

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

PEOPLES TRUST COMPANY

Applicant

- and -

ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY

Respondent

**RESPONDING MOTION RECORD
OF DELOITTE & TOUCHE INC, IN ITS CAPACITY AS RECEIVER AND
MANAGER OF ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY**

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

PEOPLES TRUST COMPANY

- and -

ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY

Respondent

**SECOND REPORT TO THE COURT OF THE RECEIVER
(dated December 14, 2012)**

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- APPENDIX “K”:** Correspondence dated October 16, 2012 to Gowlings from counsel to Mikal and Keith Ly, advising the Receiver that the ownership of Mikal was disputed among Mr. Ly and Mr. Hui.
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INTRODUCTION

1. 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**”). A copy of the Amended and Restated Appointment Order is attached hereto as **Appendix “A”**.
2. Rose’s principal asset is a 12-storey building located at 15-17 Maplewood Avenue, Toronto, Ontario (the “**Property**”) that is comprised of a 60 bed long-term care facility located on floors 4 through 6 (the “**Nursing Home**”) and 90 life-lease units located on floors 2, 3 and 7 through 12 (the “**Life-Lease Residence**”).
3. This Second Report of the Receiver (the “**Report**”) is delivered in response to a motion brought by Trisura Guarantee Insurance Company returnable December 21, 2012 and following review of the affidavit of Edouard Chassé sworn December 12, 2012 (the “**Chassé Affidavit**”) sworn in support of the said motion.

TERMS OF REFERENCE

4. In preparing this Report, the Receiver has relied upon records of Rose and the Applicant Peoples Trust Company (“**Peoples**”). The Receiver has not performed an audit or other verification of such information.
5. In accordance with paragraph 3(d) of the Appointment Order, Gowlings acts as counsel to the Receiver and to Peoples, the Applicant in these receivership proceedings, except on

matters upon which the Receiver requires independent advice. The Receiver has determined that it does not require independent representation for this lift stay motion.

BACKGROUND

6. Rose is a not-for-profit Ontario corporation that was created to develop and provide senior's type housing for people of Korean heritage.
7. Rose obtained construction financing from Peoples by way of a commitment letter dated March 17, 2005. Construction of the Property commenced in the summer of 2006 and the initial development schedule provided for construction to be completed, and for the Nursing Home to open, in the fall of 2007.
8. The Receiver has been advised by Mr. John Yoon, Chairman of Rose, that due to construction delays, the project did not achieve substantial completion until September 17, 2010, almost three years behind schedule. On November 4, 2010, the City of Toronto issued an occupancy permit for the Property. As the Receiver has advised in its First Report, dated December 12, 2011, although the occupancy permit has been issued, there appear to be certain issues relating to the construction of the building that remain incomplete or deficient.

THE LIEN CLAIM AND THE LIEN ACTION

9. On November 19, 2010 Mikal-Calladan Construction Inc. ("**Mikal**"), the general contractor of the Property which operated under the trade name Unimac or via the related entity Unimac Group Ltd., or variations of that name, registered a construction lien registered as Instrument No. AT2556511 on title to the Property (the "**Lien Claim**").
10. The Lien Claim was perfected via a Statement of Claim issued by Mikal on December 31, 2010, which is attached as Exhibit "B" to the Chassé Affidavit. The Lien Claim is an

Appendix to the Statement of Claim. The affidavit of verification required for the Lien Claim is executed by Keith Ly, representing Mikal. Delivery of this Statement of Claim commenced the "**Lien Action**". Counsel for Mikal at the time was Jeffrey A. Armel of Goldman Sloan Nash & Haber LLP.

11. It is apparent from Mr. Armel's correspondence to Gowlings, in its capacity as counsel to Peoples, that Mr. Armel was involved in negotiations with Rose with a view to settling the Lien Claim. Attached hereto as **Appendix "B"** is correspondence from Mr. Armel dated April 11, 2011 advising Gowlings that negotiations were continuing and that defences in the Lien Action were not required at that time.
12. Gowlings' file also discloses that the next event was the receipt of a Notice that the Lien Action would be dismissed, which was issued by the Court on July 11, 2011, attached hereto as **Appendix "C"**.
13. Gowlings delivered Peoples' Statement of Defence in the Lien Action on July 21, 2011. Peoples' Statement of Defence is attached as Exhibit "D" to the Chassé Affidavit.
14. On August 18, 2011, Gowlings delivered Peoples' consent to a Judgment ordering a Reference to the Master at Toronto to determine all issues raised in the Lien Action. A copy of the e-mail providing this consent is attached hereto as **Appendix "D"**.
15. It appears that after Mr. Armel was advised of the Appointment Order, he advised Gowlings, for the first time, of a default judgment obtained by Mikal on September 29, 2011, two days after the Appointment Date. A copy of Mr. Armel's e-mail, dated October 4, 2011 and attached hereto as **Appendix "E"**, acknowledges the Appointment Order and advises that: "Under the circumstances, we will not take any steps to enforce our client's judgment in the absence of obtaining the necessary leave from the Court."
16. The Lien Claim was apparently assigned to Trisura, the company that provided a Performance Bond and a Labour and Material Payment Bond with respect to Mikal's contract with Rose, on January 30, 2012. The Assignment is executed by Leon Hui as a representative of Mikal, although as set out below, there is some question concerning Mr. Hui's authority in this regard.

THE RECEIVER'S DISCOVERY OF DEFICIENT WORK

17. Following its appointment and preliminary investigations concerning the condition of the Property, the Receiver commissioned Norman Lee and Associates to conduct an audit of the condition of the building that houses the Nursing Home and the Life-Lease Residence at the Property. In March 2012, Norman Lee and Associates delivered its conclusions (the "**Building Audit Report**"). The Building Audit Report is available to be produced to the Court upon request.
18. On May 4, 2012, Gowlings wrote to Mikal and delivered the Building Audit Report. On behalf of the Receiver, Gowlings notified Mikal of the various deficiencies identified in the Building Audit Report and provided Mikal five days to rectify them.
19. Mikal failed to rectify the identified deficiencies within five days as required under its contract with Rose and the Performance Bond. As a result, on June 1, 2012, Gowlings, on behalf of the Receiver, wrote to Trisura to claim under Performance Bond TC0211026 (the "**Performance Bond**") issued by Trisura with respect to Mikal's work for Rose on the Property. The package provided to Trisura on June 1, 2012 (which includes the letters to Mikal) is attached hereto as **Appendix "F"**.
20. Borden Ladner Gervais LLP ("**BLG**"), as counsel to Trisura, responded to the claim against the Performance Bond in an e-mail dated June 4, 2012, which is attached hereto as **Appendix "G"**.
21. Gowlings responded to Trisura's June 4, 2012 correspondence on behalf of the Receiver by delivering the information requested by BLG on July 10, 2012. A copy of the cover letter to this package is attached hereto as **Appendix "H"**. The package that was attached to this letter is available to be produced to the Court upon request.
22. Trisura did not accept the claim made by the Receiver under the Performance Bond. As a result, on September 14, 2012, the Receiver issued a Statement of Claim with respect to the deficiencies in the work identified in the Building Audit Report. This Statement of Claim is attached hereto as **Appendix "I"**. Trisura accepted service of the Statement of Claim on September 18, 2012, via an e-mail from BLG attached hereto as **Appendix "J"**.

Despite requests from Gowlings, Trisura has not delivered a Statement of Defence to this Statement of Claim. The Receiver has not to date noted Trisura in default.

23. In response to service upon Mikal of the Statement of Claim in the proceeding commenced by the Receiver, on October 16, 2012, Gowlings received correspondence from Garth Low, counsel to Mikal and Keith Ly, advising the Receiver that the ownership of Mikal was disputed among Mr. Ly (who executed the affidavit of verification for the Lien Claim) and Leon Hui (who executed the assignment of the Lien Claim). This dispute is currently being adjudicated in another court proceeding. Mr. Low's letter dated October 16, 2012 is attached hereto as **Appendix "K"**.

TRISURA'S REQUEST TO LIFT THE STAY OF PROCEEDINGS

24. On October 24, 2012, BLG requested the Receiver's consent to lift the stay of proceedings to set the Lien Action down for trial. A copy of the e-mail correspondence is attached hereto as **Appendix "L"**.
25. Gowlings responded to BLG's request with a letter dated October 30, 2012, pointing out a number of difficulties with Trisura's request to set the Lien Claim down for trial. This letter is attached hereto as **Appendix "M"**.
26. As set out at Exhibit "P" to the Chassé Affidavit, on November 7, 2012, BLG asked for the Receiver's consent to an Order lifting the stay of proceedings. Gowlings provided the Receiver's position respecting the terms of a proposed Order lifting the stay of proceedings in the letter dated November 22, 2012 attached to the Chassé Affidavit as Exhibit "Q".
27. Gowlings also set out Peoples' position concerning the Lien Action in a separate letter dated November 22, 2012, attached to the Chasse Affidavit as Exhibit "R". In this letter, as a term of its consent to setting the Lien Action down for trial, Peoples asked for the opportunity to amend its Statement of Defence.
28. One of the terms set out in the November 22, 2012 letters was that Trisura was to take out an Order to Continue. As set out at paragraph 12 of the Chassé Affidavit, the Order to

Continue in the Lien Action was obtained November 26, 2012. It was served on Gowlings on December 3, 2012. Attached hereto as **Appendix "N"** is copy of the e-mail serving the Order to Continue.

RECEIVER'S REQUEST TO THE COURT

The Receiver is respectfully seeking an order:

- (a) approving this Second Report; and
- (b) ordering that the stay of proceedings be lifted on the terms set out in Gowlings' letters dated November 22, 2012.

All of which is respectfully submitted to this Honourable Court.

DATED this 14th day of December, 2012.

Deloitte & Touche Inc.

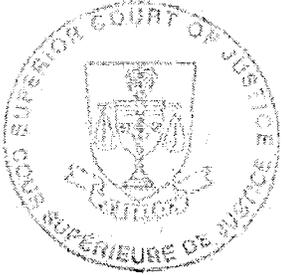
Receiver and Manager of the current and future assets, undertakings and properties of Rose of Sharon (Ontario) Retirement Community and not in its personal capacity.



Daniel R. Weisz, CA•CIRP, CIRP
Senior Vice President

Hartley Bricks, MBA, CA•CIRP
Vice President

APPENDIX A



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) **TUESDAY, THE 27th DAY**
)
JUSTICE C. CAMPBELL) **OF SEPTEMBER, 2011**

BETWEEN:

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**

AMENDED AND RESTATED APPOINTMENT ORDER

THIS APPLICATION made by Peoples Trust Company ("Peoples Trust" or the "Applicant") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Deloitte & Touche Inc. ("Deloitte") as receiver and manager (in such capacities, the "Receiver") without security, of all of the

assets, undertakings and properties of Rose of Sharon (Ontario) Retirement Community (the "Debtor"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Michael Lombard sworn September 22, 2011, and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and counsel for the Debtor no one appearing for any other party although duly served as appears from the Affidavits of Service of Alma Cano, sworn September 23 and September 26, 2011, and on reading the Consent of Deloitte to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Deloitte is hereby appointed Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, wherever situate, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of

locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) subject to section 110 of the *Long-Term Care Homes Act*, S.O. 2007, c. 8 (the "LTCHA") to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) subject to section 110 of the LTCHA, to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order, and in this regard the Receiver is specifically authorized to retain counsel for the Applicant to advise and represent it save and except on matters upon which the Receiver in its judgment determines it requires independent advice, in which case the Receiver shall retain Blaney McMurtry LLP;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) Notwithstanding anything in this Order, the Debtor is the licensee (the "Licensee") of the long-term care home located at 17 Maplewood Avenue, Toronto, Ontario which forms a part of the Property (the "Home"). The

Home is currently licensed pursuant to the LTCHA and the regulations thereunder. Toronto Central Local Health Integration Network ("TC LHIN") will continue to pay the Licensee (and the Receiver will be entitled to receive such payments) pursuant to the Service Accountability Agreement in respect of the Home between the TC LHIN and the Debtor effective March 4, 2011 (the "SAA") and the Ministry of Health and Long-Term Care (~~together with the TC LHIN, the "MOH"~~) will continue to pay the Licensee (which payments shall be received by the Receiver in accordance with this Order) pursuant to ~~the existing agreement.~~ agreements. Any monies received by the Debtor or the Receiver from the MOH or the TC LHIN shall be used or applied by the Receiver for the operation of the Home in accordance with the SAA, any agreement with the MOH and the LTCHA. Any payments by the TC LHIN shall be subject to TC LHIN review and reconciliation as provided for under the SAA and applicable law and written policy. Any payments by the MOH shall be subject to MOH review and reconciliation as provided for under any agreement with the Debtor or the Receiver and applicable law and written policy. For clarity, subject to the foregoing reconciliations, any surplus monies arising from the operation of the Home may be applied by the Receiver in accordance with this Order.

- (h) to settle, extend or compromise any indebtedness owing to the Debtor;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;

- (k) to apply for such permits, licenses, approvals or permissions as may be required by any governmental authority with respect to the Property, including, without limitation, licenses under the LTCHA
- (l) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (m) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (n) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000 provided that the aggregate consideration for all such transactions does not exceed \$200,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (s) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order, including without limitation Mr. Charles Daley and IWOK Corporation (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver and any party the Receiver retains in accordance with subparagraph 3(d) of this Order and section 110 of the LTCHA, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the

information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver or any party the Receiver retains in accordance with sub-paragraph 3(d) of this Order and section 110 of the LTCHA (the "**Manager**") except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver and the Manager, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a

security interest, or (iv) prevent the registration of a claim for lien. For clarity, this paragraph 9 shall apply to the Manager solely in its capacity as agent for the Receiver.

