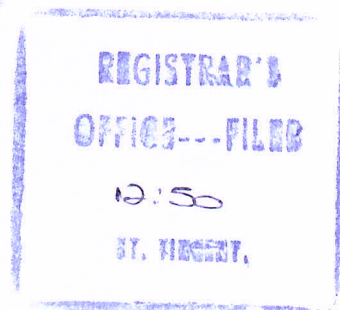
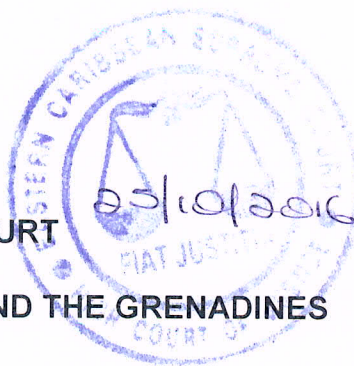


Form 3: Regulation 19

IN THE EASTERN CARIBBEAN SUPREME COURT  
HIGH COURT OF JUSTICE SAINT VINCENT AND THE GRENADINES  
(IN BANKRUPTCY AND INSOLVENCY)

CLAIM NO.



IN THE MATTER OF:     **The *Bankruptcy and Insolvency Act* (Cap. 136 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009)**

AND IN THE MATTER OF: **The Intention to Make a Proposal of Harlequin Property (SVG) Limited**

**Notice of Motion**

TAKE NOTICE that Gabriella Klein, as appointed representative of a large group of creditors of Harlequin Property (SVG) Limited (hereinafter "**Harlequin**") who are actively pursuing a Petition for a Receiving Order that was filed with this Court on March 6, 2016 under Suit no 53 of 2016, pursuant to Section 4 of the *Bankruptcy and Insolvency Act*, No. 43 of 2007 (the "**BIA**"), makes an Application to the Court seeking the following relief:

- (a) an Order declaring that the failure by Brian Glasgow of KPMG, in his capacity as Trustee under a Notice of Intention to Make a Proposal ("**NOI**") filed by Harlequin on October 3, 2016 (the "**Trustee**"), to file his report on the reasonableness of Harlequin's cash flow projections within the specified ten (10) day time limit to do so, amounted to a breach of Section 29(2) of the BIA, which by operation of Section 29(8) of the BIA constituted a deemed assignment, rendering Harlequin immediately bankrupt as of October 13, 2016, the date the applicable deadline passed; and

- (b) An order that the Trustee forthwith file a report in the prescribed form with the Supervisor who shall issue a certificate of assignment in the prescribed form; and
- (c) An order that the Trustee within 5 days of the certificate of assignment send a notice of meeting of creditors as set out in section 29(8) (c ); **or**
- (d) In the alternative, an Order declaring the premature end of the stay of proceedings affecting creditors of Harlequin, by operation of Section 29(10) of the BIA, and the deemed bankruptcy of Harlequin, on the basis that Harlequin:
  - (i) has not acted in good faith during the first three weeks of the applicable stay period;
  - (ii) will not likely be able to make a viable proposal before the expiry of the current stay period and appears to lack a meritorious position on an extension thereof, and
  - (iii) will not likely be in position to present a proposal which will be accepted by the required majorities of its creditors.

This application is made under sections 29 (8) and (10) the *Bankruptcy and Insolvency Act Cap 136*.

A draft of the orders sought is attached.

**The Grounds of the Motion are:**

**(a) The Non-Filing of the Trustee's Report**

1. Section 29(2) of the BIA contains the following mandatory provisions respecting an insolvent debtor which has filed an NOI:

"[29](2) Within ten days after filing a notice of intention under subsection (1) the insolvent person shall file with the Supervisor-

- (a) a statement indicating the projected cash flow of the insolvent person (in this section referred to as the "cash flow statement"),



prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention, and signed by the trustee and the insolvent person;

(b) a report on the reasonableness of the cash flow statement, in the prescribed form, prepared and signed by the trustee; and

(c) a report containing prescribed representations by the insolvent person regarding the preparation of the cash flow statement, in the prescribed form, prepared and signed by the insolvent person." (emphasis added)

