

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

EMMANUEL VILLAGE RESIDENCE INC.

Applicant

- and -

ATTORNEY GENERAL OF ONTARIO

Applicant

- and -

1250 WEBER STREET EAST, KITCHENER, ONTARIO OR THE PROCEEDS OF THE
SALE THEREOF (IN REM)

Respondent

**FACTUM OF EMMANUEL VILLAGE RESIDENCE INC.
(Motion Returnable September 6, 2016)**

September 1, 2016

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FACTUM OF EMMANUEL VILLAGE RESIDENCE INC.

PART I - OVERVIEW

1. This motion was originally brought as a single motion for (i) an approval and vesting order; and (ii) ancillary relief, including approving the Receiver's fees and activities and an increase to the Administration Charge, as defined in the order of Justice Penny, dated June 27, 2016 (the "**Appointment Order**"), returnable on August 31, 2016.
2. As a result of scheduling issues, the parties attended a 9:30 a.m. appointment before Justice Hainey on August 23, 2016 where motion was bifurcated such that the approval and vesting order

and the ancillary relief related to the Receiver's fees and activities was granted on August 26, 2016.¹ The remainder of the motion, namely the increase to the Administration Charge and a priority Brokerage Charge, is the subject of this appearance.

3. The increase in the Administration Charge is necessary and appropriate given the additional complications that have arisen in this proceeding, including the steps that the Professional Group (as defined in the Appointment Order and in paragraph 23, below) have been required to take due to the parallel application (the "**Forfeiture Application**") commenced by the Attorney General for Ontario ("**AGO**"), a non-commercial party. The interplay between the receivership and the Forfeiture Application have required additional court appearances, interim steps that were not anticipated at the commencement of the receivership application, and extensive discussions with a non-commercial party that is not easily able to obtain instructions or compromise on commercially reasonable issues. These complications are on top of the numerous issues and competing parties that have been raised in the receivership itself, including unanticipated complications in the negotiations of the Purchase and Sale Agreement ("**PSA**"), such as the necessity for the appointment of representative counsel.

4. As a result of these complications, the Professional Group has incurred fees and disbursements that exceed what was originally set aside in the Appointment Order to convert the assets of Emmanuel Village Residence Inc. ("**EVR**") into proceeds. As of September 1, 2016 the aggregate expenses and fees of the Professional Group is well in excess of the original amount of the Administration Charge and no payments have been made on these accounts.

¹ Attached as Schedule C, D and E to this factum are copies of the orders and endorsements issued by Justice Hainey on August 26, 2016.

5. The quantum of the increase being sought is fair and reasonable, under the circumstances, and has led to a successful sale transaction that will generate significant sale proceeds for the benefit of all stakeholders. It would be unfair to subordinate the security for the reasonable fees and disbursements of the Professional Group to any unsecured claim, including the interests of the AGO. For many of the same reasons it would be unfair to subordinate the fees due to the broker for its activities leading to a successful sale process that was ultimately approved by the Court.

6. EVR also seeks a sealing order over the transcript and attachments of the cross-examination of Judy Hunking, taken on August 24, 2016 as they related to sensitive banking information (the “**Confidential Information**”). This Confidential Information contains sensitive cash flow information that ought to be protected pending the closing of the sale transaction contemplated by the PSA.

PART II - FACTS

Factual Background

7. EVR is the owner and operator of Emmanuel Village in Kitchener, Ontario. Emmanuel Village is a retirement community that houses between 110 and 130 residents and employs approximately 50 individuals.²

8. EVR was originally incorporated on October 25, 2001 with a view to acquiring lands on which a retirement residence apartment building was being constructed. Construction of Emmanuel Village began in the fall of 2001 and was completed in March, 2003. Bryan Hunking is

² Affidavit of Judith Ann Hunking, sworn August 19, 2016 (“**Hunking Affidavit**”), Motion Record of Emmanuel Village Residence Inc. (“**EVR MR**”), Tab 2, para 3.

the President of EVR and the sole shareholder of 1553748 Ontario Inc., which owns all of the shares of EVR.³

9. Mr. Hunking pleaded guilty to a single count of fraud over \$5,000 on or about April 22, 2015 and is currently being held in custody in respect of that conviction. The fraud was related to a series of investments Mr. Hunking engaged in with three partners. The vast majority of the victims of the fraud are parties to a civil settlement and are represented in these proceedings by Bennett Jones LLP.⁴

10. Largely as a result of Mr. Hunking's conviction, the Retirement Homes Regulatory Authority ("**RHRA**") revoked EVR's license to operate a retirement home ("**License**"). The current effective date for the revocation of EVR's License is October 3, 2016. This required EVR to take steps to sell its business as a going-concern or risk displacing its residents at the expiry of its license.⁵

Procedural Background

11. On or about June 10, 2016, EVR commenced an application to appoint a receiver for the limited purpose of completing a going concern sale of EVR's business and the assets, undertaking and property used in relation to the business, including all proceeds thereof (collectively, the "**Business**") to a purchaser who is licensed to carry on the Business as a retirement home at the Commercial List in Toronto under Court File No.: CV-16-11424-00CL (the "**Receivership Application**"). This resulted in the Appointment Order.⁶

³ Hunking Affidavit, EVR MR Tab 2, para 4.

⁴ Hunking Affidavit, EVR MR Tab 2, para 6.

⁵ Hunking Affidavit, EVR MR Tab 2, para 6.

⁶ Hunking Affidavit, EVR MR Tab 2, paras 5, 9; Appointment Order, EVR MR, Tab 2D.

