

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) TUESDAY , THE 10th DAY
)
JUSTICE MESBUR) OF SEPTEMBER, 2013

BETWEEN:



PEOPLES TRUST COMPANY

Applicant

- and -

ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY

Respondent

ORDER
(ALUS SETTLEMENT APPROVAL)

THIS MOTION made by Peoples Trust Company (“**Peoples**”) for an Order giving effect to a settlement (the “**Settlement**”) between Peoples and the arms length purchasers of units in the Property (the “**ALUs**”) represented by Kronis, Rotsztain, Margles, Cappel LLP as representative counsel (the “**Representative Counsel**”) pursuant to the Order of Justice Mesbur dated April 11th, 2013 was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Peoples’ Compendium and the documents contained therein, Peoples’ Factum and Supplementary Factum and on hearing the submissions of counsel for Peoples, Representative Counsel and counsel for Deloitte Restructuring Inc. in its capacity as

receiver and manager (the “**Receiver**”) in relation to the property, assets and undertaking (the “**Property**”) of Rose of Sharon (Ontario) Retirement Community (“**Rose of Sharon**”) and those other counsel appearing on the counsel slips provided to this Court, no one appearing for any other party although duly served as appears from the Affidavits of Service of Haddon Murray, sworn September 4, 2013, September 5, 2013 and September 6, 2013.

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.
2. THIS COURT ORDERS that the Settlement reached between the ALU’s (as defined below) and Peoples, as comprehensively set out in the further terms of this Order, is hereby approved and Representative Counsel and the Receiver are hereby authorized and directed to take all steps necessary to implement the Settlement.
3. THIS COURT ORDERS that the Receiver is hereby authorized to take commercially reasonable steps to register the residential and long term care facility that comprises the Property as a condominium pursuant to *Condominium Act* and related regulations.
4. THIS COURT ORDERS that upon and conditional upon registration of the Property as a condominium, each arms length purchaser of units in the Property (the “**ALUs**”) represented by Kronis, Rotsztain, Margles, Cappel LLP as representative counsel (the “**Representative Counsel**”) pursuant to the Order of Justice Mesbur dated April 11th, 2013 shall be given a notice (the “**Purchase Notice**”) by the Receiver providing that they or their authorized assignee may acquire title to the condominium unit(s) identified in their respective Right to Occupy Agreements, as amended (“**RTOAs**”) upon payment of the sum of the following amounts (the “**Unit Purchase Price**”), in immediately available funds:
 - (a) the total amount set out in the attached chart (the “**Payment Chart**”) in the column entitled “Settlement Amount Owing” subject to such adjustments as the Receiver may determine are appropriate to reconcile payments of principal

amounts due under RTOA's actually received by the Receiver from ALUs after the appointment of the Receiver;

- (b) the total amount of any unpaid sums for common area maintenance fees due and owing on the date this settlement is approved by the Court (the "**Settlement Date**"); and
 - (c) the total amount of any unpaid interest required to be paid pursuant to RTOAs on the positive balances set out in the Payment Chart in the column entitled "Balance Owing After Notes".
5. THIS COURT ORDERS that each ALU shall have sixty (60) days from the date of delivery of the Purchase Notices to pay the Unit Purchase Price to the Receiver.
 6. THIS COURT ORDERS that in default of payment of the Unit Purchase Price for a unit within the period prescribed in paragraph 4 above, the Receiver may sell the unit free and clear of any and all claims of the ALU and anyone claiming through them, including any tenant of the ALU, and the Receiver shall be entitled to obtain applicable vesting orders and writs of possession in respect of each such unit.
 7. THIS COURT ORDERS that upon payment of the Unit Purchase Price, the Receiver shall sell and each of the ALUs shall purchase their units on an "as-is, where-is" basis and the Receiver and Peoples shall have no liability in respect of the units and shall be released and discharged from all claims arising from or related to the unit, the RTOAs or any dealings of the ALUs with the Receiver, Rose of Sharon or the Property.
 8. THIS COURT ORDERS that any amounts required to be contributed to the condominium reserve fund for the Property, either before or after registration of the condominium and whether forming part of common area maintenance charges applicable to a unit or otherwise, shall be for the account of the ALUs and neither the Receiver nor Peoples shall have any liability in respect of these contributions.
 9. THIS COURT ORDERS that ALUs shall pay all common area maintenance fees required in relation to their units which arise after the Settlement Date, as and when they become

due and that, provided these payments are made, each ALU may continue to occupy their units until the earlier of:

