

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**IN THE MATTER OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C.43, AS AMENDED**

**AND IN THE MATTER OF THE ADMINISTRATION
PROCEEDINGS OF CARRIAGE HILLS VACATION
OWNERS ASSOCIATION (the “Applicant”)**

MOTION RECORD
(Returnable October 15, 2020)

October 2, 2020

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Lawyers for the Applicant, Carriage Hills Vacation
Owners Association

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TAB	DOCUMENT
1.	Notice of Motion returnable October 15, 2020
2.	Affidavit of Darren Chapelle sworn October 2, 2020
“A”	Email correspondence approving Board resolution
3.	Draft Order

TAB 1

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

IN THE MATTER OF THE *COURTS OF JUSTICE ACT*, R.S.O.
1990, c. C.43, AS AMENDED

AND IN THE MATTER OF THE PROCEEDINGS OF
**CARRIAGE HILLS VACATION OWNERS
ASSOCIATION**

Applicant

NOTICE OF MOTION

Carriage Hills Vacation Owners Association (the “**Applicant**”) will make a motion to Madam Justice Conway on Thursday, October 15, 2020, at 10:00 a.m. (Eastern Time), or as soon after that time as the motion can be heard, by judicial video conference via Zoom at Toronto, Ontario. Please refer to the conference details attached as Schedule “A” hereto in order to attend the motion and advise if you intend to join the motion by emailing Mitch Grossell at mgrossell@tgf.ca.

PROPOSED METHOD OF HEARING:

This Motion is to be heard orally by video conference.

THIS MOTION IS FOR:

1. An Order, substantially in the form attached at Tab 3 of this Motion Record, *inter alia*:
 - (a) approving the decision of the board of directors of the Applicant (the “**Board**”)
authorizing the closure of the Carriage Hills timeshare resort (the “**Hills Resort**”);

- (b) authorizing BDO Canada Limited, in its capacity as administrator of the Applicant (the “**Administrator**”), to direct the Applicant to engage such persons as it deems necessary to develop a marketing and sales process in respect of the Hills Resort;
 - (c) authorizing BDO Canada Limited to investigate the availability and terms of third-party financing to fund the ongoing costs of maintaining the Hills Resort, if necessary;
 - (d) approving the Second Report of the Administrator dated October 1, 2020 (the “**Second Report**”) and the activities of the Administrator as set out therein; and
 - (e) approving the fees and disbursements of the Administrator and its counsel as described in the Second Report.
2. Such other relief as necessary.

THE GROUNDS FOR THIS MOTION ARE:

A. *Capitalized Terms*

3. Capitalized terms not expressly defined herein have the meanings ascribed to them in the Second Report.

B. *Overview*

4. The Applicant is a not-for-profit corporation vested with the operation, maintenance, alteration, improvement and protection of a timeshare resort located in Horseshoe Valley, Ontario.
5. The Hills Resort is governed pursuant to a time-share agreement (the “**TSA**”). Pursuant to the TSA, purchasers of the time-share intervals (the “**Members**”) also purchased a

proportionate ownership interest as tenants-in-common in the land on which the Hills Resort is situated.

6. Currently, the only way for a Member to terminate its ownership is to sell their Interval to a third party. Due to a decreasing market for timeshare intervals, many Members have abandoned their Intervals and simply stopped paying their share of the operating costs, which increases the annual dues required to be paid by Members that remain in good standing.
7. The large increase in unpaid fees by Delinquent Members in conjunction with an increase in required capital expenditures due to the age of the Hills Resort has led to a significant and steep deterioration in the Applicant's financial position.
8. As a result, on May 15, 2020, the Applicant sought and obtained the Order of Madam Justice Conway (the "**Appointment Order**") that, among other things, appointed the Administrator in respect of the assets of the Applicant and the real property owned by the Members on which the Hills Resort is situated.
9. The Hills Resort has a neighbouring "sister" resort, known as the Ridge Resort, which obtained identical relief in a separate proceeding pursuant to an Order of Madame Justice Conway dated May 15, 2020.
10. In accordance with the terms of the Appointment Order, the preliminary focus of these proceedings was to:

- (a) create a procedure to ascertain the interests of the Members whereby they would be able to indicate, among other things, if they wished to terminate or continue their relationship with the Resorts; and
- (b) develop an exit strategy for those Members wishing to exit, subject to appropriate terms and conditions.