12. Also on or about June 10, 2016, the Attorney General of Ontario (the “**AGO**”) commenced the Forfeiture Application in Kitchener, Ontario under Court File No.: C-636-16 in respect of the property municipally known as 1250 Weber Street East, Kitchener, Ontario, a portion of which is owned by EVR (the “**EVR Property**”). Pursuant to the Forfeiture Application, the AGO sought and obtained a temporary preservation order under the Civil Remedies Act that placed a “No Dealings” notation on title to the EVR Property on an ex parte basis (the “**Preservation Order**”).⁷

13. Both applications purported to deal with the same piece of property, being the EVR Property, in two different jurisdictions. Parties were required to make appearances in both Kitchener and Toronto to speak to issues involving potential conflicts in orders generated by either Court. To streamline the process, the parties agreed to have the Forfeiture Application transferred to the Commercial List so that the matters may be consolidated and proceed together. This would also avoid the potential for conflicting orders out of different jurisdictions.⁸

14. A further preservation order was issued by Justice Pattillo dated July 27, 2016 after the consolidation of the applications.⁹

The Sale Transaction

15. On or about Friday, August 12, 2016, EVR entered into the PSA with the Purchaser.¹⁰

16. The PSA is the result of a sale process conducted by Sure Mortgage, through its principal owner, Jeffrey Winters. Sure Mortgage assisted EVR in obtaining financing from 2010 and was

⁷ Hunking Affidavit, EVR MR Tab 2, paras 7, 8; Preservation Order, EVR MR, Tab 2A.

⁸ Hunking Affidavit, EVR MR Tab 2, paras 11, 12.

⁹ Hunking Affidavit, EVR MR Tab 2, para 13; Pattillo Order, EVR MR Tab 2H.

¹⁰ Hunking Affidavit, EVR MR Tab 2, para 14.

retained specifically to search for a potential purchaser of EVR in or about March 2016. Sure Mortgage is also a mortgagee of EVR.¹¹

17. A written broker agreement (the “**Broker Agreement**”) was entered into on or about March 3, 2016, in which EVR retained Sure Mortgage for the purpose of arranging the sale of the Business. A term of the Broker Agreement entitles Sure Mortgage to a Sale Transaction Fee as a percentage of the value of all cash, securities or other property paid, and including assumed debts and liabilities, in connection with a sale transaction (the “**Brokerage Fee**”). This type of term is standard in a sale transaction of this type.¹²

18. Conditions of the PSA included obtaining the Approval and Vesting Order, and obtaining representative counsel for a class of elderly residents of the neighbouring townhouses (who are not part of the EVR facility) (the “**EVH Residents**”).

19. Representative Counsel was appointed by the Order of Justice Newbould, dated August 19, 2016, and the Approval and Vesting Order was obtained on August 26, 2016.¹³

The Bifurcated Motion

20. This motion was originally brought as a single motion for (i) an approval and vesting order; and (ii) ancillary relief, including approving the Receiver’s fees and activities and an increase to the Administration Charge, as defined in the Appointment Order, and was originally returnable on August 31, 2016.¹⁴

¹¹ Hunking Affidavit, EVR MR Tab 2, paras 15-18.

¹² Hunking Affidavit, EVR MR Tab 2, para 19.

¹³ Representative Counsel Order, Third report to the Court submitted by BDO Canada Ltd., in its capacity as Receiver of Emmanuel Village Residence Inc., dated August 22, 2016 (“**Third Report**”), Tab M.

¹⁴ Notice of Motion, EVR MR Tab 1; Schedules C, D, and E of this factum.

21. On or about August 19, 2016, the AGO requested that the time for the motion, originally set for 20 minutes, be changed to 2.5 hours. The Court advised the parties that the motion needed to be rescheduled and the parties attended before Justice Hainey on August 23, 2016 to address the scheduling of the motion. At the time, EVR was constrained by the revocation date of its license, set for September 2, 2016. It was only upon the issuing of the Approval and Vesting Order that the RHRA agreed to further extend the effective revocation date of the License.

22. Justice Hainey bifurcated the motion so that the approval and vesting portion and portions relating to the Receiver's fees and activities were set for August 26, 2016 (to meet the RHRA deadline for the revocation of the License), and that the issue of the increase to the Administration Charge be left to September 6, 2016.

The Increase to the Administration Charge

23. The Appointment Order granted the Receiver, counsel to the Receiver (Thornton Grout Finnigan LLP), and counsel to EVR (Madorin, Snyder LLP and DLA Piper (Canada) LLP) (collectively, the "**Professional Group**") the benefit of a priority charge in the aggregate amount of \$350,000.000 as security for their professional fees and disbursements incurred at the standard rates and charges of the Professional Group, both before and after the making of the Appointment Order (the "**Administration Charge**").¹⁵

24. The Administration Charge ranked in priority to all other Encumbrances (as defined in the Appointment Order) up to a maximum of \$200,000, the remainder being subordinate only to the primary secured lender, HMT Holdings Inc.¹⁶

¹⁵ Appointment Order, EVR MR Tab 2D, para 25.

¹⁶ Appointment Order, EVR MR Tab 2D, paras 27, 29.

25. EVR has been unable to pay any of the Professional Group from its free cash-flow and as a result none of the Professional Group have received any payments in respect of this matter.¹⁷

26. The Professional Group have incurred fees and disbursements higher than originally anticipated in the Appointment Order for a number of reasons, including the following:

- a. The complexity of the proceedings, mainly due to the commencement of the Kitchener Application for forfeiture of the same property at issue in the Toronto Application;
- b. The increased time monitoring and responding to the needs of the parties in each of the proceedings, and in particular the AGO as a non-commercial party;
- c. The increased number of steps required to complete the Sale Transaction as a result of the commencement of the Kitchener Application;
- d. The additional time that the Professional Group was required to spend preparing materials and appearing at various motions in these proceedings (including both before and after the proceedings were consolidated);
- e. The additional time spent finalizing the Sale Transaction given the complexity of the transaction; and
- f. The additional time spent dealing with the RHRA in relation to the requests to extend the License.¹⁸

¹⁷ Hunking Affidavit, EVR MR Tab 2, para 28.

