

CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC
DIVISION No.: 01-MONTREAL
COURT 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 formed under
the laws of Nova Scotia, having its head office at 1959
Upper Water Street, Suite 900, Halifax, Nova Scotia,
B3J 3N2, Canada, a chief place of business at 3500
de Maisonneuve Blvd. West, Suite 970, Montreal,
Quebec, H3Z 3C1, Canada, and having a property
named Carat-Park Wittenberg, located at Teucheler
Weg 2, 06886 Lutherstadt Wittenberg, Germany

Insolvent person

– and –

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.
(Jean-Christophe Hamel, CPA, CA, CIRP, designated
person in charge) having a place of business at 1 Place
Ville Marie, Suite 3000, Montreal, Quebec, H3B 4T9

Receiver

**SECOND INTERIM REPORT SUBMITTED BY
SAMSON BÉLAIR/DELOITTE & TOUCHE INC. AS RECEIVER OF CERTAIN
ASSETS OF HOMCO REALTY FUND (98) LIMITED PARTNERSHIP
AS AT JANUARY 15, 2015
(Subsection 246(2) of the *Bankruptcy and Insolvency Act*
and Rule 126 of the *Bankruptcy and Insolvency General Rules*)**

I. Introduction

1. Homco Realty Fund (98) Limited Partnership (“**H98**”) is a limited partnership formed under the laws of Nova Scotia, having its registered head office at 1959 Upper Water Street, Suite 900, Halifax, Nova Scotia, B3J 3N2, Canada, and having a chief place of business at

3500 de Maisonneuve Blvd. West, Suite 970, Montreal, Quebec, H3Z 3C1, Canada. H98 was established for the sole purpose of acquiring and operating a real estate property.

2. H98's only real estate asset is an 18,145 square meter property located in Wittenberg, Germany. The city of Wittenberg lies some 100 km south-west of Berlin and 70 km north-east of Leipzig, and has approximately 50,000 inhabitants.
3. On December 18, 2013, H98 filed an assignment in bankruptcy and Samson Bélair/Deloitte & Touche Inc. ("**Deloitte**") was appointed as trustee.
4. On January 16, 2014, following a motion by Titan Europe 2006-5 P.L.C. and Credit Suisse International (the "**Secured Creditors**"), H98's sole secured creditors, the Court rendered an order appointing Deloitte as receiver (the "**Receiver**") of certain assets of H98 pursuant to Section 243 of the *Bankruptcy and Insolvency Act* with the powers enumerated in said order (the "**Receivership Order**"), as appears from the Court record.
5. On January 16, 2014, following the Receivership Order, Deloitte, in its capacity as trustee of the estate of H98, formally renounced all rights to possession and seizure of the real property of H98 located at Teucheler Weg 2, 06886 Lutherstadt Wittenberg, in Germany (the "**Real Property**"), the rental receivables with respect of the Real Property, and cash balances held in certain bank accounts of H98 (collectively the "**Secured Property**"), the whole in favor of Deloitte in its capacity as receiver to the Secured Property, the whole pursuant to the Receivership Order.

II. Purpose of this report

6. The purpose of this second report of the Receiver (the "**Second Report**") is to advise/provide the Superintendent with a summary with respect to:
 - a) all property of which the Receiver has taken possession or control that has not yet been sold or realized;
 - b) the activities of the Receiver since the issuance of its first interim report (dated July 15, 2014);
 - c) the interim statement of receipts and disbursements;
 - d) the anticipated completion of the receivership.

III. Summary of property of which the Receiver has taken possession

7. As of the date of this report, the Secured Property (which has not yet been sold or realized) of H98 includes the following:
 - (a) The Real Property;

- (b) The accounts receivable related to the Real Property (excluding the intercompany accounts receivable);
- (c) Cash balances held in certain bank accounts of H98.

