

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

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

October 12, 2016

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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 Canada Limited was appointed as the receiver (the “Receiver”) without security, of the assets, undertakings and properties of the Debtors, pursuant to the order of Justice Newbould dated August 10, 2015 (the “Receivership Order”). Attached hereto as **Appendix “A”** is a copy of the Receivership Order.

3. Prior to the Receiver’s appointment, on July 28, 2015, bankruptcy applications were filed by TD Bank. On August 28, 2015, this Court issued bankruptcy orders in respect of the Debtors.

4. 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>.

5. The purposes of this Report are to support the Receiver’s motion for:

- (a) approval of the proposed sale of Construction’s interest in the Joint Venture (as defined herein) pursuant to an Agreement of Purchase and Sale dated September 22, 2016 between 2075568 Ontario Inc.

and Idacris Investments Inc. (collectively, the "Purchaser") and the Receiver, as Vendor (the "Sale Agreement");

(b) an order vesting in the Purchaser the right, title and interest of Construction in the Joint Venture free and clear of all claims and encumbrances; and

(c) sealing the Confidential Supplement to the Sixth Report and the appendices annexed thereto (the "Confidential Supplemental Report").

INVESTMENT IN JOINT VENTURE

6. 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 Developments Ltd. ("Daland"), an entity of which Mr. David Gottardo is a director and president. A copy of the Corporate Profile Report for Daland is attached hereto as **Appendix "B"**.

7. 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 statement is attached hereto as **Appendix "C"**.

8. The joint venture agreement was entered into on November 1, 2004 between 2075568 Ontario Inc. ("207 Ontario"), Idacris Investments Inc. ("Idacris"), Daland and 1631057 Ontario Inc. ("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 (collectively the "Co-Owners"). A copy of the joint venture agreement is included as an attachment to the Sale Agreement which is appended to the Confidential Supplemental Report.

9. The Joint Venture is in respect of the acquisition and development of lands located in the Town of Whitby for the purpose of eventual sale of developed building lots. The joint venture agreement provides, *inter alia*, that all expenses in relation to the Joint Venture shall be borne by the Co-Owners in proportion to their respective co-ownership interests. Importantly, the joint venture agreement also provides that a Co-Owner may not transfer or encumber its interest in the Joint Venture without the consent of the other Co-Owners.

10. The Receiver obtained from Construction's accountant a copy of a trust agreement entered into by Construction and Daland on April 1, 2013 which provides that Daland holds the investment in the Joint Venture in trust for Construction. A copy of the trust agreement is attached hereto as **Appendix "D"**.

11. In November 2015, the Receiver brought a motion for, *inter alia*, a declaration that the interest of Daland in the Joint Venture is held in trust by Daland for the benefit of Construction and requiring 163 Ontario to provide access to the Receiver to the books and records, and financial information requested by the Receiver, in relation to the Joint Venture. This relief was adjourned on consent while the other Co-Owners, and the Receiver, entered into discussions concerning the purchase by the other Co-Owners of Construction's interest in the Joint Venture.

12. Meanwhile, the Receiver and David Gottardo entered into discussions in an effort to settle an application commenced by the Receiver against David Gottardo,

Bruno Gottardo and various related corporations, to collect payment of amounts owed by such parties to Construction and Site Servicing according to their books and records. Those discussions included a proposal by David Gottardo to purchase the interest of Construction in the Joint Venture as part of an overall settlement of the collection application.

13. Given the nature of the Joint Venture and the terms of the joint venture agreement, particularly the restrictions on transfer, the Receiver did not market the Joint Venture interest for sale to anyone else.

SALE AGREEMENT

14. Following extensive discussions and negotiations, the other Co-Owners and the Receiver entered into the Sale Agreement for the sale by the Receiver of the interest of Construction in the Joint Venture to the other Co-Owners, subject only to court approval of the transaction. A copy of the Sale Agreement with the purchase price redacted is attached hereto as **Appendix "E"**. An unredacted copy of the Sale Agreement is included in the Confidential Supplemental Report, to be filed with the Court. It is the Receiver's opinion that the purchase price is commercially sensitive information which, if disclosed publicly at this time, may adversely affect any subsequent negotiations for the sale of the interest of Construction in the Joint Venture should the Court decline to approve the Sale Agreement or is not completed for any reason and therefore the unredacted copy of the Sale Agreement should be sealed pending further Court order.

15. The material closing conditions of the Sale Agreement are court approval of the agreement, the issuance of a vesting order in form and substance acceptable to the Purchaser, and the expiration of all appeal periods or the dismissal of any appeals.

16. For reasons more particularly set out in the Confidential Supplemental Report, it is the opinion of the Receiver that the terms of the Sale Agreement including the purchase price for the interest of Construction in the Joint Venture are fair and commercially reasonable and that the transaction contemplated by the Sale Agreement should be approved by the Court. TD Bank, which appears to be the only secured creditor of Construction with an economic interest, fully supports approval of the transaction contemplated by the Sale Agreement.

17. All secured creditors of Construction and all known persons who may have or assert an interest in the Joint Venture lands will be served with a copy of the Receiver's motion materials in support of approval of the Sale Agreement. Attached hereto as **Appendix "F"** are certified copies of PPSA searches on Construction and Daland current as at October 6, 2016. Attached hereto as **Appendix "G"** is a copy of a subsearch of the Joint Venture lands.

18. Based on the foregoing, the Receiver respectfully requests one or more orders:

- (a) approving the Sale Agreement;
- (b) authorizing and directing the Receiver to take such steps as are necessary to carry out the terms of the Sale Agreement;
- (c) vesting the right, title and interest of Construction's interest in the Joint Venture in the Purchaser free and clear of all claims and encumbrances including any interest of Daland; and

- (d) sealing the Confidential Supplemental Report until further Order of the Court.

All of which is respectfully submitted this 12th day of October, 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, LIT
Title: Senior Vice President