2. Harlequin filed its NOI on October 3, 2016, making the cash flow statement and related documentation due to be filed with the Supervisor of Insolvency (the "**Supervisor**") on October 13, 2016.
3. Upon filing the NOI, Harlequin became the beneficiary of a thirty (30) day stay of proceedings, currently scheduled to expire on or about Tuesday November 1, 2016.
4. On or about October 13, 2016, via the Trustee, Harlequin filed with the Supervisor the following documents:
  - (a) The 26 week projected cash flow statement of Harlequin, signed by an officer of Harlequin and also signed by the Trustee (per BIA Section 29(2)(a));
  - (b) A report from Harlequin containing the prescribed representations of the insolvent person, signed by an officer of Harlequin (per BIA Section 29(2)(c) and Regulation 86.
5. Harlequin failed to file with the Supervisor the Trustee's report on the reasonableness of the cash flow statement (in Form 35) as was prescribed by BIA Section 29(2)(b).
6. In covering correspondence accompanying the cash flow statement which the Trustee presented to the Supervisor on October 13, 2016, the Trustee advised that he was, to that point in time, unable to provide the Trustee's report on the reasonableness of the preparation of the cash flow statement, but that the Trustee anticipated that his report thereon would be provided to the Supervisor on October 28, 2016, roughly five days before the scheduled expiry of the initial 30 day stay of proceedings affecting Harlequin.

7. Section 29(8) of the BIA provides, *inter alia*, that where an insolvent person fails to comply with Section 28(2) and produce the cash flow statement and associated necessary components thereof within the allotted time to do so, the insolvent person is deemed to have made an assignment into bankruptcy.
8. Section 29(8) of the BIA goes on to provide that immediately upon the deemed bankruptcy event occurring, the Trustee becomes obligated to issue a certificate of assignment in the prescribed form, which has the same effect as an assignment into bankruptcy voluntarily filed by an insolvent person pursuant to Section 24 of the BIA.
9. Section 29(8) of the BIA further provides that within five (5) days of the issuance of the certificate of assignment by the Trustee, the Trustee is obligated to send notice to creditors of the bankrupt person of a meeting of creditors, at which meeting the creditors may, by ordinary resolution, affirm the appointment of the Trustee as the trustee in bankruptcy, or appoint another licensed trustee in bankruptcy in lieu of the Trustee.
10. Observance of the time limitation described within section 29(2) is mandatory, and expressly carries the consequence of deemed assignment if breached, and thus creates for creditors of the insolvent person vested rights which arise by operation of law upon bankruptcy. The time limit is thus incapable of being extended or waived, either in advance or *nunc pro tunc*, pursuant to section 229(2) of the BIA or otherwise.
11. Harlequin, having failed to comply with section 29(2) of the BIA, was deemed to have made an assignment into bankruptcy as of October 13, 2016.
12. The Trustee, in view of the deemed assignment into bankruptcy of Harlequin as of October 13, 2016, was obligated to issue forthwith a certificate of assignment in respect of Harlequin.
13. The Trustee has failed to do so, in violation of Section 29(8)(b) of the BIA.
14. Within five (5) days of October 13, 2016, the Trustee was obligated to issue to all of Harlequin's creditors a notice of the first meeting of creditors in respect of Harlequin's bankruptcy.
15. The Trustee has failed to do so, in violation of Section 29(8)(c) of the BIA.
16. The failure by Harlequin to deliver the Trustee's report to the Supervisor was not an oversight of a trifling nature or the sort of technical defect which might be excused by Section 227 of the BIA.



