



MEYERS NORRIS PENNY LIMITED

CANADA  
Province of Ontario

Court and Estate No. 31-1473574, 31-1473575, 31-1473576

IN THE MATTER OF THE BANKRUPTCIES OF  
2004631 ONTARIO INC. O/A LIBERTY PLACE RETIREMENT RESIDENCE,  
2008777 ONTARIO INC. O/A LA CHAUMIERE RETIREMENT RESIDENCE AND  
912087 ONTARIO LIMITED O/A BEACH ARMS RETIREMENT RESIDENCE  
ALL HAVING HEAD OFFICES IN THE CITY OF TORONTO  
IN THE PROVINCE OF ONTARIO

TRUSTEE'S PRELIMINARY REPORT

A. INTRODUCTION

On March 10, 2011, on the application of General Electric Canada Real Estate Financing Holdings and General Electric Capital Canada Holdings Company (collectively "GE") Meyers Norris Penny Limited ("MNP") was appointed as receiver and manager (the "Receiver") of 2004631 Ontario Inc. o/a Liberty Place Retirement Residence ("Liberty Place"), 2008777 Ontario Inc. o/a La Chaumiere Retirement Residence ("La Chaumiere") and 912087 Ontario Limited o/a Beach Arms Retirement Residence ("Beach Arms") by Order (the "Receivership Order") of the Ontario Superior Court of Justice (the "Court"). The Court contemporaneously issued an additional order authorizing the Receiver to enter into agreements with Unions that represent substantially all of La Chaumiere and Liberty Place's employees, and a management agreement with Responsive Seniors Management Inc. ("Responsive") to assist in the daily management of the Retirement Residences (as defined below).

On March 15, 2011, the Receiver, as authorized by the Receivership Order, filed an Assignment in Bankruptcy in respect of each of Liberty Place, La Chaumiere and Beach Arms (collectively the "Retirement Residences" or the "Companies") and MNP was appointed trustee in bankruptcy of the Companies (the "Trustee").

On March 21, 2011, on application of the Receiver, the Court issued an order (the "Extension Order") that extended the Receivership to include 2007383 Ontario Inc. ("2007383"), which MNP had determined was in fact the operator and manager of Beach Arms. The Receiver as authorized by the Court filed an Assignment in Bankruptcy on behalf of 2007383 and MNP was appointed Trustee in bankruptcy of 2007383.

On March 21, 2011, the Trustee sent the Notice to all known creditors of the Retirement Residences advising of the bankruptcies and First Meeting of Creditors to be held on April 1, 2011, together with a list of creditors, proof of claim form, and proxy for each of the Retirement Residences, as set out on the Companies' Statement of Affairs dated March 14, 2011. Pursuant to subsection 102(4) of the Act, the Notice of Bankruptcy for each of the Companies was published in the March 23, 2011 edition of the *Globe and Mail* newspaper.

## B. TERMS OF REFERENCE

Since:

- (i) the Retirement Residences are under common management and ownership;
- (ii) MNP in its capacity as Receiver is continuing the operations of the Retirement Residences; and
- (iii) that subject to creditor affirmation, MNP is Trustee of each of the Retirement Residences' estate,

the Trustee has prepared this report on a consolidated basis to reflect the Trustee's administration of the Retirement Residences' estates and to promote administrative efficiency.

The information MNP has relied upon in developing and preparing this report was:

- provided by GE and its counsel, Blaney McMurtry LLP ("**Blaney**");
- financial reporting provided to GE by Mr. Greg Goutis ("**Goutis**"), the Chief Financial Officer of Liberty Assisted Living Inc. ("**Liberty**"), a corporation that we understand controlled and managed the Retirement Residences;
- provided by CAW CANADA and CAW Local 2458 ("**CAW**");
- contained in the affidavits provided by Ms. Brenda Burjaw of GE (the "**Burjaw Affidavit**") and Mr. Bruce Dickie (the "**Dickie Affidavit**") (President of CAW Local 2458), both dated March 8, 2011, that were filed with the Court in support of the Receiver's appointment;
- from the available books and records of the Retirement Residences;
- provided by Goutis in discussions and meetings with MNP; and
- as otherwise available to MNP in its capacity as Receiver and/or Trustee and MNP's counsel Gowling Lafleur Henderson LLP ("**Gowling**").

