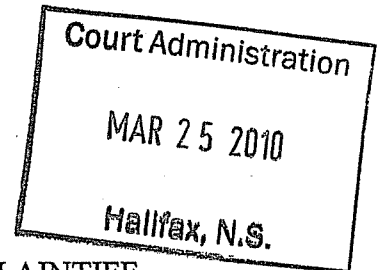


2010

Hfx. No. 326000

**SUPREME COURT OF NOVA SCOTIA
In Bankruptcy**



BETWEEN:

ADDENDA CAPITAL INC., a body corporate

PLAINTIFF

- and -

**NOVA NEW ENGLAND LIMITED, a body corporate, JAMES
BRENNAN and TERRANCE BRENNAN**

DEFENDANTS

BRIEF OF THE PLAINTIFF

**Motion for Appointment of a Receiver
Pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act***

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Defendant
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Defendant

I. CONCISE OVERVIEW OF THE PLAINTIFF'S POSITION

1. The Plaintiff, Addenda Capital Inc. ("Addenda"), seeks an order pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA") for the appointment of a Receiver for a condominium project located in Dartmouth, Nova Scotia, and known as Founders Corner.
2. The Plaintiff brings this motion as the Defendants are indebted to the Plaintiff in the amount of approximately \$9,730,000 plus interest and the payment date of January 29, 2010 has passed with no sign of payment or any response from the Defendants. In addition, numerous liens have been placed against the property in question, amounting to over \$900,000. To date, the lien claimants have refused to consent to the registration of the units as condominiums pursuant to the *Condominium Act*, R.S.N.S. 1985, c. 85, as amended, which has prevented the closing of the sale of the units.
3. Addenda seeks the appointment of a Receiver pursuant to s. 243 of the BIA to allow the Receiver to assume control over and manage the property in question and arrange for the completion of the units so that the units may be registered under the *Condominium Act*, *supra*, and sold. It is anticipated that another \$1 million of funding will be necessary in order to complete the project.

II. FACTS

4. The Plaintiff relies on the Affidavit of Elvira Dubé, Assistant Vice-President, Mortgages of Addenda, and the Affidavit of Paul Goodman, Senior Vice President with BDO Canada Limited ("BDO"), in support of its motion.
5. On June 11, 2008, Co-operators Investment Counselling Limited ("Co-operators") agreed to provide financing to the Defendants for the construction of a residential and commercial condominium project located at 66-70-72 Ochterloney Street, 41 Wentworth Street, in Dartmouth, Nova Scotia (the "Property"). Co-operators loaned \$8,980,000 to the Defendants, secured by a Mortgage (attached as Exhibit "1" to the Affidavit of Elvira Dubé). The principal sum plus accrued interest was due to be paid in full by October 1, 2009.

6. The terms of the Mortgage required that the personal Defendants, James Brennan and Terrance Brennan, each provide Personal Guarantees for payment of the principal sum of \$8,980,000 plus interest.
7. On August 19, 2008, Co-operators assigned the Mortgage, as well as the Assignment of Rents, the Assignment of Material Documents and the Security Agreement to the Plaintiff, Addenda (attached as Exhibit "5" to the Affidavit of Ms. Dubé).
8. On September 30, 2009, the parties agreed to the extension of the repayment of the loan from October 1, 2009 to January 29, 2010, among other terms (attached as Exhibit "6" to the Affidavit of Elvira Dubé).
9. On November 26, 2009, the parties entered into a Mortgage Amending Agreement, wherein the principal amount was increased to \$9,730,000 plus interest (attached as Exhibit "7" to the Affidavit of Elvira Dubé). Both personal Defendants provided Personal Guarantees for the payment of the principal sum of \$9,730,000 plus interest, copies of which are found at Exhibits "9" and "10" of the Affidavit of Elvira Dubé.
10. On January 29, 2010, the Defendants failed to pay the Mortgage when it became due. The Plaintiffs sent a demand letter to the Defendants, as well as a Notice of Intention to Enforce a Security dated February 8, 2010 (attached as Exhibits 11, 12 and 13 of the Affidavit of Elvira Dubé).
11. Despite the demand for payment by the Plaintiff to the Defendants, the Defendants have failed to make any payment and the Mortgage remains in default.
12. On February 12, 2010, the Plaintiff appointed BDO to act as a Receiver with specific and limited duties. These duties were subsequently extended to expand BDO's mandate to include the collection of occupancy fees, rents and gas recoveries under the terms of the Assignment of Rents.
13. There are 37 residential units at the Property. Twenty-two (22) of the residential units are subject to an Agreement of Purchase and Sale, of which 16 are currently occupied by individuals who have entered into Agreements of Purchase and Sale with Addenda. In addition, fifteen (15) residential units are unsold or not subject to an Agreement of

Purchase and Sale. To date, the units have not been registered pursuant to the *Condominium Act, supra*. As a result, the sale of the units has not yet closed. Some of the condominium units have not been completed.

