

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) THURSDAY, THE 30<sup>TH</sup> DAY  
JUSTICE D. BROWN ) OF JUNE, 2011.

BETWEEN :



**GENERAL ELECTRIC CANADA REAL ESTATE  
FINANCING HOLDING COMPANY and GENERAL  
ELECTRIC CAPITAL CANADA HOLDINGS COMPANY**

Applicants

- and -

**729982 ONTARIO LIMITED, LIBERTY ASSISTED LIVING INC.,  
729285 ONTARIO LIMITED, AMIR KASSAM, RAHIM BHALOO and  
MEYERS, NORRIS PENNY LIMITED in its capacity  
as RECEIVER AND TRUSTEE IN BANKRUPTCY  
OF THE ESTATES OF 2008777 ONTARIO INC.,  
2004631 ONTARIO INC., 912087 ONTARIO LIMITED  
and 2007383 ONTARIO INC.**

Respondents

**ORDER**

**THIS MOTION** made by MNP Ltd., formerly Meyers Norris Penney Limited, in its capacity as trustee in bankruptcy and receiver (the "**MNP Receiver**") of 2008777 Ontario Inc., 2004631 Ontario Inc., 912087 Ontario Limited and 200 7383 Ontario Inc. (the "**Receivership Parties**") for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Albert Gelman Inc. ("**AGI**") as receiver and inspector (in such capacities, the "**Receiver**" or "**Inspector**") without security, on the terms set out below, in

relation to Liberty Assisted Living Inc. and 729285 Ontario Limited (“729285”), was heard on June 27, 2011 at 330 University Avenue, Toronto, Ontario.

**ON READING** the reports of the MNP Receiver, and on hearing the submissions of counsel for the Applicants, counsel for the MNP Receiver and the Respondents and any others appearing, and on reading the consent of AGI to act as the Receiver and Inspector,

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

#### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, AGI is hereby appointed Receiver, without security, and with only the powers granted below, of all of the assets, undertakings and properties of 729285 acquired for, or used in relation to a business carried on by 729285 including all proceeds thereof (the “**Property**”), for a period of 120 days from the date of this Order (the “**Receivership Period**”).

#### **RECEIVER NOT IN POSSESSION OF ASSETS**

3. **THIS COURT ORDERS** that the Receiver shall not operate the business or take possession of the assets of 729285 without further Order of the Court.

4. **THIS COURT ORDERS** that 729285 shall remain in possession of their current and future assets, undertakings and properties of every nature and kind whatsoever and wherever situate including proceeds thereof.

5. **THIS COURT ORDERS** that subject to further Order of this Court 729285 shall continue to carry on business in a manner consistent with the preservation of their business and the Property.

## RECEIVER'S POWERS

6. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) 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;
- (b) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (c) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the 729285, and without interference from any other Person.

## DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

7. **THIS COURT ORDERS** that (i) the Respondents and all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (ii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, save and except the MNP Receiver, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control and shall grant immediate and continued access to the Property to the Receiver.

8. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of 729285, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communications or due to statutory provisions prohibiting such disclosure.

9. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or a bitmap image or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

10. **THIS COURT ORDERS** that the Receiver shall have access to those premises wherever the books and records of 729285 are kept, retained, stored or used, including, but not limited to, the registered head office of 729285 located at 231 Avenue Road, Toronto, Ontario, at any time or times including evenings, weekends and holidays, and 729285 shall take all reasonable steps to ensure that the Receiver will have such access, provided however that the

Receiver shall exercise its unfettered access to and control over the books and records of 729285 in such a manner as to minimally interfere with the business of 729285.

#### **EXAMINATION OF RECEIVERSHIP PARTIES**

11. **THIS COURT ORDERS** that within twenty-one (21) calendar days of the date of this Order, 729285 shall provide the Receiver with a statement under oath describing each of its assets and liabilities and all transactions in excess of \$50,000 or transfers of Property by it:

- (a) to an arm's length party (as such term is used in section 96 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (the "**BIA**")) within one year of the date preceding the date of this Order; and
- (b) to a non arm's length party (as such term is used in section 96 of the *BIA*) within five years of the date preceding the date of this Order.

12. **THIS COURT AUTHORIZES AND DIRECTS** the MNP Receiver and the Receiver to assist each other in obtaining Records, including but not limited to, delivering copies of or providing access to Records relating to these matters and sharing Records obtained, subject to such terms as to confidentiality as the MNP Receiver and the Receiver, as applicable, may deem advisable or as may be required by law.

13. **THIS COURT ORDERS THAT** 729285 provide to the Receiver copies of all documents and records relating to the sale and flow of proceeds from the sale of the retirement residences known as the Royalton Residences which are located in Kanata, Ontario, Kingston, Ontario and London, Ontario (collectively, the "**Royalton Residences**").

14. **THIS COURT ORDERS THAT** on or before the last day of the Receivership Period, the Receiver shall provide the Court with a comprehensive report on the business and affairs of 729285 (the "**Report**"). The Report shall include information regarding the affairs of 729285 including information with respect to:

- (a) funds received by 729285 from all sources, whether beneficially or otherwise, and the basis on which those funds were received, and

- (b) disbursements of funds by 729285 whether by way of investment, expenditure, or otherwise, and the basis on which those funds were disbursed.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

15. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO DISTRIBUTION OF FUNDS OUTSIDE THE ORDINARY COURSE OF BUSINESS**

16. **THIS COURT ORDERS** that 729285 will not make any payments, including, but not limited to, distributions or dividend payments to its shareholders or others, outside of the ordinary course of business without further Order of the Court.

#### **LIMITATION ON THE RECEIVER’S LIABILITY**

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

#### **RECEIVER’S ACCOUNTS**

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

21. **THIS COURT ORDERS** that the Receiver's Charge shall not be enforced without leave of this Court.

22. **THIS COURT ORDERS** that the Receiver's Charge shall not be rendered invalid or unenforceable and the Receiver's rights and remedies shall not otherwise be limited or impaired in any way by: (a) any application(s) for bankruptcy order(s) issued pursuant to the BIA; (b) the filing of any assignments for the general benefit of creditors pursuant to the BIA; (c) the provisions of any federal or provincial statute; or (d) any negative covenants, prohibitions or similar provisions with respect to borrowings, incurring of debt or creation of additional encumbrances in any existing loan documents, leases or other agreements.

## **GENERAL**

23. **THIS COURT ORDERS** that Cassels Brock Blackwell, LLP shall retain the sum of \$931,212.97, representing proceeds from the sale of the Royalton Residences, in its trust accounts and shall not disburse or otherwise deal with the said monies until further Order of this Honourable Court, following delivery of the Report.

24. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

25. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this

Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

26. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

27. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



C. CHIBA

REGISTRAR, SUPERIOR COURT OF JUSTICE  
GREFFIER ADJOINT, COUR SUPÉRIEURE DE JUSTICE

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUL 08 2011

PER/PAR:



**GENERAL ELECTRIC CAPITAL CANADA HOLDINGS COMPANY**  
Applicants

v.

**Court File No. CV-11-0000-9135-00CL**  
**729285 ONTARIO INC. et al.**  
Respondents

**ONTARIO SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**ORDER**

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