



Court File No. CV-14-10703-00CL

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

THE HONOURABLE )

MONDAY, THE 22<sup>nd</sup> DAY

JUSTICE *Patillo* )

OF JUNE, 2015 )

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

**ROMAS KARTAVICIUS**

Applicant

- and -

**OAK BAY DEVELOPMENTS INC. and OAK BAY GOLF CLUB INC.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(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.C43, AS AMENDED**

**ORDER**

**THIS MOTION** made by the Applicant, Romas Kartavicius, for, among other things, an Order substituting Deloitte Restructuring Inc. ("**Deloitte**") with Pollard & Associates Inc. ("**Pollard**") as receiver ("**Receiver**") of the property, assets and undertaking of the respondent, Oak Bay Developments Inc. (the "**Debtor**"), acquired for or used in relation to 26 residential units of The Residences of Oak Bay Golf & Country Club, for the limited purpose of the Mandate, as that term is defined in the Receivership Order of Justice Wilton-Siegel made November 12, 2014 (the "**Appointment Order**"), and **THIS MOTION** made by Deloitte for

an Order: (i) approving the Supplemental Report to the Second Report to the Court of the Receiver dated June 18, 2015 (the “**Supplementary Second Report**”) and the Receiver’s actions and activities as set out in the Supplementary Second Report; (ii) approving and accepting the Receiver’s Final Statement of Receipts and Disbursements for the period from November 12, 2014 to June 17, 2015, as set out in Appendix “C” to the Supplementary Second Report; and (iii) an Order approving the fees and disbursements for services rendered by the Receiver and its counsel for the period from May 9, 2015 to June 22, 2015, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion of the Applicant dated June 17, 2015, the Notice of Motion of Deloitte dated June 18, 2015, the affidavit of Hartley Bricks sworn June 18, 2015, the affidavit of Chad Kopach sworn June 18, 2015, the affidavit of Mervyn D. Abramowitz affirmed June 16, 2015, the Supplementary Second Report, the consent of Pollard, Eden Oak (Port Severn) Inc. and 2460112 Ontario Inc., and on hearing the submissions of counsel for these parties save and except for Pollard, no one else attending although properly served,

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing of the Applicant’s Notice of Motion dated June 17, 2015, the Deloitte Notice of Motion dated June 18, 2015, and related motion material, be and is hereby abridged, that service of the Notices of Motion and related motion material is hereby validated, and that further service thereof is hereby dispensed with.

## **REPORT, FEES AND DISBURSEMENTS**

2. **THIS COURT ORDERS** that the Supplementary Second Report dated June 18, 2015, and the actions of the Receiver and its counsel described therein, be and are hereby approved.
3. **THIS COURT ORDERS** that the Receiver's Final Statement of Receipts and Disbursements for the period from November 12, 2014 to June 17, 2015 as set out at Appendix "C" of the Receiver's Supplementary Second Report, be and is hereby accepted and approved.
4. **THIS COURT ORDERS** that the fees and disbursements of Deloitte from May 9, 2015 to June 15, 2015, the fees and disbursements of Blaney McMurtry LLP from May 28, 2015 to June 17, 2015, and the fees and disbursements of Kronis Rotsztain, Margles, Cappel LLP ("**KRMC**") from May 21, 2015 to June 10, 2015, be and are hereby approved.
5. **THIS COURT ORDERS** that all fees and disbursements of Deloitte and its counsel incurred prior to and after this Order, as may be approved by the Court, shall continue to be secured by the Receiver's Charge contemplated by paragraph 17 of the Appointment Order. For greater certainty and without limiting the generality of the foregoing, the Receiver's Charge shall apply to all fees and/or disbursements incurred by Deloitte and its counsel with respect to any and all matters relating to the Debtor from this date onward and shall remain in force until payment in full of all such fees and disbursements of Deloitte and its counsel that may be approved by this Court is completed.

## **SUBSTITUTION OF RECEIVER**

6. **THIS COURT ORDERS** that subject to paragraphs 5 and 9 to 15 herein, Deloitte is hereby discharged and relieved from any further rights, powers, obligations, liabilities, responsibilities or duties in its capacity of Receiver pursuant to the Appointment Order.