¹⁸ Hunking Affidavit, EVR MR Tab 2, para 25.

27. As of today, the aggregate of the fees and expenses of the Professional Group is well in excess of the Administration Charge set out in the Appointment Order. The Receiver has noted the following and is supportive of the increase in the Administration Charge:

The numerous issues and competing parties involved in this receivership have increased the complexity and therefore the cost of the receivership beyond the originally anticipated fees and expenses of the Professional Group as estimated in June. Accordingly, the Receiver requests that the [Administration] Charge be increased to \$700,000 to account for the increased fees and the additional anticipated fees and expenses to the closing of the sale contemplated by the APA.¹⁹

Cross Examination of Judy Hunking

28. On August 24, 2016, Judy Hunking was cross examined by the AGO on her affidavit sworn August 19, 2016. The examination related to questions about EVR's bank statements and other Confidential Information. This Confidential Information contains sensitive commercial information that is in the best interest of EVR and its stakeholders to be sealed by the Court. It could provide an unfair strategic advantage to parties or impact the future sale of EVR if it is made part of public record before the Transaction closes. The Confidential Information was provided to the AGO on the basis that the Confidential Information would not be disclosed to any third parties and EVR now seeks a sealing order to maintain this confidentiality.

PART III - ISSUES

29. The two main issues before this Court are:

- a. whether the Administration Charge should be increased to ensure that the Professional Group are paid their reasonable fees and disbursements for their

¹⁹ Third Report, section 3.5.

respective work throughout these proceedings, and their anticipated work to the conclusion of these proceedings; and

- b. whether Sure Mortgage Capital Inc. (“**Sure Mortgage**”) should be paid its agreed-upon fees for conducting the sale process that led to the Court-approved sale transaction.

30. These issues can be broken down into the following components:

- a. Whether the increase to the administration charge is appropriate, under the circumstances;
- b. Whether the fees and disbursements incurred in the course of the receivership are limited by the *Civil Remedies Act* (“**CRA**”);
- c. Whether it is in the interests of justice to require the Professional Group to subordinate their fees and disbursements accrued in generating sale proceeds; and
- d. Whether it is in the interests of justice to require Sure Mortgage to subordinate its brokerage fees incurred in conducting a successful sale process.

31. The AG has also submitted transcripts and exhibits to the cross-examination of Judy Hunking, taken on August 24, 2016 that EVR considers sensitive business information and will

PART IV - LAW AND ARGUMENT

The Increase to the Administration Charge is Appropriate

32. While the increase to the Administration Charge is not being made under subsection 64.2 of the *Bankruptcy and Insolvency Act* (the “**BIA**”), the factors used to assess administrative charges in the BIA are instructive in this case.²⁰

33. The Courts will consider several factors in assessing an administration charge and whether the quantum is appropriate, including the following:

- a. the size and complexity of the business being restructured;
- b. the proposed role of the beneficiaries of the charge;
- c. whether there is unwarranted duplication of roles;
- d. whether the quantum of the proposed charge appears to be fair and reasonable; and
- e. the position of the secured creditors likely to be affected by the charge.²¹

34. *The size and complexity of the business being restructured* - EVR operates a licensed retirement home that involves numerous stakeholders that are wholly unconnected with the alleged proceeds of unlawful activity raised by the AGO. This has increased the complexity of the proceedings above and beyond the sale transaction of a regulated business to include issues surrounding the continued operations of the business and post-closing requirements.

²⁰ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 64.2

²¹ *Comstock Canada Ltd, Re*, 2013 ONSC 4756 at paras 46-48; *Colossus Minerals Inc. Re*, 2014 ONSC 514 at paras 11-15.

35. *The proposed role of the beneficiaries of the charge* - the Professional Group has provided and continues to provide essential legal and financial advice throughout these proceedings to ensure the completion of the sale transaction. It is unlikely that any qualified advisor or law firm would assume the roles fulfilled by the Professional Group absent the increase to the priority administration charge being sought on this motion.

36. *Whether there is unwarranted duplication of roles* - There is no unwarranted duplication of roles. Madorin, Snyder LLP is local, Kitchener-based corporate counsel to EVR and have been primarily involved in dealing with transactional issues throughout the sales process, including reviewing and responding to letters of intent, engaging in negotiations related to the PSA, overseeing due diligence by the Purchaser, and addressing RHRA license extension issues. DLA Piper (Canada) LLP has primarily been involved in the receivership application, the approval of the sale and litigation issues flowing from these proceedings.

37. *Whether the quantum of the proposed charge appears to be fair and reasonable* - given the size of the transaction, the quantum of the proposed increase to the Administration Charge is fair and reasonable. No objection has been raised about the passing of the Receiver's accounts and their counsel's accounts or the quantum of fees and disbursements that they have incurred to date.

38. *The position of the secured creditors likely to be affected by the charge* - We understand that the secured creditors likely to be affected by the charge do not take any position on the proposed increase to the Administration Charge.

39. The quantum of this charge increase is appropriate, taking into consideration the nature and scope of the services to be provided, the inability of EVR to fund professional charges from free cash-flow, the complexity of these proceedings, including the interplay of the receivership and the

civil forfeiture applications, and the expected duration of the period that the Administration Charge will cover. This will also allow EVR to more easily and predictably manage its cash-flow to the closing date, which is set for October 3, 2016.

