

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

BETWEEN:

**PRUDENT EXCELLENCE MORTGAGE INVESTMENT
CORPORATION**

Applicant

-and-

TRIUMPH DEVELOPMENT HK BRADFORD TWIN REGENCY INC.

Respondent

APPLICATION UNDER 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

**MOTION RECORD OF THE RECEIVER,
BDO CANADA LIMITED**

June 30, 2023

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TO: ATTACHED SERVICE LIST

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(as at June 2023)**

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TAB 1

Court File No.: CV-22-00677227-00CL

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

BETWEEN:

**PRUDENT EXCELLENCE MORTGAGE INVESTMENT
CORPORATION**

Applicant

-and-

TRIUMPH DEVELOPMENT HK BRADFORD TWIN REGENCY INC.

Respondent

APPLICATION UNDER 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

NOTICE OF MOTION

BDO Canada Limited ("**BDO**"), in its capacity as the Court-appointed receiver (the "**Receiver**") of the Property municipally known as 2362 Line 8, Bradford West Gwillimbury, Ontario (the "**Property**") will make a motion to a Judge presiding over the Ontario Superior Court of Justice (Commercial List) on July 12, 2023 at 12:00 pm ., or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1(1);
- in writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;

[x] By video conference.

at the following location

The motion is to be heard by videoconference, details of which are to be provided by the Court.

THE MOTION IS FOR:

- (a) an Order, if necessary, the abridgement of the time for service of the Notice of Motion and Motion Record herein and dispensing of service thereof;
- (b) an Order approving and authorizing the settlement of the lien claims of Delbrook Triumphant Builders Inc. (“**Delbrook**”) and 10853828 Canada Inc. (“**108co**”) in accordance with the terms of the Settlement of Lien Claims Agreement between the Receiver, Delbrook and 108co (the “**Settlement Agreement**”) and authorizing the distribution to Delbrook in the amount of \$114,800.00 (the “**Delbrook Distribution**”) and the distribution to 108co in the amount of \$ 705,200.00 (the “**108co Distribution**”) in accordance with the Settlement Agreement;
- (c) the approval of the Receiver's activities and interim receipts and disbursements as described in the Receiver’s Report dated June 30, 2023 (the “Receiver’s Fourth Report”);
- (d) the approval of the Receiver's fees and disbursements and those of its counsel as set forth in the Receiver's Third Report;
- (e) an Order amending the terms of the Order of Justice Conway dated March 1, 2022 (the “**Receivership Order**”) to expand the scope of the Receiver’s mandate beyond the Receiver of the Property to be the Receiver in respect of Triumph Development HK Bradford Twin Regency Inc. the “**Debtor**”); and
- (f) further and other relief as required in the circumstances and this Honorable Court

deems just.

THE GROUNDS FOR THE MOTION ARE:

1. Pursuant to the terms of the Order of Justice Conway dated March 1, 2022 (the "**Receivership Order**"), BDO was appointed as Receiver over the Property pursuant to section 243 of the *Bankruptcy and Insolvency Act* ("**BIA**") and section 101 of the *Courts of Justice Act* ("**CJA**").
2. The Property forms a residential condominium development site in Bradford West Gwillimbury, Ontario. The Property was owned by Triumph Development HK Bradford Twin Regency Inc. ("**Triumph**").
3. Pursuant to the Approval and Vesting Order of Justice Cavanagh dated September 14, 2022 (the "**Sale Approval Order**") the sale of the Property was approved. The sale transaction of the Property closed on September 29, 2022 (the "**Sale Transaction**").
4. Prior to the Sale Transaction, the Property was subject to, *inter alia*, the following construction liens:
 - (a) a construction lien registered by Delbrook as instrument number SC1768859 (the "**Delbrook Lien**"); and
 - (b) a construction lien registered by 108co as instrument number SC1768866 (the "**108co Lien**").
5. Following the completion of the Sale Transaction, pursuant to the Administration and Interim Distribution Order of Justice Cavanagh dated September 14, 2022 (the "**A&D Order**"), the Receiver made an approved distribution to the first mortgagee and an approved partial distribution to the second mortgagee, subject to the Receiver withholding \$29,900 in respect of the second mortgage.

6. Pursuant to the Order of Justice Osbourne dated December 8, 2022, the Receiver made an approved further distribution to the second mortgagee and a distribution to Gerrits Engineering Limited (“**Gerrits**”). Each of these distributions were made in priority to the Delbrook Lien, the 108co Lien and any other subsequent encumbrancer.
7. The Receiver is holding the balance of the net sale proceeds in trust pending further Order of the Court.

