

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

ELEVENTH REPORT OF THE MONITOR AND INTERIM RECEIVER
BDO DUNWOODY LIMITED
MAY 13, 2009

A. INTRODUCTION

1. On July 20, 2007, Sapphire Tower Development Corp. ("**Sapphire**" or the "**Applicant**") obtained protection from its creditors pursuant 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, 2007 (the "**Initial Order**").
2. The Initial Order appointed BDO Dunwoody Limited ("**BDO**") as Monitor of the Applicant ("**Monitor**"). An Order dated August 16, 2007 granted an extension of the CCAA proceedings until September 4, 2007 and appointed BDO as Interim Receiver (the "**Monitor and Receiver**"). Through a series of Court ordered extensions the CCAA stay period was extended to August 30, 2008, whereupon the CCAA stay terminated.
3. The purpose of this eleventh report of the Monitor and Receiver (the "**Eleventh Report**") is:
 - (a) to seek approval for a final distribution of the assets in the hands of the Monitor and Receiver;

- (b) to seek approval for the proposed actions of the Monitor and Receiver, as set out in this Eleventh Report, and the approval of its fees and the fees of its counsel and of representative counsel appointed in this matter; and
- (c) to establish the process for the Monitor and Receiver's discharge.

B. TERMS OF REFERENCE

- 4. In preparing this Eleventh Report, the Monitor and Receiver has relied on unaudited financial information, company records, claims submitted by unsecured creditors, and discussions with Sapphire's management, various stakeholders, consultants and advisors. The Monitor and Receiver has not performed an audit, review or other verification of such information.
- 5. The Monitor and 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 Eleventh Report. Any use which any party, other than the Court, makes of this Eleventh Report, or any reliance on or decision based on this Eleventh Report, is the responsibility of such party.

C. BACKGROUND

- 6. Sapphire is a single purpose entity incorporated in the Province of Ontario. Sapphire owned a property located at 66 Temperence Street, Toronto (the "**Property**") which was a single parcel of undeveloped real estate, which constituted the sole asset of the receivership. The Monitor and Receiver sold the Property in a transaction which closed on January 14, 2008. Sapphire had been pursuing the development of the Property as a high rise condominium (the "**Development**"). Following the sale of the Property, the Monitor and Receiver paid out all amounts due to secured creditors in accordance with authorizations and determinations given by orders of this Court from time to time.

7. As all but current professional fees have been paid, filed with the Monitor and Receiver's motion record (the "**Motion Record**") are the fee affidavits of the Monitor and Receiver, its counsel and the counsel appointed as representative counsel for certain of the creditors in this matter. Such fee claims are summarized on Schedule "A-2" to this Eleventh Report and includes time to date, plus the fees projected to be incurred through to the finalization of this matter, assuming that the recommendations and procedures proposed in the Motion Record are approved by the court and implemented as proposed. The funds available to unsecured creditors, net fees and expenses, both incurred and projected are estimated to be \$2,878,314.58, which represents an estimated distribution to unsecured creditors of approximately 35.496% on the dollar.
8. By Order of this Honourable Court dated March 26, 2008 (the "**Claims Order**") the Court established a claims procedure (the "**Claims Procedure**") which, among other things established mechanisms for filing, allowing, disallowing, and appealing claims. The Claims Order also established a claims bar date of April 30, 2007 (the "**Claims Bar Date**").
9. Attached as Schedule "A-1" to this Eleventh Report is a draft summary of all of the creditor claims as they have been allowed by the Monitor and Receiver and the amounts at which these claims have been allowed. All claims have been finally determined and there are no outstanding disputes.
10. Attached as Schedule "A-2" to this Eleventh Report is a draft of the distribution proposed by the Monitor and Receiver based on the claims as admitted and assuming the fees and expenses are as projected. Should either CRA or Finance (both defined below) raise any issue in connection with the Applicant, a variation in fees may cause the final distribution to be slightly altered .