B. *The Member Survey*

- 11. In order to carry out the mandate of the Administrator, the Orders of Madam Justice Conway dated July 2, 2020 (the “**July 2020 Orders**”) approved the form, content, eligibility to participate and method of delivery of a survey of the Members (the “**Member Survey**”) to determine which Members wanted to remain and which Members wanted to exit the Resorts.
- 12. The Administrator provided numerous FAQs and communications to Members to assist them in completing the Member Survey and understanding the ramifications of same. The Administrator also established an email account for Members to use to ask questions of the Administrator.
- 13. The Administrator received and responded to over 2000 inquires from Members in respect of the Member Survey.

C. *Results of the Member Survey*

- 14. As detailed in the Second Report, immediately after the July 2020 Orders were granted, the Administrator engaged third-party service providers to administer the online Member Survey which was sent to Members via email or regular mail depending on the information

provided to the Administrator. The Member Survey was conducted between July 17, 2020 and August 31, 2020 (the “**Survey Period**”).

15. Despite the challenges of administering the Member Survey to such a large body of individuals, the Member Survey yielded a significant response, the results of which in respect of the Hills Resort can be summarized as follows:
 - (a) 52% of all Intervals voted to exit;
 - (b) approximately 11% of all Intervals were still delinquent by the end of the Survey Period and thus, were deemed to vote to exit;
 - (c) less than 10% of all Intervals voted to stay in the Hills Resort; and
 - (d) approximately 27% of Members entitled to vote did not vote in the Member Survey and were thus, deemed to vote to remain.

16. Based on the results of the Member Survey, the Administrator determined that the Hills Resort was not viable on its own based on the following factors:
 - (a) a majority of Members wish to exit the Hills Resort and only 9.6% of Intervals voted to stay;
 - (b) it is likely, given that some Members only voted to stay to protect their accumulated Membership Points, a second Member Survey would result in an even greater share of Members voting to exit; and
 - (c) the increase in costs per Member to maintain the central amenities given the smaller Member population.

17. The Administrator also determined that combining the Resorts would not result in a viable restructured resort based on the following factors:
- (a) the low number of Intervals that voted to stay in both Resorts;
 - (b) the expected increase in charges to the Members to maintain the amenities;
 - (c) a successful restructuring would require a large proportion of non-voted Intervals to vote to stay in a second survey;
 - (d) the costs and time required to run a second survey;
 - (e) the costs and time required to develop a restructuring plan; and
 - (f) the logistical issues associated with combining the Resorts.
18. As a result, the Administrator recommended to the Applicant that the Hills Resort should be sold in its entirety at the end of the 2020 season to maximize value for its Members. After consideration of the Administrator's recommendations, they were unanimously approved by the Board of Directors of the Applicant.

C. *Delinquent Accounts*

19. Prior to the release of the Member Survey, the Resorts had a total of 3,002 Delinquent Members with outstanding accounts totaling approximately \$25 million. Pursuant to the July 2020 Orders, the Administrator sent the notice approved by the Court notifying the Delinquent Members of the Delinquency Fee and that they were ineligible to participate in the Member Survey unless their account was brought current prior to August 31, 2020.

20. Prior to the end of the Member Survey Period, 196 Delinquent Members of the Hills Resort and 82 Delinquent Members of the Ridge Resort, brought their accounts current. This resulted in collections of approximately \$500,000 and \$216,000 respectively. Those Delinquent Members who brought their accounts current during the Survey Period were given the opportunity to vote in the Member Survey.
21. Collection of Delinquent Member accounts has continued after the Survey Period resulting in approximately \$260,000 in additional collections from Delinquent Members.
22. Rules 1.04, 1.05, 2.03, 3.02, 16, and 37 of the *Rules of Civil Procedure* (Ontario); and
23. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Affidavit of Darren Chappelle sworn October 2, 2020;
- (b) the Second Report of the Administrator dated October 1, 2020, filed; and
- (c) such further and other evidence as counsel may advise and this Court may permit.

