

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

SEVENTH REPORT OF THE MONITOR AND INTERIM RECEIVER
BDO DUNWOODY LIMITED
MARCH 20, 2008

A. INTRODUCTION

1. On July 20, 2007, Sapphire Tower Development Corp. (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 (the "**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 and 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 Stay Period as defined in the Initial Order (the “**Stay Period**”) to December 14, 2007, to allow for the completion of the Sale Process. On December 14, 2007 the Court granted a further extension of the Stay Period to January 31, 2008. On January 30, 2008 the Court granted a further extension of the Stay Period to March 28, 2008 (the “**January 30 Order**”)
5. The purpose of this, the Seventh Report of the Interim Receiver (“**Seventh Report**”) is to:
 - (a) Establish a claims process for determining amounts owing to the creditors of the Applicant;
 - (b) recommend a further extension of the CCAA proceedings until June 30, 2008 to allow for the determination of claims to the sales proceeds generated from the sale of the Property of the Applicant to Skyline; and
 - (c) request the approval of the fees and costs of the Monitor/Interim Receiver and its counsel, as well as for Representative Counsel (as defined below), as set out herein.
6. Capital terms not defined in this Seventh Report are as defined in the Initial Order.

B. TERMS OF REFERENCE

7. In preparing this Seventh Report, the Interim Receiver has relied upon unaudited financial information, company records, claims submitted by creditors, and discussions with management of the Applicants, various stakeholders and consultants and advisors. The Monitor and Interim Receiver has not performed an audit, review or other verification of such information.
8. The Monitor and Interim Receiver assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, re-production 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.

C. BACKGROUND

9. The Applicant is a single purpose entity incorporated and resident in the Province of Ontario, that owns the Property which is a single parcel of undeveloped real estate located at 66 Temperance Street, Toronto in the core downtown area of Toronto. The site was currently leased out as a parking lot. The Applicant had no active employees other than Harry Stinson (“Stinson”), who is the sole officer shareholder and director of the Applicant, and at the time of filing was 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.

D. POSTING OF ORDERS AND REPORTS OF THE MONITOR AND INTERIM RECEIVER

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

E. POSSESSION OF ASSETS

12. Immediately following its appointment as Interim Receiver, the Monitor and Interim Receiver took possession of all of the personal property and books and records of the Applicant. The Monitor and Interim Receiver took steps to ensure that the rental payments by the tenant of the company's real property were made to the Monitor and Interim Receiver. The Monitor and Interim Receiver did not go into possession of the real property owned by the Applicant as it did not believe that there was any necessity to do so.

F. CONSULTATION WITH INVESTORS/UNSECURED CREDITORS

13. Following its appointment, the Monitor and Interim Receiver had various discussions and meetings with stakeholders with a view to soliciting their input and views. In particular, the Monitor and Interim Receiver met with certain creditors whose advances included a contracted interest in units which were to be built in the contemplated condominium project.
14. In addition, persons in this group raised the issue of wishing to have legal representation for this group, to be funded out of the project. The Monitor and Interim Receiver was supportive of this group obtaining representation, and supported the concept of a charge in favour of counsel for this group, so long as such a charge ranked immediately behind the interest of the secured creditors.
15. Accordingly, by the endorsement of the Honourable Mr. Justice Cumming dated October 19, 2007, the Court appointed Page, Martin LLP as representative counsel (the "**Representative Counsel**") for all unsecured creditors, and Page, Martin LLP was granted 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.

G. STATUS OF SALE OF PROPERTY TO SKYLINE

16. On December 14, 2007 Justice Cumming granted a Sale Approval and Vesting Order approving the sale of the Property to Skyline. The Interim Receiver and its counsel have

completed the transaction with Skyline and fulfilled all conditions to completing the APS. The transaction closed on January 14, 2008 as anticipated, and the Interim Receiver has received the sale proceeds. The only remaining distributable assets of the Applicant are these sale proceeds.

