

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

IN THE MATTER OF AN APPLICATION UNDER SECTION  
47(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985,  
c. B-3, AS AMENDED, AND SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C-43, AS AMENDED

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

**DESJARDINS FINANCIAL SECURITY LIFE  
ASSURANCE COMPANY**

Applicant

- and -

**CRAIGLEE NURSING HOME LIMITED**

Respondent

**MOTION RECORD  
Returnable December 20, 2012**

December 14, 2012

**BLANEY McMURTRY LLP**  
Barristers and Solicitors  
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Inc. in its capacity as Interim Receiver and  
Receiver and Manager of the current and future  
assets, undertakings and properties of Craiglee  
Nursing Home Limited

**TO:** see Service List at Schedule "A"

**SCHEDULE "A"**

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Tel: 416-643-6961

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# INDEX

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

IN THE MATTER OF AN APPLICATION UNDER SECTION  
47(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985,  
c. B-3, AS AMENDED, AND SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C-43, AS AMENDED

**BETWEEN:**

**DESJARDINS FINANCIAL SECURITY LIFE  
ASSURANCE COMPANY**

Applicant

- and -

**CRAIGLEE NURSING HOME LIMITED**

Respondent

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# TAB 1

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

IN THE MATTER OF AN APPLICATION UNDER SECTION  
47(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985,  
c. B-3, AS AMENDED, AND SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C-43, AS AMENDED

BETWEEN:

**DESJARDINS FINANCIAL SECURITY LIFE  
ASSURANCE COMPANY**

Applicant

- and -

**CRAIGLEE NURSING HOME LIMITED**

Respondent

**NOTICE OF MOTION**

**DELOITTE & TOUCHE INC.** (“**Deloitte**”), in its capacity as Interim Receiver and Receiver and Manager (the “**Receiver**”) over all of the current and future assets, undertakings and properties (the “**Assets**”) of the Respondent Craiglee Nursing Home Limited (“**Craiglee**” or the “**Debtor**”), will make a motion to a judge on Thursday the 20<sup>th</sup> day of December, 2012, at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto.

**THE MOTION** is to be heard orally.

**THE MOTION IS FOR:**

1. An Order substantially in the form attached hereto as **Schedule "A"**:
  - (a) abridging the time for and validating service of this Notice of Motion and the motion materials filed in support of this motion, and dispensing with further service thereof;
  - (b) confirming and approving the actions and activities of the Receiver with respect to the Craiglee receivership (the "**Receivership**") to November 30, 2012 as set out in the Third Report of the Receiver dated December 14, 2012 (the "**Third Report**") and approving the Third Report;
  - (c) approving and accepting the Receiver's Interim Statements of Receipt and Disbursements for the period from April 28, 2009, to November 30, 2012, as set out in the Third Report;
  - (d) approving the fees for services rendered by the Receiver for the period from August 1, 2011 to October 31, 2012, the fees and disbursements of Gowlings LLP for the period from October 14, 2011 to December 9, 2011, and the fees and disbursements of Blaney, McMurtry LLP for the period from October 1, 2011 to October 31, 2012, as set out in the Third Report;
  - (e) authorizing and directing the Receiver to distribute from the trust account held by the Receiver in respect of Craiglee (the "**Craiglee Trust Account**"), funds in the amount of \$742,794.70 to Canada Revenue Agency ("**CRA**") in respect of CRA's deemed trust claim over the Assets for the period prior to the Appointment Order (the "**Deemed Trust Claim**"), as recommended in the Third Report;
  - (f) authorizing and directing the Receiver to distribute from the Craiglee Trust Account funds to Desjardins Financial Security Life Assurance Company

(“**Desjardins**”) in the amount of \$8,200,000.00, as recommended in the Third Report;

