

ONTARIO

SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SAPPHIRE TOWER DEVELOPMENT CORP.

APPLICATION UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, C. C-36, AS AMENDED

FOURTH REPORT OF THE MONITOR/INTERIM RECEIVER
BDO DUNWOODY LIMITED
DECEMBER 12, 2007

INTRODUCTION

1. On July 20, 2007, the Applicant filed for and obtained protection from its creditors under the *Companies' Creditors Arrangement Act, R.S.C. 1985, c.C-36*, as amended ("CCAA") pursuant to an order of this Honourable Court dated July 20, 2005 (the "Initial Order").
2. Pursuant to the Initial Order, BDO Dunwoody Limited ("BDO") was appointed Monitor of the Applicant (the "Monitor").
3. By order dated August 16, 2007 an extension of the CCAA proceedings was granted to September 4, 2007. At the same time BDO was appointed as Interim Receiver with a mandate to prepare a marketing and sale process, to disseminate it to stakeholders and to bring the same before the Court for approval on September 4, 2007. As part of the extension motion BDO filed its First Report dated August 14, 2007 ("First Report").

4. By Order dated September 4, 2007 an extension of the CCAA proceedings was granted to November 9, 2007. As part of the extension motion BDO filed its Second Report, dated August 30, 2007 ("**Second Report**"). As part of the Order, the Court approved a marketing and sale process as set out in Schedule "A" to the Second Report, and instructed the Monitor/Interim Receiver to direct all known creditors, in writing, to review the materials regarding the marketing and sale process on the Sapphire Website, and to invite interested parties to apply to the Court by September 11, 2007 to vary or amend the sale process, such Motion to be returnable on September 24, 2007. No party brought such a motion. On November 7, 2007, the Court granted an extension of the CCAA proceedings to December 14, 2007, to allow for the completion of the Sale Process.

5. The purpose of this Fourth Report of the Monitor/Interim Receiver ("**Fourth Report**") is to:
 - (a) report to this Honourable Court in detail on the activities of the Monitor/Interim Receiver in relation to the Court-approved Sale Process, as set out in Schedule "A" to the Monitor/Interim Receiver's Second Report;
 - (b) recommend the approval of the Sale of the debtor's property located at 66 Temperance Street, Toronto, Ontario, to Skyline International Development Inc;
 - (c) recommend a further extension of the CCAA proceedings until January 31, 2008, to allow the sale of the debtor's property to be completed; and
 - (d) request the approval of the fees and costs of the Monitor/Interim Receiver and its Counsel, as set out herein.

6. Capital terms not defined in this Third Report are as defined in the Initial Order.

TERMS OF REFERENCE

7. In preparing this Fourth Report, the Monitor/Interim Receiver has relied upon unaudited financial information, company records and discussions with management of the Applicants, various stakeholders and consultants and advisors. The Monitor/Interim Receiver has not performed an audit, review or other verification of such information.
8. The Monitor assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction or use of this report. Any use which any party, other than the Court, makes of this report, or any reliance on or decision based on it, is the responsibility of such party.

BACKGROUND

9. The Applicant is a single purpose entity incorporated and resident in the Province of Ontario, that owns a single parcel of undeveloped real estate located at 66 Temperance Street, Toronto (the "**Property**") in the core downtown area of Toronto. The site is currently leased out as a parking lot. The Applicant has no active employees other than Harry Stinson ("**Stinson**"), who is the sole officer shareholder and director of the Applicant, and is resident in Toronto. The Applicant had been pursuing the development of this site as a high rise condominium project of 50 or more stories in height.
10. The stakeholders in this matter are various parties holding mortgages or liens on the property, trade creditors, and various individuals who appear to be unsecured creditors who had advanced money in arrangements which included an interest in units in the prospective development.

POSTING OF EXTENSION ORDER AND MONITOR'S REPORTS

11. The Monitor/Interim Receiver has posted all court material on its website at <http://www.bdo.ca/Sappire>, as required by the Order of the Honourable Mr. Justice Cumming, dated September 4, 2007.

POSSESSION OF ASSETS

12. Immediately following its appointment as Interim Receiver, the Monitor/Interim Receiver took possession of all of the personal property and books and records of the Applicant. The Monitor/Interim Receiver has taken steps to ensure that the rental payments by the tenant of the company's real property are made to the Monitor/Interim Receiver. The Monitor/Interim Receiver has not gone into possession of the real property owned by the Applicant as it does not believe that there is any necessity to do so at this time.

