

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

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

November 3, 2015

APPENDICES

- "A" Affidavit of Emily Randle
- "B" Receivership Order
- "C" Confidential Information Memorandum
- "D" Redacted Liquidation Services Agreement
- "E" Disputed Assets
- "F" Email Regarding Encumbered Assets
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- "I" Trust Agreement
- "J" Correspondence re Joint Venture
- "K" Summary of Receipts and Disbursements

INTRODUCTION AND PURPOSE OF THE SECOND 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. The Debtors operated from three adjacent leased facilities municipally known as 132 Ashbridge Circle (“**132 Ashbridge**”), 148 Ashbridge Circle (“**148 Ashbridge**”) and 150 Ashbridge Circle (“**150 Ashbridge**”), Vaughan, Ontario (collectively the “**Vaughan Premises**”).

3. The Debtors are indebted to The Toronto-Dominion Bank (“**TD Bank**”), the Debtors’ senior secured lender, with respect to certain credit facilities made available by TD Bank pursuant to and under the terms of a letter of agreement dated September 22, 2011 (the “**Credit Agreement**”). Each of the Debtors is liable for the credit facilities, as each was a signatory to the Credit Agreement as borrower and each has provided an unlimited guarantee of the other’s indebtedness to TD Bank. The indebtedness of the Debtors to TD Bank was secured by various security agreements creating a security interest in substantially all of their property and assets.

4. On June 11, 2015, TD Bank made written demand on the Debtors for payment of their indebtedness to the bank (the “**Debtor Demand Letter**”). The Debtor Demand Letter was accompanied by a Notice of Intention to Enforce Security issued pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended (“**BIA**”). At the time of

the demand, the Debtors were indebted to TD Bank in the amount of approximately \$15.8 million.

5. The lending relationship between the Debtors and TD Bank, and the circumstances that led to TD Bank seeking the Receiver's appointment, is set out in the Affidavit of Emily Randle sworn July 28, 2015, a copy of which (without exhibits) is attached hereto as **Appendix "A"**. BDO Canada Limited was appointed as the receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of the Debtors (collectively, the "**Assets**"), pursuant to the order of the Honourable Mr. Justice Newbould made August 10, 2015 (the "**Receivership Order**"), a copy of which is attached hereto as **Appendix "B"**.

6. The Receiver has retained Chaitons LLP as its independent legal counsel.

7. The purposes of this Second Report are to:

- (a) inform the Court of the activities of the Receiver taken to date, in particular with respect to the sale and marketing process conducted by the Receiver with respect to the Assets, and to request the Court's approval of the actions of the Receiver taken to date as described herein;
- (b) advise of the proposed liquidation of the parts inventory and equipment (collectively, the "**Auctioned Assets**") by Corporate Assets Inc. and Century Services Inc. (the "**Auctioneer**") pursuant to a Liquidation Services Agreement dated October 19, 2015 (the "**Liquidation Services Agreement**"), which is subject to the Court's approval;
- (c) request approval of the Receiver's engagement of a former employee of the Debtors, who will provide assistance to the Receiver in determining the

quantum of the outstanding receivable and related litigation with the City of Mississauga (the "City");

- (d) request an order sealing the Confidential Supplement to the Second Report and the appendices annexed thereto (the "Confidential Supplemental Report"), in order to preserve confidentiality of the engagement with the former employee and to preserve the integrity of the sale and marketing process, until further Order of the Court;
- (e) request an Order requiring Mr. Bruno Gottardo to return a certain Ford F150 to the Receiver pending determination of the priority between TD Bank and Ford Credit to the vehicle; and
- (f) inform the Court regarding certain assets claimed by B&L Gottardo (referred to herein as the Disputed Assets) and seek the Court's advice and directions as to whether the Disputed Assets may be sold by the Receiver via the auction to be conducted by the Auctioneer;
- (g) request an order declaring that the interest of Daland in the Joint Venture (as each term is defined below) is held in trust by Daland for the benefit of Construction;
- (h) request an order requiring 1631057 Ontario Inc. ("163 Ontario") to provide access to its books and records to the Receiver and copies of its externally and internally prepared financial statements for the fiscal years ended 2012, 2013, 2014 and the interim financial statements for 2015; and
- (i) request an order restraining Daland, 163 Ontario, 207 Ontario and Idacris (as each term is defined below) from directly or indirectly selling, mortgaging,

dissipating, alienating, transferring, encumbering or otherwise dealing with Daland's or Construction's interest in the Joint Venture pending further order of the Court.

