

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

THE HONOURABLE ) THURSDAY, THE 11<sup>TH</sup> DAY  
 )  
JUSTICE MESBUR ) OF APRIL, 2013

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



**PEOPLES TRUST COMPANY**

Applicant

- and -

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

Respondent

**REPRESENTATIVE COUNSEL ORDER**

**THIS MOTION** made by Deloitte & Touche 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 appointing Kronis, Rotsztain, Margles, Cappel LLP (“**KRMC**”) as representative counsel in this proceeding for the holders of the Arm’s Length Units (as defined in the Notice of Motion), the tenants and occupants of those Arm’s Length Units, and the tenants of other units of the Rose of Sharon (Ontario) Retirement Community Life-Lease Residence (collectively, the “**Arm’s Length Claimants**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Receiver's Motion Record dated February 22, 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 Receiver's Memorandum of Law dated April 5, 2013, the Motion Record of Peoples Trust Company ("**Peoples**") dated April 8, 2013, and upon hearing submissions of counsel for the Receiver, counsel for Peoples and upon being advised that KRMC is prepared to act on the terms hereof,

*Handwritten notes:*  
✓  
counsel for  
The  
Director  
Group, Mr  
Berg,  
+ Unimac  
1 wk

1. **THIS COURT ORDERS** that the timing and method of service of the Receiver's Notice of Motion returnable February 28, 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 served 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 subject to paragraphs 4 and 6 below, KRMC is hereby appointed in this proceeding as representative counsel ("**Representative Counsel**") for the Arm's Length Claimants (as set out in **Schedule "A"** attached hereto) with respect to any possessory, financial, equitable and/or contingent claims and/or interests the Arm's Length Claimants may have in their Life-Lease Unit(s) at the Rose of Sharon (Ontario) Retirement Community Life-Lease Residence (the "**Arm's Length Claims**"), and specifically (i) the issue of the priority between the Construction Mortgage (as defined in the Notice of Motion) and the Arm's Length Claims, and (ii) Peoples' motion seeking an Order that the 90 Life-Lease Units in the Rose of Sharon (Ontario) Retirement Community Life-Lease Residence may be sold free and

clear of all claims and interests, including the Arm's Length Claims (collectively the "**Mandate**").

3. **THIS COURT ORDERS** that no individuals who were directors of Rose of Sharon (Ontario) Retirement Community ("**Rose**") prior to June, 2011, and/or related family members of those individuals, be included in the Arm's Length Claimants to be represented by Representative Counsel, without leave of the Court.

4. **THIS COURT ORDERS** that the role of Representative Counsel for the Arm's Length Claimants shall be limited to the Mandate.

5. **THIS COURT ORDERS** that any individual Arm's Length Claimants who do not wish to be represented by Representative Counsel and be bound by this Order and all other orders which may subsequently be made in this proceeding related to the appointment of Representative Counsel, shall by April 26, 2013 (the "**Opt-Out Date**") notify Representative Counsel and the Receiver by facsimile, email or delivery, in the form attached hereto as **Schedule "B"** (the "**Opt-Out Letter**"), and shall thereafter not be represented by Representative Counsel and shall represent themselves as an independent individual party (with or without counsel) at their own expense to the extent they wish to appear in any or all matters relating to this proceeding.

6. **THIS COURT ORDERS** that if more than one-third of the Arm's Length Claimants opt-out of this Order by the Opt-Out Date, KRMC shall be automatically and immediately discharged from its role and duties as Representative Counsel and, forthwith upon the Receiver notifying the Arm's Length Claimants by mail or email at their address(es) set out in Schedule "A" hereto of KRMC's discharge as Representative Counsel, the Arm's Length Claimants shall represent themselves as an independent individual party (with or without counsel) at their own expense to the extent they wish to appear in any or all matters relating to this proceeding.

7. **THIS COURT ORDERS** that, in fulfilling its duties hereunder, Representative Counsel:

- (a) may consult with the Arm's Length Claimants, but shall not be obligated to follow the instructions of, nor provide opinions to, any individuals; and
- (b) shall act in the best interests of the Arm's Length Claimants as a whole, and take such necessary and appropriate actions and steps as Representative Counsel deems advisable from time to time.

8. **THIS COURT ORDERS** that Representative Counsel shall pass its accounts from time to time, and for this purpose the accounts of Representative Counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice. At such passing of accounts, Representative Counsel 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 Representative Counsel, up to a maximum amount of \$150,000.00 plus disbursements actually incurred and applicable taxes, subject to further Order of this Court obtained on notice to Peoples and the Receiver.

