

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

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

**DESJARDINS FINANCIAL SECURITY LIFE  
ASSURANCE COMPANY**

Applicant

- and -

**CRAIGLEE NURSING HOME LIMITED**

Respondent

**AFFIDAVIT OF STEPHEN A. WOOD**

I, **STEPHEN A. WOOD**, of the Town of Oakville, Regional Municipality of Halton, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Regional Vice-President for Central Canada, Mortgage & Corporate Lending, Desjardins Asset Management (“**DAM**”), and as such have knowledge of the matters hereinafter deposed to.
2. To the extent that any of the information set out in this affidavit is based upon my review of documents, I have so indicated and verily believe the information in such documents to be true.
3. Where the information in this affidavit is based upon information and belief, I have indicated the source of my information and belief and do verily believe it to be true.

## The Parties

4. The Respondent Craiglee Nursing Home Limited (“**Craiglee**”) is incorporated pursuant to the laws of Ontario. It operates a for-profit nursing home located at 102 Craiglee Drive, Toronto, Ontario (the “**Nursing Home**”) which is licensed by Her Majesty the Queen in Right of Ontario as Represented by the Minister of Health and Long-Term Care for Ontario (“**MOH**”) to operate 169 beds. However, as of April 21, 2009, only 131 of these beds were occupied.

5. According to the Corporate Profile Report for Craiglee, its directors are Roy Washington McDougall, Doris May McDougall and Celia Ann McDougall. Roy McDougall and Doris McDougall are spouses of one another. Celia McDougall is their daughter. Attached hereto and marked as **Exhibit “A”** to this affidavit is a copy of the Corporate Profile Report for Craiglee dated March 30, 2009.

6. The applicant Desjardins Financial Security Life Assurance Company (“**Desjardins**”) is the senior secured creditor of Craiglee. DAM acts as agent for Desjardins.

7. Following default on Desjardins’ loan to Craiglee, on March 31, 2009, Desjardins made demand on Craiglee for payment in full under that loan. Attached hereto and marked as **Exhibit “B”** to this affidavit is a copy of the demand for payment and related Notice pursuant to section 244 of the *Bankruptcy and Insolvency Act* made on Craiglee (the “**Notice**”).

8. The Notice accurately reflects the Craiglee debt owing to Desjardins as of March 30, 2009, exclusive of certain costs and disbursements (the “**Debt**”). The Debt remains outstanding in its entirety, and has in fact grown on account of costs, interest and the various protective payments described below in paragraph 54 below.

9. Now shown to me and marked as **Exhibit "C"** to this affidavit is a copy of a statement of account for the Debt owing by Craiglee to Desjardins as of April 20, 2009.

10. In light of the Nursing Home's financial situation (described below in more detail), on or about February 5, 2009, Craiglee appointed Extendicare (Canada) Inc. ("**Extendicare**") to manage the Nursing Home. Attached hereto and marked as **Exhibit "D"** to this affidavit is a copy of the management agreement between Craiglee and Extendicare dated February 5, 2009.

### **Background and the Desjardins Security**

11. First National Financial Corporation ("**First National**") had made a loan to Craiglee (the "**First National Loan**") secured by way of a first mortgage in the amount of \$11,781,565.00 over the properties municipally known as 94, 96 and 102 Craiglee Drive, Toronto, (the "**Craiglee Properties**"), 9 and 11 Vanbrugh Avenue, Toronto, (the "**Vanbrugh Properties**") and 10 Sharpe Street, Toronto (collectively with the Craiglee Properties and the Vanbrugh Properties, the "**Nursing Home Properties**"). Attached hereto and marked as **Exhibit "E"** to this affidavit is a copy of First National's first mortgage over the Nursing Home Properties (the "**Nursing Home Mortgage**"), registered as Instrument No. AT3911092 on or about January 22, 2004 in the Land Registry Office for Toronto (No. 66) (the "**Land Registry Office**").

12. In addition to the Nursing Home Mortgage, Craiglee granted First National the following additional security for the First National Loan (collectively with the Nursing Home Mortgage the "**First National Security**"):

- (a) Assignment of Rents in respect of the Nursing Home Properties registered on title as instrument number AT3911093 on January 20, 2004; and

- (b) General Security Agreement dated January 20, 2004 (the “**GSA**”), registered pursuant to the *Personal Property Security Act* (Ontario) as file number 079210305.

Attached hereto and marked as **Exhibits “F”** and **“G”** respectively to this affidavit is a copy of the Assignment of Rents in respect of the Nursing Home Properties and the GSA.

