

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
JUSTICE **NEWBOULD**)
)

MONDAY, THE 9TH
DAY OF NOVEMBER, 2015

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

ORDER


THIS MOTION made by BDO Canada Limited, in its capacity as Court-appointed receiver (the “**Receiver**”) of the property, assets and undertakings of B. Gottardo Construction Ltd. and B. Gottardo Site Servicing Limited (collectively, the “**Debtors**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report of the Receiver dated November 3, 2015 (the “**Second Report**”) and the Appendices thereto, the Confidential Supplement to the Second Report dated November 3, 2015 (the “**Confidential Report**”) and the Appendices thereto, the Supplement to the Second Report dated November 8, 2015 and the Appendices thereto, and on hearing the submissions of counsel for the Receiver and other counsel listed on the Counsel Slip, no one else from the service list appearing although duly served as appears from the affidavit of service of Antoinette DePinto sworn November 4, 2015, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF SECOND REPORT AND THE RECEIVER’S ACTIVITIES

2. **THIS COURT ORDERS** that the Second Report, and the activities of the Receiver as described therein, be and are hereby approved. *subject to issues raised in the Affidavit of David Gottardo sworn November 6, 2015.* 

APPROVAL OF LIQUIDATION SERVICES AGREEMENT

3. **THIS COURT ORDERS** that the Liquidation Services Agreement dated October 19, 2015 (the “**Liquidation Services Agreement**”) between the Receiver, Corporate Assets Inc. and Century Services Inc. (collectively, the “**Auctioneer**”), and the transaction contemplated therein (the “**Transaction**”) be and are hereby approved, and the execution of the Liquidation Services 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.

4. **THIS COURT ORDERS AND DECLARES** that upon the Auctioneer completing the sale of any of the assets to a purchaser, and upon receipt of the purchase price by the Auctioneer and delivery by the Auctioneer of an instrument of transfer to the purchaser (the “**Transfer Instrument**”) all of the Debtors' right, title and interest in and to the assets described in the Transfer Instrument shall vest absolutely in such 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 Mr. Justice Newbould dated August 10, 2015; and (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.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the monies payable to the Receiver under the Liquidation Services Agreement from the sale of the assets shall stand in the place and stead of such assets, and that from and after delivery of the Transfer Instrument all Claims shall attach to the net proceeds from the sale of the assets with the same priority as they had with respect to the assets immediately prior to the sale, as if the 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.

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

- (a) the pendency of these proceedings; and

(b) the bankruptcy of the Debtors,

the vesting of the assets in a purchaser pursuant to this Order shall be binding on the trustee in bankruptcy of the Debtors and shall not be void or voidable by creditors of the Debtors, 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.

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

ENGAGEMENT OF FORMER EMPLOYEE

8. **THIS COURT ORDERS** that the terms of the engagement between the Receiver and a former employee of the Debtors, as set out in the Second Report and the Confidential Report, be and are hereby approved.

SEALING

9. **THIS COURT ORDERS** that the Confidential Report and the Appendices thereto are hereby sealed and shall not form part of the public record pending further order of the Court.



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

NOV 09 2015



THE TORONTO-DOMINION BANK

Applicant

B. GOTTARDO CONSTRUCTION LTD. ET AL.

- and -

Respondents

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

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

Proceedings commenced at TORONTO

ORDER

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Lawyers for the BDO Canada Limited

- and -

Court File No. CV15-11054-00CL

Nov 9/15

November 9, 2015

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at Toronto

MOTION RECORD
OF THE RECEIVER
(returnable November 9, 2015)

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Lawyers for BDO Canada Limited,
Court-appointed Receiver

90 minutes.
No confidential requirement to the court.
Agreed of the receiver is to be sealed.
The liquidator's duties agreed to the
subject to the premises being referred to the
can stand in brown street location by Nov 31/15.

