

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

THE HONOURABLE MR.) TUESDAY, THE 8th
JUSTICE DUNPHY) DAY OF JUNE, 2021

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Plaintiff

and

**10268054 CANADA CORP., DREAM MAKER DEVELOPMENTS INC. AND
TEMITOPE OLOWOLAFE a.k.a. ISAAC OLOWOLAFE**

Defendants

ORDER

(Disclaiming Purchase Agreements and Administrative Matters)

THIS MOTION made by BDO Canada Limited ("**BDO**"), in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of 10268054 Canada Corp. ("**102co**") for the relief set out in the Notice of Motion dated May 31, 2021, including the approval of the sale transaction (the "**Transaction**") contemplated by an Asset Purchase Agreement between the Receiver in its capacity as Receiver of 102co and 12931109 Canada Inc. (the "**Purchaser**") made as of May 17, 2021 (the "**Sale Agreement**"), vesting in the Purchaser 102co's (the "**Debtor**") right, title, benefit and interest in the assets described in the Sale Agreement (the "**Purchased Assets**") and approving the disclaimer of all agreements of purchase and sale entered into by 102co in respect of the condominium development that was to be constructed at the property municipally

known as 135 Mandrake Street, Ajax, Ontario (the “**Project**”) was heard this day by videoconference as a result of the Covid-19 pandemic.

ON READING the Motion Record of the Receiver and the Second Report of the Receiver dated May 31, 2021 (the "**Receiver’s Second Report**"), the Affidavit of Irving Marks sworn May 28, 2021 (the “**Robins Fee Affidavit**”) and the Affidavit of Josie Parisi sworn May 31, 2021 (the “**BDO Fee Affidavit**”) and on hearing the submissions of counsel for the Receiver and any such other counsel or individual as were present, no one appearing for any other person on the service list, although properly served as evidenced by the Affidavits of Wendy Lee sworn June 1 and June 4, 2021, filed.

SERVICE

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

PURCHASE AGREEMENTS

2. **THIS COURT ORDERS** that upon completion and closing of the Transaction, the Receiver’s disclaimer of all agreements of purchase and sale entered into by 102co in respect of the Project be and is hereby approved.

3. **THIS COURT ORDERS** that the Deposit Protocol in respect of the return of deposits to purchasers of units in the Project attached hereto as Schedule “A” is hereby approved.

DISTRIBUTIONS

4. **THIS COURT ORDERS** that the motion as it relates to the proposed distributions sought

in paragraph 2(g) of the Notice of Motion of the Receiver dated May 31, 2021 is hereby adjourned to a date to be fixed by the Court.

SEALING

5. **THIS COURT ORDERS** that the Confidential Appendices to the Receiver's Second Report are hereby sealed until the earlier of:

- (a) the closing of the Transaction;
- (b) July 30, 2021; or
- (c) upon further order of the Court.

APPROVAL OF ACTIVITIES

6. **THIS COURT ORDERS** that the Interim Receipts and Disbursements of the Receiver as described in the Receiver's Second Report are hereby approved.

APPROVAL OF RECEIVER' FEES AND EXPENSES

7. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its legal counsel as described in the Receiver's Second Report, the BDO Fee Affidavit and the Robins Fee Affidavit are hereby approved, subject to an application made in respect of the fees and disbursements of the Receiver and its legal counsel pursuant to section 248(2) of the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3) .



SCHEDULE "A"

