

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

BETWEEN:

CITY OF TORONTO

Applicant

-and-

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

Respondent

FACTUM OF THE RECEIVER

April 25, 2024

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PART 1 - NATURE OF THE MOTION

1. On March 14, 2023, the Ontario Superior Court of Justice (the “**Court**”) granted an order (the “**Appointment Order**”) appointing RSM Canada Limited as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties (the “**Property**”) of Harry Sherman Crowe Housing Co-Operative (the “**Respondent**” or “**HSC**”). On March 1, 2024, the Honourable Justice Conway granted an order substituting TDB Restructuring Limited (“**TDB**”) in place of RSM Canada Limited as the Receiver (the “**Omnibus Order**”).

2. Pursuant to the Appointment Order, the Receiver is required to, among other things, provide an annual report to the Court to advise of the actions taken and decisions made by the Receiver under its appointment. Accordingly, the Receiver brings this motion to provide its annual report and in connection therewith, request an order:

- a) Approving the First Court Report (as defined hereinafter), including the Quarterly Reports (as defined hereinafter), and the activities and conduct of the Receiver described in the First Court Report and the Quarterly Reports;
- b) Approving the Interim SRD (as defined hereinafter) of the Receiver for the period March 14, 2023 to March 11, 2024;

- c) Approving the fees and disbursements of the Receiver as set out in the Fee Affidavit (as defined hereinafter); and,
- d) Such further and other relief that to this Honourable Court seems just.

3. The motion to approve the First Court Report and activities of the Receiver, the interim SRD and professional fees and disbursements incurred by the Receiver is consistent with the customary responsibilities of a Receiver and is in accordance with the Appointment Order.

PART 2 - THE FACTS

4. Detailed facts relevant to the relief sought on this motion are set out in the First Report to the Court of TDB Restructuring Limited dated March 19, 2024 (the “**First Court Report**”), the Supplement to First Report to the Court of TDB Restructuring Limited dated April 22, 2024 (the “**Supplemental Report**”) and the Affidavit of Paul Fischer sworn on April 22, 2024 (the “**Fisher Affidavit**”). The following is a high-level summary of the facts.

5. Prior to the Appointment Order, the Respondent operated a housing project at the premises located at 51 Chimneystack Road in Toronto (the “**Housing Project**”) and was a housing provider within the meaning of the HSA. The Service Manager is responsible for administering and funding housing providers and their designated housing projects.¹

6. The Receiver was appointed receiver-manager over the Property of the Respondent and has managed the Housing Project since its appointment. Pursuant to paragraph 12 of the Appointment Order, the Receiver is required to provide quarterly updates (the “**Quarterly Reports**”) to the Applicant, City of Toronto (the “**City**”), in its capacity as “Service Manager” (in such capacity, the “**Service Manager**”) within the meaning of the *Housing Services Act, 2011* (the “**HSA**”). Pursuant to paragraph 13 of the Appointment Order, the Receiver is required to provide

¹ Reply Motion Record of the Receiver (“**RMR**”), Affidavit of Paul Fischer (“**Fischer Affidavit**”), Tab 2, paras. 2 and 5.

an annual report to the Court (the “**Annual Report**”) advising the Court of the actions taken and decisions made by the Receiver under its appointment.²

7. The Receiver prepared and provided its Quarterly Reports for the periods March 14, 2023 to June 13, 2023, June 14, 2023 to September 18, 2023 and September 19, 2023 to December 14, 2023. The Receiver published these Quarterly Reports on the Receiver’s case website, which was deemed by the Service Manager as sufficient for the purposes of paragraph 12 of the Appointment Order.³ The case website was established pursuant to paragraph 27 of the Appointment Order and is available for public access, including the Respondent and its members.

8. The purpose of the First Report, among other things, is to advise the Court of the actions taken and decisions made by the Receiver in accordance with paragraph 13 of the Appointment Order, and together with the Quarterly Reports appended to the First Report, constitute the Annual Report.⁴

9. As set out in the First Report and the Quarterly Reports, the Receiver engaged in a number of actions and made decisions in relation to the Housing Project and the Property, which include but are not limited to:

- (i) Meeting with, assessing the capabilities of, and ultimately terminating the former property managers of the Housing Project;⁵
- (ii) Engaging a new independent property and maintenance manager (the “**Property Manager**”);⁶
- (iii) Obtaining and securing bank accounts of the Respondent and opening new trust accounts for its receivership mandate;⁷

² Motion Record of the Receiver (“**MR**”), First Report to the Court of TDB Restructuring Limited dated March 19, 2024 (“**First Report**”), Appendix A.