IV. The activities of the Receiver since the issuance of its first interim report (dated July 15, 2014)

8. Upon its appointment, the Receiver continued the existing management agreement with the Asset Manager of the real estate property, namely Garigal Asset Management GmbH (“**Garigal**”). The responsibilities of Garigal under the existing management agreement included notably all of the necessary tasks to secure the on-going operations of the Real Property in addition to exploring any options available for the Real Property (i.e., mainly leasing the vacant spaces and/or selling the property).
9. According to Garigal, it has been increasingly difficult to attract new tenants for the Real Property and there has been very little interest in the Real Property for the following reasons:
 - (a) A high level of competition in the immediate area resulting from a Kaufland-anchored center located less than two kilometers away and the opening of a brand new shopping center in the city center, in October 2012;
 - (b) In Wittenberg, the unemployment rate of 12% is far worse than the German average of 7.3%. The population of Wittenberg is forecasted to decrease by 18% before 2025;
 - (c) The Property is considered old and outdated, with an unattractive internal/external layout as well as poor signage and lighting;
 - (d) The existing building/zoning legislation restricts or prevents certain modifications to the Property and commercial usage.
10. Since its appointment, Garigal approached over 25 potential tenants, including furniture stores, kitchen retailers, and bike stores. The Real Property was also presented for both leasing and purchase to 4 different parties: Porta Möbel GmbH & Co. (“**Porta**”), Höffner Möbelgesellschaft, Roller and Poco. Garigal also had discussions with Brack Capital regarding the acquisition of the Property.
11. Following Garigal’s process to attract new tenants or to find a buyer for the property, the only party which expressed an interest in leasing the Property was Porta, one of the largest players in German furniture businesses. Porta was first interested in leasing the vacant area and being granted a purchase option to be exercised before the end of 2014, subject to certain conditions, such as having free rent, taking up the space currently occupied by another tenant, obtaining a building permit for its contemplated use and capital expenditures by the Receiver. In September 2014, Porta withdrew its offer to lease, but remained interested in purchasing the Property.

12. On September 17, 2014, Porta confirmed its interest in acquiring the Property, under different scenarios (namely a closing by December 31, 2014, by March 31, 2015, and by December 31, 2015). The proposed purchase price in the different scenarios is lower if the date of closing is later. All of the contemplated purchasing scenarios were subject to Porta taking over rent-free the vacant area and an adjacent space presently occupied by another tenant, by December 31, 2014.
 13. As it is more thoroughly explained in the *Motion for the issuance of an order authorizing the sale of a real property and for the issuance of a vesting order* (the “**Motion for a Vesting Order**”), as appears from the Court record, under the existing market conditions and following Garigal’s marketing efforts, it was determined that accepting Porta’s offer/entering into negotiation with Porta based on the offer it submitted was the alternative that would maximize the value of the Real Property and that would most benefit H98’s creditors.
 14. In these circumstances, in the fall of 2014, Garigal, with the consent of the special servicer acting for the Secured Creditors, namely Hatfield Philips International Limited (“**HPI**”), and the Receiver, entered into discussions with Porta (and eventually the Purchaser) in order to complete a transaction under the first two scenarios proposed by Porta, namely either a sale by December 31, 2014 or by March 31, 2015.
 15. All parties involved, namely Garigal, HPI, the Receiver, and Porta, participated to discussions and negotiations and multiple versions of a draft Sale and Purchase Agreement were exchanged between the parties.
 16. On December 17, 2014, the parties agreed to the terms and conditions of a final Sale and Purchase Agreement providing for a sale to the Purchaser effective on December 31, 2014 or on March 31, 2015 (the “**SPA**”), the whole subject to Court approval.
 17. On December 18, 2014, Deloitte petitioned the Court seeking an Order authorizing the sale of the Real Property to Porta and a Vesting Order. The Order authorizing the sale of a real property and vesting order (the “**Vesting Order**”) was granted by the Court on December 18, 2014.
 18. On December 19, 2014, the SPA was signed in front of a German notary. However, given the existing timing, the need for several Canadian documents (including the Vesting Order) to be “legalized” for German purposes for the SPA to become binding upon the Receiver as seller and the German requirements for a transfer of real estate property to become effective, the parties acknowledged that the transfer of property would only become effective on March 31, 2015.
- V. The interim statement of receipts and disbursements for the period ended December 31, 2014**
19. You will find in **Appendix A** the interim statement of receipts and disbursements for the period from January 16 to December 31, 2014 (the “**Declaration Period**”).

20. The receipts during the Declaration Period totaled €3,440K and mainly included the realization of the cash balances (of €1,459K) held in H98's bank accounts at the time of Deloitte's appointment as Receiver, and the collection of rental receivables related to the Real Property of €1,981K.
21. The disbursements during the Declaration Period totaled €2,912K and mainly included the following:
- (a) Distributions to the Secured Creditors in the amount of €1,540K (as part of the regular/scheduled quarterly payments to the Secured Creditors as per the loan agreement);
 - (b) Disbursements of €98K related to repairs (including capital expenditures) and maintenance of the Real Property;
 - (c) Monthly reimbursement of VAT (German sales taxes) (including the payments of interest and penalties related to the VAT monthly declarations) to the German tax authorities in the amount of €253K;
 - (d) The reimbursement of costs/legal fees incurred by the Secured Creditors as part of H98's restructuring in the amount of €200K;
 - (e) The payment of utility charges (related to electricity, gas, and water consumptions) in the amount of €192K;
 - (f) Disbursements of €135K related to the Receiver's (and the Receiver's legal counsels) fees, as authorized by the Receivership Order and HPI;
 - (g) Disbursements of €92K related to the Asset Manager's fees;
 - (h) Disbursements of €66K related to the payment of property tax;
 - (i) Disbursements of €18K related to the insurance of the Real Property;
 - (j) Disbursements of €18K related to other various operating expenses related to the Real Property.
22. Consequently, an amount of approximately €28K was in the possession of/controlled by the Receiver as of December 31, 2014.

