

ASHCROFT HOMES – 101 RICHMOND ROAD INC., ASHCROFT HOMES – 108 RICHMOND ROAD INC., ASHCROFT HOMES - 111 RICHMOND ROAD INC.

SECOND SUPPLEMENTAL REPORT TO THE SECOND REPORT OF THE RECEIVER

November 14, 2024

Court File No. CV-24-00095337-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

Applicant

- and -

**ASHCROFT HOMES – 101 RICHMOND ROAD INC., ASHCROFT HOMES – 108 RICHMOND  
ROAD INC., AND ASHCROFT HOMES - 111 RICHMOND ROAD INC.**

Respondents

**APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended, and under section 101 of the  
*Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended**

**SECOND SUPPLEMENTAL REPORT TO THE SECOND REPORT OF BDO CANADA LIMITED  
IN ITS CAPACITY AS RECEIVER OF ASHCROFT HOMES – 101 RICHMOND ROAD INC.,  
ASHCROFT HOMES – 108 RICHMOND ROAD INC., ASHCROFT HOMES - 111 RICHMOND  
ROAD INC.**

**NOVEMBER 14, 2024**

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## I. PURPOSE OF REPORT

1. This Second Supplemental Report to the Second Report of the Receiver (the “**Second Supplemental Second Report**”) is filed in respect of the Receiver’s motion for the relief set out in its Fresh as Amended Notice of Motion, dated November 13, 2024.
2. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Second Report or the Supplemental Second Report to the Court, dated November 13, 2024.
3. This Second Supplemental Second Report should be read in conjunction with the Second Report. All qualifications set forth in the Second Report are relied upon and adopted in this Second Supplemental Second Report.
4. Unless otherwise noted, all monetary amounts contained in this Second Supplemental Second Report are expressed in Canadian dollars.

## II. DEBTORS’ RESPONSE TO RECEIVER’S REQUESTS

5. By letter, dated November 13, 2024, and delivered by email at 3:25 p.m. (the “**Mann Letter**”), the Debtors provided a limited response to certain of the Receiver’s requests for information and documentation required to report to this Honourable Court in respect of the viability of the Debtors’ refinancing. A copy of the letter, dated November 13, 2024, is attached hereto as **Appendix “A”**.
6. The Mann Letter does not provide accurate information with respect to the Debtors’ current or post-discharge financial position. The Receiver brings to this Court’s attention the following issues with respect of the letter and the information contained therein:
  - a) the listing of pre-receivership obligations noted in the Mann Letter does not correspond with the Debtors’ books and records – i.e. the June 17, 2024 trial balances which the Debtors provided to the Receiver on the commencement of these proceedings. Excerpts from the 108RR and 111RR June 17, 2024 trial balances are attached hereto as **Appendix “B” and Appendix “C”**, respectively. It is unclear to the Receiver where the pre-receivership liability figures contained in the Mann Letter are derived;
  - b) The Mann Letter does not account at all for the intercompany indebtedness and how the Debtors propose to deal with such obligations;
  - c) the Debtors’ calculations assume that the November rental receipts will be available to the Debtors to satisfy post-discharge liabilities, however the Receiver’s calculation of the Estimated Shortfall as set out in the Updated Refinancing Calculation Estimate, and

detailed in the Supplemental Second Report, was prepared on the assumption that the November 2024 rental receipts are paid to the Receiver on or around December 10<sup>th</sup> and applied against the Receiver's accrued and owing expenditures as of November, 2024 and any remainder to be retained as part of and in addition to the Reserve, which residual balance in the Reserve after all priority payables and post-receivership obligations of the Receiver are paid, if any, be returned to the Debtors in due course;

- d) the Mann Letter uses the term of "Total Surplus" of \$69,704 as of March 2025; Leaving aside that the calculation on page 3 does not deal with pre-filing unsecured obligations nor does it adequately deal with post-filing obligations, the Total Surplus amount does not account for the payment of the first instalment of property taxes due in 2025 – whether on an accrual or cash basis - which is estimated to total approximately \$151,000 and be due on or before March, 2025 (based upon 2024 property tax information), and will vastly exceed the alleged calculated "Total Surplus". Same can be said for other expenses that will have to be incurred by the Debtors, such as insurance premiums;
- e) the Debtors' go-forward business plan seems to be to market and lease the commercial units, however they also propose to sell the Real Property in order to pay down the financing received by the New Lender. As property is sold, rental revenues will decrease. The calculations in the Mann Letter does not incorporate any reduction in rental revenues on account of any sale, meaning the implicit assumption is no property will be sold by March 2025, contrary to the assertion in the "Ashcroft Sales Process" section of the Mann Letter;
- f) there is no calculation demonstrating the net proceeds of sale will be sufficient to repay the financing received from the New Lender, all pre-receivership unsecured indebtedness or how much of such proceeds will be available to satisfy post-discharge obligations. In fact nowhere in the Mann Letter is the repayment of the pre-receivership obligations addressed – as evidence for that proposition the Mann Letter provides for the reduction in liabilities with the "Discharge Order Payment" (found on each of pages 1 and 2 of the Mann Letter) which payments are presumably solely to satisfy priority payables quantified in the Mann Letter in place of the pre-receivership HST and property tax priority payables quantified in the Updated Refinancing Calculation Estimate, and does not provide for the payment of pre-filing unsecured obligations;
- g) there is no information demonstrating the Debtors have the financial ability to pay their pre-receivership liabilities;

