Court File No. CV-20-00648456-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

ALTERNA SAVINGS AND CREDIT UNION LIMITED

Applicant

- and -

1140402 ONTARIO INC. O/A EMERALD LODGE

Respondent

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT,* R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

FIRST REPORT TO THE COURT SUBMITTED BY GRANT THORNTON LIMITED IN ITS CAPACITY AS RECEIVER

NOVEMBER 20, 2020

Grant Thornton Limited
200 King Street West, 11th Floor
Toronto, Ontario, M5H 3T4

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INTRODUCTION & PURPOSE

1. On September 25, 2020, on application by Alterna Savings and Credit Union Limited ("**Alterna**") to the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), an Order was issued (the "**Appointment Order**") appointing Grant Thornton Limited ("**GTL**") as receiver (in such capacity, the "**Receiver**"), without security, of all the assets, undertakings and properties of 11404402 Ontario Inc. operating as Emerald Lodge ("**Emerald Lodge**" or the "**Company**"). The said receivership proceeding shall be referred to herein as the "**Receivership Proceedings**". A copy of the Appointment Order is attached hereto as **Appendix "1"** to this First Report of the Receiver (the "**First Report**").

2. The purpose of this First Report is to inform the Court of the Receiver's activities since the date of the Appointment Order, and to support the Receiver's request for an Order, among other things:

a) authorizing the Receiver to undertake the Sales Process (as defined and described later in this First Report);

b) declaring that the Receiver may sell the Property free and clear of any interest claimed under the Land ROFR and Services ROFR (all capitalized terms in this paragraph are defined later in this First Report), and free any clear of any prior purchase agreements, if any;

c) approving the actions of the Receiver as described in this First Report; and

d) approving the fees and disbursements of the Receiver and its counsel.

DISCLAIMER

3. In preparing this First Report, the Receiver has relied upon the Company's books and records, unaudited financial information, various operational information provided by the Company, Stefanie Martino (defined later in this First Report), and other employees or consultants of the Company (collectively, the "**Information**"). Except as described in this First Report, the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.

4. This First Report has been prepared for the use of this Court to provide general information and an update relating to these Receivership Proceedings for the purpose of assisting the Court in making a determination as to whether to approve the relief sought. This First Report should not be relied on for any other purpose. The Receiver will not assume responsibility or liability for losses incurred as a result of the circulation, publication, reproduction or use of this First Report for any other purpose.

5. All references to dollars are in Canadian currency unless otherwise noted.

6. Copies of materials filed in these Receivership Proceedings are available on the

Receiver's case website at: http://www.grantthornton.ca/emeraldlodge.

BACKGROUND

7. Emerald Lodge is the registered owner of certain real property located at 83-85 Emerald Street South, Hamilton, Ontario (the "**Property**"). The Company operated a residential care facility which offered personal care and assisted living for adults, people with disabilities and those with limited incomes (the "**Home**"). The majority of the revenue for Emerald Lodge was generated pursuant to a subsidy agreement (the "**Subsidy Agreement**") with the City of Hamilton (the "**City**").

8. Stefanie Laura Martino ("**Stefanie Martino**") is the President and sole Officer and Director of Emerald Lodge. Stefanie Martino was also responsible for the day to day operations of the Home. At the time of the Receiver's appointment, Emerald Lodge had nine employees.

9. The Company's first mortgagee is Alterna. According to the application record Alterna filed in support of the Receivership Proceedings, the Company was indebted to Alterna in the amount of $2,296,460.39 inclusive of interest but excluding fees to November 14, 2020 pursuant to a mortgage with Alterna (the "**Alterna Mortgage**").

10. It is the Receiver's understanding that on or around June 15, 2020, Emerald Lodge defaulted on certain of its financial covenants and margin requirements pursuant to its lending arrangement with Alterna. Background information pertaining to Emerald Lodge, including the circumstances leading to the appointment of the Receiver, are contained in the affidavit of Umair Saleem, sworn September 22, 2020 (the "**Saleem Affidavit**"). A copy of the Saleem Affidavit, without exhibits, is attached hereto as **Appendix "2"**.

