

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

**SIXTH REPORT OF BDO CANADA LIMITED, IN ITS CAPACITY**

**AS COURT APPOINTED RECEIVER**

**November 13, 2017**

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## INTRODUCTION AND PURPOSE OF THIS REPORT

### Introduction

1. By Order of the Honourable Mr. Justice Wilton-Siegel of the Ontario Superior Court of Justice (the "**Court**") dated February 24, 2017 (the "**Receivership Order**"), BDO Canada Limited ("**BDO**") was appointed as the Court-appointed receiver (in such capacity, the "**Receiver**") of all of the assets, undertakings and properties (collectively, the "**Assets**") of Terrasan 327 Royal York Rd. Limited ("**Terrasan**" or the "**Company**"), pursuant to the application made by Centurion Mortgage Capital Corporation ("**Centurion**"). A copy of the Receivership Order is attached herein as **Appendix A**.
2. The Company's principal asset was a partially constructed residential condominium development known as the "*On the Go Mimico*" (the "**Project**"). 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 (the "**Sale Process Order**") which, among other things, approved a marketing and sale process set out in respect of the Assets (the "**Sale Process**").
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. ("**2402871**"), and the transaction as set out therein (the "**Transaction**").
5. The closing of the Transaction was delayed as 2402871, following further due diligence, was not prepared to close the Transaction until a tower crane and scaffolding (collectively, the "**Equipment**") was removed from the Property. 2402871 specifically raised liability concerns over assuming responsibility for the demobilization of the Equipment upon closing of the Transaction.
6. The Receiver and 2402871 negotiated a letter agreement dated September 12, 2017 (the "**Letter Agreement**") to resolve the outstanding matters delaying the closing of the Transaction. The Letter Agreement, among other things, provided for an adjustment to the purchase price in favour of 2402871 (the "**Price Adjustment**"). The Letter Agreement also provided for the closing of the Transaction to be completed on or before September 15, 2017 (5:00 p.m. Toronto time).

7. On September 13, 2017 this Court granted an Order (the "**Letter Agreement Approval Order**"):
  - (a) approving and authorizing the execution by the Receiver of the Letter Agreement, and approving the Price Adjustment; and
  - (b) 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".
8. The Transaction closed on September 15, 2017. The Receiver also filed the Receiver's Certificate on September 15, 2017, in accordance with the 2402871 APA and the Approval and Vesting Order, confirming that the Transaction had closed. The net sale proceeds totaling \$30,044,444 ("**Sale Proceeds**") stand in the place and stead of the Property in respect of the various mortgages and lien claims previously registered against title to the Property.
9. On October 10, 2017, the Court granted an Order (the "**Distribution Order**") which, among other things, directed the Receiver to make a distribution from the Sale Proceeds sufficient to repay the first mortgagee, Centurion, in full and final satisfaction of all amounts owing by Terrasan to Centurion.

#### **Purpose of the Report**

10. The purpose of this report dated November 13, 2017 (the "**Sixth Report**") is to provide information to the Court with respect to:
  - (a) background information relating to these proceedings;
  - (b) the Receiver's activities;
  - (c) the proposed deposit claims procedure to address the claims of purchasers of the Project's condominium units (a "**Purchaser**") and the deposits paid (the "**Deposit Claims Procedure**");
  - (d) the Receiver's motion for an Order of this Court:
    - (i) authorizing and approving the Deposit Claims Procedure (the "**Deposit Claims Procedure Order**");

- (ii) approving the Receiver's Statement of Receipts and Disbursements to date, attached as **Appendix B** herein (the "**R&D Statement**");
  - (iii) approving the Sixth Report and the activities of the Receiver outlined herein; and
  - (iv) approving the fees and disbursements of the Receiver and its legal counsel, Dentons Canada LLP ("**Dentons**"), as set out in this Sixth Report, and authorizing the Receiver to pay all approved and unpaid fees and disbursements.
11. The Receiver has set up a website at <http://extranets.bdo.ca/terrasan> (the "**Website**"). All prescribed materials filed by the Receiver and other parties relating to these receivership proceedings are available to creditors and other interested parties in electronic format on the Website. The Receiver makes periodic updates to the Website to ensure creditors and other interested parties are kept informed of recent developments.

