

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

**THIRD REPORT OF THE MONITOR/INTERIM RECEIVER
BDO DUNWOODY LIMITED
NOVEMBER 6, 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.

5. The purpose of this Third Report of the Monitor/Interim Receiver ("**Third Report**") is to:
 - (a) report to this Honourable Court on the activities of the Monitor/Interim Receiver from the date of the Second Report to the present; and

 - (b) to express the views of the Monitor/Interim Receiver as to the utility of continuing the CCAA proceedings.

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

TERMS OF REFERENCE

7. In preparing this Third 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 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 and director of the Applicant. 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 in certain cases included a right to obtain 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, but, unfortunately, there is no cash available to fund counsel nor could the Monitor/Interim Receiver view it as appropriate that assets over which other stakeholders have priority be deployed to support the interest of this group. The Monitor/Interim Receiver did, however, support 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. To the best of the Monitor/Interim Receiver's knowledge, no creditors have objected to the sale process, and accordingly 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. The Monitor/Interim Receiver set up the website, which also set out the Court approved process, prepared a marketing brochure, a due diligence room and relevant documentation, a Confidential Information Memorandum and Confidentiality Agreement, and set out procedures for submission of offers and a structure of the transaction including a form of Agreement of Purchase and Sale, compiled lists of potential purchasers, and retained the firm of N. Barry Lyon Consultants Limited as marketing consultants to assist in the sale process.
17. 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 200 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 Monitor/Interim Receiver received Letters of Intent from a number of interested parties.
18. The period from October 20, 2007 to October 26, 2007 represented the period for evaluation of the Letters of Intent received. Due to the similarity in range of a number of the offers received, BDO requested a meeting with about 10 parties, and met and/or spoke with them, to clarify the terms and amounts of their offers.

19. Accordingly, by 26 October 2007, a short list of offerors had been prepared. It is important to note that the Monitor/Interim Receiver has indicated to each offeror that it reserves the right to evaluate new bids on an ongoing basis if it believes such bids to be superior to those submitted to date. Also, it has been emphasized to offerors that we seek to finalize an offer that is attractive in price, has no conditions, and has an early closing date, all as per the requirements of the sale process. Further, offerors have been advised of the amount of a deposit which must accompany final offers.
20. The period from October 27, 2007 to November 23, 2007 represents the formal due diligence period, which is currently in progress. The Monitor/Interim Receiver and its consultant have made themselves available throughout this period to assist offerors in finalizing their offers. At the time of drafting this report, the bidder interest in this project continues to be strong. The Interim Receiver is about to commence a claims process so as to obtain a more precise determination of the liabilities. To date, that information has been obtained from the debtor's records, and from various communications with specific creditors.
21. In accordance with the sale process, offerors have been advised that the deadline for formal offers is November 28, 2007, with selection of a successful bidder to hopefully take place by December 5, 2007, and Court approval and a Vesting Order to follow, hopefully by December 10, 2007. Most of the offerors appear to be content with these timelines, although one offeror has indicated that it would not be able to close until the end of February 2008.

CCAA PROCEEDINGS

22. The applicant moves for the continuation of the CCAA proceedings. The Monitor/Interim Receiver has had discussions with counsel for the applicant

about the utility of the continuance of the CCAA proceedings in light of the present state of affairs.

23. On the last motion for the extension of the CCAA proceedings, the Monitor recommended that the CCAA proceeding be kept in existence pending receipt of the bids which have now been received since it was considered possible that a bidder might wish to express its bid in a format that would include it sponsoring a plan of arrangement under the CCAA. For this reason, the length of the extension of the CCAA was designed to dovetail with the bidding time lines, so that, upon the return date for the next extension the Monitor/Interim Receiver would be able to advise the court as to whether a bid based on a plan was still a possibility.
24. The situation at present is such that it remains possible that a purchaser could be selected whose offer might contain either the possibility of some continued interest in the project or the right for stakeholders to elect to receive such in lieu of other forms of recovery such as cash. It is not clear to the Monitor/Interim Receiver that should such a offer in this format be selected, that it would be necessary to implement the same through a plan of arrangement. It is possible that such a transaction could simply be approved by the court, or, if a meeting of creditors was considered necessary it could either done informally be ordered by the court as part of the approval process or achieved through the filing by the Monitor/Interim Receiver of a proposal under the Bankruptcy and Insolvency Act ("BIA") all of which would likely be faster, simpler and cheaper than a plan of arrangement under the CCAA.
25. The Monitor/Interim Receiver has tabled these concerns with the counsel for the applicant who is of a different view. In the view of the Monitor/Interim Receiver the only issues are ones of costs and efficiency. Given that there will be the need to appear in court at least one more time to approve a sale, deferring the matter of dealing with the continuance of the CCAA until that

motion, when matters will be even more certain, will not entail more costs. That, said, ultimately it is clear that this matter is headed towards a distribution of the proceeds of a sale and it is the Monitor/Interim Receiver's view that such a distribution can be done more quickly and efficiently under the terms of the BIA than under the CCAA and that the use of the BIA in such circumstances is more appropriate.

- 23 Since there will be no additional costs incurred in deferring the issues related to the CCAA until the date of the approval of the sale, the Monitor would be content with an extension until such time at which time the court could finally address the concerns set out above provided, however, that during that period there were no actions taken by the applicant in the CCAA , such as the filing of a plan, which would lead to costs or any potential for a delays in the bidding process, without either the Monitor's consent or leave of the court. The Monitor does not have any issue with the applicant having met the other criteria for extension such as having acted in good faith.

All of which is respectfully submitted this 6th day of November, 2007.

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



Encl.

**IN THE MATTER OF the Companies' Creditors Arrangement Act, R.S.C. 1985, c.C-36, as amended
AND IN THE MATTER OF the Plan of Compromise and Arrangement of **SAPPHIRE TOWER DEVELOPMENT CORP.****
Court File No. 07-CL-7109

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings Commenced at Toronto

**THIRD REPORT OF THE MONITOR/INTERIM
RECEIVER BDO DUNWOODY LIMITED
NOVEMBER 6, 2007**

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