13. The purpose of the First National Loan was to finance an expansion of the Nursing Home from 94 beds to 169 beds, and to renovate the Nursing Home (the “**Renovations**”).

14. On or about December 20, 2005, First National assigned the First National Loan and the First National Security to Desjardins. The balance under the First National Loan when it was assigned to Desjardins was approximately \$10,977,703.40 (the “**Desjardins Loan**”). Attached hereto and marked as **Exhibits “H”**, **“I”** and **“J”** respectively to this affidavit are (collectively, the “**Desjardins Security**”):

- (a) Transfer of Charge from First National to Desjardins dated December 21, 2005 registered on title as instrument number AT1017117 on that date (**Exhibit “H”**);
- (b) Assignment of Rents-General from First National to Desjardins dated December 21, 2005 registered on title as instrument number AT 1017118 (**Exhibit “I”**); and
- (c) Assignment of General Security Agreement from First National to Desjardins dated December 20, 2005 (**Exhibit “J”**).

15. On or about June 19, 2008, Desjardins discharged the Vanbrugh Properties from the Desjardins Security. Attached hereto and marked as **Exhibit "K"** to this affidavit is a copy of the Discharge of Charge with respect to the Vanbrugh Properties registered as instrument number AT1810233.

16. However, on or about February 20, 2009, Craiglee gave Desjardins a collateral mortgage over 9 Vanbrugh Avenue, Toronto, Ontario (the "**Vanbrugh Property**") and an Assignment of Rents in respect of the Vanbrugh Property which were both registered on February 20, 2009 as Instrument Nos. AT2015651 and AT2015652 respectively in the Land Registry Office (the "**Vanbrugh Security**"). Attached hereto and marked as **Exhibit "L"** to this affidavit is a copy of the Vanbrugh Security.

17. As set out below, Desjardins made further advances to Craiglee following the granting of the Vanbrugh Security.

18. The Nursing Home Mortgage is insured by Canada Mortgage and Housing Corporation ("**CMHC**").

19. Now shown to me and marked as **Exhibits "M"** and "**N"** respectively to this affidavit is a copy of the parcel registers (the "**Real Property Searches**") for the Nursing Home Properties and for the Vanbrugh Property.

20. Both Desjardins and Extendicare have Mortgages over the Nursing Home Properties and the Vanbrugh Property.

21. On reviewing the Real Property Searches at Exhibits "M" and "N" to this affidavit, it appears that Desjardins has a first mortgage over the Nursing Home Properties and a second mortgage on the Vanbrugh Property. Extendicare has a second mortgage over the Nursing Home Properties and a third mortgage over the Vanbrugh Property.

22. Scotia Mortgage Corporation appears to have a first mortgage over the Vanbrugh Property in the principal amount of \$126,000.00.

23. Now shown to me and marked as **Exhibit "O"** to this affidavit is a copy of a search conducted pursuant to the Personal Property Security Registration System in Ontario (the "**PPSA Search**")

24. A review of the *PPSA* Search reveals that in addition to Desjardins, Her Majesty the Queen in Right of Ontario as represented by the Minister of Finance (the "**MOF**") and Consumers' Waterheater Income Fund ("**Consumers**") appear to have charges against some, or all, of Craiglee's personal property. I note that the MOF has a registration in the amount of \$60,000.00 and the Consumers registration appears to be with respect to a Heating, Ventilation and Air Conditioning system.

25. As a result of the Desjardins registrations set out in the Real Property Searches and the *PPSA* Search, I believe that Desjardins holds a first ranking mortgage over the Nursing Home Properties (subject to the discharge of the Nursing Home Mortgage over 9 and 11 Vanbrugh), a subsequent collateral mortgage over 9 Vanbrugh, and a properly perfected security interest over Craiglee's personal property.

**Craiglee's Obligations**

26. David Rough of Extendicare is the Controller for the Nursing Home. He has advised me of the financial information set out below.

27. The Nursing Home employs approximately 108 unionized employees who are members of the Service Employees International Union Local 1.0n ("SEIU"). The balance of Craiglee's employees (approximately 20) are non-union. Total union dues payable by Craiglee were \$1,634.22 and \$3,453.63 for January and February 2009, respectively.

28. Pursuant to its collective agreement with SEIU, Craiglee also makes contributions to the Nursing Home and Related Industries Pension Plan ("NHRIPP"). The pension contributions required to be made by Craiglee are equal to 4% of pensionable earnings (or approximately \$15,000.00 per month), which amounts are matched by employees through payroll deductions. These employer contributions and pension deductions are due at the end of the month following deduction.