³ MR, First Report, para. 11.

⁴ MR, First Report, para. 6.

⁵ MR, First Report, Appendix C, para. 11.

⁶ MR, First Report, Appendix C, para. 11.

⁷ MR, First Report, Appendix C, para. 11.

- (iv) Advising relevant persons of the Receiver's appointment, including the entity holding investments of the Respondent, Canada Revenue Agency ("CRA"), utilities providers, and the residents of the Housing Project;⁸
- (v) Corresponding with the City of Toronto in respect of funding requirements;⁹
- (vi) Working with the Property Manager to prepare and process new monthly financial statements, rent geared to income calculations and documentation, urgent repair requests, essential services, tax filings, and more;¹⁰
- (vii) Reviewing and revising the capital repair and maintenance budget for the City of Toronto in respect of available subsidies and grants;¹¹
- (viii) Communicating and working with the Property Manager and the auditor with respect to preparation of the Respondent's annual audited financial statements;¹²
- (ix) Attending to various insurance matters, including in respect of a flood insurance claim;¹³
- (x) Attending to urgent maintenance and repairs in various units and common area and mechanical system repairs and maintenance;¹⁴
- (xi) Resubmitting tax submissions to CRA, due to prior submissions being rejected;¹⁵
- (xii) Updating resident housing deposits and housing charges;¹⁶ and,

⁸ MR, First Report, Appendix C, para 11.

⁹ MR, First Report, Appendix C, para 11.

¹⁰ MR, First Report, Appendix D, para. 11.

¹¹ MR, First Report, Appendix D, para 11.

¹² MR, First Report, Appendix D, para. 11; First Report, Tab 2, para. 12.

¹³ MR, First Report, Appendix D, para. 11.

¹⁴ MR, First Report, Appendix E, para. 10.

¹⁵ MR, First Report, Appendix E, para. 10.

¹⁶ MR, First Report, para. 12.

- (xiii) Administering funding and program pursuant to the Canada-Ontario Community Housing Initiative Agreement (the “**COCHI Agreement**”) to address necessary capital repairs to the Housing Project.¹⁷

10. The capital repairs approved under the COCHI Agreement include roof replacement, replacement of fire alarms, repaving of road and parking areas, replacement of uneven paving, replacement of ground lighting, replacement of hallway/common area and underground parking lighting, elevator modernization and booster pump replacement. The Receiver has received part of the funding from the City pursuant to the COCHI Agreement and the Receiver is in the process of arranging for and approving the capital works approved.¹⁸

11. The Receiver continues to address the underlying issues giving rise to the triggering events leading up to the appointment of the Receiver.¹⁹

12. In furtherance of its reporting mandate, the Receiver provided its interim statement of receipts and disbursements (the “**Interim SRD**”) for the period March 14, 2023 to March 11, 2024.²⁰

13. In accordance with paragraph 21 of the Appointment Order, the Receiver tendered the Affidavit of Arif Dhanani sworn on March 19, 2024 (the “**Fee Affidavit**”) in respect of its fees for the period from March 14, 2023 to January 21, 2024. The amounts set out in the Fee Affidavit have been subsidized by the City of Toronto.²¹

PART 3 - ISSUES AND THE LAW

14. The issues on this motion are whether this Court should:

- (i) Approve the First Court Report, including the Quarterly Reports, and the activities and conduct of the Receiver as described therein;

¹⁷ MR, First Report, paras. 19-22.

¹⁸ MR, First Report, paras. 20-21; Appendix F.

¹⁹ RMR, Receiver’s Supplement to the First Report to the Court dated April 22, 2024 (“**Supplemental Report**”), Tab 1, para. 10.

²⁰ MR, First Report, para. 23; Appendix G.

²¹ MR, First Report, para. 26; Appendix H, para. 5.

- (ii) Approve the Interim SRD; and
- (iii) Approve the fees and disbursements of the Receiver.

