

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

**ONTARIO  
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

**APPLICATION UNDER section 243 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**

**BDO CANADA LIMITED  
IN ITS CAPACITY AS RECEIVER OF  
DUNDAS SHORNCLIFFE LIMITED PARTNERSHIP**

**May 10, 2024**

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## INTRODUCTION AND PURPOSE OF THIS REPORT

### Introduction

1. This report dated May 10, 2024 (the “**First Report**”) is filed by BDO Canada Limited (“**BDO**”) in its capacity as the receiver (the “**Receiver**”) over the property, assets and undertakings, including the real property known municipally as 5507-5509 Dundas Street West, Etobicoke, Ontario and the associated Project (defined below) (collectively the “**Assets**”) of Dundas Shorncliffe Limited Partnership and Dundas Shorncliffe Ltd. (collectively “**Dundas**” or the “**Debtor**”). An order appointing BDO as Receiver was made on August 4, 2023 (the “**Receivership Order**”) by the Honourable Madam Justice Kimmel of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on application by Centurion Mortgage Capital Corporation (“**Centurion**” or the “**Lender**”). The Receivership Order did not become effective until March 26, 2024 as described below. A copy of the Receivership Order is attached as **Appendix “A”**.
2. The Debtor’s primary asset consists of lands located at 5507 and 5509 Dundas Street West, Etobicoke, Ontario (collectively the “**Real Property**”). The Real Property is a pre-construction proposed mixed purpose residential and retail development. Legal description of the Real Property, is included hereto as **Appendix “B”**.
3. Centurion initially applied for the appointment of a Receiver over the Debtor’s Assets in March 2023. In her endorsement dated March 30, 2023, attached as **Appendix “C”**, Madam Justice Kimmel confirmed, among other things, the following:
  - a) The Borrower shall have until Tuesday April 11, 2023 (because of the Easter weekend intervening) to pay in a lump sum to Centurion the per diem interest on the Loan of \$9,252.68/day commencing March 30 through to and including April 30, 2023.
  - b) If the Borrower provides the interest payment contemplated in paragraph (a) above, the parties shall notify the court (through my judicial assistant at: [linda.bunoza@ontario.ca](mailto:linda.bunoza@ontario.ca)) and

this application shall be adjourned to April 28, 2023 at 10:00 a.m., at which time it will proceed unless the Borrower has secured an alternative transaction that causes Centurion to agree to further adjourn or withdraw its application. The court time on April 28, 2023 has been reserved with the Commercial List Office.

4. On April 28, 2023, Centurion and the Debtor agreed to adjourn the receivership application to June 1, 2023 on specific terms, as set out in the endorsement of Justice Conway (the “**Conway Endorsement**”) attached as **Appendix “D”**, which included, among other things,:
  - a) That Centurion may appoint BDO as a private receiver (in such capacity, the “**Private Receiver**”) of the Debtor. In the event BDO is appointed as Private Receiver, BDO may take all the necessary steps to prepare the property municipally known as 5507-5509 Dundas Street West, Toronto, Ontario (the “**Lands**”) for sale, including retaining Avison Young Commercial Real Estate Services, LP (“**AY**”) as broker to conduct the sale of the Lands. However, notwithstanding its appointment, neither BDO nor its agents or realtors will actively market (or pre-market) the sale of the Lands, including listing the Lands for sale until after June 1, 2023.
  - b) In the event of a private appointment of BDO, the Applicant, BDO, and their agents and employees shall keep all information relating to the private appointment confidential and such information shall not be disseminated to any third party, with the exception of a duly retained real estate agent. For greater clarity, this confidentiality obligation shall extend to any realtor retained by BDO or the Applicant.
5. BDO was appointed as Private Receiver over the Debtor’s Assets on May 3, 2023. In accordance with the Conway Endorsement, BDO did not file the statutory receivership notices pursuant Section 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* to keep its appointment as Private Receiver confidential.

6. Pursuant to the endorsement of Justice Osborne, dated June 2, 2023, attached as **Appendix “E”**, the receivership application was adjourned on specific terms, which included, among other things, :
  - a) continuation of BDO’s appointment as Private Receiver of the Debtor with the power to market and list the Real Property for sale with a commercial realtor; and
  - b) neither BDO or its agents or realtors will accept and enter into an agreement of purchase and sale for the Real Property until the conclusion of the marketing period set forth in the Pre-Filing Report, and in any event not before June 20, 2023.
  