29. In addition to the employee obligations set out above, the Nursing Home's operating expenses include the following:

- (a) *Salaries, wages and other source deductions.* The Nursing Home's payroll is paid in-house, with cheques distributed directly to the employees (no direct deposit). Payroll is paid on Thursday (with the cheque post-dated to the Friday immediately after) for service up to the previous Sunday. Accordingly, there are at least 4 days unpaid salary and wages at any given time, and these could be up to 18 days in arrears. The payroll is paid from Craiglee's general operating account.

- (b) *Workplace Safety and Insurance Board ("WSIB") premiums.* The Nursing Home's WSIB premiums are 2.69% of gross payroll.
- (c) *Benefits.* Craiglee remits monthly benefits premiums to Manulife for non-union employees and to SEIU for union employees.
- (d) *Care Costs.* These consist of food, linens and supplier, medical consultants, contractors and medical supplies.
- (e) *Insurance.* Craiglee maintains property and commercial general liability insurance for the Nursing Home, which is integral to a business of this nature.
- (f) *Property Taxes.* Craiglee is currently remitting equal instalments on account of the Nursing Home's property taxes with its mortgage payments.
- (g) *Repairs and Maintenance.*
- (h) *Utilities.* These consist of hydro, gas, water and telephone costs.
- (i) *Management Fees.* Roy McDougall is being paid \$1,600.00 bi-weekly and Doris McDougall is being paid \$1,000.00 bi-weekly. Celia McDougall is the Nursing Home Administrator and her salary is \$75,000.00 per year.



### **Craiglee's Revenues**

30. The nursing home business is highly regulated in Ontario. It relies on significant funding from the provincial government. The Nursing Home's operational funding is provided by the MOH as well as from revenues received from the residents themselves.

31. The MOH provides monthly funding dedicated to certain "envelopes" that must be spent in accordance with certain service agreement parameters and actual occupancy, failing which the surplus funding must be refunded to the MOH.

32. I am advised by David Rough that Craiglee currently receives the following funding for the Nursing Home within each "envelope" based on a Case-Mix Index ("CMI") of 100 (CMI is a measure of the relative amount of nursing and therapy staff time involved in providing long-term care services. Craiglee's current CMI is 81.92%, and Extendicare is working towards increasing that number back up to 100, or more):

<b>Envelope</b>	<b>Per Resident Day ("PRD") Funding</b>	<b>Funding Requirements</b>
Nursing and Personal Care ("NPC")	\$77.32	Fully spent based on occupancy level or refunded
Program and Support Services	\$7.35	Fully spent based on occupancy level or refunded
Accommodations - Food	\$7.15	Fully spent based on occupancy level or refunded
Other	\$46.74	Retained as adjusted for occupancy level

33. I am also advised by David Rough that the Nursing Home receives the following payments from the MOH: \$0.33 accreditation facility funding per resident day; \$2.22 pay equity equalization funding adjustment per resident day; municipal and capital tax allowance at 85% of municipal taxes (\$26,360 per month); lump sum pay equity (\$14,488.00 per month); Registered Practical Nurse (“RPN”) funding of \$8,393.00 per month; structural compliance of \$1.00 per resident day for the 94 older beds (\$2,859.00 per month); funding for construction costs for the 75 new beds of \$10.35 per resident day (\$23,610.00 per month). All of the RPN funding and a portion of pay equity funding must be spent or refunded to the MOH.

34. The MOH also provides funding for High Intensity Needs (“HIN”) expenses incurred by the Nursing Home. These expenses can include medical supplies for patients with high care requirements and are subject to 100% reimbursement from the MOH, in arrears.

35. David Rough advises me that Craiglee also receives revenues from residents, invoiced prior to month-end for payments due on the first of each month. Subject to ability to pay, the Nursing Home residents pay a Basic Fee of \$51.88 per day, plus an additional \$8.00 per day for semi-private accommodation and an additional \$18.00 per day for private accommodation (the Nursing Home has residents paying for 8 semi-private rooms and 18 private rooms). However, the MOH can reduce the amount of the Basic Fee to various extents based on the residents’ inability to pay. Currently, the MOH estimates that Craiglee will collect \$39.57 per day from its residents for the Basic Fee. This amount is deducted from the monthly payment provided by the MOH to the Nursing Home.

36. (After year end, an Annual Reconciliation is completed and the difference between what was billed to the residents and what was deducted on a monthly basis for the Basic Fee is refunded to the MOH or paid to the Nursing Home depending on the result. 50% of the amounts that are billed to residents but not collected *i.e.* bad debts can be recouped from the MOH. The \$8.00 per day and \$18.00 per day premiums for semi-private and private rooms respectively are kept by the Nursing Home.