- h) the Mann Letter states that the New Lender will fund a portion of the shortfall but fails to provide any evidence of the New Lender's agreement to this arrangement, which the Receiver has repeatedly requested;
  - i) the calculation of the property management cost savings, noted as \$7,706.00/month is incorrect, as currently the property management fee is \$2,938.88 plus HST; meaning that at most any "savings" is capped at the amount that is currently being charged;
  - j) the dentist rental cash receipt in February 2025 is only \$1,470.89, due to the application of a leasehold improvement inducement and first month rent deposit pursuant to the lease agreement. Full rent only becomes effective March 2025. This is a decrease of \$20,890 to the February net receipts amount included in the Mann Letter; and
  - k) other than an exchange of emails regarding the amounts in connection with insurance expenses there have been no discussions between the Receiver and Mr. Difilippo, as alleged in the Mann Letter. Other than indicating that it might take issue with the fees of the Receiver and its counsel, the issue of insurance was the only question posed by the Debtors in connection with the Updated Refinancing Calculation Estimate, which included the estates' receipts and disbursements to October 31, 2024. Despite repeated efforts by the Receiver, the parties have not spoken once since the November 5, 2024 court appearance.
7. By email, dated November 13, 2024, at 5:17 p.m. Dentons responded to Mann Lawyers inviting a call that evening between the Receiver and Mr. Difilippo and Ms. Tara Bonsor. A copy of the email, dated November 13, 2024, is attached hereto as **Appendix "D"**.
  8. By email, at 7:09 p.m., Mann Lawyers responded advising the Mr. Difilippo was not available. A copy of the email, dated November 13, 2024, is attached hereto as **Appendix "E"**.

### III. CONCLUSION

9. The Receiver respectfully requests the Court grant the relief contained in its Fresh as Amended Notice of Motion, dated November 13, 2024.

All of which is respectfully submitted on the 14<sup>th</sup> day of November, 2024.

**BDO Canada Limited**  
**in its capacity as Court-Appointed Receiver of**  
**Ashcroft Homes – 101 Richmond Road Inc.;**  
**Ashcroft Homes – 108 Richmond Road Inc.; and**  
**Ashcroft Homes – 111 Richmond Road Inc.,**  
**and not in its personal or corporate capacity**



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**Matthew Marchand, CPA, CMA, CIRP, LIT**  
Senior Vice President

**Appendix “A”**  
**to the Second Supplemental Report**  
**to Second Report of the Receiver**





Raymond Murray  
 raymond.murray@mannlawyers.com  
 Direct Dial: 613.369.0367

November 13, 2024

Sara-Ann Wilson  
 Dentons Canada LLP  
 77 King Street West  
 Suite 400  
 Toronto-Dominion Centre  
 Toronto, ON M5K 0A1  
 Sara.wilson@dentons.com

Dear Ms. Wilson

Re: Ashcroft ats DUCA  
 Our File No.: 2401960

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This letter is further to your email dated November 8, 2024, and provides a substantive response to your questions as well as critique and revisions to figures outlined by your client in Excel sheets.

