

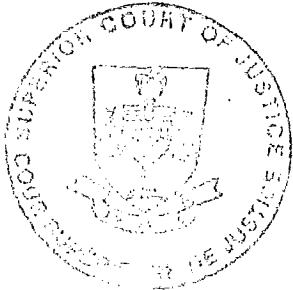
**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -



FAIRVIEW NURSING HOME LIMITED

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a judge presiding over the Commercial List at 330 University Avenue, Toronto, Ontario on December 18, 2013, at 10:00 a.m. or as soon after that time as the matter can be heard on the application of the Applicant.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: December 12, 2013.

Issued by



Local registrar

**Giuseppe Di Pietro
Registrar**

Address of
court office:

330 University Avenue
Toronto, Ontario
M5G 1R7

TO: ALL THE PARTIES ON THE ATTACHED SERVICE LIST

APPLICATION

THE APPLICANT, THE TORONTO-DOMINION BANK (“TD”), MAKES APPLICATION FOR AN ORDER, among other things:

- a) If necessary, abridging the time for service and filing of this notice of application and the application record or, in the alternative, dispensing with same;
- b) Appointing BDO Canada Limited (“BDO”) as receiver (in such capacity, the “Receiver”), without security, in respect of a sales process of all of the assets, undertakings and properties of Fairview Nursing Home Limited (the “Debtor”) acquired for, or used in relation to the Debtor’s business, including all proceeds thereof (the “Property”) on the terms set out in the draft Order attached as Schedule A to this Notice of Application (“Proposal Order”); and
- c) Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE APPLICATION ARE:

- a) The Debtor is a corporation incorporated pursuant to the laws of the Province of Ontario;
- b) The Debtor is currently indebted to TD with respect to:
 - i) certain credit facilities granted by TD pursuant to and under the terms of a letter agreement dated July 7, 2010 and accepted by the Debtor on July 8, 2010, as amended by letter agreement dated April 23, 2012 (collectively and as amended, restated, renewed and replaced, the “Credit Agreement”); and
 - ii) a forbearance agreement among TD, the Debtor and the Guarantor (as defined below) dated August 22, 2012 (the “Forbearance Agreement”), which agreement ended effective February 14, 2013;
- c) As security for its obligations to TD, the Debtor provided, *inter alia*,

- i) a General Security Agreement dated July 16, 2010 (the “GSA”), registration of which was duly made under the *Personal Property Security Act* (Ontario) (the “PPSA”);
 - ii) a collateral Charge/Mortgage over the property known municipally as 14 Cross Street, Toronto, Ontario, and legally described as PIN 21296-0399 (LT) (the “Premises”) in the principal amount of \$1,500,000 registered on July 19, 2010 as Instrument No. AT2450748 (the “Charge”); and
 - iii) a general assignment of rents in respect of the Premises dated July 16, 2010 as collateral security for the due payment and performance of all of the Debtor’s obligations under the Charge, which was registered on title on July 19, 2010 as Instrument No. AT2450749 (the “Assignment of Rents” and, together with the GSA and the Charge, the “Security”);
- d) The obligations of the Debtor to TD were guaranteed by Herbert Washington Chambers pursuant to and under the terms of a Guarantee dated July 16, 2010 (the “Guarantee”). Herbert W. Chambers passed away and the obligations owed to TD under the Guarantee enured to The Estate of Herbert Washington Chambers (the “Guarantor”). The Bank of Nova Scotia Trust Company is the Estate Trustee of the Guarantor;
- e) The Debtor is in default of its obligations to TD under the Credit Agreement and the Forbearance Agreement;
- f) As of November 13, 2013, the Debtor was indebted to TD under the Credit Agreement and the Forbearance in the aggregate of \$1,008,673.69 (the “Indebtedness”), exclusive of legal fees, costs and accruing interest;
- g) Demand has been made in respect of the Indebtedness and the Guarantee;
- h) The Debtor operates a long term care facility business which is funded in large part from revenue from receipts from the Ministry of Health and Long-Term Care;

- i) On average, the Debtor does not generate sufficient monthly revenue to cover its monthly expenses;
- j) The Debtor is insolvent and unable to fulfill all its obligations to TD and other creditors;
- k) A sale of the long term care facility business is anticipated to take at least fifteen months;
- l) The Debtor, its shareholders and TD have entered into a second forbearance agreement which will allow the shareholders and the Debtor to fund a sales process for the long term care business;
- m) As part of the terms of the second forbearance agreement, the Debtor, TD and its shareholders have agreed to the appointment of BDO Canada Limited on the terms set out in the Proposed Order;
- n) The Proposed Order will permit the Debtor and BDO the opportunity to borrow to fund operating losses, pay downs to TD and to market the assets and undertakings of the Debtor;
- o) BDO is a licensed trustee in bankruptcy and is familiar with the circumstances of the Debtor and its arrangements with TD;
- p) BDO has consented to being appointed as Receiver;
- q) Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- r) Rules 1.04, 2.03, 3.02 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- s) Such further and 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:

- a) The affidavit of Kenneth J. Malcolm sworn December 10, 2013;
- b) The consent of BDO to act as Receiver of the Debtor; and
- c) Such other material as counsel may submit and this Honourable Court may permit.

December 12, 2013

AIRD & BERLIS LLP
Barristers & Solicitors
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Lawyers for The Toronto-Dominion Bank

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Fax: 416.595.8695
Email: jmarin@millერთhompson.com

Solicitors for Fairview Nursing Homes Limited and Violet Agatha Chambers

DENTONS CANADA LLP

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Toronto ON M5K 0A1

Attention: Jane Dietrich and David Lobl

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Fax: 416.863.4592
Emails: jane.dietrich@dentons.com and david.lobl@dentons.com

Solicitors for The Bank of Nova Scotia Trust Company in its capacity as Estate Trustee of the Estate of Herbert Washington Chambers, Deceased

GOWLING LAFLEUR HENDERSON LLP

1 First Canadian Place
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Toronto, ON M5X 1G5

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Attention: Frank Lamie

Email:

Solicitors for the Proposed Receiver, BDO Canada

THE TORONTO-DOMINION BANK

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Attention: Kenneth J. Malcom
Email: kenneth.malcolm@td.com

GARDINER ROBERTS

40 King Street West
Suite 3100
Scotia Plaza
Toronto, ON M5H 3Y2

Attention: John Atchison

Tel: 416.865.6600
Fax: 416.865.6636
Email: jatchison@gardiner-roberts.com

Solicitors for Responsive Health Management Inc.

CITY OF TORONTO

5100 Yonge Street
Toronto, ON M1N 5V7

MINISTRY OF HEALTH

Attention: Janice Crawford – Director Ministry of Health and Long Term Care
Email: Janice.Crawford@Ontario.ca

Attention: Troy Harrison Crown Civil Office
Email: Troy.Harrison@Ontario.ca

ASSETLINX CAPITAL INC.

4-6655 Kitimat Road
Mississauga, ON L5N 6J4

ROYNAT INC.

Suite 1500

4710 Kingsway Street

Burnaby, BC V5H 4M2

STANDARD TRUST COMPANY

c/o its Liquidator, Ernst & Young Inc.

222 Bay Street, ON M5K 1J7

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THE TORONTO-DOMINION BANK

- and - FAIRVIEW NURSING HOME LIMITED

Applicant

Respondent

Court File No. C0-13-10365-0001

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

NOTICE OF APPLICATION

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