



Court File No. CV-23-00694646-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

THE HONOURABLE

)

TUESDAY, THE 6TH

JUSTICE KIMMEL

)

DAY OF AUGUST, 2024

)

B E T W E E N:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

and

DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP
AND DUNDAS SHORNCLIFFE LTD.

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Dundas Shorncliffe Limited Partnership and its general partner Dundas Shorncliffe Ltd. (the "**GP**" and collectively, the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Centurion Acquisition Corporation (the "**Purchaser**") dated July 9, 2024, and appended to the Report of the Receiver dated July 29, 2024 (the "**Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, counsel for the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Victoria Gifford, sworn July 30, 2024 filed:

1. **THIS COURT ORDERS** that the time for service of this Notice of Motion and the Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on **Schedule "B"** hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the order of the Honourable Justice Kimmel dated August 4, 2023 (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for Toronto (number 80) of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule "B" hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule "C"** hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **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 Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of the date of this order without any need for entry or filing.



Digitally
signed by
Jessica
Kimmel
Date:
2024.08.06
23:30:30
-04'00'

Schedule "A"
Form of Receiver's Certificate

Court File No. CV-23-00694646-00CL

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SUPERIOR COURT OF JUSTICE
(Commercial List)

B E T W E E N:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

and

DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP
AND DUNDAS SHORNCLIFFE LTD.

Respondents

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Kinmel of the Ontario Superior Court of Justice (the "**Court**") dated August 4, 2023, BDO Canada Limited was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Dundas Shorncliffe Limited Partnership and its general partner Dundas Shorncliffe Ltd. (the "**GP**" and collectively, the "**Debtor**").

B. Pursuant to an Order of the Court dated August 6, 2024 the Court approved the agreement of purchase and sale made as of July 9, 2024 (the "**Sale Agreement**") between the Receiver and Centurion Acquisition Corporation (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section ___ of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section ____ of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**BDO Canada Limited, in its capacity as
Receiver of the undertaking, property and
assets of Dundas Shorncliffe Limited
Partnership and its general partner Dundas
Shorncliffe Ltd., and not in its personal
capacity**

Per: _____

Name:

Title:

Schedule "B"
Purchased Assets

PIN 07550-0052 (LT)

LT 13, PL 2104, EXCEPT PART 1, 64R1955, PART 7, RS1028, & PART 26, 64R8387 ; S/T
EB542779, TB34882 ETOBICOKE , CITY OF TORONTO

PIN 07550-0051 (LT)

PT LT 14, PL 2104 , AS IN EB429988 ; ETOBICOKE , CITY OF TORONTO

Schedule "C"
Claims to be deleted and expunged from title to Real Property

PIN 07550-0051 (LT)

1. Notice as Instrument No. AT5328805
2. Charge in favour of Pesciolino Holdings Inc. registered as Instrument No. AT5328806
3. Notice registered as Instrument No. AT5328807
4. Postponement registered as Instrument No. AT5674648
5. Postponement registered as Instrument No. AT5674649
6. Postponement registered as Instrument No. AT5674650
7. Postponement registered as Instrument No. AT5709906
8. Postponement registered as Instrument No. AT5709907
9. Postponement registered as Instrument No. AT5709908
10. Application to Change Name registered as Instrument No. AT5766785
11. Postponement registered as Instrument No. AT5821000
12. Postponement registered as Instrument No. AT5821001
13. Postponement registered as Instrument No. AT5821002
14. Charge in favour of Mapleview Pear Tree Inc. registered as Instrument No. AT5978724
15. Postponement registered as Instrument No. AT5978784
16. Postponement registered as Instrument No. AT5978785

PIN 07550-0052 (LT)

1. Notice registered as Instrument No. AT5328805
2. Charge in favour of Pesciolino Holdings Inc. registered as Instrument No. AT5328799
3. Charge in favour of Pesciolino Holdings Inc. registered as Instrument No. AT5328806
4. Notice registered as Instrument No. AT5328807
5. Postponement registered as Instrument No. AT5674648
6. Postponement registered as Instrument No. AT5674649
7. Postponement registered as Instrument No. AT5674650

8. Postponement registered as Instrument No. AT5674651
9. Postponement registered as Instrument No. AT5709906
10. Postponement registered as Instrument No. AT5709907
11. Postponement registered as Instrument No. AT5709908
12. Application to Change Name registered as Instrument No. AT5766785
13. Postponement registered as Instrument No. AT5821000
14. Postponement registered as Instrument No. AT5821001
15. Postponement registered as Instrument No. AT5821002
16. Charge in favour of Maplevue Pear Tree Inc. registered as Instrument No. AT5978724
17. Postponement registered as Instrument No. AT5978784
18. Postponement registered as Instrument No. AT5978785

Schedule "D"
Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property

(unaffected by the Vesting Order)

1. The reservations, limitations, provisions and conditions expressed in the original grant from the Crown and all unregistered rights, interests and privileges in favour of the Crown under or pursuant to any applicable statute or regulation.
2. Any subdivision agreement, development agreement, servicing agreement, site plan agreement or any other agreement, document, regulation, subdivision control by-law or other instrument containing provisions relating to the Lands or the use, development, installation of services and utilities or the erection of buildings or other improvements in or on the Lands.
3. All easements, licenses, rights-of-way, watercourses and rights (and all reference plans with respect thereto), whether registered or unregistered, including without limitation those for access or for the installation and maintenance of public and private utilities and other services including without limitation, telephone lines, hydro-electric lines, gas mains, water mains, sewers and drainage and other services or for the maintenance, repair or replacement of any adjoining building or lands, including any cost sharing agreement relating thereto, or any right of re-entry reserved by a predecessor in title.
4. Any restrictive covenants and building restrictions affecting the Lands.
5. Any defects of title or encroachments by or onto the Lands, whether by gardens, fences, trees, buildings, foundations, or other structures or things, which may be revealed by any survey or reference plan of the Lands, whether now in existence or not.
6. Utility agreements, and other similar agreements with Authorities or private or public utilities affecting the Lands.
7. Liens for taxes, local improvements, assessments or governmental charges or levies not at the time due or delinquent.
8. Undetermined, inchoate or statutory liens and charges (including, without limitation, the liens of public utilities, workers, suppliers of materials, contractors, subcontractors, architects and unpaid Receivers of moveable property) incidental to any current operations of the Lands which have not been filed pursuant to any legal requirement or which relate to obligations not yet due or delinquent.
9. Zoning restrictions, restrictions on the use of the Lands or minor irregularities in title thereto.
10. The reservations, limitations, conditions and exceptions to title set out in the *Land Titles Act (Ontario)*.
11. Instrument No. EB254155
12. Instrument No. 64R8387

13. Instrument No. EB542779
14. Instrument No. TB34882
15. Instrument No. E317117
16. Instrument No. AT1090313
17. Charge in favour of Centurion Mortgage Capital Corporation registered as Instrument No. AT5328801
18. Notice of Assignment of Rents – General in favour of Centurion Mortgage Capital Corporation registered as Instrument No. AT5328802
19. Notice of Right of First Refusal in favour of Centurion Mortgage Capital Corporation registered as Instrument No. AT5328804
20. Instrument No. AT5674643
21. Postponement registered as Instrument No. AT5674645
22. Postponement registered as Instrument No. AT5674647
23. Notice in favour of Centurion Mortgage Capital Corporation registered as Instrument No. AT5709874
24. Notice in favour of Centurion Mortgage Capital Corporation registered as Instrument No. AT5820957