

**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**

**SUPPLEMENT TO THE SECOND REPORT OF BDO CANADA LIMITED, IN ITS CAPACITY  
AS COURT APPOINTED RECEIVER**

**November 8, 2015**

## INTRODUCTION

1. This Supplement to the Second Report is prepared in response to the Affidavit of David Gottardo (“David”) sworn and served on November 6, 2015 (the “Gottardo Affidavit”) and filed by David in response to the Receiver’s motion returnable November 9, 2015.
2. As described in greater detail below, a number of the issues raised in the Gottardo Affidavit were not brought to the Receiver’s attention by David, Bruno Gottardo, David’s father (“Bruno”, and together with David, the “Gottardos”), or their legal counsel, until the receipt of the Gottardo Affidavit and are also not relevant to the Receiver’s motion.
3. Capitalized terms not otherwise defined herein shall have the meaning ascribed to those terms in the Second Report of the Receiver. The Supplement addresses the issues raised in the Gottardo Affidavit in the order in which they appear in that affidavit.

## THE TELEPHONE SYSTEMS AND PHOTOCOPIER

4. The first time that the Receiver has learned of the issues raised by the 150 Owners with respect to the telephone systems and the photocopier was upon the receipt of the Gottardo Affidavit.
5. The telephone systems and photocopier referred to in the Gottardo Affidavit were located at 150 Ashbridge. As described in the Second Report, the 150 Owners made an ownership claim to the furniture located at 150 Ashbridge (the “150 Assets”). The Receiver confirmed to the 150 Owners that upon the receipt of evidence as to the ownership of these items the Receiver will release the 150 Assets to

the 150 Owners and will exclude them from the list of the Debtors' assets to be sold by the liquidator.

6. By email dated October 22, 2015, a copy of which is attached to this Supplement as **Appendix "A"**, Ken Page, counsel for the 150 Owners, provided a description of the 150 Assets. This list was reviewed by the Receiver and the items listed therein were left by the Receiver at 150 Ashbridge. The list provided by Mr. Page did not include the telephone systems or the photocopier. All items not listed by Mr. Page were removed by the Receiver from 150 Ashbridge.

7. A bill of sale in support of the 150 Owners' claim to the 150 Assets was provided by Mr. Page to the Receiver by email dated October 26, 2015 (the "**150 Bill of Sale**"), after the removal of the Debtors' assets, including the telephone systems and the photocopier, by the Receiver from 150 Ashbridge. A copy of Mr. Page's email dated October 26, 2015 is attached to this Supplement as **Appendix "B"**.

8. On October 27, 2015, the Receiver released the 150 Ashbridge Premises to the 150 Owners and, prior to doing so, toured the facility with the 150 Owners (the "**Landlord Site Visit**"). The issue of the missing telephone systems and the photocopier was not raised by the 150 Owners during the Landlord Site Visit or any time prior to service of the Gottardo Affidavit.

9. The Receiver has now reviewed the 150 Bill of Sale and confirms that it includes the telephone systems but not the photocopier. At the time of the receipt of the 150 Bill of Sale, the Receiver understood that the items listed therein were the same items listed on Mr. Page's October 22, 2015 email. The discrepancy between the items listed in Mr. Page's email dated October 22, 2015 and the 150 Bill of Sale was not brought to the Receiver's attention.

10. The Receiver is prepared to release the telephone systems to the 150 Owners. In addition, the Receiver is prepared to release the photocopier to the 150 Owners upon receipt of evidence of their ownership of the photocopier prior to the auction date.

#### **ALLEGED DAMAGE TO 150 ASHBRIDGE**

11. The 150 Ashbridge premises were left by the Receiver in the same state as the premises were received by the Receiver at the commencement of its occupation.

12. No issues with respect to the state of the 150 Ashbridge premises were raised by the 150 Owners during the Landlord Site Visit or any time thereafter until the service of the Gottardo Affidavit. No details of the alleged damages were provided in the Gottardo Affidavit. The Receiver is unable to respond to the allegations raised in the Gottardo Affidavit without further information as to the alleged damages.

#### **UTILITIES AT 150 ASHBRIDGE**

13. 150 Ashbridge consists of two buildings occupied by different tenants, of which one was occupied by the Debtors. There is only one utilities meter for both of the buildings. The Receiver has always been prepared to pay for the portion of the utilities pertaining to the premises occupied by it.

