

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

**MOTION RECORD
(RETURNABLE SEPTEMBER 19, 2017)**

August 22, 2017

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the court-appointed Receiver of
Portofino Corporation

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TAB "1"

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2502461 ONTARIO LTD.

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-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

**NOTICE OF MOTION
(returnable September 19, 2017)**

BDO CANADA LIMITED ("**BDO**"), in its capacity as court-appointed receiver (the "**Receiver**") of the assets, undertakings and properties of Portofino Corporation ("**Portofino**" or the "**Debtor**") pursuant to the Order of The Honourable Mr. Justice Thomas dated October 29, 2013 (the "**Appointment Order**") will make a motion to the Court on Tuesday, September 19, 2017 at 10:00 a.m. or as soon after that time as the motion can be heard, at the Courthouse, 245 Windsor Avenue, Windsor, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR an Order as follows:

- (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 Eighth Report of the Receiver dated August 22, 2017 and all appendices thereto (the "**Eighth Report**"), and directing that any further service of same be dispensed with such that this motion is properly returnable on September 19, 2017;

- (b) approving the Eighth Report and the activities and conduct of the Receiver described therein;
- (c) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to July 21, 2017 (the "**Statement of Receipts and Disbursements**");
- (d) approving the professional fees and disbursements of the Receiver and its legal counsel (the "**Professional Fees**");
- (e) authorizing the Receiver to enter into a settlement agreement (the "**Settlement Agreement**") with Dede Dalfidan c.o.b. Fidan Enterprise Contracting ("**Dalfidan**") whereby the Receiver would pay \$80,000 (the "**Settlement Amount**") in full and final settlement of the issues arising in the actions under Court File No. 07-CV-8478 and Court File No. 06-CV-8228 (collectively, the "**Dalfidan Action**") and approving the Settlement Agreement;
- (f) approving and authorizing the distribution of \$1,700,000 to Windsor Family Credit Union ("**WFCU**") from the funds on hand; and
- (g) such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Approval of the Eighth Report, the Receiver's Activities and the Statements of Receipts and Disbursements

1. The Receiver has carried out its duties and responsibilities in accordance with the terms of the Appointment Order;
2. The Receiver seeks approval of the Eighth Report and the Receiver's activities detailed therein;
3. The particulars of the receipts and disbursements reflected in the Statement of Receipts and Disbursements are detailed in the Eighth Report;

Approval of Settlement of Dalfidan Action

4. It is the Receiver's opinion that the Settlement Amount is reasonable and is in the best interests of the creditors given the time, expense and uncertainty involved in the litigation process;

Approval of Professional Fees

1. Pursuant to paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver were granted a first charge on the Property, as defined in the Appointment Order, as security for the Professional Fees, both before and after the making of the Appointment Order;
2. Pursuant to paragraph 20 of the Appointment Order, the accounts of the Receiver and its legal counsel must be passed from time to time by a judge of the Ontario Superior Court of Justice;
3. The Receiver and its legal counsel have maintained detailed records of the Professional Fees;
4. It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work performed by the Receiver and its legal counsel in connection with these receivership proceedings;

Interim Distribution to WFCU

5. The Receiver has received an Opinion from its independent legal counsel, Miller Thomson LLP, that, subject to the customary assumptions and qualifications, the security granted by the Debtor to Bank of Montreal, which security has been assigned to WFCU, over the assets realized upon by the Receiver to date is valid and enforceable and in priority to all other registered interests.

Other

1. Appointment Order;
2. Section 101 of the CJA;
3. Section 243 of the BIA;

4. Rules 3, 4, 6, 11 and 13 of the *Bankruptcy and Insolvency General Rules*;
5. Rules 1.04, 1.05, 3.02(1), 16 and 37 of the *Ontario Rules of Civil Procedure*; and
6. such other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the Eighth Report;
2. the fees Affidavit of Stephen N. Cherniak sworn August 18, 2017 and the exhibits attached thereto;
3. the fees Affidavit of Tony Van Klink sworn August 18, 2017 and the exhibits attached thereto;
4. all other pleadings and materials previously filed in these proceedings; and
5. such further and other evidence as counsel may advise and this Honourable Court may permit.

August 22, 2017

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**NOTICE OF MOTION
(RETURNABLE SEPTEMBER 19, 2017)**

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Lawyers for BDO Canada Limited, Court-Appointed
Receiver of Portofino Corporation

TAB "2"

Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2502461 ONTARIO LTD.

Applicant

- and -

PORTOFINO CORPORATION

Respondent

**EIGHTH REPORT TO THE COURT SUBMITTED BY BDO CANADA LIMITED,
AS RECEIVER OF PORTOFINO CORPORATION**

August 22, 2017

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Appendices

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- Appendix B** - Omnibus Approval and Vesting Order dated May 2, 2014
- Appendix C** - Order dated July 26, 2016
- Appendix D** - Seventh Report of the Receiver dated February 7, 2017
- Appendix E** - Order dated February 28, 2017
- Appendix F** - Letter from Receiver to creditors dated March 8, 2017 re: assignment of Portofino legal actions
- Appendix G** - Miller Thomson LLP letter to creditors dated April 12, 2017
- Appendix H** - Minutes of Settlement dated June 29, 2017
- Appendix I** - Statement of Receipts and Disbursements
- Appendix J** - Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn August 18, 2017
- Appendix K** - Fee affidavit of Tony Van Klink for the interim accounts of Miller Thomson LLP sworn August 18, 2017
- Appendix L** - Legal Opinion of Miller Thomson LLP dated July 11, 2016
- Appendix M** - Legal Opinion of Miller Thomson LLP dated November 7, 2016
- Appendix N** - Legal Opinion of Miller Thomson LLP dated August 17, 2017

1. Introduction and Background

1.1 Introduction

- 1.1.1 This report is submitted by BDO Canada Limited, in its capacity as Receiver ("**BDO**" or the "**Receiver**") of the assets, undertakings and properties of Portofino Corporation ("**Portofino**" or the "**Company**") acquired for or used in relation to a business carried on by Portofino, including all proceeds thereof (the "**Property**").
- 1.1.2 On application of Bank of Montreal ("**BMO**"), BDO was appointed as receiver by the Order of Mr. Justice Thomas dated October 29, 2013 (the "**Appointment Order**"). A copy of the Appointment Order is attached as **Appendix A** to this report.

1.2 Background

- 1.2.1 At all material times, Portofino was engaged in the development of a 123 unit luxury residential condominium project known as "Portofino" (the "**Portofino Condominium**" or the "**Project**"), located at 1225 Riverside Drive West in the City of Windsor, Ontario. Dr. Dante Capaldi ("**Capaldi**") is the principal of Portofino.
- 1.2.2 Construction of the Portofino Condominium was completed in 2007, but not all individual units were completed. Essex Standard Condominium Corporation No. 122 ("**ECC 122**") was registered and the closing of sales of units commenced in July, 2007.
- 1.2.3 At the time of the appointment of the Receiver, Portofino owned:
- (a) fifty-two (52) condominium units, including forty-three (43) fully finished units and nine (9) unfinished units (the "**Unsold Condominium Units**");
 - (b) thirty-eight (38) parking units, including four (4) surface-level covered parking units and thirty-four (34) surface-level uncovered parking units (the "**Unsold Parking Units**"); and
 - (c) two (2) storage units (the "**Unsold Storage Units**")
- (collectively, the "**Unsold Units**").

- 1.2.4 Since 2005, there has been ongoing litigation commenced by Remo Valente Real Estate (1990) Limited ("**Valente Real Estate**"), as plaintiff, against Portofino, among others, in Court Action No. 05-CV-5864CM (the "**Valente Court Action**").
- 1.2.5 Since its appointment on October 29, 2013, the Receiver has undertaken various activities, including, without limitation, the sale of 41 Unsold Condominium Units and the defence of the Valente Court Action. To date, eight reports, including the within report, have been filed by the Receiver in these proceedings wherein these activities, transactions and litigation are described in greater detail.
- 1.2.6 As part of its Third Report to the Court, the Receiver sought prospective approval for future sales of the Unsold Units and the vesting of Portofino's right, title and interest in and to the applicable Unsold Unit, subject to certain conditions, in the applicable Purchaser.
- 1.2.7 By Order dated May 2, 2014 (the "**Omnibus Approval and Vesting Order**"), Mr. Justice Campbell prospectively approved the sales transactions in respect of the Unsold Units and vested all of Portofino's right, title and interest in and to the applicable Unsold Unit, subject to certain terms and conditions, in the Purchaser. A copy of the Omnibus Approval and Vesting Order is attached as **Appendix B**.
- 1.2.8 In June 2015, BMO sold to RREF II BHB IV PORTOFINO LLC ("**RREF**") its loans with Portofino and the security held for those loans, including the mortgage held by BMO over the Project (the "**BMO Mortgage**").
- 1.2.9 In May 2016, RREF, in turn, sold those loans and security, including the BMO Mortgage, to 2502461 Ontario Ltd. ("**250 Ontario**"). 250 Ontario subsequently assigned those loans and security to Windsor Family Credit Union ("**WFCU**") by way of security for amounts owing by 250 Ontario to WFCU.
- 1.2.10 By order dated July 26, 2016 (the "**July 26, 2016 Order**") Mr. Justice Campbell, among other things, approved certain amendments to the Omnibus Approval and Vesting Order. A copy of the July 26, 2016 Order is attached as **Appendix C**.
- 1.2.11 The July 26, 2016 Order also approved the interim distribution of \$4.0 million to WFCU from the net receipts from the sale of units and collection of rents. On July 26, 2016 the Receiver paid \$4.0 million to WFCU.

- 1.2.12 By order dated November 29, 2016 (the "**November 29, 2016 Order**") Mr. Justice Bondy, among other things, approved the further interim distribution of \$2.4 million to WFCU. On November 30, 2016 the Receiver paid \$2.4 million to WFCU.
- 1.2.13 By order dated February 28, 2017 (the "**February 28, 2017 Order**") Mr. Justice Monroe, among other things, authorized the Receiver to take no further steps with respect to certain litigation, as set out in the Receiver's Seventh Report to Court dated February 7, 2017 (the "**Seventh Report**"), but make the actions available to any creditor of Portofino to pursue at their own risk and expense. The Seventh Report (without appendices) is attached as **Appendix D**. A copy of the February 28, 2017 Order is attached as **Appendix E**.
- 1.2.14 The Receiver is presently holding net receipts of approximately \$1,930,000 from the sale of units and the collection of rents. The Receiver wishes to make a further interim distribution of \$1,700,000 from those funds.

2. Terms of Reference

- 2.1 In preparing this Eighth Report, the Receiver has relied upon unaudited and draft, internal financial information obtained from Portofino's books and records and discussions with management and staff (the "**Information**"). The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information and expresses no opinion, or other form of assurance, in respect of the Information.

3. Purpose of the Receiver's Eighth Report

- 3.1 This constitutes the Receiver's Eighth Report to the Court (the "**Eighth Report**") in this matter and is filed:
- (a) To provide the Court with information on:
 - (i) the Receiver's activities since the date of the Seventh Report;
 - (ii) the completion of the Valente Court Action;
 - (iii) the status of the various litigation that was the subject of the February 28, 2017 Order; and
 - (iv) the status of litigation between Dede Dalfidan carrying on business as Fidan Enterprise Contracting ("**Dalfidan**") as plaintiff, and Portofino and another party, as defendants, in Court File No. 07-CV-8478 and Court File No. 06-CV-8228 (collectively, the "**Dalfidan Action**").
 - (b) In support of an order of the Court:
 - (i) Approving the Eighth Report and the activities and conduct of the Receiver described herein;
 - (ii) Approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to July 21, 2017 (the "**Statement of Receipts and Disbursements**");
 - (iii) Authorizing the Receiver to enter into a settlement agreement with Dalfidan whereby the Receiver would pay \$80,000 in full and final settlement of the Dalfidan Action;
 - (iv) Approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**");

- (v) Approving the professional fees and disbursements of Miller Thomson LLP ("MT"), counsel to the Receiver ("MT Fees" and collectively with the BDO Fees, the "**Professional Fees**"); and
- (vi) Approving and authorizing the distribution of \$1,700,000 to WFCU from the funds on hand.

4. Receiver's Activities

- 4.1 In its Seventh Report, the Receiver reported to the Court on its activities through February 7, 2017.
- 4.2 In this, the Eighth Report, the Receiver reports on its activities since the date of the Seventh Report.

Sale of the Unsold Units

- 4.3 The Fourth Report provided a detailed report of the Receiver's sale process for the Unsold Units and the results achieved to April 15, 2016.
- 4.4 Subsequent reports have provided updates on further sales of the Unsold Units.
- 4.5 Since the Seventh Report, the Receiver has completed the sales of units 1301, 204 and 1603, and entered into a firm Agreement of Purchase and Sale for unit 1502 that is scheduled to close on October 3, 2017. Unit 1602 (unfinished) continues to be listed on the Multiple Listing Service ("MLS").
- 4.6 To date, the Receiver has sold 42 of the Unsold Condominium Units, including two unfinished units.
- 4.7 The Receiver has sold six (6) of the Unsold Parking Units, consisting of four surface level garages and two surface level parking spaces.
- 4.8 Of the 52 Unsold Condominium Units owned by Portofino at the time of the appointment of the Receiver, 10 units remain unsold, 3 of which are fully finished and 7 are unfinished. In addition, 32 parking units and two storage units remain unsold. A summary of the sales completed to date of the Unsold Condominium Units and the remaining Unsold Condominium Units is provided on the following page:

**Condominium units sold by
Receiver**

Unit No.		Size (Sq. ft.)	Sale date
1108	Finished	1,151	05-May-14
704	Finished	1,282	30-Jun-14
904	Finished	1,602	31-Oct-14
804	Finished	1,282	04-Dec-14
1102	Finished	1,547	09-Jan-15
1104	Finished	1,602	12-Feb-15
803	Finished	1,217	29-May-15
1404	Finished	2,233	30-Jun-15
701	Finished	1,150	24-Jul-15
402	Finished	1,062	30-Jul-15
1105	Finished	1,547	31-Jul-15
1002	Finished	1,547	14-Aug-15
508	Finished	1,150	03-Sep-15
805	Finished	1,282	23-Sep-15
203	Finished	1,062	23-Oct-15
1303	Finished	2,450	16-Nov-15
901	Finished	1,593	20-Nov-15
903	Finished	1,602	20-Nov-15
1403	Finished	2,450	01-Dec-15
603	Finished	1,217	03-Dec-15
906	Finished	1,593	11-Dec-15
1503	Unfinished	2,450	25-Jan-16
1008	Finished	1,151	19-Feb-16
401	Finished	1,150	08-Mar-16
1001	Finished	1,593	24-Mar-16
708	Finished	1,150	16-May-16
1101	Finished	1,593	05-Jul-16
1202	Unfinished	2,450	13-Jul-16
103	Finished	1,282	15-Jul-16
304	Finished	1,282	02-Aug-16
601	Finished	1,150	05-Aug-16
105	Finished	1,062	30-Aug-16
1501	Finished	2,233	20-Sep-16
104	Finished	1,217	03-Oct-16
408	Finished	1,150	03-Oct-16
309	Finished	1,151	02-Nov-16
806	Finished	1,217	06-Jan-17
1401	Finished	2,233	17-Feb-17
1301	Finished	2,233	31-Mar-17
204	Finished	1,150	16-Jun-17
1603	Finished	2,450	22-Jun-17
1502	Finished	2,450	03-Oct-17
		<u>65,418</u>	

Remaining units

Unit No.		Size (Sq. ft.)
101	Unfinished	2,036
102	Finished	2,081
106	Finished	1,150
1201	Unfinished	2,233
1302	Unfinished	2,450
1402	Unfinished	2,450
1505	Unfinished	1,718
1601	Unfinished	2,233
1602	Unfinished	2,450
1605	Finished	1,718

20,519

Tarion Warranty Corporation

- 4.9 The Receiver's Third Report to the Court, and the Receivers' Fourth Report to the Court (the "**Fourth Report**") reported on Portofino's status with Tarion Warranty Corporation ("**Tarion**"), which administers the Ontario New Home Warranties Plan Act. The Receiver has continued to pay premiums to Northridge General Insurance Corporation ("**Northridge**") on a bond, in the amount of \$640,000, posted as security for Tarion.
- 4.10 As noted in the Fourth Report, Essex Standard Condominium Corporation No. 122 ("**ECC 122**") engaged an engineer to conduct the outstanding Performance Audit required by Tarion. Mr. Tom Park of OHE Consultants ("**OHE**") attended at Portofino Condominium in February 2016, and provided his written Performance Audit Tracking Summary Report (the "**PATS Report**") on August 5, 2016.
- 4.11 On November 1, 2016, the President of ECC 122 provided Tarion with written comments, and an action plan, regarding the relatively small number of items that OHE had noted as still incomplete (the "**November 1, 2016 Tarion Letter**").
- 4.12 In April 2017, a representative of Tarion attended at a meeting of the Board of Directors of ECC 122, and subsequently viewed Portofino Condominium, including the items noted in the November 1, 2016 Tarion Letter.
- 4.13 On May 17, 2017, the Board of Directors of ECC 122 passed a resolution confirming that all items noted in the original, June 16, 2008 Performance Audit and the PATS Report are now resolved, with the exception of those noted in the November 1, 2016 Tarion Letter.
- 4.14 In view of the small number of remaining deficiencies, and the sale of two of the unfinished units, the Receiver expects the amount of bond required by Tarion to be significantly reduced. The Receiver has not yet been advised of the revised bond amount.

5. Litigation

Valente Court Action

- 5.1 The Seventh Report outlined the settlement of the Valente Court Action and the funding of the settlement amount of \$630,000.
- 5.2 As set out in the Seventh Report, the plaintiff drew upon the letter of credit posted as security in the action to satisfy the settlement amount of \$630,000.00. The letter of credit was thereafter delivered up to the Receiver by the Accountant of the Superior Court of Justice. The letter of credit has since been cancelled. This settlement has been completed and the Valente Court Action is now concluded.

Actions subject to the February 28, 2017 Order

- 5.3 Section 6 of the Seventh Report outlined the recommendation of the Receiver's counsel with respect to numerous other legal actions, including several that were approaching administrative dismissal due to the length of time that had elapsed since the commencement of the litigation.
- 5.4 The February 28, 2017 Order, among other things, authorized the Receiver to take no further steps with respect to certain litigation, as set out in the Seventh Report, but make the actions available to any creditor of Portofino to pursue at their own risk and expense.
- 5.5 On March 8, 2017 the Receiver notified all known creditors, including parties to litigation with Portofino, either by electronic mail or registered mail, of the February 28, 2017 Order and the mechanism for creditors to take an assignment of the actions (the "**Actions**"). A copy of the March 8, 2017 letter from the Receiver, including the creditor list, is attached as **Appendix F**.
- 5.6 The Receiver and its legal counsel received various enquiries from creditors regarding the process to take an assignment of the Actions. However, no creditors indicated their intention to take an assignment of the Actions.
- 5.7 By letter to all creditors dated April 12, 2017, a copy of which is attached as

Appendix G, the Receiver's legal counsel advised all known creditors that the Actions were being abandoned by the Trustee.

- 5.8 On April 12, 2017 the Receiver's legal counsel advised the Court that the Actions were being abandoned and withdrew motions for the scheduling of status hearings in certain of the Actions.

The Dalfidan Action

- 5.9 As set out in the Fourth Report, Civa Stucco Supply Ltd, also known as Civa Stucco Supply Ltd. & Moulding ("Civa") was the stucco contractor for the Project. Dalfidan was a subcontractor to Civa. Dalfidan seeks payment of approximately \$230,000 alleged to be owing under its subcontract with Civa. Dalfidan also seeks payment from Portofino for additional services and materials in the amount of \$16,945.40.
- 5.10 Dalfidan registered a construction lien against the Portofino condominium. Portofino vacated the registration of Dalfidan's construction lien by posting security in the amount of \$290,465.07 by way of a lien bond issued by Lombard General Insurance Company. Thereafter, an order was issued limiting the extent of the security posted by Portofino to \$150,000. A bond in this amount was issued by Northridge, on which the Receiver has continued to pay the premiums.
- 5.11 The Dalfidan Action was scheduled to proceed to trial in September, 2014 but has not proceeded because of the receivership.
- 5.12 Settlement discussions have resulted in a settlement being reached, subject to Court approval. Minutes of Settlement have been executed. A copy of the executed Minutes of Settlement is attached as **Appendix H**.
- 5.13 Under the terms of the Minutes of Settlement, Portofino is to pay the plaintiff Dalfidan \$80,000 on or before 30 days following the approval of the settlement by the Court.
- 5.14 In the Receiver's view, the settlement of the Dalfidan Action is reasonable and in the best interests of the creditors given the time, expense and uncertainty involved in the litigation process.

6. Statement of Receipts and Disbursements of the Receiver

6.1 The Receiver maintains an account at BMO in London, Ontario. Attached as **Appendix I** is the Statement of Receipts and Disbursements. Details of the Receiver's receipts and disbursements are as follows:

6.2 Receipts

- a) *Sale of units and surface parking (\$11,979,284.61)* — The Receiver received net proceeds of \$11,979,284.61 from the sale of the Unsold Units. Proceeds received are net of amounts paid on closing for condominium fee arrears, real estate commissions inclusive of HST, and HST collected on the sale of Unsold Parking Units and unfinished Unsold Condominium Units.
- b) *Condominium rent collected (\$1,950,387.60)* — The Receiver collected \$1,950,387.60 from the rental of the Unsold Condominium Units.
- c) *Lawsuit (\$119,789.96)* — Portofino was involved in litigation arising from the original construction of the Project. The Receiver collected \$119,789.96, being the balance of holdback funds held in the lawyer's trust account, after distribution to sub-contractors in settlement of the litigation.
- d) *Reimbursement of Letter of Credit Costs (\$64,408.22)* — As required by the Orders of the Court of Appeal and Justice Quinn, Valente Real Estate reimbursed the costs of maintaining the letter of credit in the Valente Court Action.
- e) *Parking rent collected (\$30,814.69)* — The Receiver collected \$30,814.69 from the rental of Unsold Parking Units.
- f) *Interest (\$20,155.82)* — The Receiver received \$20,155.82 in interest on trust funds invested by the Receiver in Guaranteed Investment Certificates ("GIC") that matured or were redeemed. Interest is recognized as it is received.
- g) *HST refund (\$7,971.76)* — Upon filing the outstanding corporate income tax returns, the Receiver received \$7,971.76 in HST refunds accruing from prior to the appointment of the Receiver.

6.3 Disbursements

- a) *Property taxes (\$3,004,706.56)* — The Receiver has paid property taxes to the City of Windsor of \$3,004,706.56. This amount represents property tax arrears, interest and penalties to August 2015 and current installment payments for the balance of 2015, 2016, and 2017 year to date.
- b) *Receiver's fees (\$836,448.52)* – BDO's accounts for the period July 19, 2013 to January 13, 2017 in the amount of \$773,249.64, excluding HST, were previously approved by the Court and paid. The Receiver paid BDO's interim accounts for the period January 14, 2017 to May 17, 2017 in the amount of \$63,199.28 and is seeking approval of the Court for these invoices.
- c) *Condominium common fees (\$726,121.44)* — The Receiver has paid \$726,121.44 to ECC 122 for common fees on the Unsold Units, including arrears, interest and current monthly payments.
- d) *Legal fees (\$364,642.44)* – MT's accounts for the period September 9, 2013 to December 31, 2016 in the amount of \$328,201.31, excluding HST, were previously approved by the Court and paid. The Receiver paid MT's interim accounts for the period January 1, 2017 to May 31, 2017 in the amount of \$36,441.13, and is seeking approval of the Court of these invoices.
- e) *Repairs and Maintenance (\$218,068.95)* – The Receiver has paid \$218,068.95 in repairs and maintenance to the Unsold Units, replacement and enhanced landscaping to the west roof, replacement of the underground parking roof, and the installation of a rooftop air conditioning unit for unit 1202.
- f) *HST paid (\$202,727.91)* – The Receiver has paid \$202,727.91 in HST on its disbursements.
- g) *HST remitted (\$116,483.44)* – The Receiver is obliged to collect HST on the sale of the Unsold Parking Units and unfinished Unsold Condominium Units and has remitted \$116,483.44. This amount represents the HST collected, less any eligible input tax credits.
- h) *Legal fees – Sutts Strosberg (\$78,662.72)* – The Receiver engaged Sutts Strosberg LLP ("SS") to provide an initial review and chronology of the Valente

Court Action for the Receiver's counsel, and subsequently to continue the litigation on behalf of Portofino Corporation.

- i) *Property management fees (\$70,000.00)* — The Receiver has paid \$70,000.00 to Capaldi Holdings for property management of the Unsold Units.
- j) *Bond premiums (\$41,004.00)* — The Receiver paid \$41,004.00 to Northbridge General Insurance Corporation for the premiums on bonds posted as security for:
 - i) Tarion Warranty Corporation; and
 - ii) Portofino litigation with Dalfidan.
- k) *Advertising (\$40,346.72)* — The Receiver paid \$40,346.72 for advertising, signage, photography, web site maintenance, and the staging of condominium units listed for sale.
- l) *BMO Letter of credit fees (\$39,074.26)* — The Receiver paid \$39,074.26 to BMO for fees to maintain the \$2.0 million Letter of Credit in connection with the Valente Court Action.
- m) *Utilities (\$37,641.05)* — The Receiver paid \$37,641.05 for utilities on vacant Unsold Units and leased condominium units where utilities were paid by the Landlord.
- n) *Valente litigation – Costs Award (\$30,393.34)* — The Receiver paid \$30,393.34 in legal costs awarded to Valente Real Estate in the Valente Court Action.
- o) *Appraisal fees (\$15,014.50)* — The Receiver paid \$15,014.50 to Metrix Realty Group for an appraisal of the Unsold Condominium Units on an individual unit basis.
- p) *Insurance (\$7,372.00)* — The Receiver paid \$7,372.00 to Hub International for premiums on the Receiver's liability insurance policy.
- q) *Miscellaneous (\$4,640.00)* — The Receiver has paid \$4,640.00 in miscellaneous expenses.
- r) *Accounting fees (\$4,250.00)* — The Receiver has paid \$4,250.00 to Michael Greenaway Professional Corporation for the preparation of 2013 through 2016 financial statements and corporate income tax returns.