D. CLAIM SUBMITTED BY JAY AND USHA RAYAN

11. The Monitor and Receiver was required to deal with one claim filed in the Claims Procedure, that being the claim of Jay and Usha Rayan (the "**Rayans**"). The Monitor and Receiver had issued to the Rayans a notice of Revision or Disallowance in respect of the Rayans' claim, as the Monitor and Receiver disputed the amount of the Rayans' claim and the Rayans' assertion that their claim was in priority to all other claimants, including the secured creditors of the Applicant, on the basis of an alleged entitlement to an equitable lien on the Property. More details of the claim and the Monitor and Receiver's dispute of same are set out in paragraphs 26 through 31 of the tenth report of the Monitor and Receiver dated February 4, 2009
12. The dispute of the Rayans' claim was determined by way of a motion for directions on February 27, 2009 before the Honourable Mr. Justice Spence. For reasons set out in an endorsement dated March 3, 2009, Honourable Mr. Justice Spence upheld the disallowance of the Rayans' claim made by the Monitor and Receiver and determined that the Rayans' claim was unsecured. A copy of the endorsement of the Honourable Mr. Justice Spence dated March 3, 2009 is attached to this Eleventh Report as Schedule "B".
13. The time in which to appeal the decision of the Honourable Mr. Justice Spence has lapsed. As a result, the decision made by the Honourable Mr. Justice Spence is final, therefore a reserve previously established with respect to the Rayans' claim is no longer necessary and can now form part of the general funds available to the unsecured creditors for the final distribution, approval of which is sought in respect of which this Eleventh Report is filed. An award for costs, if any, in respect of the Rayans' claim has not been settled at the time of writing this Eleventh Report.

E. CLAIMS MADE BY THE CANADA REVENUE AGENCY AND THE MINISTER OF FINANCE

14. The Monitor and Receiver has received a claim from Canada Revenue Agency ("**CRA**") in the amount of \$1.00 for a deemed trust in connection with unremitted GST (the "**CRA Claim**"). Subsequent to filing its claim, CRA conducted an audit of Sapphire. The audit determined that CRA had no claim for unremitted GST.
15. In February 2009, the Monitor and Receiver filed the final tax return of the Applicant with CRA in connection with the Applicant's 2008 fiscal year, such tax return indicated that no taxes were owing to CRA (the "**Nil Return**").
16. CRA has the ability to issue to the Monitor and Receiver a clearance certificate under the provisions of s.159(2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) ("**CRA Clearance Certificate**"), but it is the experience of the Monitor and Receiver that in practice CRA does not in fact issue such certificates.
17. The Monitor and Receiver has had numerous communications with representatives of the Minister of Finance (Ontario) ("**Finance**"). Finance was served with the required material concerning the Claims Procedure in this matter, which established the Claims Bar Date. Finance has re-assessed their claim for capital tax and now claims approximately \$95,000 (the "**Subsequent Claim**"). Finance has been advised that its claim is barred by the Claims Procedure. Finance has taken no steps to seek relief from the claims process and has acknowledged to the Monitor and Receiver that it did in fact receive the Claims Procedure material. No adequate explanation was given as to why Finance did not file any claims in a timely manner.
18. Since Finance's claim is barred, the Monitor and Receiver has not expended estate resources to examine or make a determination as to the validity of Finance's claim and the Monitor and Receiver expresses no view on the same.

19. The distribution put forward for approval by the Monitor and Receiver in this report proposes to proceed without regard to the Subsequent Claim.
20. Finance has the ability to issue to the Monitor and Receiver clearance certificates for outstanding corporate tax, employer health tax and retail sales tax (collectively, "**Finance Clearance Certificates**"), but clearly under the circumstances, the Monitor and Receiver believes that Finance will not in fact issue Finance Clearance Certificates.
21. Should either CRA or Finance raise issue to any matters set out in this Eleventh Report, additional estate resources may be required to deal with same.
22. As contingency for potentially dealing with CRA and Finance, the Monitor and Receiver holds funds from the estate of the Applicant in the amount of \$15,051.21. Should CRA or Finance not raise issue to any matters set out in this Eleventh Report, the contingency of funds, along with an award for costs, if any, in connection with the Rayans' claim will be distributed to the unsecured creditors of the Applicant at a later date.

