

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

B E T W E E N:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

- and -

TERRASAN 327 ROYAL YORK RD. LIMITED

Respondent

**FIFTEENTH REPORT OF BDO CANADA LIMITED, IN ITS CAPACITY
AS COURT APPOINTED RECEIVER**

June 17, 2020

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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**”).
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, the Court granted an Order which, among other things, approved a marketing and sale process set out in respect of the Assets.
4. On August 25, 2017, the Court granted an Approval and Vesting Order which approved, among other things, the asset purchase agreement dated July 28, 2017 between the Receiver and 2402871 Ontario Inc., and the transaction as set out therein (the “**Transaction**”).
5. The Transaction closed on September 15, 2017. 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.
6. On October 10, 2017, the Court granted an Order (the “**Centurion 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.
7. On November 16, 2017, the Court granted an Order (the “**Deposit Claims Procedure Order**”) which approved the deposit claims procedure to address the claims of the purchasers of the Project’s condominium units (each a “**Purchaser**”) and the deposits paid (the “**Deposit Claims Procedure**”).
8. On April 18, 2018, the Court granted an Order (the “**Deposit Claims Distribution Order**”) which, among other things, authorized and directed the Receiver to make a distribution from the Sale Proceeds to Purchasers with a proven deposit claim in an amount equal to

the corresponding accepted deposit claim, in accordance with the Deposit Claims Procedure Order (a "**Deposit Claim Distribution**").

9. On April 27, 2018, the Court granted an Order which, among other things, set out a protocol to address: (i) the delivery of Deposit Claims Procedure documentation, and (ii) the manner in which the Tarion Warranty Corporation ("**Tarion**") bond would be reduced by the corresponding value of the delivered Deposit Claim Distributions, the value of the disallowed claims, and the value of the barred claims.
10. On July 6, 2018, the Court granted an Order (the "**Diversified Distribution Order**") which, among other things, directed the Receiver to make a distribution from the Sale Proceeds sufficient to repay the third place mortgagee, (or second place mortgagee at the time of such distribution as the first mortgage had already been re-paid) Diversified Capital Inc. ("**Diversified**"), in full and final satisfaction of all amounts owing by Terrasan to Diversified.
11. On August 29, 2018, the Court granted an order (the "**Holdback and Distribution Order**") which, among other things, authorized the Receiver to: (i) make a distribution from the Sales Proceeds in the amount of \$200,000 to Tarion as cash security for claims, (ii) make a distribution from the Sale Proceeds to the Guarantee Company of North America (the "**Guarantee**") in full and final satisfaction of the all amounts owing by Terrasan to the Guarantee (the "**Guarantee Distribution**"), and (iii) make a distribution from the Sale Proceeds to Resform Construction Limited ("**Resform**") in the amount of \$186,843.98, in accordance with a settlement of lien claim and motion agreement dated July 31, 2018 between the Receiver and Resform, in full and final settlement of Resform's lien claim.
12. On December 4, 2018, the Court granted an Order (the "**First Lien Settlement and Distribution Order**") which among other things: (i) approved and authorized the Bluescape Construction Management Inc. ("**Bluescape**") settlement agreement and the distribution to Bluescape in the amount of \$34,000, (ii) approved and authorized the Mansteel Rebar Ltd. ("**Mansteel**") settlement agreement and distribution to Mansteel in the amount of \$22,833.57, and (iii) approved and authorized the settlement of the Roni Excavating Limited ("**Roni**") settlement agreement and the distribution to Roni in the amount of \$34,000.
13. On March 12, 2019, the Court granted an Order (the "**Second Lien Settlement and Distribution Order**") which among other things: (i) approved and authorized the CRH Canada Group Inc. ("**CRH**") settlement agreement and distribution to CRH in the amount of \$45,000; (ii) approved and authorized the Summit Concrete & Drain Ltd. ("**Summit**") settlement agreement and distribution to Summit in the amount of \$12,000; (iii) approved

and authorized the R. Mancini and Associates (“**Mancini**”) settlement agreement and distribution to Mancini in the amount of \$7,000; (iv) approved and authorized the Quinn Dressel Associates (“**Quinn**”) settlement agreement and distribution to Quinn in the amount of \$5,596.90; (v) approved and authorized the Desrosiers Geothermal Corporation (“**Desrosiers**”) settlement agreement and distribution to Desrosiers in the amount of \$71,680.63; and (vi) approved and authorized the McCallum Sather Architects Inc. (“**McCallum**”) settlement agreement and distribution to McCallum in the amount of \$9,431.13.

