

Form 78.05

2011

Hfx No. 342317

Supreme Court of Nova Scotia

Between:

CONCENTRA FINANCIAL SERVICES ASSOCIATION

and

101 WATER STREET YARMOUTH INVESTMENTS
INCORPORATED and 2005897 ONTARIO LIMITED

Defendants

Court Administration
MAR 24 2011
Plaintiff
Halifax, N.S.



Order for Receiver and Manager

Before the Honourable ~~Justice~~

Justice Peter P. Rosinski

in Chambers:

Upon the Motion of Concentra Financial Services Association (the "Plaintiff"), a secured creditor of 101 Water Street Yarmouth Investments Incorporated (the "Borrower"), for an order appointing BDO Canada Limited as the receiver and manager of certain assets, property and undertakings of the Borrower;

SGD.
P.P.R.
J.

And upon reading the Affidavits of Barb Mercier, Paul Goodman-FCA, FCIRP, FIIC, and Gavin MacDonald and the other materials on file herein;

And upon it appearing that BDO Canada Limited has consented to act as receiver and manager of the Borrower;

And upon the Borrower having consented to the appointment of BDO Canada Limited as receiver and manager.

And upon being satisfied that all persons having an interest in the assets, property and undertakings of the Borrower have been notified of this motion;

And upon hearing Gavin MacDonald on behalf of the Plaintiff in support hereof;

Now upon motion it is hereby ordered that:

Abridgement of Time

1. The time for hearing this motion be and is hereby abridged so that the motion is properly returnable today.

Appointment and Powers

2. BDO Canada Limited, a body corporate, be and is hereby appointed as the receiver and manager (the "**Receiver**") of the real property known as 101 Water Street, Yarmouth, Province of Nova Scotia (PID 90195132) (the "**Assets**") as comprised in and subject to a mortgage dated February, 2008 and recorded February 18, 2008 in the Yarmouth Land Registration Office as Document No. 89970108, together with:
 - a) the authority and power to receive, preserve, protect and realize upon the Assets or any part or parts thereof; and
 - b) the entitlement to immediate, continuous and unrestricted access to the Assets or any part or parts thereof.
3. Each of the Borrower, its directors, officers, representatives, nominees, servants, employees, agents and all other persons having notice of this order shall forthwith on written request from the Receiver make available and deliver, without charge, to the Receiver all of the Assets and all deeds, conveyance documents, contracts, papers, accounts and records of every kind whatsoever relating to the Assets (the "**Corporate Records**") and allow the Receiver immediate, continuous and unrestricted access to the Assets and the Corporate Records, provided however that nothing in paragraph 2 or paragraph 3 of this order shall require the delivery of Corporate Records, or the granting of access to Corporate Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communications.
4. If any of the Corporate Records are stored in a computer (which shall include electronic information as defined in the Civil Procedure Rules) accessible to any of the persons referred to in paragraph 2 of this order, whether by independent service provider or otherwise, such person shall, at the written request of the Receiver, give the Receiver access to and assistance in retrieving, reading and copying such information and data whether by way of printing the information onto paper or making copies 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 Corporate Records without the prior written consent of the Receiver. For the purposes of this paragraph, all such persons shall provide the Receiver with such assistance in gaining immediate access to the information in the Corporate 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, passwords, account names, account numbers or other similar information that may be required to gain access to the information in the Corporate Records.

