

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

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

**FOURTH REPORT OF
BDO CANADA LIMITED, IN ITS CAPACITY
AS COURT APPOINTED RECEIVER**

MARCH 11, 2016

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- GG Demand letter to 2191673 Ontario Ltd. dated March 1, 2016
- HH Relevant page from B. Gottardo Construction Ltd. books and records re: \$110,242.52
- II Demand letter to Bruno Gottardo dated March 8, 2016

INTRODUCTION AND PURPOSE OF THIS REPORT

1. B. Gottardo Construction Ltd. (“Construction”) and B. Gottardo Site Servicing Limited (“Site Servicing”) (collectively “the Debtors”) are corporations incorporated pursuant to the *Business Corporations Act*, Ontario. Construction was incorporated on February 4, 1997 and Site Servicing was incorporated on August 23, 2002. The Debtors are privately owned and provided large-scale construction services, frequently being infrastructure projects for municipalities and other government entities as well as site servicing for developers.
2. On application by The Toronto-Dominion Bank (“TD Bank”), the Debtors’ senior secured lender, BDO was appointed as Receiver (the “Receiver”) without security, of the assets, undertakings and properties of the Debtors pursuant to the Order of the Honourable Mr. Justice Newbould dated August 10, 2015 (the “Receivership Order”). A true copy of the Receivership Order is attached hereto as **Appendix “A”**.
3. The Receivership Order empowers the Receiver to, among other things, receive and collect all monies and accounts owed to the Debtors, to exercise all remedies of the Debtors in collecting such monies, and to initiate and prosecute any and all proceedings with respect to the Debtors and or their property.
4. Prior to the Receiver’s appointment, on July 28, 2015, a bankruptcy application was filed by TD Bank. On August 28, 2015, this Court issued a bankruptcy order in respect of the Debtors. BDO was appointed as trustee. A true copy of the Bankruptcy Order is attached hereto as **Appendix “B”**.

5. All court materials filed, including previous Receiver reports, and court orders and endorsements issued in these proceedings are available on the Receiver's website at <http://www.extranets.bdo.ca/BGottardo>.

LOANS AND ADVANCES TO RELATED AND CERTAIN UNRELATED PARTIES

6. Since its appointment, the Receiver has examined the Debtors' available books and records for the purpose, among other things, of collecting monies owed to the Debtors. In addition, in its capacity as Trustee, BDO exercised its powers under section 163 of the Bankruptcy and Insolvency Act and examined Mr. David Gottardo ("David") under oath. The examination occurred on February 19, 2016. During the examination David was asked certain questions and he gave certain answers (the "Examination"). Where appropriate David's answers are referred to herein. A transcript of the Examination will be provided to the Court.
7. As a result of its review of the Debtors' books and records and responses provided by David during his Examination, the Receiver believes that the Debtors are owed monies from related parties and a certain third party, the details of which are set out herein. The following table summarizes the amounts believed to be owed to Construction and Site Servicing which can be categorized as loans.

Loans and advances receivable	
Construction:	
Kleinridge Investments Inc.	2,756,346.60
Falconridge Corporation	398,000.00
615146 Ontario Ltd.	107,484.80
David Gottardo	149,791.43
2346193 Ontario Ltd.	2,126,997.47
2191673 Ontario Ltd	45,000.00
2303663 Ontario Ltd.	434,805.00
Bruno Gottardo	110,242.52
Total Construction	6,128,667.82
Site Servicing:	
Kleinridge Investments Inc.	128,238.14
David Gottardo	212,400.00
Total Site Servicing	340,638.14
Total amount due to Construction and Site Servicing	6,469,305.96

8. In accordance with the terms of the Receivership Order as set out in paragraph 3 herein, the Receiver brings this motion to seek an order granting judgment against those parties.

2013 AUDITED FINANCIAL STATEMENTS

9. The Receiver is informed by Mr. Rick Gargarella (“Gargarella”) of Collins Barrow (Vaughan) LLP that Collins Barrow (the “External Auditor”) acted as auditor for Construction and Site Servicing. Gargarella informed the Receiver that the External Auditor prepared audited financial statements for Construction and Site Servicing for the year ended November 2013. Gargarella also advised the Receiver that audited financial statements for Construction and Site Servicing were not prepared for the fiscal year ended November 30, 2014.

