

**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**

**NOTICE OF MOTION
(Returnable November 7, 2007)**

THE APPLICANTS, Sapphire Tower Development Corporation ("STDC") will bring a Motion before Mr. Justice Cumming of the Commercial Court on Wednesday, November 7, 2007, at 10:00 a.m. or as soon after that time as the Motion can be heard at 330 University Avenue, Toronto.

THE MOTION IS FOR:

1. An Order, if necessary, permitting late delivery of materials for this Motion.
2. An Order extending the Stay of Proceedings as previously granted and extended and now requested to be extended to December 31, 2007 or such other period as this Honourable Court deems just;

THE GROUNDS FOR THE MOTION ARE:

1. Section 11(4) of the *Companies' Creditors Arrangement Act*;
2. That circumstances exist that make the order requested to be appropriate;
3. That the Applicant has acted and continues to act in good faith; and
4. That the Applicant has acted and continues to act with due diligence: s. 11(6);
5. That particularly certain unsecured creditors of the Applicant will ultimately enjoy the benefits of any stay extension so granted;
6. On equitable grounds.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit of Harry Stinson sworn November 3, 2007.

November 4, 2007

SHIBLEY RIGHTON LLP
Barristers & Solicitors
250 University Avenue
7th Floor
Toronto, Ontario
M5H 3E5

Arthur O. Jacques (LSUC # 12437M)
Tel: (416) 214-5213
Fax: (416) 214-5413
E-mail: arthur.jacques@shibleyrighton.com

Peter Raytek (LSUC # 24209C)
Tel: (416) 214-5293
Fax: (416) 214-5493
E-mail: peter.raytek@shibleyrighton.com

TO: SEE ATTACHED SERVICE LIST

TO: **FRASER MILNER CASGRAIN LLP**
100 King Street West
1 First Canadian Place
Toronto, Ontario
M5X 1B2

Daniel R. Dowdall LSUC#:16737D Tel:(416) 863-4700
Facsimile: (416) 863-4592
Email: dan.dowdall@fmc-law.com

AND TO: **BDO DUNWOODY LIMITED**
1200 – 123 Front St. W.
Toronto, ON M5J 2M2

Uwe Manski, Court Appointed Monitor
E-mail: umanski@bdo.ca

AND TO: **STEINBERG MORTON HOPE & ISRAEL LLP**
5255 Yonge Street
Suite 1100
Toronto, ON
Canada
M2N 6P4

Michael Title
Telephone: 416-225-2777 ext.217
Facsimile: 416-225-7112
E-mail: mtitle@smhilaw.com

Solicitors for Graphic Arts Building Incorporated

AND TO: **T.S. REIBER PROFESSIONAL CORPORATION**
1100 – 121 Richmond Street West
Toronto, Ontario
M5H 2K1

T.S. Reiber
Telephone: 416 927-9841
Facsimile: 416 975-1531
E-mail: terry@reiber.ca

Solicitors for Graphic Arts Building Incorporated

AND TO: **SIMPSON WIGLE LLP**
Barristers & Solicitors
Suite 501
390 Brant Street
Burlington, Ontario
L7R 4J4

Michael G. Emery
Telephone: 905 639-1052 ext. 241
Facsimile: 905 333-3960
E-mail: emerym@simpsonwigle.com

Rosemary Fisher
Telephone: 905 639-1052 ext. 353
Facsimile: 905 333-3960
E-mail: fisherr@simpsonwigle.com

*Solicitor for a participant et al in a Secured Mortgage held by Stinson
Financial Corporation in Trust*

AND TO: **HEENAN BLAIKIE LLP**
2600 - 200 Bay Street
South Tower, P.O. box 185
Stn. Royal Bank Plaza
Toronto, ON M5J 2J4

Ken Kraft
Telephone: 416.360.6336
Facsimile: 416.360.8425
E-mail: kkraft@heenan.ca

Brad Elberg
Telephone: 416.360.2618
Facsimile: 416.360.8425
E-mail: belberg@heenan.ca

Solicitors for a participant in a mortgage held by Stinson Financial Corporation in Trust

AND TO: **LEON GAVENDO**
Barrister and Solicitor
2000 – 393 University Avenue
Toronto, Ontario
M5G 1E6

Telephone: 416 585-3109
Facsimile: 416 585-9668
E-mail: lgavendo@on.aibn.com

Solicitor for Turner Fleischer Architects Inc.

