

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MADAM) THURSDAY, THE 2ND
)
JUSTICE CONWAY) DAY OF JULY, 2020

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** (the “**Applicant**”)

ORDER

THIS MOTION made by the Applicant for an Order that, *inter alia*: (i) approving the form, content and method of delivery of the Member Survey and the Member Survey Deadline, (ii) confirming that delinquent Members shall not be permitted to vote with respect to the Member Survey, (iii) approving the Exit Fee; (iv) approving the Delinquency Fee; (v) approving the First Report of BDO Canada Limited dated June 22, 2020 (the “**First Report**”), in its capacity as administrator of the Applicant (the “**Administrator**”), and the activities of the Administrator as set out therein, and (vi) approving the fees and disbursements of the Administrator and counsel to the Administrator, was heard this day via Zoom judicial video conference due to the COVID-19 pandemic.

ON READING the Motion Record of the Applicant dated June 22, 2020 (the “**Motion Record**”), including the affidavit of Darren Chapelle, sworn June 22, 2020 (the “**Chapelle Affidavit**”) and the Exhibit thereto, the First Report and the appendices thereto, and on hearing the submissions of counsel for the Applicant, counsel for BDO, counsel for Lori Smith, Karen Levins and Bruce Fleming, Christopher Diana on behalf of himself and counsel for David and Phyllis Lennox, no one else appearing for any other parties on the Service List, although duly served as appears from the affidavit of service of Mitch Grossell, sworn June 30, 2020, filed.

SERVICE AND DEFINED TERMS

1. **THIS COURT ORDERS** that the time for service of the Motion Record is hereby validated so that this Motion is properly returnable today and further service thereof is hereby dispensed with.
2. **THIS COURT ORDERS** that all capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the First Report.

APPROVAL OF THE MEMBER SURVEY AND NOTICING PROCEDURE

3. **THIS COURT ORDERS** that the Member Survey substantially in the form and content attached as Schedule "A" to this Order, including but not limited to the amount of the Exit Fee, is hereby approved and the Administrator is authorized and directed to have the Member Survey issued in accordance with the terms of this Order.
4. **THIS COURT ORDERS** that the Administrator be and is hereby authorized and directed to retain Votenet to manage the online Member Survey, including sending email notifications and reminders to the Members, provide phone and email support services to the Members and provide the certified voting results and statistical reporting to the Administrator at an estimated cost of U.S. \$7,714.00.
5. **THIS COURT ORDERS** that within ten (10) days of the date of this Order:

- (a) the Administrator shall cause Votenet to send a link to the Member Survey via email to every Member that has provided a working email address; and
- (b) the Administrator shall send a paper copy of the Member Survey by regular mail to every Member that has not provided a working email address

provided that, the Administrator shall have no obligation to send the Member Survey to any Member with a Delinquent Account. In the event that the Delinquent Account of such Member is rectified before the Member Survey Deadline, the Administrator shall cause the Member Survey to be delivered to the Member. For greater certainty, notwithstanding the foregoing, the date of the

Member Survey Deadline shall not be extended beyond August 31, 2020 without the written consent of the Administrator.

RESPONSES TO THE MEMBER SURVEY

6. **THIS COURT ORDERS** that responses to the Member Survey shall be received by the Administrator by no later than August 31, 2020 (“**Member Survey Deadline**”). The Administrator shall not be required to consider any Member Survey received after the Member Survey Deadline.

7. **THIS COURT ORDERS** that Members with Delinquent Accounts (a “**Delinquent Member**”) shall not be entitled to participate or vote in the Member Survey. In the event that a Delinquent Member responds to the Member Survey, the Administrator shall disregard and not take into consideration the response of any such Delinquent Member. For greater certainty, Delinquent Members shall be treated as Members voting to exit.

8. **THIS COURT AUTHORIZES AND APPROVES** the nature and amount of the Delinquency Fee as set out in the First Report.

9. **THIS COURT ORDERS AND DIRECTS** the Administrator to send by email, to those Delinquent Members who have provided a valid email address, a notice to the Delinquent Members substantially in the form and content attached as Schedule “**B**” notifying the Delinquent Owners of the Delinquency Fee and that the Delinquent Owners are not entitled to participate in the Member Survey unless they bring their account current.