The Delbrook Lien and the 108co Lien

8. The Receiver’s independent counsel has provided to the Receiver an opinion regarding the Delbrook Lien and the 108co Lien. The Receiver’s counsel is of the view that the Delbrook Lien and the 108co Lien are valid and enforceable and have full priority over the third mortgage registered by Xiaofeng Fu and Meng Sun as Instrument Number SC 18029280 (the “**Third Mortgage**”).
9. As noted above, the Receiver has settled the Delbrook Lien and the 108co Lien. The Receiver is of the view that the Settlement Agreement, the Delbrook Distribution and the 108co Distribution are reasonable and appropriate in the circumstances.

Approval of Activities and Fees

10. In the Receiver's Fourth Report, the Receiver has included a detailed description of its activities, its fees and disbursements, and the fees and disbursements of its lawyers, Robins Appleby LLP.
11. The Receivership Order provides that the Receiver and its legal counsel are entitled to be paid their reasonable fees and disbursements at their standard rates and charges, and are

required to pass their accounts from time to time.

12. The Receiver's activities, statement of receipts and disbursements including the fees and disbursements of its legal counsel, Robins Appleby LLP, as set out in the Receiver's Fourth Report are fair and reasonable and should to be approved.

Expansion of Receivership

13. In the event of the approval of the Settlement Agreement, the Delbrook Distribution and the 108co Distribution, the primary remaining task of the Receiver will be to attend to various Debtor related CRA issues, including HST filings.
14. In order to effectively deal with the remaining issues, the Receiver believes it appropriate for its mandate to expand the receivership beyond the scope of the Property to the receivership of the Debtor. In the circumstances, it is just and convenient to do so.

Other Grounds

15. Rules 1.04, 2.03, 3.02, 37 and 59.06 of the *Rules of Civil Procedure*.
16. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Receiver's Fourth Report;
- (b) The Affidavit of Irving Marks sworn June 29, 2022 (the "**Robins Appleby LLP Fee Affidavit**");
- (c) The Affidavit of Gary Cerrato sworn June 30, 2022 (the "**BDO Fee Affidavit**"); and
- (d) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

June 30, 2023

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Lawyers for the Receiver, BDO Canada
Limited

TO: ATTACHED SERVICE LIST

**PRUDENT EXCELLENCE
MORTGAGE INVESTMENT
CORPORATION**

- and -

**TRIUMPH DEVELOPMENT HK
BRADFORD TWIN REGENCY INC.**

Applicant

Respondent

Court File No.: CV-22-00677227-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

APPLICATION UNDER 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

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

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TAB 2

Court File No. CV-22-00677227-00CL

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

BETWEEN:

**PRUDENT EXCELLENCE MORTGAGE INVESTMENT
CORPORATION**

Applicant

- and -

TRIUMPH DEVELOPMENT HK BRADFORD TWIN REGENCY INC.

Respondent

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

June 30, 2023

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INTRODUCTION AND PURPOSE OF THIS REPORT

Introduction

1. By Order of the Honourable Madam Justice Conway of the Ontario Superior Court of Justice (the “**Court**”) dated March 1, 2022 (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 Triumph Development HK Bradford Twin Regency Inc. (“**Triumph**” or the “**Debtor**”) municipally known as 2362 Line 8, Bradford West Gwillimbury, ON (the “**Property**”). A copy of the Receivership Order is attached hereto as **Appendix “A”**. The within proceeding is referred to herein as the “**Receivership Proceeding**”.
2. The Debtor is a corporation governed by the *Canadian Business Corporations Act* with a registered head office located at A10-3000 Highway 7, Markham, ON. The Debtor was incorporated on June 8, 2017. The Debtor’s principal asset was the Property which was an undeveloped parcel of land consisting of approximately 9.45 acres of land fronting onto Line 8 Bradford with a municipal address of 2362 Line 8 Bradford West Gwillimbury, ON. It appears the Debtor was incorporated for the sole purpose of purchasing and developing the Property.
3. The Receiver has been provided with information that indicates the Debtor is either owned by Bradford Holding Limited Partnership which is ultimately owned through corporations wholly owned by Lu (Wilson) Shen (“**Shen**”), his spouse, Yuerong Wang (“**Wang**”) and Jun Chen (“**Chen**”) or solely by Wang. Based on the conflicting information, the Receiver is not sure who in fact are the shareholders of Triumph. The listed directors of Triumph as at February 14, 2022 are Chen and Shen, although Wang also served as a director of the Debtor from incorporation to March 29, 2021.
4. The Property has been sold by the Receiver and pursuant to the Approval and Vesting Order, the net proceeds of sale stand in the place and stead of the Property in respect of the competing claims outlined below registered against the Property.