### **Pre-Receivership Liabilities**

BDO Canada Limited (the “**Receiver**”) was provided with the general ledgers (“GLs”) of Ashcroft Homes – 101 Richmond Road Inc., Ashcroft Homes – 108 Richmond Road Inc, and Ashcroft Homes – 111 Richmond Road Inc (“**Ashcroft**” or the “**Debtor**”) when it was appointed in June 2024. Those GLs set out Ashcroft’s pre-receivership liabilities, which were:

#### ***108 Richmond Road Inc (“108RR”)***

A) HST	\$ 12,282
B) Property Tax	\$152,899
C) Other	<u>\$ 91,237</u>
SUBTOTAL	\$256,418
Less Discharge Order Payment	\$165,181
TOTAL	<b>\$ 91,236</b>

300-11 Holland Avenue  
 Ottawa, Ontario  
 K1Y 4S1

T: 613.722.1500  
 F: 613.722.7677  
 www.mannlawyers.com

*Offices in Ottawa and Perth*

**111 + 101 Richmond Road ("101RR")**

A) HST	\$ 85,568.77
B) T2 Taxes	\$ 59,578.57
C) Other	\$ 34,696.78
 SUBTOTAL	 \$179,844.12
Less Discharge Order Payment	\$ 85,568.77
TOTAL	<b>\$ 94,275.35</b>

**Ashcroft Operation Post-Receivership / Financing Shortfall**

The Receiver's calculation of the overall financing shortfall to the end of November 2024 of \$261,731.50 is incorrect because it does not take into account the November 2024 net receipts of \$76,466.32. Thus, the true shortfall is in fact \$185,265.18.

Ashcroft will continue to earn similar rent and other revenues that accord with the Receiver's projected revenues of \$76,466.32 in December 2024. Similar earnings will be made in January 2025. In February 2025, the commercial dental office begins paying rent in the amount of \$22,361.58, which further increases revenues to \$98,794.90. At the same time, Ashcroft will be promoting the leasing of further commercial units that would further augment their monthly revenues.

Further, after the discharge of the Receiver, and given the fact that Ashcroft has its own property management, there would be an additional ongoing monthly savings of \$7,706.00 commencing in January 2025.

Without taking into account the dentist revenue and property management savings, Ashcroft will pay off the shortfall of \$185,265.18 by February 2025 and will begin operating at a surplus by March 2025.

<b>Go forward cash contributions assuming occupancy does not change and entries as per BDO are correct except for the items noted below:</b>			
cash shortfall by BDO			-261,731
Nov net receipts not reflected in summary			76,466
net deficit position on receivership discharge			-185,265
Dec net receipts assuming Nov is correct			
start with Nov and adjust	76,466		
Dec condo fees	-31,611		
ongoing property fees savings	7,706		52,561
	Jan-25		52,561
	Feb-25		74,923
opening shortfall covered by Feb 2025			-5,219
	Mar-25		74,923
Total surplus as of March 2025			69,704

### Ashcroft Sale Process

Ashcroft has already detailed in correspondence to date how it intends to pay off its refinancing and any outstanding unsecured post-receivership lender via the sale of properties. In this regard, and prior to receivership, Ashcroft had already established a sale team and was receiving solicited and unsolicited offers. The sales of their remaining units will cover the refinancing, and Ashcroft is prepared to resume the sale of units as early as December 2024.

### Interest Reserve

Ashcroft has spoken with the refinancing lender, who has agreed to allow it to access the interest reserve to cover the shortfall, provided it is given an exact figure on that amount that accords with Ashcroft's review and audit. In this regard, the refinancing lender has agreed to Ashcroft accessing the interest reserve to cover the \$185,265 shortfall.

### Indemnification / Reservation of Rights

We have prepared the **attached** draft order, which includes the standard language release provision from the model receivership Discharge Order approved by the Toronto Commercial List Users' Committee. The provision, as you know, releases and discharges the Receiver from

any liability. You will also note that both the Model Order and jurisprudence support that an interested party, including a Debtor, is entitled to limit that release to exclude any acts of omissions of a receiver that amounts to gross negligence or willful misconduct.

Similarly, and per Ashcroft's submissions at the motion hearing, the inclusion of paragraph 2 of Ashcroft's notice of motion seeking leave was exclusively to deal with the issue of reserving the Debtor's right to object to the Receiver's accounts. At this time, we still have not received sworn fee affidavits and therefore continue to reserve our rights to pursue an order, compelling the Receiver to pass its accounts. We do not agree that the Receiver's fees and disbursements should be approved by the Court and state that the Debtor should be afforded the opportunity to investigate them further (and not half-way through a motion hearing and less than 24 hours before the second day of hearing).

The Debtor has no intention of pursuing any proceedings against the Receiver, except to potentially object to the Receiver's accounts, and to compel them to pass those accounts.

### **Conversations with Manny Difilippo**

As outlined in our correspondence, I understand that your client has had an opportunity to speak with Mr. Difilippo and to be responsive to your email yesterday, our client is satisfied with the responses provided by your client in respect of insurance. Ashcroft continues to have a series of questions in respect of the Receiver's fees, expenses, disbursements and receipts but those questions can be posed after we are in receipt of your complete accounts and sworn affidavits. Ashcroft also requires disclosure with respect to property taxes and HST, including the HST roll, how it has been and is being paid.