Deposit Refund Protocol

10268054 Canada Corp.

- 1) Miller Thomson LLP ("**MT LLP**") will in a reasonable time frame provide to Tarion Warranty Corporation ("**Tarion**"), the Statutory Declaration in the form attached as Schedule "A" hereto in respect of the deposits ("**Deposits**") of purchasers of units ("**Purchasers**") in the project that was to have been constructed at 135 Mandrake Street, Ajax, Ontario (the "**Project**").
- 2) BDO Canada Limited in its capacity as receiver of 10268054 Canada Corp. (the "**Receiver**") will provide to Tarion the Statutory Declaration in the form attached as Schedule "B" hereto in respect of the Project.
- 3) The Receiver will request that the principal (the "**Principal**") of 10268054 Canada Corp. provide to Tarion the Statutory Declaration in the form attached as Schedule "C" hereto. Failure by the Principal to provide such Statutory Declaration will not prevent the refund of the Deposits to the Purchasers.
- 4) MT LLP will send an email or letter to the Purchasers in the Project for which Deposits have not been refunded as at the date hereof notifying them that they may obtain a refund of their Deposits and the instructions for them to do so. These instructions will include requirements that Purchasers execute a Release and Termination Agreement, provide Photo Identification, a mailing address and a Receipt. A copy of such email or letter will be provided to Tarion, the Receiver and Westmount Guarantee Services Inc. on behalf of Aviva Insurance Company of Canada ("**Westmount**"). Any Purchasers who refuse to execute and return a Release and Termination Agreement, will be requested to at least execute and return a Written Acknowledgment Confirming the Amount of Monies Refunded and Termination of the Purchase Transaction prior to the refund of Deposits to the Purchasers. Failure by Purchasers to comply with either of the above requirements/requests will not prevent the refund of Deposits to the Purchasers; provided, that MT LLP sends the Purchaser's Deposit Monies by registered mail to the Purchaser named in the Purchase Agreement, and provides confirmation of same to Tarion, Westmount and the Receiver.
- 5) Purchasers will be asked to comply with the instructions referred to in paragraph 4 above, including returning their executed Release and Termination Agreement or a Written Acknowledgment Confirming the Amount of Monies Refunded and Termination of the Purchase Transaction, along with Photo Identification to MT LLP, which items MT LLP will forward to Westmount, if received.

- 6) From time to time, MT LLP will assemble the documents listed below (if available) in a single binder organized by unit number for each of the Deposits refunded after the date hereof at such time ("**Closing Binders**"):
- Executed Release and Termination Agreements, if obtained
 - A Copy of the First Page of the Unit Agreement of Purchase and Sale ("**APS**")
 - A Copy of any Assignment of the APS by the Purchaser
 - Copies of any Form 4
 - Written Acknowledgment executed by Purchaser Confirming the Amount of Monies Refunded and Termination of the Purchase Transaction, if obtained
 - An Updated Summary of the Deposits Released and Remaining

Closing Binders shall be delivered electronically to Tarion, the Receiver and Westmount.

- 7) After Tarion receives the most recent Closing Binder, Tarion will within ten business days of receipt, confirm by email to Westmount that the documentation is complete such that Tarion's liability to the relevant Purchaser(s) for claims in respect of their respective Deposits will be extinguished once MT LLP releases the Deposit to the Purchaser. "Deposit" means any amount that would be a valid deposit claim under the Ontario New Home Warranties Plan Act.
- 8) After Westmount receives the email from Tarion referred to in the paragraph above, MT LLP will then advise Purchasers that their deposit refund cheques (including the funds relating to the applicable Deposit) made out to the Purchaser(s) named in the APS or any permitted assignee or designee so designated in writing will be mailed to the address provided by the Purchasers or permitted assignee or permitted designee. Cheques will be made out to the name of (i) the Purchaser(s) shown on the APS; (ii) a permitted assignee(s); or (iii) a permitted designee(s).
- 9) Upon release of Deposits, MT LLP will provide in a reasonable time frame to Tarion a Statutory Declaration in the form attached as Schedule "A" in respect of such refunded deposits.
- 10) From time-to-time, and upon being satisfied that its liability to the relevant Purchasers for claims in respect of their respective Deposits has been extinguished, Tarion will provide confirmation to Westmount that the surety bond provided in respect of the Project (the "Tarion Bond") is reduced by the relevant amount on a unit-by-unit basis.
- 11) MT LLP will every month, provide Tarion, the Receiver and Westmount with a ledger of: (i) deposits paid to MT LLP (including Deposits released); and (ii) deposits paid to MT LLP (including Deposits) not released.

- 12) Once all Deposits have been returned to Purchasers and upon being satisfied that its liability to the relevant Purchasers for claims in respect of their respective Deposits has been extinguished, Tarion will correspondingly reduce the amount of the Tarion Bond; provided, however, that Tarion shall at all times be entitled to retain a sufficient portion of the Tarion Bond to cover Tarion's liabilities in respect of amounts secured by the Tarion Bond that have not been extinguished at the time of any reduction. Upon being satisfied that its liability in respect of amounts secured by the Tarion Bond has been extinguished, Tarion will return the Tarion Bond to Westmount for cancellation.

