

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) WEDNESDAY, THE 5TH
)
JUSTICE STEELE) DAY OF JULY, 2023
)

B E T W E E N:

AMERICAN GENERAL LIFE INSURANCE COMPANY,
LEXINGTON INSURANCE COMPANY, AND
THE VARIABLE ANNUITY LIFE INSURANCE COMPANY

Applicants

- and -

SOUTHMOUNT HEALTHCARE CENTRE INC., 180 VINE INC., 2478658
ONTARIO LTD., 2009 LONG LAKE HOLDINGS INC., 65 LARCH
HOLDINGS INC., 100 COLBORNE HOLDINGS INC., 240 OLD
PENETANGUISH HOLDINGS INC., GROSS PROPERTIES INC., 180 VINE
PURCHASER INC., AND 2413667 ONTARIO INC.

Respondents

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985,
c. B-3, as amended, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

DISCHARGE, DISTRIBUTION AND ANCILLARY MATTERS ORDER

THIS MOTION, made by KPMG Inc. (“**KPMG**”), in its capacity as Court-appointed receiver and manager (the “**Receiver**”) without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule “A”** (the “**Real Property**”) of the Appointment Order granted on June 29, 2021 (the “**Appointment Order**”), of (i) Southmount Healthcare Centre Inc., 180 Vine Inc., 2478658

Ontario Ltd., 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc., and 240 Old Penetanguish Holdings Inc. (the “**Legal Owners**”) acquired for, or used in relation to the Legal Owner’s business (collectively, the “**Legal Owners’ Property**”), and (ii) the beneficial owners of the Legal Owners’ Property (collectively, the “**Beneficial Owners**”, and together with the Legal Owner, the “**Debtors**”), but solely in respect of all of each Beneficial Owners’ right, title and interest in and to the Legal Owners’ Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others, for an order, among other things:

- (i) authorizing the Receiver to make further distributions to the Applicants;
- (ii) approving the activities of the Receiver, as set out in the Receiver’s report to the Court dated June 26, 2023 (the “**Fourth Report**”) and approving the Fourth Report;
- (iii) dispensing with the requirement of the Receiver and the Receiver’s Counsel to pass their fees and disbursements (“**Accounts**”);
- (iv) discharging KPMG as Receiver effective upon the filing of the Discharge Certificate (as defined below); and
- (v) releasing the Receiver and the Receiver’s Counsel (as defined below),

was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Receiver’s Notice of Motion, the Receiver’s Fourth Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicants and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served as evidenced by the affidavit of Nancy Thompson sworn June 29, 2023 (the “**Thompson Affidavit**”):

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Thompson Affidavit is hereby abridged and validated, so that this motion is properly returnable today.

DISTRIBUTIONS

Interim Distribution

2. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to make one or more distributions to the Applicants from any funds in the possession of the Receiver at the time or times determined by the Receiver, in its sole discretion, on account of principal, interest, fees and expenses owing to the Applicants by the Debtors, subject to the maintenance of a reserve, in an amount satisfactory to the Receiver, in consultation with the Applicants, or in an amount otherwise ordered by the Court, to: (i) fund the fees and disbursements of the Receiver, the Receiver's counsel, Blake, Cassels & Graydon LLP ("**Blakes**") and the Receiver's independent counsel, Norton Rose Fulbright Canada LLP ("**Norton Rose**", together with Blakes, the "**Receiver's Counsel**"), (ii) fund the completion of any remaining matters in these Proceedings, and (iii) fund the Southmount et al Bankruptcy Proceedings (as defined in the Fourth Report).

Final Distribution

3. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to distribute, prior to the filing of a Discharge Certificate (as defined below) any and all remaining funds in the possession of the Receiver to the Applicants on account of principal, interest, fees and expenses owing to the Applicants by the Debtors.

TERMINATION OF PROCEEDINGS & RELEASE OF RECEIVER'S CHARGE

4. **THIS COURT ORDERS** that upon the filing of a certificate of the Receiver, certifying that, to the best of the knowledge and belief of the Receiver, all matters to be attended to in connection with the within proceedings (the "**Proceedings**") have been completed to the satisfaction of the Receiver (the "**Discharge Certificate**"), the within Proceedings shall be terminated without any other act or formality or Order of this Court (the "**Receivership Termination Time**").

5. **THIS COURT ORDERS** that the Receiver's Charge (as defined in the Appointment Order) shall be and is hereby terminated, released and discharged, effective as at the Receivership Termination Time.

APPROVAL OF FOURTH REPORT

6. **THIS COURT ORDERS** that the Fourth Report and the activities of the Receiver described therein, shall be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize such approval in any way.

