



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-22-00688248-00CL

DATE: Apr 29 2024

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TITLE OF PROCEEDING: CITY OF TORONTO v. HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

BEFORE: JUSTICE PENNY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Mark Siboni	CITY OF TORONTO	mark.siboni@toronto.ca

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Courtney Betty	HARRY SHERMAN CROWE HOUSING COOPERATIVE INC.	betty@bettyslaw.com
Julian Castro		Julian@bettyslaw.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Philip Cho	Counsel for Receiver	pcho@weirfoulds.com
Brian Tannenbaum	Counsel for Receiver	btannenbaum@tdbadvisory.ca
Arif Dhanani	Counsel for Receiver	adhanani@tdbadvisory.ca

ENDORSEMENT OF JUSTICE PENNY:

- [1] The Receiver moves for an order approving: its First Report; the interim statement of receipts and disbursements; and the Receiver's fees.
- [2] The Respondent is a co-op housing project governed by the *Housing Services Act, 2011*. Under the *HSA*, the City of Toronto is the "service manager". The service manager is entitled to certain disclosures, ongoing reporting and such from registered housing Toronto co-ops. As a result of specific deficiencies in building maintenance and management, governance, and financial reporting, Toronto took the extraordinary step of bringing an application for the appointment of a receiver over the assets and undertaking of the Co-op. By order of March 14, 2023, I granted the order and appointed RSM Canada as Receiver. RSM subsequently changed its name to TDB Restructuring. Conway J. made an omnibus order changing RSM in the title of proceedings to TDB. My order required the Receiver to provide quarterly reports to Toronto and the Co-op, and to report to the Court at least annually.
- [3] Over the course of the last year the Receiver has worked diligently to remedy many of the deficiencies and problems. Among other things, the Receiver has: assessed the capabilities of, and replaced, the former property managers; worked with the new property manager to prepare accurate monthly financial statements, rent geared to income (RGI) calculations, urgent repair requests, essential services and up to date tax filings; worked with the auditor to prepare annual audited financial statements; attended to urgent maintenance and repairs in units, common areas and mechanical systems; updated housing deposits and charges; and administered funding to address necessary capital repairs. The capital repairs include roof replacement, fire alarm replacement, road and parking re-pavements, indoor and outdoor lighting upgrades and replacement, and elevator modernization. The Receiver has also prepared, and made available to both Toronto and the Co-op, quarterly reports, and has completed, and filed with this motion, the Receiver's first annual report. Among other things, the Receiver reports that the Co-op is still insolvent and could not continue without support from the Toronto.
- [4] Not all of the capital repairs applied for to Toronto were approved. It is anticipated that other applications for approval will be made once the current slate of projects is completed or nearing completion. The Receiver provided a progress report on the approved projects. The most complicated and involve project is the elevator renovation, which has an anticipated completion date of March 2025. The Receiver continues to work with the service manager, the property manager, the Co-op and other stakeholders to ensure the Co-op is operating in a manner consistent with the *HSA* and to complete various capital projects which Toronto has approved and funded (with earmarked funds). The Receiver recommends continuing the appointment until such time as the housing project is being operated in full compliance with the *HSA*, the various capital repair projects approved and funded by Toronto are completed and the Co-op is at a stage where it is capable of managing the project as a going concern. Toronto supports this recommendation.
- [5] The Co-op filed the affidavit of Rosell Kerr, who is the Chair of the Co-op board. In her affidavit, Ms. Kerr raised a number of concerns related to the Receiver and the ongoing receivership. In a supplement to its First Report, the Receiver comprehensively responded to those concerns, many of which appear to have resulted from a misunderstanding of what is actually happening, what the true financial circumstances of the Co-op are and what should be done in the future. I accept the Receiver's explanations in the supplementary report. For example, Ms. Kerr was concerned about the cost of the Receivership – but did not appreciate that the cost of the receivership was being paid by Toronto, not out of Co-op revenues. Ms. Kerr felt that the fact that the Co-op had over \$400,000 in its account showed the

Co-op was solvent – when in fact these funds are an advance from Toronto for capital repairs, earmarked for specific upgrades.

- [6] Although efforts to explore a consent order today were unsuccessful, in the end, Mr. Betty, on behalf of the Co-op, did not oppose the specific relief being sought today. His concern, and the concerns of the Co-op, relate to the path forward and to obtaining greater clarity about when the triggering events which lead to the receivership will have been sufficiently addressed to warrant return of control of the Co-op to its board of directors.
- [7] At the close of submissions, I indicated that I would grant the order sought today and provide some suggestions for the path forward. I am satisfied with the Receiver's First Report and with the actions taken by the Receiver to date, as documented in the Report. I am likewise satisfied with the interim statement and with the Receiver's outline, and amount of, its fees.
- [8] The Receiver's motion is granted. Order to issue in the form signed by me this day.
- [9] In my view, the past year has been spent dealing with the most urgent and pressing problems; this was necessarily so given the extent and seriousness of the physical, financial, governance and other problems being faced by the Co-op. Now that the situation has begun to stabilize, the Receiver should, as outlined in the First Report, continue with the initiatives it has undertaken. At the same, time, in this next phase of the receivership, Toronto and the Receiver should work with the Co-op to begin working toward a plan for when and how the transition back to board control might be achieved.
- [10] For example, counsel for Toronto advised that there are various resources available to board members, and potential board members, to help them understand what is required to successfully manage a co-op housing project. I strongly recommend that the board work with Toronto to understand and utilize these resources. The history of this matter leads me to believe that, in the past, the board has on occasion failed to understand, and to follow, various requirements necessary to maintain the service manager's support and co-operation. If the board wishes to successfully transition out of the receivership, it will have to show it has a clear understanding of what is required, from a regulatory, governance and financial point of view, for the successful operation of the Co-op.
- [11] Similarly, it would enhance the process if, during the next phase of the receivership, the Receiver and Toronto work toward specific, identifiable metrics and milestones for the resolution of the triggering events and what the conditions are for a successful conclusion of the receivership and a transition back to board control.



Penny J.