

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERICAL LIST)

B E T W E E N:

CITY OF TORONTO

Applicant

- and -

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

Respondent

FACTUM OF THE RESPONDING PARTY

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

April 25, 2024

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PART I - INTRODUCTION

1. Harry Sherman Crowe Housing Co-operative Inc. (The Respondent) opposes the Applicant's request for an order approving the Interim Statement of Revenues and Disbursements SRD (as defined hereinafter) of the Receiver for the period March 14, 2023, to March 11, 2024, and opposes an order approving the fees and disbursements of the Receiver as set out in the Fee Affidavit.
2. The Respondent also respectfully requests that this Honourable Court not grant any continuation of the request of the Receiver to continue further work without demonstrating that there is a proposed pathway to solvency for the Harry Sherman Housing Co-operative Inc.

PART II - SUMMARY OF FACTS

3. The Respondent, the Co-op's housing complex is comprised of several buildings that contain 164 units. Townhome blocks within the housing project's complex contain 38 townhome units, while the remaining 126 units are contained within a high-rise apartment building. The Respondent is subject to the Housing Services Act S.O. 2011, c. 6, Sched. 1.
4. By June 2019, the community was in a state of desperation. The Units and townhomes were eroded and infested with roaches and rats. Common areas such as laundry rooms were rotting and infested with cockroaches and rats. Most of this decay was caused by water leaks and years of neglect. Nevertheless, the Board made significant improvements to the property including but not limited to the installations of Camaras and safety measures. ¹The Board has miraculously been able to renovate more than seventy units and townhouses, without the much-needed support from the city.² Without the support of the city, the Co-op decided that the Urgency of the situation required the use of operational

¹ RESPONDING APPLICATION RECORD OF HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC. Affidavit Rosel Kerr, para 18 page 7

² RESPONDING APPLICATION RECORD OF HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC. Para 19 page 7

funds to carry out capital improvements. Thus began the path which has led to this matter being before the Court.

5. It should be noted that in 2020, the Co-op faced a significant challenge related to the Covid19, pandemic. This not only shutdown the community and the Co-op operations, but it also impacted the Co-op's financial situation and the tenants as well. In 2020 and 2021, around 70% of the members of the Co-op were not able to pay their rent. Further, the Board was forbidden to evict these individuals who were unable to pay their rent or to increase rent for 2 years.³
6. On November 10, 2022, the City of Toronto initiated an Application before the Ontario Superior Court of Justice seeking the Court appointment of a receiver pursuant to section 85(7) of the *Housing Services Act 2011, S.O. 2011, c. 6, Sched. 1*. The reasons that the City provided the Court to appoint a receiver pursuant to section 85(7) are as follows:
 - a. *the Co-op was unable to pay its debts as they become due, has inadequate cash on hand to pay its debts, and its current liabilities exceeded its current assets;*
 - b. *the Co-op was unable to pay its debts as they become due, has inadequate cash on hand to pay its debts, and its current liabilities exceeded its current assets;*
 - c. *the policies and procedures that were submitted to the City did not fully address the gaps in governance, financial control, and RGI administration processes that the City had identified; the Co-op had not demonstrated that it had implemented the policies and procedures it had submitted, even putting aside any deficiencies such policies and procedures may have.*⁴
7. By Order of the Ontario Superior Court of Justice (the “Court”) dated March 14, 2023, (the “Appointment Order”), RSM Canada Limited was appointed receiver and manager (the “Receiver”), without security, of all the assets, undertakings and properties of Harry Sherman Housing Cooperative Inc. (“HSC” or the “Co-op”) acquired for, or used in relation to a business carried on by HSC, including all proceeds thereof (the “Property”).

³ RESPONDING APPLICATION RECORD OF HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC. Para 28, page 9

⁴ Application Record, City of Toronto v. Harry Sherman paragraph 93, page 85.

8. On March 01, 2024, the Court granted an order substituting TDB Restructuring Limited in place of RSM Canada Limited as Receiver (the “Omnibus Order”). It should be noted that this order was obtained without notification or service of any materials by the City of Toronto or the Receiver.
9. Paragraphs 12 and 13 of Appointment Order require the Receiver to:
 - a. *provide quarterly updates to the Applicant Service Manager, which reports shall be shared with the Respondent and its members, to update the Service Manager and, through it, the Housing Provider and its membership, of the actions taken and decisions made by the Receiver in respect of the Property, provided that the information included in such reports shall be in the sole discretion of the Receiver; and*
 - b. *provide an annual report to the Court, the purpose of which is to advise the Court of the actions taken and decisions made by the Receiver under its appointment.*
10. On March 19, 2024 the Receiver TDB Restructuring Limited (“TDB”) submitted a Motion requesting the Court to:
 - a. *Approve the Quarterly Reports (as defined hereinafter) and the First Court Report (as defined hereinafter) and the activities and conduct of the Receiver described therein;*
 - b. *Approve the Interim Statement of Receipts and Disbursements (SRD) (as defined hereinafter) of the Receiver for the period March 14, 2023, to March 11, 2024;*
 - c. *Approve the fees and disbursements of the Receiver as set out in the Fee Affidavit.*

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

11. The first issue is to determine whether the Court should approve the requests by the Moving Party.

Section 1 of the Housing and Services Act states that the Purpose of the Act 1 is,

- a) *to provide for community-based planning and delivery of housing and homelessness services with general provincial oversight and policy direction; and*