AND TO: **PAGE, MARTIN LLP**
Barristers and Solicitors
150 York Street, Suite 800
Toronto, Ontario
M5H 3S5

Murray B. Page, Q.C. (LSUC# A7609E)
Telephone: 416 595 9935 x 330
Fax: 416 595 1731
Email murraypage@pagemartin.com

Solicitor for Eyal Reingold and David Bergart

Court File No. 07-CL-7109

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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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**AFFIDAVIT OF HARRY STINSON
(sworn November 3, 2007)**

I, Harry Stinson, of the City of Toronto, make oath and say as follows:

INTRODUCTION

1. I am a sole shareholder and sole director and operating officer of the Applicant, Sapphire Tower Development Corporation ("STDC") in connection with the earlier above-noted proceedings pursuant to the *Company Creditors' Arrangement Act* ("CCAA"). As of this date STDC had previously commenced a proceeding under the CCAA and an extension has been obtained from this Honourable Court with respect to the application of a stay of proceedings up until November 9th next. I have been extensively involved with respect to the purchase, exploitation, development and ongoing sale process of the Lands situate at 66 Temperance and 73 Richmond Street West (that currently has extended air rights, etc.) to the development since

2001. During this entire period, I have been engaged with external counsel, Town Planners, representatives of the City of Toronto Building Department, external specialized municipal lawyers, architects, engineers, traffic consultants, surveyors, and many other specialized consultants whose services have been necessary for the development and exploitation of the process. I have been involved in real estate development for the past 20 years in the GTA.

2. This Affidavit is in support of a Notice of Motion that I have instructed my counsel to prepare and file to seek an additional extension with respect to the outstanding CCAA proceedings as contemplated in this particular restructuring. As of this date BDO Dunwoody has also been previously appointed as Receiver and Manager ("the Receiver") of the sole asset and undertaking of STDC being a parcel of land physically situate at 66 Temperance Street, Toronto ("Subject Lands").

3. The Subject Lands had been previously offered for sale by public advertisement and otherwise by the Receiver. Prior to the appointment of the Receiver, STDC had solicited offers and had accepted certain offers relating to the Subject Lands as previously reported to this Court.

4. The Stay of Proceedings as previously directed and continued by this Court had been lifted on October 9th, 2007 after submissions to this Court and on Consent for the purpose of serving on counsel of the Applicant the filing of a Petition in Bankruptcy

5. As of the date hereof the Receiver has received a number of offers for the purchase and sale of the Subject Lands ("APS"). I have little knowledge of the specific details as to the various APS's submitted nor the intent of the Receiver in proceeding and entertaining the acceptance of any particular offer. As of the date hereof, I have not nor has my counsel been served with any written report of the Receiver informing the Court of the status of any sale proceedings or any other matter relating to the sale. Since the appointment of BDO as Monitor under the CCAA Proceeding as well as its complimentary appointment as Receiver and Manager of the Applicant, I have actively co-operated at all levels in direct aid in assisting BDO in all material respects relating to the proposed solicitation of offers and hopeful successful disposition of the single real estate asset. I have met with senior executive personnel of the Receiver's office in direct assistance in their marketing and presentation efforts. All material documentation impacting on the subject site and in my possession and control has obviously been turned over to

the Receiver. My external counsel has effected the "three Cs" in assisting the Monitor/Receiver and its external counsel, Fraser Casgrain. In addition, I have made it abundantly clear to the Receiver that at no time have I been an active bidder or party in aid of effecting a bid for the subject property. I have been contacted from time to time by various potential bidders with respect to the subject site who were conducting preliminary due diligence and effecting other enquiries relating to the developmental components of the property. From time to time I have had telephone attendances with both Messrs. Uwe Manski, C.A., and Clark McKeown, C.A., both senior executive officers of the Receiver and experienced insolvency and restructuring personnel.

6. I was also surprised to learn yesterday that my counsel had received a voice message and subsequent telephone attendance by a secretary for counsel and subsequent telephone call from counsel for the Receiver who reported, *inter alia*, that it would seek, *inter alia*, on the return on November 7th next an Order dismissing the standing CCAA Application. I do not agree with such a request and have not seen any materials that impact on the Receiver's judgment with respect to such proposed request.

7. I have personally guaranteed the sum of approximately \$7,500,000 (plus interest) with respect to 22 creditors who have advanced on an unsecured basis the aforementioned amounts directly and indirectly to Sapphire. It has always been my intention to have Sapphire and myself honour all such indebtedness.

EXECUTIVE SUMMARY AND OVERVIEW

8. There is no financial risk to the Receiver in permitting the request for an extension of the outstanding CCAA proceedings and permitting continuation of the stay. It is my understanding that the receiver has already received a significant number of serious proposals from potential purchasers. I am further advised by the receiver that they have selected a 'short list' of the most financially qualified and credible purchasers and that these groups have been given until late November to submit their respective final offers. These candidates have also been told that in order to enhance the appeal of their submission, their respective offer should be unconditional and close within the calendar year. While I do not know the specific details of these offers, I am aware of the identities of many of the prospective purchasers, and frankly I am

confident that a firm sale will be negotiated. Many of these groups have contacted me directly for input on various design and market issues, and I am impressed with their seriousness.

