

ONTARIO

SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SAPPHIRE TOWER DEVELOPMENT CORP.

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
C. C-36, AS AMENDED

SIXTH REPORT OF THE MONITOR AND INTERIM RECEIVER
BDO DUNWOODY LIMITED
JANUARY 28, 2008

A. INTRODUCTION

1. On July 20, 2007, Sapphire Tower Development Corp. (the "**Applicant**") filed for and obtained protection from its creditors under the Companies' Creditors Arrangement Act, R.S.C. 1985, c.C-36, as amended ("**CCAA**") pursuant to an order of this Honourable Court dated July 20, 2005 (the "**Initial Order**").
2. Pursuant to the Initial Order, BDO Dunwoody Limited ("**BDO**") was appointed Monitor of the Applicant (the "**Monitor**").
3. By order dated August 16, 2007 an extension of the CCAA proceedings was granted to September 4, 2007. At the same time BDO was appointed as Interim Receiver (the "**Interim Receiver**") with a mandate to prepare a marketing and sale process, to disseminate it to stakeholders and to bring the same before the Court for approval on September 4, 2007. As part of the extension motion BDO filed its First Report dated August 14, 2007 ("**First Report**").
4. By Order dated September 4, 2007 an extension of the CCAA proceedings was granted to November 9, 2007. As part of the extension motion BDO filed its Second Report, dated

August 30, 2007 (“**Second Report**”). As part of the Order, the Court approved a marketing and sale process as set out in Schedule “A” to the Second Report, and instructed the Monitor and Interim Receiver to direct all known creditors, in writing, to review the materials regarding the marketing and sale process on the Sapphire Website, and to invite interested parties to apply to the Court by September 11, 2007 to vary or amend the sale process, such Motion to be returnable on September 24, 2007. No party brought such a motion. On November 7, 2007, the Court granted an extension of the Stay Period as defined in the Initial Order (the “**Stay Period**”) to December 14, 2007, to allow for the completion of the Sale Process. On December 14, 2007 the Court granted a further extension of the Stay Period to January 31, 2008.

5. The purpose of this Sixth Report of the Interim Receiver (“**Sixth Report**”) is to:
- (a) report to this Honourable Court in detail on the completion of the sale of the debtor’s property located at 66 Temperance Street, Toronto, Ontario (the “**Property**”), to Skyline International Development Inc. (“**Skyline**”);
 - (b) report on the claims process for determining amounts owing to the secured creditors of the Applicant;
 - (c) recommend a further extension of the CCAA proceedings until March 28th, 2008 to allow for the determination of claims to the sales proceeds generated from the sale of the Property to Skyline;
 - (d) to approve a further interim distribution of the proceeds of sale of the Property to the secured creditors; and
 - (e) request the approval of the fees and costs of the Monitor/Interim Receiver and its counsel, as set out herein.
6. Capital terms not defined in this Third Report are as defined in the Initial Order.

B. TERMS OF REFERENCE

7. In preparing this Sixth Report, the Interim Receiver has relied upon unaudited financial information, company records, claims submitted by creditors, and discussions with management of the Applicants, various stakeholders and consultants and advisors. The

Monitor and Interim Receiver has not performed an audit, review or other verification of such information.

8. The Monitor and Interim Receiver assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, re-production or use of this report. Any use which any party, other than the Court, makes of this report, or any reliance on or decision based on it, is the responsibility of such party.

C. BACKGROUND

9. The Applicant is a single purpose entity incorporated and resident in the Province of Ontario, that owns the Property which is a single parcel of undeveloped real estate located at 66 Temperance Street, Toronto in the core downtown area of Toronto. The site is currently leased out as a parking lot. The Applicant has no active employees other than Harry Stinson (“**Stinson**”), who is the sole officer shareholder and director of the Applicant, and is resident in Toronto. The Applicant had been pursuing the development of this site as a high rise condominium project of 50 or more stories in height.
10. The stakeholders in this matter are various parties holding mortgages or liens on the property, trade creditors, and various individuals who appear to be unsecured creditors who had advanced money in arrangements which included an interest in units in the prospective development.