The information contained herein has not been verified or otherwise audited by MNP. Consequently, MNP expresses no opinion whatsoever with respect to the validity, accuracy or reliability of the information contained herein.

## C. BUSINESS AND ASSETS OF THE BANKRUPTS

Based on available information, the Trustee understands that the Retirement Residences operated under the umbrella of a corporation known as Liberty Assisted Living Inc., which is incorporated under the laws of Canada. Oftentimes, the Retirement Residences were designated on promotional materials as being part of the "Liberty Group of Companies" or "Liberty Assisted Living Group". Substantially all of the Retirement Residences' accounting and finance functions were completed at Liberty's head office at 231 Avenue Road, Toronto, Ontario, M5R 2J3 (the "**Head Office**").

Liberty also owns and/or operates five other retirement residences, two located in Quebec known as Chateau Dollard and Chateau Royal and three located in Ontario known as the Royalton Retirement Residences.

Each of La Chaumiere, Liberty Place and Beach Arm's sole business comprises a retirement home and assisted living facility. Each facility comprises common areas include a reception area, lounge, dining room, activity room and beauty salon. The Retirement Residences' services include:

- complete daily meal service;
- health care staff on site 24 hours a day, 7 days a week;
- housekeeping and laundry services;
- beauty and barber salon;
- activity director on staff; and
- other traditional services provided in retirement and assisted living facilities.

Liberty Place is located at 505 Kingston Road, Scarborough, Ontario M4L 3T5 and comprises 106 rental suites consisting primarily of private studio units. Most units are traditional one bedroom suites. Liberty Place currently has 92 residents. It employs 47 and substantially all of these employees are represented by the Christian Labour Association of Canada ("CLAC").

La Chaumiere is located at 1023 County Road, 22 RR #1, Town of Lakeshore, Ontario N0R 1A0 and comprises 92 rental suites consisting primarily of private studio units. Most units are traditional one bedroom suites. La Chaumiere currently has 59 residents (the "**Residents**"). It employs 35 and substantially all of these employees are represented by the CAW.

Beach Arms is located at 500 Kingston Road, Scarborough, Ontario M4l 1V3 and comprises 81 rental suites consisting primarily of private studio units. Most units are traditional one bedroom suites. This Beach Arms currently has 85 residents. It employs 43 and is not unionized.

The Retirement Residences' primary assets comprise land, building, furniture, tenancy agreements and equipment (the "**Primary Asset**"). Based on the Companies' books and records, discussions with Goutis, and other available information, the Receiver prepared and filed the Retirement Residences' respective Statements of Affairs as at March 14, 2011. Preliminary information for the Primary Asset is set out below:

	<b>La Chaumiere</b>	<b>Liberty Place</b>	<b>Beach Arms</b>	<b>Total</b>
Estimated Net Book Value at December 31, 2010	\$ 5,098,000	\$ 4,833,000	\$ 6,008,000	\$ 15,939,000
GE Secured Indebtedness	\$ 4,630,000	\$ 8,217,000	\$ 4,901,000	\$ 17,748,000

**D. CAUSES OF FINANCIAL DIFFICULTY**

The Companies' revenue and expenses as reported by Liberty to GE for the nine month period ended September 30, 2010 is summarized below:

**Revenue and Expenses  
For The Period Ended September 30, 2010  
Unaudited**

	<b>La Chaumiere</b>	<b>Beach Arms</b>	<b>Liberty Place</b>	<b>Total</b>
<b>Resident Revenue</b>	<b>\$ 1,290,000</b>	<b>\$ 1,622,000</b>	<b>\$ 1,264,000</b>	<b>\$ 4,176,000</b>
<b>Operating Expenses</b>				
Salaries, wages and benefits	729,000	672,000	592,000	1,993,000
Food and supplies	105,000	148,000	158,000	412,000
Utilities	75,000	66,000	108,000	249,000
Property taxes	57,000	36,000	25,000	118,000
Management fees	60,000	76,000	53,000	220,000
Other operating expenses	51,000	94,000	76,000	189,000
	<b>1,077,000</b>	<b>1,092,000</b>	<b>1,012,000</b>	<b>3,181,000</b>
<b>Income before depreciation and debt service costs</b>	<b>\$ 213,000</b>	<b>\$ 530,000</b>	<b>\$ 252,000</b>	<b>\$ 995,000</b>