H. CLAIMS PROCEDURE FOR SECURED CREDITORS

17. As noted in the Fifth Report of the Interim Receiver dated January 10, 2008 (the “**Fifth Report**”) and the Supplement to the Fifth Report dated January 11, 2008 (the “**Supplement**”), in order to implement a distribution to the secured creditors of the Applicant, on December 21, 2007 the Interim Receiver sent a form of proof of claim by mail to all creditors of the Applicant known to the Interim Receiver, including those who had registered claims against the Property. The instruction sheet sent along with the proof of claim form requested that all proofs of claim be submitted to the Interim Receiver by January 4, 2008 to enable the Interim Receiver to report to the Court by January 8, 2008, and to enable a distribution on or about the closing date for the transaction with Skyline on January 14, 2008.
18. As a result of the request for claims, 45 secured creditors submitted claims. As noted in the Fifth Report and the Supplement, the Trustee requested that distributions be made to certain secured creditors in order to maximize realization to unsecured creditors. These distributions were approved by the Order of Justice Spence dated January 14, 2008 (the “**Interim Distribution Order**”). Attached as Appendix “A” to the Seventh Report is a copy of the Interim Distribution Order.

I. SUMMARY OF INITIAL DISTRIBUTION

19. In accordance with the Interim Distribution Order, the Interim Receiver distributed the following aggregate amounts to the secured creditors of the Applicant out of the Sale Proceeds:

Recommended Distribution

Graphic Arts	\$ 11,473,963.01
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Syndicated Mortgage (in amounts set out at Appendix "G" in the Fifth Report) (Note 1)	\$	6,842,869.89
Shibley Righton LLP	\$	627,356.41
Page Martin LLP	\$	8,663.66
	\$	<u>18,952,852.97</u>

Note 1: The Interim Receiver has not paid the sum of \$254,654.24 indicated as owing to two separate investors in the Syndicated Mortgage as these two individuals had not submitted proofs of claim. Hence, the account indicated as owing to them had been reserved. One of the two individuals has meanwhile submitted a proof of claim in the amount of \$178,294.79, being the amount reserved for this individual, and the Interim Receiver recommends this should now be paid from the reserved funds.

J. SUMMARY OF RESERVES MAINTAINED

20. In accordance with the Interim Distribution Order, the Interim Receiver has reserved the following aggregate amounts out of the Sale Proceeds:

Reserves

Graphic Arts	\$	236,250.00
Syndicated Mortgage – 1% Admin Fee	\$	1,123,500.00
Syndicated Mortgage, reserve creditors	\$	890,860.27
TFA	\$	56,474.04
Oro	\$	286,775.73
WBM	\$	177,868.69
Rayan	\$	630,000.00
	\$	<u>\$3,401,728.73</u>

Note: In addition the Interim Receiver continues to reserve the remaining \$76,359.45 of the amount of \$254,654.24 previously reserved, as noted in the preceding section "I" with respect to the Syndicated Mortgage, for the second of the two individuals who has not yet filed a proof of claim.

K. GRAPHIC ARTS BUILDING INCORPORATED MORTGAGE (THE “GA MORTGAGE”) INTEREST PENALTY

21. As noted in the Fifth Report and the Supplement, the first charge registered on title to the Property was a mortgage in favour of Graphic Arts Building Incorporated (“**Graphic Arts**”) which was registered on May 5, 2005 in the amount of \$10,500,000.
22. The Interim Receiver has paid \$11,473,963.01, (including outstanding principal and interest calculated on a non-compounded basis) to Graphic Arts pursuant to the Interim Distribution Order and maintains a reserve of \$236,250.00. As noted in the Supplement to the Fifth Report, the Interim Receiver raised an issue with the method of calculation of interest used by Graphic Arts. Graphic Arts filed a revised Proof of Claim, showing payment of interest calculated and compounded monthly, and the Interim Receiver proposes to pay this additional amount of interest of \$39,215.70, calculated on a compounded basis, to Graphic Arts. The Court approved the distribution of additional interest in the January 30th Order.
23. The issue of whether the penalty of three months interest payable under the terms of the Graphic Arts mortgage upon issuance of a Notice of Sale violates s.8 of the *Mortgages Act*, remains outstanding, and counsel for Graphic Arts, the Interim Receiver and Representative Counsel have been canvassing dates for a hearing of this matter in April.

