

CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC
DIVISION No.: 01-MONTREAL
COURT No.: 500-11-045750-136
ESTATE No.: 41-1821345

SUPERIOR COURT
Commercial Division

**IN THE MATTER OF THE
BANKRUPTCY OF:**

HOMCO REALTY FUND (98) LIMITED PARTNERSHIP, a limited partnership formed under the laws of Nova Scotia, having its head office at 1959 Upper Water Street, Suite 900, Halifax, Nova Scotia, B3J 3N2, Canada, a chief place of business at Suite 970, 3500 de Maisonneuve Blvd. West, Montreal, Quebec, H3Z 3C1, Canada, and having a property named Carat-Park Wittenberg, located at Teucheler Weg 2, 06886 Lutherstadt Wittenberg, Germany

Bankrupt

– and –

SAMSON BÉLAIR/DELOITTE AND TOUCHE INC. (**Jean-Christophe Hamel**, CPA, CA, CIRP, person in charge), having its place of business at 1 Place Ville Marie, Suite 3000, Montreal, Quebec, H3B 4T9, Canada.

Trustee

TRUSTEE'S PRELIMINARY REPORT TO CREDITORS

The *Bankruptcy and Insolvency Act*, a federal act in Canada (the “Act”), provides for a first meeting of creditors to discuss the creditors’ collective interest in the administration of the Bankrupt’s estate.

A) Background

Homco Realty Fund (98) Limited Partnership (“**H98**”) is a limited partnership formed under the laws of Nova Scotia, having its registered head office at 1959 Upper Water Street, Suite 900, Halifax, Nova Scotia, B3J 3N2 and having a chief place of business at Suite 970, 3500 de Maisonneuve Blvd. West, Montreal, Quebec, H3Z 3C1, Canada. H98 was established for the sole purpose of acquiring and operating a real estate property.

Homburg Invest Inc. (“**HII**”) is the sole limited partner of H98. As limited partner, HII is entitled to the profits of H98 and, in the event of a liquidation of H98, to any liquidation proceeds after the payment of all of the limited partnership’s creditors, and thus has the ultimate beneficial interest of the property owned by H98.

The general partners of H98 are Homburg L.P. Management Inc. (as “holding” general partner) and HII (98) GP Inc. (as “managing” general partner). Homburg L.P. Management Inc. is indirectly owned by Homburg Canada Incorporated, whereas HII (98) GP Inc. is a wholly owned subsidiary of HII. Pursuant to the limited partnership agreement, the “managing” general partner, HII (98) GP Inc., has full power and authority to manage the business and assets of H98.

Homco Realty Fund (98) LP («**H98**»)’s only real estate asset is a 18,145 square meter property located in Wittenberg, in Germany. The city of Wittenberg lies some 100 km south-west of Berlin and 70 km north-east of Leipzig and has approximately 50,000 inhabitants.

Restructuring of HII

On September 9, 2011, HII and certain related entities (the “**HII Parties**”) initiated a restructuring process by filing for and obtaining protection from their creditors under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) pursuant to an order rendered by the Superior Court of Quebec (as amended and extended from time to time, the “**Initial Order**”). HII, through a number of entities (collectively with HII, the “**HII Group**”), owns a diversified portfolio of real estate assets in Europe (Germany, Baltic States and the Netherlands), Canada and the United States.

In the course of the CCAA proceedings, the HII Group made a thorough analysis of its portfolio in order to identify its “non-core” properties, including the ones that, in the absence of a satisfactory agreement with the pertaining mortgage lender (i.e. an agreement to “rightsize” the loan, namely to reduce the capital in light of the property’s reduced realizable value due to market conditions), should be disposed of prior to emergence from the CCAA as they would not form part of the post-restructuring portfolio. In the course of this exercise, the real property of H98 was identified as a “non-core” property. Since no satisfactory agreement was reached with the secured creditor or H98, namely Titan Europe 2006-5 p.l.c. (the “**Secured Creditor**”), a decision was made to file an assignment in bankruptcy for H98.

Financial statements

For reference purposes, below is H98’s income statement for the nine-month period ended September 30, 2013 as well as H98’s balance sheet as of September 30, 2013. The income statement and balance sheet presented below have been converted to Canadian dollars using the exchange rate as of September 30, 2013 (EUR1.00 = CAD1.3920).

