

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF THE LIQUIDATION AND WINDING-UP OF
OXFORD GOLF AND COUNTRY CLUB, LIMITED

APPLICATION UNDER SECTION 244 OF THE
CORPORATIONS ACT, R.S.O. 1990, c. C.38

FACTUM OF THE APPLICANT

LERNERS LLP
130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Domenico Magisano LS#: 45725E
dmagisano@lerners.ca
Tel: 416.601.4121
Fax: 416.601.4123

Alan Melamud LS#: 58370F
amelamud@lerners.ca
Tel: 416.601.4128
Fax: 416.601.2748

Lawyers for the Applicant

PART I - INTRODUCTION

1. Oxford Golf and Country Club, Limited (the “**Corporation**”) brings this application pursuant to section 244 of the *Corporations Act* (the “**Act**”) for an order winding-up the Corporation and appointing BDO Canada Limited as the liquidator (the “**Liquidator**”).¹

2. The Corporation sold all of its assets in March 2017 and expects to have surplus funds remaining after paying its secured and unsecured creditors. The Corporation wishes to be wound-up and to distribute the surplus funds to its shareholders.

PART II - THE FACTS

A. Background

3. The Corporation was incorporated as a not-for-profit social club with share capital on June 21, 1909 by Letters Patent.² Its sole business was the ownership and operation of the Craigowan Golf Club (the “**Business**”), a semi-private golf club located near Woodstock, Ontario.³

4. The Corporation was operated by a volunteer board of directors (the “**Directors**”).⁴

B. Sale of the Business

5. In 2016, the Corporation faced financial difficulties, and it was determined that the Corporation should solicit offers for the sale of the Business and the land on which the golf club was situate (the “**Property**”).⁵

¹ R.S.O. 1990, c. C. 38, s. 244. [*Corporations Act*]

² Affidavit of David Balfour, sworn February 6, 2018 [**Balfour Affidavit**], Application Record [AR], Tab 2, para. 3; Letters Patent, Exhibit “A” to the Balfour Affidavit, AR, Tab 2A.

³ Balfour Affidavit, *ibid.*, para. 4.

⁴ *Ibid.*, para. 5.

⁵ *Ibid.*, para. 7.

6. By special resolution of the shareholders dated March 8, 2017, the shareholders authorized the Directors to accept an offer to purchase the Business and the Property from LH Group Golf Inc. (“**LGG**”).⁶

7. By Asset Purchase Agreement, dated March 23, 2017 (the “**APA**”), the Corporation sold substantially all of its assets (including the Property) to Cardinal Golf Group (Craigowan) Inc. (the “**Purchaser**”), the permitted assignee of LGG.⁷

8. The transaction under the APA closed on March 23, 2017 and proceeds of the sale were used to pay the Corporation’s secured and known unsecured creditors.⁸

C. The Corporation Has No Ongoing Business

9. Following the sale of the Business and the Property, the Corporation ceased carrying on any active business.⁹ A surplus of funds, however, did remain following the payment of the Corporation’s known creditors.¹⁰ The Corporation may also be entitled to certain tax credits, which would provide additional funds (collectively, the “**Surplus Funds**”).¹¹

10. The APA contained an indemnity provision in favour of the Purchaser as to specific types of claims identified therein.¹² The indemnity expires on March 23, 2018.¹³ To the best of the Directors’ knowledge, a claim under this indemnity is the only contingent claim against the Corporation.¹⁴

⁶ *Ibid.*, para. 8; Shareholders’ Special Resolution, dated March 8, 2017, Exhibit “B” to the Balfour Affidavit, AR, Tab 2B.

⁷ Balfour Affidavit, *ibid.*, para. 9; Asset Purchase Agreement, dated March 23, 2017, Exhibit “C” to the Balfour Affidavit, AR, Tab 2C. [**APA**]

⁸ Balfour Affidavit, *ibid.*, para. 10.

⁹ *Ibid.*, para. 12.

¹⁰ *Ibid.*, para. 11.

¹¹ *Ibid.*

¹² *Ibid.*, para. 13; APA, *supra* note 7, AR, Tab 2C, Section 4.1.

¹³ Balfour Affidavit, *ibid.*; APA, *ibid.*, AR, Tab 2C, Sections 3.2, 4.1.

¹⁴ Balfour Affidavit, *ibid.*

11. Accordingly, it was determined that subject to the indemnity, the Corporation should be wound-up and the remaining proceeds from the sale paid out to the Corporation's shareholders.¹⁵

12. The only remaining known obligations of the Corporation, other than the indemnity, are certain professional fees for the ongoing maintenance of accounting and legal matters through dissolution, and the premiums for runoff insurance for the directors.¹⁶

13. The Corporation has prepaid the insurance premiums to the insurer, in trust.¹⁷

D. Winding-Up of the Corporation

14. By special resolution of the shareholders dated December 19, 2017, the shareholders authorized the winding-up of the Corporation on the following terms:

A resolution to authorize the Corporation to apply to the Superior Court of Justice under section 243 of the Corporations Act to approve the winding up of the Corporation to commence after March 23, 2018 and in such application to request that the Court authorize the appointment of a liquidator for the purpose of winding up its affairs and distributing its property, namely BDO Canada Limited, and the directors of the Corporation are hereby authorized and approved to take any and all actions required to give effect to the foregoing.¹⁸

15. Support for the special resolution was unanimous by all shareholders present at the special meeting and those who voted by proxy.¹⁹

¹⁵ *Ibid.*, para. 14.