I. Approval of First Report and Activities of the Receiver

15. As per the Appointment Order, the Receiver is empowered and authorized to, among other things, do the following where necessary or desirable:

- (i) 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;
- (ii) to receive, preserve, and protect 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;
- (iii) to manage, operate, and carry on the business of the Respondent, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Respondent;
- (iv) 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;
- (v) to receive and collect all monies and accounts now owed or hereafter owing to the Respondent and to exercise all remedies of the Respondent in collecting such monies, including, without limitation, to enforce any security held by the Respondent; and

- (vi) The Appointment Order empowers the Receiver to borrow by way of 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 \$500,000 (or such greater amount as the Court may order), for the purpose of funding the administration of the receivership and the exercise of the Receiver's powers and duties.

16. The Appointment Order requires that the Receiver provide the Quarterly Reports and Annual Report, and the Receiver has complied with this aspect of the Appointment Order as more particularly set out in the First Court Report.

17. The Respondent has tendered the Affidavit of Rosell Kerr sworn on April 16, 2024 (the "**Kerr Affidavit**") in response to the within motion.²² In the Kerr Affidavit, one of the concerns raised is respect of paragraph 10 of the Notice of Motion – that the "Receiver and the Service Manager recommend continuation of the Receiver's Appointment to complete certain capital repair projects and until it is appropriate, in the opinion of the Service Manager, to return control to the housing provider."²³

18. To be clear, neither the Receiver nor the Service Manager seeks an order for the continuation of the receivership appointment. In the First Court Report, the Receiver reports that it has commenced certain capital repair projects to the Housing Project that are ongoing. The Receiver's recommendation with respect to continuation of the receivership appointment is a point of fact that the work should continue and that it is presently not an appropriate time to consider a discharge or termination of the receivership appointment.

19. The particulars of the concerns in this respect are not expressly clear from the Kerr Affidavit. Some of the allegations relate to issues that were raised in response to the initial return of the City of Toronto's application to appoint a receiver.²⁴

20. The Kerr Affidavit appears to misconstrue the financial position of the Respondent under the control of the Receiver when Ms. Kerr states that the Receiver is investing \$431,250.00

²² Affidavit of Rosell Kerr sworn on April 16, 2024 ("**Kerr Affidavit**").

²³ Kerr Affidavit, at para. 11.

²⁴ RMR, Affidavit of Paul Fischer sworn April 22, 2024 ("**Fischer Affidavit**"), at para. 8.

in term deposits, when these monies are expressly for the capital repair projects approved by the City of Toronto.²⁵

21. The Kerr Affidavit alleges that under the Receiver's control, the costs of running the Housing Project have increased substantially.²⁶ However, the evidence of Ms. Kerr in support of this allegation is inaccurate or misinformed. Reliable evidence on financial position should be based on the audited financial statements, not the Receiver's Interim SRD.²⁷ A review of the audited financial statements discloses that the numbers referenced in the Kerr Affidavit in respect of maintenance and repair costs and property management costs are wrong.²⁸ Finally, the Receiver has provided additional information to explain some of the increases to these costs, which relate in part to the condition of the Property at the time of the Receiver taking control.²⁹

22. Nothing in the Kerr Affidavit establish "concerns" that should prevent the Court's approval of the reported activities and decisions taken by the court-appointed Receiver.

23. In [*Target Canada Co. \(Re\)*, 2015 ONSC 7574](#), then RSJ Morawetz discussed the purposes of a court approving activities of a court-officer (in that case a court-appointed monitor) in a general sense during a proceeding. Specifically, Court approval allows the court-officer to move forward with next steps, brings the court-officer's activities before the Court, allows an opportunity for the concerns of stakeholders to be addressed, enables the Court to satisfy itself that the court-officer's activities have been conducted in prudent and diligent manners, provides protection for the court-officer not otherwise provided by the statute under which it is appointed, and protects creditors from delay and distribution that would be caused from re-litigation of steps taken and potential indemnity claims by the court-officer.³⁰

24. The comments in *Target Canada* apply in the context of a court-appointed receiver.³¹

²⁵ Kerr Affidavit, para. 20; RMR, Supplemental Report, at para. 11.

²⁶ Kerr Affidavit, para. 21.