### **Estate Accounts**

The Receiver's estate accounts are subject to the following errors/miscalculations:

- a) The figures and particularly interest should be calculated to November 15, 2024 when payments will be made, and not November 30<sup>th</sup> where appropriate (IE we have been provided with DUCA's interest calculation to November 15, 2024);
- b) The calculation of surplus:
  - i. does not account for November revenues as discussed above;
  - ii. the Receiver is proposing to receive November professional fees of \$67,800 plus an additional \$15,000 in reserves. The \$67,800 covers the period of time required for discharge.

We are available to discuss our draft discharge order, and other information exchanged today, and in advance of the continuation of the motion hearing tomorrow.

Yours truly,

Mann Lawyers LLP



Raymond Murray  
RAM/mn

**Appendix “B”**  
**to the Second Supplemental Report**  
**to Second Report of the Receiver**

**108RR Trial Balance Exceprts**

Account Code	Account Name	Closing Balance
2100	Accounts Payable	(135,265.68)
2110	Accrued Liabilities	(157,680.17)
2160	Last Months Rent	(30,739.99)
2190	Deposits - Deferred Revenue	(47,130.41)
Subtotal		(370,816.25)

Account Code	Account Name	Closing Balance
2200.CLER	GST Receivable/(Payable)	(19,898.48)
2200.COL	GST Collected	(2,658.17)
2200.ITS	GST Input Tax Credit	3,070.40
2200.OITS	HST Input Tax Credit - Ontario	4,912.64
2200.ON	HST Payable Sales - Ontario	(4,253.07)
Subtotal		(18,826.68)

**Appendix “C”**  
**to the Second Supplemental Report**  
**to Second Report of the Receiver**



**111RR Trial Balance Exceprts**

Account Code	Account Name	Closing Balance
2100	Accounts Payable	(29,994.90)
2110	Accrued Liabilities	(13,156.65)
2160	Last Months Rent	(57,496.30)
Subtotal		(100,647.85)

Account Code	Account Name	Closing Balance
2200.CLER	GST Receivable/(Payable)	6,060.83
2200.COL	GST Collected	(5,032.94)
2200.ITS	GST Input Tax Credit	1,237.48
2200.OITS	HST Input Tax Credit - Ontario	1,979.89
2200.ON	HST Payable Sales - Ontario	(8,052.68)
Subtotal		(3,807.42)

**Appendix “D”**  
**to the Second Supplemental Report**  
**to Second Report of the Receiver**

**Wilson, Sara-Ann**

---

**From:** Salmas, John  
**Sent:** Wednesday, November 13, 2024 5:17 PM  
**To:** Mary Neill; Wilson, Sara-Ann; mdifilippo@ashcrofthomes.ca; tbonsor@ashcrofthomes.ca; Mackinnon Blair, Fraser  
**Cc:** Timothy Dunn; Stephen Gaudreau; Sarah DelVillano; K. Scott McLean; Raymond Murray  
**Subject:** RE: Ashcroft ats DUCA - Court File No. CV-24-00095337-0000

We have sent your letter to the Receiver who is currently reviewing.

The visceral response is that there are having difficulty understanding the layout of the numbers/metrics in the letter. The Receiver can make itself available asap to discuss with Manny/Tara. What is their availability for a call this evening?

Without commenting – and reserving any rights in that regard to do so – in respect of the substance of the letter, any numbers/metrics proposed therein or in respect of the draft order, can you please provide any evidence from the new lender on its agreement in respect of the Debtors' use of the interest reserve to speak to the shortfall? If so, please provide asap.

Please let us know.

Regards,

John

**John Salmas**

Partner

My **pronouns** are: He/Him/His

 +1 416 863 4737

**Dentons Canada LLP | Toronto**

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**From:** Mary Neill <mary.neill@mannlawyers.com>  
**Sent:** Wednesday, November 13, 2024 3:19 PM  
**To:** Wilson, Sara-Ann <sara.wilson@dentons.com>  
**Cc:** Timothy Dunn <tdunn@blaney.com>; Salmas, John <john.salmas@dentons.com>; Stephen Gaudreau <sgaudreau@blaney.com>; Sarah DelVillano <sarah.delvillano@mannlawyers.com>; K. Scott McLean <scott.mclean@mannlawyers.com>; Raymond Murray <raymond.murray@mannlawyers.com>  
**Subject:** Ashcroft ats DUCA - Court File No. CV-24-00095337-0000

**[WARNING: EXTERNAL SENDER]**

Please see the attached correspondence of today's date from Raymond Murray together with a draft Discharge Order.

