

**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

**MOTION RECORD  
(RETURNABLE FEBRUARY 28, 2017)**

February 10, 2017

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AND TO:	<p><b>Andreolli Investments Inc.</b>  285 Ouellette Avenue  Windsor ON N9A 4H9</p>

# INDEX

**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

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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

**NOTICE OF MOTION  
(returnable February 28, 2017)**

BDO CANADA LIMITED ("BDO"), in its capacity as court-appointed receiver (the "Receiver") of the assets, undertakings and properties of Portofino Corporation ("Portofino" or the "Debtor") pursuant to the Order of The Honourable Mr. Justice Thomas dated October 29, 2013 (the "Appointment Order") will make a motion to the Court on Tuesday, February 28, 2017 at 10:00 a.m. or as soon after that time as the motion can be heard, at the Courthouse, 245 Windsor Avenue, Windsor, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR an Order as follows:

- (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 Seventh Report of the Receiver dated February 8, 2017 and all appendices thereto (the "Seventh Report"), and directing that any further service of same be dispensed with such that this motion is properly returnable on February 28, 2017;

- (b) approving the Seventh Report and the activities and conduct of the Receiver described therein;
- (c) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to January 31, 2017 (the "Statement of Receipts and Disbursements");
- (d) authorizing the Receiver to take no further steps with respect to certain litigation involving Portofino and authorizing the Receiver to make such actions available to any creditors who wish to pursue same at their own risk and expense;
- (e) approving the professional fees and disbursements of the Receiver and its legal counsel (the "Professional Fees"); and
- (f) such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Approval of the Seventh Report, the Receiver's Activities and the Statements of Receipts and Disbursements

1. The Receiver has carried out its duties and responsibilities in accordance with the terms of the Appointment Order;
2. The Receiver seeks approval of the Seventh Report and the Receiver's activities detailed therein;
3. The particulars of the receipts and disbursements reflected in the Statement of Receipts and Disbursements are detailed in the Seventh Report;

Authorizing for the Receiver to take no further steps with respect to certain litigation involving Portofino

1. Portofino is plaintiff or plaintiff by counterclaim in a number of outstanding actions, most of which are more than five years old and were subject to administrative dismissal as of January 1, 2017 under rule 48.14 of the *Rules of Civil Procedure*; and
2. As all of the actions are stale, the Receiver does not wish to expend funds from the receivership estate to pursue the actions. Instead, if any creditor sees benefit in

pursuing some or all of the actions, the Receiver proposes that such creditors be permitted to do so for their own benefit and at their own risk and expense.

Approval of Professional Fees

1. Pursuant to paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver were granted a first charge on the Property, as defined in the Appointment Order, as security for the Professional Fees, both before and after the making of the Appointment Order;
2. Pursuant to paragraph 20 of the Appointment Order, the accounts of the Receiver and its legal counsel must be passed from time to time by a judge of the Ontario Superior Court of Justice;
3. The Receiver and its legal counsel have maintained detailed records of the Professional Fees;
4. It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work performed by the Receiver and its legal counsel in connection with these receivership proceedings;

Other

1. Appointment Order;
2. Section 101 of the CJA;
3. Section 243 of the BIA;
4. Rules 3, 4, 6, 11 and 13 of the *Bankruptcy and Insolvency General Rules*;
5. Rules 1.04, 1.05, 3.02(1), 16 and 37 of the *Ontario Rules of Civil Procedure*; and
6. such other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the Seventh Report;

2. the fees Affidavit of Stephen N. Cherniak sworn February 8, 2017 and the exhibits attached thereto;
3. the fees Affidavit of Sherry A. Kettle sworn February 8, 2017 and the exhibits attached thereto;
4. the fees Affidavit of William V. Sasso sworn February 8, 2017 and the exhibits attached thereto;
5. all other pleadings and materials previously filed in these proceedings; and
6. such further and other evidence as counsel may advise and this Honourable Court may permit.

February 8, 2017

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AND TO:	<b>Andreolli Investments Inc.</b> 285 Ouellette Avenue Windsor ON N9A 4H9

2502461 ONTARIO LTD.     PORTOFINO CORPORATION  
Applicant     and     Respondent

Court File No: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**NOTICE OF MOTION  
(RETURNABLE FEBRUARY 28, 2017)**

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Receiver of Portofino Corporation

**TAB 2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**2502461 ONTARIO LTD.**

**Applicant**

- and -

**PORTOFINO CORPORATION**

**Respondent**

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

**February 7, 2017**

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- Appendix B** - Omnibus Approval and Vesting Order dated May 2, 2014
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- Appendix D** - Minutes of Settlement
- Appendix E** - Judgment of Justice Thomas dated January 3, 2017
- Appendix F** - Miller Thomson letter dated February 3, 2017
- Appendix G** - Statement of Receipts and Disbursements
- Appendix H** - Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn February 7, 2017
- Appendix I** - Fee affidavit of Sherry A. Kettle for the interim accounts of Miller Thomson LLP sworn February 8, 2017
- Appendix J** - Fee affidavit of William Sasso for the interim accounts of Sutts Strosberg sworn February 8, 2017



# 1. Introduction and Background

---

## 1.1 Introduction

- 1.1.1 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**").
- 1.1.2 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**"). A copy of the Appointment Order is attached as **Appendix A** to this report.

## 1.2 Background

- 1.2.1 At all material times, Portofino was engaged in the development of a 123 unit luxury residential condominium project known as "Portofino" (the "**Portofino Condominium**" or the "**Project**"), located at 1225 Riverside Drive West in the City of Windsor, Ontario. Dr. Dante Capaldi ("**Capaldi**") is the principal of Portofino.
- 1.2.2 Construction of the Portofino Condominium was completed in 2007, but not all individual units were completed. Essex Standard Condominium Corporation No. 122 ("**ECC 122**") was registered and the closing of sales of units commenced in July, 2007.
- 1.2.3 At the time of the appointment of the Receiver, Portofino owned:
- (a) fifty-two (52) condominium units, including forty-three (43) fully finished units and nine (9) unfinished units (the "**Unsold Condominium Units**");
  - (b) thirty-eight (38) parking units, including four (4) surface-level covered parking units and thirty-four (34) surface-level uncovered parking units (the "**Unsold Parking Units**"); and
  - (c) two (2) storage units (the "**Unsold Storage Units**")
- (collectively, the "**Unsold Units**").

- 1.2.4 Since 2005, there has been ongoing litigation commenced by Remo Valente Real Estate (1990) Limited ("**Valente Real Estate**"), as plaintiff, against Portofino, among others, in Court Action No. 05-CV-5864CM (the "**Valente Court Action**").
- 1.2.5 Since its appointment on October 29, 2013, the Receiver has undertaken various activities, including, without limitation, the sale of 38 Unsold Condominium Units and the defence of the Valente Court Action. To date, seven reports, including the within report, have been filed by the Receiver in these proceedings wherein these activities, transactions and litigation are described in greater detail.
- 1.2.6 As part of its Third Report to the Court, the Receiver sought prospective approval for future sales of the Unsold Units and the vesting of Portofino's right, title and interest in and to the applicable Unsold Unit, subject to certain conditions, in the applicable Purchaser.
- 1.2.7 By Order dated May 2, 2014 (the "**Omnibus Approval and Vesting Order**"), Mr. Justice Campbell prospectively approved the sales transactions in respect of the Unsold Units and vested all of Portofino's right, title and interest in and to the applicable Unsold Unit, subject to certain terms and conditions, in the Purchaser. A copy of the Omnibus Approval and Vesting Order is attached as **Appendix B**.
- 1.2.8 In June 2015, BMO sold to RREF II BHB IV PORTOFINO LLC ("**RREF**") its loans with Portofino and the security held for those loans, including the mortgage held by BMO over the Project (the "**BMO Mortgage**").
- 1.2.9 In May 2016, RREF, in turn, sold those loans and security, including the BMO Mortgage, to 2502461 Ontario Ltd. ("**250 Ontario**"). 250 Ontario subsequently assigned those loans and security to Windsor Family Credit Union ("**WFCU**") by way of security for amounts owing by 250 Ontario to WFCU.
- 1.2.10 By order dated July 26, 2016 (the "**July 26, 2016 Order**") Mr. Justice Campbell, among other things, approved certain amendments to the Omnibus Approval and Vesting Order. A copy of the July 26, 2016 Order is attached as **Appendix C**.
- 1.2.11 The July 26, 2016 Order also approved the interim distribution of \$4.0 million to WFCU from the net receipts from the sale of units and collection of rents. On July 26, 2016 the Receiver paid \$4.0 million to WFCU.

1.2.12 By order dated November 29, 2016 (the "**November 29, 2016 Order**") Mr. Justice Bondy, among other things, approved the further interim distribution of \$2.4 million to WFCU. On November 30, 2016 the Receiver paid \$2.4 million to WFCU.

## 2. Terms of Reference

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- 2.1 In preparing this Seventh Report, the Receiver has relied upon unaudited and draft, internal financial information obtained from Portofino's books and records and discussions with 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 Receiver's Seventh Report

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- 3.1 This constitutes the Receiver's Seventh Report to the Court (the "**Seventh Report**") in this matter and is filed:
- (a) To provide the Court with information on:
    - (i) the Receiver's activities since the date of the Sixth Report;
    - (ii) the resolution of the Valente Court Action; and
    - (iii) the status of other litigation that Portofino is a party to
  - (b) In support of an order of the Court:
    - (i) Approving the Seventh Report and the activities and conduct of the Receiver described herein;
    - (ii) Approving and authorizing the Receiver to take no further steps with respect to certain litigation, as set out in the Seventh report, but make the actions available to any creditor of Portofino to pursue at their own risk and expense;
    - (iii) Approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to January 31, 2017 (the "**Statement of Receipts and Disbursements**");
    - (iv) Approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**");
    - (v) Approving the professional fees and disbursements of Miller Thomson LLP ("**MT**"), counsel to the Receiver ("**MT Fees**"); and
    - (vi) Approving the professional fees and disbursements of Sutts Strosberg LLP ("**SS**"), counsel retained by the Receiver on behalf of Portofino for

the Valente Court Action ("**SS Fees**" and collectively with the BDO Fees and MT Fees, the "**Professional Fees**")

## 4. Receiver's Activities

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- 4.1 In its Sixth Report, the Receiver reported to the Court on its activities through November 9, 2016.
- 4.2 In this, the Seventh Report, the Receiver reports on its activities since the date of the Sixth Report.

### **Sale of the Unsold Units**

- 4.3 The Fourth Report provided a detailed report of the Receiver's sale process for the Unsold Units and the results achieved to April 15, 2016.
- 4.4 Subsequent reports have provided updates on further sales of the Unsold Units.
- 4.5 Since the Sixth Report, the Receiver has completed the sale of unit 806 and entered into a firm Agreement of Purchase and Sale for unit 1401 that is scheduled to close on February 17, 2017. The conditional sales of units 1601 and 1602 reported in the Sixth Report are not proceeding. Unit 1602 continues to be listed on the Multiple Listing Service ("**MLS**").
- 4.6 To date, the Receiver has sold 38 of the Unsold Condominium Units, including two unfinished units.
- 4.7 The Receiver has sold five (5) of the Unsold Parking Units, consisting of four surface level garages and one surface level parking space.
- 4.8 Of the 52 Unsold Condominium Units owned by Portofino at the time of the appointment of the Receiver, 14 units remain unsold, 7 of which are fully finished and 7 are unfinished. In addition, 33 parking units and two storage units remain unsold. A summary of the sales completed to date of the Unsold Condominium Units and the remaining Unsold Condominium Units is provided on the following page:

**Condominium units sold by Receiver**

Unit No.		Size (Sq. ft.)	Sale date
1108	Finished	1,151	05-May-14
704	Finished	1,282	30-Jun-14
904	Finished	1,602	31-Oct-14
804	Finished	1,282	04-Dec-14
1102	Finished	1,547	09-Jan-15
1104	Finished	1,602	12-Feb-15
803	Finished	1,217	29-May-15
1404	Finished	2,233	30-Jun-15
701	Finished	1,150	24-Jul-15
402	Finished	1,062	30-Jul-15
1105	Finished	1,547	31-Jul-15
1002	Finished	1,547	14-Aug-15
508	Finished	1,150	03-Sep-15
805	Finished	1,282	23-Sep-15
203	Finished	1,062	23-Oct-15
1303	Finished	2,450	16-Nov-15
901	Finished	1,593	20-Nov-15
903	Finished	1,602	20-Nov-15
1403	Finished	2,450	01-Dec-15
603	Finished	1,217	03-Dec-15
906	Finished	1,593	11-Dec-15
1503	Unfinished	2,450	25-Jan-16
1008	Finished	1,151	19-Feb-16
401	Finished	1,150	08-Mar-16
1001	Finished	1,593	24-Mar-16
708	Finished	1,150	16-May-16
1101	Finished	1,593	05-Jul-16
1202	Unfinished	2,450	13-Jul-16
103	Finished	1,282	15-Jul-16
304	Finished	1,282	02-Aug-16
601	Finished	1,150	05-Aug-16
105	Finished	1,062	30-Aug-16
1501	Finished	2,233	20-Sep-16
104	Finished	1,217	03-Oct-16
408	Finished	1,150	03-Oct-16
309	Finished	1,151	02-Nov-16
806	Finished	1,217	06-Jan-17
1401	Finished	2,233	17-Feb-17
		<u>57,135</u>	

**Remaining units**

Unit No.		Size (Sq. ft.)
101	Unfinished	2,036
102	Finished	2,081
106	Finished	1,150
204	Finished	1,150
1201	Unfinished	2,233
1301	Finished	2,233
1302	Unfinished	2,450
1402	Unfinished	2,450
1502	Finished	2,450
1505	Unfinished	1,718
1601	Unfinished	2,233
1602	Unfinished	2,450
1603	Finished	2,450
1605	Finished	1,718

28,802



**Other Matters**

- 4.9 The Receiver engaged Portofino's external accountant to prepare financial statements and income tax returns for the fiscal year ended July 1, 2016. The Receiver is now current in filing the income tax returns of Portofino, and the returns have been assessed by Canada Revenue Agency.

## 5. Valente Court Action

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- 5.1 The First Report and Third Report provided a summary and subsequent update of the Valente Court Action. A detailed report on the status of the Valente Court Action was provided in the Fourth Report.
- 5.2 The trial of the Valente Court Action commenced on November 14, 2016. Prior to the commencement of the trial there were settlement discussions, but no settlement was reached. On November 15, 2016 further settlement discussions were held which resulted in a settlement being reached. Minutes of Settlement were drafted and signed. A copy of the signed Minutes of Settlement is attached as **Appendix D**.
- 5.3 Under the terms of the Minutes of Settlement, Portofino was to pay to the plaintiff \$630,000 within five business days.
- 5.4 Prior to the receivership, Portofino posted with the court a \$2 million letter of credit as security for the claims made in the Valente Court Action. As part of the arrangements made in connection with the assignment of the BMO security and debt to RREF, 250 Ontario and ultimately WFCU, 250 Ontario posted with the lawyers for RREF security for the contingent liability represented by the letter of credit. When the Minutes of Settlement were signed, it was intended that the \$630,000 to be paid by Portofino to the plaintiff under the Minutes of Settlement would be funded from the security posted by 250 Ontario with the lawyers for RREF. That funding did not occur.
- 5.5 Not having received payment of the amounts required by the Minutes of Settlement, the plaintiff brought a motion for judgment in accordance with the settlement. On that motion a judgment was signed by Mr. Justice Thomas, on consent, a copy of which is attached as **Appendix E**.
- 5.6 Steps have been taken by the plaintiff in accordance with that judgment to draw upon the letter of credit for the amounts provided for in the judgment (\$630,000 plus interest and costs of the motion). After the judgment is satisfied, the letter of credit is to be released and the Valente litigation will thereupon be complete.

## 6. Other Litigation

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- 6.1 In November 2016, the Receiver learned that Portofino was a party to numerous legal actions including a number of actions that were approaching administrative dismissal due to the length of time that had elapsed since the commencement of the litigation. Several of the actions originated from pre-construction sales of condominium units in 2003 – 2005 that could not be completed by the buyer.
- 6.2 In order to prevent the administrative dismissal of the actions on January 1, 2017, and afford the opportunity for the Receiver to evaluate the actions, the Receiver's legal counsel filed motions returnable on February 28, 2017 for orders that status hearings be held.
- 6.3 The Receiver's counsel has reviewed the various actions, to the extent that documents were available. MT's letter to the Receiver, summarizing the outstanding actions, is attached as **Appendix F**.
- 6.4 The Receiver's counsel determined that in one of the actions - Betschel's Kitchen Centre Inc. vs Portofino Corporation, Court File No. 07-CV-9730 ("**Betschel's Kitchen Action**") – Portofino had posted security with the Court which, with accrued interest, totalled \$148,897 as of November 30, 2016. The Receiver in consultation with its legal counsel is assessing the ability of the Receiver to obtain payment out of Court of those funds.
- 6.5 As recommended by MT, the Receiver seeks the approval of the Court to take no further steps with respect to the following actions (being the actions summarized in MT's Report in which a judgment has not been obtained, save and except the Betschel's Kitchen Action), and to make the actions available to any creditors of Portofino to pursue for their own benefit, but at their own risk and expense. If no creditor takes an assignment of the actions, the actions will be abandoned by the Receiver.

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<b>Opposing Party</b>	<b>Court File Number</b>
Adam, Richard	N/A
B & R Crevatin Electric Inc.	CV-08-12314 SR
Betschel, David	CV-09-13288SR
Eagle Mechanical Group Inc. / Osvaldo Rizzo	CV-11-16298
Jeji, Karamit	CV-09-13287 SR
Loucks, Richard	CV-09-13289 SR
Mind Quest Engineering Inc. / Dennis Pupulin	CV-10-15068
Spec Coatings Inc.	CV-09-13226 CM
Villata, Dino & Tina	CV-09-13290 SR

## 7. Statement of Receipts and Disbursements of the Receiver

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7.1 The Receiver maintains an account at BMO in London, Ontario. Attached as **Appendix G** is the Statement of Receipts and Disbursements. Details of the Receiver's receipts and disbursements are as follows:

### 7.2 Receipts

- a) *Sale of units and surface parking (\$10,306,427.16)* — The Receiver received net proceeds of \$10,306,427.16 from the sale of the Unsold Units. Proceeds received are net of amounts paid on closing for condominium fee arrears, real estate commissions inclusive of HST, and HST collected on the sale of Unsold Parking Units and unfinished Unsold Condominium Units.
- b) *Condominium rent collected (\$1,901,137.60)* — The Receiver collected \$1,901,137.60 from the rental of the Unsold Condominium Units.
- c) *Lawsuit (\$119,789.96)* — Portofino was involved in litigation arising from the original construction of the Project. The Receiver collected \$119,789.96, being the balance of holdback funds held in the lawyer's trust account, after distribution to sub-contractors in settlement of the litigation.
- d) *Reimbursement of Letter of Credit Costs (\$64,408.22)* — As required by the Orders of the Court of Appeal and Justice Quinn, Valente Real Estate reimbursed the costs of maintaining the letter of credit in the Valente Court Action.
- e) *Parking rent collected (\$27,079.69)* — The Receiver collected \$27,079.69 from the rental of Unsold Parking Units.
- f) *Interest (\$20,155.82)* — The Receiver received \$20,155.82 in interest on trust funds invested by the Receiver in Guaranteed Investment Certificates ("GIC") that matured or were redeemed. Interest is recognized as it is received.

- g) *HST refund (\$7,971.76)* — Upon filing the outstanding corporate income tax returns, the Receiver received \$7,971.76 in HST refunds accruing from prior to the appointment of the Receiver.

