

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

THE HONOURABLE  
JUSTICE MESBUR

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FRIDAY, THE 22<sup>ND</sup> DAY  
OF NOVEMBER, 2013

**B E T W E E N:**

**PEOPLES TRUST COMPANY**

Applicant

- and -

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**

Respondent

**ORDER  
(Discharge of Representative Counsel and ILA Appointment)**

**THIS MOTION** made by Deloitte Restructuring Inc. in its capacity as Receiver and Manager over all of the current and future assets, undertakings and properties of the Respondent Rose of Sharon (Ontario) Retirement Community (in that capacity, the “**Receiver**”) for an Order granting the relief sought in the Notice of Motion, including (i) amending the Mandate of Representative Counsel (as defined in the Representative Counsel Order of Mesbur J. dated April 11, 2013), *nunc pro tunc*, (ii) discharging Kronis, Rotsztain, Margles, Cappel LLP (“**KRMC**”) as Representative Counsel, and (iii) appointing KRMC to provide independent legal advice in this

proceeding to individuals who are unit-holders in the Rose of Sharon (Ontario) Retirement Community (“**Rose**”) life lease residence (the “**Life-Lease Residence**”), but are not Arm’s Length Unit Holders and are not represented by counsel (the “**ILA Unit-holders**”), with respect to the nature and effect of any proposed settlements (the “**Proposed Settlements**”) with Peoples Trust Company (“**Peoples Trust**”) involving their unit(s) in the Rose Life-Lease Residence, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion dated November 20, 2013, the Third Report of the Receiver dated February 19, 2013 (the “**Third Report**”), the Fourth Report of the Receiver dated March 11, 2013 (the “**Fourth Report**”), the Amended Notice of Motion of People’s Trust Company (“**Peoples Trust**”) dated September 4, 2013, and the related affidavits of Martin Mallich sworn April 4, 2013, and Michael Lombard sworn July 9, 2013, and upon hearing submissions of counsel for the Receiver, counsel for Peoples *per counsel for Trisura, Unimac + John Yoon* and counsel for KRMC which also *Ken* advises that it is prepared to act to provide independent legal advice, on the terms set out in the Notice of Motion, if so appointed,

1. **THIS COURT ORDERS** that the time for, and method of, service of the Receiver’s Notice of Motion returnable November 22, 2013 (the “**Notice of Motion**”), and related motion material filed in support of that Notice of Motion (the “**Motion Material**”) be and is hereby abridged, that service of the Notice of Motion and Motion Material is hereby validated such that service effected on the parties provided with the Notice of Motion and Motion Material shall be good and sufficient notice thereof, and that further service thereof is hereby dispensed with.

2. **THIS COURT ORDERS** that the Mandate is hereby amended, *nunc pro tunc*, by removing from the class of persons for which Representative Counsel was appointed those persons referenced in the preamble to the Representative Counsel Order as “the tenants of other units of the Rose of Sharon (Ontario) Retirement Community Life-Lease Residence”.

3. **THIS COURT ORDERS AND DECLARES** that Representative Counsel has fulfilled the Mandate, as amended by this Order.

4. **THIS COURT ORDERS** that paragraph 8 of the Representative Counsel Order be amended by increasing the maximum amount for legal fees to which Representative Counsel shall be allowed to \$275,000.00, plus disbursements actually incurred and applicable taxes.

5. **THIS COURT ORDERS** that KRMC is hereby discharged as Representative Counsel.

6. **THIS COURT ORDERS** that KRMC be permitted to pass at a later date its accounts with respect to the Mandate, notwithstanding its discharge as Representative Counsel.

7. **THIS COURT ORDERS** that KRMC be appointed to provide independent legal advice in this proceeding (the “**ILA Mandate**”) to the ILA Unit-holders with respect to the nature, meaning and effect of any documents to be executed in connection with the Proposed Settlements, and the obligations and liabilities of such ILA Unit-holders thereunder.

8. **THIS COURT ORDERS** that KRMC shall pass its accounts in the ILA Mandate from time to time, and for this purpose the accounts of KRMC are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice. At such passing of accounts, KRMC shall be allowed its reasonable fees and disbursements, in each case at its standard rates and

charges unless otherwise ordered by the Court, for work done as part of the ILA Mandate, up to a maximum amount of \$15,000.00 plus disbursements actually incurred and applicable taxes, subject to further Order of this Court obtained on notice to Peoples Trust and the Receiver.

9. **THIS COURT ORDERS** that subject to paragraph 8 above, after the rendering of accounts by KRMC to the Receiver in respect of the ILA Mandate, any expenditure or liability which is properly made or incurred by KRMC, including the reasonable fees and disbursements of KRMC, shall be paid by the Receiver out of the Rose estate in a timely manner and prior to the passing of accounts in respect of the ILA Mandate so as to allow KRMC to fulfill its ILA Mandate in accordance with this Order, but in the event of any disagreement regarding such fees and disbursements such matters will be dealt with on the passing of accounts in respect of the ILA Mandate and payment shall be deferred until that time.

10. **THIS COURT ORDERS** that KRMC shall have the benefit of the Receiver's Charge, established pursuant to the Amended and Restated Appointment Order of Justice Campbell dated September 27, 2011 in this proceeding, for its fees and disbursements relating to the ILA Mandate.

11. **THIS COURT ORDERS** that subject to further order of the Court, and without limitation to any other right or protection in favour of KRMC, KRMC shall not be required to take any step or action in respect of its ILA Mandate if it reasonably believes that there will not be sufficient funds available to it to complete such step or action, and KRMC may apply to this Court to be discharged from the ILA Mandate at any time in its sole discretion, including,

without limitation, on the basis that it reasonably believes that there are insufficient funds available to it to carry out the terms of this Order or otherwise fulfill the ILA Mandate.

12. **THIS COURT ORDERS** that the Receiver shall provide notice of this Order to the ILA Unit-holders by emailing, mailing or delivering a copy of this Order to them, and by posting a copy of this Order on the Receiver's website as soon as practicable after the issuance of this Order.

13. **THIS COURT ORDERS** that KRMC shall have no liability for any act or omission as a result of its appointment or the fulfillment of its duties in carrying out the provisions of this Order including but not limited to the ILA Mandate, save and except for any gross negligence or willful misconduct on its part, and that no action or other proceedings shall be commenced against KRMC relating to the ILA Mandate, except with prior leave of this Court to be obtained on at least (7) seven days' notice to KRMC, and upon further order in respect of security for costs on a substantial indemnity basis in favour of KRMC in connection with any such action or proceeding.

14. **THIS COURT ORDERS** that KRMC shall be at liberty and is authorized at any time to apply to this Court for advice and directions in the discharge and variation of its powers and duties, including but not limited to whether or not any individual should be represented by KRMC as part of the ILA Mandate, because of a potential conflict of interest or otherwise.

15. **THIS COURT ORDERS** that in the event this Order is later amended by further Order of the Court, the Receiver may post such further Order on the Receiver's website and such posting will constitute adequate notice to the ILA Unit-holders of such amended Order.

*Meslin J.*

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

DEC - 3, 2013

NB

**PEOPLES TRUST COMPANY**

and

Applicant

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding Commenced at **TORONTO**

**ORDER**

**BLANEY McMURTRY LLP**  
Barristers and Solicitors  
1500 — 2 Queen Street East  
Toronto, ON M5C 3G5

**Eric Golden (LSUC #38239M)**  
(416) 593-3927 (Tel)  
(416) 593-5437 (Fax)

Lawyers for Deloitte Restructuring Inc., in its capacity as  
court appointed receiver and manager of Rose of Sharon  
(Ontario) Retirement Community