Purpose of this Report

5. The purpose of this Fourth Report of the Receiver dated June 30, 2023 (the “**Fourth Report**”) is to obtain Order(s):
 - i. approving and authorizing the settlement of the lien claims of Delbrook Triumphant Builders Inc. (“**Delbrook**”) and 10853828 Canada Inc. (“**108 Canada**”) in accordance with the terms of the Settlement of Lien Claims Agreement between the Receiver, Delbrook and 108 Canada (the “**Lien Settlement Agreement**”).
 - ii. approving and authorizing the proposed distribution to Delbrook in the amount of \$114,800.00 (the “**Delbrook Distribution**”) and the distribution to 108 Canada in the

amount of \$705,200.00 the ("**108 Canada Distribution**") in accordance with the Lien Settlement Agreement.

- iii. approving the Receiver's Interim Statement of Receipts and Disbursements (the "**Interim R&D Statement**");
- iv. approving the Receiver's activities as described in this Fourth Report;
- v. approving the Receiver's fees and disbursements and those of its counsel, Robins Appleby LLP ("**Robins Appleby**"), as set forth in this Fourth Report;
- vi. obtaining an Order amending the terms of the Receivership Order to expand the scope of the Receiver's mandate beyond the Receiver of the Property to be the Receiver in respect of Triumph Development HK Bradford Twin Regency Inc.; and
- vii. such further and other relief as required in the circumstances and this Honorable Court deems just.

DISCLAIMER

6. In preparing this Fourth Report, the Receiver may have been provided with, and has relied upon, unaudited, draft and/or internal financial information, the Debtor's books and records, discussions with management of the Debtor ("**Management**"), and information from third-party sources (collectively, the "**Information**"). Except as described in this Fourth Report:
 - a) the Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited 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 ("**CAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
 - b) the Receiver has prepared this Fourth Report in its capacity as a Court-appointed officer in connection with its motion for approval of the Receiver's activities and for approval of certain proposed distributions. Parties using the Fourth Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.
7. Unless otherwise stated, all monetary amounts contained in this Fourth Report are expressed in Canadian dollars.
8. This Fourth Report, and other all court materials and orders issued and filed in this Receivership Proceeding are or will be made available on the Receiver's case website at the following URL: https://www.bdo.ca/en-ca/extranets/triumph_twin_regency/ and will remain available on the website for a period of six (6) months following the Receiver's discharge.

BACKGROUND

9. The Receiver delivered its First Report dated September 8, 2022 (the “**First Report**”) in connection with its motion returnable September 14, 2022. At that motion, the Receiver obtained an Approval and Vesting Order approving a sale transaction for the Property. Additionally, the Receiver obtained an Administration and Interim Distribution Order: (i) approving the Receiver’s activities; (ii) sealing the Confidential Supplemental Record until completion of the sale transaction for the Property or further order of the Court; and (iii) approving a final distribution to Peter and Leni Vander Kooij (“collectively, “**Vander Kooij**”) and an interim distribution to Prudent Excellence Mortgage Investment Corporation (“**Prudent**”), the first and second mortgagees respectively. Copies of the Approval and Vesting Order and the Administration and Interim Distribution Order dated September 14, 2022 are attached hereto as **Appendix “B”**.
10. The sale transaction for the Property (the “**Sale Transaction**”) closed on September 29, 2022 and pursuant to the Administration and Interim Distribution Order, the Receiver made a final distribution to Vander Kooij and an interim distribution to Prudent in the amounts of \$2,187,793.44 and \$711,878.41 respectively. The interim distribution to Prudent was subject to the Receiver withholding \$29,900 in respect of Prudent’s mortgage (the “**Prudent Holdback**”).
11. The Receiver delivered its Second Report to Court dated October 7, 2022 (the “**Second Report**”) and its Supplement to the Second Report dated November 11, 2022 (the “**Supplemental Report**”) seeking the Court’s: (i) approval to unseal the Confidential Supplemental Record (the “**Confidential Supplement**”) as provided by Paragraph 3 of the Administration and Interim Distribution Order; and (ii) advice and directions regarding the issue of the validity of the liens registered against the Property by Delbrook (the “**Delbrook Lien**”) and 108 Canada (the “**108 Lien**”). Copies of the Second Report and the Supplemental Report, excluding appendices, are included hereto as **Appendix “C”**.
12. Certain creditors of the Debtor informed the Receiver that it was their position that the Delbrook Lien and 108 Lien were invalid given alleged common ownership among Triumph, Montanaro Project Management Professional Inc. (“**Montanaro**”)¹, Delbrook and 108 Canada. The Receiver’s motion for advice and directions focused on investigating and reporting its findings in respect of the commonality of ownership among Triumph, Montanaro, 108 Canada and Delbrook. Based on the evidence gathered by the Receiver, the Receiver concluded that notwithstanding that Triumph, Montanaro, 108 Canada and Delbrook had common directors at certain points in time, there was

