

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

IN THE MATTER OF THE RECEIVERSHIP OF:

NO.: 500-11-045750-136
Estate No.: 41-1821345

HOMCO REALTY FUND (98) LIMITED PARTNERSHIP
Debtor

- and -

TITAN EUROPE 2006-5 P.L.C.

- and -

CREDIT SUISSE INTERNATIONAL

Petitioners/Secured Creditors

- and -

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Trustee/Proposed Receiver

- and -

HATFIELD PHILIPS INTERNATIONAL LIMITED

Mise-en-cause

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Proceeding being served: Motion for the issuance of an order appointing a receiver

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CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO.: 500-11-045750-136
Estate No.: 41-1821345

SUPERIOR COURT
(Commercial Division)

**IN THE MATTER OF THE RECEIVERSHIP
OF:**

**HOMCO REALTY FUND (98) LIMITED
PARTNERSHIP**, a limited partnership existing
under the laws of the Province of Nova Scotia,
having its registered office at Suite 900-1959
Upper Water Street, Halifax, Nova Scotia, B3J
2X2

Debtor

- and -

TITAN EUROPE 2006-5 P.L.C., a limited
liability company incorporated in Ireland having
its registered office at First Floor, 7 Exchange
Place, International Financial Services Centre,
Dublin 1, Ireland

- and -

CREDIT SUISSE INTERNATIONAL, a
corporation duly constituted having its
registered office at One Cabot Square, London
E14 4QJ

Petitioners/Secured Creditors

- and -

**SAMSON BÉLAIR/DELOITTE & TOUCHE
INC.**, a corporation duly constituted having its
registered office at 1 Place Ville-Marie, Suite
3000, Montréal, Quebec, H3B 4T9

Trustee/Proposed Receiver

- and -

**HATFIELD PHILIPS INTERNATIONAL
LIMITED**, a limited company incorporated in
England and Wales having its registered office

at 34th Floor, 25 Canada Square, Canary Warf,
London E14 5LB

Mise-en-cause

**MOTION FOR THE ISSUANCE OF AN ORDER APPOINTING
A RECEIVER
(Section 243 of the *Bankruptcy and Insolvency Act* (the "BIA"))**

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT
(COMMERCIAL DIVISION), DISTRICT OF MONTREAL, OR TO THE
REGISTRAR THEREOF, THE PETITIONERS RESPECTFULLY SUBMIT THE
FOLLOWING:

I. THE PARTIES

(A) Credit Suisse International and Titan Europe 2006-5 p.l.c.

1. Credit Suisse International is a financial services company, who on March 28, 2006, entered into, as lender (the "**Original Lender**") and security agent (the "**Security Agent**"), a facility agreement (as amended from time to time, the "**Facility Agreement**") with Homco Realty Fund (98) Limited Partnership (the "**Debtor**"), acting through its general partner, Homburg L.P. Management Inc. (the "**General Partner**"), whereby the Original Lender agreed to provide a term loan to the Debtor in the amount of €23,205,000 (the "**Loan**"). A copy of the Facility Agreement is communicated herewith as **Exhibit P-1**.
2. On December 21, 2006, the Original Lender entered into a Loan Transfer Agreement (the "**Transfer Agreement**") with Titan Europe 2006-5 p.l.c. ("**Titan**" or the "**Lender**"), pursuant to which it transferred its entire interest in the Loan and the related Security Documents (as defined hereinafter) to Titan, the whole as appears from a copy of the Transfer Agreement, communicated herewith as **Exhibit P-2**.
3. As appears from Section 2.2 of the Facility Agreement, the Security Agent has the independent right to demand and receive payment of any amounts owing by the Debtor to the Lender.
4. Titan is a public company incorporated with limited liability under the laws of Ireland.
5. As further described below, Titan and the Security Agent are the sole secured creditors (the "**Secured Creditors**") of Homco Realty Fund (98) Limited

Partnership (the "**Debtor**"), and maintain security over substantially all of the Debtor's movable and immovable property.

(B) Hatfield Philips International Limited

6. The Secured Creditors are represented by Hatfield Philips International Limited ("**Hatfield**"), a limited partnership incorporated in England and Wales, who acts as the special servicer of the Loan and related security on behalf of the Lender and Security Agent, as appears from a copy of the Servicing Agreement dated December 21, 2006, communicated herewith as **Exhibit P-3**.

