



Court File No. CV-20-00640266-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM) TUESDAY, THE 23RD DAY
)
JUSTICE CONWAY) OF AUGUST, 2022

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 RIDGE OWNERS
ASSOCIATION**

INTERIM DISTRIBUTION ORDER

THIS MOTION, made by BDO Canada Limited (“**BDO**”), in its capacity as receiver (in such capacity, the “**Receiver**”) over all of the assets, properties and undertakings of Carriage Ridge Owners Association (the “**Applicant**”) and all the lands and premises on which the Applicant operates the Carriage Ridge Resort (the “**Resort Property**”), appointed by Order of the Court with effect as of January 6, 2021 (the “**Receivership Order**”), for an Order approving, *inter alia*, an interim distribution, was heard this day via Zoom judicial video conference due to the COVID-19 pandemic.

ON READING the Motion Record of the Receiver dated August 10, 2022 (the “**Motion Record**”), Seventh Report of the Receiver dated August 10, 2022 (the “**Seventh Report**”), and on hearing the submissions of counsel for the Receiver, counsel for Wyndham Worldwide Corporation, Shell Finco LLC, Carriage Hills Resort Corporation and Carriage Hills Hospitality Inc., and no one else appearing for any other parties on the Service List, although duly served as appears from the affidavit of service of Christine Doyle sworn August 12, 2022, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record be and is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meanings ascribed thereto in the Seventh Report.

LATE CLAIMS

3. **THIS COURT ORDERS AND AUTHORIZES** the Receiver to accept Claims filed by Owners and received on or before the date of this Order as if they were filed by the Claims Bar Deadline.

DELIVERY VALIDATION

4. **THIS COURT ORDERS** that the delivery of the Process Packages is hereby validated and confirms that such was properly delivered in accordance with the Ownership Claims Process Orders.

ACCOUNT AGENT AGREEMENT

5. **THIS COURT ORDERS** that

- (a) subject to the direction and supervision of the court and the Receiver, the appointment of the Claims Agent pursuant to the terms of the Account Agent Agreement is hereby approved, including, without limitation, the payment of the fees and expenses contemplated thereby;
- (b) the Claims Agent shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the Claims Agent;

- (c) no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the Claims Agent, and all rights and remedies of any Person against or in respect of them are hereby stayed and suspended, except with the written consent of the Claims Agent as applicable or with leave of this Court on notice to the Receiver and the Claims Agent as applicable;
- (d) the Claims Agent shall comply with all applicable provisions of Canada's private sector privacy laws, including, without limiting the generality of the foregoing, the *Personal Information Protection and Electronic Documents Act* (“**Pipeda**”);
- (e) in particular, the Claims Agent must comply with the principles set out in Schedule I of Pipeda with respect to the collection, storage and safeguards in relation to any information recorded or obtained by the Claims Agent from any Eligible Owner with the exception that the Claims Agent shall be permitted to disclose this information to the Receiver, its counsel, the Court or as otherwise directed by the Court; and
- (f) notwithstanding the foregoing and for the avoidance of doubt, the Claims Agent are authorized to collect all Eligible Owner information necessary to effect the Interim Distribution, and all Eligible Owners who provide information to the Claims Agent are hereby deemed to have consented to the processing of their information for all purposes relating to these Proceedings.

INTERIM DISTRIBUTION

6. **THIS COURT ORDERS** that the Receiver's proposed Interim Distributions in the manner set out in the Seventh Report be and is hereby authorized and approved, and the Receiver be and is hereby authorized and directed to make the proposed Interim Distributions on behalf of the Applicant to Eligible Owners, which distributions shall be made in accordance with each Eligible Owner's proportionate interest as determined in the Claims Process.

7. **THIS COURT ORDERS** that the methodology of the Receiver in formulating the Interim Distributions is hereby authorized and approved.

8. **THIS COURT ORDERS** that the methods of payment and deduction of the fees associated with same from the Interim Distributions as set out in the Seventh Report are hereby authorized and approved.

9. **THIS COURT AUTHORIZES AND CONFIRMS** that the amount charged in respect of the payment method selected by the Eligible Owner shall be deducted from the amount of such Eligible Owner's Interim Distribution.

10. **THIS COURT ORDERS AND DIRECTS** the Receiver to deduct any proportionate amounts owed by an Owner to the Mortgagee from their Interim Distribution (the "**Mortgage Payment**"), after deducting the Withheld Amount (as defined below), if any. For greater certainty, the Mortgage Payment shall be deducted from the Distribution Pot regardless of whether such Owner filed a Claim in the Claims Process. The Receiver shall pay the Mortgage Payments to the Mortgagee at the time of or before the completion of the Interim Distribution.

11. **THIS COURT ORDERS AND DIRECTS** the Receiver to withhold any Interim Distribution Payment from an Eligible Owner in the event that there is a disputed Mortgage Payment until such time as the Receiver has written confirmation from the Eligible Owner and Mortgagee that the dispute has been settled or further Order of this Court.

12. **THIS COURT ORDERS AND DIRECTS** the Receiver to off-set any amounts owed by an Eligible Owner in respect of their Delinquent Account(s) from their proportionate Interim Distribution (the "**Delinquent Off-Set**"), after deducting the Withheld Amount and/or the Mortgage Payment, if any, and such Delinquent Off-Set shall be available for distribution to Eligible Owners.

13. **THIS COURT ORDERS** that, for greater certainty, the following amounts shall be deducted by the Receiver from any Eligible Owner's proportionate Interim Distribution as follows:

- (a) Firstly, the Withheld Amount, if any;

- (b) Secondly, the Mortgage Payments, if any; and
- (c) Thirdly, the Delinquent Off-Set, if any.