### 7.3 Disbursements

- a) *Property taxes (\$2,946,945.52)* — The Receiver has paid property taxes to the City of Windsor of \$2,946,945.52. This amount represents property tax arrears, interest and penalties to August 2015 and current installment payments for the balance of 2015 and 2016.
- b) *Receiver's fees (\$743,168.56)* – BDO's accounts for the period July 19, 2013 to September 26, 2016 in the amount of \$708,775.53, excluding HST, were previously approved by the Court and paid. The Receiver paid BDO's interim account for the period September 27, 2016 to November 22, 2016 in the amount of \$34,393.03 and is seeking approval of the Court for this invoice and its invoice for the period November 23, 2016 to January 13, 2017.
- c) *Condominium common fees (\$691,921.05)* — The Receiver has paid \$691,921.05 to ECC 122 for common fees on the Unsold Units, including arrears, interest and current monthly payments.
- d) *Legal fees (\$328,201.31)* – MT's accounts for the period September 9, 2013 to October 31, 2016 in the amount of \$302,815.30, excluding HST, were previously approved by the Court and paid. The Receiver paid MT's interim account for the period November 1, 2016 to December 29, 2016 in the amount of \$25,386.01 and is seeking approval of the Court of this invoice.
- e) *Repairs and Maintenance (\$214,204.05)* – The Receiver has paid \$214,204.05 in repairs and maintenance to the Unsold Units, replacement and enhanced landscaping to the west roof, replacement of the underground parking roof, and the installation of a rooftop air conditioning unit for unit 1202.
- f) *HST paid (\$185,059.21)* – The Receiver has paid \$185,059.21 in HST on its disbursements.
- g) *HST remitted (\$115,452.23)* – The Receiver is obliged to collect HST on the sale of the Unsold Parking Units and unfinished Unsold Condominium Units and has

remitted \$115,452.23. This amount represents the HST collected, less any eligible input tax credits.

- h) *Legal fees – Sutts Strosberg (\$78,662.72)* – The Receiver engaged SS to provide an initial review and chronology of the Valente Court Action for the Receiver’s counsel, and subsequently to continue the litigation on behalf of Portofino Corporation. SS’s accounts for the period July 6, 2016 to November 6, 2016 in the amount of \$52,647.46, excluding HST, were previously approved by the Court and paid. The Receiver paid SS’s interim account for the period November 7, 2016 to December 30, 2016 in the amount of \$21,015.26 and is seeking approval of the Court of this invoice.
- i) *Property management fees (\$70,000.00)* — The Receiver has paid \$70,000.00 to Capaldi Holdings for property management of the Unsold Units.
- j) *Letter of credit fees (\$39,074.26)* — The Receiver paid \$39,074.26 to BMO for fees to maintain the \$2.0 million Letter of Credit in connection with the Valente Court Action.
- k) *Advertising (\$38,178.71)* — The Receiver paid \$38,178.71 for advertising, signage, photography, web site maintenance, and the staging of condominium units listed for sale.
- l) *Bond premiums (\$37,587.00)* — The Receiver paid \$37,587.00 to Northbridge General Insurance Corporation for the premiums on bonds posted as security for:
  - i) Tarion Warranty Corporation; and
  - ii) Portofino litigation with Dede Dalfidan cob as Fidan Enterprise Contracting.
- m) *Utilities (\$36,489.15)* — The Receiver paid \$36,489.15 for utilities on vacant Unsold Units and two leased condominium units where utilities were paid by the Landlord.
- n) *Valente litigation – Costs Award (\$30,393.34)* — The Receiver paid \$30,393.34 in legal costs awarded to Valente Real Estate in the Valente Court Action.
- o) *Appraisal fees (\$15,014.50)* — The Receiver paid \$15,014.50 to Metrix Realty Group for an appraisal of the Unsold Condominium Units on an individual unit basis.

- p) *Insurance (\$5,212.08)* — The Receiver paid \$5,212.08 to Hub International for premiums on the Receiver's liability insurance policy.
- q) *Commission on rentals (\$3,650.00)* — The Receiver paid \$3,650.00 to a party engaged by the property manager to assist in the leasing of vacant Unsold Units.



## 8. Fees and Disbursements of the Receiver and Counsel to the Receiver

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- 8.1 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.
- 8.2 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.
- 8.3 Attached as **Appendix H** is the fee affidavit of Stephen N. Cherniak sworn February 7, 2017 containing BDO's interim accounts as Receiver for the following periods:
- o September 27, 2016 to November 22, 2016
  - o November 23, 2016 to January 13, 2017
- 8.4 The Receiver's fees to date, exclusive of HST, are as follows:
- |                                       |   |                     |
|---------------------------------------|---|---------------------|
| Fees paid and Court approved          | - | \$ 708,775.53       |
| Fees paid, but not yet Court approved | - | 34,393.93           |
| Fees neither paid, nor Court approved | - | 30,080.68           |
|                                       |   | <u>\$773,249.64</u> |
- 8.5 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.
- 8.6 Attached as **Appendix I** is the fee affidavit of Sherry A. Kettle, sworn February 8, 2017, containing the interim accounts of MT for the period November 1, 2016 to December 31, 2017.
- 8.7 MT's fees to December 31, 2016, exclusive of HST, are as follows:

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Fees paid and Court approved	-	\$ 302,815.30
Fees paid, but not yet Court approved	-	<u>25,386.01</u>
		<u>\$328,201.31</u>

8.8 Attached as **Appendix J** is the fee affidavit of William V. Sasso, sworn February 8, containing the interim accounts of SS for the period November 7, 2016 to December 30, 2016.

8.9 SS fees to December 30, 2016, exclusive of HST, are as follows:

Fees paid and Court approved	-	\$52,647.46
Fees paid, but not yet Court approved	-	<u>21,015.26</u>
		<u>\$73,662.72</u>

8.10 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, MT and SS in connection with the receivership during the relevant periods. The Receiver recommends approval of the Professional Fees by the Court.

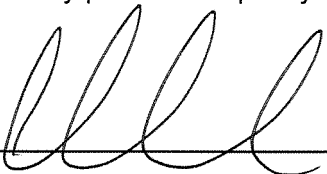
## 9. Recommendations

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- 9.1. The Receiver recommends and respectfully requests that the Court grant an order as follows:
- (a) Approving the Seventh Report and the activities and conduct of the Receiver described herein;
  - (b) Approving and authorizing the Receiver to take no further steps with respect to certain litigation, as set out in Section 6 of the Seventh Report, but make the actions available to any creditor of Portofino to pursue at their own risk and expense;
  - (c) Approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to January 31, 2017; and
  - (d) Approving the Professional Fees;

All of which is Respectfully Submitted this 1th day of February, 2017.

BDO Canada Limited in its capacity as Court Appointed Receiver 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-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) TUESDAY, THE 29th  
JUSTICE B. THOMAS ) DAY OF OCTOBER, 2013

**BANK OF MONTREAL**

Applicant

- and -

**PORTOFINO CORPORATION**

Respondent

**ORDER**

THIS APPLICATION made by the Applicant, Bank of Montreal, ("BMO") for an 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 (the "CJA") appointing BDO Canada Limited as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Portofino Corporation (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 245 Windsor Avenue, Windsor, Ontario.

ON READING the affidavit of Greg Fedoryn sworn September 6, 2013 and the Exhibits thereto and on hearing the submissions of counsel for BMO, Essex Condominium Corporation 122 ("ECC 122"), the Estate of Patrick D'Amore, Portofino Corporation and Dante Capaldi, Remo Valente Real Estate (1990) Limited and Sutts Strosberg LLP, no one appearing for Lombard General Insurance Company of Canada (now Northbridge General Insurance

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Corporation) or Royal Bank of Canada, although duly served and on reading the consent of BDO Canada Limited to act as the Receiver,

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, BDO Canada Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

### **RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary

course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor, and to complete any minor repairs or construction as may be required to release and/or reduce security held for the Debtor's obligations under the Ontario New Home Warranties Plan Act, R.S.O. 1990, c. O.31, as amended;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby

conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate; In marketing the Property, the Receiver will consult with ECC 122; however the advice and opinions of ECC 122 will not be binding upon the Receiver;

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

(m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;



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- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

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5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **REPORT TO COURT AND STAKEHOLDERS**

7. THIS COURT ORDERS that the Receiver will deliver its first report to the Court on notice to BMO, Dante Capaldi, the Estate of Patrick D'Amore, Osvaldo Rizzo, Northbridge General Insurance Corporation, Remo Valente Real Estate (1990) Limited, Sutts Strosberg LLP;

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Royal Bank of Canada, Essex Condominium Corporation no.122 and the City of Windsor (collectively, the "Stakeholders") within 45 days following its appointment.

8. THIS COURT ORDERS that the Receiver will report to the Stakeholders on a quarterly basis, prorated for 2013, such that the first such report is not required until the end of the first quarter of 2014.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

9. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

10. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court. Leave of the Court is hereby granted to continue the Proceeding known as *Remo Valente Real Estate (1990) Limited v. Portofino Riverside Tower Inc., Westview Park Gardens (2004) Inc., Portofino Corporation and Dante Capaldi*, Court file 05-CV-5864CM.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

11. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

12. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

13. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

**RECEIVER TO HOLD FUNDS**

14. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

**EMPLOYEES**

15. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

**PIPEDA**

16. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

17. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or

relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form 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, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Ontario Superior Court of Justice.

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21. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

25. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

**GENERAL**

26. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
27. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
29. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
30. THIS COURT ORDERS that the applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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J. S. V. Romer

ENTERED AT WINDSOR	
In Book No.	24
re Document No.	1485
on	NOV 21 2013
by	JJ

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**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

32. THIS IS TO CERTIFY that BDO Canada Limited, the receiver (the "Receiver") of the assets, undertakings and properties of Portofino Corporation (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the \_\_\_\_\_ of \_\_\_\_\_, 2013 (the "Order") made in an action having Court file number \_\_\_\_\_ has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

33. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of Montreal from time to time.

34. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

35. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

36. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

37. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

38. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2013.

BDO Canada Limited, solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

**Bank of Montreal**  
*Applicant*

**-and- Portofino Corporation**  
*Respondent*

Court File No. CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**  
  
**PROCEEDING COMMENCED AT  
WINDSOR**

**ORDER**

**ROBINS APPLEBY & TAUB LLP**  
Barristers & Solicitors  
2600 - 120 Adelaide Street West  
Toronto ON M5H 1T1

**David A. Taub**  
LSUC No. 33518M  
Tel: (416) 360-3354  
Fax: (416) 868-0306

Lawyers for the Applicant, Bank of Montreal

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# **APPENDIX “B”**

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR. ) FRIDAY, THE 2ND  
JUSTICE CAMPBELL ) DAY OF MAY, 2014

BETWEEN:

BANK OF MONTREAL Applicant

- and -

PORTOFINO CORPORATION Respondent

**OMNIBUS APPROVAL AND VESTING ORDER**

THIS MOTION, made by BDO Canada Limited, in its capacity as Court-appointed receiver of all of the assets, undertakings and properties of Portofino Corporation ("**Portofino**") pursuant to the Order of The Honourable Justice Thomas dated October 29, 2013 (the "**Receiver**"), for an order:

- (a) prospectively authorizing the Receiver to accept an offer or offers to purchase any or all of the unsold units (the "**Unsold Units**") provided that the sale price for each Unsold Unit to which such offer(s) relates is acceptable to the Receiver having regard to the appraised value for such Unsold Unit(s) and prior sales of similar units and all other terms of the offer(s) are, in the Receiver's sole opinion, in the best interests of the stakeholders of Portofino;
- (b) prospectively authorizing the execution of an agreement of purchase and sale in respect of each Unsold Unit by the Receiver, as vendor, and the purchaser of each Unsold Unit (each purchaser hereinafter referred to as the "**Purchaser**") substantially in the form of the Form of Unsold Unit Sale Agreement attached as Schedule "A" to the Sale Agreement Order, together with any amendments or

modifications thereto deemed necessary by the Receiver (each agreement hereinafter referred to as an "**Unsold Unit Sale Agreement**");

- (c) prospectively approving the sale transactions (each such transaction, a "**Transaction**" and together, the "**Transactions**") in respect of the Unsold Units, more particularly described on **Schedule "A"** to this Order; and
- (d) providing that, upon the delivery by the Receiver to a Purchaser of a Receiver's Certificate substantially in the form attached as Schedule "B" to this Order (the "**Receiver's Certificate**"), all of Portofino's right, title and interest in and to the Unsold Unit(s) described in each applicable Unsold Unit Sale Agreement (the "**Purchased Assets**") will vest in and to the applicable Purchaser, free and clear of any and all claims and encumbrances including those listed on Schedule "C" and in paragraph 3 of this Order, save and except for those encumbrances listed on Schedule "D" of this Order,

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

ON READING the Third Report of the Receiver dated April 21, 2014 and all appendices thereto (the "**Third Report**"), and the Confidential Supplement to the Third Report and all appendices thereto (the "**Confidential Supplement**") and on hearing the submissions of counsel for the Receiver, and such other persons as may be present and on noting that no other persons appeared, although properly served as appears from the affidavit of Susan Jarrell sworn April 22, 2014, filed:

1. THIS COURT ORDERS that the Receiver is hereby prospectively authorized to accept an offer or offers to purchase any or all of the Unsold Units provided that the sale price for each Unsold Unit to which such offer(s) relates is acceptable to the Receiver having regard to the appraised value for such Unsold Unit(s) and prior sales of similar units and all other terms of the offer(s) are, in the Receiver's sole opinion, in the best interests of the stakeholders of Portofino.
2. THIS COURT ORDERS AND DECLARES that each Transaction is hereby prospectively approved, and the execution of each applicable Unsold Unit Sale Agreement by the Receiver is hereby authorized and approved, with any amendments or modifications thereto deemed necessary by the Receiver. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for

the completion of any Transaction and for the conveyance of the Purchased Assets to each applicable Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's Certificate to the Purchaser substantially in the form attached as **Schedule "B"** hereto, all of Portofino's right, title and interest in and to the Purchased Assets described in the applicable Unsold Unit Sale Agreement and listed on Exhibit "A" of the applicable Receiver's Certificate in respect of such Unsold Unit Sale Agreement shall vest absolutely in and to the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Thomas dated October 29, 2013; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (iii) any Claims filed in respect of or affecting the Purchased Assets, which Claims are filed on or after the date of the granting of this Order, including without limitation, Claims in respect of the *Construction Lien Act* (Ontario); (iv) those Claims listed on **Schedule "C"** hereto in relation to the Purchased Assets (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"** in relation to the Purchased Assets) and, for greater certainty, this Court orders that upon delivery of the applicable Receiver's Certificate all of the Encumbrances affecting or relating to the Purchased Assets shall be expunged and discharged as against the Purchased Assets.

4. THIS COURT DIRECTS that the Land Registrar in respect of the Land Registry Office for the Land Titles Division of Essex (No. 12) (the "**Land Registry**") shall register a copy of this Order along with the applicable fully completed and executed Receiver's Certificate in respect of the Purchased Assets once the Land Registrar is in receipt of same.

5. THIS COURT ORDERS that upon the registration in the Land Registry of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act* (which will include a copy of this Order and the fully completed and executed Receiver's Certificate in respect of the Purchased Assets), the Land Registrar is hereby directed to enter the Purchaser named in the applicable Receiver's Certificate as the owner of the



Purchased Assets listed in Exhibit "A" to the Receiver's Certificate in fee simple, and is hereby directed to delete and expunge from title to the Purchased Assets all of the Claims listed in Schedule "C" hereto and in paragraph 3 of this Order.

6. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate in respect of an applicable Unsold Unit Sale Agreement, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of each Receiver's Certificate, forthwith after delivery thereof, and in any event no later than thirty (30) days after the date of the closing of the Transaction detailed in each applicable Unsold Unit Sale Agreement.

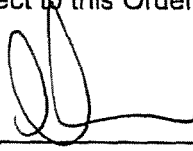
8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Portofino and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Portofino;

the vesting of the Purchased Assets in each applicable Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Portofino and shall not be void or voidable by creditors of Portofino, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. THIS COURT ORDERS AND DECLARES that each Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



Justice, Superior Court of Justice

ENTERED AT WINDSOR	
In Book No.	25
File Document No.	572
DATE	May 2 14
by	DF

**Schedule "A" – Unsold Units**

**Legal Description**

**Description:** Essex Standard Condominium Plan No. 122 and its appurtenant interest. The description of the condominium property is: LT 1, South Side of Sandwich Street, PI 392 & Pt Lot 73 Concession 1 Windsor; Pt 1 PI 12R17829; S/T Ease as set out in Schedule "A" of Declaration CE278123, Windsor Ontario (LT) (LRO#12)

Unsold Condominium Units					
Unit	Level		PIN		
1	1		01872	-	0001
2	1		01872	-	0002
3	1		01872	-	0003
4	1		01872	-	0004
5	1		01872	-	0005
6	1		01872	-	0006
3	2		01872	-	0052
4	2		01872	-	0053
4	3		01872	-	0058
9	3		01872	-	0063
1	4		01872	-	0065
2	4		01872	-	0066
8	4		01872	-	0072
8	5		01872	-	0082
1	6		01872	-	0085
3	6		01872	-	0087
1	7		01872	-	0095
4	7		01872	-	0098

Unsold Condominium Units					
Unit	Level		PIN		
8	7		01872	-	0102
3	8		01872	-	0107
4	8		01872	-	0108
5	8		01872	-	0109
6	8		01872	-	0110
1	9		01872	-	0115
3	9		01872	-	0117
4	9		01872	-	0118
6	9		01872	-	0120
1	10		01872	-	0123
2	10		01872	-	0124
8	10		01872	-	0130
1	11		01872	-	0131
2	11		01872	-	0132
4	11		01872	-	0134
5	11		01872	-	0135
1	12		01872	-	0139
2	12		01872	-	0140
1	13		01872	-	0145
2	13		01872	-	0146
3	13		01872	-	0147
1	14		01872	-	0151
2	14		01872	-	0152
3	14		01872	-	0153

Unsold Condominium Units					
Unit	Level		PIN		
4	14		01872	-	0154
1	15		01872	-	0157
2	15		01872	-	0158
3	15		01872	-	0159
5	15		01872	-	0161
1	16		01872	-	0162
2	16		01872	-	0163
3	16		01872	-	0164
5	16		01872	-	0166

Unsold Parking Units					
Unit	Level		PIN		
7	1		01872	-	0007
8	1		01872	-	0008
12	1		01872	-	0012
13	1		01872	-	0013
16	1		01872	-	0016
17	1		01872	-	0017
18	1		01872	-	0018
19	1		01872	-	0019
20	1		01872	-	0020
21	1		01872	-	0021
22	1		01872	-	0022
23	1		01872	-	0023

Unsold Parking Units					
Unit	Level		PIN		
24	1		01872	-	0024
25	1		01872	-	0025
26	1		01872	-	0026
27	1		01872	-	0027
28	1		01872	-	0028
29	1		01872	-	0029
30	1		01872	-	0030
31	1		01872	-	0031
32	1		01872	-	0032
33	1		01872	-	0033
34	1		01872	-	0034
35	1		01872	-	0035
36	1		01872	-	0036
37	1		01872	-	0037
38	1		01872	-	0038
39	1		01872	-	0039
40	1		01872	-	0040
41	1		01872	-	0041
42	1		01872	-	0042
43	1		01872	-	0043
44	1		01872	-	0044
45	1		01872	-	0045
46	1		01872	-	0046
47	1		01872	-	0047

Unsold Parking Units					
Unit	Level		PIN		
48	1		01872	-	0048
49	1		01872	-	0049

Unsold Storage Units					
Unit	Level		PIN		
2	A		01872	-	0168
1	A		01872	-	0167

Schedule "B" – Form of Receiver's Certificate

Court File No. CV-13-19866

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Thomas of the Ontario Superior Court of Justice (the "Court") dated October 29, 2013, BDO Canada Limited ("BDO") was appointed as the receiver (the "Receiver") of all of the assets, undertakings and properties Portofino ("Portofino").