14. There are three commercial units at the Property, which were intended to be sold after they were registered as commercial condominium units. The Defendants entered into an Agreement of Purchase and Sale for one of the commercial units. In addition, one commercial unit is currently rented and is operating as a café.
15. As of March 15, 2010, numerous liens have been filed against the property, as set out in Exhibit "19" to the Affidavit of Elviva Dubé. The total amount claimed in the liens is over \$900,000.
16. On March 16, 2010, the Plaintiff appointed BDO to act as Receiver or Receiver/Manager of the assets as encumbered by the Mortgage (see Affidavit of Paul Goodman at Exhibit "5").
17. To date, the lien claimants have refused to consent to the registration of the units as condominium pursuant to the *Condominium Act, supra*, and this has prevented the closing of the sale of the units.
18. As many of the units are unfinished, a schedule detailing the projected cost of the work required to bring the units to completion was prepared by Vince MacDonald, the project manager at the Property, and is attached to the Affidavit of Paul Goodman at Exhibit "8". It is estimated by Mr. Goodman that the Receiver may have to borrow up to \$1 million to finish the work required to complete the units at the Property.

III. ISSUE

19. Should this Honourable Court appoint BDO as the Receiver of the Property pursuant to s. 243(1) of the BIA?

IV. ANALYSIS

Preliminary Matter

20. As a preliminary matter and to the extent necessary, the Plaintiff may be seeking an Order to abridge the ordinary time limits set out in the *Civil Procedure Rules* to permit this motion to be heard without the required 10-day notice to all parties. If an abridgement of the time limits is required, it is submitted that there are sufficient grounds as set out in the affidavits provided with this motion to justify the Plaintiff's request for abridgment.

21. As noted in the Affidavit of Elvira Dubé at paragraph 20, the Plaintiff issued a notice of intention to enforce security pursuant to s. 244(1) of the BIA, and sent such notice to the Defendant, Nova New England Limited ("NNEl") c/o Peter Coulthard, recognized agent for the Defendants, as well as personally to the Defendants James Brennan and Terrance Brennan, on February 8, 2010. In the intervening weeks, the issues involving the Property have not been resolved, and as such the Plaintiff is now applying to this Honourable Court for the appointment of a receiver pursuant to the recently amended s. 243(1) of the BIA.

The Bankruptcy and Insolvency Act, Section 243(1)

22. Section 243(1) (Tab 13) of the BIA states as follows:

243. (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a

receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

(a) the insolvent person consents to an earlier enforcement under subsection 244(2); or

(b) the court considers it appropriate to appoint a receiver before then.

23. With respect to the time period set out in s. 243(1.1) of the BIA, it is submitted that the ten-day waiting period between issuance of the s. 244(1) notice and appointment of a receiver stated in s. 243(1.1) has expired, given that the s. 244(1) notice issued was sent on February 8, 2010, as noted at paragraph 20 of the Dubé Affidavit.
24. The amendments to the BIA which allow for the appointment of a receiver pursuant to s. 243(1) came into force on September 18, 2009, and there is very little jurisprudence concerning s. 243(1) receivers. However, this Honourable Court has appointed a receiver pursuant to s. 243(1) of the BIA in an unreported decision by Justice Moir, but referenced at paragraph 2 of his decision in *Railside Developments Ltd., Re*, 2010 CarswellNS 8 (S.C.) (Tab 8).
25. The new provisions set out in s. 243(1) of the BIA have been considered in two cases in Ontario. In *Romspen v. 6176666 Canada Ltee.*, 2009 CarswellOnt 7318 (S.C.J.) (Tab 9), a receiver was appointed on a condominium project wherein the applicant had loaned the defendant over \$14 million and held the first and second mortgages on the property. The condominium project had encountered delays and cost overruns and numerous liens had been registered against the property. Both the first and second mortgages had matured and were in default and there had been no response by the defendants to the demands made by the applicant.
26. Aside from considering the provisions of the BIA, the Court was addressing whether the applicant fell under the legislative requirements set out under the Ontario New Home Warranty Program. Ultimately, the Court granted the applicant's request for the appointment of a receiver as being just and convenient, in providing at paragraph 23:

23 For these reasons, I reject Tarion's position on this motion. I am granting the applicant's request for the appointment of SF Partners Inc. as receiver. It is necessary for protection of the interests of 617's creditors

and is just and convenient to do so. I am granting the order requested with the exception of paragraph 3(d) which is adjourned to be addressed following service on all affected parties and particularly those whose agreements are the subject matter of the termination request contained in that paragraph, or on the filing of their written consent.

[Emphasis added]

27. In *Rompsen Investment Corporation v. 1514904 Ontario Ltd.*, 2010 CarswellOnt 1367 (S.C.J.) (Tab 10), the applicant commenced an application for the appointment of a receiver pursuant to s. 243(1) of the BIA. The Court addressed whether the appointment of the receiver was “just and convenient having regard to balancing the inconvenience facing the creditor in using the usual means of execution with the cost, ultimately to be borne by the debtors, of appointing a receiver” (para 3.) In the matter, the subject loan was \$10 million and the applicant secured a first mortgage over the real properties and a security interest over the personal properties of all the respondents.
28. The property involved the development of a subdivision and the Court noted that time and money were needed to make the property ready for market. The Court found that the developer was under capitalized and did not have the resources to put towards the debt. The Court noted that the unsecured payables were in the range of \$300,000 and the respondent was not able to obtain credit from the engineer to complete and release the necessary plans.
29. The Court employed a just and convenient assessment and stated at paragraphs 16 and 17:

16 The just and convenient assessment involves consideration of the interests of lender and borrower. The wrap around financing in 2006 was such that the respondent had to know at the time that in the event of default and enforcement a receiver would be advanced. The number and nature of properties, the subdivision agreements, the involvement of the municipality, the second mortgage suggests that enforcement on a piecemeal basis is contraindicated. The fact that the second mortgagee under the direction of a guarantor to the instant indebtedness supports the appointment suggests that they, too, have seen equity evaporate and are concerned that this development is near or past the point of repayment in full. The principals and investors in the second mortgagee are familiar with the Almonte market and their support for the application is a significant factor.

17 *The developer respondents are insolvent. They owe more than \$1K and are unable to pay. The first mortgage has been in default since July 2008. The developer respondents are unable to allocate any proceeds of commercial rent to the secured creditors as the rent is consumed by monthly expenses of operation.*

[Emphasis added]

30. The Court appointed the receiver and found at paragraph 19:

19 *In the instant case as opposed to the circumstances in Fisher/Nusbaum there is advantage to bringing in a receiver to direct the resolution of the outstanding debt. The status quo is untenable even in the short term. There is a daily erosion of equity if there is any. If there is not, it is the second and unsecured lenders who are being compromised. A receiver is a significant intrusion but is clearly the most efficient in a difficult situation. It does not mean the end of the development. It does result in an orderly liquidation of assets bearing in mind the best interest of all parties and when required subject to court approval. The respondent developer is not precluded from obtaining alternate financing. The representation made is that the developer may be able to implement a refinance in 30 days.*

[Emphasis added]

31. The Plaintiff respectfully submits that the circumstances as set out in *Rompsen v. 1514904 Ontario, supra*, are very similar to the matter currently before this Court. As set out in the affidavits of Ms. Dubé and Mr. Goodman, the appointment of a receiver, while an intrusion, is the most efficient method to ensure the completion of the Property. As a result, the appointment of a receiver is just and convenient.

