

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

- and -

**1645494 ONTARIO LIMITED, 8320373 CANADA LTD., 7822022 CANADA CORPORATION, 7925336
CANADA CORPORATION, 7925336 CANADA CORPORATION, 7925344 CANADA CORPORATION,
7822812 CANADA CORPORATION, 7905335 CANADA CORPORATION, 7905351 CANADA
CORPORATION, 7905394 CANADA CORPORATION, 8085234 CANADA CORPORATION
and 2120 DUNDAS HOLDINGS INC.**

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985 c. B-3, AS AMENDED; AND SECTION 101
OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43 AS AMENDED**

**FIRST REPORT TO THE COURT OF BDO CANADA LIMITED,
IN ITS CAPACITY AS COURT APPOINTED RECEIVER OF 1645494 ONTARIO LIMITED ET AL.**

AUGUST 16, 2018

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INTRODUCTION AND PURPOSE OF THIS REPORT

Introduction

1. By Order of the Honourable Mr. Justice Wilton-Siegel of the Ontario Superior Court of Justice, Commercial List (the “Court”), dated June 19, 2018 (the “Appointment Order”), BDO Canada Limited (“BDO”) was appointed as the receiver (in such capacity, the “Receiver”) of all of the assets, undertakings and property of each of 1645494 Ontario Limited, 8320373 Canada Ltd., 7822022 Canada Corporation, 7925336 Canada Corporation, 7925344 Canada Corporation, 7822812 Canada Corporation, 7905335 Canada Corporation, 7905351 Canada Corporation, 7905394 Canada Corporation, 8085234 Canada Corporation, and 2120 Dundas Holdings Inc. (collectively, the “Debtors”), pursuant to the application made by Business Development Bank of Canada (“BDC”), the Debtors senior secured creditor. A copy of the Appointment Order is attached hereto as Appendix “A”.
2. Details about the Debtors leading up to the appointment of Receiver can be found in the Affidavit Ruth Thomson, a Business Specialist at BDC, sworn April 26, 2018, which was filed in support of BDC’s application.
3. The Debtors directly or indirectly own the following real properties (collectively, the “Real Properties” and each a “Real Property”):

Entity	Address
1645494 Ontario Limited	9160 Bayview Avenue, Richmond Hill, Ontario
8320373 Canada Ltd.	Parent company of the following real estate holding companies which collectively own nine (9) condominium units at 330 Bronte St., Milton, Ontario as follows: (a) 7822022 Canada Corporation - registered owner of Unit 101 (b) 7925336 Canada Corporation - registered owner of Unit 102 and ancillary unit (c) 7925344 Canada Corporation - registered owner of Unit 103 (d) 7822812 Canada Corporation - registered owner of Unit 104 and ancillary units (e) 7905335 Canada Corporation - registered owner of Unit 106 and ancillary unit (f) 7905351 Canada Corporation - registered owner of Unit 109 and ancillary unit (g) 7905394 Canada Corporation - registered owner of Unit 110 and ancillary unit (h) 8085234 Canada Corporation - registered owner of Units 114, 119 and ancillary units
2120 Dundas Holdings Inc.	2120 Dundas St. E. Mississauga, Ontario

4. The Real Properties are subject to, *inter alia*, first ranking mortgages granted in favour of BDC. As at the date of the Receivership, the Debtors were indebted to BDC in the aggregate amount of approximately \$18.0 million.
5. Despite the provisions of the Appointment Order and the numerous requests made by the Receiver to the Debtor's former principals, former management and their bookkeeper/accountant, the Receiver has not been provided with any books and records relating to the Debtors, nor has the Receiver located any books and records on the Real Properties to the extent accessible.
6. The Appointment Order empowered and authorized, but did not obligate the Receiver to, among other things, do the following:
 - (a) take possession and control of the Property (as defined in the Appointment Order) and any and all proceeds and receipts arising therefrom;
 - (b) market any or all of the Property on such terms and conditions of sale as the Receiver deems appropriate;
 - (c) sell, convey, transfer, lease or assign the Property; and
 - (d) report to, meet and discuss with affected Persons (as defined in the Appointment Order), as the Receiver deems appropriate, all matters relating to the Property and the receivership proceedings.