- s) *Commission on rentals (\$3,650.00)* — The Receiver paid \$3,650.00 to a party engaged by the property manager to assist in the leasing of vacant Unsold Units.

7. Fees and Disbursements of the Receiver and Counsel to the Receiver

- 7.1 Pursuant to Paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver shall be paid their reasonable Professional Fees in each case at their standard rates and charges. The Receiver and counsel to the Receiver have been granted a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person as security for payment of the Professional Fees.
- 7.2 Pursuant to paragraph 21 of the Appointment Order, the Receiver is at liberty, from time to time, to apply reasonable amounts, out of the monies in its hands, against the Professional Fees, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its Professional Fees when and as approved by the Court.
- 7.3 Attached as **Appendix J** is the fee affidavit of Stephen N. Cherniak sworn August 18, 2017 containing BDO's interim accounts as Receiver for the following periods:
- o January 14, 2017 to March 13, 2017
 - o March 14, 2017 to May 17, 2017
- 7.4 The Receiver's fees to date, exclusive of HST, are as follows:
- | | | |
|---------------------------------------|---|---------------|
| Fees paid and Court approved | - | \$ 773,249.64 |
| Fees paid, but not yet Court approved | - | 63,199.28 |
| Fees neither paid, nor Court approved | - | - |
| | | \$836,448.52 |
- 7.5 The Receiver submits that the hourly rates charged by the Receiver and its staff are commensurate with commercially reasonable rates for mid-market insolvency firms in the Southwestern Ontario region.
- 7.6 Attached as **Appendix K** is the fee affidavit of Tony Van Klink, sworn August 18, 2017, containing the interim accounts of MT for the period January 3, 2017 to July 26, 2017.
- 7.7 MT's fees to date, exclusive of HST, are as follows:

Fees paid and Court approved	-	\$ 328,201.31
Fees paid, but not yet Court approved	-	36,441.13
Fees neither paid, nor Court approved	-	<u>2,781.80</u>
		<u>\$367,424.24</u>

7.8 The fees of SS, to date, exclusive of HST, are as follows:

Fees paid and Court approved	-	\$73,662.72
Fees paid, but not yet Court approved	-	-
Fees neither paid, nor Court approved	-	<u>-</u>
		<u>\$73,662.72</u>

7.9 It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work done by the Receiver, MT and SS in connection with the receivership during the relevant periods. The Receiver recommends approval of the Professional Fees by the Court.

8. Distribution

- 8.1 The Receiver obtained an independent legal opinion of MT dated July 11, 2016 (the "**July 11th Opinion**") indicating that, subject to the customary assumptions and qualifications, the BMO Mortgage is valid and enforceable in accordance with its terms and has priority over all other registered charges. A copy of the independent legal opinion of MT was attached as Appendix G to the Receiver's Fifth Report to the Court and is attached hereto as **Appendix L**. MT confirmed that the opinions expressed in the July 11th Opinion apply to the Net Receipts from sales of Unsold Units sold by the Receiver from July 11, 2016 to November 2, 2016. A copy of this letter was attached as Appendix H to the Receiver's Sixth Report to the Court and is attached hereto as **Appendix M**. MT has confirmed that the opinions expressed in the July 11th Opinion apply to the Net Receipts from sales of Unsold Units sold by the Receiver from November 3, 2016 to August 14, 2017. A copy of this letter is attached hereto as **Appendix N**.
- 8.2 Based on the materials filed by BMO on the receivership application, as of September, 2013 BMO was owed approximately \$11.8 million by Portofino for principal and interest, including a \$2 million letter of credit posted by BMO on behalf of Portofino in the Valente Court Action.
- 8.3 As set out above, the BMO Mortgage was assigned to RREF, 250 Ontario and, most recently, WFCU. 250 Ontario has provided the Receiver with an irrevocable Direction directing the Receiver to make payment to WFCU of all amounts otherwise payable to 250 Ontario under the BMO Mortgage.
- 8.4 The July 26, 2016 Order authorized the Receiver to distribute \$4,000,000 to WFCU. On July 26, 2016 the Receiver paid \$4.0 million to WFCU.
- 8.5 The November 29, 2016 Order authorized the Receiver to distribute \$2,400,000 to WFCU. On November 30, 2016 the Receiver paid \$2.4 million to WFCU.
- 8.6 At the Receiver's request, 250 Ontario provided the Receiver with a loan statement at August 8, 2017. The Receiver conducted a preliminary review of the statement. Although the Receiver will require additional information from 250 Ontario to complete its review, the Receiver is satisfied that 250 Ontario's indebtedness exceeds the

distributions to date, plus the proposed distribution of \$1,700,000.

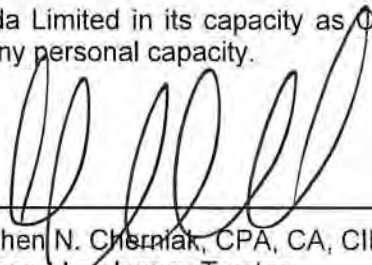
- 8.7 The Receiver has sufficient funds on hand to distribute a further \$1,700,000.
- 8.8 The Receiver seeks an Order authorizing it to distribute \$1,700,000 to WFCU from the funds on hand.

9. Recommendations

- 9.1. The Receiver recommends and respectfully requests that the Court grant an order as follows:
- (a) Approving the Eighth Report and the activities and conduct of the Receiver described herein;
 - (b) Approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to July 21, 2017;
 - (c) Authorizing the Receiver to enter into a settlement agreement with Dalfidan whereby the Receiver would pay \$80,000 in full and final settlement of the Dalfidan Action;
 - (d) Approving the Professional Fees; and
 - (e) Approving and authorizing the distribution of \$1,700,000 to WFCU from the funds on hand.

All of which is Respectfully Submitted this 22nd day of August, 2017.

BDO Canada Limited in its capacity as Court Appointed Receiver of Portofino Corporation and not in any personal capacity.



Per: Stephen N. Cherniak, CPA, CA, CIRP
Licensed Insolvency Trustee
Senior Vice President

TAB "A"

Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**THE HONOURABLE
JUSTICE B. THOMAS**

) **TUESDAY, THE 29th**
)
) **DAY OF OCTOBER, 2013**

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

ORDER

THIS APPLICATION made by the Applicant, Bank of Montreal, ("BMO") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing BDO Canada Limited as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Portofino Corporation (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 245 Windsor Avenue, Windsor, Ontario.

ON READING the affidavit of Greg Fedoryn sworn September 6, 2013 and the Exhibits thereto and on hearing the submissions of counsel for BMO, Essex Condominium Corporation 122 ("ECC 122"), the Estate of Patrick D'Amora, Portofino Corporation and Dante Capaldi, Remo Valente Real Estate (1990) Limited and Sutts Strosberg LLP, no one appearing for Lombard General Insurance Company of Canada (now Northbridge General Insurance

Corporation) or Royal Bank of Canada, although duly served and on reading the consent of BDO Canada Limited to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, BDO Canada Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary

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course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor, and to complete any minor repairs or construction as may be required to release and/or reduce security held for the Debtor's obligations under the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31, as amended:

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby

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- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

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conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate; In marketing the Property, the Receiver will consult with ECC 122; however the advice and opinions of ECC 122 will not be binding upon the Receiver.
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

REPORT TO COURT AND STAKEHOLDERS

7. THIS COURT ORDERS that the Receiver will deliver its first report to the Court on notice to BMO, Dante Capaldi, the Estate of Patrick D'Amore, Osvaldo Rizzo, Northbridge General Insurance Corporation, Remo Valente Real Estate (1990) Limited, Sutta Strosberg LLP;

Royal Bank of Canada, Essex Condominium Corporation no.122 and the City of Windsor (collectively, the "Stakeholders") within 45 days following its appointment.

8. THIS COURT ORDERS that the Receiver will report to the Stakeholders on a quarterly basis, prorated for 2013, such that the first such report is not required until the end of the first quarter of 2014.

NO PROCEEDINGS AGAINST THE RECEIVER

9. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

10. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court. Leave of the Court is hereby granted to continue the Proceeding known as *Remo Valente Real Estate (1990) Limited v. Portofino Riverside Tower Inc., Westview Park Gardens (2004) Inc., Portofino Corporation and Dante Canaldi*, Court file 05-CV-5864CM.

NO EXERCISE OF RIGHTS OR REMEDIES

11. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

12. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, Internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or

relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.5(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.5(2) of the BIA.

20. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Ontario Superior Court of Justice.

21. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

25. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

GENERAL

26. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

29. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. THIS COURT ORDERS that the applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

- 13 -

J. S. P. Jones

ENTERED AT WINDOW
In Book No. 24
re Document No. 7485
on NOV 21 1962
by <i>[Signature]</i>

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

32. THIS IS TO CERTIFY that BDO Canada Limited, the receiver (the "Receiver") of the assets, undertakings and properties of Portofino Corporation (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the _____ of _____, 2013 (the "Order") made in an action having Court file number _____ has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

33. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of Montreal from time to time.

34. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

35. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

36. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

37. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

38. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2013.

BDO Canada Limited, solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

Bank of Montreal
Applicant

-and- Paroqina Corporation
Respondent

Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
WINDSOR**

ORDER

ROBINS APPLEBY & TAUB LLP
Barristers & Solicitors
2600 - 120 Adelaide Street West
Toronto ON M5H 1T1

David A. Taub
LSUC No. 33518M
Tel: (416) 360-3354
Fax: (416) 868-0306

Lawyers for the Applicant, Bank of Montreal

TAB "B"

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.)
JUSTICE CAMPBELL)
FRIDAY, THE 2ND
DAY OF MAY, 2014

BETWEEN:

BANK OF MONTREAL
Applicant

- and -

PORTOFINO CORPORATION
Respondent

OMNIBUS APPROVAL AND VESTING ORDER

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

- (a) prospectively authorizing the Receiver to accept an offer or offers to purchase any or all of the unsold units (the "**Unsold Units**") provided that the sale price for each Unsold Unit to which such offer(s) relates is acceptable to the Receiver having regard to the appraised value for such Unsold Unit(s) and prior sales of similar units and all other terms of the offer(s) are, in the Receiver's sole opinion, in the best interests of the stakeholders of Portofino;
- (b) prospectively authorizing the execution of an agreement of purchase and sale in respect of each Unsold Unit by the Receiver, as vendor, and the purchaser of each Unsold Unit (each purchaser hereinafter referred to as the "**Purchaser**") substantially in the form of the Form of Unsold Unit Sale Agreement attached as Schedule "A" to the Sale Agreement Order, together with any amendments or

- 2 -

modifications thereto deemed necessary by the Receiver (each agreement hereinafter referred to as an **"Unsold Unit Sale Agreement"**);

- (c) prospectively approving the sale transactions (each such transaction, a **"Transaction"** and together, the **"Transactions"**) in respect of the Unsold Units, more particularly described on **Schedule "A"** to this Order; and
- (d) providing that, upon the delivery by the Receiver to a Purchaser of a Receiver's Certificate substantially in the form attached as Schedule "B" to this Order (the **"Receiver's Certificate"**), all of Portofino's right, title and interest in and to the Unsold Unit(s) described in each applicable Unsold Unit Sale Agreement (the **"Purchased Assets"**) will vest in and to the applicable Purchaser, free and clear of any and all claims and encumbrances including those listed on Schedule "C" and in paragraph 3 of this Order, save and except for those encumbrances listed on Schedule "D" of this Order,

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

ON READING the Third Report of the Receiver dated April 21, 2014 and all appendices thereto (the **"Third Report"**), and the Confidential Supplement to the Third Report and all appendices thereto (the **"Confidential Supplement"**) and on hearing the submissions of counsel for the Receiver, and such other persons as may be present and on noting that no other persons appeared, although properly served as appears from the affidavit of Susan Jarrell sworn April 22, 2014, filed:

1. THIS COURT ORDERS that the Receiver is hereby prospectively authorized to accept an offer or offers to purchase any or all of the Unsold Units provided that the sale price for each Unsold Unit to which such offer(s) relates is acceptable to the Receiver having regard to the appraised value for such Unsold Unit(s) and prior sales of similar units and all other terms of the offer(s) are, in the Receiver's sole opinion, in the best interests of the stakeholders of Portofino.
2. THIS COURT ORDERS AND DECLARES that each Transaction is hereby prospectively approved, and the execution of each applicable Unsold Unit Sale Agreement by the Receiver is hereby authorized and approved, with any amendments or modifications thereto deemed necessary by the Receiver. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for

the completion of any Transaction and for the conveyance of the Purchased Assets to each applicable Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's Certificate to the Purchaser substantially in the form attached as **Schedule "B"** hereto, all of Portofino's right, title and interest in and to the Purchased Assets described in the applicable Unsold Unit Sale Agreement and listed on Exhibit "A" of the applicable Receiver's Certificate in respect of such Unsold Unit Sale Agreement shall vest absolutely in and to the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Thomas dated October 29, 2013; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (iii) any Claims filed in respect of or affecting the Purchased Assets, which Claims are filed on or after the date of the granting of this Order, including without limitation, Claims in respect of the *Construction Lien Act* (Ontario); (iv) those Claims listed on **Schedule "C"** hereto in relation to the Purchased Assets (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"** in relation to the Purchased Assets) and, for greater certainty, this Court orders that upon delivery of the applicable Receiver's Certificate all of the Encumbrances affecting or relating to the Purchased Assets shall be expunged and discharged as against the Purchased Assets.

4. THIS COURT DIRECTS that the Land Registrar in respect of the Land Registry Office for the Land Titles Division of Essex (No. 12) (the "**Land Registry**") shall register a copy of this Order along with the applicable fully completed and executed Receiver's Certificate in respect of the Purchased Assets once the Land Registrar is in receipt of same.

5. THIS COURT ORDERS that upon the registration in the Land Registry of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act* (which will include a copy of this Order and the fully completed and executed Receiver's Certificate in respect of the Purchased Assets), the Land Registrar is hereby directed to enter the Purchaser named in the applicable Receiver's Certificate as the owner of the

Purchased Assets listed in Exhibit "A" to the Receiver's Certificate in fee simple, and is hereby directed to delete and expunge from title to the Purchased Assets all of the Claims listed in Schedule "C" hereto and in paragraph 3 of this Order.

6. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate in respect of an applicable Unsold Unit Sale Agreement, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of each Receiver's Certificate, forthwith after delivery thereof, and in any event no later than thirty (30) days after the date of the closing of the Transaction detailed in each applicable Unsold Unit Sale Agreement.

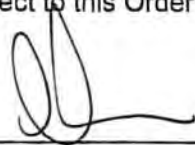
8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)* in respect of Portofino and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Portofino;

the vesting of the Purchased Assets in each applicable Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Portofino and shall not be void or voidable by creditors of Portofino, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act (Canada)*, the *Companies' Creditors Arrangement Act (Canada)*, or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. THIS COURT ORDERS AND DECLARES that each Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



Justice, Superior Court of Justice

ENTERED AT WINDSOR	
In Book No.	25
re Document No.	572
on	May 2
by	DF

Schedule "A" – Unsold Units

Legal Description

Description: 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 (LT) (LRO#12)

Unsold Condominium Units					
Unit	Level		PIN		
1	1		01872	-	0001
2	1		01872	-	0002
3	1		01872	-	0003
4	1		01872	-	0004
5	1		01872	-	0005
6	1		01872	-	0006
3	2		01872	-	0052
4	2		01872	-	0053
4	3		01872	-	0058
9	3		01872	-	0063
1	4		01872	-	0065
2	4		01872	-	0066
8	4		01872	-	0072
8	5		01872	-	0082
1	6		01872	-	0085
3	6		01872	-	0087
1	7		01872	-	0095
4	7		01872	-	0098

Unsold Condominium Units					
Unit	Level		PIN		
8	7		01872	-	0102
3	8		01872	-	0107
4	8		01872	-	0108
5	8		01872	-	0109
6	8		01872	-	0110
1	9		01872	-	0115
3	9		01872	-	0117
4	9		01872	-	0118
6	9		01872	-	0120
1	10		01872	-	0123
2	10		01872	-	0124
8	10		01872	-	0130
1	11		01872	-	0131
2	11		01872	-	0132
4	11		01872	-	0134
5	11		01872	-	0135
1	12		01872	-	0139
2	12		01872	-	0140
1	13		01872	-	0145
2	13		01872	-	0146
3	13		01872	-	0147
1	14		01872	-	0151
2	14		01872	-	0152
3	14		01872	-	0153

Unsold Condominium Units					
Unit	Level		PIN		
4	14		01872	-	0154
1	15		01872	-	0157
2	15		01872	-	0158
3	15		01872	-	0159
5	15		01872	-	0161
1	16		01872	-	0162
2	16		01872	-	0163
3	16		01872	-	0164
5	16		01872	-	0166

Unsold Parking Units					
Unit	Level		PIN		
7	1		01872	-	0007
8	1		01872	-	0008
12	1		01872	-	0012
13	1		01872	-	0013
16	1		01872	-	0016
17	1		01872	-	0017
18	1		01872	-	0018
19	1		01872	-	0019
20	1		01872	-	0020
21	1		01872	-	0021
22	1		01872	-	0022
23	1		01872	-	0023

Unsold Parking Units					
Unit	Level		PIN		
24	1		01872	-	0024
25	1		01872	-	0025
26	1		01872	-	0026
27	1		01872	-	0027
28	1		01872	-	0028
29	1		01872	-	0029
30	1		01872	-	0030
31	1		01872	-	0031
32	1		01872	-	0032
33	1		01872	-	0033
34	1		01872	-	0034
35	1		01872	-	0035
36	1		01872	-	0036
37	1		01872	-	0037
38	1		01872	-	0038
39	1		01872	-	0039
40	1		01872	-	0040
41	1		01872	-	0041
42	1		01872	-	0042
43	1		01872	-	0043
44	1		01872	-	0044
45	1		01872	-	0045
46	1		01872	-	0046
47	1		01872	-	0047

Unsold Parking Units					
Unit	Level		PIN		
48	1		01872	-	0048
49	1		01872	-	0049

Unsold Storage Units					
Unit	Level		PIN		
2	A		01872	-	0168
1	A		01872	-	0167

Schedule "B" – Form of Receiver's Certificate

Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

PORTOFINO CORPORATION

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Thomas of the Ontario Superior Court of Justice (the "**Court**") dated October 29, 2013, BDO Canada Limited ("**BDO**") was appointed as the receiver (the "**Receiver**") of all of the assets, undertakings and properties Portofino ("**Portofino**").

B. Pursuant to an Order of the Court dated May 2, 2014, the Court granted an omnibus approval and vesting order (the "**Omnibus Approval and Vesting Order**"), providing for among other things:

- (a) the Court's approval of this Transaction in respect of the Purchased Assets (as defined below) as described in the Sale Agreement (as defined below);
- (b) the Court's authorization of the Receiver entering into the Agreement of Purchase and Sale made as of _____ [DATE OF AGREEMENT] (the "**Sale Agreement**") between the Receiver and _____ [NAME OF PURCHASER] (the "**Purchaser**"); and
- (c) the vesting in and to the Purchaser all of Portofino's right, title and interest in and to the lands and premises legally described on **Exhibit "A"** to this Receiver's Certificate (the "**Purchased Assets**"), with such vesting to be effective in respect of the Purchased

Assets upon the delivery by the Receiver to the Purchaser of this certificate confirming (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or, to the extent that such conditions could be waived, have been waived by the Receiver and the Purchaser; and (iii) the transaction described in the Sale Agreement (the "Transaction") has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Omnibus Approval and Vesting Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on closing pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or, to the extent such conditions could be waived, have been waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver;
4. In accordance with the provisions of the Omnibus Approval and Vesting Order, upon delivery by the Receiver of this Receiver's Certificate to the Purchaser, the Transaction is approved and the Purchaser is vested with all of Portofino's right, title and interest in and to the Purchased Assets; and
5. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

BDO CANADA LIMITED solely in its capacity as Court-appointed receiver of Portofino Corporation and not in its personal capacity

Per: _____
Name:
Title:

Exhibit "A" to Form of Receiver's Certificate – Purchased Assets

**(INSERT LEGAL DESCRIPTION AND MUNICIPAL ADDRESS FOR EACH UNSOLD UNIT
COMPRISING THE PURCHASED ASSETS SUBJECT TO THE APPLICABLE UNSOLD UNIT
SALE AGREEMENT)**

BANK OF MONTREAL
Plaintiff

and

PORTOFINO CORPORATION
Defendant

Court File No: CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

RECEIVER'S CERTIFICATE

MILLER THOMSON LLP

One London Place
255 Queens Avenue, Suite 2010
London, ON Canada N6A 5R8

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Sherry A. Kettle, LSUC #53561B
Tel: 519.931.3534
Fax: 519.858.8511
Email: skettle@millerthomson.com

Lawyers for BDO Canada Limited, Court-Appointed
Receiver of Portofino Corporation

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

Description:	Essex Standard Condominium Plan No. 122 and its appurtenant interest. The description of the condominium property is: LT 1, South Side of Sandwich Street, Pl 392 & Pl Lot 73 Concession 1 Windsor; Pt 1 Pl 12R17829; S/T Ease as set out in Schedule "A" of Declaration CE278123, Windsor Ontario (LRO#12)
Unsold Condominium 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. 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.

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.
Unsold Storage 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.
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4.	Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.
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11. Instrument No. CE584311 – Construction lien in the amount of \$3,000,000 registered by Andreolli Investments Inc. on September 30, 2013.
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14. Instrument No. CE588864 – Certificate registered by Dante J. Capaldi and 1287678 Ontario Inc. on November 1, 2013.
15. Instrument No. CE588865 – Certificate registered by Andreolli Investments Inc. and Wilma Capaldi on November 1, 2013.

**Schedule "D" – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Unsold Units (Unsold Condominium Units, Unsold Parking Units and
Unsold Storage Units)**

(unaffected by the Omnibus Approval and Vesting Order)

- (i) Instrument No. CE98338 – Notice from the Corporation of the City of Windsor to Portofino Riverside Tower Inc.
- (ii) Instrument No. CE191717 – Notice from the Corporation of the City of Windsor to Portofino Corporation
- (iii) Instrument No. CE278123 – Declaration Condo
- (iv) Instrument No. ECP122 – Plan Condominium
- (v) Instrument No. CE279560 – Condo By-Law/98 (By-Law No. 1)
- (vi) Instrument No. CE279561 – Condo By-Law/98 (By-Law No. 2)
- (vii) Instrument No. CE279607 – Condo By-Law/98 (By-Law No. 3)
- (viii) Instrument No. CE279624 – Condo By-Law/98 (By-Law No. 4)
- (ix) Instrument No. CE279635 – Condo By-Law/98 (By-Law No. 5)
- (x) Instrument No. CE279643 – Condo By-Law/98 (By-Law No. 6)

BANK OF MONTREAL

and

PORTOFINO CORPORATION

Court File No: CV-13-19866

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Windsor

OMNIBUS APPROVAL AND VESTING ORDER

MILLER THOMSON LLP

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255 Queens Avenue, Suite 2010
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Lawyers for BDO Canada Limited, Court-Appointed
Receiver of Portofino Corporation

TAB "C"

Court File No.: CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE)
Suzanne Levesque)

TUESDAY, THE 26TH
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;

- 2 -

- (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

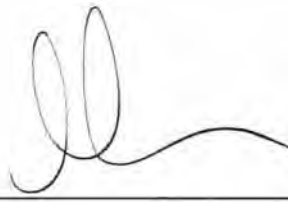
- 3 -

"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.



ENTERED AT WINDSOR	
In Book No.	27
re Document No.	9164
on	JUL 26 2016
by	JK

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

Description:	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)
Unsold Condominium Units (See Schedule "A" for individual unit descriptions)	
<ol style="list-style-type: none"> 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 	<p>Instrument No. CE185236 – Charge in the principal amount of \$30,000,000 from Portofino Corporation to Bank of Montreal, registered on November 28, 2005.</p> <p>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.</p> <p>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.</p> <p>Instrument No. CE380280 – Notice from Portofino Corporation to Bank of Montreal, registered on June 10, 2009.</p> <p>Instrument No. CE380282 – Postponement from Lombard General Insurance Company of Canada to Bank of Montreal, registered on June 10, 2009.</p> <p>Instrument No. CE459564 – Notice from Portofino Corporation to Bank of Montreal, registered on February 15, 2011.</p> <p>Instrument No. CE482047 – Charge in the principal amount of \$400,000 from Portofino Corporation to Sutts Strosberg LLP, registered on August 9, 2011.</p> <p>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.</p> <p>Instrument No. CE500569 – Notice Assignment of Rents from Portofino Corporation to Royal Bank of Canada, registered on December 20, 2011.</p> <p>Instrument No. CE508840 – Application Change Name from Lombard General Insurance Company of Canada to Northbridge General Insurance Corporation, registered on March 1, 2012.</p> <p>Instrument No. CE551002 – Charge in the principal amount of \$524,312 from Portofino Corporation to Sutts Strosberg LLP, registered on January 10, 2013.</p> <p>Instrument No. CE574028 – Notice from Portofino Corporation to Bank of Montreal, registered on July 22, 2013.</p> <p>Instrument No. CE584310 – Construction lien in the amount of \$875,000, registered by Dante J. Capaldi and 1287678 Ontario Inc. on September 30, 2013.</p>

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).

