SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-22-00688248-00CL **DATE:** 14 March 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: CITY OF TORONTO v HARRY SHERMAN

BEFORE JUSTICE: Penny

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Counsel for Respondents Courtney Betty	Harry Sherman Crowe Housing Cooperative Inc.	betty@bettyslaw.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Bryan Tannenbaum Mervyn Abramowitz	RSM Proposed Receiver (Observing)	Bryan.tannenbaum@rsmcanada.com mabramowitz@blaney.com

ENDORSEMENT OF JUSTICE PENNY:

The City of Toronto brings this application under s. 85(7) of the *Housing Services Act, 2011*, S.O. 2011, c. 6, Schedule 1, for the appointment of a receiver over the property, assets and undertaking of respondent, Harry Sherman Crowe Housing Cooperative Inc.

Responsibility for administering and funding social housing programs in Ontario rests with the municipalities in which these housing programs operate. The municipalities are designated as "Service Managers" under the HSA. Toronto is the Service Manager charged with overseeing social housing projects in its territorial jurisdiction, including the housing project being operated by the Co-op. The Co-op is a not-for-profit corporation incorporated under the *Corporations Act* which operates a series of townhome blocks and a residential apartment building located at 51 The Chimneystack Road in Toronto. These housing units were built in 1993 and rest on land that is owned by, and leased from, York University.

In the course of its ongoing monitoring role, Toronto determined that the Co-op was experiencing challenges regarding its operations and the administration of its Rent-Geared-to-Income portfolio. The City also identified issues with the Co-op's financial position and its governance structures and practices.

These issues have persisted over time and remain unresolved. Among other things, the Co-op is currently unable to pay its debts as they become due, and the governance, financial control and rent-geared-to-income administration processes and practices at the Co-op have gaps that need to be addressed.

Although the parties' relationship has at times leading up to this application been somewhat adversarial, counsel for Toronto, the Co-op and the proposed Receiver have worked hard, both together and with their clients, to reach a substantial understanding and accommodation about what needs to be done to achieve their mutual goal of working together to put the Co-op back on a financially sound and administratively sustainable and compliant footing.

As a result, the remaining concerns by the time of the hearing this morning no longer involved the need or justification for the order itself but focused on three narrow issues about specific provisions and what they are intended to mean.

The proposed order for the appointment of the Receiver is based on the Model Order used by the Commercial List. There is no dispute about the use of this order as the starting point. The parties all recognize, however, that a receiver under s. 85(7) of the HSA is operating in a milieu which is somewhat different from the typical appointment sought by a secured creditor seeking to realize repayment of a debt through enforcement against its security.

The first of the three issues which remain of concern relates to para. 2 of the Order -- the powers of the Receiver; specifically 2(o), which authorizes the Receiver to enter into agreements with any trustee in bankruptcy appointed in respect of the Co-op. The Co-op has

expressed concerns about the prospect of it being petitioned into bankruptcy without proper notice or an opportunity to respond. I do not read para 2(o) of the Order to be dealing at all with whether the Receiver, or anyone else, might seek to petition the Co-op into bankruptcy. All para 2(o) says is that *if* a trustee were to be appointed, the Receiver could deal with the trustee in an appropriate way. This provision does not impair the Co-op's right to notice of, or to respond to, any effort by anyone to put the Co-op into bankruptcy.

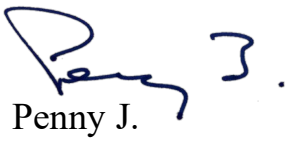
The second issue relates to para 7 of the Order which prohibits any proceedings by or against the Co-op without the Receiver's consent or an order of the Court, and imposes a stay of any existing proceedings. This provision is primarily for the benefit of the Co-op, as it restricts third party claims during the receivership period in order to stabilize the situation and give the Receiver (and the Co-op) time to reorganize and implement the steps necessary to return to good financial and governance health. The Co-op expressed concern that it not be precluded from asserting claims against Toronto, depending on what may happen in the future. While it is true that para 7 would prevent such a claim, it is subject to the obvious, clear proviso that such claims may be authorized by the Receiver's consent or, failing consent, by the Court on the Co-op's motion. I note as well, in this regard, that para 33 of the Order provides that any interested party may apply to the Court to vary or amend the Order on notice to the Receiver and other interested parties. Stability and consistency are important at this stage, so the provisions of para 7 are warranted. The Co-op remains able, under this term of the Order, to discuss the matter with the Receiver or to seek leave of the Court if it deems it necessary to take further action against a third party.

The third issue of concern raised by the Co-op relates to the duration of the receivership and to paras 12 and 13 of the Order which govern the Receiver's reporting obligations. The Co-op would prefer to have a one year time limit on the receivership while allowing the Receiver and/or Toronto to move to extend it. Toronto and the Receiver propose, as a means of dealing with this concern, to impose more stringent quarterly and annual reporting requirements on the Receiver than would typically be the case under the Model Order. In my view, the reasonable resolution of this concern is not to impose a hard deadline, particularly as it seems entirely possible given the scope and duration of the Co-op's problems, that a year will not be sufficient time in which to turn the Co-op around. However, I support the idea that the Receiver should report: a) to Toronto quarterly and that those reports should be shared with the Co-op and its members so they are aware of the actions taken and decisions made by the Receiver; and, b) annually to the Court (which would obviously be shared with Toronto and the Co-op as well). It would be the Court's expectation that the Receiver, in the annual report at least, will advise the Court, among other things, of its plans for bringing the Co-op to a point where the receivership would no longer be necessary. Again, I note that, in any event, any interested party may apply to the Court to vary or amend the Order, on notice, at any time.

The Court's jurisdiction under s. 85(7) of the HSA and s. 101 of the *Courts of Justice Act* requires that the Court be satisfied that the appointment of a receiver is, in the circumstances, "just or convenient". I am satisfied on the record before me that the circumstances of the Co-op and the challenges it faces, make the appointment of the Receiver just or convenient. The Co-op does not disagree and has recognized that both sides wish to put the Co-op back onto a firm

foundation so that it may continue to offer social housing services to its stakeholders in the future.

Order to issue in the form signed by me this day.



Penny J.