B. Pursuant to an Order of the Court dated May 2, 2014, the Court granted an omnibus approval and vesting order (the "Omnibus Approval and Vesting Order"), providing for among other things:

(a) the Court's approval of this Transaction in respect of the Purchased Assets (as defined below) as described in the Sale Agreement (as defined below);

(b) the Court's authorization of the Receiver entering into the Agreement of Purchase and Sale made as of \_\_\_\_\_ [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver and \_\_\_\_\_ [NAME OF PURCHASER] (the "Purchaser"); and

(c) the vesting in and to the Purchaser all of Portofino's right, title and interest in and to the lands and premises legally described on Exhibit "A" to this Receiver's Certificate (the "Purchased Assets"), with such vesting to be effective in respect of the Purchased



Assets upon the delivery by the Receiver to the Purchaser of this certificate confirming (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or, to the extent that such conditions could be waived, have been waived by the Receiver and the Purchaser; and (iii) the transaction described in the Sale Agreement (the "Transaction") has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Omnibus Approval and Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on closing pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or, to the extent such conditions could be waived, have been waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver;
4. In accordance with the provisions of the Omnibus Approval and Vesting Order, upon delivery by the Receiver of this Receiver's Certificate to the Purchaser, the Transaction is approved and the Purchaser is vested with all of Portofino's right, title and interest in and to the Purchased Assets; and
5. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**BDO CANADA LIMITED** solely in its capacity as Court-appointed receiver of Portofino Corporation and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

**Exhibit "A" to Form of Receiver's Certificate – Purchased Assets**

**(INSERT LEGAL DESCRIPTION AND MUNICIPAL ADDRESS FOR EACH UNSOLD UNIT  
COMPRISING THE PURCHASED ASSETS SUBJECT TO THE APPLICABLE UNSOLD UNIT  
SALE AGREEMENT)**

BANK OF MONTREAL  
Plaintiff

and

PORTOFINO CORPORATION  
Defendant

Court File No: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

**RECEIVER'S CERTIFICATE**

**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, Court-Appointed  
Receiver of Portofino Corporation

**Schedule "C" – Claims to be deleted and expunged from title to the Unsold Units**

<b>Description:</b>	Essex Standard Condominium Plan No. 122 and its appurtenant interest. The description of the condominium property is: LT 1, South Side of Sandwich Street, Pl 392 & Pt Lot 73 Concession 1 Windsor; Pt 1 Pl 12R17829; S/T Ease as set out in Schedule "A" of Declaration CE278123, Windsor Ontario (LRO#12)
<b>Unsold Condominium Units (See Schedule "A" for individual unit descriptions)</b>	
1.	Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.
2.	Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.
3.	Instrument No. CE297353 – Charge in the principal amount of \$1,000,000 from Portofino Corporation to Remo Valente Real Estate (1990) Limited, registered on October 12, 2007.
4.	Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
5.	Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
6.	Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
7.	Instrument No. CE482047 – Charge in the principal amount of \$400,000 from Portofino Corporation to Sutts Strosberg LLP, registered on August 9, 2011.
8.	Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
9.	Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
10.	Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.
11.	Instrument No. CE551002 – Charge in the principal amount of \$524,312 from Portofino Corporation to Sutts Strosberg LLP, registered on January 10, 2013.
12.	Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal,

registered on July 22, 2013.

13. Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.
14. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
15. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
16. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
17. Instrument No. CE588099 – Condo Lien/98 in the amount of \$80,749 registered by Essex Standard Condominium Corporation No. 122 on October 29, 2013.
18. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
19. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.
20. Instrument No. CE592122 – Application Court Order registered on November 28, 2013.

**Unsold Parking Units (See Schedule "A" for individual unit descriptions)**

1. Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.
2. Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.
3. Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
4. Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
5. Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
6. Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
7. Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
8. Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation,

- registered on March 1, 2012.
- 9. Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.
- 10. Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.
- 11. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
- 12. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
- 13. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
- 14. Instrument No. CE588098 – Condo Lien/98 in the amount of \$23,497 registered by Essex Standard Condominium Corporation No. 122 on October 29, 2013.
- 15. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
- 16. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.

**Unsold Storage Units (See Schedule "A" for individual unit descriptions)**

- 1. Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.
- 2. Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.
- 3. Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
- 4. Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
- 5. Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
- 6. Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
- 7. Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to

- Royal Bank of Canada, registered on December 20, 2011.
8. Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.
  9. Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.
  10. Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.
  11. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
  12. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
  13. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
  14. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
  15. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.

**Schedule "D" – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Unsold Units (Unsold Condominium Units, Unsold Parking Units and  
Unsold Storage Units)**

**(unaffected by the Omnibus Approval and Vesting Order)**

- (i) Instrument No. CE98338 – Notice from the Corporation of the City of Windsor to Portofino Riverside Tower Inc.
- (ii) Instrument No. CE191717 – Notice from the Corporation of the City of Windsor to Portofino Corporation
- (iii) Instrument No. CE278123 – Declaration Condo
- (iv) Instrument No. ECP122 – Plan Condominium
- (v) Instrument No. CE279560 – Condo By-Law/98 (By-Law No. 1)
- (vi) Instrument No. CE279561 – Condo By-Law/98 (By-Law No. 2)
- (vii) Instrument No. CE279607 – Condo By-Law/98 (By-Law No. 3)
- (viii) Instrument No. CE279624 – Condo By-Law/98 (By-Law No. 4)
- (ix) Instrument No. CE279635 – Condo By-Law/98 (By-Law No. 5)
- (x) Instrument No. CE279643 – Condo By-Law/98 (By-Law No. 6)



BANK OF MONTREAL  
Applicant

and

PORTOFINO CORPORATION  
Respondent

Court File No: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

**OMNIBUS APPROVAL AND VESTING ORDER**

**MILLER THOMSON LLP**

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

**Tony Van Klink** LSUC#: 29008M  
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Email: skettle@millerthomson.com

Lawyers for BDO Canada Limited, Court-Appointed  
Receiver of Portofino Corporation

# **APPENDIX “C”**

Court File No.: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE

*Surry & Amussen*

)  
)  
)

TUESDAY, THE 26<sup>TH</sup>

DAY OF JULY, 2016

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 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 Fifth Report of the Receiver dated July 13, 2016 and all appendices thereto (the "Fifth Report"), and directing that any further service of same be dispensed with such that this motion is properly returnable on July 26, 2016;
- (b) amending Schedule "C" – Claims to be deleted and expunged from title to the Unsold Units – to the Omnibus Approval and Vesting Order of Mr. Justice Campbell dated May 2, 2014;

- (c) deleting instrument numbers CE664524, CE715152, CE715154, CE715155, CE7157156, CE715157, CE715158, CE715159 and CE715282 from title to the condominium units comprised by property identifier numbers 01872-0131, 01872-0140 and 01872-0003;
- (d) approving the Fifth Report and the activities and conduct of the Receiver described therein;
- (e) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to June 30, 2016 (the "Statement of Receipts and Disbursements");
- (f) approving the professional fees and disbursements of BDO as Receiver;
- (g) approving the professional fees and disbursements of Miller Thomson LLP and Sutts Strosberg LLP, counsel to the Receiver;
- (h) approving and authorizing the distribution of \$4,000,000 to Windsor Family Credit Union from the funds on hand; and
- (i) such further and other relief as counsel may advise and this Honourable Court may deem just.

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

**ON READING** the Fifth Report and on hearing the submissions of counsel for the Receiver, no one else appearing from the service list, although duly served as appears from the affidavit of Julie Los sworn July 14, 2016, filed:

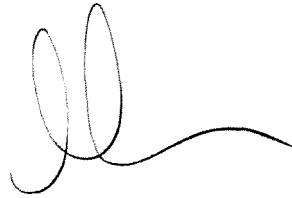
1. **THIS COURT ORDERS** that the time for and method of service of all motion confirmation forms, the motion record, including the notice of motion and the Fifth Report, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof;
2. **THIS COURT ORDERS** that Schedule "C" – Claims to be deleted and expunged from title to the Unsold Units – to the Omnibus Approval and Vesting Order of Mr. Justice Campbell dated May 2, 2014 be and is hereby amended and replaced by the Schedule

"C" – Claims to be deleted and expunged from title to the Unsold Units attached to this Order;

3. **THIS COURT ORDERS** that the following instruments are to be deleted and expunged from title to the condominium units having property identifier numbers 01872-0131, 01872-0140 and 01872-0003 and the Land Registrar in respect of the Land Registry Office for the Land Titles Division of Essex (No. 12) is hereby directed to delete and expunge the following instruments from title to the condominium units having property identifier numbers 01872-0131, 01872-0140 and 01872-0003:

- (a) instrument number CE664524 – Transfer of Charge from Bank of Montreal to RREF II BHB IV Portofino, LLC registered on June 29, 2015;
- (b) instrument number CE715152 – Transfer of Charge from RREF II BHB IV Portofino, LLC to 2502461 Ontario Ltd. registered on May 30, 2016;
- (c) instrument number CE715154 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
- (d) instrument number CE715155 – Postponement from Andreolli Investments Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
- (e) instrument number CE715156 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
- (f) instrument number CE715157 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
- (g) instrument number CE715158 - Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
- (h) instrument number CE715159 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016; and

- (i) instrument number CE715282 – Transfer of Charge from 2502461 Ontario Ltd. to Windsor Family Credit Union Ltd. registered on May 31, 2016.
- 4. **THIS COURT ORDERS** that the Fifth Report and the activities and conduct of the Receiver described in the Fifth Report are hereby approved;
- 5. **THIS COURT ORDERS** that the Statement of Receipts and Disbursements be and the same is hereby approved;
- 6. **THIS COURT ORDERS** that the professional fees of the Receiver and its legal counsel, Miller Thomson LLP and Sutts Strosberg LLP, as described in the fee affidavits of Steven Cherniak sworn July 11, 2016, Tony Van Klink sworn July 13, 2016 and William Sasso sworn July 13, 2016 be and the same are hereby approved; and
- 7. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to distribute to Windsor Family Credit Union the sum of \$4,000,000 from the funds being held by the Receiver.



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ENTERED AT WINDSOR	
In Book No.	27
re Document No.	9164
on	JUL 26 2016
by	TK

**Schedule "C" – Claims to be deleted and expunged from title to the Unsold Units**

<b>Description:</b>	Essex Standard Condominium Plan No. 122 and its appurtenant interest. The description of the condominium property is: LT 1, South Side of Sandwich Street, PI 392 & Pt Lot 73 Concession 1 Windsor; Pt 1 PI 12R17829; S/T Ease as set out in Schedule "A" of Declaration CE278123, Windsor Ontario (LRO#12)
<b>Unsold Condominium Units (See Schedule "A" for individual unit descriptions)</b>	
<ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> <li>4.</li> <li>5.</li> <li>6.</li> <li>7.</li> <li>8.</li> <li>9.</li> <li>10.</li> <li>11.</li> <li>12.</li> <li>13.</li> </ol>	<p>Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.</p> <p>Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.</p> <p>Instrument No. CE297353 – Charge in the principal amount of \$1,000,000 from Portofino Corporation to Remo Valente Real Estate (1990) Limited, registered on October 12, 2007.</p> <p>Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.</p> <p>Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.</p> <p>Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.</p> <p>Instrument No. CE482047 – Charge in the principal amount of \$400,000 from Portofino Corporation to Sutts Strosberg LLP, registered on August 9, 2011.</p> <p>Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.</p> <p>Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.</p> <p>Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.</p> <p>Instrument No. CE551002 – Charge in the principal amount of \$524,312 from Portofino Corporation to Sutts Strosberg LLP, registered on January 10, 2013.</p> <p>Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.</p> <p>Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.</p>

14. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
15. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
16. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
17. Instrument No. CE588099 – Condo Lien/98 in the amount of \$80,749 registered by Essex Standard Condominium Corporation No. 122 on October 29, 2013.
18. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
19. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.
20. Instrument No. CE592122 – Application Court Order registered on November 28, 2013.
21. Instrument No. CE664524 – Transfer of Charge from Bank of Montreal to RREF II BHB IV Portofino, LLC registered on June 29, 2015.
22. Instrument No. CE715152 – Transfer of Charge from RREF II BHB IV Portofino, LLC to 2502461 Ontario Ltd. registered on May 30, 2016.
23. Instrument No. CE715154 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
24. Instrument No. CE715155 – Postponement from Andreolli Investments Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
25. Instrument No. CE715156 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
26. Instrument No. CE715157 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016 (save and except PIN's 01872-0161, 01872-0162, 01872-0163, 01872-0164 and 01872-0166).
27. Instrument No. CE715158 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
28. Instrument No. CE715159 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Limited registered on May 30, 2016.
29. Instrument No. CE715282 – Transfer of Charge from 2502461 Ontario Ltd. to Windsor Family Credit Union Limited registered on May 31, 2016.
30. Instrument No. CE715562 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of Windsor Family Credit Union Limited registered on June 1, 2016 (PIN's 01872-0161, 01872-0162, 01872-0163, 01872-0164 and 01872-0166).



<b>Unsold Parking Units (See Schedule "A" for individual unit descriptions)</b>	
1.	Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.
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24.	Instrument No. CE715159 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
25.	Instrument No. CE715282 – Transfer of Charge from 2502461 Ontario Ltd. to Windsor Family Credit Union Limited registered on May 31, 2016.
<b>Unsold Storage Units (See Schedule "A" for individual unit descriptions)</b>	
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21. Instrument No. CE715158 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
22. Instrument No. CE715159 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
23. Instrument No. CE715282 – Transfer of Charge from 2502461 Ontario Ltd. to Windsor Family Credit Union Limited registered on May 31, 2016.
24. Instrument No. CE715562 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of Windsor Family Credit Union Limited registered on June 1, 2016

2502461 ONTARIO LTD.

Applicant

and

PORTOFINO CORPORATION

Respondent

Court File No: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT WINDSOR

**ORDER**

**MILLER THOMSON LLP**

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

**Tony Van Klink** LSUC#: 29008M  
Tel: 519.931.3509  
Fax: 519.858.8511  
Email: tvanklink@millerthomson.com

**Sherry A. Kettle**, LSUC #53561B  
Tel: 519.931.3534  
Fax: 519.858.8511  
Email: skettle@millerthomson.com

Lawyers for BDO Canada Limited, Court-  
Appointed Receiver of Portofino Corporation

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# **APPENDIX “D”**

Court File No.: 05-CV-5864CM

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**REMO VALENTE REAL ESTATE (1990) LIMITED**

**Plaintiff**

**- and -**

**PORTOFINO RIVERSIDE TOWER INC., WESTVIEW PARK  
GARDENS (2004) INC. PORTOFINO CORPORATION and DANTE J. CAPALDI**

**Defendants**

**MINUTES OF SETTLEMENT**

THE PARTIES, by their lawyers duly authorized on their behalf, and BDO Canada Limited, as court-appointed receiver of the assets, undertakings and properties of Portofino Corporation (the "Receiver"), for \$1.00 and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, agree to settle this action on the following terms:

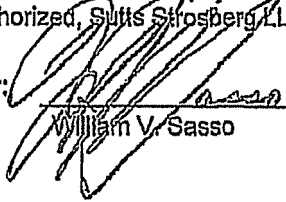
1. The defendant, Portofino Corporation, shall pay to the plaintiff the sum of \$630,000 (the "Settlement Amount") within five (5) business days from the date of these Minutes of Settlement (the "Payment Date") in full and final satisfaction of the plaintiff's claim for damages for breach of contract, inclusive of interest and costs (including the costs of maintaining the letter of credit posted as security in the action);
2. The plaintiff irrevocably directs payment of the Settlement Amount be made to its lawyer, Gino Morga Q.C., in trust.
3. Upon payment of the Settlement Amount by the Payment Date,
  - a) the action shall be dismissed without costs and the Accountant of the Superior Court of Justice shall be directed to deliver up for cancellation the letter of credit posted as security in the action (the "Dismissal Order"); and

b) the parties and the Receiver shall execute a mutual release in the form attached as Schedule "A".

3. The parties shall execute such consents as are necessary to obtain the Dismissal Order. The documents to obtain the Dismissal Order shall be filed by the defendants or the Receiver, at their expense, by December 30, 2016.

DATED this \_\_\_\_\_ day of December, 2016.

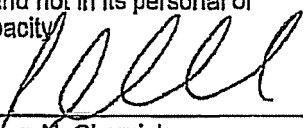
PORTOFINO RIVERSIDE TOWER INC.,  
WESTVIEW PARK GARDENS (2004)  
INC. PORTOFINO CORPORATION and  
DANTE J. CAPALDI, by their lawyers duly  
authorized, Suits Strosberg LLP

Per:   
William V. Sasso

REMO VALENTE REAL ESTATE (1990)  
LIMITED, by its lawyers duly authorized,  
Gino Morga, Q.C.

Per: \_\_\_\_\_  
Gino Morga, Q.C.

BDO CANADA LIMITED, as court-  
appointed receiver of the assets,  
undertakings and properties of Portofino  
Corporation and not in its personal or  
corporate capacity

Per:   
Stephen N. Cherniak

b) the parties and the Receiver shall execute a mutual release in the form attached as Schedule "A".

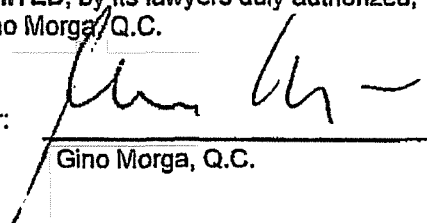
3. The parties shall execute such consents as are necessary to obtain the Dismissal Order. The documents to obtain the Dismissal Order shall be filed by the defendants or the Receiver, at their expense, by December 30, 2016.

DATED this \_\_\_\_\_ day of December, 2016.

**PORTOFINO RIVERSIDE TOWER INC.,  
WESTVIEW PARK GARDENS (2004)  
INC. PORTOFINO CORPORATION and  
DANTE J. CAPALDI, by their lawyers duly  
authorized, Sutts Strosberg LLP**

Per: \_\_\_\_\_  
William V. Sasso

**REMO VALENTE REAL ESTATE (1990)  
LIMITED, by its lawyers duly authorized,  
Gino Morga, Q.C.**

Per:  \_\_\_\_\_  
Gino Morga, Q.C.

**BDO CANADA LIMITED, as court-  
appointed receiver of the assets,  
undertakings and properties of Portofino  
Corporation and not in its personal or  
corporate capacity**

Per: \_\_\_\_\_  
Stephen N. Cherniak



**SCHEDULE "A"****MUTUAL RELEASE**

**WHEREAS** by a Statement of Claim issued on November 15, 2005 in the Ontario Superior Court of Justice at Windsor under court file number 05-CV-5864CM (the "Action") Remo Valente Real Estate (1990) Limited ("Valente Real Estate") commenced an action against Portofino Riverside Tower Inc., Westview Park Gardens (2004) Inc., and Portofino Corporation (collectively, the "Portofino Defendants") and Dante J. Capaldi ("Capaldi");

**AND WHEREAS** Westview Park Gardens (2004) Inc. and Portofino Corporation are one and the same corporation;

**AND WHEREAS** pursuant to the Order of Justice Thomas dated October 29, 2013 in court file number CV-13-19866 at Windsor BDO Canada Limited (the "Receiver") was appointed as receiver of all of the assets, undertakings and properties of Portofino Corporation (the "Receivership Estate");

**AND WHEREAS** Valente Real Estate, the Portofino Defendants, Capaldi and the Receiver have agreed to settle the Action on the terms set forth in Minutes of Settlement dated December \_\_, 2016 (the "Minutes of Settlement");

**NOW THEREFORE** this Release witnesses that in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, including the settlement of the Action on the terms set forth in the Minutes of Settlement, the receipt and sufficiency of which is acknowledged,

1. Valente Real Estate does hereby irrevocably and forever release and discharge the Portofino Defendants, Capaldi, the Receiver and the Receivership Estate and, as applicable, each of their employees, officers, directors, heirs, executors, administrators, successors and assigns (collectively, the Releasees") from all claims, suits, debts, contracts, complaints, demands, rights, actions and causes of action (collectively, the "Claims") of any kind or nature whatsoever existing up to the present time, whether or not known or anticipated at the present time or discovered in the future, which Valente Real Estate ever had, presently has or may in the future have against the Releasees, or any of them, based on facts in existence as of the date of this Release relating to or in

any manner connected with the Exclusive Listing Agreement dated November 22, 2002 (the "ELA") made between Valente Real Estate and 1318941 Ontario Limited (now Portofino Riverside Tower Inc.) and/or the Portofino building located at 1225 Riverside Drive West, Windsor including, without limitation, all Claims asserted in the Action or in any manner connected with or related to the subject matter of the Action or which could have been raised in the Action;

2. the Portofino Defendants, Capaldi and the Receiver do hereby irrevocably and forever release and discharge Valente Real Estate and each of its employees, officers, directors, successors and assigns (collectively, the "Valente Real Estate Releasees") from all claims of any kind or nature whatsoever existing up to the present time, whether or not known or anticipated at the present time or discovered in the future, which the Portofino Defendants, Capaldi and the Receiver, or any of them, ever had, presently have or may in the future have against the Valente Real Estate Releasees, or any of them, based on facts in existence as of the date of this Release relating to or in any manner connected with the ELA and/or the Portofino building located at 1225 Riverside Drive West, Windsor including, without limitation, all Claims asserted in the Action or in any manner connected with or related to the subject matter of the Action or which could have been raised in the Action;
3. Valente Real Estate, the Portofino Defendants, Capaldi and the Receiver agree not to make any claim or take or continue any proceedings against any other person or corporation who might claim contribution or indemnity from the Releasees or Valente Real Estate Releasees in respect of any matters connected in any way with the Claims released by this Release;
4. Valente Real Estate, the Portofino Defendants, Capaldi and the Receiver represent and warrant that they have not assigned to any person, firm, corporation or legal entity any of the Claims which are being released by this Release or with respect to which they agree herein not to make any claims or take or continue any proceedings. Valente Real Estate, the Portofino Defendants, Capaldi and the Receiver hereby agree that this Release shall operate conclusively as an estoppel in the event of any such claims or proceedings and may be pleaded accordingly; and

- 5. Valente Real Estate, the Portofino Defendants, Capaldi and the Receiver acknowledge and confirm that they have received, or have had the opportunity to receive, independent legal advice with respect to the terms of this Release and that they have read this Release carefully and have signed it voluntarily and freely and without any form of duress being exerted upon them and with the express purpose of making a full and final compromise, adjustment and settlement with respect to all of the matters to which this Release applies.