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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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Lawyers for BDO Canada Limited, Court-
Appointed Receiver of Portofino Corporation

TAB “D”

Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2502461 ONTARIO LTD.

Applicant

- and -

PORTOFINO CORPORATION

Respondent

**SEVENTH REPORT TO THE COURT SUBMITTED BY BDO CANADA LIMITED,
AS RECEIVER OF PORTOFINO CORPORATION**

February 7, 2017

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8. Fees and Disbursements of the Receiver and Counsel to the Receiver	17
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Appendices

- Appendix A** - Appointment Order dated October 29, 2013
- Appendix B** - Omnibus Approval and Vesting Order dated May 2, 2014
- Appendix C** - Order dated July 26, 2016
- Appendix D** - Minutes of Settlement
- Appendix E** - Judgment of Justice Thomas dated January 3, 2017
- Appendix F** - Miller Thomson letter dated February 3, 2017
- Appendix G** - Statement of Receipts and Disbursements
- Appendix H** - Fee affidavit of Stephen N. Cherniak for interim accounts of BDO Canada Limited sworn February 7, 2017
- Appendix I** - Fee affidavit of Sherry A. Kettle for the interim accounts of Miller Thomson LLP sworn February 8, 2017
- Appendix J** - Fee affidavit of William Sasso for the interim accounts of Sutts Strosberg sworn February 8, 2017

1. Introduction and Background

1.1 Introduction

- 1.1.1 This report is submitted by BDO Canada Limited, in its capacity as Receiver ("**BDO**" or the "**Receiver**") of the assets, undertakings and properties of Portofino Corporation ("**Portofino**" or the "**Company**") acquired for or used in relation to a business carried on by Portofino, including all proceeds thereof (the "**Property**").
- 1.1.2 On application of Bank of Montreal ("**BMO**"), BDO was appointed as receiver by the Order of Mr. Justice Thomas dated October 29, 2013 (the "**Appointment Order**"). A copy of the Appointment Order is attached as **Appendix A** to this report.

1.2 Background

- 1.2.1 At all material times, Portofino was engaged in the development of a 123 unit luxury residential condominium project known as "Portofino" (the "**Portofino Condominium**" or the "**Project**"), located at 1225 Riverside Drive West in the City of Windsor, Ontario. Dr. Dante Capaldi ("**Capaldi**") is the principal of Portofino.
- 1.2.2 Construction of the Portofino Condominium was completed in 2007, but not all individual units were completed. Essex Standard Condominium Corporation No. 122 ("**ECC 122**") was registered and the closing of sales of units commenced in July, 2007.
- 1.2.3 At the time of the appointment of the Receiver, Portofino owned:
- (a) fifty-two (52) condominium units, including forty-three (43) fully finished units and nine (9) unfinished units (the "**Unsold Condominium Units**");
 - (b) thirty-eight (38) parking units, including four (4) surface-level covered parking units and thirty-four (34) surface-level uncovered parking units (the "**Unsold Parking Units**"); and
 - (c) two (2) storage units (the "**Unsold Storage Units**")
- (collectively, the "**Unsold Units**").

- 1.2.4 Since 2005, there has been ongoing litigation commenced by Remo Valente Real Estate (1990) Limited ("**Valente Real Estate**"), as plaintiff, against Portofino, among others, in Court Action No. 05-CV-5864CM (the "**Valente Court Action**").
- 1.2.5 Since its appointment on October 29, 2013, the Receiver has undertaken various activities, including, without limitation, the sale of 38 Unsold Condominium Units and the defence of the Valente Court Action. To date, seven reports, including the within report, have been filed by the Receiver in these proceedings wherein these activities, transactions and litigation are described in greater detail.
- 1.2.6 As part of its Third Report to the Court, the Receiver sought prospective approval for future sales of the Unsold Units and the vesting of Portofino's right, title and interest in and to the applicable Unsold Unit, subject to certain conditions, in the applicable Purchaser.
- 1.2.7 By Order dated May 2, 2014 (the "**Omnibus Approval and Vesting Order**"), Mr. Justice Campbell prospectively approved the sales transactions in respect of the Unsold Units and vested all of Portofino's right, title and interest in and to the applicable Unsold Unit, subject to certain terms and conditions, in the Purchaser. A copy of the Omnibus Approval and Vesting Order is attached as **Appendix B**.
- 1.2.8 In June 2015, BMO sold to RREF II BHB IV PORTOFINO LLC ("**RREF**") its loans with Portofino and the security held for those loans, including the mortgage held by BMO over the Project (the "**BMO Mortgage**").
- 1.2.9 In May 2016, RREF, in turn, sold those loans and security, including the BMO Mortgage, to 2502461 Ontario Ltd. ("**250 Ontario**"). 250 Ontario subsequently assigned those loans and security to Windsor Family Credit Union ("**WFCU**") by way of security for amounts owing by 250 Ontario to WFCU.
- 1.2.10 By order dated July 26, 2016 (the "**July 26, 2016 Order**") Mr. Justice Campbell, among other things, approved certain amendments to the Omnibus Approval and Vesting Order. A copy of the July 26, 2016 Order is attached as **Appendix C**.
- 1.2.11 The July 26, 2016 Order also approved the interim distribution of \$4.0 million to WFCU from the net receipts from the sale of units and collection of rents. On July 26, 2016 the Receiver paid \$4.0 million to WFCU.

1.2.12 By order dated November 29, 2016 (the "**November 29, 2016 Order**") Mr. Justice Bondy, among other things, approved the further interim distribution of \$2.4 million to WFCU. On November 30, 2016 the Receiver paid \$2.4 million to WFCU.

2. Terms of Reference

- 2.1 In preparing this Seventh Report, the Receiver has relied upon unaudited and draft, internal financial information obtained from Portofino's books and records and discussions with management and staff (the "Information"). The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information and expresses no opinion, or other form of assurance, in respect of the Information.

3. Purpose of the Receiver's Seventh Report

- 3.1 This constitutes the Receiver's Seventh Report to the Court (the "**Seventh Report**") in this matter and is filed:
- (a) To provide the Court with information on:
 - (i) the Receiver's activities since the date of the Sixth Report;
 - (ii) the resolution of the Valente Court Action; and
 - (iii) the status of other litigation that Portofino is a party to
 - (b) In support of an order of the Court:
 - (i) Approving the Seventh Report and the activities and conduct of the Receiver described herein;
 - (ii) Approving and authorizing the Receiver to take no further steps with respect to certain litigation, as set out in the Seventh report, but make the actions available to any creditor of Portofino to pursue at their own risk and expense;
 - (iii) Approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to January 31, 2017 (the "**Statement of Receipts and Disbursements**");
 - (iv) Approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**");
 - (v) Approving the professional fees and disbursements of Miller Thomson LLP ("**MT**"), counsel to the Receiver ("**MT Fees**"); and
 - (vi) Approving the professional fees and disbursements of Sutts Strosberg LLP ("**SS**"), counsel retained by the Receiver on behalf of Portofino for

the Valente Court Action ("**SS Fees**" and collectively with the BDO Fees and MT Fees, the "**Professional Fees**")

4. Receiver's Activities

- 4.1 In its Sixth Report, the Receiver reported to the Court on its activities through November 9, 2016.
- 4.2 In this, the Seventh Report, the Receiver reports on its activities since the date of the Sixth Report.

Sale of the Unsold Units

- 4.3 The Fourth Report provided a detailed report of the Receiver's sale process for the Unsold Units and the results achieved to April 15, 2016.
- 4.4 Subsequent reports have provided updates on further sales of the Unsold Units.
- 4.5 Since the Sixth Report, the Receiver has completed the sale of unit 806 and entered into a firm Agreement of Purchase and Sale for unit 1401 that is scheduled to close on February 17, 2017. The conditional sales of units 1601 and 1602 reported in the Sixth Report are not proceeding. Unit 1602 continues to be listed on the Multiple Listing Service ("MLS").
- 4.6 To date, the Receiver has sold 38 of the Unsold Condominium Units, including two unfinished units.
- 4.7 The Receiver has sold five (5) of the Unsold Parking Units, consisting of four surface level garages and one surface level parking space.
- 4.8 Of the 52 Unsold Condominium Units owned by Portofino at the time of the appointment of the Receiver, 14 units remain unsold, 7 of which are fully finished and 7 are unfinished. In addition, 33 parking units and two storage units remain unsold. A summary of the sales completed to date of the Unsold Condominium Units and the remaining Unsold Condominium Units is provided on the following page:

Condominium units sold by Receiver

Unit No.		Size (Sq. ft.)	Sale date
1108	Finished	1,151	05-May-14
704	Finished	1,282	30-Jun-14
904	Finished	1,602	31-Oct-14
804	Finished	1,282	04-Dec-14
1102	Finished	1,547	09-Jan-15
1104	Finished	1,602	12-Feb-15
803	Finished	1,217	29-May-15
1404	Finished	2,233	30-Jun-15
701	Finished	1,150	24-Jul-15
402	Finished	1,062	30-Jul-15
1105	Finished	1,547	31-Jul-15
1002	Finished	1,547	14-Aug-15
508	Finished	1,150	03-Sep-15
805	Finished	1,282	23-Sep-15
203	Finished	1,062	23-Oct-15
1303	Finished	2,450	16-Nov-15
901	Finished	1,593	20-Nov-15
903	Finished	1,602	20-Nov-15
1403	Finished	2,450	01-Dec-15
603	Finished	1,217	03-Dec-15
906	Finished	1,593	11-Dec-15
1503	Unfinished	2,450	25-Jan-16
1008	Finished	1,151	19-Feb-16
401	Finished	1,150	08-Mar-16
1001	Finished	1,593	24-Mar-16
708	Finished	1,150	16-May-16
1101	Finished	1,593	05-Jul-16
1202	Unfinished	2,450	13-Jul-16
103	Finished	1,282	15-Jul-16
304	Finished	1,282	02-Aug-16
601	Finished	1,150	05-Aug-16
105	Finished	1,062	30-Aug-16
1501	Finished	2,233	20-Sep-16
104	Finished	1,217	03-Oct-16
408	Finished	1,150	03-Oct-16
309	Finished	1,151	02-Nov-16
806	Finished	1,217	06-Jan-17
1401	Finished	2,233	17-Feb-17
		<u>57,135</u>	

Remaining units

Unit No.		Size (Sq. ft.)
101	Unfinished	2,036
102	Finished	2,081
106	Finished	1,150
204	Finished	1,150
1201	Unfinished	2,233
1301	Finished	2,233
1302	Unfinished	2,450
1402	Unfinished	2,450
1502	Finished	2,450
1505	Unfinished	1,718
1601	Unfinished	2,233
1602	Unfinished	2,450
1603	Finished	2,450
1605	Finished	1,718

28,802

Other Matters

- 4.9 The Receiver engaged Portofino's external accountant to prepare financial statements and income tax returns for the fiscal year ended July 1, 2016. The Receiver is now current in filing the income tax returns of Portofino, and the returns have been assessed by Canada Revenue Agency.

5. Valente Court Action

- 5.1 The First Report and Third Report provided a summary and subsequent update of the Valente Court Action. A detailed report on the status of the Valente Court Action was provided in the Fourth Report.
- 5.2 The trial of the Valente Court Action commenced on November 14, 2016. Prior to the commencement of the trial there were settlement discussions, but no settlement was reached. On November 15, 2016 further settlement discussions were held which resulted in a settlement being reached. Minutes of Settlement were drafted and signed. A copy of the signed Minutes of Settlement is attached as **Appendix D**.
- 5.3 Under the terms of the Minutes of Settlement, Portofino was to pay to the plaintiff \$630,000 within five business days.
- 5.4 Prior to the receivership, Portofino posted with the court a \$2 million letter of credit as security for the claims made in the Valente Court Action. As part of the arrangements made in connection with the assignment of the BMO security and debt to RREF, 250 Ontario and ultimately WFCU, 250 Ontario posted with the lawyers for RREF security for the contingent liability represented by the letter of credit. When the Minutes of Settlement were signed, it was intended that the \$630,000 to be paid by Portofino to the plaintiff under the Minutes of Settlement would be funded from the security posted by 250 Ontario with the lawyers for RREF. That funding did not occur.
- 5.5 Not having received payment of the amounts required by the Minutes of Settlement, the plaintiff brought a motion for judgment in accordance with the settlement. On that motion a judgment was signed by Mr. Justice Thomas, on consent, a copy of which is attached as **Appendix E**.
- 5.6 Steps have been taken by the plaintiff in accordance with that judgment to draw upon the letter of credit for the amounts provided for in the judgment (\$630,000 plus interest and costs of the motion). After the judgment is satisfied, the letter of credit is to be released and the Valente litigation will thereupon be complete.

6. Other Litigation

- 6.1 In November 2016, the Receiver learned that Portofino was a party to numerous legal actions including a number of actions that were approaching administrative dismissal due to the length of time that had elapsed since the commencement of the litigation. Several of the actions originated from pre-construction sales of condominium units in 2003 – 2005 that could not be completed by the buyer.
- 6.2 In order to prevent the administrative dismissal of the actions on January 1, 2017, and afford the opportunity for the Receiver to evaluate the actions, the Receiver's legal counsel filed motions returnable on February 28, 2017 for orders that status hearings be held.
- 6.3 The Receiver's counsel has reviewed the various actions, to the extent that documents were available. MT's letter to the Receiver, summarizing the outstanding actions, is attached as **Appendix F**.
- 6.4 The Receiver's counsel determined that in one of the actions - Betschel's Kitchen Centre Inc. vs Portofino Corporation, Court File No. 07-CV-9730 ("**Betschel's Kitchen Action**") – Portofino had posted security with the Court which, with accrued interest, totalled \$148,897 as of November 30, 2016. The Receiver in consultation with its legal counsel is assessing the ability of the Receiver to obtain payment out of Court of those funds.
- 6.5 As recommended by MT, the Receiver seeks the approval of the Court to take no further steps with respect to the following actions (being the actions summarized in MT's Report in which a judgment has not been obtained, save and except the Betschel's Kitchen Action), and to make the actions available to any creditors of Portofino to pursue for their own benefit, but at their own risk and expense. If no creditor takes an assignment of the actions, the actions will be abandoned by the Receiver.

Opposing Party	Court File Number
Adam, Richard	N/A
B & R Crevatin Electric Inc.	CV-08-12314 SR
Betschel, David	CV-09-13288SR
Eagle Mechanical Group Inc. / Osvaldo Rizzo	CV-11-16298
Jeji, Karamit	CV-09-13287 SR
Loucks, Richard	CV-09-13289 SR
Mind Quest Engineering Inc. / Dennis Pupulin	CV-10-15068
Spec Coatings Inc.	CV-09-13226 CM
Villata, Dino & Tina	CV-09-13290 SR

7. Statement of Receipts and Disbursements of the Receiver

7.1 The Receiver maintains an account at BMO in London, Ontario. Attached as **Appendix G** is the Statement of Receipts and Disbursements. Details of the Receiver's receipts and disbursements are as follows:

7.2 Receipts

- a) *Sale of units and surface parking (\$10,306,427.16)* — The Receiver received net proceeds of \$10,306,427.16 from the sale of the Unsold Units. Proceeds received are net of amounts paid on closing for condominium fee arrears, real estate commissions inclusive of HST, and HST collected on the sale of Unsold Parking Units and unfinished Unsold Condominium Units.
- b) *Condominium rent collected (\$1,901,137.60)* — The Receiver collected \$1,901,137.60 from the rental of the Unsold Condominium Units.
- c) *Lawsuit (\$119,789.96)* — Portofino was involved in litigation arising from the original construction of the Project. The Receiver collected \$119,789.96, being the balance of holdback funds held in the lawyer's trust account, after distribution to sub-contractors in settlement of the litigation.
- d) *Reimbursement of Letter of Credit Costs (\$64,408.22)* — As required by the Orders of the Court of Appeal and Justice Quinn, Valente Real Estate reimbursed the costs of maintaining the letter of credit in the Valente Court Action.
- e) *Parking rent collected (\$27,079.69)* — The Receiver collected \$27,079.69 from the rental of Unsold Parking Units.
- f) *Interest (\$20,155.82)* — The Receiver received \$20,155.82 in interest on trust funds invested by the Receiver in Guaranteed Investment Certificates ("GIC") that matured or were redeemed. Interest is recognized as it is received.

- g) *HST refund (\$7,971.76)* — Upon filing the outstanding corporate income tax returns, the Receiver received \$7,971.76 in HST refunds accruing from prior to the appointment of the Receiver.

7.3 Disbursements

- a) *Property taxes (\$2,946,945.52)* — The Receiver has paid property taxes to the City of Windsor of \$2,946,945.52. This amount represents property tax arrears, interest and penalties to August 2015 and current installment payments for the balance of 2015 and 2016.
- b) *Receiver's fees (\$743,168.56)* — BDO's accounts for the period July 19, 2013 to September 26, 2016 in the amount of \$708,775.53, excluding HST, were previously approved by the Court and paid. The Receiver paid BDO's interim account for the period September 27, 2016 to November 22, 2016 in the amount of \$34,393.03 and is seeking approval of the Court for this invoice and its invoice for the period November 23, 2016 to January 13, 2017.
- c) *Condominium common fees (\$691,921.05)* — The Receiver has paid \$691,921.05 to ECC 122 for common fees on the Unsold Units, including arrears, interest and current monthly payments.
- d) *Legal fees (\$328,201.31)* — MT's accounts for the period September 9, 2013 to October 31, 2016 in the amount of \$302,815.30, excluding HST, were previously approved by the Court and paid. The Receiver paid MT's interim account for the period November 1, 2016 to December 29, 2016 in the amount of \$25,386.01 and is seeking approval of the Court of this invoice.
- e) *Repairs and Maintenance (\$214,204.05)* — The Receiver has paid \$214,204.05 in repairs and maintenance to the Unsold Units, replacement and enhanced landscaping to the west roof, replacement of the underground parking roof, and the installation of a rooftop air conditioning unit for unit 1202.
- f) *HST paid (\$185,059.21)* — The Receiver has paid \$185,059.21 in HST on its disbursements.
- g) *HST remitted (\$115,452.23)* — The Receiver is obliged to collect HST on the sale of the Unsold Parking Units and unfinished Unsold Condominium Units and has

remitted \$115,452.23. This amount represents the HST collected, less any eligible input tax credits.

- h) *Legal fees – Sutts Strosberg (\$78,662.72)* – The Receiver engaged SS to provide an initial review and chronology of the Valente Court Action for the Receiver's counsel, and subsequently to continue the litigation on behalf of Portofino Corporation. SS's accounts for the period July 6, 2016 to November 6, 2016 in the amount of \$52,647.46, excluding HST, were previously approved by the Court and paid. The Receiver paid SS's interim account for the period November 7, 2016 to December 30, 2016 in the amount of \$21,015.26 and is seeking approval of the Court of this invoice.
- i) *Property management fees (\$70,000.00)* — The Receiver has paid \$70,000.00 to Capaldi Holdings for property management of the Unsold Units.
- j) *Letter of credit fees (\$39,074.26)* — The Receiver paid \$39,074.26 to BMO for fees to maintain the \$2.0 million Letter of Credit in connection with the Valente Court Action.
- k) *Advertising (\$38,178.71)* — The Receiver paid \$38,178.71 for advertising, signage, photography, web site maintenance, and the staging of condominium units listed for sale.
- l) *Bond premiums (\$37,587.00)* — The Receiver paid \$37,587.00 to Northbridge General Insurance Corporation for the premiums on bonds posted as security for:
 - i) Tarion Warranty Corporation; and
 - ii) Portofino litigation with Dede Dalfidan cob as Fidan Enterprise Contracting.
- m) *Utilities (\$36,489.15)* — The Receiver paid \$36,489.15 for utilities on vacant Unsold Units and two leased condominium units where utilities were paid by the Landlord.
- n) *Valente litigation – Costs Award (\$30,393.34)* — The Receiver paid \$30,393.34 in legal costs awarded to Valente Real Estate in the Valente Court Action.
- o) *Appraisal fees (\$15,014.50)* — The Receiver paid \$15,014.50 to Metrix Realty Group for an appraisal of the Unsold Condominium Units on an individual unit basis.

- p) *Insurance (\$5,212.08)* — The Receiver paid \$5,212.08 to Hub International for premiums on the Receiver's liability insurance policy.
- q) *Commission on rentals (\$3,650.00)* — The Receiver paid \$3,650.00 to a party engaged by the property manager to assist in the leasing of vacant Unsold Units.

8. Fees and Disbursements of the Receiver and Counsel to the Receiver

- 8.1 Pursuant to Paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver shall be paid their reasonable Professional Fees in each case at their standard rates and charges. The Receiver and counsel to the Receiver have been granted a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person as security for payment of the Professional Fees.
- 8.2 Pursuant to paragraph 21 of the Appointment Order, the Receiver is at liberty, from time to time, to apply reasonable amounts, out of the monies in its hands, against the Professional Fees, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its Professional Fees when and as approved by the Court.
- 8.3 Attached as **Appendix H** is the fee affidavit of Stephen N. Cherniak sworn February 7, 2017 containing BDO's interim accounts as Receiver for the following periods:
- o September 27, 2016 to November 22, 2016
 - o November 23, 2016 to January 13, 2017
- 8.4 The Receiver's fees to date, exclusive of HST, are as follows:
- | | | |
|---------------------------------------|---|---------------------|
| Fees paid and Court approved | - | \$ 708,775.53 |
| Fees paid, but not yet Court approved | - | 34,393.93 |
| Fees neither paid, nor Court approved | - | 30,080.68 |
| | | <u>\$773,249.64</u> |
- 8.5 The Receiver submits that the hourly rates charged by the Receiver and its staff are commensurate with commercially reasonable rates for mid-market insolvency firms in the Southwestern Ontario region.
- 8.6 Attached as **Appendix I** is the fee affidavit of Sherry A. Kettle, sworn February 8, 2017, containing the interim accounts of MT for the period November 1, 2016 to December 31, 2017.
- 8.7 MT's fees to December 31, 2016, exclusive of HST, are as follows:

Fees paid and Court approved	-	\$ 302,815.30
Fees paid, but not yet Court approved	-	<u>25,386.01</u>
		<u>\$328,201.31</u>

8.8 Attached as **Appendix J** is the fee affidavit of William V. Sasso, sworn February 8, containing the interim accounts of SS for the period November 7, 2016 to December 30, 2016.

8.9 SS fees to December 30, 2016, exclusive of HST, are as follows:

Fees paid and Court approved	-	\$52,647.46
Fees paid, but not yet Court approved	-	<u>21,015.26</u>
		<u>\$73,662.72</u>

8.10 It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work done by the Receiver, MT and SS in connection with the receivership during the relevant periods. The Receiver recommends approval of the Professional Fees by the Court.

9. Recommendations

- 9.1. The Receiver recommends and respectfully requests that the Court grant an order as follows:
- (a) Approving the Seventh Report and the activities and conduct of the Receiver described herein;
 - (b) Approving and authorizing the Receiver to take no further steps with respect to certain litigation, as set out in Section 6 of the Seventh Report, but make the actions available to any creditor of Portofino to pursue at their own risk and expense;
 - (c) Approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to January 31, 2017; and
 - (d) Approving the Professional Fees;

All of which is Respectfully Submitted this 1th day of February, 2017.

BDO Canada Limited in its capacity as Court Appointed Receiver of Portofino Corporation and not in any personal capacity.



Per: Stephen N. Cherniak, CPA, CA, CIRP
Licensed Insolvency Trustee
Senior Vice President

TAB "E"

Court File No.: CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE *KIRK W. MURPHY*

TUESDAY, THE 28th
DAY OF FEBRUARY, 2017

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 ("Portofino") 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 Seventh Report of the Receiver dated February 8, 2017 and all appendices thereto (the "Seventh Report"), and directing that any further service of same be dispensed with such that this motion is properly returnable on February 28, 2017;
- (b) approving the Seventh Report and the activities and conduct of the Receiver described therein;

- 2 -

- (c) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to January 31, 2017 (the "Statement of Receipts and Disbursements");
- (d) authorizing the Receiver to take no further steps with respect to certain litigation involving Portofino and authorizing the Receiver to make such actions available to any creditors who wish to pursue same at their own risk and expense;
- (e) approving the professional fees and disbursements of the Receiver and its legal counsel (the "Professional Fees"); and
- (f) such further and other relief as counsel may advise and this Honourable Court deems just.

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

ON READING the Seventh 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 February 10, 2017, 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 Seventh 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 the Seventh Report and the activities and conduct of the Receiver described in the Seventh Report are hereby approved.
3. **THIS COURT ORDERS** that the Statement of Receipts and Disbursements be and the same is hereby approved.
4. **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 Stephen N. Cherniak sworn February 7, 2017, Sherry A. Kettle sworn February 8, 2017 and William V. Sasso sworn February 8, 2017 be and the same are hereby approved.
5. **THIS COURT ORDERS** that the Receiver shall give written notice (the "Notice") to all known creditors (the "Creditors") of Portofino of the existence of the actions (the "Actions") described in paragraph 6.5 of the Seventh Report.