The Fees and Disbursements of the Professional Group Relate to the Receivership, not the Forfeiture Application and are Not Subject to the CRA Limitations

40. The fees and disbursements that the Professional Group seek to protect under the increased Administration Charge are related to fees and expenses incurred in the course of the receivership. These include the fees and disbursements of the Receiver and its counsel, who passed their accounts without objection, at their regular hourly rates, on August 26, 2016. The Professional Group, as a whole, now seek an increase to that charge which will necessarily cover some of these already-approved activities and the activities of the Professional Group through the closing of the transaction.

41. While the CRA imposes limits related to legal expenses that may be claimed in a forfeiture proceeding, those limits are related to claims made against property in the forfeiture application, and not the process that is necessary to convert the assets of EVR into sale proceeds that will then be held by the Receiver for the benefit of the forfeiture application. To hold otherwise would have a chilling effect on attracting and retaining skilled court-appointed receivers and counsel to act on receivership or other insolvency matters that may intersect with civil forfeiture proceedings, to the detriment of stakeholders.

It is not in the Interests of Justice to Require the Professional Group to Subordinate Their Fees and Disbursements Accrued in Generating Sale Proceeds

42. This Court has the discretion to order that preservation of the property be varied to permit the increase in the Administration Charge in the interests of justice.²²

43. The purpose of the CRA is set out at section 1.²³

1. The purpose of this Act is to provide civil remedies that will assist in,

(a) compensating persons who suffer pecuniary or non-pecuniary losses as a result of unlawful activities;

(b) preventing persons who engage in unlawful activities and others from keeping property that was acquired as a result of unlawful activities;

(c) preventing property, including vehicles as defined in Part III.1, from being used to engage in certain unlawful activities; and

(d) preventing injury to the public that may result from conspiracies to engage in unlawful activities.

44. The Supreme Court of Canada, in *Ontario (Attorney General) v Chatterjee*, held that the dominant purpose of the CRA “is to make crime in general unprofitable, to capture resources tainted by crime so as to make them unavailable to fund future crime and to help compensate private individuals and public institutions for the costs of past crime.”²⁴

45. These purposes are achieved when the Crown takes steps to seize currency obtained from the sale of illegal weapons or drugs, or the seizure of personal property used in the course of committing crimes, such as weapons or vehicles, or the seizure of real property that is used as an

²² CRA, s. 4(1)8; CJA, ss. 98, 101(2).

²³ CRA, s. 1.

²⁴ *Ontario (Attorney General) v Chatterjee*, 2009 SCC 19.

instrument of illegal activity, such as clubhouses used to conduct gang activity, or residential properties used to grow or consume illicit substances.

46. It is less clear that these purposes are achieved when the Crown claims an entitlement to preserve the gross proceeds of a sale transaction overseen by a court-appointed receiver, without regard to creditors or other stakeholders, including the professionals who are instrumental in converting assets into available sale proceeds.

47. In forfeiture proceedings, the Court is limited in its ability to make an order forfeiting property “except where it would clearly not be in the interests of justice”. This provision does not purport to limit the Court’s ability to make a determination that property should pre-emptively be excluded as part of a forfeiture order.²⁵

48. The Court of Appeal has recognized the similarity and overlap between s. 3(1) of the CRA and s. 98 of the, which allows the Court to grant relief from forfeiture on such terms as considered just. “[A] forfeiture order made in circumstances where any reasonable person would regard the order as excessive, while perhaps serving the purposes of the CRA in the narrow sense, would do a real disservice to the administration of justice and thereby undermine rather than promote the ‘interests of justice’.”²⁶

49. To deny the Professional Group their reasonable fees and disbursements on the basis that they ought to be subordinate to the un-enumerated claim of an as-yet undefined victim class who will, if and when identified, benefit from the services provided by the Professional Group, does not serve the interests of justice.

²⁵ CRA, s. 3(1).

²⁶ *Ontario (Attorney General) v McDougall*, 2011 ONCA 363, para 93, 96; CJA, s 98.

It is not in the Interests of Justice to Require Sure Mortgage to Subordinate its Brokerage Fees incurred in Conducting a Successful Sale Process

50. For the reasons stated above, it would be similarly unfair to subordinate the brokerage fees of Sure Mortgage that it is entitled to on closing of the successful, and court-approved sale transaction. The activities of Sure Mortgage were instrumental in identifying the Purchaser and successfully completing a sale process that this Court approved on August 26, 2016.

EVRs Bank Records Should be Sealed

51. EVR is seeking an order sealing the transcript of the cross-examination of Judy Hunking, conducted on August 24, 2016 along with the attached exhibits and answers to undertakings.

52. Section 137(2) of the CJA provides this Court with the statutory authority to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.²⁷

53. In *Sierra Club of Canada v Canada (Minister of Finance)*, the Supreme Court of Canada interpreted the sealing provisions of the Federal Court Rules and adopted the following test to determine when a sealing order should be made:²⁸

A confidentiality order under Rule 151 should only be granted when:

- (a) Such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
- (b) The salutary effects of the confidentiality order, including the effects on the rights of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to

²⁷ CJA, s. 137(2)

²⁸

free expression, which, in this context, includes the public interest in open and accessible court proceedings.

54. The Confidential Information contains sensitive commercial information that is in the best interest of EVR and its stakeholders to be sealed by the Court. The Receiver supports EVR's request to maintain the confidentiality of the Confidential Information.

55. Keeping this information confidential will not have any deleterious effects on any parties with an interest in these proceedings. Further, the salutary effects of keeping the Confidential Information confidential outweigh any conceivable deleterious effects of sealing the Confidential Information because there is a risk that if the sale transaction contemplated by the PSA does not close, it will place EVR in a strategic disadvantage if it is required to undergo a further sales process.

