

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

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Applicant

- and -



**APARTMENTS FOR LIVING FOR PHYSICALLY HANDICAPPED ASSOCIATION**

Respondent

APPLICATION FOR A WINDING-UP ORDER AND THE APPOINTMENT OF A RECEIVER AND LIQUIDATOR PURSUANT TO THE *CORPORATIONS ACT*, R.S.O. 1990, c.C.38 AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43

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**NOTICE OF APPLICATION**

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**TO THE RESPONDENT**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the applicant. The claim made by the applicant appears on the following page.

**THIS APPLICATION** will come on for a hearing before a judge presiding over the Commercial List on a date to be set at 330 University Avenue, Toronto, Ontario.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date May 1, 2018

Issued by   
Local registrar

Address of court office 330 University Avenue  
7<sup>th</sup> Floor  
Toronto, ON M5G 1R7

TO: **APARTMENTS FOR LIVING FOR  
PHYSICALLY HANDICAPPED ASSOCIATION**  
3185 Forest Glade Drive  
Windsor, ON N8R 1W7

AND TO: **RSM CANADA LIMITED**  
11 King St. W., Suite 700, Box 27  
Toronto, Ontario, Canada, M5H 4C7

AND TO: **CANADA MORTGAGE AND HOUSING CORPORATION**  
700 Montreal Road  
Ottawa, ON K1A 0P7

**APPLICATION**

**1. THE APPLICANT, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO (“ONTARIO”), MAKES AN APPLICATION FOR:**

- (a) An order, if necessary, validating or dispensing with service of the notice of application and application materials herein;
- (b) An order substantially in the form attached at Tab 2 to the Application Record herein providing for, among other things:
  - (i) The appointment of RSM Canada Limited as receiver and liquidator of ALPHA, pursuant to section 246 of the *Corporations Act* and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c C.43; and,
  - (ii) the liquidation and winding-up of the respondent, Apartments For Living For Physically Handicapped Association (“ALPHA”) pursuant to section 243(d) of the *Corporations Act*, R.S.O. 1990, c C.38 (the “*Corporations Act*”); and,
- (c) Such further and other relief as counsel may advise and this Honourable Court may permit.

**2. THE GROUNDS FOR THE APPLICATION ARE AS FOLLOWS:**

***Background of ALPHA***

- (a) ALPHA is a corporation without share capital formed in 1971 under the *Corporations Act* for the purpose of operating a social housing project (the “ALPHA Housing Project”) and providing an attendant care program to assist low and moderate income individuals with special needs with activities of daily living.

- (b) ALPHA operated the ALPHA Housing Project on a property owned by ALPHA at 3185 Forest Glade Drive in the City of Windsor (the “**Premises**”). ALPHA’s sole activity since its formation was the management and operation of the ALPHA Housing Project and the provision of an attendant care program at the Premises.

***Ontario assumed control of ALPHA in 1994***

- (c) In December 1993, as a result of pending changes to the *Landlord and Tenant Act*, ALPHA announced that it was terminating its attendant care program for its residents effective March 31, 1994. After discussions with ALPHA to arrange for a replacement care provider failed, the Ministry of Health (now the Ministry of Health and Long-Term Care or “**MOHLTC**”) assumed control of ALPHA pursuant to regulation 191/94 passed pursuant to Section 13(1) of the *Ministry of Community and Social Services Act*, R.S.O. 1990, c. M.20, and Order in Council 781/94.
- (d) All of ALPHA’s directors appear to have resigned in 1994 and no new directors appear to have been appointed. In fact, it appears that no directors or members of ALPHA have been involved with the affairs of ALPHA since March 1994.
- (e) MOHLTC has been in control of the affairs of ALPHA and the ALPHA Housing Project since March 1994.