10. **THIS COURT ORDERS** that, in the case of any Member responding to the Member Survey indicating that he or she wishes to exit the Association, such decision shall be binding on such Member and that Member shall not be permitted to change their decision to exit after the Member Survey Deadline.

11. **THIS COURT ORDERS** that any Members (other than Delinquent Members) that do not respond to the Member Survey shall be deemed to have responded that the Member wishes to stay in the Resort.

NO LIABILITY OF THE ADMINISTRATOR

12. **THIS COURT ORDERS** that the Administrator shall incur no liability or obligation as a result of the terms of this Order or the carrying out by it of the provisions of this Order, save and except for gross negligence or wilful misconduct on its part, and nothing in this Order shall derogate from the protections afforded to the Administrator pursuant to the Administration Order.

CORPORATE GOVERNANCE

13. **THIS COURT ORDERS AND DECLARES** that the annual general meeting of the Applicant (the “AGM”) and the nomination and election process for directors of the Applicant is hereby suspended and deferred for a period of six months. Until the AGM is held in accordance with this Order, all current directors of the Applicant shall remain as directors of the Applicant.

APPROVAL OF FEES AND ACTIVITIES OF THE ADMINISTRATOR

14. **THIS COURT ORDERS** that the First Report filed in these proceedings and the Administrator’s activities as set out therein are hereby approved.

15. **THIS COURT ORDERS** that the professional fees and disbursements of the Administrator for (i) the period ending June 15, 2020 in the amount of \$63,156.00 plus HST of \$8,210.28 for a total of \$71,366.28 as set out in the Affidavit of Brad Newton sworn June 22, 2020 and attached as Appendix “L” to the First Report, are hereby approved.

16. **THIS COURT ORDERS** that the professional fees and disbursements of Aird & Berlis, counsel to the Administrator, for (i) the period ending June 17, 2020 in the amount of \$62,060.25 plus HST of \$8,067.83 for a total of \$70,128.08 as set out in the Affidavit of Sam Babe sworn June 22, 2020 and attached as Appendix “M” to the First Report, are hereby approved and the Association is authorized to pay its proportionate share of such fees in accordance with the terms of the Administration Order.

GENERAL

17. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

18. **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 to give effect to this Order and to assist the Applicant, the Administrator and their respective 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 Applicant and to the Administrator, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Administrator in any foreign proceeding, or to assist the Applicant and the Administrator and their respective agents in carrying out the terms of this Order.

19. **THIS COURT ORDERS** that the Applicant and the Administrator be at liberty and are 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, and that the Administrator is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

Conway J.

SCHEDULE "A"
MEMBER SURVEY

CARRIAGE RIDGE AND CARRIAGE HILLS MEMBER SURVEY

PURPOSE OF SURVEY

The purpose of this survey is to determine which owners wish to immediately exit their resort intervals and which owners may wish to maintain at least one of their intervals in a “restructured resort”. The basic parameters of a “restructured resort” are found below. The Administrator needs to gauge the interest in exiting immediately versus remaining in a restructured resort in order to determine if a restructured resort is a viable option.

TIME TO COMPLETE SURVEY

This survey will be available to be completed for 45 days only commencing **July __** and ending **August __**, 2020.

EFFECT OF SURVEY

This survey will be binding on those voting to exit. If this survey were not binding on those wanting to exit now, the Administrator would be forced to conduct multiple surveys involving numerous restructuring options which would take many months and be very expensive. Most importantly, such a delay would mean that an exit for owners would not be available before the next annual payment is due. The Administrator has heard directly from many owners that they want to exit before the next payment is due and we are trying to accommodate that request. Therefore, if you do not choose to exit now, you will be invoiced for next year’s fees, which will need to be paid to be eligible to continue in this process.

The survey will not be binding on those voting to stay. Until the results of this survey are available, we are unable to determine what a restructured resort will look like or whether a restructured resort is possible as we will not know how many owners wish to remain. Once this is known and assuming a restructuring is possible, we will be able to prepare a projection of what a restructured resort will look like and what the ongoing maintenance fees are likely to be. Those owners who indicated that they wanted to stay will then have 45 days to decide if they wish to remain or exit based on those terms. The owners choosing to exit after the second survey will go through the same exit process and fee as those who exited earlier.