BACKGROUND

8. The Debtors are privately-owned corporations that provided large scale construction services, including infrastructure projects for government entities as well as site servicing for developers in Ontario. The Debtors provided the services to various customers within the Greater Toronto Area.

9. The Debtors' operated from the Vaughan Premises. The Receiver understands that the Vaughan Premises are owned by parties related to the principals of the Debtors. Significant portions of the owned and leased equipment used in the Debtors' operations are stored at 132 Ashbridge and 148 Ashbridge ("**132-148 Ashbridge**"). The balance of the Debtors' owned and leased equipment is located at the Ritchie Brother's Bolton property (the "**Bolton Facility**") and various construction sites within the Greater Toronto Area (the "**Construction Sites**").

10. TD Bank was the Debtors' primary operating lender. As security for its obligations to TD Bank, the Debtors granted a security interest to TD Bank in substantially all of their Assets, including, without limitation, pursuant to General Security Agreements ("**GSA**") and a Chattel Mortgage which were granted on October 27, 2011.

11. During 2010, Construction entered into a contract with the Corporation of the City of Mississauga, referred to as the Bus Rapid Transit Project ("**BRT Project**"). The contract was significant, with a price in excess of \$100 million. Numerous delays were experienced on the BRT Project, resulting in disputes between the City and Construction. The contract was ultimately terminated by the City in February 2015.

12. In or around March 2015, the City commenced an action against Construction seeking breach of contract damages. Construction responded by filing a claim for lien for the balance owing under the contract, in excess of \$10 million, and a counterclaim against the City for approximately \$15 million. The action remains outstanding. In addition to the amounts noted above, the Construction books and records show approximately \$4.6 million (excluding HST) as being due by the City to Construction in respect of holdbacks. Due to the receivable being in dispute and non-payment by the City, the receivable was not eligible for the purposes of calculating margin availability under the Debtors' credit facilities with TD Bank, resulting in the TD Bank operating line being over drawn by the Debtors as at February 2015. This was not discovered by TD Bank until June 2015.

13. As a result of liquidity issues, the Debtors failed to make payments to their subcontractors, suppliers and other creditors on a timely basis, which resulted in these parties registering liens against construction projects to which they had supplied materials and/or services.

14. Prior to August 10, 2015 and as a result of their liquidity issues and lack of availability under their TD Bank credit facilities, the Debtors were unable to make payroll and pay other obligations as they came due. As of August 10, 2015, the Debtors had not paid their employees in respect of two pay cycles. As a result of non-payment, the majority of the Debtors' employees did not report to work on or about July 29, 2015.

15. From August 10, 2015 to the date of this Second Report, no customers have made any payments to the Receiver in respect of the outstanding amounts under their respective contracts with the Debtors. In order to preserve the rights of the Debtors, the Receiver registered liens against the properties improved by the Debtors in the total approximate amount of \$3.6 million, which are summarized below (the "**Liened Projects**").