***Ontario has been paying all of ALPHA’s liabilities since 1994***

- (f) ALPHA has an outstanding mortgage with Canada Mortgage and Housing Corporation (“**CMHC**”). Pursuant to a Social Housing Agreement under which

CMHC transferred the management and administration of many of its social housing programs to provincial control, Ontario is required to indemnify CMHC for losses, costs and expenses it incurs under the CMHC mortgage. Accordingly, Ontario has been paying down the CMHC mortgage and has kept it in good standing since 1994 in order to avoid a default, which would cause the full amount under the mortgage to come due;

- (g) Ontario has also been covering all of ALPHA's other ongoing expenses. ALPHA's ongoing liabilities and expenses, which primarily relate to the costs of maintaining the Premises and the CMHC mortgage, presently total approximately \$14,616 per month. Ontario does not wish to continue to cover these ongoing liabilities.
- (h) Ontario advanced \$239,600 to ALPHA in 2012 for its capital reserve fund. These funds have not been used and, while the funds were advanced on the basis that there would be no requirement for repayment, given that ALPHA is no longer operating Ontario takes the position that the funds should be returned.

***Status of the ALPHA Housing Project***

- (i) In 2012, following a determination that the Premises were no longer suitable for ALPHA's residents, MOHLTC and a local support service provider arranged for the residents at the Premises to be moved to other accommodations.
- (j) The Premises have been vacant since 2012. Various criminal acts have recently occurred at the Premises, including vandalism, a break-in and theft. Police have been asked to patrol the area more frequently.

***Corporate Status of ALPHA***

- (k) ALPHA's corporate records are incomplete and out of date, but based on MOHLTC's inquiries it appears that all of ALPHA's directors resigned in 1994 and no new directors were ever elected.
- (l) MOHLTC staff has also attempted to locate those persons who, according to the available corporate records, were at one time listed as members of ALPHA and for whom there is no record of a resignation as a member. The only individuals MOHLTC has been able to locate are individuals who have confirmed that they had resigned as members and members who MOHLTC has determined have passed away.
- (m) ALPHA carries on no active business and has no employees.

***A wind-up, receivership and liquidation order is just and equitable in these circumstances***

- (n) In the circumstances, it would be just and equitable for an order to be made providing for the winding up ALPHA and appointing a receiver and liquidator to initiate a process for the sale of the Premises and ALPHA's other assets and to use the proceeds to pay ALPHA's liabilities. In particular, this relief is just and equitable because:
  - (i) the ALPHA Housing Project ceased when the Premises were vacated in 2012 and ALPHA's only assets are the vacant Premises and certain bank accounts and investments;
  - (ii) ALPHA has ceased to function as an active enterprise and can no longer carry out its objects;

- (iii) all of ALPHA's directors appear to have resigned approximately 24 years ago;
- (iv) no members of ALPHA can be located and in any event no members appear to have been involved with ALPHA since in the past 24 years;
- (v) Ontario has been in control of ALPHA since 1994;
- (vi) even if a remaining member of ALPHA could be located, they would not have any economic interest in ALPHA's assets in their capacity as a member in the event of its winding-up because ALPHA's Letters Patent provide that upon its dissolution, and after payment of all debts and liabilities, ALPHA's remaining property shall be distributed or disposed of to charitable organizations which carry on their work solely in Ontario;
- (vii) Ontario is continuing to pay down the CMHC mortgage and other carrying costs for the Premises, and there is no reason for Ontario to continue to bear these expenses for a corporation that for all intents and purposes has ceased to function;
- (viii) without Ontario's continued financial support, ALPHA would be in default under the CMHC mortgage and its other liabilities;
- (ix) CMHC, ALPHA's primary creditor, consents to the relief sought in this application; and,
- (x) RSM Canada Limited has consented to act as receiver and liquidator.
- (o) Sections 237, 243(d), 244 - 246, 248, 249, 251, 254 and 255 of the *Corporations Act*.
- (p) Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c C.43;

- (q) Rules 14, 16.04 and 41 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194;  
and,
- (r) Such further and other grounds and counsel may advise.

**3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:**

- (a) the Affidavit of Miriam Johnston, sworn April 12, 2018;
- (b) the Consent of RSM Canada Limited to act as receiver and liquidator; and,
- (c) such other material as is required and this Court may permit.

~~April 27, 2018~~

May 1, 2018 re

**ATTORNEY GENERAL FOR ONTARIO**

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Her Majesty the Queen in right of Ontario



CV-18-596938-00CL

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