14. On July 15, 2019, the Court granted an Order which among other things (the “**Syndicated Claims Procedure and Distribution Order**”): (i) approved and authorized the Shalom Electric Inc. (“**Shalom**”) settlement agreement and distribution to Shalom in the amount of \$5,143.12; and (ii) authorized, empowered and directed the Receiver to carry out a syndicated mortgage claims procedure to address the claims of investors (collectively, the “**Investors**”) in the syndicated mortgage (the “**Syndicated Mortgage**”) who invested funds invested through Olympia Trust Company (“**Olympia Trust**”), John Fletcher (“**Fletcher**”) and Community Trust Company (“**Community Trust**”).
15. On October 15, 2019, the Court granted an Order (the “**Interim Syndicated Mortgage Distribution Order**”) which among other things approved and authorized an interim distribution to the Investors (the “**Interim Distribution**”), as set out in the Receiver’s Thirteenth Report (the “**Thirteenth Report**”). A copy of the Thirteen Report is attached herein as **Appendix “A”**.
16. Distributions as approved and authorized by the Centurion Distribution Order, Diversified Distribution Order, Holdback and Distribution Order, First Lien Settlement and Distribution Order, Second Lien Settlement and Distribution Order, Syndicated Claims Procedure and Distribution Order, and Interim Syndicated Mortgage Distribution Order, have been completed by the Receiver.
17. On January 31, 2020, the Court granted an Order (the “**Third Lien Settlement and Distribution Order**”) which among other things: (i) approved and authorized the Limen Group Limited (“**Limen**”) settlement agreement and distribution to Limen in the amount of \$80,000 (the “**Limen Distribution**”); (ii) approved and authorized the 2043102 Ontario Limited (“**YYZed**”) settlement agreement and distribution to YYZed in the amount of \$100,000 (the “**YYZed Distribution**”); (iii) directed the Accountant of the Ontario Superior Court of Justice to pay out of court and to the Receiver \$700,631.40 plus interest earned related to monies previously paid into court by Terrasan in relation to the Limen lien action

(the “**Limen Posted Monies**”); and (iv) directed the Accountant of the Ontario Superior Court of Justice to pay out of court and to the Receiver \$381,385.13 plus interest earned related to monies previously paid into court by Terrasan in relation to the lien action of YYZed (the “**YYZed Posted Monies**”).

18. 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.

Purpose of the Report

19. The purpose of this report dated June 17, 2020 (the “**Fifteenth Report**”) is to provide information to the Court to support the granting of an Order:
- (a) approving the Fifteenth Report and the activities and conduct of the Receiver since its Fourteenth Report dated January 27, 2020;
 - (b) approving and authorizing a second interim distribution to the Investors in the amount of \$1,400,000 on account of the indebtedness owing by Terrasan pursuant to the Syndicated Mortgage (the “**Second Interim Distribution**”);
 - (c) authorizing and directing the Receiver to pay the Bare Trustee Invoices in the aggregate amount of \$81,308.49;
 - (d) approving the fees and disbursements of the Receiver and its legal counsel, Dentons Canada LLP (“**Dentons**”), as set out in this Fifteenth Report, and authorizing the Receiver to pay all approved and unpaid fees and disbursements; and
 - (e) approving the Receiver’s interim statement of receipts and disbursements dated June 12, 2020 (the “**Interim R&D**”).

Disclaimer

20. This Fifteenth Report is prepared solely for the use of the Court for the purpose of assisting the Court for the purpose of making a determination as to whether to grant the relief sought herein.
21. Except as otherwise described in this Fifteenth 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.
22. Unless otherwise stated, all monetary amounts contained in this Fifteenth Report are expressed in Canadian dollars.

ACTIVITIES OF THE RECEIVER

23. In addition to the activities undertaken by the Receiver as detailed in its prior reports, the Receiver has, among other things:
- (a) made the Interim Distribution to the Investors pursuant to the Syndicated Mortgage Distribution Order;
 - (b) made the Limen Distribution and YYZed Distribution and engaged in various discussions with the Accountant of the Superior Court of Justice (“**Accountant**”) in relation to the Limen Posted Monies and YYZed Posted Monies;
 - (c) engaged in further discussions with its legal counsel, Dentons and counsel to MaryLou Santaguida in relation to potential claims to the remaining assets of Terrasan;
 - (d) engaged in discussions with various Investors;
 - (e) communicated with the City of Toronto (the “**City**”) in respect of an outstanding letter of credit;
 - (f) communicated with counsel for a limited group of Investors relating to the Bare Trustee Invoices (as defined herein) and other administration matters; and
 - (g) completed other miscellaneous administrative obligations of the Receiver as required.