9. **THIS COURT ORDERS** that subject to paragraph 8 above, after the rendering of accounts by Representative Counsel to the Receiver, any expenditure or liability which is properly made or incurred by Representative Counsel, including the reasonable fees and disbursements of Representative Counsel, shall be paid by the Receiver out of the Rose estate in a timely manner and prior to the passing of accounts to allow Representative Counsel to fulfill its 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 and payment shall be deferred until that time.

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

11. **THIS COURT ORDERS** that, subject to further order of the Court, and without limitation to any other right or protection in favour of Representative Counsel, KRMC shall not be required to take any step or action 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 be discharged from its role as Representative Counsel 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 its role as Representative Counsel.

12. **THIS COURT ORDERS** that the Receiver shall provide notice of this Order to the Arm's Length Claimants set out in Schedule "A" hereto by (a): emailing or mailing a copy of the Receiver's Notice attached as **Schedule "C"** hereto, together with a copy of this Order, after the issuance of this Order, to the Arm's Length Claimants at their address(es) set out in Schedule "A" hereto; and by (b) posting a copy of the Receiver's Notice on the Receiver's website as soon as practicable after the issuance of this Order.

13. **THIS COURT ORDERS** that Representative Counsel 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, save and except for any gross negligence or willful misconduct on its part, and that no action or other proceedings shall be commenced against Representative Counsel relating to its acting as such, except with prior leave of this Court to be obtained on at least (7) seven days' notice to Representative Counsel and upon further order in respect of security for costs on a substantial indemnity basis of Representative Counsel in connection with any such action or proceeding.

14. **THIS COURT ORDERS** that Representative Counsel 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 Representative Counsel 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 Arm's Length Claimants of such amended Order.

  
\_\_\_\_\_

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



APR 11 2013

**SCHEDULE "A"**  
**ARM'S LENGTH CLAIMANTS**  
**Rose of Sharon (Ontario) Retirement Community**

**Arm's Length Unit-holders - Arm's Length Units**

Mary Chon

Youngsook Cha

Sung-Sun Yoon

Mi-Kyung Yoon

Soon Sup Lee

Hyung Good Lee

Kyung Yurl Lee

Jung Ja Lee

Young Jeon

Bog Shim Shin

Han Hyeong Lee

Hae Jeong Kang

Eunkyung Yim

Jong Ran Kim

Sun Hwa Lee

Woo Sam Park

Myung Hee Kim

Jun Do Sung

Mansoo Chun

Hyang Ok Hong



John Bai

Chang Joon Kim

Soon Ja Kim

Sang Hyon Kim

Brenda (Chun Ja) Ha

Young Sohn

Mal Hwa Kim

Ellen Kim

Morgiana Lee

Gye-Soon Kim

Joon Kie Kim

Jae Won Byun

Hee Jun Park

Na Rae Choi

Jong Rye Lee

Chang Hun Shin

**Occupants and Tenants - Arm's Length Units**

Suites 304, 306, 308, 706, 707, 708, 709, 711, 803, 805, 806, 807, 810, 812, 906, 907, 908, 909, 911, 912, 1002, 1005, 1008, 1009, 1010, 1108, 1112, PH6

**Tenants -Director Units**

Suites 703, 710, 712, 801, 802, 804, 809, 811, 902, 1001, 1003, 1007, 1011, 1107, 1109 and 1111

**Tenants - Mugungwha Units**

Suites 205 and 207

**Tenants - Non-Arm's Length Units**

Suites 201, 203, 204, 206, 208, 209, 210, 211, 212, 213, 214, 311, 701, 901, 903, 910, 1103 and 1105

**Tenants - Released & Vacant Units**

Suites 202, 302, 307, 310, 312, 313, 314, 702, 704, 705, 904, 905, 1006, 1008, 1101 and 1102

**Tenants - Unimac Units**

Suites 207, 301, 303, 309, PH1 and PH8

**Tenants - Turfpro RTOA Units**

Suites 305, PH5 and PH7

**Tenants - Turfpro Option Units**

Suites 310, 802, PH3 and PH8

**Tenants - Unsold & Vacant Units**

Suite 808

**SCHEDULE "B"**

Court File No. CV-11-9399-00CL

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

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

**PEOPLES TRUST COMPANY**

Applicant

- and -

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

Respondent

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended and under Section 101 of the  
*Courts of Justice Act*, R.S.O. 1990, c. C.43**

**OPT-OUT LETTER**

**DELOITTE & TOUCHE INC.**

Brookfield Place  
Suite 1400  
181 Bay Street  
Toronto ON M5J 2V1

**Attention: Daniel R. Weisz/Hartley Bricks**

(416) 775-4724 / (416) 775-7326 (Tel)  
(416) 601-6690 (Fax)  
Email: [dweisz@deloitte.ca](mailto:dweisz@deloitte.ca) /  
[hbricks@deloitte.ca](mailto:hbricks@deloitte.ca)

