

Court File No. CV-17-11679-00CL

**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

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

**AS COURT APPOINTED RECEIVER**

**July 4, 2018**

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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, 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. (the "**2402871**"), and the transaction as set out therein (the "**Transaction**").
5. 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.
6. 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.
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 (the "**Deposit Claims Protocol 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 Bond (as defined herein) 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. 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**

11. The purpose of this report dated July 4, 2018 (the "**Eighth Report**") is to provide information to the Court with respect to:
  - (a) the Receiver's activities since the seventh report dated April 13, 2018 (the "**Seventh Report**");
  - (b) the Receiver's progress with respect to the Deposit Claims Procedure;
  - (c) the Receiver's progress with respect to the Deposit Claim Distributions;
  - (d) the Receiver's progress with respect to the protocol outlined above (the "**Deposit Claims Protocol**"); and
  - (e) the Receiver's motion for an Order of this Court:
    - (i) approving the Eighth Report and the activities and conduct of the Receiver outlined herein;

- (ii) approving the Receiver's interim statement of receipts and disbursements to date (the "**Interim R&D**"); and
- (iii) authorizing and approving a distribution by the Receiver to the second place mortgagee, Diversified Capital Inc. ("**Diversified**"), in the amount of \$3,392,228.47 (the "**Diversified Distribution**");

### **Disclaimer**

- 12. This Eighth Report is prepared solely for the use of the Court for the purpose of assisting the Court in making a determination whether to: (i) approve the actions and conduct of the Receiver as set out in this Eighth Report, including the Interim R&D, (ii) approve the Diversified Distribution, and (iii) grant any other ancillary relief being sought.
- 13. Except as otherwise described in this Eight 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 Eighth 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 on account of the Pre-Construction Sales. According to the Terrasan books and records, as at the receivership date: (i) 73 of the Purchase Agreements appeared to be valid and enforceable, and (ii) 135 Purchase Agreements appeared 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. Following the delivery of the Purchaser Correspondence and upon receiving the Court’s approval of the Deposit Claims Procedure, the Receiver notified the Purchasers of the Deposit Claims Procedure and the requirement to complete and file with the Receiver the required documentation to prove any claim they may have pursuant to the Deposit Claims Procedure.

#### **ACTIVITIES OF THE RECEIVER**

20. In addition to the activities undertaken by the Receiver as detailed in its prior reports, the Receiver has, among other things:
  - (a) attended to the administration of the Deposit Claims Procedure including responding to enquiries from Purchasers regarding the Deposit Claims Procedure and provided assistance to Purchasers as requested;
  - (b) together with the Guarantee Company of North America (the “**Guarantee**”), reviewed all Deposit Claims received and determined the claims to be either: proven, disallowed or revised;
  - (c) advised Purchasers with Proven Claims of the acceptance of their Deposit Claim and the amount accepted for payment;
  - (d) prepared and delivered disallowance notices to Purchasers whose claims were not accepted and engaged in discussions with these Purchasers as appropriate;

- (e) prepared and delivered revision notices to Purchasers whose claims were partially accepted and engaged in discussions in an effort to settle those claims as appropriate;
- (f) obtained Consents from the Guarantee to make payments to the Purchasers with Proven Claims in accordance with the Deposit Claims Procedure Order;
- (g) advised Purchasers with Proven Claims of the times and location where cheques prepared in respect of Deposit Claim Distributions are available for in-person pick-up and advised Purchasers of the requirement for two pieces of original current Canadian or provincial government issued identification to be presented to the Receiver, in accordance with the Deposit Claims Procedure;
- (h) facilitated the delivery of Deposit Claim Distributions in accordance with the Deposit Claims Distribution Order;
- (i) delivered the receiver's certificate to Tarion Warranty Corporation ("**Tarion**") as required by paragraph 4 of the Deposit Payment Protocol Order;
- (j) delivered to Tarion the claims procedure documentation and Receiver's Certificates (as defined herein) as required by paragraphs 5 and 6 of the Deposit Payment Protocol Order;
- (k) delivered to Tarion and the Guarantee: (a) a ledger of the Proven Deposit Claims paid; and (b) updated claims determination summaries outlining the proven, revised and disallowed claims;
- (l) engaged in discussions with its legal counsel, Dentons Canada LLP, and trade creditors that filed lien claims against the Property regarding the potential priority of those claims in relation to the various mortgages that were registered against title to the Property;
- (m) engaged in discussions with Tarion and the Guarantee regarding the reduction of the Tarion Bond equal to: (i) the amount of the Receiver's Certificates delivered by the Receiver in respect of Proven Deposit Claims, (ii) the total amount of disallowed claims, and (iii) the total amount of barred claims, in accordance with the Deposit Payment Protocol Order;

- (n) engaged in discussions and meetings with the mortgagees regarding the anticipated timing of distributions and the completion of the receivership administration;
- (o) responded to a scheduled motion by Diversified regarding a distribution prior to distributions on account of the Guarantee secured obligations; and
- (p) completed other miscellaneous administrative obligations of the Receiver as required.

