

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

FAIRVIEW NURSING HOME LIMITED

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

**NOTICE OF MOTION
(Returnable April 23, 2015)**

BDO CANADA LIMITED, in its capacity as receiver (in such capacity, the “**Receiver**”), appointed in accordance with the Order of Justice D. Brown dated December 20, 2013 in relation to the assets, undertakings and properties (the “**Property**”) of Fairview Nursing Home Limited (“**Fairview**” or the “**Debtor**”), will make a motion to the Ontario Superior Court of Justice (Commercial List) on Thursday, April 23, 2015 at 9:30 a.m., or as soon thereafter as the motion can be heard, at the Courthouse located at 330 University Avenue, Toronto, Ontario, Canada.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

1. **THE MOTION IS FOR** Orders substantially in the form of the draft Order attached hereto as **Schedule “A”**:

- (a) Abridging the time for service of the Notice of Motion and Motion Record, if necessary, and declaring that this motion is properly returnable on Thursday, April 23, 2015 and dispensing with further service thereof;
- (b) Approving the Second Report to Court of the Receiver dated April 17, 2015 (the “**Report**”), and the conduct, actions, and activities of the Receiver described therein;
- (c) Authorizing and directing the Receiver to pay the sum of \$562,778.95 plus per diem interest in the amount of \$80.64 from April 16, 2015 to the date of payment, to The Toronto-Dominion Bank (“**TD**”) in full and final satisfaction of TD’s senior secured claims against the Debtor and the Property; and
- (d) such further and other relief as counsel may advise and this Court deems just and/or equitable;

2. **THE GROUNDS FOR THE MOTION ARE:**

- (a) On March 31, 2015, as contemplated by the Order of Justice Newbould herein dated September 25, 2014 providing for the approval of the sale of the Property to Schlegel Villages Inc. (“**SVI**”) or its authorized assigns (the “**Approval and Vesting Order**”), the Receiver completed the sale of the Property and realized proceeds of sale;
- (b) In accordance with the Approval and Vesting Order, all claims against the Debtor vest in the proceeds;
- (c) Based on the opinion of counsel to the Receiver, TD holds a valid and enforceable security interest against the Property and its proceeds;
- (d) Based on the registrations under the *Land Titles Act*, R.S.O 1990, c. L. 5, TD’s security against the real property of the Debtor constitutes a first charge;
- (e) Based on the registrations under the *Personal Property Security Act*, R.S.O. 1990, c. P. 10, TD’s security against the personal property of the Debtor was registered before any

registrations in respect of security for debts to other creditors which remain outstanding;

- (f) As of April 16, 2015, TD was owed the sum of \$562,778.95 plus per diem interest by the Debtor;
- (g) Together with monies on hand, the proceeds of sale of the Property are more than sufficient to repay the senior secured claims of TD;
- (h) The Receiver has closed the sale of the Property to SVI in accordance with the terms of the Approval and Vesting Order and has acted throughout in a commercially reasonable fashion.;
- (i) No secured creditor of the Debtor opposes the proposed distribution to TD;
- (j) The provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and this Honourable Court's equitable and statutory jurisdiction thereunder;
- (k) the inherent jurisdiction of the Court;
- (l) Rules 1.04, 2.03, 3.02, 16, and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (m) such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) the Second Report to Court of the Receiver dated April 17, 2015; and
- (b) Such further material as counsel may advise and this Honourable Court may permit.

Date: April 17, 2015

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Solicitors for the Receiver

TAB A

Schedule "A"

Court File No. CV-13-10365-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE
JUSTICE

THURSDAY, THE 23th DAY
OF APRIL, 2015

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ORDER

THIS MOTION, MADE BY BDO CANADA LIMITED, in its capacity as receiver (in such capacity, the "Receiver"), appointed in accordance with the Order of Justice D. Brown dated December 20, 2013 in relation to the assets, undertakings, and properties (the "Property") of Fairview Nursing Home Limited (the "Debtor"), for an Order approving the Second Report to Court of the Receiver dated April 17, 2015 (the "Report") and the Receiver's conduct activities outlined therein and directing payment of certain monies and proceeds held by the Receiver in satisfaction of the senior secured claims of The Toronto-Dominion Bank ("TD"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver and those counsel listed on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Alma Cano, sworn April 17, 2015, 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 REPORT

2. **THIS COURT ORDERS** that the Report, and the activities of the Receiver outlined therein be and are hereby approved.

DISTRIBUTION

3. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to pay the sum of \$562,778.95, plus per diem interest in the amount of \$80.64 from April 16, 2015 to the date of payment, to TD from monies and sale proceeds held by the Receiver, in full and final satisfaction of the claims of TD against the Debtor and the Property.

4. **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.

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**SUPERIOR COURT OF JUSTICE
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(PROCEEDING COMMENCED AT TORONTO)

ORDER

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