- (g) authorizing and directing the Receiver to make subsequent distributions to Desjardins from excess cash on hand from the Craiglee Trust Account;
- (h) the costs of this motion on a substantial indemnity basis; and
- (i) such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. pursuant to an Order of Justice Campbell of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 28, 2009 (the “**Appointment Order**”), Deloitte was appointed as the Receiver of all of the current and future assets, undertakings and properties of Craiglee pursuant to subsection 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.1985, C. B-3 (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 19111190, c. C. 43 (the “**CJA**”);
2. as at the date of the Appointment Order (the “**Appointment Date**”), the Assets were comprised primarily of Craiglee Nursing Home, a 169-bed nursing home located at 102 Craiglee Avenue, Toronto, Ontario (the “**Nursing Home**”). Craiglee was also the registered owner of the property located at 9 Vanbrugh Ave., Toronto (“**9 Vanbrugh**”), a single family two-storey residence which is located adjacent to the Nursing Home;
3. on November 9, 2011, Justice Wilton-Siegel granted an Approval and Vesting Order (the “**Vesting Order**”) approving the Receiver entering into and completing an Agreement of Purchase and Sale (the “**APS**”) for the sale of Craiglee to CVH (No. 1) LP (“**CVH**” or the “**Purchaser**”), the assignee of the APS, and vesting in CVH the Debtor’s right, title and interest in the Purchased Assets (as defined in the Vesting Order) subject to the

closing of the transaction with CVH and the Receiver filing with the Court a Receiver's Certificate (the "**Receiver's Certificate**");

4. on November 2, 2012, the Receiver (a) advised the Ministry of Health and Long Term Care (the "**MOH**") that the Closing Date for the transaction in respect of Craiglee was November 13, 2012, and (b) subject to the closing of the transaction and the issuance of a license to CVH (the Purchaser), surrendered Craiglee's original Nursing Home license to the MOH;
5. on November 13, 2012, the sale of Craiglee closed and the MOH issued the license in respect of the Craiglee Nursing Home to CVH;
6. Desjardins has valid and enforceable security against the property, assets and undertakings of Craiglee, including but not limited to:
  - (i) a first charge/mortgage of land from Craiglee in favour of First National Financial Corporation ("**First National**") which was registered on title to the real property as Instrument No. AT3911092 on January 22, 2004 assigned by First National to Desjardins pursuant to a general assignment of rights dated December 2005 and a Transfer of Charge registered as Instrument No. AT1017117 on December 21, 2005 and as amended pursuant to an agreement amending charge/mortgage dated December 20, 2005 between Craiglee, Desjardins and Roy and Doris McDougall (the "**Desjardins First Mortgage**"). This First Mortgage covers all of Craiglee's real property save and except for 9 Vanbrugh; and
  - (ii) a second charge/mortgage of land from Craiglee in favour of Desjardins which was registered on title to the real property bearing property identification number

06432-0409(LT) as Instrument No. AT2015651 on February 20, 2009 (the “**Desjardins Second Mortgage**”). The Desjardins Second mortgage covers all of Craiglee’s real property including 9 Vanbrugh (over which Scotia Mortgage Corporation held a first mortgage that was paid out of the proceeds of sale); and

(iii) related first ranking personal property security.

7. notwithstanding the Desjardins security over Craiglee, CRA has a Deemed Trust Claim over the Assets in the amount of \$742,794.70 in respect of unremitted source deductions for the period prior to the Appointment Order;
8. on June 24, 2008, the Sheriff for the City of Toronto registered a Writ in favour of WSIB against Craiglee for \$43,739.58 plus interest and costs. This Writ was registered after the Scotia Mortgage Corporation first mortgage over 9 Vanbrugh, but prior to the registration of the Desjardins Second Mortgage;
9. as of December 14, 2012, the outstanding balance under the Desjardins First Mortgage is \$13,590,093.56, inclusive of principal and interest;
10. the Receiver has determined that \$8,200,000.00 would be an appropriate amount to distribute to Desjardins as partial payment against the Desjardins First Mortgage and is seeking this Honourable Court’s authorization to make such distribution;
11. the current balance in the Craiglee Trust Account is \$10,129,160.00, resulting in a holdback of \$1,186,365.30 once the proposed distributions to CRA for the Deemed Trust Claim and to Desjardins in respect of the Desjardins First Mortgage are made;
12. the Receiver has operated the Craiglee nursing home in a prudent and sustainable manner since its appointment and until its sale;