6. **THIS COURT ORDERS** that the Notice may be sent by e-mail or registered mail. If sent by e-mail, the Notice shall be deemed to be given on the date the e-mail is successfully transmitted or, if sent by mail, on the fifth day after mailing.
7. **THIS COURT ORDERS** that the Receiver is authorized to assign the Actions to any Creditors who within 10 days after the service of the Notice on them notify the Receiver, in writing, of their intention to take an assignment of the Actions to enable such Creditors to continue to prosecute the Actions in their own name and at their own expense and risk.
8. **THIS COURT ORDERS** that all benefits to be derived from the Actions so assigned by the Receiver, together with the costs of same, shall belong exclusively to the Creditors to whom such actions have been assigned.
9. **THIS COURT ORDERS** that in case there shall be a surplus after paying the claims and costs of the Creditors to whom the Actions have been assigned, such surplus shall be paid to the Receiver in augmentation of the receivership estate.
10. **THIS COURT ORDERS** that any Creditors who fail to notify the Receiver, in writing, of their intention to take an assignment of the Actions within 10 days after the service of the Notice on them shall be thereafter excluded from participating in the benefits to be derived from the Actions.
11. **THIS COURT ORDERS** that any Actions not assigned by the Receiver may be abandoned by the Receiver.



Justice, Ontario Superior Court of Justice

ENTERED AT WINDSOR	
In Book No.	28
re Document No.	221
on	Feb 28 2017
by	LR

2502461 ONTARIO LTD.

Applicant

and

PORTOFINO CORPORATION

Respondent

Court File No: CV-13-19866

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT WINDSOR

ORDER

MILLER THOMSON LLP

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Lawyers for BDO Canada Limited, Court-
Appointed Receiver of Portofino Corporation

TAB "F"



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BDO Canada Limited
633 Colborne Street, Suite 100
London ON N6B 2Y3 Canada

March 8, 2017

To: All Creditors of Portofino Corporation

Re: Portofino Corporation ("Portofino")

Enclosed is a copy of the Order of Mr. Justice Munroe dated February 28, 2017 (the "Order") made in the receivership proceeding of Portofino.

In accordance with paragraph 5 of the Order, we are providing to you notice of the existence of the actions (the "Actions") described on Schedule "A" to this letter.

Any creditors who wish to take an assignment of the Actions from the Receiver must notify the Receiver, in writing, of their intention to do so within 10 days after service of this letter on them. Service of this letter is effective on the date sent, if sent by e-mail or, if sent by mail, on the fifth day after mailing.

Any creditors who fail to notify the Receiver, in writing, of their intention to take an assignment of the Actions within 10 days after service of this letter on them shall thereafter be excluded from participating in the benefits to be derived from the Actions. Any Actions not assigned by the Receiver may be abandoned by the Receiver.

Yours Truly,

BDO Canada Limited
Court Appointed Receiver of
Portofino Corporation

Per: Stephen N. Cherniak, CPA, CA, CIRP
Licensed Insolvency Trustee
Senior Vice-President

Encl

SCHEDULE "A"

<u>Title of Proceedings</u>	<u>Court File Number</u>
Dante J. Capaldi, Portofino Corporation v. Richard Adam	Unknown
B & R Crevatin Electric Inc. v. Portofino Corporation	CV-08-12314 SR
Portofino Corporation v. Dave Betschel	CV-09-13288SR
Eagle Mechanical Group Inc. v. Portofino Corporation	CV-11-16298
Portofino Corporation v. Eagle Mechanical Group Inc. and Osvaldo Rizzo (Defendants by counterclaim)	
Portofino Corporation v. Karamit Jeji	CV-09-13287 SR
Portofino Corporation v. Richard Loucks	CV-09-13289 SR
Portofino Corporation v. Mind Quest Engineering Inc. and Dennis Pupulin	CV-10-15068
Portofino Corporation v. Spec Coatings Inc.	CV-09-13226 CM
Portofino Corporation v. Dino Villalta and Tina Villalta	CV-09-13290 SR

Court File No.: CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

TUESDAY, THE 28th

JUSTICE

Kirk W. Murray

DAY OF FEBRUARY, 2017

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 ("Portofino") 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 Seventh Report of the Receiver dated February 8, 2017 and all appendices thereto (the "Seventh Report"), and directing that any further service of same be dispensed with such that this motion is properly returnable on February 28, 2017;
- (b) approving the Seventh Report and the activities and conduct of the Receiver described therein;

- (c) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to January 31, 2017 (the "Statement of Receipts and Disbursements");
- (d) authorizing the Receiver to take no further steps with respect to certain litigation involving Portofino and authorizing the Receiver to make such actions available to any creditors who wish to pursue same at their own risk and expense;
- (e) approving the professional fees and disbursements of the Receiver and its legal counsel (the "Professional Fees"); and
- (f) such further and other relief as counsel may advise and this Honourable Court deems just.

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

ON READING the Seventh 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 February 10, 2017, 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 Seventh 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 the Seventh Report and the activities and conduct of the Receiver described in the Seventh Report are hereby approved.
3. **THIS COURT ORDERS** that the Statement of Receipts and Disbursements be and the same is hereby approved.
4. **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 Stephen N. Cherniak sworn February 7, 2017, Sherry A. Kettle sworn February 8, 2017 and William V. Sasso sworn February 8, 2017 be and the same are hereby approved.
5. **THIS COURT ORDERS** that the Receiver shall give written notice (the "Notice") to all known creditors (the "Creditors") of Portofino of the existence of the actions (the "Actions") described in paragraph 6.5 of the Seventh Report.

- 6. **THIS COURT ORDERS** that the Notice may be sent by e-mail or registered mail. If sent by e-mail, the Notice shall be deemed to be given on the date the e-mail is successfully transmitted or, if sent by mail, on the fifth day after mailing.
- 7. **THIS COURT ORDERS** that the Receiver is authorized to assign the Actions to any Creditors who within 10 days after the service of the Notice on them notify the Receiver, in writing, of their intention to take an assignment of the Actions to enable such Creditors to continue to prosecute the Actions in their own name and at their own expense and risk.
- 8. **THIS COURT ORDERS** that all benefits to be derived from the Actions so assigned by the Receiver, together with the costs of same, shall belong exclusively to the Creditors to whom such actions have been assigned.
- 9. **THIS COURT ORDERS** that in case there shall be a surplus after paying the claims and costs of the Creditors to whom the Actions have been assigned, such surplus shall be paid to the Receiver in augmentation of the receivership estate.
- 10. **THIS COURT ORDERS** that any Creditors who fail to notify the Receiver, in writing, of their intention to take an assignment of the Actions within 10 days after the service of the Notice on them shall be thereafter excluded from participating in the benefits to be derived from the Actions.
- 11. **THIS COURT ORDERS** that any Actions not assigned by the Receiver may be abandoned by the Receiver.



Justice, Ontario Superior Court of Justice

ENTERED AT WINDSOR	
In Book No.	28
re Document No.	221
on	Feb 28 2017
by	CL

2502461 ONTARIO LTD.

Applicant

and

PORTOFINO CORPORATION

Respondent

Court File No: CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**
PROCEEDING COMMENCED AT WINDSOR

ORDER

MILLER THOMSON LLP

One London Place
255 Queens Avenue, Suite 2010
London, ON Canada N6A 5R8

Tony Van Klink LSUC#: 29008M

Tel: 519.931.3509

Fax: 519.858.8511

Email: tvanklink@millerthomson.com

Sherry A. Kettle, LSUC #53561B

Tel: 519.931.3534

Fax: 519.858.8511

Email: skettle@millerthomson.com

Lawyers for BDO Canada Limited, Court-
Appointed Receiver of Portofino Corporation

**PORTOFINO CORPORATION
CREDITOR LIST**

Portofino Corporation

Email: drcapaldi@bell.net

c/o Shibley Righton LLP
2510 Ouellette Avenue
Suite 301
Windsor, ON N8X 1L4

Jerry Goldberg
Email: goldberg@shibleyrighton.com

Estate of Patrick D'Amore and 2502461 Ontario Inc.

Email: scottfdamore@gmail.com

c/o Bartlet & Richardes LLP
Barristers and Solicitors
1000-374 Ouellette Ave
Windsor, ON N9A 1A9

Philip S. Chandler
Email: pchandler@bartlet.com

Elizabeth Musyj
Email: emusyj@bartlet.com

Northbridge General Insurance Corporation
(formerly Lombard General Insurance Company)

105 Adelaide Street West
Toronto, ON M5H 1P9

c/o Delzotto Zorzi LLP
Suite D - 4810 Dufferin Street
Toronto, ON M3H 5S8

Robert Calderwood
Email: rcalderwood@dzlaw.com

Remo Valente Real Estate (1990) Limited

2985 Dougall Avenue
Windsor, ON N9E 1S1

c/o Gino Morga Q.C.
2485 Ouellette Avenue, Suite 104
Windsor, ON N8X 1Y4
Email: gmorga@morgalaw.com

Sutts Strosberg LLP

600-251 Goyeau Street
P.O. Box 670
Windsor, ON N9A 6V4

William V. Sasso
Email: wsasso@strosbergco.com

Royal Bank of Canada

383 Richmond Street, Suite 804
London, ON N6A 3C4

Email: mark.swanson@rbc.com

c/o Harrison Pensa LLP
450 Talbot Street
London, ON N6A 4K3

Timothy C. Hogan
Email: thogan@harrisonpensa.com

Oswaldo Rizzo

4000 North Talbot Road
Oldcastle, ON N0R 1L0

c/o Marusic Law LLP
2491 Ouellette Avenue
Windsor, ON N8X 1L5

Maria Marusic
Email: mmarusic@marusiclaw.com

Dede Dalfidan c.o.b as Fidan Enterprise Contracting

c/o Drudi Alexiou Kuchar LLP
7050 Weston Road
Suite 610
Vaughan, ON L4L 8G7

Constantine Alexiou
Email: calexiou@dakllp.com

<p>Windsor Family Credit Union 3000 Marentette Avenue Windsor, ON N8C 4G2</p> <p>Dan Mladenovic Email: dmladenovic@windsorfamily.com</p>
<p>Dr. Dante J. Capaldi 1603-1225 Riverside Drive West Windsor ON N9A 0A2</p> <p>Email: drcapaldi@bell.net</p>
<p>Wilma Capaldi 1603-1225 Riverside Drive West Windsor ON N9A 0A2</p> <p>Email: drcapaldi@bell.net</p>
<p>1287678 Ontario Inc. 285 Ouellette Avenue Windsor ON N9A 4H9</p> <p>Email: drcapaldi@bell.net</p>
<p>Andreolli Investments Inc. 285 Ouellette Avenue Windsor ON N9A 4H9</p> <p>Email: drcapaldi@bell.net</p>
<p>B & R Crevatin Electric Inc. 3298 Walker Road Windsor ON N8W 3R8</p>
<p>Brevon Concrete Cutting 4080 North Service Road E Windsor ON N8W 5X2</p>
<p>Eagle Mechanical Group Inc 4000 North Talbot Road Oldcastle, ON N0R 1L0</p>
<p>Miller, Canfield LLP c/o Shibley Righton LLP 2510 Ouellette Avenue Suite 301 Windsor, ON N8X 1L4</p> <p>Jerry Goldberg Email: goldberg@shibleyrighton.com</p>

Finlay Appraisal & Consultation
1010-176 University Avenue West
Windsor, ON N9A 5P3

PCR Contractors
5255 County Rd 42
Windsor, ON N8N 2M1

Plaza Ontario Marble & Tile
1641 Provincial Road
Windsor, ON N9A 6J3

Dino Villalta and Tina Villalta

c/o Kirwin Partners LLP
423 Pellissier Street
Windsor, ON N9A 4L2

Dante Gatti
Email: dgatti@kirwinpartners.com

Karamjit Jeji

c/o Claudio Martini
c/o Gardiner Roberts LLP
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Attention: Scott Gfeller

Betschel's Kitchen Centre
2535 Jefferson Blvd.
Windsor, ON N8T 2W5

S. Funtig & Associates Inc.

Trustee in bankruptcy of David Wayne Betschel
200 – 484 Pelissier Street
Windsor, ON N9A 4K9

TAB "G"



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
ONE LONDON PLACE
255 QUEENS AVENUE, SUITE 2010
LONDON, ON N6A 5R8
CANADA

T 519.931.3500
F 519.858.8511

MILLERTHOMSON.COM

April 12, 2017

Delivered via E-mail/Mail

To the Creditors listed on Schedule "A"

Dear Sirs/Mesdames:

Re: Portofino Corporation

We refer to the letter dated March 8, 2017 from BDO Canada Limited (the "Receiver"), the court-appointed receiver of Portofino Corporation ("Portofino") in which the Receiver gave you notice of the existence of various actions (the "Actions") involving Portofino.

No creditor has taken an assignment of the Actions from the Receiver. Accordingly, the Actions are being abandoned by the Receiver. As well, the motions brought by the Receiver for the scheduling of status hearings in certain of the Actions are also being withdrawn.

Yours truly,

Tony Van Klink
TVK/vj

c. Steve Cherniak
David Flett
23807510.1

SCHEDULE "A"

- TO:**
- Portofino Corporation**
Email: drcapaldi@bell.net
c/o Shibley Righton LLP
2510 Ouellette Avenue
Suite 301
Windsor, ON N8X 1L4
Jerry Goldberg
Email: goldberg@shibleyrighton.com
- AND TO:**
- Estate of Patrick D'Amore and 2502461 Ontario Inc.**
Email: scottfdamore@gmail.com
c/o Bartlet & Richardes LLP
Barristers and Solicitors
1000-374 Ouellette Ave
Windsor, ON N9A 1A9
Philip S. Chandler
Email: pchandler@bartlet.com
Elizabeth Musyj
Email: emusyj@bartlet.com
- AND TO:**
- Northbridge General Insurance Corporation**
(formerly Lombard General Insurance Company)
105 Adelaide Street West
Toronto, ON M5H 1P9
c/o Delzotto Zorzi LLP
Suite D - 4810 Dufferin Street
Toronto, ON M3H 5S8
Robert Calderwood
Email: rcalderwood@dzlaw.com
- AND TO:**
- Remo Valente Real Estate (1990) Limited**
2985 Dougall Avenue
Windsor, ON N9E 1S1
c/o Gino Morga Q.C.
2485 Ouellette Avenue, Suite 104
Windsor, ON N8X 1Y4
Email: gmorga@morgalaw.com



- AND TO: **Sutts Strosberg LLP**
600-251 Goyeau Street
P.O. Box 670
Windsor, ON N9A 6V4
William V. Sasso
Email: wsasso@strosbergco.com
- AND TO: **Royal Bank of Canada**
383 Richmond Street, Suite 804
London, ON N6A 3C4
Email: mark.swanson@rbc.com
c/o Harrison Pensa LLP
450 Talbot Street
London, ON N6A 4K3
Timothy C. Hogan
Email: thogan@harrisonpensa.com
- AND TO: **Oswaldo Rizzo**
4000 North Talbot Road
Oldcastle, ON N0R 1L0
c/o Marusic Law LLP
2491 Ouellette Avenue
Windsor, ON N8X 1L5
Maria Marusic
Email: mmarusic@marusiclaw.com
Sheri Lynn Medaglia
smedaglia@marusiclaw.com
- AND TO: **Dede Dalfidan c.o.b as Fidan Enterprise Contracting**
c/o Drudi Alexiou Kuchar LLP
7050 Weston Road
Suite 610
Vaughan, ON L4L 8G7
Constantine Alexiou
Email: calexiou@dakllp.com



AND TO: **Windsor Family Credit Union**
3000 Marentette Avenue
Windsor, ON N8C 4G2
Dan Mladenovic
Email: dmladenovic@windsorfamily.com

AND TO: **Dr. Dante J. Capaldi**
1603-1225 Riverside Drive West
Windsor ON N9A 0A2
Email: drcapaldi@bell.net

AND TO: **Wilma Capaldi**
1603-1225 Riverside Drive West
Windsor ON N9A 0A2
Email: drcapaldi@bell.net

AND TO: **1287678 Ontario Inc.**
285 Ouellette Avenue
Windsor ON N9A 4H9
Email: drcapaldi@bell.net

AND TO: **Andreolli Investments Inc.**
285 Ouellette Avenue
Windsor ON N9A 4H9
Email: drcapaldi@bell.net

AND TO: **B & R Crevatin Electric Inc.**
3298 Walker Road
Windsor ON N8W 3R8

AND TO: **Brevon Concrete Cutting**
4080 North Service Road E
Windsor ON N8W 5X2

AND TO: **Eagle Mechanical Group Inc**
4000 North Talbot Road
Oldcastle, ON N0R 1L0



- AND TO: **Miller, Canfield LLP**
c/o Shibley Righton LLP
2510 Ouellette Avenue
Suite 301
Windsor, ON N8X 1L4
Jerry Goldberg
Email: goldberg@shibleyrighton.com
- AND TO: **Finlay Appraisal & Consultation**
209-380 Pellissier Street
Windsor, ON N9A 6W8
- AND TO: **PCR Contractors**
5255 County Rd 42
Windsor, ON N8N 2M1
- AND TO: **Plaza Ontario Marble & Tile**
1641 Provincial Road
Windsor, ON N9A 6J3
- AND TO: **Dino Villalta and Tina Villalta**
c/o Kirwin Partners LLP
423 Pellissier Street
Windsor, ON N9A 4L2
Dante Gatti
Email: dgatti@kirwinpartners.com
- AND TO: **Karamjit Jeji**
c/o Claudio Martini
c/o Gardiner Roberts LLP
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3
Attention: Scott Gfeller
E-mail: sgfeller@grllp.com
- AND TO: **S. Funtig & Associates Inc.**
Trustee in bankruptcy of David Wayne Betschel
200 – 484 Pelissier Street
Windsor, ON N9A 4K9



TAB "H"



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
ONE LONDON PLACE
255 QUEENS AVENUE, SUITE 2010
LONDON, ON N6A 5R8
CANADA

T 519.931.3500
F 519.858.8511

MILLERTHOMSON.COM

June 23, 2017

Delivered Via E-mail (calexiou@dakllp.com)

WITHOUT PREJUDICE

Drudi Alexiou Kuchar LLP
7050 Weston Road, Suite 610
Vaughan, Ontario L4L 8G7

Attention: Constantine Alexiou

Dear Sir:

**Re: Portofino Corporation re Dede Dalfidan c.o.b. as Fidan Enterprise Contracting
Court File No. 07-CV-8478**

Sherry A. Kettle
Direct Line: 519.931.3534
Direct Fax: 519.858.8511
skettle@millerthomson.com

File: 0082873.0012

23/6/17
du Perish
- MA
- WMY
Cra

As you know, we are counsel to BDO Canada Limited, (the "Receiver"), the Receiver of Portofino Corporation ("Portofino"). By letter dated March 2, 2015, your client, Dede Dalfidan c.o.b. as Fidan Enterprise Contracting ("Dalfidan") offered to settle all matters involving Dalfidan, Portofino and the Receiver, including the issues arising in the actions under Court File No. 07-CV-8478 and Court File No. 06-CV-8228 (the "Actions") for the sum of \$135,000. That offer has been rejected.

By letter dated May 17, 2017, the Receiver made an offer to settle which has now expired. By telephone conversation yesterday, you stated that Dalfidan was making a counter-offer of \$100,000 all in. That offer is hereby rejected.

That said, we have received instructions from the Receiver to make an offer to settle this matter on the following terms, subject to Court approval (the "Settlement"):

1. BDO Canada Limited, in its capacity as Receiver of Portofino, shall pay the sum of \$80,000.00 (the "Settlement Amount"), inclusive of interest, taxes, costs and legal fees to Dalfidan in full and final satisfaction of all claims between Dalfidan, Portofino and the Receiver;
2. The Settlement Amount shall be paid on or before 30 days following the approval of the Settlement by the Court;
3. The Settlement Amount shall be made by certified cheque or bank draft made payable to "Drudi Alexiou Kuchar LLP, in Trust";
4. Upon payment of the Settlement Amount and Court approval of the Settlement:
 - (a) Dalfidan shall at its own expense obtain an order, on consent, dismissing any and all actions involving Portofino, including the Actions, on a without costs and with prejudice basis, which order shall provide for the delivery up for

D.D. [Signature]

cancellation of any and all lien bonds by the Accountant of the Superior Court of Justice in respect to the Actions;

(b) Dalfidan shall execute and deliver any and all required documentation to facilitate the delivery up by the Accountant of the Superior Court of Justice of any and all lien bonds posted with the Accountant of the Superior Court of Justice and for the release of any other security otherwise posted, registered or held by any other party, firm, person, corporation or entity in respect to the issues arising in the Actions and Dalfidan hereby acknowledges and confirms that it has no right or interest in any funds or security held by the Accountant of the Superior Court of Justice or any other party, firm, person, corporation or entity on account of or in respect to the Actions;

(c) Dalfidan and the Receiver shall execute and deliver a full and final mutual release in the form attached hereto as **Schedule "A"**;

5. This offer may be executed and delivered by electronic means and each of the parties may rely on such electronic execution as though it were an original handwritten signature.

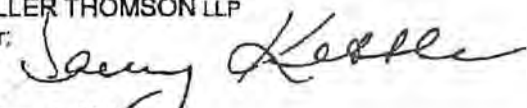
Please advise your client that this is the Receiver's best and final offer. The above offer is open for acceptance until 12:00 noon on June 30, 2017 at which time, unless accepted in writing, the offer shall be deemed immediately withdrawn and no longer capable of acceptance.

If Dalfidan is in agreement with the above terms of settlement, please acknowledge such agreement below and return an executed copy of this correspondence to my attention by fax or e-mail.

We look forward to hearing from you.

Yours truly,


MILLER THOMSON LLP

Per: 

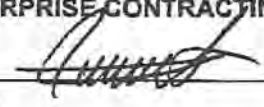
Sherry A. Kettle

SAK/sj
c: client

The foregoing terms and conditions are acceptable to the undersigned as of the 29 day of JUNE, 2017.


Witness C. ALEXIOU

DEDE DALFIDAN C.O.B. AS FIDAN ENTERPRISE CONTRACTING

Per: 

Name:

Title:

I have authority to bind the Corporation



SCHEDULE A**FULL AND FINAL MUTUAL RELEASE**

WHEREAS Dede Dalfidan c.o.b. as Fidan Enterprise Contracting ("Dalfidan") commenced actions under Court File No. 07-CV-8478 and Court File No. 06-CV-8228 (the "Actions") against Portofino Corporation ("Portofino"), Civa Stucco Supply Ltd. also known as Civa Stucco Supply Ltd. & Moulding ("Civa");

AND WHEREAS on October 29, 2013, BDO Canada Limited was appointed as receiver (the "Receiver") of Portofino;

AND WHEREAS BDO Canada Limited, in its capacity as Receiver, has paid to Dalfidan and Dalfidan has accepted from the Receiver the sum of Eighty Thousand Dollars (\$80,000.00) in full and final satisfaction of all amounts owing between Dalfidan and Portofino in respect to all the issues arising in the Actions (the "Settlement");

AND WHEREAS the Receiver has obtained Court approval of the Settlement;

1. NOW THEREFORE in consideration of the said payment by the Receiver as aforesaid, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, each of Dalfidan and the Receiver for themselves and their successors, agents, assigns, employees, officers and directors do hereby release and forever discharge the other and each of their successors, agents, assigns, employees, officers and directors from all manner of actions, causes of actions, suits, debts, dues, accounts, bonds, covenants, contracts, claims and demands of any nature whatsoever which either Dalfidan and the Receiver ever had, now have or may have against the other for or by reason of or in any way relating to the Actions;
2. AND FOR THE SAID CONSIDERATION, Dalfidan and the Receiver further agree not to make or continue any claim or commence or continue any proceedings or actions against any other person or corporation who might claim contribution or indemnity under any law or statute of any place or jurisdiction whether presently existing or subsequently developed or enacted, in respect to any matter to which this Full and Final Mutual Release (the "Mutual Release") applies, including without limitation any claims relating to Civa;
3. AND IT IS FURTHER AGREED AND UNDERSTOOD that Dalfidan and the Receiver have not assigned to any person, partnership, corporation, or other such entity any of the matters or claims which are released by this Mutual Release. Dalfidan and the Receiver agree that this Mutual Release shall operate conclusively as an estoppel in the event of any such claims or proceedings and may be pleaded accordingly;
4. AND IT IS FURTHER ACKNOWLEDGED AND CONFIRMED that Dalfidan and the Receiver have received, or have had the opportunity to receive, independent legal advice with respect to the terms of this Mutual Release;
5. AND IT IS FURTHER AGREED AND UNDERSTOOD that Dalfidan and the Receiver do not by the aforesaid consideration or otherwise admit any liabilities or obligations of any kind whatsoever to the other and such liabilities and obligations are in fact denied;
6. AND IT IS FURTHER AGREED AND UNDERSTOOD that Dalfidan and the Receiver further covenant and agree not to publicize, advertise or in any way communicate any

facts respecting the circumstances of the settlement of any claims released herein and shall maintain secret and confidential the terms and the nature of the settlement of this matter save and except for their legal and financial advisors, reporting to and approval by the Court, as required by law and to obtain the delivery up for cancellation of any and all lien bonds by the Accountant of the Superior Court of Justice and for release of any other funds or security otherwise posted, registered or held by any other party, firm, person, corporation or entity in respect to the Actions;

- 7. AND IT IS FURTHER ACKNOWLEDGED AND CONFIRMED that Dalfidan and the Receiver have read this Mutual Release carefully, that the terms of this Mutual Release are fully understood and that they have signed it voluntarily and freely and without any form of duress being exerted upon them and with the express purpose of making a full and final compromise, adjustment and settlement with respect to all of the matters to which this Mutual Release applies;
- 8. AND IT IS FURTHER AGREED AND UNDERSTOOD that this Mutual Release contains the entire agreement between the parties and that the execution of this Mutual Release has not been induced by, nor have Dalfidan and the Receiver relied upon, any representation, warranty, condition or agreement, whether written or oral, other than as expressly set out or referred to herein;
- 9. AND IT IS FURTHER AGREED AND UNDERSTOOD that this Mutual Release shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein;
- 10. AND IT IS FURTHER AGREED AND UNDERSTOOD that should any provision of this Mutual Release be found void at law, for public policy or otherwise, that provision only, is severable and the remainder of the Mutual Release shall continue to bind the parties;
- 11. AND IT IS FURTHER AGREED AND UNDERSTOOD that transmission by facsimile or electronic transmission in "PDF" format of an executed copy of this Mutual Release shall be deemed to constitute due and sufficient delivery of such counterpart;
- 12. AND IT IS FURTHER AGREED AND UNDERSTOOD that this Mutual Release may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument, notwithstanding their date of actual execution.

