

**SUPERIOR COURT
(Commercial Division)**

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

No. 500-11-045750-136

DATE: January 16, 2014

PRESIDING : ~~Me Chantal Flamand, registraire~~

**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.

Receiver/Trustee

-and-

HATFIELD PHILIPS INTERNATIONAL LIMITED

Mise-en-cause

ORDER APPOINTING A RECEIVER
(Section 243 of the *Bankruptcy and Insolvency Act*)

- [1] **SEEING** that on December 18, 2013, the Debtor filed an assignment in bankruptcy under Article 49 of the BIA and that Samson Bélair/Deloitte & Touche Inc. ("**Deloitte**") was appointed trustee of the Debtor's estate (the "**Trustee**");
- [2] **ON READING** the Motion to Appoint a Receiver (the "**Motion**") pursuant to Article 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), the affidavit and the exhibits in support thereof;
- [3] **SEEING** that Hatfield Philips International Limited ("**Hatfield**"), as special servicer acting on behalf of the Petitioners, filed the Motion on behalf of the Petitioners;
- [4] **SEEING** that the *Asset and Property Management Agreement* dated November 1, 2013 (the "**Management Agreement**"), between the Debtor, Hatfield, as special servicer acting on behalf of the Petitioners, and Garigal Asset Management GmbH (the "**Asset Manager**") is valid and remains in place;
- [5] **SEEING** the submissions of the attorneys for Hatfield, as the special servicer acting on behalf of the Petitioners;
- [6] **SEEING** the submissions of the Trustee's ~~attorneys~~; ^{cu}
- [7] **SEEING** that it is appropriate to appoint a receiver to the Property (such as defined herein) of the Debtor;

WHEREFORE THE COURT:

- [8] **GRANTS** the Motion;

SERVICE

- [9] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof;

APPOINTMENT

- [10] **APPOINTS** Deloitte to act as receiver (the "**Receiver**") to the Property of the Debtor until one of the following events comes to pass:
 - (a) the sale of all the Property; or
 - (b) the issuance of any order by the Court terminating the mandate of the Receiver;

- [11] **DECLARES** that the order (the "**Order**") and its effects shall survive the filing by the Debtor of a proposal pursuant to the terms of the BIA or the issuance of an initial order in regard of the Debtor pursuant to the terms of the *Companies Creditors Arrangements Act* (the "**CCAA**"), unless the Court orders otherwise;

RECEIVER'S POWERS

- [12] **AUTHORIZES** the Receiver, in its discretion, to exercise the following powers:

12.1 Powers related to the possession of the Property

- (a) take possession of all of the assets, undertakings and properties of the Debtor, of every nature and kind whatsoever, wherever situated, and regardless of whose possession it may be in, excluding, until further order of this Court, the Debtor's intercompany receivable and taxes receivable (as same are further described in the Trustee's preliminary report filed at the first creditors' meeting) (the "**Property**") and to exercise the following powers listed hereinafter in the place and stead of the Trustee and/or Debtor in respect of the Property;

12.2 Powers related to the preservation of the Property

- (b) all the powers necessary for the preservation, control and protection of the Property;
- (c) all the powers necessary to grant the Receiver access to all the accounting records of the Debtor, as well as to any document, contract, register of any nature or kind whatsoever, wherever they may be situated and regardless of the medium on which they may be recorded (the "**Records**"), as well as the powers necessary to make copies of all the Records necessary or useful to the execution of the Receiver's functions;
- (d) all the powers necessary to undertake an analysis of the Debtor's Records;

12.3 Powers related to the Debtor's operations

- (e) carry on the Debtor's operations;
- (f) all the powers necessary to control the Debtor's receipts and disbursements;
- (g) all the powers necessary to collect all the accounts receivable and all the other claims of the Trustee and/or Debtor and to transact in respect of same, as well as to sign any document for this purpose;
- (h) all the powers necessary to open any required bank account, pursuant to the terms and conditions the Receiver may determine, with any chartered Canadian bank, or any other financial institution, the whole, in order to cash any item payable to the Debtor, and to issue any payment which, in the opinion of the Receiver, is necessary or useful to the Debtor's operations;

12.4 Powers related to the disposition or sale of the Property

- (i) **AUTHORIZES** the Receiver to further petition the Court for authorization to sell all or any part of the Debtor's Property outside the ordinary course of business, upon written instruction from Hatfield, as special servicer acting on behalf of the Petitioners, and pursuant to conditions the Court deems reasonable in the circumstances;
- [13] **GRANTS** the Receiver all the powers necessary to initiate, prosecute and continue the prosecution of any and all proceedings it considers appropriate, including for the purpose of Sections 34 and 249 of the BIA, within the performance of its duties regarding the Property;
- [14] **AUTHORIZES** the Receiver to continue the Management Agreement, subject to any amendments that the Receiver may deem necessary in order to exercise some or all of its powers herein, which amendments must be approved by the parties to the Management Agreement or by this Court;
- [15] **AUTHORIZES** the Receiver to retain the services of any lawyer, or of any person or business in order to appropriately fulfil its functions;
- [16] **DECLARES** that the Receiver may provide creditors and other relevant stakeholders with information in response to requests made by them in writing. A copy of such requests must be sent to Hatfield's attorney. Where the Receiver has been advised by Hatfield, as special servicer acting on behalf of the Petitioners, that information is confidential, proprietary or competitive, the Receiver shall not provide such information to any person without the consent of Hatfield, as special servicer acting on behalf of the Petitioners, unless otherwise directed by this Court.