If you choose to exit: Choosing the exit option below does not mean you have actually exited the time share or given up your interval(s). You will receive further information on precisely how to exit and the implications of exiting after the survey is completed and a final exit plan is approved by the Court. An Exit Fee (as set out in the chart below) will have to be paid by all those wishing to exit at this time or if you exit as discussed in the “If you choose to stay” paragraph below. After all or any portion of the resort is sold, there may be a payment made to all exiting owners (whether they exit under this survey or after the next). However, the exact amount of that payment will not be known until a sale is completed.

Total Cancellation Fee per Interval (including HST)	Every Year Interval		Even/Odd Year Interval	
	Red	White	Red	White
Carriage Hills	\$ 2,300.33	\$ 2,417.74	\$ 1,150.16	\$ 1,208.87
Carriage Ridge	\$ 2,282.38	\$ 2,399.17	\$ 1,141.19	\$ 1,199.58

If you choose to stay: Choosing to stay in a restructured resort does not mean you will automatically be part of a restructured resort in the future. The Administrator is simply trying to gauge your desire to do so. You will be provided with further information on what a future restructured resort will look like, together with the annual cost, after the survey is completed and the exit plan for those wishing to exit is approved by the Court. Depending on the results of the survey, it may be that a restructured resort is not feasible if not enough owners wish to remain in a restructured resort. It is anticipated that, once the exact terms and conditions of a restructured resort are determined, those terms will be shared with owners who voted to stay and you will again be able to choose to stay or to exit based on those exact terms.

If you do not reply to the survey: If you do not reply to the survey the Administrator will have to assume that you are voting to STAY in the resort. The Administrator CANNOT assume owners want to break a legal contract.

Please note, we require you to vote separately for each interval you own and only one vote per interval will be permitted

Please enter the following information:

Name of the owner of the time share _____

Please choose one of the following two options:

- Carriage Hills Interval
- Carriage Ridge interval

Please choose one of the following three options:

- Every year Interval
- Odd year Interval
- Even year Interval

Please choose one of the following two options:

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

Pursuant to the time share agreement, in order for the resort to be determined to be “**obsolete**”, 75% of all intervals must be voted in favour of obsolescence. If more than 75% of intervals are voted in favour of obsolescence, then the **entire** resort must be sold. If less than 75% of all intervals are voted in favour of exiting, then it is possible that a portion of the resort will be sold to accommodate a smaller future resort. The process for the sale and the distribution of the proceeds of that sale will be proposed by the Administrator and have to be approved by the Court.

A “**restructured resort**” requires that, at a minimum, the time share agreement be altered to eliminate the perpetual nature of the Owners’ obligations. In other words, a mechanism would need to be created to provide Owners with the option to opt-out of the resort in the future (on terms to be determined) in the event that they are unable to sell their intervals. A successful restructured resort would also not see any significant escalation in annual maintenance fees. What exactly a restructured resort will look like and what the maintenance fees will be is uncertain and cannot be determined until the results of this survey are known.

No decisions have been made on what will happen with the resorts at this time. The results of the survey will help to inform all owners, the boards of directors, the Administrator and the Court as to what the next steps should be.

**SCHEDULE “B”
NOTICE TO DELINQUENT MEMBERS**

Proposed Email to Delinquent Members:

Pursuant to the records of Carriage Ridge Owners Association (“**CROA**”) and/or Carriage Hills Vacation Owners Association (“**CHVOA**”), you are a member of CROA and/or CHVOA (“**Member**”) and have outstanding fees owing to CROA and/or CHVOA (a “**Delinquent Account**”). Pursuant to the Order of the Ontario Superior Court of Justice dated July 2, 2020, as a Member with a Delinquent Account, you will not be permitted to vote in the Court-ordered Member Survey. In addition, a delinquency fee of \$1,000 (the “**Delinquency Fee**”) will be added to your account effective October 1, 2020.

However, if you pay your entire outstanding Delinquent Account before the Member Survey Deadline of August 31, 2020, you will be permitted to vote in the Member Survey. If you pay your outstanding account in full before September 30, 2020, you will not be assessed the Delinquency Fee.

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ADMINISTRATION PROCEEDINGS OF **CARRIAGE HILLS VACATION OWNERS ASSOCIATION**

Court File No.: CV-20-00640265-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER

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