

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
COMMERCIAL LIST**

BETWEEN:

**PEOPLES TRUST COMPANY**

Applicant

- and -

**PARAGON HEALTH CARE INC. AND 1508669 ONTARIO LIMITED**

Respondents

**Third Report to the Court of Mintz & Partners Limited,  
as Interim Receiver and Receiver and Manager of  
Paragon Health Care Inc., Paragon Health Care (Ontario) Inc.  
and 1508669 Ontario Limited**

**OVERVIEW OF THE RECEIVER'S POSITION**

1. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 23, 2006 (the "**Appointment Order**"), Mintz & Partners Limited ("**MPL**") was appointed as Interim Receiver and Receiver and Manager (the "**Receiver**") of all the current and future assets, undertakings and property (the "**Assets**") of Paragon Health Care Inc. ("**Paragon**"), Paragon Health Care (Ontario) Inc. ("**Paragon Ontario**") and 1508669 Ontario Limited ("**1508669**") (collectively, the "**Companies**") effective 9:00 am on January 24, 2006 (the "**Appointment Date**"). A copy of the Appointment Order is attached hereto as **Appendix "A"**.
2. On August 17, 2007, the Receiver, through its counsel, was served with notice of a motion brought by David Oravec ("**Mr. Oravec**"), a former employee of Paragon (the "**Oravec Motion**"), for an order granting leave pursuant to paragraph 8 of the Appointment Order and Section 215 of the

*Bankruptcy and Insolvency Act.* Mr. Oravec seeks, by his motion, leave to commence proceedings against the Receiver and to issue a Statement of Claim for, *inter alia*:

- o damages for breach of contract and wrongful dismissal in the sum of \$70,000.00;
- o special damages in the sum of \$10,000.00; and
- o aggravated, exemplary and/or punitive damages in the sum of \$25,000.00.

3. The Receiver opposes the Oravec Motion as the Receiver has already provided Mr. Oravec with any entitlements he may have had pursuant to the employment contract he signed with the Receiver (the "**Employment Contract**") and the *Employment Standards Act, 2000*. The Employment Contract, including its attachments, is attached hereto as **Appendix "B"**.
4. The Receiver has complied with its obligations under the Employment Contract and by statute, and as such, Mr. Oravec has no claim against the Receiver.
5. This Third Report to the Court ("**Third Report**") is submitted in response to the Oravec Motion.

**BACKGROUND**

6. Paragon's assets comprise the Casa Verde Health Centre, a 252-bed nursing home ("**Casa Verde Nursing Home**") and a 94-bed retirement home ("**Casa Verde Retirement Home**") (collectively, with Casa Verde Nursing Home, "**Casa Verde**") located at 3595 Keele Street, Toronto, Ontario. 1508669's assets comprise the West Park Health Centre ("**West Park**"), a 93-bed nursing home located at 103-111 Pelham Road, St. Catharines, Ontario (collectively, with Casa Verde, the "**Homes**" or "**Facilities**").
7. Paragon Ontario is a non-operating entity that employs certain nursing staff used by Casa Verde.
8. Capitalized terms not defined in this Report are as defined in the Appointment Order.

**TERMS OF REFERENCE**

9. In preparing this Report, the Receiver has relied upon records of the Companies and/or Diversicare Canada Management Services Co., Inc. ("**Diversicare**"). The Receiver has not

performed an audit or other verification of such information. Diversicare has been engaged as day-to-day manager of Casa Verde and West Park on behalf of the Receiver.

10. The Receiver has sought the advice of Gowling Lafleur Henderson LLP ("**Gowlings**"), counsel to Peoples, for general legal matters that have arisen in respect of the receiverships.

#### **MR. ORAVEC'S EMPLOYMENT**

11. On or about May 26, 1982, Casa Verde hired Mr. Oravec as a janitor, on a part-time basis. Mr. Oravec was subsequently promoted to other positions at Casa Verde, the most recent of which was the Director of Activities, which was also referred to as the Program Director.
12. Mr. Oravec remained in his position as Casa Verde's Program Director until the Appointment Order became effective on January 24, 2006.
13. Upon the making of the Appointment Order, Mr. Oravec's employment was terminated by operation of law, effective January 24, 2006.
14. Accordingly, on January 24, 2006, the Receiver convened a meeting with the employees of Casa Verde (the "**Meeting**"), which Mr. Oravec attended. At the Meeting, the Receiver informed the employees of Casa Verde, including Mr. Oravec, that the Receiver had been appointed pursuant to the Appointment Order, and as a result, the employees' employment with Casa Verde was terminated. The Receiver also provided the employees with a letter, dated January 23, 2006, which is attached hereto at **Appendix "C"**.
15. During the Meeting, the Receiver indicated that it would like to employ former employees of Casa Verde on certain terms and conditions so that the Receiver could operate Casa Verde as a going concern until the Assets could be sold. The Receiver then indicated that it would be issuing a letter to the employees indicating the terms and conditions of employment with the Receiver.
16. On or about January 31, 2006, the Receiver issued another letter to the employees, including Mr. Oravec. The letter became Mr. Oravec's Employment Contract with the Receiver, and as such, it governed the terms and conditions of Mr. Oravec's employment with the Receiver. Mr. Oravec was given time to consider, sign and return the Employment Contract to the Receiver if he agreed with its terms and conditions. At no time was any pressure exerted over any employee, including Mr. Oravec, to sign the Employment Contract.