#### **Disclaimer**

12. This Sixth Report is prepared solely for the use of the Court for the purpose of assisting the Court in making a determination whether to: (i) grant the Deposit Claims Procedure Order, (ii) approve the actions and conduct of the Receiver as set out in this Sixth Report, (iii) approve the fees of the Receiver and Dentons, and (iv) grant any other ancillary relief being sought.
13. Except as otherwise described in this Sixth Report:
- (a) the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
  - (b) the Receiver has not conducted an examination or review of any financial forecast and projections in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
14. Unless otherwise stated, all monetary amounts contained in this Sixth Report are expressed in Canadian dollars.

## BACKGROUND

15. Terrasan is a single purpose entity incorporated in Ontario for the purpose of developing the Project. The Project was to be developed into a condominium complex with 242 suites ranging between 537 sq. ft. to 2,700 sq. ft. including two levels of penthouses. Additionally, the Project was to include 193 residential parking stalls, 116 lockers and 8,245 sq. ft. of retail/commercial space.
16. According to the Corporate Profile Report of Terrasan, Luigi Santaguida is listed as the sole officer and director of Terrasan. Mr. Santaguida is the acting President and Secretary of Terrasan and the sole employee.
17. The Receiver understands that approximately 208 condominium units had been pre-sold (the "**Pre-Construction Sales**") and agreements of purchase and sale (a "**Purchase Agreement**") had been executed between Terrasan and the Purchasers. In addition, Terrasan had received deposits (a "**Deposit**") on account of the Pre-Construction Sales. According to the Terrasan books and records (the "**Records**"), as at the receivership date: (i) 73 of the Purchase Agreements appear to be valid and enforceable, and (ii) 135 Purchase Agreements appear to have been terminated, due to the non-payment of milestone deposits as prescribed in each Purchase Agreement.
18. On October 10, 2017, the Receiver delivered correspondence to the Purchasers that executed a Purchase Agreement and advised those Purchasers that the Receiver closed the Transaction and, as a result, Terrasan no longer had any ownership interest in the Property and would not be in a position to satisfy its obligations to those Purchasers with a valid and enforceable Purchase Agreement (the "**Purchaser Correspondence**").
19. A copy of the Purchaser Correspondence has been posted to the Website, and is attached herein as **Appendix C**.

## ACTIVITIES OF THE RECEIVER

20. In addition to the activities undertaken by the Receiver as detailed in its prior reports (and in particular since the second report of the Receiver dated August 16, 2017), the Receiver has, among other things:
  - (a) attended to the day-to-day maintenance and preservation of the Project, leading up to the closing of the Transaction;

- (b) addressed the delays associated with the closing of the Transaction, together with numerous Court appearances to address the removal of the Equipment;
- (c) engaged in numerous discussions with 2402871 with respect to the closing of the Transaction and the negotiation of the Letter Agreement;
- (d) attended to closing the Transaction;
- (e) managed water removal issues associated with the Project and addressed the assignment of a Sanitary Discharge Agreement between the Receiver, the City of Toronto and 2402871;
- (f) responded to enquiries from Purchasers;
- (g) reviewed the Records in order to assess the status of the Purchase Agreements and the Deposits. The Receiver is also reviewing a "loyalty program" that was implemented by Terrasan to sell units in the Project;
- (h) attended meetings with The Guarantee Company of North America (the "**Guarantee**") and held various discussions with Tarion Warranty Corporation ("**Tarion**") to develop the Deposit Claims Procedure;
- (i) engaged in numerous discussions and meetings with the secured creditors;
- (j) engaged in numerous discussions with those parties that have filed Lien Claims (as defined herein);
- (k) obtained and reviewed security documents of the secured creditors;
- (l) continued the preparation of the Receiver's reply to the motion filed by Resform Construction Ltd.;
- (m) coordinated the removal of various trailers and other equipment from the leased lands adjacent to the Project site; and
- (n) completed the distribution to Centurion pursuant to the Distribution Order.

