

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
)
JUSTICE *D. BROWN*)

MONDAY, THE 23RD
DAY OF JANUARY, 2012

BETWEEN:



BANK OF MONTREAL

Applicant

-and-

OWEN SOUND GOLF AND COUNTRY CLUB, LIMITED
and KENNETH W. ROWE LIMITED

Respondents

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

ORDER

THIS MOTION, made by BDO Canada Limited, the Court-Appointed Receiver and Receiver and Manager of the assets of the Respondents for an Order pursuant to section 243 (d) of the Ontario *Corporations Act*, R.S.O. 1990, c. C-38 (the "Corporations Act") and under s. 207 (1)(b)(iv) of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B-16, as amended (the "OBCA") for an Order winding up the Respondents (the "Companies") and appointing BDO Canada Limited as Liquidator of each of the Respondents, was heard this day at the Court house, 330 University Avenue, Toronto, Ontario, M5G 1R7.

ON READING the Second Report to Court of the Receiver (the "Second Report"), the Supplement to the Second Report, and on hearing the submissions of the lawyer for the Receiver, no parties appearing in opposition to this Motion,

APPROVAL OF SECOND REPORT AND ACTIVITIES AND ACCOUNTS

1. THIS COURT ORDERS that the Second Report is hereby approved and the activities of the Receiver as set out in the Second Report are hereby approved.
2. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel as reflected in their respective Bills of Cost as submitted to the Court are hereby approved.

WINDING-UP AND APPOINTMENT

3. THIS COURT ORDERS that the Receiver is recognized as an appropriate party to bring this motion pursuant to s.244 of the *Corporations Act*;
4. THIS COURT ORDERS that, pursuant to s. 243(d) of the Corporations Act, the Respondent Owen Sound Golf and Country Club, Limited ("OSGCC") be wound up.
5. THIS COURT ORDERS that, pursuant to s. 207 (1)(b)(iv) of the OBCA, the Respondent Kenneth W. Rowe Limited be wound up.
6. THIS COURT ORDERS that the Receiver is hereby appointed Liquidator, without security, of all of the assets, property and undertakings of the Companies (the "Property") effective upon the granting of this Order.

LIQUIDATOR'S POWERS

7. THIS COURT ORDERS that the Liquidator 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 Liquidator is hereby expressly empowered and authorized to do any of the following where the Liquidator considers it necessary or desirable:

- (a) to take possession and control of the Property, including all bank accounts of the Companies, any and all capital assets of the Respondents and any and all proceeds, receipts and disbursements arising out of or from the Property for the purpose of winding up the Companies' business and distributing its property;
- (b) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons, including former employees, accountants and advisors to the Companies, if any, from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (c) to receive and collect all monies and accounts now owed or hereafter owing to the Companies, including such amounts owing or determined to be owing from its shareholders or entities related to them, and to exercise all remedies of the Companies in collecting such monies, including, without limitation, to enforce any security held by the Companies;
- (d) to settle, extend or compromise any indebtedness owing to the Companies;
- (e) 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 Companies, the Property or the Liquidator, 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 proceedings;

- (f) 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 Liquidator in its discretion may deem appropriate;
- (g) 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 \$25,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; 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*, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;

- (h) 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;
- (i) to exercise any shareholder, partnership, joint venture or other rights which the Companies may have;

- (j) to do all acts and execute, in the name and on behalf of the Companies, all documents, and for that purpose use the seal of the corporation, if any;
- (k) to do and execute all such other things as are necessary for winding up the business and affairs of the Companies and distributing its property;
- (l) to undertake the liquidation process proposed in the Second Report, and, in particular, to identify those persons entitled to a distribution of the surplus funds on hand as a result of the sale of the assets of the Respondents by the Receiver.
- (m) to take any steps reasonably incidental to the exercise of these powers; and
- (n) to provide reports to, meet with and discuss with such affected Persons (as defined below) as the Liquidator deems appropriate on all matters relating to the Property and the winding-up, and to share information, subject to such terms as to confidentiality as the Liquidator deems advisable.

and in each case in which the Liquidator takes any such actions or steps or exercises any power or right conferred hereby, it shall be authorized and empowered to do so to the exclusion of and free of any hindrance or interference of all other Persons (as defined below).

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE LIQUIDATOR

8. THIS COURT ORDERS that (i) the Companies, (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, (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

Liquidator of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Liquidator, and shall deliver all such Property to the Liquidator upon the Liquidator's request.

9. THIS COURT ORDERS that all Persons shall forthwith advise the Liquidator 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 Companies, 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 Liquidator or permit the Liquidator to make, retain and take away copies thereof and grant to the Liquidator unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 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 Liquidator due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

10. 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 Liquidator for the purpose of allowing the Liquidator 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 Liquidator in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Liquidator. Further, for the purposes

of this paragraph, all Persons shall provide the Liquidator with all such assistance in gaining immediate access to the information in the Records as the Liquidator may in its discretion require including providing the Liquidator with instructions on the use of any computer or other system and providing the Liquidator with any and all access codes, account names and account numbers that may be required to gain access to the information.

SHAREHOLDER CLAIMS PROCESS

11. **THIS COURT ORDERS** that the claims procedure provided for at paragraph 22 of the Receiver's Supplement to the Second Report of the Receiver (the "Claims Procedure"), is hereby approved and the Liquidator is hereby directed to undertake and complete that process.