Purpose of the Report

7. This constitutes the Receiver's First report to the Court (the "**First Report**") in this matter and it is filed to:
 - (a) report on certain of the Receiver's activities in these receivership proceedings since the Appointment Date; and
 - (b) Request an Order, *inter alia*:
 - (i) authorizing the Receiver to terminate (the "**102 Termination**") the lease entered into between 1645494 Ontario Limited ("**164 Ont**") as landlord and Dr. Antonenko Medicine Professional Corporation and Dr. Inna Polyakov (the "**Unit 102 Tenants**"), as tenants, of unit 102 at 9160 Bayview Avenue;
 - (ii) or, in the alternative to (i) above, a declaration that the 102 Lease shall be divested from the Bayview Property upon the issuance by this Court of an

approval and vesting order approving a sale transaction involving the Bayview Property to a *bone fide* purchaser pursuant to the marketing process to be carried out by the Receiver in these proceedings;

- (iii) approving this First Report and the conduct and actions of the Receiver to date; and
- (iv) approving the combined statement of receipts and disbursements of the Debtors (the “R&D Statement”).

Scope and Terms of Reference

8. The First Report has been prepared for the use of this Court and the Debtors’ stakeholders as general information relating to the Debtors and to assist the Court in making a determination on whether to grant the relief sought herein. Accordingly, the reader is cautioned that the First Report may not be appropriate for any other purpose. The Receiver will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of the First Report for a purpose different than set out in this paragraph.
9. Except as otherwise described in this First Report:
 - (a) the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) the Receiver has not conducted an examination or review of any financial forecast and projections in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook,

Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information except as expressly stated herein.

10. Capitalized terms used not defined in this First Report shall have the meaning ascribed to them in the Appointment Order.
11. This First Report, and all court materials and orders issued and filed in these receivership proceedings are available on the Receiver’s website at: <http://www.extranets.bdo.ca/1645494/documents.cfm> and will remain available on the website for a period of six (6) months following the Receiver’s discharge.

BACKGROUND

The Real Properties

12. As described in paragraph 3 above,
 - (a) 164 Ont owns the Real Property municipally known as 9160 Bayview Avenue, Richmond Hill, Ontario (the “**Bayview Property**”). The Bayview Property is currently used as a medical building and is comprised of seven units within two floors. Each of the seven units are currently leased or occupied. There is also a vacant basement space as the construction of this area is not complete.
 - (b) the Real Properties owned by the subsidiaries of 8320373 Canada Ltd. (“**832 CAD**”) is comprised of nine individual commercial condominium units contained within a medical/professional building located at 330 Bronte St., Milton, Ontario (collectively, the “**Bronte Units**”). Four of the nine units are currently vacant. The interior construction of one of the vacant units is not complete.
 - (c) 2120 Dundas Holdings Inc. (“**2120 Dundas**”) owns the Real Property municipally known as 2120 Dundas St. E. Mississauga, Ontario (the “**Dundas Property**”), which is a standalone building that operated as a banquet hall facility. As described in more detail below, the Receiver terminated the occupancy arrangement between 2120 Dundas and the tenant, 8167346 Canada Corporation (c.o.b. as Lviv Castle)(“**Lviv Castle**”).
13. This First Report will largely focus on the Bayview Property and the current undervalued lease arrangement in place at that property.

The Loans and Mortgages

14. Pursuant to an offer letter dated June 14, 2016, BDC made loan advances to 164 Ont in respect of the Bayview Property in the amount of \$10.0 million for the purposes of refinancing certain existing loans in the amount of \$7.3 million and financing an equity withdrawal in the amount of \$2.7 million (the “**164 Loan**”).
15. As security for the 164 Loan, BDC obtained (amongst other things):
 - (a) a first-ranking mortgage registered against the Bayview Property; and
 - (b) a general assignment of rents.