October 2, 2020

Thornton Grout Finnigan LLP
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TD West Tower, Toronto-Dominion Centre
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Lawyers for Carriage Hills Vacation Owners
Association

TO: ATTACHED SERVICE LIST

**Schedule “A”
Conference Details to join Motion via YouTube and Zoom**

All parties wishing to attend the hearing but not make submissions may do so by using the following link:

<https://youtu.be/ik3Wmm293AM>

Please be advised that the preceding link will not allow you to be seen or heard by the Court. If you intend to make submissions to the Court, please contact Mitch Grossell at mgrossell@tgf.ca to be provided with a Zoom link.

Schedule “B”

Court File No. CV-20-00640265-00CL

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

**IN THE MATTER OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c.C-43, AS AMENDED**

**AND IN THE MATTER OF THE PROCEEDINGS OF
CARRIAGE HILLS VACATION OWNERS
ASSOCIATION (the “Applicant”)**

**SERVICE LIST
(as at May 22, 2020)**

<p>THORNTON GROUT FINNIGAN LLP</p> <p>100 Wellington St. West, Suite 3200 TD West Tower, Toronto-Dominion Centre Toronto, ON M5K 1K7</p> <p>Leanne M. Williams Tel: 416-304-0060 Email: lwilliams@tgf.ca</p> <p>Mitchell W. Grossell Tel: 416-304-7978 Email: mgrossell@tgf.ca</p> <p>Lawyers for the Applicant</p>	<p>BDO CANADA LIMITED</p> <p>20 Wellington Street East, Suite 500 Toronto, ON M5E 1C5</p> <p>Brad Newton Tel: 416-775-7829 Email: bnewton@bdo.ca</p> <p>Administrator of the Applicant</p>
--	--

<p>AIRD & BERLIS LLP 181 Bay Street, Suite 1800 Brookfield Place Toronto, ON M5J 2T9</p> <p>Sanjeev Mitra Tel: 416-865-3085 Email: smitra@airdberlis.com</p> <p>Sam Babe Tel: 416-865-7718 Email: sbabe@airdberlis.com</p> <p>Lawyers for the Proposed Administrator</p>	<p>WYNDHAM WORLDWIDE CORPORATION 6277 Sea Harbor Dr. Orlando, FL 32821 ATTN: Legal Department – Resort Operations</p> <p>Gord Minor Email: gord.minor@wyn.com</p>
<p>BLANEY McMURTRY LLP Lawyers Suite 1500- 2 Queen Street East Toronto, ON M5C 3G5</p> <p>Lou Brzezinski Tel: (416) 593-2952 Fax: (416) 594-5084 Email: lbrzezinski@blaney.com</p> <p>Varoujan Arman Tel: (416) 596-2884 Fax: (416) 593-2960 Email: varman@blaney.com</p> <p>Lawyers for Lori Smith and Karen Levins</p>	<p>CHRISTOPHER DIANA 1889 Birkeshire Woods Lane Severn, ON L3V 0E8</p> <p>Tel: 1 (705) 259-0726</p> <p>Email: cdiana@rogers.com</p>

<p>NEWTON WONG & ASSOCIATES PROFESSIONAL CORPORATION Barristers and Solicitors 1033 Bay Street Suite 307SO Toronto, ON M5S 3A5</p> <p>Newton Wong Tel: (416) 971-9118 Fax: (416) 971-7210 Email: nwong@nwlaw.ca</p> <p>Lawyers for Respondents, David and Phyllis Lennox</p>	<p>MARK GROSSMAN PROFESSIONAL 17 Weber Street West Kitchener, ON N2H 3Y9</p> <p>Mark S. Grossman Tel: 1 (519) 578-9010 Fax: 1 (647) 946-6570 Email: mgrossman@shuhclinetgrossman.com</p> <p>Lawyers for Mark Grossman and Carole Grossman</p>
--	--

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cdiana@rogers.com; nwong@nwlaw.ca; mgrossman@shuhlinegrossman.com;

IN THE MATTER OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED AND IN THE MATTER OF THE
ADMINISTRATION PROCEEDINGS OF **CARRIAGE HILLS VACATION OWNERS ASSOCIATION**

Court File No. CV-20-00640265-00CL

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

Proceedings commenced at Toronto

NOTICE OF MOTION

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Lawyers for the Applicant, Carriage Hills Vacation
Owners Association