The Trustee understands that commencing in May 2010, La Chaumiere's payroll was being paid late or on many occasions not paid at all. By December 2010, La Chaumiere's payroll had not been paid for up to six weeks. Concurrently, the Retirement Residences' suppliers were not being paid on a timely basis and were withholding delivery of critical supplies. In January 2011, GE paid approximately \$700,000 of the Retirement Residences' realty tax and local municipal service fee arrears to prevent a Sheriff seizure and other enforcement actions against the Primary Assets. In February 2011, the CAW obtained a Court order to garnish La Chaumiere's bank account and was successful in obtaining a further Court Order to have these funds (approximately \$116,00) paid to La Chaumiere's employees for January 2011 payroll arrears. Furthermore, MNP understands that employee source deductions for Beach Arms and Liberty Place were not remitted since at least January 2010. This statutory priority could exceed \$350,000.

On March 8, 2011, GE filed its application for the Receiver's appointment citing among other things:

- the Companies' continuing defaults on the terms of its secured indebtedness to GE;
- concerns regarding Liberty's ability to properly manage the Retirement Residences;
- concerns regarding safety and well being of the Residents and Employees in light of Liberty's mismanagement; and
- operational and safety concerns which were set out in the Burjaw and Dickie Affidavits.

E. CONSERVATORY AND PROTECTIVE MEASURES

On March 10, 2011, immediately after issuance of the Receivership Order, MNP in its capacity as Receiver attended at the Retirement Residences with representatives of Responsive, CAW and CLAC, as applicable, to take possession and control.

At the time of the Receiver's appointment, the Companies' most recent payrolls were overdue and certain of their key suppliers were withholding critical supplies which potentially put the operations continuity and the Residents safety and well being at risk. As a result, the Receiver and Responsive's initial activities concentrated on stabilizing operations and addressing the safety and care of the Residents. In this regard the Receiver and Responsive *inter alia*:

- met with the employees (the "**Employees**") and almost all of the Residents (as a group or individually) to review the Receiver's appointment, the Management Agreement with Responsive and the continuation of operations under the control and supervision of the Receiver and Responsive;
- reviewed security arrangements;
- reviewed daily operational and management issues with Responsive and applicable Employees, to make plans that would prevent potential disruptions to the Retirement Residences' operations and ensure the level and quality of Residents' care would be suitably maintained;
- reviewed with Responsive and certain Employees arrangements for ongoing accounting, rent collections and bill payments by Responsive and the Receiver pursuant to the Management Agreement;
- arranged for the payment of approximately \$130,000 of outstanding and overdue payrolls;
- arranged for certain of the Employees to assist the Receiver in the administration of the receivership, as necessary; and
- met with Goutis at the Head Office and arranged for copies or access to certain of the Retirement Residences' financial records necessary for the administration of the receivership.

In addition, the Receiver and Responsive completed a preliminary assessment of outstanding repair, maintenance and safety issues that require immediate rectification. Responsive has estimated these expenditures could cost between \$260,000 and \$500,000 as summarized below:

- Liberty Place – roof repairs, kitchen equipment repairs and replacement;
- Beach Arms – remediation of "Bed Bug" infestation, roof repairs, remediation of public health violations and other deficiencies; and
- La Chaumiere - fire alarm system repairs, kitchen equipment repairs and replacement, roof repairs, mould and room remediation.

**F. PREFERENCE PAYMENTS AND TRANSACTIONS AT UNDERVALUE**

The Trustee is completing its initial review for potential preference payments, transactions at undervalue and other reviewable transactions. The Trustee reviewed the Companies' operating account bank statements for the period January 1, 2010 to March 10, 2011 including available supporting documentation. Individual receipts and disbursements of greater than \$2,000 were reviewed as well as all receipts and disbursements to entities or individuals that the Trustee considered to be potential related parties. Based on the Trustee's preliminary review to date, set out below is a summary of transactions that the Trustee believes requires further investigation.