PART V - ORDER REQUESTED

56. As a result of the foregoing, EVR respectfully requests that the Court grant an order:
- a. increasing the Administration Fee to an aggregate of \$700,000 by varying subparagraph 29(b) of the Appointment Order, increasing the amount from \$150,000 to \$500,000;
 - b. approving a priority charge for the fees of Sure Mortgage in the aggregate amount equal to the brokerage fee, as set out in the Brokerage Agreement, due to Sure Mortgage; and
 - c. sealing the Confidential Information pending the closing of the sale transaction contemplated by the PSA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of September, 2016.

Jennifer A. Whincup

September 1, 2016

DLA PIPER (CANADA) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 6000
P.O. Box 367
Toronto ON M5X 1E2

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Lawyers for Emmanuel Village Residence Inc.

SCHEDULE “A”

List Of Authorities

1. *Comstock Canada Ltd, Re*, 2013 ONSC 4756
2. *Colossus Minerals Inc. Re*, 2014 ONSC 514
3. *Ontario (Attorney General) v Chatterjee*, 2009 SCC 19
4. *Ontario (Attorney General) v McDougall*, 2011 ONCA 363
5. *Sierra Club of Canada v Canada (Minister of Finance)* 2002 SCC 41 (CL Book of Authorities)

SCHEDULE “B”

Text Of Statutes, Regulations & By - Laws

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3

Court may order security or charge to cover certain costs

64.2 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

- (a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee’s duties;
- (b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

Civil Remedies Act, 2001, S.O. 2001, c. 28

Purpose

1. The purpose of this Act is to provide civil remedies that will assist in,

- (a) compensating persons who suffer pecuniary or non-pecuniary losses as a result of unlawful activities;
- (b) preventing persons who engage in unlawful activities and others from keeping property that was acquired as a result of unlawful activities;
- (c) preventing property, including vehicles as defined in Part III.1, from being used to engage in certain unlawful activities; and
- (d) preventing injury to the public that may result from conspiracies to engage in unlawful activities.

Forfeiture order

3. (1) In a proceeding commenced by the Attorney General, the Superior Court of Justice shall, subject to subsection (3) and except where it would clearly not be in the interests of justice, make an order forfeiting property that is in Ontario to the Crown in right of Ontario if the court finds that the property is proceeds of unlawful activity.

Interlocutory order for preservation, management or disposition of property

4. (1) On motion by the Attorney General in a proceeding or intended proceeding under section 3, the Superior Court of Justice may make any or all of the following interlocutory orders for the preservation, management or disposition of any property that is the subject of the proceeding:

1. An order restraining the disposition or encumbrance of the property or its use as collateral under the Personal Property Security Act or otherwise.
2. An order for the possession, delivery or safekeeping of the property.
3. An order appointing a receiver or receiver and manager for the property.
4. An order for the sale or other disposition of the property if it is perishable or of a rapidly depreciating nature.
 - 4.1 An order that any proceeds of sale or other disposition of the property be paid into court pending the conclusion of a proceeding under section 3.
5. An order to sever or partition any interest in the property or to require any interest in the property to be sold or otherwise disposed of, and for all or part of the proceeds of the severance, partition, sale or other disposition to be paid to the Crown in right of Ontario as compensation for its costs incurred in preserving, managing or disposing of the property and in enforcing or complying with any other order made under this subsection in respect of the property.
6. An order giving the Crown in right of Ontario a lien for an amount fixed by the court on the property or on other property specified in the order to secure performance of an obligation imposed by another order made under this subsection.
7. An order that notice of the proceeding or of any order made under this subsection be registered in a land registry office against the property or any other property specified in the order.
8. Any other order for the preservation, management or disposition of the property that the court considers just.

(2) Except where it would clearly not be in the interests of justice, the court shall make an order under subsection (1) if the court is satisfied that there are reasonable grounds to believe that the property is proceeds of unlawful activity.

Courts of Justice Act, R.S.O. 1990, c. C.43

Relief against penalties

98. A court may grant relief against penalties and forfeitures, on such terms as to compensation or otherwise as are considered just.

Injunctions and receivers

101. (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

(2) An order under subsection (1) may include such terms as are considered just.

Sealing documents

137. (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

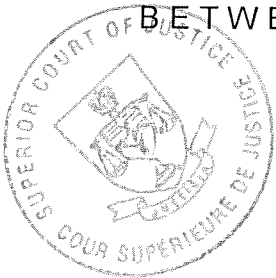
ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
JUSTICE HAINEY

)
)
)

FRIDAY, THE 26th
DAY OF AUGUST, 2016

BETWEEN:



EMMANUEL VILLAGE RESIDENCE INC.

Applicant

- and -

ATTORNEY GENERAL OF ONTARIO

Applicant

- and -

**1250 WEBER STREET EAST, KITCHENER, ONTARIO OR THE PROCEEDS OF THE
SALE THEREOF (IN REM)**

Respondent

**APPROVAL AND VESTING ORDER
(Sale to Revera Inc.)**

THIS MOTION, made by Emmanuel Village Residence Inc. (the "**Company**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Company and Revera Inc. (the "**Purchaser**") dated August 12, 2016, and vesting in the Purchaser all of the Company's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Judith Ann Hunking, sworn August 19, 2016 (the "**Hunking Affidavit**") and the third report of BDO Canada Limited, in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of the Company, dated August 19, 2016 (the "**Report**"), and the confidential supplement to the Report, and on hearing the submissions of counsel for the Company, the Receiver, the Purchaser, HMT Holdings Inc., Sure Mortgage Capital Inc., Plaintiffs in Court File No. CV-10-8597-00CL, the Retirement Homes Regulatory Authority, and the Attorney General of Ontario ("**AGO**"), no one appearing for any other person on the service list, although properly served as appears from the affidavit of Jennifer Whincup sworn August 23, 2016 filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Company is hereby authorized and approved, with such minor amendments as the Company may deem necessary, with the approval of the Receiver. The Company and the Receiver are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
2. **THIS COURT ORDERS AND DECLARES** that, upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement (including without limitation the real property identified in Schedule B hereto) shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Penny dated June 24, 2016; (ii) any encumbrances, charges, restrictions or rights in favour of the AGO either under the Order of the Honourable Justice Sloan dated June 16, 2016 in Superior Court of Justice File No. C-