NO INTERFERENCE WITH THE RECEIVER

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver or Manager, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver, at least one of which will describe the account holder as "Deloitte & Touche Inc. as Rec. & Mgr. of Rose of Sharon (Ontario) Retirement Community" (the "Post

Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. Neither the Receiver nor the Manager shall be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively,

"Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 81.4(4), and 81.6(2) of the BIA.

18. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. Subject to section 107 of the LTCHA, the whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections, 81.4(4), and 81.6(2) of the BIA.

21. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

GENERAL

24. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

25. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

26. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

27. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

28. **THIS COURT ORDERS** that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or,

if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

~~29. 28A.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the Receiver and Manager shall comply with the SAA, the LTCHA and the regulations thereunder as they apply to the management operation of the Home and ~~neither~~ TCLHIN nor MOH shall ~~not~~ be subject to paragraphs 9 and 10 of this Order in relation to any non-compliance with the SAA, the LTCHA and the regulations thereunder by the Receiver and/or the Manager with respect to the management operation of the Home.

~~29.~~ 30. _____

THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



Natasha Brown
Registrar

ENTERED AT / INSÉRÉ À TORONTO
3917 BOOK NO:
LE 7 DANS LE REGISTRE NO.:

DEC 23 2011

PER/PAR:



SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Deloitte & Touche Inc., the receiver and manager (the "Receiver") of the current and future assets, undertakings and properties of Rose of Sharon (Ontario) Retirement Corporation of every nature and kind whatsoever, wherever situate (the "Debtor"), including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number ___-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the head office of the Lender.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

DELOITTE & TOUCHE INC. solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name: Daniel R. Weisz

Title: Senior Vice President

PEOPLES TRUST COMPANY v.
Applicant

ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

AMENDED AND RESTATED
APPOINTMENT ORDER

GOWLING LAFLEUR HENDERSON LLP
Barristers and solicitors
1 First Canadian Place
100 King Street West, Suite 1600
TORONTO, Ontario
M5X 1G5

Clifton Prophet
LSUC No.: 34845K

Telephone: (416) 862-3509 / (416) 268-9900

Facsimile: (416) 862-7661

Lawyers for the Applicant,
Peoples Trust Company

APPENDIX B

Tattoni, Adriana

From: Jeff Armel [armel@gsnh.com]
Sent: April 11, 2011 4:28 PM
To: Tattoni, Adriana
Subject: RE: Mikal-Calladan v. Rose of Sharon (Court File No. CV-10-417426)
nothing to report. Parties have been talking and no defences required yet.

Jeffrey A. Armel
GOLDMAN SLOAN NASH & HABER LLP
Barristers and Solicitors
480 University Avenue, Suite 1600
Toronto, Ontario, Canada M5G 1V2

Please note that our postal code has changed

Tel 416-597-6477 Fax 416-597-3370

Email armel@gsnh.com

Web www.gsnh.com

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From: Tattoni, Adriana [mailto:Adriana.Tattoni@gowlings.com]
Sent: Monday, April 11, 2011 3:19 PM
To: armel@gsnh.com
Subject: Mikal-Calladan v. Rose of Sharon (Court File No. CV-10-417426)

As you know we are legal counsel for Peoples Trust. Please advise as to the status of the proceedings in this lien action. Thank you.

Kind regards,

Adriana Tattoni
Law Clerk
416-369-4607
adriana.tattoni@gowlings.com

gowlings

Gowling Lafleur Henderson LLP
Lawyers • Patent and Trade-mark Agents
1 First Canadian Place
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Toronto, Ontario
M5X 1G5 Canada
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12/04/2011

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APPENDIX C

**ONTARIO
SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE**

**BETWEEN:
ENTRE:**

MIKAL-CALLADAN CONSTRUCTION INC.

Plaintiff
Demandeur

and / et

ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY ; PEOPLES TRUST COMPANY ; IWOK
CORPORATION

Defendant
Défendeur

**NOTICE THAT ACTION WILL BE DISMISSED
AVIS PORTANT QUE L'ACTION SERA REJETÉE**

TO THE PARTIES AND THEIR LAWYERS
AUX PARTIES ET À LEURS AVOCATS

According to the records in the court office:

D'après le dossier du greffe du tribunal, les conditions suivantes sont réunies :

- (a) 180 days have passed since the originating process was issued,
a) 180 jours se sont écoulés depuis la délivrance de l'acte introductif d'instance;
- (b) no defence has been filed,
b) aucune défense n'a été déposée;
- (c) the action has not been disposed of by final order or judgment, and
c) l'action n'a pas fait l'objet d'une ordonnance définitive ou d'un jugement;
- (d) the action has not been set down for trial.
d) l'action n'a pas été inscrite pour instruction.

Pursuant to subrule 48.15(1), THIS ACTION WILL BE DISMISSED AS ABANDONED unless, within 45 days of being served with this notice:

Conformément au paragraphe 48.15 (1), LA PRÉSENTE ACTION SERA REJETÉE POUR CAUSE DE DÉSISTEMENT à moins que, dans les 45 jours de la signification du présent avis, l'une ou l'autre des conditions suivantes ne soit remplie :

- (a) a defence is filed,
a) une défense est déposée;
- (b) it is disposed of by final order or judgment, or
b) l'action fait l'objet d'une ordonnance définitive ou d'un jugement;
- (c) it is set down for trial.
c) l'action est inscrite pour instruction.

NOTE: A "defence" means a statement of defence, a notice of intent to defend, or a notice of motion in response to a proceeding, other than a motion challenging the court's jurisdiction.

REMARQUE : Une «défense» s'entend d'une défense visée à la Règle 18, d'un avis d'intention de présenter une défense ou d'un avis de motion en réponse à une instance, autre qu'une motion en contestation de la compétence du tribunal.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE**

**NOTICE THAT ACTION WILL BE DISMISSED
AVIS PORTANT QUE L'ACTION SERA REJETÉE**

CV-10-00417426-0000

Court File No./N° du dossier du greffe

Date: 11-JUL-2011

Date:

Signed by: _____

signature: Local registrar / greffier local

Address of court office: Toronto

**adresse du greffe: 393 University Av 10th fl
Toronto ON M5G 1E6**

**TO : PEOPLES TRUST COMPANY
DESTINATAIRES : 130 ADELAIDE STREET WEST, SUITE 1801 .
TORONTO ON CA M5H 3P5**

APPENDIX D

To: ni, Adriana

From: Meddings, Debra on behalf of Vanderlugt, Harry

Sent: August 18, 2011 12:04 PM

To: 'Jeff Armel'

Cc: Tattoni, Adriana; Vanderlugt, Harry

Subject: Rose of Sharon

Attachments: CONSENT TO JUDGMENT-TOR_LAW-7722195-v1.PDF

Jeff, attached is signed consent. You may sign original consent for us.
I have noted several small items on the attached draft judgment you may wish to make.

Harry VanderLugt
Partner
416.862.5723

Gowling Lafleur Henderson LLP
Suite 1600, 1 First Canadian Place 100 King Street West
Toronto, ON M5X 1G5 Canada
T 416.862.7525 | F 416.862.7661
gowlings.com

gowlings

Court File No. CV-10-417426

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF the *Construction Lien Act*,
R.S.O. 1990, c. C-30, as amended**

BETWEEN:

MIKAL-CALLADAN CONSTRUCTION INC.

Plaintiff

- and -

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY,
PEOPLES TRUST COMPANY and IWOK COMPANY**

Defendants

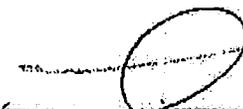
CONSENT

THE PARTIES HERETO, by their respective lawyers, consent to the form of Judgment attached hereto and certify that none of the parties affected by the Judgment are under a disability.

The defendant, Rose of Sharon (Ontario) Retirement Community has been noted in default and the action has been discontinued as against the defendant, Iwok Company.

Date:

MIKAL-CALLADAN CONSTRUCTION INC.
by its lawyers,
GOLDMAN SLOAN NASH & HABER LLP
Per:

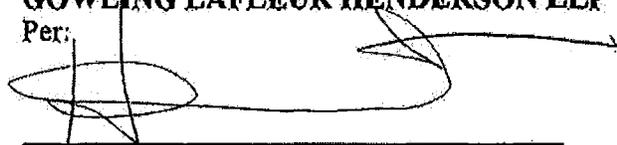


JEFFREY A. ARMEL

- 2 -

Date:

PEOPLES TRUST COMPANY
by its lawyers,
GOWLING LAFLEUR HENDERSON LLP
Per:



HARRY R. VANDERLUGT

Court File No. CV-10-417426

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF the *Construction Lien Act*,
R.S.O. 1990, c. C-30, as amended**

**THE HONOURABLE M) DAY, THE DAY
JUSTICE) OF , 2011**

BETWEEN:

MIKAL-CALLADAN CONSTRUCTION INC.

Plaintiff

- and -

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY,
PEOPLES TRUST COMPANY and IWOK COMPANY**

Defendants

JUDGMENT

THIS MOTION made by the plaintiff under the provisions of subsection 58(1) of the *Construction Lien Act*, R.S.O. 1990, Chapter C.30, was read this day at Toronto.

ON READING the Consent of the lawyers for the plaintiff and the defendant, Peoples Trust Company, the defendant, Rose of Sharon (Ontario) Retirement Community having been noted in default and the action having been discontinued as against the defendant, Iwok Company,

- 2 -

1. **THIS COURT ORDERS AND ADJUDGES** that this matter be referred to a Master at Toronto for trial.

 2. **THIS COURT FURTHER ORDERS AND ADJUDGES** that the parties found liable forthwith after confirmation of the report of the Master, pay to the parties, the respective amounts due to them. *successful*

 3. **THIS COURT FURTHER ORDERS AND ADJUDGES** that the Master determine all questions arising in this action on the reference and all questions arising under the *Construction Lien Act* and that the findings of the Master be effective on the confirmation of the report.

 4. **THIS COURT FURTHER ORDERS AND ADJUDGES** that the Master determine the question of costs in this action and of the reference, and the costs be assessed ^{and} as paid as the Master shall direct.
-

APPENDIX E

From: Jeff Armel [mailto:armel@gsnh.com]

Sent: October 4, 2011 2:22 PM

To: Prophet, Clifton

Cc: 'Brendan Bissell'; 'Jessica Caplan'; 'Leon Hui'

Subject: RE: In the Matter of Peoples Trust Company and Rose of Sharon (Ontario) Retirement Community - Application Record of the Applicant

Clifton:

We obtained a default judgment against Rose of Sharon, a copy of which is attached hereto. Our materials were submitted to the Registrar prior to Mr. Justice Campbell's Receivership order. Under the circumstances, we will not take any steps to enforce our client's judgment in the absence of obtaining the necessary leave from the Court.

Yours truly,

Jeffrey A. Armel

GOLDMAN SLOAN NASH & HABER LLP

Barristers and Solicitors

480 University Avenue, Suite 1600

Toronto, Ontario, Canada M5G 1V2

Please note that our postal code has changed

Tel 416-597-6477 Fax 416-597-3370

Email armel@gsnh.com

Web www.gsnh.com

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us immediately by telephone or email and confirm that you have destroyed the original transmission and any copies that have been made. Thank you for your cooperation.

From: Prophet, Clifton [mailto:Clifton.Prophet@Gowlings.com]
Sent: Tuesday, September 27, 2011 6:15 PM
To: Prophet, Clifton; ron@hgr.ca; shayne.kukulowicz@fmc-law.com; jane.dietrich@fmc-law.com; tim.burns@ontario.ca; armel@gsnh.com; diane.winters@justice.gc.ca; kevin.ohara@ontario.ca; PLepsoe@lavery.ca
Cc: Machado, Eunice (JUS); Eric Golden; Weisz, Daniel (CA - Toronto); Bricks, Hartley (CA - Toronto); Brendan Bissell
Subject: RE: In the Matter of Peoples Trust Company and Rose of Sharon (Ontario) Retirement Community - Application Record of the Applicant

Further to our attendance in Court today, please find the Order of the Honourable Justice C. Campbell appointing Deloitte & Touche Inc. as receiver and manager of Rose of Sharon, as issued and entered.

Regards,

Cliff

Clifton Prophet
Partner
416-862-3509
gowlings.com

From: Cano, Alma **On Behalf Of** Prophet, Clifton
Sent: September 23, 2011 3:26 PM
To: 'ron@hgr.ca'; 'shayne.kukulowicz@fmc-law.com'; 'jane.dietrich@fmc-law.com'; 'tim.burns@ontario.ca'; 'armel@gsnh.com'; 'diane.winters@justice.gc.ca'; 'kevin.ohara@ontario.ca'; 'PLepsoe@lavery.ca'
Cc: Prophet, Clifton
Subject: In the Matter of Peoples Trust Company and Rose of Sharon (Ontario) Retirement Community - Application Record of the Applicant

To Service List:

Attached is the Application Record of the Applicant regarding the above-noted matter, which is being served upon you pursuant to the *Rules of Civil Procedure*.