¹ Montanaro was incorporated to be the project management company to manage development of the Property pursuant to a Project Management Agreement dated June 8, 2017.

no evidence to demonstrate commonality of ownership (legal or beneficial) among the aforementioned corporate entities thereby invalidating the Delbrook Lien and 108 Canada Lien.

13. Pursuant to the Endorsement of Justice Cavanagh dated October 21, 2022 the Receiver's motion for advice and directions regarding the validity of the Delbrook Lien and 108 Lien was scheduled to be heard on March 1, 2023 and the interested parties agreed upon the timetable proposed by the Receiver. A copy of the Endorsement of Justice Cavanagh dated October 21, 2022 is attached hereto as **Appendix "D"**.
14. The Receiver delivered its Third Report to Court dated November 28, 2022 (the "**Third Report**") seeking, among other relief, (i) approval to distribute the Prudent Holdback, subject to the Court's advice and directions in respect of the validity and enforceability of the claim made by Prudent for a bonus payment of 3 months interest as provided for under the terms of the Prudent Mortgage and/or pursuant to Section 17 of the *Mortgages Act*; and (ii) approval of the Gerrits Engineering Limited lien settlement (the "**Gerrits Lien Settlement**") and authorizing the proposed distribution to Gerrits Engineering Limited ("**Gerrits**").
15. Pursuant to the Order of Justice Osbourne dated December 8, 2022, the Receiver made an approved further distribution to Prudent from the Prudent Holdback in the amount of \$14,150 and a distribution to Gerrits in respect of its lien in the amount of \$16,385.15. Each of these distributions were made in priority to the Delbrook Lien, 108 Lien and any other subsequent encumbrancer. Attached as **Appendix "E"** is the Order and Endorsement of Justice Osbourne dated December 8, 2022.
16. Pursuant to the Order and Endorsement of Justice Penny dated March 1, 2023, the Confidential Supplement was unsealed and the Receiver's motion for advice and directions returnable on March 1, 2023 was withdrawn as the interested parties served with the Receiver's Second Report and Supplemental Report accepted the Receiver's findings confirming uncommon ownership among Triumph, Montanaro, Delbrook and 108 Canada. Copies of the Order and Endorsement of Justice Penny dated March 1, 2023 are included hereto as **Appendix "F"**.
17. The Receiver is holding the balance of the net sale proceeds, net of the aforementioned Court approved distributions, from the Property in trust pending further Order of the Court.

Creditor Claims

18. Prior to the Sale Transaction, the Property was subject to the following encumbrances:

Chargor	Encumbrance	Amount	Instrument	Registration Date
Vander Kooij, Peter and Leni	Mortgage	\$2,795,000	SC1421256	June 19, 2017

Prudent Excellence Mortgage Investment Corporation	Mortgage	\$800,000	SC1760648	March 5, 2021
Delbrook Triumphant Buildings Inc.	Construction Lien	\$1,404,036	SC1768859	April 6, 2021
10853828 Canada Inc.	Construction Lien	\$1,870,538	SC1768866	April 6, 2021
Gerrits Engineering Limited	Construction Lien	\$16,385	SC1776388	April 30, 2021
Fu, Xiaofeng and Sun, Meng	Mortgage	\$10,000,000	SC1802980	July 12, 2021