Homco Realty Fund (98) Limited Partnership	
Income Statement (\$)	
For the nine months ended September 30, 2013 (unaudited)	
Rental revenues	1,716,644
Expenses	-
Mortgage interest	1,228,281
Unrealized valuation changes	499,617
Professional fees	414,194
Management fees	152,299
Fuel and electricity	144,655
Repairs and maintenance	112,712
Property taxes	57,341
Other	17,688
	<u>2,626,787</u>
Net income	<u>(910,143)</u>

Homco Realty Fund (98) Limited Partnership	
Balance Sheet (\$)	
As at September 30, 2013 (unaudited)	
Assets	
Cash	2,157,638
Accounts receivable	14,271
Income tax receivable	147,136
Prepays	330
Due from Homburg Invest Inc.	301,889
Investment property	28,939,680
	<u>31,560,944</u>
Liabilities	
Accounts payable	506,900
Mortgage payable	28,304,051
	<u>28,810,951</u>
Partners' equity	
Partners' capital	7,343,400
Cumulative currency translation account	(4,593,407)
	<u>2,749,993</u>
	<u>31,560,944</u>

Causes of insolvency

As indicated in the above financial statements, for the nine-month period ended September 30, 2013, H98 recorded a loss of \$910K. In addition, the latest cash flow projections prepared by the representatives of H98 projected net cash flow deficits for the upcoming years due to the current vacancy rate of the property. As a matter of fact, due to the current economic conditions in Europe and the capital expenditures that would be required to make the real estate property more attractive to new tenants, H98 expected that it would have been difficult for it to find any new viable tenants to reduce the current vacancy rate of the real estate property in the near future.

Given H98's economic situation and in the absence of a satisfactory "rightsizing" agreement with the Secured Creditor, the HII Group concluded that the property held by H98 should be disposed of prior to emergence from the CCAA as it would not form part of the post-restructuring portfolio. A decision was therefore made to file an assignment in bankruptcy for H98.

H98 meets the definition of an "insolvent person" under the Act because, *inter alia*, the aggregate value of its assets, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of its obligations, due and accruing due.

An offer to purchase H98's property for €17.3M was submitted by an interested party on October 21, 2013. The secured debt owed to the Secured Creditor as at September 30, 2013 amounts to approximately €20.3M, exceeding the value of the offer received for the real estate property (and its estimated realizable value) by approximately €3M. In addition, as at June 30, 2012, a third-party appraisal report conducted by DTZ Zadelhoff valued the property at €16.7M (under the assumption of a limited sale period of 3 to 6 months), namely approximately €3.6M less than the debt owed to the Secured Creditor as at September 30, 2013. H98 is of the view that the estimated value of H98's real estate property has significantly deteriorated due to the economic crisis of the recent years and its impact on the European economy. The total estimated realizable value of H98's assets as at November 21, 2013 was approximately \$26.4M, approximately \$2.4M lower than H98's total obligations as at November 21, 2013 (as indicated in H98's Statement of Affairs included in the following section of this report).

The third-party appraisal report conducted by DTZ Zadelhoff also included a fair market valuation of the property at €21.2M. Under this scenario, which the HII Group does not believe to be realistic or realizable in the short to medium term, the total estimated realizable value of H98's assets as at November 21, 2013 would be approximately \$3.2M higher than the value of its total obligations, excluding obligations accrued or incurred after the filing into bankruptcy.

Bankruptcy

As (i) the estimated realizable value of H98's assets is lower than the estimated value of its liabilities, and (ii) the property of H98 is not a core asset that will form part of the HII Group's restructured portfolio, the decision was made for H98 to file an assignment in bankruptcy. On December 18, 2013, H98 filed an assignment in bankruptcy and Samson Bélair/Deloitte & Touche Inc. («**Deloitte**») was appointed as trustee. HII (98) GP Inc., H98's "managing" general partner, has also filed an assignment in bankruptcy and Deloitte also acts as its bankruptcy trustee.