17. In or around April or May 2006 (the "April/May Meeting"), Diversicare learned that some employees, and specifically Mr. Oravec, had questions about the Employment Contract. Accordingly, Diversicare convened a meeting to answer any questions the employees may have had.
18. At the April/May Meeting, only Mr. Oravec asked questions about the provisions of the Employment Contract. In fact, Mr. Oravec made handwritten marks on his Employment Contract beside the clauses he referred to in his questions. Specifically, Mr. Oravec inquired about the Receiver's responsibility for his prior years of service in the event he was terminated from his employment with the Receiver. In response, Diversicare confirmed that the Receiver would not recognize Mr. Oravec's service with Paragon for any purpose and advised him that, if he felt he wanted to pursue his entitlements for further notice or pay in lieu thereof, he could pursue his former employer, if he so chose. After the April/May Meeting, Mr. Oravec was given further time to consider the Employment Contract with the Receiver. Mr. Oravec then signed and returned the Employment Contract to the Receiver on June 23, 2006.
19. The Employment Contract lists the terms upon which the Receiver was willing to employ Mr. Oravec. Specifically, the Employment Contract indicated:
  - o "The Receiver will engage all active former employees of the Company who were on the payroll on January 23, 2006 (the "Former Employees") on a week-to-week basis until further notice"; and
  - o "Your engagement date is January 24, 2006. The Receiver does not recognize your service with the Company for any purpose".
20. In addition to the above terms, the Employment Contract specified that the Receiver had no obligation in respect of the unpaid wages owing from Casa Verde to its employees. Despite the foregoing, the Receiver agreed to pay unpaid wages from January 16, 2006 until January 23, 2006 in exchange for Mr. Oravec's execution of Schedule A to the Employment Contract.
21. Schedule "A" to the Employment Contract includes the following provisions:
  - o "[Mr. Oravec]...hereby confirms that it has no further claim whatsoever against the Receiver, Paragon, its estate, or any trustee in bankruptcy of Paragon, or any

representatives, successor or assign of same...and hereby agrees to release the Releasees from any claim whatsoever arising from or relating in any way to the Employment of the Assignor by Paragon"; and

- o "[Mr. Oravec]...acknowledges that he/she has been employed by the Receiver since January 24, 2006 and confirm that he/she has no claim whatsoever against the Receiver for any matter whatsoever in any way arising from his/her employment prior to January 24, 2006".

22. Mr. Oravec was offered, and accepted, employment on the terms and conditions in the Employment Contract.

#### **TERMINATION OF MR. ORAVEC'S EMPLOYMENT WITH THE RECEIVER**

23. Mr. Oravec was employed with the Receiver from January 24, 2006 until May 14, 2007 when his employment was terminated without cause.
24. On termination, Mr. Oravec was provided with a termination letter, termination pay, severance pay and any accrued but outstanding vacation pay pursuant to the *Employment Standards Act, 2000* and the Employment Contract. A copy of the termination letter provided to Mr. Oravec on May 14, 2007 (the "Termination Letter") is attached hereto at **Appendix "D"**.
25. The Receiver provided Mr. Oravec with the amounts indicated in the Termination Letter.
26. Based on the terms of the Employment Contract, Mr. Oravec is not entitled to any further payment from the Receiver.

#### **RELIEF SOUGHT**

27. The Receiver respectfully requests that this Honourable Court make an Order dismissing the Oravec Motion with costs payable to the Receiver.

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August 24, 2007  
Court File No. 06-CL-6233

Page 6

All of which is respectfully submitted to this Honourable Court.

DATED this 24<sup>th</sup> day of August, 2007.



**MINTZ & PARTNERS LIMITED**  
Interim Receiver and Receiver and Manager of  
Paragon Health Care Inc., Paragon Health Care (Ontario) Inc.  
and 1508669 Ontario Limited

Daniel R. Weisz, CA-CIRP, CIRP  
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