32. The Plaintiff submits that the current wording of s. 243(1) is analogous to that of the former section 47 of the BIA, prior to the amendment on September 18, 2009. The previous s. 47 (Tab 14) stated:

47. (1) *Where the court is satisfied that a notice is about to be sent or has been sent under subsection 244 (1), the court may, subject to subsection (3), appoint a trustee as interim receiver of all or any part of the debtor's property that is subject to the security to which the notice relates, for such term as the court may determine.*

(2) *The court may direct an interim receiver appointed under subsection (1) to do any or all of the following:*

(a) *Take possession of all or part of the debtor's property mentioned in the appointment;*

(b) *Exercise such control over that property, and over the debtor's business, as the court considers advisable; and*

(c) *Take such other action as the court considers advisable.*

(3) *An appointment of an interim receiver may be made under subsection (1) only if it is shown to the court to be necessary for the protection of*

(a) *The debtor's estate; or*

(b) *The interests of the creditor who sent the notice under subsection 244(1).*

33. As the recent amendments to s. 47 remove much of the flexibility that was inherent in the section, and, in essence, transferred the broad and permissive language to the current s. 243 of the BIA, the Plaintiff submits that the import of the former s. 47 is now embodied in s. 243. As a result, the Plaintiff will also be referring to jurisprudence developed under the former s. 47 of the BIA in setting out the reasons for the appointing of a receiver.

Appointing a Receiver Pursuant to s. 243(1) of the BIA

34. With respect to the requirement in s. 243(1) that the appointment be “just and convenient”, the Plaintiff submits that the necessity for protection referred to in the former s. 47(3) is analogous. As such, the holding in *Royal Bank v. Zutphen Brothers Construction Ltd.*, 1993 CarswellNS 22 (S.C.) (Tab 11) regarding the standard for appointing an interim receiver pursuant to the former s. 47 is of relevance. As Registrar Smith stated at paragraph 20:

20 It is well established law, that in order to support an application for the appointment of an interim receiver, the danger of dissipation of assets must be actual and immediate and not one based on suspicion and speculation.

35. Although Registrar Smith's determination has not been distinguished or otherwise challenged in Nova Scotia, it has also not been approved of or even positively considered in this jurisdiction. Indeed, the “actual immediate danger” standard has been expressly rejected by the courts in Ontario, commencing with the holding in *Bank of*

Nova Scotia v. D.G. Jewelry Inc., 2002 CarswellOnt 3443 (S.C.J.) (Tab 1). As Justice
Ground stated in paragraphs 1 to 3,

1 I do not think that, in order to appoint an Interim Receiver pursuant to Section 47 of the BIA, I must be satisfied that there is an actual and immediate danger of a dissipation of assets. The decision of *Nova Scotia Registrar Smith in Royal Bank v. Zutphen Brothers Construction Ltd.* [1993 CarswellNS 22 (N.S. S.C.)] is not, in my view, the law of Ontario.

2 I accept the submission of Mr. MacNaughton that the objection based on the Notice of Application, not seeking an interlocutory order for the appointment of a Receiver is formalistic and could easily be remedied by amending the Notice of Application to seek some declaratory or other relief to create a *lis* as between the parties.

3 On the main issue of the test to be applied by the court in determining whether to appoint a Receiver, I do not think the Ontario courts have followed the Saskatchewan authorities cited by Mr. Tayar which require a finding that the legal remedies available to the party seeking the appointment are defective or that the appointment is necessary to preserve the property from some danger which threatens it, neither of which could be established in the case before this court. The test, which I think this court should apply, is whether the appointment of a court-appointed Receiver will enable that Receiver to more effectively and efficiently carry out its duties and obligations than it could do if privately appointed. I believe that test is met in the case at bar. . . .

[Emphasis added]

36. This “effective and efficient” formulation has most recently been approved of in *Pension Positive Inc., Re*, 2006 CarswellOnt 664 (S.C.J.) (Tab 7), and the “actual immediate danger” standard from *Zutphen, supra*, likewise rejected. The Court stated at paragraphs 15 to 18:

15 The Debtors submit that, to support an application for the appointment of an Interim Receiver, the danger of dissipation of assets must be actual and immediate and not one based on suspicion and speculation, and that the onus falls on the Moving Party to adduce evidence in this regard.

16 In support of this position, the Debtors have referred to the decision of Registrar Smith of the Nova Scotia Supreme Court-in-Bankruptcy in *Royal Bank v. Zutphen Brothers Construction Ltd.*, [1993] N.S.J. No. 640 (N.S.S.C.)

17 However, Ground J. of this court in his decision in *Bank of Nova Scotia v. D.G. Jewelry Inc.*, [2002] O.J. No. 4000 (Ont. S.C.J.), stated that in his view the decision in *Royal Bank v. Zutphen Brothers Construction Ltd.*, *supra* was no the law of Ontario. Ground J. also stated at para 3:

The test, which I think this court should apply, is whether the appointment of a court-appointed Receiver will enable that Receiver to more effectively and efficiently carry out its duties that it could do if privately appointed.