L. SYNDICATED MORTGAGE ADDITIONAL 1% “ADMINISTRATION FEE” DISPUTE

24. As noted above, the Interim Receiver previously reserved the amount of \$1,123,500 to deal with the possible claim under the Syndicated Mortgage for a 1% per month “administration fee” payable on default under the terms of the Syndicated Mortgage (the “**Administration Fee Claim**”). The Monitor and Representative Counsel have taken the position that this claim violates s.8 of the *Mortgages Act*, which prohibits the imposition of a higher rate of interest after default than before default.
25. On March 20, 2008 counsel for the Interim Receiver received correspondence from Simpson Wigle, counsel for Jeffrey Family Holdings Inc., the Succeeding Trustee under the Syndicated Mortgage (“**Jeffrey**”). Jeffrey was made Trustee under the Syndicated

Mortgage by the Order of Justice Cumming dated November 7, 2007, replacing Stinson Financial Corp. Jeffrey had the largest claim under the Syndicated Mortgage, in the amount of \$2,545,315.07, out of the total amount that had been outstanding under the Syndicated Mortgage of \$6,808,848.55. In this correspondence Jeffrey advised the Interim Receiver that Jeffrey, as Trustee of the Syndicated Mortgage, and on its own behalf, would not be prosecuting the Administration Fee Claim.

26. In addition, counsel for Dr. McNeely, another Syndicated Mortgagee, has advised the Interim Receiver that Dr. McNeely would settle and agree not to pursue the Administration Fee Claim, or claims for legal fees under the terms of the Syndicated Mortgage if the Interim Receiver agreed to pay the settlement amount of \$25,000. Dr. McNeely had the second largest claim under the Syndicated Mortgage, in the amount of \$636,328.77. The Interim Receiver recommends that this settlement amount be paid, and Representative Counsel concurs in this recommendation.
27. The Interim Receiver has not been advised by any of the other individual Syndicated Mortgagees that they wish to continue this claim. If the individual mortgagees choose not to prosecute the Administration Fee Claim by the time of completion of the Claims Procedure, as described below, this should result in the amount of \$1,123,500, currently reserved by the Interim Receiver as noted in Section "J" above, becoming available for distribution to the unsecured creditors of Sapphire.

M. SYNDICATED MORTGAGE RESERVE CREDITORS LOCATED

28. Since its last report to the Court, the Interim Receiver has also investigated the particulars of the reserve of \$890,860.27 for Syndicated Mortgage Reserve creditors. This reserved amount represented the potential claims of 9 individuals who had invested \$700,000 into the Syndicated Mortgage, but, at the date of the Fifth Report had not been identified by Sapphire as current creditors, and had not submitted claims.
29. The Interim Receiver has determined that 7 of the 9 individuals who had invested \$550,000 of the sum of \$700,000, in fact were repaid their investment, plus interest, on or about the mortgage due date of May 31, 2006.

30. As to the remaining two individuals who had invested \$150,000, no evidence of repayment was found, but the Interim Receiver was able to locate addresses for these individuals. The Interim Receiver wrote to these individuals, urging them to submit particulars of any claim they may have, but has not received responses from these individuals, nor have the letters been returned by the post office as undeliverable.
31. It appears, therefore, that at least \$700,000 of the reserved amount of \$890,860.27 may become available for distribution to the unsecured creditors of Sapphire, and that any remaining claims would be dealt with in the Claims Bar Process.

N. PROPOSED CLAIMS PROCEDURE

32. The Interim Receiver had previously requested that secured creditors of Sapphire file Proofs of Claim with the Interim Receiver in order to expedite the payment of the secured creditors, in order to minimize the payment of interest and maximize recoveries to the unsecured creditors. As this process has largely been completed, and it now appears that sufficient sale proceeds will remain to provide a significant distribution to the unsecured creditors of Sapphire, it is the view of the Interim Receiver that it would be prudent at this time to conduct a claims procedure to determine the claims of the unsecured creditors of Sapphire.
33. To the knowledge of the Interim Receiver, these unsecured creditors are divisible into two groups: the trade creditors; and those persons that claim that Sapphire purportedly sold one or more "units" in the Sapphire Tower, and signed promissory notes as evidence of this indebtedness for the purchase of the "units".
34. The Interim Receiver proposes that the claims procedure as described in the draft Order appended to these materials would be implemented as follows:
 - (a) notice of this Order be mailed to all known creditors by the Interim Receiver;
 - (b) a notice of the claims procedure be published in the *Globe and Mail* on or about April 4, 2008;
 - (c) that creditors have until April 30, 2008 to file proofs of claim with the Interim Receiver (the "**Claims Bar Date**");

- (d) that claims not filed by the Claims Bar Date would be barred;
 - (e) that creditors who had previously filed proofs of claim by way of the secured creditor proof of claim form, file a second proof of claim form, and check off a box indicating they had previously filed their claim and submitted all required documentation.
35. The Interim Receiver would evaluate and, if necessary, disallow claims using the disallowance procedures in the claims procedure.
36. The claims procedure proposed would also assist the Interim Receiver in determining whether there are any more creditors having the same types of claims as asserted by ORO, WBM and Rayan, for which specific reserves have been maintained by the Interim Receiver, as described in Section J above, and in the Fifth Report.