(C) Homco Realty Fund (98) Limited Partnership

7. The Debtor was established for the sole purpose of acquiring and operating a real property known as the Carat Park Shopping Centre (the "**Shopping Centre**"), located in Amendorfer Straße, Wittenberg, Germany.
8. On December 18, 2013, the Debtor filed an assignment under section 49 of the *Bankruptcy and Insolvency Act* (the "**BIA**") and Samson Bélair/Deloitte & Touche Inc. ("**Deloitte**") was appointed trustee of the Debtor's estate (the "**Trustee**").

II. ORDERS SOUGHT

9. For the reasons described hereinafter, the Secured Creditors, through Hatfield, as special servicer acting on behalf of the Secured Creditors, hereby seek the issuance of an order appointing Deloitte as receiver to the assets of the Debtor. More specifically, the Secured Creditors, through Hatfield, as special servicer acting on behalf of the Secured Creditors, seek the issuance of the order substantially in the form of the draft receivership order (the "**Receivership Order**") communicated herewith as **Exhibit P-4**.

III. BACKGROUND

(A) The Financial Difficulties of the Debtor

10. As mentioned above, the Debtor is a limited partnership whose sole limited partner is Homburg Invest Inc. ("**HII**"), who, on September 9, 2011, filed for and obtained protection from its creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA**"), pursuant to an order by the Superior Court of Quebec.
11. HII, through various entities (the "**HII Group**"), owns a diversified portfolio of real estate assets in Europe, Canada and the United States, a number of which had been operating with a negative cash flow and/or had a fair market value that was less than the outstanding capital balance of a loan secured by a mortgage over the same property, as appears from a copy of the Trustee's Preliminary Report to Creditors dated January 8, 2014 (the "**Trustee's Report**"), communicated herewith as **Exhibit P-5**.

12. In the context of the CCAA proceedings, the HII Group engaged in a thorough analysis of its real estate portfolio, identifying certain "bad" or "non-core" properties, which included the Shopping Centre, as appears from the Trustee's Report (Exhibit P-5).
13. In the case at hand, the Debtor's only real estate asset is the Shopping Centre, which as a result of being identified as "non-core" property, has been removed from the HII Group's structure and balance sheet.
14. The previous asset manager, Hinvest Rems B.V. ("**Hinvest**"), faced immense difficulties in renting the whole of the Shopping Centre, due, *inter alia*, to a need for certain renovations and capital improvements.
15. As a result of this vacancy, the Debtor's revenues have been consistently low, resulting in a negative cash flow from operations and the possibility that debt service payments may not be met in the future.
16. In light of these financial difficulties, including the CCAA proceedings, on December 4, 2012, Hatfield, as special servicer acting on behalf of the Secured Creditors, sent a letter to the Debtor, advising the Debtor that it was in default, having failed to comply with its obligations under the terms of the Facility Agreement, the whole as appears from a copy of the letter dated December 4, 2012, communicated herewith as **Exhibit P-6**.
17. Since having placed the Debtor in default, Hatfield, as special servicer acting on behalf of the Secured Creditors, has remained in constant communication with the Debtor and Deloitte, the whole so as to identify the optimal way going forward and for the benefit of all stakeholders.
18. As at November 21, 2013, the net realization value of the Shopping Centre was estimated by the Debtor to be \$24,453,698, whereas the secured portion of the debt owed to the Secured Creditors was estimated as amounting to approximately \$26,401,398 and the unsecured portion to \$2,416,920, as appears from the Trustee's Report (Exhibit P-5).
19. Accordingly, and as mentioned above, these financial difficulties culminated to the Debtor filing, on December 18, 2013, an assignment in bankruptcy, and on January 8, 2014, the Secured Creditors filed a proof of claim in the amount of \$29,516,085, as appears from a copy of the proof of claim, communicated herewith as **Exhibit P-7**.

(B) The Asset and Property Management Agreement

20. As at February 17, 2012, Hinvest acted as property manager of the Shopping Centre, pursuant to a Property Management Agreement (the "**Hinvest Management Agreement**") entered into by Hinvest and the General Partner, on behalf of the Debtor.