As you will note, this Application is being served on the basis that the Notice of Application is to be issued subsequently. As soon as the Notice has been issued, it will be circulated under separate cover.

Arrangements to have the matter heard on the Commercial List on September 27th are ongoing. Should there be any change, we will advise.

Clifton Prophet
Partner
416-862-3509
clifton.prophet@gowlings.com
gowlings.com

Gowling Laffeur Henderson LLP
Lawyers • Patent and Trade-mark Agents

1 First Canadian Place
100 King Street West, Suite 1600
Toronto Ontario
M5X 1C Canada
T 416-862-7525 F 416-862-7661

gowlings

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**ONTARIO
SUPERIOR COURT OF JUSTICE**



**IN THE MATTER OF the *Construction Lien Act*,
R.S.O. 1990, c. C-30, as amended**

MIKAL-CALLADAN CONSTRUCTION INC.

Plaintiff

- and -

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY,
PEOPLES TRUST COMPANY and IWOK COMPANY**

Defendants

JUDGMENT

On reading the Statement of Claim in this action and the proof of service of the Statement of Claim on the Defendant, Rose of Sharon (Ontario) Retirement Community, filed, and the Defendant, Rose of Sharon (Ontario) Retirement Community having been noted in default,

1. **IT IS ORDERED AND ADJUDGED** that the Defendant, Rose of Sharon (Ontario) Retirement Community pay to the Plaintiff the sum of \$4,195,768.64 and the sum of \$ 1,350.00 ^{GA} for the costs of this action.

This judgment bears interest at the rate of 3.00% per year from its date.

Date: September 29, 2011 Signed by: 

Local Registrar
393 University Avenue, 10th Floor
Toronto, Ontario
M5G 1E6

G. Argyropoulos, Registrar
Superior Court of Justice

ENTERED AT / INSCRIPT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

SEP 30 2011

AS DOCUMENT NO.:
A TITRE DE DOCUMENT NO.:
PER / PAR: 

MIKAL-CALLADA CONSTRUCTION INC.

- and -

ROSE OF SHARON (ONTARIO) RETIREMENT
COMMUNITY, et al.

Plaintiff

Defendants

Court File No. CV-10-417426

ONTARIO
SUPERIOR COURT OF JUSTICE
IN THE MATTER OF the *Construction Lien*
Act, R.S.O. 1900, c. C-30, as amended

Proceeding Commenced at TORONTO

JUDGMENT

OMEGA

GOLDMAN SLOAN NASH & HABER LLP
Barristers & Solicitors
480 University Avenue, Suite 1600
Toronto, Ontario M5G 1V2

Jeffrey A. Armel
LSUC #35749P
Tel: 416-597-6477
Fax: 416-597-3370
Lawyers for the Plaintiff
100854

APPENDIX F



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Christopher Stanek
Direct 416-862-4369
Assistant 416-862-4362
chris.stanek@gowlings.com
File No. T988324

June 1, 2012

VIA E-MAIL

Ms. Rebekah Alberga
Trisura Guarantee Insurance Company
Bay/Adelaide Centre
333 Bay Street
Suite 1610
P.O. Box 22
Toronto, Ontario
M5H 2R2

Dear Ms. Alberga:

Re: Notice of Claim Under Performance Bond

Bond No.: TC0211026
Project: Construction of 12 Storey Retirement and Long-Term Care Facility
at 165 & 171 Vaughan Road, Toronto (Rose of Sharon
Development)
Obligee: Rose of Sharon (Ontario) Retirement Community
Principal: Mikal-Calladan Construction Inc.

We are writing to advise you of the default of Mikal-Calladan Construction Inc. under the Contract referenced in Performance Bond no. TC0211026 (the "Bond") dated March 29, 2007. Please accept this letter as formal notice of the claim of Deloitte & Touche Inc., the Court-appointed Receiver and Manager of Rose of Sharon (Ontario) Retirement Community (the "Receiver") and Administrator and Successor of the Obligee, Rose of Sharon (Ontario) Retirement Community, pursuant to the terms of the Bond

The details of the default are set out in the building audit report prepared by Norman Lee & Associates (the "Building Audit Report") that has been provided to the Principal, Mikal-Calladan Construction Inc. on May 4, 2012 and again on May 23, 2012 at the address directed by Mr. Leon Hui of Mikal-Calladan Construction Inc., the individual who signed the Bond.

Please find attached our correspondence notifying Mr. Hui of his company's default as well as his response and the letter providing the Building Audit Report. Five business days



have passed without any of the deficiencies identified in the Building Audit Report being rectified. As a result, Mikal-Calladan Construction Inc. is in default of the Contract and the Receiver is entitled to enforce its rights as Administrator and Successor of the Obligee, Rose of Sharon (Ontario) Retirement Community pursuant to the terms of the Bond

The Receiver's audit of Mikal-Calladan's performance under the Contract continues. We will advise if further defaults are identified.

The Building Audit Report can be provided upon request. If any further information is required, please contact the undersigned at the telephone number above.

Yours truly,

GOWLING LAFLEUR HENDERSON LLP

A handwritten signature in black ink, appearing to read "C Stanek", written over a horizontal line.

Christopher Stanek

CS:gg

Encl.

cc. Mikal-Calladan Construction Inc.
TOR_LAW\ 7926436\2



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Christopher Stanek
Direct 416-862-4369
Assistant 416-862-4362
chris.stanek@gowlings.com
File No. T988324

May 4, 2012

VIA REGULAR AND REGISTERED MAIL

Mr. Leon Hui
Unimac Group Ltd.
(o/a Mikal-Calladan Construction Inc.)
90 Nolan Court
Markham, ON
L3R 4L9

Dear Mr. Hui:

Re: Agreement between Rose of Sharon (Ontario) Retirement Community and Unimac Group Ltd. operating as Mikal-Calladan Construction Inc.

We represent Deloitte & Touche Inc., the Receiver and Manager (the "Receiver") of Rose of Sharon (Ontario) Retirement Community, appointed by the Ontario Superior Court of Justice pursuant to a Court Order dated September 27, 2011.

I am writing with respect to the CCDC 2 (1994) agreement (the "Contract") between Rose of Sharon (Ontario) Retirement Community and Unimac Group Ltd. operating as Mikal-Calladan Construction Inc. ("Mikal-Calladan") for the construction of a building at 165 & 171 Vaughan Road Toronto (the "Property"). The Receiver hereby provides notice of default, pursuant to GC 7.1.2 of the Contract.

The details of the default are set out in the attached building audit report dated March 20, 2012 (the "Building Audit Report") prepared by Norman Lee & Associates Ltd. ("Norman Lee") for the Receiver. Norman Lee was retained by the Receiver as a consultant to determine the extent of any deficiencies in the construction of the Property. The Executive Summary at page 24 of the Building Audit Report identifies specific deficiencies at items 10.01 through 10.14, each of which is a failure to comply with the requirements of the Contract.

Pursuant to 7.1.3 of the General Conditions of the Contract, Mikal-Calladan has five working days from the receipt of this letter to correct each of the deficiencies set out at items 10.01 to 10.14 of the Building Audit Report.



Please provide notice that Mikal-Calladan intends to attend at the Property to rectify the deficiencies at items 10.01 though 10.14 of the Executive Summary of the Building Audit Report so that the Receiver can make arrangements to monitor this work.

In the event that Mikal-Calladan fails to attend to correct said defaults in the next five working days, the Receiver intends to claim under Performance Bond number TC0211026 issued by Trisura Guarantee Insurance Company, under which Mikal-Calladan is principal and the Receiver is administrator of the Obligee, Rose of Sharon (Ontario) Retirement Community.

The Receiver's audit of the work performed by Mikal-Calladan under the Contract continues. If the Receiver becomes aware of further failures to comply with the requirements of the Contract, we will notify Mikal-Calladan of such further defaults so that Mikal-Calladan will have the opportunity to rectify said defaults, if any.

Yours truly,

GOWLING LAFLEUR HENDERSON LLP

A handwritten signature in black ink, appearing to read "C Stanek", written over a horizontal line.

Christopher Stanek

CS:gg

TOR_LAW 790395712

DELIVERY REQUEST

DATE: May 4, 2012

TIME: 3:25 PM

DESTINATION:

Name, Mr. Leon Hui
Company, Unimac Group Ltd.
Address: (o/a Mikal-Calladan Construction Inc.)
90 Nolan Court
Markham, ON
L3R 4L9

Phone:

Complete address, postal/zip code and phone number required

DELIVERY DEADLINE:

Please check the appropriate service level.

SAME DAY:

Within 1 hour
Within 1-3 hours
Within 4 hours
By End of Day

NEXT BUSINESS DAY:

9:00 am (if available)
10:30 am (if available)
Noon
End of Day
2-7 Days (overseas)

SPECIAL SERVICES:

SATURDAY DELIVERY REQUIRED [where available]

LEAVE IN MAILBOX IF NO ONE HOME [within Canada only]

SPECIAL INSTRUCTIONS:

REGISTERED MAIL

BILLING INFORMATION:

Client #:
Matter #: T993527
Lawyer #: 2195

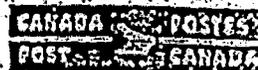
Client Name:
Matter Name: Rose of Sharon
Lawyer Name: Chris Stanek

TO BE COMPLETED BY COURIER DEPARTMENT:

Amount: \$ _____



Registered Reçommandé



Chris Stonak
(Sender)
7993527
(File #)

Gowling Lafleur Henderson LLP
1 First Canadian Place
100 King Street West
Suite 1600
Toronto, Ontario, Canada M5X 1G5



REGISTERED DOMESTIC

REÇOMMANDÉ RÉGIME INTÉRIEUR



CUSTOMER RECEIPT

REÇU DU CLIENT

To / Destinataire	From / Nom
Address / Adresse	City / Prov. / Postal Code / Ville / Prov. / Code postal

FOR DELIVERY CONFIRMATION	CONFIRMATION DE LA LIVRAISON
www.canpost.ca	www.postescanada.ca
1 888 550-6333	

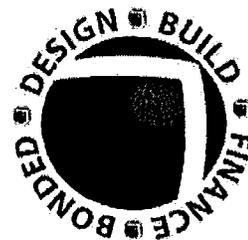
Declared Value / Valeur déclarée \$

CPO Tracking Number / Numéro de suivi de la SCP
RW 649 823 349 CA

33-086-584 (11-04)

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RÉGION DE L'ON
M5X 1G5

Ken Tsui
Project Manager



6 Wilmont Court, Markham,
Ontario, Canada L6C 1A9
Tel: 416.258.2988 ext 2016
Fax: 905.948.9461
ken@unimacgroup.com

May 9, 2012

Via Registered Mail

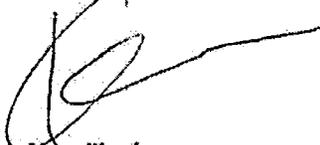
Mr. Christopher Stanek
Gowling Lafleur Henderson LLP
1 First Canadian Place,
100 King Street West, Suite 1600,
Toronto, Ontario, Canada M5X 1G5

Re: Rose of Sharon

Dear Mr Stanek,

This letter responds to your letter dated May 4, 2012, which was only received on May 9, 2012. As you mentioned in your letter, you have received a building audit report dated March 20, 2012 with alleged deficiencies in the building, however, you have failed to provide a copy of the building audit report. Accordingly, please send us a copy of the building audit report to 6 Wilmont Court, Markham, Ontario L6C 1A9.

Yours truly,



Ken Tsui

UNIMAC GROUP
L T D

unimacgroup.com

6 Wilmont Court, Markham, Ontario, Canada L6C 1A9 Tel: (416) 258 2988 Fax: (905) 948 9461



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Christopher Stanek
Direct 416-862-4369
Assistant 416-862-4362
chris.stanek@gowlings.com
File No. T988324

May 14, 2012

VIA COURIER

Mr. Leon Hui
Unimac Group Ltd.
(o/a Mikal-Calladan Construction Inc.)
90 Nolan Court
Markham, ON
L3R 4L9

Dear Mr. Hui:

**Re: Agreement between Rose of Sharon (Ontario) Retirement Community and
Unimac Group Ltd. operating as Mikal-Calladan Construction Inc.**

I am writing to you with respect to your letter to us dated May 9, 2012. Your letter advises that you did not receive the building audit report dated March 20, 2012.

The building audit report was sent to you via registered mail as well as regular mail with our letter. In the event you did not receive either copy, please find an additional copy.

Please advise as to when Mikal-Calladan Construction Inc. intends to rectify these deficiencies.

Yours truly,

GOWLING LAFLEUR HENDERSON LLP

Christopher Stanek

CS:gg

Encl.

DELIVERY REQUEST

DATE: May 14, 2012

TIME: 3:50 PM

DESTINATION:

Name, Mr. Leon Hui
Company, Unimac Group Ltd. (o/a Mikal-Calladan Construction Inc.)
Address: 90 Nolan Court
Markham, ON
L3R 4L9

Phone:

Complete address, postal/zip code and phone number required

DELIVERY DEADLINE:

Please check the appropriate service level.