Transmission by facsimile or electronic transmission in "PDF" format of an executed copy of this Release shall be deemed to constitute due and sufficient delivery of same.

THIS RELEASE shall be binding on Valente Real Estate, the Portofino Defendants, Capaldi and the Receiver and each of their successors and assigns.

IN WITNESS WHEREOF Valente Real Estate (1990) Limited, Portofino Riverside Tower Inc., Portofino Corporation, BDO Canada Limited, as court-appointed receiver of the assets, undertakings and properties of Portofino Corporation, and Dante J. Capaldi have executed this Mutual Release as of the \_\_\_\_\_ day of December, 2016.

**VALENTE REAL ESTATE (1990)  
LIMITED**

Per: \_\_\_\_\_  
Title

**PORTOFINO RIVERSIDE TOWER INC.**

Per: \_\_\_\_\_  
Title

**PORTOFINO CORPORATION** by its  
Court-appointed receiver, BDO Canada  
Limited

Per: \_\_\_\_\_  
Stephen N. Cherniak

**BDO CANADA LIMITED, as Court-appointed receiver of the assets, undertakings and properties of Portofino Corporation and not in its personal or corporate capacity**

Per: \_\_\_\_\_  
Stephen N. Cherniak

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
DANTE J. CAPALDI, in his personal capacity

REMO VALENTE REAL ESTATE (1990)  
LIMITED  
Plaintiff

and

PORTOFINO RIVERSIDE TOWER INC., et  
al.  
Defendants

Court File No.: 05-CV-5864 CM

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**MINUTES OF SETTLEMENT**

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

Tony Van Klink LSUC#: 29008M  
Tel: 519.931.3509  
Fax: 519.858.8511

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

# **APPENDIX “E”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**THE HONOURABLE MR.  
JUSTICE THOMAS**

)  
)  
)

**TUESDAY, THE 3RD  
DAY OF JANUARY, 2017**

**BETWEEN:**

**REMO VALENTE REAL ESTATE (1990) LIMITED**

Plaintiff

- and -

**PORTOFINO RIVERSIDE TOWER INC., WESTVIEW PARK  
GARDENS (2004) INC. PORTOFINO CORPORATION and DANTE J. CAPALDI**

Defendants

**JUDGMENT**

**THIS MOTION**, made by the plaintiff for judgment against the defendants in the principal amount of \$630,000 in accordance with the terms of the settlement made by the parties to this action was heard this day at the courthouse 245 Windsor Avenue, Windsor,

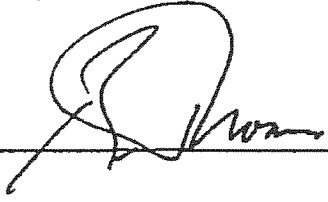
**ON READING** the Motion Record of the plaintiff and the Affidavit of Julie Los sworn December 29, 2016, and upon hearing the submissions of the lawyers for the plaintiff and BDO Canada Limited, the court-appointed receiver of the defendant, Portofino Corporation,

1. **THIS COURT ORDERS** that the plaintiff shall have judgment against the defendants in the principal sum of \$630,000 (the "Principal Sum");
2. **THIS COURT ORDERS** that the defendants shall pay to the plaintiff interest on the Principal Sum to the date of this Order in the amount of \$1,173.70 (the "Interest Amount");
3. **THIS COURT ORDERS** that the defendants shall pay to the plaintiff costs of this motion fixed in the sum of \$5,650, inclusive of HST (the "Costs");

- 4. **THIS COURT ORDERS** that the Principal Sum, Interest Amount and Costs, together with further interest thereon from the date of this Order calculated in accordance with this judgment, shall be paid from irrevocable standby letter of credit number OSB26737T0R (the "Letter of Credit") issued by the Bank of Nova Scotia and standing to the credit of this action;
  
- 5. **THIS COURT DIRECTS** the Accountant of the Ontario Superior Court of Justice to draw upon the Letter of Credit for the Principal Sum, Interest Amount and Costs, together with further interest thereon from the date of this Order calculated in accordance with this judgment, and to remit payment of the amounts so received to Gino Morga, Q.C., in trust;
  
- 6. **THIS COURT ORDERS** that upon payment by the Accountant of the Ontario Superior Court of Justice to Gino Morga, Q.C., in trust of the amounts provided for in paragraph 5 of this Order and the plaintiff filing with the Court a Satisfaction Piece for the amounts payable under this Order and providing a copy of the Satisfaction Piece to the Accountant of the Ontario Superior Court of Justice, no further drawings under the Letter of Credit shall be permitted and the Accountant of the Ontario Superior Court of Justice shall thereupon deliver up to BDO Canada Limited, the court-appointed receiver of Portofino Corporation, the original Letter of Credit for cancellation; and
  
- 7. **THIS COURT ORDERS** that this judgment is a final judgment on all outstanding claims in the action.

This judgment bears interest at the rate of 2.0% per year from its date.

ENTERED AT WINDSOR	
In	28
to	12
on	Jan 6 12
by	DF




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REMO VALENTE REAL ESTATE (1990)  
LIMITED  
Plaintiff

and

PORTOFINO RIVERSIDE TOWER  
INC., et al.  
Defendants

Court File No.: 05-CV-5864 CM

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**JUDGMENT**

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

**Tony Van Klink** LSUC#: 29008M  
Tel: 519.931.3509  
Fax: 519.858.8511  
Email: tvanklink@millerthomson.com

Lawyers for BDO Canada Limited, Court-  
Appointed Receiver of Portofino Corporation

# **APPENDIX “F”**



**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

90

MILLERTHOMSON.COM

February 3, 2017

**Tony Van Klink**  
 Direct Line: 519.931.3509  
 tvanklink@millerthomson.com

**Delivered via E-mail**

File: 082873.0012

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

Attention: Stephen N. Cherniak

Dear Sir:

**Re: Portofino Corporation – Outstanding Litigation**

Following is a summary of the outstanding actions in which Portofino is plaintiff or plaintiff by counterclaim which came to our attention in late November, 2016.

**Portofino Corporation v. Dino Villalta and Tina Villalta – Court File No. CV-09-00013290-SR**

This action was commenced by a Statement of Claim issued on June 17, 2009 (Tab 1). Portofino claims damages in the amount of \$139,750.45 in respect of an aborted sale transaction for condominium unit number 1603 and a declaration that deposits in the amount of \$20,000 are forfeited to it. A Statement of Defence and Counterclaim (Tab 2) has been delivered. The counterclaim seeks the return of the deposits.

Under the Receivership Order, the action is now under the control of the Receiver. The Receiver has the power to continue the prosecution of the action if it sees fit to do so. The counterclaim against Portofino is stayed by the Receivership Order, although, for practical purposes, the stay would need to be lifted if the action is pursued.

We learned of the existence of this action in late November, 2016 when we were contacted by Americo Fernandes, the lawyer for Portofino. Mr. Fernandes contacted us because the action was more than five years old and, as such, was subject to being administratively dismissed as of January 1, 2017 pursuant to rule 48.14 of the *Rules of Civil Procedure*. After discussing the matter with you, instructions were provided to Mr. Fernandes to put in place a litigation timetable to prevent the administrative dismissal of the action. On December 2, 2016 an Order (Tab 3) was signed by Justice Verbeem to give effect to the litigation timetable agreed upon by the parties.

It is our understanding that this action remains at the discovery stage.

Through our discussions with Mr. Fernandes, we also became aware of a number of other actions in which Portofino is plaintiff or plaintiff by counterclaim of which we were not previously aware and understand that you as Receiver were also unaware of. Those actions are summarized below.

**Portofino Corporation v. Karamjit Jeji – Court File No. CV-09-13287-00SR**

This action was commenced by a Statement of Claim issued on June 18, 2009 (Tab 4). In this action Portofino claims damages in the sum of \$97,361.67 in respect of an aborted sale transaction for condominium unit number 1104 and a declaration that deposits in the amount of \$20,000 are forfeited to Portofino. A Statement of Defence and Counterclaim (Tab 5) has been delivered. The counterclaim seeks the return of the deposits.

The Receivership Order affects this action and counterclaim in the same manner as the Villalta action above.

Adam Paglione is the lawyer of record for Portofino. Mr. Paglione is no longer in private practice. The lawyer of record for the defendant is Claudio Martini. Mr. Martini's licence to practice is currently under suspension by the Law Society of Upper Canada.

The action was administratively dismissed by the Registrar by Order dated July 15, 2014. For the action to proceed further, an order setting aside the dismissal order would be required.

**Portofino Corporation v. Richard Loucks – Court File No. CV-09-13289 SR**

This action was commenced by a Statement of Claim issued on June 18, 2009 (Tab 6). In this action Portofino claims damages in the sum of \$44,182.43 in respect of an aborted sale transaction for condominium unit number 508 and a declaration that the deposit for that transaction is forfeited. A Statement of Defence (Tab 7) has been delivered.

Adam Paglione is the lawyer of record for Portofino. The lawyer of record for the defendant is Ryan McKenzie.

Because this action is more than five years old and was subject to administrative dismissal as of January 1, 2017, we filed a motion record for an order that a status hearing be scheduled to prevent the administrative dismissal of the action. That motion is returnable on February 28, 2017.

**Eagle Mechanical Group Inc. v. Portofino Corporation – Court File No. CV-11-16298**

This is an action in which Portofino is a defendant and plaintiff by counterclaim. The action against Portofino was commenced by a Statement of Claim issued on May 12, 2011 (Tab 8). Portofino has delivered a Statement of Defence and Counterclaim dated August 4, 2011 (Tab 9). In the counterclaim Portofino seeks various declarations and a judgment for the amount "found due and owing to Portofino". The counterclaim has been defended (Tab 10).

A status hearing was held on January 15, 2014. At the status hearing an endorsement was made which indicates that the action is stayed as against Portofino by the Receivership Order (Tab 11). The endorsement does not address the status of Portofino's counterclaim which is not stayed by the Receivership Order. The Receivership Order only stays actions against Portofino, not actions brought by Portofino.



William Sasso is the lawyer of record for Portofino. Claudio Martini is the lawyer of record for Eagle Mechanical Group Inc.

Because the counterclaim is more than five years old, it was subject to administrative dismissal as of January 1, 2017. We have filed a motion returnable on February 28, 2017 for an order that a status hearing be held.

**B. & R. Crevatin Electric Inc. and Portofino Corporation – Court File No. CV-08-12314SR**

This is another action in which Portofino is a defendant and plaintiff by counterclaim. The Statement of Claim was issued on December 24, 2008 (Tab 12). The Statement of Claim seeks payment from Portofino in the sum of \$34,778.53. Portofino had delivered a Statement of Defence and Counterclaim dated February 27, 2009 (Tab 13). In the counterclaim Portofino claims damages for breach of contract in the amount of \$49,000. The counterclaim has been defended (Tab 14).

David Robins is the lawyer of record for Portofino. Grant English is the lawyer of record for B. & R. Crevatin Electric Inc. Mr. English is no longer in private practice.

Because the counterclaim is more than five years old and was subject to administrative dismissal as of January 1, 2017, we have filed a motion for an order that a status hearing be held. That motion is returnable on February 28, 2017.

**Portofino Corporation v. Mind Quest Engineering Inc. and Dennis Pupulin – Court File No. CV-10-15068**

This action was commenced by a Notice of Action issued on July 28, 2010. The Statement of Claim has been amended on two occasions, most recently on February 28, 2011 (Tab 15). In this action Portofino claims damages in the sum of \$100,000 in respect of the improper installation of a roof membrane. A Statement of Defence dated April 5, 2011 (Tab 16) has been delivered.

A status hearing was held on February 5, 2014. At the status hearing an endorsement was made which indicated that the action was stayed by the Receivership Order (Tab 17). As indicated above, the Receivership Order stays actions against Portofino not actions brought by Portofino.

Adam Paglione is the lawyer of record for Portofino. Todd Branch is the lawyer of record for the defendants. Neither are in private practice any longer.

Because this action is more than five years old and was subject to administrative dismissal as of January 1, 2017 we have filed a motion for an order that a status hearing be held. That motion is returnable on February 28, 2017.

**Betschel's Kitchen Centre Inc. v. Portofino Corporation – Court File No. 07-CV-9730**

This is a construction lien action in which Portofino is defendant and plaintiff by counterclaim. The action was commenced by a Statement of Claim issued on August 28, 2007 (Tab 18). The Statement of Defence and Counterclaim is dated November 7, 2007



(Tab 19). In the counterclaim Portofino seeks payment of \$145,299.04 in respect of an overpayment. The counterclaim has been defended (Tab 20).

This action, like the others, is stayed by the Receivership Order. The counterclaim is not stayed.

The plaintiff, Betschel's Kitchen Centre Inc., registered a claim for lien against title to the Portofino building. That lien was vacated by Portofino posting security with the Court in the amount of \$116,514.11. We have confirmed with the Accountant of the Superior Court of Justice that the security remains posted with the Court and, with accrued interest, had increased to \$147,897.54 as of November 30, 2016 (Tab 21).

Crista Rea is lawyer of record for Portofino. Claudio Martini is lawyer of record for Betschel's Kitchen Centre Inc.

Ms. Rea commenced this action on behalf of Portofino when she was a lawyer at Miller Canfield. She has since moved her practice to Bartlet & Richardes but did not take this file with her.

We have made inquiries at the Windsor Court office and determined that a trial record was filed on June 3, 2009. We have not been able to determine what happened to the action after that date. The file is no longer at the Windsor Court office. It has apparently been shipped to Toronto. We have requested that Miller Canfield locate its file but have not yet received a response to that request.

Because the counterclaim was more than five years old and subject to administrative dismissal as of January 1, 2017, a motion for an order that a status hearing be held was also filed in this action. That motion is returnable on February 28, 2017.

#### **Dante J. Capaldi, Portofino Corporation v. Richard Adam**

This action was commenced by a Statement of Claim issued on February 1, 2013 (Tab 22). In this action Mr. Capaldi and Portofino claim damages of \$1,000,000 for fraud, breach of contract and unjust enrichment arising from a failed loan transaction.

Adam Paglione is the lawyer of record for Portofino.

Based on the information provided to us by Mr. Fernandes, it appears that the Statement of Claim was never served as Mr. Adam could not be located.

#### **Portofino Corporation v. Spec Coatings Inc. – Court File NO. CV-09-13226 CM**

This action was commenced by a Statement of Claim issued on June 9, 2009 (Tab 23). In this action, Portofino sought damages in the amount of \$200,000 for breach of contract.

On March 17, 2010 a default judgment was entered (Tab 24). The default judgment declares that the defendant is liable to Portofino for damages and directs a reference to be conducted before the Master to quantify the damages. We are unaware of whether the reference was conducted or not.



**Portofino Corporation v. Kaveh Mobin, et al. – Court File No. 10-0002720**

The only documentation we have with respect to this matter is a copy of a request dated November 18, 2016 to the Sheriff of Essex County to renew a Writ of Seizure and Sale issued November 30, 2010 (Tab 25).

**Portofino Corporation v. Dave Betschel – Court File No. CV-09-13288 SR**

This action was commenced by a Statement of Claim dated June 17, 2009 (Tab 26). Portofino claims damages in the sum of \$77,770.94 in respect of an aborted sale transaction for condominium unit number 903 and a declaration that deposits in the amount of \$20,000 are forfeited to it. A Statement of Defence and Counterclaim (Tab 27) has been delivered. The counterclaim seeks damages in the amount of \$20,000 in respect of the deposits.

The defendant, plaintiff by counterclaim, made an assignment in bankruptcy on January 26, 2012 (Tab 28). As a result, Portofino's action against the defendant is stayed and the counterclaim has vested in the bankruptcy trustee.

**Recommendation Regarding Future Steps**

Without spending further time and incurring additional expense in undertaking a detailed review of each action, it is difficult for us to assess whether any of the above actions have merit and would be worthwhile for the Receiver to pursue. We do note that all of the actions are stale which, while not conclusive, may suggest that the actions were not considered worthwhile to pursue further. As well, there is no certainty that even if an action has merit and a judgment is obtained that the judgment will be satisfied.

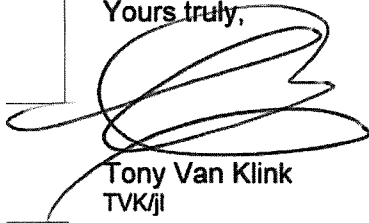
We do know that approximately \$148,000 is standing as security for the Betschel construction lien action. Steps should be taken by the Receiver to determine what transpired in that action after the filing of the trial record in 2009 and, if appropriate, to bring the action to an end and seek the payment out of the Court of the security.

Other than taking steps to recover the security posted by Portofino with the Court in the Betschel construction lien action, we recommend that the Receiver take no further steps to pursue the above actions. Instead, we recommend that the Receiver report to the Court on the existence of these actions and recommend to the Court that a procedure similar to that provided for under section 38 of the *Bankruptcy and Insolvency Act* be adopted to allow any creditors who wish to pursue the actions to do so at their own risk and expense and to receive for their own benefit any recoveries made to the extent of their claims with any surplus to be paid over the Receiver to augment the receivership estate. In that way, any creditors who wish to pursue the actions may do so without cost to the receivership estate. Any actions not pursued by the creditors would be abandoned.



Please call if you have any questions or would like to discuss.