NON-INTERFERENCE WITH THE RECEIVER, THE DEBTOR AND THE PROPERTY

- [17] **ORDERS** that subject to any other order rendered by the Court, which may only be rendered after a prior notice has been duly sent to the Receiver and to Hatfield, as special servicer acting on behalf of the Petitioners, no proceeding, seizure, revendication, or any other enforcement process shall be commenced or enforced against the Property;
- [18] **ORDERS** that no person shall interrupt, modify, terminate or fail to execute its obligations pursuant to any contract, agreement, license or permit entered into with the Debtor without the prior consent of the Receiver or without the authorization of the Court;

CONTINUATION OF SERVICES

- [19] **ORDERS** that any person having an oral or written agreement with the Debtor or Asset Manager, as well as any supplier of goods or services to the Debtor or Asset Manager is hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services, as may be required by the Receiver or Asset Manager and that the Receiver shall be authorized to continue use of the Debtor's current premises, telephone numbers, facsimile numbers, internet

addresses, domain names and other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver, subject to the Management Agreement, and in accordance with the normal payment practices of the Debtor and Asset Manager or such other practices as may be agreed upon by Hatfield, as special servicer acting on behalf of the Petitioners, supplier or service provider and the Receiver, or as may be ordered by this Court;

PROTECTION OF PERSONAL INFORMATION

[20] **DECLARES** that pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information on identifiable individuals, which information it has in its possession or under its responsibility, to interested parties or to investors, financiers, prospective purchasers or potential strategic partners, as well as to their advisors, but only to the extent desirable or required, and only upon condition that the persons to whom such personal information is disclosed shall undertake to maintain and protect the privacy of such information and limit the use of such information pursuant to confidentiality agreements entered into with the Receiver;

LIMITATION OF LIABILITY

[21] **DECLARES** that nothing herein contained shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Property. The Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Property within the meaning of any legislation, including any environmental legislation;

[22] **DECLARES** that the powers of the Receiver shall be exercised pursuant to its sole discretion and judgment;

[23] **DECLARES** that section 215 of the *BIA* applies *mutatis mutandis*, and hence that no action lies against the Receiver by reason of its appointment or the execution of the powers granted by the Court, except by leave of the Court. The entities related to the Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph;

[24] **ORDERS** that Titan Europe 2006-5 p.l.c. shall indemnify the Receiver and save it harmless against any claim which may be brought against the Receiver in relation to the operation of the Property, including, without limiting the generality of the foregoing, for any operational loss, for any acts or omissions of the Asset Manager or for any payment made to the Secured Creditors (the indemnification being limited to the amount of the actual payment made), save and except for any claims arising as a result of the gross negligence or willful misconduct of the Receiver;

FEES

[25] **DECLARES** that as security for the professional fees and disbursements incurred in relation to these proceedings, both before and after the date of the Order, a charge and

security over the Property is hereby constituted in favour of the Receiver, of the Receiver's attorneys and other advisors, to the extent of the aggregate amount of \$80,000 (the "**Administration Charge**");

- [26] **DECLARES** that the Administration Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances;
- [27] **DECLARES** that the Administration Charge is effective and shall charge, as of 12:01 a.m. (Montreal time) the day of the Order (the "**Effective Time**"), all the Debtor's Property present and future;
- [28] **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) the bankruptcy of the Debtor and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Receiver pursuant to any Order and the granting of the Administration Charge do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting a recourse for abuse under an applicable law, and shall be valid and enforceable as against any person, including any trustee in bankruptcy, and any receiver to the Property of the Debtor;
- [29] **AUTHORIZES** the Receiver to collect the payment of its fees and disbursements and those of its attorneys, with the consent of Hatfield, as special servicer acting on behalf of the Petitioners, the whole subject to taxation in conformity with the *BIA*, if applicable;

GENERAL

- [30] **DECLARES** that the Order, the Motion and the affidavit do not, in and of themselves, constitute a default or failure to comply by the Debtor under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or any other written document or requirement;
- [31] **DECLARES** that the Receiver is at liberty to serve any notice, circular or any other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given address as last shown in the Records; the documents served in this manner shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if delivered by ordinary mail;
- [32] **DECLARES** that the Receiver may serve any court materials in these proceedings on all represented parties, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Receiver shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter;

- [33] **DECLARES** that any party interested in these proceedings may serve any court material in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that such party shall deliver a "hard copy" on paper of such PDF or electronic materials to the Debtor's and the Receiver's counsel and to any other party who may request such delivery;
- [34] **DECLARES** that, unless otherwise provided herein, ordered by this Court, or provided by the BIA, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a notice of appearance on the solicitor for the Trustee and the Receiver and has filed such notice with the Court;
- [35] **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Receiver, Hatfield, as special servicer acting on behalf of the Petitioners, and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;
- [36] **DECLARES** that the present Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;
- [37] **DECLARES** that the Receiver shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada or elsewhere (including in Germany in particular), for orders which aid and complement the Order and any subsequent orders of this Court. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Receiver as may be deemed necessary or appropriate for that purpose;
- [38] **REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body elsewhere (including in Germany in particular), to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
- [39] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

(s)

Me Chantal Flamand, registraire

