

SUPERIOR COURT

(Commercial Division)

(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36)

C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

Court No: 500-11-041305-117

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

HOMBURG INVEST INC.
HOMBURG SHARECO INC.
CHURCHILL ESTATES DEVELOPMENT LTD.
INVERNESS ESTATES DEVELOPMENT LTD.
CP DEVELOPMENT LTD.

Debtors

and

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor/Petitioner

and

HOMCO REALTY FUND (52) LIMITED PARTNERSHIP
HOMCO REALTY FUND (53) LIMITED PARTNERSHIP
HOMCO REALTY FUND (88) LIMITED PARTNERSHIP
HOMCO REALTY FUND (89) LIMITED PARTNERSHIP
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HOMCO REALTY FUND (199) LIMITED PARTNERSHIP

Mis-en-cause

MOTION BY THE MONITOR TO OBTAIN LISTS OF REGISTERED BONDHOLDERS

(s. 11 of the *Companies Creditors' Arrangements Act*)

TO THE HONOURABLE LOUIS J. GOUIN J.S.C. OR TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL:

I. INTRODUCTION

1. On September 9, 2011, this Court issued an order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, (the "**CCAA**") in respect of Homburg Invest Inc. ("**HII**"), Homburg ShareCo Inc. ("**ShareCo**"), Churchill Estates Development Ltd. ("**Inverness**") and CP Development Ltd. ("**CP**"), together with HII, ShareCo, Churchill and Inverness, the "**Debtors**").
2. Pursuant to the Initial Order, Samson Bélair/Deloitte & Touche Inc. was appointed as monitor under the CCAA (the "**Monitor**").
3. By the present Motion, the Monitor seeks this Honourable Court's assistance to obtain complete lists of all registered bondholders and debentureholders of the Debtors, so as to carry out its role as court-appointed officer in the context of the Debtors' CCAA restructuring process, as is further explained hereunder.

II. THE BONDS AND DEBENTURES ISSUED BY THE DEBTORS

4. Shareco issued mortgage bonds (the "**Mortgage Bonds**"), pursuant to a trust indenture dated December 15, 2002 between Shareco and Stichting Homburg Mortgage Bonds, as trustee, as appears from a copy of said trust indenture filed herewith as **Exhibit R-1**.
5. HII issued corporate bonds (the "**Corporate Bonds**") pursuant to a trust indenture dated 31st October 2006 between HII and Stichting Homburg Bonds, as appears from a copy of said trust indenture filed herewith as **Exhibit R-2**.
6. HII issued debenture referred to as "Capital Securities A" (the "**Capital Securities A Debentures**"), pursuant to a trust indenture dated February 28, 2009 between HII and Stichting Homburg Capital Securities, as appears from a copy of said trust indenture filed herewith as **Exhibit R-3**.
7. The amounts outstanding of the Mortgage Bonds, the Corporate Bonds and the Capital Securities A Debentures issued under the three trust indentures (collectively, the "**Trust Indentures**") and under supplemental Trust Indentures entered into from time to time thereafter (collectively, the "**Bonds**"), as at the date of the Initial Order, are respectively approximately €102.5M, €310.0M, and €26.8M.
8. In the days following the granting of the Initial Order, the Monitor, in conformity with its duty to send a notice of the Initial Order to each known creditor of the Petitioners, sent such notice to Stichting Homburg Mortgage Bonds in its capacity as trustee under the Mortgage Bonds trust indenture dated December 15, 2002, Stichting Homburg Bonds in its capacity as trustee under the Corporate Bonds trust indenture dated June 1st, 2006 and to Stichting Homburg Capital Securities in its capacity as trustee under the Capital Securities A trust indenture dated February 28, 2009 (collectively, the "**Trustees**").

9. In order to be in a position to advise each holder of the Bonds (collectively, the "**Bondholders**") of the Initial Order in conformity with its duties, the Monitor also requested from the Debtors and their counsel up-to-date lists of the registered Bondholders.
10. The Monitor was informed that neither the Debtors nor their counsel had such up-to-date such lists in their possession and that they were taking measures to obtain same.

