

Court File No.: CV-20-00640265-00CL  
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**Superior Court of Justice  
 Commercial List**

**FILE/DIRECTION/ORDER**

IN THE MATTER OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.  
 C.43, AS AMENDED

AND IN THE MATTER OF THE ADMINISTRATION PROCEEDINGS  
 OF **CARRIAGE HILLS VACATION OWNERS ASSOCIATION**

AND IN THE MATTER OF THE ADMINISTRATION PROCEEDINGS  
 OF **CARRIAGE RIDGE OWNERS ASSOCIATION**

(together, the “**Applicants**”)

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Counsel	Telephone No:	Email/Facsimile No:
As per counsel slip		

**July 2, 2020**

**Conway J. - Endorsement on Motions**

[1] On May 15, 2020, I granted orders appointing BDO Canada Limited (“**BDO**”) over the assets of the Carriage Hills Vacation Owners Association and Carriage Ridge Owners Association and the lands on which the resorts are operated.

[2] The need for an administrator was readily apparent and critical. Members were subject to perpetual contracts that committed them to paying annual dues indefinitely. Many of the Members had defaulted in paying their dues, increasing the burden on the remaining Members and exacerbating the cycle. Many of the resorts’ over 11,000 members wanted to exit the resorts immediately without considering any alternatives.

[3] In paragraph 5 of the appointment orders, BDO was required, as soon as reasonably practicable after its appointment, to (i) make reasonable efforts to create an updated Member contact list; (ii) subject to court approval, “plan and propose a procedure to ascertain the interests of the Members going forward with respect to the Resort, whereby Members of the Applicant will be able to indicate, among other things, whether they wish to terminate their relationship with the Resort or continue their relationship with the Resort if a satisfactory restructuring solution can be

developed”; and (iii) subject to court approval, develop an “Exit Option” for Members that want to relinquish their membership with the Applicant and obtain a release of all future obligations to the Applicant.

[4] BDO, in consultation with the Consultative Committee (that was established to represent the varied interests of the Members) has developed a form of survey to send to Members (the “**BDO Survey**”). The BDO Survey is intended to ascertain which Members want to exit regardless of what a restructured resort may look like and which Members wish to stay and consider a possible restructured resort. According to BDO, the information about how many Members wish to exit now is key to determining whether the resorts are viable and should be restructured or whether they should be sold in their entirety.

[5] The BDO Survey asks:

- Do you want to exit now (this would include declaring the resort “obsolete”)?
- Do you want to remain in a “restructured resort”?

[6] The BDO Survey provides:

- it will be binding on those who vote to exit now. The BDO Survey explains that if the survey is not binding, BDO will be required to conduct multiple surveys involving numerous restructuring options, which would take many months and be very expensive. It also means that an exit for those Members would not be possible before the payment of basic charges (“**Basic Charges**”) for 2021 is due in the fall of 2020.
- it will not be binding on those voting to stay. BDO can only determine what a restructured resort looks like or whether the resorts are viable once the results are in. Once a restructuring plan is developed, Members can then decide whether they wish to exit or stay. If they exit, the Members will have to pay an exit fee at that time.
- If a Member chooses to exit now, an exit fee will be payable. The amount of the exit fee is set out in the BDO Survey and ranges from \$1,150 to \$2417, depending on the type of interval owned by the Member. The amount is approximately 1.5 times the amount of the Basic Charge.
- If any of the resort lands are sold, there may be a payment to all exiting owners in the future.
- If a Member does not respond, that Member is considered to have voted to stay. Delinquent owners will not be able to vote unless they bring their account up to date and pay a delinquency fee. If they do not do so, they will be treated as exiting Members.

[7] The Respondents, Lori Smith, Karen Levins and Bruce Fleming, oppose the BDO Survey. Many of their issues with the BDO Survey were resolved prior to the hearing. Those include the method and timing of delivering the survey, the need for a separate question about obsolescence, how delinquent Members are to be dealt with (subject to a few changes proposed by Mr. Wong to clarify the survey); and how non-voting Members are to be dealt with. They now accept the provisions of the BDO Survey with respect to those matters.