5. Each of the Borrower, its directors, officers, representatives, nominees, servants, employees, agents and all other persons having notice of this order are hereby restrained and enjoined from disturbing or interfering with the Receiver, or the Receiver's possession and control of the Assets, or the exercise by the Receiver of its powers under this order, except with the Receiver's prior written consent or permission of a judge.
6. Each of the Borrower, its directors, officers, representatives, nominees, servants, employees, agents and all other persons having notice of this order are hereby restrained from selling, transferring, alienating, mortgaging, encumbering or otherwise dealing with the Assets in any manner without the Receiver's written consent or permission of a judge.
7. Subject to the terms hereof, the Receiver is empowered, from time to time, to do every act or thing which, in its opinion, is necessary or desirable to do for the purpose of receiving, preserving, protecting or selling the Assets, or any part or parts thereof, including, without limitation, all or any of the following acts or things, until further order:
 - a) to take possession and control of the Assets and any and all proceeds or receipts arising out of or from the Assets;
 - b) to refrain from exercising its right to take possession or control of such Assets as the Receiver deems impractical or inappropriate in its discretion;
 - c) to maintain, protect and preserve the Assets and to take such steps as, in its opinion, are necessary or appropriate to establish and maintain control over the Assets, or any part or parts thereof, including, but not limited to, the changing of the locks and security codes, engaging independent security personnel, taking physical inventory as may be deemed necessary or appropriate in the discretion of the Receiver and the placement of adequate insurance as required;
 - d) to manage, operate and carry on or decline to carry on the business of the Borrower, including the power 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 or cancel any contracts or obligations of the Borrower;
 - e) to exercise all powers that a sheriff can exercise under an execution order;
 - f) to purchase or lease such equipment, inventories, supplies or other assets to continue the business of the Borrower or any part or parts thereof;
 - g) to receive and collect all monies and accounts now owed or hereafter owing to the Borrower and to exercise all remedies of the Borrower in collecting such

monies, including, without limitation, to enforce any security held by the Borrower;

- h) to institute and prosecute all suits, proceedings and actions as may, in its opinion, be necessary and desirable to properly receive, protect and preserve the Assets and likewise to defend all suits, proceedings and actions instituted against the Assets or the Receiver and to appear and conduct the prosecution or defence of any such suits, proceedings and actions now pending in any court or other forum, the prosecution or defence of which will, in its opinion, be necessary or desirable to properly receive, protect and preserve the Assets. The foregoing authority shall extend to appeals or judicial reviews as the Receiver shall deem proper or advisable in respect of any order or judgment pronounced in any suit, proceeding or action;
- i) to settle, extend or compromise any indebtedness owing to the Borrower;
- j) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Assets, whether in the Receiver's name or in the name and on behalf of the Borrower, for any purpose pursuant to this order;
- k) to make such expenditures as shall be, in its discretion, necessary in the normal course and in otherwise fulfilling its powers and duties hereunder;
- l) to take steps to preserve, protect, repair (including, without limitation, to make repairs of a capital nature), maintain, renew and restore the Assets or any part or parts thereof as the Receiver considers necessary to fulfill the Receiver's duties and powers hereunder;
- m) to make such expenditures (including, without limitation, capital expenditures or other expenditures properly made by the Receiver in fulfilling its duties and powers hereunder) which directly or indirectly benefits, protects, preserves, enhances or improves the Assets;
- n) to apply for any permits, licences, approvals or permissions, if necessary or considered advisable, from any governmental or regulatory authority;
- o) to settle and pay any claims which may be made or brought that relate to the Assets on such terms and in such manner as the Receiver deems necessary or advisable;
- p) to negotiate and enter into any agreement and to amend any existing agreements as the Receiver shall deem proper and advisable in fulfilling its duties and powers hereunder;
- q) to pay or make arrangements with any creditors or encumbrancers of the Assets, including real property taxes;

- r) to market any or all of the Assets, including advertising and soliciting offers in respect of the Assets or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
 - s) to sell, convey, transfer, assign, lease or dispose of any or all of the Assets in such manner as the Receiver, in its discretion, shall determine as being commercially reasonable including, without limitation, selling the Assets or any part or parts thereof by way of tender, public auction or private sale, excepting real property which can only be sold by further order of the court;
 - t) to take all steps as are reasonably necessary to complete any such sale, conveyance, transfer, assignment, lease or disposal including, without limitation, executing and delivering such deeds, bills of sale and other documents and to do or perform all acts or things as may be necessary or appropriate, in its opinion, to effect and complete any such transactions as contemplated herein; and
 - u) to take such other steps as it may deem necessary or desirable to preserve and protect the Assets of the Borrower in its custody or which are reasonably incidental to the exercise of these powers.
8. The Receiver is authorized to retain from time to time such agents, consultants, advisors, experts, auditors and solicitors (in addition to the solicitor required under Civil Procedure Rule 73.06), and hire personnel or employees on a temporary basis or otherwise, as the Receiver may consider necessary for the purpose of receiving, preserving and protecting the Assets or generally performing its powers hereunder, provided that the issuance of this order itself shall not cause (or be deemed to have caused) the Receiver to be considered a successor employer of any employee of the Borrower or any related entity pursuant to any collective agreement governing employment or labour statute or regulation or any other statute, regulation or rule in law or equity. The Receiver may apply to the court for directions as to whether any course of action pursuant to this order will cause it to become a successor employer.
9. The Receiver is authorized and empowered to apply to any other court in any other jurisdiction, whether in Canada, the United States, or elsewhere, for an order recognizing the appointment of the Receiver by this Court and confirming the powers of the Receiver in any other jurisdiction or jurisdictions, and all courts of all other jurisdictions are hereby respectfully requested to make such orders and provide such other aid and assistance to the Receiver, as an officer of this court, as it may deem necessary or appropriate in furtherance of this order.