IN WITNESS hereof the undersigned each have caused this Mutual Release to be duly executed by their respective duly authorized representatives.

DATED this _____ day of _____, 2017.

**DEDE DALFIDAN C.O.B. AS FIDAN
ENTERPRISE CONTRACTING**

By: _____
Name:
Title:
I have authority to bind the Company

**BDO CANADA LIMITED,
IN ITS CAPACITY AS RECEIVER OF
PORTOFINO CORPORATION**

By: _____

Name: Stephen N. Chemiak
Title: Senior Vice-President
I have authority to bind the Receiver

TAB "I"

**BDO Canada Limited Court Appointed Receiver of
Portofino Corporation
Statement of Receipts and Disbursements
October 29, 2013 through July 21, 2017**

Receipts:

Sale of units & surface parking	12,829,009.00	
Less: property tax arrears	(424,295.35)	
Less: real estate commissions (incl HST)	(482,760.07)	
Less: ECC No. 122 common fees	(36,959.02)	
Less: closing adjustments	(26,960.83)	
Add: HST collected on parking and unfinished units	121,250.88	
	<hr/>	\$ 11,979,284.61
Unit rental Income		1,950,387.60
Holdback funds re: Portofino sub-trades		119,789.96
Reimbursement of Letter of Credit costs		64,408.22
Parking space rental		30,814.69
Interest		20,155.82
HST refund		7,971.76
Miscellaneous litigation		497.88
		<hr/>
		14,173,310.54

Disbursements:

City of Windsor - property taxes	3,004,706.56	
Receiver's fees	836,448.52	
ECC No. 122 - common fees	726,121.44	
Miller Thomson LLP - Receiver's legal fees	364,642.44	
Repairs & maintenance	218,068.95	
HST paid on disbursements	202,727.91	
HST remitted	116,483.44	
Sutts, Strosberg LLP- legal fees	78,662.72	
Property management fees	70,000.00	
Bond premiums	41,004.00	
Advertising	40,346.72	
BMO - Letter of Credit fees re Valente litigation	39,074.26	
Utilities	37,641.05	
Valente litigation - costs award	30,393.34	
Appraisal fees	15,014.50	
Insurance	7,372.08	
Miscellaneous expenses	4,640.00	
Accounting fees	4,250.00	
Commission paid re rentals	3,650.00	
Corporate income tax	692.58	
Valente litigation - interest on settlement	628.36	
Bank charges	602.50	
Receiver General - receivership filing fee	70.00	
	<hr/>	5,843,241.37

Excess receipts over disbursements**\$ 8,330,069.17**

Represented by:

Payment to secured creditor (WFCU)	6,400,000.00
Balance of funds held by Receiver as at July 21, 2017	1,930,069.21
	<hr/>
	<u>\$ 8,330,069.21</u>

TAB "J"

**ONTARIO SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE RECEIVERSHIP OF PORTOFINO CORPORATION

AFFIDAVIT OF STEPHEN N. CHERNIAK

I, **Stephen N. Cherniak**, of the City of London, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a Senior Vice-President of BDO Canada Limited, the Receiver of Portofino Corporation, (“Portofino”) and, as such, I have knowledge of the matters hereinafter deposed to.
2. By Order dated October 29, 2013 BDO Canada Limited was appointed as Receiver of Portofino (the “Receiver”).
3. The Receiver’s First Report to the Court was approved by Mr. Justice Thomas on December 13, 2013. The first account of the Receiver for the period July 19, 2013 to November 28, 2013 was also approved by the Order of Justice Thomas on December 13, 2013.
4. The Receiver’s Second Report to the Court was submitted to the Court on February 28, 2014.
5. The Receiver’s Third Report to the Court was approved by Mr. Justice Campbell on May 2, 2014. The second account of the Receiver for the period November 28, 2013 to April 9, 2014 was also approved by the Order of Justice Campbell on May 2, 2014.
6. The Receiver’s Fourth Report to the Court was approved by Mr. Justice Desotti on May 17, 2016. The third account of the Receiver for the period April 10, 2014 to March 10, 2016 was also approved by the Order of Justice Desotti on May 17, 2016.
7. The Receiver’s Fifth Report to the Court was approved by Mr. Justice Campbell on July 26, 2016. The fourth account of the Receiver for the period March 11, 2016 to June 14, 2016 was also approved by the Order of Justice Campbell on July 26, 2016.

8. The Receiver's Sixth Report to the Court was approved by Mr. Justice Bondy on November 29, 2016.
The fifth account of the Receiver for the period June 15, 2016 to September 26, 2016 was also approved by the Order of Justice Bondy on November 29, 2016.
9. The Receiver's Seventh Report to the Court was approved by Mr. Justice Monroe on February 28, 2017.
The sixth account of the Receiver for the period September 27, 2016 to January 13, 2017 was also approved by the Order of Justice Monroe on February 28, 2017
10. Since the date of the Receiver's last account the Receiver has been engaged in the following:
 - Prepare the Seventh Report of the Receiver and attend Court hearing on February 28, 2017
 - Negotiate the sale of units 101, 204 and 1301 through the Receiver's agent;
 - Analyze comparable sales and market conditions, and negotiate the sale of unit 1603 directly with purchaser;
 - Review offers received for units 102 and 1505, without a firm Agreement of Purchase and Sale being achieved;
 - Complete the sale of condominium units 1301 and 1401 and parking space 22;
 - Review legal counsel's summary and reporting on numerous older legal actions, and agree on an approach to make the claims available to creditors to pursue;
 - Correspondence to all creditors, pursuant to the February 28, 2017 Order, regarding actions available to creditors to pursue at their own risk and expense, and respond to various telephone and email enquiries;
 - Telephone calls and correspondence with the Receiver's legal counsel regarding the Dalfidan Court Action;
 - Research rules and filing deadline for HST New Housing rebate on unfinished units, and applicability to certain offerors;

- Telephone calls and correspondence with ECC 122 and its Property Manager regarding parking spaces to be acquired by ECC 122 and repairs to the common elements of the building;
- Direct Receiver's Property Manager to complete various repairs to condominium units prior to sale completion, as agreed to by the Receiver under Agreements of Purchase and Sale;
- Attend three (3) meetings of the Board of Directors of ECC 122 by telephone;
- Collect monthly rents for the leased, unsold units;
- Respond to tenant queries and concerns; and
- Various telephone calls and correspondence with the stakeholders and their respective counsel

11. In the course of performing the duties pursuant to the Order and as set out above at paragraph 10, and since the date of the Sixth Report the Receiver's staff expended 165.2 hours for the period of January 14, 2017 through May 17, 2017. Attached hereto and marked as Exhibit "A" to this my Affidavit are the accounts of the Receiver together with a summary sheet.
12. To the best of my knowledge, the rates charged by the Receiver throughout the course of these proceedings are comparable to the rates charged by other insolvency practitioners in the Ontario mid-market for providing similar insolvency and restructuring services.
13. The hourly billing rates outlined in Exhibit "A" to this my Affidavit are not more than the normal hourly rates charged by BDO Canada Limited for services rendered in relation to similar proceedings.
14. Although the assets of Portofino are located in Windsor and the Receiver's primary office is located in London the Receiver has not charged for travel time or travel expenses.
15. I verily believe that the fees and disbursements incurred by the Receiver are fair and reasonable in the circumstances.

16. This Affidavit is sworn in support of the motion for approval of the Receiver's fees and disbursements and for no other or improper purposes.

SWORN BEFORE ME at the City of
London in the Province of Ontario
on the 18th day of August, 2017



Commissioner for Taking Affidavits

David Randall Flett, a
Commissioner, etc., Province of Ontario,
For BDO Canada Limited and BDO Canada LLP.
Expires April 20, 2019.


STEPHEN N. CHERNIAK, CPA, CA, CIRP

Attached is Exhibit A
To the Affidavit of Stephen N. Cherniak
Sworn the 18th day of August 2017.



A Commissioner, Etc

David Randall Flett, a
Commissioner, etc., Province of Ontario,
For BDO Canada Limited and BDO Canada LLP,
Expires April 20, 2019.

**Summary of Receiver's Accounts for the period
January 14, 2017 through May 17, 2017**

Invoice Date	Hours Expended	Fees & Disbursements	HST	Invoice Total
March 14, 2017	93.0	\$35,164.36	\$4,571.37	\$39,735.73
May 18, 2017	72.2	28,034.92	3,644.54	31,679.46
	165.2	\$63,199.28	\$8,215.91	\$71,415.19



Invoice # 88814099
 Portofino Corporation
 HST Reg # 101518124RT0001

Ontario Superior Court of Justice
 245 Windsor Ave
 Windsor, ON N9A 1J2

March 14, 2017

Re: Portofino Corporation

For professional services rendered for the period January 14, 2017 through March 13, 2017 as per the attached detail:

Our Fee	\$35,000.00
Disbursements (courier)	<u>164.36</u>
Sub total	35,164.36
HST	4,571.37
	<hr/>
Total	<u>\$39,735.73</u>

REMITTANCE ADVICE

Cheque Payments to:
 100-633 Colborne Street
 London, ON N6B 2V3

Invoice # 88814099

Amount \$39,735.73

March 14, 2017

For professional services rendered

Staff	Date	Time	Narrative
Cherniak, S	16-Jan-17	0.4	Review of email from D. Capaldi on allocation of funds for condo projects. Review of D. Capaldi expenses. Discussion of timing of next court report. Review of email to D. Capaldi re Union Gas bill.
Flett, D	16-Jan-17	0.9	Review unit 1401 amendment, sign and return to J. McClelland; call with J. McClelland re: unit 1401 amendment units 1601/1602 status; review October - December property management expenses and email to D. Capaldi re: unit 106 utilities.
Flett, D	17-Jan-17	0.2	Emails with D. Capaldi re: unit 106 utilities and repairs, January 2017 rents.
Hooper, L	17-Jan-17	0.1	Banking.
Finnegan, M	17-Jan-17	0.5	File administration.
Finnegan, M	18-Jan-17	1	Deposit rents and update rent roll. Pay bills.
Flett, D	18-Jan-17	0.7	Emails with D. Capaldi re: unit 106 status and ECC #122 building repairs; email from J. McClelland on status of conditional sales; call with J. McClelland on unit 1401 inspection and financing condition, unit 106 repair status, units 1601/1602 condition status, Windsor Star ads; email with D. Capaldi re unit 102 rent.
Cherniak, S	18-Jan-17	0.2	Review of email from D. Capaldi re unit 106 repairs. Update on rents.
Cherniak, S	19-Jan-17	0.3	Update on unit 106. Discuss and approve extension on unit 1401.
Flett, D	19-Jan-17	1.1	Review D. Capaldi emails re: units 106, 102; review unit 1401 amendment; call with J. McClelland re: amendment and financing status; review unit 1401 amendment and units 1601/1602 status; further call with J. McClelland re: units 1601/1602.
Flett, D	20-Jan-17	0.4	Call with J. McClelland re: unit 1401 conditions and repairs, units 1601/1602 sale status, pending expiry; further call with J. McClelland re: units 1601/1602 expiry of conditions.
Hooper, L	20-Jan-17	0.1	Banking.
Cherniak, S	20-Jan-17	0.1	Call with Miller Thomson re report.
Hooper, L	23-Jan-17	0.1	Banking.
Flett, D	23-Jan-17	1	Calls with J. McClelland on units 1601/1602 expired conditions, financing status, option of amendment to revive; review HST balance owing; review unit 1401 notice of fulfillment, acknowledge and forward to J. McClelland.

Staff	Date	Time	Narrative
Finnegan, M	23-Jan-17	0.3	Review company HST returns re CRA notice received.
Finnegan, M	24-Jan-17	0.5	Pay bills.
Flett, D	24-Jan-17	0.5	Review units 1401, 1601/1602 sale status; call and email with J. McClelland re: units 1601/1602 expiry of conditions and mutual releases; update sales and inventory schedules.
Cherniak, S	24-Jan-17	0.6	Review of lengthy email between J. Cook and K. Wolfe re D. Capaldi lien claims. Email to Miller Thomson re same. Send email to D. Capaldi re unit 1603. Update on unit 1401 deal and Satz/Ashanati deal. Review of email to Miller Thomson from Americo.
Cherniak, S	25-Jan-17	0.2	Review and respond to D. Capaldi email. Call with Miller Thomson re J. Cook email.
Flett, D	25-Jan-17	0.4	Email with D. Capaldi re: unit 1401 repairs and status; review February condo fees; call with J. McClelland re: unit 1401 status, units 1601/1602 mutual releases.
Finnegan, M	25-Jan-17	0.5	Receipt of City of Windsor 2017 interim tax bills, review and prepare payment schedule.
Flett, D	26-Jan-17	2.6	Review email from D. Capaldi re: unit 1401 repairs; review status, quantum of original BMO financing; review units 1603, 102 list prices; call with J. McClelland re: unit 1401 inspection, closing date, units 1601/1602 mutual release status; emails with J. Cook re: unit 1401 closing date; further call with J. McClelland on unit 1401 closing date, financing condition; review 2017 interim tax bills and revised assessed values; email to J. McClelland re: parking unit 13 taxes; email to MPAC re: parking tax roll, parking units 8, 16 tax issues; review units 1603, 102 list prices factors.
Cherniak, S	26-Jan-17	0.5	Call with D. Capaldi re purchase of unit 1603 and unit 102. Discuss list prices and commission with D. Flett. Discuss quantum of S. D'Amore outstandings.
Cherniak, S	27-Jan-17	0.5	Update on unit 1401. Execute waiver of final condition and review updated closing. Review of email to D. Capaldi re unit 1301 clean up. Review of suggested list prices for units 1603 and 102.

Staff	Date	Time	Narrative
Flett, D	27-Jan-17	3	Call with J. McClelland on unit 1401 conditions, closing date; email to Miller Thomson re: unit 1401 sale, sale documents; review unit 1401 notice of fulfillment, sign, forward to J. McClelland; update to sales and inventory schedules; call with J. McClelland re: unit 1401 taxes, closing date and unit 1301 listing timing; update 2017 property tax payment schedule; review and sign amendment to change closing date; email to J. Cook with amendment; email to D. Capaldi re: unit 1401 closing date, unit 1301 repairs; prepare unit summary for 7th report; start preparation of 7th report.
Flett, D	30-Jan-17	2.6	Review email from D. Capaldi re: unit 1301 repairs and forward to J. McClelland; call with J. McClelland re: unit 1301 repairs, staging, parking unit 22 purchaser; units 1601/1602 mutual releases; email to D. Capaldi re: APS and schedules; email with MPAC re: further parking unit property tax issues; prepare 7th report - R & D section; reconcile unit sales summary.
Hooper, L	30-Jan-17	0.1	Banking.
Finnegan, M	30-Jan-17	0.5	Bill payments.
Cherniak, S	30-Jan-17	0.5	Review of emails re unit 1401. Email to D. Capaldi re list prices. Discussion re strategy with D. Capaldi. Review of forms sent to D. Capaldi. Pay bills. Review response from D. Capaldi.
Cherniak, S	31-Jan-17	0.3	Execute parking agreement. Review of email to D. Capaldi re units 1601/1602. Update on report.
Finnegan, M	31-Jan-17	1	Prepare R & D for court report.
Flett, D	31-Jan-17	3.2	Email with and voice mail from J. McClelland re: parking unit 22 listing; email with J. McClelland re: unit 1505 list price, taxes and condo fees; revise and reconcile detail sale summary schedule; review R&D and revisions; continue with 7th report; prepare litigation summary chart for 7th report; email with At-home Staging; email to J. McClelland re: unit 1505 parking and storage; review listing for parking #22.
Flett, D	1-Feb-17	3.2	Review 7th court report, and revisions; call with J. McClelland on unit 1505 showing, unit 1505 HST rebate, unit 1602 showing, units 1601/1602 mutual releases; email with MPAC re: parking; review units 1601/1602 status; review Miller Thomson summary of litigation; continue with 7th report - Other litigation section, revise litigation summary table for report; other 7th report revisions; call with J. McClelland re: unit 1602 listing status, other unfinished unit listing.

Staff	Date	Time	Narrative
Cherniak, S	1-Feb-17	1.2	Review of email from D. Capaldi. Review of MPAC email re improper charges. Execution of parking space deal. Review of Miller Thomson reporting letter. Review file re missing matters. Email to Miller Thomson. Review response. Discussion re listing of new unfinished unit and how to deal with units 1601/1602.
Cherniak, S	2-Feb-17	0.5	Review of edits to report. Send to Miller Thomson. Discussion re listing units 1505 and 1601 on MLS. Review of email to D. Capaldi re same.
Flett, D	2-Feb-17	2.2	Revisions to 7th report and review; review proposed unit 1505 listing; call with J. McClelland re: unit 1505 listing, units 1601/1602 mutual release; review HST new housing rebate regulations and prepare schedule of available HST rebate on unit 1505; email with S Merry re: 1505 HST rebate; email with J. McClelland re: unit 606 re-sale; email to D. Capaldi re: unit 1505 listing; review unit 1505 listing agreement; review unfinished unit furnace and a/c status.
Flett, D	3-Feb-17	0.6	Review, revise and sign unit 1505 listing agreement and email to J. McClelland re: listing, a/c, HST rebate; call with J. McClelland re: unit 1301 enquiry, unit 1505 HST; email with S. Merry re: unit 1505 HST rebate illustration.
Merry, S	3-Feb-17	0.1	Review of HST rebate calculation.
Flett, D	6-Feb-17	0.7	Review email from D. Capaldi re: unit 1505 parking; review P22 offer, review with SC and prepare counter; call with J. McClelland re: P22 offer and timing, unit 1505 listing, unit 1301 listing; call with J. McClelland re: unit 1505 listing, units 1402, 1602 further showings and questions; email to D. Capaldi re: unit 1402.
Cherniak, S	6-Feb-17	0.4	Review of emails re unit 1505, review of updated Miller Thomson reporting letter. Review of email to D. Capaldi re units 1402, 1602. Review of D. Capaldi voicemail message.
Cherniak, S	7-Feb-17	1.5	Email from D. Capaldi re units 1402/1602. Call from D. Capaldi re purchase of unit 1603 and possible payout of loan. Call with Miller Thomson re same. Review of correspondence from Sutts re T5 for Dalfidan funds. Review of Miller Thomson edits to 7th report. Review and sign fee affidavit. Email to Miller Thomson re report.
Flett, D	7-Feb-17	2.2	Email with D. Capaldi; call with J. McClelland re: units 1402, 1601 showings; review Miller Thomson revisions to 7th report; prepare affidavit of fees for 7th report.
Finnegan, M	7-Feb-17	0.5	Deposit rents and update rent roll.
Finnegan, M	8-Feb-17	0.2	Adding Motion Record to BDO website.

Staff	Date	Time	Narrative
Flett, D	8-Feb-17	1.5	Lengthy call with J. McClelland on units 1402, 1602 showing and questions, units 1601/1602 mutual release, unit 1301 staging and listing, unit 806 commission accounting, surface parking price and availability; review draft order for 7th report and email to T. Van Klink re: actions available to be assigned to creditors; email to J. McClelland re: surface parking spots for sale; review property tax payment and sign cheque; review motion record and Valente settlement documents; review unit 1301 listing agreement.
Hooper, L	8-Feb-17	0.1	Banking.
Szypula, C	8-Feb-17	0.5	Review 7th Report.
Cherniak, S	8-Feb-17	0.4	Email from D. Capaldi re upcoming board meeting. Review of draft order. Discussion re creditors to be served when Section 38 type notice goes out. Review of Motion Record.
Cherniak, S	9-Feb-17	0.3	Update on sale of parking space. Execute listing agreement for unit 1301. Update on next available listing.
Flett, D	9-Feb-17	1.4	Review unit 1301 listing, sign and forward to J. McClelland; voice mail from/to J. McClelland re: unit 1301 listing, unit 1602 enquiry; email Miller Thomson re: unit 1401 property tax installment paid; receive parking #22 accepted offer, advise D. Capaldi and prepare property tax information for Miller Thomson; updates to sales and inventory schedules.
Finnegan, M	9-Feb-17	0.5	Pay property tax installment payment.
Flett, D	10-Feb-17	0.3	Voice mail from J. McClelland to update; email to J. McClelland re: unit 1602 showing; review revised court date and motion record.
Cherniak, S	10-Feb-17	0.5	Emails re change in court date. Call with Scott D'Amore re update.
Cherniak, S	13-Feb-17	0.4	Email from D. Capaldi re potential purchase of units. Review and execute documents for unit 1401 purchase. Review of email re unit 1401 deficiencies.
Flett, D	13-Feb-17	1.6	Call with J. McClelland re: unit 1505 showings, unit 1401 repairs; email to D. Capaldi re: unit 1401 repairs; email to Miller Thomson re: parking #22 sale documents, property tax information; review draft unit 1401 closing statements; email with L. Lattimore (unit 1403 owner); call with J. McClelland re: unit 1602 interested parties, unsold inventory.
Finnegan, M	13-Feb-17	0.5	Bill payment. Add revised motion record date to BDO Portofino website.
Finnegan, M	14-Feb-17	0.5	Prepare and send sale documents to Miller Thomson.

Staff	Date	Time	Narrative
Flett, D	14-Feb-17	1.8	Emails with D. Capaldi re: unit 1401 repairs, lower level storage rooms; call with J. McClelland re: unit 1401 repairs, unit 1602 showing, unit 1402 status, unit 1505 HST; review letter from unit 1401 buyer lawyer and email to Miller Thomson re: Reliance arrears; email to D. Capaldi re: ongoing Reliance billing issues; email with Miller Thomson re: unit 1401 Reliance arrears payment on closing; call with J. McClelland on units 101 and 1201 list prices, showings.
Cherniak, S	14-Feb-17	0.8	Numerous emails re unit 1401 closing issue re reliance bills. Review of D. Capaldi response. Review of Reliance schedule. Review of correspondence from Shibley and D. Capaldi Send to Miller Thomson. Respond to Shibley
Cherniak, S	15-Feb-17	0.4	Updates on unit 1401 issues re Reliance.
Flett, D	15-Feb-17	0.9	Several emails with D. Capaldi and J. McClelland on unit 1401 repairs; email with Miller Thomson re: unit 1401 Reliance arrears; further email with Miller Thomson and D. Capaldi re: Reliance arrears and review revised unit 1401 statement of trust.
Flett, D	16-Feb-17	1.4	Review D. Capaldi emails regarding repairs and other property management issues; emails with L. Lattimore on short term rental of storage locker; email to M. Greenaway re: T5's and forward BMO T5's; call with J. McClelland on unit 1201 showing, unit 1401 closing, forward unfinished unit tax and condo fee information.
Hooper, L	16-Feb-17	0.1	Banking.
Finnegan, M	16-Feb-17	0.3	Pay bills.
Cherniak, S	16-Feb-17	0.2	Email re storage locker. Respond.
Flett, D	17-Feb-17	1.6	Call with J. McClelland re: unit 1201 interested party, list price, pending offer; voice mail from J. McClelland, call back re: unit 1201, upcoming weekend showings, unit 1505 HST rebate; email with Miller Thomson, text msg with D. Capaldi, J. McClelland re: unit 1401 closing; update sales and inventory schedules, analysis; email with J. McClelland re: unit 806 commission.

Staff	Date	Time	Narrative
Flett, D	21-Feb-17	3.2	Email with J. McClelland, re: additional unit 806 funds received and update sale accounting; review parking #22 closing documents and email to Miller Thomson re: revision, commission and deposit funds to be returned; review units 1505, 1301 offers; call with J. McClelland re: unit 1301, unit 1505 offers, unit 1505 HST rebate, parking #22 commission statement; review revised parking #22 documents; email to S. Merry re: unit 1505 offeror HST rebate eligibility; prepare unit 1301, unit 1505 counter offers; email Hub International re: liability renewal, number of units owned; call with J. McClelland and emails with Miller Thomson re: amend P#22 closing date; review units 1301, 1505 offers and forward to J. McClelland.
Cherniak, S	21-Feb-17	0.8	Emails from D. Capaldi re upcoming board meeting. Review of email to S. Merry re HST on upcoming offer. Execute documents on parking space sale. Review of emails re update on Letter of Credit payout to Morga. Discuss, review and execute counters on offers for units 1301 and 1502.
Cherniak, S	22-Feb-17	0.8	Update on unit 1301 offer. Emails re sale and parking space closing. Review of board minutes and agenda. Update on Letter of Credit, email to D. Capaldi re unit.
Flett, D	22-Feb-17	2.2	Review unit 1301 accepted offer and update sales and unsold unit schedules; call with J. McClelland re: unit 1301 acceptance, unit 1505 status, future listing; email to D. Capaldi re: conditional sale of unit 1301; receive additional unit 1301 sale documents from J. McClelland; review revised P22 statement of adjustments and email with Miller Thomson re: revisions, new closing date; review units 1301, 1505, parking unit 2017 interim tax bills.
Finnegan, M	22-Feb-17	0.5	Prepare and send sale documents to Miller Thomson.
Finnegan, M	23-Feb-17	0.6	Deposit rent cheques and sale proceeds cheque. Pay bill.
Flett, D	23-Feb-17	1.2	Call with J. McClelland re: unit 1505 offer status, unit 1301 inspection condition, unit 1502 listing; call with J. McClelland on unit 1301 inspection, available surface parking, #19, 20 status; review level 1 site plan and parking allocation; review ECC 122 visitor parking issue.
Hooper, L	23-Feb-17	0.1	Banking.