DISPENSING WITH REQUIREMENT TO PASS ACCOUNTS

7. **THIS COURT ORDERS AND DECLARES** that the requirement of the Receiver and Receiver's Counsel pursuant to Paragraph 19 of the Appointment Order to pass their Accounts is hereby waived and dispensed with: (a) in respect of the period up to and including May 31, 2023, and (b) in respect of the period from and after May 31, 2023, provided that (i) the Receiver provides the Applicants with a written statement of the quantum of such Accounts from time to time, and (ii) none of the Applicants requests in writing that the Receiver or its counsel pass their Accounts for such period prior to the discharge of the Receiver.

DISCHARGE OF THE RECEIVER & RELEASES

8. **THIS COURT ORDERS AND DECLARES** that the Receiver shall, at least seven calendar days prior to the proposed Receivership Termination Time, provide notice to the Service List in these Proceedings of the Receiver's intention to file the Discharge Certificate and that upon the filing of the Discharge Certificate, the release and discharge of the Subsequent Released Claims (as defined below) shall be deemed effective unless any objection is received by the Receiver in accordance with paragraph 12 hereof.

9. **THIS COURT ORDERS AND DECLARES** that effective at the Receivership Termination Time, KPMG shall be and hereby is discharged as Receiver and shall have no further duties, obligations or responsibilities as Receiver in connection with these Proceedings.

10. **THIS COURT ORDERS AND DECLARES** that effective as of the date of this Order, in addition to the protections in favour of the Receiver in any Order of this Court in these Proceedings or the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**"), the Receiver, the Receiver's Counsel, and each of their respective affiliates and officers, directors, partners, employees and agents (collectively, the "**Released Parties**") are hereby released and discharged from any and all claims that any person may have or be entitled to assert against the Released Parties whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of this Order in any way relating to, arising out of or in respect of the within Proceedings or with respect to their respective conduct in the within Proceedings (collectively, the "**Present Released Claims**"), and any such Present Released Claims are hereby released, stayed, extinguished and forever barred and the Released Parties shall have no liability in respect thereof, provided that the Present Released Claims shall

not include any claim or liability arising out of any gross negligence or willful misconduct on the part of the Released Parties.

11. **THIS COURT ORDERS** that effective as of the Receivership Termination Time and subject to paragraph 12 hereof, in addition to the protections in favour of the Receiver in any Order of this Court in these Proceedings or the BIA, the Released Parties are hereby released and discharged from any and all claims that any person may have or be entitled to assert against the Released Parties whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place following the date of this Order and up to and including the Receivership Termination Time, in any way relating to, arising out of or in respect of the within Proceedings or with respect to their respective conduct in the within Proceedings (collectively, the “**Subsequent Released Claims**”) and any such Subsequent Released Claims are hereby released, stayed, extinguished and forever barred and the Released Parties shall have no liability in respect thereof, provided that the Subsequent Released Claims shall not include any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Released Parties.

12. **THIS COURT ORDERS** that in the event that any person objects to the release and discharge of the Subsequent Released Claims pursuant to paragraph 11 hereof, that person must send a written notice of objection and the grounds therefor to the Receiver, such that the objection is received by the Receiver prior to the proposed Receivership Termination Time. If no objection is received by the Receiver prior to the proposed Receivership Termination Time, the release and discharge of the Subsequent Released Claims pursuant to paragraph 11 hereof shall

be automatically deemed effective upon the Receivership Termination Time up to and including the Receivership Termination Time, without further Order of the Court.

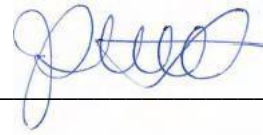
13. **THIS COURT ORDERS** that if an objection to the release of the Subsequent Released Claims pursuant to paragraph 11 hereof is received by the Receiver in accordance with paragraph 12 hereof, the release and discharge of any Subsequent Released Claims pursuant to paragraph 11 hereof which are the subject of such objection shall only become effective if the objection is consensually resolved with the person making such objection or upon further Order of the Court. For greater certainty, no objection received in accordance with paragraph 12 hereof shall affect the release and discharge of the Present Released Claims pursuant to paragraph 10 hereof, which shall be effective as of the date of this Order.

14. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against any of the Released Parties in any way arising from or related to the within Proceedings, except with prior leave of this Court on at least seven days' prior written notice to the applicable Released Party.

15. **THIS COURT ORDERS** that notwithstanding any provision of this Order and the termination of the within Proceedings, nothing herein shall affect, vary, derogate from, limit or amend, and the Receiver shall continue to have the benefit of, any of the protections in favour of the Receiver at law or pursuant to the BIA or any Order of this Court in the within Proceedings or otherwise.

MISCELLANEOUS

16. **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.



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Applicants

- and -

SOUTHMOUNT HEALTHCARE CENTRE INC., *et al.*
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding Commenced at Toronto

**DISCHARGE, DISTRIBUTION AND
ANCILLARY MATTERS ORDER**

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