Summary of Receiver's Liens	
Construction:	
Sundial Homes (Sharon) Limited	\$ 895,549
Holland Green Developments	484,292
LRT Technologies	431,401
Ringley Construction Ltd.	117,784
2280900 Ontario Inc.	100,076
Total liens Construction [A]	2,029,102
Site Servicing:	
Tribute Nobelton Holdings Corp	1,226,976
2280900 Ontario Inc.	267,184
Ringley Construction Ltd.	43,867
Total liens Site Servicing [B]	1,538,027
Total liens - Construction & Site Servicing [A+B]	\$ 3,567,129

INITIAL RECEIVERSHIP ACTIVITIES

16. On August 10, 2015, the Receiver attended at the Vaughan Premises and the Construction Sites to take possession and secure the Debtors' Assets situated at each of the locations. The initial activities of the Receiver included:

- (a) changing locks;
- (b) contacting the utilities, alarm and insurance providers to give notice of the receivership and arrange for continued services;
- (c) meeting with the Debtors' management and certain employees to discuss the plans for the receivership administration including determining which of the Debtors' employees should be retained on a temporary basis to assist the Receiver with billing and collection of accounts receivable, contacting customers, updating and maintaining accounting records, preparing T-4's and records of employment, as well as other administrative duties;

- (d) taking an inventory of the owned and leased equipment and retaining a third party to move the equipment located at the Construction Sites and relocate it to the secured Bolton Facility;
- (e) placing notices on the owned and leased assets physically located at the Construction Sites in an effort to safeguard the equipment;
- (f) reviewing the Debtors' books and records to identify potential priority claims;
- (g) identifying third party owned goods and releasing such goods to third parties once proof of ownership was established;
- (h) responding to creditor and employee inquiries;
- (i) preparing and issuing the prescribed notices and statements of the Receiver pursuant to sections 245(1) and 246(1) of the BIA;
- (j) contacting equipment lessors, requesting that they provide proof of their security, and, where the security was valid and there was no equity in the leased equipment, releasing such equipment to the lessors;
- (k) sending notices, instructions and proofs of claim to the former employees of the Debtors pursuant to the prescribed requirements of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1, as amended (the "*WEPPA*");
- (l) identifying construction projects in progress and having discussions with the Debtors employees to determine whether the projects could be completed; and

- (m) registering construction liens over the Liened Projects on which the Debtors provided materials and/or services and for which they had not received payment.

SALES AND MARKETING EFFORTS

17. Pursuant to its powers contained in the Receivership Order, the Receiver initiated a sales and marketing process (the "Sales Process") to invite offers to purchase the Assets of the Debtors on an *en bloc* or on a specific asset parcel basis. The Sales Process consisted of the following steps:

- (a) preparing a contact list of potential purchasers;
- (b) preparing a confidential information memorandum (the "CIM") to invite offers to purchase the Assets, which included the terms and conditions of sale (the "Terms and Conditions of Sale") and an offer form (the "Offer Form"). A copy of the CIM is attached hereto as **Appendix "C"**. The Terms and Conditions of Sale included in the CIM requested that offers be submitted by no later than 5:00 pm on October 5, 2015 (the "Offer Deadline") and that the following be provided with the Offer Form:
 - (i) Identity of the purchaser
 - (ii) Indication of the parcel of assets to be purchased and the dollar value of the offer by asset;
 - (iii) Whether the offer was to be considered as an *en bloc* offer;
 - (iv) The total dollar value of the offer submitted; and

- (v) A deposit equal to 10% of the offer price.
- (c) advertisement of the sale opportunity in the national edition of the Globe & Mail on September 14, 2015 and September 22, 2015. The September 22, 2015 advertisement included the sale of the equipment and the contracts in progress;
- (d) providing access to prospective purchasers to the Vaughan Premises and the Bolton Facility to view the Assets;
- (e) providing site visits;
- (f) responding to additional information requests and questions;
- (g) receiving and reviewing the proposals; and
- (h) selecting a successful bidder, executing the Liquidation Services Agreement, and preparing to seek Court approval to close the transaction.

18. The Debtors' machinery and equipment consists of heavy construction equipment including: excavators, graders, service trucks, loaders and dozers. This equipment is large in nature and not easily transported. The Debtors advised the Receiver that hauling the equipment would require it to be dismantled and carried via float vehicles.