TAB 2

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

**IN THE MATTER OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C.43, AS AMENDED**

**AND IN THE MATTER OF THE PROCEEDINGS OF
CARRIAGE HILLS VACATION OWNERS ASSOCIATION
(the “Applicant”)**

**AFFIDAVIT OF DARREN CHAPELLE
(sworn October 2, 2020)**

I, Darren Chapelle of the City of St. Catherines, in the Province of Ontario, **MAKE OATH AND SAY:**

1. This affidavit is in support of the Applicant’s motion for an Order which includes (i) approving the decision of the board of directors of the Applicant authorizing the closure of the Carriage Hills timeshare resort (the “**Carriage Hills Resort**”), and (ii) authorizing BDO Canada Limited, in its capacity as administrator of the Applicant (the “**Administrator**”), to direct the Applicant to engage such persons as it deems necessary to develop a marketing and sales process in respect of the Carriage Hills Resort and investigate the availability of third-party financing to fund the ongoing costs of maintaining the Carriage Hills Resort, if necessary.
2. I have been a director of the Applicant since October 2016 and its president since October 2018, and have been an Owner (as defined below) since 2015. As such, I have personal knowledge of the matters deposed to in this affidavit. Where I have relied on other sources of information, I have referred to them and believe their content to be true.
3. Capitalized terms not otherwise defined herein are as defined in my affidavit sworn April 30, 2020.

I. BACKGROUND

4. The Applicant is a not-for-profit corporation vested with the operation, maintenance, alteration, improvement and protection of a timeshare resort located in Horseshoe Valley, Ontario. The Applicant is run by a volunteer board of five directors (the “**Board**”) who receive no remuneration.
5. As a result of spiralling deficits, the Applicant sought professional assistance to avoid the financial collapse of the Carriage Hills Resort. Pursuant to the terms of Madam Justice Conway’s Appointment Order dated May 15, 2020, the Administrator was appointed over the property, assets and undertaking of the Applicant and the real property owned by the Members.

II. ADMINISTRATOR’S RECOMMENDATION AT BOARD OF DIRECTOR’S MEETING

6. Pursuant to the Order of Madam Justice Conway dated July 2, 2020, the Administrator was directed to conduct a survey of the Members (the “**Member Survey**”) to determine which Members want to remain in the Carriage Hills Resort and which Members want to exit.
7. Despite the challenges of administering the Member Survey to such a large body of individuals, the Member Survey yielded significant response. At the conclusion of the Member Survey, the results were presented to the Board together with the Administrator’s analysis of the viability of the continuation of the Carriage Hills Resort which is set out in the Second Report of the Administrator dated September 30, 2020.

III. APPROVAL OF ADMINISTRATOR’S RECOMMENDATION

8. Based on the results of the Member Survey, the Administrator advised that it did not believe that the Carriage Hills Resort was viable and that it should be sold. After careful review and consideration of the Administrator’s recommendations, the Board unanimously agreed with the Administrator’s recommendations, subject to the approval of the Court. A copy of the resolution of the Board is attached as **Exhibit “A”**.

- 9. The Administrator and the Board also considered the timing of the proposed shutdown and determined that the appropriate time to cease operations is the end of the 2020 operating year, being January 6, 2021. This timing will allow non-delinquent Members to use the Carriage Hills Resort for the remainder of the 2020 season for which they have paid annual fees.

- 10. When considering the Administrator’s recommendations, the Board had to balance the results of the Member Survey with the fairness to Members voting to remain in the Carriage Hills Resort. Those Members who voted to remain and continue their contractual obligations are losing the enjoyment of the Carriage Hills Resort and will have to incur the costs associated with finding alternative vacation arrangements. However, for the reasons set out in the Second Report, the Board agreed with the Administrator’s opinion that the Carriage Hills Resort was not viable and approved the recommendations of the Administrator.

- 11. This affidavit is sworn in support of the motion by the Applicant and for no improper purpose.

SWORN BEFORE ME over videoconference on this 2nd day of October, 2020. The affiant was located in St. Catharines, in the Province of Ontario and the Commisisoner was located in the City of Toronto, Province of Ontario. This affidavit was commissioned remotely as a result of COVID-19.

Commissioner for taking affidavits

Mitchell W. Grossell
LSO# 69993I

Darren Chapelle

This is Exhibit "A" referred to in the
Affidavit of Darren Chapelle sworn before me
This 2nd day of October 2020.