D. POSTING OF ORDERS AND REPORTS OF THE MONITOR AND INTERIM RECEIVER

11. The Monitor and Interim Receiver has posted all court material on its website at <http://www.bdo.ca/Sapphire>, as required by the Order of the Honourable Mr. Justice Cumming, dated September 4, 2007.

E. POSSESSION OF ASSETS

12. Immediately following its appointment as Interim Receiver, the Monitor and Interim Receiver took possession of all of the personal property and books and records of the Applicant. The Monitor and Interim Receiver took steps to ensure that the rental payments by the tenant of the company’s real property were made to the Monitor and Interim Receiver. The Monitor and Interim Receiver did not go into possession of the

real property owned by the Applicant as it did not believe that there was any necessity to do so.

F. CONSULTATION WITH INVESTORS/UNSECURED CREDITORS

13. Following its appointment, the Monitor and Interim Receiver had various discussions and meetings with stakeholders with a view to soliciting their input and views. In particular, the Monitor and Interim Receiver met with certain creditors whose advances included a contracted interest in units which were to be built in the contemplated condominium project.
14. In addition, persons in this group raised the issue of legal representation for this group being obtained and funded out of the project. The Monitor and Interim Receiver was supportive of this group obtaining representation, and supported the concept of a charge being given in favour of counsel for this group, so long as such a charge was given a ranking immediately behind the interest of the secured creditors.
15. Accordingly, by the endorsement of the Honourable Mr. Justice Cumming dated October 19, 2007, the Court appointed Page, Martin LLP as representative counsel (the “**Representative Counsel**“) for all unsecured creditors, and Page, Martin LLP was granted a charge on the assets ranking immediately behind the administrative charges and the interest of the valid secured creditors, in accordance with paragraph 12 of the Monitor’s Second Report.

G. STATUS OF SALE OF PROPERTY TO SKYLINE

16. On December 14, 2007 Justice Cumming granted a Sale Approval and Vesting Order approving the sale of the Property to Skyline. The Interim Receiver and its counsel have completed the transaction with Skyline and fulfilled all conditions to completing the APS. The transaction closed on January 14, 2008 as anticipated, and the Interim Receiver has received the sale proceeds.

H. CLAIMS PROCEDURE FOR SECURED CREDITORS

17. As noted in the Fifth Report of the Interim Receiver dated January 10, 2008 (the “**Fifth Report**“) and the Supplement to the Fifth Report dated January 11, 2008 (the “**Supplement**“), in order to implement a distribution to the secured creditors of the

Applicant, on December 21, 2007 the Interim Receiver sent a form of proof of claim by mail to all creditors of the Applicant known to the Interim Receiver, including those who had registered claims against the Property. The instruction sheet sent along with the proof of claim form requested that all proofs of claim be submitted to the Interim Receiver by January 4, 2008 to enable the Interim Receiver to report to the Court by January 8, 2008, and to enable a distribution on or about the closing date for the transaction with Skyline on January 14, 2008.

18. As a result of the request for claims, 45 secured creditors submitted claims. As noted in the Fifth Report and the Supplement, the Trustee requested that distributions be made to certain secured creditors in order to maximize realization to unsecured creditors. These distributions were approved by the Order of Justice Spence dated January 14, 2008 (the “**Interim Distribution Order**”). Attached as Appendix “A” to the Sixth Report is a copy of the Interim Distribution Order.

I SUMMARY OF DISTRIBUTION

In accordance with the Interim Distribution Order, the Interim Receiver has distributed the following aggregate amounts to the secured creditors of the Applicant out of the Sale Proceeds:

Recommended Distribution

Graphic Arts	\$ 11,473,963.01
Syndicated Mortgage (in amounts set out at Appendix “G” in the Fifth Report) (Note 1)	\$ 6,842,869.89
Shibley Righton LLP	\$ 627,356.41
Page Martin LLP	\$ 8,663.66
	\$ 18,952,852.97

Note 1: The Interim Receiver has not paid the sum of \$254,654.24 indicated as owing to two separate investors in the Syndicated Mortgage as these two individuals have not submitted proofs of claim. Hence, the amounts indicated as owing to them have been reserved.