18 I agree that the test for the appointment of an Interim Receiver pursuant to s. 47 of the BIA is as stated by Ground J.

37. A similar rejection of the “actual immediate danger” was espoused by Campbell J. in *Maxium Financial Services Inc. v. Corporate Cars Ltd. Partnership*, 2006 CarswellOnt 7735 (S.C.J.) (Tab 6) at paragraph 15.
38. Although the “actual immediate danger” standard from *Zutphen, supra*, has not specifically been rejected in Nova Scotia, the Plaintiff submits that the “effective and efficient” formulation as set forth in the Ontario jurisprudence is a preferable basis for appointing a receiver pursuant to s. 243(1). The “effective and efficient” standard more closely accords with the underlying foundation of a receiver’s powers, as set forth in the BIA, and the new “just and convenient” standard set forth in s. 243(1).

Powers of Receiver Pursuant to s. 243 of the BIA

39. The jurisprudence concerning powers of a receiver once appointed follows the pragmatic and flexible underpinnings of the “effective and efficient” standard as set out above. Farley J. described the foundation for the broad spectrum of these powers in *Canada (Minister of Indian Affairs & Northern Development) v. Curragh Inc.*, 1994 CarswellOnt 294 (Gen. Div.) (Tab 4) at paragraph 22:

22 *While the BIA is generally a very fleshed out piece of legislation when one compares it to the CCAA, it should be observed that [the former] s. 47(2)(c): "The court may direct an interim receiver ... to ... (c) take such other action as the court considers advisable" is not in itself a detailed code. It would appear to me that Parliament did not take away any inherent jurisdiction from the Court but in fact provided, with these general words, that the Court could enlist the services of an interim receiver to do not only what "justice dictates" but also what "practicality demands." It should be recognized that where one is dealing with an insolvency situation one is not dealing with matters which are neatly*

organized and operating under predictable discipline. Rather the condition of insolvency usually carries its own internal seeds of chaos, unpredictability and instability. . . .

[Emphasis added]

40. The practical approach advocated by Farley J. was most recently approved of in *Charon Systems Inc./Charon Systemes inc., Re*, 2001 CarswellOnt 4556 (S.C.J.) (Tab 5) at paragraph 20 and in *Battery Plus Inc., Re*, 2001 CarswellOnt 4122 (S.C.J.) (Tab 2) at paragraphs 12 to 14. In the matter at hand, it is submitted that common sense dictates the timely intervention, which a receiver would best be able to provide.
41. While the practical approach espoused by Farley J. in *Curragh, supra*, provides a suitably pragmatic and flexible basis for a receiver's powers, the Nova Scotia Court of Appeal in *Bayhold Financial Corp. v. Clarkson Co.*, 1991 CarswellINS 33 (C.A.) (Tab 3) confirmed the focus of these powers at paragraphs 31 to 34:

31 In dealing with the appellant's argument on this issue, it may be useful to consider the nature and purpose of a receiver-manager's appointment. The remarks of Cozens-Hardy M.R. at p. 472 of the Newdigate case, supra, are relevant; he stated:

The jurisdiction of the Court to appoint receivers is extremely old, but I believe the practice of appointing a manager is far more modern, and I think it has been settled that the Court will never appoint a person receiver and manager except with a view to a sale. The appointment is made by way of interlocutory order with a view to a sale; it is not a permanency.

32 The point being that while a receiver-manager is empowered to carry on the debtor's business, it is contemplated that eventually there will likely be a liquidation notwithstanding that the receiver-manager has a duty to preserve the property and the goodwill of the business. . . .

...

34 In summary, the essence of a receiver's powers is to liquidate the assets. On the other hand, a receiver-manager is vested with the additional power to manage the business, but this does not derogate from his power to realize on the assets. . . .