37. The PRD and HIN funding is calculated on a per resident basis. Accordingly, if the Nursing Home is not fully occupied at greater than 97%, Craiglee is only to receive funding for the residents actually occupying the Nursing Home.

38. As set out above, Craiglee has 169 beds. However, as set out below, the MOH over-funded for these beds during and following the Renovations.

#### **Defaults - Craiglee's Funding Crisis**

39. During and following the Renovations, the MOH was providing funding to Craiglee for the Nursing Home on the basis that the Nursing Home was fully occupied. However, at various periods during that time, the Nursing Home was not fully occupied and the envelope funding provided was not fully spent.

40. In addition, on or about December 31, 2008, the MOH suspended admissions to the Nursing Home due to the non-compliance by the Nursing Home of regulatory requirements and standards and criteria set out in the Long-Term Care Homes Program Manual (the "Suspension"). As a result, currently only 131 of its 169 beds are occupied. Attached hereto

and marked as **Exhibit "P"** to this affidavit is a copy of the MOH's letter to Craiglee dated December 30, 2008 advising of the Suspension.

41. Accordingly, the MOH has been overfunding Craiglee for quite some time.

42. Once the MOH discovered the overfunding issue, it took steps to retrieve from Craiglee all excess amounts that had been paid on the mistaken belief that the Nursing Home was fully occupied and the envelope funds were fully spent (the "**Clawbacks**"). The MOH began deducting the Clawbacks from Craiglee's monthly payments from the MOH, although it has temporarily ceased doing so over the last three months.

43. I am advised by Extendicare that the total Clawbacks owing by Craiglee to the MOH are almost \$3 million (including approximately \$769,325.00 for 2006, and an estimated \$2.2 million for 2007, 2008 and 2009 to date). Attached hereto and marked as **Exhibit "Q"** to this affidavit is a copy of a letter from the MOH to Craiglee dated March 16, 2009, concerning the amount owing by Craiglee to the MOH for 2006.

44. I am advised by David Rough that the MOH lifted the Suspension last week for a probationary period, but that the admission schedule is very limited for the next little while (*i.e.* only one new admission was permitted last week, with two new admissions per week permitted for the following two weeks, after which the MOH will reassess the status of admissions). As a result, it could be several months before the Nursing Home is potentially back to full occupancy.

45. In addition, notwithstanding the Renovations, there are also Nursing Home repair and maintenance costs required to be undertaken to comply with conditions imposed by the MOH to have the Suspension lifted beyond the probationary period. I am advised by Extendicare that these additional repair and maintenance costs could be as high as approximately \$360,000.00. Attached hereto and marked as **Exhibit "R"** to this affidavit is a copy of Extendicare's estimate.

46. Over and above the significant financial strain that the Clawbacks placed and will continue to place on the Nursing Home's operations, Craiglee is in arrears with respect to several of its statutory remittances including WSIB premiums, employer health tax ("**EHT**") premiums, Canada Pension Plan ("**CPP**") contributions, Employment/Unemployment Insurance ("**EI**") premiums and income tax deductions from employee wages (collectively, the "**Unpaid Statutory Remittances**").

47. These Unpaid Statutory Remittances total over \$1 million before interest and penalties which continue to accrue. Attached hereto and marked as **Exhibit "S"** to this affidavit is a copy of Extendicare's report on these arrears (the "**Report**").

48. According to the Report, as of December 31, 2008, WSIB arrears for 2008 total over \$100,000.00. The EHT arrears total an estimated \$291,415.00 (for 2004 to 2008).

49. As of April 6, 2009, arrears to Canada Revenue Agency ("**CRA**") for CPP, EI and income tax source deductions totalled approximately \$1 million including interest and penalties. Attached hereto and marked as **Exhibit "T"** is a copy of a letter from CRA to counsel for Craiglee dated April 6, 2009 setting out the CRA arrears for source deductions (principal portion \$726,448.50) and penalties and interest (\$250,158.99).

50. I am advised by Extendicare that CRA has sent a garnishment notice to the MOH seeking to garnish funds on account of Unpaid Statutory Remittances owing to CRA. Attached hereto and marked as **Exhibit "U"** to this affidavit is a copy of the CRA Requirement to Pay dated February 12, 2009.