LIMEN POSTED MONIES AND YYZED POSTED MONIES

24. The Limen Posted Monies and the YYZed Posted Monies (collectively, the “**Posted Monies**”) together with the interest earned thereon was received by the Receiver and deposited in the Receiver’s trust account. In total \$1,145,021.91 was received.
25. Shortly following the receipt of the funds from the Accountant, the Receiver made the Limen Distribution and YYZed Distribution in accordance with the Third Lien Settlement and Distribution Order. Following the completion of the aforementioned distributions, the Receiver currently holds approximately \$965,021 from the Posted Monies (the “**Residual Cash**”).
26. Prior to the Receiver’s receipt of the Posted Monies, Mr. Brett Moldaver (“**Moldaver**”), counsel to Terrasan and to MaryLou Santaguida (spouse of the principal shareholder of Terrasan), advised the Receiver that Mrs. Santaguida had certain claims to the Posted Monies.
27. In February 2020, Moldaver advised the Receiver that Mrs. Santaguida’s claim supersedes any secured claim that could be made by the Syndicated Mortgage to the Residual Cash.
28. As of the date of this Fifteenth Report, the Receiver has not received any claim information or documentation from Mrs. Santaguida.
29. The Receiver obtained a security opinion from its counsel in relation to the personal property security held by the Syndicated Mortgage (the “**Security Opinion**”) and, subject to the customary qualifications and assumptions contained therein, the Security Opinion opines that the personal property security held by the Syndicated Mortgage is valid and enforceable against Terrasan.
30. Subject to the customary assumptions and qualifications contained in the Security Opinion, Receiver’s counsel has opined that the subject security documents:
 - (a) constitute legal, valid and binding security interests in favour of the Syndicated Mortgage in the Residual Cash, and all other personal property;
 - (b) is sufficient to secure the payment and performance of the obligations secured thereby; and
 - (c) creates an unperfected security interest.

31. Of note, there are no other registrations made in favour of any other secured party at the Personal Property Registry pursuant to the *Personal Property Security Act* (Ontario). The Receiver is also unaware of any other outstanding unperfected secured claims. A copy of the Security Opinion is available upon request.
32. Based upon the Security Opinion, the Syndicated Mortgage has a priority claim to the Residual Cash, and all other personal property.

SYNDICATED MORTGAGE AND SECOND INTERIM DISTRIBUTION

33. As detailed in prior reports filed by the Receiver, four charges were registered against title to the Property. As noted above, the Receiver has made full and final distributions in respect of three of the mortgages, which were held by Centurion, Guarantee and Diversified, respectively.
34. The fourth mortgage is the Syndicated Mortgage. The Syndicated Mortgage represents the remaining secured indebtedness claim to the Sale Proceeds (and the Residual Cash, and personal property as noted above). As set out in the Thirteenth Report, pursuant to a payout statement dated September 27, 2019, the amount of \$12,505,358.51 was due and owing to the Investors in the Syndicated Mortgage. Pursuant to the Interim Syndicated Mortgage Distribution Order, the Receiver made an interim distribution in the amount of \$8,000,000 to Investors (the "**Interim Distribution**").
35. The Receiver currently holds sufficient funds in the estate to make a second interim distribution ("**Second Interim Distribution**") to the Investors and proposes a distribution in the amount of \$1,400,000.
36. The Second Interim Distribution will be made on the same *pro-rata* basis as set out in Appendix "E" to the Thirteenth Report.

BARE TRUSTEE FEES

37. Fletcher was appointed as Bare Trustee pursuant to trust agreements that were executed between Fletcher and each Investor (the "**Bare Trustee Agreements**"). A sample of a Bare Trustee Agreement was attached as Appendix "F" to the Receiver's Thirteenth Report.
38. Kara Hamilton ("**Hamilton**") replaced Fletcher as Bare Trustee.
39. On September 26, 2019, Hamilton delivered to the Receiver invoices for bare trustee fees in the amount of \$81,308.49 inclusive of HST, for the billing period from June 5, 2017 to

August 30, 2019 (the “**Bare Trustee Invoices**”). The Bare Trustee Invoices were attached as Appendix “G” to the Receiver’s Thirteenth Report.