#### **DEPOSIT CLAIMS PROCEDURE ORDER**

21. According to the Records:

- (a) Terrasan entered into approximately 208 Purchase Agreements pursuant to which each Purchaser agreed to purchase an un-built condominium unit in the Project;
  - (b) a number of Purchasers paid or had Deposits delivered to Terrasan upon the execution of a Purchase Agreement;
  - (c) the Deposits were paid to Terrasan's solicitors to be held in trust pursuant to the provisions of the *Condominium Act* (Ontario) (the "**Condominium Act**"); and
  - (d) the majority of the Deposit funds were released to Terrasan, and approximately \$157,000 remain in trust (the "**Remaining Deposit Funds**") with the deposit trustee, Schneider Ruggerio LLP ("**SRLaw**").
22. The Receiver understands that Terrasan was entitled to receive Deposit funds from SRLaw and use those Deposit funds for the development of the Project, subject to Terrasan obtaining a condominium deposit insurance policy to secure the release of those Deposit funds.
23. Prior to the Receiver's appointment, the Guarantee, an insurer authorized under the Condominium Act, provided deposit insurance policies to Terrasan in order to secure Deposit funds that were released to Terrasan (the "**Deposit Insurance Policies**"). The Deposit Insurance Policies included a Tarion bond and an excess condominium deposit insurance policy.
24. The Guarantee has informed the Receiver that the Deposit Insurance Policies protect the Purchaser's right to a return of a Deposit paid under a valid and enforceable Purchase Agreement, in the event a Purchase Agreement is terminated.
25. The Receiver understands that the majority of Deposit funds paid by Purchasers were released and replaced by the Deposit Insurance Policies.
26. Upon the termination of a Purchase Agreement, a Purchaser may be entitled to claim recovery of a Deposit pursuant to the Deposit Insurance Policies. Upon payment of any such claim by the Guarantee, the Receiver understands that the Guarantee would have a subrogated claim against Terrasan for the amount of such payment. The Guarantee's subrogated claims against Terrasan are secured by a mortgage registered against the Property (which was conveyed pursuant to the Transaction).



27. The Receiver is of the view that it is just, appropriate and in the best interest of the administration of the receivership estate to establish a procedure to identify and determine the Deposit claims of Purchasers.
28. The Deposit Claims Procedure, attached herein as **Appendix D**, is necessary to enable the Receiver, in conjunction with the Guarantee, to: (i) determine proven Deposit claims and to facilitate the return of amounts payable in respect of Deposit claims to Purchasers, and (ii) assist the Receiver and the Guarantee in quantifying the Guarantee's secured claim pursuant to its loan and security documentation (the "**Guarantee Security**").
29. With respect to the Remaining Deposit Funds, the Receiver is seeking an Order directing SRLaw to deliver the Remaining Deposit Funds to the Receiver. The Receiver will maintain these funds in a separate account held by the Receiver, and will coordinate the return of the Remaining Deposit Funds to those Purchasers having a specific claim to those deposit funds, in accordance with the Deposit Claims Procedure Order.