Receiver to Hold Funds

10. 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 Assets 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.

Receiver's Accounts

11. The Receiver shall from time to time pass its accounts for the period commencing as of the date of this Order and any fees or expenditures, both before and after the date of this order, including any necessary solicitor's fees on a solicitor and client basis, which shall be properly made or incurred by the Receiver, shall be allowed it in passing its accounts and shall form a charge on all the Assets in priority to the claims of the Plaintiff and the Receiver be allowed such payments in its accounts, and when the accounts are so passed, the balance shall be disbursed as the court may direct. The Receiver may, before passing its accounts and applying to have its remuneration fixed, pay itself in respect to its services as Receiver a reasonable amount incurred at the normal rates and charges of the Receiver or its counsel, either monthly or at such longer intervals as it deems appropriate, which amounts shall constitute an advance against its remuneration when fixed. Any questions from persons other than the Plaintiff relating to the Receiver's accounts shall be referred to the court upon five (5) days notice to the Receiver.
12. The Receiver may, from time to time, make interim payments to the Plaintiff out of the amounts realized by the Receiver in liquidating the Assets.

Stay of Proceedings

13. Without limiting the generality of any of the provisions herein, no person, firm, corporation, union, government, governmental agency or board shall levy, pursue, initiate or continue any distress, suit, course of action or proceeding against the Borrower, the Assets or the Receiver nor shall any person, firm, corporation, union, government, governmental agency or board take, institute or continue any action at law, equity or other proceeding against the Borrower or the Receiver whether before a court, tribunal, board or administrative body without the permission of a judge. No person, firm corporation, union, government, governmental agency or board shall otherwise interfere with the carrying on the business of the Borrower by the Receiver and, without limiting the generality of the foregoing, no person, firm, corporation, union, government, governmental agency or board having agreements or other arrangements with the Borrower or in connection with the Assets shall accelerate, terminate, suspend, modify, cancel or withdraw any agreements, licences, insurance or any such arrangements relating to the Assets without the permission of a judge.
14. Without limiting the generality of the foregoing, all persons, firms and corporations are enjoined from discontinuing, disturbing or interfering with utility or other services including, without limitation, the furnishing of fuel, gas, heat, electricity, water, telephone, garbage or waste collection or any other utilities or services of a similar

nature, previously furnished to the Borrower, and they are enjoined from cutting off, discontinuing or altering any such utilities or services to the Receiver except with the permission of a judge.

15. No creditor of or any person having a contractual relationship with the Borrower may exercise any right of set-off or trust claim with respect to its accounts with, or claims against, the Borrower, except with the permission of a judge.
16. Canada Revenue Agency may not exercise any right of set-off for any amount owing for pre or post receivership obligations.
17. Any interested person may make a motion to this Court on five (5) days notice to the Receiver for the permission of a judge to take any of the actions or do any of the things prohibited by the terms of Sections 13, 14, 15, or 16, or otherwise to vary the terms thereof.

Continuation of Services

18. All persons having oral or written agreements with the Borrower or statutory or regulatory mandates for the supply of goods or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services or utility services, are hereby restrained until further order from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and the Receiver shall be entitled to the continued use of the Borrower's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this order are paid by the Receiver in accordance with normal payment practices of the Borrower or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered.