CONSULTATION WITH INVESTORS/UNSECURED CREDITORS

13. Following its appointment, the Monitor/Interim Receiver has had various discussions and meetings with stakeholders with a view to soliciting their input and views. In particular, the Monitor/Interim Receiver met with certain creditors whose advances included a contracted interest in units which were to be built in the contemplated condominium project. Input from these creditors included the fact that there may be interest in a purchase arrangement which could include the opportunity for stakeholders to continue to be invested in the project.
14. In addition, persons in this group raised the issue of legal representation for this group being obtained and funded out of the project. The Monitor/Interim Receiver was supportive of this group obtaining representation, and supported the concept of a charge being given in favour of counsel for this group, so long as such a charge was given a ranking immediately behind the interest of the secured creditors. Accordingly, by the endorsement of the Honourable Mr. Justice Cumming dated October 19, 2007, the Court appointed Page, Martin

LLP as representative counsel for all unsecured creditors, with Page, Martin LLP to be given a charge on the assets ranking immediately behind the administrative charges and the interest of the valid secured creditors, in accordance with paragraph 12 of the Monitor's Second Report.

SALE PROCESS

15. The sale process commenced as planned, in accordance with the timetable and specifics set out in Schedule "A" to the Second Report.
16. The period from September 4, 2007 to September 21, 2007 represented the period of preparation for the marketing process. Initially, the sale process envisaged the retention of a prominent realtor as a marketing consultant, and negotiations were held with Colliers International whereby they offered to act in the role of a marketing consultant. The Monitor/Receiver sought input from its counsel, and also advised Sapphire through its counsel, of the plan to retain Colliers International.
17. On hearing about the proposed engagement of Colliers International to assist in the marketing process, Mr. Stinson, the principal of Sapphire, objected strenuously, maintaining there would be a perception in the market place that a real estate broker, even if only acting in an advisory capacity, might try to direct the sale of the project to one of its clients, and that accordingly other brokers would be discouraged from marketing the property to their clients; notwithstanding the fact that the terms of the sale process specifically protected brokers and their commissions and that BDO would continue to manage the overall process.
18. Accordingly, the Monitor/Interim Receiver approached the Transaction Advisory Services ("TAS") group of BDO and asked for assistance. The TAS group specializes in distressed corporate finance services for troubled

businesses, including the financing or refinancing of same, or sale thereof, either within, or without formal insolvency processes.

19. The Monitor/Interim Receiver engaged the TAS group to conduct the formal sale process, set up the website, which also detailed the Court approved process, prepare marketing documents an online due diligence site and other relevant documentation, establish procedures for submission of offers and a structure of the transaction including a form of Agreement of Purchase and Sale, and compile lists of potential purchasers, and also retained the firm of N. Barry Lyon Consultants Limited ("Barry Lyon") as technical consultants to assist in the sale process. Barry Lyon has extensive technical experience related to the issues affecting the construction and sale of downtown Toronto condominium and office buildings, and was quite familiar with the specific issues related to the Sapphire property, including its small "footprint" and related challenges pertaining to parking space for automobiles, and its projected building height and potential "shadow" problems on Phillips Square and Toronto's "New" City Hall.
20. The period from September 22, 2007 to October 19, 2007 represented the formal marketing period. Advertisements were published in the Globe and Mail for three weeks at the rate of two advertisements per week, a list of approximately 180 potentially interested parties, was created, and the parties contacted via telephone, documentation was distributed to parties expressing an interest in receiving same, and parties were encouraged to submit non-binding Letters of Intent by October 19, 2007. On or about that date, the TAS group received Letters of Intent from 13 interested parties.
21. The period from October 20, 2007 to October 26, 2007 represented the period for evaluation of the Letters of Intent received. Thirteen offers were received. Offers No. 2, 10 and 12 were rejected as being too low. Due to the similarity in range of the other offers received, the TAS group requested a meeting with

each of the remaining 10 parties. During the process, one additional party, No. 1, lost interest in the process and withdrew its bid. The TAS group met and/or spoke with the other 9 interested parties, setting a minimum criteria of \$20,000,000 as a starting bid. Four of the bidders, being Nos. 4, 6, 8 and 9 were below this target threshold, but two of them increased their offers immediately, so as to meet the minimum. These two offerors were Nos. 8 and 9. The other two parties withdrew. Also, offeror No. 3 was rejected, as its offer included the provision of a vendor take-back mortgage by the Interim Receiver, which was not feasible to do.

