

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE )  
JUSTICE )  
*Scott J. Appleton* )

TUESDAY, THE 26<sup>TH</sup>  
DAY OF JULY, 2016

BETWEEN:

**2502461 ONTARIO LTD.**

Applicant

-and-

**PORTOFINO CORPORATION**

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

**ORDER**

**THIS MOTION**, made by BDO Canada Limited ("BDO"), in its capacity as court-appointed receiver (the "Receiver") of the assets, undertakings and properties of Portofino Corporation pursuant to the Order of the Honourable Mr. Justice Thomas dated October 29, 2013 for an order:

- (a) if necessary, abridging the time for service and filing and validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Fifth Report of the Receiver dated July 13, 2016 and all appendices thereto (the "Fifth Report"), and directing that any further service of same be dispensed with such that this motion is properly returnable on July 26, 2016;
- (b) amending Schedule "C" – Claims to be deleted and expunged from title to the Unsold Units – to the Omnibus Approval and Vesting Order of Mr. Justice Campbell dated May 2, 2014;

- (c) deleting instrument numbers CE664524, CE715152, CE715154, CE715155, CE7157156, CE715157, CE715158, CE715159 and CE715282 from title to the condominium units comprised by property identifier numbers 01872-0131, 01872-0140 and 01872-0003;
- (d) approving the Fifth Report and the activities and conduct of the Receiver described therein;
- (e) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to June 30, 2016 (the "Statement of Receipts and Disbursements");
- (f) approving the professional fees and disbursements of BDO as Receiver;
- (g) approving the professional fees and disbursements of Miller Thomson LLP and Sutts Strosberg LLP, counsel to the Receiver;
- (h) approving and authorizing the distribution of \$4,000,000 to Windsor Family Credit Union from the funds on hand; and
- (i) such further and other relief as counsel may advise and this Honourable Court may deem just.

was heard this day at 245 Windsor Avenue, Windsor, Ontario.

**ON READING** the Fifth Report and on hearing the submissions of counsel for the Receiver, no one else appearing from the service list, although duly served as appears from the affidavit of Julie Los sworn July 14, 2016, filed:

1. **THIS COURT ORDERS** that the time for and method of service of all motion confirmation forms, the motion record, including the notice of motion and the Fifth Report, are hereby abridged and validated, as necessary, such that this motion is properly returnable today and hereby dispenses with further service thereof;
2. **THIS COURT ORDERS** that Schedule "C" – Claims to be deleted and expunged from title to the Unsold Units – to the Omnibus Approval and Vesting Order of Mr. Justice Campbell dated May 2, 2014 be and is hereby amended and replaced by the Schedule

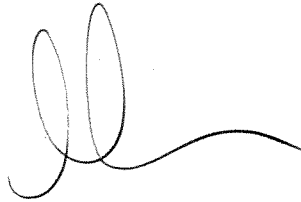
"C" – Claims to be deleted and expunged from title to the Unsold Units attached to this Order;

3. **THIS COURT ORDERS** that the following instruments are to be deleted and expunged from title to the condominium units having property identifier numbers 01872-0131, 01872-0140 and 01872-0003 and the Land Registrar in respect of the Land Registry Office for the Land Titles Division of Essex (No. 12) is hereby directed to delete and expunge the following instruments from title to the condominium units having property identifier numbers 01872-0131, 01872-0140 and 01872-0003:

- (a) instrument number CE664524 – Transfer of Charge from Bank of Montreal to RREF II BHB IV Portofino, LLC registered on June 29, 2015;
- (b) instrument number CE715152 – Transfer of Charge from RREF II BHB IV Portofino, LLC to 2502461 Ontario Ltd. registered on May 30, 2016;
- (c) instrument number CE715154 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
- (d) instrument number CE715155 – Postponement from Andreolli Investments Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
- (e) instrument number CE715156 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
- (f) instrument number CE715157 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
- (g) instrument number CE715158 - Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016;
- (h) instrument number CE715159 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016; and

(i) instrument number CE715282 – Transfer of Charge from 2502461 Ontario Ltd. to Windsor Family Credit Union Ltd. registered on May 31, 2016.

4. **THIS COURT ORDERS** that the Fifth Report and the activities and conduct of the Receiver described in the Fifth Report are hereby approved;
5. **THIS COURT ORDERS** that the Statement of Receipts and Disbursements be and the same is hereby approved;
6. **THIS COURT ORDERS** that the professional fees of the Receiver and its legal counsel, Miller Thomson LLP and Sutts Strosberg LLP, as described in the fee affidavits of Steven Cherniak sworn July 11, 2016, Tony Van Klink sworn July 13, 2016 and William Sasso sworn July 13, 2016 be and the same are hereby approved; and
7. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to distribute to Windsor Family Credit Union the sum of \$4,000,000 from the funds being held by the Receiver.