[8] The main issues left are the binding nature of the BDO Survey and the requirement of exiting Members to pay an exit fee.

### **The BDO Survey is Binding on Members that Choose to Exit**

[9] The BDO Survey is binding on those who indicate that they wish to exit now. The Respondents argue that the survey should be just that – a survey, not a binding commitment of the exiting Members.

[10] I am satisfied that the binding nature of the survey on exiting Members is a reasonable requirement in the circumstances of this case, for the following reasons:

- The critical threshold issue for any potential restructuring to occur is for BDO to know how many Members want to exit regardless of any possible restructuring. As noted, many of the Members have clearly expressed their wish to exit the resorts as soon as they can. Knowing how many Members are truly committed to leaving will enable BDO to determine whether there are a sufficient number of Members left to come up with a viable plan for the resorts;
- The Applicants already know that many Members wish to exit. The BDO Survey will provide a far more realistic picture of just how many Members want to get out regardless of any possible restructuring plan;
- The only Members who will be bound by the survey are those who are committed to leaving. There is no requirement that they do this – it is within their control. If a Member is unsure at this point, the Member can vote to stay and see what the restructuring plan looks like and preserve the option to exit at a later date;
- The binding nature of the survey for those Members will ensure that they do not have to pay their 2021 Basic Charges in the fall – which is something many of the Members want to avoid. Otherwise, all Members will have to be invoiced for these charges in the fall;
- As BDO points out, if the survey is non-binding, there will be an ongoing series of surveys that will only increase delays. This will preclude those who want to exit from doing so before the next payment of Basic Charges is due;
- While some of the mechanics of exiting are still to be developed, the essential information is known – in particular, the amount of the exit fee the Members will have to pay to get out of their perpetual contracts.

## **The Exit Fee**

[11] BDO calculated the exit fee as a one-time fee that enables Members to terminate their perpetual contracts. BDO considered various factors including the estimated length of time required to sell all or a portion of the resorts, an allocation of the resorts' operating deficits across all Members and an allocation of the costs of the restructuring process across all Members.<sup>1</sup> The fee does not include any charges for future capital improvements. As noted, the one time fee is approximately 1.5times the amount of the annual Basic Charge.

[12] I see no unfairness in the imposition of an exit fee. Most significantly, payment of this fee will relieve exiting Members of their perpetual contractual obligations, which has been an ongoing source of frustration for Members. Further, BDO has confirmed that if and when any of the resort lands are sold, the exiting Members may receive some portion of the exit fee back from the net proceeds of such a sale on a *pro rata* basis.

[13] With respect to the timing of payment of the exit fee, it will not be immediately payable by the Members who vote to exit now. That payment will only be required after BDO determines whether the resorts are viable. At that point, another survey will be done to see which of the remaining Members are prepared to accept a proposed restructuring plan or wish to exit. BDO expects that Members will not be required to pay the exit fee until after the second survey and once the final details of the exit plan have been determined.

[14] Finally, if any Member votes to stay and later wishes to exit, that Member will be required to pay an exit fee to get out of the perpetual contract. I see no unfairness because any Member that wishes to exit the resorts, whenever that may be, will have to pay an exit fee to be released from the perpetual contract.

## **Orders**

[15] Overall, I see nothing unfair in the way the BDO Survey is structured. In my view, it is a balanced survey that takes into account the various interests of the Members – those who want to exit immediately (and avoid more Basic Charges), those who definitely want to stay in a restructured resort if that is possible, and those who want to wait and see what a restructured resort looks like before making a decision.

[16] The BDO Survey has been developed with the input of the Consultative Committee that was designed to reflect those differing interests. It is practical, will minimize further delays, and is within the mandate given to BDO by this court.

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<sup>1</sup> One of the purposes of the fee is to cover the significant costs of maintaining the property of exiting Members until the land can be sold.

[17] I approve the BDO Survey and grant the requested orders. These orders are effective from today's date and are enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", is written over a horizontal line.

Justice Conway

Released: July 2, 2020