

Court File No. CV-16-11578-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

COMTECH FIRE CREDIT UNION LIMITED

Applicant

-AND-

MARK EUGENE GAUTHIER

Respondent

**FIRST REPORT OF THE RECEIVER
BDO CANADA LIMITED**

MARCH 22, 2017

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- Appendix "A" - Receivership Order, dated November 15, 2016
- Appendix "B" - Letter to Legal Counsel of Clifton Blake Capital Corp.
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CONFIDENTIAL APPENDICES

- Confidential Appendix "A" - Initial Property Appraisal of City Management**
- Confidential Appendix "B" - Initial Property Appraisal of Otto and Company**
- Confidential Appendix "C" - Revised Property Appraisal of City Management**
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- Confidential Appendix "E" - Listing Proposal of CBRE Limited**
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- Confidential Appendix "G" - Listing Proposal of Tony Sbrocchi**

INTRODUCTION

1. On November 15, 2016, BDO Canada Limited was appointed as receiver (the "Receiver") of the real property of Mark Eugene Gauthier ("Gauthier") municipally known as 36, 38, 40, and 42 University Avenue East, Waterloo, Ontario (collectively, the "Properties"), pursuant to a first mortgage registered on July 3, 2014 and security agreement dated July 2, 2014, held by Comtech Fire Credit Union Limited ("Comtech"). A copy of the Receivership Order appointing the Receiver dated November 15, 2016 is attached hereto as **Appendix "A"**.
2. The Properties are used as student rental housing for students of Wilfred Laurier University and the University of Waterloo, which are located nearby.
3. 36, 38, and 40 University Avenue East are 3-story buildings (plus finished basement), consisting of 4 units. Each unit has 5 bedrooms. 42 University Avenue is a 2-storey building (plus finished basement) and consists of 1 unit with 3 bedrooms. In total, the Properties contain 13 separate units and 63 bedrooms. Each unit is a registered condominium.
4. As of today's date, 49 of 63 rooms are currently being rented by students. Of the 49 existing leases, 31 end at the end of April 2017 and 18 end at the end of August 2017.

PURPOSE OF THIS REPORT

5. The purpose of this report is to:
 - a) Inform this Court of the activities of the Receiver taken to date and request approval of such activities as set out herein;
 - b) Obtain an Order authorizing the Receiver to engage CBRE Limited to list and market the Properties' for sale;
 - c) Obtain an Order sealing Confidential Appendices "A" through "G" to the First Report until a sale of the Properties has been completed or until further order of this Court;
 - d) Obtain an Order approving the Receiver's fees and disbursements from November 14, 2016 to March 10, 2017;

- e) Obtain an Order approving the Receiver's counsel's fees and disbursements from October 21, 2016 to March 21, 2017; and
- f) Obtain such further and other relief as counsel may advise and this Court may permit.

TAKING POSSESSION

6. On November 15, 2016, the Receiver attended the Properties but was unable to access the units as the keys and door codes were in the possession of Domus Student Housing Inc. ("Domus"). Domus was retained as a property manager of the Properties by Clifton Blake Capital Corp. ("Clifton Blake") on or around June 2016.
7. On the same day, the Receiver met with Ho Tek and Rick Xu, both of Domus, to obtain information on the current status of the Properties. The Receiver requested various information from Domus, including, but not limited to: details of utility accounts, information on rent payments collected by either Domus or Clifton Blake to date, funds in the possession of Domus relating to the Properties, copies of leases, keys and door codes to the Properties, and post-dated rent cheques in the possession of Domus.
8. At the meeting, the Receiver was advised that Domus intended to cooperate fully with the Receiver; however, subsequently, Domus resisted in assisting the Receiver and did not cooperate in providing any of the requested information until approximately 2.5 weeks after the Receiver's appointment.
9. The local utility companies were notified by the Receiver of the receivership and appropriate arrangements were made for continued usage.
10. The Receiver has obtained an insurance policy on the Properties from Dan Lawrie Insurance Brokers.
11. The Receiver's statutory notice and statement for the Company pursuant to Section 245 and 246 of the *Bankruptcy and Insolvency Act* has been filed with the Office of the Superintendent of Bankruptcy Canada and mailed to all known creditors.