B) Trustee's preliminary evaluation of assets and details of security interest

Below is a summary of the Statement of Affairs as of November 21, 2013, which includes the estimated net realization value of the assets of H98 as well as the estimated deficit following the distribution of estimated proceeds from the liquidation of the assets to secured and unsecured creditors:

Homco Realty Fund (98) Limited Partnership Statement of Affairs (CAD) As of November 21, 2013 (unaudited)	Book value (September 30, 2013) (Note 1)	Net realization value (Note 1)
Assets		
Cash	2,194,528	1,685,278
Accounts receivable	14,515	14,515
Income tax receivable	149,651	149,651
Prepaid expenses	336	-
Intercompany receivable	307,050	98,256
Investment Property	29,434,482	24,453,698
	32,100,562	26,401,398
Liabilities		
Secured creditor		26,401,398
Secured creditor (unsecured portion)		2,416,920
Unsecured creditor (Note 2)		-
		28,818,318
Deficit (before professional fees)		(2,416,920)

Note 1:

All amounts denominated in Euros were converted using the November 19, 2013 exchange rate (1.4158).

Note 2:

Creditors will have the onus to prove their claims and only those claims that are proven will constitute valid claims and will receive a distribution if funds are available.

The estimated value attributed to the various assets of H98 in the Statement of Affairs is discussed below:

- Cash: The net realization value of the cash balances is based on the November 15, 2013 bank account balances.
- Accounts receivable: The net realization value of the accounts receivable was estimated based on H98's internal financial statements as of September 30, 2013.
- Income tax receivable: The net realization value of the income tax receivable was estimated based on H98's internal financial statements as of September 30, 2013.

- Prepaid expenses: The net realization value of the prepaid expenses was estimated at \$0.
- Intercompany receivable: The book value of the intercompany receivable was estimated based on H98's internal financial statements as at September 30, 2013. The estimated net realization value of the intercompany receivable was calculated based on an election made by H98 at a meeting of creditors on May 30, 2013 pursuant to H98's claim against HII in the aforementioned CCAA proceedings. As explained in the twenty-third Monitor's report to the Superior Court of Quebec, HII's Plan of Arrangement dated June 5, 2013 (the "**Plan**") includes an option for unsecured creditors to receive a cash settlement instead of common shares of the new legal entity to emerge from HII's CCAA proceedings, which would otherwise have been issued to H98 under the Plan. As per the HII Group's and Monitor's estimates and subject to a number of variables and risk factors further detailed in HII's Information Circular dated May 3, 2013, the distribution to be received from HII in connection with H98's claim for the intercompany receivable could represent approximately 32% of said claim existing at the date HII filed for protection under the CCAA, September 9, 2011.
- Investment property: The book value of the investment property is as per H98's internal financial statements as of September 30, 2013. The Trustee estimated the fair market value of the real property based on the value offered to purchase the real estate property on October 21, 2013 by an interested party.

The firm Clifford Chance Partnerschaftsgesellschaft provided the Trustee with an independent legal advice on the validity of the Secured Creditor's security, which is governed by German law. The advice indicates that, subject to certain assumptions, limitations and qualifications, security documents have been validly created and perfected in order to secure H98's assets, including certain bank accounts, receivables and the real property.

C) Conservatory and protective measures

The Trustee implemented the following conservatory and protective measures:

- Request of the change of the authorized signing officers for all of H98's bank accounts;
- Change of beneficiary of H98's insurance policy (from HII to the Trustee); and
- Temporary continuation of the asset and property management agreement between Garigal Asset Management GmbH (the "**Property Manager**"), Hatfield Philips International Limited, acting as special servicer on behalf of (the "**Special Servicer**") and H98, to ensure the continuation of services of the Property Manager after the date of bankruptcy.

D) Information relating to provable claims

On January 7, 2014, the Trustee received a proof of claim from the Secured Creditor in the aggregate amount of \$29,516,085, evaluating its security at an amount of \$28,000,000. The Trustee has not reviewed these quanta at this stage.

E) Legal proceedings, transfer at undervalue, and preference payments

The Trustee has not initiated any legal proceedings and has not identified any transfer at undervalue or preference payments to date.

F) Conflict of interest and details of fee guarantees

Conflict of interest – Potential Receiver

As stated above, the real property of H98 is secured in favor of the Secured Creditor and, based on the estimated realizable value, no equity is expected to be available to the unsecured creditors of H98. In the course of the bankruptcy, the Trustee would therefore normally surrender said property to the secured creditor and stop operating/safeguarding the real estate asset.

