

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

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

**AS COURT APPOINTED RECEIVER**

**October 4, 2017**

TABLE OF CONTENTS

---

Introduction ..... 3  
Purpose of the Report..... 4  
Disclaimer ..... 4  
Background ..... 5  
Dispute with Sub Contractor ..... 6  
Secured Creditors ..... 6  
SECURITY OPINION..... 7  
PRIORITY CLAIMS..... 8  
RECEIPTS AND DISBURSEMENTS ..... 8  
INTERIM DISTRIBUTION..... 8  
SUMMARY AND RECOMMENDATIONS ..... 8

APPENDICES

Sales Process Order dated April 3, 2017 A  
Letter Agreement Approval Order dated September 13, 2017 B  
Receiver’s Third Report dated August 30, 2017 C  
Centurion Mortgage Payout Statement D  
Receiver’s R&D Statement dated October 3, 2017 E

## 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**").
2. The Company's principal asset was a partially constructed condominium known as the "*On the Go Mimico*" residential condominium development (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: (i) approved the First Report of the Receiver dated March 27, 2017 (the "**First Report**"), and the actions of the Receiver set out therein; and (ii) approved the marketing and sale process set out in the First Report (the "**Sale Process**"). A copy of the Sale Process Order is annexed hereto as Appendix A.
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 sale pursuant to the 2402871 APA was to occur within 7 days of the Court granting the Approval and Vesting Order (the "**Closing Date**").
5. The closing of the Transaction was delayed as the Purchaser, 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. The Purchaser specifically raised liability concerns over assuming responsibility for the demobilization of the Equipment upon closing of the Transaction.
6. The Receiver and the Purchaser 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 the Purchaser (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). The closing of the Transaction pursuant to the 2402871 APA, notwithstanding the Price Adjustment, still represented the highest and best offer for the Property.

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".

A copy of the Letter Agreement Approval Order is attached hereto as Appendix B.

8. The closing of the Transaction occurred on September 15, 2017. The Receiver also filed the Receiver's Certificate pursuant to the 2402871 APA and the Approval and Vesting Order on September 15, 2017, confirming that the Transaction had closed. The net sale proceeds totaling \$30,044,444 ("**Sale Proceeds**") now 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.

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

9. The purpose of this report dated October 4, 2017 (the "**Fifth Report**") is to :
- (a) approve the Receiver's Statement of Receipts and Disbursements to date (the "**R&D Statement**");
  - (b) approve the Fifth Report and the activities outlined therein; and
  - (c) seek an Order authorizing and approving a distribution by the Receiver to Centurion to fully retire its mortgage debt from the Sale Proceeds generated from the closing of the 2402871 APA.

#### **Disclaimer**

10. This Fifth Report is prepared solely for the use of the Court for the purpose of assisting the Court in making a determination whether to approve and authorize the Receiver to make the Interim Distribution and other ancillary relief being sought.

11. Except as otherwise described in this 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.
12. Unless otherwise stated, all monetary amounts contained in this Fifth Report are expressed in Canadian dollars.

#### **Background**

13. Terrasan is a single purpose entity incorporated in Ontario for the purpose of the developing the Project. At the time of the Receiver's appointment, the Project was under construction and was to be developed into 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.
14. 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.
15. The Receiver understands that approximately 208 condominium units had been pre-sold (the "**Pre-Construction Sales**") and agreements of purchase and sale (the "**Condominium Unit Sale Agreements**") had been executed between Terrasan and the condominium purchasers. In addition, Terrasan had received deposits in respect of the majority of these Pre-Construction Sales. At the receivership date only 73 of the Pre-Construction Sales remained and the balance, 135 Pre-Construction Sales, had been terminated primarily due to non-payment of milestone deposits as prescribed in the respective Condominium Unit Sale Agreements, according to the Terrasan records.
16. The Receiver intends on sending correspondence to purchasers of condominium units notifying them that the Receiver has closed the Transaction and as a result, Terrasan no longer has any ownership in the Property and will not be in a position to satisfy its

obligations to those purchasers with a valid and enforceable Condominium Unit Sale Agreement.