[Emphasis added]

42. The ultimate purpose of a receiver's appointment is the realization of the debtor's assets.

43. Taking together the liquidative focus supported in *Bayhold, supra*, the pragmatic and flexible approach promoted in *Curragh, supra*, and the “effective and efficient” standard set forth in *D.G. Jewelry, supra*, the Plaintiff submits that in the current situation, it is not only necessary to appoint a receiver pursuant to s. 243(1) of the BIA, but also “just and convenient” to invest the receiver with the power to deal with several matters in relation to the Property.
44. As set out in the Dubé Affidavit, the condominium units have not yet been registered and, for that reason, cannot be sold. The receiver will need to become involved in the process of dealing with the various lien claimants in order to complete the registration process. Furthermore, additional funding will likely be required to finish the units that are not yet complete, as set out in the Goodman Affidavit. Finally, the units not currently under agreement must be sold. A marketing plan must be established and executed. Similarly, a marketing plan is needed to sell the commercial properties which are part of the project. All of these would be the responsibility of the receiver.
45. This Court does have the ability to empower a receiver to borrow funds, as set out in *Torstar Corp. V. ITI Information Technology Institute Inc.*, 2002 CarswellNS 335 (S.C. [In Chambers]) (Tab 12). In *Torstar, supra*, the Court was addressing the issue of priority of a security interest held by the receiver and manager in respect of personal property which was the subject of a lease between ITI and a third party lessor.
46. The Court noted that there has been both an interim receivership order and a receivership order issued on August 16, 2001 (pursuant to an unreported decision). In referring to the powers of a receiver manager, the Court quoted from the Order of August 16, 2001 at paragraph 27:

27 Quite significant power to appoint a receiver under that rule. Two of the paragraphs contained in the Associate Chief Justice MacDonald's receivership order, one of the two orders dated August 16, 2001, two of the clauses under that receivership order are significant I think. Paragraph 8 reads:

AND IT IS FURTHER ORDERED that the Receiver and Manager

(a) in addition to the powers conferred by Paragraph 5 hereof, be at liberty and is hereby empowered to borrow moneys without personal liability from time to time as it may consider necessary or desirable not exceeding the principal sum of \$1,000,000 in the aggregate at such rate or rates of interest as it deems advisable and for such period or periods as it may be able to arrange for the purpose of carrying on the business of the Company and protecting, preserving and managing the Assets, and that as security for such borrowings and every part thereof, the Receiver and Manager is authorized to pledge, assign or give security or securities on the Assets or any portion thereof which shall form a charge on the Assets, any other property or asset in priority to the interest of any affected secured creditor, but subject to the right of the Receiver and Manager to be indemnified out of the Assets with respect to its own liabilities, expenses and remuneration properly incurred;

[Emphasis added]

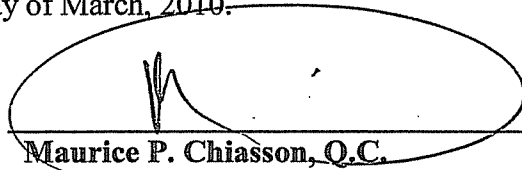
47. It is clear that this Court has the power to grant the receiver the right to borrow funds up to \$1,000,000 to carry on the business of the company as set out in *Torstar, supra*. Without written reasons as to the granting of the receivership order, the basis on which the order was granted in *Torstar* is not clear, including whether the terms of the order were based on the Civil Procedure Rules or the BIA. Regardless, the Plaintiff submits that s. 243(1)(c) of the BIA allows this Court to appoint a receiver to take any other action the court considers advisable.
48. The project is at a critical state with respect to the completion of the units. Almost half of the residential units are occupied and there is a popular and operational café leasing one of the commercial units. Completion of the work at the Property is of the utmost importance to ensure that all obligations are met to all involved parties. Without the receiver having the ability to borrow additional funds, the completion of the project is uncertain. The Plaintiff respectfully submits that empowering the receiver to borrow additional funds to complete the work is not only advisable, but necessary.
49. Before any of these items may be dealt with, it is necessary that the receiver be empowered to take control over the Property. As is apparent from the Dubé Affidavit and the affidavit of Paul Goodman, also filed with this motion, there are numerous

issues with the Property that have not been resolved, including liens amounting to close to \$1 million. To date, there has been absolutely no indication from the Defendants that any of the issues set out in these submissions will be addressed and resolved.

V. CONCLUSION

50. It is respectfully submitted that this Honourable Court appoint BDO as Receiver pursuant to s. 243(1) of the BIA as being just and convenient for the reasons set out above.

RESPECTFULLY SUBMITTED, this ^{24th} day of March, 2010.



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