11. KLN Holdings Inc. ("**KLN**") is the second mortgagee (the "**KLN Mortgage**"). KLN advised the Receiver that as at October 9, 2020 it is owed $468,602.74 (comprised of $450,000 of principal plus interest and costs).

ACTIVITIES OF THE RECEIVER

12. In the days following the issuance of the Appointment Order, representatives of the Receiver attended the Home to assess the state of affairs.

13. The Receiver understands that many of the former residents suffer from severe forms of mental illness and require a high level of care, including, in many cases, assistance with taking their prescription medication. Following its appointment, the Receiver asked Stefanie Martino to continue day to day operational control of the Home, and an independent contractor agreement was provided. The agreement was never signed, though Stefanie Martino continued to function as the operator of the Home on a day-to-day basis. She provided directions to staff and was paid by the Receiver.

14. In addition to asking Stefanie Martino to serve as operator of the Home, immediately after its appointment, the Receiver:

a) met with Stefanie Martino and the employees and provided employee retention agreements to each of the nine employees;

b) discussed with Stefanie Martino her responsibilities and expectations of the Receiver in the engagement of same, to which she agreed;

c) discussed with Stefanie Martino the need for her to coordinate urgent capital repairs which she had brought to the attention of the Receiver, including replacing 18 broken windows and ordering a new commercial washing machine (collectively, the "**Urgent Capital Repairs**");

d) liaised with the City in order to understand the status of any outstanding inspections and payments to Emerald Lodge pursuant to the Subsidy Agreement;

e) liaised with the insurance broker to continue liability and property insurance coverage;

f) engaged the independent contractor accountant used by Emerald Lodge to process payroll, receive funds from the City, and pay vendors; and,

g) issued the required receivership notices pursuant to Section 245(1) and Section 246(1) of the *Bankruptcy and Insolvency Act*.

15. During the week of October 12, 2020, the Receiver became aware of the following:

a) following an inspection of the premises, on October 11, 2020, the City issued an order addressed to Stefanie Martino indicating inadequate COVID-19 screening and other protocols at the Home (the "**COVID Order**");

b) on October 11, 2020, the City issued a pest control order addressed to Stefanie Martino after finding evidence of cockroaches in a food storage area (the "**Pest Control Order**");

c) an Order issued by the City on October 7, 2020 and received by Stefanie Martino was brought to the Receiver's attention on or about October 14, 2020. Pursuant to this order, the City mandated certain repairs relating to a clogged bath tub and broken door hinges (the "**Repair Order**", and collectively with the COVID Order and the Pest-Control Order, the "**City Orders**"); and,

d) no progress had been made by Stefanie Martino in respect of the Urgent Capital Repairs.

16. On October 13, 2020, the Receiver corresponded with Stefanie Martino about the need to make immediate operational changes to ensure compliance with the COVID Order, the Pest Control Order, the Repair Order, and to ensure a safe environment for residents. Stefanie Martino advised the Receiver that she would tend to the foregoing.

17. However, following this correspondence, the Receiver was unable to reach Stefanie Martino by phone for a period of 8 days starting on the afternoon of October 13, 2020. Certain employees advised that she did attend the Property three times during the week of October 12, 2020, but these visits were brief, and the matters referenced in the City Orders were not addressed by Stefanie Martino, nor were the Urgent Capital Repairs.

18. As a result of Stefanie Martino's inability or refusal to take immediate action to address the City Orders, the Receiver reached out to more than 10 experienced operators and asked the City for assistance in order to find a replacement operator for the Home on an expedited basis. The Receiver also attended to several urgent matters regarding the Property including, among other things, contracting with a pest control company and ordering replacement windows. Although the Receiver increased the frequency of its visits to the Property, it did not and could not take over responsibility for patient care as it does not possess the requisite expertise.

