

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No. : 500-11-041305-117

SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act,
R.S.C., c. C-36, as amended)

IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:

HOMBURG INVEST INC. et als.

Debtors

- and -

SAMSON BELAIR/DELOITTE & TOUCHE
INC.

Monitor

- and -

STICHTING HOMBURG BONDS

Petitioners

MOTION FOR THE ISSUANCE OF AN ORDER CONFIRMING THE
APPLICATION OF THE FUNDING ORDER DATED FEBRUARY 15, 2012

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING
IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF
MONTRÉAL, THE PETITIONER, STICHTING HOMBURG BONDS
RESPECTFULLY SUBMITS THE FOLLOWING:

I. INTRODUCTION

1. Stichting Homburg Bonds ("SHB"), the indenture trustee representing Debtholders (the "Debtholders") of Homburg Invest Inc. et al. (the "HII Group"), holding about \$600 million in claims against Homburg Invest Inc. ("HII"), is hereby seeking the issuance of an order by this Court confirming that the fees and expenses incurred by SHB in the representation of Debtholders after the implementation of the HII Group's CCAA restructuring plans, as well as in the context of the judicial proceedings filed by Homburg Canada Inc. ("HCI") against SHB and certain of its existing and former directors in the Netherlands (the "Dutch Proceedings"), fall within the ambit of the funding order issued by this Court on February 15, 2012 (the "Funding Order").

2. The Funding Order provides a mechanism for the making and repayment of interim advances. Such advances are provided by the HII Group and will be netted against amounts to be distributed under the Third Joint Amended and Restated Plan of Compromise and Reorganization of HII and Homburg ShareCo Inc. ("**Shareco**") dated June 5, 2013 and the Restated Plan of Compromise of Homco Realty Fund (61) Limited Partnership ("**Homco 61**") dated April 26, 2013 (the "**Plans**").
3. When the Funding Order was rendered by this Court, it was not expected or anticipated that SHB would be required to actively continue its representations of the Debtholders after the implementation of a restructuring of the HII Group.
4. Following the implementation of the Plans, SHB will be required to continue to work alongside the Monitor and the HII Group to ensure that the interests of the Debtholders are properly represented, and will therefore require continued financing in accordance with the terms of the Funding Order. For instance, SHB expects that it will be required to take an active part of pending litigation including, without limitation, litigation involving the holders of Taberna Notes and the alleged holders of construction liens on the property known as the "KAI Property" which was recently sold.
5. In addition, SHB has and will continue to incur costs in the context of the Dutch Proceedings, which are a direct result of its representation of the Debtholders throughout these CCAA proceedings. In this context, SHB will also require funding pursuant to the terms of the Funding Order.
6. The HII Group and the Monitor have indicated that they support the present requests being made by SHB.

II. RELIEF SOUGHT

7. SHB requests an order from this Court confirming that the Funding Order applies to the fees and expenses incurred by SHB, its directors, legal counsel and financial advisors, (i) in the context of the Dutch Proceedings, and (ii) following the implementation of the Plans.

III. BACKGROUND

8. On February 15, 2012, this Court issued an order (the "**Funding Order**") providing, *inter alia*, for the following:

[2] ORDERS that the Petitioners shall advance from the available cash of the Debtors ... amounts equivalent to the reasonable fees and expenses incurred as and from December 3rd, 2011 in connection with the CCAA proceedings and the Restructuring by the Trustees' Advisors, the aggregate of which advances (the "Stichting Advances") up to the maximum amount to be distributed or paid (i) shall become due and payable to the Debtors immediately prior to any distribution or payment, including pursuant to a sale of assets, liquidation or

realization of security or otherwise (each a "Distribution Event"), to be made to or for the benefit of the holders of the Securities, as the case may be, (ii) shall be set-off/compensated against the aggregate of any distribution to be made to or for the benefit of the holders of Securities pursuant to any such Distribution Event and (iii) shall be allocated, as between the holders of Securities, on a pro-rata basis, based on the amount, if any, to be distributed or paid in respect of each of the Corporate Bonds, Mortgage Bonds and Capital Securities as a percentage of the total amount to be distributed in respect of all Securities.

9. The Funding Order provides for a mechanism for the interim funding and reimbursement of the fees and expenses incurred for the necessary participation of SHB in the CCAA proceedings.
10. The advances provided for under the Funding Order will be netted against amounts to be distributed under the Plans.
11. The HII Group and the Monitor have suspended payment of the fees and expenses of SHB recently incurred in connection with the Dutch Proceedings and have advised that they would also suspend the payment of any fees and expenses incurred after the implementation of the Plans until such time as this Court renders the order sought herein.

