

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

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 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.C43, AS
AMENDED

THE HONOURABLE)
JUSTICE *B. H. Wilton*)

THURSDAY THE 9TH
DAY OF JULY, 2015

ROMAS KARTAVICIUS

Applicant

- and -



OAK BAY DEVELOPMENTS INC. and OAK BAY GOLF CLUB INC.

Respondents

ORDER

THIS MOTION made by the applicant for an order amending the order of the Honourable Justice Wilton-Siegel dated November 12, 2014 made in this proceeding, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Romas Kartavicius sworn June 29, 2015 and the exhibits attached thereto, the First Report of Deloitte Restructuring Inc. in its capacity as receiver of Oak Bay Developments Inc., the Second Report of Deloitte Restructuring Inc. in its capacity as receiver of Oak Bay Developments Inc., the Supplementary Report to the Second Report of Deloitte Restructuring Inc. in its capacity as receiver of Oak Bay Developments Inc. and the consent of Eden Oak (Port Severn) Inc. and 2460112 Ontario Inc. and on hearing the submissions of counsel for the applicant, Eden Oak (Port Severn) Inc., 2460112 Ontario Inc. and

Industrial and Commercial Bank of China, no one else appearing despite being duly served with notice of this motion and the motion record as evidenced by the applicable affidavit of service,

1. **THIS COURT ORDERS** that the time for service of the applicant's notice of motion and motion record herein be, and the same is hereby, abridged and validated so that this motion is properly returnable today and that further service thereof be, and the same is hereby, dispensed with.

2. **THIS COURT FURTHER ORDERS** that the order of the Honourable Justice Wilton-Siegel dated November 12, 2014, which order was amended by the order of the Honourable Justice Pattillo dated March 27, 2015 and the order of the Honourable Justice Pattillo dated June 22, 2015, be, and the same is hereby, further amended as follows:
 - a. replace paragraph 2 with the following,

“2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Pollard & Associates Inc. is hereby appointed Receiver (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Oak Bay Developments Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “**Property**”);
 - b. replace paragraph 3 with the following,

“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 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;
- (d) to engage contractors, tradespersons, quantity surveyors, architects, 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 receive the proceeds of the EOH Credit Facility (as defined below) and allocate the funds as it deems necessary in order to exercise the Receiver's powers and duties, including, without limitation, those conferred by this Order;

- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (g) 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;
- (h) to settle, extend or compromise any indebtedness owing to the Debtor;
- (i) 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;
- (j) to negotiate and settle any and all security interests, trusts, liens, construction liens, trust claims (whether or not perfected or preserved), charges and encumbrances (including but not limited to condominium corporation arrears), claims of secured creditors, statutory or otherwise, against title to any or all of the Property;
- (k) 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;

- (l) 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;
- (m) 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 \$250,000.00, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000.00; 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.
- (n) 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;
- (o) 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;

- (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (q) 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;
- (r) 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;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (t) 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.”;

- c. completely delete paragraph 4 and its heading;
- d. replace paragraph 5 with the following,

“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 assets, undertakings and properties of the Debtor acquired for, or used in relation to the Property in such Person's possession or control, shall grant immediate and continued access to all such assets, undertakings and properties to the Receiver, and shall deliver all such assets, undertakings and properties to the Receiver upon the Receiver's request.”;

e. replace paragraph 6 with the following,

“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.”;

f. replace paragraph 7 with the following,

“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.”;

g. replace paragraph 13 with the following,

“12. 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."; and

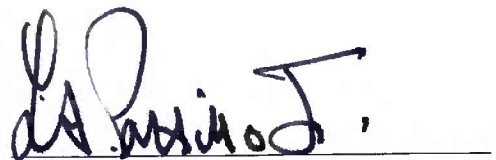
h. replace paragraph 27 with the following,

"26. 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 \$750,000.00 (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."

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LE / DANS LE REGISTRE NO.:



JUL 9 - 2015



ROMAS KARTAVICIUS
Applicant

-and-

OAK BAY DEVELOPMENTS INC. ET AL.
Respondents

Court File No. CV-14-10703-00CL

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1990, c.C43, AS AMENDED

PROCEEDING COMMENCED AT TORONTO

ORDER

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