19. On October 19, 2020, the Receiver met at the Property with representatives from Good Shepherd Non-Profit Homes Inc. ("**Good Shepherd**") about potentially acting as

replacement operator. The following was discovered at that visit:

a) additional staff had left without notice and there were now only 6 staff remaining to provide care 7 days a week and 24 hours a day for the 34 residents – there were not enough staff to be able to provide an adequate level of care on a long-term basis;

b) the remaining overburdened staff were unable to implement all of the required COVID safety protocols contemplated by the COVID Order, including screening visitors before they are allowed to enter the Property;

c) fire escapes had been padlocked to prevent access in response to safety concerns of staff that people who were not residents and who were violent were gaining unauthorized access to the building – this meant that residents and staff would be unable to use these escapes in event of a fire; and,

d) there were other safety concerns relating to specific residents.

20. Throughout the week of October 19, 2020, the Receiver continued discussions with Good Shepherd about assuming operational control of Emerald Lodge. Good Shepherd and the City conducted further inspections of the Home during this time. The following additional health and safety issues were identified during those inspections:

a) smoke detectors and carbon monoxide detectors were not working;

b) someone (presumably a resident) had intentionally plugged toilets and showers resulting in only one working toilet and one working shower to service all residents until a plumber was called to resolve the issues;

c) there were not enough beds in the Home to provide a bed for each resident;

d) an inspection by the City found rodent feces in several places in the kitchen and a bed bug infestation in several rooms of the Home;

e) many residents were taking several types of prescribed medications – Good Shepherd later advised the Receiver that the number of medications prescribed to each person was much higher than what they would have expected, in their experience;

f) the room where medication was kept had been broken into and resident medications, which included narcotics, had been removed; and,

g) in the opinion of Good Shepherd, more than 15 of the residents had high psychiatric care needs which exceeded the level of care which Emerald Lodge was able to provide and needed to be removed immediately from Emerald Lodge to a facility more suited to their healthcare needs.

21. A series of discussions amongst the Receiver, Good Shepherd and the City took place during the week of October 19, 2020. Ultimately, Good Shepherd reached the conclusion that while they wanted to assist, they were not able to guarantee safe working conditions for their staff or the minimum level of care needed for the residents. As a result, Good Shepherd advised the Receiver on October 23, 2020 that it would be unable to act as replacement operator. None of the other potential operators contacted by the Receiver were willing or able to manage the Home, due in large part to the numerous health and safety issues with the Home.

22. Due to the Receiver's lack of confidence in Stefanie Martino as a result of her absence and lack of diligence, the Receiver formally terminated her effective as of October 23, 2020.

23. On the evening of October 23, 2020, the City, with agreement from the Receiver, evacuated all residents of Emerald Lodge to a facility nearby in hope of reducing the disruption to the residents, but ensuring that residents would be provided better care and attention to their specific needs. The Home has remained closed since this time.

24. Immediately after the evacuation, the Receiver:

a) notified all employees of the closure of the Home;

b) with the assistance of the Company's accountant:

i. ensured final pay and record of employment forms were provided to all employees;

ii. received residents' personal needs money and forwarded such funds collected to the residents; and

iii. administered the Wage Earner Protection Program for unpaid termination pay;

c) met with residents to allow them to remove any personal belongings which they were not able to remove during the evacuation;

d) collected all keys from staff and engaged a locksmith to change the locks and secure all doors and windows of the building; and

e) notified the Company's insurance broker of the evacuation and change in insurance risk in light of the premises being vacated.

SALES PROCESS

25. The Receiver is of the view that it is now an appropriate time to commence a broad public marketing of the Property for sale, with a view to consummating a value maximizing transaction in respect of the Property (the "**Sale Process**").

26. Starting the week of October 5, 2020, the Receiver reached out to three commercial real estate brokers – Colliers International (“**Colliers**”), Cushman & Wakefield (“**Cushman**”) and CBRE Limited (“**CBRE**”) regarding potentially listing the Home. Proposals were received by Cushman and CBRE (collectively, the "**Potential Brokers**"), with Colliers declining to provide a proposal.