16. Pursuant to an offer letter dated November 28, 2016, BDC made loan advances of \$4.6 million to 8320373 Canada Ltd. (“**Milton Medical**”) for the purpose of refinancing an existing mortgage in respect of the Bronte Units and financing an equity withdrawal (the “**832 Loan**”).
17. As security for the 832 Loan, BDC obtained (amongst other things):
 - (a) a first-ranking mortgage registered against each of the Bronte Units;
 - (b) a general assignment of rents in respect of the Bronte Units; and
 - (c) a general security agreement granted by Milton Medical in favour of BDC.
18. Pursuant to an offer letter dated May 25, 2017, BDC made a loan to 2120 Dundas in the amount of \$3,655,000 for the purpose of financing the acquisition of the Dundas Property (the “**Dundas Loan**”).
19. As security for the Dundas Loan, BDC obtained (among other things):
 - (a) a secured guarantee from Milton Medical;
 - (b) first ranking mortgage registered against the Dundas Property;
 - (c) a general assignment of rents in respect of Dundas Property;
 - (d) a general security agreement granted by 2120 Dundas in favour of BDC; and
 - (e) a general security agreement granted by Milton Medical in favour of BDC.

ACTIVITIES OF THE RECEIVER

20. Since its appointment, the Receiver has:
 - (a) attended each of the Real Properties and changed locks, as appropriate;
 - (b) attended to numerous meetings and/or discussions with the tenants, the Debtors, and individuals related to the former management of the Real Properties;
 - (c) obtained from the tenants and reviewed the purported lease agreements between them and the Debtors;
 - (d) attorned and collected monthly rent and rent arrears;
 - (e) terminated the month-to-month occupancy arrangement between 2120 Dundas and Lviv Castle;

- (f) communicated with the insurance broker, Ledoux, Lew & Patterson Insurance Brokers Limited, to confirm that the existing insurance policies over the Real Properties were effective and adequate in the circumstances, and also to have the Receiver included as a “named insured” and “loss payee” under the Debtors’ existing insurance policies;
- (g) prepared and issued the prescribed Notice and Statement of the Receiver pursuant to sections 245 (1) and 246 (1) of the *Bankruptcy and Insolvency Act*, which was forwarded to the Office of the Superintendent of Bankruptcy and the creditors which could be identified;
- (h) through its counsel, Aird & Berlis LLP (“A&B”), registered the Receivership Order against title to the Real Properties at the land registry office;
- (i) engaged two (2) appraisers to value the Real Properties; and
- (j) contacted and obtained, from four local realtors with experience in selling real property similar to the Real Properties (including medical buildings), listing proposals for the marketing and solicitation of offers for the sale of the Real Properties.

DUNDAS PROPERTY

- 21. At the date of the Appointment Order, Lviv Castle operated as a banquet facility from the Dundas Property. Following its appointment, the Receiver contacted Lviv Castle to, amongst other things: (i) advise Lviv Castle of the receivership, (ii) direct the current rent to be paid to the Receiver and collect all rent arrears, (iii) obtain a copy of any lease agreement between 2120 Dundas and Lviv Castle; and (iv) obtain proof of liability insurance.
- 22. Management for Lviv Castle advised the Receiver that it had entered into a 5-year lease with 2120 Dundas commencing September 1, 2017 and provided the Receiver a lease, which Lviv Castle represented to the Receiver was a true and valid copy of lease between the parties. The lease agreement that was provided to the Receiver was prepared using an Ontario Real Estate Association (“OREA”) template form. Other than the rental rate, there were no terms or conditions associated with the lease. A copy of the purported lease is attached hereto as **Appendix “B”**.
- 23. The lease agreement was signed by 2120 Dundas, as landlord, and Lviv Castle, as tenant, and is dated August 20, 2017. However, the OREA template form includes a footer indicating that the form is the 2018 version. Upon a review of lease document, the Receiver’s counsel questioned Lviv Castle regarding this discrepancy and Lviv Castle, through its legal counsel at the time, advised that management had created the document in response to the Receiver’s request in order to satisfy the Receiver.