Yours truly,



Tony Van Klink  
TVK/jl

Enclosures





# **APPENDIX “G”**

**BDO Canada Limited Court Appointed Receiver of  
Portofino Corporation  
Statement of Receipts and Disbursements  
October 29, 2013 through January 31, 2017**

**Receipts:**

Sale of units & surface parking	\$ 11,089,509.00	
Less: property tax arrears	(424,295.35)	
Less: real estate commissions (incl HST)	(431,305.52)	
Less: ECC No. 122 common fees	(36,959.02)	
Less: closing adjustments	(10,797.83)	
Add: HST collected on parking and unfinished units	<u>120,275.88</u>	
		\$ 10,306,427.16
Unit rental Income		1,901,137.60
Holdback funds re: Portofino sub-trades		119,789.96
Reimbursement of Letter of Credit costs		64,408.22
Parking space rental		27,079.69
Interest		20,155.82
HST refund		7,971.76
Miscellaneous litigation		<u>497.88</u>
		<u>12,447,468.09</u>

**Disbursements:**

City of Windsor - property taxes	2,946,945.52	
Receiver's fees	743,168.56	
ECC No. 122 - common fees	691,921.05	
Miller Thomson LLP - Receiver's legal fees	328,201.31	
Repairs & maintenance	214,204.05	
HST paid on disbursements	185,059.21	
HST remitted	115,452.23	
Sutts, Strosberg LLP- legal fees	78,662.72	
Property management fees	70,000.00	
BMO - Letter of Credit fees re Valente litigation	39,074.26	
Advertising	38,178.71	
Bond premiums	37,587.00	
Utilities	36,489.15	
Valente litigation - costs award	30,393.34	
Appraisal fees	15,014.50	
Insurance	5,212.08	
Commission paid re rentals	3,650.00	
Accounting fees	3,250.00	
Miscellaneous expenses	2,668.00	
Corporate income tax	692.58	
Bank charges	602.50	
Receiver General - receivership filing fee	<u>70.00</u>	
		5,586,496.77

**Excess receipts over disbursements**

\$ 6,860,971.32

## Represented by:

Payment to secured creditor (WFCU)	6,400,000.00
Balance of funds held by Receiver as at January 31, 2017	460,971.32
	<u>\$ 6,860,971.32</u>

# **APPENDIX “H”**

**ONTARIO SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE RECEIVERSHIP OF PORTOFINO CORPORATION

**AFFIDAVIT OF STEPHEN N. CHERNIAK**

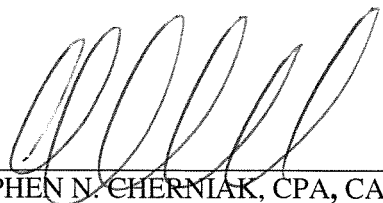
I, **Stephen N. Cherniak**, of the City of London, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a Senior Vice-President of BDO Canada Limited, the Receiver of Portofino Corporation, (“Portofino”) and, as such, I have knowledge of the matters hereinafter deposed to.
2. By Order dated October 29, 2013 BDO Canada Limited was appointed as Receiver of Portofino (the “Receiver”).
3. The Receiver’s First Report to the Court was approved by Mr. Justice Thomas on December 13, 2013. The first account of the Receiver for the period July 19, 2013 to November 28, 2013 was also approved by the Order of Justice Thomas on December 13, 2013.
4. The Receiver’s Second Report to the Court was submitted to the Court on February 28, 2014.
5. The Receiver’s Third Report to the Court was approved by Mr. Justice Campbell on May 2, 2014. The second account of the Receiver for the period November 28, 2013 to April 9, 2014 was also approved by the Order of Justice Campbell on May 2, 2014.
6. The Receiver’s Fourth Report to the Court was approved by Mr. Justice Desotti on May 17, 2016. The third account of the Receiver for the period April 10, 2014 to March 10, 2016 was also approved by the Order of Justice Desotti on May 17, 2016.
7. The Receiver’s Fifth Report to the Court was approved by Mr. Justice Campbell on July 26, 2016. The fourth account of the Receiver for the period March 11, 2016 to June 14, 2016 was also approved by the Order of Justice Campbell on July 26, 2016

8. The Receiver's Sixth Report to the Court was approved by Mr. Justice Bondy on November 29, 2016.  
The fifth account of the Receiver for the period June 15, 2016 to September 26, 2016 was also approved by the Order of Justice Bondy on November 29, 2016.
9. Since the date of the Receiver's last account the Receiver has been engaged in the following:
  - Complete the Sixth Report of the Receiver and attend Court hearing on November 29, 2016;
  - Negotiate the sale of units 806 and 1401 through the Receiver's agent;
  - Complete the sale of condominium units 104, 309, 408 and 806;
  - Various amendments to the Agreements of Purchase and Sale to amend the conditional sale of units 1601 and 1602;
  - Telephone calls and correspondence with the Receiver's legal counsel regarding the resolution of the Valente Court Action;
  - Review court materials for several older litigation matters approaching administrative dismissal;
  - Direct Property Manager to complete various repairs to condominium units prior to sale completion, as agreed to by the Receiver under Agreements of Purchase and Sale;
  - Prepare working schedules and correspond with external accountant regarding 2010 – 2013 requests for reassessment; July 1, 2016 financial statements and income tax return, corporate tax balance owing;
  - Correspondence with the Municipal Property Assessment Corporation (MPAC) regarding tax roll for surface parking garages and spaces, and issues regarding release from roll when sold;
  - Attend a meeting of the Board of Directors of ECC 122 by telephone and the Annual General Meeting in person;
  - Collect monthly rents for the leased, unsold units;
  - Respond to tenant queries and concerns; and

- Various telephone calls and correspondence with the stakeholders and their respective counsel
10. In the course of performing the duties pursuant to the Order and as set out above at paragraph 9, and since the date of the Sixth Report the Receiver's staff expended 171.3 hours for the period of September 27, 2016 through January 13, 2017. Attached hereto and marked as Exhibit "A" to this my Affidavit are the accounts of the Receiver together with a summary sheet.
  11. To the best of my knowledge, the rates charged by the Receiver throughout the course of these proceedings are comparable to the rates charged by other insolvency practitioners in the Ontario mid-market for providing similar insolvency and restructuring services.
  12. The hourly billing rates outlined in Exhibit "A" to this my Affidavit are not more than the normal hourly rates charged by BDO Canada Limited for services rendered in relation to similar proceedings.
  13. Although the assets of Portofino are located in Windsor and the Receiver's primary office is located in London the Receiver has not charged for travel time or travel expenses.
  14. I verily believe that the fees and disbursements incurred by the Receiver are fair and reasonable in the circumstances.
  15. This Affidavit is sworn in support of the motion for approval of the Receiver's fees and disbursements and for no other or improper purposes.

SWORN BEFORE ME at the City of  
London in the Province of Ontario  
on the 7<sup>th</sup> day of February, 2017



STEPHEN N. CHERNIAK, CPA, CA, CIRP



Commissioner for Taking Affidavits

Attached is Exhibit A  
To the Affidavit of Stephen N. Cherniak  
Sworn the 7<sup>th</sup> day of February 2017.



A Commissioner, Etc

David Randall Flett, a  
Commissioner, etc., Province of Ontario,  
For BDO Canada Limited and BDO Canada LLP.  
Expires April 20, 2019.

**Summary of Receiver's Accounts for the period  
September 27, 2016 through January 12, 2017**

<b>Invoice Date</b>	<b>Hours Expended</b>	<b>Fees &amp; Disbursements</b>	<b>HST</b>	<b>Invoice Total</b>
November 22, 2016	92.9	\$34,393.03	\$4,471.10	\$38,864.13
January 16, 2017	78.4	30,080.68	3,910.49	33,991.17
	<b>171.3</b>	<b>\$64,473.71</b>	<b>\$8,381.59</b>	<b>\$72,855.30</b>





102

Invoice # 88709023  
Portofino Corporation  
HST Reg # 101518124RT0001

Ontario Superior Court of Justice  
245 Windsor Ave  
Windsor, ON N9A 1J2

November 22, 2016

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**Re: Portofino Corporation**

For professional services rendered for the period September 26, 2016 through November 22, 2016 as per the attached detail:

Our Fee	\$34,000.00
Disbursements (courier)	<u>393.03</u>
Sub total	34,393.03
HST	4,471.10
Total	<u>\$38,864.13</u>

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**REMITTANCE ADVICE**

Cheque Payments to:  
100-633 Colborne Street  
London, ON N6B 2V3

Invoice # 88709023

Amount \$38,864.13

November 22, 2016

For professional services rendered

Staff	Date	Time	Narrative
Flett, D	26-Sep-16	0.2	Review D. Capaldi emails and download, preliminary review of July, August, 2016 property expenses.
Finnegan, M	27-Sep-16	0.3	Prepare and send executed sale documents re unit 104 to Miller Thomson.
Flett, D	27-Sep-16	3.7	Review draft closing statements for unit 104, unit 408; full review of July and August property maintenance expenses; message from J McClelland on unit 1401 showings; review revised statements of adjustment, trust for unit 104, unit 408; review several matters re unit 601 repairs, F2015 financial statements, unit 806 listing, July/August property manager report; email to M Greenaway re: finalizing F2015 statements; emails to D. Capaldi re: unit 601 repairs; call with J. McClelland on unit 806 listing and list price; email to D. Capaldi re: unit 806 listing, anticipated closing date.
Chorniak, S	27-Sep-16	1.3	Finish review of information for condo board meeting. Emails re hot tub. Execute unit 104 closing documents. Review of changes to unit 408 documents. Updates on various D. Capaldi items-potential purchase of unit 806, repairs to unit 601, and review of D. Capaldi monthly expenses. Review of 2015 financials and execute T183 form. Review of email to D. Capaldi re unit 806.
Chorniak, S	28-Sep-16	1.5	Review of D. Capaldi response to sale of unit 806. Review of Miller Thomson email re condo fees payment. Execute unit 806 listing agreement. Review of condo newsletter. Pay bills. Attend condo board meeting by telephone.
Hooper, L	28-Sep-16	0.2	Banking.
Flett, D	28-Sep-16	4.2	Email with M. Greenaway on F2015 statements and forward signed T183; review October condo fee payment; email with Miller Thomson on buyer lawyer query re: unit 408 condo fees; prepare F2016 unit sale summary schedule, prepare package of F2016 closing documents and memo to M Greenaway re: F2016 financial statements; call with J McClelland on 1601 conditional offer status, unit 806 listing; review unit 806 listing agreement and revisions; email to MPAC re: sale of garage #8 and remove from tax roll; review unit 1401 listing and email to J. McClelland; update 6th Court Report for units sold and remaining; return signed unit 806 listing to J. McClelland.
Finnegan, M	28-Sep-16	0.5	Prepare and send condo fee payment for month of October.
Finnegan, M	29-Sep-16	0.8	Bill payments. Prepare and file HST return.
Flett, D	29-Sep-16	1.3	Update to draft 6th Court Report - professional fees, R&D; review unit 806 and unit 1401 MLS listing; call with J. McClelland on unit 806 listing and showings; email to D. Capaldi re: drawings for units 1601/1602 conditional buyer.
Chorniak, S	29-Sep-16	1	Balance of time for board meeting (from last evening). Emails from D. Capaldi/Cassano re hot tub vote. Email re same. Email from D. Capaldi re unit 806.

Staff	Date	Time	Narrative
Flett, D	30-Sep-16	2.5	Review emails from D. Capaldi re: units 1401, 1601/1602 drawings; call with J McClelland on unit 806 interest, unit 104 pre-closing repair; email to D. Capaldi re: unit 1401 rent arrangements; email to J. McClelland re: unit 1401 possession date; messages with D. Capaldi re: unit 104 door repair; memo re: October rents and tenant vacates; update 6th Court Report - units sold, R & D; review F2014 notice of assessment and forward to M Greenaway; email to D. Capaldi re: unit 806 rent.
Finnegan, M	30-Sep-16	0.2	Update rent roll with tenant vacating etc. Check on rents outstanding.
Flett, D	3-Oct-16	4.8	Review D. Capaldi emails on tenant rents, unit 806; call with J McClelland on unit 806 showings and offers; Review two offers for unit 806; Call with J. McClelland on additional unit 806 offers expected; call with CRA on details of prior corporate tax balance and email with M. Greenaway on 2010-2013 taxes owing; call with J. McClelland on multiple offer double-end commission disclosure rules; review two further offers on unit 806 and call with J. McClelland; review four unit 806 offers; Call with J. McClelland on unit 806 offers, CB commission on Derksen offer; email with Miller Thomson and text message with D. Capaldi re: units 104, 408 closings; update inventory and sales schedules for units 104, 408 sales; updates to 6th Court Report; further calls with J. McClelland on unit 806 offers, accept Mastronardi offer and forward to J. McClelland.
Cherniak, S	3-Oct-16	1	Emails from D. Capaldi re units 1601/1602 and 1401. Emails from Greenaway re CRA and balance owing. Review of 4 offers on unit 806 and make decision.
Cherniak, S	4-Oct-16	0.7	Update on deal for unit 806. Review of deal. Review of email to D. Capaldi re repairs to unit 806. Review of email from accountant re treatment of tax losses. Discuss approach. Discuss Court Report. Review of updated schedule and how to deal with remaining units.
Hooper, L	4-Oct-16	0.1	Banking.
Flett, D	4-Oct-16	2.2	Review unit 806 accepted offer, Court Report timing and content; email from J McClelland with fully signed unit 806 acceptance; email to D. Capaldi re: unit 806 sale, utility room repair issue; update to sales schedule; review R&D cut-off, cash balance; email with Greenaway on 2010-2013 requests for reassessment; call with J. McClelland on unit 806 showing request and escape clause; updates to 6th Court Report.
Finnegan, M	4-Oct-16	0.5	Deposit sale funds
Finnegan, M	5-Oct-16	1	Update R&D for Court Report. Pay bill.
Flett, D	5-Oct-16	3	Email with D. Capaldi on unit 806 repairs, conditional sale; review R&D and revise/update 6th Court Report; review 2016 omit tax bills for units 1301, 1502, garage #13 and detail memo to City of Windsor re: assessed value changes and ownership still in Portofino name; call with City of Windsor on units 1301, 1502 taxes and review; email to MPAC re: garage #13; update unsold unit schedule for revised assessments and taxes; email MPAC re: garage #13 ownership issue.
Cherniak, S	5-Oct-16	0.7	Review of email to D. Capaldi re unit 806 sale. Review of property tax bills and emails to/from City of Windsor. Review of D. Capaldi email re AGM. Email to City of Windsor re Letter of Credit.

Staff	Date	Time	Narrative
Cherniak, S	6-Oct-16	0.5	Email from D. Capaldi re unit 806. Email response from City of Windsor re Letter of Credit. Discuss response with D. Flett. Execute four notices of reassessment for CRA.
Hooper, L	6-Oct-16	0.1	Banking.
Flett, D	6-Oct-16	0.6	Review 2010-2013 return reassessment package prepared by M. Greenaway, review and prepare for filing; review and update on units 1301, 1502, garage #13 property tax issue resolution; review City of Windsor email re; Letter of Credit.
Cherniak, S	10-Oct-16	0.3	Begin review of 6 <sup>th</sup> Court Report.
Cherniak, S	11-Oct-16	0.6	Finish review of 6 <sup>th</sup> Court Report. Review of email re update on units 1601/1602. Review of email to D. Capaldi re BMO Line of Credit. Review of email to Miller Thomson re 6 <sup>th</sup> Court Report.
Hooper, L	11-Oct-16	0.1	Banking.
Flett, D	11-Oct-16	1.2	Revision to 6 <sup>th</sup> Court Report; forward 6 <sup>th</sup> Court Report to Miller Thomson for review; email to D. Capaldi re: BMO L/C outstanding site plan control items; review October rent receipts and unit 806 September rent status; review CRA request for reassessment package; voice mail from J. McClelland on showings, units 1601/1602 status; email with M. Greenaway re: F2016 financial statements and forward schedules
Finnegan, M	11-Oct-16	0.5	Deposit rent cheques and update rent roll.
Finnegan, M	12-Oct-16	0.2	Pay bill.
Flett, D	12-Oct-16	0.3	Email with D. Capaldi on BMO L/C; call and email with J. McClelland on recent showings, surface parking space availability and units 1601/1602 condition status and extension.
Cherniak, S	12-Oct-16	0.1	Review of email from D. Capaldi re Letter of Credit.
Cherniak, S	13-Oct-16	0.1	Email from D. Capaldi re Letter of Credit.
Flett, D	13-Oct-16	2.4	Emails with MPAC on garage #13 taxes still in name of Portofino; call with J. McClelland on units 1601/1602 condition extension, Pelland parking space purchase, garage #13 taxes to be paid by new owners; email to J. McClelland re: garage #13 taxes, revised units 1301, 1502 taxes; review unit 309 sales documents and email with J. McClelland re: closing date; call with J. McClelland on unit 1601/1602 amendment expiry.
Finnegan, M	13-Oct-16	0.5	Deposit VTB funds.
Flett, D	14-Oct-16	2.8	Review units 1601/1602 sale amendments and call with J. McClelland; call with Miller Thomson on expiry of previous amendment; revisions to units 1601/1602 amendments and sign; further call with J. McClelland re: units 1601, 1602. revisions to amendments and forward to J. McClelland; email to D. Capaldi re: availability of units 1601, 1602 engineering drawings; sign unit 806 fulfilment of conditions, return to J. McClelland and advise D. Capaldi; email with J. McClelland on unit 1601 amendment signed by all parties; call with S Tripp, Windsor realtor; start fee affidavit for 6 <sup>th</sup> Court Report.
Flett, D	17-Oct-16	2.4	Emails with D. Capaldi on units 1601, 1602 drawings, unit 806 rent and November 30 vacate date; review rent roll and units 806, 1301 rent; email to Miller Thomson re: firm sale of unit 806, with documents; prepare fee affidavit for 6 <sup>th</sup> Court Report.
Cherniak, S	17-Oct-16	0.3	Emails from D. Capaldi re unit 806 and update on extension for doctors.

Staff	Date	Time	Narrative
Flett, D	18-Oct-16	1.2	Edit to fee affidavit for 6th Court Report, finalize; call with J. McClelland re: unit 1401 tenant status; unit 806 closing date, surface parking sale process, unit 1505 list price and other matters; review F2016 financial statements and email with M. Greenaway re: accounts payable, pre-receivership deposits.
Flett, D	19-Oct-16	0.4	Review re-sale and comparable MLS listings; updates to unsold unit and inventory schedule.
Finnegan, M	19-Oct-16	0.3	Deposit.
Cherniak, S	19-Oct-16	1	Email from D. Capaldi re in camera meeting. Review of materials in prep for AGM. Call to Miller Thomson re status of report and timing. Review of offer from Morga re breach of contract. Call with Miller Thomson re same.
Cherniak, S	20-Oct-16	2.9	Review of email from Sasso. Review of draft 2016 F/S and emails to accountant. Email from owners re board. Attend board meeting and AGM at Portofino in person.
Flett, D	20-Oct-16	1.4	Review draft F2016 financial statements; email to M. Greenaway re: BMO loan transfer; call with J. McClelland re: unit 1401 showing; further call with J. McClelland re: unit 1401 showing, buyer unfinished HST enquiry, unit 1104 re-sale; review 6th Court Report timetable and Valente litigation status; review unit 309 closing documents and email with Miller Thomson.
Flett, D	21-Oct-16	3.2	Email with D. Capaldi re: September property management; voice mail from and email to J. McClelland re: unit 1302 hvac, permits listing and pending offer; review unit 1302 listing agreement; call with J. McClelland re: unit 1302 interested party, unit 1302 hvac, units 1601/1602 condition status; forward signed unit 1302 listing to J. McClelland; review unit 1302 offer and call with J. McClelland re: offer; prepare unit 1302 counter offer and review; review ECC 122 AGM, Valente litigation status; prepare unit sale summary schedule for W. Sasso; call with J. McClelland re: unit 1302 offer, W. Sasso enquiry.
Finnegan, M	21-Oct-16	0.3	Review cashed GIC and post interest earned to account.
Cherniak, S	21-Oct-16	1.3	Email from D. Capaldi. Return call. Call with W. Sasso re upcoming trial. Email to W. Sasso re offer. Review updated sales schedule requested by W. Sasso. Email to W. Sasso with updated sales schedule. Review of offer on unit 1302. Execute counter. Execute exclusive listing agreement.
Cherniak, S	24-Oct-16	0.6	Review of monthly statements from ECC # 122. Emails to/from BMO re Letter of Credit. Email from J. McClelland re unit 1302.
Cherniak, S	25-Oct-16	0.5	Email GIC to BMO. Update on J. McClelland call with W. Sasso and failed unit 1303 offer.
Finnegan, M	25-Oct-16	0.3	Purchase GIC.
Flett, D	25-Oct-16	1.8	Review BMO emails re: City Windsor Letter of Credit and GIC; review J. McClelland email re: unit 1302; review November condo fees and sign cheque; review F2016 financial statements, T2 and forward signed T183 to M Greenaway; call with J. McClelland on W. Sasso enquiry, unit 1302 showing and counter offer withdrawn, units 1601/1602 status; review listings and email re: summary of current MLS listings, unit 1401 staging.
Flett, D	26-Oct-16	0.3	Review W. Sasso emails re Valente litigation, receiver's sales and listings; review unsold unit status.
Finnegan, M	26-Oct-16	0.5	Prepare monthly condo fee payment and remit.