27. In addition, the Receiver is in contact with potential interested parties who have expressed a preliminary interest in the Property and is assessing whether any potential market-value transactions might be possible. In the event that no meaningful opportunity arises from these discussions, it is the Receiver's intention to retain a Potential Broker to list the Property for sale.

28. The Receiver is requesting authorization from the Court to retain one of the Potential Brokers (without the obligation to do so) to act as listing agent and broker in respect of the Property, and to assist the Receiver with the Sale Process.

29. Given that various potential end uses of the Property are conceivable which may attract a variety of proposal structures, the Receiver, in consultation with the Potential Brokers, is of the view that it should be afforded broad discretion to determine the particular

procedures to be followed in the Sale Process once the Property has been publicly listed for sale and initial expressions of interest are received.

30. If a Potential Broker is retained, and subject to such retained Potential Broker's recommendation, it is expected that the Property would be listed on the multiple listing service. It is also expected that the retained Potential Broker will also approach potential bidders with information regarding the Property and Sale Process. The Receiver and the retained Potential Broker will consult to determine the appropriate next steps for the Sale Process based on the level of interest in a transaction in respect of the Property, among other factors. The Receiver and retained Potential Broker will keep Sale Process participants apprised of material developments to the Sale Process, including with respect to any bid deadlines and procedures, if any, that may be recommended by the retained Potential Broker, as agreed by the Receiver.

31. In tandem with discussions with the Potential Brokers and other strategic interested parties, the Receiver also responded to and engaged in discussions with five parties who had expressed an unsolicited interest in acquiring the Home each with the intention of continuing operations as a care facility (collectively, the "**Interested Operators**"), conditional upon finalizing a subsidy agreement with the City. Interested Operators were asked to submit a letter of intent ("**LOI**") by 5:00 PM EST on October 16, 2020. Two Interested Operators submitted LOI's on that date. A third LOI was received during the week of October 19, 2020. All three LOI's were rescinded by the respective Interested Operator following the evacuation of Emerald Lodge on October 23, 2020. The Receiver is also aware that Emerald Lodge had been engaged with interested parties prior to the Receiver's appointment and understands that no definitive or binding purchase agreements were completed during the pre-appointment period. One of the pre-appointment interested parties is an Interested Operator who also submitted an LOI, described above.

32. Even had Emerald Lodge continued to operate, it may not have been possible for any of the Interested Operators to have finalized a satisfactory subsidy agreement with the City, which was a precondition to closing for each of the LOIs received; the City had previously indicated to the Receiver that the 40 subsidized beds in the Home had been "grandfathered", that a new buyer would likely not receive funding for as many subsidized tenants, and that generally no more than 24 subsidized beds are available at

any one location.

33. During the weekend of November 14th and 15th of 2020, the Receiver received an unsolicited LOI and an offer to purchase (the "**Recent Offers**"), however, the Receiver is of the view that the broad and flexible marketing strategy for the Property contemplated by the Sale Process is in the best interests of all stakeholders. Alterna is supportive of the Sale Process and neither of the Recent Offers would offer sufficient proceeds to result in any recovery in respect of the KLN Mortgage.

34. Accordingly, subject to obtaining Court approval, the Receiver intends to undertake the Sale Process as outlined herein. Given that Emerald Lodge is no longer operating, it is possible that the successful purchaser may not want to operate a similar care facility and would instead want to repurpose the Property for another purpose. It is anticipated that a broad canvassing of the market will attract the greatest number of prospective purchasers and provide the best opportunity to consummate a value maximizing transaction.

RIVERVIEW PHARMACY

35. One of the parties who expressed an interest in the Property and provided one of the Recent Offers is Rafik Lotfi. Mr. Lotfi has advised the Receiver that he is the sole owner of Riverview Pharmacy Ltd. ("**Riverview**"), the pharmacy which provided a daily supply of medication for the residents at Emerald Lodge.