²⁷ RMR, Supplemental Report, paras. 12-15.

²⁸ Kerr Affidavit, paras. 27-28; RMR, Supplemental Report, at para. 16.

²⁹ RMR, Supplemental Report, para. 17-19.

³⁰ *Target Canada Co. (Re)*, 2015 ONSC 7574 (CanLII), at [para 23](#).

³¹ *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, 2023 ONSC 3400 (CanLII), at [para 66](#); *Hanfeng Evergreen Inc., (Re)*, 2017 ONSC 7161 (CanLII), at [para 15](#).

25. The Receiver only seeks for approval of its activities and conduct described in the First Court Report and Quarterly Reports in its personal capacity and only with respect to its personal liability.

26. Therefore, the Receiver submits that it is entitled to the relief sought with respect to the approval of the First Court Report, the Quarterly Reports, and the activities and conduct of the Receiver described therein.

II. Approval of the Interim SRD

27. The Receiver provided its Interim SRD for March 14, 2023 to March 11, 2024 in connection with its reporting mandate pursuant to the Appointment Order.

28. Ms. Kerr makes certain criticisms of the Receiver's expenditures, but as noted above, it appears that Ms. Kerr's information is misplaced or simply incorrect.³²

29. The Interim SRD is in a form consistent with the requirements of the *Bankruptcy and Insolvency Act*. As reported, the Receiver has worked with the City of Toronto in respect of its budgets and requests for funding and the City of Toronto has no objection to the Interim SRD.

30. As such, the Receiver submits that the Interim SRD should be approved by this Court.

III. Approval of Professional Fees and Disbursements

31. The Appointment Order provides that the Receiver and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Appointment Order.³³ The Appointment Order also provides that the Receiver and its counsel shall pass their accounts before the Court.³⁴

32. The Fee Affidavits show that the fees incurred are fair and reasonable, based on the (i) nature, extent and value of the assets; (ii) the complications and difficulties encountered, (iii)

³² RMR, Supplemental Report, paras. 22-26.

³³ MR, First Report, Appendix A, para. 20.

³⁴ MR, First Report, Appendix A, para. 21.

the time spent by the court officer, (iv) the receivers' knowledge, experience and skill, (v) the diligence and thoroughness displayed (vi) the responsibilities assumed (vii) the results achieved, and (viii) the costs of comparable services.³⁵

33. In the Kerr Affidavit, Ms. Kerr makes the allegation that the average hourly rate is "substantial."³⁶ However, as the Receiver's fees are subsidized by the City of Toronto, there is no prejudice to the Respondent. Moreover, the average hourly rates are below market rates.³⁷

34. The Kerr Affidavit alleges that the tasks charged for by the Receiver are administrative in nature and therefore the fees charged are "not reasonable".³⁸ However, Ms. Kerr misunderstands the nature of the activities and is not qualified to comment on the appropriateness of the activities.³⁹

35. The Receiver submits that there is no reason not to approve the fees and disbursements of the Receiver as set out in the Fee Affidavit. The invoices are a fair and accurate description of the services provided and the amounts charged by the Receiver.⁴⁰ As such, the fees and disbursements of the Receiver should be approved.

PART 4 - RELIEF SOUGHT

36. The Receiver respectfully submits that an order should issue, substantially in the form of the draft order included at Tab 3 of its Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: April 25, 2024



WeirFoulds LLP

Per: Philip Cho, counsel for the Receiver

³⁵ *Confectionately Yours Inc. (Re)*, 2002 CanLII 45059 (ONCA) at paras. [42-54](#).

³⁶ Kerr Affidavit, para. 30.

³⁷ RMR, Supplemental Report, para. 20.

³⁸ Kerr Affidavit, paras. 31-32.

³⁹ RMR, Supplemental Report, paras. 21-22.

⁴⁰ MR, Affidavit of Arif Dhanani sworn on March 19, 2024, Tab 2, Appendix H, para. 6.

**Schedule “A”
List of Authorities**

Confectionately Yours Inc. (Re), 2002 CanLII 45059.

Target Canada Co. (Re), 2015 ONSC 7574.

Triple-I Capital Partners Limited v 12411300 Canada Inc., 2023 ONSC 3400.

Hanfeng Evergreen Inc., (Re), 2017 ONSC 7161.

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