Staff	Date	Time	Narrative
Cherniak, S	26-Oct-16	1	Email from Miller Thomson re Letter of Credit. Call with Miller Thomson re same. Email to W. Sasso re list price for unsold units. Review response. Email to D. Capaldi re unit.
Cherniak, S	27-Oct-16	1	Emails and call with D. Capaldi re unit 1603 and Letter of Credit trial. Email from W. Sasso's office re unit 1401 listing. Respond. Review of email re units 1601/1602 extension.
Flett, D	27-Oct-16	1.1	Review, sign and forward units 1601/1602 amendments to J. McClelland; email and listing agreement to Sutts Strosberg; review unit 1603 status; call with J. McClelland re: resales, unit 1401 vacancy date; email to D. Capaldi re: unit 1401 vacancy; update unsold unit schedule.
Flett, D	28-Oct-16	0.7	Email with D. Capaldi re: units 1401, 806 vacate dates; email with MPAC re: garage/parking space rent roll; preliminary review of September maintenance expenses; prelim review of Sutts Strosberg prepared schedules of unit sales.
Flett, D	31-Oct-16	1.3	Email with Miller Thomson on post July 11-16 sales and provide schedule; review September 2016 property expenses; review Sutts Strosberg prepared schedules of unit sales and accounting, and email on revisions.
Cherniak, S	31-Oct-16	0.5	Review of correspondence from Morga re damage calculation. Review of correspondence from W. Sasso re sales. Review of email from W. Sasso to Morga re settlement offer.
Hooper, L	31-Oct-16	0.1	Deposit.
Cherniak, S	1-Nov-16	0.3	Review of email re unit 106. Review of issue with unit 309 closing.
Flett, D	1-Nov-16	1.8	Email with City of Windsor; email to D. Capaldi re: unit 106 vacancy, exterior repair status; call with J. McClelland re: unit 309 walk through and closing issue, unit 1401 tenant status; email to D. Capaldi re: unit 309 appliance repair; emails with Miller Thomson re: unit 309 closing issue; further calls with J. McClelland on unit 309 appliance closing issue.
Flett, D	2-Nov-16	1.4	Review emails from D. Capaldi on units 106, 1301 and 309 and reply; email with Miller Thomson and text messages with D. Capaldi re: closing of unit 309; calls with J. McClelland re: unit 309 closing; email with City of Windsor re: tax accounts, unit 309 sale; update inventory and sales schedules for unit 309 closing.
Finnegan, M	2-Nov-16	0.2	Deposit.
Cherniak, S	2-Nov-16	0.3	Email from D. Capaldi on unit 106 repairs. Email re unit 1301 notice to vacate. Email from W. Sasso's office. Respond.
Cherniak, S	3-Nov-16	0.4	Review and approve Portofino expenses. Review Miller Thomson legal bill. Email from D. Capaldi re unit 106. Email from Sutts Strosberg re schedules to Morga.
Finnegan, M	3-Nov-16	0.5	Deposit.
Flett, D	3-Nov-16	0.5	Review D. Capaldi emails on units 106, 1401 tenant, 309 closing; email with J. McClelland on unit 1401 showing, tenant status; update unsold unit schedule; review CRA letter re: 2010-2013.
Flett, D	4-Nov-16	0.2	Review D. Capaldi emails re: units 106, 1401; review CRA letter and forward to M. Greenaway.
Finnegan, M	4-Nov-16	0.5	Bill payments.
Cherniak, S	7-Nov-16	0.5	Emails from Miller Thomson re court report. Review of updated opinion letter from Miller Thomson.

Staff	Date	Time	Narrative
Flett, D	7-Nov-16	1.3	Email with Miller Thomson re: post July 11, 2016 sales summary, 6th report; review email from MPAC re: garage 13; review property tax records and detailed email and attached sale documents to MPAC re: garages 13, 8.
Cherniak, S	8-Nov-16	0.5	Email from D. Capaldi re board meeting. Review of Sasso account. Review of discussion of email from S. D'Amore re questions.
Flett, D	8-Nov-16	0.7	Call with J. McClelland on unit 1401 vacant condition, flooring repair, units 1601/1602 offer status, unit 1401 showings; email to D. Capaldi re: unit 1401 flooring repair; review S. D'Amore enquiry with SC
Flett, D	9-Nov-16	1.7	Email with D. Capaldi re: unit 1401 flooring; review revised 6th report, fee affidavits from Miller Thomson and email to S. Kettle with revisions and edits; review final 6th report; call with J. McClelland on unit 1401 showing, units 1601/1602 conditions, engineering report status.
Cherniak, S	9-Nov-16	0.7	Review of Miller Thomson edits to report. Execute signature page. Update on unit 1401. Call with S. D'Amore re various questions and update.
Finnegan, M	9-Nov-16	0.5	Deposit rent cheques and update rent roll.
Flett, D	10-Nov-16	0.6	Review HST refund and status of pre-receivership returns; call with J. McClelland re: units 1601/1602 status
Finnegan, M	11-Nov-16	0.3	Review of HST refund received and deposit.
Cherniak, S	14-Nov-16	1.6	Numerous emails re settlement offer from Morga. Call with S. D'Amore. Call with Miller Thomson. Review of Court Appeal cost awards. Emails from Sasso. Set up call for tomorrow to discuss settlement. Review of Calderwood email. Review of emails re condo board meeting, agenda, October financials and Cassano memo re games room. Review of Lacey response.
Cherniak, S	15-Nov-16	1.6	Long call with Sasso/Miller Thomson re settlement of Line of Credit. Follow up call with Miller Thomson re Rule 49 Offer. Two calls with S. D'Amore re settlement offer. Review of decisions re costs for previous trials re breach of contract issue. Review of email to D. Capaldi re unit 1401.
Finnegan, M	15-Nov-16	0.5	Prepare and send final 2016 property tax installment to City of Windsor
Flett, D	14-Nov-16	0.3	Review email from W. Sasso office re: receiver sale of unit 704.
Flett, D	15-Nov-16	1.5	Review November property tax payment, including units 1502, 1301 additional assessments and parking account; email and call with MPAC re: garage 13 tax roll amendment, garages and 2015 overages; call with J. McClelland re: unit 1401 showing, staging and photos; unit 1302 interested party, unit 101 list price; review status of Valente litigation and pending settlement; email to D. Capaldi re: unit 1401 cleaning; review unit 101 list price and email to J. McClelland.
Flett, D	16-Nov-16	2.1	Email with D. Capaldi and J. McClelland on unit 1401; review November rent roll and email; prepare 2015, 2016 Section 358 applications for surface parking tax roll and email to MPAC; lengthy call with J. McClelland on units 1601/1602 condition status, waiver timing and condo corporation approval of design plan; memo to S. Merry re: HST issues on Valente litigation settlement.

Staff	Date	Time	Narrative
Cherniak, S	16-Nov-16	0.5	Call with Miller Thomson re settlement agreement, how funds should be paid, HST issue. Discuss with D. Flett. Review email to HST specialist.
Hooper, L	16-Nov-16	0.1	Banking.
Cherniak, S	17-Nov-16	0.2	Email to D. Capaldi re board meeting non-attendance. Review of email re staging.
Merry, S	17-Nov-16	0.4	Review and respond to email re: HST on court settlement.
Finnegan, M	17-Nov-16	0.3	Pay bill.
Flett, D	17-Nov-16	0.4	Email with At-home Staging re: staging and review unit 1401 quotation; email with S. Merry re: HST on Valente settlement; review HST.
Flett, D	18-Nov-16	1.8	Call with J. McClelland re: units 1601/1602 conditions and removal arrangements, unit 1401 showing, unit 1401 staging; email with J. McClelland re: unit 1401; review, and sign staging contract/invoice; further calls with J. McClelland re: units 1601/1602 and review, sign, forward fulfillments of conditions; email to M. Greenaway.
Cherniak, S	18-Nov-16	0.2	Update on Satz Ashanti deal. Email to Miller Thomson re HST on settlement.
Cherniak, S	21-Nov-16	0.7	Review of email from D. Capaldi re Tarion. Review of settlement agreement. Emails re same to Miller Thomson.
Flett, D	21-Nov-16	1.4	Review D. Capaldi re: Tarion; review units 1601/1602 architect's plans; review ECC 122 Notice of Motion re: construction; several calls with J. McClelland re: units 1601/1602 plans, engineer certification and ECC 122 approval.

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**92.9 Total Time**

Staff	Position	Office	Rate	Time
Cherniak, S	Sr. Vice President	London	\$475	24.4
Finnegan, M	Administrative	London	\$175	8.7
Flett, D	Vice President	London	\$350	58.7
Hooper, L	Estate Administrator	London	\$125	0.7
Merry, S	Senior Manager, Tax	Cambridge	\$345	0.4
				<b>92.9</b>





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Invoice # 88762030  
Portofino Corporation  
HST Reg # 101518124RT0001

Ontario Superior Court of Justice  
245 Windsor Ave  
Windsor, ON N9A 1J2

January 16, 2017

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**Re: Portofino Corporation**

For professional services rendered for the period November 21, 2016 through January 13, 2017  
as per the attached detail:

Our Fee	\$30,000.00
Disbursements (courier)	<u>80.68</u>
Sub total	30,080.68
HST	3,910.49
	<hr/>
Total	<u>\$33,991.17</u>

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**REMITTANCE ADVICE**

Cheque Payments to:  
100-633 Colborne Street  
London, ON N6B 2V3

Invoice # 88762030

Amount \$33,991.17



January 16, 2017

For professional services rendered

Staff	Date	Time	Narrative
Finnegan, M	21-Nov-16	0.2	Deposit rent cheques.
Hooper, L	21-Nov-16	0.1	Issued chq
Cherniak, S	22-Nov-16	0.2	Discussion of D. Capaldi unit. Review of D. Capaldi response re performance audit.
Finnegan, M	22-Nov-16	0.2	Call to CRA to update mailing address for accounts.
Flett, D	22-Nov-16	0.5	Call with J. McClelland re: units 1601/1602 architect plans and submitting to ECC 122; review unit 1401 listing, unit 1301 status.
Hooper, L	22-Nov-16	0.1	Banking.
Cherniak, S	23-Nov-16	0.2	Review of condo newsletter. Email from Miller Thomson re Motion.
Finnegan, M	23-Nov-16	0.5	Pay bills.
Flett, D	23-Nov-16	0.3	Call with J. McClelland re: unit 1601/1602 conditions, status; review email from D. Azar
Cherniak, S	24-Nov-16	0.3	Call and response re lawsuit requiring stay lifted to preserve timetable. Emails re unit 806 drawings for unit and tenant moving out.
Flett, D	24-Nov-16	1.1	Email with D. Capaldi re: unit 806 tenant; email with D. Azar and review revised design proposal for units 1601/1602; call with J. McClelland re: unit 1601/1602 condition, unit 806 repairs; email to D. Capaldi / ESC 122 re: approval of unit 1601/1602 redesign.
Cherniak, S	25-Nov-16	0.4	Review and discussion re unit 1601/1602 drawings and condo board approval. Review of D. Capaldi email re same. Review of emails re unit 806.
Flett, D	25-Nov-16	0.7	Review email from D. Capaldi and review units 806, 1601/1602 status; emails to D. Capaldi re: unit 806 repairs, ECC 122 approval of redesign plan.
Cherniak, S	28-Nov-16	1.3	Review of letter to Tarion re response. Discuss the letter's failings with D. Flett. Review and send response to D. Capaldi. Call with Miller Thomson re lawsuit re aborted sale prior to receiver's appointment. Email to D. Capaldi re same. Review numerous emails from Miller Thomson re same re response to counsel dealing with the matter.

Staff	Date	Time	Narrative
Flett, D	28-Nov-16	1.8	Review emails from D Capaldi on items related to units 806, 1401, 1601/1602 design review; review ESCC 122 letter to Tarion re: performance audit; call with J. McClelland on unit 806 closing, ECC 122 notice of motion re: construction; draft detailed memo to S. Cherniak / D. Capaldi re: queries and comments on ECC 122 response to Tarion.
Cherniak, S	29-Nov-16	1.5	Attend motion re distribution. Email from Miller Thomson re lawsuits on aborted sales. Review of statement of claim for Villalta. Emails re settlement agreement.
Finnegan, M	29-Nov-16	0.6	Prepare and send December, 2016 condo fee payment. Deal with nsf parking payment. Posted Order to website.
Flett, D	29-Nov-16	1.6	Review D. Capaldi email on Tarion letter, unit 1401 items; email and text msg to D. Capaldi re: call on Tarion and uncompleted sale lawsuits; emails with J. McClelland on units 1401, 1601/1602 conditions; review 5th report motion record and email to S. Cherniak re: Miller Thomson opinion; emails from Miller Thomson re: Order; review emails re: HST on Valente settlement; further text messages with D. Capaldi re: phone call; review December, 2016 condo fees and sign cheque.
Merry, Scott	29-Nov-16	0.2	Review and respond to email re: clause in agreement re: HST being remitted on settlement payment.
Cherniak, S	30-Nov-16	1.4	Long call with D. Capaldi re lawsuits and Tarion response. Review revised minutes of settlement. Review of response from S. Merry re HST. Email to Miller Thomson. Gather materials for aborted lawsuits.
Finnegan, M	30-Nov-16	0.4	Prepare and send secured creditor payment to WFCU.
Flett, D	30-Nov-16	3.5	Lengthy call with D Capaldi on Tarion, bond reduction, aborted deal lawsuits, City of Windsor, Line of Credit; call with J. McClelland on unit 1401 staging, showings, units 1601/1602 condition status; review emails from A Fernandes and court documents for several lawsuits with buyers for sales not completed; prepare summary of outstanding lawsuits and subsequent sale by receiver.
Hooper, L	30-Nov-16	0.2	Banking.
Cherniak, S	1-Dec-16	1.5	Review of materials from Americo Fernandes re lawsuits. Long call with Miller Thomson re same. Review of emails from Miller Thomson to Americo Fernandes re request for information. Review responses. Review of email to D. Capaldi re request for information. Review Shibley file re deposits.

Staff	Date	Time	Narrative
Flett, D	1-Dec-16	2.8	Review litigation status; call with Miller Thomson and S. Cherniak on status of several lawsuits for construction issues and aborted sales; email to D. Capaldi on litigation and status of court materials for several unresolved actions; emails with Miller Thomson re: Betschel Kitchen litigation and email to D. Capaldi re: discharge of construction lien; call with J. McClelland on unit 906 condo fees prepaid, unit 1401 showings, and email to J. McClelland with unit 906 condo fee particulars.
Cherniak, S	2-Dec-16	1.2	Review of various statements of claim and supporting materials for the various lawsuits. Send same to Miller Thomson. Review of email re agreements of purchase and sale used in these sales. Review of email from Miller Thomson re: Mobin.
Flett, D	2-Dec-16	2.2	Brief review of lawsuit documents obtained from court house; email to Miller Thomson re: Mobin action; review units 1601/1602 seller condition, amendment for buyer conditions; call with J. McClelland re: unit 1401 repairs, units 1601/1602 condition amendment; review and sign units 1601/1602 amendments; emails with D. Capaldi on unit 1401 repairs, agreements of purchase and sale for Jeji, Loucks and Villata; review agreements and forward to Miller Thomson.
Cherniak, S	5-Dec-16	0.5	Finish and send email to Calderwood. Update on units 1601/1602. Review of agreement of purchase and sale from D. Capaldi.
Finnegan, M	5-Dec-16	0.5	Update rent roll and deposit rents.
Flett, D	5-Dec-16	0.5	Review file and correspondence re: Portofino funds with Miller Canfield / Shibley Righton; review funds status and various litigation status; review units 1601, 1602, 806 status.
Hooper, L	5-Dec-16	0.1	Banking.
Cherniak, S	6-Dec-16	0.1	Review of correspondence from Ferndandes re Villata lawsuit.
Flett, D	6-Dec-16	1.7	Emails with MPAC re: 358 applications; finalize applications, review with S. Cherniak and forward to MPAC; call with J. McClelland on unit 1401 staging, unit 1401 showing, unit 1301 vacancy, units 1601/1602 conditions; review December rent roll; review and sign receiver cheques; call with J. McClelland re: unit 1401 showing; unit 1301 inspection and needed repairs.
Cherniak, S	7-Dec-16	0.7	Discussion of state of unit 1301 after tenants left. Review of email to D. Capaldi and D. Capaldi response. Review of D. Capaldi response re ECC #122 position on units 1601/1602. Review of correspondence from Sutts re Crevatin. Review of Miller Thomson response.
Finnegan, M	7-Dec-16	0.5	Pay bills

Staff	Date	Time	Narrative
Flett, D	7-Dec-16	1.2	Review unit 1301 issues and listing timing with S. Cherniak; email to D. Capaldi re: ECC #122 approval of units 1601/1602 redesign plan; detailed memo to D. Capaldi re: several repairs to unit 1301 and cleaning; call with J. McClelland on unit 1401 showing, unit 1201 list price.
Cherniak, S	8-Dec-16	1.2	Review of emails to D. Capaldi re unit 1301 and units 1601/1602. Discussion re status of units 1601/1602 deal. Execute amendments. Review of emails from Miller Thomson re Morga and status of settlement minutes. Long call with Miller Thomson re same and how to deal with lawsuits. Call with Scott D'Amore re-funding \$630k without release of line of credit. Call to Miller Thomson re same. Review of further email to Morga re settlement minutes.
Flett, D	8-Dec-16	1.4	Emails with D. Capaldi and J. McClelland re: units 1601/1602 redesign approval and condition; review units 1601/1602 agreement, seller fulfillment of conditions, sign and forward to J. McClelland; review units 1601/1602 status with S. Cherniak; email with D. Capaldi re: unit 1301 repairs; call with J. McClelland on units 1601/1602 status certificate and financing conditions; sign receiver cheques; review units 1601/1602 buyer waiver of status certificate and call with J. McClelland on issue.
Hooper, L	8-Dec-16	0.1	Banking.
Cherniak, S	9-Dec-16	0.7	Review of emails from Miller Thomson re lawyer of record on lawsuits. Review of email from Morga re consent to agreement. Calls and emails with S. D'Amore. Email to Miller Thomson.
Cherniak, S	12-Dec-16	0.8	Review of numerous emails from Morga/Miller Thomson re settlement agreement. Review of final agreements. Review of email from Trottier. Review of Miller Thomson response. Update on unit 1401 showings.
Flett, D	12-Dec-16	1.2	Review email from J. McClelland and units 1601/1602 fulfillments of conditions; update unsold unit inventory schedule; call with J. McClelland on units 1601/1602 status, unit 1401 staging and photos; unit 1401 showings; call with J. McClelland re: unit 906 parking space rental; call with J. McClelland re: units 1601/1602 inspection condition.
Cherniak, S	13-Dec-16	1.4	Review of revisions to minutes of settlement. Review Morga executed copy. Review of correspondence from Colauti firm re lawsuit against D. Capaldi. Call with Scott D'Amore. Call with Miller Thomson re same. Email to S. D'Amore. Review of application record. Call with Miller Thomson re settlement and Miller Thomson discussion with Sasso re Capaldi Review of email from Sasso. Email to D. Capaldi re execution of settlement minutes.
Flett, D	13-Dec-16	0.6	Email with D. Capaldi re: unit 806 repairs; email with J. McClelland on unit 806 closing date and repairs; email with Miller Thomson re: unit 806 closing; call with J. McClelland on unit 806 condition, additional repairs.

Staff	Date	Time	Narrative
Cherniak, S	14-Dec-16	0.5	Updates on issues with units 1601/1602 re drawings. Review of email to D. Capaldi re same. Email from Miller Thomson re: funds for settlement. Email to S. D'Amore re same.
Flett, D	14-Dec-16	1.2	Review unit 806 photos and emails from J. McClelland; call with J. McClelland re; units 1601/1602 plans, redesign plan issue and condition status, unit 1401 showings; review units 1601/1602 condition status, design issue with S. Cherniak; call with J. McClelland re: units 1601/1602 inspection, financing condition expiry; email to D. Capaldi re: units 1601/1602 construction versus drawings.
Cherniak, S	15-Dec-16	0.5	Update on units 1601/1602 situation and decision on extension. Email from Miller Thomson re: funds paid into court. Review of undertaking to be executed.
Flett, D	15-Dec-16	1.4	Review email from D Capaldi re: units 1601/1602; lengthy call with J. McClelland re: units 1601/1602 drawings not reflecting as built changes; financing condition, timing of condition extension; review units 1601/1602 issues, extension timing with S. Cherniak; call with J. McClelland re: units 1601/1602 extension of conditions; review Miller Thomson email re: Betschel litigation funds in court.
Cherniak, S	16-Dec-16	1	Review of email from City of Windsor re MPAC assessment. Review of D. Flett response. Review and calls with Miller Thomson re Capaldi seeking independent legal opinion before signing agreement. Voice mail message to D. Capaldi. Review of Sasso email.
Finnegan, M	16-Dec-16	0.5	File HST returns.
Flett, D	16-Dec-16	1.2	Call with J. McClelland on unit 1401 showing, utility bills, units 1601/1602 condition status; review unit 1401 utilities; review units 1601/1602 amendment to extend financing and inspection conditions, sign and forward to J. McClelland; review and forward; review HST filings; review unit 1401 photos and email from J. McClelland; review email from City Windsor re: tax adjustment applications.
Cherniak, S	19-Dec-16	2	Two calls with D. Capaldi re-signing Valente settlement. Two calls with Miller Thomson re same. Review email to City of Windsor re tax appeal.
Flett, D	19-Dec-16	0.8	Email to City Windsor re: parking tax roll adjustment submission; voice mail from J. McClelland re: unit 1401 showing/offer; call with J. McClelland re: unit 1602 enquiry, possible offer; email to MPAC.
Cherniak, S	20-Dec-16	0.7	Email from Miller Thomson re execution of settlement. Review of email to Morga. Send to D. Capaldi. Call with S. d' Amore re status of minutes. Review of email re offer on units 1601/1602. Review of email to M. Greenaway re NOA's.
Finnegan, M	20-Dec-16	0.5	Deposit rent cheques and update rent roll.