636-16 (as amended by Order of Justice D.A. Broad dated June 23, 2016, as amended and extended by Order of the Honourable Justice Hainey dated July 15, 2016, as transferred to the Commercial List by Order of the Honourable Justice Newbould dated July 22, 2016 and as consolidated into these proceedings by Order of the Honourable Justice Conway dated July 22, 2016) or under the Order of the Honourable Justice Pattillo dated July 27, 2016 in these proceedings; (iii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system, including without limitation those items referenced in Schedule E hereto; (iv) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D); and (v) any and all rights which any owner of a lifelease at Emmanuel Village Homes Inc. may have to receive any services or amenities from the Company, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that, upon the registration in Land Titles Division of Waterloo (No. 58) of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar for the Land Titles Division of Waterloo (No. 58) is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

4. **THIS COURT ORDERS** that the registration of this Order on title to the Real Property is not prohibited by any of the previously registered "no dealings" indicators or other restrictions, including without limitation those in any of Instrument No. WR959399, Instrument No. WR961087, Instrument No. WR966314, Instrument No. WR967194 or Instrument No. WR970673, each of which instruments is listed in Schedule C hereto.

5. **THIS COURT ORDERS** that, for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the

Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Company is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Company's past and current employees, including personal information of those employees listed on Schedule "9.1" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Company.

8. **THIS COURT ORDERS** that, notwithstanding:

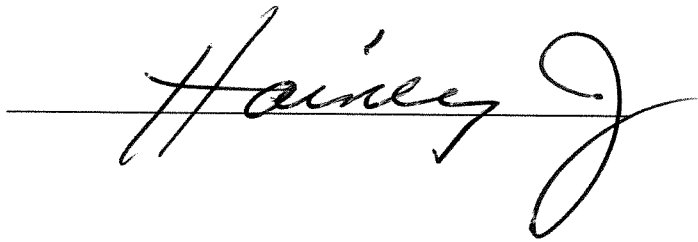
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Company and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Company;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Company and shall not be void or voidable by creditors of the Company, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer

at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

10. **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 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.

A handwritten signature in cursive script, reading "Hainey J.", written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

AUG 26 2016

PER / PAR:

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Schedule A – Form of Receiver’s Certificate

Court File No. CV-16-11424-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

EMMANUEL VILLAGE RESIDENCE INC.

Applicant

- and -

EMMANUEL VILLAGE RESIDENCE INC.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice (the "**Court**") dated June 24, 2014, BDO Canada Limited was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Emmanuel Village Residence Inc. (the "**Company**").

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "**Sale Agreement**") between the Company and Revera Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Company’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section • of the Sale Agreement have been satisfied

or waived by the Company and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section • of the Sale Agreement have been satisfied or waived by the Company and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**BDO CANADA LIMITED, in its capacity as
Receiver of the undertaking, property
and assets of Emmanuel Village
Residence Inc., and not in its personal
capacity**

Per: _____

Name:

Title:

Schedule B – Real Property Legal Description

Municipal Description: 1250 Weber Street East, Kitchener, Ontario

Legal Description: LT 75-81 PL 322 TWP OF WATERLOO; PT LT 38-43, 51-56, 74, 82-85 PL 322 TWP OF WATERLOO; PT LT 2 PL 963 KITCHENER, PT LT 141 STREETS AND LANES KITCHENER; PT LT 142 STREETS & LANES KITCHENER (FORMERLY PT HERMAN AV & PT AUBURN AV PL 322, CLOSED BY 210008) PT 1, 2, 3, 4, 5, 6, 7, 58R13759; S/T & T/W 1566343; S/T 1404828, 1559347, 1563157; KITCHENER

PIN: 22565-0352 (LT)

Schedule C – Claims to be deleted and expunged from title to Real Property

1. Instrument No. WR608571, registered April 15, 2011 being an Application for Court Order;
2. Instrument No. WR608873, registered April 18, 2011 being an Application for Court Order;
3. Instrument No. WR821198, registered June 12, 2014 being a charge in favour of HMT Holdings Inc.;
4. Instrument No. WR821199, registered June 12, 2014 being a notice of assignment of rents – general in favour of HMT Holdings Inc.;
5. Instrument No. WR821246, registered June 12, 2014 being a charge in favour of Sure Mortgage Capital Inc.;
6. Instrument No. WR821247, registered June 12, 2014 being a notice of assignment of rents – general in favour of Sure Mortgage Capital Inc.;
7. Instrument No. WR938102, registered February 25, 2016 being notice of terms amending the charge registered as Instrument No. WR821198;
8. Instrument No. WR959399, registered June 16, 2016 being an Application for Restrictions Based on Court Order;
9. Instrument No. WR961087, registered June 24, 2016 being an Application for Restrictions Based on Court Order;
10. Instrument No. WR966314, registered July 15, 2016 being an Application for Restrictions Based on Court Order;
11. Instrument No. WR967194, registered July 20, 2016 being an Application for Court Order; and
12. Instrument No. WR970673, registered August 3, 2016 being an Application for Restrictions Based on Court Order.

