

Court File No.: CV-17-11679-00CL

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

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

- and -

TERRASAN 327 ROYAL YORK RD. LIMITED

Respondent

**MOTION RECORD
(Returnable September 13, 2017)**

DATED: September 12, 2017

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(as at September 11, 2017)

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COURIER SERVICE LIST
(as at August 28, 2017)

TO:	TERRASAN 327 ROYAL YORK RD. LIMITED 39 Newcastle Street Etobicoke, ON M8Y 1A3
AND TO:	JOHN PAUL FLETCHER 3355 Elsa Storry Avenue, R.R. #1 Locust Hill, ON L0H 1J0
AND TO:	COMMUNITY TRUST COMPANY 2350 Matheson Boulevard East Mississauga, ON L4W 5G9
AND TO:	OLYMPIA TRUST COMPANY 125 9 th Avenue SE, Suite 2200 Calgary, AB T2G 0P6
AND TO:	MCCALLUM SATHER ARCHITECTS INC. 157 Catherine St. N, Hamilton, ON L8L 4S4

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TAB 1

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

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

- and -

TERRASAN 327 ROYAL YORK RD. LIMITED

Respondent

**NOTICE OF MOTION
(Returnable September 13, 2017)**

BDO Canada Limited (“**BDO**”), in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Terrasan 327 Royal York Rd. Limited (“**Terrasan**”), will make a motion to a judge presiding over the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on September 13, 2017, at 10:00 a.m., or as soon after that time as the motion may be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, substantially in form attached hereto as **TAB 3** of the Motion Record, for the following relief:

- (a) abridging the time for service of the Notice of Motion herein, Motion Record and the Supplement to the Fourth Report of BDO, in its capacity as Receiver, dated September 12, 2017 (the “**Supplemental Report**”) so that this Motion is properly returnable on September 13, 2017, and dispensing with further service thereof;
- (b) approving the Letter Agreement (as defined herein), together with the Price Adjustment (as defined herein), and authorizing the execution of the Letter Agreement by the Receiver;
- (c) amending the Approval and Vesting Order granted on August 25, 2017, such that any reference to “Asset Purchase Agreement”, shall be deemed to be a reference to the “Asset Purchase Agreement, as amended by the Letter Agreement”;
- (d) ordering that **Confidential Appendix A** to the Supplemental Report of the Receiver dated September 12, 2017 be sealed from the public record until further Order of the Court; and,
- (e) such further and other grounds as counsel may advise and this Honourable Court may permit;

THE GROUNDS FOR THE MOTION ARE:

1. By Order of the Court dated February 24, 2017, BDO was appointed as the Receiver of all of the assets, undertakings and properties of Terrasan, pursuant to the application made by Centurion Mortgage Capital Corporation;

2. Terrasan's principal asset is a partially constructed residential condominium development located at 327 Royal York Rd., Toronto, Ontario, known as the "On the Go Mimico". The municipal address for the Project is 327 Royal York Rd., Toronto, Ontario (the "**Property**");
3. On April 3, 2017, this Court granted an Order which, among other things: (i) approved the First Report of the Receiver dated March 27, 2017, and the actions of the Receiver set out therein; and (ii) approved the marketing and sale process for the Property as set out in the First Report;
4. On August 25, 2017, this Court granted an Approval and Vesting Order (the "**Approval and Vesting Order**") which approved, among other things, the asset purchase agreement dated July 28, 2017 (the "**2402871 APA**") between the Receiver and 2402871 Ontario Inc. (the "**Purchaser**"), and the transaction as set out therein (the "**Transaction**"). The closing of the Transaction was to occur within 7 days of the Court granting the Approval and Vesting Order (the "**Closing Date**");
5. By correspondence in writing from the Purchaser delivered on August 28, 2017, the Purchaser advised the Receiver that it was not prepared to close the Transaction until certain equipment (the "**Equipment**") was removed from the Property;
6. On September 1, 2017, the Receiver and the Purchaser agreed in writing to extend the Closing Date to September 8, 2017. During this time, the Receiver and Purchaser continued discussions regarding closing and the Equipment;

7. On September 7, 2017, the Receiver and the Purchaser agreed in writing to further extend the Closing Date until September 15, 2017;
8. On September 11, 2017, the Receiver updated the Court on the status of the closing of the Transaction. In this regard, the Receiver filed its Fourth Report dated September 8, 2017 (the “**Fourth Report**”);
9. The Receiver and the Purchaser have now resolved the outstanding matters delaying the closing of the Transaction. In this regard, the Receiver and the Purchaser have negotiated a letter agreement dated September 12, 2017 (the “**Letter Agreement**”). The Letter Agreement, among other things, provides for an adjustment to the purchase price in favour of the Purchaser (the “**Price Adjustment**”). The Letter Agreement is attached a **Confidential Appendix A** to the Supplemental Report;
10. The Receiver is of the opinion that the Letter Agreement is commercially reasonable and is in the best interest of the creditors as a whole. The closing of the Transaction, less the Price Adjustment, still represents the highest and best offer for the Property;
11. The Receiver believes it is appropriate for **Confidential Appendix A** to remain confidential and made subject to a sealing order given the commercially sensitive terms of such information; and
12. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The Fourth Report and Supplemental Report;
2. Confidential Appendix A, to the Receiver's Second Report dated August 16, 2017 (bid summary);
3. Such further and other material as counsel may advise and this Honourable Court may permit.