7. Pursuant to the endorsement of Madam Justice Steele dated June 21, 2023, attached as **Appendix “F”**, the receivership application was again adjourned on specific terms, which included among other things, :
  - a) continuation of BDO’s appointment as Private Receiver of the Debtor with the power to market and list the Real Property for sale with a commercial realtor; and
  - b) neither BDO or its agents or realtors will accept and enter into an agreement of purchase and sale for the Real Property until after July 14, 2023.
  
8. Pursuant to the endorsement of Madam Justice Kimmel dated August 4, 2023, attached as **Appendix “G”**, (the **“Kimmel Endorsement”**) the receivership application was granted on the following terms:
  - a) The Receivership Order sought by the Applicant shall be granted in the form uploaded to Caselines;
  - b) Notwithstanding the granting of the Receivership Order on today’s date, the Receivership Order shall not be in force or effect until
    - (i) After 9:00 a.m. on Monday, August 14, 2023; and

- (ii) The Applicant has delivered an affidavit to both the Receiver and counsel for the Respondents attesting to the fact that the indebtedness owed to the Applicant remains unpaid as of 9:00 a.m. on Monday August 14, 2023.
  - c) In the event that the Applicant receives full payment, the Receivership Order shall be null and void and shall never become effective.
  - d) The Receiver is not permitted to enter into an agreement of purchase and sale in respect of the Real Property until the Receivership Order is in force and effect in accordance with paragraph (b) above.
9. Following the Kimmel Endorsement, Centurion continued to work with the Debtor to afford it time to secure alternative financing which efforts ultimately failed. Contemporaneously, the Private Receiver listed the Real Property for sale with AY which resulted in the Private Receiver receiving two offers for the Real Property for consideration as discussed below.
10. In the circumstances, an affidavit was sworn by Bob Vavaroutsos dated March 26, 2024 (the “**Vavaroutsos Affidavit**”) confirming that the Debtor did not repay the indebtedness owing to Centurion and advised the Receiver and the Debtor of the status of the indebtedness. Consequently, the Receivership Order became effective on the date the Vavaroutsos Affidavit was sworn and served pursuant to the Kimmel Endorsement. A copy of the Vavaroutsos Affidavit is attached hereto as **Appendix “H”**.
11. This First Report (defined below), and other all court materials and orders issued and filed in these receivership proceedings are or will be made available on the Receiver’s case website (“**Case Website**”) at: <https://www.bdo.ca/en-ca/extranets/dundas-shorncliffe/> and will remain available on the Case Website for a period of six (6) months following the Receiver’s discharge.

12. This receivership proceeding is referred to hereinafter as the “**Receivership Proceeding**”.

#### **Purpose of this Report**

13. The purpose of the Receiver’s First Report is to provide information to the Court with respect to:

- (a) certain background information leading to the Receivership Proceeding and information with regard to the Real Property and the Project; and
- (b) the Receiver’s request for an Order of this Court approving the Receiver’s recommended sale and investment solicitation process for the Real Property, Project and investment opportunity (the “SISP”), as set out in this First Report.

#### **SCOPE AND TERMS OF REFERENCE**

14. This First Report has been prepared for this Court and the Debtor’s stakeholders to provide general information relating to the Debtor and to assist the Court in making a determination on whether to grant the relief sought herein. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose.

15. In preparing this First Report and conducting its analysis and recommendations, the Receiver has obtained and relied upon information provided to it by the Lender. Except as otherwise described in this First Report, 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. The Receiver expresses no opinion or other form of assurance with respect to such information except as expressly stated herein.

16. Capitalized terms used herein and not defined in this First Report shall have the meaning ascribed to them in the Receivership Order.

17. Unless otherwise stated, all monetary amounts contained in this Report are expressed in Canadian dollars.

## BACKGROUND

### Property Description

18. The Real Property consists of two adjacent parcels of land located at the intersection of Dundas Street West and Shorncliffe just west of Kipling Avenue in Etobicoke, Ontario. The Real Property is currently zoned for residential rental units. To date no construction has commenced, however, the Debtor has expended monies toward the “soft costs” associated with the lands’ development. The project is still at the site plan application stage, the application fee has been partially paid and an application for shoring, excavation and site clearing can now be made.
19. The Real Property was approved for construction of a 22-storey, 242,187 square foot mixed use building with up to 265 residential rental suites and 176 parking stalls (the “**Project**”). Publicly available information regarding 5507-5509 Dundas West indicates that there would be 228,195 square feet of residential space and 13,982 square feet of commercial space under the approved zoning by-law. According to marketing information, the Project was to have “amazing amenities, breathtaking modern design, an outdoor patio and high-quality finishes”. The Real Property is accessible by motor vehicle and both the TTC and Go transit being close to Kipling Station in Toronto. Toronto Pearson Airport, Sherway Gardens Mall and Highway 427 are all close by.
20. Dundas Shorncliffe Limited Partnership is the limited partnership and according to the corporate profile report was incorporated on November 22, 2019. Dundas Shorncliffe Ltd. is the general partner of Dundas Shorncliffe Limited Partnership and was incorporated on November 18, 2019. The Debtor’s corporate address is listed as 555 Richmond Street West, Suite 504, Toronto, Ontario.