#### Dispute with Resform

17. Resform Construction Limited ("**Resform**") has scheduled a motion returnable before this Court on November 20, 2017 seeking an Order to fix the alleged compensation that the Receiver should pay Resform regarding the Equipment. Resform alleges that the Receiver retained the Equipment from the date of the Receiver's appointment.
18. The Receiver has provided the Court with updates in respect of the Resform claim. The Receiver has maintained that at no time did it prohibit Resform or its sub-trade Aluma from removing the Equipment from the Property, or agree to pay Resform any compensation. The dispute with Resform is discussed in more detail in the Receiver's Third Report. A Copy of the Third Report, including appendices, is attached hereto as Appendix C.
19. The Receiver will be opposing the relief sought by Resform and will file a further report in this regard.

#### Secured Creditors

20. Set out below is a summary of the mortgages that are registered against title to the Property, together with the corresponding amount of the registered mortgage (the "**Mortgages**"):
 

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

21. As reflected in the mortgage payout statement provided by Centurion attached hereto as Appendix D, Centurion is owed \$12,679,084.29 as at October 4, 2017, and per diem interest is accruing at \$3,453.78 per day.
22. Additionally, the Receiver is advised by its counsel that the following liens ("**Lien Claims**") are registered against title to the Property:

-7-

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>

### SECURITY OPINION

23. The Receiver obtained a security opinion from its counsel (the "**Security Opinion**") and, subject to the customary qualifications and assumptions contained therein, the Security Opinion opines that: (i) the security held by Centurion is valid and legally enforceable against Terrasan, and (ii) Centurion has a first priority security interest in the assets sold pursuant to the 2402871 APA (the "**Assets**").
24. Subject to the customary assumptions and qualifications contained in the Security Opinion, Receiver's counsel has opined that the subject Centurion security documents:
- (a) constitute legal, valid and binding security interests in favour of Centurion in the Assets;
  - (b) is sufficient to secure the payment and performance of the obligations secured thereby; and
  - (c) is properly registered and in first position over all other secured creditors.
25. The Receiver is in the process of completing an opinion on the debt and security of GCNA, Diversified and Olympia. With respect to GCNA, GCNA's claim is contingent in nature and covers deposit insurance claims. The Receiver is currently working with both Tarion Warranty Corporation and GCNA to establish the framework of a claims procedure to deal with the claims of purchasers of condominium units in respect of deposits paid. Once a framework is established, the Receiver intends to return to this Court to obtain an Order approving a claims procedure.

**PRIORITY CLAIMS**

26. At the date of receivership Terrasan had no employees (other than Mr. Santaguida), no outstanding wages, vacation pay or source deductions. In addition, Terrasan had no outstanding HST obligations and was in an HST receivable position at the date of receivership. Accordingly, the Receiver is unaware of any claims which would rank in priority to the secured claims of the mortgagees and Lien Claims.

**RECEIPTS AND DISBURSEMENTS**

27. The R&D Statement, appended hereto as Appendix E, reports net receipts over disbursements from the date of the Receiver's appointment to October 3, 2017 amount to \$30,567,564.55.
28. The Receiver is seeking the Court's approval of its R&D Statement.

**INTERIM DISTRIBUTION**

29. Given that the Sale Proceeds are sufficient to pay Centurion, and in order to limit interest charges accruing on the Centurion indebtedness, the Receiver is seeking the approval of a distribution to repay Centurion in full and final satisfaction of all amounts owing by Terrasan (the "**Centurion Distribution**").
30. The Receiver is satisfied that there will remain sufficient funds in the estate following the Centurion Distribution to address any priorities confirmed pursuant to the Lien Claims.

**SUMMARY AND RECOMMENDATIONS**

31. As a result of the closing of the Transaction, the Receiver is therefore of the view that the proposed Centurion Distribution is appropriate in the circumstances.
32. Based on the foregoing, the Receiver recommends that the Court:
- (a) approve the Receiver's R&D Statement;
  - (b) approve the Fifth Report and the activities outlined therein; and
  - (c) grant an Order approving and authorizing the Receiver to make the Centurion Distribution as set forth herein.



All of which is respectfully submitted this 4<sup>th</sup> day of October, 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:

A handwritten signature in black ink, appearing to read "J. Parisi". The signature is written in a cursive, flowing style.

---

Name: Josie Parisi, CA, CPA, CBV, CIRP, LIT  
Title: Senior Vice-President