SAME DAY:

Within 1 hour
Within 1-3 hours
Within 4 hours
By End of Day

NEXT BUSINESS DAY:

9:00 am (if available)
10:30 am (if available)
Noon
End of Day
2-7 Days (overseas)

SPECIAL SERVICES:

SATURDAY DELIVERY REQUIRED [where available]

LEAVE IN MAILBOX IF NO ONE HOME [within Canada only]

SPECIAL INSTRUCTIONS:

BILLING INFORMATION:

Client #: **Client Name:**
Matter #: T988324 **Matter Name:** Unimac
Lawyer #: 2195 **Lawyer Name:** Chris Stanek

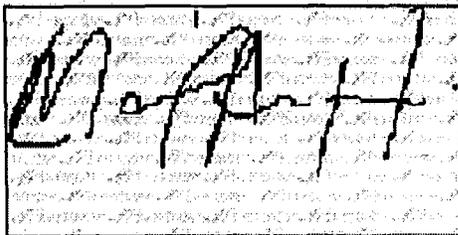
TO BE COMPLETED BY COURIER DEPARTMENT:

Amount: \$ _____

Close

TRACKING DETAILS

PIN 601666483271
Status Delivered to HUI at GUARD of HOUSE CALL
Date/Time 2012-05-23 02:26 PM
Depot TORONTO (EAST/EST), ON
Tracking Phone # 1 888 SHIP-123 or 1-888-744-7123
To Company HOUSE CALL
Address 6 WILMONT CRT, MARKHAM, ON L6C1A9, CANADA
Delivery Location GUARD
Delivery Recipient HUI
Premium Service 10:30 AM SERVICE
Delivery Signature



Print

APPENDIX G

Stanek, Chris

From: MacLellan, James W. [JMACLELLAN@blg.com]
Sent: June 4, 2012 2:09 PM
To: Stanek, Chris
Subject: Trisura - Unimac - Rose of Sharon
Attachments: image2012-06-01-113103.pdf; Scan 2- Tab 2.pdf

Chris,

Further to our discussion on Friday, a copy of your letter dated June 1, 2012 has been forwarded to me for response.

Our preliminary comments on the claim by your client, provided with a full reservation of rights under the Performance Bond, are as follows:

1. It is Trisura's understanding that Rose of Sharon is in default of its obligations under the Agreement between Rose of Sharon and Mikal-Calladon due to, in part, Rose of Sharon's failure to remit payment to Mikal-Calladon as required by the Contract. I have attached a copy of the first report of the Receiver, which confirms in paragraph 112 that Judgment has been obtained by Mikal-Calladon against Rose of Sharon. I do not have a copy of the Judgment as I did not receive a complete copy of the Report.
2. Also, as noted in paragraph 62 of the Receiver's Report, Mikal-Calladon's contractual obligation (ignoring the default of Rose of Sharon) was to correct deficiencies identified within the one year warranty period as provided for in the Contract. As noted in the Receiver's Report, no such notification of deficiencies was provided to Mikal-Calladon within the one year period and therefore Mikal-Calladon has no contractual obligation to correct any alleged deficiencies.
3. Pursuant to the provisions of the Performance Bond, in order to make a claim, an obligee is required to comply with the obligee's obligations under the Bonded Contract. It would appear based on our understanding at this time that Rose of Sharon defaulted on its obligations under the Bonded Contract and the Receiver is not in a position to remedy the default of the Rose of Sharon. Accordingly, neither Rose of Sharon nor the Receiver would have any entitlement to make a claim under the Bond.

If, notwithstanding the above, your client intends to make a claim against the Bond, we would ask that you forward to us the following information related to the Contract:

1. Certified copy of the original Performance Bond.
2. Copy of the Contract between Rose of Sharon and Mikal-Calladon. Please highlight the provision of the Contract relied on by your client as the basis of its claim under the Performance Bond
3. Copies of the progress certificates, change orders issued under the Contract
4. Copies of any payments made by Rose of Sharon to Mikal-Calladon.
5. Copy of the Project Certificate of Substantial Performance.
6. Copy of any deficiency list issued to Mikal-Calladon prior to the one year warranty period in the Contract.
6. Copy of the Building Audit Report referenced in your letter

We can confirm that Trisura reserves all of its rights under the Performance Bond and Law.

James



James MacLellan
 Partner
 T 416.367-6592 | F 416.361-7350 | jmaclellan@blg.com
 Scotia Plaza, 40 King Street West, Toronto, ON, Canada M5H 3Y4

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12/12/2012

APPENDIX H



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Christopher Stanek
Direct 416-862-4369
Assistant 416-862-4362
chris.stanek@gowlings.com
File No. T988324

July 10, 2012

VIA COURIER

James MacLellan
Borden Ladner Gervais LLP
Scotia Plaza
40 King Street West,
Toronto, Ontario
M5H 2R2

Dear Mr. MacLellan:

Re: Claim Under Performance Bond TC0211026 (the "Bond")
Project: Construction of 12 Storey Retirement and Long-Term Care Facility at 165 & 171 Vaughan Road, Toronto, Ontario (Rose of Sharon Development)
Obligee: Rose of Sharon (Ontario) Retirement Community
Principal: Mikal-Calladan Construction Inc. ("Mikal-Calladan")

We are writing to respond to your e-mail to me of June 4, 2012. Due to the state of Rose of Sharon's records, it has taken some time to reconcile amounts due and owing to properly address the allegations set out in your e-mail. However, as set out in my e-mail to you of June 13, 2012, Rose of Sharon was not in default of its obligations under the Contract (defined below), for the reasons set out below.

The Amount Owing Under the Contract

Mikal-Calladan was, in fact, overpaid according to the terms of the Contract. Attached at **Tab 1** is the Receiver's reconciliation of payments under the Contract (the "**Reconciliation**"). The Reconciliation is a document originally prepared by Rose of Sharon and amended by the Receiver where applicable based upon the available books and records of Rose of Sharon. The Reconciliation shows that, in fact, Mikal-Calladan was overpaid the amount of \$58,851.66, if certain (but not all) set-offs are made. The Reconciliation is supported by the following documents which form the contract between the parties (the "Contract"):

1. The CCDC 2 Contract between Rose of Sharon (Ontario) Retirement Community and Unimac Group Ltd. operating as Mikal-Calladan Construction Inc. incorporating the provisions of a standard CCDC 2 – 1994 contract form (attached at **Tab 2**).
2. Memorandum of Understanding between Rose of Sharon and Unimac Group Ltd. dated October 17, 2008 (the “**MOU**” attached at **Tab 3**). This document amended the CCDC 2 contract. In this document Unimac Group Ltd. (Mikal-Calladan) agreed to receive, as security for the \$1,263,923.31 owing at the time of the MOU, six units in the project.
3. Addendum to Right to Occupy Agreement (attached at **Tab 4**). This document is actually an addendum to the MOU. Its terms confirm the terms of the MOU.
4. Agreement between Rose of Sharon and Unimac Group Ltd. dated Dec. 10, 2009 (the “**2009 Agreement**”, attached at **Tab 5**). The 2009 Agreement sets out that Rose of Sharon was entitled to be compensated by Mikal-Calladan for all interim interest charges incurred by Rose of Sharon on the construction loan owing to Peoples Trust Company due to Mikal-Calladan’s failure to achieve an occupancy permit for floors 1-6 of the project by January 31, 2010. The 2009 Agreement provided that any reimbursable interest charges would be deducted from amounts due and owing under the Contract. These deductions are made in Change Orders 16 through 22 and Change Order 24, which confirm Mikal-Calladan’s default under the Contract. However, the calculations in the Change Orders are not consistent with the actual terms of the 2009 Agreement and are adjusted as set out in the Reconciliation.
5. Change Order Summary prepared by Victor J. Heinrichs Architect (“Heinrichs”) dated February 28, 2011 and Change Orders 1 through 24 (attached at **Tab 6**). These are incorporated into the Reconciliation.

Payments Under the Contract

In the Reconciliation, the payments to Mikal-Calladan total **\$17,388,067**, shown in the “Disbursement” column, after taking into account the two holdback releases of \$101,198 and \$486,547. This amount is completely consistent with Mikal-Calladan’s document titled Rose of Sharon Account Statement at 10/17/10 (the “Mikal-Calladan Account Statement”) attached at **Tab 7**. Mikal-Calladan therefore admits receiving \$17,388,067.

Holdback

The Mikal-Calladan Account Statement is inaccurate with respect to the “10% Hold Back” column. It appears that, in the Mikal-Calladan Account Statement, Mikal-Calladan has included invoices in which it invoiced for “holdback release” in this column *in addition to* the amounts which were actually required to be held back, resulting in an overstatement of holdback shown. If the four “holdback release” entries are excluded, the amount of holdback in Mikal-Calladan’s records becomes \$1,859,083.81, which approximates the total holdback of \$1,866,329.67 set out in the Reconciliation (before holdback payments).

In fact, if the "10% Hold Back" column is corrected as set out above, the "Outstanding Balance" owed to Mikal-Calladan, according to its own records at Tab 7 is reduced to \$513,852.75.

The Reconciliation shows that **\$494,345.41** is owing to Mikal-Calladan. After consideration of holdback already paid, the amount of holdback owing is **\$1,278,584.67**. However, both of these amounts are subject to adjustments and other set offs described below.

Set-Offs

Rose of Sharon is entitled to a number of set-offs that eliminate the amount owing to Mikal-Calladan and result in significant amounts owing to Rose of Sharon, as follows:

1. At page 4 of Report #22 of Pelican-Woodcliff Inc. ("Pelican") dated September 28, 2009 (attached at **Tab 8**, which is the last report issued by Pelican), it indicated that the "cost of work in place is \$18,227,664". However, Mikal-Calladan has issued invoices to Rose of Sharon for \$18,663,026, which is **\$435,362** more than the amounts authorized by Pelican. Since Mikal-Calladan is only entitled to obtain payment for work it performed, its billings should be reduced by \$435,362. This set-off is included in the Reconciliation.
2. As discussed above, the 2009 Agreement provides for reimbursement by Mikal-Calladan to Rose of Sharon for interim interest charges to the extent that Mikal-Calladan failed to obtain an occupancy permit for floors 1-6 by January 31, 2010. Since the Occupancy Permit was not issued until November 4, 2010, Rose of Sharon rightfully issued change orders in respect to interim interest charges it incurred in respect of the Peoples Trust construction loan. However, the change orders failed to reflect the actual interest charges incurred, resulting in a further **\$68,835.07** of interest that should be properly set off against amounts owing to Mikal-Calladan. This set-off is also included in the Reconciliation.
3. Given Mikal-Calladan's failure to obtain the Occupancy Permit by January 31, 2010, Rose of Sharon incurred a further **\$49,000** in interest charges on account of its \$700,000 debt to IWOK Corporation, a related entity to Mikal-Calladan which provided a secondary construction loan to Rose of Sharon. This set-off is also included in the Reconciliation.
4. Upon issuance of the Occupancy Permit in November 2010, Mikal-Calladan purported to exercise its "security" under the MOU and took possession of units #207, #301, #303, #309, #PH1 And #PH8 in the project. These six units had individual list prices totalling **\$2,300,710**. Mikal-Calladan has failed to take into account its possession of these units in its accounting of the Contract. We further note that despite that Mikal-Calladan has been renting out these units and continuing to collect income, it has failed to make any payments in respect of common area maintenance charges since occupying the six units. Mikal-Calladan's outstanding common area maintenance charges are approximately **\$75,000** as of June 2012. These amounts are not included in the Reconciliation.

Deficiencies

Outstanding deficiencies noted by Heinrichs were costed at **\$528,951 plus HST** as of September 30, 2011 (see attached at **Tab 9**). This deficiency report was provided to Mikal-Calladan within what you claim is the warranty period. These deficiencies do not appear in the Reconciliation.

Added to the deficiencies noted by Heinrichs are the deficiencies noted in the Building Audit Report prepared for the Receiver by Norman Lee & Associates Ltd., dated March 2012 (attached at **Tab 10**), which has been provided to Mikal-Calladan. These deficiencies have not yet been costed, but the cost of rectification of these deficiencies could exceed **\$3 million**. These deficiencies also do not appear in the Reconciliation.

As illustrated above, once the set-offs, deficiencies and overbilling have been applied to the amounts owing to Mikal-Calladan under the Contract, Rose of Sharon is not in breach of its obligations under the Contract. Rose of Sharon is therefore entitled to claim against the Bond for amounts required to complete performance of the Contract.

Requested Documents

Your e-mail of June 4, 2012 requested a number of documents. Please see attached:

1. A copy of the Bond (attached at **Tab 11**). We have not located the original, as yet.
2. Payment Certificates 13 through 39 (attached at **Tab 12**). Certificates 1 through 12 could not be located.
3. A Certificate of Substantial Performance signed September 30, 2010 by Heinrich, erroneously showing "Regional Municipality of Niagara" as the relevant municipality, an incorrect address and an incorrect description of the improvement (attached at **Tab 13**). We understand that this was what Mikal-Calladan relied upon as the Certificate of Substantial Performance. As it is deficient, we do not admit that Substantial Performance was ever certified.
4. The Occupancy Permit issued by the City of Toronto dated November 4, 2010 (attached at **Tab 14**).



We trust the foregoing is satisfactory. When additional information becomes available to support the Receiver's claim, we will provide it to you.

Yours truly,

GOWLING LAFLEUR HENDERSON LLP

Christopher Stanek

CS:gg

Encl.