9. Notwithstanding my optimism that a sale will be achieved, there is less clarity regarding the likely sale price. Even if we knew the price, the net residual value of the sale will be further significantly affected by the sale date, given the ongoing interest costs and professional fees. As such, the sale of the property in itself may not provide satisfactory finality for the company, the creditors and myself as guarantor of many of the obligations.

10. This Application is necessary to establish a proper commercial environment for a level playing field in which the sale of the Property can place for the enhancement of all creditors in order to maximize the realization from such sale in the interest of all the creditors of Sapphire.

11. An inordinate amount of professional effort has been expended to date in considering and pre-planning the type of restructuring plan that Sapphire would ultimately file. The specifics of the plan can only be determined by 'reverse financial engineering'. Simply put, what is the amount available for distribution after the Receivership costs and disbursements as well as discharge of secured indebtedness? As of this date I have no knowledge of this number, and we will remain in the same position until at least November 28, 2007 (the final offer submission date that the receiver has given to purchasers).

12. At the present time I am actively engaged in the exploitation, development and finalization within the Golden Horseshoe in income and capital producing developmental real estate projects that recognize my experience and my abilities. In addition, I am also actively engaged in the development of other projects in the United States that will take advantage of my professional experience. I am not investing any capital in these projects. It is my intention and I have communicated and shared these experiences with my external counsel, to contribute an equitable allocation of all receipts and profits to be obtained from these new opportunities. I have advised counsel that I wish to work within the flexibility of restructuring jurisprudence to obtain these ends and am comforted by the ability to do that under the CCAA Proceedings which are already underway. I have been awaiting concrete information from the Receiver with respect to offers received to date and those offers he intends to pursue. Any information obtained by me

will be held in the strictest of confidence and will not be employed for any improper purpose to obtain any advantage with respect to the ongoing disposal process. I candidly was most disturbed and upset with the proceedings being contemplated by the Receiver vis-à-vis the request to terminate the CCAA Proceedings, all suddenly received last Friday afternoon. An extension of the Stay under the CCAA and my ability to work thereunder can work to the advantage of all parties.

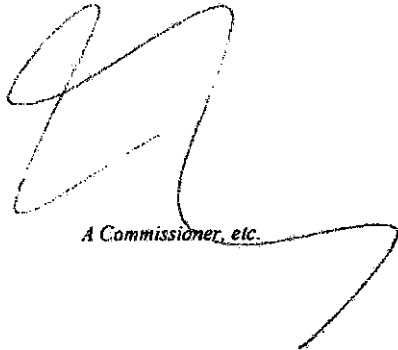
13. Going forward there are no unusual costs other than the supervision and intervention by myself and counsel on an ad hoc basis with respect to the administration of the ongoing Receivership. No charges or costs are being attached, subsequent to September 4th last, to the Administrative Charge originally granted by this Court.

14. I disagree with any suggestion that a proposal pursuant to the provisions of the *Bankruptcy and Insolvency Act* would be far more efficient and less costly than the proceedings underway pursuant to the ongoing CCAA proceeding.

15. I respectfully request that this Court exercise its equitable discretion in extending the Stay of Proceedings (as previously granted and extended to November 9th next) to no earlier than a date in mid-December, 2007, and more specifically to a date that is at least two weeks subsequent to the date on which the receiver determines that they have carried out sufficient marketing of the property, and that they have received an acceptable offer. It may well be the case that the receiver is in possession at that time of several potentially acceptable APS proposals, each of which is differently structured. I am aware that the receiver has encouraged purchasers to structure their final offers as 'all cash' deals, in order to simplify comparison. However, as the receiver is directly aware, many of the investors (who will be the parties most dramatically affected by the terms of the sale) have specifically indicated that they would consider a carried interest in an ongoing project as opposed to an immediate cash settlement. It is probable that offers proposing an immediate cash settlement will do so based on discounted amounts, whereas those offers including a carried interest would likely be at a higher value or in the form of real estate. Thus it is only fair to the investors to allow them to consider various options, as part of the restructuring plan.

16. Given that Sapphire Tower Development Corporation is a sole purpose company, in the process of liquidating its one significant asset, (as opposed to an operating company whose position could change on a day-to-day basis), once the market value of the asset is determined, we can rapidly proceed to structure a fair and realistic distribution plan.

SWORN BEFORE ME at the
City of Toronto, Province of Ontario
this 3rd day of November, 2007



A Commissioner, etc.

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HARRY STINSON

Court File No. 07-CL-7109

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Proceeding Commenced at Toronto

APPLICANT'S NOTICE OF MOTION

SHIBLEY RUGHTON LLP
Barristers & Solicitors
250 University Avenue
Suite 700
Toronto, Ontario
M5H 3E5

Arthur O. Jacques - LSUC # 12437M
Tel.: 416.214.5213; Fax: 416.214.5413
arthur.jacques@shibleyrughton.com

Peter Raytek - LSUC # 24209C
Tel.: 416.214.5293; Fax: 416.214.5493
peter.raytek@shibleyrughton.com

Solicitors for the Applicant