

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

B E T W E E N:

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**

**AFFIDAVIT OF MERVYN D. ABRAMOWITZ
AFFIRMED FEBRUARY 26, 2015**

I, Mervyn D. Abramowitz, of the City of Toronto, in the Province of Ontario,

DO SOLEMNLY AFFIRM:

1. I am a partner in the law firm of Kronis, Rotsztain, Margles, Cappel LLP (“**KRMC**”), appointed to provide independent legal advice to the “**ILA Unit-holders**”, as defined in the Order of the Honourable Justice Mesbur dated November 22, 2013 (the “**ILA Appointment Order**”). I have been involved in this file from the outset, and as such, I have personal knowledge of the matters deposed to herein.

2. Pursuant to paragraph 7 of the ILA Appointment Order, KRMC was appointed by the Court to provide independent legal advice in this proceeding to the ILA Unit-holders with respect to the nature, meaning and effect of any documents to be executed in connection with proposed settlements with Peoples Trust Company, and the obligations and liabilities of such ILA Unit-holders thereunder (the “**ILA Mandate**”).

3. Pursuant to paragraph 8 of the ILA Appointment Order, KRMC was to pass its accounts before a Judge of the Commercial List of the Superior Court of Justice, and was allowed its reasonable fees up to a maximum amount of \$15,000 plus disbursements actually incurred and applicable taxes.

4. Attached hereto and marked as **Exhibit “A”** to this my affidavit is a true copy of the account rendered to the Receiver for work done by KRMC pursuant to the ILA Appointment Order during the period from November 26, 2013 to March 21, 2014, together with the supporting dockets.

5. The following personnel at KRMC performed work on this matter. Their respective names, position, hourly rate and date of call to the Ontario Bar are as follows:

<u>Name</u>	<u>Position</u>	<u>Hourly Rate</u>	<u>Call to Bar</u>
Mervyn Abramowitz	Partner	\$550.00	1988
Philip Cho	Associate	\$400.00	2002
Law Clerk		\$150.00	

6. The work was all performed and the billing rates are the normal billing rates for the individuals who performed the work and as a result, all of the amounts billed were properly due and owing.

7. It is appropriate to highlight for the court one aspect of the work performed and billed. During the period January 29, 2013 to November 22, 2013, KRMC acted as representative counsel to certain arm's length unit-holders (the "**Representative Counsel Mandate**"). Thereafter, once that mandate was complete, it was proposed that KRMC take on the ILA Mandate. In December 2013, when it appeared that our work in respect of both mandates was complete, KRMC intended on bringing a motion to pass its accounts. As a result, KRMC prepared motion materials to deal with the passing of these accounts and split its time for the preparation of the motion materials equally to each mandate.

8. However, after discussions with the lawyers for the Receiver and Peoples Trust Company, it was decided to split the passing of accounts into two separate motions as there remained a possibility that the ILA Mandate could be extended past December 2013. KRMC, therefore, only proceeded with a motion to pass its accounts in the Representative Counsel Mandate, which accounts were approved by the Honourable Justice Wilton-Siegel on January 28, 2014.

9. The additional time billed and that is referenced in the dockets in the period December 2013 relates to the preparation of the motion materials for the other fees motion that did not proceed.

10. Attached hereto and marked as **Exhibit "B"** to this my affidavit is a true copy of our estimate of fees for the work done since the last account was rendered and the work to be done

through to the termination of the mandate (as defined in paragraph 2 of the Representative Counsel Order). The estimate includes KRMC's fees and disbursements for the remaining steps, including preparation for and attendance at the motion to pass the accounts of KRMC.

11. As before, the amounts relate to work to be done at the normal billing rates for the individuals involved and represent accurate estimates, to the best of our knowledge, information and belief, at this point in time, of the work required to complete KRMC's involvement in this matter.

AFFIRMED before me)
at the City of Toronto,)
in the Province of Ontario,)
this 26th day of February, 2015.)