14. Shortly after its appointment, the Receiver contacted the utilities service provider and instructed it to direct all future utilities bills to the Receiver's office. The utilities provider in error continued to send the utilities bills to the 150 Owners. Due to the issues with Canada Post, described in greater detail below, the Receiver did not receive a copy of the utilities bill from the utilities provider or the 150 Owners until early November 2015.

15. The utilities bill does not provide a breakdown of the utilities owing by each tenant of 150 Ashbridge. Upon reviewing the utilities bill for the entire 150 Ashbridge premises, the Receiver asked the 150 Owners how the utilities charges are divided between the tenants but to date has not received a response.

16. Upon the termination of its occupation of 150 Ashbridge, the Receiver contacted the utilities provider to advise them that the mail should now be redirected back to the 150 Owners. At that time, the Receiver was advised by the utilities provider for the first time that the utilities have not been paid by the 150 Owners and that, as a consequence, power would be shut off. The Receiver immediately contacted the 150 Owners with this information.

17. The Receiver understands that the 150 Owners paid for the utilities owing. The Receiver is prepared to reimburse the 150 Owners for the portion of the utilities upon being provided with documents to support the charges.

#### **CANADA POST**

18. As part of its receivership duties, the Receiver redirected all mail related to the Debtors to its office. In error, Canada Post redirected all mail addressed to 132 Ashbridge and 150 Ashbridge to the Receiver's office, including the mail addressed to the parties who were not the Debtors. Mr. Page and his clients requested that Canada Post sort the mail by the addressees rather than the mailing address, but were advised by Canada Post that they are unable to do so. The Receiver reviewed all of the mail received and forwarded all mail not related to the Debtors to the Gottardos.

19. The Receiver attempted to resolve the issue of non-Debtor mail being delivered to the Receiver for several weeks without success, including proposing that a third party agreeable to both the Receiver and the Gottardos pick up the mail and sort it on

behalf of all parties. On October 2, 2015, Canada Post cancelled the mail redirection and ceased delivering mail until a solution could be identified. The situation is now resolved and Canada Post, after consulting with its legal counsel, is sorting and delivering the appropriate mail to the relevant parties.

20. To the extent that any of the non-Debtor mail was opened by the Receiver as alleged in the Gottardo Affidavit, this was done inadvertently and all non-Debtor mail was promptly forwarded to the Gottardos.

#### **OCCUPATION RENT**

21. Contrary to statement made at paragraph 3(v) of the Gottardo Affidavit, the Receiver has never denied its liability for occupation rent for 148 Ashbridge and 150 Ashbridge (collectively, the “Occupied Premises”).

22. On numerous occasions, the Receiver requested from the 150 Owners (who are also the owners of 148 Ashbridge) copies of the leases for the Occupied Premises. As at the date of this Supplement, neither the lease agreement(s) nor the amount of monthly rent payable by the Debtors to the 150 Owners have been provided to the Receiver.

23. The Debtors’ financial statements show substantially different amounts paid for occupation rent by the Debtors for the Occupied Premises. Based on the Debtors’ financial statements, records and bank statements it appears that between 2012 and 2015, the Debtors paid the following amounts in occupation rent to the 150 Owners for the Occupied Premises: (i) \$53,000 in 2012; (ii) \$32,000 in 2013; (iii) \$11,400 in 2014; and (iv) no occupation rent appears to have been paid by the Debtors in 2015.

## **BMW**

24. The Receiver did not agree to limit the purchase price for the BMW to \$6,000. The estimated fair market value for this vehicle is substantially higher than \$6,000. The Receiver has requested that Bruno return this vehicle so that it can inspect it and determine the vehicle's condition and appraised value. To date, Bruno has not complied with this request. Until such inspection is completed, it is not possible for the Receiver to ascertain the condition of the vehicle and therefore the appropriate price of same.

25. The receiver is prepared to sell the BMW to Bruno at a fair market value and has indicated this to Bruno and his lawyer.

## **FORD F150**

26. Attached hereto as Appendix "C" is an email from counsel for Ford Credit to the Receiver's legal counsel, Harvey Chaiton dated November 4, 2015, wherein Ford Credit confirms that it does not have a priority security interest in the Ford F150 (the "F150").