21. On November 13, 2013, the Hinvest Management Agreement was terminated by Hatfield, as special servicer acting on behalf of the Secured Creditors, pursuant to Section 8.3(c) of the Hinvest Management Agreement.
22. On November 13, 2013, the Asset and Property Management Agreement (the "**Management Agreement**") dated November 1, 2013, between the Debtor, Hatfield, as special servicer acting on behalf of the Secured Creditors, and Garigal Asset Management GmbH (the "**Asset Manager**"), became effective. Pursuant to the Management Agreement, the Asset Manager would provide comprehensive managing services to the Debtor, including, *inter alia*, the following duties:
 - (a) developing a business plan setting forth (i) steps for the eventual sale of the Shopping Centre on or before the Loan maturity date in 2016, (ii) strategies for entering into new occupational leases, and (iii) monthly budgets;
 - (b) preparing market data in connection with the Shopping Centre, including up-to-date information regarding the various opportunities for the disposal of the Shopping Centre;
 - (c) monitoring the performance of the lessees¹ and more generally managing the business relationships with the lessees;
 - (d) negotiating, obtaining and monitoring all service agreements for the Shopping Centre, and recommending appropriate insurance policies for the assets therein;
 - (e) checking invoices and providing the Debtor's accountants and auditors with all data required for annual reports; and
 - (f) preparing maintenance and repair budgets, ensuring that the Shopping Centre complies with all statutory and safety requirements, identifying necessary development and refurbishment measures and other constructional value enhancing opportunities, and more generally, providing technical property management services.
23. The Management Agreement was entered into knowing that the Debtor intended on filing bankruptcy proceedings, and it was the intention of the parties, that the Management Agreement "*remain valid and [...] survive the bankruptcy of the [Debtor]*", as appears from Section 1(d) of the Management Agreement, communicated herewith as **Exhibit P-8**.

IV. SECURITY DOCUMENTS

24. In order to secure the payment and punctual performance of the Debtor's obligations under the Facility Agreement, the Debtor granted security interests in

certain movable and immovable property (the "Collateral") pursuant to the following agreements:

- (a) a notarial *Land Charge Deed* dated March 2, 2006 (no. 512/2006Ad of the roll of deeds of the notary public Konrad Adenauer, Cologne, the "**Land Charge Deed**") and a *Security Purpose Agreement* dated March 28, 2006 (the "**Security Purpose Agreement**"), in which the Debtor created a certified land charge over the Shopping Centre as security for the Lender's claims against the Debtor under the Facility Agreement, as appears from a copy of the Land Charge Deed and the Security Agreement, communicated herewith as **Exhibit P-9** and **Exhibit P-10**, respectively;
 - (b) a *Global Assignment Agreement* dated March 28, 2006 (the "**Global Assignment**"), in which the Debtor assigned certain receivables as security for any claims the Lender may have against the Debtor under the Facility Agreement, as appears from a copy of the Global Assignment, communicated herewith as **Exhibit P-11**; and
 - (c) an *Account Pledge Agreement* dated March 28, 2006 (the "**Account Pledge**"), in which the Debtor granted a pledge over its present and future credit balances standing to the credit on certain bank accounts as security for any claims the Lender may have against the Debtor under the Facility Agreement, as appears from a copy of the Account Pledge, communicated herewith as **Exhibit P-12**.
25. The security created by or pursuant to the Land Charge Deed, Security Purpose Agreement, Global Assignment and Account Pledge (collectively, the "**Security Documents**"), is all held and administered by the Security Agent for and on behalf of the Lender.
26. As described in greater detail above, the Lender and Security Agent are the only secured creditors of the Debtor, the whole as appears from a report from the Nova Scotia Personal Property Registry communicated herewith, as **Exhibit P-13**, as well as the Trustee's Report (Exhibit P-5).

V. GROUNDS FOR THIS MOTION

27. For the reasons described hereinafter, the appointment of Deloitte as receiver to the assets of the Debtor is necessary in order to protect the Debtor's estate as well as the interests of the Secured Creditors.
28. As stated above, since (i) the estimated realizable value of the Debtor's assets is lower than the estimated value of its liabilities, and (ii) the Shopping Centre is not a core asset forming part of HII's restructuring portfolio, it was decided that the Debtor would file an assignment in bankruptcy.