- (a) the date which is sixty (60) days after the date of delivery of the Purchase Notices; or
- (b) the date which is 12 months after the Settlement Date, subject to Peoples' subsequent written agreement (which agreement shall be in Peoples' sole discretion) to extend to a later date (the "**Outside Date**").

- 10. THIS COURT ORDERS that in the event that the Property is not registered as a condominium by the Outside Date, all rights and obligations provided for under paragraphs 2, 3, 4, 5, 6 and 7 of this Order shall lapse and be of no further force and effect.
- 11. THIS COURT ORDERS AND DECLARES that the Receiver shall not be obliged to deliver the disclosure statement contemplated by s. 72(1) of the *Condominium Act* in respect of the ALUs' units unless and until the Purchase Notices have been delivered by the Receiver.

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



SEP 11 2013



SCHEDULE "A"
Unit # Sq. Ft.

Units	Name of Unit Holder	Date of RTOA	Years	Life Lease Purchase/Selling Price	Deposits Paid	Price Adjustments/ Rebates/ Offsets Given by Rose of Sharon	Balance Owed	Loan(s) to Rose/ Promissory Note(s) from Rose	Balance Owning After Note(s)	3% Interest	New Value	Settlement Amount Owing
ALUS												
304	Mary Chon	24/08/2005	8	137,685.00	-41,304.85	-13,769.00	82,611.15	-82,612.00	-0.85	33,044.40	170,729.40	33,044.40
306	Mary Chon	10/05/2005	8	189,610.00	-93,261.00	-18,961.00	77,388.00	-77,388.00	0.00	45,506.40	235,116.40	45,506.40
308	Youngsook Cha	18/08/2006	7	182,240.00	-54,672.00	0.00	127,568.00	0.00	127,568.00	38,270.40	220,510.40	165,838.40
706	Sung-Sun Yoon/Mi-Kyung Yoon	22/09/2003	10	111,195.00	-31,770.00	0.00	79,425.00	-74,561.00	4,864.00	33,358.50	144,553.50	38,222.50
707*	Soon Sup Lee / Hyung Good Lee	06/08/2009	4	177,645.00	-95,403.00	0.00	82,242.00	-73,935.00	8,307.00	21,317.40	198,962.40	29,624.40
708	Kyung Yuril Lee/Jung Ja Lee	06/11/2009	4	196,000.00	-76,300.00	0.00	119,700.00	-119,700.00	0.00	23,520.00	219,520.00	23,520.00
709	Young Jeon	26/10/1996	17	132,407.00	-69,804.00	0.00	62,603.00	-62,603.00	0.00	67,527.57	199,934.57	67,527.57
711	Young Jeon	26/10/1996	17	114,439.00	-69,804.00	0.00	44,635.00	-52,347.00	-32,712.00	58,363.89	172,802.89	58,363.89
803**	Bog Shim Shin	30/12/1999	14	143,000.00	-94,000.00	0.00	49,000.00	0.00	49,000.00	60,060.00	203,060.00	109,060.00
805	Han Hyeong Lee/Hae Jeong Kang	31/12/2003	10	195,000.00	-195,000.00	0.00	0.00	0.00	-25,000.00	58,500.00	253,500.00	58,500.00
806	Eunkyung Yim	13/05/2005	8	182,838.00	-54,851.00	-9,141.90	118,845.10	0.00	118,845.10	43,881.12	226,719.12	162,726.22
807	Jong Ran Kim	10/12/2007	6	214,500.00	-233,966.00	0.00	-19,466.00	0.00	-19,466.00	38,610.00	253,110.00	38,610.00
810	Sun Hwa Lee	05/09/2003	10	100,000.00	-23,265.99	0.00	76,734.01	-105,353.54	-53,619.53	30,000.00	130,000.00	30,000.00
812	Sun Hwa Lee	05/09/2003	10	197,000.00	-45,834.01	0.00	151,165.99	-207,546.46	-56,380.47	59,100.00	256,100.00	59,100.00