10. Accordingly, to understand the amounts due to the Debtors at the date of receivership (August 10, 2015), the Receiver used the related party balances presented in the November 2013 audited financial statements as the starting point of its analysis. The Receiver read and relied upon, amongst other things: the fiscal 2014 and 2015 bank statements and cancelled cheques (collectively the “Bank Statements”) and the fiscal 2014 and 2015 general ledger detail (the “General Ledger”). The Bank Statements and General Ledger were used to understand the activity which occurred subsequent to the 2013 audit.
11. Construction’s 2013 audited financial statements and supporting documentation provided by the External Auditor show the following amounts due to Construction. These amounts are categorized as “Advances to related companies”:

<u>Due from related companies as at November 30, 2013</u>	
Loan receivable - Kleinridge Investments Inc.	1,786,379.83
Loan receivable - 615146 Ontario Ltd.	250,000.00
Loan receivable - David Gottardo	268,257.88
Loan receivable - 2191673 Ontario Ltd.	45,000.00
Loan receivable - 2346193 Ontario Ltd.	869,393.65
Loan receivable - 2303663 Ontario Ltd.	434,805.00
<u>Total advances to related companies</u>	<u>3,653,836.36</u>

12. A copy of Construction’s November 30, 2013 audited financial statements and supporting documentation provided by the External Auditor are attached hereto as **Appendix “C”**. The financial statements, as appended, are signed by a director of Construction. The Receiver believes the signature is that of Bruno Gottardo who was, according to the corporate profile, Construction’s only officer and director.

13. While the audited financial statements and supporting documentation provided by the External Auditor show 2346193 Ontario Ltd. is a related party, the Receiver was informed by David during the Examination that 2346193 Ontario Ltd. is not related to Construction or Site Servicing (p. 32, Q. 133; p. 34, Q. 140)
14. The Site Servicing 2013 audited financial statements and supporting documentation provided by the External Auditor show the following amounts due to it from related companies as at November 30, 2013.

Due from related companies as at November 30, 2013	
Loan receivable - Kleinridge Investments Inc.	108,463.14
Loan receivable - 615146 Ontario Ltd.	(20,000.00)
Loan receivable - B. Gottardo Construction Investments - 1539527 Ontario	1,699,611.41
Due from 1539527 Ont. Ltd	(10.00)
	1,040.00
Total advances to related companies	1,789,104.55

15. The Site Servicing 2013 audited financial statements also show as a separate line “Advances due from shareholder” which amounts to \$212,400.
16. A copy of Site Servicing’s November 30, 2013 audited financial statements and supporting documentation provided by the External Auditor are attached hereto as **Appendix “D”** and present the foregoing amounts. The financial statements, as appended, are signed by a director of Site Servicing. The Receiver believes the signature to be that of Bruno Gottardo.

KLEINRIDGE INVESTMENTS INC. AND FALCONRIDGE CORPORATION

Background

17. A corporate search indicates that David is the sole director and officer of Kleinridge Investments Inc. (“Kleinridge”). A copy of the corporate search for Kleinridge is attached hereto as **Appendix “E”**.
18. A corporate search indicates that David is the sole director and officer of Falconridge Corporation (“Falconridge”). A copy of the corporate search for Falconridge is attached hereto as **Appendix “F”**.
19. Based on a review of the available Debtors’ books and records and information received from David during the Examination, the Receiver understands that Kleinridge and Falconridge are companies related to the Debtors.
20. The Debtors’ books and records disclose that at the date of receivership, Kleinridge is indebted to Construction and Site Servicing in the amounts of \$2,756,346.60 and \$128,238.14, respectively.

Construction and Kleinridge

21. The amount owed by Kleinridge to Construction is recorded in the Construction books and records as follows:

<u>Due from Kleinridge Investments</u>		
Per the November 30, 2013 audited financial statements	Notes	1,786,379.83
Advances via cheques and wires during 2014 and 2015		504,000.00
Payments made on behalf of Kleinridge		173,966.77
Journal entries	[1], [2], [3], [4]	292,000.00
<u>Total due to Construction from Kleinridge</u>		<u>2,756,346.60</u>

Notes:

- [1] Includes \$102,000 of adjusting journal entries which reallocate cash advances made to 2346193 to Due From Kleinridge.
 [2] Includes a \$45,000 adjusting journal entry which reallocates amounts shown as due from to 2191673 to Due From Kleinridge.
 [3] Includes a \$50,000 adjusting journal entry which reallocates amounts shown as due from 2303663 to Due From Kleinridge.
 [4] Includes a \$95,000 adjusting journal entry which reallocates amounts shown as Sundry Receivable to Due From Kleinridge.