TOR_LAW\ 7944754\5

APPENDIX I

CV 12463472
Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**ROSE OF SHARON (ONTARIO) RETIREMENT
COMMUNITY by DELOITTE & TOUCHE INC., solely in its
capacity as court-appointed Receiver and Manager and
not in its personal capacity**

Plaintiff

– and –

**UNIMAC GROUP LTD. OPERATING AS MIKAL-
CALLADAN CONSTRUCTION INC., MIKAL CALLADAN
CONSTRUCTION INC., UNIMAC GROUP LTD., VICTOR J.
HEINRICHS ARCHITECTS INC., VICTOR J. HEINRICHS
INC., YORK HEALTH CARE DEVELOPMENTS INC., JAIN
& ASSOCIATES LIMITED, M.V. SHORE ASSOCIATES
(1993) LIMITED, and TRISURA GUARANTEE
INSURANCE COMPANY**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$2,500 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

Date: September 14, 2012

Issued by 
Local Registrar

Address of Court Office:

393 University Avenue
10th Floor
Toronto, Ontario
M5G 1W9

TO: UNIMAC GROUP LTD. o/a MIKAL-CALLADAN CONSTRUCTION INC.
6 Wilmot Ct.
Markham, Ontario
L6C 1A9

AND TO: MIKAL CALLADAN CONSTRUCTION INC.
6 Wilmot Ct.
Markham, Ontario
L6C 1A9

AND TO: UNIMAC GROUP LTD.
6 Wilmot Ct.
Markham, Ontario
L6C 1A9

AND TO: VICTOR J. HEINRICHS ARCHITECT INC.
500-920 Yonge Street
Toronto, Ontario
M4W 3C7

AND TO: VICTOR J. HEINRICHS INC.
500-920 Yonge Street
Toronto, Ontario
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AND TO: YORK HEALTH CARE DEVELOPMENTS INC.
7610 Yonge Street
Thornhill, Ontario
L4J 1V9

AND TO: JAIN & ASSOCIATES LIMITED
2nd Floor
2260 Argentia Road
Mississauga, Ontario
L5N 6H7

AND TO: MV SHORE ASSOCIATES (1993) LIMITED
402-1200 Eglinton Avenue East
Toronto, Ontario
M3C 1H9

AND TO: BORDEN LADNER GERVAIS LLP
Scotia Plaza
40 King Street West
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Solicitors for Trisura Guarantee Insurance Company

CLAIM

1. The plaintiff claims as against the defendants Unimac Group Ltd. operating as Mikal-Calladan Construction Inc., Unimac Group Ltd., Mikal Calladan Construction Inc., Victor J. Heinrichs Architect Inc., Victor J. Heinrichs Inc., York Health Care Developments Inc., Jain & Associates Limited, and M.V. Shore Associates (1993) Limited:

- (a) general damages for breach of contract and/or negligence, currently estimated at \$3,500,000, particulars of which will be provided prior to trial,
- (b) prejudgment interest thereupon pursuant to s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43,
- (c) its costs of this proceeding on a substantial indemnity basis; and
- (d) such further and other relief as this honourable court may deem just.

2. The plaintiff claims as against Trisura Guarantee Insurance Company,

- (a) a declaration that the defendant, Trisura Guarantee Insurance Company, as Surety, is liable to the plaintiff, Rose of Sharon (Ontario) Retirement Community, for all damages incurred as a result of the breaches by Mikal Calladan Construction Inc., as Principal, pursuant to a written

Performance Bond No. TCS0211026 issued by Trisura Guarantee Insurance Company,

- (b) payment, or alternatively, damages, plus HST in the maximum amount of \$7,420,000 in respect of Bond No. TCS0211026;
- (c) prejudgment interest on the damages claimed pursuant to s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43,
- (d) its costs of this proceeding on a substantial indemnity basis; and
- (e) such further and other relief as this honourable court may deem just.

The Parties

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

4. Rose is a not-for-profit Ontario corporation incorporated pursuant to the laws of the Province of Ontario that was created to develop and provide senior's type housing for people of Korean heritage. Rose's principal asset is a 12-storey building

located at 15-17 Maplewood Avenue, Toronto, Ontario (the "Property") that is comprised of a 60 bed long-term care facility located on floors 4 through 6 (the "Nursing Home") and 90 life-lease units located on floors 2, 3 and 7 through 12 (the "Life-Lease Residence").

5. The defendant Unimac Group Ltd. is a corporation incorporated pursuant to the laws of the Province of Ontario. Leon Hui is the sole director of Unimac Group Ltd.

6. The defendant Mikal-Calladan Construction Inc. is a corporation incorporated pursuant to the laws of the Province of Ontario. Leon Hui is an officer and director of Mikal-Calladan Construction Inc.

7. The business name "Unimac Group" is a business name registered for use by Mikal-Calladan Construction Inc. pursuant to the laws of the Province of Ontario.

8. Rose, through the Receiver, states that "Unimac Group Ltd. operating as Mikal-Calladan Construction Inc." is an unregistered business name used by Unimac Group Ltd. and Mikal-Calladan Construction Inc. Rose, through the Receiver, further states that Unimac Group Ltd. and Mikal-Calladan Construction Inc. operate as one and the same business entity and that the two defendant corporations Unimac Group Ltd. and Mikal-Calladan Construction Inc., are jointly and severally liable for any and all liabilities incurred through the use of the business name "Unimac Group Ltd. operating

as Mikal-Calladan Construction Inc." or through the use of either of the two corporate identities. As such, the defendants Unimac Group Ltd. operating as Mikal-Calladan Construction Inc., Unimac Group Ltd. and Mikal Calladan Construction Inc. will be hereinafter identified collectively as "**Mikal-Calladan**".

9. The defendant Victor J. Heinrichs Inc. ("**Heinrichs**") is a corporation incorporated pursuant to the laws of the Province of Ontario. Heinrichs carries on business as an architectural firm from premises located at #500-920 Yonge Street, Toronto, Ontario. "Victor J. Heinrichs Architect Inc." is identified as the Consultant in the Contract (defined below). Rose, through the Receiver, states that "Victor J. Heinrichs Architect Inc." is an unregistered business name used by Heinrichs. Rose states that "Victor J. Heinrichs Architect Inc." and Heinrichs are one and the same.

10. The defendant York Health Care Developments Inc. ("**York**") is a corporation incorporated pursuant to the laws of the Province of Ontario. York provides construction management services to health-care oriented construction projects from its premises located at 7610 Yonge Street, Thornhill, Ontario.

11. The defendant Jain & Associates Limited ("**Jain**") is a corporation incorporated pursuant to the laws of the Province of Ontario. Jain is an engineering firm that provides mechanical and electrical engineering design services to the construction industry from premises located at 2260 Argentia Road, Mississauga, Ontario.

12. The defendant M.V. Shore Associates (1993) Limited ("**Shore**") is a corporation incorporated pursuant to the laws of the Province of Ontario. Shore is an engineering firm that provides mechanical and electrical engineering design services to the construction industry from premises located at #402-1200 Eglinton Avenue East, North York, Ontario.

13. The defendant Trisura Guarantee Insurance Company ("**Trisura**") is a corporation incorporated pursuant to the laws of the Dominion of Canada. Trisura carries on business from premises located at #1610-333 Bay Street, Toronto, Ontario. Trisura, as Surety, issued Performance Bond No. TCS0211026 (the "**Bond**") binding it to Rose, as Obligee, for the performance obligations owed to Rose by Mikal-Calladan under the Contract (defined below).

The Project

14. Rose was incorporated to construct and manage a facility where elder members of the Korean community could spend their remaining years with other members of that community. The facility was to be comprised of both a retirement living section and a nursing home in the event individuals required the services a nursing home provides.

15. Rose was initially granted 50 bed licences for the Nursing Home by the Ministry of Health and Long Term Care ("**MOHLTC**") in 1990. However, the

development of the Project stalled until 1996 when the concept of a combination life lease and long-term care facility was conceived. The life lease concept was adopted by Rose with the intention of maintaining a predominately Korean cultural base in a building that would house both the Nursing Home and the Life Lease Residence (the "Project").

16. In 2002, Rose was granted a further 10 bed licences from the MOHLTC bringing the total number of bed licences for the Nursing Home to 60. On April 29, 2003, Rose entered into a Development Agreement with the MOHLTC for a 60-bed Class "A" long-term care home, being the Nursing Home.

17. Rose obtained construction financing for the Project from Peoples Trust Company ("Peoples") by way of a commitment letter dated March 17, 2005.

18. On or about November 15, 2005, "Unimac Group Ltd. operating as Mikal-Calladan Construction Inc." entered into a Stipulated Price Contract with Rose to construct the Nursing Home and Life-Lease Residence on the Property incorporating the terms of Standard Construction Document CCDC 2-1994 for a price of \$17,608,655 plus GST (the "Contract"). Heinrichs was identified as the Consultant in the Contract.

19. Rose states that it was an implied condition of the Contract that Mikal-Calladan and its subcontractors would perform the work under the Contract in a good, proper and workmanlike manner, and that the materials supplied by Mikal-Calladan and

its subcontractors should be of good quality and suitable for the purposes for which they were intended.

20. Rose also states that, in the circumstances, Mikal-Calladan owed Rose a duty to use reasonable care and skill in the provision of its services, including the supervision of its subcontractors.

21. Rose states that it was an implied term of the Contract that Mikal-Calladan's work and the work of its subcontractors would meet the requirements of the *Ontario Building Code, 2006* and the applicable Canadian Standards Association codes.

22. Heinrichs was engaged by Rose to provide professional architectural services and to design the Project. Heinrichs also agreed to act as prime Consultant under the Contract and was the "payment certifier" of payments to be made by Rose to Mikal-Calladan under the Contract as that term is defined in the *Construction Lien Act*. In this capacity, Heinrichs met with Rose and Mikal-Calladan on numerous occasions and provided advice to Rose, before and during construction. Rose relied upon the advice received from Heinrichs.

23. Pursuant to the General Conditions of the Contract, GC 2.2 and as "payment certifier" as that term is defined in the *Construction Lien Act*, Heinrichs was required to:

- (a) Interpret the requirements of the Contract and make findings as to the performance thereunder by Mikal-Calladan;
- (b) Ensure that Mikal-Calladan's performance of the Contract was consistent with the intent of the Contract and the specifications of the Project thereunder;
- (c) Inspect any work if necessary, whether or not such work was fabricated, installed or completed;
- (d) Reject any work that was defective or which did not conform to the Contract; and
- (e) Conduct a review of the work to determine the date of Substantial Performance of the Work.

24. Rose states that it was an implied term of its contract with Heinrichs that it would ensure that construction of the Project would meet the requirements of the *Ontario Building Code, 2006* and the applicable Canadian Standards Association codes.

25. Rose states that, by virtue of its role as consultant to, and administrator of, the Contract, Heinrichs owed a duty of care to Rose to ensure that the Project, as

constructed, conformed to the Contract specifications and would meet the requirements of the *Ontario Building Code* and the applicable Canadian Standards Association codes.

26. York was retained by Rose to act as Project Manager. As Project Manager, York owed a duty of care to Rose to ensure that the Project, as constructed, conformed to the Contract specifications and would meet the requirements of the *Ontario Building Code* and the applicable Canadian Standards Association codes.

27. York also owed a duty of care to Rose to ensure that the Project was constructed in a good, proper and workmanlike manner, and that the materials supplied would be of good quality and suitable for the purposes for which they were intended to be used.

28. Jain was retained by Rose as engineering consultants to prepare mechanical, plumbing and electrical specifications for the Project. Jain also acted as electrical consultant to Heinrichs for the purpose of ensuring that the electrical work conformed to the Contract specifications and met the requirements of the *Ontario Building Code* and the applicable Canadian Standards Association codes.

29. As electrical consultant, Jain owed a duty of care to Rose to ensure that the electrical components of the Project, as constructed, conformed to the Contract specifications and would meet the requirements of the *Ontario Building Code* and the applicable Canadian Standards Association codes.

30. Jain also owed a duty of care to Rose to ensure that the electrical components of the Project were constructed in a good, proper and workmanlike manner, and that the materials supplied would be of good quality and suitable for the purposes for which they were intended to be used.

31. Shore acted as mechanical engineers on the Project and as consultant to Heinrichs for the purpose of ensuring that the mechanical components of the Project conformed to the Contract specifications and met the requirements of the *Ontario Building Code* and the applicable Canadian Standards Association codes.

32. As mechanical consultant, Shore owed a duty of care to Rose to ensure that the mechanical components of the Project, as constructed, conformed to the Contract specifications and would meet the requirements of the *Ontario Building Code* and the applicable Canadian Standards Association codes.

33. Shore also owed a duty of care to Rose to ensure that the mechanical components of the Project were constructed in a good, proper and workmanlike manner, and that the materials supplied would be of good quality and suitable for the purposes for which they were intended to be used.

34. All of Mikal-Calladan, Heinrichs, York, Jain and Shore represented to Rose that they were experienced in designing or constructing multi-use residential buildings and that they understood the design or construction demands of such

buildings. Rose relied upon those representations to its detriment causing the damages to Rose sought in paragraph 1, above.

The Bond

35. On or about March 29, 2007, Trisura issued the Bond in the amount of \$7,420,000.00. The Bond incorporates by reference the terms of the Contract and makes Trisura liable for all damages and costs incurred by Rose, as Obligee, resulting from breaches by the Principal, Mikal-Calladan, of the Contract up to \$7,420,000.00.