27. The Receiver was aware that Bruno was trying to deal with Ford directly regarding the F150. However, the Receiver was unaware that Bruno purchased the vehicle from Ford until it received the Gottardo Affidavit. Counsel to the Receiver has contacted counsel for Ford Credit and requested payment of sale proceeds from the vehicle. If payment is not received by the Receiver without undue delay, the Receiver will bring a motion for an order requiring Ford to pay the proceeds to the Receiver.

## **ASSETS NOT BELONGING TO THE DEBTORS**

28. With respect to the tool box belonging to a former employee, the Receiver has made unsuccessful attempts to contact the employee and its representative to request

that the tool box be picked up. If the tool box is not removed by the former employee or his representative before the Receiver gives up access to 132 Ashbridge and 148 Ashbridge (the "Ashbridge Premises"), it is the Receiver's intention to leave the tool box at the Ashbridge Premises for subsequent pick up by the employee.

29. With respect to the valve, the Receiver has asked the Gottardos to provide it with the name of the owner of the valve. Until the receipt of the Gottardo Affidavit, no name had been provided to the Receiver. The alleged owner of the valve has not made a claim to the valve and will be required to file a property claim to establish ownership of the valve.

30. The first time the Receiver has learned of the existence of the show machine was upon reading the Gottardo Affidavit. As of the date of this Report, no third party has asserted a claim to the snow machine.

#### **OCCUPATION OF THE ASHBRIDGE PREMISES**

31. The Receiver is advised by the liquidator that it requires occupation of the Ashbridge Premises until December 31, 2015 in order to: (i) conduct the auction scheduled for December 10, 2015; (ii) provide the purchasers of the purchased assets with reasonable opportunity to remove the purchased assets; and (iii) and provide the liquidator with the time to clean and vacate the premises.

#### **CONFIDENTIAL SUPPLEMENT**

32. Contrary to the allegations raised in paragraph 10 of the Gottardo Affidavit, the Gottardos are not guarantors of the Debtors loans to TD and, accordingly, have no interest in the sale price of the assets, other than as a potential purchaser. In addition, the Gottardos have not established their entitlement to the release of private employee information.



All of which is respectfully submitted this 8<sup>th</sup> day of November, 2015.

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

A handwritten signature in black ink, appearing to read "J. Parisi". The signature is written in a cursive, flowing style.

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

# APPENDIX A

**From:** Ken Page <[kenpage@pagemartin.com](mailto:kenpage@pagemartin.com)>  
**Date:** October 22, 2015 at 11:04:13 AM EDT  
**To:** "Parisi, Josie" <[JParisi@bdo.ca](mailto:JParisi@bdo.ca)>  
**Cc:** David Gottardo <[dwgottardo@gmail.com](mailto:dwgottardo@gmail.com)>  
**Subject: Re:**

I will clarify with David. It would include furniture, work stations, cabinets, safe, artwork.

Sent from my BlackBerry 10 smartphone on the Rogers network.

Original Message  
From: Parisi, Josie  
Sent: Thursday, October 22, 2015 11:02 AM  
To: Ken Page  
Subject: RE:

Ken,

Can you describe "contents". My understanding it was only the furniture. Is there something else specific?

-----Original Message-----  
From: Ken Page [<mailto:kenpage@pagemartin.com>]  
Sent: Thursday, October 22, 2015 8:41 AM  
To: Parisi, Josie <[JParisi@bdo.ca](mailto:JParisi@bdo.ca)>  
Cc: David Gottardo <[dwgottardo@gmail.com](mailto:dwgottardo@gmail.com)>  
Subject: RE:

My client says the contents including furniture came with the building. He no longer has records to show this.

They are prepared to provide an Affidavit to confirm this.

I thought the Receiver\Trustee had no interest in the contents.

Also, we still do not have mail. David spoke to Frank at Canada Post who says he is still waiting for direction from legal counsel

-----Original Message-----  
From: Parisi, Josie [<mailto:JParisi@bdo.ca>]  
Sent: October-22-15 8:36 AM  
To: Ken Page  
Subject:

Ken

Can you please send me your clients position in respect of the furniture at 150 Ashbridge?