¹⁶ *Ibid.*, para. 15.

¹⁷ *Ibid.*, para. 16.

¹⁸ *Ibid.*, para. 17; Shareholders' Special Resolution, dated December 19, 2017, Exhibit "D" to the Balfour Affidavit, AR, Tab 2D. [**Wind-up Resolution**]

¹⁹ Balfour Affidavit, *ibid.*, para. 18.

16. The sole reason for the March 23, 2018 commencement date for winding-up in the special resolution was to ensure the Corporation would satisfy any claim for indemnity by the Purchaser that might arise.²⁰

E. Appointment of a Liquidator

17. The Directors believe that, at this juncture, it is appropriate to appoint the Liquidator to permit it to begin to address the many tasks that will ultimately be required to complete the wind-up of the Corporation following March 23, 2018.²¹

18. The Liquidator will oversee a claims process that will determine whether there are any other creditors of the Corporation, develop a comprehensive list of shareholders, address numerous shareholder enquiries, review a considerable volume of the Corporation's records (the "**Claims Process**"), and report to the Court on its progress. With the information obtained from the Claims Process (together with a determination of whether any funds are payable to the Purchaser pursuant to the indemnity in the APA), the Liquidator will then be able to develop a distribution plan for the Surplus Proceeds that is in accordance with applicable law (the "**Distribution Plan**").²²

19. The Distribution Plan will then need to be brought before the Court for approval.²³

20. By beginning the process now, the Liquidator will hopefully be in a position to obtain Court approval and implement the Distribution Plan shortly after March 23, 2018, and then complete the wind-up and dissolution of the Corporation in accordance with the special resolution of the shareholders.²⁴

21. BDO Canada Limited has consented to acting as the Liquidator.²⁵

²⁰ *Ibid.*, para. 19.

²¹ *Ibid.*, para. 20.

²² *Ibid.*, para. 21.

²³ *Ibid.*, para. 22.

²⁴ *Ibid.*, para. 23.

²⁵ *Ibid.*, para. 24; BDO Consent, Exhibit "E" to the Balfour Affidavit, AR, Tab 2E.

PART III - ISSUES AND THE LAW

22. The only issue on this application is whether to grant the order winding-up the Corporation and appointing the Liquidator as requested by the Corporation.

23. Pursuant to section 245 of the *Act*, the Court may grant a wind-up order as is considered just.²⁶

24. The wind-up order sought is warranted because: (1) the Corporation no longer carries out an ongoing business;²⁷ (2) in such circumstances the shareholders are entitled to the remaining cash held by the Corporation;²⁸ and (3) the shareholders of the Corporation unanimously passed a special resolution authorizing the directors to proceed with an application for a wind-up.²⁹

25. Section 243 of the *Act* states:

243 A corporation may be wound up by order of the court,

(a) where the shareholders or members by a majority of the votes cast at a general meeting called for that purpose pass a resolution authorizing an application to be made to the court to wind up the corporation;

...

(d) where in the opinion of the court it is just and equitable for some reason, other than the bankruptcy or insolvency of the corporation, that it should be wound up.³⁰

26. Section 246 provides for the appointment of the Liquidator as part of the wind-up order.³¹

27. Section 251 provides for a stay of all proceedings against the Corporation as the commencement of a winding-up order of the Court.³²

²⁶ *Corporations Act*, *supra* note 1, s. 245.

²⁷ Balfour Affidavit, *supra* note 2, para. 12.

²⁸ *Ibid.*, para. 13.

²⁹ *Ibid.*, paras. 17-18; Wind-Up Resolution, *supra* note 18.

³⁰ *Corporations Act*, *supra* note 1, s. 243.

³¹ *Ibid.*, s. 246.

28. While the special resolution provides for the application to be commenced on March 23, 2018, the only purpose for this stipulation was to ensure the Corporation would satisfy the indemnity before distributing its remaining cash.³³ There is otherwise absolutely no reason to allow the Corporation's cash to sit idle when it could be distributed to its shareholders.

29. Given the considerable work that will be required of the Liquidator to complete the Claims Process before a distribution can be made,³⁴ it would be just and equitable for the Court to permit the Claim Process to begin now so that it can be completed by or shortly after March 23, 2018.

30. The words "just and equitable" in section 243(d) are words of the widest significance and should be given a liberal interpretation.³⁵

31. By permitting the process to begin now, the Corporation would be able to ensure that the Claims Process is carried out in an efficient and timely manner and that the distribution of the Corporation's remaining cash is paid out to shareholders as soon as possible.³⁶

32. There is absolutely no prejudice to the Purchaser or anyone else from appointing the Liquidator now. The order proposed by the Corporation fully protects the Purchaser and the indemnity obligation by barring the distribution of the Corporation's cash until the indemnity expires in accordance with its terms, is waived by the Purchaser, or is otherwise disposed of by order of this Court.³⁷

33. Furthermore, the entire process will remain under the Court's supervision. The Liquidator will be required to return to the Court to approve the Claims Process, the final Distribution Plan, and for the distribution to commence.