#### **Summary of Deposit Claims Procedure**

30. Capitalized terms not otherwise defined in this section are as defined in the Deposit Claims Procedure Order.
31. Notice of the Deposit Claims Procedure would include the following activities:
  - (a) the Receiver will deliver a Claims Package to each Purchaser on or before November 24, 2017;
  - (b) the Receiver will post the Newspaper Notice on or before November 24, 2017; and
  - (c) the Receiver will post the Claims Package on the Website on or before November 24, 2017.
32. The filing of Deposit Claim Forms and the determination of such claims would operate under the following procedure:
  - (a) Purchasers asserting a Deposit Claim are required to deliver a Deposit Claim Form to the Receiver no later than January 24, 2018 (the "**Claims Bar Date**"), failing which, such Purchaser would stand forever barred, estopped, and enjoined from asserting or enforcing any Deposit Claim against Terrasan, Tarion and the Guarantee, and such claim would be forever extinguished;

- (b) the Receiver will send a copy of each and every completed Deposit Claim Form to the Guarantee for the review and evaluation of the Deposit Claim. The Receiver will either accept, revise or disallow the claim set out in such Deposit Claim Form;
- (c) the Receiver, in consultation with the Guarantee, may attempt to resolve the amount of a Deposit Claim, either before or after accepting, revising or disallowing such Deposit Claim;
- (d) if the Receiver accepts a Deposit Claim as set forth in a Deposit Claim Form, that Deposit Claim would be a Proven Deposit Claim;
- (e) if the Receiver, in consultation with the Guarantee, chooses to revise or disallow a Deposit Claim, the Receiver will advise the Purchaser by sending a Notice of Revision or Disallowance to the Purchaser;
- (f) any Purchaser who disputes the amount of its Deposit Claim as set forth in a Notice of Revision or Disallowance, must deliver a Notice of Dispute to the Receiver by 5:00 p.m. (Toronto time) on the day that is fifteen (15) Calendar Days after the date of the Notice of Revision or Disallowance;
- (g) any Purchaser who fails to deliver a Notice of Dispute by the deadline set forth in sub-paragraph above, will be deemed to accept the amount of its Deposit Claim as set out in the Notice of Revision or Disallowance;
- (h) upon receipt of a Notice of Dispute, the Receiver will send a copy to the Guarantee and the Receiver, in consultation with the Guarantee, may attempt to resolve the amount of the claim with the Purchaser by consent;
- (i) if a Deposit Claim is resolved by consent between the Receiver, the Guarantee and the Purchaser, the Receiver may accept a revised Deposit Claim Form setting forth the agreed amount of the Deposit Claim, and such settled Deposit Claim shall be a Proven Deposit Claim; and
- (j) in the event the Receiver, the Guarantee and the Purchaser are not able to resolve the Deposit Claim amount and any matters arising pursuant to the Notice of Dispute, the Purchaser must schedule a motion before the Court, to be heard not later than 30 days following the delivery of the Notice of Dispute by the Purchaser to the Receiver. In the event the Purchaser fails to schedule the motion by the

forementioned deadline, the Purchaser will be deemed to accept the amount of the Deposit Claim as set out in the Notice of Revision and Disallowance.

33. The proposed time frame for administering the Deposit Claims Procedure is summarized as follows:

Process	Date
Mailing to Purchasers	November 24, 2017
Website Posting	November 24, 2017
Newspaper Notice	November 24, 2017
Claims Bar Date	January 24, 2018
Notice of Revision or Disallowance	To be delivered by the Receiver, acting reasonably
Notice of Disputes	15 calendar days after the date of the Notice of Revision or Disallowance

#### SECURED CREDITORS and LIEN CLAIMS

34. Set out below is a summary of the mortgages that were registered against title to the Property prior to the closing of the Transaction, and the corresponding amount of the registered mortgage (collectively, the "**Mortgages**"):

Creditor	Instrument Number	Charge
Centurion	AT4192730	\$21,800,000
Diversified Capital Inc. (" <b>Diversified</b> ")	AT3235332 and AT4035434	\$7,700,000
The Guarantee	AT3841250	\$15,053,500
Olympia Trust Company / John Fletcher / Community Trust Company (" <b>Olympia</b> ")	AT3539503 and AT4464383 (Transfer of Charge)	\$10,000,000