22. The Construction general ledger recorded \$504,000 in payments made by Construction to Kleinridge and Falconridge during fiscal 2014 and 2015. It appears that certain of the wires/transfers were made to Falconridge and recorded in the Due from Kleinridge account. Copies of the cheques and documents supporting the wire transfers were also found in Construction's books and records or provided by TD Bank. Attached hereto and marked collectively as **Appendix "G"** are copies of the Construction general ledger, wire documentation and cheques written to Kleinridge and Falconridge.
23. In addition, the general ledger shows three payments, totaling \$173,966.77, were made by Construction and were recorded in the due from Kleinridge account; indicating these payments were made by Construction on behalf of Kleinridge.

24. The balance of the amount claimed to be owing by Kleinridge to Construction is \$292,000. This amount is recorded as journal entries in the Construction books and records.

Site Servicing and Kleinridge

25. The Receiver's review of the Debtors' books and records indicates that Kleinridge owed Site Servicing the sum of \$128,238.14. Attached hereto and marked as **Appendix "H"** is a true copy of the Site Servicing ledger recording the amount of \$108,463.14 outstanding by Kleinridge to Site Servicing for the period December 1, 2014 to August 10, 2015. In addition, Kleinridge owed Site Servicing the sum of \$19,775.00 for an unpaid invoice. A copy of the January 28, 2013 invoice is marked as **Appendix "I"** hereto.
26. On September 21, 2015, the Receiver, through its counsel made demand upon Kleinridge for payment of the outstanding amount owed to the Debtors. Despite demand, the amount due and owing by Kleinridge to the Debtors has not been repaid in whole or in part. A copy of the demand is attached hereto as **Appendix "J"**.
27. At David's Examination he acknowledged receipt of the Kleinridge, and all other demands, which were issued on September 21, 2015. David further acknowledged that he did not respond to any of the demands (p. 60, Q. 214; p. 63, Q. 224; p. 89, Q. 310).

Construction and Falconridge

28. The Receiver's review of the Debtors' books and records indicates that Construction advanced Falconridge \$398,000 as summarized below.

<u>Advances to Falconridge</u>	
Wire made on:	
06-Dec-13	40,000
21-Jan-14	41,000
28-Mar-14	80,000
28-Apr-14	40,000
30-May-14	36,000
24-Aug-14	120,000
03-Nov-14	41,000
<u>Total advances to Falconridge</u>	<u>398,000</u>

29. Attached hereto as **Appendix "K"** are copies of bank records which show wires transfers from Construction in the respective amounts. Each of these amounts are recorded in the books and records of Construction as advances to Falconridge.
30. Based upon the Receiver's review of the available books and records, it appears that the amounts due from Falconridge were written off by Construction.
31. On March 1, 2016, the Receiver, through its counsel made demand upon Falconridge for payment of the outstanding amount owed to Construction. Despite demand, the amount due and owing by Falconridge has not been repaid in whole or in part. No response whatsoever to the demand was received. Attached hereto and marked as **Appendix "L"** is a true copy of the demand letter.

615146 ONTARIO LTD.

32. A corporate search indicates that Bruno Gottardo (“Bruno”) is the sole director and officer of 615146 Ontario Ltd. (“615146”). A copy of the corporate search for 615146 is attached hereto as **Appendix “M”**.
33. Based upon the Receiver’s review of the Construction books and records, Construction is owed \$107,484.80 from 615146 summarized as follows:

Due from 615146 Ontario Ltd.	
Per the November 30, 2013 audited financial statements	250,000.00
Payments received from 615146 Ontario Ltd. during 2014	(70,000.00)
Payments received from 615146 Ontario Ltd. during 2015	(25,000.00)
Payroll Transfer	(47,515.20)
Total due to Construction from 615146 Ontario Ltd.	107,484.80

34. Attached hereto and marked **Appendix “N”** is a true copy of the Construction general ledger confirming the amount recorded as owing by 615146 to Construction.
35. On September 21, 2015, the Receiver, through its counsel made demand upon 615146 for payment of the outstanding amount owed to the Debtors. Despite demand, the amount due and owing by 615146 to the Debtors has not been repaid in whole or in part. No response whatsoever to the demand was received. Attached hereto and marked as **Appendix “O”** is a true copy of the demand letter.

