

February 18, 2021

**Hand Delivered**

The Honourable Justice Presiding in Chambers  
Supreme Court of Nova Scotia  
The Law Courts  
1815 Upper Water Street  
Halifax, Nova Scotia B3J 1S7

My Lord/My Lady:

**RE: Royal Bank of Canada v Civic Homes Limited  
Hfx No. 494188**

We represent Deloitte Restructuring Inc. (the “**Receiver**”), the Court appointed receiver of the assets of Civic Homes Limited (the “**Respondent**”). Please accept this letter as our submissions in respect of a motion to discharge the Receiver and provide certain ancillary relief. This motion is scheduled to be heard on Friday, February 26, 2021 at 9:30 a.m. in General Chambers. No opposition is expected.

With our Notice of Motion we have filed the Third Report of the Receiver (the “**Report**”), Fee Affidavits from James Foran and Gavin MacDonald, and a proposed form of order.

**SERVICE AND NOTICE**

The relief sought in this motion is pursuant to the *Bankruptcy and Insolvency Act* (“**BIA**”) and therefore the Bankruptcy and Insolvency General Rules supersede our *Nova Scotia Civil Procedure Rules* in the event of any inconsistency. BIA Rule 3 states:

- 3** In cases not provided for in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules.

Because this is a matter where BIA act does not specify a minimum notice requirement, the BIA Rule 6 applies. Rule 6 states:

**Gavin D. F. MacDonald** | Partner

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February 18, 2021

- 6** (1) Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.
- (2) Unless otherwise provided in these Rules, every notice or other document given or sent pursuant to the Act or these Rules
- (a) must be received by the addressee at least four days before the event to which it relates, if it is served, delivered personally, or sent by facsimile or electronic transmission; or
  - (b) must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or by courier.
- (3) A trustee, receiver or administrator who gives or sends a notice or other document shall prepare an affidavit, or obtain proof, that it was given or sent, and shall retain the affidavit or proof in their files.
- (4) The court may, on an ex parte application, exempt any person from the application of subsection (2) or order any terms and conditions that the court considers appropriate, including a change in the time limits.

In terms of measuring the four days provided for under BIA Rule 6, the period of time is governed by BIA Rule 4, which stipulates clear business days:

- 4** If a period of less than six days is provided for the doing of an act or the initiating of a proceeding under the Act or these Rules, calculation of the period does not include Saturdays or holidays.

In accordance with Rule 6(1), it is the intention of the Receiver to serve the motion materials in the time prescribed. Proof by affidavit of service will be filed prior to the hearing of this Motion.

#### **APPROVAL OF ACTIONS AND DISTRIBUTION OF FUNDS**

As indicated in the Report, the Receiver has completed its liquidation of the assets of the Respondent. The Report details the actions of the Receiver since its last report to the Court and we submit that it is appropriate for the Court to approve the actions undertaken by the Receiver as officer of the Court.

February 18, 2021

#### **DISCHARGE OF RECEIVER**

The moving party relies on Civil Procedure Rule 73.11 in support of this motion, which provides:

“73.11 A receiver who completes the task for which the receivership order was granted must make a motion for an order passing the receiver’s accounts, approving fees and expenses not yet approved, and discharging the receiver.”

The bulk of the work undertaken by the Receiver is detailed in the Report and prior reports filed in connection with this proceeding. The assets of the company have been liquidated by the Receiver in the sale approved by this Court. We submit that the task for which the Receiver was appointed has therefore been completed.

We submit that the costs and expenses of the Receiver and its counsel as detailed in the Report and affidavits on file are reasonable in light of the complexity of the task undertaken and the results obtained.

#### **DISTRIBUTION OF FUNDS**

As indicated in the Affidavit of Gavin MacDonald sworn October 3, 2020 and on file with the Court, there were three secured creditors in respect of the real property of the respondent: Royal Bank of Canada, Loon Lake Developments Limited and Dexter Construction Company Limited. The security held by these creditors was vested out by operation of the Sale Approval Order, and each received security in the proceeds of sale in accordance with their rights in the sold real estate. Following sale of the assets by the Receiver, it initiated a claims process for the secured creditors to identify the quantum of their claim. Details of these are provided in the Report. In addition, the Affidavit of Gavin McDonald filed in connection with this motion provides an update that there are no recorded judgments in the judgment roll at the Land Registration Office of Halifax County, or any new secured registrations pursuant to the *Personal Property Security Act*, which would include notices of judgment pursuant to the *Creditors Relief Act*. As a result, the Receiver is recommending a distribution to the secured creditors as outlined in the Report.

This recommended distribution will leave a balance remaining with the Receiver in trust. In addition to its role as Receiver, the Receiver is also trustee in bankruptcy for the Respondent pursuant to the assignment of bankruptcy authorized by previous order of this Court. Pursuant to the BIA, all property of the bankrupt is vested in the trustee. Therefore, the Receiver is recommending that the balance remaining with it in trust in their capacity as Receiver be transferred to the bankruptcy estate. It is expected that, subsequent to the granting of the relief sought, the Receiver will then undertake a claims process pursuant to the BIA so that any unsecured creditors of the Respondent may prove a claim and seek recovery in

February 18, 2021

accordance with the provisions the BIA. In the submissions of the Receiver, this is the most cost effective means of addressing the balance remaining.

**PREVIOUSLY SEALED MATERIAL**

In connection with the Receiver's motion for approval of the sale of assets in 2020, certain materials were sealed pursuant to the Court's order issued October 13, 2020. By the terms of that order, the confidentiality provisions will expire on or about April 13, 2020. Since they expire automatically, we submit nothing further is required at this time.

All of which is respectfully submitted,

A handwritten signature in blue ink, appearing to read "Gavin D. F. MacDonald", with a stylized flourish at the end.

Gavin D. F. MacDonald

GDFM/lb  
Enclosure