19. Prior to August 10, 2015, the Debtors had engaged Century Services Inc. ("Century Services") to appraise the machinery and equipment (the "Century Services Appraisal"). The appraisal is annexed as **Appendix "A"** to the Confidential Supplemental Report and is the subject of a request for a sealing order.

20. By the Offer Deadline, eight liquidation proposals were received, no *en bloc* offers were received, and no offers were received to continue the contracts of the Debtors.

21. The Receiver reviewed and assessed the eight liquidation proposals. A comparison of the proposals including the key terms is set out in a summary annexed as **Appendix "B"**, to the Confidential Supplemental Report. Copies of the proposals are annexed as **Appendices "C" to "K"** to the Confidential Supplemental Report.

22. The Receiver considered the net minimum guarantee offer ("**NMG**") submitted by the Auctioneer as the best offer, as the Auctioneer's proposal provides for: (i) the highest proceeds of all proposals received; (ii) a deposit (10% of the NMG) at the time of signing the Liquidation Services Agreement); (iii) a threshold in excess of the NMG which accrues to the Auctioneer and provides upside potential to the receivership estate in comparison to the outright purchase offers; (iv) the share of proceeds accruing to the Receiver in excess of the threshold at 95% is higher than all other liquidation proposals; and (v) the Auctioneer agreed to assume the cost of moving the Debtors' assets from the various Construction Sites and the Bolton Facility. Accordingly, the Receiver, with the agreement of TD Bank, accepted the Auctioneer's proposal, negotiated and executed the Liquidation Services Agreement, subject to Court approval. A redacted copy of the Liquidation Services Agreement is attached hereto as **Appendix "D"**. An unredacted copy of the Liquidation Services Agreement is attached as **Appendix "L"** to the Confidential Supplemental Report.

23. The Auctioneer required the Receiver to obtain a Court order that, among other things: (i) approves the Liquidation Services Agreement and the transactions contemplated herein; (ii) authorizes the Receiver to enter into the Liquidation Services Agreement; (iii) authorizes the Auctioneer to act as the agent for the Receiver in selling the Auctioned Assets that are subject to the Liquidation Services Agreement; and (iv) provides that upon execution

of an instrument of transfer, substantially in the form attached **Appendix "M"** to the Confidential Supplemental Report, title to the Auctioned Assets will vest in the ultimate purchasers thereof free and clear of all liens and encumbrances.

24. The liquidators/auctioneers who submitted offers indicated to the Receiver that their proposals contemplated leaving the assets situated at 132-148 Ashbridge at that location and moving the assets located on Construction Sites and the Bolton Facility to a third party location. The liquidators/auctioneers indicated that they believed moving all of the assets to one location would not enhance the realization proceeds. The liquidators/auctioneers who submitted offers also advised the Receiver that a large percentage of equipment purchased at auction is completed via on-line bids as opposed to live bidding. As a result of the foregoing, the auctioneers believe that conducting an auction from two auction sites would not negatively impact the realization proceeds. They further indicated that the cost of relocating all the Assets to one location would be significant and would erode the value to the receivership estate.

25. In the event that the Liquidation Services Agreement is approved by the Court, the Auctioneer will be holding the auction on December 10, 2015.

LEASED ASSETS

26. The Receiver analyzed the available equity in leased assets based upon the Century Services Appraisal as well as discussions with certain liquidators/auctioneers. Century Services indicated that the appraisal of the leased equipment considered the then current quality and condition of those leased items. The Receiver's analysis considered the lessor's buyout amounts. The analysis shows that there was no equity in the vast majority of the leased assets. Accordingly, the Receiver contacted the lessors and advised that the Receiver had no interest in the equipment and, upon receipt of an executed release, the Receiver

commenced returning the leased equipment to the lessors. The Receiver has requested that the lessors provide an accounting of the sale proceeds, and should the sale proceeds exceed the buyout and lien amounts, the excess, if any, be remitted to the Receiver.

