

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

B E T W E E N:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

- and -

1001 BROADVIEW AVENUE INC.

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985 c. B-3, AS AMENDED; AND SECTION 101 OF
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43 AS AMENDED**

**THIRD REPORT TO THE COURT OF BDO CANADA LIMITED, IN ITS CAPACITY AS COURT
APPOINTED RECEIVER OF THE PROPERTY MUNICIPALLY KNOWN AS 995-1001, 1003 & 1005
BROADVIEW AVENUE, TORONTO, ONTARIO AND 2 & 4 MORTIMER AVENUE, TORONTO,
ONTARIO**

March 2, 2021

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INTRODUCTION AND PURPOSE OF THIS REPORT

Introduction

1. By Order of the Honourable Justice Gilmore of the Ontario Superior Court of Justice (the “**Court**”) dated July 21, 2020 (the “**Receivership Order**”), BDO Canada Limited (“**BDO**”) was appointed as the Court-appointed receiver (in such capacity, the “**Receiver**”) over the real property owned by 1001 Broadview Avenue Inc. (the “**Debtor**” or “**1001 Broadview**”). The real property consists of land located at 995, 997, 999, 1991, 1003 and 1005 Broadview Avenue along with 2 and 4 Mortimer Avenue, Toronto, Ontario (collectively the “**Property**”). The Receivership Order was made following a motion brought by Centurion Mortgage Capital Corporation (“**Centurion**”) in the proceeding bearing Court File No. CV-00643617-00CL.
2. Pursuant to the Receivership Order, the Receiver was authorized and directed to market and sell the Property in accordance with the approved sales process including advertising and soliciting offers for the Property and negotiating terms and conditions of sale. The approved sales process was detailed in the Pre-Filing Report of the Receiver dated July 10, 2020 (the “**Sales Process Order**”). The Receiver conducted the sale in accordance with the Sales Process Order and entered into an agreement of purchase and sale (the “**APS**”) with 2774179 Ontario Inc. (“**277ont**”). A copy of the Sales Process Order authorizing the Receiver to engage Avison Young as the listing agent is attached hereto as **Appendix “A”**.
3. On October 20, 2020 Justice Dietrich of the Ontario Superior Court of Justice issued an order approving the sale of the Property to 277ont (“**Sale Approval Order**”). A copy of the Sale Approval Order is attached hereto as **Appendix “B”**.
4. On January 18, 2021, Justice Hainey of the Ontario Superior Court of Justice issued an Order amending the Sale Approval Order the (“**Amended Sale Approval Order**”), allowing for the substitution of 2774179 Ontario Inc. as the Purchaser with 102568 P.E.I Inc. (the “**Purchaser**”). A copy of the Amended Sale Approval Order is attached hereto as **Appendix “C”**.
5. This third report of the Receiver (the “**Third Report**”), and other all court materials and orders issued and filed in these receivership proceedings are available on the Receiver’s case website at: <https://www.bdo.ca/en-ca/extranets/1001broadview/> and will remain available on the website for a period of six (6) months following the Receiver’s discharge.

Purpose of the Report

6. This Third Report in this matter is filed to:

- (a) report on the Receiver's activities in these receivership proceedings since filing of the Second Report;
- (b) request one or more Orders, *inter alia*:
 - (i) approving this Third Report and the conduct and actions of the Receiver to date;
 - (ii) terminating the APS between the Receiver and the Purchaser;
 - (iii) setting aside the Sale Approval Order and the Amended Sale Approval Order;
 - (iv) approving and authorizing the Receiver to retain the non-refundable Deposit, totaling \$890,000, paid by the Purchaser;
 - (v) approving and authorizing the Receiver to make a distribution to Centurion after holding back a reserve; and
 - (vi) approving the fees and disbursements of the Receiver and its legal counsel, Robins Appleby LLP ("RA") as outlined herein and detailed in the supporting fee affidavits appended hereto, and authorizing the Receiver to pay all approved and unpaid fees and disbursements.

Scope and Terms of Reference

7. The Third Report has been prepared for the use of this Court and the Debtors' stakeholders as 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 Third Report may not be appropriate for any other purpose. The Receiver will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Third Report for a purpose different than set out in this paragraph.
8. Except as otherwise described in this Third 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. Accordingly, the Receiver expresses no

opinion or other form of assurance with respect to such information except as expressly stated herein.

9. Capitalized terms used herein and not defined in this Third Report shall have the meaning ascribed to them in the First Report, Second Report and the Receivership Order, as applicable.
10. All monetary amounts contained herein are expressed in Canadian dollars.

