

Court File No.: CV-13-00019866-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) TUESDAY, THE 10TH  
 )  
JUSTICE **BRIAN D. DUBÉ** ) DAY OF JANUARY, 2023

BETWEEN:

**2502461 ONTARIO LTD.**

Applicant

- and -

**PORTOFINO CORPORATION**

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

**ORDER**

**THIS MOTION**, made by BDO Canada Limited (“BDO”), in its capacity as court-appointed receiver (the “Receiver”) of the assets, undertakings and properties of Portofino Corporation (the “Debtor”) pursuant to the Order of the Honourable Mr. Justice Thomas dated October 29, 2013 for an order:

- (a) if necessary, abridging the time for service and filing and validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Eleventh Report of the Receiver dated December 13, 2022 and all appendices thereto (the “Eleventh

Report”), and directing that any further service of same be dispensed with such that this motion is properly returnable on January 10, 2023;

- (b) approving the Eleventh Report and the activities and conduct of the Receiver described therein;
- (c) approving the Receiver to transfer the Westview Trust Funds, as defined in section 6 of the Eleventh Report, together with the accrued interest thereon, to the general trust account for the receivership;
- (d) for advice and directions of the Court with respect to the sum of \$85,000.45, plus interest (the “Miller Canfield Trust Funds”) held by Miller, Canfield, Paddock and Stone, LLP (“Miller Canfield”) at the date of the receivership order as to whether (i) Miller Canfield had a solicitors’ lien against the Miller Canfield Trust Funds, and (ii) Miller Canfield was entitled to apply the Miller Canfield Trust Funds after the date of the receivership order against outstanding invoices owing by Portofino to Miller Canfield for the pre-receivership period or whether the Miller Canfield Trust Funds are required to be paid over to the Receiver to be distributed to the secured creditors of Portofino in accordance with their priority under their security;
- (e) such orders as are necessary to give effect to the advice and directions provided by the Court with respect to the Miller Canfield Trust Funds
- (f) approving the Receiver’s interim Statement of Receipts and Disbursements for the period October 29, 2013 to November 15, 2022 (the “Statement of Receipts and Disbursements”);

- (g) approving the professional fees and disbursements of the Receiver and its legal counsel (the "Professional Fees");
- (h) subject to the payment of the Professional Fees and other residual costs and expenses incurred in the administration of the receivership estate, approving and authorizing the distribution of the balance of the funds held by the Receiver, including the Westview Trust Funds and any amounts to be paid to the Receiver from the Miller Canfield Trust Funds, as follows:
  - (A) to pay \$636,270.29, plus per diem interest, to Windsor Family Credit Union ("WFCU") in full satisfaction of its secured claim against the Property; and
  - (B) to pay the balance of the funds, if any, to Strosberg Sasso Sutts LLP ("SSS") on account of its secured claim against the Property up to the amount owed to SSS.
- (i) subject to the determination by the court of the relief sought in paragraphs (c), (d) and (e) above, discharging the Receiver as receiver of the Property and releasing BDO from any and all liability, save and except for any gross negligence or wilful misconduct on the Receiver's part; and
- (j) such further and other relief as counsel may advise and this Honourable Court deems just.

was heard this day at 245 Windsor Avenue, Windsor, Ontario.

**ON READING** the Eleventh Report and on hearing the submissions of counsel for the Receiver and such other counsel that were present as listed on the participant information sheet, no one else appearing for any other person on the service list, although duly served as appears from the affidavits of service, filed:

1. **THIS COURT ORDERS** that the time for and method of service of the notice of motion and the motion record are hereby abridged and validated, as necessary, so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Eleventh Report and the activities and conduct of the Receiver described in the Eleventh Report are hereby approved.
3. **THIS COURT ORDERS** that the Statement of Receipts and Disbursements be and the same is hereby approved.
4. **THIS COURT ORDERS** that the professional fees of the Receiver and its legal counsel, Miller Thomson LLP, as described in the fee affidavits of Stephen N. Cherniak sworn November 24, 2022 and Michael Prosia sworn December 12, 2022, be and the same are hereby approved.
5. **THIS COURT ORDERS** that subject to payment of the Professional Fees and other residual costs and expenses incurred in the administration of the receivership estate, the Receiver be and is hereby authorized and directed to make the following distributions in the following order:
  - (a) firstly, to WFCU up to the amount of \$636,270.29, plus per diem interest thereon, on account of Portofino's secured indebtedness owing to WFCU;

and

- (b) secondly, to SSS up to the amount of Portofino's secured indebtedness owing to SSS.

6. **THIS COURT ORDERS** that the Receiver is authorized and directed:

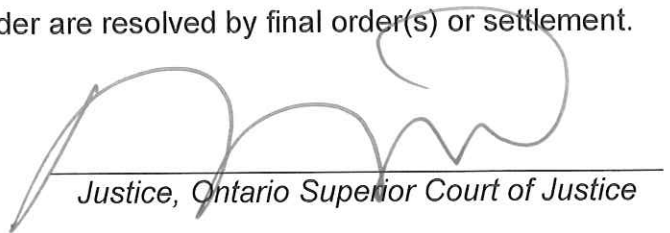
- (a) to transfer \$165,000 of the Westview Trust Funds, plus accrued interest thereon, from the segregated trust account in which the Westview Trust Funds are being held to the general receivership trust account; and
- (b) to pay to Kirwin Partners LLP, in trust for Westview Park Luxury Gardens 2006) Inc., \$55,000 of the Westview Trust Funds, plus accrued interest thereon.

7. **THIS COURT ORDERS** that the motion for the relief in paragraphs (d) and (e) of the preamble to this Order is adjourned to a date to be fixed by the trial coordinator's office and the following timetable is established:

- (a) responding materials, if any, to be delivered by February 17, 2023;
- (b) reply materials, if any, to be delivered by March 10, 2023;
- (c) cross-examinations, if any, to be completed by March 31, 2023 and undertakings to be fulfilled by April 10, 2023; and
- (d) facta to be filed not less than seven days before the hearing date.

8. **THIS COURT ORDERS** that the motion for the relief in paragraph (i) of the

preamble to this Order is adjourned to a date to be fixed by the trial co-ordinator's office following the date on which the motion for the relief in paragraphs (c), (d) and (e) of the preamble to this Order are resolved by final order(s) or settlement.

A handwritten signature in black ink, consisting of several large, sweeping loops and a final sharp hook, positioned above a horizontal line.

---

*Justice, Ontario Superior Court of Justice*

2502461 ONTARIO LTD.

Applicant

and

PORTOFINO CORPORATION

Respondent

Court File No: CV-13-00019866-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT WINDSOR

**ORDER**

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

**Tony Van Klink LSO#: 29008M**  
tvanklink@millerthomson.com  
Tel: 519.931.3509  
Fax: 519.858.8511

**Lawyers for BDO Canada Limited, the  
Court-Appointed Receiver of Portofino  
Corporation**