24. The Receiver has been provided no evidence that Lviv Castle had a lease arrangement with 2120 Dundas or that it paid rent at any time during its occupancy of the Dundas Property. For certain, no rent has been paid since the Receiver's appointment.
25. The Receiver also discovered that Lviv Castle did not have liability insurance over its operations despite operating an establishment that served food and alcohol.
26. On June 27, 2018, the Receiver's counsel wrote to Lviv Castle notifying that it was the Receiver's position that no valid written lease agreement existed and, as such, issued a notice of termination requiring Lviv Castle to vacate the premises by no later than July 31, 2018, in accordance with the provisions of the *Commercial Tenancies Act* (Ontario). A copy of the notice of termination is attached hereto as **Appendix "C"**.
27. On July 31, 2018, Lviv Castle surrendered the premises and the Receiver changed the locks. The Receiver also attempted to make arrangements with the tenant to remove its belongings, including perishable items, from the Dundas Property. As of the date of this First Report, Lviv Castle has not contacted the Receiver to make such arrangements, despite numerous written requests made by the Receiver, through its legal counsel, to Lviv Castle.
28. Given that certain of the items left behind by the Lviv Castle were perishable, the Receiver was forced to dispose of the food items to avoid contamination.

BAYVIEW PROPERTY - UNIT 102

102 Lease

29. The Unit 102 Tenants are the current tenants of Unit 102 within the Bayview Property. Following to its appointment, the Receiver met with the Unit 102 Tenants to obtain a copy of the lease agreement and discuss the terms thereof. A copy of the lease (the "**102 Lease**") is attached hereto as **Appendix "D"**.
30. The 102 Lease provides for a 10-year initial term commencing November 1, 2016. The total annual rent obligation is \$24.00 per annum (plus HST) with no additional rent charged (the "**Annual Rent**"). The Annual Rent is grossly below market value and significantly lower than rents paid by other tenants at the Bayview Property.
31. The salient terms under the 102 Lease include:
 - (a) total annual rent of \$24.00;
 - (b) no additional rent in respect of operating costs such as property taxes, common area costs or maintenance;

- (c) at the tenant's option, the lease can be extended for an additional 10 years on the same terms and conditions as the existing lease (i.e. \$24.00 per annum with no additional rent payments);
- (d) a rent-free period for the first six (6) months of the lease term;
- (e) subordination clauses are included which place the leasehold interest below that of any mortgagee, including BDC;
- (f) no security deposits or advance rent amounts are payable;
- (g) references to "fair market rent" have been crossed out of the lease agreement; and
- (h) the lease contains a non-disturbance clause which requires a written agreement between the mortgagee and the tenant for such provision to take effect.

Correspondence with the Unit 102 Tenants

- 32. On July 26, 2018, by email, the Receiver advised the Unit 102 Tenants that it is the Receiver's view that the 102 Lease is far below the market rate and diminishes the value of the property in a sale scenario. The Receiver advised the Unit 102 Tenants that if they wished to remain at the premises, the Unit 102 Tenants would need to renegotiate the lease arrangement to provide for closer to market rent. The Receiver also advised that failing a successful renegotiation, the Receiver would seek authority from the Court to terminate the 102 Lease on the basis that the existing lease was impairing the Receiver's ability to sell the Bayview Property for fair value. A copy of the email correspondence is attached hereto as **Appendix "E"**.
- 33. On July 30, 2018, legal counsel to the Unit 102 Tenants, Juriansz & Li Barristers & Solicitors ("**J&L**"), wrote to the Receiver advising it that the Unit 102 Tenants were unwilling to renegotiate the lease on the basis that the Unit 102 Tenants believe the 102 Lease to be arm's length and a *bona fide* lease arrangement. J&L requested that it be provided with the basis upon which the Receiver would seek to terminate the 102 Lease. A copy of J&L's letter is attached hereto as **Appendix "F"**.
- 34. On August 10, 2018, the Receiver's legal counsel, A&B, wrote to J&L outlining the basis for the 102 Termination and the supporting case law. A&B requested that J&L provide its position by no later than August 14, 2018. J&L has yet to provide a response. A copy of A&B's letter addressed to J&L is attached hereto as **Appendix "G"**.