**DEPOSIT CLAIMS DISTRIBUTION UPDATE**

- 21. Capitalized terms not otherwise defined in this section are as defined in the Deposit Claims Procedure Order, attached hereto as **Appendix A**.
- 22. As discussed in the Seventh Report, establishing the Deposit Claims Procedure was necessary to enable the Receiver, in consultation 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 as the Guarantee's claim is contingent in nature and based on the Guarantee's liability under the deposit insurance policies and the payment of Proven Deposit Claims.
- 23. Subsequent to the issuance of the Deposit Claims Procedure Order, the Receiver received and reviewed all Deposit Claims and, collaboratively with the Guarantee, determined the Deposit Claims as either accepted, disallowed or revised. The Receiver communicated with all Purchasers who filed a Deposit Claim.
- 24. The Receiver's current determination (as supported by the Guarantee) of the Deposit Claims received pursuant to the Deposit Claims Procedure Order, is summarized in the following table:

Terrasan Claims Summary		
	# of Claims	Total \$ Claimed
Accepted	73	\$ 3,764,046.61
Disallowed	30	387,355.00
Disputed	3	17,650.00
Total		\$ 4,169,051.61



25. Pursuant to the Deposit Claims Procedure Protocol, the Receiver was to deliver a receiver's certificate to Tarion on a bi-weekly basis outlining the Deposit Claim Distributions made on account of the Proven Deposit Claims (a "**Receiver's Certificate**"). The following table summarizes the total value of the Receiver's Certificates delivered by the Receiver to Tarion and the Guarantee:

Deposit Claim Payments	
Total accepted Deposit Claims	\$ 3,764,046.61
Payments on account of Tarion Bond	1,388,335.00
Payments on account of Excess Condominium Deposit Insurance	2,295,666.61
Total payments	3,684,001.61
Net payments pending delivery to Purchasers	\$ 80,045.00

26. Attached herein as **Confidential Appendix A** are Receiver's Certificates 1 through 5 detailing Deposit Claim Distributions (without Schedule "B"). To date, the Receiver has delivered payments totaling \$3,684,001.61 in respect of Proven Deposit Claims totaling \$3,764,046.61. Two Purchasers with Proven Claims totaling \$80,045 have not made arrangements to obtain their Deposit Claim Distribution.
27. Three Purchasers, with claims totaling \$17,650, dispute the Receiver's disallowance of their respective Deposit Claims (the "**Disputed Claims**"). These Disputed Claims are the only outstanding Deposit Claims to be determined or settled. Two of the Disputed Claims are each in the amount of \$6,000 and one is in the amount of \$5,650 (the "**Disputed Claimants**"). The Disputed Claimants each paid \$1,000 to the Project's deposit trustee and the balance was paid to a broker as a finder's fee or commission. Prior to the Receivership, Terrasan terminated each of the Disputed Claimants' Purchase Agreements for non-payment of scheduled deposit payments as required by the Purchase Agreement. The Receiver is attempting to resolve the Disputed Claims.

#### RECEIPTS AND DISBURSEMENTS

28. The Interim R&D, attached herein as **Appendix B**, reports net receipts over disbursements from the date of the Receiver's appointment to July 3, 2018 of \$13,697,560.20.
29. The Receiver is seeking the Court's approval of its Interim R&D.

## SECURED CREDITORS

30. As reported in the Seventh Report, detailed 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
GCNA	AT3841250	\$15,053,500
Diversified	AT3235332 and AT4035434	\$3,000,000
Olympia Trust Company / John Fletcher / Community Trust Company (“ <b>Olympia</b> ”)	AT3539503 and AT4464383 (Transfer of Charge)	\$15,000,000

31. Pursuant to the Distribution Order granted on October 10, 2017, the Receiver distributed the amount of \$12,692,899.41 to the first mortgagee, Centurion, in full and final satisfaction of all amounts owing by Terrasan to Centurion.
32. Additionally, the Receiver is advised by its counsel that liens (the “**Lien Claims**”) totaling \$4,359,219.12 were registered against title to the Property.
33. With respect to the Lien Claims, the Receiver and its legal counsel are in the process of resolving the Lien Claims. A detailed listing of the lien claims is set out in Paragraph 43 of Seventh Report. A copy of the Seventh Report (without Appendices) is attached herein as **Appendix C**.