DISPUTED ASSETS AND OTHER ASSETS

Disputed Assets

27. The former management of the Debtors, specifically Mr. David Gottardo and Mr. Bruno Gottardo (collectively, the "Gottardos"), claim that certain assets listed in the CIM are not assets of the Debtors and should not be sold by the Receiver (referred to herein as the Disputed Assets). The Gottardos represented that the Disputed Assets are owned by B & L Gottardo Bros. Excavating Ltd. ("B&L"), an entity of which Mr. Bruno Gottardo is a director. Counsel for the Gottardos provided a listing, a copy of which is attached hereto as **Appendix "E"**, detailing the Disputed Assets. In addition, an appraisal dated February 26, 1999 was provided in support of the Gottardos ownership claim. The Receiver has been advised by the Gottardos that the equipment appraisal was commissioned, 18 years prior to the Receiver's appointment, for the purposes of assisting a business valuator, BDO Dunwoody, with the business valuation of B&L in connection with a shareholder dispute.

28. TD Bank asserts that the Disputed Assets are encumbered by and form part of the assets subject to TD Bank's security, as the Disputed Assets were included in asset listings provided to TD Bank in support of the original loan advanced to the Debtors during 2011.

29. In October 2011, Construction retained Century Services to provide an appraisal of its machinery and equipment for financing purposes. TD Bank has informed the Receiver that this appraisal was provided to the bank in support of the Debtors' request for financing. The Disputed Assets were listed as assets of Construction and were included in the appraisal, and

the appraisal indicates that Century Services relied on the records and information received from Construction in conducting the appraisal.

30. Also attached hereto as **Appendix "F"** is a copy of an email chain between TD Bank and Mr. David Gottardo dated March 27, 2015, wherein the parties discuss "bulge financing". The email chain commences with Mr. David Gottardo writing to Mr. John Tyrrell of TD Bank and stating:

"I was thinking after our conversation on the telephone, I don't know which pieces of equipment the bank has encumbered or a specific charge against. If you could or have a list of the equipment which the bank has, please send it to me so I can see which equipment is available to lend against."

31. Mr. Tyrell provided a listing and responded:

"Please find the list of equipment attached. We can look at financing the one's marked "x" if they are free and clear with no liens registered against them. When we last did a look at the PPSA registration, these pieces of equipment were already financed by other lenders".

32. The Disputed Assets are included on the listing attached to the email, indicating TD Bank's understanding that the items had been pledged to TD Bank as security in support of its original loan advance to the Debtors. The Disputed Assets are not items marked with "x", which would denote that the items are encumbered by another party. Accordingly, TD Bank has asserted that the Disputed Assets form part of the assets subject to its security and should not be released to the Gottardos.

33. Based upon the books and records of the Debtors, it appears that:

- (a) the original sales invoices for the Disputed Assets are in the name of B&L and the original purchase dates range from 1970 to 1994;

- (b) Construction commissioned the Century Services Appraisal in support of a request for additional financing from TD Bank. The Disputed Assets were included on the listing of assets provided to Century Services;
- (c) the Disputed Assets are insured, and premiums were paid, by the Debtors;
- (d) repairs and maintenance related to the Disputed Assets appeared to have been billed to and paid for by the Debtors; and
- (e) the Receiver is unaware of any rental agreements between B&L and the Debtors in respect of use of the Disputed Assets.

34. The Disputed Assets were included in the asset listing in the CIM, with the majority of the assets segregated in Parcel #3, and are included in the Auctioned Assets to be auctioned by the Auctioneer.

35. As a result of the opposing positions taken by the Gottardos and TD Bank with respect to the Disputed Assets, the Receiver seeks the advice and directions of the Court regarding whether the Disputed Assets should be included in the Auctioned Assets to be auctioned by the Auctioneer pursuant to the Liquidation Services Agreement on December 10, 2015.