Please provide any supporting documentation and your affidavit.

Thanks

Sent from my iPhone

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## **APPENDIX B**

**From:** Ken Page <[kenpage@pagemartin.com](mailto:kenpage@pagemartin.com)>

**Date:** October 26, 2015 at 11:22:28 AM EDT

**To:** "Parisi, Josie" <[JParisi@bdo.ca](mailto:JParisi@bdo.ca)>

**Subject:** **Gottardo Contents**

My client has located a document from the purchase of the 150 Ashbridge property. See attached.

Please advise whether you still require an Affidavit or if the document attached is sufficient for the Trustee and Receiver to acknowledge that the contents belong to the landlord



150 ASHBRIDGE CIRCLE  
WOODBRIDGE, ONTARIO  
L4L 3R5  
TELEPHONE: (905) 856-3900  
(416) 798-7066  
FAX: (416) 748-1829

**SALE OF FURNITURE TO 1171987 ONTARIO LIMITED  
BY TRU-WALL GROUP LIMITED**

**PRICE AS AGREED WITH THE PRINCIPAL OF 1171987 ONTARIO LIMITED  
AT A MEETING HELD ON SEPTEMBER 20, 1996**

|             |                    |
|-------------|--------------------|
| Price       | \$17,500.00        |
| P.S.T. (8%) | 1,400.00           |
| G.S.T. (7%) | <u>1,225.00</u>    |
|             | <u>\$20,125.00</u> |

The above purchase price includes all furnishings and miscellaneous items as inspected including desks, filing cabinets, art-work, atrium furniture, refrigerators, dishwasher, microwave, typewriters, calculators, storage cabinets, estimating desks, credenzas, chairs, dishes, coffee mugs, telephone system, and miscellaneous office supplies. Work station complete with screening, board room, lounge area, main vestibule at reception area and sauna room to remain as inspected together with other incidental office equipment too numerous to mention. The entire furnishings in the offices of Michael Ursini and Leonard Ursini are to be removed. Although computers and printers were originally to be left, the purchaser advised that in all probability they would not be suitable for their operation and authorized us to remove several stations.

\_\_\_\_\_  
Leonard A. Ursini

cc: M. Ursini  
H. Cooper

Havendale Homes • Industrial Concrete Forming  
Regis Concrete Forming • Tru-Wall Properties  
Challenger Masonry Contractors

A CANADIAN OWNED PUBLIC COMPANY

## **APPENDIX C**



**From:** Kevin Bunt [<mailto:kevinbunt@mitchell77.com>]  
**Sent:** Wednesday, November 04, 2015 10:25 AM  
**To:** Harvey G. Chaiton  
**Subject:** RE: Ford Credit v. Gottardo Construction

Mr. Chaiton:

In response to your inquiry as to the position of Ford Credit with respect to the other three vehicles, I can advise you as follows:

Re: 2013 F-150 with VIN ending in 67361 - Ford Credit acknowledges that it does not have a secured interest in the vehicle and will not oppose the receiver's disposition of the vehicle.

Re: 2013 F-150 with VIN ending in 35090 - Ford Credit acknowledges that it does not have a secured interest in the vehicle and will not oppose the receiver's disposition of the vehicle.

Re: 2013 F-150 with VIN ending in 12591 - As the vehicle is in the possession of the debtor, the Receiver must obtain possession of the vehicle from the debtor.

I look forward to you hearing from you with respect to the two vehicles to be released by the Receiver to Ford Credit: F550 with VIN ending in 66716; and 2013 F-150 with VIN ending in 67111.

Yours truly,

**Kevin C. Bunt, B.A.(Hons.), LL.B. | Mitchell & Associates, Barristers & Solicitors**  
Main 519 253 3456 | Fax 519 253 6941 | [kevinbunt@mitchell77.com](mailto:kevinbunt@mitchell77.com)  
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**From:** Harvey G. Chaiton [<mailto:Harvey@chaitons.com>]  
**Sent:** November-03-15 6:58 PM  
**To:** 'kevinbunt@mitchell77.com'  
**Subject:** Re: Ford Credit v. Gottardo Construction

Kevin

I will seek instructions. What is Ford Credit's position on the others?

---

**Harvey G. Chaiton**

Partner | Chaitons LLP | T: 416.218.1129