## The Guarantee

34. As reported in the Seventh Report, the Receiver obtained a security opinion from its counsel (the “**Guarantee Security Opinion**”) and, subject to the customary qualifications and assumptions contained therein, the Guarantee Security Opinion opines that: (i) the security held by the Guarantee is valid and legally enforceable against Terrasan, and (ii) the Guarantee has a first priority security interest in the assets sold pursuant to the 2402871 APA (the “**Assets**”).
35. Subject to the customary assumptions and qualifications contained in the Guarantee Security Opinion, Receiver’s counsel has opined that the subject Guarantee security documents:
- (a) constitute legal, valid and binding security interests in favour of the Guarantee in the Assets;

- (b) are sufficient to secure the payment and performance of the obligations secured thereby; and
  - (c) are properly registered and in first position over all other secured creditors.
36. The Guarantee issued surety bond # TM5120055 to Tarion in relation to the Project pursuant to the *Ontario New Home Warranties Plan Act* (Ontario) (the “**Tarion Bond**”) in the amount of \$4,840,000. Under the Tarion Bond, the Guarantee insured deposits made by Purchasers to a maximum of \$20,000 per Purchaser. The Guarantee also provided a Master Excess Condominium Deposit Insurance Policy to Terrasan (“**MECDIP**”), which insured individual Purchaser’s deposits in excess of \$20,000.
37. Total deposits made by Purchasers to the Project according to the Records, totaled \$5,930,681.61. As described herein, by the Claims Bar Date, Deposit Claims totaling \$4,282,065.07 were filed with the Receiver.
38. By way of letter dated May 22, 2018, Tarion reduced the amount of the Tarion Bond by \$900,000, thereby reducing the Tarion Bond from \$4,840,000 to \$3,940,000 on account of two (2) Receiver’s Certificates. Tarion has made no other reductions to the Tarion Bond pursuant to the Deposit Claims Procedure Protocol.

#### **Diversified**

39. As reported in the Seventh Report, the Receiver obtained a security opinion from its counsel (the “**Diversified Security Opinion**”) and, subject to the customary qualifications and assumptions contained therein, the Diversified Security Opinion opines that: (i) the security held by Diversified is valid and legally enforceable against Terrasan, and (ii) Diversified has a second priority security interest in the Assets.
40. Subject to the customary assumptions and qualifications contained in the Diversified Security Opinion, Receiver’s counsel has opined that the subject Diversified security documents:
- (a) constitute legal, valid and binding security interests in favour of Diversified in the Assets;
  - (b) are sufficient to secure the payment and performance of the obligations secured thereby; and
  - (c) are properly registered and in second position over all other secured creditors.

41. According to a payout statement received on June 25, 2018, the amount of \$3,392,228.47 is claimed as owing to Diversified, together with interest accruing at 30 percent per annum to July 6, 2018. Attached herein as **Appendix D**, is a copy of the Diversified payout statement.

**DISTRIBUTION TO DIVERSIFIED**

42. The Deposit Claims Procedure is substantially complete and the obligations secured by the security held by the Guarantee are reasonably known.
43. There are sufficient funds in the estate to support the Diversified Distribution. As set out below, the Receiver is satisfied that sufficient funds will remain in the estate following the Diversified Distribution to address distributions to the Guarantee, any priority amounts confirmed in respect of the Lien Claims, and a potential reserve on account of the Taron Bond pursuant to the Deposit Claims Procedure Protocol.
44. The Guarantee has advised that it does not oppose the Diversified Distribution.

**CASH SUMMARY**

45. For ease of reference, the Receiver has prepared the table below which provides a summary of the potential known priority claims to the Sale Proceeds:

Estimated Cash Balances	
Balance in Receiver's Trust Account per R&D	\$ 13,777,605.20
Proven Deposit Claims for which payments have not been delivered to Purchasers	(80,045.00)
Reserve for Lien Claims	(4,359,219.12)
Balance Remaining for Costs and Further Distributions	\$ 9,338,341.08

**Note:** [1] *The Lien Claims may only have priority over the mortgages to the extent of the deficiency in the holdback funds from the Project.*

**SUMMARY AND RECOMMENDATIONS**

46. Based on the foregoing, the Receiver respectfully recommends that the Court:
- (a) approve the Eighth Report and the activities and conduct of the Receiver outlined herein;
  - (b) approve the Interim R&D; and
  - (c) approve the Diversified Distribution.

All of which is respectfully submitted this 4<sup>th</sup> day of July, 2018.

**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: Josie Parisi  
Title: Senior Vice President