Ford F150

36. There are currently two vehicles in the possession of the Gottardos. The Receiver is agreeable to selling one vehicle, a BMW, to the Gottardos at a price which is supported by an appraisal. The Receiver has requested that the second vehicle, a Ford F150 (the "Ford F150"), be returned, as there is significant equity in the vehicle. As of August 10, 2015, the Ford F150 was leased with Ford Canada Credit ("Ford Credit"). The Receiver's counsel reviewed Ford Credit's security and has advised the Receiver that it does not rank ahead of TD Bank's security in the Ford F150. Without consulting the Receiver, Ford Credit either sold

or re-leased the Ford F150 to Mr. Bruno Gottardo. Despite requests for the return of the vehicle, it remains in Mr. Bruno Gottardo's possession.

Furniture located at 150 Ashbridge

37. Discussions with Mr. David Gottardo and Mr. Marco Bellisario (the "150 Owners") indicate that they are co-owners of the facility located at 150 Ashbridge and claim that these premises were acquired several years ago and included the land, building and furniture. The 150 Owners produced a bill of sale to support their ownership claim in the furniture located at 150 Ashbridge. The Receiver makes no claim to the furniture and has excluded the furniture from the assets that were the subject of the CIM.

Investment in Joint Venture

38. The 2013 audited financial statements of Construction show that during that fiscal year Construction acquired, for \$1.1 million, an investment in a joint venture (the "Joint Venture") from an entity under common control. The Receiver understands that the company under common control is Daland, an entity of which Mr. David Gottardo is a director and president. A copy of a Corporate Profile Report for Daland is attached hereto as **Appendix "G"**.

39. The 2013 audited financial statements further show that during 2013, Construction contributed \$1.2 million to the joint venture, resulting in a total investment of \$2.2 million. A copy of the 2013 financial statements are attached hereto as **Appendix "H"**.

40. The Receiver obtained from the external accountant a copy of the joint venture agreement along with a trust agreement. The joint venture agreement was entered into on November 1, 2004 between 2075568 Ontario Inc. ("207 Ontario"), Idacris Investments Inc. ("Idacris"), Daland and 163 Ontario. Based upon the joint venture agreement, 163 Ontario is

the operator and 207 Ontario (50% ownership), Idacris (25% ownership) and Daland (25% ownership) are the owners. A copy of the joint venture agreement is attached as **Appendix "N"** to the Confidential Supplemental Report.

41. The trust agreement, a copy of which is attached hereto as **Appendix "I"**, was entered into on April 1, 2013. The trust agreement shows that Daland holds in trust the investment in the joint venture in trust for Construction.

42. The Receiver, through its counsel, requested that 163 Ontario provide it with access to the books and records of the joint venture in order to understand the value of Construction's investment. 163 Ontario has declined the Receiver's request indicating that it does not recognize Construction's interest in the joint venture as the joint venture agreement prohibits the sale, exchange, transfer, etc. of a co-owners interest. Copies of the correspondence are collectively attached hereto as **Appendix "J"**.

43. The Receiver is requesting that order be granted declaring that the interest of Daland in the Joint Venture is held in trust by Daland for the benefit of Construction.

44. The Receiver has concern that given Construction's significant investment and 163 Ontario's position regarding the validity of the trust agreement, that Construction's interest may be further transferred or alienated resulting in a dissipation of the value of this asset. The Receiver requests that the Court issue an order restraining Daland, 163 Ontario, 207 Ontario and Idacris from directly or indirectly selling, mortgaging, dissipating, alienating, transferring, encumbering or otherwise dealing with Daland's or Construction's interest in the Joint Venture pending further order of the Court.

ENGAGEMENT OF FORMER EMPLOYEE

45. Prior to the Receiver's appointment, Construction had registered a lien on the BRT Project in the amount of \$10.1 million and had commenced litigation against the City. In an effort to obtain the details of the project and the merits of pursuing the litigation with the City, the Receiver retained the services of a former employee of the Debtors. The terms of the agreement are detailed in the Confidential Supplemental Report.