Staff	Date	Time	Narrative
Cherniak, S	23-Feb-17	2.6	Correspondence from Miller Thomson re motion confirmation. Emails from D. Capaldi re board meeting. Review of financial information for board meeting. Review of email from Bowman re same. Email from D. Capaldi re timing of call re purchase of units. Discussion re parking spaces taken by ECC #122 for entrance to visitors parking. Attend condo board meeting by phone.
Cherniak, S	24-Feb-17	1.1	Review of directions from meeting last evening. Long call with D. Capaldi re parking space issue, S. D'Amore outstandings and purchase of unit 1603 and 102. Follow up with D. Flett.
Hooper, L	24-Feb-17	0.1	Banking.
Flett, D	24-Feb-17	2	Review parking space 18-20, unit 1603 pricing, comparable; call with J. McClelland re: unit 1505 interested party, parking spaces; review March condo fees and sign cheque; prepare analysis of Trieste and comparable sales to date.
Finnegan, M	24-Feb-17	0.5	Pay bill
Flett, D	27-Feb-17	2.2	Review, acknowledge unit 1301 fulfillment of inspection; call with J. McClelland re: unit 1301 status certificate condition, unit 1204 rental, update; review units 102, 1603 offers; review unit 1603 comparable analysis; prepare units 102, 1603 counter offers.
Cherniak, S	27-Feb-17	0.9	Review of D. Capaldi offers on units. Discuss counters with D. Flett. Review comparables. Execute counter. Review of email re HST. Review of email from Miller Thomson response to Shibley refunds held in trust to be offset for fees.
Cherniak, S	28-Feb-17	0.5	Update on court attendance. Draft and send email to D. Capaldi.
Flett, D	28-Feb-17	1.8	Attend at court for 7th report hearing; attend at Portofino and inspect new parking area; review email re: units 102, 1603 offers.
Flett, D	1-Mar-17	0.3	Call with J. McClelland on unit 1301 status, de-staging, future unit 106 listing; review email from D. Capaldi.
Finnegan, M	1-Mar-17	0.2	Add court order document to website documents.
Cherniak, S	1-Mar-17	0.3	Review of order obtained. Email from D. Capaldi re deals.
Williams, P	1-Mar-17	1	Research eligibility for NRRP Rebate in general as well as for a U.S. Citizen.
Cherniak, S	2-Mar-17	0.5	Review of proposed letter to creditors. Discussion re service list.

Staff	Date	Time	Narrative
Flett, D	2-Mar-17	2.2	Review draft letter to creditors re: litigation to be assigned; email with Miller Thomson re: service list; review accounts payable, summary, existing service list, litigation summary and prepare/revise creditor list for Receiver notice; review creditors to receive notice; call with J. McClelland re: enquiry, units 1601/1602 mutual release, unit 1301 conditions.
White, N	2-Mar-17	0.4	Research rebate eligibility.
Flett, D	3-Mar-17	1.6	Review D. Capaldi email, unit 1603 offer and review with SC; update sale and inventory summaries; email with J. McClelland re: 1301 conditions; revise list to creditors re: Feb 28 17 order, litigation to be assigned and forward to T Van Klink for review.
Cherniak, S	3-Mar-17	0.6	Email from D. Capaldi re acceptance of offer. Review offer. Email to D. Capaldi.
Cherniak, S	6-Mar-17	0.8	Review of email from D. Capaldi. Discuss updating realtor on D. Capaldi sale. Review of Merry email on HST rebate for non-residents. Review of correspondence on Letter of Credit from Morga and the Attorney General's. Respond to Miller Thomson re same. Review of Miller Thomson response to Morga.
Flett, D	6-Mar-17	1.1	Review S. Merry memo re: buyer eligibility for HST new housing rebate; call with J. McClelland on unit 1301 condition status, unit 1505 HST rebate, unit 1603 conditional sale, unit 1502 listing timing; email with At-Home staging; review unit 1603 sale.
Merry, S	6-Mar-17	0.1	Review research re: non-resident purchasing unit and rebate, respond to D. Flett.
Finnegan, M	7-Mar-17	0.3	Prepare and send cheque to Gino Morga re Letter of Credit payment shortfall.
Flett, D	7-Mar-17	3.5	Review edits to creditor list re: litigation to be assigned, and call with Miller Thomson; revise creditor list and email with Miller Thomson; call with J. McClelland re: unit 1301 fulfillment of conditions, unit 1301 staging; review email re: Valente cheque and sign; review unit 1301 fulfillment, acknowledge and forward sale documents to Miller Thomson; email to D. Capaldi re: unit 1301 sale; finalize creditor list for letter to creditors re: litigation, review and organize with Feb 28 court order; update sales and inventory summaries; draft agreement re: unit 1301 buyer furnishings pre closing.
Hooper, L	7-Mar-17	0.1	Banking.
Cherniak, S	7-Mar-17	0.6	Review of Letter of Credit calculation and correspondence to Morga. Discuss with Miller Thomson. Arrange for cheque. Finalize payment.

Staff	Date	Time	Narrative
Cherniak, S	8-Mar-17	0.5	Email from D. Capaldi. Review of finalized docs re service of letter re lawsuit.
Flett, D	8-Mar-17	0.8	Review mailing and email of creditor notice; return signed unit 1301 agreement re: furniture to J. McClelland; review At-Home Staging invoice and email re same; review issued notice to creditors re: litigation and subsequent emails.
Finnegan, M	8-Mar-17	0.7	Email and send registered mail to Portofino creditors.
Finnegan, M	9-Mar-17	0.6	Deposit rent cheques and update rent roll
Cherniak, S	9-Mar-17	0.1	Email from D. Capaldi re bond premium. Respond.
Cherniak, S	10-Mar-17	0.4	Review D. Capaldi response to performance audit report. Review of monthly reporting. Review of email exchange re retirement of Letter of Credit. Update on parking space closing.
Flett, D	10-Mar-17	0.6	Review D. Capaldi email re: Tarion bond; emails with L. Lattimore (unit 1403) re: storage unit rental arrangements; email with Miller Thomson and D. Capaldi re: sale of parking space #22; update sales schedule; review Miller Thomson letter to Bob Pedler; call with J. McClelland re: upcoming showings, sale of P22.
Cherniak, S	13-Mar-17	0.4	Correspondence re Letter of Credit. Review of email from L. Lattimore. Review of correspondence from creditor re Sec 38. Discuss response.
		93	Total Time

Staff	Position	Office	Rate	Time
Cherniak, S	Sr. Vice President	London	\$495	21.1
Finnegan, M	Administrative	London	\$175	10.2
Flett, D	Vice President	London	\$350	58.7
Hooper, L	Estate Administrator	London	\$125	0.9
Merry, S	Partner - Tax	Cambridge	\$345	0.2
Szypula, C	Sr. Vice President	London	\$475	0.5
White, N	Sr. Accountant - Tax	Cambridge	\$190	0.4
Williams, P	Jr. Accountant - Tax	Cambridge	\$135	1.0
				93



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Invoice # 88967960
Portofino Corporation
HST Reg # 101518124RT0001

Ontario Superior Court of Justice
245 Windsor Ave
Windsor, ON N9A 1J2

May 18, 2017

Re: Portofino Corporation

For professional services rendered for the period March 13, 2017 through May 17, 2017 as per the attached detail:

Our Fee	\$28,000.00
Disbursements (courier)	<u>34.92</u>
Sub total	28,034.92
HST	3,644.54
Total	<u>\$31,679.46</u>

REMITTANCE ADVICE

Cheque Payments to:
100-633 Colborne Street
London, ON N6B 2V3

Invoice # 88967960

Amount \$31,679.46

May 18, 2017

For professional services rendered

Staff	Date	Time	Narrative
Flett, D	13-Mar-17	0.6	Email with D. Capaldi and L. Lattimore re: unit 102; review process for assignment of litigation and review Plaza Marble enquiry; sign cheques and review parking space common fees; email with Miller Thomson re; Betschel's Kitchen and notice to creditors.
Finnegan, M	13-Mar-17	0.6	Prepare and send property tax installment payment. Call and email to Lynn Freeland bookkeeping re March condo fee payment.
Hooper, L	13-Mar-17	0.1	Banking
Finnegan, M	14-Mar-17	0.4	Deposit sale funds.
Cherniak, S	14-Mar-17	0.3	Review of materials for condo board meeting.
Flett, D	14-Mar-17	0.4	Call with J. McClelland on showings, listing status; email to MPAC re: sale of parking space #22.
Finnegan, M	15-Mar-17	0.5	Bill payment.
Hooper, L	15-Mar-17	0.1	Banking
Hooper, L	16-Mar-17	0.1	Banking
Finnegan, M	16-Mar-17	0.2	Post motion record to website.
Flett, D	16-Mar-17	0.1	Call to P. Fontana of Plaza Ontario and VM.
Flett, D	17-Mar-17	0.4	Emails with L. Lattimore re: unit 102; call with J. McClelland re: showings; review email re: unit 1603 sale.
Cherniak, S	17-Mar-17	0.3	Review of fulfillment of condition from D. Capaldi. Execute and email back.
Cherniak, S	20-Mar-17	0.6	Review of letter from Gatti re Section 38 Order. Email to Miller Thomson Review Miller Thomson email to Gatti. Review emails to/from D. Capaldi re deal. Discuss listing of unit 1502. Review email to D. Capaldi.
Flett, D	20-Mar-17	2.1	Review unit 1603 sale documents and update sales and update unsold unit inventory schedule; memo to Miller Thomson re: sale of unit 1603 and documents and property taxes; review sale of unit 1502, litigation, timing of next court report; call with J. McClelland re: unit 1603 status, unit 1502 listing timing and price; email to D. Capaldi re: unit 1502 listing, current tenants.
Flett, D	21-Mar-17	0.5	Review emails from D. Capaldi on unit 1603 closing, unit 1502 tenant and reply; email D. Capaldi re: march rents; email to Miller Thomson re: unit 1603 closing particulars and buyers' lawyer; email to P. Fontana re: actions.
Cherniak, S	21-Mar-17	0.3	Email from D. Capaldi re unit 1502. Review of email to Miller Thomson re Capaldi purchase. Review of correspondence to Attorney General's office re Letter of Credit.
Finnegan, M	21-Mar-17	0.3	Deposit

Staff	Date	Time	Narrative
Cherniak, S	22-Mar-17	0.2	Review email from Capaldi re unit 1502. Discuss how to proceed.
Flett, D	22-Mar-17	0.2	Email with D. Capaldi re: unit 1502, March rents; review unit 1502 listing arrangements.
Flett, D	23-Mar-17	0.4	Review draft unit 1301 closing documents and email with Miller Thomson; voice mail from P. Fontana; review Westview mortgage.
Cherniak, S	23-Mar-17	0.4	Execute documents for sale of unit 1301. Calls from S. D' Amore re update on sales, next court date and Portofino Westview park mortgage.
Flett, D	24-Mar-17	0.7	Email with Miller Thomson re: unit 1301 Statement of Adjustment, common fees; review revised closing statements; email to P. Fontana of Plaza re; actions to be assigned to creditors; call with J. McClelland re: units 1502, 1505 showing; email to D. Capaldi re: unit 1502 tenants.
Finnegan, M	24-Mar-17	0.3	File HST returns.
Flett, D	27-Mar-17	0.7	Review email from D. Capaldi re: unit 1502; call with J. McClelland re: unit 1505 interested party, unit 1502 listing; review April condo fee payment schedule and revise; email with L. Lattimore. Review legal action assignment status, process.
Cherniak, S	27-Mar-17	0.3	Review of email from D. Capaldi re Satz and Ashanti. Update from Picard on Capaldi matters. Discuss no need for report on Apr 18 with Miller Thomson.
Finnegan, M	28-Mar-17	0.5	Deposit rent cheques and update rent roll.
Flett, D	29-Mar-17	0.3	Call with J. McClelland on unit 1602 interested party, unit 1108 rental; current re-sale listings.
Flett, D	30-Mar-17	0.2	Email with L. Lattimore re: storage locker; call to P. Fontana re: assignment of legal actions.
Flett, D	31-Mar-17	2.2	Email with D Capaldi re: unit 204 tenant; review numbered company unit 1505 offer and call with J. McClelland; review Qiu unit 1505 offer and call with J. McClelland; review current re-sale listings; calls with L. Lattimore and text msg with D. Capaldi re: locker 102 arrangements; call with J. McClelland and txt msg with D. Capaldi re: unit 1301 closing; update sales and inventory schedules, analysis for unit 1301 closing; prepare unit 1505 counter offer; text messages with D. Capaldi and emails with Miller Thomson re: unit 1301 buyer key arrangements; review unit 1505 offer and forward to J. McClelland.
Cherniak, S	31-Mar-17	0.5	Review of email from Capaldi re unit 204. Update on unit 1301 closing. Review and discuss offer and counter on unit 1505. Execute counter.
Hooper, L	3-Apr-17	0.4	Bank deposit.
Cherniak, S	3-Apr-17	0.3	Update on firm deal for unit 1505. Review of emails to Capaldi. Review of updated schedule.

Staff	Date	Time	Narrative
Flett, D	3-Apr-17	1.3	Review unit 1505 accepted offer, compile documents and email with J. McClelland; update sale and inventory schedules for unit 1505 sale; email to D. Capaldi re: unit 1505; review Receiver accounting for parking space 22 and deposit receipt from Bob Pedler; email with J. McClelland re: unit 1505 HST rebate; call with J. McClelland on unit 204, unit 1502 listings.
Flett, D	4-Apr-17	1.6	Call with J. McClelland re: unit 1502 listing, timing, unit 1602 enquiry; further call with J. McClelland re: unit 1502 listing and tenant considerations; call with R. Finlay re; assignment of Actions and subsequent email; detailed memo to Miller Thomson re: absence of mutual release from conditional sale of units 1601/1602 and future sale of units; emails to D. Capaldi re: unit 1505 condenser installation, unit 106 and exterior repairs, unit 1502 appliances.
Cherniak, S	4-Apr-17	0.5	Emails to Capaldi re unit 1502 and unit 106. Review of email to Miller Thomson re unit 1502 and tenant not dealing with deposit. Call from Miller Thomson re realtor interested in all units. Call to realtor.
Cherniak, S	5-Apr-17	0.5	Review of Miller Thomson response to unit 1502 issue with doctors. Review draft letter to doctors. Review of email to Capaldi.
Flett, D	5-Apr-17	2.5	Review D. Capaldi emails re: units 1502, 106 repairs; review Miller Thomson email re units 1601/1602 conditional sale issues and reply; call with J McClelland re: unit 1502 listing, unit 1602 showing; prepare letter to Ashtiani, Satz re: lapse of units 1601/1602 offer, unit 1502 listing and forward to D. Capaldi; review unit 1502 listing agreement, edit and forward signed to J. McClelland; further call with J. McClelland on unit 1502 listing, showings and tenant arrangements.
Flett, D	6-Apr-17	0.5	Review D. Capaldi email re: unit 1502 tenant owned appliances and advise J McClelland; review Bob Pedler invoices; call with J. McClelland re: unit 1502 listing, unit 1505 conditions, unit 204 listing; email to J. McClelland.
Cherniak, S	6-Apr-17	1.2	Review Capaldi responses re unit 1502. Review Dalfidan materials.
Cherniak, S	7-Apr-17	1.3	Review of additional information from Miller Thomson on Dalfidan. Call with Miller Thomson re same. Discussion re possible set offs. Email re Capaldi involvement.
Flett, D	7-Apr-17	1.2	Review units 1601, 1602 mutual releases, sign and return to J. McClelland; review unit 1502 and resale listings; brief review of Dalfidan counsel materials, Tarion audit report and review Dalfidan action issues; call to P. Fontana re: actions to be assigned.
Hooper, L	7-Apr-17	0.1	Deposit

Staff	Date	Time	Narrative
Flett, D	10-Apr-17	2.2	Review pending closings and future distribution timing and amount; lengthy call with J. McClelland on weekend showings including unit 1505 buyer HST; unit 1602 showings and interested party questions; unit 101; review Jan - Mar 17 property expenses; call with J. McClelland re: unit 101 enquiry; unit 1303 showing and possible offer; HST rebate rules; review photo and email to D. Capaldi re: unit 101 repairs, building envelope repairs; email with S. Merry on CRA deadline for HST new housing rebate applications; review unit 101 issues, quarterly expenses.
Merry, Scott	10-Apr-17	0.2	Review and respond to email re: timing of rebates.
Cherniak, S	10-Apr-17	0.5	Decide on conference call time re Dalfidan. Email re condo board. Review of email to Capaldi re potential interest in unit 101 and water issues. Discussion re fix. Review of response from S. Merry re commencement of 2 year limitation period on filing claims for unfinished units.
Cherniak, S	11-Apr-17	0.8	Review of Capaldi email re unit 101 fix and BDO response. Discussion re same. Emails from Miller Thomson re abandonment of lawsuits and any response. Discuss plaza marble and review v/m. Review various letters and notices of motion to various respondents.
Flett, D	11-Apr-17	1.6	Email with D Capaldi re: unit 101 repairs; emails Miller Thomson re: status of actions assignable to creditors and creditor responses; email to P Fontana re: assignment of action; review updated creditor list for assignment and forward to T Van Klink; call with P Fontana of Plaza marble re: assignment of legal actions; updates to unsold inventory summary; sign cheques
Hooper, L	11-Apr-17	0.1	Banking
Finnegan, M	12-Apr-17	0.5	Bill payments
Flett, D	12-Apr-17	0.8	Review Miller Thomson letter to creditors re: legal actions; email with D. Capaldi re: unit 101 condition; review unit 1505 amendment, email with J. McClelland and forward signed amendment; review Dalfidan litigation status; review April rents; email with L. Lattimore re storage locker rental cheque.
Cherniak, S	12-Apr-17	1.1	Review response from Capaldi on water issues in units 101 and 106. Conference call with Capaldi and Miller Thomson re Dalfidan. Call with Miller Thomson afterwards. Review of Miller Thomson letter to service list re withdrawal of lawsuit motion. Review of email re court procedure and no attendance required.
Cherniak, S	13-Apr-17	1.2	Review of response to undertakings provided by Capaldi. Prepare schedule. Review of Miller Thomson response. Review of Capaldi response to listing unit 101. Review of email from Gatti re remaining units. Respond.
Flett, D	13-Apr-17	1.1	Call with J McClelland on unit 1505 financing, extension; review D Capaldi emails re: units 101, 204; review April property taxes to be paid; review unit 1505 amendment, sign and forward to J. McClelland; call with J. McClelland on unit 1505 buyer questions, permitted construction hours; email to D. Capaldi re: construction hours.

Staff	Date	Time	Narrative
Flett, D	17-Apr-17	1.3	Call with J. McClelland re: unit 1505 buyer question - unit finishing, unit 1502 showings, appliances; email to D. Capaldi re: unfinished unit completion, by-law no. 6 and other considerations; review 2016-2017 liability insurance policy and email with M Cleary of HUB on renewal and current unsold units.
Cherniak, S	17-Apr-17	1.5	Review Capaldi email to Miller Thomson over the weekend. Prepare and send email to Capaldi with schedule of deficiencies re Dalfidan. Review of material for Apr 20/17 condo board meeting. Email to Capaldi re nonattendance. Review of email to S. D'Amore re payments from receiver to WFCU. Respond. Review of Capaldi response re unit 101. Review of email to Capaldi re conditions re reno of unfinished unit. Review of email from owner re extra charge for inspection of HVAC system. Review of Capaldi responses to emails.
Finnegan, M	17-Apr-17	0.4	Property tax installment payment
Cherniak, S	18-Apr-17	0.4	Emails from S. D'Amore re request for updated information. Review of emails with Miller Thomson re closing of Capaldi unit. Review of email re elevator charges.
Flett, D	18-Apr-17	1.3	Prepare current unsold unit summary and forward to S. D'Amore with comments; review ESCC 122 Notice of Motion re: service elevator and call with J McClelland; email with Miller Thomson re: unit 1603 closing date; call with J. McClelland re: unit 101 repairs.
Flett, D	19-Apr-17	0.3	Review Feb 23, 2017 ESCC 122 Notice of Motion; review emails and upcoming board meeting and Tarion.
Cherniak, S	19-Apr-17	0.7	Review of numerous emails from board members re HVAC issues. Review of Capaldi email re in camera session. Email to Capaldi and Cassano re Flett attendance.
Finnegan, M	19-Apr-17	0.3	Bill payment
Flett, D	20-Apr-17	1.2	Call with J. McClelland re: unit 1505 conditions, unit 1502 showings; Feb 23 2017 ECC #122 Notice of Motion; review Aug 5/16 OHE report, Nov 1/16 ECC 122 letter to Tarion; participate in Tarion portion of ECC #122 in camera board meeting.
Flett, D	21-Apr-17	1.3	Email with D. Capaldi and review of ECC #122 Notice of Motion; call with J McClelland re: unit 1505 conditions; email with M. Cleary on liability renewal, revised premium; review updated April/17 rent roll; call with J. McClelland re: unit 1505 financing not fulfilled, mutual release, unit 1502 showings, unit 204 listing, unit 1502 light fixtures; review unit 1505 status; further call with J. McClelland re: unit 1505.
Cherniak, S	21-Apr-17	0.7	Review of resolution re Tarion report. Review of email to Capaldi re Tarion inspection. Update on unit 1505 not closing. Update on unit 1502. Review of email from insurer re reduction.
Finnegan, M	21-Apr-17	0.5	Deposit
Cherniak, S	24-Apr-17	0.4	Email from Capaldi re board meeting. Email from Miller Thomson re Dalfidan. Review of corr. Email to Capaldi. Execute unit 1505 release.
Flett, D	24-Apr-17	0.1	Email with J. McClelland re: unit 1505 mutual release.

Staff	Date	Time	Narrative
Flett, D	25-Apr-17	1.8	Call with J. McClelland on recent showings, unit 1602 'verbal' offer, unit 1505 listing cancellation, unit 204 listing timing; emails with J. McClelland re unit 204 taxes, condo fees, closing date, list price; emails to D. Capaldi re: unit 1505 condenser arrangements, unit 204 listing; review unit 204 listing and call with J. McClelland re: offer review dates; review unit 204 listing plan, sign and return listing agreement to J. McClelland; review may condo fee payment.
Cherniak, S	25-Apr-17	0.5	Email from Capaldi re Dalfidan. Review of emails to Capaldi re units 1505 and 204. Execute cancellation of listing of unit 1505. Execute listing agreement for unit 204. Discuss marketing strategy.
Cherniak, S	26-Apr-17	0.5	Emails from Capaldi re Dalfidan, units 204 and 1505. Revise Dalfidan schedule. Email from Miller Thomson. Respond. Review of revised Portofino schedule.
Flett, D	26-Apr-17	0.9	Review emails from D. Capaldi re units 204, 1505; email with J McClelland re: unit 1505; review re-sale listings; update unsold unit summary schedule; call with J. McClelland re: unit 204 listing.
Finnegan, M	26-Apr-17	0.5	Prepare and send condo fee payment.
Hooper, L	26-Apr-17	0.1	Banking
Flett, D	27-Apr-17	0.1	Voice mail from J. McClelland re: unit 204 showings.
Cherniak, S	27-Apr-17	0.3	Call from Miller Thomson re Dalfidan. Review of email to Capaldi.
Cherniak, S	28-Apr-17	0.2	Review of Capaldi emails re Dalfidan. Review of email to Capaldi re unit 204.
Flett, D	28-Apr-17	0.4	Call with J. McClelland on unit 204 showings, repair; email to Capaldi re: unit 204 repair.
Hooper, L	1-May-17	0.1	Banking
Flett, D	1-May-17	0.4	Call with J McClelland re: weekend showings and activity, verbal offer on unit 1505, buyer queries re: unfinished units; email to J. McClelland re: by-law no. 6.
Cherniak, S	1-May-17	0.1	Review of Capaldi email re unit 204. Discuss giving condo by-laws to prospective unfinished purchasers.
Cherniak, S	2-May-17	0.2	Review and counter offer on unit 204.
Flett, D	2-May-17	1.4	Voice mail from J McClelland re: unit 204 offers; review unit 204 offers; call with J. McClelland on unit 204 offers received, conditions; review unit 204 offers, prepare counter offer and forward to J. McClelland; review and sign receiver cheques.
Hooper, L	2-May-17	0.1	Banking
Flett, D	3-May-17	1.4	Review April property expenses report; call with J. McClelland on unit 204 offer status, unit 1505; review unit 204 accepted offer and emails to D. Capaldi, J. McClelland; emails in evening with J. McClelland on unit 204 amendment, unit 101 offer to be received.
Cherniak, S	4-May-17	0.3	Email from Pedlar re Unit 204. Execute and return. Review of email from Capaldi re unit 204.