O. CCAA PROCEEDINGS

37. Under the circumstances, it is the view of the Monitor/Interim Receiver that the CCAA stay should be extended until June 30, 2008, so as to conduct a claims process to determine the claims of unsecured creditors of the Applicant.
38. The Monitor/Interim Receiver has been requested by the Applicant to support the continuation of the CCAA and the Monitor/Interim Receiver supports the requested extension because it believes that maintaining the CCAA proceeding will preserve flexibility in the process.
39. 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.

P. MONITOR'S AND INTERIM RECEIVER'S COSTS

40. BDO as Interim Receiver has incurred time charges of \$41,292.50, calculated at the normal billing rates of its personnel involved, for the period from January 18, 2008 to

March 18, 2008, plus \$328.81 for out of pocket disbursements, for total fees and disbursements of \$41,621.31, 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.

41. Fraser Milner Casgrain LLP, counsel to BDO, charged fees to the Interim Receiver in the period November 11, 2007 to March 20, 2008, in the amount of \$58,675.50 calculated at the normal billing rates of its personnel involved, as well as \$1,090.07 for out of pocket disbursements, for total fees and disbursements to \$62,747.59 including GST. The Interim Receiver seeks the approval of the 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.
42. Page Martin LLP, representative counsel, charged fees pursuant to their charge in the period November 30 to March 13, 2008, in the amount of \$6,888.00 calculated at the normal billing rates of its personnel involved, as well as \$176.81 for out of pocket disbursements, for total fees and disbursements to \$7,064.81 including GST. The Interim Receiver seeks the approval of the 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.

All of which is respectfully submitted this 24th day of March, 2008.

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



Initial Order, the Interim Receivership Order dated August 16, 2007 (the “**Interim Receivership Order**”), and on hearing the submissions of counsel for BDO, the Applicant, Stinson Financial Corporation, Graphic Arts Building Incorporated (“**Graphic Arts**”), Jeffrey Family Trust, the Substituted Trustee of the Stinson Financial Corporation Mortgage, Turner Fleischer Architects Inc. (“**TFA**”), and Page Martin LLP, representative counsel for the unsecured creditors;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the actions and activities of BDO as Interim Receiver, and as Monitor, as set out in the Fifth Report, and the Supplement, are hereby authorized and approved.
3. **THIS COURT ORDERS** that the Interim Receiver shall proceed to make the distributions and set aside the reserves recommended by the Interim Receiver in the Fifth Report, and in the Supplement with respect to the claim of Graphic Arts, to those secured creditors of the Applicant set out below.

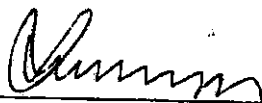
- i) The Interim Receiver shall distribute the following aggregate amounts to the secured creditors of the Applicant out of the Sale Proceeds:

Graphic Arts	\$ 11,473,963.01
Syndicated Mortgage (in amounts set out at Appendix “G” in the Fifth Report)	\$ 6,842,869.89
Sibley Righton LLP	\$ 627,356.41
Page Martin LLP	\$ 8,663.66
	\$ 18,952,852.97

- ii) The Interim Receiver shall reserve the following aggregate amounts out of the Sale Proceeds:

Graphic Arts	\$	236,250.00
Syndicated Mortgage – 1% Admin Fee	\$	1,123,500.00
Syndicated Mortgage, reserve creditors, paragraph 27	\$	890,860.27
TFA	\$	56,474.04
Oro	\$	286,775.73
WBM	\$	177,868.69
Rayan	\$	630,000.00
	\$	<u>\$3,401,728.73</u>

4. **THIS COURT ORDERS** that the distribution to Shibley Righton LLP, as noted above, shall be deemed to be payment in full for all amounts now or hereafter due under the Shibley Mortgages which shall no longer bind the proceeds of sale and for all work done on behalf of the Applicant to January 14, 2008 and claimed by Shibley Righton LLP under the Administrative Charge, each as defined in the Fifth Report.



 C. Irwin, Registrar

JAN 14 2008