A Commissioner for Taking Affidavits, etc.
PHILIP CHO



MERVYN D. ABRAMOWITZ

This is Exhibit "A" referred to in the Affidavit of Mervyn D. Abramowitz affirmed February 26, 2015

A handwritten signature in black ink, appearing to read 'Philip Cho', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

PHILIP CHO

IN ACCOUNT WITH
KRMC

Kronis, Rotsztain, Margles, Cappel LLP
Barristers and Solicitors

Deloitte & Touche LLP
Brookfield Place
181 Bay Street, Suite 1400
Toronto, Ontario M5J 2V1
Attention: Hartley Bricks

8 King Street East
Suite 1000 Toronto, ON
Canada M5C 1B5
Telephone: (416) 225-8750
Facsimile: (416) 306-9874

File No.110835

March 25, 2014

Re: Rose of Sharon Receivership re: ILA

FOR ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter for the period November 26, 2013 to March 21, 2014, as per the attached dockets:

To being retained to act for Deloitte & Touche LLP with respect to providing independent legal advice to certain individuals in the Rose of Sharon (Ontario) Retirement Community receivership; to telephone discussions with and to correspondence to Hartley Bricks generally with respect to obtaining instructions; to all other matters not specifically referred to above, including correspondence, facsimiles, attendances, memoranda, legal research, telephone conversations and to reporting to you herein.

FEES

Mervyn Abramowitz	4.30 hours @ \$550.00 per hour	\$2,365.00	
Philip Cho	12.40 hours @ \$400.00 per hour	4,960.00	
Kelly Barrett	3.90 hours @ \$150.00 per hour	<u>585.00</u>	
Sub-total		\$7,910.00	
HST		<u>1,028.30</u>	
TOTAL FEES AND HST			\$8,938.30

DISBURSEMENTS WITHOUT HST

Court fees (file motion record)			127.00
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DISBURSEMENTS WITH HST

Office photocopies	\$ 83.25		
Process server's fee	<u>50.75</u>		
Sub-total	\$ 134.00		
HST	<u>17.42</u>		<u>151.42</u>

TOTAL FEES AND DISBURSEMENTS

\$9,216.72

THIS IS OUR ACCOUNT

KRONIS, ROTSZTAIN, MARGLES, CAPPEL LLP

Per:

Mervyn D. Abramowitz, C.S.

MDA:kb - E.&Q.E. Our GST Registration No. R119428514

Accounts are due when rendered. In accordance with Section 33 of the *Solicitors Act*, interest will be charged at the rate of 1.3% per annum on all outstanding amounts calculated from April 25, 2014.

KRMC
Philip Cho's
Time Entry Report for Selected File

Rose of Sharon re: ILA
Client ID: 9073
Matter ID: 110835
Tue. Nov 26, 2013 to Fri. Mar 21, 2014