IV. GROUNDS FOR THIS MOTION

12. It is respectfully submitted that SHB is required to continue representing the Debtholders following the implementation of the Plans.
13. The purpose of the Funding Order is to ensure that the interests of the approximately 9,500 Debtholders residing in the Netherlands, are fully and adequately represented throughout the CCAA proceedings, which necessarily includes participation with respect to any issues that may arise following the implementation of the Plans.
14. In addition, as a result of these CCAA proceedings, HCI has instituted the Dutch Proceedings, in which it alleges, *inter alia*, that SHB has failed to meet its obligations under an agreement dated December 3, 2011 and entitled the *Amendment to the Heads of Agreement and Voting Agreement* (the "AHOA") and that SHB is accordingly obligated to pay the sum of \$2.1 million.
15. SHB is convinced that it has met its obligations, and that HCI will be unsuccessful in the context of the Dutch Proceedings. This being said, SHB has no other choice but to vigorously contest the allegations found in the Dutch Proceedings, which will require financing by the HII Group, in accordance with the terms of the Funding Order.

V. CONCLUSION

16. In light of the foregoing reasons, the Petitioners respectfully request this Court to confirm and order that the Funding Order apply to any and all reasonable fees and expenses incurred by SHB in connection with the representation of Debtholders following the implementation of the Plans, as well as in the context of the Dutch Proceedings.
17. The present motion is well founded in fact and in law.

WHEREFORE, MAY THIS COURT:

GRANT the present *Motion for the Issuance of an Order Confirming the Application of the Funding Order dated February 15, 2012*.

ORDER that the Funding Order issued by this Court on February 15, 2012 in the present matter shall apply to i) any and all reasonable fees and expenses incurred by SHB in connection with the representation of Debtholders following implementation of the Plans and ii) any and all reasonable fees and expenses incurred by SHB in connection with the Dutch Proceedings.

WITHOUT COSTS, save and except in the event of contestation.

MONTREAL, February 5, 2014

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Attorneys for the Petitioners

ANNEX I

APPLICANT PARTNERSHIPS

1. HOMCO REALTY FUND (52) LIMITED PARTNERSHIP
2. HOMCO REALTY FUND (88) LIMITED PARTNERSHIP
3. HOMCO REALTY FUND (89) LIMITED PARTNERSHIP
4. HOMCO REALTY FUND (92) LIMITED PARTNERSHIP
5. HOMCO REALTY FUND (94) LIMITED PARTNERSHIP
6. HOMCO REALTY FUND (105) LIMITED PARTNERSHIP
7. HOMCO REALTY FUND (121) LIMITED PARTNERSHIP
8. HOMCO REALTY FUND (122) LIMITED PARTNERSHIP
9. HOMCO REALTY FUND (142) LIMITED PARTNERSHIP
10. HOMCO REALTY FUND (199) LIMITED PARTNERSHIP

AFFIDAVIT

I, the undersigned, Karel de Vries, business person, having my principal place of business at Prinsenhage 9, Vught 5263 CT, The Netherlands, solemnly declare the following:

1. I am a director of Stichting Homburg Bonds.
2. All the facts alleged in the *Motion for the Issuance of an Order Confirming the Application of the Funding Order Dated February 15, 2012* are true.

AND I HAVE SIGNED:


KAREL DE VRIES

Solemnly declared before me in Montreal
on the 5th day of February, 2014





NOTICE OF PRESENTATION

To: Service List

TAKE NOTICE that the *Motion for the Issuance of an Order Confirming the Application of the Funding Order Dated February 15, 2012* will be presented for adjudication before the Honourable Louis Gouin J.S.C., or one of the Honourable Judges of the Superior Court, sitting in the District of Montréal, at the Montréal Court House, 1 Notre-Dame Street East, Montréal, Quebec **on February 7, 2014, at 9:15am in room 15.03.**

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, February 5, 2014

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Attorneys for the Petitioners

SUPERIOR COURT
(Commercial Division)
(Sitting as a Court designated pursuant to the *Companies' Creditors
Arrangement Act*, R.S.C., c. C-36, as amended)

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-and- SAMSON BELAIR/DELOITTE & TOUCHE INC.	Monitor
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BS0350	File: 131425-1001

MOTION FOR THE ISSUANCE OF AN ORDER CONFIRMING
THE APPLICATION OF THE FUNDING ORDER DATED
FEBRUARY 15, 2012

ORIGINAL

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