The Secured Creditor however indicated that it will seek for Deloitte to act as receiver and to continue operate the real estate asset until the property is eventually sold. As of the time of this report, the Secured Creditor's counsel is in the process of drafting a motion to the Court for the appointment of Deloitte as receiver, which motion should be presented around mid-January 2014. It is expected that the Secured Creditor will indemnify Deloitte for any loss incurred in the operations of the real estate asset and will agree to cover all of Deloitte's fees incurred in the administration and operation of the real estate asset.

Deloitte does not believe that its role as receiver and the undertakings of the Secured Creditor put it in a position of conflict interest. As a matter of fact, any operating profit or increase in value obtained by not immediately surrendering the real estate asset to the Secured Creditor could also benefit the unsecured creditors if such profit/increase in the realizable value would turn out to be sufficient to cover the Secured Creditor's outstanding debt and the related fees in their entirety.

Conflict of interest - Monitor of HII and Trustee in the bankruptcy of HII (98) GP Inc.

Also as stated above, on September 9, 2011, the HII Parties filed and obtained protection from their creditors under the CCAA pursuant to the Initial Order. Pursuant to said order, Deloitte was appointed monitor of HII under the CCAA. As of the time of this report, the HII Parties are still under the protection of the CCAA.

In addition, on December 18, 2013, following the assignment in bankruptcy of H98, HII (98) GP Inc. filed an assignment in bankruptcy. Deloitte was appointed trustee of the estate of the bankrupt by the official receiver, subject to affirmation by the creditors of the trustee's appointment or substitution of another trustee by the creditors.

As mentioned in the previous sections of this report, HII is the sole limited partner of H98 and also the shareholder of HII (98) GP Inc., H98's "managing" general partner. The Trustee, however, does not believe Deloitte's roles as court-appointed monitor in the CCAA proceedings of HII or as Trustee in the bankruptcy of HII (98) GP Inc. put it in a position of conflict of interest to act as Trustee in bankruptcy of H98. As court-appointed monitor under HII's CCAA proceedings, Deloitte is an officer of the Superior Court of Quebec, appointed to monitor the business and financial affairs of HII. As Trustee of HII (98) GP Inc. and H98, Deloitte is an

officer of the Superior Court of Quebec, appointed to administer the respective Bankrupt's estates in accordance with the Act.

Details of other fee guarantees

In an order dated October 10, 2012, the Superior Court of Quebec (overseeing the CCAA proceedings of HII and certain related entities) extended the definition of the "Administration Charge" granted in the Initial Order such that it secures the professional fees and disbursements of Deloitte, in its capacity as Trustee in the bankruptcy of H98.

Pursuant to the order of the Superior Court of Quebec dated June 5, 2013, the Plan was sanctioned and the Court ordered, declared and authorized, *inter alia*, that, on the Plan Implementation Date, (i) the "Administration Charge" be continued as against certain cash pools and reserves and other non-core assets of HII, and (ii) an "Administrative Reserve" be created to cover certain fees, costs and expenses, including any unpaid fees and disbursements of Deloitte, acting as trustee in bankruptcy to entities related to HII.

G) Projected distribution and Trustee's comments on anticipated asset realization

As illustrated in the Statement of Affairs (summarized above), the Trustee estimates that the proceeds that would be realized from the liquidation of all of H98's secured assets would not be sufficient to fully reimburse the Secured Creditor, which has a first ranked security on the vast majority of H98's assets, including its real estate property.

Therefore, the Trustee anticipates that any distribution to H98's unsecured creditors would be nominal.

H) Trustee's remuneration

The professional fees and disbursements of Deloitte, in its capacity as Trustee in the bankruptcy of H98, are guaranteed by the "Administration Charge" and by the eventual "Administrative Reserve" approved by the Superior Court of Quebec in the course of the HII Group's restructuring under the CCAA.

I) Other matters

None.

DATED AT MONTREAL, Quebec, this 8th day of January, 2014.

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

In its capacity as Trustee of the Estate of
Homco Realty Fund (98) Limited Partnership
and not in its personal capacity

Per:



Jean-Christophe Hamel, CPA, CA, CIRP
Vice-President