Receiver's Borrowing Powers

19. The Receiver is authorized to borrow monies, without personal liability, from time to time, as it may consider necessary, not exceeding the principal sum of \$250,000.00 in the aggregate at such rate or rates of interest as it deems advisable for such period or periods of time as it may be able to arrange for the purpose of exercising its powers and performing its duties hereunder, including for the payment of any costs, disbursements, fees and expenses of the Receiver, notwithstanding any agreement to which the Borrower is a party prohibiting borrowing money or incurring indebtedness. Any such borrowings shall be without recourse to the Receiver personally and any recourse taken in respect of such borrowings shall be limited to the Assets taken as security for such borrowings. The Receiver is authorized to pledge, sign or give security or securities on the Assets (or a portion thereof) for the purpose of facilitating its borrowings as the Receiver considers necessary or appropriate to fulfill its powers and duties hereunder. Any security granted by the Receiver in connection with its borrowing shall not be enforced without the

permission of a judge. The Receiver may sell Assets (or a portion thereof) to the extent required to repay borrowings hereunder but may not do so without the permission of a judge where such Assets are subject to registered third party security interests.

20. The monies authorized to be borrowed by this order may be in the nature of a revolving credit and the Receiver may pay off or re-borrow within the limits of the authority hereby conferred, as long as the maximum principal amount owing in respect of such borrowings at any one time does not exceed the amount hereby authorized.

Environmental Obligations

21. Nothing in this order in and of itself shall cause the Receiver to be (or to be deemed to be) in possession, charge or control of the Assets for the purposes of any environmental order, directive, claim, demand, cause of action, rule, duty or obligation in law or in equity or under any environmental statute, regulation or by-law (each, an "**Environmental Obligation**").
22. Nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Assets that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination, provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable environmental legislation. The Receiver shall not, as a result of this order or anything done in pursuance of its duties and powers under this order, be deemed to be in Possession of any Assets within the meaning of any environmental legislation, unless it is actually in possession.
23. Nothing in the making of this order in and of itself shall vest in the Receiver the ownership, control, possession or management of any Assets which may be a source of a pollutant or contaminant or may cause or contribute or threaten to cause or contribute a discharge, release or deposit of a substance contrary to any Environmental Obligation.

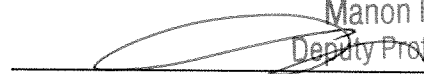
General

24. The Receiver need not file security with the court for the due and proper performance of its duties as Receiver, but the Receiver shall make good any default in connection with the Receiver's custody or management of the Assets or any part or parts thereof unless relieved from any default on such terms as this court thinks fit.
25. Any interested person including, without limitation, a holder of an encumbrance or security in priority to that of the Plaintiff, may apply to the court for the permission of

a judge provided for herein or for such further or other order recognizing, enforcing, preserving or protecting the rights of other persons on five (5) days notice to the Receiver and the Plaintiff.


- 26. The appointment of the Receiver shall continue until terminated by a further order.
- 27. The Receiver shall report to the court at least annually as to the state of the Assets and the conduct of its administration hereunder.
- 28. The Receiver may, from time to time, apply to the court for guidance and directions in the discharge of its powers and duties hereunder.

Issued March 24, 2011

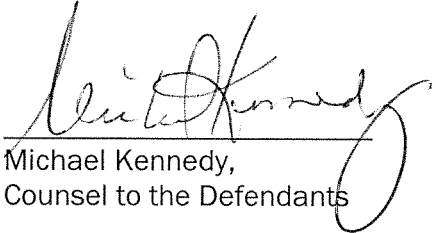

 Manon Haché
 Deputy Prothonotary

 Prothonotary

Consented to:



 Gavin D.F. MacDonald,
 Counsel to the Plaintiff



 Michael Kennedy,
 Counsel to the Defendants

IN THE SUPREME COURT OF NOVA SCOTIA

I hereby certify that the foregoing document, identified by the Seal of the Court, is a true copy of the original document on file herein.

Dated the 24 day of March A.D., 2011


 Manon Haché
 Deputy Prothonotary