If anyone wishes to discuss the attached, Mr. Murray has advised that he will be available after 4:30 p.m. today.



**Mary Neill**  
**Law Clerk**  
**Ext. 258**

11 Holland Avenue | Suite 300 | Ottawa | Ontario | K1Y 4S1  
t: 613-722-1500 | f: 613-722-7677

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**Appendix “E”**  
**to the Second Supplemental Report**  
**to Second Report of the Receiver**

**Wilson, Sara-Ann**

---

**From:** Raymond Murray <raymond.murray@mannlawyers.com>  
**Sent:** Wednesday, November 13, 2024 7:09 PM  
**To:** Salmas, John; Wilson, Sara-Ann  
**Cc:** Timothy Dunn; Stephen Gaudreau; Sarah DelVillano; K. Scott McLean; Mary Neill  
**Subject:** RE: Ashcroft ats DUCA - Court File No. CV-24-00095337-0000

**[WARNING: EXTERNAL SENDER]**

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Good Evening John:

I would ask that you halt any further and direct communications with our client. As you are aware, Ashcroft has counsel and we do not consent to your attempts at direct communications.

Manny is not available and is at a function this evening. I am available if you would like to discuss although I am not encouraged by your comments.

I can assure you that Manny is available to speak to the court with respect to the figures contained within our letter.

Best regards,

Ray



**Raymond Murray**  
**Lawyer**  
**613-369-0367**

11 Holland Avenue | Suite 300 | Ottawa | Ontario | K1Y 4S1  
 t: 613-722-1500 | f: 613-722-7677

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**Cc:** Timothy Dunn <tdunn@blaney.com>; Stephen Gaudreau <sgaudreau@blaney.com>; Sarah DelVillano <sarah.delvillano@mannlawyers.com>; K. Scott McLean <scott.mclean@mannlawyers.com>; Raymond Murray <raymond.murray@mannlawyers.com>  
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Please let us know.

Regards,

John

**John Salmas**

Partner

My pronouns are: He/Him/His

+1 416 863 4737

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**Sent:** Wednesday, November 13, 2024 3:19 PM

**To:** Wilson, Sara-Ann <[sara.wilson@dentons.com](mailto:sara.wilson@dentons.com)>

**Cc:** Timothy Dunn <[tdunn@blaney.com](mailto:tdunn@blaney.com)>; Salmas, John <[john.salmas@dentons.com](mailto:john.salmas@dentons.com)>; Stephen Gaudreau <[sgaudreau@blaney.com](mailto:sgaudreau@blaney.com)>; Sarah DelVillano <[sarah.delvillano@mannlawyers.com](mailto:sarah.delvillano@mannlawyers.com)>; K. Scott McLean <[scott.mclean@mannlawyers.com](mailto:scott.mclean@mannlawyers.com)>; Raymond Murray <[raymond.murray@mannlawyers.com](mailto:raymond.murray@mannlawyers.com)>

**Subject:** Ashcroft ats DUCA - Court File No. CV-24-00095337-0000

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**Law Clerk**  
**Ext. 258**

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DUCA FINANCIAL SERVICES CREDIT UNION  
LTD.

-and-

ASHCROFT HOMES – 101 RICHMOND ROAD INC., ASHCROFT  
HOMES – 108 RICHMOND ROAD INC., and ASHCROFT HOMES  
– 111 RICHMOND ROAD INC.

Applicant

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT OTTAWA

**SECOND SUPPLEMENTAL REPORT TO THE SECOND  
REPORT OF THE RECEIVER**

**DENTONS CANADA LLP**

77 King Street West, Suite 400  
Toronto-Dominion Centre  
Toronto, ON M5K 0A1

**John Salmas** (LSO # 42336B)

Tel: 416-863-4737

[john.salmas@dentons.com](mailto:john.salmas@dentons.com)

**Sara-Ann Wilson** (LSO # 56016C)

Tel: 416-863-4402

[sara.wilson@dentons.com](mailto:sara.wilson@dentons.com)

**Fraser Mackinnon Blair** (LSO #66683L)

Tel: 613-783-9647

[fraser.mackinnon.blair@dentons.com](mailto:fraser.mackinnon.blair@dentons.com)

*Lawyer for BDO Canada Limited, in its capacity as the Court-  
appointed Receiver of Ashcroft Homes – 101 Richmond  
Road Inc., Ashcroft Homes – 108 Richmond Road Inc. and  
Ashcroft Homes – 111 Richmond Road Inc.*