**Schedule D – Permitted Encumbrances, Easements and Restrictive
Covenants
related to the Real Property (unaffected by the Vesting Order)**

Schedule E – Personal Property Security Act (Ontario) Registrations to be vested out

	Secured Party(ies)	Debtor(s)	Reference File No. & Registration Number (Registration Period)	Collateral Classification	Amendments/Assignments Discharges/Renewals Transfers/Subordinations
1.	Sure Mortgage Capital Inc.	Emmanuel Village Residence Inc.	697063815 – 20140612 1336 2067 1330 (5 years)	Inventory, Equipment, Accounts, Other	
2.	HMT Holdings Inc. in Trust	Emmanuel Village Residence Inc.	696941451 – 20140609 1503 1590 3885 (3 years)	Inventory, Equipment, Accounts, Other, Motor Vehicles	<u>Renewed by 20160212 1049 1590 3257</u> 1 year
3.	Bank of Nova Scotia – Ontario CAU	Emmanuel Village Residence Inc	679485213 – 20120626 1705 1219 2809 (5 years)	Other, Motor Vehicles, Amount Secured: \$24,444, 2012 Dodge Grand Caravan, VIN listed	

6600699

EMMANUEL - and ATTORNEY - and 1250 WEBER STREET EAST, KITCHENER, Court File No. CV-16-11424-
VILLAGE - GENERAL OF - ONTARIO OR THE PROCEEDS OF THE 00CL
RESIDENCE INC. ONTARIO SALE THEREOF (IN REM)

Applicant

Applicant

Respondent

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER
(Sale to Revera Inc.)**

DLA PIPER (CANADA) LLP
Barristers & Solicitors
1 First Canadain Place
100 King Street West, Suite 6000
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Lawyers for the Emmanuel Village Residence
Inc.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

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FRIDAY, THE 26th

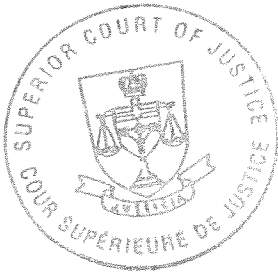
JUSTICE HAINEY

)

DAY OF AUGUST, 2016

)

BETWEEN:



EMMANUEL VILLAGE RESIDENCE INC.

Applicant

- and -

ATTORNEY GENERAL OF ONTARIO

Applicant

- and -

**1250 WEBER STREET EAST, KITCHENER, ONTARIO OR THE PROCEEDS OF THE
SALE THEREOF (IN REM)**

Respondent

ANCILLARY ORDER

THIS MOTION made by Emmanuel Village Residence Inc. ("**EVR**") for an order:

- a. if necessary, abridging the time for service and filing of this notice of motion and the motion record and dispensing with further service thereof;
- b. approving the second report of BDO Canada Limited, in its capacity as court-appointed receiver of EVR ("**Receiver**"), dated August 18, 2016 (the

"**Second Report**"), filed, and the conduct and activities of the Receiver described therein;

- c. approving the third report of the Receiver (the "**Third Report**") and the confidential supplement to the Third Report (the "**Confidential Report**"), filed, and the conduct and activities of the Receiver described therein;
- d. sealing the Confidential Report with the Court; and
- e. approving the professional fees and disbursements of the Receiver and its counsel, Thornton Grout Finnigan LLP ("**TGF**") as set out in the Third Report;

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Judith Ann Hunking, sworn August 19, 2016, the Third Report and the Confidential Report, and on hearing the submissions of counsel for the Company, the Receiver, the Purchaser, HMT Holdings Inc., Sure Mortgage Capital Inc., Plaintiffs in Court File No. CV-10-8597-00CL, the Retirement Homes Regulatory Authority, and the Attorney General of Ontario ("**AGO**"), no one appearing for any other person on the service list, although properly served as appears from the affidavit of Jennifer Whincup sworn August 23, 2016 filed,

SERVICE

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

APPROVAL OF RECEIVERS REPORTS

2. **THIS COURT ORDERS** that ~~the activities of the Receiver, as set out in the Second Report, Third Report and Confidential Report,~~ are hereby approved.



and the conduct and activities of the Receiver described therein,

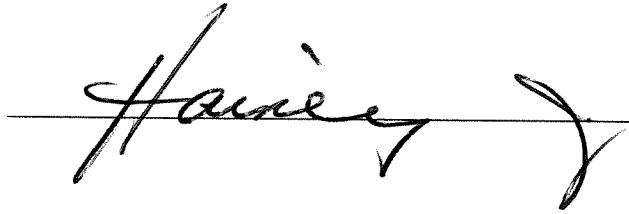
APPROVAL OF FEES

3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver, in the amount of \$47,426.62 for the period of June 24, 2016 to August 12, 2016 as se set out in the Third Report and the Affidavit of Michael J. Hanson, sworn August 22, 2016, are hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's counsel, Thornton Grout Finnigan LLP, in the amount of ~~\$10,000.05~~^{86,974.04} for the period of May 1, 2016 to August 12, 2016 as se set out in the Third Report and the Affidavit of Asim Iqbal, sworn August 22, 2016, are hereby approved. *gt*

SEALING OF CONFIDENTIAL REPORT

5. **THIS COURT ORDERS** the sealing of the Confidential Report with the Court from the public record until further order of this Honourable Court.



ENTERED AT INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

AUG 26 2016

PER / PAR: *gt*

EMMANUEL - and ATTORNEY - and 1250 WEBER STREET EAST, KITCHENER, Court File No. CV-16-11424-
VILLAGE - GENERAL OF - ONTARIO OR THE PROCEEDS OF THE 00CL
RESIDENCE INC. ONTARIO SALE THEREOF (IN REM)

Applicant

Applicant

Respondent

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ANCILLARY ORDER

DLA PIPER (CANADA) LLP

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Fax: 416.369.5240

Lawyers for the Emmanuel Village Residence
Inc.

August 26, 2016

I am satisfied that the attached orders should issue. Attached is my endorsement as well as my summary of the AG's position.