POTENTIAL PRIORITY CLAIMS

46. Numerous property claims have been received since the Receiver's appointment. The Receiver reviewed the claims along with supporting documentation and released the assets to their owners as appropriate. The Receiver continues to retain possession of leased equipment where priority to the equipment is in dispute. No 30 day goods claims were received.

47. The Receiver reviewed the books and records of the Debtors and identified the following potential priority claims:

- (a) Secured employee wage claims under section 81.4 of the BIA totaling approximately \$149,000.
- (b) Source Deductions - Canada Revenue Agency ("CRA") conducted its source deductions audit and the Receiver is expecting CRA to submit its deemed trust claim in the near future.
- (c) Unremitted pension contributions - the Labourers' International Union of North America, Local 183 has submitted a claim asserting a super priority under section 81.6 of the BIA for unremitted pension contributions, which it estimates at \$121,774. The International Union of Operating Engineers, Local 793 has submitted a claim asserting a super priority under section 81.6 of the BIA for

unremitted pension contributions, which it estimates at \$21,103. The Receiver is investigating these claims.

- (d) HST - 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. Accordingly, HST is not a priority claim in the receivership estates.

SUMMARY OF RECEIPTS AND DISBURSEMENTS

48. The Receiver currently holds approximately \$393,000 in its trust accounts. The majority of the receipts relate to the deposit from the Auctioneer and Receiver borrowings. A summary of the Receipts and Disbursements is appended hereto as **Appendix "K"**.

CONSTRUCTION LIENS

49. As part of its pre-receivership operations, the Debtors had been contracted to provide construction services and/or supply materials to premises owned by certain customers. The customers have advised that liens pursuant to the *Construction Lien Act, R.S.O. 1990, c.30* as amended (the "CLA"), have been registered against their properties by subcontractors. As of the date of this Second Report, the customers continue to be indebted to the Debtors and each customer has expressed apprehension regarding payment to the Receiver in light of the liens registered against their respective properties.

50. In order to preserve the Debtors' rights, the Receiver has also registered liens on behalf of the Debtors against the properties owned by customers.

SUMMARY AND RECOMMENDATIONS

51. The Receiver is satisfied that the Sale Process sufficiently exposed for sale the business and Assets of the Debtors to the marketplace. Furthermore, the Receiver is of the view that the Auctioneer's offer under the Liquidation Services Agreement constitutes the best offer for the sale of the Auctioned Assets. The Receiver's recommendation is supported by TD Bank.

52. Accordingly, the Receiver respectfully requests an order:

- (a) approving the Receiver's activities as set out herein;
- (b) approving the Liquidation Services Agreement and the sale of the Auctioned Assets pursuant to the terms of the Liquidation Services Agreement;
- (c) authorizing and directing the Receiver to take such steps as necessary to carry out the terms of the Liquidation Services Agreement;
- (d) vesting title to the assets purchased at the auction held by the Auctioneer in purchasers free and clear of all claims and encumbrances;
- (e) approving the Receiver's engagement of the former employee of the Debtors;
- (f) sealing the Confidential Supplemental Report until further Order of the Court;
- (g) directing Mr. Bruno Gottardo to return the Ford F150 to the Receiver pending determination of the priority between TD Bank and Ford Credit to the vehicle;
- (h) declaring that the interest of Daland in the Joint Venture is held in trust by Daland for the benefit of Construction;

- (i) requiring 163 Ontario to provide access to the Receiver to the books, and financial information requested by the Receiver, related to the Joint Venture; and
- (j) restraining Daland, 163 Ontario, 207 Ontario and Idacris from directly or indirectly selling, mortgaging, dissipating, alienating, transferring, encumbering or otherwise dealing with Daland's or Construction's interest in the Joint Venture pending further order of the Court.

53. The Receiver also seeks the advice and directions of the Court regarding whether the Disputed Assets may be included in the assets to be sold by the Auctioneer under the Liquidation Services Agreement.

All of which is respectfully submitted this 3rd day of November, 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