TENANTS & RENT

RENT COLLECTIONS

12. The Receiver drafted and hand-delivered a letter to the tenants on December 1, 2016 notifying them of the receivership. In the letter, the tenants were advised that during the receivership processes the leases would continue to be upheld, and that the Properties would continue to be maintained. The tenants were also advised to remit new post-dated rent cheques to the Receiver.
13. The Receiver subsequently obtained the post-dated cheques that were in the possession of Domus, and were made out to either Clifton Blake or Domus, and returned them to the tenants.
14. In addition, the Receiver obtained \$14,505 from Domus, which represented the funds on hand from rent and deposits that was previously collected by Domus on behalf of Clifton Blake. Of the amount collected, \$3,000 relates to key deposits which were collected by Domus and will need to be refunded by the Receiver to the related tenants upon completion of their leases.
15. The Receiver understands that some rent payments were also paid directly to Clifton Blake prior to the receivership. The Receiver's legal counsel requested an accounting of same from Clifton Blake's legal counsel, Steven Pearlstein of Minden Gross LLP, on December 23, 2016; however, no response has been received. A copy of the correspondence is attached hereto as Appendix "B".
16. To date, the Receiver has collected \$118,514 in rent from the Properties' tenants, which includes the \$14,505 that was provided by Domus.
17. As of the date of this tenant, there is \$2,200 in rent arrears outstanding from one tenant. It is expected that payment from the tenant will be received within the next week.

PROPERTY MANAGEMENT

18. The Receiver encountered considerable difficulty in obtaining quotes from property management companies in the Waterloo area who were interested in providing their

services. Domus was approached but was not interested in continuing to manage the Properties.

19. After obtaining 2 quotes for property management services, the Receiver retained Blackline Corporation ("Blackline") as property manager of the Properties as of January 25, 2017. Blackline has experience in managing student rental properties as well as working with receivers.
20. The primary duties of Blackline are to deal with tenant inquiries, maintenance issues, and market the Properties for new tenants.

MARKETING FOR NEW TENANTS

21. Blackline has been actively marketing the Properties since the end of January 2016 for new tenants by regularly posting advertisements on various websites, including Kijiji, Places for Students, the University of Waterloo's Off Campus Housing website, and Facebook.
22. After approximately 2.5 weeks, Blackline advised that there had not yet been any inquiries into the Properties by prospective tenants. Blackline advised that due to the oversaturated student rental market in the Waterloo Region, many other property owners were offering incentives to entice new tenants to sign leases. Example of incentives included gift cards for anywhere from \$100 to \$400, and 1 month's free rent in exchange for signing a new lease. After undertaking some independent research, the Receiver determined that these incentives appeared to be the norm in the Waterloo student rental market, and instructed Blackline to offer 1 month's free rent to new tenants who sign 12 month leases.
23. To date Blackline has advised that inquiries on the Properties have been slow, and that there have been no new leases signed yet for the upcoming 2017-2018 school year, other than 8 tenants that have advised they would like to renew their lease for the upcoming school year but have not yet signed renewal forms. Blackline is continuing follow up with current tenants regarding lease renewals, and continuing to provide tours of the Properties to prospective tenants.

PROPOSED SALE PROCESS

PROPERTY APPRAISALS

24. The Receiver retained City Management & Appraisals (2006) Ltd. ("City Management") and Otto and Company to provide appraisals of the Properties.
25. The initial appraisal provided by City Management is attached as Confidential Appendix "A" hereto. The initial appraisal provided by Otto and Company is attached as Confidential Appendix "B" hereto.
26. The two initial appraisals had a difference in market value of over \$2 million. Upon the Receiver's review of the appraisals, it was noted that the vacancy rate used in the income approach calculation of one of the appraisals was overstated as the rent roll initially provided to the Receiver was incomplete, and it was noted that various property expenses that were initially provided by the Receiver were understated.
27. Accordingly, the Receiver had various discussions with the appraisers regarding the revised tenant and expense information, as well as the significant difference in the 2 appraised values, and requested that the appraisers revise their appraisals.
28. The revised appraisal provided by City Management is attached as Confidential Appendix "C". The revised appraisal provided by Otto and Company is attached as Confidential Appendix "D".

LISTING PROPOSALS

29. The Receiver had contacted the following real estate brokerages to request listing proposals for the Properties:
 - CBRE Limited ("CBRE");
 - Collier International ("Colliers"); and
 - GLEED Inc. Real Estate Brokerage ("Gleed").

30. The Receiver was also advised by Gauthier that prior to the receivership he had retained Tony Sbrocchi ("Sbrocchi") of The Condo Store Inc. Brokerage to sell the Properties. The Receiver had also requested that a listing proposal be provided from Sbrocchi.
31. Colliers subsequently advised that they would not be submitting a listing proposal as they felt that the value of the Properties would not be sufficient to see Comtech paid in full due to the oversaturated student housing market in the Waterloo Region.
32. Gauthier advised the Receiver that he had contacts who may be interested in purchasing the units on an individual basis. The Receiver advised Gauthier that it would be willing to review and consider any offers provided, but no formal offers were provided.
33. A summary of the listing proposals received is attached hereto as **Appendix "C"**.
34. The listing proposal of Colliers is attached hereto as **Confidential Appendix "E"**, the listing proposal of Gleed is attached hereto as **Confidential Appendix "F"**, and the listing proposal of Sbrocchi is attached here to as **Confidential Appendix "G"**.
35. In the listing proposals received, 2 of 3 Realtors (CBRE and Gleed) recommended selling the Properties on an "en bloc" basis. In addition, the appraiser Otto and Company also recommended selling the Properties on an "en bloc basis". CBRE advised that a very limited number of "older stock" 5-bedroom pod condos, comparable to the Properties, have been successfully marketed and sold. The most comparable product sold 4 of 20 units, and the majority of units offered had expired listings and remained unsold. CBRE also advised that while there may be additional value per bed, taking a unit-by-unit disposition route would be a protracted process with greater uncertainty of success relative to selling the Properties on an "en bloc" basis. Any additional value would likely be eroded due to higher disposition costs. Accordingly, the Receiver recommends proceeding to sell the Properties on an "en bloc" basis as well.
36. Of the 2 Realtors that recommended selling the properties on an "en bloc" basis, CBRE had a lower commission rate (3.0% to CBRE if CBRE is the only agent involved in the transaction or 3.5% if there is a cooperating agent involved, and 1.5% to the purchasing agent) than Gleed (5.0% to Gleed and 2.0% to the purchasing agent). Both CBRE and Gleed recommend a listing price of \$5,500,000 for the Properties.