29. In the context of this bankruptcy, and based on the estimated realizable value of the Shopping Centre, no equity is expected to be available to any of the Debtor's unsecured creditors, which in any event, as of this date, include only the Lender and Security Agent for their expected deficiency claim.
30. In these circumstances, the Trustee would normally cease operating the Shopping Centre, surrendering it instead to the Secured Creditors, the whole as appears from the Trustee's Report (Exhibit P-5).
31. However, any increase in value obtained by not immediately surrendering the real estate asset to the Secured Creditors would benefit the Secured Creditors and could also potentially benefit the unsecured creditors, if such increase in the realizable value turns out to be sufficient to cover the Secured Creditors' outstanding debt.
32. In fact, by nominating a receiver to the assets of the Debtor, the Secured Creditors are ensuring that time and resources are allocated to maximizing the value of the Shopping Centre, namely through capital expenditures, which will make the Shopping Centre more attractive to new tenants, thereby reducing the current vacancy rate.
33. In taking the time to identify new tenants and by reducing the vacancy rate, the potential realizable value of the Shopping Centre will probably increase, and accordingly, benefit all stakeholders.
34. As such, by appointing Deloitte as receiver with the necessary powers to take all appropriate measures in respect of the Debtor's assets, including overseeing the Asset Manager's continued administration and maintenance of the Shopping Centre pursuant to the Management Agreement, the value of the business and assets will ultimately be maximized, and will allow the Receiver, in cooperation with the Asset Manager and Hatfield, as special servicer acting on behalf of the Secured Creditors, to proceed with the eventual sale of the Shopping Centre.
35. Deloitte is qualified and has agreed to act as receiver to the assets of the Debtor and exercise any and all of the proposed powers provided for in the draft Receivership Order (Exhibit P-4), provided that the Management Agreement remain in force, and that this Court grant a charge on the assets, property and undertakings of the Debtor, in the maximum amount of \$80,000, in order to secure the professional fees and disbursements incurred by Deloitte in connection with these proceedings, both before and after the date of the Receivership Order.
36. The present request is urgent given the situation enunciated above.
37. The present motion is well-founded in fact and in law.

WHEREFORE, MAY THIS COURT:

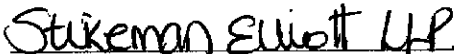
GRANT the present *Motion for the Issuance of an Order Appointing a Receiver* (the "**Motion**");

ISSUE an order in the form of the draft receivership order (the "**Receivership Order**") communicated as **Exhibit P-4** in support of the Motion.

ORDER the provisional execution of the Receivership Order notwithstanding appeal;

THE WHOLE without costs save in case of contestation.

MONTREAL, January 15, 2014

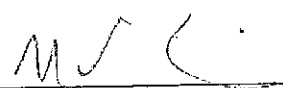

STIKEMAN ELLIOTT LLP
Attorneys for Hatfield Philips
International Limited, as special servicer
acting on behalf Titan Europe 2006-5
p.l.c. and Credit Suisse International

AFFIDAVIT

I, the undersigned, Matthew Grefsheim, having a place of business at 25 Canada Square, 34th Floor, London E14 5LB, United Kingdom, solemnly declare:

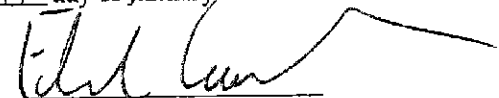
- a) I am the Director of Special Servicing of Hatfield Philips International Limited, the special servicer acting on behalf of Titan Europe 2006-5 p.l.c. and Credit Suisse International; and
- b) All the facts alleged in the *Motion for the Issuance of an Order Appointing a Receiver* are true.