14. **THIS COURT ORDERS** that, upon making the Interim Distribution, the Receiver shall be released and discharged from any and all obligations and claims in respect of the Interim Distribution, save and except for those arising out of any gross negligence or wilful misconduct on the Receiver's part.

WITHHOLDING OBLIGATIONS

15. **THIS COURT ORDERS AND AUTHORIZES** the Receiver to rely on the declarations of residency made in the Claims Process by each Owner for the purpose of the distribution of funds to each Owner and the withholding and remittance in accordance with section 116 of the *Income Tax Act* (Canada). Each Owner, who declared themselves a non-resident of Canada will be treated as a non-resident of Canada (a “**Non-Resident Owner**”) for the purposes of any applicable non-resident withholding tax on all payments hereunder.

16. **THIS COURT ORDERS AND DIRECTS** that the Receiver will deduct and withhold 40.007% (the “**Withholding Tax Rate**”) from any payment to any Non-Resident Owner, in accordance with section 116 of the *Income Tax Act* (Canada), in respect of only that portion of the distribution to a non-resident that is allocable to funds arising from the sale of the resorts (the “**Withheld Amounts**”). If the Receiver is unable to identify any specific provision in the *Income Tax Act* (Canada) that provides for withholding on distribution of funds other than from the sale of the resorts as detailed on Schedule “A”, the Receiver shall make no further withholdings or remittances.

17. **THIS COURT ORDERS AND DIRECTS** the Receiver to remit the Withheld Amounts to Canada Revenue Agency (“**CRA**”) together with Confidential Appendix 1 indicating the amounts withheld from each Non-Resident Owner and their contact particulars. The calculation of the Withholding Tax Rate is as set out in section 5.6 of the Report and is hereby approved. To the extent that amounts are so withheld or deducted and remitted to CRA, such withheld or deducted amounts will be treated for all purposes hereof as having been paid to such Non-Resident Owner as the remainder of the payment in respect of which such withholding or

deduction was made. No gross-up or additional amount will be paid on any payment hereunder to the extent the Receiver deducts or withholds amounts pursuant to this Order. Notwithstanding any withholding or deduction, each Eligible Owner receiving a payment will have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Authority (including income and other tax obligations on account of such distribution).

18. **THIS COURT ORDERS** that, with the exception of the amounts provided for in paragraph 15, the Receiver is not required to remit any further amounts to CRA in respect of the Owner Distributions.

RESERVES

19. **THIS COURT AUTHORIZES AND DIRECTS** the Receiver to establish the Reserves for the reasons and purposes set out in section 5.3 of the Seventh Report.

APPROVAL AND AUTHORIZATION

20. **THIS COURT ORDERS** that the Seventh Report and the Receiver's activities set out therein be and are hereby approved.

21. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements for the period ending July 31, 2022 be and is hereby approved.

22. **THIS COURT ORDERS** that the professional fees and disbursements of BDO in its capacity as Receiver and receiver of Carriage Hills for the period from November 1, 2021 to July 31, 2022, in the amount of \$747,076.50 plus disbursements of \$11,359.42 and HST of \$90,746.49, for a total of \$849,182.41, as set out in the Affidavit of Matthew Marchand, sworn August 5, 2022 and attached as Appendix "P" to the Seventh Report, are hereby approved and the Receiver is authorized to pay the Applicant's 31% share of such fees and disbursements.

23. **THIS COURT ORDERS** that the professional fees and disbursements of Aird & Berlis LLP, counsel to the Receiver and to the receiver of Carriage Hills for the period from November 1, 2021 to July 31, 2022, in the amount of \$159,687 plus disbursements of \$995.25 and HST of \$20,805.52, for a total of \$181,487.80, as set out in the Affidavit of Sanjeev Mitra, sworn August

5, 2022 and attached as Appendix “Q” to the Seventh Report, are hereby approved and the Receiver is authorized to pay the Applicant’s 31% share of such fees and disbursements.

24. **THIS COURT ORDERS** that the professional fees and disbursements of Thornton Grout Finnigan LLP, special counsel to the Receiver and to the receiver of Carriage Hills for the period from December 1, 2021 to July 31, 2022, in the amount of \$156,005.00 plus disbursements of \$203.15 and HST of \$20,306.05, for a total of \$176,514.20, as set out in the Affidavit of Leanne M. Williams sworn August 5, 2022 and attached as Appendix “R” to the Sixth Report, are hereby approved and the Receiver is authorized to pay the Applicant’s 31% share of such fees and disbursements.

GENERAL

25. **THIS COURT ORDERS** that the Receiver may, in its discretion, generally or in individual circumstances, waive, in writing, the time limits imposed on any Creditor under this Order if the Receiver deems it advisable to do so (without prejudice to the requirement that all other Creditors comply with this Order) and, in so doing, may extend any related time period applicable to the Receiver by the same period of time.

26. **THIS COURT ORDERS** that, notwithstanding the terms of this Order, the Receiver may apply to this Court from time to time for such further order or orders as it considers necessary or desirable to amend, supplement or replace this Order.

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

EFFECT, RECOGNITION AND ASSISTANCE OF OTHER COURTS

28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or abroad, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an

officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Receiver and its agents in carrying out the terms of this Order.

29. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that this Order and all of its provisions are effective from the as of 12:01 a.m. Eastern Standard Time on the date of this Order without any need for entry and filing.



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

Applicant

Court File No. CV-20-00640266-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

INTERIM DISTRIBUTION ORDER

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