DATED: September 12, 2017

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TO: SERVICE LIST

CENTURION MORTGAGE CAPITAL CORPORATION

- and -

TERRASAN 327 ROYAL YORK RD. LIMITED

Applicant

Respondent

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

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION
(Returnable September 13, 2017)**

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Lawyers for the Receiver

TAB 2

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

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

- and -

TERRASAN 327 ROYAL YORK RD. LIMITED

Respondent

**SUPPLEMENT TO THE FOURTH REPORT
OF BDO CANADA LIMITED, IN ITS CAPACITY
AS COURT APPOINTED RECEIVER**

September 12, 2017

INTRODUCTION AND PURPOSE OF THIS REPORT

Introduction

1. This supplemental report is filed by BDO Canada Limited, in its capacity as Court appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Terrasan 327 Royal York Rd. Limited.
2. The purpose of this supplemental report dated September 12, 2017 (the "**Supplemental Report**") is to supplement the Fourth Report of the Receiver dated September 8, 2017 (the "**Fourth Report**") and provide the Court with a further update on the closing of the sale pursuant to the 2402871 APA (the "**Transaction**").
3. Capitalized terms not otherwise defined herein are as defined in the Fourth Report.

2402871 APA update

4. On September 11, 2017, the Receiver updated the Court on the status of the closing of the Transaction, as set out in the Fourth Report (the "**September 11 Attendance**"). Since the September 11th Attendance, the Receiver and Purchaser have continued discussions regarding the closing of the Transaction.
5. The Receiver and the Purchaser have now resolved the outstanding matters delaying the closing of the Transaction. In this regard, the Receiver and the Purchaser have negotiated a letter agreement dated September 12, 2017 (the "**Letter Agreement**"). The Letter Agreement, among other things, provides for an adjustment to the purchase price in favour of the Purchaser (the "**Price Adjustment**"). Attached hereto as **Confidential Appendix A** is a copy of the Letter Agreement.
6. The Letter Agreement provides for the closing of the Transaction to be completed on or before September 15, 2017 (5:00 p.m. Toronto time). Additionally, the closing of the Transaction, less the Price Adjustment, still represents the highest and best offer for the subject assets;
7. The Letter Agreement does not amend any other terms or conditions.
8. The Receiver is of the opinion that the Letter Agreement is commercially reasonable and is in the best interest of the creditors as a whole.
9. Given the commercially sensitive information contained in the Letter Agreement and its potential impact on the Receiver's ability to negotiate subsequent transactions in the event that this Transaction fails to close, the Receiver believes that it is appropriate for the Letter Agreement to

remain confidential until the Transaction closes. Accordingly, the Receiver requests an order sealing the Letter Agreement until further order of the Court.

10. The approval and vesting order granted on August 25, 2017 (the "**Approval and Vesting Order**") only allowed the Receiver to make minor amendments to the 2402871 APA. Given that the Letter Agreement contemplates the Price Adjustment, the Receiver is of the view that an Order is required by the Court approving the Letter Agreement, and the Price Adjustment.
11. Based on the foregoing, the Receiver recommends that the Court:
 - (a) approve and authorize the execution by the Receiver the Letter Agreement, and approve the Price Adjustment;
 - (b) amend the Approval and Vesting Order granted on August 25, 2017, such that any reference to "Asset Purchase Agreement", shall be deemed to be a reference to the "Asset Purchase Agreement, as amended by the Letter Agreement"; and
 - (c) seal the Letter Agreement, filed as **Confidential Appendix A** to this Supplemental Report.
12. All of which is respectfully submitted this 12th day of September, 2017.

BDO CANADA LIMITED,
in its capacity as the Court-appointed Receiver of
Terrasan 327 Royal York Rd. Limited, and not in its personal or corporate capacity
Per:



Name: Gary Cerrato, CIRP, LIT
Title: Vice-President

TAB A

CONFIDENTIAL APPENDIX “A”

TAB 3

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

THE HONOURABLE) WEDNESDAY, THE 13th DAY
JUSTICE CONWAY) OF SEPTEMBER, 2017

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

and

TERRASAN 327 ROYAL YORK RD. LIMITED

Respondent

ORDER

THIS MOTION, made by BDO Canada Limited, in its capacity as Court appointed receiver and manager (the “**Receiver**”) for an Order approving the letter agreement between the Receiver and 2402871 Ontario Inc. dated September 12, 2017 (the “**Letter Agreement**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Receiver dated September 12, 2017 and the Supplement to the Fourth Report of the Receiver dated September 12, 2017 (the “**Supplemental Report**”), and on hearing the submissions of counsel for the Receiver, and any such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Vanja Ginic sworn September 13, 2017 filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion is abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion is hereby dispensed with.

2. **THIS COURT DECLARES** that the Letter Agreement is hereby approved, together with the Price Adjustment (as defined therein), and the execution of the Letter Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary.

3. **THIS COURT ORDERS** that the Approval and Vesting Order granted on August 25, 2017 is hereby amended such that any reference to "Asset Purchase Agreement", shall be deemed to be a reference to the "Asset Purchase Agreement, as amended by the Letter Agreement";

4. **THIS COURT ORDERS** that the Confidential Appendix A shall be sealed, kept confidential and not form part of the public record, but shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further order of the Court.

CENTURION MORTGAGE CAPITAL CORPORATION

- and -

TERRASAN 327 ROYAL YORK RD. LIMITED

Applicant

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT TORONTO

ORDER

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PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD
(RETURNABLE SEPTEMBER 13, 2017)**

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