40. Based upon a review of the Syndicated Mortgage records in the possession of the Receiver, the Bare Trustee Agreement appears to govern the relationship between the bare trustee and the Investors and requires that the bare trustee’s fees be paid from the funds to be distributed to the Investors.
41. The Receiver understands that a limited number of Investors take issue with the Bare Trustee Invoices. That group of Investors is of the view that the Bare Trustee Invoices should not be paid. The Receiver notes that the limited number of Investors do not make up a majority in number of the Investors nor represent a majority debt position in the Syndicated Mortgage.
42. The Receiver further notes that a component of the services did assist with and support the syndicated mortgage claims procedure. The Receiver recommends that the Bare Trustee Invoices be paid in accordance with the Bare Trustee Agreement.

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43. As part of the original building permit approval, Terrasan was required to post security with the City pursuant to a site plan agreement entered into by the parties on July 29, 2015 (the “**Site Plan Agreement**”). Pursuant to the Site Plan Agreement, the posted security addressed landscaping requirements at the Project.
44. On June 30, 2016, DUCA Financial Services Credit Union Ltd. (“**DUCA**”) issued, on behalf of Terrasan, a letter of credit to the City in the amount of \$173,535.00 as security for the landscaping requirements as set out in the Site Plan Agreement (the “**LC**”).
45. As noted above, the Property was sold by the Receiver pursuant to the Approval and Vesting Order on September 15, 2017. Subsequent to the sale of the Property, the Receiver has requested that the City deliver and return the LC to DUCA for termination.
46. The Receiver and its counsel have attempted to resolve this issue with the City, however the City has not either returned calls or responded to emails.
47. Based on discussions with DUCA, the Receiver understands that the LC renews automatically until the LC is delivered back to DUCA and permanently cancelled.
48. The Property was sold almost three years ago and is no longer owned by Terrasan or within the control of the Receiver. The Receiver understands that, based upon publically

available information, the purchaser of the Property has plans for the development of the Property.

49. The City has not drawn upon the LC and the LC has been deposited with the City for over 4 years. The LC is supported by cash collateral deposited by Terrasan in favour of DUCA to secure any DUCA exposure following a draw down on the LC. The cash collateral deposited with DUCA needs to be released to the Receiver for distribution on account of the Syndicated Mortgage prior to the Receiver's discharge.
50. The Receiver will be seeking advice and directions from the Court in relation to the LC at the discharge motion.

RECEIPTS AND DISBURSEMENTS

51. The Interim R&D, attached as **Appendix "B"**, reports net receipts over disbursements from the date of the Receiver's appointment to June 16, 2020 of \$1,745,050.95.
52. The Receiver is seeking the Court's approval of its Interim R&D.

FEES AND DISBURSEMENTS

53. Pursuant to the Receivership Order, the Receiver has provided services and incurred disbursements during the period of January 16, 2020 to May 15, 2020, which are described in the Affidavit of Josie Parisi sworn June 16, 2020, attached herein as **Appendix "C"**.
54. 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.
55. 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 June 17, 2020, attached herein as **Appendix "D"**.
56. The Receiver requests that the Court approve its interim accounts for the period of January 16, 2020 to May 15, 2020 in the amount of \$18,998.24, inclusive of HST of \$2,185.64.
57. The Receiver also requests that the Court approve the interim accounts of its legal counsel for the period of January 1, 2020 to May 31, 2020 in the amount of \$86,897.50, together with HST of \$11,418.69.

58. 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

59. Based on the foregoing, the Receiver respectfully recommends that the Court:
- (a) approve the Fifteenth Report and the activities and conduct of the Receiver outlined herein;
 - (b) approving and authorizing a second interim distribution to the Investors in the amount of \$1,400,000 on account of the indebtedness owing by Terrasan pursuant to the Syndicated Mortgage;
 - (c) authorizing and directing the Receiver to pay the Bare Trustee Invoices in the amount of \$81,308.49;
 - (d) approve the fees and disbursements of the Receiver and Dentons, as set out in this Fifteenth Report, and authorize the Receiver to pay all approved and unpaid fees and disbursements; and
 - (e) approve the Receiver's Interim R&D.

All of which is respectfully submitted this 17th day of June, 2020.

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

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- and -

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PROCEEDING COMMENCED AT TORONTO

**FIFTEENTH REPORT OF BDO CANADA LIMITED, IN ITS
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