III. THE TRUSTEES' CONTROL OF THE LISTS OF BONDHOLDERS

11. It is the Monitor's understanding that pursuant to sections 2.11 and 2.13 of each of the Trust Indentures, the Trustees act as registrars and, in that capacity, keep registers in respect of the registered Bonds, including the lists of names and addresses of holders of registered Bonds and showing the principal amount and serial numbers of the Bonds held by each such holder.
12. Pursuant to section 2.13 of the Trust Indentures, the Trustees must, when requested to do so by Hll or by ShareCo, as the case may be, furnish Hll or ShareCo with a list of the names and addresses of holders of registered Bonds entered on the register kept by such registrar and showing the principal amount and serial numbers of the Bonds held by each such holder.

IV. REFUSAL OF THE TRUSTEES TO FURNISH THE LISTS OF BONDHOLDERS

13. On September 21, 2011, the Monitor's counsel wrote a letter to the Trustees' requesting that all lists of registered Bondholders which the Trustees have the obligation to keep pursuant to the Trust Indentures, including the names and addresses of the Bondholders, as well as the principal amount and serial number of bonds or debentures held by each such Bondholder, as appears from a copy of said letter filed herewith as **Exhibit R-4**.
14. On September 22, 2011, during a case management conference, the Monitor's counsel advised this Honourable Court of this request made to the Trustees' counsel.
15. On September 26, 2011, the Monitor's counsel sent a letter to the Trustees' counsel pertaining, *inter alia*, to the following items:
 - (a) The Monitor once again requested an up-to-date list of the registered Bondholders (the Monitor was informed that the Debtors' counsel made a written request to the same effect on that day as well); and
 - (b) The Monitor asked for clarifications on the parties represented by the Trustees' counsel as the Amended Appearance filed by the latter did not include "Stichting Homburg Mortgage Bonds", the Trustee to the Mortgage Bonds.

the whole as appears from a copy of said Monitor's counsel's letter filed herewith as **Exhibit R-5**.

16. On September 28, 2011, the Trustees' counsel responded to the latest aforementioned correspondence indicating, in particular, the following:

- (a) The Trustees refuse to remit to the Monitor the requested lists of registered Bondholders; and
- (b) "Stichting Homburg Mortgage Bonds", the Trustee to the Mortgage Bonds, would have changed its name to "Stichting Homburg Bonds" (which the Monitor notes turns out to also be the name of the Trustee to the Corporate Bonds).

the whole as appears from a copy of said Trustee's counsel letter filed herewith as **Exhibit R-6**.

17. On September 29, 2011, the Monitor's counsel responded by letter to the Trustees' counsel indicating, *inter alia*, that the Monitor failed to see on what basis the Trustees were refusing to remit to the Monitor and to HII and Shareco the lists of registered Bondholders and reiterated its request to obtain said lists without delay, as appears from a copy of said letter filed herewith as **Exhibit R-7**.

18. The Monitor has received no response to this latest correspondence at this date.

IV. THE NECESSITY FOR THE MONITOR TO OBTAIN THE LISTS OF BONDHOLDERS AND THE MONITOR'S RIGHT TO SAME

19. The Monitor believes it is important to obtain the lists of registered Bondholders and send notices directly to them in order to ensure that they are properly advised of the CCAA restructuring process initiated by the Debtors, in conformity with the CCAA.

20. In fact, the Monitor must send a prescribed notice to every known creditor who has a claim against the Debtors of more than \$1,000, including the Bondholders, pursuant to subparagraph 23(1)(ii)(B) of the CCAA and subparagraph 35(a) of the Initial Order.

21. The Monitor was not provided with any evidence establishing that the Trustees were duly given instructions and directions pursuant to and in accordance with the Trust Indentures and thus submits that it is especially relevant for the Monitor to notify the Bondholders directly.

22. Furthermore, the Monitor submits that it is especially important to notify the Bondholders in the current context where, to the Monitor's knowledge:

- (a) the Bondholders are, at least for the vast majority (if not all), located abroad, notably in the Netherlands; and
- (b) the Bondholders are, at least for the vast majority (if not all), individual holders unfamiliar with the Canadian CCAA process.