36. The Bond was duly executed by Leon Hui as a representative of Mikal-Calladan (in the name of Mikal Calladan Construction Inc.), and by Trisura and the Bond was delivered to Rose following its execution. Rose is therefore entitled to claim under the Bond.

Delays in the Construction of the Project

37. A shoring and excavation permit was issued by the City of Toronto in December 2005. Construction of the Project commenced in the summer of 2006 and the initial development schedule provided for construction to be completed, and for the long-term care facility to open, in the fall of 2007.

38. Soon after construction commenced, Mikal-Calladan and Rose became engaged in ongoing disputes primarily related to Mikal-Calladan's lack of progress in construction which resulted in numerous revisions to completion dates. By the time that the City of Toronto issued the required building permit, on January 26, 2007, the Project was already six months behind schedule.

39. To resolve their ongoing dispute, Rose and Mikal-Calladan entered into a number of agreements which were collateral to, or in the alternative, amended, the Contract. These collateral contracts or amendments were as follows:

- (a) A Memorandum of Understanding dated October 17, 2008 (the "**October 2008 MOU**") which set out that, as security for a promised payment of \$1,263,923.31 to Mikal-Calladan (the "**MOU Debt**"), Rose purported to provide Mikal-Calladan (in the name of Unimac Group Ltd.) six units in the Life Lease Residence (the "**Security Units**"). In exchange, Mikal-Calladan agreed to complete the Project and obtain an occupancy permit from the City of Toronto by March 31, 2009;
- (b) An undated Addendum to the October 2008 MOU (titled "Addendum to Right to Occupy Agreement") in which the parties further set out the terms and conditions relating to the Security Units. The Addendum to the Right to Occupy Agreement provided that in the event that the MOU Debt was not paid when the Security Units were ready for occupation (pursuant to

the time frames set out in the October 2008 MOU), Mikal-Calladan (in the name of Unimac Group Ltd.) had the right to close the purchase and use some or all of the MOU Debt in payment of the purchase price of the Security Units. The parties further agreed that Rose could continue to offer the units for sale and use the proceeds to pay down the MOU Debt;

- (c) An Agreement dated December 10, 2009 in which Rose was entitled to be compensated by Mikal-Calladan (in the name of Unimac Group Ltd.) for all interest charges incurred by Rose with respect to the construction loan owing to Peoples, if Mikal-Calladan failed to achieve an occupancy permit for floors 1-6 of the Project from the City of Toronto by January 31, 2010 (the "2009 Agreement");
- (d) a second mortgage (the "IWOK Mortgage"), registered on title to the Property in the amount of \$700,000 with 12% interest payable annually from Rose to IWOK Corporation ("IWOK"). The \$700,000 proceeds of the IWOK Mortgage were used to pay Mikal-Calladan under the Contract. The principal of Mikal-Calladan, Mr. Leon Hui, is the sole officer and director of IWOK; and
- (e) a fifth mortgage, in the amount of \$150,000 with 5% interest payable annually from Rose to Mikal-Calladan (in the name of Unimac Group Ltd.).

40. In June 2010, Rose declared Mikal-Calladan in default of the contract for failure to achieve an occupancy permit from the City of Toronto by January 31, 2010.

41. In its capacity as "payment certifier" (as that term is defined in the *Construction Lien Act*), Heinrichs certified substantial performance of the Project as of September 17, 2010, almost three years behind schedule. A Certificate of Substantial Performance of the Contract under Section 32 of the *Construction Lien Act* was signed by Heinrichs on September 30, 2010.

42. On November 4, 2010, the City of Toronto issued an occupancy permit for the Property, rectifying the default declared by Rose in June 2010. The Nursing Home and the Life Lease Residence then opened for occupancy despite that the Project was incomplete due to the incomplete work and deficiencies described below.

Payments to Mikal-Calladan

43. As construction progressed, Mikal-Calladan issued invoices for work it claimed to have completed and submitted its invoices and payment applications to Rose. Each payment application was reviewed for accuracy and completeness by Heinrichs. Heinrichs also had access to the professional engineering opinions of Jain and Shore to assess the accuracy of the payment applications. When Heinrichs signed a Certificate of Payment, it represented to Rose that, in Heinrichs' professional opinion, each payment application was accurate.

44. With respect to each payment application, York provided its professional opinion of the accuracy of the progress claimed against Mikal-Calladan's actual progress in completing the Project. After this assessment, York also signed each payment certificate, representing to Rose that, in York's professional opinion, the progress claimed therein was accurate.

45. Pelican Woodcliff Inc. ("**Pelican**"), a cost consultant engaged by Peoples to assist with the approval of advances under Peoples' construction mortgage to Rose found that Heinrichs and York each signed 39 Certificates for Payment totalling \$18,258,598 (not including GST), as of August 30, 2009. These 39 Certificates for Payment were reviewed by Pelican and it found that the work actually performed by Mikal-Calladan set out in the first 39 Certificates for Payment totalled only \$18,227,664 (not including GST). As such, Mikal-Calladan invoiced for \$30,934 for work which it did not perform.

46. Of the \$18,227,664 worth of the work Mikal-Calladan actually performed, Rose was required to maintain a holdback of 10% of the invoiced amount pursuant to the provisions of the *Construction Lien Act*, R.S.O. 1990, C. C.30, or \$1,822,766 as of August 30, 2009. Using Pelican's calculations, the amount owing under the 39 approved payment certificates as of August 30, 2009 was \$16,404,898 (not including GST).

47. Mikal-Calladan also issued a 40th invoice, dated January 18, 2010, in the amount of \$74,238.61 plus GST that has been approved by Heinrichs and York but had not been reviewed by Pelican.

48. Rose paid \$16,800,322 to Mikal-Calladan with respect to the 39 Certificates for Payments that Pelican had reviewed.

49. In addition, Heinrichs has approved and issued ten change orders since October 2009, most of which are credits in Rose's favour. The effect of these change orders reduces the certified amounts owing to Mikal-Calladan by \$454,452.

50. For the reasons set out below, Rose states that substantial performance of the Contract has not been achieved. As such, the total holdback of \$1,822,766 is not yet due and owing and, as result, Rose has, in fact, overpaid Mikal-Calladan for the work which Mikal-Calladan performed under the Contract.

51. In addition to the change order credits set out above, Rose is also entitled to set off against the holdback and amounts already paid to Mikal-Calladan the following amounts:

- (a) Additional interest in the amount of \$68,835 paid by Rose to Peoples on account of the mortgage as a result of Mikal-Calladan's failure to complete the Project as stipulated in the 2009 Agreement. This interest is additional

in that it is the difference between the actual interest costs incurred by Rose and the amounts set out in the Change Orders approved by Heinrichs reducing amounts owed under the Contract;

- (b) Interest incurred and paid by Rose with respect to the IWOK mortgage in the amount of \$49,000 resulting from Mikal-Calladan's failure to complete the Project as stipulated in the 2009 Agreement; and
- (c) Deficiencies identified by Heinrichs in September 2010 (costed at \$528,951 plus HST to rectify) plus deficiencies identified by Norman Lee & Associates ("NLA"), the independent consulting engineer retained by the Receiver, which are estimated at the time of the issuance of this statement of claim to be \$3,000,000 to rectify (described in detail below).

52. None of the deficiencies identified by Heinrichs or NLA have been rectified by Mikal-Calladan, and, as such, the Contract has not been substantially performed according to the definition set out at section 2 of the *Construction Lien Act*. As such, holdback is not due or owing to Mikal-Calladan.

53. Despite the outstanding deficiencies identified by Heinrichs and despite the amounts shown in its own records, on November 19, 2010, Mikal-Calladan registered a construction lien on title to the Property in the amount of \$4,166,659 (the

"Mikal-Calladan Lien"). Subsequent to its registration on title to the Property, the Mikal-Calladan Lien has been assigned to Trisura.

54. The registration of the Mikal-Calladan Lien meant that no further mortgage advances could be made to Rose without a mortgagee losing priority to the extent of the advance by operation of section 78 of the *Construction Lien Act*. The registration of the Mikal-Calladan Lien also had the practical effect of stopping work on the Project because it meant that, after receiving notice of the Mikal-Calladan Lien, Rose could not pay any party to finish the Project without Rose first holding back the full amount of the Mikal-Calladan Lien or paying that amount into court to vacate the Mikal-Calladan Lien from title to the Property pursuant to the provisions of the *Construction Lien Act*.

55. Mikal-Calladan then also purported to seize the Security Units notwithstanding that Mikal-Calladan failed to perform its obligations and complete the Project by the dates set out in the October 2008 MOU. Mikal-Calladan has rented out the Security Units and has been collecting rent from the Security Units in amounts that are unknown to Rose or the Receiver. Mikal-Calladan has also not paid any common area maintenance payments to Rose or the Receiver while collecting rent from the use of the Security Units. Rose states that Mikal-Calladan is required to account to Rose for these amounts.

56. Companies related to Mikal-Calladan also received mortgages on title to the Property in the amount of \$850,000 as set out above.

57. In September 2011, IWOK attempted to seize the entire Property by taking steps to enforce the security it was provided under the IWOK Mortgage. IWOK purported to appoint Charles Daley as receiver over Rose (the "IWOK Receiver"). When Peoples became aware of IWOK's purported appointment of the IWOK Receiver, Peoples proceeded to make an application to the Court on September 27, 2011 for the appointment of the Receiver. The Appointment Order was issued the same day.

58. On September 29, 2011, two days after the Receiver was appointed and Justice Campbell ordered in the Appointment Order that all proceedings as against Rose be stayed, Mikal-Calladan obtained default judgment as against Rose on its construction lien claim in the amount of \$4,195,769 plus costs.

The Deficient and Incomplete Work

59. Following the Receiver's appointment, Rose provided the Receiver with a schedule prepared by Heinrichs which listed the construction deficiencies Heinrichs had identified. As set out above, Heinrichs' schedule of deficiencies indicates that the estimated costs to remedy the deficiencies were \$528,951 plus HST as of September 17, 2010. Mikal-Calladan has not rectified any of these deficiencies.

60. On or about October 20, 2011, and as a result of the approaching winter season, the Receiver retained a contractor to ensure that the Nursing Home and the

Life-Lease Residence were heated for the winter. In the course of this work, certain deficiencies in the heating system were noted.

61. The Receiver then engaged NLA to conduct a building condition assessment for the Property. The services for which NLA was engaged to perform were: (i) confirming that the building was constructed in general accordance with the approved drawings, plans and specifications; (ii) identifying any significant material deficiencies in the building systems; (iii) determining any remedial or repair work that is required to the installed components and systems; and (iv) developing preliminary budgets for any required or recommended repair or remedial work.

62. In its Building Audit Report dated March 2012, NLA reported the following:
- (a) the windows installed in the Project failed to meet the criteria set out in the Contract specifications for air tightness, water tightness and insect screen strength and must be replaced;
 - (b) sliders on all sliding glass doors do not meet *Ontario Building Code* requirements and must be replaced;
 - (c) many sliding glass doors do not operate effectively. The occupants of units PH1 and 1002 were required to use object to block exterior air from entering their units;

- (d) the sills at units 314 and 214 were left incomplete exposing the wall below to water penetration;
- (e) numerous sections of uncaulked joints require completion;
- (f) all balcony guardrails do not meet *Ontario Building Code* requirements in that they are not 42 inches from the bottom track of the sliding door to the top of the rail and in many instances the balcony guardrail openings exceeded the maximum four inch *Ontario Building Code* requirements. All balcony guardrails will have to be retrofitted to meet *Ontario Building Code* requirements;
- (g) at the balconies for units 1103, 1003, 903, 803 and 703, the joint between the underside of the cantilevered balcony slab and the top of the brick was left uncaulked leaving a large continuous gap which allows direct water penetration into the wall;
- (h) many balconies that are accessed by multiple units do not have a divider installed as specified in the Contract;
- (i) at the balcony at unit 707, the membrane became debonded from the substrate and had to be repaired;

- (j) numerous balconies did not drain and trap standing water due to inadequately sloped slabs;
- (k) three balconies (units 303, 305 and 315) lack a drain of any kind;
- (l) occupancy sensors for lighting control were never installed despite being including in the Contract specifications;
- (m) numerous deficiencies with respect to the Electrical Safety Code were observed including:
 - (i) receptacles were located at wall directly behind kitchen sinks;
 - (ii) receptacles were located within one meter of kitchen sinks and not protected by ground fault circuit interrupters;
 - (iii) adjacent receptacles in kitchens were connected to the same branch circuit;
 - (iv) receptacles in bedroom of some units were not protected by an arc-fault circuit interrupter;
 - (v) the distance between some receptacles is greater than twelve feet;

- (vi) more than twelve outlets were connected to a single branch circuit;
and
- (vii) cover plates for some receptacles were missing;
- (n) the dryer exhaust vent and the fresh air intake for the gas-fired dryers in the Second Basement floor room 2B121 were not properly installed and were installed with poor workmanship and must be corrected;
- (o) laundry machines have never been connected and were not operational;
- (p) with respect to the HVAC system, two AirWise fresh air units were not operable for long periods of time due to system control problems causing fluctuations of supply air temperature. The control system problems also caused the domestic booster pump to be constantly out of order;
- (q) no air and water balancing were performed to the air and hydronic systems;
- (r) single-stage instead of two-stage thermostats were installed in some units to control fan coil units such that the auxiliary heater could not be turned on. In addition, no control valves were installed at the hydronic coils of the fan coil units contrary to the Contract specification;