## Centurion and other Secured Parties

21. As noted in the Affidavit of Bob Vavaroutsos sworn March 2, 2023 and filed in support of the request for the Receivership Proceeding, Centurion has loaned the principal sum of \$16,111,912.00 to the Debtor for land acquisition and pre-development purposes (the “Loan”). The loan was guaranteed by Dundas Shorncliffe Ltd. (formerly 2727400 Ontario Corp.), Contessa Developments Inc. and Karsten von Wersebe (collectively the “Guarantors”). Centurion’s charge against the Real Property was registered on December 23, 2019.
22. As security for the Loan to Centurion, the Debtor provided, without limitation, (collectively, the “Security”): (i) a registered first mortgage in the amount of \$11 million; (ii) a general assignment of rents; (iii) a Site Specific General Security Agreement; and (iv) a guarantee and postponement of claim from the Guarantors.
23. For ease of reference, set out below is a summary of the charges that are registered against the Real Property by parcel identification number:

PIN#	Secured Creditor	Instrument	Charge
07550-0051	Centurion Mortgage Capital Corporation	AT5328801	\$11,000,000
07550-0051	Pesciolino Holdings Inc.	AT5328806	\$3,050,000
07550-0051	Mapleview Pear Tree Inc.	AT5978724	\$1,337,500
07550-0052	Pesciolino Holdings Inc.	AT5328799	\$5,000,000
07550-0052	Centurion Mortgage Capital Corporation	AT5328801	\$11,000,000
07550-0052	Pesciolino Holdings Inc.	AT5328806	\$3,050,000
07550-0052	Mapleview Pear Tree Inc.	AT5978724	\$1,337,500

24. Pesciolino Holdings Inc. (“Pesciolino”) is a secured creditor of the Debtor, Pesciolino has:
- (a) two mortgages registered against the property with municipal address 5507 Dundas Street West, Etobicoke, ON (“5507”): a first-ranking mortgage in the amount of \$5,000,000 with instrument number AT5328799 and a third-ranking mortgage in the amount of \$3,050,000 with instrument number AT5328806; and

- (b) a second-ranking mortgage in the amount of \$3,050,000 with instrument AT5328806 against the property with municipal address 5509 Dundas Street, West, Etobicoke, ON (“5509”).
25. Pesciolino’s first ranking mortgage on 5507 was in the form of a vendor take-back mortgage. The second ranking mortgage on both 5507 and 5509 is a result of a Density and Zoning Bonus owed to Pesciolino by the Debtor.
26. Pesciolino entered into a Subordination and Standstill Agreement with Centurion and the Debtor in respect of charge bearing instrument number AT5328806 which prevents Pesciolino from enforcing this mortgage without first having obtained the written consent of Centurion.
27. There is also a third-ranking charge on 5509 and a fourth-ranking charge on 5507 in the amount of \$1,337,500 in favour of Mapleview Pear Tree Inc. and registered as instrument number AT5978724 on both properties. This falls behind Centurion’s priority.
28. The Debtor is in breach of the terms of the Loan by: (i) failing to fully repay the indebtedness owing to Centurion on its maturity date; (ii) failing to make property tax payments when due and (iii) failure to pay or perform any covenants or agreements under the Loan. Centurion is owed \$20,046,375 as of April 30, 2024, plus accruing interest, at a per diem rate of \$10,473.03., plus future costs and disbursements.

### **Marketing Efforts**

29. In accordance with the judges’ endorsements as set out above, the Private Receiver solicited listing proposals from four commercial real estate brokers. The Private Receiver entered into a listing agreement with AY on May 2, 2023 to list the Real Property and Project for sale.
30. AY thoroughly exposed the Real Property and Project to the market and secured two offers both dated August 17, 2023 for consideration. The Private Receiver reviewed the offers with Centurion. The offers were negotiated, however, they were ultimately allowed to expire given that they were both

for considerably less than the amount outstanding under Centurion's mortgage. Copies of the offers received by the Private Receiver are included as **Confidential Appendix "A"**.