23. Thus, the Bondholders do not have knowledge of the impacts of the Debtors' CCAA restructuring process and of their rights pursuant to such a process, including their right to be informed by the Monitor of the CCAA restructuring process, the developments under said process and their right to eventually file a claim and vote on a plan of arrangement with the benefit of having obtained all the relevant information from the Monitor as the independent court-appointed officer.

24. The Monitor must consider the interests of all the stakeholders having an interest in the restructuring process, including the Bondholders, and must be able to communicate with the latter in order to consider their interests and address their concerns as the case may be.
25. The Monitor believes that it should have direct communications with the Bondholders and allow them to ask questions on the implications of the CCAA filing for the Debtors generally and for themselves as Bondholders specifically.
26. Paragraph 36 of the Initial Order orders, *inter alia*, that "all other Persons having notice of the [Initial Order] shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including without limitation, the books, records, data, including data in electronic form, and all other documents of the [Debtors] in connection with the Monitor's duties and responsibilities".
27. The Monitor is thus clearly entitled to obtain from the Trustees the lists of Bondholders.
28. The present Motion is well founded in fact and law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the Monitor's motion to obtain the lists of Bondholders;

ORDER Stichting Homburg Bonds, Stichting Homburg Mortgage Bonds (or its successor as the case may be), and Stichting Capital Securities to provide the Monitor with updated lists of registered Bondholders, including the names and addresses of the holders of Bonds issued by Homburg Shareco Inc. and Homburg Invest Inc. pursuant to the Trust Indentures and any supplemental Trust Indentures, as well as the principal amount and serial numbers of the Bonds held by each such holder;

THE WHOLE with costs.

MONTREAL, October 4, 2011


McCarthy Tetraault LLP
Attorneys for the Monitor

SUPERIOR COURT

(Commercial Division)

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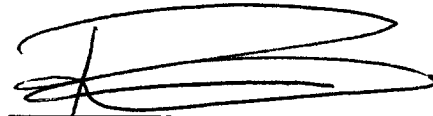
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AFFIDAVIT

I, the undersigned, Pierre Laporte, partner of Samson Bélair/Deloitte & Touche Inc., having a place of business at 1, Place Ville-Marie, Montréal, Québec, H3B 4T9, solemnly declare the following:


1. I am a duly authorized representative of Samson Bélair/Deloitte & Touche Inc. in its capacity of Monitor to Homburg Invest Inc. et als. for the purposes hereof;
2. All the facts alleged in the Motion by the monitor to obtain lists of registered Bondholders are true.

AND I HAVE SIGNED



Pierre Laporte

Solemnly declared before me in Montréal, Québec
on this 4th day of October 2011

 #189,442
Commissioner of oaths for the Quebec



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Mis-en-cause

NOTICE OF PRESENTATION

- TO : OSLER HOSKIN & HARCOURT** **Attorneys for the Debtors**
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TAKE NOTICE that the present *Motion by the monitor to obtain lists of registered bondholders* will be presented before Justice Louis J. Gouin of the Superior Court of Quebec, at the Montreal courthouse, located at 1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6, in on October 06, 2011, at 9:15 A.M. in a room to be determined.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, October 4, 2011


McCarthy Tétrault LLP
Counsel for the Monitor

SUPERIOR COURT

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Mis-en-cause

LIST OF EXHIBITS

(Motion by the Monitor to obtain lists of registered bondholders)

- Exhibit R-1: Trust Indenture between dated December 15, 2002 between Shareco and Stichting Homburg Mortgage Bonds
- Exhibit R-2: Trust Indenture between dated October 31, 2006 between HII and Stichting Homburg Bonds
- Exhibit R-3: Trust Indenture between dated February 28, 2009 between HII and Stichting Homburg Capital Securities
- Exhibit R-4: Letter from Monitor's counsel to Trustee's counsel dated September 21, 2011
- Exhibit R-5: Letter from Monitor's counsel to Trustee's counsel dated September 26, 2011
- Exhibit R-6: Letter from Trustee's counsel to Monitor's counsel dated September 28, 2011
- Exhibit R-7: Letter from Monitor's counsel to Trustee's counsel dated September 29, 2011

MONTREAL, October 4, 2011


McCARTHY TETRAULT LLP
Counsel for the Monitor

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ORIGINAL

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