Correspondence with BDC

35. After discussions with representatives of BDC and a review of the information contained in the application record filed by BDC in support of these receivership proceeding, the Receiver was able to determine that:
- (a) the Bayview Property and the Unit 102 Tenants entered into the 102 Lease after the mortgage registered against the Bayview Property in favour BDC;
 - (b) it is an express term of the credit agreement between BDC and 164 Ont that all leases entered into between 164 Ont and its tenants be provided to and be on terms acceptable to BDC, including that the rent be at fair market value. BDC confirmed that it was not provided with a copy the 102 Lease nor was it aware of any such lease; and
 - (c) although implied by the fact that BDC had no knowledge of the 102 Lease, BDC further confirmed to the Receiver that it did not provide a waiver or non-disturbance agreement to the Unit 102 Tenants.
36. As a result, BDC was not aware of the existence, or the unfavourable terms, of the 102 Lease.

Lease Below Market Rents and Impact of Value

37. The Unit 102 Tenants advised the Receiver that they were offered the extremely favourable rent terms under the 102 Lease because they were considered “anchor tenants” who could attract other tenants to the Bayview Property due to patients they could potentially refer to other practitioners in the building.
38. Following this discussion with Unit 102 Tenants, the Receiver discussed the foregoing with experienced realtors and appraisers specializing in sale and valuation of medical buildings who advised the explanation provided by the Tenants was unusual, and not something they had ever come across in their experience. Correspondence between the realtors and the Receiver are attached hereto as **Appendices “H”, “I” and “J”**, the key excerpts of which are summarized as follows:
- (a) *“..... this is very irregular. Perhaps as a draw they might have been offered an upgraded leasehold package or enhanced free rent package but nothing like that. Even with a market lease perhaps you may offer a small equity percentage in the building but a 20 year basically totally rent free lease seems unfathomable.*

The other thing that discredits that story is I believe the other tenants were already in place at that time. They didn't need an anchor to draw.”
 - (b) *“the short answer is no and the explanation from the Tenant doesn't make sense.*

Anchor tenants are more common in a retail environment for uses such as grocery, major departments stores, etc. The concept is that "anchor" tenants drive business for the surrounding users which benefit from the traffic they generate and therefore the surrounding users pay higher rents as they benefit from the volume.

A medical tenant is 1400 sq. ft. of +/-20,000 sq. ft. is not an anchor tenant and should not get a below market rent.

Rents are similar across the board for medical buildings save for ground-floor pharmacies, which usually pay a premium as they benefit from building traffic and are quasi retail. At Bayview...the Pharmacy is paying \$27.65 per square foot gross which isn't much of a premium."

(c) *"The short answer is no. It is a breach of the Ontario College of Physician and Surgeons professional conduct to accept lower rent for referrals. However, in practice GP and Pedestrian pay lower rents than other medical tenants as they draw patients to the building. I have seen hundreds of medical office building rent rolls and GP and Pedestrian pay on average \$30 psf gross range. \$25 per year is ridiculous".*

(d) *"We have noted in the valuation that the lease at unit 102 at 9160 Bayview is a material drag on value. Terminating this lease would likely unlock \$750,000 of value in a sale".*

39. The realtors indicated that the 102 Lease is significantly under value and will unfavorably impact offers received from potential purchasers as it provides nominal cash flow from the unit for a period of 10 to 20 years unless the terms of the agreement can be modified.
40. The Receiver has obtained appraisals from two (2) independent appraisers that specialize in medical buildings, and similar to the realtors, each has confirmed that the terms of 102 Lease are well below market and significantly reduce the realizable value of the Bayview Property.
41. Based upon the Receiver's discussions and correspondence with the realtors and appraisers, retaining the 102 Lease as is could reduce the realizable value of any sale associated with the Bayview Property to between \$460,000 to \$750,000.