Schedule "A"

STATUTORY DECLARATION

| | | |
|---------------------|---|---|
| CANADA |) | IN THE MATTER OF the proposed development |
| |) | (the "Project") by 10268054 Canada Corp. (the |
| |) | "Vendor") situated in the Town of Ajax on those |
| PROVINCE OF ONTARIO |) | lands and premises owned by the Vendor located at |
| |) | 135 Mandrake Street, Ajax, Ontario |
| |) | |
| TO WIT: |) | |

I, _____, of the City of _____, DO SOLEMNLY DECLARE THAT:

1. Miller Thomson LLP is the escrow agent for the Vendor and Westmount Guarantee Services Inc. pursuant to a Deposit Trust Agreement.
2. I _____, am a partner of Miller Thomson LLP, and as such have knowledge of the matters declared herein.
3. All deposits paid to Miller Thomson LLP under agreements of purchase and sale in respect of the Project units numbered _____, _____ and _____ have been refunded to the respective purchasers of such units or their permitted assignees or permitted designees by Miller Thomson LLP.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED BEFORE ME by Video Conference by _____ of the City of _____, at the City of _____, of the Province of Ontario, on the _____ day May, 2021 in accordance with O.Reg.431/20, Administering Oath or Declaration Remotely.

A Commissioner etc.

Name:
Title:

Schedule "B"

STATUTORY DECLARATION

| | | |
|---------------------|---|--|
| CANADA |) | IN THE MATTER OF the proposed development |
| |) | (the “ Project ”) by 10268054 Canada Corp. (the |
| |) | “ Vendor ”) situated in the Town of Ajax on those |
| PROVINCE OF ONTARIO |) | lands and premises owned by the Vendor located at |
| |) | 135 Mandrake Street, Ajax, Ontario |
| |) | |
| TO WIT: |) | |

I, _____, of the City of _____, DO SOLEMNLY DECLARE THAT:

1. I am a _____ of BDO Canada Limited, the receiver appointed in respect of the Vendor.
2. The Vendor is not proceeding with the Project that the Vendor had proposed to construct on the lands and premises described above.
3. To the best of my knowledge and belief (which is based on information provided by the Vendor): (i) the Vendor entered into ■ (■) agreements of purchase and sale with respect to units in the Project (collectively, the "Condominium Sales Agreements"); (ii) aside from the Condominium Sales Agreements, no other agreements of purchase and sale have been entered into in respect of the Project or the lands and premises described above; and (iii) nothing has come to my attention that would suggest that sales of units in the Project were agreed to other than pursuant to the Condominium Sales Agreements.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED BEFORE ME by Video Conference by _____ of the City of _____, at the City of _____, of the Province of Ontario, on the _____ day May, 2021 in accordance with O.Reg.431/20, Administering Oath or Declaration Remotely.

A Commissioner etc.

Name:
Title:

STATUTORY DECLARATION

| | | |
|---------------------|---|--|
| CANADA |) | IN THE MATTER OF the proposed development |
| |) | (the “ Project ”) by 10268054 Canada Corp. (the |
| |) | “ Vendor ”) situated in the Town of Ajax on those |
| PROVINCE OF ONTARIO |) | lands and premises owned by the Vendor located at |
| |) | 135 Mandrake Street, Ajax, Ontario |
| |) | |
| TO WIT: |) | |

I, _____, of the City of _____, DO SOLEMNLY DECLARE THAT:

1. I am _____ of the Vendor, and as such have knowledge of the matters hereinafter declared.
2. The Vendor is not proceedings with the Project that the Vendor had proposed to construct on the lands and premises described above.
3. The Vendor provided all deposits that it received in respect of the sale of units in the project to Miller Thomson LLP, the escrow agent for the Vendor.
4. The Vendor entered into only ■(■) agreements of purchase and sale with respect to units in the Project and did not enter into any other agreements of purchase and sale for units in the Project.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED BEFORE ME by Video Conference by _____ of the City of _____, at the City of _____, of the Province of Ontario, on the _____ day May, 2021 in accordance with O.Reg.431/20, Administering Oath or Declaration Remotely.

A Commissioner etc.

Name:
Title:

**CENTURION MORTGAGE - and-
CAPITAL CORPORATION**

10268054 CANADA CORP. ET AL

Plaintiff

Defendants

Court FileNo.:CV-20-006521714-00CL

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

PROCEEDING COMMENCED AT TORONTO

**ORDER
(Disclaiming Purchase Agreements and
Administrative Matters)**

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