BACKGROUND

11. The Property consists of eight (8) parcels of land on the north east corner of the intersection of Broadview Avenue and Mortimer Avenue in Toronto, Ontario. The Debtor acquired the Property in July and September 2017. 1001 Broadview had not commenced construction nor had it entered into any pre-construction agreements of purchase and sale for any units.
12. As described in the Second Report, the Receiver listed the Property for sale with a Listing Agent. The Property was exposed to the market for approximately six (6) weeks and three offers were received. Of the two offers that were not accepted: one was below the appraised values; and the second could not obtain financing acceptable to it.
13. The Receiver sought and the Court granted approval of the Sale Transaction with the Purchaser on October 20, 2020. Significant terms of the APS included:
 - (a) the Property was sold “as is, where is” with no representations or warranties provided by the Receiver;
 - (b) the offer was unconditional;
 - (c) non-refundable deposit of \$300,000 was paid upon acceptance of the offer and the funds are held in trust by RA, the Receiver’s counsel;
 - (d) the Sale Transaction was set to close the later of 10 days following receipt of the Approval and Vesting Order but not prior November 15, 2020 (the “**Closing Date**”);
 - (e) there were two permitted extensions (the “**Extension Right**”) to the Closing Date, which required additional non-refundable deposits of \$200,000 per extension (the “**Extension Deposits**”), with the outside date for closing the transaction of January 15, 2021; and
 - (f) the Extension Deposits formed part of the Deposit, as defined in the APS, and are non-refundable should the Purchaser default on the transaction.

14. The Purchaser requested the two permitted extensions pursuant to the Extension Right provisions of the APS and paid the additional non-refundable deposits totaling \$400,000 to RA.
15. In an email dated January 4, 2021 the Purchaser's counsel, Zimmerman Associates ("**Zimmerman**"), confirmed that it intended to close the transaction on January 15, 2021 as scheduled (the "**Jan 4 Email**"). A copy of the Jan 4 Email is attached hereto as **Appendix "D"**.
16. In an email dated January 8, 2021, the Zimmerman advised that the name of the purchaser should be changed to 102568 P.E.I Inc. and requested the Receiver seek an amendment to the Vesting Order to reflect this entity.
17. On January 4, 2021 the Receiver became aware of certain Notices of Violations issued by the City of Toronto which required the Receiver to remove various graffiti and debris from the Property (the "**Clean-Up**"). The City of Toronto agreed that should the Clean-Up be completed by the end of January 2021 it would not levy fines.
18. In an email dated January 11, 2021 the Purchaser requested the Closing Date be extended to January 29, 2021 (the "**Third Extension**") and agreed to pay an additional deposit of \$100,000. The deposit was paid on January 18, 2021. The Purchaser agreed that \$10,000 of the deposit be used for the Clean-Up and \$90,000 be credited as a further deposit towards the purchase price (the "**Third Extension Deposit**").
19. On January 25, 2021 the Purchaser's counsel requested a further extension to February 15, 2021 (the "**Fourth Extension**") and paid an additional \$100,000 extension deposit (the "**Fourth Extension Deposit**"). Zimmerman advised that the reason for the Fourth Extension was that the Purchaser had another large transaction closing in early February 2021 and the Purchaser was focusing on that transaction. The Receiver discussed the Fourth Extension request with the secured creditors, who agreed to the Fourth Extension and the quantum of the Fourth Extension Deposit, which was to be paid on February 1, 2021. The buyer did not pay the Fourth Extension Deposit on February 1, 2021.
20. On February 2, 2021, counsel for the Purchaser emailed advising: "*I understand that funds are with Morgan Stanley in New York and that I will be told tomorrow when I can expect all funds, including the closing funds*" (the "**Feb 2 Email**"). A copy of the Feb 2 Email is attached hereto as **Appendix "E"**.
21. On February 3, 2021 the parties attended a phone call to understand the status of closing the Sale Transaction (the "**Feb 3 Call**"). During the Feb 3 Call, the Purchaser advised that the funds necessary to close the transaction were in New York and would be sent as soon as possible. The Receiver requested evidence that the Purchaser had sufficient funds or financing to complete the

Sale Transaction. On February 4, 2021, the Purchaser's counsel provided a bank statement dated January 31, 2021 from First Bank in the name of Discernment Corp which showed USD\$18.1 million in a bank account held with First Bank. The documents provided by the Purchaser showed that First Bank and Discernment Corp are both located in Puerto Rico. The Receiver was advised that Discernment Corp. is "an equity participant" in the acquisition of the Property.