Staff	Date	Time	Narrative
Finnegan, M	4-May-17	0.3	Pay bill
Cherniak, S	5-May-17	0.4	Email from Capaldi re board meeting. Discussion and counter of offer on 101.
Flett, D	5-May-17	1.8	Email with M. Cleary of Hub on liability renewal, BDO address change and review invoice; review unit 204 amendment; review unit 101 offer and call with J McClelland on offer, repair request; review and sign unit 101 exclusive listing; email with D. Capaldi and J. McClelland re: unit 204 appraisal; phone call with S. Cherniak to review unit 101 offer; prepare unit 101 counter offer and forward to J. McClelland.
Flett, D	8-May-17	1.1	Email with D Capaldi re: unit 204; lengthy call with J. McClelland on unit 101 water issues, counter offer, unit 1201 interest, HST and listing agreement; review previous emails and email to D. Capaldi re: unit 101 re building caulking repairs; call with J. McClelland on unit 101 offer, inspection condition, unit 1502 list reduction, pending unit 1201 offer.
Cherniak, S	8-May-17	0.2	Update on water problems in units 101 and 106.
Cherniak, S	9-May-17	0.9	Review of drone proposal. Email to Capaldi followed up with call re various mostly regarding units 101 and 106 water seepage issues. Review and accept offer on unit 101.
Flett, D	9-May-17	1.2	Review D. Capaldi email re units 101 and 106 water issues, ECC 122 proposed repairs; call with J McClelland re: unit 101 offer, unit 1201 offer not submitted, unit 204 appraisal; review unit 101 counter offer and forward accepted offer to J. McClelland; review leak diagnostic and ECC 122 proposed repairs; update unsold inventory and sales schedules.
Finnegan, M	9-May-17	0.5	Deposit and update rent roll.
Flett, D	10-May-17	1.4	Email to D. Capaldi re: questions on April property expenses; email to D. Capaldi re: sale of unit 101, details of conditions and repairs; lengthy call with J. McClelland on unit 101 repairs, unit 1502 verbal offer and review of list price, unit 204 condition status and minor repairs; email to D. Capaldi re: unit 204 blinds, fixtures; update unsold inventory schedule.
Cherniak, S	10-May-17	0.7	Texts from Capaldi re repairs to units 101 and 106. Review of email to Capaldi re property management expenses. Discussion with Miller Thomson re Dalvidan. Call from S. D'Amore re next court date for payout.
Cherniak, S	11-May-17	0.3	Review and execute closing documents for unit 1603.
Flett, D	11-May-17	1.3	Review emails from D Capaldi re: unit 204, April property expenses, unit 101 conditional sale; sign receiver cheques; review unit 204 amendment, repairs; review unit 204 amendment and forward signed to J. McClelland; review draft closing statements for unit 1603 and email with Miller Thomson re: deposit; Sign and return unit 101 waiver of condition; review units 101 and 106 repairs.
Finnegan, M	11-May-17	0.6	Prepare and send executed sale documents to Miller Thomson. Bill payment.

Staff	Date	Time	Narrative
Hooper, L	11-May-17	0.1	Banking
Cherniak, S	15-May-17	0.6	Review of material for May 17/17 condo board meeting. Review of detailed email from Miller Thomson re Dalfidan claim. Respond.
Cherniak, S	16-May-17	0.5	Review of emails re finalization of unit 204 sale. Review of emails from Miller Thomson re unit 1603 extension. Further review of materials for board meeting May 17/17.
Flett, D	16-May-17	1.3	Review unit 204 fulfillments of condition; email to D. Capaldi re: firm sale of unit 204 and repairs; email to Miller Thomson re: sale of unit 204, sale and property tax documents; update unsold unit inventory schedule; review liability policy renewal from Hub; email with Miller Thomson re: unit 1603 extension.
Flett, D	17-May-17	0.7	Review unit 1603 closing extension terms and emails with Miller Thomson re: unit 1603 extension; review revised unit 1603 Statement of Adjustments; call with J. McClelland re: unit 1502 showing, list price reduction, other showings.
Cherniak, S	17-May-17	2.2	Review of draft settlement letter and release re Dalfidan. Respond. Deal with delay in unit 1603 closing. Attend in camera meeting and condo board meeting by telecom.

72.2 Total Time

Staff	Position	Office	Rate	Time
Cherniak, S	Sr. Vice President	London	\$495	21.9
Finnegan, M	Administrative	London	\$175	6.4
Flett, D	Vice President	London	\$350	42.3
Hooper, L	Estate Administrator	London	\$125	1.3
Merry, S	Partner - Tax	Cambridge	\$345	0.3
				72.2

TAB "K"

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2502461 ONTARIO LTD.

Applicant

- and -

PORTOFINO CORPORATION

Respondent

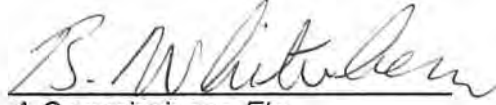
APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

AFFIDAVIT OF TONY VAN KLINK

I, TONY VAN KLINK, of the Municipality of Thames Centre, in the Province of Ontario, MAKE OATH AND SAY:

1. I am partner with the law firm of Miller Thomson LLP ("**MT**"), lawyers for BDO Canada Limited, in its capacity as Court-appointed Receiver (the "**Receiver**") of the property, assets and undertakings of Portofino Corporation and, as such, have knowledge of the matters to which I hereinafter depose.
2. I make this Affidavit in support of the Receiver's motion for, among other things, having the fees and disbursements of MT, as legal counsel to the Receiver, approved.
3. Attached hereto to this my Affidavit and marked as **Exhibit "A"** are copies of the invoices rendered by MT to the Receiver for fees and disbursements of MT for the period January 3, 2017 through to July 26, 2017 (the "**Period**"). I affirm that the invoices accurately reflect the services provided by MT during the Period and the fees and disbursements claimed by it. During the Period, the total fees and disbursements billed were \$38,339.50 and \$883.43 respectively. The HST billed was \$5,098.98. Attached hereto to this my Affidavit and marked as **Exhibit "B"** is a statement summarizing MT's fees for the Period. Lawyers and staff at MT have collectively expended a total of 98.10 billable hours in connection with this matter during the Period as outlined in the summary of fees attached as Exhibit "B".

Attached are Exhibits "A" and "B" to the
Affidavit of Tony Van Klink sworn the
18th day of August, 2017

A handwritten signature in cursive script, appearing to read "B. Whitaker". The signature is written in black ink and is positioned above a horizontal line.

A Commissioner, Etc.



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EXHIBIT "A"

156

March 15, 2017

Invoice Number 3010893

BDO Canada Limited
633 Colborne Street
Suite 100
London, ON N6B 2V3
Canada

Attention: Stephen N. Cherniak

To Professional Services Rendered in connection with the following matter(s) including:

Re: Portofino Corporation
Our File No. 0082873.0012

Date	Initials	Description	Hours
01/03/2017	JL	Review of requisition letter and draft response; prepare closing documents including Statement of Adjustment, Statement of Trust and Receiver's Certificate; draft closing correspondence; e-mail correspondence with client and purchaser's solicitor;	1.70
01/03/2017	AVK	attendance on motion to enforce settlement in Valente litigation and settle form of order; attend to obtain approval for late filing of motions for status hearings for matters subject to administrative dismissal; attend at court office and trial coordinator's office to review court files and address filing issues for motions	9.80
01/03/2017	AVK	e-mails from and to Ms. Rea re motion for status hearing	0.20
01/04/2017	AVK	finalize draft judgment; e-mails from and to Mr. Morga, Mr. Trottier, Mr. Chandler and Mr. Sasso; letter to Justice Thomas	1.60
01/04/2017	AVK	Telephone call with Mr. Cherniak re settlement of Valente action and status hearing motions for various	0.50



Date	Initials	Description	Hours
		actions involving Portofino	
01/05/2017	JL	E-mail correspondence with purchaser's solicitor and client regarding revised Statement of Adjustments and Utility Arrears; revise documents;	0.60
01/05/2017	AVK	Telephone call with Mr. Bellowus re B+R Crevatin action	0.20
01/05/2017	AVK	Telephone call with Mr. MacKenzie re Loucks action; e-mails to and from Mr. Tighe re actions involving Mr. Martini as counsel; e-mails to Mr. Chandler; confirm status hearing motions; e-mails from and to Mr. Branch; telephone call with Mr. Paglione	1.20
01/05/2017	AVK	Telephone call with trial office re Valente order	0.10
01/05/2017	SK	E-mail correspondence from Mr. Flett re revising APS;	0.10
01/06/2017	JL	Prepare accounting forms; email correspondence with purchaser's solicitor; finalize application for registration; attend to various matters to facilitate closing; prepare outgoing courier;	0.80
01/06/2017	ASR	Attend to mortgage payouts; Telephone attendance on D. Flett regarding impact on non-resident status on purchaser;	0.30
01/06/2017	AVK	Telephone call with David Robins	0.30
01/09/2017	ASR	Telephone attendance on S. Kettle regarding residency issue;	0.20
01/09/2017	SK	Prepare letter to agent re filing receiver's certificate re unit 806; E-mail correspondence from Mr. Flett re APS; Consider issue; Telephone call to Mr. Roth (left voice message); Telephone conference with Mr. Roth re APS;	0.80
01/10/2017	SK	Telephone call to Mr. Flett (left voice message);	0.10
01/10/2017	AVK	attend on return of status hearing motions	6.00
01/11/2017	SK	Telephone conference with Mr. Flett; Revise APS;	0.10
01/12/2017	JL	Finalise draft report letter to client;	0.30
01/12/2017	SK	Review revised Schedule C; E-mail correspondence to Mr. Flett re same;	0.10
01/13/2017	SK	E-mail correspondence to Mr. Flett re APS;	0.10



Date	Initials	Description	Hours
01/17/2017	AVK	review draft affidavit to payout funds for Valente litigation	0.10
01/20/2017	AVK	Telephone call with Mr. Cherniak	0.10
01/25/2017	AVK	Telephone call with Mr. Cherniak	0.10
01/26/2017	AVK	Preparing report on outstanding litigation	2.50
01/27/2017	JL	E-mail correspondence with client; review of Agreement of Purchase and Sale and corresponding documents;	0.20
01/29/2017	AVK	Revising report on outstanding litigation	0.20
01/30/2017	AVK	Working on report of outstanding litigation	0.30
02/01/2017	AVK	Telephone call with Mr. Cherniak; finalize report on outstanding litigation; e-mail from and to Mr. Cherniak	0.40
02/02/2017	AVK	Revising report on outstanding litigation	0.30
02/02/2017	AVK	Revisions to Receiver's draft 7th Report	0.80
02/06/2017	AVK	Review and revise Receiver's draft 7th Report	0.30
02/07/2017	AVK	Working on Receiver's draft 7th Report, fee affidavits and Notice of Motion; telephone call with Mr. Cherniak	1.30
02/08/2017	AVK	working on motion materials and draft order	1.00
02/08/2017	AVK	Working on Motion materials and draft order	1.00
02/08/2017	AVK	Telephone call with Mr. Cherniak	0.20
02/08/2017	SK	Review and swear fee affidavit;	0.30
02/13/2017	JL	Review of requisition letter and prepare response; draft closing documents; e-mail correspondence;	1.30
02/14/2017	JL	Review of Agreement of Purchase and Sale for parking unit; e-mail correspondence with purchaser's solicitor; review of faxed correspondence from purchaser's solicitor regarding Reliance arrears and email correspondence with client regarding same;	0.60
02/14/2017	ASR	Attend to issue with respect to water heater rental arrears;	0.20
02/14/2017	SK	E-mail correspondence from and to Mr. Alexiou;	0.20
02/15/2017	JL	E-mail correspondence with client regarding Reliance Energy arrears; telephone conference with Reliance	0.70



Date	Initials	Description	Hours
		Energy Customer Service department; revise accounting documents;	
02/15/2017	ASR	E-mail correspondence regarding closing issues;	0.30
02/15/2017	SK	E-mail correspondence from Ms. Niro re scheduling call with Mr. Alexiou; Provide instructions re same;	0.10
02/16/2017	ASR	Review title issue with respect to reserve blocks;	0.40
02/16/2017	AVK	Review correspondence from Mr. Goldberg; telephone call and e-mail to Mr. Goldberg	0.20
02/17/2017	JL	Prepare accounting forms and outgoing couriers; e-mail correspondence with purchaser's solicitor and client; attend to various matters to facilitate closing; finalize Application for registration;	0.70
02/17/2017	ASR	Attend to VTB payout; Instructions regarding reserve blocks;	0.40
02/21/2017	JL	Review of requisition letter and draft response and closing documents; draft Application for Vesting Order; e-mail correspondence with client and purchaser's solicitor;	1.80
02/21/2017	AVK	Telephone call with lawyer for Mr. Martini re status hearing motions	0.10
02/21/2017	AVK	Telephone call with Mr. Morga; e-mail from and to Mr. Chandler	0.20
02/22/2017	SK	Prepare letter to agent re filing receiver's certificate for Unit 1401;	0.20
02/22/2017	SK	Review reporting letter re Unit 309; Review reporting letter re Unit 104;	0.20
02/22/2017	JL	E-mail correspondence with purchaser's lawyer and client regarding extension of closing date;	0.40
02/22/2017	AVK	E-mail from Mr. Morga; prepare motion confirmations	0.10
02/23/2017	SK	Review reporting letters for Unit 104, 806;	0.30
02/24/2017	SK	Finalize reporting letter for Unit 408; Finalize reporting letter for Unit 1501; Finalize reporting letter for Unit 601; Finalize reporting letter for Unit 304; Finalize reporting letter for Unit 103; Finalize reporting letter for Unit 105; Finalize reporting letter for Unit 1101;	3.40



Date	Initials	Description	Hours
		Finalize reporting letter for Unit 1202;	
02/24/2017	AVK	Telephone call with Mr. Goldberg, review Irrevocable Direction and consideration of issues relating to same; e-mail to Mr. Goldberg re delivery up of trust funds	1.00
02/27/2017	AVK	Prepare draft Order	0.10
02/28/2017	AVK	Attend on Motion for approval of Receiver's 7th Report; attend to entry of Order in court office; letter to Service List; prepare notice to creditors re assignment of actions	7.60
Total Hours			54.70

Our Fee: **\$25,353.00**

TK ID	Initials	Name	Title	Rate	Hours	Amount
05212	ASR	A. Roth	Partner	\$395.00	1.80	\$711.00
05403	AVK	A. Van Klink	Partner	\$565.00	37.80	\$21,357.00
05767	JL	J. Cook	Paraprofession al	\$150.00	9.10	\$1,365.00
05715	SK	S. Kettle	Partner	\$320.00	6.00	\$1,920.00

Taxable Disbursements

Delivery	56.73	
Agent's Fees	75.00	
Mileage/Parking Expenses	169.91	
Out of town travel expenses	339.82	
Total Taxable Disbursements	641.46	\$641.46

Total Fees and Disbursements **\$25,994.46**

Ontario HST 13% (R119440766)

On Fees	\$3,295.89
On Disbursements	\$83.39



MILLER THOMSON
AVOCATS | LAWYERS

Total Amount Due

\$29,373.74

E.&O.E.



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April 20, 2017

Invoice Number 3024101

BDO Canada Limited
633 Colborne Street
Suite 100
London, ON N6B 2V3
Canada

Attention: Stephen N. Cherniak

To Professional Services Rendered in connection with the following matter(s) including:

**Re: Portofino Corporation
Our File No. 0082873.0012**

Date	Initials	Description	Hours
03/01/2017	SK	Finalize reporting letter re Unit 1401;	0.20
03/06/2017	SK	Work on Dalfidan; Meeting with Mr. Van Klink re same; Telephone conference with Mr. Constantine;	4.50
03/06/2017	AVK	Review correspondence from Mr. Morga; e-mail to Mr. Cherniak; telephone call and e-mail to Mr. Morga	0.30
03/06/2017	AVK	Review and revise creditor's list for actions to be assigned; e-mail to Mr. Flett	0.20
03/07/2017	AVK	Telephone call with Mr. Kim (lawyer for RREF); e-mails from and to Mr. Morga regarding satisfaction of outstanding balance on Valente judgment; e-mails to Mr. Cherniak; letter to Mr. Morga	0.50
03/07/2017	AVK	Telephone call with Mr. Flett regarding actions to be assigned and creditors' list	0.20
03/07/2017	AVK	Review corporation profile report; e-mail to Mr. Flett re creditors' list	0.20
03/07/2017	AC	Obtain Corporation Profile Report for Batschel's Kitchen Centre Inc. and provide same to T. Van Klink;	0.10

Date	Initials	Description	Hours
03/10/2017	JL	Revise closing letters to reflect new closing date; e-mail correspondence with purchaser; s solicitor; prepare accounting forms; attend to various matters to facilitate closing; finalize Application for registration;	0.90
03/10/2017	ASR	Attend to transfer;	0.20
03/13/2017	SK	Prepare letter to agent re filing receiver's certificate for unit 22; Review reporting letter for unit 22 parking space;	0.20
03/16/2017	AVK	E-mail to Mr. Morga	0.10
03/20/2017	AVK	Review correspondence from Mr. Gatti; e-mails from and to Mr. Cherniak; e-mail to Mr. Gatti	0.20
03/21/2017	AVK	Telephone call with Accountant's office; prepare Requisition; letter to Accountant's office	0.30
03/23/2017	JL	Review of requisition letter and draft response; prepare all closing documents and correspondence; e-mail correspondence with purchaser's solicitor and client; prepare accounting forms and draft final report to client;q	1.50
03/23/2017	ASR	Correspondence regarding response to requisitions;	0.20
03/24/2017	JL	E-mail correspondence with purchaser's solicitor and client regarding revised Statement of Adjustments; revise documents;	0.30
03/24/2017	AVK	Receive original LC from Accountant's office, e-mails and correspondence to other counsel thereon	0.20
03/27/2017	JL	E-mail correspondence with purchaser's solicitor regarding documents to be deleted from title;	0.10
03/30/2017	JL	Finalize schedule to Application for Vesting Order and closing package to purchaser's solicitor;	0.40
03/31/2017	ASR	Attend to closing;	0.30
03/31/2017	JL	Review of executed documents received from purchaser's solicitor; finalize Application for Vesting Order for registration; prepare outgoing couriers; e-mail correspondence with client and purchaser's solicitor regarding status of file; finalize reporting package to client;	0.70



Total Hours **11.80**

Our Fee: **\$3,686.50**

TK ID	Initials	Name	Title	Rate	Hours	Amount
05948	AC	A. Chornaby	Paraprofession al	\$140.00	0.10	\$14.00
05212	ASR	A. Roth	Partner	\$395.00	0.70	\$276.50
05403	AVK	A. Van Klink	Partner	\$565.00	2.20	\$1,243.00
05767	JL	J. Cook	Paraprofession al	\$150.00	3.90	\$585.00
05715	SK	S. Kettle	Partner	\$320.00	4.90	\$1,568.00

Taxable Disbursements

Delivery	74.37
Agent's Fees	29.80
Corporate or Securities file searches	8.00

Total Taxable Disbursements 112.17 **\$112.17**

Total Fees and Disbursements **\$3,798.67**

Ontario HST 13% (R119440766)

On Fees \$479.25

On Disbursements \$14.58

Total Amount Due **\$4,292.50**

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June 16, 2017

Invoice Number 3049009

BDO Canada Limited
633 Colborne Street
Suite 100
London, ON N6B 2V3
Canada

Attention: Stephen N. Cherniak

To Professional Services Rendered in connection with the following matter(s) including:

Re: Portofino Corporation
Our File No. 0082873.0012

Date	Initials	Description	Hours
03/02/2017	AVK	Revise Notice to Creditors re assignment of proceedings	0.10
04/04/2017	AVK	Telephone call with Mr. Fazakis (ReMax Capital); telephone call with Mr. Cherniak	0.20
04/04/2017	SK	Prepare letter to agent re filing receiver's certificate for Unit 1301; Finalize reporting letter re Unit 1301;	0.20
04/04/2017	AVK	Telephone call with Gerry Trottier regarding VTB	0.10
04/05/2017	ASR	E-mail correspondence regarding release and lapsed purchase agreement;	0.30
04/05/2017	SK	Review submissions and documents and discussions with Mr. Alexiou re Dalfidan; E-mail correspondence to Mr. Cherniak re same;	2.90
04/07/2017	SK	E-mail correspondence from and to Mr. Cherniak; Telephone conference with Mr. Cherniak;	0.90
04/10/2017	SK	E-mail correspondence from and to Mr. Cherniak;	0.10
04/11/2017	AVK	E-mails to and from Mr. Cherniak; prepare and serve motion confirmation forms; correspondence to	0.80



Invoice 3049009

Date	Initials	Description	Hours
		opposing counsel regarding status hearing motions; correspondence to Portofino creditors	
04/12/2017	SK	Telephone conference with Mr. Cherniak and Mr. Capaldi;	0.80
04/12/2017	AVK	Telephone call with Ms. Caron re status hearing motions	0.10
04/12/2017	AVK	E-mail from and to Dante Gatti re B&R Crevatin claim against Portofino	0.10
04/13/2017	SK	E-mail correspondence from and to Dr. Capaldi;	0.20
04/17/2017	SK	E-mail correspondence from Dr. Capaldi; E-mail correspondence from Mr. Cherniak; Telephone call to Dr. Capaldi (left voice message);	0.10
04/18/2017	JL	E-mail correspondence with client regarding closing date of Unit 1603;	0.20
04/21/2017	SK	Telephone call to Dr. Capaldi (left voice message);	0.10
04/24/2017	SK	Review letter from Mr. Alexiou; Telephone call to Mr. Alexiou (left voice message); E-mail correspondence to and from Mr. Cherniak;	0.20
04/26/2017	SK	Review documents re Dalfidan; E-mail correspondence from Dr. Capaldi;	0.30
04/27/2017	SK	Review documents; Telephone call to Dr. Capaldi (left voice message); Telephone conference with Mr. Cherniak; E-mail correspondence to Dr. Capaldi; Telephone call to Mr. Ball (left voice message);	2.40
04/27/2017	AC	Obtain Bankruptcy certificate for Civa Stucco Supply Ltd. and provide same to S. Kettle;	0.10
04/28/2017	SK	Telephone call to Dr. Capaldi (left voice message); Telephone conference with Dr. Capaldi; Telephone call to Mr. Serafimovski (left voice message); Voice message from Mr. MacKenzie's office;	0.50
05/02/2017	SK	Telephone conference with Mr. MacKenzie re Portofino; Telephone call to Mr. Alexiou (left voice message);	0.50
05/03/2017	SK	Telephone conference with Mr. Ball; Telephone call to Mr. Keller (left voice message); E-mail	0.40

Please return the Account Summary and Remittance Form with your payment.

Terms: Accounts due when rendered. Interest at the rate of 12.0% per annum will be charged on accounts overdue 30 days or more. Any disbursements not posted to your account on the date of this account will be billed later.



Date	Initials	Description	Hours
		correspondence from and to Mr. Keller;	
05/04/2017	SK	Voice message from Mr. Keller; E-mail correspondence from and to Mr. Keller; Telephone call to Mr. Keller (left voice message); E-mail correspondence to Mr. Keller;	0.10
05/09/2017	SK	Voice message from Mr. Keller; Telephone conference with Mr. Keller;	0.30
05/10/2017	SK	Telephone conference with Mr. Cherniak re Dalfidan;	0.40
05/11/2017	JL	Review of requisition letter and draft response and ancillary documents; prepare Statement of Adjustments and Statement of Trust; compose e-mail to purchaser's solicitor enclosing same; compose e-mail to client with closing documents for signature;	1.60
05/11/2017	ASR	Attend to response to requisitions;	0.20
05/15/2017	SK	Review letter from Mr. Alexiou re Dalfidan; E-mail correspondence to and from Mr. Cherniak re Dalfidan;	1.30
05/16/2017	SK	Prepare offer to settle re Dalfidan; E-mail correspondence to Mr. Cherniak re same;	2.00
05/16/2017	JL	Discussions with G. Parkinson regarding email correspondence received from purchaser's solicitor requesting extension of closing date; compose e-mail co lenity regarding same;	0.20
05/16/2017	GP	Corresponding with D. Flett regarding extension to closing;	0.20
05/17/2017	GP	Corresponding with lawyer for the purchaser;	0.20
05/17/2017	JL	Discussions with G. Parkinson regarding extension; e-mail correspondence with client regarding same; revise Statement of Adjustments;	0.60
05/17/2017	SK	Revise and finalize offer to settle;	0.50
05/25/2017	JL	Review of faxed correspondence from purchaser's solicitor requesting extension; e-mail correspondence with client regarding same;	0.50
05/25/2017	ASR	Attend to extension of closing on unit and additional deposit; Attend to extension letter; E-mail correspondence;	0.20



Date	Initials	Description	Hours
05/26/2017	JL	Discussions with A. Roth; review of faxed and emailed correspondence; e-mail correspondence with purchaser's solicitor;	0.30
05/26/2017	ASR	Finalize extension of closing;	0.20
05/30/2017	ASR	Review final form of agreement and provide comments; E-mail correspondence;	0.40
05/31/2017	AVK	E-mail from and to Mr. MacKenzie	0.10
05/31/2017	ASR	E-mail correspondence regarding court order; Receive and review court order;	0.20
Total Hours			21.10

Our Fee: **\$6,615.00**

TK ID	Initials	Name	Title	Rate	Hours	Amount
05948	AC	A. Chornaby	Paraprofession al	\$210.00	0.10	\$21.00
05212	ASR	A. Roth	Partner	\$395.00	1.50	\$592.50
05403	AVK	A. Van Klink	Partner	\$565.00	1.50	\$847.50
05781	GP	G. Parkinson	Associate	\$250.00	0.40	\$100.00
05767	JL	J. Cook	Paraprofession al	\$150.00	3.40	\$510.00
05715	SK	S. Kettle	Partner	\$320.00	14.20	\$4,544.00

Taxable Disbursements

Agent's Fees	25.00	
Bankruptcy Search/Bank Act Search	8.00	
Total Taxable Disbursements	33.00	\$33.00

Total Fees and Disbursements **\$6,648.00**

Ontario HST 13% (R119440766)
 On Fees **\$859.95**



On Disbursements

\$4.29

Total Amount Due

\$7,512.24

E.&O.E.