19. As stated, the Receiver has retired the Vander Kooij first mortgage and the Prudent second mortgage from the net sale proceeds from the Property.
20. The Delbrook Lien and the 108 Lien (referred to hereinafter together as the “**Construction Liens**”) relate to supplied labour and consulting services for project and construction management and other “soft-costs” for improvement/work completed by other sub-contractors towards an application for site plan approval that remain unpaid by the Debtor and which are further discussed below.
21. Gerrits’ lien (the “**Gerrits Lien**”) related to unpaid “soft-costs” incurred for engineering work for conceptual design and was also included in the Delbrook Lien and/or the 108 Lien. The Gerrits Lien Settlement also stipulated that upon making payment for the Gerrits Lien, that the Delbrook Lien and the 108 Lien would be reduced, to the extent that each of these liens included amounts claimed in the Gerrits Lien.
22. The charge registered by Xiaofeng Fu and Meng Sun as Instrument Number SC 18029280 (the “**Third Mortgage**”) appears to “back-stop” personal loans provided to Shen and Wang. Further investigation into the details of the Third Mortgage remain ongoing by the Receiver.
23. CTBC Bank Corp. (“**CTBC**”) is a secured creditor with a registration against the Debtor under the *Personal Property Security Act* (Ontario) (the “**PPSA**”) in the amount of \$5,000,000 with a registration against Triumph’s “Accounts” which are described as term deposits and credit balances held with CTBC in respect of a Letter of Credit security against Shen and Wang.

RECEIVER’S ACTIVITIES

24. The Receiver’s more salient activities since the Third Report include:
- a) reviewing lien timeline schedules provided by Delbrook and 108 Canada;
 - b) reviewing Gerrits Lien opinion and discussions regarding same with counsel;
 - c) reviewing Delbrook and 108 Canada’s responding motion record;

- d) uploading documents in respect of the common ownership investigation conducted by the Receiver to a portal for parties on the service list to access and review together with the Receiver's Third Report;
- e) finalizing the Third Report;
- f) attendance at the Court in respect of the Receiver's motion seeking approval of the distribution of the Prudent Holdback to Prudent and the distribution to Gerrits in respect of the Gerrits Lien;
- g) processing the Prudent and Gerrits final distributions;
- h) returning calls to parties that paid deposits for the right to purchase units at the pre-sales event held by the Debtor;
- i) reviewing documentation provided in the affidavit of documents and supplementary affidavit of documents provided by Delbrook and 108 Canada;
- j) meeting with counsel to discuss and strategize on vetting the Delbrook and 108 Canada liens;
- k) meeting with BDO's Forensic Dispute and Investigation and Construction Services practice ("**BDO's Construction Services Group**") to discuss vetting the Delbrook and 108 Canada Liens;
- l) reviewing of all of the documentation to be considered by BDO's Construction Services Group to vet the Delbrook Lien and 108 Canada Lien;
- m) providing access to parties to view documentation included in the Receiver's virtual sales data room in respect of the work done by the project and construction managers to obtain site plan approval;
- n) attending a meeting with Delbrook and 108 Canada and its counsel to review the Receiver's preliminary findings in respect of the Delbrook and 108 Canada Liens;
- o) attending a follow-up meeting with counsel and BDO's Construction Services Group to discuss alternative methods of vetting the Delbrook and 108 Canada Liens;
- p) reviewing updated lien analysis schedules prepared by BDO's Construction Services Group;
- q) attending meetings with counsel to discuss lien analysis and discuss legal aspects of the Delbrook Lien and 108 Canada Lien;
- r) attending a follow-up meeting with Delbrook and 108 Canada to review the Receiver's lien analysis;
- s) reviewing the legal opinion received from Robins Appleby in respect of the Delbrook Lien and 108 Canada Lien;
- t) negotiating the Lien Settlement Agreement;
- u) uploading copious amounts of documents to a portal for parties on the service list to be able to review them together with the Receiver's Fourth Report in respect of the motion for approval of the Lien Settlement Agreement; and

- v) drafting the Fourth Report.

THE DELBROOK AND 108 CANADA LIENS

25. The Receiver's Second Report discusses the Delbrook Lien and 108 Canada Lien and Triumph's Statements of Defence in respect of those Construction Liens. The Receiver will only reiterate certain facts surrounding the Construction Liens that complicate valuing them and evaluating the validity and enforceability of the liens which necessitated settlement discussions to settle the Construction Liens:

- i. 108 Canada claims that it took an assignment of the Montanaro Project Management Agreement on consent of Triumph, however, such assignment was not documented in writing². 108 Canada liened for the pre-construction work completed by both Montanaro and 108 Canada that remained unpaid by Triumph. The Receiver has no record of the Montanaro Project Management Agreement ever having been formally assigned, however, the Triumph records do support the position that 108 Canada was providing these project management services.
- ii. The Delbrook Lien is in respect of work completed for construction management services provided by Delbrook to Triumph pursuant to a CCDC 5B Agreement dated March 3, 2020³, however, no construction was ever commenced on the Property.
- iii. Pursuant to the Montanaro Project Management Agreement and CCDC 5B Agreement, 108 Canada and Delbrook were to be compensated based on 8% of the hard construction cost budget under each contract. Although not documented in writing, 108 Canada and Delbrook apparently agreed to split compensation under the aforementioned contracts with Triumph on a 3.2% and 4.8% basis for project management and construction management services respectively (total compensation under both contracts combined equal 8% of the hard construction cost budget split 40% and 60% for project management and construction management services respectively).
- iv. 108 Canada and Delbrook's invoicing in support of the Construction Liens was based on a "hard cost" construction budget in the range of approximately \$70.5 million to \$72.2 million which was the construction budget for a 239 dwelling unit building which never received site plan approval. The CCDC 5B Agreement originally contemplated a "hard cost" construction budget of \$42.5 million with site approved plans for two buildings with a total of 218 dwelling units, 108 and 110 units in each building respectively. 108 Canada and Delbrook have agreed to be compensated for their services and work performed based on the \$42.5 million "hard cost" construction budget as set out in the CCDC 5B contract.

26. The Receiver engaged BDO's Construction Services Group to vet the Construction Liens. BDO's Construction Services Group has conducted a thorough analysis of the Constructions Liens and is satisfied that both 108 Canada and Delbrook have performed services on a *quantum meruit* basis that improved the Property.

² Triumph claims in its Statement of Defence that 108 Canada was not assigned or otherwise obtained rights under the Montanaro Project Management Agreement. Therefore 108 Canada did not have privity of contract with Triumph and thus had no right to demand payment under the Montanaro Project Management Agreement.

³ Triumph claims in its Statement of Defence that it entered into the CCDC 5B contract with Delbrook for the sole purpose of facilitating registration with Tarion Warranty Corporation as a builder.

27. Given the absence of the implementation of any progress measurement system based on the limited Triumph records available, a weighted average methodology was adopted to measure the progress achieved under the project management and construction management contracts. The weighted average methodology is a commonly used technique in the construction industry to measure and assess the overall status of a project. This involves assigning weights to different project components based on their relative importance in the project and combining the completion percentages to derive a comprehensive progress metric. The weighted average methodology provides a meaningful assessment of the status of the project and progress achieved under the project management and construction management contracts. Attached as **Appendix "G"** is a memo further describing the methodology employed to evaluate the Construction Liens.
28. Below is a summary of the progress achieved and the valuation of the work performed by 108 Canada and Delbrook as assessed by BDO's Construction Services Group:

<u>Description</u>	<u>Amount</u>
Total Hard Costs (Excluding the Construction Management Fee)	\$ 42,528,438
Total Budget for PM & CM Fee (8% of the Hard Costs)	3,402,275
PM Budget @40% of the Total Budget	1,360,910
Progress Achieved pursuant to PM Agreement	<u>39.5%</u>
PM Fee Due	<u>\$ 536,907</u>
CM Budget @60% of the Total Budget	2,041,365
Progress Achieved pursuant to CCDC 5B	<u>4.3%</u>
CM Fee Due	<u>\$ 88,253</u>
Total Fee Due (PM + CM)	<u>625,160</u>
Total Fee Due (PM + CM) plus HST@13%	706,431
Plus: Third-Party Costs/Invoicing	318,092
Less: Payments by Triumph	(47,728)
Total Lien Value	<u><u>\$ 976,795</u></u>

29. Given the issues described in Paragraph 25, the Receiver entered into settlement discussions with Delbrook and 108 Canada to settle the Constructions Liens. Prior to completing any settlement of the Construction Liens, the Receiver requested a memorandum from its counsel to confirm the enforceability and validity of the Constructions Liens.
30. The Receiver's independent counsel, Robins Appleby, has provided to the Receiver an opinion regarding the Construction Liens. A copy of Robins Appleby's opinion in respect of the 108 Lien and Delbrook Lien together with the Lien Settlement Agreement are attached hereto as **Appendix "H"**. The Receiver's counsel is of the view that:

- a) The Construction Liens are valid and enforceable pursuant to the *Construction Act*, R.S.O. 1990, c. C.30 (the “**Act**”); and
 - b) the Construction Liens have full priority over the Third Mortgage. Under the Act, lien claimants have priority over all interests affecting the owner’s interest in the property. Accordingly, mortgagees have a subsequent priority to lien claimants unless they can fit within the express exceptions found in section 78 of the Act. The Third Mortgage and the Third Mortgagees do not fall within the parameters of these exceptions.
31. In the circumstances, it appears the Construction Liens are valid and enforceable as they were registered and perfected in time as:
- a. they were registered within a 45-day window of the date of last service/supply;
 - b. both 108 Canada and Delbrook perfected their respective liens and issued claims and commenced proceedings in the Ontario Superior Court. These matters were also set down for trial or before the two-year anniversary of the commencement of the claims, in compliance with the Act.
32. The Receiver has settled the Construction Liens. The Receiver is of the view that the Lien Settlement Agreement and the 108 Distribution and the Delbrook Distribution are reasonable and appropriate in the circumstances. The Receiver has reviewed the work claimed by 108 Canada and Delbrook in support of the Constructions Liens and the Receiver is satisfied that the work was performed and the liens registered and perfected within the prescribed time frames under the Act. As to the payment in respect of the Constructions Liens, the Receiver believes that the contemplated settlement amounts are fair and reasonable on a *quantum meruit* basis weighing the issues raised in Paragraph 25 with the valuation of the work performed as set out in Paragraph 28. Accordingly, the Receiver is seeking the Court’s approval of the Lien Settlement Agreement and seeking authorization to make the 108 Canada Distribution and the Delbrook Distribution.

RECEIVER’S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

33. The Receiver’s Interim R&D Statement reports net receipts over disbursements of \$981,659.09 since the inception of the Receivership Proceeding, after provision for Court approved distributions made to Vander Kooij, Prudent and Gerrits. The Receiver is seeking the Court’s approval of the Receiver’s Interim R&D Statement as set out below.

Estate No.: 31-459339

**IN THE MATTER OF THE RECEIVERSHIP OF
TRIUMPH DEVELOPMENT HK BRADFORD TWIN REGENCY INC.**

RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS
(for the period March 1, 2022 to June 29, 2023)

INTERIM STATEMENT

RECEIPTS:	
Sale of Land	\$ 4,500,000.00
Miscellaneous Refunds	3,680.01
Interest	<u>29,071.09</u>
Total Receipts	<u><u>4,532,751.10</u></u>
DISBURSEMENTS:	
Filing Fee	72.97
Insurance	2,619.00
Search Fees	12.50
Commission on Sale of Land	135,000.00
Property Taxes	37,989.81
Possession Expenses	410.00
Receiver's Fees	172,197.49
Legal Fees	141,641.93
Consulting Fees - Lien Claim	64,335.00
HST Paid	66,606.31
<i>Distribution to Mortgagees and Lien Claimants:</i>	
Vander Kooij	2,187,793.44
Prudent	726,028.41
Gerrits Engineering Limited	<u>16,385.15</u>
Total Disbursements	<u><u>3,551,092.01</u></u>
RECEIPTS OVER DISBURSEMENTS	<u><u>\$ 981,659.09</u></u>

FEES AND DISBURSEMENTS

34. Pursuant to 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 counsel, constitute part of the "**Receiver's Charge**".
35. The Receiver's fees and disbursements for the period of November 16, 2022 to June 27, 2023 total \$51,584.50 plus HST of \$6,705.96 for a total of \$58,290.46 which are described in the Affidavit of Gary Cerrato sworn, 2022 June 30, 2023, a copy of which is attached hereto as **Appendix "I"**.
36. Robins Appleby's fees and disbursements for the period of November 28, 2022 to June 27, 2023 total \$33,233.00 plus disbursements of \$1,120.00 and applicable taxes of \$4,424.29 for an aggregate amount of \$38,777.29, as set out in the affidavit of Irving Marks sworn June 29, 2023, a copy of which is attached hereto as **Appendix "J"**.
37. The Receiver respectfully submits that the Receiver's fees and disbursements and Robins Appleby's fees and disbursements are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Receivership Order.

EXPANSION OF RECEIVERSHIP

38. In the event of the approval of the Settlement Agreement, the Delbrook Distribution and the 108 Canada Distribution, the primary remaining task of the Receiver will be to attend to various Debtor related CRA issues, including HST filings to recover estate input tax credits, making the aforementioned lien distributions, filing the Receiver's final report pursuant to S.246(3) of the *Bankruptcy and Insolvency Act* with the Office of the Superintendent of Bankruptcy and such further and other administrative and ancillary matters as may be necessary to complete the administration of the Receivership estate.
39. In order to effectively deal with the remaining issues, the Receiver believes it appropriate for its mandate to expand the receivership beyond the scope of the Property to the receivership of the Debtor.