F. PROPOSED PROCEDURE FOR FINAL DISTRIBUTION AND DISCHARGE OF THE MONITOR AND RECEIVER

23. The Monitor and Receiver seeks the following relief:
 - (a) approval to proceed with the final distribution as set out herein;
 - (b) an order permanently staying any action against the Monitor and Receiver that would be barred as though the Monitor and Receiver had received a CRA Clearance Certificate and Finance Clearance Certificates;

- (c) discharge from its obligations as Monitor and Receiver, the same to take effect following the distribution of funds as set out above and payment of outstanding professional fees, the same to be effective upon the filing of a certificate in the form attached to the draft order contained in the motion record of the Monitor and Receiver.

G. CONCLUSION

24. The last issues to be dealt with by the Monitor and Receiver in this matter are the final distribution to the unsecured creditors of the Applicant and the discharge of BDO as Monitor and Interim Receiver of the Applicant. It is hoped that these issues can be dealt with quickly.

25. All of which is respectfully submitted this 13th day of May, 2009.

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



Gary Cerrato, CIRP
Vice-President

Court File No. 07-CL-7109

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

SCHEDULE "A-1"

**TO THE ELEVENTH REPORT OF THE MONITOR AND INTERIM RECEIVER
BDO DUNWOODY LIMITED
MAY 13, 2009**

CLAIMS SUMMARY & ESTIMATED DISTRIBUTION*

Secured Creditor Claims:

<u>Creditor</u>	<u>Claim as Filed</u>	<u>Claim Admitted</u>	35.496% Estimated Distribution
Glenda Margaret Bell	5,698.49	Disallowed	Disallowed
Roberta Mattson	56,080.10	Disallowed	Disallowed
Araneta, Juanito	\$59,084.69	Disallowed	Disallowed
Arora, Arlene & Deepak	66,502.33	Disallowed	Disallowed
Barlow, Jane Dixon	9,712.30	Disallowed	Disallowed
Connally, Catherine	127,265.75	Disallowed	Disallowed
Leong, Henry	70,393.38	Disallowed	Disallowed
Rejman, Elzbieta	951.68	Disallowed	Disallowed
Student Guide Corporation (Anges Wong)	63,632.88	Disallowed	Disallowed
Graphic Arts Building Incorporated	236,350.00	Withdrawn	Withdrawn
CRA - GST	1.00	Nil	Nil
	\$695,672.60	\$0.00	\$0.00

General Creditor Claims:

<u>Creditor</u>	<u>Claim as Filed</u>	<u>Claim Admitted</u>	<u>Estimated Distribution</u>
Altus Derbyshire	\$8,292.85	\$8,292.85	\$2,943.62
Arc Design Group	17,442.40	17,532.40	6,223.29
Bateman MacKay	3,460.73	3,460.73	1,228.42
Bousfields Inc.	12,169.01	12,169.01	4,319.50
FedEX	171.03	171.03	60.71

* The estimated distribution may vary slightly from what is set out herein to reflect the kind and amounts of settlement in respect of certain matters detailed in the body of the Eleventh Report.