J. SUMMARY OF RESERVES MAINTAINED

In accordance with the Interim Distribution Order, the Interim Receiver has reserved the following aggregate amounts out of the Sale Proceeds:

Recommended Reserved

Graphic Arts	\$	236,250.00
Syndicated Mortgage – 1% Admin Fee	\$	1,123,500.00
Syndicated Mortgage, reserve creditors	\$	890,860.27
TFA	\$	56,474.04
Oro	\$	286,775.73
WBM	\$	177,868.69
Rayan	\$	630,000.00
	\$	<u>\$3,401,728.73</u>

(Note: In addition the Interim Receiver has reserved \$254,654.24, as noted in the preceding section “I” with respect to the Syndicated Mortgage)

K GRAPHIC ARTS BUILDING INCORPORATED MORTGAGE (THE “GA MORTGAGE”)

19. As noted in the Fifth Report and the Supplement, the first charge registered on title to the Property was a mortgage in favour of Graphic Arts Building Incorporated (“**Graphic Arts**”) which was registered on May 5, 2005 in the amount of \$10,500,000.
20. The Interim Receiver has paid \$11,473,963.01, (including outstanding principal and interest calculated on a non-compounded basis) to Graphic Arts pursuant to the Interim Distribution Order and maintains a reserve of \$236,250.00. As noted in the Supplement to the Fifth Report, the Interim Receiver raised an issue with the method of calculation of interest used by Graphic Arts. Graphic Arts has filed a revised Proof of Claim, showing payment of interest calculated and compounded monthly, and the Interim Receiver proposes to pay this additional amount of interest of \$39,215.70, calculated on a compounded basis, to Graphic Arts, and requests the Court’s approval to do so.

L CCAA PROCEEDINGS

21. Under the circumstances, it is the view of the Monitor/Interim Receiver that the CCAA stay should be extended until March 28, 2008, so as to facilitate the adjudication of the proofs of claim filed, to complete the distribution to the secured creditors and to conduct a claims process to determine the claims of unsecured creditors.
22. The Monitor/Interim Receiver has been requested by the Applicant to support the continuation of the CCAA and the Monitor/ Interim Receiver supports the requested

extension because if believes that maintaining the CCAA proceeding will preserve flexibility in the process against eventualities such as the transaction not closing, which are hopefully remote.

23. This said, it is the view of the Monitor/Interim Receiver that the terms of the extension of the CCAA should be the same as those imposed in the last extension such that any further steps in the CCAA proceedings, such as the filing of a Plan of Arrangement, could only be taken with the prior consent of the Monitor/Interim Receiver. The Monitor/Interim Receiver believes that the Applicant is and has been proceeding in good faith and with due diligence.

MONITOR'S AND INTERIM RECEIVER'S COSTS

24. BDO as Interim Receiver has incurred time charges of \$76,194.18, calculated at the normal billing rates of its personnel involved, for the period from December 1, 2007 to January 18, 2008, plus \$256.05 for out of pocket disbursements, for total fees and disbursements of \$76,450.23, all before GST. The Interim Receiver seeks the approval of this Honourable Court for the payment of these fees and disbursements, plus applicable GST. Additional costs will need to be incurred to finalize the Interim Receivership.
25. Fraser Milner Casgrain LLP, counsel to BDO, charged fees to the Interim Receiver in the period December 1, 2007 to January 26th, 2008, in the amount of \$137,067.00 calculated at the normal billing rates of its personnel involved, as well as \$2,084.02 for out of pocket disbursements, for total fees and disbursements to \$146,093.67 including GST. The Interim Receiver seeks the approval of the Honourable Court for the payment of these fees and disbursements, plus applicable GST. Additional costs will need to be incurred to finalize the interim receivership.

All of which is respectfully submitted this 28th day of January, 2008.

BDO DUNWOODY LIMITED
In its capacity as Court Appointed
Monitor and Interim Receiver of the Applicant

