

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

THE HONOURABLE MR .)

WEDNESDAY, THE 19TH DAY

)

)

OF OCTOBER, 2016



THE TORONTO-DOMINION BANK

Applicant

- and -

**B. GOTTARDO CONSTRUCTION LTD. and
B. GOTTARDO SITE SERVICING LIMITED**

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of B. Gottardo Construction Ltd. (the "**Debtor**") for, *inter alia*, an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and 2075568 Ontario Inc. and Idacris Investments Inc. (collectively, the "**Purchaser**") appended as a Confidential Appendix to the Sixth Report of the Receiver dated October 12, 2016 (the "**Report**"), and vesting in the Purchaser the Debtor' right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and the Confidential Supplemental Report of the Receiver (the "**Confidential Supplemental Report**"), and on hearing the submissions of counsel for the Receiver, counsel for The Toronto-Dominion Bank, counsel for the Purchaser and those other counsel on the Counsel Slip, no one appearing for any other person on the service list, although

properly served as appears from the affidavit of Antoinette DePinto sworn October 13, 2016 filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the "**Receiver's Certificate**"), all of the Debtor's rights, title and interests in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule B** hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Newbould dated August 10, 2015; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (iii) any interest of Daland Developments Ltd., David Gottardo and Bruno Gottardo (all of which are collectively referred to as the "**Encumbrances**", which term shall not include any mortgages, charges, easements or restrictive covenants or other encumbrances registered against the Lands (as defined in the Sale Agreement)) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets

with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

5. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

7. **THIS COURT ORDERS** that the Confidential Supplemental Report and the appendices annexed be and hereby are sealed pending further order of the Court.

8. **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 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 Receiver, as an officer of this

Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 19 2016

PER / PAR: 

Schedule A – Form of Receiver’s Certificate

Court File No. CV-15-11054-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

**B. GOTTARDO CONSTRUCTION LTD. and
B. GOTTARDO SITE SERVICING LIMITED**

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Newbould of the Ontario Superior Court of Justice (the "Court") dated August 15, 2015, BDO Canada Limited was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of B. Gottardo Construction Ltd. (collectively, the "**Debtor**").

B. Pursuant to an Order of the Court dated October 19, 2016, the Court authorized the Receiver to complete the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between 2075568 Ontario Inc. and Idacris Investments Inc. (collectively, the "**Purchaser**") and the Receiver (the "**Sale Agreement**") and provided for the vesting in the Purchaser, the Debtor’ right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the purchase price for the purchased assets pursuant to the Sale Agreement; (ii) that the conditions to closing as set out in the Sale

Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the purchased assets payable on closing pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

BDO CANADA LIMITED, in its capacity as Receiver of the undertaking, property and assets of B. GOTTARDO CONSTRUCTION LTD. and B. GOTTARDO SITE SERVICING LIMITED and not in its personal capacity

Per: _____

Name:

Title:

Schedule B – Purchased Assets

All terms not otherwise defined herein, shall be ascribed the meaning given to those terms in the Sale Agreement.

1. The Shares;
2. Lands, including without limitation the following properties:

PIN 26569-1710 (LT)

Osso Lands: Part of Lot 23, Concession 5, in the Geographic Township of Whitby, in the Town of Whitby, Regional Municipality of Durham, designated as Part 2 on Reference Plan 40R-12227, save and except Parts 1 and 2 on Reference Plan 40R-12671.

PIN 26569-1780 (LT)

Hochberg Lands: Part of Lots 23 and 24, Concession 4, in the Geographic Township of Whitby, now in the Town of Whitby, in the Regional Municipality of Durham, as more particularly described in Instrument No. CO202443.

3. Joint Venture Agreement entered into between Daland Developments Ltd. and 2075568 Ontario Inc. and Idacris Investments Inc. dated November 1, 2004

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Respondents
Court File No. CV-15-11054-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at TORONTO

APPROVAL AND VESTING ORDER

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**Lawyers for the Receiver, BDO Canada
Limited**

October 19, 2016

No one has appeared to oppose the order sought. I am satisfied that the interest in the joint venture is to be shared with approximately in the circumstances. Order to go. Confidentially of BDO X 50 sealed. Dred T.

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

MOTION RECORD

(Sale Approval returnable October 19, 2016)

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Court-appointed Receiver