Fieldston Traders Limited	400,000.00	400,000.00	141,983.70
H.H. Angus & Associates Limited	17,120.00	17,120.00	6,076.90
Homes For Sale Magazine	4,063.80	3,710.00	1,316.90
Larden Muniak Consulting Inc.	6,134.58	6,134.58	2,177.53
Lasso Data Systems Inc.	2,703.00	2,703.00	959.45
Leipciger Kaminker Mitelman & Partners Inc.	60,993.00	60,992.58	21,649.88
Meyer Wassenaar Banach LLP	112,275.07	112,275.07	39,853.08
R. J. Burnside & Associates Ltd	10,702.02	9,384.42	3,331.09
Rowan Williams Davies & Irwin Inc.	5,300.00	5,300.00	1,881.28
Sweetland, Jim	9,964.00	9,964.00	3,536.81
Wier Foulds LLP	36,899.85	35,065.67	12,446.88
Wilbert Wilcott	58,625.00	62,979.74	22,355.24
Yvon Wilcott	58,625.00	62,981.79	22,355.97
Wilcox Sign Company Inc.	3,844.62	3,844.62	1,364.68
WJW Venture 2000 Inc.	117,250.00	125,963.21	44,711.81
Yolles Partnership Inc.	134,880.06	134,880.06	47,876.93
Cassius Adams	17,521.25	17,521.25	6,219.33
	<u>\$1,098,437.27</u>	<u>\$1,112,446.01</u>	<u>\$394,873.00</u>

Special Investor Claims:

<u>Creditor</u>	<u>Claim as Filed</u>	<u>Claim Admitted</u>	<u>Estimated Distribution</u>
1049237 Ontario Ltd.	\$369,800.00	\$393,862.33	\$139,805.09
1579295 Ontario Inc.	566,950.00	566,950.00	201,244.15
The Raymond Aaron Group	100,000.00	115,315.91	40,932.45
Dr. Saira Ansari/Atique Ansari	132,450.00	132,450.00	47,014.35
Lloyd Arthur Courtney	233,700.00	233,700.00	82,953.98
Eric H. Cox	140,008.00	50,000.00	17,747.96
Grange Investment Club	364,000.00	182,000.00	64,602.58
Lincoln Lin	402,670.00	337,800.00	119,905.24
Liu - Chou Management	142,450.00	142,450.00	50,563.95
Cheryl Patricia Marshall	132,450.00	132,450.00	47,014.35
Trevor Orville Moo	619,728.50	450,000.00	159,731.67
Nawrocki Elizabeth	531,019.52	471,300.00	167,292.30
Oro Properties Limited	424,750.00	424,750.00	150,768.94
Parvez Patel	736,414.33	351,878.00	124,902.35
Prestige Corporation	545,471.59	418,050.00	148,390.72
Jay Rayan & Usha Rayan	630,000.00	508,196.72	180,389.13
Eyal Reingold	1,235,918.00	1,244,360.06	441,697.12
Wissam Shaia	151,538.00	88,450.00	31,396.15
Sheila Tedford / Peter Richardson	4,995.00	Disallowed	Disallowed
Tony Tullot	570,000.00	570,000.00	202,326.78
The Classic Organ Company Ltd.	182,450.00	182,450.00	64,762.32
	<u>\$8,216,762.94</u>	<u>\$6,996,413.02</u>	<u>\$2,483,441.58</u>
Grand Total	<u>\$10,010,872.81</u>	<u>\$8,108,859.03</u>	<u>\$2,878,314.58</u>

Court File No. 07-CL-7109

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

SCHEDULE "A-2"

**TO THE ELEVENTH REPORT OF THE MONITOR AND INTERIM RECEIVER
BDO DUNWOODY LIMITED
MAY 13, 2009**

**SAPPHIRE TOWER DEVELOPMENT CORPORATION
PROPOSED DISTRIBUTION**

Estate Receipts	\$ 2,938,314.58
Less: Estimated Professional Fees	(44,948.79)
Less: Reserve	(15,051.21)
Amount Available for Distribution	<u>\$ 2,878,314.58</u>
Claims Admitted to Date	\$ 8,108,859.03
Proposed Claims Distribution Percentage	<u>35.496%</u>

Note:

[1] The Monitor and Receiver intends to hold a contingency reserve of \$15,051.21.