906	Woo Sam Park	06/04/2006	7	163,000.00	-48,900.00	-16,300.00	97,800.00	0.00	72,800.00	34,230.00	197,230.00	107,030.00
907	Myung Hee Kim/Jun Do Sung	27/11/2004	9	221,000.00	-66,300.00	-22,100.00	132,600.00	0.00	132,600.00	59,670.00	280,670.00	192,270.00
908	Han Hyeong Lee/Hae Jeong Kang	22/09/2003	10	107,600.00	-107,600.00	0.00	0.00	0.00	0.00	32,280.00	139,880.00	32,280.00
909	Mansoo Chun	21/07/2008	5	150,000.00	-24,400.00	0.00	125,600.00	0.00	125,600.00	22,500.00	172,500.00	148,100.00
911	Hyang Ok Hong/John Bai	23/12/2002	11	182,600.00	-44,260.00	0.00	138,340.00	-40,000.00	98,340.00	60,258.00	242,858.00	158,598.00
912	Chang Joon Kim/Soon Ja Kim/Sar	09/11/2010	3	217,980.00	-123,280.00	0.00	94,700.00	-90,600.00	4,100.00	19,618.20	237,598.20	23,718.20
1002	Brenda (Chun Ja) Ha	31/10/1996	17	159,319.00	-103,552.00	0.00	55,767.00	0.00	55,767.00	81,252.69	240,571.69	137,019.69
1005	Young Sohn	30/05/2007	6	320,900.00	-96,270.00	0.00	224,630.00	0.00	224,630.00	57,762.00	378,662.00	282,392.00
1008	Mal Hwa Kim/Ellen Kim	30/05/2007	6	150,000.00	-25,000.00	0.00	125,000.00	0.00	125,000.00	27,000.00	177,000.00	152,000.00
1009	Morgiana Lee	14/06/2011	2	155,000.00	-65,000.00	0.00	90,000.00	0.00	90,000.00	9,300.00	164,300.00	99,300.00
1010	Gye-Soon Kim/Joan Kie Kim	12/03/2010	3	227,000.00	-148,200.00	0.00	78,800.00	-50,000.00	28,800.00	20,430.00	247,430.00	49,230.00
1108	Jae Won Byun	27/09/2004	9	329,810.00	-98,946.00	-32,981.00	197,883.00	-186,555.00	11,328.00	89,048.70	418,858.70	100,376.70
1112****	Hee Jun Park/Na Rae Choi	29/03/2005	8	209,600.00	-62,880.00	0.00	146,720.00	0.00	146,720.00	50,304.00	259,904.00	197,024.00
PH6****	Jong Rye Lee/Chang Hun Shin	29/05/2007	6	441,000.00	-44,100.00	0.00	396,900.00	-88,000.00	308,900.00	79,380.00	520,380.00	388,280.00
Units = 28			8,392.9	5,308,368.00	-2,237,923.85	-113,252.90	2,957,191.25	-1,267,201.00	1,589,980.25	1,254,093.27	6,562,461.27	2,987,262.37

* - Changed from 16 to 4 years. ALU advised that 2009 RTOA is for new unit, and therefore, reflects 2009 unit prices - not 1997 unit price. Affidavit is consistent with this. Documents support this and are available if required.

** - This should have been 14 years but had been recorded as 5 years.

*** - Changed from 13 years to 8 years. RTOA is dated 2005 but contains a notation that it is a renewal of agreement dated 2000. ALU advises that this is incorrect as only immigrated to Canada in 2002 and only signed one RTOA in 2005. Affidavit is consistent with this.

**** - Changed from -44,000 to -88,000. See payment summary of Receiver. Two notes of \$44,000 each. ALU advises that the two notes, plus the initial deposit, total the 30% deposit required.

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Applicant

v.

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ORDER

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