**Summary of Identified Bank Transactions  
January 1, 2010 to March 10, 2011**

PAYEE	PAYOR			Total
	Liberty Place	Beach Arms	La Chaumiere	
			<b>Disbursements</b>	
Liberty Assisted Living Inc.	\$ 242,000	\$ 334,000	\$ 1,414,000	\$ 1,990,000
729285 Ontario Ltd.	77,000	184,000	575,000	836,000
Chateau Dollard		10,000	1,254,000	1,264,000
Chateau Royal	83,000	253,000	921,000	1,257,000
Various individuals in Quebec			117,000	117,000
	<b>\$ 402,000</b>	<b>\$ 781,000</b>	<b>\$ 4,281,000</b>	<b>\$ 5,464,000</b>

In addition to the transfers from Liberty Place, Beach Arms and La Chaumiere summarized above, Chateau Dollard and Chateau Royal transferred the sums of \$2,673,000 and \$800,000, respectively, to La Chaumiere.

It should also be noted that between March 1 and 10, 2011, immediately prior to the Receiver's appointment, approximately \$170,000 (primarily comprising the March 2011 Resident monthly rental payments) was transferred from the Retirement Residences operating accounts to 729285 Ontario Ltd. ("729285"). A corporate search of 729285 indicates that its directors and officers are also the directors and officers of the Retirement Residences.

The above findings were reviewed on a preliminary basis with Goutis who has advised that:

- the Residents' rental revenue for Chateau Dollard and Royal were collected and paid to these residences through La Chaumiere's bank accounts; and
- since the inter-company accounts for all the Retirement Residences and other entities in the "Liberty Group" are in the process of being reconciled by the Liberty Group's accountants, he would be able to provide an explanation when the reconciliations were complete.

The Trustee will seek the creditors' and/or Inspectors' instructions on further investigation of these transactions.

**G. BOOKS AND RECORDS**

The Trustee has in its possession certain of the Company records and is working with Liberty to obtain other records necessary for the administration of these proceedings that are in Liberty's possession.

**H. LEGAL PROCEEDINGS**

The Trustee understands that various legal proceedings have been commenced by unsecured creditors against the Companies for unpaid accounts. These proceedings have been stayed by the Receivership Order and the bankruptcies. The Trustee is not aware of any legal proceedings commenced by the Companies nor have any legal proceedings been initiated by the Trustee prior to the First Meeting of Creditors.

**I. PROVABLE CLAIMS**

Based on the Companies books and records, discussions with Goutis and other available information, the Receiver prepared and filed the Statement of Affairs (as amended) that reflect the potential provable claims set out below:

	<b>Potential Provable Claims as at March 14, 2011</b>			
	<b>La Chaumiere</b>	<b>Liberty Place</b>	<b>Beach Arms</b>	<b>Total</b>
Secured	\$ 4,629,770	\$ 8,217,172	\$ 4,901,103	\$ 17,748,045
Preferred	Unknown	Unknown	Unknown	Unknown
Ordinary Unsecured	273,299	231,832	167,844	672,975
<b>Total</b>	<b>\$ 4,903,069</b>	<b>\$ 8,449,004</b>	<b>\$ 5,068,947</b>	<b>\$ 18,421,020</b>

The Trustee will provide a supplementary report at the First Meeting of Creditors to confirm the quantum and nature of claims filed prior to this meeting.

**J. SECURED CREDITORS**

Gowlings has advised that GE (the senior secured creditor) holds real estate mortgage security, a General Security Agreement and an Assignment of Leases and Rents in respect of each of the Retirement Residences.

Gowlings has opined, subject to the usual assumptions and qualifications, that the Security is properly perfected and valid and enforceable.

**K. ANTICIPATED REALIZATIONS AND PROJECTED DISTRIBUTION**

Based on the information in the Companies' records and as reported in the Statement of Affairs, it does not appear likely there would be sufficient realizations from the Primary Assets to provide a distribution to any creditors that are subordinate position to GE.

L. OTHER


The Trustee received an indemnity regarding its fees and its legal fees and disbursements with respect to the administration of the bankrupt estates from GE.

**DATED: March 30, 2011**

**MEYERS NORRIS PENNY LIMITED**

**Trustee in the Bankruptcy of:** 2004631 Ontario Inc. o/a Liberty Place Retirement Residence,  
2008777 Ontario Inc. o/a La Chaumiere Retirement Residence and  
912087 Ontario Inc. o/a Beach Arms Retirement Residence

Per:

  
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Jerry Henechowicz CA•CIRP