51. There were also significant pension contribution and deduction arrears owing to the NHRIPP, and outstanding union dues arrears for December 2008 and January 2009. In fact, as a result of Craiglee's failure to remit employee pension contributions to the NHRIPP, litigation ensued and the parties entered into a settlement agreement concerning the payment of outstanding pension arrears. Attached hereto and marked as **Exhibit "V"** to this affidavit is a copy of the Settlement Agreement between NHRIPP, SEIU and Craiglee dated October 6, 2008 with respect to the pension arrears.

52. However, Craiglee recently defaulted on the Settlement Agreement. Attached hereto and marked as **Exhibit "W"** to this affidavit is a copy of an e-mail dated February 19, 2008 from Doug LeFaive of Sack Goldblatt Mitchell LLP (counsel for NHRIPP) to Dave Rough advising of the default.

53. Extendicare prepared a cash-flow statement for the Nursing Home which reveals the extent to which its cash-flow position is currently strained. Attached hereto and marked as **Exhibit "X"** to this affidavit is a copy of the cash-flow statement for the Nursing Home as of April 17, 2009, prepared by Extendicare.

54. The effect of the MOH Clawbacks and the CRA garnishment is that Craiglee will no longer have sufficient cashflow to finance its operations. As a result of Craiglee's dire financial circumstances as described above, Desjardins has made the following protective disbursements in order to finance the Nursing Home's payroll and other operating costs so that it could maintain operations:

- (a) March 11, 2009: \$350,000.00 to finance the Nursing Home's operating shortfalls, and in particular payroll and residents' food; and
- (b) April 15, 2009: \$50,000 to finance the Nursing Home's payroll.

55. However, Desjardins is not prepared to advance further funds without Craiglee receiving court protection from its creditors.

56. While there has not yet been a monetary default under the Nursing Home Mortgage, there have been several non-monetary defaults involving statutory remittances, as set out above.

### **Craiglee Going Forward**

57. In light of the circumstances described above, it is apparent that the Nursing Home cannot continue current operations without considerable additional financing. Therefore, in order to ensure that there is continuity of Craiglee's business as a going concern and to permit an attempt to sell the business as a going concern, it is necessary for the protection of the business and in the interest of all creditors, including Desjardins, that an interim receiver and receiver and manager be appointed over the Nursing Home.

58. Deloitte & Touche Inc. (“**Deloitte**”) has consented to act as Interim Receiver and Receiver and Manager (the “**Proposed Receiver**”). Attached hereto and marked as **Exhibit “Y”** to this affidavit is a copy of the Proposed Receiver’s consent. CMHC has consented to the appointment of Deloitte.

59. Desjardins’ intention is to maintain operations at the Nursing Home.

60. To that end, Desjardins and the Proposed Receiver have sought proposals from Extendicare and another qualified nursing home manager to manage the Nursing Home on behalf of the Proposed Receiver. Based on the proposals received, and subject to an acceptable management agreement being negotiated, Desjardins and the Proposed Receiver have selected Extendicare to act as the Nursing Home manager. The Proposed Receiver is in the process of negotiating the terms of a Management Agreement with Extendicare to operate the Nursing Home.

61. Desjardins also advised counsel for the SEIU of its intention to seek the appointment of the Proposed Receiver and solicited the SEIU’s support for the smooth transition of the Nursing Home’s operations should the Appointment Order be granted. To that end, the Proposed Receiver, the SEIU and the NHRIPP are attempting to negotiate an agreement that sets out, among other things, the terms under which the SEIU will support the receivership application, support the operation of the Nursing Home under the Proposed Receiver and will not consider the Proposed Receiver as a successor employer.

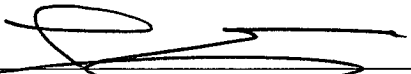


62. Desjardins is also seeking a stay of proceedings so that the Nursing Home can maintain operations. Desjardins is hopeful that with the assistance of the stay of proceedings, the Nursing Home will shortly be able to operate without the need for additional financial assistance. That being said, the Proposed Receiver, together with input from Extendicare, will need to assess the Nursing Home's financial needs as time progresses.

63. For the foregoing reasons, I believe that the immediate appointment of the Proposed Receiver as Interim Receiver and Receiver and Manager is required.

64. I swear this affidavit in support of an application appointing the Proposed Receiver as the Interim Receiver and Receiver and Manager and for no improper purpose.

SWORN BEFORE ME at )  
the City of Toronto, )  
in the Province of Ontario, )  
this 23<sup>rd</sup> day of April, 2009 )

  
\_\_\_\_\_  
A Commissioner for Taking Affidavits )  
ERIL GOLDEN )

  
\_\_\_\_\_  
STEPHEN A. WOOD )