13. the Receiver's fees and disbursements, and those of its counsel, incurred in relation to this proceeding are fair, appropriate, and reasonable;
14. such further and other grounds as set out in the Third Report;
15. the *BIA*;
16. the *CJA*;
17. Rule 3.02 of the *Rules of Civil Procedure*;
18. as further set out in the Third Report and the exhibits thereto; and
19. such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. the Third Report of the Receiver dated December 14, 2012, and the appendices attached thereto;
2. the Affidavit of Daniel Weisz sworn December 4, 2012, and the exhibits attached thereto;
3. the Affidavit of Patrick Shea to be sworn, and the exhibits to be attached thereto;
4. the Affidavit of William Anderson sworn December 14, 2012, and the exhibits attached thereto; and



5. such further and other evidence as counsel may advise and this Honourable Court may permit.

December 14, 2012

**BLANEY McMURTRY LLP**  
Barristers and Solicitors  
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Lawyers for the Receiver, Deloitte & Touche  
Inc. in its capacity as Interim Receiver and  
Receiver and Manager of the current and future  
assets, undertakings and properties of Craiglee  
Nursing Home Limited

**TO: THE SERVICE LIST**

**DESJARDINS FINANCIAL SECURITY LIFE ASSURANCE COMPANY**  
Applicant

and **CRAIGLEE NURSING HOME LIMITED**  
Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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IN THE MATTER OF AN APPLICATION UNDER SECTION  
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Proceeding Commenced at **TORONTO**

**NOTICE OF MOTION**  
Returnable **December 20, 2012**

**BLANEY McMURTRY LLP**  
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Lawyers for the Receiver, Deloitte & Touche Inc. in its  
capacity as Interim Receiver and Receiver and Manager of the  
current and future assets, undertakings and properties of  
Craiglee Nursing Home Limited

# TAB A

Court File No. CV- 09-8156-00CL

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

**THE HONOURABLE  
JUSTICE**

)  
)  
)

**THURSDAY, THE 20TH DAY  
OF DECEMBER, 2012**

IN THE MATTER OF AN APPLICATION UNDER SECTION  
47(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985,  
c. B-3, AS AMENDED, AND SECTION 101 OF THE  
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**BETWEEN:**

**DESJARDINS FINANCIAL SECURITY LIFE  
ASSURANCE COMPANY**

Applicant

- and -

**CRAIGLEE NURSING HOME LIMITED**

Respondent

**ORDER**

**THIS MOTION** made by Deloitte & Touche Inc. ("**Deloitte**"), in its capacity as the Court-appointed interim receiver and receiver and manager (the "**Receiver**") over all of the current and future assets, undertakings and properties (the "**Assets**") of the Respondent Craiglee Nursing Home Limited ("**Craiglee**" or the "**Debtor**"), for an Order (i) confirming and approving