**KRONIS, ROTSZTAIN, MARGLES,  
CAPPEL LLP**

Barristers and Solicitors  
8 King Street East  
Suite 1000  
Toronto, ON M5C 1B5

**Attention: Mervyn Abramowitz/Philip Cho**

(416) 218-5620/(416) 218-5494 (Tel)  
(416) 306-9874 (Fax)  
Email: [mabramowitz@krmc-law.com](mailto:mabramowitz@krmc-law.com) /  
[pcho@krmc-law.com](mailto:pcho@krmc-law.com)

I, \_\_\_\_\_, am an Arm's Length Claimant as defined in the Order of Justice Mesbur dated April 11, 2013 (the "**Representative Counsel Order**"). My Arm's Length Claim relates to Unit \_\_\_\_\_ at the Rose of Sharon Life Lease Residence.

Under paragraph 4 of the Representative Counsel Order, Arm's Length Claimants who do not wish Kronis, Rotsztain, Margles, Cappel LLP ("**KRMC**") to act as their Representative Counsel may opt out.

I hereby notify KRMC and Deloitte & Touche Inc. that I do not wish to be bound by the Representative Counsel Order, and will be represented as an independent individual party at my own expense to the extent I wish to appear in these proceedings.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Name:

Telephone Number:

Email Address:

Contact Address:

## SCHEDULE "C"

### RECEIVER'S NOTICE

Pursuant to an Order (the "**Appointment Order**") of Justice Campbell of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated September 27, 2011 (the "**Appointment Date**"), Deloitte & Touche Inc. ("**Deloitte**") was appointed as receiver and manager (the "**Receiver**") of all of the current and future assets, undertakings and properties of Rose of Sharon (Ontario) Retirement Community ("**Rose**").

Pursuant to an order of Justice Mesbur dated April 11, 2013 (the "**Representative Counsel Order**"), Kronis, Rotsztain, Margles, Cappel LLP ("**KRMC**") was appointed as representative counsel ("**Representative Counsel**") of all Arm's Length Claimants (as set out in Schedule "A" to the Representative Counsel Order) in respect of the Mandate (as defined in the Representative Counsel Order). As set out in the Representative Counsel Order, no individuals who were directors of Rose prior to June, 2011, and/or related family members of those individuals, can be included in the Arm's Length Claimants to be represented by Representative Counsel, without leave of the Court.

The reasonable fees and disbursements incurred by the Representative Counsel shall be paid by the Receiver on a periodic basis up to a limit of \$150,000.00 plus disbursements and applicable taxes. Accordingly, **you are not required to contribute to the costs of the Representative Counsel, subject to further Order of the Court.**

**If you do not wish to be bound by the Representative Counsel Order**, you must notify Deloitte and KRMC in writing, by mail, e-mail or delivery on or before **April 26, 2013**. If more than one-third of the Arm's Length Claimants opt-out by April 26, 2013, KRMC will be discharged as Representative Counsel for the remaining Arm's Length Claimants who do not opt out, and each of the Arm's Length Claimants will have to represent themselves as an independent individual party (with or without counsel) at their own expense. Your notice that you do not wish to be bound by the Representative Counsel Order must be in the form of a fully completed and enclosed "Opt-Out Letter" attached as Schedule "B" to the Representative Counsel Order and also available on the Receiver's website at:

<http://tinyurl.com/bex6rxy>

[http://www.deloitte.com/view/en\\_CA/ca/specialsections/insolvencyandstructuringproceedings/6a6abed46e0b2310VgnVCM3000001c56f00aRCRD.htm](http://www.deloitte.com/view/en_CA/ca/specialsections/insolvencyandstructuringproceedings/6a6abed46e0b2310VgnVCM3000001c56f00aRCRD.htm)

Additional information concerning the Rose receivership, including previous Orders granted in the receivership, can be also found on the Receiver's website at the same links. Arm's Length Claimants may contact KRMC in confidence directly at:

**Mervyn Abramowitz/Philip Cho**

(416) 218-5620/(416) 218-5494 (Tel)

(416) 306-9874 (Fax)

Email: [mabramowitz@krmc-law.com](mailto:mabramowitz@krmc-law.com) / [pcho@krmc-law.com](mailto:pcho@krmc-law.com)

PEOPLES TRUST COMPANY

and

ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY

Applicant

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 & Touche Inc., in its capacity as court  
appointed receiver and manager of Rose of Sharon  
(Ontario) Retirement Community