

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

SUPPLEMENT TO
FIFTH REPORT OF THE MONITOR AND INTERIM RECEIVER
BDO DUNWOODY LIMITED
JANUARY 11, 2008

A. INTRODUCTION

1. On January 10, 2008, the Interim Receiver of Sapphire Tower Development Corp., BDO Dunwoody Limited (the “**Interim Receiver**”) circulated the Fifth Report (the “**Fifth Report**”).
 - (i) **Graphic Arts Building Incorporated Mortgage (the “GA Mortgage”)**
2. As noted in the Fifth Report the first charge that remains registered on title to the Property is 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. The GA Mortgage was a “vendor take back mortgage” granted to Graphic Arts by the Applicant as part payment of the purchase price of \$14,500,000 for the purchase of the Property by the Applicant .
3. The balance was due under the GA Mortgage on December 1, 2006. The GA Mortgage has a rate of interest of 9%, compounded monthly, not in advance. The monthly payments, as stipulated in the mortgage, were \$78,750.00, on account of interest only.

4. As noted in the Fifth Report Graphic Arts has filed a proof of claim for amounts owing under the GA Mortgage in response to the call for claims by the Interim Receiver. Attached as Appendix "D" to the Fifth Report is a copy of the Graphic Arts Proof of Claim (the "**GA Claim**"). In the Graphic Arts Proof of Claim, Graphic Arts claims that it is owed \$10,500,000.00 of unpaid principal, \$918,868.93 of unpaid interest, costs of \$55,094.09 for a total claim of \$11,710,213.02, with per diem interest of \$2,736.38 after January 14, 2008.
5. Upon further review of the GA Claim, the Interim Receiver found that the claim for a penalty of three months interest in the amount of \$236,250.00, payable upon the issuance of a Notice of Sale, included in the GA Claim, is a penalty that effectively raises the rate of interest payable under the GA Mortgage on default. Accordingly, the Interim Receiver takes the position that this provision violates the provisions of s.8 of the *Interest Act*.
6. Accordingly the Interim Receiver revises is recommendation and recommends that the amount of \$11,473,963.01 be distributed at this time to Graphic Arts out of the proceeds of sale, and that the Interim Receiver reserve the amount of \$236,250.00 pending determination of this issue.

B. REVISED SUMMARY OF DISTRIBUTION REQUESTED

In summary, the Interim Receiver proposes to distribute the following aggregate amounts to the secured creditors of the Applicant out of the Sale Proceeds:

<u>Recommended Distribution</u>	
Graphic Arts	\$ 11,473,963.01
Syndicated Mortgage	\$ 6,842,869.89
Page Martin	\$ 8,663.66
	<u>\$ 18,325,496.56</u>

C. REVISED SUMMARY OF RESERVED AMOUNTS

In summary, the Interim Receiver proposes to reserve the following aggregate amounts out of the Sale Proceeds:

<u>Recommended Reserved</u>	
Graphic Arts	\$ 236,250.00
Syndicated Mortgage – 1% Admin Fee	\$ 1,123,500.00
Syndicated Mortgage, reserve creditors, paragraph 27	\$ 890,860.27
TFA	\$ 56,474.04
Shibleys	\$ 662,504.03
Oro	\$ 286,775.73
WBM	\$ 177,868.69
Rayan	\$ 630,000.00
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	\$ 4,064,232.76
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All of which is respectfully submitted this 11th day of January, 2008.

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