Staff	Date	Time	Narrative
Flett, D	20-Dec-16	2.8	Review units 1601/1602 offer and call with J. McClelland re: offer, no counter; email with S. Cherniak re: unit 1602 offer; call with J. McClelland re: unit 1602; review email from MPAC re: parking space roll; review rent roll and emails to D. Capaldi re: December rents; call with J. McClelland re; listing extension, holiday suspensions, unit 1401 showing; unit 1602 listing amendment; review 2010-2013, 2016 corporate tax notices of assessment and email to M. Greenaway; email reply to MPAC with detail of surface parking sales and ownership.
Cherniak, S	21-Dec-16	1.2	Email from D. Capaldi re minutes of settlement. Review of numerous emails re lobby enhancement from condo board members. Discussion and execution of documents re suspending listings over the holidays. Review of correspondence from S. D'Amore v D. Capaldi. Call from D. Capaldi re execution of minutes. Call to Miller Thomson. Review of Miller Thomson email re conversation with Godard. Review of Morga response.
Finnegan, M	21-Dec-16	0.5	Bill payments.
Flett, D	21-Dec-16	1.2	Further email to MPAC with additional information on sold garages and spaces; email with M. Greenaway re: 2012 corp tax owing; call with J. McClelland on further unit 1602 offer, irrevocable date over holidays; sign listing suspensions and return to J. McClelland; call with J. McClelland re: unit 806 condition, Unit 1602 interest.
Cherniak, S	22-Dec-16	1.2	Review of email from Cassano and other owner re lobby enhancements. Review of response re unit 806 repairs. Review of emails from Miller Thomson, Sasso and Morga re finalizing agreement. Review of email from D. Capaldi re execution of minutes. Two calls with Miller Thomson re same. Send D. Capaldi undertaking. Review of response. Execute undertaking and send to Miller Thomson.
Finnegan, M	22-Dec-16	0.3	Prepare and send condo fee payment.
Flett, D	22-Dec-16	0.8	Call with M. Greenaway re: 2012 corporate tax penalty owing; call with J. McClelland re: unit 806 condition, repairs; email to D. Capaldi re: unit 806 repairs; update unsold unit inventory summary.
Cherniak, S	23-Dec-16	1	Reply from D. Capaldi on unit 806. Discuss issues and how to deal with and review photos. Discuss CRA issue and send cheque. Attend at Miller Thomson offices to sign affidavits for old lawsuits. Review Miller Thomson email to Morga re finalizing lawsuit.
Flett, D	23-Dec-16	0.9	Review corporate tax owing, unit 806 repair issues with S. Cherniak; email with At-home and review invoice; call with J. McClelland re: unit 1602 offer status, holiday listing suspensions.

Staff	Date	Time	Narrative
Cherniak, S	29-Dec-16	0.5	Review of various motion records for lawsuits.
Cherniak, S	30-Dec-16	0.3	Review of draft order and affidavit. Email to Miller Thomson approving order.
Cherniak, S	3-Jan-17	0.5	Review of email re lobby enhancements. Review and execute docs re sale of unit 806.
Finnegan, M	3-Jan-17	0.5	Prepare and send executed sale documents to Miller Thomson.
Flett, D	3-Jan-17	0.9	Review unit 806 sale documents; review draft unit 806 closing documents and email with Miller Thomson on deposit/commission query and review commission statement; call with J. McClelland re: unit 806 closing, walk-through.
Hooper, L	3-Jan-17	0.1	Banking.
Cherniak, S	4-Jan-17	1.3	Call with Miller Thomson re update on settlement with Valente. Review of draft order and Thomas handwritten endorsements. Review of emails from Chandler/Trottier re amendments to the order. Update on lawsuits and discussion on how to deal with them. Discussion of potential offer on unit 1401.
Finnegan, M	4-Jan-17	0.3	File HST return.
Flett, D	4-Jan-17	0.8	Call with J. McClelland re: unit 1401 showing and pending offer; review unit 1401 offer timing with S. Cherniak; review litigation status, next court report.
Hooper, L	4-Jan-17	0.1	Deposit
Cherniak, S	5-Jan-17	1.1	Review of revisions re unit 806 closing. Review of various emails re lawsuits and motion on January 10, 2017. Review of emails re Paglione. Discussion and counter offer on unit 1401.
Flett, D	5-Jan-17	2.6	Emails with Miller Thomson on unit 806 outstanding Enwin account; review revised unit 806 closing statements; review J. McClelland email and unit 1401 offer; call with J. McClelland on unit 1401 offer, timing of conditions, possible competing offer, counter offer price; call with J. McClelland on unit 806 walk through; prepare unit 1401 counter offer, review with S. Cherniak and forward to J. McClelland; email to Miller Thomson re: revision to APS Schedule C; email with Miller Thomson and J. McClelland re: revised Schedule C; review MLS listings and email to J. McClelland re: unit 1401; email to D Capaldi re: unit 806 repair; email with J. McClelland and forward schedules B, C to APS.



Staff	Date	Time	Narrative
Flett, D	6-Jan-17	2.5	Call with J. McClelland re: unit 1401 status, unit 806 closing arrangements; email with D. Capaldi re: unit 806 repair; email with Miller Thomson and txt msg with D. Capaldi re: unit 806 closing; review email from 1403 buyer; update sales and inventory schedules for unit 806 closing; call with J. McClelland re: unit 1401 buyer non-residency; call with Miller Thomson on non-resident buyers; call with J. McClelland on unit 1401 utilities and forward copies; call with J. McClelland on unit 1401 acceptance; draft reply to unit 1403 buyer enquiry re: tenant damage.
Hooper, L	6-Jan-17	0.1	Banking
Cherniak, S	9-Jan-17	0.9	Review of emails re unit 806 closing. Review of emails and discuss and review response re unit 1403 tenants of purchaser. Review of email re sale of unit 1401. Review of emails re motion confirmations for lawsuits.
Flett, D	9-Jan-17	2.1	Email with D. Capaldi re: unit 806 repairs, unit 1401 conditional sale; review accepted unit 1401 offer; call with J. McClelland re: unit 806 closing, unit 1401 sale, conditions and buyer's solicitor, unit 1301 enquiries; emails with R. Pelland re: unit 1403 tenant, parking spaces available for sale; update unsold unit schedule; email to Miller Thomson re: sales to non-residents.
Hooper, L	9-Jan-17	0.1	Banking.
Cherniak, S	10-Jan-17	0.1	Review of email re unit 1401 repairs.
Finnegan, M	10-Jan-17	0.7	Deposit and update rent roll. Pay bills.
Flett, D	10-Jan-17	1.1	Email with D. Capaldi re: unit 1401 conditional sale, unit 806 repair; call with J. McClelland on unit 1401 inspection, repairs, condition status; prepare detailed memo to D. Capaldi on unit 1401 repairs and queries.
Cherniak, S	11-Jan-17	0.3	Review of Miller Thomson bill. Review of email from Miller Thomson re Morga requiring affidavit from Sasso. Review of email re unit 1401.
Flett, D	11-Jan-17	0.9	Email with D. Capaldi re: unit 1401 repairs; call with J. McClelland re: unit 1401 conditions, units 1601/1602 status, unit 1301 interested party, unit 1302 showing; call with Miller Thomson re: non-resident buyer clause in Schedule C.
Cherniak, S	12-Jan-17	0.6	Review of emails re unit 1403 and former tenant issues. Discuss and execute amendment for unit 1401. Update on doctors and unfinished unit purchase. Review of D. Capaldi response to unit 1401 repairs.
Flett, D	12-Jan-17	1.2	Review email from D Capaldi re: unit 1401 repairs and maintenance; call with J. McClelland on unit 1401 condition status; review unit 1401 amendment; emails with R. Pelland and forward copy of unit 1403 amendment; review unit 1401 amendment, units 1601/1602 status with S. Cherniak, sign and forward to J. McClelland.

Staff	Date	Time	Narrative
Cherniak, S	13-Jan-17	0.2	Review of correspondence from Sasso including account.
Flett, D	13-Jan-17	0.2	Review revised Schedule C to APS from Miller Thomson and forward to J. McClelland; voice mail from J. McClelland re: unit 1401.

**78.4 Total Time**

Staff	Position	Office	Rate	Time
Cherniak, S	Sr. Vice President	London	\$475	27.3
Finnegan, M	Administrative	London	\$175	6.2
Flett, D	Vice President	London	\$350	43.7
Hooper, L	Estate Administrator	London	\$125	1.0
Merry, S	Partner - Tax	Cambridge	\$345	0.2
				<b>78.4</b>

# **APPENDIX “I”**

**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

**AFFIDAVIT OF SHERRY A. KETTLE**

I, SHERRY A. KETTLE, of the City of London, County of Middlesex, in the Province of Ontario, MAKE OATH AND SAY:

1. I am partner 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" is a copy of the invoice rendered by MT to the Receiver for fees and disbursements of MT for the period November 1, 2016 through to December 31, 2016 (the "Period"). I affirm that the invoice accurately reflects the services provided by MT during the Period and the fees and disbursements claimed by it. During the Period, the total fees and disbursements billed were \$23,586.00 and \$1,800.01 respectively. The HST billed was \$3,154.58. 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 52.40 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 invoice.


SWORN before me at the City of London, )  
Province of Ontario this 8th day of )  
February, 2017 )

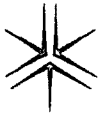
\_\_\_\_\_  
A Commissioner for taking affidavits. )

*Julie [Signature]*  
PO9602

*Sherry A. Kettle [Signature]*  
\_\_\_\_\_  
Sherry A. Kettle )

Attached are Exhibits "A" and "B" to the  
Affidavit of Sherry A. Kettle sworn the  
8th day of February, 2017

  
\_\_\_\_\_  
A Commissioner, Etc.



**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

ACCOUNT

December 31, 2016

Invoice Number 2990037

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

Attention: Stephen N. Cherniak

**TO PROFESSIONAL SERVICES RENDERED in**  
connection with the following matter including:

**Re: Portofino Corporation**  
**Our File No. 082873.0012**

Date	Initials	Description	Hours
11/01/2016	ASR	Attend to funds and discharge;	0.20
11/01/2016	SK	Work on Sixth Report;	0.40
11/02/2016	TV	[Unit 309] Review memorandum; review instructions from D. Flett; consult with A. Roth regarding closing matters; attend to closing matters; draft closing letter to purchaser's solicitor with attachments and forward; review purchaser's closing letter and documents; finalize Teraview form; attend to registrations; notify respective parties transaction closed; attend to post closing matters;	1.00
11/02/2016	AVK	Conference with Sherry Kettle re opinion regarding sale proceeds from additional condo sales	0.20
11/02/2016	AVK	Dictate rider for Receiver's report	0.10
11/02/2016	SK	Work on motion for Sixth Report;	2.90
11/02/2016	RA	Obtaining parcel registers for Essex Condominium Plan No. 122 as detailed in the receiver's certificates;	0.40



<b>Date</b>	<b>Initials</b>	<b>Description</b>	<b>Hours</b>
11/03/2016	SK	Revise opinion letter re net receipts from date of July 11th Opinion; Telephone conference with Mr. Alexiou re Dalfidan lien action;	1.80
11/07/2016	AVK	Review opinion and fees affidavit	0.20
11/07/2016	SK	Work on Sixth Report; E-mail correspondence with Mr. Flett and Mr. Cherniak; E-mail correspondence to Mr. Sasso; Telephone call to Mr. Sasso's office;	2.50
11/07/2016	RA	Obtaining parcel register for PIN 01872-0063;	0.10
11/08/2016	SK	Work on Sixth Report of Receiver; E-mail correspondence to and from Ms. Peterson re fee affidavit;	0.60
11/09/2016	SK	Work on Sixth Report; E-mail correspondence to and from Receiver re same; Telephone call to Mr. Cooke (left voice message); Voice message from Mr. Cooke; E-mail correspondence to Mr. Cooke;	1.60
11/14/2016	AVK	E-mails from and to Mr. Sasso and Mr. Cherniak regarding settlement offers for Valente action	0.20
11/14/2016	AVK	Telephone call with Mr. Cherniak regarding Valente action and settlement options; e-mails from and to Mr. Sasso and Mr. Cherniak	0.40
11/14/2016	SK	Finalize motion record re Sixth Report; Draft order; Prepare service letter; Prepare letter to agent re filing; Provide instructions;	1.00
11/15/2016	AVK	Conference call with Mr. Cherniak and Mr. Sasso regarding Valente litigation	0.50
11/16/2016	AVK	Telephone call with Mr. Sasso re settlement of Valente litigation	0.40
11/16/2016	AVK	Telephone call with Mr. Cherniak re settlement of Valente litigation	0.30
11/18/2016	AVK	Consider issues relating to settlement of Valente litigation and payment of settlement amount, drafting settlement documents for Valente Real Estate action	1.80
11/21/2016	AVK	Revise settlement documents for Valente action	0.30
11/21/2016	SK	Prepare motion confirmation;	0.10
11/28/2016	AVK	Telephone call with Mr. Fernandes regarding outstanding litigation in which Portofino is plaintiff, review file documents, e-mail to Mr. Cherniak; telephone call with Mr. Cherniak	1.10





<b>Date</b>	<b>Initials</b>	<b>Description</b>	<b>Hours</b>
11/28/2016	AVK	Further telephone call with Mr. Fernandes regarding Portofino litigation	0.20
11/28/2016	AVK	Review pleadings for Portofino - Villalta litigation, e-mails to and from Mr. Cherniak and Mr. Fernandes thereon; review draft timetable and order, email to Mr. Fernandes thereon	0.60
11/28/2016	AVK	E-mail from and to Mr. Calderwood	0.10
11/28/2016	SK	Discussion with Mr. Van Klink re motion re Sixth Report;	0.10
11/29/2016	AVK	E-mails from and to Mr. Morga; review documents relating to Villalta litigation and e-mail to Mr. Fernandes thereon	0.20
11/29/2016	AVK	Revisions to draft Minutes of Settlement; e-mails to and from Mr. Morga; e-mail to Mr. Cherniak re HST issue	1.00
11/29/2016	AVK	Telephone call with Mr. Fernandes regarding additional Portofino litigation and e-mail to Mr. Cherniak thereon	0.30
11/29/2016	SK	Travel to and from Windsor; Attend motions court re Receiver's Sixth Report; Attend court office to have order issued and entered; E-mail correspondence to receiver with copy of issued and entered order;	6.70
11/30/2016	AVK	Further revisions to draft Minutes of Settlement; e-mail to Mr. Morga	0.20
11/30/2016	AVK	Review pleadings and e-mails for various outstanding lawsuits involving Portofino which are subject to administrative dismissal on January 1, 2017	0.80
11/30/2016	SK	E-mail correspondence to and from Mr. Cherniak;	0.10
12/01/2016	AVK	Conference call with Mr. Cherniak and Mr. Flett regarding outstanding litigation; e-mails to Mr. Fernandes; review various pleadings; review Betschel construction lien documents and request additional searches be undertaken; review order discharging Betschel lien and e-mail to Receiver thereon	1.80
12/01/2016	AVK	Review additional materials related to Betschel Kitchen construction lien, e-mail to Mr. Cherniak and correspondence to Accountant of the Ontario Court thereon	0.70
12/01/2016	RA	Obtaining parcel register for PIN 01203-0437, together with a copy of Application to Register Court Order;	0.20
12/07/2016	AVK	Review and consideration of outstanding litigation matters which are subject to administrative dismissal; communications with Mr. Robins and Mr. Sasso	2.00



<b>Date</b>	<b>Initials</b>	<b>Description</b>	<b>Hours</b>
12/07/2016	AVK	E-mails from and to Mr. Morga regarding Valente settlement; e-mail to Mr. Cherniak and Mr. Sasso	0.40
12/08/2016	AVK	E-mails from Mr. Morga re Valente settlement; review file documents regarding scope of damage claim being asserted in Valente litigation; consider issues raised by Mr. Morga and response to same; telephone call with Mr. Cherniak regarding settlement of Valente actin and steps to be take with respect to other Portofino litigation; e-mail to Mr. Morga; revise draft Minutes of Settlement	2.20
12/09/2016	AVK	E-mail to Mr. Fernandes re Portofino litigation; consider steps to be taken for Portofino litigation; working on motion materials	1.80
12/09/2016	AVK	E-mail from and to Mr. Morga re completion of settlement; revise draft Minutes of Settlement; e-mail to Mr. Cherniak	0.30
12/12/2016	AVK	Working on settlement documents and completion of settlement for Valente litigation; e-mail from and to Mr. Trottier re funding of Valente settlement; e-mails from and to Mr. Morga	1.20
12/13/2016	AVK	Revise draft Minutes of Settlement; e-mail to Mr. Morga; e-mail from and to Mr. Sasso; receive executed Minutes of Settlement and e-mail to Mr. Trottier thereon; Telephone call with Mr. Morga	0.70
12/13/2016	AVK	E-mail to Mr. Cherniak re D'Amore Estate application	0.10
12/15/2016	AVK	Review draft Undertaking; e-mail to Mr. Sasso and Mr. Cherniak thereon	0.10
12/15/2016	AVK	Review correspondence from Accountant of Superior Court regarding funds held for Betschel Kitchen construction lien and e-mail to Receiver thereon	0.10
12/16/2016	AVK	Telephone call with Mr. Sasso re execution of settlement documents for Valente litigation	0.10
12/16/2016	AVK	E-mail from Mr. Sasso and e-mail to Mr. Cherniak regarding execution of settlement documents by Capaldi; telephone call with Mr. Cherniak	0.20
12/16/2016	AVK	Working on motion materials for status hearings; e-mail from and to Mr. Robins.	2.50
12/16/2016	AVK	Telephone call with Mr. Cherniak	0.10
12/19/2016	AVK	Telephone calls with Mr. Cherniak	0.30



Date	Initials	Description	Hours
12/20/2016	AVK	E-mails to Mr. Cherniak; receive executed Minutes of Settlement; e-mail to Mr. Morga; Telephone call with Mr. Morga	0.70
12/21/2016	AVK	Telephone call with Mr. Godard; e-mails to and from Mr. Morga and Mr. Cherniak re Valente settlement	0.80
12/22/2016	AVK	Telephone calls with Mr. Cherniak; e-mails from and to Mr. Morga	0.30
12/22/2016	AVK	Revisions to motion materials for status hearings	0.80
12/23/2016	AVK	Finalize affidavits for status hearing motions; attend with Mr. Cherniak to swear affidavits	1.00
12/23/2016	AVK	E-mail to Mr. Morga re completion of settlement of Valente litigation	0.20
12/28/2016	AVK	Working on motion materials and related correspondence for status hearings, e-mails to Mr. Trottier and Mr. Morga re settlement of Valente action, drafting affidavit and order for Valente action	4.40
12/29/2016	AVK	Finalize and swear affidavits of service; Telephone call with Ryan MacKenzie (lawyer for Mr. Loucks) regarding status hearing motion and Loucks action; revisions to affidavit and draft Order; e-mail to Mr. Morga; correspondence to Mr. Morga	1.00

TOTAL HOURS 52.40

**OUR FEE: \$23,586.00**

Initials	Name	Title	Rate	Hours	Amount
5212	ASR	A. Roth	Partner	365.00	0.20 73.00
5403	AVK	A. Van Klink	Partner	545.00	32.70 17,821.50
5715	SK	S. Kettle	Partner	305.00	17.80 5,429.00
5721	RA	R. Armstrong	Clerk	125.00	0.70 87.50
5231	TV	T. Vogel	Clerk	175.00	1.00 175.00

**TAXABLE DISBURSEMENTS**

Couriers	48.78	
Mileage/Parking	174.33	
Agent's Fees	50.00	
Online Searches - Teranet	406.90	
<b>TOTAL TAXABLE</b>	<b>680.01</b>	<b>\$680.01</b>

**NON-TAXABLE DISBURSEMENTS**

Issue Notice of Motion	960.00
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Page 6  
Invoice 2990037

Issue Statement of Defence	160.00	
TOTAL NON-TAXABLE	1120.00	\$1,120.00
<b>TOTAL FEES AND DISBURSEMENTS:</b>		<b>\$25,386.01</b>
<b>Harmonized Sales Tax (R119440766)</b>		
On Fees		\$3,066.18
On Disbursements		\$88.40
<b>TOTAL AMOUNT DUE:</b>		<b><u>\$28,540.59</u></b>

E.&O.E.