36. During the operations of the Home, Riverview leased space from the Company and provided pharmacy services from such lease premises for the Home and its residents. Since the evacuation of the Home, Riverview no longer occupies the leased space or provides any pharmaceutical services.

37. Riverview, the Company, and Stefanie Martino entered into a Residential Care Facility Pharmaceutical Service Agreement on November 19, 2015 (as amended and extended by written agreements dated April 12, 2016 and December 18, 2018, the "**Pharmaceutical Services Agreement**"). Copies of the Pharmaceutical Services Agreement including the amendments thereto are attached to this Report as **Appendix "3"**.

38. Riverview was also party to a License Agreement dated April 12, 2016 with North

American Living Centres Limited ("**NALC**") and several numbered entities and other holding companies, including the predecessor entity to the Debtor (the "**License Agreement**"). The License Agreement was renewed by written agreement dated December 18, 2018, and copies of the License Agreement and amendment are attached to this Report as **Appendix "4"**.

39. It is the Receiver's understanding that, pursuant to the License Agreement, Riverview paid an annual fee of $2,125 for the exclusive right to provide pharmaceutical services to the Home and several other similar facilities. Amounts payable under the License Agreement were paid to NALC, and the Debtor did not receive any monetary benefit from the License Agreement.

40. Furthermore, it is the Receiver's understanding that the aforementioned annual license fee paid to NALC was inclusive of any rent payable in respect of Riverview's lease of space within the Home. In other words, the Debtor did not receive any direct monetary benefit from either the lease arrangement or the license arrangement.

41. Under the terms of the Pharmaceutical Services Agreement, Riverside was granted (i) a right of first refusal in respect of bona fide offers to purchase the operating business of the Home or the Lands (the "**Land ROFR**"), and (ii) certain rights to contract with any prospective purchase of the Property to provide pharmaceutical services to any successor owner/operator of the Home (the "**Services ROFR**", and collectively with the Land ROFR, the "**ROFR Rights**"). The ROFR Rights have been registered on title to the Property, as Instrument Nos. WE1081631 and WE1430135, and copies thereof are attached to this Report as **Appendix "5"**.

42. The Receiver is requesting that the Court provide declaratory relief, confirming the nullification the ROFR Rights and expunging them from title to the Property at the outset of the sale process. The reasons for this request are as follows:

   a) The Receiver is of the view that the business terms set out in the Pharmaceutical Services Agreement do not reflect a commercially reasonable or rational business arrangement. The Company received <u>no financial consideration</u> in exchange for the ROFR Rights.

   b) Riverview has postponed its interest in the ROFR Rights to Alterna and KLN, and

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these postponements have been registered on title to the Property as Instrument Nos. WE1387288 and WE1416699, respectively (together, the "Postponements"). Copies of the Postponements are attached hereto as **Appendix "6"**. The registration of the Postponements on title to the Property indicates that neither Riverview nor the Company, or indeed neither Alterna nor KLN, intended that the ROFR Rights should prejudice the mortgage interests of Alterna or KLN.

c) The Receiver is of the view that the continued registration of the Pharmaceutical Services Agreement on title to the Property represents a serious impediment to selling the Property. Simply put, it will be extremely challenging to attract even a market value of the Property, let alone a value maximizing transaction, with this title registration in place as interested parties are unlikely to incur significant due diligence costs if they believe that the Land ROFR or Services ROFR may be exercised. The existence of these title registrations will likely frustrate the efforts of the priority-ranking secured creditors to realize on their collateral.

d) Counsel to Riverview has been served with seven days' notice of the within motion.

43. The Receiver is of the view that the declaratory relief requested herein will promote the success of the Sale Process. It is in the best interests of the Company's secured creditors for the Property to be sold through a value maximizing transaction.