- (s) hot water instead of glycol has been used in the kitchen makeup unit, contrary to the Contract specification, which subjects the unit to possible freezing;
- (t) the heat exchanger and its hydronic coil were installed contrary to the Contract specification;
- (u) fire dampers were not installed at some wall openings with fire rating;
- (v) filters of the horizontal heat pump units were not installed;
- (w) some fire alarm speakers, smoke detectors and pull stations were missing;
- (x) some of the kitchen range hoods specified in the Contract were never installed;
- (y) the hot water boilers were standard efficient type rather than the high efficient type required by the Contract;
- (z) some of the kitchen sinks were single compartment type rather than the double compartment type set out in the Contract specifications;

- (aa) numerous pieces of construction items were observed resting on the roof membrane including two large heavy metal bins, spare drain bodies, unused metal decking, timbers, metal barricades, screws and a swingstage which were required to be removed;
- (bb) many spun aluminum metal flashings were damaged and dented at the roof penetrations, and must be replaced;
- (cc) the mechanical penthouse roof leaked during rain events due to the lack of a waterproofing membrane and had to be waterproofed;
- (dd) the leaks in the mechanical penthouse roof has caused damage to PH3 that had to be repaired;
- (ee) numerous areas of stucco deterioration on exterior walls were observed and recommended to be retrofitted with a metal flashing;
- (ff) mortar joints were cracked in numerous locations and require repair;
- (gg) the brick masonry termination at the southeast corner was left incomplete, exposing the wall to direct water penetration;

- (hh) the concrete in the parking garage is leaking. Testing showed that the Chloride Ion content exceeded the maximum allowed. This was the result of the failure to install a waterproofing membrane;
- (ii) the drywall is cracked at many door frames, which could be caused by improper site assembly of the door frame and/or inadequate metal stud framing around the door opening. The drywall cracks must be filled, sanded and painted;
- (jj) paint in some units was so thin it does not fully cover the drywall;
- (kk) the double door from the Party Room to the terrace does not meet the minimum headroom requirement;
- (ll) the headroom at the deck of the hot tub did not meet minimum requirements;
- (mm) at unit 1008, the kitchen counter interferes with the operation of the folding laundry door;
- (nn) at unit 707, the washroom door swing impacts the ceiling mounted light fixture;

- (oo) at unit 704, a metal access hatch door is located in the unit's hallway, providing direct entry into the elevator shaft; and
- (pp) unit PH4 was not constructed as specified in the Contract. Instead it is a bachelor apartment separated from the next unit by an intermediate wall with a door in it that does not open. This unit is heated only by a portable heating unit which requires a pipe which vents out a permanently open slider window to the exterior, causing heavy condensation build-up around the window.

63. The Life Lease Residence is not fully occupied. Due to the state of the Project, the Receiver is of the view that units should not be marketed until the Project is complete and the deficiencies rectified. Furthermore, since the units are life lease units and not condominiums, the Tarion Warranty Program does not cover the Project and the residents, many of whom are elderly, have no independent recourse to force Mikal-Calladan to complete performance of the Contract or to repair or complete their units or the common areas of the Project.

64. Indeed, for the Receiver to market the Property for sale, under the supervision and approval of the court, the Receiver will be required to repair, complete or rectify many or all of the incomplete work and deficiencies set out above. NLA estimates on a preliminary basis that the cost of the repairs required due to the

deficiencies and incomplete work described above will cost the Receiver in excess of \$3,000,000.

65. The Receiver states that as a result of its discovery of the foregoing incomplete work and deficiencies, the Contract was not, and could not have been, substantially performed when the Certificate of Substantial Performance was issued by Heinrichs. Significant deficiencies existed and continue to exist such that Mikal-Calladan's work on the Project was not, and could not have been, substantially performed according to the definition of "substantial performance" set out in the Contract and the *Construction Lien Act*, R.S.O. 1990, C. C.30 on September 17, 2010.

66. Furthermore, not only was the Contract not substantially performed as of September 17, 2010, the Contract has never been substantially performed and no warranty period has commenced.

67. Consequently, Rose is entitled, under the Contract, to charge to Mikal-Calladan's account and set-off against the holdback and payments made to Mikal-Calladan, all costs of repairing, completing or rectifying all of the incomplete work and deficiencies that Mikal-Calladan has failed to perform or rectify as required by the Contract.

68. Furthermore, when Heinrichs certified the Contract as substantially performed on September 17, 2010, Heinrichs breached its duty of care to Rose

because the Contract was not, or could not have been, substantially performed as of September 17, 2010. As a result, Heinrichs was negligent and is liable for Rose's damages set out at paragraph 1 herein.

69. Rose, through the Receiver, also states that, as a result of their failure to identify the deficiencies described above, Heinrichs, York, Jain and Shore each breached their respective duties of care to Rose to ensure that the Project conformed to the Contract specifications and met the requirements of the *Ontario Building Code* and the applicable Canadian Standards Association codes.

70. Rose, through the Receiver, also states that, as a result of the foregoing, Heinrichs, York, Jain and Shore each breached their respective duties of care to Rose to ensure that the Project was constructed in a good, proper and workmanlike manner, and that the materials supplied would be of good quality and suitable for the purposes for which they were intended to be used.

71. As required, Rose, through the Receiver, notified Mikal-Calladan of outstanding deficient and incomplete work in a letter dated May 4, 2012, which provided Mikal-Calladan with NLA's Building Audit Report. Despite this notice, Mikal-Calladan has failed or refused to rectify or complete any of the incomplete work or deficiencies identified by NLA in the Building Audit Report.

Rose's Claim Under the Bond

72. As Mikal-Calladan did not perform its obligations under the Contract, the Receiver is obliged to retain the services of third parties to complete performance of and remedy the scope of work under the Contract at a cost estimated at \$3,500,000 and thereby has incurred, or will incur, damages for which Trisura is liable under the Bond.

73. Rose, through the Receiver, declared Mikal-Calladan in default under the Contract on May 4, 2012 and provided Trisura timely notice of such declaration of default. Mikal-Calladan has failed to remedy its defaults and Trisura has been so advised in accordance with the terms of the Bond.

74. Pursuant to the terms of the Contract, Rose, through the Receiver, gave timely notice of its claim against the Bond and called upon Trisura to perform its obligations pursuant to the Bond, which Trisura has failed and refused to perform.

75. Rose states that it, through the Receiver, has acted reasonably, or will act reasonably, in entering into contracts for the completion of remedial work required to remedy the defaults and deficiencies of the work performed by Mikal-Calladan described above. Rose has incurred, and will continue to incur, completion and correction costs for which Trisura will be liable. The particulars of these costs will be provided prior to trial.

76. All of the completion and correction costs were incurred as a result of Mikal-Calladan's failure or refusal to complete and/or remedy the work it was required to perform pursuant to the Contract for which Trisura is obliged to compensate Rose, together with interest and costs.

77. Rose, through the Receiver, has incurred legal and professional costs associated with the investigation of the remedial work required resulting from Mikal-Calladan's breaches of the Contract and deficiencies and the engagement of a contractor to complete the remedial work. Rose, through the Receiver, states that Trisura is obliged to indemnify Rose in respect of these costs.

78. Rose, through the Receiver, pleads and relies upon the provisions of the *Construction Lien Act*, R.S.O. 1990, c. C.30 and the *Negligence Act*, R.S.O. 1990, c. N.1.

79. Rose, through the Receiver, proposes that this action be tried at Toronto.

Date: September 14, 2012

GOWLING LAFLEUR HENDERSON LLP
Barristers and solicitors
1 First Canadian Place
100 King Street West, Suite 1600
TORONTO, Ontario
M5X 1G5

Christopher Stanek
LSUC No.: 45127K

telephone: (416) 862-4369
facsimile: (416) 862-7661

Lawyers for the plaintiff

Court File No.:

CV 12 463472

ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY by DELOITTE & TOUCHE INC., solely in its capacity as its court-appointed Receiver and Manager, and not in its personal capacity v.

– Plaintiff –

UNIMAC GROUP OPERATING AS MIKAL-CALLADAN CONSTRUCTION INC., et al.

– Defendants –

**ONTARIO
SUPERIOR COURT OF JUSTICE**

(PROCEEDING COMMENCED AT TORONTO)

STATEMENT OF CLAIM

GOWLING LAFLEUR HENDERSON LLP

Barristers and solicitors
1 First Canadian Place
100 King Street West, Suite 1600
TORONTO, Ontario
M5X 1G5

Christopher Stanek
LSUC No.: 45127K

Telephone: (416) 862-4369
Facsimile: (416) 862-7661

LAWYERS FOR THE PLAINTIFF

APPENDIX J

Stanek, Chris

From: MacLellan, James W. [JMACLELLAN@blg.com]
Sent: September 18, 2012 5:20 PM
To: Stanek, Chris
Subject: Trisura - Receiver - Rose of Sharon

Attachments: AB082B4B.TIF



AB082B4B.TIF (2
MB)

Chris,

I have instructions to accept service of the statement of claim. I will have my assistant to send you the back page tomorrow.

Can you advise who the other lawyers for the parties are so I can serve the notice of intent to defend.

James

James MacLellan
Partner
T 416.367-6592 | F 416.361-7350 | jmaclellan@blg.com
Scotia Plaza, 40 King St W, Toronto, ON, Canada M5H 3Y4

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APPENDIX K



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BARRISTER

SUITE 200, 70 BOND STREET
TORONTO, ONTARIO
M5B 1X3

GENERAL TEL: (416) 365-9320
DIRECT TEL: (416) 865-5334
FACSIMILE: (416) 365-0695

EMAIL: garth.low@garthlow.com

October 16, 2012

VIA FACSIMILE TRANSMISSION

Gowling Lafleur Henderson LLP
Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, Ontario M5X 1G5
Attention: Christopher Stanek

Belsito Baichoo & Ruso
Barristers and Solicitors
Practicing in Association
1 West Pearce Street, Suite 505
Richmond Hill, Ontario L4B 3K3
Attention: Justin Baichoo

Borden Ladner Gervais LLP
Barristers and Solicitors
Scotia Plaza, 40 King Street West
Toronto, Ontario M5H 3Y4
Attention: James W. MacLellan

Dear Counsel:

**Re: Rose of Sharon v. Unimac and Mikal-Calladan Construction Inc.
Court File No. CV-12-463472
Our File No. 12-167**

Please be advised that I am counsel to Keith Ly and to Mikal-Calladan Construction Inc.

As plaintiff's counsel may be aware, there is an on-going dispute, being played out in the courts at present (in two separate actions in fact), as to the ownership of Mikal-Calladan Construction Inc.

Page 2 of 2

Mr. Ly takes the position that he purchased Mikal-Calladan in December 2006 and operated the company as a going concern.

Leon Hui, represented by Justin Baichoo, has taken the position, among other things, that Mr. Hui's sale of the company to Mr. Ly was null and void.

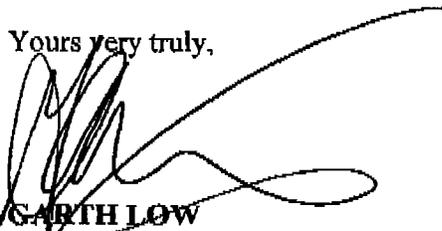
Those cases are still in their early stages. Discoveries have yet to be conducted.

I would ask on behalf of Mikal-Calladan Construction Inc. for an indulgence from the plaintiff in regards to the need to deliver a defence at this time, or at least until the competing counsel for Mikal-Calladan Construction Inc. and counsel for Trisura Guarantee Insurance Company can come to an agreement as to how might the Mikal-Calladan Construction Inc. be properly defended.

In any event, I ask that counsel for the plaintiff confirm that no steps will be taken by the plaintiff to note Mikal-Calladan Construction Inc. in default and that should a defence from Mikal-Calladan Construction Inc. be required, that reasonable notice of 15 business days be provided to counsel.

I am beginning three days of discoveries tomorrow and expect to be in a better position to discuss this matter early next week.

Yours very truly,



GARTH LOW

GL:tg

cc. Keith Ly
Mikal-Calladan Construction Inc.



GARTH LOW
BARRISTER

SUITE 200, 70 BOND STREET
TORONTO, ONTARIO
M5B 1X3

GENERAL TEL: (416) 365-9320
DIRECT TEL: (416) 865-5334
FACSIMILE: (416) 365-0695

EMAIL: garth.low@garthlow.com

FAX TRANSMISSION

DATE: Tuesday, October 16, 2012

TOTAL PAGES (including this page): 3

TO: Belsito Baichoo & Ruso
Attn: Justin Baichoo
Fax: 1-866-395-9140

AND TO: Borden Ladner Gervais LLP
Attn: James W. MacLellan
Fax: 416-361-7350

AND TO: Gowling Lafleur Henderson LLP
Attention: Christopher Stanek
Fax: 416-862-7661

FILE NAME AND NUMBER: Mikal-Calladan ats Rose of Sharon: 12-167

IN CASE OF TRANSMISSION PROBLEMS, PLEASE CONTACT MR. LOW'S SECRETARY,
TANIA GRANT, AT 416-365-9320 ext. 380.