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ENTERED AT WINDSOR	
In Book No.	27
re Document No.	864
on	JUL 26 2016
by	HK

**Schedule "C" – Claims to be deleted and expunged from title to the Unsold Units**

<b>Description:</b>	Essex Standard Condominium Plan No. 122 and its appurtenant interest. The description of the condominium property is: LT 1, South Side of Sandwich Street, PI 392 & Pt Lot 73 Concession 1 Windsor; Pt 1 PI 12R17829; S/T Ease as set out in Schedule "A" of Declaration CE278123, Windsor Ontario (LRO#12)
<b>Unsold Condominium Units (See Schedule "A" for individual unit descriptions)</b>	
1.	Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.
2.	Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.
3.	Instrument No. CE297353 – Charge in the principal amount of \$1,000,000 from Portofino Corporation to Remo Valente Real Estate (1990) Limited, registered on October 12, 2007.
4.	Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
5.	Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
6.	Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
7.	Instrument No. CE482047 – Charge in the principal amount of \$400,000 from Portofino Corporation to Sutts Strosberg LLP, registered on August 9, 2011.
8.	Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
9.	Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
10.	Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.
11.	Instrument No. CE551002 – Charge in the principal amount of \$524,312 from Portofino Corporation to Sutts Strosberg LLP, registered on January 10, 2013.
12.	Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.
13.	Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.

14. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
15. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
16. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
17. Instrument No. CE588099 – Condo Lien/98 in the amount of \$80,749 registered by Essex Standard Condominium Corporation No. 122 on October 29, 2013.
18. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
19. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.
20. Instrument No. CE592122 – Application Court Order registered on November 28, 2013.
21. Instrument No. CE664524 – Transfer of Charge from Bank of Montreal to RREF II BHB IV Portofino, LLC registered on June 29, 2015.
22. Instrument No. CE715152 – Transfer of Charge from RREF II BHB IV Portofino, LLC to 2502461 Ontario Ltd. registered on May 30, 2016.
23. Instrument No. CE715154 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
24. Instrument No. CE715155 – Postponement from Andreolli Investments Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
25. Instrument No. CE715156 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
26. Instrument No. CE715157 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016 (save and except PIN's 01872-0161, 01872-0162, 01872-0163, 01872-0164 and 01872-0166).
27. Instrument No. CE715158 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
28. Instrument No. CE715159 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Limited registered on May 30, 2016.
29. Instrument No. CE715282 – Transfer of Charge from 2502461 Ontario Ltd. to Windsor Family Credit Union Limited registered on May 31, 2016.
30. Instrument No. CE715562 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of Windsor Family Credit Union Limited registered on June 1, 2016 (PIN's 01872-0161, 01872-0162, 01872-0163, 01872-0164 and 01872-0166).

**Unsold Parking Units (See Schedule "A" for individual unit descriptions)**

1. Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.
2. Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.
3. Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
4. Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
5. Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
6. Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
7. Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
8. Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.
9. Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.
10. Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.
11. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
12. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
13. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
14. Instrument No. CE588098 – Condo Lien/98 in the amount of \$23,497 registered by Essex Standard Condominium Corporation No. 122 on October 29, 2013.
15. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
16. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.

17.	Instrument No. CE664524 – Transfer of Charge from Bank of Montreal to RREF II BHB IV Portofino, LLC registered on June 29, 2015.
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25.	Instrument No. CE715282 – Transfer of Charge from 2502461 Ontario Ltd. to Windsor Family Credit Union Limited registered on May 31, 2016.
<b>Unsold Storage Units (See Schedule “A” for individual unit descriptions)</b>	
1.	Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.
2.	Instrument No. CE185421 – Charge in the principal amount of \$4,200,000 from Portofino Corporation to Lombard General Insurance Company of Canada, registered on November 29, 2005.
3.	Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.
4.	Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
5.	Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.
6.	Instrument No. CE500568 – Charge in the principal amount of \$1,540,000 from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.
7.	Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.



8. Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.
9. Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.
10. Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.
11. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
12. Instrument No. CE587801 – Construction lien in the amount of \$3,000,000 registered by Dante J. Capaldi and 1287678 Ontario Inc. on October 25, 2013.
13. Instrument No. CE587802 – Construction lien in the amount of \$875,000 registered by Andreolli Investments Inc. and Wilma Capaldi on October 25, 2013.
14. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
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20. Instrument No. CE715156 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
21. Instrument No. CE715158 – Postponement from Dante J. Capaldi and 1287678 Ontario Inc. in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
22. Instrument No. CE715159 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of 2502461 Ontario Ltd. registered on May 30, 2016.
23. Instrument No. CE715282 – Transfer of Charge from 2502461 Ontario Ltd. to Windsor Family Credit Union Limited registered on May 31, 2016.
24. Instrument No. CE715562 – Postponement from Andreolli Investments Inc. and Wilma Capaldi in favour of Windsor Family Credit Union Limited registered on June 1, 2016

2502461 ONTARIO LTD.

Applicant

and

PORTOFINO CORPORATION

Respondent

Court File No: CV-13-19866

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT WINDSOR

**ORDER**

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