the actions and activities of the Receiver with respect to the Craiglee receivership (the "**Receivership**") to November 30, 2012; (ii) approving the Third Report of the Receiver dated December 14, 2012 (the "**Third Report**"); (iii) approving and accepting the Receiver's Interim Statements of Receipt and Disbursements for the period from April 28, 2009, to November 30, 2012; (iv) approving the fees for services rendered by the Receiver for the period from August 1, 2011 to October 31, 2012, the fees and disbursement of Gowlings LLP for the period from October 14, 2011 to December 9, 2011, and the fees and disbursements of Blaney, McMurtry LLP for the period from October 1, 2011 to October 31, 2012; (v) authorizing and directing the Receiver to distribute from the trust account held by the Receiver in respect of Craiglee (the "**Craiglee Trust Account**"), funds in the amount of \$742,794.70 to Canada Revenue Agency ("**CRA**") in respect of CRA's deemed trust claim over the Assets for unremitted source deductions for the period prior to the Appointment Order; (vi) authorizing and directing the Receiver to distribute from the Craiglee Trust Account funds to Desjardins Financial Security Life Assurance Company ("**Desjardins**") in the amount of \$8,200,000.00; and (vii) authorizing and directing the Receiver to make subsequent distributions to Desjardins from excess cash on hand from the Craiglee Trust Account, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Receiver's Notice of Motion dated December 14, 2012, the Third Report of the Receiver dated December 14, 2012 (the "**Third Report**"), filed, and upon hearing the submissions of counsel for the Receiver, no other parties attending, although duly served as appears from the Affidavit of Service of Sharm Sowa, sworn December [DATE], 2012, filed,

1. **THIS COURT ORDERS** that service of the Notice of Motion and the Motion Record herein is hereby abridged, if necessary, and that this motion is properly returnable today and that service, including the form, manner and time that such service was actually effected on all parties, is hereby validated, and where such service was not effected such service is hereby dispensed with.

2. **THIS COURT ORDERS** that the Third Report is hereby accepted and approved.

3. **THIS COURT ORDERS** that the conduct of the Receiver and its agents to November 30, 2012, as detailed in the Third Report, be and the same is hereby accepted and approved.

4. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements for the period April 28, 2009, to November 30, 2012 in respect of Craiglee as set out in **Appendix "N"** to the Third Report, filed, is hereby approved.

5. **THIS COURT ORDERS** that the Receiver is authorized and hereby directed to distribute from the Craiglee Trust Account the sum of \$742,794.70 to CRA, in respect of CRA's deemed trust claim over the Assets for the period prior to the Appointment Order.

6. **THIS COURT ORDERS** that the Receiver is authorized and hereby directed to distribute from the Craiglee Trust Account the sum of \$8,200,000.00 to Desjardins Financial Security Life Assurance Company, as partial payment on account of its secured claims against Craiglee.

7. **THIS COURT ORDERS** that the Receiver is authorized and hereby directed to make distributions to Desjardins Financial Security Life Assurance Company from excess cash on hand from the from the Craiglee Trust Account.

8. **THIS COURT ORDERS** that the fees and disbursements of the Receiver relating to the receivership of Craiglee for the period August 1, 2011 to October 31, 2012, in the amount of \$207,064.05 as set out in the Affidavit of Daniel R. Weisz sworn December 4, 2012, filed, be and the same are hereby approved.

9. **THIS COURT ORDERS** that the fees and disbursements of Gowling Lafleur Henderson LLP, independent counsel to the Receiver, relating to the receivership of Craiglee for the period October 14, 2011 to December 9, 2011, in the amount of \$13,926.78, as set out in the Affidavit of Patrick O'Shea, sworn December [        ], 2012, filed, be and the same are hereby approved.

10. **THIS COURT ORDERS** that the fees and disbursements of Blaney McMurtry LLP, counsel to the Receiver, relating to the receivership of Craiglee for the period October 1, 2011 to October 31, 2012, in the amount of \$115,028.52, as set out in the Affidavit of John Polyzogopoulos, sworn December 14, 2012, filed, be and the same are hereby approved.

---

**DESJARDINS FINANCIAL SECURITY LIFE ASSURANCE COMPANY**  
Applicant

and **CRAIGLEE NURSING HOME LIMITED**  
Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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Proceeding Commenced at **TORONTO**

**ORDER**

**Returnable December 20, 2012**

**BLANEY McMURTRY LLP**  
Barristers and Solicitors  
2 Queen Street East, Suite 1500  
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**Eric Golden** (LSUC #38239M)  
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