31. The Receiver also understands that the Debtor listed the Real Property for sale with another commercial broker prior to the private receivership proceeding.
32. Given the Real Property and Project's prior exposure to the market, the Receiver is proposing to conduct an abbreviated SISP for approximately 10 weeks concurrent with a "Stalking Horse" bid from Centurion which effectively sets a "floor price" for the Real Property and Project.

## **SALE PROCESS**

33. Pursuant to the Receivership Order, the Receiver is authorized to sell, convey, transfer, lease or assign any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver, in its discretion, may deem appropriate.

## **Receiver's SISP**

34. The Receiver has developed a detailed SISP to market the Real Property, Project and investment opportunity in an open and transparent manner designed to maximize realizations. A copy of the SISP document is attached as **Appendix "I"** hereto.
35. As part of the SISP negotiations, the Receiver intends, upon approval of this Honourable Court, to enter into a fully binding conditional purchase and sale agreement dated May 10, 2024 (the "**Stalking Horse Sale Agreement**") between the Receiver and Centurion Acquisition Corporation, in trust for a corporation to be incorporated (the "**Stalking Horse Bidder**") pursuant to which the Stalking Horse Bidder has made an offer to purchase the Real Property and Project through a combination of a credit bid plus cash consideration.

36. The Receiver’s proposed SISP is expected to take approximately 75 days and is described below with the milestone dates summarized in the following table. The SISP is expected to be relatively short given that the Real Property and Project has already been thoroughly exposed to the market by the Private Receiver and the Debtor.

Milestone	Deadline
Commencement of SISP	May 16, 2024
Distribution of the Teaser Letter and Bid Letter	May 20, 2024
Globe & Mail Advertisement	May 23, 30, 2024
Bid Deadline	June 28, 2024
Auction	July 5, 2024
Sale Approval Hearing	July 15 to 19, 2024
Closing Date Deadline	on or before July 29, 2024

#### Phase 1

- (a) preparing a list of potential purchasers which included both industry and financial buyers (the “**Potential Bidder’s List**”);
- (b) promoting the SISP on the Receiver’s Case Website;
- (c) advertising the opportunity in national edition of the Globe and Mail, Daily Commercial News construction gazette and the NRU GTA Weekly Newsletter;
- (d) advertising the development/investment opportunity on the MLS and/or ICX website through a third party provider;
- (e) preparing a summary describing the opportunity, outlining the process under the SISP and inviting recipients to express their interest pursuant to the SISP (the “**Teaser**”);
- (f) preparing a standard non-disclosure agreement (“**NDA**”) to be executed by potential bidders prior to be provided access to confidential information related to the Real Property;
- (g) preparing a detailed confidential information package (“**Confidential Information Package**”) which provides information regarding the Real Property and the Project;
- (h) creating and populating a virtual dataroom with relevant information and documents associated with the Real Property and the Project;

- (i) preparing a bid letter which provides instructions on the bid process including the bid deadline (the “**Bid Letter**”);
- (j) preparing a standard asset purchase agreement to allow all potential purchasers to bid on the same basis (the “**Template APA**”);
- (k) contacting each of the parties included on the Potential Bidders List, obtaining executed NDA’s and providing the Confidential Information Package and the Bid Letter;
- (l) soliciting preliminary offers and receiving expressions of interest (“**EOI**”);

### Phase 2

- (m) reviewing submitted EOI’s;
- (n) select which potential purchasers will be invited to perform additional due diligence, if required (“**Qualified Bidders**”);
- (o) distribute the Template APA to potential purchasers;
- (p) arranging and participating in site tours, if required, and meetings with prospective purchasers;
- (q) soliciting final offers in the form of the marked-up Template APA;
- (r) engaging in negotiations with potential buyers;
- (s) consultation with primary stakeholders;
- (t) selection of Bids;

### Phase 3

- (u) Auction process as necessary;
- (v) Selection of Winning Bidder;
- (w) Court approval; and
- (x) further negotiating and completion of closing definitive documents.

## Stalking Horse Bid and Process

37. The Redacted Stalking Horse Sale Agreement is attached hereto as **Appendix “J”** and the unredacted Stalking Horse Sale Agreement is at **Confidential Appendix “B”** to the Supplementary Motion Record.