22. After consulting with the stakeholders, the Receiver agreed to the Fourth Extension. As February 15, 2021 was a statutory holiday, the Receiver agreed to an extension date of February 16, 2021. On February 5, 2021, the Fourth Extension Deposit was received. On February 5, 2021 (the "**Feb 5 Email**"), RA advised Zimmerman: "*As discussed, the closing is now set for February 16th. Please be advised that the Receiver is not agreeable to a further extension of closing beyond February 16th on the basis of a further deposit. Your client should be in a position to close by the new deadline*". A copy of the Feb 5 Email is attached hereto as **Appendix "F"**.
23. On February 16, 2021, the closing documents were executed and exchanged between the parties however, the balance of the purchase price was not paid to the Receiver. On this same day, the Receiver's counsel was advised that the Purchaser was awaiting funds to be received in order to pay the balance of the purchase price and close the Sale Transaction. In an email dated February 16, 2021 (the "**Feb 16 Email**") RA advised the Purchaser's counsel that the Purchaser was in breach of the purchase agreement:

"Our clients are ready, willing and able to close. We have delivered all documents and other deliveries required pursuant to the agreement of purchase and sale. The signed receiver's certificate is in hand and is awaiting delivery to court upon receipt of funds. We have received your client's signed documents but have not received any funds. We understand that the delay in delivery of funds is due to your client's equity funds not having been received yet. As such, your client is in breach of the agreement of purchase and sale.

Without prejudice to our client's rights, our client would be agreeable to extend closing until 2:00 pm tomorrow on the following terms:

- *Statement of Adjustments remain as of today's date*
- *Your client waives tender*
- *Any demands, notices or other communication required to be delivered in connection with the purchase agreement will only need to be delivered to you without any such notice being served directly on your client*

With all other terms and conditions of the purchase agreement to remain the same and time to remain of the essence.

Please confirm this extension on behalf of your client."

The Feb 16 Email is attached hereto as **Appendix "G"**.

24. On February 17, 2021, RA received an email stating: “*My clients are agreeable to the terms. As just discussed Dom, I attach a copy of the wire confirmation for the balance of the funds*” (the “**Feb 17 Email**”). A copy of the Feb 17 Email is attached here to as **Appendix “H”**.
25. On February 17, 2021 the Purchaser advised that USD\$7,000,000 had been wired to the Purchaser’s counsel however the Purchaser had made a typographical error when entering bank account details for the Purchaser’s counsel resulting in the funds being held up by the banks while the error was being rectified. The Purchaser’s counsel provided a statement from First Bank, which showed Discernment Corp made an outgoing wire in the amount of \$7 million and that \$13.2 million remained in the account after the wire payment.
26. In an email dated Thursday February 18, 2021 (the “**Feb 18 Email**”) the Receiver’s counsel advised that despite the Purchaser being in default of the purchase agreement, an extension to Monday February 22, 2021 would be permitted (the “**Fifth Extension Deadline**”). In addition, it advised that:

“Further to our discussion, your client is once again in default. That being said, the Receiver will allow your client until 1:00 pm on Monday, February 22, 2021 to complete the closing of the sale transaction. At this stage the only remaining step is for your client to make payment. If the sale transaction has not closed by 1:00 pm on Monday, the Receiver will terminate the APS as a result of the ongoing default and retain the deposit paid by your client as per the terms of the agreement.

Given that your client’s equity partner appears to have over \$13 million USD in its account, the Receiver suggests that it transfer the balance of the purchase funds for the sale transaction from this account and work with its bank to collect the earlier failed \$7 million wire. This way the sale transaction will not be jeopardized by your client’s banking error.”

The funds were not received by the Fifth Extension Deadline. A copy of the Feb 18 Email is attached hereto as **Appendix “I”**.

27. On February 22, 2021 the Receiver’s counsel wrote to Zimmerman advising of the Receiver’s intention to terminate the agreement and that the deposit would be forfeited. Specifically, RA stated:

“Further to our discussions today, as you know your client has missed the deadline set out below. This is unfortunate. At this stage the Receiver will not tolerate this ongoing default and has decided to move on from this transaction and will go to court and seek an order terminating the APS and declaring that the deposit in respect of this transaction is forfeited. Please note that this email is being sent to you in accordance with the agreement in respect of providing notice set out in the attached email”.

A copy of the foregoing correspondence is attached hereto as **Appendix “J”**.

28. On March 1, 2021, the Receiver’s counsel wrote to Zimmerman and advised of the conditions in which the Receiver would agree to reinstate the agreement. Specifically, RA stated:

“As you are aware, the Receiver has brought a motion for an Order terminating the APS and declaring that the deposit in respect of this transaction is forfeited. This motion is scheduled for March 9, 2021. The Receiver will be filing its Motion Record with its Third Report later this week.

Without prejudice to the position that will be taken on this motion, please be advised that the Receiver is willing to take steps to reinstate the APS and close the transaction with your client on the condition that the sale is completed before March 9, 2021. If your client does not close the sale transaction by March 9, 2021, the Receiver will proceed with the motion as currently contemplated. If the sale is completed by March 9, 2021, the Receiver will withdraw its motion once the transaction has closed.”

A copy of the foregoing correspondence is attached hereto as **Appendix “K”**.