Date	Task / Activity Code	Task/Activity Description	Time (hrs)
Thu. Feb 27, 2014		ILA Mandate - Email correspondence with Receiver's counsel re list of individuals who received ILA from KRMC	0.20
Mon. Dec 9, 2013		ILA Mandate: Email to C Prophet re report on individuals who have received ILA and confirm no further individuals; Mtg w/ MDA re ILA mandate completion; ILA Mandate: Telephone call from Vivian Rhee re has not been contacted by anyone about a settlement; Prepare Notice of Motion re passing of accounts; Email correspondence with counsel to Peoples Trust and to the Receiver re passing of accounts	2.10
Fri. Dec 6, 2013		ILA Mandate: Prepare for ILA meeting; ILA meeting with Jane Kim; ILA meeting with Klara Kim; Discuss fee affidavit preparation w/ Kelly Barrett	3.80
Thu. Dec 5, 2013		ILA Mandate: Telephone call with Lawrence Kim re ILA for Mrs. Kim but not necessary for him; Telephone call with Jane Kim re documents to bring to her appointment; Telephone call with Sang-Hyun Ahn re appointment for ILA; Prepare form of ILA certificate;	1.00
Thu. Dec 5, 2013		ILA Mandate: Meeting with Olivia Yoon re ILA	1.20
Wed. Dec 4, 2013		ILA - Revise ILA Checklist; Receipt and review email from H. Murray re list of individuals requiring ILA; ILA Mandate: Telephone call to Hartley Bricks re obtaining contact information for the individuals requiring ILA; ILA Mandate: Telephone call to ILA individuals re arranging appointments for ILA; Receipt and review email from E Golden re order of Mesbur J and next court attendance; Telephone call from Jane Kim re setting up ILA; Telephone call with Steven Yu re ILA and his advice that he is represented; Email correspondence with C. Prophet clarifying individuals requiring ILA	1.80
Tue. Dec 3, 2013		ILA Mandate - Email to Cliff Prophet re contact information for individuals requiring ILA	0.20
Thu. Nov 28, 2013		ILA Mandate: Prepare ILA worksheet for use with ILA clients; Mtg w/ MDA to discuss issues to cover in ILA	1.20

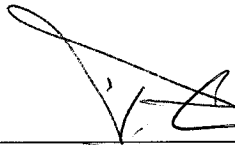
Date	Task / Activity Code	Task/Activity Description	Time (hrs)
Wed. Nov 27, 2013		ILA Mandate: Telephone call with C Prophet, H. Murray, MDA re ILA mandate and individuals requiring ILA	0.40
Wed. Nov 27, 2013		Telephone call to Kaylie Handler re clarifying mechanics of settlement	0.50
Total Time:			12.40

KRMC
Kelly Barrett's
Time Entry Report for Selected File

Rose of Sharon re: ILA
 Client ID: 9073
 Matter ID: 110835
Tue. Nov 26, 2013 to Fri. Mar 21, 2014

Date	Task/Activity Code	Task/Activity Description	Time (hrs)
Wed. Dec 11, 2013		To preparation of motion record re: passing of accounts; to revising notice of motion and affidavit of Philip Cho; to finalizing motion record; to email correspondence to the service list serving the motion record; to preparation of affidavit of service; to memo to process server re: filing instructions;	2.50
Mon. Dec 9, 2013		To inter office conference with MDA and Philip Cho re: fee affidavits; to preparation of fee affidavit re: ila mandate; to preparation of the estimate of fees; to receipt of instructions from MDA re: preparing notice of motion and fee affidavit returnable for Friday, December 13, 2013; to inter office conference with PC re: advising Joe at Commercial List re: motion;	1.40
Total Time:			3.90

This is Exhibit "B" referred to in the Affidavit of Mervyn D. Abramowitz affirmed February 26, 2015

A handwritten signature in black ink, appearing to read 'Philip Cho', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

PHILIP CHO

TOTAL UNBILLED AND ESTIMATED TIME & DISBURSEMENTS

DESCRIPTION	LAWYER	HOURLY RATE	UNBILLED/ ESTIMATED TIME	ESTIMATED FEES/ DISBURSEMENTS	TOTALS
Communications with respect to independent legal advice provided	Philip Cho	\$400.00	0.6	\$ 240.00	
Communications with respect to the motion by the Receiver to pass accounts	Mervyn Abramowitz Philip Cho	\$550.00 \$400.00	0.4 0.4	\$ 220.00 \$ 160.00	
Preparation of Fee Affidavit re: passing accounts of Representative Counsel	Mervyn Abramowitz Philip Cho	\$550.00 \$400.00	0.4 0.8	\$ 220.00 \$ 320.00	
Attendance before court on Motion to pass accounts	Philip Cho	\$400.00	3.0	\$1,200.00	
TOTAL ESTIMATED TIME					\$2,360.00
HST					306.80
TOTAL ESTIMATED FEES (INCLUDING HST)					<u>\$2,666.80</u>