

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) FRIDAY, THE 20TH DAY
JUSTICE P. A. CUMMING) OF JULY, 2007

**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**

INITIAL ORDER

THIS APPLICATION, made by Sapphire Tower Development Corp. (the "Applicant"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the Affidavit of Harry Stinson sworn July 19, 2007 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and counsel for Graphic Arts Building Incorporated, no one appearing for Jeffrey Family Holdings Inc. although duly served as appears from the affidavit of service of Joanne O'Neil sworn July 19, 2007 and on reading the consent of BDO Dunwoody Limited to act as the Monitor.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan") between, *inter alia*, the Applicant and one or more classes of its secured and/or unsecured creditors as it deems appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of the Value of its business (the "Business") and Property. The Applicant shall be authorized and empowered to continue to retain, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order. Notwithstanding anything to the contrary in this Order, the Applicant is authorized to do whatever is reasonably necessary to close the sale of the property that it owns municipally known as 66 Temperance Street, Toronto substantially on the terms of the agreement of purchase and sale that the Applicant accepted on July 17, 2007.

5. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order being the fees and disbursements of any Assistants retained by the Applicant in respect of these proceedings, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the

Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

7. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (b) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the Property or the carrying on of the Business by the Applicant.

8. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges, mortgages or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

9. **THIS COURT ORDERS** that the Applicant shall have the right to:

- (a) do whatever is reasonably necessary to close the sale of the property municipally known as 66 Temperance Street, Toronto substantially on the terms of the agreement of purchase and sale which the Applicant accepted on July 17, 2007;
- (b) repudiate such of its arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicant deems appropriate on such terms as may be agreed upon between the Applicant and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (c) pursue all avenues of refinancing and offers for material parts of its Business or Property, in whole or part, subject to the agreement of purchase and sale which the Applicant accepted on July 17, 2007 and subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above),

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").

10. **THIS COURT ORDERS** that, subject to the other provisions of this Order and any further Order of this Court, the Applicant shall be permitted to dispose of any or all of the Property and, for greater certainty, the Applicant shall have the right to realize upon the Property and other assets in such manner as it deems suitable or desirable for the purpose of maximizing the proceeds and recovery therefrom.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

11. **THIS COURT ORDERS** that until and including the day which is thirty (30) days after the date of this Order, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or

with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property, including without limitation the Attornment of Rent Order dated June 2007 served on behalf of the City of Toronto on the Applicant's tenant or licensee, Canada Auto Parks, are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

12. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) exempt the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

13. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, insurance, transportation, services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current telephone

numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

15. **THIS COURT ORDERS** that, notwithstanding anything else contained herein, no creditor of the Applicant shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

16. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

17. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicant, after the date hereof, to make payments of the nature referred to in subparagraphs 7(a) and 7(b) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicant except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

PAC
18. ~~THIS COURT ORDERS~~ that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for the indemnity provided in paragraph 17 of this Order. The Directors' Charge shall have the priority set out in paragraphs 29 and 31 herein. *PAC*

PAC
19. ~~THIS COURT ORDERS~~ that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 17 of this Order. *PAC*

APPOINTMENT OF MONITOR

20. **THIS COURT ORDERS** that BDO Dunwoody Limited is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicant's conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

21. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicant in its development of the Plan and any amendments to the Plan;

- (d) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' meetings for voting on the Plan;
- (e) have full and complete access to the books, records and management and advisors of the Applicant and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (g) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan; and
- (h) perform such other duties as are required by this Order or by this Court from time to time.

22. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

23. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in

pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

24. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

25. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

26. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees, disbursements and GST, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a biweekly basis.

27. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

28. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of Five Hundred Thousand Dollars (\$500,000) as security for their professional fees, disbursements and GST incurred at the standard rates and charges of the Monitor and such

counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~29 and 31~~ hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

~~29 THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as between them, shall be as follows:~~

~~First - Administration Charge (to the maximum amount of \$500,000); and~~

~~Second - Directors' Charge (to the maximum amount of \$250,000).~~

30. ~~THIS COURT ORDERS~~ that the filing, registration or perfection of ~~the Directors' Charge or, the Administration Charge~~ (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

31. ~~THIS COURT ORDERS~~ that ~~each of the Directors' Charge and the Administration Charge~~ (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, mortgages and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

32. ~~THIS COURT ORDERS~~ that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, ~~any of the Directors' Charge or the Administration Charge~~ unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the ~~Directors' Charge and the Administration Charge~~, or further Order of this Court.

33. ~~THIS COURT ORDERS~~ that the ~~Directors' Charge and the Administration Charge~~ shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the ~~Charges~~ (collectively, the "Chargees") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued

pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges^{ALL, POC} shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) ~~none~~^{ALL, POC} of the Charges^{ALL, POC} shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges^{ALL, POC}; and
- (c) the payments made by the Applicant pursuant to this Order and the granting of the Charges^{ALL, POC}, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

SERVICE AND NOTICE

34. **THIS COURT ORDERS** that the Applicant shall, within ten (10) business days of the date of entry of this Order, send a copy of this Order to its known creditors, other than creditors to which the Applicant owes less than Two Hundred and Fifty Dollars (\$250) at their addresses as they appear on the Applicant's records, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

35. **THIS COURT ORDERS** that the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by

courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

36. **THIS COURT ORDERS** that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website at www.bdo.ca.

GENERAL

37. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

38. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

39. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

40. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

41. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than ten (10) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

42. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

July 20, 2007 Peter A. Cumming J.

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.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding Commenced at Toronto

INITIAL ORDER

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Solicitors for the Applicant

July 20, 2007

July 20 / 2007

The Applicant appears on an
important basis. The secured creditors
Graphic, with the first charge against
the property, requests an adjournment
give the short notice. After submissions,
the In my view, the CCAA applies.

The total claims against the

Alber company exceed \$5m.

The circumstances establish that

the order made is appropriate, being

The Applicant is insolvent, being

unable to pay its debts as they

become due. It is in the best

interest of all creditors to make

The value of the property through

The amount of \$30m. After & provide

It is the Applicant's intention &

make a follow-up on application that
under s. 11 (4) of the CCAA, the
application is to be heard by me
August 16, 2007 at 2:00pm.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding Commenced at Toronto

APPLICATION RECORD

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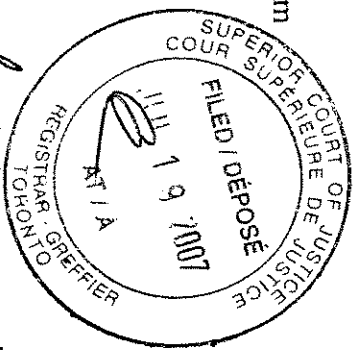
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Solicitors for the Applicants



SAPPHIRE
1.0

I request to vary, suspend or
discontinue the application, if upheld,
to be heard on Sept 10/07 at 10:00
am.