

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

THE HONOURABLE) THURSDAY, THE 27th DAY
MR. JUSTICE BROWN) OF DECEMBER, 2012

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

ORDER

THIS MOTION, made by Trisura Guarantee Insurance Company (“Trisura Guarantee”), for an Order that the stay of proceedings (the “Stay”) in Justice Campbell’s Order dated September 27, 2011 (the “Appointment Order”) be lifted for the purpose of allowing Trisura Guarantee to pursue an action bearing Court File No. CV-10-417426 (the “Construction Lien Action”), commenced by Mikal-Calladan Construction Inc. (“Mikal-Calladan”), as against certain parties, including Rose of Sharon (Ontario) Retirement Community (“Rose of Sharon”) and so that Trisura Guarantee can comply with section 37 of the *Construction Lien Act* in the Construction Lien Action, was heard on December 21, 2012

at 330 University Avenue, Toronto, Ontario, judgment having been reserved until December 27, 2012.

ON READING the affidavits of Edouard Chassé, sworn December 12, 2012 and December 17, 2012, the Second Report of Deloitte & Touche Inc., in its capacity as Court-appointed receiver (the "Receiver") dated December 14, 2012 and upon hearing submissions from counsel for Trisura Guarantee and counsel for the Receiver and upon reading the Affidavits of Service of Jessica Beare, sworn December 12, 2012 and December 17, filed.

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Stay provided for in the Appointment Order be and is hereby lifted so that Trisura Guarantee can continue and take all steps necessary to advance the Construction Lien Action and so that Trisura Guarantee can take all steps as are necessary to comply with section 37 of the *Construction Lien Act*.
3. **THIS COURT ORDERS** that the Construction Lien Action be and is hereby set down for trial in accordance with section 37(1)2 of the *Construction Lien Act*.
4. **THIS COURT ORDERS** that the noting in default of Rose of Sharon in the Construction Lien Action be and is hereby set aside.
5. **THIS COURT ORDERS** that the Default Judgment dated September 29, 2011, against Rose of Sharon in the Construction Lien Action be and is hereby set aside.
6. **THIS COURT ORDERS** that the Receiver may file a Statement of Defence in the Construction Lien Action within 20 days of the date of this Order.
7. **THIS COURT ORDERS** that the issues of liability, timeliness and quantum in the Construction Lien Action shall be determined in a Reference before a Master.

8. **THIS COURT ORDERS** that the issue of the priorities of the construction lien vis-à-vis any other encumbrance shall be determined by a Judge of the Commercial List in these receivership proceedings.

9. **THIS COURT ORDERS** that Trisura Guarantee pay costs to the Receiver in the amount of \$4,000, which costs shall be paid within 20 days of the date of this Order.

A handwritten signature in black ink, appearing to be "A. J.", is written over a horizontal line.

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

Handwritten initials, possibly "AB", in black ink.

DEC 28 2012

PEOPLES TRUST COMPANY

-and-

ROSE OF SHARON (ONTARIO) RETIREMENT COMMUNITY

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PROCEEDINGS COMMENCED AT TORONTO

ORDER

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