DAVID GOTTARDO

Construction

36. Based upon a review of Construction's available books and records, the amount due to Construction from David is \$149,791.43 summarized as follows:

Due from David Gottardo	
Per November 30, 2013 audited financial statements	268,257.88
Payments made on behalf of D. Gottardo during 2014	82,512.83
Payments made on behalf of D. Gottardo during 2015	49,020.72
Payments received from D. Gottardo	(250,000.00)
Total due to Construction from David Gottardo	149,791.43

37. The Construction books and records report payments made by Construction on behalf of David paid to Bank of Montreal on a monthly basis each in the amount of \$6,127.95. Attached hereto and marked as **Appendix "P"** are true copies of the relevant bank statements.
38. There are also two transactions totaling \$8,981.75 comprised of: \$1,590.00 TD Canada Trust and \$7,391.75 Visa. Attached hereto and marked as **Appendix "Q"** is the general ledger detail which shows these amounts recorded in the amount due from David.
39. On September 21, 2015, the Receiver, through its counsel made demand upon David for payment of the outstanding amount owed to Construction. Despite demand, the amount due and owing by David to Construction has not been repaid in whole or in part. No response whatsoever to the demand was received. Attached hereto and marked as **Appendix "R"** is a true copy of the demand letter.

Site Servicing

40. During the Examination, David stated that the shares of Site Servicing are owned by a numbered company; however, the Site Servicing tax return indicates David personally holds 100% of the shares.
41. Based upon a review of Site Servicing's available books and records, the amount due to Site Servicing from David at the Receivership Date is \$212,400. Attached hereto and marked as **Appendix "S"** is the general ledger detail showing the foregoing amount. The balance is in a receivable position. This same amount is shown as a receivable on the 2013 audited financial statements.

2346193 ONTARIO LTD.

42. The Construction books and records disclosed that Construction represented to its External Auditor that the amount of \$2,126,997.47 was due and owing from 2346193 Ontario Ltd. ("2346193") as at November 30, 2014. Moreover, it appears that Construction prepared accounts receivable confirmation letters including one addressed to 2346193 dated April 23, 2015 on behalf of the External Auditor. The confirmation letter was intended to confirm the balance owing to Construction as at November 30, 2014. The Receiver understands that, based upon its discussions with the External Auditor, the letter was not sent as the 2014 audit was not completed. Attached hereto and marked **Appendix "T"** is a true copy of the correspondence.

43. On October 27, 2015 and November 13, 2015 the Receiver, believing the amount was a trade receivable, made demand upon 2346193. Attached hereto and marked **Appendix “U”** are true copies of the correspondence with enclosures.
44. On November 11, 2015, the Receiver received correspondence from 2346193 indicating they would respond to the Receiver’s demand shortly. Attached hereto and marked **Appendix “V”** are true copies of the correspondence with enclosures.
45. In response to the demand letters, the Receiver received correspondence from 2346193’s lawyer John Spina of Davis, Spina and Falquez denying liability on behalf of 2346193 in respect of the trade receivable. Attached hereto and marked collectively as **Appendix “W”** are true copies of the correspondence from John Spina.
46. Based upon a review of the books and records of Construction and documentation provided by the External Auditor, it appears that historically transactions between Construction and 2346193 had been recorded as loans to 2346193 or as Sundry Receivables. A review of the bank statements and information provided by TD Bank shows that Construction made wire transfers to 2346193 during 2014 and 2015 totaling \$625,100. The wire transfers were recorded in the Sundry Receivables account in Construction’s books and records. Attached hereto and marked collectively as **Appendix “X”** are the bank statements showing the wire transfers, an email from TD Bank confirming the transfers were made to 2346193 or to 2346193’s counsel Davis, Spina and Falquez, the general ledger detail for Sundry Receivables and the general ledger detail for the Loan Receivable from 2346193.

47. The books and records of Construction show that during 2014, the amount in Sundry Receivables associated with 2346193 was transferred to trade receivables. The amount which was transferred from the Sundry Receivables to trade receivables was \$1,882,298.65. HST of \$244,698.74 was added to this amount. A total of \$2,126,997.47 is shown in trade receivables. Attached hereto and marked as **Appendix "Y"** is a copy of the trade accounts receivables listing at the Date of Receivership.

48. The following table summarizes the activity associated with 2346193.

Due from 2346193 Ontario Ltd.		
Per the November 30, 2013 audited financial statements		869,393.65
Wire transfers made on:		
21-Jan-14		50,000
26-Feb-14		103,000
18-Mar-14		102,000
03-Jun-14		30,000
09-Jun-14		11,100
05-Sep-14		120,000
21-Nov-14		75,000
10-Dec-14	[1]	15,000
22-Dec-14	[2]	17,000
09-Jan-15	[1]	25,000
01-Apr-15	[1]	20,000
30-Apr-15	[1]	25,000
29-May-15		32,000
Due from 2346193 based on Nov 2013 audit plus cash advances		1,494,493.65
Other		387,805.00
Transferred from Sundry Receivable to trade receivable	[3]	1,882,298.65
HST @ 13%		244,698.82
Amount invoiced and included in trade receivable due from 2346193	[4]	2,126,997.47

Notes:

[1] These amounts, totaling \$102,000 were paid to 2346193 and recorded in the loan due from Kleinridge account.