35. Pursuant to the Distribution Order, on October 10, 2017, the Receiver distributed the amount of \$12,692,899.41 to Centurion in full and final satisfaction of all amounts owing by Terrasan to Centurion.
36. The Receiver's counsel is in the process of completing an opinion on the debt and security of the Guarantee, Diversified and Olympia. With respect to the Guarantee, the Guarantee's claim is contingent in nature and is based on the Guarantee's liability under the Deposit Insurance Policies and the payment of Proven Deposit Claims. The Deposit Claims Procedure Order will facilitate the determination of Deposit Claims and, as a result, the quantum of the Guarantee's secured debt claim pursuant the Guarantee Security.
37. The Receiver is advised by its counsel that the following liens ("**Lien Claims**") were registered against title to the Property just prior the closing of the Transaction:

Liens per PIN Search	
CRH Canada Group Inc.	\$ 435,519.00
Summit Concrete & Drain Ltd.	111,313.00
Roni Excavating Limited	504,413.00
Bluescape Construction Management Inc.	469,827.00
Mansteel Rebar Ltd.	228,336.00
Desrosiers Geothermal Corporation	285,237.00
R. Mancini and Associates Ltd.	34,881.00
R. Mancini and Associates Ltd.	29,826.00
Resform Construction Ltd.	2,015,268.00
Shalom Electric Inc.	73,198.12
McCallum Sather Architects Inc.	115,432.00
Quinn Dressel Associates	55,969.00
<b>Total</b>	<b>\$ 4,359,219.12</b>

38. On October 2, 2017 Receiver's counsel delivered correspondence to each party that registered a lien claim requesting further particulars supporting such claims. The Receiver and its counsel have received the requested information from the majority of those parties noted above and are in the process of reviewing those Lien Claims.

#### RECEIPTS AND DISBURSEMENTS

39. The R&D Statement, attached herein as **Appendix B**, reports net receipts over disbursements from the date of the Receiver's appointment to October 16, 2017 of \$17,734,527.39.

#### FEES AND DISBURSEMENTS

40. Pursuant to the Receivership Order, the Receiver has provided services and incurred disbursements, which are described in the Affidavit of Gary Cerrato sworn October 17, 2017, attached herein as **Appendix E**.
41. The detailed narratives contained in the invoices provide a fair and accurate description of the services provided and the amounts charged by BDO as Receiver. Included with the invoices is a summary of the time charges of partners and staff, whose services are reflected in the invoices, including the total fees and hours billed.
42. Additionally, the Receiver has incurred legal fees of its legal counsel, Dentons, in respect of these proceedings, as more particularly set out in the Affidavit of Robert Kennedy sworn November 13, 2017, attached herein as **Appendix F**.
43. The Receiver requests that the Court approve its interim accounts from August 1, 2017 to September 30, 2017 in the amount of \$119,280.28, inclusive of HST of \$13,722.51.

44. The Receiver also requests that the Court approve the accounts of its legal counsel for the period from July 1, 2017 to August 31, 2017 in the amount of \$103,495.32 for fees and disbursements including HST of \$13,440.33, for a total of \$116,935.65.
45. The Receiver respectfully submits that the Receiver's fees and disbursements, and Dentons' fees and disbursements, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Receivership Order.

#### **SUMMARY AND RECOMMENDATIONS**

46. Based on the foregoing, the Receiver respectfully recommends that the Court:
- (a) grant the Deposit Claims Procedure Order, thereby approving the Deposit Claims Procedure as outlined in this Sixth Report;
  - (b) approve the Receiver's R&D Statement;
  - (c) approve this Sixth Report and the activities of the Receiver as described herein; and
  - (d) approve the fees and disbursements of the Receiver and Dentons, as set out in this Sixth Report, and authorize the Receiver to pay all approved and unpaid fees and disbursements.

All of which is respectfully submitted this 13<sup>th</sup> day of November, 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:



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