37. Accordingly, based on the above, the Receiver recommends proceeding to retain CBRE based on their lower commission rate and extensive experience in selling apartment and rental properties. The Receiver recommends a list price of \$5,999,000. Accordingly, the Receiver requests that this Honourable Court authorizes the Receiver to engage CBRE to list and market the Properties' for sale at a list price of \$5,999,000.

OTHER MATTERS

SECURED CREDITORS

38. As advised to the Court in Comtech's application materials, Comtech has a Charge/Mortgage registered in first position against the Properties on July 3, 2014. The amount of the Registration is \$4,600,000.
39. 2174217 Ontario Inc. has a Charge/Mortgage registered in second position against the Properties on February 17, 2015. The amount of the registration is \$875,000.
40. Clifton Blake has a Charge/Mortgage registered in third position against the Properties on September 30, 2015. The amount of the charge is \$1,200,000.
41. The Receiver's legal counsel, Flett Beccario, has prepared a security opinion of Comtech's security, which advises that Comtech's security is valid and enforceable, subject to the usual qualifications. A copy of the security opinion is attached hereto as Appendix "D".

PRIORITY CLAIMS

42. The Receiver has received property tax statements from the City of Waterloo, which indicate that the following is or will be outstanding for all of the Properties:

Property Taxes	Amount
2016 Arrears	\$ 52,167.53
2017 Interim Installment #1 (Due March 1, 2017)	\$ 9,707.00
2017 Interim Installment #2 (Due May 1, 2017)	\$ 9,696.60
Total	\$ 71,571.13

43. The Receiver is not currently aware of any other priority claims with respect to the Properties.

RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

44. The Receiver's Interim Statement of Receipts and Disbursements, dated March 21, 2017, is attached hereto as Appendix "E".

SEALING ORDER

45. The Receiver is of the view that the Confidential Appendices "A" through "G" should be sealed pending the completion of Transaction because disclosure of such information could have a negative effect on further sales and liquidation efforts.

PROFESSIONAL FEES AND EXPENSES

46. The Receiver seeks the approval of its professional fees and disbursements, as well as the legal fees of its counsel, Flett Beccario.
47. The professional fees and disbursements of the Receiver total \$68,094.94, plus applicable HST of \$8,852.34, for the period of November 14, 2016 to March 10, 2017. The Receiver's affidavit of fees attached hereto as Appendix "F".
48. The legal fees of the Receiver's legal counsel, Flett Beccario, total \$6,177.05, plus applicable HST of \$803.02, for the period of October 21, 2016 to March 21, 2017. An affidavit regarding Flett Beccario's professional fees and disbursements is attached hereto as Appendix "G". The Receiver has reviewed the time entries submitted by Flett Beccario and believes the work performed and charges incurred to be appropriate and reasonable.

CONCLUSION AND RECOMMENDATIONS

49. The Receiver respectfully recommends that this Court issue:

- (a) An Order approving this First Report and the actions and activities of the Receiver described herein;
- (b) An Order authorizing the Receiver to engage CBRE Limited to list and market the Properties for sale;
- (c) An Order sealing Confidential Appendices "A" through "G" to the First Report until a sale of the Properties has been completed or until further order of this Court;
- (d) An Order approving the Receiver's fees and disbursements from November 14, 2016 to March 10, 2017;
- (e) An Order approving the Receiver's counsel's fees and disbursements from October 21, 2016 to March 21, 2017; and
- (f) Such further and other relief as counsel may advise and this Court may permit.

All of which is respectfully submitted this 22nd day of March, 2017.

BDO CANADA LIMITED

in its capacity as Court-appointed Receiver of
the properties municipally known as
36, 38, 40, and 42 University Avenue East, Waterloo, Ontario
and not in its personal or corporate capacity

Per:



Christopher J. Mazur, CIRP
Senior Vice President