



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-20-00640265-00CL
CV-20-00640266-00CL

DATE: April 24, 2023

NO. ON LIST: 2 & 3

TITLE OF PROCEEDING: RE: CARRIAGE HILLS VACATION OWNERS' ASSOCIATION and
CARRIAGE RIDGE OWNERS ASSOCIATION

BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Sam Babe	Receiver	sbabe@airdberlis.com
Leanne Williams	Receiver	lwilliams@tgf.ca
Matthew Marchand	Receiver	mmarchand@bdo.ca
S. Mitra	Receiver	smitra@airdberlis.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Tim Duncan	Claims Officer	tduncan@foqlers.com
Dave Catuogno	CHRC	david.catuogno@klgates.com
Chris Diana	Self-represented	cdiana@rogers.com

ENDORSEMENT OF JUSTICE CONWAY:

- [1] **All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Notice of Motion for today's hearing.**
- [2] The Receiver brings this motion today for three orders with respect to each of the Associations. Unless otherwise noted below, the motions are unopposed.
- [3] The first is the Claims Decisions Appeals Procedure Order. This relates to the appeals from decisions of the Claims Officer (Mr. Duncan) on the Receiver's claims against Subject Members. The draft order reflects the direction I provided to counsel in previous case conferences. The order is intended to facilitate the appeals by the Subject Members while at the same time streamlining the process to make efficient use of the court's resources.
- [4] I required counsel to amend the order with respect to costs of the appeal. I do not agree that no costs are to be awarded against the Receiver (as per Mr. Babe's submission) or that costs are presumptively awarded against an unsuccessful appellant (as per Mr. Diana's submission). Rather, costs remain in the discretion of the court, as set out in the *Courts of Justice Act* and the *Rules of Civil Procedure*. All parties to the appeal must be aware that there may be costs consequences to them if they are unsuccessful on the appeal.
- [5] The second is the Owner Claims Dispute and Appeal Procedure Order. That order establishes a process for Owner Claims Disputes to be adjudicated by the Honourable Laurence Pattillo, formerly a judge of the Commercial List, with appeals from his decision to be made in accordance with the process set out in the Claims Decision Appeals Procedure Order.
- [6] The Owner Claims Dispute and Appeal Procedure Order authorizes the Receiver to accept Claims filed beyond the Claims Bar Date. There are approximately 265 of those late-filed Claims. The test for accepting late filed claims is set out in *Re Blue Range Resource Corp.*, 2000 ABCA 285, paras. 26, 41. See also *Re Target Canada Co.*, 2017 ONSC 327, paras. 24 to 27.
- [7] In the circumstances of this case, it is not practical or efficient for the Receiver to obtain evidence for the court to ascertain whether, for each of the 265 late claimants, the delay was inadvertent and, if so, whether it acted in good faith. That inquiry would consume disproportionate resources of the Receiver and further delay matters. In any event, there is no prejudice to permitting these claims to proceed. The Receiver has already established reserves that far exceed the amount of these claims. There will be no claw back or impact to distributions that have taken place already. Further, accepting them will not cause any delay in the final distribution given the number of other steps that remain to be taken.
- [8] Mr. Diana voiced his concern that there needs to be finality to accepting late claims. He notes how hard others have worked to file their Claims by the existing Claims Bar Date. I agree. While I am making the order permitting the Receiver to accept Claims to today's date, **that is the final date for doing so. I will not grant any further extensions for late filings.**
- [9] The third is the Ancillary Order that approves the fees and expenses of the Receiver and its counsel. Mr. Diana questioned the administrative support charge of approximately \$9,000 in the Receiver's accounts. The Receiver advised the court that this charge was for back-office banking and administrative-type functions conducted by the Receiver for the members and distributions to be made to them. I will accept

this charge as part of the Receiver's function but direct the Receiver to provide more explanation of this charge in its future written materials.

- [10] Six orders to go as signed by me and attached to this Endorsement. These orders are effective from today's date and are enforceable without the need for entry and filing.
- [11] I direct the Receiver's counsel to arrange a case conference before me, through the Commercial List office, to schedule dates for the Claims Decisions Appeals. Those dates will be in the fall of 2023. I direct that the case conference be arranged as soon as possible so that those dates can be secured.

A handwritten signature in blue ink, appearing to read "Conway J.", with a stylized flourish at the end.