There shall be a sealing order with respect to the recent Confidential Report.

Hainey J.

ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

Proceeding commenced at Toronto

MOTION RECORD OF EMMANUEL VILLAGE RESIDENCE INC.

DLA PIPER (CANADA) LLP Barristers & Solicitors 1 First Canadian Place 100 King Street West, Suite 6000 P.O. Box 367 Toronto ON M5X 1E2

Bruce Darlington (LSUC# 25310K) bruce.darlington@dlapiper.com Tel: 416-365-3529 Fax: 416-369-5210

Jennifer A. Whincup (LSUC# 60326W) jennifer.whincup@dlapiper.com Tel: 416-365-3425 Fax: 416-369-5240

Lawyers for Emmanuel Village Residence Inc.

Representative Counsel, Ed D'Agostino, attended this ^{on} motion and made submissions regarding both the impact on the EVH Residents of their ancillary rights and the impact of the transaction on the EVH Residents' own properties.

The ancillary rights are not a basis to ~~oppose~~ ^{not approve} the transaction. Any possible impact on the EVH Residents' own properties is also not a basis to not approve the transaction and is instead something that ^{is more properly} may be approved by pursued ~~against~~ the proceeds of the sale of the transaction, as contemplated by the Approval & Vesting Order.

I appreciate the opt-out provisions of the Representative Counsel Order, dated August 19, 2016, set a later deadline for the EVH Residents to opt-out of representation by Mr. D'Agostino. Given the necessity of making the approval and vesting order, and having heard submissions from representative counsel, I am ~~not~~ nevertheless satisfied that the order should be granted.

the AGO takes no position on this motion for approval of the proposed sales transaction for the following reasons:

- (1) Because EVR's Licence order lapses on Sept 2, 2010, if the proposed sales transaction is not approved ~~by~~ on or before August 31st [2010], there is a very strong likelihood the proposed sales transaction will collapse ~~this will have a~~
- (2) the impact of this sale not occurring will have a negative effect on the residents of EVR, because without an operating licence, EVR cannot legally operate Emmanuel Village Residence Inc.
- (3) Attempting to sell EVR without an operating licence will very likely result in the significant~~ly~~ reduction of its value.
- (4) The Court appointed Receiver approves of this proposed sales transaction and the AG is not aware of any reason to challenge the Receiver's approval.

while the AGO does not oppose this motion for approval, it cannot consent to it for the following reasons:

(1) Given the timelines between when the AG was provided with the Receiver's third report (Aug 22, 2016) recommending the approval of the sale and the deadline of Sept 2, 2016, when EVR's licence to operate the retirement home will lapse the AG's ability to conduct an independent assessment of the value of EVR's assets and its operations has been rendered impossible.

(2) Further, compounding this problem, the AG has not been provided access to the confidential Supplement to the third report, which may have contained information that would allow the AG to formulate a more informed position on the sale ~~transaction~~ process and the sale transaction.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

EMMANUEL VILLAGE RESIDENCE INC.

Applicant

- and -

ATTORNEY GENERAL OF ONTARIO

Applicant

- and -

1250 WEBER STREET EAST, KITCHENER, ONTARIO OR THE PROCEEDS OF THE
SALE THEREOF (IN REM)

Respondent

**Endorsement of Justice Hainey
(August 26, 2016)**

I am satisfied that the attached order should issue. Attached is my endorsement agreed to by counsel and a summary of the AG's position.

There shall be a sealing order with respect to the Receiver's confidential Report.

Haine, J.

Representative counsel, Ed D'Agostino, attended on this motion and made submissions regarding both the impact on the EVH Residents of their ancillary rights and the impact of the transaction on the EBH Residents' own properties.

The ancillary rights are not a basis to not approve the transaction. Any possible impact on the EVH Residents' own properties is also not a basis to not approve the transaction and is instead something that is more properly pursued against the proceeds of the sale of the transaction, as contemplated by the Approval & Vesting Order.

I appreciate the opt-out provisions of the Representative Counsel Order, dated August 19, 2016, set a later deadline for the EVH Residents to opt-out of representation by Mr. D'Agostino. Given the necessity of making the approval and vesting order, and having heard submissions from representative counsel, I am nevertheless satisfied that the order should be granted.

Schedule A - The AGO's Position

The AGO takes no position on this motion for approval of the proposed sales transaction for the following reasons:

1. Because EVR's Licence order lapses on September 2, 2016, if the proposed sales transaction is not approved on or before August 31st [2016], there is a very strong likelihood the proposed sales transaction will collapse.
2. The impact of this sale not occurring will have a negative effect on the residents of EVR, because without an operating licence, EVR cannot legally operate Emmanuel Village Residence Inc.
3. Attempting to sell EVR without an operating licence will very likely result in the significant reduction of its value.
4. The court appointed Receiver approves of this proposed sale transaction and the AG is not aware of any reason to challenge the Receiver's approval.

While the AGO does not oppose this motion for approval, it cannot consent to it for the following reasons:

1. Given the timeline between when the AG was provided with the Receiver's third report (Aug 22, 2016) recommending the approval of the sale and the deadline of Sept 2, 2016, when EVR's licence to operate the retirement home will lapse the AG's ability to conduct an independent assessment of the value of EVR's assets and its operations has been rendered impossible.
2. Further, compounding this problem, the AG has not been provided access to the confidential supplement to the third report which may have contained information that would allow the AG to formulate a more informed position on the sale process and the sale transaction.

EMMANUEL VILLAGE
RESIDENCE INC.

and

ATTORNEY GENERAL OF
ONTARIO and

EMMANUEL VILLAGE RESIDENCE INC.

Court File No: CV-16-11424-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FACTUM
(Motion Returnable September 6, 2016)**

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