VI. The anticipated completion of the receivership

23. As indicated in the previous sections of this report, the SPA (which provides for the sale of the Real Property) was signed in front of a German notary on December 19, 2014. However, also as indicated in the previous sections of this report, the transfer of property will only become effective on March 31, 2015 (assuming that all of the required steps required for the transaction to close on March 31, 2015 are completed as planned/occur before March 31, 2015).

24. In addition, as of the time of this Second Report, there is a possibility that the Receiver may not be able to distribute all of the sale proceeds to the Secured Creditors following the closing of the transactions and that the Receiver may only be able to distribute part of the sale proceeds a few months following the closing of the transaction (once some potential liabilities to the Receiver identified in the SPA no longer exist/have expired).
25. Therefore, as of the time of this report and due to the reasons explained above, the Receiver does not anticipate the completion of the receivership before March 31, 2015 and possibly not before a few months following the contemplated closing date of the transaction (scheduled for March 31, 2015).

DATED AT MONTREAL, this 15th day of
January, 2015.

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.
Receiver to the property of Homco Realty Fund (98)
Limited Partnership



Jean-Christophe Hamel, CPA, CA, CIRP

APPENDIX A

District of Quebec
 Division No. 01 - Montréal
 Court No. 500-11-045750-136
 Estate No. 41-343482

**In the matter of the receivership of
 Homco Realty Fund (98) Limited Partnership
 of the City of Montreal, in the Province of Quebec**

Form 12
 Interim Statement of Receipts and Disbursements

RECEIPTS

1. Asset Realization		
Cash in bank	<u>1,458,366.06</u>	1,458,366.06
2. Miscellaneous		
Rental Income	<u>1,981,211.53</u>	1,981,211.53
TOTAL RECEIPTS		<u>3,439,577.59</u>

DISBURSEMENTS

3. Premium		
Insurance	<u>17,626.66</u>	17,626.66
4. Federal and Provincial taxes		
Others	<u>253,017.81</u>	253,017.81
5. Counseling fees		
Outside consulting	<u>92,158.96</u>	92,158.96
6. Miscellaneous		
Payments to Secured Creditors	1,539,869.61	
Bank charges	3,557.79	
Other misc disbursements	5,109.10	
Security	8,152.41	
Utilities	192,178.40	
Municipal taxes	66,465.47	
Repairs & maintenance	398,116.80	
Legal fees/disbursements	200,387.98	
Receiver's fees and costs	<u>135,239.17</u>	2,549,076.73
TOTAL DISBURSEMENTS		<u>2,911,880.16</u>

Note: How much of the total disbursements was paid for services provided by persons related to the trustee? 0.00

Amount available for distribution		<u>527,697.43</u>
7. Levy payable under section 147 of the Act		<u>0.00</u>
8. Unsecured creditors		
Current dividend	0.00 less levy	<u>0.00</u>
9. Amount retained in the Trust account by the Trustee:		<u>527,697.43</u>

Assets not sold or realized

Cash on hand - Cash	1,685,278.00	Realized in full
Debts Due - Business - Account Receivable	14,515.00	Not disposed
Debts Due - Business - Intercompany receivable	98,256.00	Unable to realize
Other - Income tax receivable	149,651.00	Unable to realize
Real Property or Immovable - Building - Wittenburg - Teucheler Weg 2, 06886 Lutherstadt	24,453,698.00	Not disposed

Asset Notes

Debts Due - Business - Intercompany receivable	98,256.00	Those assets were excluded from the assets of Homco Realty Fund (98) LP for which Samson Bélair/Deloitte & Touche Inc. was appointed Receiver by the Court on January 16, 2014.
Other - Income tax receivable	149,651.00	Those assets were excluded from the assets of Homco Realty Fund (98) LP for which Samson Bélair/Deloitte & Touche Inc. was appointed Receiver by the Court on January 16, 2014.

Notes:

1: Interim statement of receipts and disbursements for the period from January 16, 2014 to December 31, 2014.

2: All amounts are denominated in euros.

Dated at the City of Montréal in the Province of Quebec, this 15th day of January 2015.

Samson Bélair / Deloitte & Touche Inc. - Receiver

1, Place Ville Marie, Suite 3000
Montréal QC H3B 4T9
Phone: (514) 393-5427 Fax: (514) 390-4103

Taxed at the sum of \$ _____, this _____ day of _____.

Registrar