A Commissioner for taking affidavits
Mitchell W. Grossell
LSO# 69993

From: [REDACTED]
Sent: Thursday, October 1, 2020 3:24 PM
To: Mitch Grossell
Subject: Fwd: Re: AWOM from today's executive session Zoom call. Michelle Eeuwes reply
Attachments: [REDACTED]

----- Forwarded Message -----

Subject:Re: AWOM from today's executive session Zoom call.
Date:Tue, 22 Sep 2020 13:20:23 -0400
From:Michelle Eeuwes [REDACTED]
To:Fleckenstein, Kurt [REDACTED]
CC:ALAN BONE [REDACTED], Lambert, Sarah [REDACTED], Paltanen, Esa [REDACTED]

I vote yes to all.

Michelle Reesor

On Tue, Sep 22, 2020 at 12:39 PM Fleckenstein, Kurt [REDACTED] wrote:
Agreed

Kurt Fleckenstein, CPA

Vice President, HOA Accounting

Wyndham Destinations

6277 Sea Harbor Drive

Orlando, FL 32821

[Redacted]

[Redacted]

[Redacted]

-----Original Message-----

From: ALAN BONE [mailto:[Redacted]]

Sent: Tuesday, September 22, 2020 12:26 PM

To: [Redacted]

Cc: Michelle Eeuwes <[Redacted]>
Paltanen, Esa [Redacted]; Lambert, Sarah [Redacted]

Subject: Re: AWOM from today's executive session Zoom call.

Yup

Alan Bone

[Redacted]

> On Sep 22, 2020, at 11:42 AM, Darren Chapelle, B.Admin., CPA, CA,
[Redacted] wrote:

>

> Hello all:

>

> Further to our meeting today with legal council and the administrator, (executive session) the following AWOM's are provided to you to vote by reply all email. These motions will be formally approved at the next regular Board Meeting:

>

> 1) The board of directors agree with the recommendation of the administrator that based on the results of the

survey the resort is not viable and shall be shuttered at the end of the 2020 time share year. This will allow check in's on December 31 to stay for their full reservation up to a maximum of 7 days, checking out not later than January 6, 2021.

>

> 2) The board of directors agree with the recommendation of legal council to begin the process of changing BDO from being an "Administrator: to being a "Receiver" including borrowing funds to pay resort expenses until it is able to liquidate the assets of the resort and payout the surplus to owners in a fair way, to be approved by the court. The projected date for BDO to become "Receiver" will be after the resort is shuttered on January 6, 2021.

>

> 3) The board of directors approved all repairs required to the staircases in the amount of \$135,769.50 subject to receipt of the engineers report noting that the repairs are an immediate health and safety issue.

>

> Thanks for your prompt replies

>

> Darren

>

>

> --

> Our office has started implementing some procedures to limit our staff's and clients exposure in an effort to abide by social distancing recommendations.

> We are cancelling all possible in-person meetings with clients asking that they simply drop off and pick up their documents where necessary and to do as much online and telephone contact as possible.

> The CRA is accepting online signatures and our office is able to accept electronic e-transfers or credit card payments payments by telephone to help ensure your safety.

>

>

> Darren Chapelle, CPA. CA., LPA, Partner Steinbachs & Chapelle

> Professional Corporation

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

>

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[REDACTED]

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From: Darren Chapelle, B.Admin., CPA, CA, [REDACTED]
Sent: Thursday, October 1, 2020 3:25 PM
To: Mitch Grossell
Subject: Fwd: Re: AWOM from today's executive session Zoom call. Gordon Aue reply
Attachments: [REDACTED]

----- Forwarded Message -----

Subject: Re: AWOM from today's executive session Zoom call.

Date: Tue, 22 Sep 2020 12:24:08 -0400

From: Gordon Aue [REDACTED]

To: Darren Chapelle [REDACTED]

CC: Alan Bone [REDACTED]

[REDACTED], Michelle Eeuwes [REDACTED]

[REDACTED], Paltanen, Esa [REDACTED]

[REDACTED], Lambert, Sarah [REDACTED]

I vote yes my approval.