**(b)The Termination of the Stay of Proceedings**

17. Harlequin has not shown itself worthy of continued enjoyment of the stay of proceedings, and thus the stay of proceedings should be prematurely terminated pursuant to Section 29(10) of the BIA, resulting in the automatic bankruptcy of Harlequin.
18. The bases for the premature termination are numerous, but generally accord with the elements of Section 29(10) of the BIA, *to wit*:
  - (i) Harlequin has not acted in good faith during the first three weeks of the applicable stay period;
  - (ii) Harlequin will not likely be able to make a viable proposal before the expiry of the current stay period and appears to lack a meritorious position on an extension thereof, and
  - (iii) Harlequin will not likely be in position to present a proposal which will be accepted by the required majorities of its creditors.
19. The cash flow statement produced by Harlequin is deficient in many respects, namely:
  - (a) The 26 week forward-looking statements commence (week 1) on *October 16, 2016*, notwithstanding the fact that the NOI was issued on October 3, 2016, meaning that two full weeks of this NOI period (stay of proceedings in effect) are unaccounted for;
  - (b) Because of the two week head start, the end of the cash flow projection period is actually two weeks beyond the six month total maximum allowable extended stay of proceedings which hypothetically might avail to Harlequin pursuant to Section 29(9) of the BIA.
  - (c) The cash flow statement features anticipated revenue streams which are patently unrealistic; *to wit*, weekly revenue from “completions” and “other SVG sales”, which presumably relate to concluded construction projects and new investment and/or unit sales. Evidence to be adduced in conjunction with this Application discloses that Harlequin’s residential unit construction schedule has been hopelessly stagnant since November 2012, and new investment has dried up completely. Harlequin’s reliance upon these projected inflows is therefore manifestly unreasonable.
  - (d) As the main revenue generating source to potentially fund a proposal (as reflected in the cash flow projections) is predicated on the unrealistic prospect

of unit completions by Harlequin, the likelihood of Harlequin producing a viable proposal which might address the claims of its thousands of creditors, bearing collective value potentially in excess of £400,000,000, is extremely low.

- (e) No account is made in the cash flow statements of the roughly £122,000,000 owed to investors in Harlequin which have participated in the program operated by the Financial Services Compensation Scheme, which creditors, along with those represented by Ms. Klein, logically would need to see a proposal offering to them a more favourable return than would avail under the alternative of bankruptcy in order to vote in favour of Harlequin's proposal. In the circumstances, the likelihood of Harlequin's creditors accepting a proposal based on such limited operating inputs and zero third party financing prospects is extremely low.
  - (f) Scores of investor claims are marked in the cash flow statement (signed by both Harlequin and by the Trustee) as being "disputed", which creates in the reader the impression of pre-judgment by the Trustee and/or Trustee partiality to the opinions of Harlequin and its directing mind as to the merits of many provable claims which have not yet been received and considered by the Trustee.
  - (g) The absence of independent Trustee vetting and analysis with respect to the cash flow statements to date, with no prospect of same arriving until, perhaps, October 28, 2016, presents a situation where Harlequin stands to enjoy 83.3% (or more) of the duration of the initial 30 day stay of proceedings without any professional oversight of the cash flow statement at all, which situation is unacceptable to Harlequin's creditors and it not authorized under the BIA.
20. Harlequin, both in its public communications wherein it has attempted to parse the words "insolvent person" in an effort to distance itself from the spectre of bankruptcy, and within the vaguely described, unreasonably optimistic and overly lengthy cash flow projection period, has exhibited a cavalier attitude toward the bankruptcy process, and toward Harlequin's creditors and this Court.
21. Such conduct amounts to a lack of good faith, and the unusually (and unlawfully) lengthy stay period anticipated by Harlequin in its cash flow statement signals to the reader that Harlequin takes its creditor protection for granted, presupposes it will receive multiple extensions of the initial stay period, and intends to drag this process out for several months, which amounts to a lack of due diligence in the restructuring of its affairs.



22. The Trustee, in failing in his duties to creditors of Harlequin pursuant to Section 29(8) of the BIA in the face of an obvious deemed bankruptcy event on Harlequin's part, has shown that he should no longer occupy the office of either NOI or bankruptcy Trustee for the benefit of Harlequin's general body of creditors.
23. By intentionally and with inadequate excuse missing the deadline to review and report on the reasonableness of Harlequin's cash flow statement within the allotted time, thus causing Harlequin's bankruptcy, the Trustee has demonstrated a lack of good faith and reasonable care in assessing this cash flow statement, in contravention of Section 29(5) of the BIA.
24. The Trustee's disregard for the mandatory provisions of the BIA which he was knowingly violating, may amount to negligence.
25. On all of the above grounds, and given the prejudice they cause to the Petitioners and other creditors, and on such further grounds as may appear, the stay of proceedings benefitting Harlequin should end immediately, resulting in the deemed bankruptcy of Harlequin as of the date of the Order.