TERMINATION OF THE SALE TRANSACTION & DEPOSIT FORFEITURE

29. Despite being granted three additional extensions beyond the two contemplated in the APS and being provided the opportunity to reinstate the APS, to date the Purchaser has failed to pay the balance of purchase price and accordingly, is in default of the terms of the APS. The Receiver seeks approval to terminate the APS. A redacted copy of the APS, together with the amendments to the APS are attached as **Appendix “L”**.
30. Section 2.05 of the APS states: *“If the transaction contemplated by this Agreement is not completed as a result of the default of the Purchaser, the Deposit (together with all interest) shall be forfeited to the Receiver”*.
31. Section 6.01 of the APS provides that additional deposits made by the Purchaser to extend closing form part of the “Deposit”. Specifically, Section 6.01 states:

“The Purchaser shall have the right to extend the Closing Date (the “Extension Right”) for up to thirty (30) days per extension up to two (2) times on the following terms:.....

(b) The Purchaser provides the Vendor with the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000) on or before the Time of Closing, which sum shall be added to and deemed to constitute part of the Deposit. For clarity, an additional sum is payable with

each exercise of the Extension Right, so that upon the Purchaser exercising both of its Extension Rights, the Deposit shall comprise a total of SEVEN HUNDRED THOUSAND DOLLARS (\$700,000).....”

32. The Receiver’s counsel currently holds \$890,000 in its trust account comprised of the following Deposits all of which are non-refundable. .

Summary of Deposits	
Initial Deposit	\$ 300,000
First Extension Deposit	200,000
Second Extension Deposit	200,000
Third Extension Deposit	90,000
Fourth Extension Deposit	100,000
Total	\$ 890,000

33. Significant carrying costs continue to be incurred as a result of the delays caused by the Purchaser. Specifically, between September 24, 2020 and March 9, 2021, the interest carrying cost of both mortgages registered against Property will total approximately \$640,000 which will be added to the debt. Legal costs of approximately \$50,000 and Receiver cost approximately \$20,000 have been incurred to deal with the name change, Clean-up costs, extensions and defaults. This is in addition to the property taxes that continue to accrue (\$9,000 to February 2021).
34. The Receiver requests approval of the Court to retain a holdback and make a distribution to Centurion for the balance of the Deposit to be applied against its outstanding debt.

FEES AND DISBURSEMENTS

35. Pursuant to paragraph 18 of the Receivership Order, any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees and disbursements of the Receiver and the fees and disbursements of the Receiver’s legal and its counsel, RA, constitute part of the “Receiver’s Charge”. The fees and disbursements of the Receiver in connection with the Receivership for the period to October 1, 2020 to February 28, 2021 (the “**Billing Period**”) are detailed in the affidavit of Josie Parisi, a copy of which is attached hereto as **Appendix “M”**. The fees and disbursements of RA for Billing Period are detailed in the affidavit of Irving Marks, a copy of which is attached as **Appendix “N”**.
36. 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.

37. The Receiver's fees for the Billing Period encompass 48.25 hours at an average hourly rate of approximately \$395.42 for a total of \$19,079.25 prior to disbursements of \$38.12 and applicable taxes. The Receiver is therefore requesting that this Honourable Court approve total fees and disbursements inclusive of applicable taxes in the amount of \$21,602.67.
38. RA's fees for the Billing Period encompass 97.30 hours at an average hourly rate of approximately \$467.30 for a total of \$45,468.29 prior to disbursements of \$376.75 and applicable taxes. The Receiver is therefore requesting that this Honourable Court approve RA's total fees and disbursements inclusive of applicable taxes in the amount of \$51,763.55.
39. The Receiver respectfully submits that the fees and disbursements of the Receiver and RA are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Receivership Order.

SUMMARY AND RECOMMENDATIONS

40. Based on the foregoing, the Receiver respectfully requests that the Court grant an Order:
 - (a) terminating the Sale Transaction;
 - (b) setting aside the Sale Approval Order and the Amended Sale Approval Order;
 - (c) authorizing and approving the Receiver to retain the non-refundable deposits;
 - (d) approving and authorizing the Receiver to make a distribution to Centurion after holding back a reserve;
 - (e) approving the fees and disbursements of the Receiver and R&A, as set out in this Third Report, and authorizing the Receiver to pay all approved and unpaid fees and disbursements; and
 - (f) that the Court grant such further and other relief as it may deem just.

All of which is respectfully submitted this 2nd day of March 2021.

BDO CANADA LIMITED,
in its capacity as the Court-appointed Receiver of the property
municipally known as 995-1001, 1003 & 1005 Broadview Avenue,
Toronto, Ontario and 2 & 4 Mortimer Avenue, Toronto, Ontario and
not in its personal or corporate capacity

Per:



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