Reasons for Termination of the 102 Lease

42. Reasons for the 102 Termination include:
- (a) based upon discussions with the realtors, the Receiver has determined that, in order to maximize value for Bayview Property, it may be necessary to deliver Unit 102 to the ultimate purchaser free and clear of the 102 Lease;
 - (b) authority to terminate the Lease would permit the Receiver to expose the Bayview Property to the widest possible market, including purchasers acquiring the property for investment purposes;
 - (c) pursuant to section 93(3) if the *Land Titles Act*, RSO 1990, c L.5, BDC's charge over the Bayview Property (the "Charge") takes priority over the interests, if any, of the Unit 102

Tenants, as the 102 Lease is dated subsequent to the Charge, and the 102 Lease is not registered on title to the Bayview Property;

- (d) BDC has the largest economic interest in the estates of the Debtors and based upon the listing proposals, and the draft appraisals, received by the Receiver, it is expected that BDC will suffer a significant shortfall of its debt as is it currently stands. The shortfall will be greater should 102 Lease not be terminated;
 - (e) BDC had no knowledge of the 102 Lease, or the terms of the existing lease arrangement with Unit 102 Tenants;
 - (f) the Charge pre-dates the 102 Lease;
 - (g) the BDC loan documents required 164 Ont to obtain BDC's pre-approval of any lease arrangements. Such approval was not obtained by BDC and would not have been provided on the basis of that the 102 Lease is considerably under value and would result in nominal cash flows; and
 - (h) the Unit 102 Tenants do not have the right of non-disturbance, as it did not obtain such agreement from BDC.
43. As such, the Receiver is of the view that neither it or BDC should be be worse off than if a mortgagee sells a property by way of private enforcement in circumstance such as this where the Unit 102 Tenants are subordinate to BDC.
44. If the Court agrees with the Receiver's conclusion that the equities support the Receiver being entitled to terminate the 102 Lease, the Receiver's will request that the termination period be not less than 60 days.

RECEIPTS AND DISBURSEMENTS

45. The interim R&D Statement, attached herein as **Appendix "K"**, reports net receipts over disbursements from the date of the Receiver's appointment to August 15, 2018 of \$174,734.94.
46. The Receiver is seeking the court's approval of the R&D Statement.

SUMMARY AND RECOMMENDATIONS

47. Based upon the comments received from the appraisers and realtors, the Receiver understands that should the 102 Lease not be terminated it will significantly impact the realizable value of

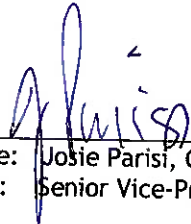
the Bayview Property, in a negative way, as the terms are commercially unreasonable and unattractive to potential purchasers.

48. The Unit 102 Tenants have expressly subordinated their interests to and in favour of BDC, as the senior secured creditor.
49. Accordingly, the Receiver respectfully submits this First Report to the Court in support of the Receiver's motion for an Order:
 - (a) approving the First Report and the Receiver's activities as outlined therein;
 - (b) authorizing the Receiver, upon 60 days written notice, to terminate the 102 Lease;
 - (c) directing the Unit 102 Tenants upon receiving the notice of termination issued by the Receiver to, on or before the expiry of the 60 day notice period, deliver vacant possession of the Unit 102 at the Bayview Property to the Receiver; and
 - (d) approving the interim R&D Statement.

All of which is respectfully submitted this 16th day of August, 2018.

BDO CANADA LIMITED,
in its capacity as the Court-appointed Receiver of
the Debtors, and not in its personal or corporate capacity

Per:



Name: Josie Parisi, CPA, CA, CBV, CIRP, LIT
Title: Senior Vice-President

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