AND I HAVE SIGNED



MATTHEW GREFSHEIM

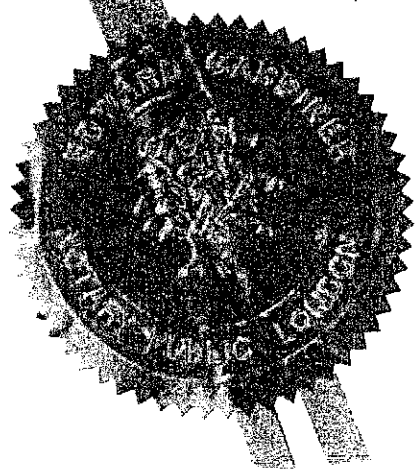
SOLEMNLY DECLARED before me in
London, this 15th day of January 2014



Notary Public, London, England
(Edward Gardiner)

CHEESWRIGHTS
NOTARIES PUBLIC

Bankside House, 107 Leadenhall Street,
London EC3A 4AF
Telephone: 020 7623 9477
Facsimile: 020 7623 5428



CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

NO.: 500-11-045750-136
Estate No.: 41-1821345

IN THE MATTER OF THE RECEIVERSHIP
OF:

HOMCO REALTY FUND (98) LIMITED
PARTNERSHIP

Debtor

- and -

TITAN EUROPE 2006-5 P.L.C.

- and -

CREDIT SUISSE INTERNATIONAL

Petitioners/Secured Creditors

- and -

SAMSON BÉLAIR/DELOITTE & TOUCHE
INC.

Trustee/Proposed Receiver

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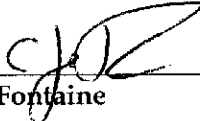
HATFIELD PHILIPS INTERNATIONAL
LIMITED

Mise-en-cause

ATTESTATION OF AUTHENTICITY
(Art. 82.1 C.P.C.)

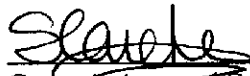
I, the undersigned, Jean Fontaine, attorney with the law firm of Stikeman Elliott LLP, hereby certify that the attached copy of the affidavit of Mr. Matthew Grefsheim is true to the e-mail received from Sophie Callander of Berwin Leighton Paisner LLP on January 15, 2014, at 12:55 p.m. which contained his affidavit in the matter of Homco Realty Fund (98) Limited Partnership and al. in the above-captioned Court file number. The e-mail address from which such affidavit was received is Sophie.Callander@blplaw.com.

AND I HAVE SIGNED:



Jean Fontaine

Solemnly affirmed before me,
In Montréal, on the 15th day
of January, 2014



Commissioner of Oaths for the Province of Québec



NOTICE OF PRESENTATION

TO:


SAMSON BÉLAIR/DELOITTE & TOUCHE INC.
1 Place Ville-Marie, Suite 3000,
Montréal, QC H3B 4T9

Attn.: Benoît Clouâtre
Fax: (514) 390-4103

TAKE NOTICE that the *Motion for the issuance of an Order Appointing a Receiver* will be presented for adjudication before one of the Honorable Judges of Superior Court or to the Registrar, sitting in practice in and for the District of Montreal, in **room 16.10**, of the Montreal Courthouse, located at 1 Notre-Dame Street East, on **January 16, 2014** at **9:00am** or soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, January 15, 2014


STIKEMAN ELLIOTT LLP
Attorneys for Hatfield Philips
International Limited, as special servicer
acting on behalf Titan Europe 2006-5
p.l.c. and Credit Suisse International

SUPERIOR COURT
(Commercial division)

No.: 500-11-045750-136
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CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

IN THE MATTER OF THE RECEIVERSHIP OF:

HOMCO REALTY FUND (98) LIMITED PARTNERSHIP
Debtor

-and-
TITAN EUROPE 2006-5 P.L.C.

-and-
CREDIT SUISSE INTERNATIONAL
Petitioners/Secured Creditors

-and-
SAMSON BÉLAIR/DELOITTE & TOUCHE INC.
Trustee/Proposed Receiver

-and-
HATFIELD PHILIPS INTERNATIONAL LIMITED
Mise-en-cause

BS0350 File: 127539-1023

MOTION FOR THE ISSUANCE OF AN ORDER
APPOINTING A RECEIVER, AFFIDAVIT, ATTESTATION
OF AUTHENTICITY AND NOTICE OF PRESENTATION

ORIGINAL

Mtre Nathalie Nouvet (514) 397-3128
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