12. **THIS COURT ORDERS** that for the purposes of this Section of this Order, the term "Claim" shall mean any right of any person in connection with any alleged shareholdings of any class or type in OSGCC, whether evidenced by a shareholder's certificate or other documentation, existing prior to July 15, 2011, being the date of Receivership of the Respondents, which such persons may allege entitles them to participate in the distribution of surplus funds currently being held by BDO Canada Limited in its capacity as Receiver over the Respondents.

13. **THIS COURT ORDERS** that the Claims Bar Date shall be at 5:00 p.m. Toronto, Ontario Time on May 31, 2012 (the "Claims Bar Date"), which shall be the latest date on which a person may file a Claim as a shareholder, or otherwise, to participate in any distribution of the proceeds of the Property, after which such person's claim thereto, absent an order of this Court, shall be forever barred.

14. **THIS COURT ORDERS** that the Liquidator is hereby empowered to:
- (a) Request evidence of either membership in OSGCC, or shareholder status from all parties of whom the Liquidator is aware;
 - (b) Advertise in a local newspaper on at least three occasions, with the last occasion being not later than February 19, 2012, requesting all parties holding Claims or purported Claims to submit required documentation, in the form prescribed by the Liquidator, summarizing the basis for, and evidence supporting, their Claim;
 - (c) Utilize electronic and traditional media to make members of the public in the vicinity of the golf club to determine if there are additional shareholders in order to communicate with them;
 - (d) Conduct a further, in-depth review of the corporate records of OSGCC to determine if there are additional shareholders in order to communicate with them;
 - (e) Review submissions and determines active (plating as members who have paid dues in 2011) and inactive shareholders;
 - (f) Compile as complete a list as possible of inactive and active shareholders;
 - (g) Hold a meeting of shareholders and members with all identified parties to discuss the winding-up process and obtain input from them as to desired outcomes from the winding-up;

- (h) Request from its counsel an opinion as to the appropriate parties entitled to participate in the distribution of surplus funds based on the available corporate records, legislation and jurisprudence;
- (i) Within thirty days of the Claims Bar Date, or such further period as may be authorized by the Court, the Liquidator may challenge the validity of any Claim by sending a Notice of Revision or Disallowance to any parties asserting Claims. If no Notice of Revision or Disallowance are sent by the Liquidator prior to such date, then the Liquidator shall be deemed to have accepted all Claims;
- (j) If a Notice of Revision or Disallowance is sent, the Claimant shall be entitled to dispute the Notice of Revision or Disallowance by sending, by personal service, facsimile, courier or email, a Notice of Dispute to the Liquidator, which must be received within fourteen days of the date of the Notice of Revision or Disallowance, failing which, the Claim shall be deemed Revised or Disallowed in accordance with the Notice.
- (k) Upon delivering the Notice of Dispute, the Claimant must, within ten days, file an Application with the Court for a determination of the Claim, such Application to be returnable within five days of the filing of the Application;
- (l) Communicate the Liquidator's preliminary recommendations to the stakeholders and members ;

- (m) As soon as is reasonably practical make a recommendation and propound a scheme of distribution to the Court for the disposition of the surplus funds, on notice to all stakeholders;

NO PROCEEDING AGAINST THE LIQUIDATOR

15. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal shall be commenced or continued against the Liquidator except with the written consent of the Liquidator or with leave of this Court.

LIMITATION ON THE LIQUIDATOR'S LIABILITY

16. THIS COURT ORDERS that the Liquidator shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part as so found by a court of competent jurisdiction.

LIQUIDATOR'S ACCOUNTS

17. THIS COURT ORDERS that any expenditure or liability which shall properly be made or incurred by the Liquidator, including the fees and disbursements of the Liquidator and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Liquidator and its counsel, shall be allowed to it in passing its accounts and 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 (the "Liquidator's Charge"), subject only to the Receiver's charge created pursuant to the Receivership Order of the Honourable Mr. Justice Lederer dated July 15, 2011.

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

19. THIS COURT ORDERS that prior to the passing of its accounts, the Liquidator 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 Liquidator or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

GENERAL

20. THIS COURT ORDERS that nothing in this Order derogates from any rights that the Liquidator may have pursuant to the applicable provisions of the OBCA.

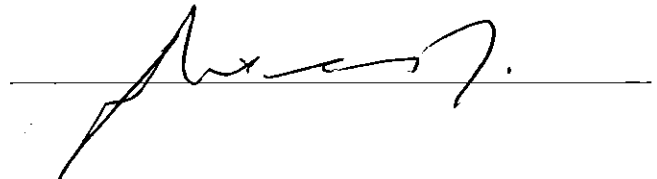
21. THIS COURT ORDERS that the Liquidator may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

22. THIS COURT ORDERS that the Liquidator shall report to this Court upon a proposed distribution of the proceeds of realization of the Property to the shareholders of the Companies.

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JAN 24 2012



BANK OF MONTREAL
Applicant

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Respondents

OWEN SOUND GOLF AND COUNTRY CLUB, LIMITED et al.

Court File No. CV-11-9306-00CL

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PROCEEDING COMMENCED AT TORONTO

ORDER

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Lawyers for the Receiver, BDO Canada Limited

RCP-E 4C (July 1, 2007)