Dated this 25<sup>th</sup> day of October, 2016.



.....  
Joseph A. Delves

Legal Practitioner for the Applicants

**NOTICE**

This Motion will be heard by Honourable Justice Cottle on the 11<sup>th</sup>

Day of Nov, 2016, at 9:00 [am/pm] at the high court in Kingstown.

**If you do not attend this hearing an order may be made in your absence.**

The Court Office is at the High Court, Kingstown at telephone number 457-1220. The opening hours are 9 - 12 and 1 - 3 Monday to Friday except Public holidays.

IN THE EASTERN CARIBBEAN SUPREME COURT  
HIGH COURT OF JUSTICE SAINT VINCENT AND THE GRENADINES

(IN BANKRUPTCY AND INSOLVENCY)

CLAIM NO.

IN THE MATTER OF:       The *Bankruptcy and Insolvency Act* (Cap. 136 of the Laws of  
Saint Vincent and the Grenadines, Revised Edition 2009)

AND IN THE MATTER OF:       The Intention to Make a Proposal of Harlequin  
Property (SVG) Limited

Notice of Motion

JOSEPH DELVES

CHAMBERS



DRAFT

IN THE EASTERN CARIBBEAN SUPREME COURT  
HIGH COURT OF JUSTICE SAINT VINCENT AND THE GRENADINES  
(IN BANKRUPTCY AND INSOLVENCY)  
CLAIM NO.

IN THE MATTER OF:       The *Bankruptcy and Insolvency Act* (Cap. 136 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009)

AND IN THE MATTER OF:       The Intention to Make a Proposal of Harlequin Property (SVG) Limited

Order

BEFORE THE HONOURABLE JUSTICE BRIAN COTTLE

Dated the        day of                    2016

Entered the     day of                    2016

Mr. Joseph A. Delves for the Applicant

Ms. Renee Baptiste and Mr B McNamara for the Respondent

UPON HEARING Counsel for the Applicant and the Respondent

IT IS ORDERED AS FOLLOWS:

- (e) That the failure by Brian Glasgow of KPMG, in his capacity as Trustee under a Notice of Intention to Make a Proposal (“**NOI**”) filed by Harlequin on October 3, 2016 (the “**Trustee**”), to file his report on the reasonableness of Harlequin’s cash flow projections within the specified ten (10) day time limit to do so, amounted to a breach of Section 29(2) of the BIA, which by operation of Section 29(8) of the BIA constituted a deemed assignment, rendering Harlequin immediately bankrupt as of October 13, 2016, the date the applicable deadline passed; and

- (f) That the Trustee forthwith file a report in the prescribed form with the Supervisor who shall issue a certificate of assignment in the prescribed form; and
- (g) That the Trustee within 5 days of the certificate of assignment send a notice of meeting of creditors as set out in section 29(8) (c ); **or**
- (h) In the alternative, It is declared that the premature end of the stay of proceedings affecting creditors of Harlequin, by operation of Section 29(10) of the BIA, and the deemed bankruptcy of Harlequin, on the basis that Harlequin:
  - (iv) has not acted in good faith during the first three weeks of the applicable stay period;
  - (v) will not likely be able to make a viable proposal before the expiry of the current stay period and appears to lack a meritorious position on an extension thereof, and
  - (vi) will not likely be in position to present a proposal which will be accepted by the required majorities of its creditors.

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REGISTRAR



DRAFT

IN THE EASTERN CARIBBEAN SUPREME COURT

HIGH COURT OF JUSTICE SAINT VINCENT AND THE GRENADINES

(IN BANKRUPTCY AND INSOLVENCY)

CLAIM NO. SVGHCVC 2016/

IN THE MATTER OF:       The *Bankruptcy and Insolvency Act* (Cap. 136 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009)

AND IN THE MATTER OF:     The Intention to Make a Proposal of Harlequin Property (SVG) Limited

DRAFT ORDER

Joseph Delves

Chambers