SECURITY REVIEW

44. On October 22, 2020, the Receiver received a legal opinion from its independent counsel, Bennett Jones LLP ("**Bennett Jones**") that, subject to the usual assumptions and qualifications:

a) the Mortgages constitute valid and binding obligations of the Company, enforceable against the Debtor in accordance with the terms thereof;

b) the Alterna Mortgage creates a fixed and specific mortgage and charge on the Property and, as of the date hereof, the Alterna Mortgage was registered on title to the Property; and,

c) the KLN Mortgage creates a fixed and specific mortgage and charge on the Property and, as of the date hereof, the KLN Mortgage was registered on title to the Property.

45. The security opinion delivered by Bennett Jones confirms that, subject to the usual assumptions and qualifications, Alterna has a first ranking charge on the Property based on the order of registrations on title.

GOVERNMENT PRIORITY CLAIMS

46. The Receiver understands that source deductions totaling $91,279.10 (as of the date of the Appointment Order) relating to the period from February 2020 to September 2020 are owing to the Canada Revenue Agency ("**CRA**") (see **Appendix "7"** for supporting detail).

47. CRA source deductions relate to amounts deducted but not remitted for the period from March 15 – October 15, 2020. Alterna and KLN mortgages were registered prior to this period.

48. The CRA has been served with notice of the present motion and the Receiver intends to engage with the CRA to verify the quantum of the source deductions, including assisting with any audit, if requested.

49. The Receiver is advised by its legal counsel that the CRA's source deduction claims are subordinated to the secured mortgage claims of Alterna and KLN by operation of section 227.4 of the Income Tax Act and Regulation 2201 promulgated thereunder. No relief is sought in this regard in the present motion.

RECEIVER'S FEES AND DISBURSEMENTS

50. Pursuant to paragraph 18 of the Appointment Order, the Receiver and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Appointment Order. Pursuant to paragraph 19 of the Appointment Order, the Receiver and its counsel shall pass their accounts.

51. The Receiver seeks to have its fees and disbursements, including those of its legal counsel, approved by the Court. The Receiver and its counsel have maintained detailed

records of their professional time and costs.

52. The total fees for the Receiver for the period of September 4, 2020 (in preparation for the Receivership) until October 31, 2020 were $107,653.35, plus disbursements of $70, plus HST of $14,004.04, for a total of $121,727.39. The time spent by the Receiver is more particularly described in the Affidavit of Rob Stelzer sworn November 20, 2020 (the "**Stelzer Affidavit"**), which is attached hereto as **Appendix "8"** and contains a copy of the invoice that sets out the services provided during this time period.

53. The total fees of Bennett Jones, as counsel to the Receiver, for the period of September 22, 2020 to October 31, 2020, were $33,953.50, plus disbursements of $1,437.80, plus HST of $4,600.81, for a total of $39,992.11. The time spent by Bennett Jones is more particularly described in the Affidavit of Raj Sahni sworn November 20, 2020, a copy of which is attached hereto as **Appendix "9"** and contains, among other things, a copy of the invoice that sets out the services provided during this period of time.

54. It is the Receiver's opinion that the fees and disbursements of the Receiver and Bennett Jones accurately reflect the work done by the Receiver and on behalf of the Receiver by Bennett Jones in connection with the receivership. It is the Receiver's opinion that the fees and disbursements of Bennett Jones are fair and reasonable and justified in the circumstances. The Receiver recommends approval of these accounts by this Honourable Court.

CONCLUSION

55. For the reasons set out herein, the Receiver respectfully requests the relief and approval as set out in the introduction section of this First Report.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of November, 2020.

GRANT THORNTON LIMITED,
IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER
OF 1140402 ONTARIO INC. O/A EMERALD LODGE
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

Rob Stelzer, CPA, CA, CIRP, LIT
Vice-President

Court File No. CV-20-00648456-00CL

APPLICATION PURSUANT TO SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED; AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. 43, AS AMENDED

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FIRST REPORT OF GRANT THORNTON LIMITED, THE RECEIVER

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