



ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) THURSDAY, THE 16th DAY
)
JUSTICE CUMMING) OF AUGUST, 2007

**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**

ORDER

THIS MOTION, made by Sapphire Tower Development Corp ("**Sapphire**") for an order continuing and extending the Initial Order made herein dated July 20, 2007 ("**Initial Order**") to November 16, 2007 and for other relief as set out in its Notice of Motion, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Monitor BDO Dunwoody limited ("**BDO**") and the affidavit of Harry Stinson sworn August 15, 2007 and on hearing the submissions of counsel for Sapphire, BDO, Graphic Arts Building Incorporated, Stinson Financial Corporation in Trust; Jeffery Family Holdings Inc., Dr. D McNeeley, and Turner Fleischer Architects Inc. no other party having been served;

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

CCAA PROCEEDING

2. THIS COURT ORDERS that the terms of the Initial Order including the stay therein provided be continued and extended to September 4, 2007 subject to the additional provisions as set out hereinafter, except that there shall not be any further costs allowed to the Monitor and its counsel and counsel for the Applicant after September 4, 2007 without leave.

APPOINTMENT OF BDO AS INTERIM RECEIVER

3. THIS COURT ORDERS that pursuant to section 47(1) of the *Bankruptcy and Insolvency Act* ("BIA") and section 101 (1) of the *Courts of Justice Act*, BDO is, in addition to its obligations and rights as Monitor in these proceedings, hereby appointed Interim Receiver, without security, of all of the Sapphire's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property").

INTERIM RECEIVER'S POWERS AND OBLIGATIONS

4. THIS COURT ORDERS that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Interim Receiver shall prepare and disseminate to the creditors and present for approval to this Court on September 4, 2007 a marketing and sale process (the "Sales Process") for approval by the Court and, in addition, is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to take possession and control of the real property (the "Real Property") comprised in the Property if it determines that the same is necessary for the preservation and realization of the Property, but the Interim Receiver

shall not take possession or be deemed to be in possession of the Real Property until the Interim Receiver files with this Court a certificate stating that it intends to take possession of such Real Property;

- (b) take possession and control of any Property that is not Real Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (c) to receive, preserve, protect and maintain control of such of the Property as it shall possess from time to time, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (d) to manage, operate and carry on the business of Sapphire, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of Sapphire;
- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;
- (f) to purchase or lease any assets necessary to continue the business of Sapphire or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to Sapphire and to exercise all remedies of Sapphire in collecting such monies, including, without limitation, to enforce any security held by Sapphire;
- (h) to settle, extend or compromise any indebtedness owing to Sapphire;

- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of Sapphire, for any purpose pursuant to this Order;
- (j) to undertake environmental or workers' health and safety assessments of the Property and operations of Sapphire;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to Sapphire, the Property or the Interim Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (l) to, in accordance with the Sales Process to be approved by this Court, market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Interim Receiver in its discretion may deem appropriate;
- (m) to, subject to Court approval, sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.
- (n) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to

the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;

- (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Interim Receiver, in the name of Sapphire;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of Sapphire;
- (s) to exercise any shareholder, partnership, joint venture or other rights which Sapphire may have; and
- (t) to take any steps reasonably incidental to the exercise of these powers, and in each case where the Interim Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including Sapphire, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER

5. THIS COURT ORDERS that (i) Sapphire, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Interim Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of Sapphire, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST SAPPHIRE OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of Sapphire or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of Sapphire or the Property are hereby stayed and suspended pending further Order of this Court.

9.(A) THIS COURT ORDERS that the stay of any Proceeding against Sapphire, the Property or the Interim Receiver, as set out in paragraphs 9 and 10 of this Order, shall also apply to any Proceeding against Harry Stinson, *mutatis mutandis*, provided that any interested party may apply to this Court by September 11th, 2007, to vary or amend this stay of any Proceeding against Harry Stinson, on three business days notice to counsel for the Interim Receiver, the Sapphire and Harry Stinson, such motion to be returnable on September 24th, 2007.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against Sapphire, the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Interim Receiver or Sapphire to carry on any business which Sapphire is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or Sapphire from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE INTERIM RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by Sapphire, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with Sapphire or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to Sapphire are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver, and that the Interim Receiver shall be entitled to the continued use of Sapphire's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment practices of Sapphire or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

INTERIM RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Interim Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Interim Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Sapphire shall remain the employees of Sapphire until such time as the Interim Receiver, on Sapphire's behalf, may terminate the employment of such employees. The Interim Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Interim Receiver may specifically agree in

writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Interim Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by Sapphire, and shall return all other personal information to the Interim Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver's duties and powers under this Order, be deemed to be

in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE INTERIM RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that any expenditure or liability (including expenses associated with the sales process and arrangements made with brokers and consultants employed in same) which shall properly be made or incurred by the Interim Receiver, including the fees of the Interim Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Interim Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Receiver's Charge") including any Charges created under the terms of the Initial Order.

19. THIS COURT ORDERS the Interim Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice. The Interim Receiver shall report to the court and all persons on the service list when its fees and those of its counsel exceed \$200,000.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

GENERAL

21. THIS COURT ORDERS that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

22. THIS COURT ORDERS that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of Sapphire.

23. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

24. THIS COURT ORDERS that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

25. THIS COURT ORDERS that in the event of any inconsistency or conflict between the provisions of this Order and any prior Order, including the Initial Order, then the provisions of this Order shall govern and prevail.

26. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

October 19, 2007 *Peter A. Cumming J.*

ENTERED IN THE REGISTRY AT TORONTO
ON / BOOK NO.
LE / DANS LE REGISTRE NO.

OCT 19 2007

CLERK *CL*

IN THE MATTER OF the Companies' Creditors Arrangement Act, R.S.C. 1985, c.C-36, as amended
AND IN THE MATTER OF the Plan of Compromise and Arrangement of SAPPHIRE TOWER DEVELOPMENT CORP.
Applicant
Court File No. 07-CL-7109

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings Commenced at Toronto

ORDER

FRASER MILNER CASGRAIN LLP
BARRISTERS AND SOLICITORS
1 First Canadian Place
100 King Street West,
Toronto, Ontario
M5X 1B2

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

Solicitors for the Monitor BDO DUNWOODY
LIMITED