- b) *to provide flexibility for service managers and housing providers while retaining requirements with respect to housing programs that predate this Act and housing projects that are subject to those programs.*⁵
12. Furthermore, *section 89 of the Housing and Services Act* holds that “*the service manager may exercise a remedy only if, in the circumstances, it is reasonable to exercise the remedy and the remedy is exercised in a reasonable way.* 2011, c. 6, Sched. 1, s. 89.”⁶
13. The Respondent understands that the Court granted the receiver discretion in handling the financial affairs of the Co-op, and the Respondent is under a duty to collaborate in a harmonic manner with the Receiver. This is an area which unfortunately has not been addressed.
14. Based on the information provided by Receiver in their annual financial statements, the costs of running the Co-op have increased substantially compared to the previous fiscal years.
15. Based on the Notice of Application filed by the City, one of the core grounds for the application were for the Receiver to take appropriate steps to rehabilitate the financial position of the Co-op. The Respondent respectfully submits that based on the cost of receivership and the management appointed by the Receiver, combined with the discretion of the City of Toronto to grant or not grant capital funding; the Co-op will never be able to achieve financial stability. No plan has been presented before the Court demonstrating the Receiver’s strategy towards further financial stability.
16. Key areas of concern are that the Receiver indicates the highest increase of revenue ever recorded for the Co-op based on increased funding from the city. The total revenue as indicated by the Receiver is in the amount of \$4,197,332. However, RSM has provided in its annual report, that presently that there is minimal cash on hand in the sum of \$49,444.00. This is primarily based on the documented increased expenses.
17. The Co-op’s housing charges revenue has exceeded Two Million Dollars for the last two fiscal years, totaling \$2,290,956.00 for the fiscal year ending on June 01, 2022. However, the precise housing fee amount for the fiscal year ending on June 01, 2023, is unavailable.

⁵ *Housing Services Act, 2011, S.O. 2011, c. 6, Sched. 1 Section 1*

⁶ *Housing Services Act, 2011, S.O. 2011, c. 6, Sched. 1 Section 89*

The estimated sum for the fiscal year ending June 01, 2023, is \$2,290,956.00 and it is expected to be above two million for the fiscal year ending 2024.

18. RSM disclosed that they had received \$1,951,951.00 in Government subsidies, operating funds, and Receiver's fees. This necessitates a breakdown of what portion of the funds goes to the Co-op's operating subsidy and RGI subsidy. The Receiver's fees for maintaining the Co-op is \$204,906.00.
19. According to the Schedules to Statement of Revenues, Expenditures, and Accumulated Surplus for the year ended June 30, 2023, the projected budget for 2023, was of \$440,586, however, the actual amount spent was 658,319.
20. The property management costs of \$423,637.008 that RSM reported are significantly higher than the property management fees of \$130,041 in the fiscal year 2022 and drastically lower than the projected budget of 2023 of \$90,000.00 in 2023.
21. The annual financial report indicates a substantial increase in government revenue, surpassing any previous records in the history of the Co-op. RSM reported a total revenue of \$4,197,332.00 with expenditures amounting to \$3,567,713.00 leaving a balance of \$629,619.00. However, it is noteworthy that the opening cash on hand at the time of creating this annual report was only \$49,444.00.
22. Based on the affidavit submitted by ARIF DHANANI on March 19, 2024, the total fees in respect of the receivership proceedings from March 14, 2023, to January 31, 2024 (the "Period") charged for the Period are \$230,391.50, plus disbursements of \$366.95 and HST of \$29,998.58 giving a total of \$260,757.03.
23. The average hourly rate charged during the Period was \$435.85 by the Receiver which based on the revenues of the Co-op is substantial and unreasonable.
24. The reported professional service fees of \$435.85 per hour, as stated by RSM, are high particularly for tasks that could have been managed by the Co-op's administration staff. These tasks, such as sending emails, photocopying, returning phone calls, meeting with four members of the Co-op, and setting up a webpage that already existed, do not warrant such high fees.

Second Issue: Whether the continued appointment of the Receiver is still reasonable under the current circumstances

25. By Court Order dated March 14, 2023, a Receiver was appointed *pursuant to 85(7) of the Housing Services Act, 2011, S.O. 2011, c. 6, Sch. 1, as amended (the "HSA"), and section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended (the "CJA")*
26. In deciding whether to appoint a receiver, the court must have regard to all the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto: *Bank of Nova Scotia v. Freure Village of Clair Creek (1996), 40 C.B.R. (3d) 274, 1996 CanLII 8258 (Ont. S.C.J.)*.⁷
27. In making a determination based on specific circumstances whether it is just or convenient to appoint a receiver, the Court must have regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto. *Bank of Nova Scotia v. Freure Village on the Clair Creek, 1996 O.J. No. 5088, 1996 CanLII 8258*⁸
28. The Respondent respectfully submits that without a plan by the Receiver demonstrating a path towards solvency for Harry Sherman Co-op Inc, the request for approval of any plan moving forward must be denied. It should be noted that according to the Receiver’s reply motion record p.14, this Court is being asked to approve: “that its appointment continue until, among other things, the Property is brought back to an appropriate standard and condition. Based on the present admitted evidence of all parties this may never be.

ALL OF WHICH RESPECTFULLY SUBMITTED THIS 25th DAY OF APRIL 2024.

Courtney Betty

Courtney Betty (Apr 25, 2024 16:06 EDT)

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Courtney Betty, JD

⁷ *Bank of Nova Scotia v. Freure Village of Clair Creek (1996), 40 C.B.R. (3d) 274, 1996 CanLII 8258 para 37*

⁸ *Bank of Nova Scotia v. Freure Village on the Clair Creek, 1996 O.J. No. 5088, 1996 CanLII 8258 para 10*

Court File No. CV-22-00688248-00CL

BETWEEN

CITY OF TORONTO and

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

(Applicant)

(Respondent)

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

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