[2] This amount was paid to Davis Spina and Falquez and recorded in the due from Kleinridge account.

[3] Represents the amount transferred from "Sundry Receivables" and described as "to invoice 2346193".

[4] Represents the amount shown in trade receivables listing due from 2346193 Ontario Ltd.

49. Based upon the fact that Construction made cash advances to 2346193 and that 2346193 denies the amount relates to work performed by Construction, the Receiver believes the amount is not trade in nature but rather a loan.
50. On March 2, 2016, the Receiver, through its counsel made demand upon 2346193 for payment of the outstanding amount owed to Construction. Despite demand, the amount due and owing by 2346193 has not been repaid in whole or in part. Attached hereto and marked as **Appendix “Z”** is a true copy of the demand letter.
51. On March 7, 2016, the Receiver’s counsel Chaitons LLP received correspondence from John Spina denying liability on behalf of 2346193. Attached hereto and marked as **Appendix “AA”** is a true copy of the March 7, 2016 letter.

2303663 ONTARIO LTD.

52. A corporate search indicates that Bruno and David are the directors and officers of 2303663 Ontario Ltd. (“2303663”). A copy of the corporate search for 2303663 is attached hereto as **Appendix “BB”**.
53. The Receiver’s review of the Construction books and records show a related party receivable owed to Construction by 2303063 in the amount of \$434,805.00 at November 30, 2013. Attached hereto and marked as **Appendix “CC”** is a true copy of the relevant page from the Construction 2013 Audited Financial Statements and supporting documentation provided by the External Auditor.

54. On March 1, 2016, the Receiver, through its counsel made demand upon 2303663 for payment of the outstanding amount owed to Construction. Despite demand, the amount due and owing by 2303663 has not been repaid in whole or in part. No response whatsoever to the demand was received. Attached hereto and marked as **Appendix “DD”** is a true copy of the demand letter.

2191673 ONTARIO LTD.

55. A corporate search indicates that Bruno and David are the directors and officers of 2191673 Ontario Ltd. (“2191673”). A copy of the corporate search for 2191673 is attached here to as **Appendix “EE”**.

56. The Receiver’s review of the Construction books and records show a related party receivable owed to Construction by 2191673 Ontario Ltd. in the amount of \$45,000.00 at November 30, 2013. Attached hereto and marked as **Appendix “FF”** is a true copy of the relevant page from the Construction 2013 Audited Financial Statements and supporting documentation from the External Auditor.

57. Based upon the books and records of Construction, it appears that journal entries were recorded that transfer the amount from due from 2191673 to due from Kleinridge.

58. On March 1, 2016, the Receiver, through its counsel made demand upon 2191673 for payment of the outstanding amount owed to Construction. Despite demand, the amount due and owing by 2191673 has not been repaid in whole or in part. No response whatsoever to

the demand was received. Attached hereto and marked as **Appendix “GG”** is a true copy of the demand letter.

BRUNO GOTTARDO

59. During the Examination, David stated that the shares of Construction are owned by Bruno (p. 9, Q. 19).
60. Construction’s books and records show a shareholder loan receivable in the amount of \$110,242.52. Attached hereto and marked as **Appendix “HH”** is a true copy of the relevant page showing the shareholder loan receivable.
61. On March 8, 2016, the Receiver, through its counsel made demand upon Bruno for payment of \$110,242.57. Despite demand, the amount due and owing by Bruno has not been paid in whole or in part. Attached hereto and marked as **Exhibit “II”** is a true copy of the demand letter.

CONCLUSION AND RECOMMENDATION

62. The Receiver recommends and requests an order granting judgement against those parties in the following amounts:

Loans and advances receivable	
Construction:	
Kleinridge Investments Inc.	2,756,346.60
Falconridge Corporation	398,000.00
615146 Ontario Ltd.	107,484.80
David Gottardo	149,791.43
2346193 Ontario Ltd.	2,126,997.47
2191673 Ontario Ltd	45,000.00
2303663 Ontario Ltd.	434,805.00
Bruno Gottardo	110,242.52
Total Construction	6,128,667.82
Site Servicing:	
Kleinridge Investments Inc.	128,238.14
David Gottardo	212,400.00
Total Site Servicing	340,638.14
Total amount due to Construction and Site Servicing	6,469,305.96

All of which is respectfully submitted this 11th day of March, 2016.

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