Gordon

On Tue., Sep. 22, 2020, 11:42 a.m. Darren Chapelle, B.Admin., CPA, CA, [REDACTED] wrote:

Hello all:

Further to our meeting today with legal council and the administrator, (executive session) the following AWOM's are provided to you to vote by reply all email. These motions will be formally approved at the next regular Board Meeting:

- 1) The board of directors agree with the recommendation of the administrator that based on the results of the survey the resort is not viable and shall be shuttered at the end of the 2020 time share year. This will allow check in's on December 31 to stay for their full reservation up to a maximum of 7 days, checking out not later than January 6, 2021.
- 2) The board of directors agree with the recommendation of legal council to begin the process of changing BDO from being an "Administrator: to being a "Receiver" including borrowing funds to pay resort expenses until it is able to liquidate the assets of the resort and payout the surplus to owners in a fair way, to be approved by the court. The projected date for BDO to become "Receiver" will be after the resort is shuttered on January 6, 2021.

3) The board of directors approved all repairs required to the staircases in the amount of \$135,769.50 subject to receipt of the engineers report noting that the repairs are an immediate health and safety issue.

Thanks for your prompt replies

Darren

--

Our office has started implementing some procedures to limit our staff's and clients exposure in an effort to abide by social distancing recommendations.

We are cancelling all possible in-person meetings with clients asking that they simply drop off and pick up their documents where necessary and to do as much online and telephone contact as possible.

The CRA is accepting online signatures and our office is able to accept electronic e-transfers or credit card payments payments by telephone to help ensure your safety.

Darren Chapelle, CPA. CA., LPA, Partner
Steinbachs & Chapelle Professional Corporation



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From: Darren Chapelle, B.Admin., CPA, CA, [REDACTED]
Sent: Thursday, October 1, 2020 3:26 PM
To: Mitch Grossell
Subject: Darren Chapelle
Attachments: [REDACTED]

Hi Mitch

I did not reply to my own email.....

I also voted in favour of the AWOM's

Darren Chapelle

--

Our office has started implementing some procedures to limit our staff's and clients exposure in an effort to abide by social distancing recommendations.

We are cancelling all possible in-person meetings with clients asking that they simply drop off and pick up their documents where necessary and to do as much online and telephone contact as possible.

The CRA is accepting online signatures and our office is able to accept electronic e-transfers or credit card payments payments by telephone to help ensure your safety.

Darren Chapelle, CPA. CA., LPA, Partner
Steinbachs & Chapelle Professional Corporation

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**AND IN THE MATTER OF THE ADMINISTRATION PROCEEDINGS OF CARRIAGE
HILLS VACATION OWNERS ASSOCIATION**

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
Proceeding commenced in Toronto

**AFFIDAVIT OF DARREN CHAPELLE
(sworn October 2, 2020)**

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Tel.: (416) 304-7978

Lawyers for Applicant, Carriage Hills
Vacation Owners Association

TAB 3

Court File No. CV-20-00640265-00CL

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

THE HONOURABLE MADAM)	THURSDAY, THE 15TH
)	
JUSTICE CONWAY)	DAY OF OCTOBER, 2020

IN THE MATTER OF THE *COURTS OF JUSTICE ACT*, R.S.O.
1990, c. C.43, AS AMENDED

AND IN THE MATTER OF THE ADMINISTRATION
PROCEEDINGS OF **CARRIAGE HILLS VACATION
OWNERS ASSOCIATION** (the “**Applicant**”)

ORDER

THIS MOTION made by the Applicant for an Order, *inter alia*: (i) approving the decision of the board of directors of Carriage Hills Vacation Owners Association (“**Carriage Hills**”) and authorizing the closure of the Carriage Hills timeshare resort (the “**Carriage Hills Resort**”), (ii) authorizing and directing BDO Canada Limited, in its capacity as the Administrator of the Applicant (the “**Administrator**”), to engage such persons as it deems necessary to assist the Administrator in developing a marketing and sales process in respect of the Carriage Hills Resort, (iii) authorizing and directing the Administrator to investigate the availability and terms of third-party financing to fund the ongoing costs of maintaining the Carriage Hills Resort, if necessary, (iv) approving the Second Report of the Administrator dated October 1, 2020 (the “**Second Report**”), and the activities of the Administrator as described therein, and (v) approving the fees and disbursements of the Administrator and its counsel as described in the Second Report, was heard this day via Zoom judicial video conference due to the COVID-19 pandemic.