The pertinent terms of the Stalking Horse Sale Agreement are summarized below:

- (i) the Stalking Horse Bidder will pay an amount set out in the unredacted Stalking Horse Sale Agreement for the Real Property and Project, plus customary adjustments associated with the sale of lands (the **“Stalking Horse Bid”**). The purchase price will be satisfied as follows:
  - (a) by paying by wire transfer at the Time of Closing of Canadian dollar funds to an account specified by the Receiver (collectively, the **“Closing Amount”**):
    - (1) The amount required for the Receiver to repay the loan owing to Pesciolino pursuant to its Charge/Mortgage registered as Instrument No. AT5328799 on December 23, 2019;
    - (2) An amount equal to the unfunded fees and expenses (plus applicable HST) of the Receiver and its agents and legal counsel, payable by wire transfer on Closing to the Receiver or to whom the Receiver will otherwise direct;
  - (b) by assuming a portion of the obligations and liabilities secured by the Charge/Mortgage registered as Instrument No. AT5328801 in favour of Centurion (collectively the **“Assumed Liabilities”**) which assumed portion shall be in the amount of the balance of the purchase price.
- (ii) the Real Property and Project is purchased on an “as is, where is” basis; and
- (iii) closing of the transaction is to occur 10 days after the approval and vesting order or such other date as may be agreed in writing between the parties (**“Closing”**).

38. Potential Bidders other than the Stalking Horse Bidder will be required to submit their offers no later than, June 28, 2024, the **“Bid Deadline Date”**.

39. For a Competing Bidder to have a qualified bid (**“Qualified Bid”**) they will have signed an NDA and complied with all of the requirements as set out in the SISP document.

40. For a Competing Bidder to have a superior bid to the Stalking Horse Bid (a “**Superior Offer**”), the Superior Offer must exceed the Stalking Horse Bid by a minimum of the sum of:
- a. an incremental increase of \$100,000.00.
41. In the event that there is no Superior Bid the Receiver and the Stalking Horse Bidder shall close the Stalking Horse Bid as soon as is practicable thereafter and the Real Property and Project will vest in the Stalking Horse Bidder in accordance with the terms of the vesting order approved by this Court with no further court application necessary.
42. In the event that one or more Qualified Bidders submits a Qualified Bid, the Receiver shall conduct an auction for the determination and selection of a winning bid (the Bidder submitting such bid being the “**Winning Bidder**”). Upon the selection of the Winning Bidder, there shall be a binding agreement of purchase and sale between the Winning Bidder and the Receiver. The Receiver shall forthwith bring a motion following the selection of the Winning Bidder for an order approving the agreement reached with the Winning Bidder and to vest the Purchased Assets in the Winning Bidder and, if granted, shall proceed with closing the transaction.

#### **Receiver’s Observations on the Sales Process**

43. The Receiver is of the view that the SISP, including the Stalking Horse Bid, is appropriate for the following reasons:
- (i) the Real Property and Project and investment opportunity will be widely exposed to the market through the SISP;
  - (ii) The timeline is sufficient to allow interested parties to perform due diligence and submit offers;
  - (iii) the identification of potential bidders and initial contact with prospective candidate will be accompanied by an advertising campaign in the national media to increase exposure of the Real Property and Project offered for sale, and an introduction to the SISP;

- (iv) The senior secured creditor is supportive of the SISP;
- (v) The Stalking Horse Bid is fair and reasonable having considered prior offers received for the Real Property and Project having already been exposed to the market for a considerable length of time; and
- (vi) The Stalking Horse Bid sets a fair “base level” that is acceptable to Centurion.

### **Sealing the Confidential Appendices**

44. The Receiver is of the view, and requests, that the Confidential Appendices be sealed until the transaction is approved or further order of the Court. The Confidential Appendices contain commercially sensitive information. The disclosure of the information contained in the Confidential Appendices would seriously impair the Receiver's ability to negotiate an agreement to sell the Property with a future third party. The Receiver is of the view that this would be harmful to stakeholders as it would undermine a future sales process.

45. In the circumstances, the salutary effects of sealing the Confidential Appendices outweigh the deleterious effects and accordingly the sealing order should be granted.

### **SUMMARY AND RECOMMENDATIONS**

46. In the circumstances, the Receiver is satisfied that the proposed SISP represents the most efficient and fair process to be administered that will sufficiently expose the Real Property and Project for sale to the marketplace to generate the maximum value for the Real Property and Project. Furthermore, the Receiver's recommendation is supported by the Debtor's Lender.

47. Accordingly, the Proposed Receiver respectfully requests an order:

- (a) approving this First Report of the Receiver and the activities as set out herein;
- (b) approving the SISP and the Stalking Horse Bid; and



(c) sealing the Confidential Appendices.

All of which is respectfully submitted this 10<sup>th</sup> day of May 2024.

**BDO CANADA LIMITED,  
in its capacity as the Proposed Court-appointed Receiver of  
Dundas Shorncliffe Limited Partnership and not in its personal or  
corporate capacity**

Per:



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

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