³² *Ibid.*, s. 251.

³³ Balfour Affidavit, *supra* note 2, para. 19.

³⁴ *Ibid.*, para. 21.

³⁵ *Sobrinho v. Oakville Portuguese Canadian Club*, 1982 CarswellOnt 936 at paras. 59, 61 (S.C.).

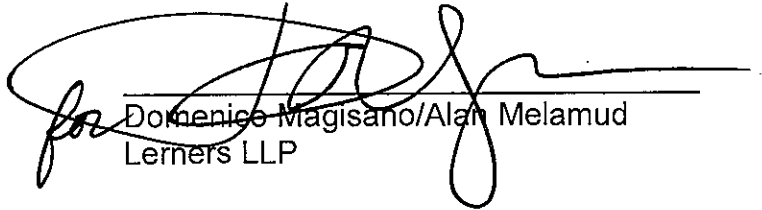
³⁶ Balfour Affidavit, *supra* note 2, para. 23.

³⁷ Proposed Order, AR, Tab 3, para. 20.

PART IV - ORDER REQUESTED

34. On the basis of the foregoing, the Corporation respectfully requests that the draft order at Tab 3 to the Application Record be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this ^{9th} day of February, 2018.



A handwritten signature in black ink, appearing to read "for [unclear]", is written over a horizontal line. The signature is stylized and cursive.

Domenico Magisano/Alan Melamud
Lerners LLP

Lawyer for the Applicant

1117

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Sobrinho v. Oakville Portuguese Canadian Club*, 1982 CarswellOnt 936 (S.C.).

SCHEDULE "B"
RELEVANT STATUTES

Corporations Act, R.S.O. 1990, c. c.38, section 243

Winding up by court

243.A corporation may be wound up by order of the court,

- (a) where the shareholders or members by a majority of the votes cast at a general meeting called for that purpose pass a resolution authorizing an application to be made to the court to wind up the corporation;
- (b) where proceedings have been begun to wind up voluntarily and it appears to the court that it is in the interest of contributories and creditors that the proceedings should be continued under the supervision of the court;
- (c) where it is proved to the satisfaction of the court that the corporation, though it may be solvent, cannot by reason of its liabilities continue its business and that it is advisable to wind it up; or
- (d) where in the opinion of the court it is just and equitable for some reason, other than the bankruptcy or insolvency of the corporation, that it should be wound up. R.S.O. 1990, c. C.38, s. 243.

Corporations Act, R.S.O. 1990, c. c.38, section 244

Who may apply

244.(1)The winding-up order may be made upon the application of the corporation or of a shareholder or of a member or, where the corporation is being wound up voluntarily, of the liquidator or of a contributory or of a creditor having a claim of \$200 or more.

Notice

(2)Except where the application is made by the corporation, four days notice of the application shall be given to the corporation before the making of the application. R.S.O. 1990, c. C.38, s. 244.

Corporations Act, R.S.O. 1990, c. c.38, section 245

Power of court

245.The court may make the order applied for, may dismiss the application with or without costs, may adjourn the hearing conditionally or unconditionally or may make any interim or other order as is considered just, and upon the making of the order may, according to its practice and procedure, refer the proceeding for

the winding up and may also delegate any powers of the court conferred by this Act to any officer of the court. R.S.O. 1990, c. C.38, s. 245.

Corporations Act, R.S.O. 1990, c. c.38, section 246

Appointment of liquidator

246.(1)The court in making the winding-up order may appoint one or more persons as liquidator of the estate and effects of the corporation for the purpose of winding up its affairs and distributing its property.

Remuneration

(2)The court may at any time fix the remuneration of the liquidator.

Vacancy

(3)If a liquidator appointed by the court dies or resigns or the office becomes vacant for any reason, the court may by order fill the vacancy.

Removal of liquidator

(4)The court may by order remove for cause a liquidator appointed by it, and in such case shall appoint another liquidator. R.S.O. 1990, c. C.38, s. 246.

Corporations Act, R.S.O. 1990, c. c.38, section 251

No proceedings against corporation after court winding up except by leave

251.After the commencement of a winding up by order of the court,

- (a) no action or other proceeding shall be proceeded with or commenced against the corporation; and
- (b) no attachment, sequestration, distress or execution shall be put in force against the estate or effects of the corporation,

except by leave of the court and subject to such terms as the court may impose. R.S.O. 1990, c. C.38, s. 251.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at LONDON

**FACTUM OF THE APPLICANT
(returnable February 20, 2018)**

LERNERS ^{LLP}
130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Domenico Magisano LS#: 45725E
dmagisano@lerners.ca
Tel: 416.601.4121
Fax: 416.601.4123

Alan Melamud LS#: 58370F
amelamud@lerners.ca
Tel: 416.601.4128
Fax: 416.601.2748

Lawyers for the Applicant