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170

July 17, 2017

Invoice Number 3063714

BDO Canada Limited
633 Colborne Street
Suite 100
London, ON N6B 2V3
Canada

Attention: Stephen N. Cherniak

To Professional Services Rendered in connection with the following matter(s) including:

Re: Portofino Corporation
Our File No. 0082873.0012

Date	Initials	Description	Hours
06/02/2017	SK	Received voice message from Mr. Alexiou; E-mail correspondence to Mr. Cherniak;	0.20
06/05/2017	SK	E-mail correspondence from Mr. Cherniak; Prepare letter to Mr. Alexiou;	0.30
06/07/2017	JL	Review of requisition letter and Agreement of Purchase and Sale; draft response to requisitions and ancillary documents; draft Teraview documents and message to other solicitor; various e-mail correspondence;	1.50
06/07/2017	ASR	Respond to requisitions;	0.20
06/14/2017	SK	Voice message from Mr. Alexiou;	0.10
06/15/2017	JL	Revise financial documents for closing; review of e-mail correspondence received from purchaser's solicitor; discussions with A. Roth; draft extension letter;	0.80
06/15/2017	ASR	Extend Carpaldi agreement;	0.30
06/15/2017	SK	Voice messages from Mr. Alexiou; E-mail	0.50



Date	Initials	Description	Hours
		correspondence from Mr. Alexiou; Telephone call to Mr. Alexiou (left voice message); Telephone conference with Mr. Alexiou;	
06/16/2017	SK	E-mail correspondence to Mr. Cherniak re Dalfidan; Telephone conference with Mr. Cherniak; Prepare letter to Mr. Alexiou;	0.60
06/16/2017	JL	Prepare closing package to purchaser's solicitor; various e-mail correspondence; attend to various matters to facilitate closing; finalize report to client; prepare payout letters;	0.80
06/16/2017	ASR	Attend to closing of unit;	0.30
06/19/2017	SK	E-mail correspondence to and from Mr. Cherniak re Dalfidan offer to settle;	0.20
06/19/2017	AVK	Telephone call with David Swift re purchase of Capaldi unit and closing logistics with AVO	0.10
06/20/2017	JL	Telephone conference with purchaser's solicitor; prepare revised numbers for closing; e-mail correspondence with client regarding same;	0.40
06/21/2017	JL	Telephone conference with Title Insurer for Unit 1603 as purchaser's policy was sent to underwriting since no agents were involved;	0.20
06/22/2017	JL	Prepare closing package to purchaser's solicitor; various e-mail correspondence; attend to various matters to facilitate closing; finalize report to client; prepare payout letters; complete Application for vesting order for registration;	0.90
06/22/2017	ASR	Attend to closing on unit sale;	0.30
06/22/2017	SK	Prepare letter to agent re filing receiver's certificate for Unit 204; Discussion with Mr. Van Klink re Dalfidan offer to settle; E-mail correspondence to and from Mr. Cherniak re same; Voice message from Mr. Cherniak re same;	0.60
06/23/2017	SK	Revise and finalize offer to settle re Dalfidan; Received voice message from Mr. Alexiou; Telephone conference with Mr. Alexiou;	0.20
06/26/2017	SK	E-mail correspondence to Mr. Cherniak re offer to	0.10



Date	Initials	Description	Hours
		settle (Dalfidan);	
06/28/2017	SK	Telephone call to Mr. Alexiou (left voice message); Voice message from Mr. Alexiou; Telephone conference with Mr. Alexiou;	0.50
Total Hours			9.10

Our Fee: **\$2,237.00**

TK ID	Initials	Name	Title	Rate	Hours	Amount
05212	ASR	A. Roth	Partner	\$395.00	1.10	\$434.50
05403	AVK	A. Van Klink	Partner	\$565.00	0.10	\$56.50
05767	JL	J. Cook	Paraprofession al	\$150.00	4.60	\$690.00
05715	SK	S. Kettle	Partner	\$320.00	3.30	\$1,056.00

Taxable Disbursements		
Delivery		40.80
Agent's Fees		50.00
Total Taxable Disbursements		<u>90.80</u>
		\$90.80

Total Fees and Disbursements **\$2,327.80**

Ontario HST 13% (R119440766)

On Fees \$290.81

On Disbursements \$11.80

Total Amount Due **\$2,630.41**

E.&O.E.



MILLER THOMSON
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MILLERTHOMSON.COM

August 17, 2017

Invoice Number 3074337

BDO Canada Limited
633 Colborne Street
Suite 100
London, ON N6B 2V3
Canada

Attention: Stephen N. Cherniak

To Professional Services Rendered in connection with the following matter(s) including:

Re: Portofino Corporation
Our File No. 0082873.0012

Date	Initials	Description	Hours
07/04/2017	SK	Review letter from Mr. Alexiou;	0.10
07/06/2017	SK	E-mail correspondence to Mr. Cherniak;	0.10
07/07/2017	SK	Telephone conference with Mr. Cherniak re Dalfidan settlement;	0.10
07/10/2017	SK	Review and finalize reporting letter on Unit 204; Review and finalize reporting letter on Unit 1603;	0.60
07/21/2017	SK	E-mail correspondence from Mr. Flett;	0.10
07/25/2017	SK	E-mail correspondence from and to Mr. Flett;	0.10
07/26/2017	SK	Telephone call to Mr. Flett (left voice message); Telephone conference with Mr. Flett;	0.30
Total Hours			1.40

Our Fee:

\$448.00



TK ID	Initials	Name	Title	Rate	Hours	Amount
05715	SK	S. Kettle	Partner	\$320.00	1.40	\$448.00

Taxable Disbursements

Delivery	6.00	
Total Taxable Disbursements	<u>6.00</u>	\$6.00

Total Fees and Disbursements **\$454.00**

Ontario HST 13% (R119440766)

On Fees		\$58.24
On Disbursements		\$0.78

Total Amount Due **\$513.02**

E.&O.E.

EXHIBIT "B"
Miller Thomson's Fees

	<u>Year of Call</u>	<u>Rate 2017</u>	<u>Inv.#3010893</u> <u>March 15, 2017</u>	<u>Inv.#3024101</u> <u>April 20, 2017</u>	<u>Inv.#3049009</u> <u>June 16, 2017</u>	<u>Inv.#3063714</u> <u>July 17, 2017</u>	<u>Invoice #3074337</u> <u>August 17, 2017</u>	<u>Total</u> <u>Invoices</u>
Hours								
S. Kettle	2007	\$320.00	6.00	4.90	14.20	3.30	1.40	29.80
T. Van Klink	1988	\$565.00	37.80	2.20	1.50	0.10	0.00	41.60
A. Roth	2004	\$395.00	1.80	0.70	1.50	1.10	0.00	5.10
G. Parkinson	2015	\$250.00	0.00	0.00	0.40	0.00	0.00	0.40
J. Cook - clerk	N/A	\$150.00	9.10	3.90	3.40	4.60	0.00	21.00
A. Chornaby - clerk	N/A	\$140.00	0.00	0.10	0.10	0.00	0.00	0.20
			<u>54.70</u>	<u>11.80</u>	<u>21.10</u>	<u>9.10</u>	<u>1.40</u>	<u>98.10</u>
Total \$								
S. Kettle	2007	\$320.00	\$1,920.00	\$1,568.00	\$4,544.00	\$1,056.00	\$448.00	\$9,536.00
T. Van Klink	1988	\$565.00	\$21,357.00	\$1,243.00	\$847.50	\$56.50	\$0.00	\$23,504.00
A. Roth	2004	\$395.00	\$711.00	\$276.50	\$592.50	\$434.50	\$0.00	\$2,014.50
G. Parkinson	2015	\$250.00	\$0.00	\$0.00	\$100.00	\$0.00	\$0.00	\$100.00
J. Cook - clerk	N/A	\$150.00	\$1,365.00	\$585.00	\$510.00	\$690.00	\$0.00	\$3,150.00
A. Chornaby - clerk	N/A	\$140.00	\$0.00	\$14.00	\$21.00	\$0.00	\$0.00	\$35.00
			<u>\$25,353.00</u>	<u>\$3,686.50</u>	<u>\$6,615.00</u>	<u>\$2,237.00</u>	<u>\$448.00</u>	<u>\$38,339.50</u>
Summary								
Fees			\$25,353.00	\$3,686.50	\$6,615.00	\$2,237.00	\$448.00	\$38,339.50
Disbursements			\$641.46	\$112.17	\$33.00	\$90.80	\$6.00	\$883.43
HST			\$3,379.28	\$493.83	\$864.24	\$302.61	\$59.02	\$5,098.98
Total			<u>\$29,373.74</u>	<u>\$4,292.50</u>	<u>\$7,512.24</u>	<u>\$2,630.41</u>	<u>\$513.02</u>	<u>\$44,321.91</u>

2502461 ONTARIO LTD. and PORTOFINO CORPORATION
Applicant Respondent

Court File No. CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**AFFIDAVIT OF TONY VAN KLINK
SWORN AUGUST 18, 2017**

MILLER THOMSON LLP

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Lawyers for BDO Canada Limited,
Court-Appointed Receiver of
Portofino Corporation

TAB "L"



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July 11, 2016

Tony Van Klink
Direct Line: 519.931.3509
tvanklink@millerthomson.com

Delivered Via E-mail (Original by Mail)

File: 082873.0012

BDO Canada Limited
252 Pall Mall Street, Suite 103
London, ON N6A 5P6

Attention: Stephen N. Cherniak, CPA, CA,
CIRP

Dear Sir:

Re: Portofino Corporation (the "Debtor")

By Order of Mr. Justice Thomas dated October 29, 2013, BDO Canada Limited (the "Receiver") was appointed as receiver of the assets, undertakings and properties of the Debtor.

Prior to the receivership the Debtor constructed a 123 unit high-rise condominium building at 1225 Riverside Drive West, Windsor (the "Project"). At the date of the Receiver's appointment, the Debtor owned 52 apartment units, 38 parking units and 2 storage units (collectively, the "Units") in the Project. Since its appointment the Receiver has undertaken efforts to sell the Units and has been collecting the rents (the "Rents") for those Units which have been rented to tenants.

The following is our report to you and our opinion on the validity and enforceability of the security granted by the Debtor to Bank of Montreal ("BMO") against the Project, including the net receipts realized by the Receiver from the sale of the Units and the collection of Rents (collectively, the "Net Receipts").

ASSUMPTIONS AND QUALIFICATIONS

The opinions expressed in this letter are subject to the qualifications and assumptions set forth on Schedule "A" to this letter.

SEARCHES

We have conducted the following searches:

1. Corporation Profile Report – we obtained a corporation profile report from the Ministry of Government Services for the Province of Ontario with respect to the Debtor dated

July 5, 2016 which confirms that the Debtor was incorporated under the name "Westview Park Gardens (2004) Inc." on May 27, 2004. The Debtor changed its name to its present name "Portofino Corporation" on July 20, 2005;

2. Certificate of Status – we obtained a certificate of status from the Ministry of Government Services for the Province of Ontario with respect to the Debtor which confirms that the Debtor had not been dissolved as of July 6, 2016;
3. Land Titles – we performed subsearches of the Units sold by the Receiver to date. Those subsearches disclosed the following registrations against some or all of the Units immediately prior to the sale thereof:

(a) six registered charges, the particulars of which are as follows:

- (i) charge in the principal amount of \$30,000,000 in favour of BMO registered on November 28, 2005 as instrument number CE185236 (the "BMO Charge");
- (ii) charge in the principal amount of \$4,200,000 in favour of Lombard General Insurance Company of Canada ("Lombard") registered on November 29, 2005 as instrument number CE185421 ("Lombard Charge");
- (iii) charge in the principal amount of \$1,000,000 in favour of Remo Valente Real Estate (1990) Limited registered on October 12, 2007 as instrument number CE297353 (the "Valente Charge");
- (iv) charge in the principal amount of \$400,000 in favour of Sutts Strosberg LLP registered on August 9, 2011 as instrument number CE482047 ("Sutts Strosberg Charge No. 1");
- (v) charge in the principal amount of \$1,540,000 in favour of Royal Bank of Canada registered on December 20, 2011 as instrument number CE500568 ("Royal Bank Charge"); and
- (vi) charge in the principal amount of \$524,312 in favour of Sutts Strosberg LLP registered on January 10, 2013 as instrument number CE551002 (Sutts Strosberg Charge No. 2").

The BMO Charge, Lombard Charge and Royal Bank Charge were registered against all Units. The Valente Charge, Sutts Strosberg Charge No. 1 and Sutts Strosberg Charge No. 2 were not registered against the four parking units included among the Units sold by the Receiver.

- (b) Four construction liens and two certificates of action (together, the "Construction Liens and Certificates of Action"), the particulars of which are as follows:



- (i) construction lien in the amount of \$875,000 in favour of Dante J. Capaldi and 1287678 Ontario Inc. registered on September 30, 2013 as instrument number CE584310;
 - (ii) construction lien in the amount of \$3,000,000 in favour of Andreolli Investments Inc. registered on September 30, 2013 as instrument number CE584311;
 - (iii) construction lien in the amount of \$3,000,000 in favour of Dante J. Capaldi and 1287678 Ontario Inc. registered on October 25, 2013 as instrument number CE587801;
 - (iv) construction lien in the amount of \$875,000 in favour of Andreolli Investments Inc. and Wilma Capaldi registered on October 25, 2013 as instrument number CE587802;
 - (v) certificate of action registered on November 1, 2013 as instrument number CE588864 with respect to the construction lien registered as instrument number CE587801; and
 - (vi) certificate of action registered on November 1, 2013 as instrument number CE588865 with respect to the construction lien registered as instrument number CE587802.
- (c) a lien by Essex Standard Condominium Corporation No. 122 ("ESCC 122") on October 29, 2013 as instrument number CE588099 (the "Condo Lien"); and
 - (d) a Notice of Assignment of Rents in favour of Royal Bank of Canada registered on December 20, 2011 as instrument number CE500569.
4. *Personal Property Security Act (Ontario)* (the "PPSA") – we obtained a search of registrations against the Debtor under the PPSA which search was current as of July 4, 2016. The registrations disclosed by that search are summarized on Schedule "B" to this letter.

The BMO Charge

The BMO Charge is the first registered charge against each of the Units. The BMO Charge was registered electronically. The registered BMO Charge indicates that it was signed by Dante J. Capaldi, as president of the Debtor. We have been provided with a copy of an acknowledgment and direction dated October 27, 2005 signed by Mr. Capaldi on behalf of the Debtor authorizing the electronic registration of the BMO Charge.

The BMO Charge is a collateral charge securing all present and future indebtedness and liability of the Debtor to BMO. Standard charge terms 200821 which form part of the BMO Charge includes an assignment of leases and rents by which the Debtor has assigned, transferred and set over to BMO all of its rights and interest in all existing and future leases and tenancy agreements as security for the payment of all present and future indebtedness and liability of the Debtor to BMO.



PPSA registrations

The *PPSA* registrations outstanding against the Debtor as of July 4, 2016 are summarized on Schedule "B".

By virtue of section 4(1)(e) of the *PPSA*, the *PPSA* applies to the assignment of rents contained in the BMO Charge. BMO registered a financing statement under the *PPSA* on December 9, 2005. That registration is in proper form and perfects the security interest created by the assignment of rents contained in the BMO Charge.

As set forth on Schedule "B", Lombard's registration under the *PPSA* is prior in time to the BMO registration. The general collateral description portion of the Lombard registration has been completed to include the words "deposit trust agreement for purchasers' deposits". As such, by virtue of section 46(2.1) of the *PPSA*, the scope of the collateral in which Lombard may claim a perfected security interest is restricted to the collateral described in the general collateral classification and does not include the rents for the Units.

Assignments of the BMO Charge

By a General Assignment dated May 5, 2015, BMO assigned to RREF II BHB IV Portofino, LLC ("RREF") its loans with the Debtor and the security held for those loans (together, the "BMO Loans and Security"), including the BMO Charge. A Transfer of Charge from BMO to RREF for the BMO Charge was registered on June 29, 2015 as instrument no. CE664524.

By a General Assignment dated May 27, 2016, RREF further assigned the BMO Loans and Security, including the BMO Charge, to 2502461 Ontario Ltd. ("250 Ontario"). A Transfer of Charge from RREF to 250 Ontario for the BMO Charge was registered on May 30, 2016 as instrument no. CE715152.

As security for amounts owing by it to Windsor Family Credit Union ("WFCU"), 250 Ontario has granted security to WFCU in the BMO Loans and Security. As part of that security, 250 Ontario has executed a Direction dated May 27, 2016 directing the Receiver to make payment to WFCU of all amounts payable to 250 Ontario under the BMO Charge. A Transfer of Charge from 250 Ontario to WFCU for the BMO Charge was registered on May 30, 2016 as instrument no. CE715282.

Approval and Vesting Orders

By an Approval and Vesting Order dated May 2, 2014 and an Omnibus Approval and Vesting Order dated May 2, 2014, (together, the "Approval and Vesting Orders"), the Court approved the sale of the Units by the Receiver and vested title to the Units in the purchasers. The Approval and Vesting Orders provide that the proceeds from the sale of the Units are to stand in the place of the Units and that all encumbrances shall attach to the net proceeds from the sale of the Units with the same priority as they had with respect to the Units immediately prior to the sale thereof.

Construction Liens and Certificates of Action

In the actions commenced with respect to the construction liens which have been registered on title to the Units, a claim for priority is made over the BMO Charge. Pursuant to an

Agreement made between the construction lien claimants and the estate trustee of the estate of Patrick D'Amore and postponements registered as instrument numbers CE715154, CE715155, CE715156, CE715158, CE715159 and CE715562 on May 30, 2016, the Construction Liens and Certificates of Action were postponed to the BMO Charge.

The Condo Lien

You have advised that the Receiver has completed a settlement with ESCC 122 for the Condo Lien and that the Condo Lien has been satisfied. A discharge of the Condo Lien was registered on May 26, 2016 as instrument number CE714479. The discharge states that ESCC122 received payment of the Condo Lien.

OPINIONS

Subject to the qualifications and assumptions set forth on Schedule "A" to this letter, we are of the opinion that:

1. The BMO Charge is valid and enforceable security against the Units;
2. The assignment of rents contained within the BMO Charge is valid and perfected security in the Rents;
3. The BMO Charge has priority over all other registered charges and encumbrances against the Units;
4. The assignment of rents contained within the BMO Charge has priority over all other security interests which are perfected by registration under the *PPSA* as summarized on Schedule "B"; and
5. The BMO Charge has priority over all other registered charges, encumbrances and security interests in the Net Receipts.

Although we express no opinion on the validity or effectiveness of the various assignments of the BMO Loans and Security, there is no obvious defect in those assignments. Notice of any intended distribution of the Net Receipts should be given to BMO, RREF, 250 Ontario and WFCU so that if there is any issue relating to the assignments of the BMO Charge, the affected parties may appear on the motion.

Yours truly,



Tony Van Klink
TVK/jl

Enclosure
19059868.1



SCHEDULE "A"

Genuineness and Authenticity

We assume the genuineness of all signatures and the authenticity of all documents or copies thereof.

Equity and other Statutory Limitations

The opinions herein expressed are subject to any equities between the parties of which we have no notice or knowledge.

Proper Corporate Authorization

We assume that the security documents described in the attached letter have been executed by proper signing officers of the Debtor duly authorized.

Accuracy of PPSA Register and Public Records

We have assumed the accuracy of all public records, indexes and filing systems which we have searched or have caused inquiries to be made. We also assume that the registrations disclosed by the PPSA search which we have conducted accurately reflects the contents of and all registrations affecting the Debtor made by all secured parties.

Laws of Ontario

The opinions expressed herein, insofar as same relate to personal property, are limited to personal property located in the Province of Ontario. The opinions expressed herein are, as well, limited to the laws of the Province of Ontario and all federal laws applicable therein.

Consideration and Outstanding Indebtedness

We assume that consideration was given by the secured parties to whom the security documents described in the attached letter were granted to support the granting of those security documents.



SCHEDULE "B"

ONTARIO PERSONAL PROPERTY SECURITY ACT SEARCH
IN THE NAME OF PORTOFINO CORPORATION

FILE CURRENCY: JULY 4, 2016

REGISTRATION NO.	SECURED PARTY	COLLATERAL CLASSIFICATION	PPSA (P)/ RSLA (R)
20051129 0933 1862 0485	Lombard General Insurance Company of Canada	Accounts, Other	P
20051209 1402 1462 8473	Bank of Montreal	Inventory, Equipment, Accounts, Other, Motor Vehicle Included	P
Renewal 20101005 1038 9011 1236			
Assignment 20150626 1609 1590 8709	RREF		
Renewal 20151021 1445 1530 1223			
Assignment 20160530 1641 1590 9955	250 Ontario		
Assignment 20160530 1641 1590 9956	WFCU		
20110919 1459 1862 9095	Sutts, Strosberg LLP	Consumer Goods, Inventory, Equipment, Accounts, Other	P

M
T

TAB "M"



MILLER THOMSON
AVOCATS | LAWYERS

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MILLERTHOMSON.COM

November 7, 2016

Delivered via E-mail (original by mail)

BDO Canada Limited
633 Colborne Street
Suite 100
London, ON N6B 2V3

Attention: Stephen N. Cherniak, CPA, CA,
CIRP

Tony Van Klink
Direct Line: 519.931.3509
tvanklink@millerthomson.com

File: 082873.0012

Dear Sir:

Re: Portofino Corporation

We refer to our opinion dated July 11, 2016 (the "July 11th Opinion"). Unless otherwise indicated, defined terms herein have the same meaning as in the July 11th Opinion.

We confirm that the opinions expressed in the July 11th Opinion apply to the Net Receipts from sales of Units sold by the Receiver from July 11, 2016 to November 2, 2016.

Yours truly,

Tony Van Klink
TVK/sj

21024820.1

TAB "N"



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August 17, 2017

Delivered via E-mail (original by mail)

BDO Canada Limited
633 Colborne Street
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Attention: Stephen N. Cherniak, CPA, CA,
CIRP

Sherry A. Kettle
Direct Line: 519.931.3534
skettle@millerthomson.com

File: 082873.0012

Dear Sir:

Re: Portofino Corporation

We refer to our opinions dated July 11, 2016 (the "July 11th Opinion") and November 7, 2016. Unless otherwise indicated, defined terms herein have the same meaning as in the July 11th Opinion.

We confirm that the opinions expressed in the July 11th Opinion apply to the Net Receipts from sales of Units sold by the Receiver from November 3, 2016 to August 14, 2017.

Yours truly,

MILLER THOMSON LLP

Per.

Sherry A. Kettle
SAK/sj

26085420.1

TAB

“3”

Court File No.: CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

)

TUESDAY, THE 19TH

JUSTICE

)

DAY OF SEPTEMBER, 2017

)

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 ("**Portofino**") 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 Eighth Report of the Receiver dated August 22, 2017 and all appendices thereto (the "**Eighth Report**"), and directing that any further service of same be dispensed with such that this motion is properly returnable on September 19, 2017;
- (b) approving the Eighth Report and the activities and conduct of the Receiver described therein;

- (c) approving the Receiver's interim Statement of Receipts and Disbursements for the period October 29, 2013 to July 21, 2017 (the "**Statement of Receipts and Disbursements**");
- (d) approving the professional fees and disbursements of the Receiver and its legal counsel (the "**Professional Fees**");
- (e) authorizing the Receiver to enter into a settlement agreement (the "**Settlement Agreement**") with Dede Dalfidan c.o.b. Fidan Enterprise Contracting ("**Dalfidan**") whereby the Receiver would pay \$80,000 (the "**Settlement Amount**") in full and final settlement of the issues arising in the actions under Court File No. 07-CV-8478 and Court File No. 06-CV-8228 and approving the Settlement Agreement;
- (f) approving and authorizing the distribution of \$1,700,000 to Windsor Family Credit Union ("**WFCU**") from the funds on hand; and
- (g) such further and other relief as counsel may advise and this Honourable Court deems just.

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

ON READING the Eighth 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 Susan Jarrell sworn August 22, 2017, 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 Eighth 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 the Eighth Report and the activities and conduct of the Receiver described in the Eighth Report are hereby approved.
3. **THIS COURT ORDERS** that the Statement of Receipts and Disbursements be and the same is hereby approved.
4. **THIS COURT ORDERS** that the professional fees of the Receiver and its legal counsel, Miller Thomson LLP, as described in the fee affidavits of Stephen N. Cherniak sworn August 18, 2017 and Tony Van Klink sworn August 18, 2017, be and the same are

hereby approved.

5. **THIS COURT AUTHORIZES** the Receiver to enter into the Settlement Agreement with Dalfidan and approves the Settlement Agreement including, but not limited to, the payment of the Settlement Amount.
6. **THIS COURT ORDERS** the distribution of \$1,700,000 to WFCU from the funds on hand.

Justice, Ontario Superior Court of Justice

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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Lawyers for BDO Canada Limited, Court-
Appointed Receiver of Portofino Corporation

2502461 ONTARIO LTD. and PORTOFINO CORPORATION
Applicant Respondent

Court File No.: CV-13-19866

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**MOTION RECORD
(RETURNABLE SEPTEMBER 19, 2017)**

MILLER THOMSON LLP

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the court-appointed Receiver of
Portofino Corporation