

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

Respondent

APPLICATION UNDER 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 OF BDO CANADA LIMITED, IN ITS CAPACITY
AS COURT APPOINTED RECEIVER

August 26, 2015

INTRODUCTION AND PURPOSE OF THIS REPORT

1. On August 10, 2015 a receivership order was granted by Justice Newbould in respect of B. Gottardo Construction Ltd. and Gottardo Site Servicing Limited (collectively "the Companies" or "Gottardo") as a result of an application by The Toronto-Dominion Bank ("TD Bank"). The TD Bank also filed bankruptcy applications against each of the Companies on July 28, 2015. The applications were originally to be heard on August 18, 2015 however, the parties agreed to an adjournment to August 28, 2015 for reasons set out in this First Report ("the Report") of the Receiver, BDO Canada Limited (the "Receiver").

2. The purposes of the Report are to provide the Court with information to support the Receiver's reasons to consent to the bankruptcy applications and a summary of the Receiver's activities in the initial two weeks of the receivership.

BACKGROUND

3. The information in this report is based upon discussions with David Gottardo, an executive officer of each of the Companies, and the affidavit of Emily Randle sworn July 28, 2015 (the "Randle Affidavit") filed in support of the application by the TD Bank for the appointment of the Receiver.

4. The Companies provided a variety of site services to major homebuilders in the GTA such as Tribute and the Conservatory Group. In addition, they have served as general contractor on many major municipal works projects including the Mississauga Bus Rail Transit project. This \$100 million project was a significant contributing factor to the Companies financial difficulties. The City of Mississauga terminated the contract in February, 2015 due to alleged deficiencies and delays in construction and ultimately issued a Statement of Claim for damages of approximately \$10 million. In turn, Gottardo liened the project for unpaid accounts in excess of \$10 million and issued a counterclaim for approximately \$15 million for alleged damages suffered by Gottardo. As a result, the Companies working capital was severely impaired. The Borrowing Base Certificate prepared by Gottardo as of May 31, 2015 represented to the TD Bank that the accounts receivable collateral net of priority claims was less than zero on operating loans of approximately \$12.5 million. This represented an erosion of collateral of approximately \$15 million since the last prior Borrowing Base Certificate provided by Gottardo for February 28, 2015.

5. Due to the lack of available collateral to support the operating loans and the inability of the owners to inject funds, Gottardo was unable to fund payroll. The Companies effectively ceased operations in the last week of July 2015. There were no employees present at the Gottardo head office or at the job sites when the receivership began.

RECEIVER'S INITIAL ACTIVATES

6. Since the appointment on August 10, 2015 the Receiver has undertaken the following initial activates and actions:

1. Served the Order electronically to the Service list and delivered a copy to Mr. David Gottardo at the Companies' head office at 150 Ashbridge Circle, Concord, Ontario.
2. Took possession of and secured the Companies' assets at the head office as well as at five job sites in the GTA where major pieces of construction equipment resided.
3. Reviewed the Companies books and records to begin to assess the amount of accounts receivable and lienable and other accounts payable.
4. Engaged certain former employees to assist with the preparation to WEPPA claims, statutory returns and final customer invoices for services rendered in July, 2015.
5. Prepared and distributed the S. 246 report to the Companies' creditors.
6. Reviewed the Companies existing insurance policies and made arrangements to insure the assets.
7. Held discussions with the legal representatives of the various project owners and lien claimants.

7. The Receiver is in the process of creating a Confidential Information Memorandum to assist in soliciting offers for the Companies constructions equipment, contracts and other assets.

CONSENT TO THE BANKRUPTCY APPLICATIONS

8. Prior to the receivership, Gottardo received an expression of interest in acquiring an equity interest in the Companies from a potential purchaser referred to as Gammon, an infrastructure company based in India. A non-binding letter of interest conditional on a due diligence period of at least 30 days was provided to Gottardo just prior to the receivership. However, without operating funds to deal with payroll and the Companies other obligations, the TD Bank proceeded with and was granted the receivership order on August 10, 2015. The receivership order granted to the Receiver the right to consent to the bankruptcies of the Companies. The basis for the relief sought was set out in paragraph 54 of the Randle Affidavit.

9. The bankruptcy applications were instituted by TD Bank prior to the receivership and were to be heard on August 18, 2015 by the Registrar. Without the consent of the Receiver, Gottardo filed disputes to the Bankruptcy applications citing that TD Bank held sufficient security to cover its claims and that the bankruptcies would not be needed due to the receivership. Based upon the Companies' books and records neither assertion appears to be accurate but Gottardo wished to preserve the Companies in case an offer from Gammon materialized. The parties agreed to an adjournment to August 28, 2015 to determine if any such offer would materialize.

10. As of the date of this Report, the Receiver has not received an offer nor had any contact from Gammon nor a Canadian legal representative of Gammon. Further, beyond the TD Bank claim, there are other large claims and judgements, as well as union contract liabilities, and pension arrears which lead the Receiver to conclude that there is no realistic prospect of concluding any agreement with Gammon or any other equity investor in the Companies.

11. Based upon the Receiver's preliminary review of the Companies' books and records there are transactions that occurred between the Companies and other entities which appear related to the Gottardo's and which require closer examination and investigation. These include large inter-company balances, a large investment in a joint venture and lease arrangements where the Companies are said to be tenants of the related entities.

12. At the request of TD Bank, the Receiver has consented to the making of bankruptcy orders and to act as Trustee in Bankruptcy of each Gottardo Company as: a) the Companies ceased operations prior to the appointment of the Receiver; b) the broader investigative mechanisms available under the Bankruptcy and Insolvency Act ("BIA") will serve to assist in the effectiveness of these insolvency proceedings; c) the BIA provides a statutory framework and review mechanism for related party transactions; and d) in the opinion of the Receiver, a bankruptcy will not impair the Receiver's ability to maximize realization on the Companies assets.

All of which is respectively submitted this 26th day of August, 2015.

**BDO CANADA LIMITED Court Appointed Receiver of B.
Gottardo Construction Ltd. and B. Gottardo Site Servicing
Limited**



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