ON READING the Motion Record of the Applicant dated October 2, 2020 (the “**Motion Record**”), including the affidavit of Darren Chapelle, sworn October 2, 2020 (the “**Chapelle Affidavit**”) and the Exhibit thereto, the Second Report and the appendices thereto, and on

hearing the submissions of counsel for the Applicant, counsel for the Administrator, no one else appearing for any other parties on the Service List, although duly served as appears from the affidavit of service of Andrea Fragala sworn October 2, 2020, filed.

SERVICE AND DEFINED TERMS

1. **THIS COURT ORDERS** that the time for service of the Motion Record is hereby validated so that this Motion is properly returnable today and further service thereof is hereby dispensed with.
2. **THIS COURT ORDERS** that all capitalized terms used herein that are not otherwise defined shall have the meaning ascribed to them in the Second Report.

CLOSURE OF THE RESORT

3. **THIS COURT ORDERS** that the decision by the board of directors of the Applicant to close the Carriage Hills Resort effective January 6, 2021, or such other date as mutually agreed upon by the Administrator and the board of directors of the Applicant, including the minutes of the Board of Directors meeting dated September 22, 2020, is hereby authorized and approved.
4. **THIS COURT DIRECTS** the Administrator, in consultation with the Applicant, to develop a strategy for the closure and sale of the Carriage Hills Resort.

POWERS OF THE ADMINISTRATOR

5. **THIS COURT ORDERS** that in addition to the powers and duties as set out in the Order of Madam Justice Conway dated May 15, 2020 (the “**Administration Order**”), or any other Order of this Court in these proceedings, the Administrator is hereby expressly empowered and authorized to do any of the following where the Administrator considers it necessary or desirable:

- (a) direct the Applicant to engage consultants, appraisers, agents, experts, brokers and such other persons from time to time and on whatever basis, including on a temporary basis, to assist the Administrator in developing a marketing and sales process in respect of the Carriage Hills Resort; and

- (b) investigate the availability and terms of possible third-party funding in the event that same is required to fund the ongoing costs of maintaining the Carriage Hill Resort.

6. **THIS COURT ORDERS** that the Administrator shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the Administration Order and any other Order of this Court and all such indemnities, charges, protections and priorities shall apply and extend to the Administrator and the fulfillment of its duties or the carrying out of the provisions of this Order.

7. **THIS COURT ORDERS** that the Applicant shall cooperate fully with the Administrator and any directions it may provide pursuant to this Order and shall provide such assistance as the Administrator may reasonably request from time to time to enable the Administrator to carry out its duties and powers as set out in the Administration Order, this Order, or any other Order of this Court.

APPROVAL OF FEES AND ACTIVITIES OF THE ADMINISTRATOR

8. **THIS COURT ORDERS** that the Second Report filed in these proceedings and the Administrator's activities as set out therein are hereby approved.

9. **THIS COURT ORDERS** that the professional fees and disbursements of the Administrator for (i) the period ending September 15, 2020 in the amount of \$273,476.00 plus HST of \$35,551.89 for a total of \$309,027.89, as set out in the Affidavit of Brad Newton sworn September 25, 2020 and attached as Appendix "U" to the Second Report, are hereby approved and the Association is authorized to pay its proportionate share of such fees in accordance with the terms of the Administration Order.

10. **THIS COURT ORDERS** that the professional fees and disbursements of Aird & Berlis, counsel to the Administrator, for (i) the period ending September 15, 2020 in the amount of \$57,023.25 plus HST of \$7,413.29 for a total of \$64,438.54 as set out in the Affidavit of Sam Babe sworn September 30, 2020 and attached as Appendix "V" to the Second Report, are hereby approved and the Association is authorized to pay its proportionate share of such fees in accordance with the terms of the Administration Order.

GENERAL

11. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

IN THE MATTER OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED AND IN THE MATTER OF THE
ADMINISTRATION PROCEEDINGS OF **CARRIAGE HILLS VACATION OWNERS ASSOCIATION**

Court File No.: CV-20-00640265-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER

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MOTION RECORD
(RETURNABLE OCTOBER 15, 2020)

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