

SUPERIOR COURT
(Commercial Division)

C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

Court No: 500-11-041305-117

Date: October 20, 2011

Present: THE HONOURABLE LOUIS J. GOUIN, J.S.C.

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

**HOMBURG INVEST INC.
HOMBURG SHARECO INC.
CHURCHILL ESTATES DEVELOPMENT LTD.
INVERNESS ESTATES DEVELOPMENT LTD.
CP DEVELOPMENT LTD.**

Debtors

-and-

**HOMCO REALTY FUND (52) LIMITED PARTNERSHIP
HOMCO REALTY FUND (88) LIMITED PARTNERSHIP
HOMCO REALTY FUND (89) LIMITED PARTNERSHIP
HOMCO REALTY FUND (92) LIMITED PARTNERSHIP
HOMCO REALTY FUND (94) LIMITED PARTNERSHIP
HOMCO REALTY FUND (105) LIMITED PARTNERSHIP
HOMCO REALTY FUND (121) LIMITED PARTNERSHIP
HOMCO REALTY FUND (122) LIMITED PARTNERSHIP
HOMCO REALTY FUND (142) LIMITED PARTNERSHIP
HOMCO REALTY FUND (199) LIMITED PARTNERSHIP**

Mis-en-cause

-and-

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

-and-

**STICHTING HOMBURG BONDS
STICHTING HOMBURG CAPITAL SECURITIES**

Trustees

CASE MANAGEMENT ORDER #4

- [1] **FURTHER** to the court hearing held on October 19, 2011 (the "**Hearing**"), with counsels to the Debtors and Mis-en-cause, to the Monitor, to the Trustees and to other interested parties to consider the status of various pending motions and related matters;
- [2] **CONSIDERING** the Initial Order issued by the Court on September 9, 2011 (the "**Initial Order**"), as extended and amended by the First Extension Order issued on October 7, 2011;
- [3] **CONSIDERING** the Case Management Order #3 issued by the Court on October 7, 2011 (the "**CMO #3**");
- [4] **CONSIDERING** that the List referred to in the Bondholders Listing Order issued by the Court on October 7, 2011, has been provided, as requested;
- [5] **CONSIDERING** that the Trustees have postponed *sine die* their "Motion for the Payment of Fees, Disbursements and Expenses of the Indenture Trustees and the Indenture Trustees' Advisors and Related Relief", pursuant to Section 11.52 of the *Companies' Creditors Arrangement Act R.S.C. 1985 c. C-36* (the "**CCAA**");
- [6] **CONSIDERING** that the following motions are either pending or upcoming :
- a. upcoming motion to be filed by the Debtors and Mis-en-cause with respect to the management of the Mis-en-cause (the "**Motion on Partnership**");
 - b. "Amended Motion for Amendments to the Initial Order" filed by the Trustees (the "**Motion to Amend**"), pursuant to Sections 11, 11.02, 11.51 and 36 of the CCAA, but only as regards paragraphs 25.1 to 25.10 of the Motion to Amend dealing with the "Applicant Partnerships", and related conclusions;
 - c. "*De Bene Esse* Motion for an Order Lifting the Stay of Proceedings for the Purpose of Seeking Relief in Respect of Homburg Invest Inc.'s Annual General Meeting" filed by the Trustees (the "**Motion to Lift**"), pursuant to Sections 11.2 et seq. of the CCAA; and
 - d. various "Motions for Orders Declaring Null and Void Notices to Disclaim or Resiliate Agreements" filed, *inter alia*, by The Cadillac Fairview Corporation Limited (the "**Motions against Disclaimers**"), pursuant to Section 32(2) of the CCAA, and involving thirteen claimants with respect to premises in two buildings located in Calgary,
- (collectively, the "**Motions**");
- [7] **CONSIDERING** that the Motions have to be dealt with in the very near future and some guidance from the Court is needed with respect to some issues raised at the Hearing;

THEREFORE, THE COURT:**A. MOTION ON PARTNERSHIP**

- [8] **TAKES ACT** of the Debtors' and Mis-en-cause's undertaking to file the Motion on Partnership as soon as possible and, in any event, no later than October 26, 2011, at 4:30 pm;
- [9] **REQUESTS** the parties to make all necessary efforts to agree on, and respect, a tied timetable in order to proceed, on November 7, 2011, on the merits of the Motion on Partnership;

B. MOTION TO AMEND

- [10] **DECLARES** that the parties shall proceed on the merits of the Motion to Amend concurrently with the Motion on Partnership, namely on November 7, 2011;

C. MOTION TO LIFT

- [11] **DECLARES** that, with respect to the Motion to Lift, and as already provided in the CMO #3, any requests of documents or for examinations have to be related to the "new Power of Attorney" (the "**PoA**") and "Heads of Agreement" ("**HoA**"), referred to as Exhibits P-8 and P-9 therein, including on the standing of the Trustees in these proceedings;
- [12] **DECLARES** that the Trustees may examine Mr. Hartmut Fromm in respect to his direct involvement in the negotiations related to the PoA and the HoA, subject to such examination being limited only to the period starting on September 1, 2011 to September 8, 2011;
- [13] **REQUESTS** the Debtors to submit to the Court, at the latest on October 21, 2011, at 10:00 am, for its consideration of whether or not the litigation privilege or the solicitor-client privilege will apply, all correspondence, memorandums, emails, notes and other documents related to the PoA and HoA, and either among representatives of the Debtors internally, or between representatives of the Debtors or their counsel and the Monitor or its counsel;
- [14] **REQUESTS** the parties to respect the following timetable :

Steps	Deadline
Continuation of the examination of Mr. Henk Knuvers	October 27, 2011
Additional undertakings subscribed during such examination	October 31, 2011
Contestation by the Debtors and Mis-en-cause	November 2, 2011
Examination of Mr. Hartmut Fromm	November 5, 2011
Court Hearing of Motion to Lift	November 8, 2011

C. MOTIONS AGAINST DISCLAIMERS


[15] **TAKES ACT** that one of the parties to the Motions against Disclaimers, namely The Cadillac Fairview Corporation Limited, will coordinate the preparation of a joint timetable and submit same to the Court for scheduling the hearing thereof;

D. GENERAL

[16] **REQUESTS** the parties to make all reasonable efforts to settle, as diligently as possible, outstanding issues and, if need be, to apply to the Court for further guidance;

[17] **REQUESTS** the Monitor to inform the persons appearing on the service list, referred to in the Initial Order, of the upcoming court hearing scheduled for November 7 and 8, 2011.

[18] **THE WHOLE WITHOUT COSTS.**



LOUIS J. GOUIN, J.S.C.

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Me Mason Poplaw
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Me Guy Martel
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Me Mark E. Meland
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