7. **THIS COURT ORDERS** that all protections afforded to Deloitte under the Appointment Order shall remain unaffected, including, but not limited to, the stay of proceedings provided for in paragraphs 8 and 10 of the Appointment Order.

8. **THIS COURT ORDERS** that Deloitte shall be and is hereby released from any all claims, suits, actions, complaints, liability and proceedings of any kind relating to its activities as the Receiver arising from its actions and conduct as Receiver, including, but not limited to, the transition of these receivership proceedings to Pollard and the Agreements as defined in paragraph 13 below, and any obligation for the remittance or payment of funds that may be considered to be held by Deloitte in trust, including funds collected and/or received in respect of Harmonized Sales Tax, save and except for any claims based on fraud or intentional misconduct by Deloitte.

9. **THIS COURT ORDERS** that notwithstanding its discharge as contemplated by paragraph 6 above, Deloitte continues to be authorized to do all such things as it considers necessary or advisable to facilitate the transfer of these receivership proceedings to Pollard or to complete its Mandate under the Appointment Order (as modified by the herein Order).

10. **THIS COURT ORDERS** that notwithstanding its discharge as contemplated by paragraph 6 above, Deloitte shall continue to have the right to engage counsel to assist with the exercise of its powers and duties, including without limitation those conferred by this Order.

11. **THIS COURT ORDERS** that Deloitte and its counsel shall be paid their reasonable fees and disbursements (which fees and disbursements shall be subject to the Court's approval) until Deloitte and its counsel are fully paid for their Court-approved fees and disbursements, in each case at their standard rates and charges.

12. **THIS COURT ORDERS** that pursuant to section 243(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*, Pollard be, and is hereby, substituted and appointed as Receiver in place of Deloitte under the Appointment Order and in paragraph 6 of the Order of Justice Conway made June 12, 2015 in these proceedings (the "**Conway Order**"), and that all references to the "Receiver" in the Appointment Order and in paragraph 6 of the Conway Order be and are hereby, a reference to Pollard from and after the date hereof.

13. **THIS COURT ORDERS** that Pollard be, and is hereby, substituted for Deloitte as the contracting party in connection with any and all of the obligations and contracts (excluding the fees and disbursements of Deloitte and its counsel) entered into by Deloitte to the date hereof in its capacity as Receiver carrying out the Mandate including but not limited to any and all policies of insurance in place for the Property (as defined in the Appointment Order) and/or the Debtor (collectively, the "**Agreements**"), that Pollard be and is hereby authorized and directed to take any and all such steps as are necessary to effect such substitution in the Agreements including, but not limited to, with the applicable insurer(s), that Pollard be and is hereby responsible and

liable for any and all obligations flowing from its substitution of Deloitte in the Agreements, and that Deloitte no longer has any duties or obligations under, arising from and/or in connection with the Agreements.

14. **THIS COURT ORDERS** that after payment of the accounts of Deloitte and its counsel up to the date hereof, Deloitte shall transfer to Pollard in trust any and all funds it is holding in respect of the Mandate.

15. **THIS COURT ORDERS** that Deloitte shall deliver to Pollard all of the books and records of the Debtor, and all other books and records and other documentation obtained under the terms of any and all Orders made in this proceeding now in the possession of Deloitte (excluding communications with the Receiver's counsel), which books, records, and documentation are to be held by Pollard on the same terms and conditions as Deloitte under the applicable provisions of the Appointment Order and any other applicable Court Order.

16. **THIS COURT ORDERS** that Deloitte may from time to time apply to this Court for advice and directions with respect to this Order and the transition of the receivership proceedings from it to Pollard.



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ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUN 22 2015



**ROMAS KARTAVICIUS**

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**OAK BAY DEVELOPMENTS INC. AND OAK BAY GOLF CLUB INC.**

Applicant

Respondents

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

Proceeding Commenced at **TORONTO**

**ORDER**

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