**EXHIBIT "B"**  
**Miller Thomson's Fees**

	<u>Year of Call</u>	<u>Rate 2016</u>	Inv.#2990037 <u>December 31, 2016</u>	<u>Total Invoices</u>
<b>Hours</b>				
S. Kettle	2007	\$305.00	17.80	17.80
T. Van Klink	1988	\$545.00	32.70	32.70
A. Roth	2004	\$365.00	0.20	0.20
T. Vogel - clerk	N/A	\$175.00	1.00	1.00
R. Armstrong - clerk	N/A	\$125.00	0.70	0.70
			<u>52.40</u>	<u>52.40</u>
<b>Total \$</b>				
S. Kettle	2007	\$305.00	\$5,429.00	\$5,429.00
T. Van Klink	1988	\$545.00	\$17,821.50	\$17,821.50
A. Roth	2004	\$365.00	\$73.00	\$73.00
T. Vogel - clerk	N/A	\$175.00	\$175.00	\$175.00
R. Armstrong - clerk	N/A	\$125.00	\$87.50	\$87.50
			<u>\$23,586.00</u>	<u>\$23,586.00</u>
<b>Summary</b>				
Fees			\$23,586.00	\$23,586.00
Disbursements			\$1,800.01	\$1,800.01
HST			\$3,154.58	\$3,154.58
Total			<u>\$28,540.59</u>	<u>\$28,540.59</u>

2502461 ONTARIO LTD.

Applicant

and

PORTOFINO CORPORATION

Respondent

Court File No. CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**AFFIDAVIT OF SHERRY A. KETTLE  
SWORN FEBRUARY 8, 2017**

**MILLER THOMSON LLP**

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

**Tony Van Klink** LSUC#: 29008M  
Tel: 519.931.3509  
Fax: 519.858.8511  
Email: tvanklink@millerthomson.com

**Sherry A. Kettle**, LSUC #53561B  
Tel: 519.931.3534  
Fax: 519.858.8511  
Email: skettle@millerthomson.com

Lawyers for BDO Canada Limited,  
Court-Appointed Receiver of  
Portofino Corporation

# **APPENDIX “J”**

**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

**AFFIDAVIT OF WILLIAM V. SASSO**

I, WILLIAM V. SASSO, of the City of Windsor, in the Province of Ontario, MAKE OATH AND SAY:

1. I am partner with the law firm of Sutts, Strosberg LLP ("SS"), lawyers for BDO Canada Limited, in its capacity as Court-appointed Receiver (the "Receiver") of the property, assets and undertakings of Portofino Corporation in respect of Ontario Superior Court of Justice action no. CV-05-5864CM being the claim by Remo Valente Real Estate (1990) Limited v. Portofino Riverside Tower Inc., Westview Park Gardens (2004) Inc., Portofino Corporation and Dante J. Capaldi ("Valente contract claim") and, as such, have knowledge of the matters to which I hereinafter depose.

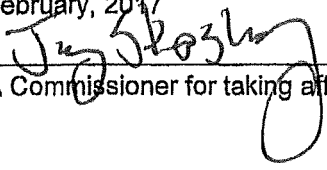
2. I make this Affidavit in support of the Receiver's motion for, among other things, having the fees and disbursements of SS, as legal counsel to the Receiver in the Valente contract claim, approved.

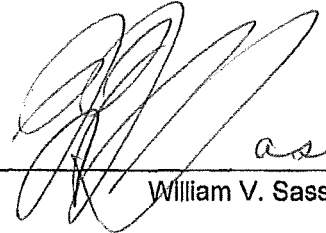
3. Attached hereto to this my Affidavit and marked as Exhibit "A" is a copy of the invoice rendered by SS to the Receiver for fees and disbursements of SS for the period from November 7, 2016 to December 30, 2016 (the "Period"). I affirm that the invoice accurately reflects the services provided by SS during the Period and the fees and disbursements claimed by it.



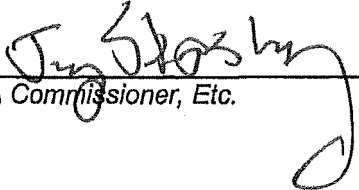
4. During the Period, the total fees and disbursements billed were \$20,520.00 and \$495.26 respectively. The HST billed was \$2,731.99. Attached hereto to this my Affidavit and marked as Exhibit "B" is a statement summarizing SS's fees for the Period. Lawyers and staff at SS have collectively expended a total of 47.70 billable hours in connection with this matter during the Period as outlined in the summary of fees attached as Exhibit "B".

5. To the best of my knowledge, the rates charged by SS 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 invoice.

SWORN before me at the City of Windsor, )  
Province of Ontario this 8th day of )  
February, 2017 )  
 )  
A Commissioner for taking affidavits. )

 )  
William V. Sasso )

Attached are Exhibits "A" and "B" to the  
Affidavit of William V. Sasso sworn the  
8th day of February, 2017

  
A Commissioner, Etc.

**SUTTS, STROSBERG**

LAWYERS

www.strosbergco.com

600-251 Goyeau Street  
Windsor, ON N9A 6V4  
519.258.9333Stephen N. Cherniak  
BDO Canada Limited, Court Appointed Receiver  
of Portofino Corporation  
BDO Canada Limited  
252 Pall Mall Street, Suite 103  
London, ON  
N9A 5P6

January 12, 2017

Our File No.: 76160002  
Bill No.: 42282  
H.S.T. Reg. #: 12276 8955 RT0001

PLEASE RETURN ONE COPY OF OUR ACCOUNT WITH YOUR PAYMENT


Portofino Riverside Tower Inc. et al ats Remo Valente Real Estate (1990) Limited

TO FEES FOR ALL PROFESSIONAL SERVICES RENDERED and costs incurred in connection with the above file and matter, including those items, the particulars of which are set forth in the schedule annexed hereto.

OUR FEE: \$ 20,520.00

DISBURSEMENTS

Colour Photocopies	\$	80.00	
Courier Service		15.88	
Facsimile		0.50	
Imaging		9.00	
Long Distance Telephone		0.45	
On Line Research		31.01	
Photocopies		355.00	
Postage		3.42	
			<hr/>
Total Disbursements Billed			495.26
			<hr/>
Total Fees and Disbursements			21,015.26
			<hr/>
H.S.T.			2,731.99
			<hr/>
BALANCE DUE AND OWING	\$		23,747.25
			<hr/>

SUTTS, STROSBERG  
Per   
William V. Sasso

# SUTTS, STROSBERG

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Particulars of time for matter 76160002 to December 30, 2016 for Bill 42282

DATE	IND	ACTIVITY PERFORMED	HOURS
07/NOV/16	WVS	REVIEW OF REASONS; ARRANGING FOR MEETING WITH RON DENEAU OF PEDLER; PREPARATION FOR TRIAL; REPORT TO RECEIVER	1.70
07/NOV/16	RS	REVIEW SATTVA SCC DECISION	0.50
08/NOV/16	WVS	ONGOING TRIAL PREPARATION; CONFERRING WITH RYAN SOLCZ; MEETING WITH RYAN SOLCZ AND RON DENEAU OUTLINE OF OPENING SUBMISSIONS FOR TRIAL	1.50
08/NOV/16	RS	REVIEW CAPALDI TRIAL TRANSCRIPT; MEET WITH RON DENEAU; EMAIL SENT TO DR. CAPALDI; REVIEW DOCUMENTS IN FILE RE: PEDLER SALES; NOTE UP SUPREME COURT OF CANADA CASE LAW	1.80
09/NOV/16	WVS	REVIEW AND COMMENTS ON BRIEF OF DOCUMENTS PREPARED BY PLAINTIFFS; PREPARATION FOR TRIAL	2.50
10/NOV/16	RS	REVIEW AGREEMENTS OF PURCHASE AND SALE SENT MY DR. CAPALDI AND DETERMINE WHICH ONES PERTAIN TO PEDLER UNITS	0.50
11/NOV/16	RS	EMAIL CORRESPONDENCE TO RON DENEAU	0.20
12/NOV/16	WVS	PREPARATION FOR TRIAL; REVIEW OF RECORD OF TWO JUDGMENTS, DECISION OF DIVISIONAL COURT AND COURT OF APPEAL; PREPARATION OF OPENING SUBMISSION; REVIEW OF AUTHORITIES ON CONTRACT INTERPRETATION, ISSUES TO BE ADDRESSED	4.50
13/NOV/16	WVS	PREPARATION FOR TRIAL ON VALENTE CONTRACT CLAIM; REVIEW AND SUMMARY OF TRANSCRIPTS OF EARLIER TRIAL ON OPPRESSION	6.50
14/NOV/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK (5:24 P.M.)	0.10
14/NOV/16	WVS	PREPARE E-MAIL TO TONY VAN KLINK (5:48 P.M.)	0.10
14/NOV/16	WVS	PREPARATION FOR AND ATTENDANCE AT TRIAL BEFORE JUSTICE CAREY (10:00 A.M. - 4:20 P.M.)	9.50
14/NOV/16	RS	ATTEND TRIAL; GATHER CASE LAW PER WILLIAM SASSO'S INSTRUCTIONS; GET AGREEMENT OF PURCHASE AND SALE DOCUMENTS FROM WILDWOOD DEVELOPMENT; DRAFT A CHART ON THE STATUS OF "TROUBLED UNITS" AS LISTED IN EXHIBIT 2 FROM ORIGINAL TRIAL	6.50
15/NOV/16	WVS	REVIEW E-MAIL FROM DR. DANTE CAPALDI (4:41 A.M.)	0.10
15/NOV/16	WVS	REVIEW E-MAIL FROM DR. DANTE CAPALDI (4:47 A.M.)	0.10
15/NOV/16	WVS	REVIEW E-MAIL FROM STEPHEN CHERNIAK (10:12 A.M.)	0.10
15/NOV/16	WVS	PREPARE E-MAIL TO TONY VAN KLINK AND STEPHEN CHERRIAK (10:08 A.M.)	0.10
15/NOV/16	WVS	PREPARE E-MAIL TO TONY VAN KLINK (10:01 A.M.)	0.10
15/NOV/16	WVS	PREPARE E-MAIL TO GINO MORGA (10:32 A.M.)	0.10
15/NOV/16	WVS	CONTINUING PREPARATION FOR TRIAL; PREPARATION OF RECORD OF ORDER, JUDGMENT, AND REASONS FOR JUSTICE CAREY; TELEPHONE CONFERENCE WITH TONY VAN KLINK AND STEPHEN CHERNIAK; TELEPHONE CALL TO MORGA; TELEPHONE CALL FROM MORGA; E-MAIL TO CHERNIAK; TELEPHONE CALL TO MORGA AND E-MAIL CONFIRMING SETTLEMENT AT \$630,000; CONFERRING WITH RYAN SOLCZ; MEETING WITH DR. DANTE CAPALDI AND SCOTT D'AMORE ON SETTLEMENT ARRANGEMENTS	2.00
15/NOV/16	WVS	TELEPHONE CALL FROM MORGA, MESSAGE LEFT REGARDING EXCHANGE OF RELEASES.	0.10
15/NOV/16	WVS	REVIEW E-MAIL FROM GINO MORGA (2:03 P.M.)	0.10
15/NOV/16	WVS	PREPARE E-MAIL TO TONY VAN KLINK (6:07 P.M.)	0.10
15/NOV/16	WVS	REVIEW OF PRIOR INTERIM RECORDS; NOTE OF MATTERS TO BE ADDRESSED IN RELEASES; MORTGAGE DISCHARGES; COURT ORDERS	0.60
15/NOV/16	RS	PRINT AND HIGHLIGHT CASE LAW AS REQUESTED; REVIEW CORRESPONDENCE ON SETTLEMENT; ATTEND COURT TO RETRIEVE BOXES; MEET WITH DR. CAPALDI	1.60
16/NOV/16	WVS	TELEPHONE CALL TO TONY VAN KLINK MESSAGE LEFT; TELEPHONE CALL FROM TONY VAN KLINK POST MORTEM DISCUSSIONS ON MATTERS TO BE DONE TO COMPLETE SETTLEMENT.	0.60
21/NOV/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK (2:22 P.M.)	0.10
21/NOV/16	WVS	REVIEW E-MAIL FROM STEPHEN CHERNIAK (3:12 P.M.)	0.10
21/NOV/16	WVS	REVIEW E-MAIL FROM STEPHEN CHERNIAK (3:19 P.M.)	0.10

# SUTTS, STROSBERG <sup>LLP</sup> LAWYERS

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Particulars of time for matter 76160002 to December 30, 2016 for Bill 42282

DATE	IND	ACTIVITY PERFORMED	HOURS
23/NOV/16	WVS	REVIEW E-MAIL FROM SUSAN JARRELL (11:16 A.M.)	0.10
24/NOV/16	WVS	REVIEW OF MINUTES OF SETTLEMENT; TELEPHONE CALL TO TONY VAN KLINK REGARDING APPROVAL; REQUESTING ADVICE ON DEALING WITH CAPALDI	0.30
28/NOV/16	WVS	REVIEW E-MAIL FROM GINO MORGA (8:48 P.M.)	0.10
29/NOV/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK (2:17 P.M.)	0.10
29/NOV/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK (4:06 P.M.)	0.10
01/DEC/16	WVS	REVIEWING COURT ORDER; DRAFT REPORT TO MONITOR AND COURT	0.40
01/DEC/16	WVS	REVIEW E-MAIL FROM JULE LOS (3:20 P.M.)	0.10
07/DEC/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK (10:37 P.M.)	0.10
07/DEC/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK (10:22 P.M.)	0.10
07/DEC/16	WVS	PREPARE E-MAIL TO TONY VAN KLINK (7:02 P.M.)	0.10
07/DEC/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK (6:25 P.M.)	0.10
08/DEC/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK (5:01 P.M.)	0.10
12/DEC/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK (4:41 P.M.)	0.10
12/DEC/16	WVS	REVIEW E-MAIL FROM TONY VANKLINK (3:50 P.M.)	0.10
12/DEC/16	WVS	PREPARE E-MAIL TO TONY VAN KLINK (4:19 P.M.)	0.10
12/DEC/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK (4:37 P.M.)	0.10
12/DEC/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK (1:09 P.M. & 1:28 P.M.)	0.10
13/DEC/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK (10:33 A.M.)	0.10
13/DEC/16	WVS	REVIEW E-MAIL FROM GINO MORGA (10:59 A.M.)	0.10
13/DEC/16	WVS	PREPARE E-MAIL TO TONY VAN KLINK (10:26 A.M.)	0.10
13/DEC/16	WVS	REVIEW E-MAIL FROM GINO MORGA (4:32 P.M.)	0.10
15/DEC/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK (11:35 A.M.)	0.10
16/DEC/16	WVS	REVIEW E-MAIL FROM TONY VAN KLINK (9:09 A.M.)	0.10
16/DEC/16	WVS	REVIEW OF MINUTES OF SETTLEMENT; MUTUAL RELEASES AND UNDERTAKING; CONFERENCE WITH DANTE CAPALDI; TELEPHONE CALL TO TONY VAN KLINK; TELEPHONE CALLS TO ROD GODARD (2)	1.50
20/DEC/16	WVS	REVIEW E-MAIL FROM GINO MORGA (3:57 P.M.)	0.10
20/DEC/16	WVS	PREPARE E-MAIL TO TONY VAN KLINK (10:53 A.M.)	0.10
21/DEC/16	WVS	TELEPHONE CONFERENCE WITH GINO MORGA; E-MAILS FROM AND TO GINO MORGA, TONY VAN KLINK, STEPHEN CHERNIAK;	0.80
22/DEC/16	WVS	RECEIPT OF CONFIRMATION OF MOTION FROM GINO MORGA	0.10
29/DEC/16	WVS	REVIEW E-MAIL FROM JULIE LOS (3:22 P.M.)	0.10
30/DEC/16	WVS	REVIEW OF DRAFT ORDER, E-MAILS FROM AND TO TONY VANKLINK AND STEPHEN CHERNIAK	0.30

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Summary of work for matter 76160002 to December 30, 2016 for Bill 42282 by Individual within Category

INIT	INDIVIDUAL	HOURS	AVG RATE	AMOUNT
<b>Category 1</b>				
WVS	William V. Sasso	36.60	500.00	18,300.00
RS	Ryan Solcz	11.10	200.00	2,220.00
Subtotal for category 1		47.70		20,520.00
Total for all individuals		47.70	430.19	20,520.00

**EXHIBIT "B"**  
**Sutts Strossberg's Fees**

	<u>Rate 2016</u>	<u>Inv.#42282 January 12, 2017</u>	<u>Total Invoices</u>
<b>Hours</b>			
William V. Sasso	\$500.00	36.60	36.60
Ryan Solcz	\$200.00	11.10	11.10
		<u>47.70</u>	<u><b>47.70</b></u>
<b>Total \$</b>			
William V. Sasso	\$500.00	\$18,300.00	\$18,300.00
Ryan Solcz	\$200.00	\$2,220.00	\$2,220.00
		<u>\$20,520.00</u>	<u><b>\$20,520.00</b></u>
<b>Summary</b>			
Fees		\$20,520.00	\$20,520.00
Disbursements		\$495.26	\$495.26
HST		\$2,731.99	\$2,731.99
Total		<u>\$23,747.25</u>	<u><b>\$23,747.25</b></u>





# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**THE HONOURABLE**

)

**TUESDAY, THE 21<sup>st</sup>**

)

**JUSTICE**

)

**DAY OF FEBRUARY, 2017**

**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 ("Portofino") 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 Seventh Report of the Receiver dated February 8, 2017 and all appendices thereto (the "Seventh Report"), and directing that any further service of same be dispensed with such that this motion is properly returnable on February 21, 2017;
- (b) approving the Seventh Report and the activities and conduct of the Receiver described therein;

- (c) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to January 31, 2017 (the "Statement of Receipts and Disbursements");
- (d) authorizing the Receiver to take no further steps with respect to certain litigation involving Portofino and authorizing the Receiver to make such actions available to any creditors who wish to pursue same at their own risk and expense;
- (e) approving the professional fees and disbursements of the Receiver and its legal counsel (the "Professional Fees"); and
- (f) 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 Seventh Report and on hearing the submissions of counsel for the Receiver, no one else appearing from the service list, although duly served as appears from the affidavit of Julie Los sworn February 8, 2017, filed:

1. **THIS COURT ORDERS** that the time for and method of service of all motion confirmation forms, the motion record, including the notice of motion and the Seventh Report, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Seventh Report and the activities and conduct of the Receiver described in the Seventh 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 and Sutts Strosberg LLP, as described in the fee affidavits of Stephen N. Cherniak sworn February 7, 2017, Sherry A. Kettle sworn February 8, 2017 and William V. Sasso sworn February 8, 2017 be and the same are hereby approved.
5. **THIS COURT ORDERS** that the Receiver shall give written notice (the "Notice") to all known creditors (the "Creditors") of Portofino of the existence of the actions (the "Actions") described in paragraph 6.5 of the Seventh Report.

6. **THIS COURT ORDERS** that the Notice may be sent by e-mail or registered mail. If sent by e-mail, the Notice shall be deemed to be given on the date the e-mail is successfully transmitted or, if sent by mail, on the fifth day after mailing.
7. **THIS COURT ORDERS** that the Receiver is authorized to assign the Actions to any Creditors who within 10 days after the service of the Notice on them notify the Receiver, in writing, of their intention to take an assignment of the Actions to enable such Creditors to continue to prosecute the Actions in their own name and at their own expense and risk.
8. **THIS COURT ORDERS** that all benefits to be derived from the Actions so assigned by the Receiver, together with the costs of same, shall belong exclusively to the Creditors to whom such actions have been assigned.
9. **THIS COURT ORDERS** that in case there shall be a surplus after paying the claims and costs of the Creditors to whom the Actions have been assigned, such surplus shall be paid to the Receiver in augmentation of the receivership estate.
10. **THIS COURT ORDERS** that any Creditors who fail to notify the Receiver, in writing, of their intention to take an assignment of the Actions within 10 days after the service of the Notice on them shall be thereafter excluded from participating in the benefits to be derived from the Actions.
11. **THIS COURT ORDERS** that any Actions not assigned by the Receiver may be abandoned by the Receiver.

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*Justice, Ontario Superior Court of Justice*

2502461 ONTARIO LTD.

Applicant

and

PORTOFINO CORPORATION

Respondent

Court File No: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT WINDSOR

**ORDER**

**MILLER THOMSON LLP**

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Lawyers for BDO Canada Limited, Court-  
Appointed Receiver of Portofino Corporation

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2502461 ONTARIO LTD.      PORTOFINO CORPORATION  
Applicant                      and                      Respondent

Court File No.: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**MOTION RECORD  
(RETURNABLE FEBRUARY 28, 2017)**

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the court-appointed Receiver of  
Portofino Corporation