22. Accordingly, by 26 October 2007, a short list of 6 offerors had been prepared, to be carried forward into the due diligence period. Subsequently, the TAS group had further discussions with offeror No. 3, who withdrew the Vendor take-back provision and resubmitted an improved offer.
23. The period from October 27, 2007 to November 23, 2007 represented the formal due diligence period. The TAS group and the consultant made themselves available throughout this period to assist offerors in finalizing their offers. Indeed, the TAS group met with all short list offerors, except No. 2 who was located far away, and accordingly was contacted by telephone, and also met with offeror No. 3 who had improved his offer.
24. In accordance with the sale process, offerors were advised that the deadline for formal offers was November 28, 2007, with selection of a successful bidder to take place by December 5, 2007, and Court approval and a Vesting Order to follow.
25. On or about November 28, 2007, two offers were received from offerors who had previously been reported on the short list. Offeror No. 3 did not submit a formal offer. Additionally, a further offer was received from another party, which had not previously consulted with the TAS group.

26. Thus, three offers were received in total.
27. Since the Skyline offer was the most attractive offer, the TAS group and the Interim Receiver/Monitor met with Skyline, together with Counsel, to finalize the offer.
28. The final Agreement of Purchase and Sale, as accepted by the Monitor/Interim Receiver (subject to approval by this Honourable Court) has been provided to the Court. The Monitor/Interim Receiver hereby requests the approval of this Agreement by the Court. BDO is a company incorporated under the laws of Canada. The Applicant is a company incorporated under the laws of Ontario. Accordingly, neither BDO nor the Applicant is a "non-resident" for the purpose of s.111 of the *Income Tax Act*.
29. One of the offerors on the short list, who did not submit a formal offer by November 28, and still has not submitted a formal offer, has contacted the TAS group a number of times since November 30, by email to inquire into his ability to still submit a formal offer. The parameters of his potential offer are set out in his emails, and the offeror has indicated his intention to obtain legal advice and seek permission to attend at Court to argue the merits of his proposed offer.

CCAA PROCEEDINGS

30. Under the circumstances, it is the view of the Monitor/Interim Receiver that the CCAA stay should be extended until January 31, 2008, so as to facilitate the completion of the Sale of the debtor's property at 66 Temperance Street, Toronto. The Monitor/ Interim Receiver has been requested by the company to support the continuation of the CCAA and the Monitor/ Interim Receiver supports the requested extension because if believes that maintaining the CCAA proceeding will preserve flexibility in the process against eventualities

such as the transaction not closing, which are hopefully remote. This said, it is the view of the Monitor/Interim Receiver that the terms of the extension of the CCAA should be the same as those imposed in the last extension such that any further steps in the CCAA proceedings, such as the filing of a Plan of Arrangement, could only be taken with the prior consent of the Monitor/Interim Receiver. The Monitor/Interim Receiver believes that the Applicant is and has been proceeding in good faith and with due diligence.

MONITOR'S AND INTERIM RECEIVER'S COSTS

31. BDO Dunwoody Limited ("BDO") as Monitor has incurred time charges totalling \$33,105.94 calculated at the normal billing rates of its personnel involved, for the period ending August 15, 2007, the day prior to the Court Order appointing BDO as Interim Receiver. Additionally, the Monitor has incurred out of pocket disbursements of \$45.45, for total fees and disbursements of \$33,151.39, all before GST. The Monitor seeks the approval of this Honourable Court for the payment of these fees and disbursements, plus applicable GST. Additional costs may need to be incurred to finalize the CCAA proceedings.
32. Additionally, BDO as Interim Receiver has incurred time charges of \$117,358.75, calculated at the normal billing rates of its personnel involved, for the period from August 16, 2007 the date of the Court's appointment of BDO as Interim Receiver, to November 30, 2007, plus \$593.40 for out of pocket disbursements, for total fees and disbursements of \$117,952.15, all before GST. The Interim Receiver seeks the approval of this Honourable Court for the payment of these fees and disbursements, plus applicable GST. Additional costs will need to be incurred to finalize the Interim Receivership.
33. Further, BDO requests the approval of this Honourable Court of the TAS group's fee of \$361,500,000, plus applicable GST. The time spent by the TAS

group is not included in the Monitor's or the Interim Receiver's time, referred to above.

34. Fraser Milner Casgrain LLP, counsel for the Monitor/Interim Receiver, has incurred time charges of \$110,654.50 calculated at the normal billing rates of its personnel involved for the period ending November 30, 2007, for the total fees and disbursements of \$121,101.36, including GST. The Monitor/Interim Receiver seeks the approval of this Honourable Court for the payment of these fees and disbursements including applicable GST. Additional fees will need to be incurred by FMC to finalize the administration of the Interim Receivership.

All of which is respectfully submitted this 12th day of December, 2007.

BDO DUNWOODY LIMITED
In its capacity as Court Appointed
Monitor/Interim Receiver of the Applicant