COMMENTS/SPECIAL INSTRUCTIONS:

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APPENDIX L

Stanek, Chris

From: MacLellan, James W. [JMACLELLAN@blg.com]
Sent: October 24, 2012 11:13 AM
To: Stanek, Chris
Cc: dpresta@bianchipresta.com; mhandler@mhandlerlaw.com
Subject: Rose of Sharon - Lien Proceeding
Attachments: 022222-200000[2012-10-24 10-37-35].pdf

Chris,

Attached is the Order obtained in August 2011 by Mr. Arnel, referring the Mikal Calladan lien matter to a Master. We would like to obtain an Order from a Lien Master for a date for the trial by way of first pre-trial to comply with s. 37 of the *Construction Lien Act* and move the matter forward.

Typically no notice is provided of the attendance to obtain such an Order but I thought, in the circumstances, I would let you know in advance and seek your consent. I have copied Domenic Presta (representing Royal Windsor) and Michael Handler (representing Tremonte) the subcontractor lien claimants lawyers. Can you advise who represents People's Trust?

I look forward to hearing from you.

James

James MacLellan

Partner

T 416.367-6592 | F 416.361-7350 | jmaclellan@blg.com
Scotia Plaza, 40 King St W, Toronto, ON, Canada M5H 3Y4

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12/12/2012

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF the *Construction Lien Act*,
R.S.O. 1990, c. C-30, as amended**

THE HONOURABLE MR) *Wed* DAY, THE *31st* DAY
JUSTICE *Macdonald*) OF *August*, 2011

BETWEEN:

MIKAL-CALLADAN CONSTRUCTION INC.

Plaintiff

- and -

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY,
PEOPLES TRUST COMPANY and IWOK COMPANY**

Defendants

JUDGMENT

THIS MOTION made by the plaintiff under the provisions of subsection 58(1) of the *Construction Lien Act*, R.S.O. 1990, Chapter C.30, was read this day at Toronto.

ON READING the Consent of the lawyers for the plaintiff and the defendant, Peoples Trust Company, *and on the representation of counsel to those parties that it* the defendant, Rose of Sharon (Ontario) Retirement Community having been noted in default and the action having been discontinued as against the defendant, Iwok Company,

1. **THIS COURT ORDERS AND ADJUDGES** that this matter be referred to a Master at Toronto for trial.

2. **THIS COURT FURTHER ORDERS AND ADJUDGES** that the parties found liable forthwith after confirmation of the report of the Master, pay to the successful parties, the respective amounts due to them.

3. **THIS COURT FURTHER ORDERS AND ADJUDGES** that the Master determine all questions arising in this action on the reference and all questions arising under the *Construction Lien Act* and that the findings of the Master be effective on the confirmation of the report.

4. **THIS COURT FURTHER ORDERS AND ADJUDGES** that the Master determine the question of costs in this action and of the reference, and the costs be assessed and paid as the Master shall direct.

4

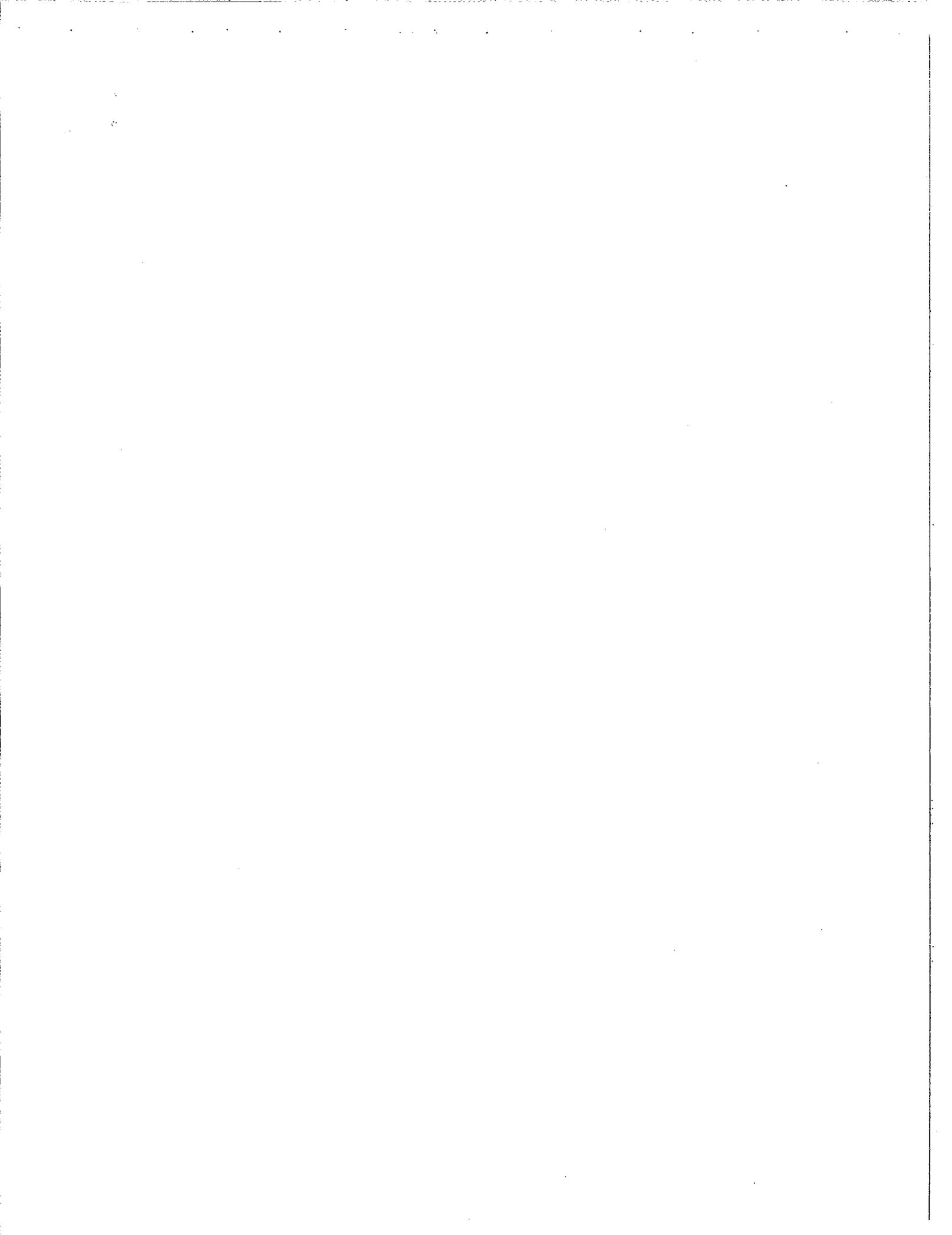
Justice Macdonald 19

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

SEP 20 2011

PER / PAR:





APPENDIX M



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Christopher Stanek
Direct 416-862-4369
Assistant 416-862-4362
chris.stanek@gowlings.com
File No. T988324

October 30, 2012

VIA FACSIMILE ONLY

Mr. James MacLellan
Borden Ladner Gervais LLP
Scotia Plaza
40 King Street West,
Toronto, Ontario
M5H 2R2

Dear Mr. MacLellan:

**Re: Mikal-Calladan Construction Inc. v. Rose of Sharon (Ontario) Retirement
Community and Peoples Trust Company**

I am writing with respect to your e-mail of October 24, 2012. The request set out in your e-mail is improper for a number of reasons. Those reasons are as follows:

1. You do not represent Mikal-Calladan Construction Inc. in the construction lien action. Mr. Armel is solicitor of record. We have no record of any notice of change of solicitors in that action.
2. If the construction lien action has been assigned to your client, Trisura Guarantee Insurance Company ("Trisura") then the assignment is a transmission of interest and the action is therefore stayed under rule 11 of the *Rules of Civil Procedure*. Even if the Mikal-Calladan Construction Inc. lien has been assigned to your client Trisura, we have two additional concerns:
 - (a) We question whether any assignment to Trisura was proper in view of the dispute between Keith Ly and Leon Hui set out in Mr. Garth Low's letter of October 16, 2012. In this regard, please produce the assignment so that we may know which of these individuals purported to assign the construction lien to your client; and
 - (b) Even if the action was properly assigned, you require an order to continue for Trisura to prosecute the construction lien proceeding.

3. The construction lien proceeding is also stayed by the receivership order. Even if the construction lien action was properly assigned to Trisura, and even if you can carry on as counsel of record, your client will still need to apply to the Commercial List to lift the stay. In this regard the judgment of reference of Justice MacDonald attached to your e-mail is also stayed.
4. Even if this matter could proceed to a construction lien pre-trial, we note that the lien of Royal Windsor Mechanical has been discharged. As such, Royal Windsor has no interest in the land and there is no reason to copy Mr. Presta on anything.

As for your question as to who represented Peoples Trust, our firm filed a statement of defence on its behalf in the construction lien action on or about July 21, 2011. Please see copy of the statement of defence attached for your convenience.

Mikal-Calladan Construction Inc.'s claim against Peoples Trust is for priority over its mortgage. Any discussion of priorities is more properly determined in the receivership proceeding which is before the Ontario Superior Court of Justice, Commercial List. As such, we believe that the best course of action, if Trisura has the capacity to pursue this claim, is to apply to the Commercial List for a judgment of reference so that the Court can properly rule upon the issue of priorities and determine what may be done by a construction lien master with the court's approval and consent. In this regard, any application to the master at Toronto would simply be met with a request that the issue be referred to a judge of the Commercial List for determination.

Yours truly,

Gowling Lafleur Henderson LLP

Christopher Stanek

CS:gg

Encl.

TOR_LAW 8026591\1

cc. Harry Vanderlugt

Clifton Prophet

APPENDIX N

Stanek, Chris

From: MacLellan, James W. [JMACLELLAN@blg.com]
Sent: December 3, 2012 10:44 AM
To: Stanek, Chris
Subject: Rose of Sharon - Order to Continue
Attachments: 019110-000076[2012-12-03 09-35-08].pdf

Chris,

Attached is a copy of the Order to Continue for your file.

James

James MacLellan

Partner

T 416.367-6592 | F 416.361-7350 | jmaclellan@blg.com
Scotia Plaza, 40 King St W, Toronto, ON, Canada M5H 3Y4

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12/12/2012

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF the *Construction Line Act*,
R.S.O. 1990, c. C-30, as amended**

✓
REGISTRAR

) ~~DAY, THE DAY OF~~
)
) ~~2012~~ ✓ *RE*

BETWEEN



MIKAL CALLADAN CONSTRUCTION INC.

Plaintiff

- and -

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY,
PEOPLES TRUST COMPANY and IWOK CORPORATION**

Defendants

ORDER TO CONTINUE

On the requisition of Trisura Guarantee Insurance Company, and on reading the affidavit of Edouard Chassé, sworn on November 15, 2012, filed, which states that Trisura Guarantee Insurance Company has received an Assignment of the interest of the Plaintiff in the claim for lien which is subject matter of this action,

IT IS ORDERED that this proceeding continue and that the title of proceedings in all documents issued, served or filed after the date of this Order be as follows:

Court File No. CV-10-417426

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF the *Construction Line Act*,
R.S.O. 1990, c. C-30, as amended**

BETWEEN:

TRISURA GUARANTEE INSURANCE COMPANY

Plaintiff

- and -

**ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY,
PEOPLES TRUST COMPANY and IWOK CORPORATION**

Defendants

Date: NOV 26 2012

Signed by

Rm. Ittleman

Local Registrar

**R. Ittleman, Registrar
Superior Court of Justice**

Address of
Court Office

Superior Court of Justice
393 University Avenue
10th Floor
Toronto, ON M5G 1T3

ENTERED AT/INSCRIT À TORONTO
CN/BOOK NO:
LE/DANS LE REGISTRE NO:

NOV 29 2012

PER/FAR:

MRD

Court File No. CV-10-417426

MIKAL-CALLADAN CONSTRUCTION INC.

- and -

**ROSE OF SHARON (ONTARIO)
RETIREMENT COMMUNITY, et al.**

Plaintiff

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED IN TORONTO**

ORDER TO CONTINUE

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
Scotia Plaza, 40 King Street West
Toronto, Ontario
M5H 3Y4

James W. MacLellan
LSUC # 37197G
Tel: 416.367.6592
Fax: 416.361-7350

Lawyers for Trisura Guarantee Insurance Company

TOR01: 5052388: v1

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

PEOPLES TRUST COMPANY
Applicant

- and -

ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(PROCEEDING COMMENCED AT TORONTO)

**Second Report to the Court of the Receiver dated
December 14, 2012**

Gowling Lafleur Henderson LLP
Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
TORONTO, Ontario
M5X 1G5

Clifton Prophet / Chris Stanek
LSUC No.: 34345K / 45127K
Telephone: (416) 862-3509 / 416-862-4369
Facsimile: (416) 862-7661
Solicitors for Deloitte & Touche Inc.,
in its capacity as receiver and manager of
Rose of Sharon (Ontario) Retirement Community

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

PEOPLES TRUST COMPANY
Applicant

- and -

ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(PROCEEDING COMMENCED AT TORONTO)

**Responding Motion Record of Deloitte & Touche Inc.,
in its capacity as receiver and manager of Rose of
Sharon (Ontario) Retirement Community**

Gowling Lafleur Henderson LLP
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1 First Canadian Place
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M5X 1G5

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