SUMMARY AND RECOMMENDATIONS

40. Based on the foregoing, the Receiver respectfully requests that this Court grant Order(s):
- a. approving the Lien Settlement Agreement and authorizing the Receiver to make the 108 Canada Distribution and the Delbrook Distribution, combined totaling \$850,000;
 - b. approving the Receiver's Interim R&D Statement;
 - c. approving the activities of the Receiver, as described in this Fourth Report;
 - d. approving the fees and disbursements of the Receiver and its legal counsel, Robins Appleby as set out in this Fourth Report, and authorizing the Receiver to pay all approved and unpaid fees and disbursements;
 - e. amending the terms of the Receivership Order to expand the scope of the Receiver's mandate beyond the Receiver of the Property to be the Receiver in respect of Triumph Development HK Bradford Twin Regency Inc.; and
 - f. such further and other relief as required in the circumstances and this Honorable Court deems just.

All of which is respectfully submitted this 30th day of June 2023.

BDO CANADA LIMITED,
in its capacity as the Court-appointed Receiver of
Triumph Development HK Bradford Twin Regency Inc.
Per:



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

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APPENDIX A

Court File No. CV-22-00677227-00CL

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

THE HONOURABLE MADAM)	TUESDAY, THE 1 ST
)	
JUSTICE CONWAY)	DAY OF MARCH, 2022

B E T W E E N:

**PRUDENT EXCELLENCE MORTGAGE INVESTMENT
CORPORATION**

Applicant

- and -

TRIUMPH DEVELOPMENT HK BRADFORD TWIN REGENCY INC.

Respondent

APPLICATION UNDER 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

**ORDER
(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing BDO Canada Limited as receiver (the "**Receiver**") of the property municipally known as 2362 Line 8, Bradford West Gwillimbury, Ontario and legally described as set out in **Schedule "A"** hereto (the "**Property**") owned by Triumph Development HK Bradford Twin Regency Inc. (the "**Debtor**"), was heard this day via videoconference due to the COVID-19 pandemic.

ON READING the affidavit of Fujia (Frank) Wang sworn February 22, 2022 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant and such other parties listed on the Participant Information Sheet, no one else appearing for the parties listed on the service list although served as appears from the affidavits of service filed with the Court, and on reading the consent of BDO Canada Limited to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, BDO Canada Limited is hereby appointed Receiver of the Property.

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, engaging of independent security personnel, the

taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (d) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor with respect to the Property and to exercise all remedies of the Debtor in collecting such monies;
- (e) to settle, extend or compromise any indebtedness owing to the Debtor with respect to the Property;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (g) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (h) to market the Property, including advertising and soliciting offers in respect of the Property and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (i) to sell, convey, transfer, lease or assign the Property with the approval of this Court, and notice under section 31 of the Ontario *Mortgages Act* shall not be required;
- (j) to apply for any vesting order or other orders necessary to convey the Property to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting the Property;
- (k) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (l) to register a copy of this Order and any other Orders in respect of the Property against title to the Property;
- (m) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof with respect to the Property for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor; and
- (n) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall grant immediate and continued access to the Property to the Receiver.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment with respect to the Property, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor with respect to the Property, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor with respect to the Property or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor with respect to the Property are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, provided in each case that

the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of the Property, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal

information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of the Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental

Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$75,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "B"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

24. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL <https://www.bdo.ca/en-ca/extranets/triumph/>.

25. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

26. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

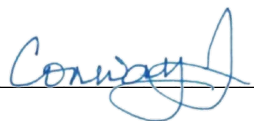
29. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Applicant from the Debtor's estate with such priority and at such time as this Court may determine.

32. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

33. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be, when the Court returns to regular operations.



SCHEDULE "A"

Municipal Address: 2362 Line 8, Bradford West Gwillimbury, Ontario

PIN: 58041-0138 (LT)

Property Description: Part Lot 16 Concession 8 West Gwillimbury as in RO261979
Save & Except Parts 1 & 3 51R37039; Town of Bradford West
Gwillimbury

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that BDO CANADA LIMITED, the receiver (the "**Receiver**") of property municipally known as 2362 Line 8, Bradford West Gwillimbury, Ontario (the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 1st day of March, 2022 (the "**Order**") made in an application having Court file number CV-22-00677227-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

BDO CANADA LIMITED, solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

PRUDENT EXCELLENCE MORTGAGE INVESTMENT CORPORATION

-and-

TRIUMPH DEVELOPMENT HK BRADFORD TWIN REGENCY INC.

Applicant

Respondent

Court File No. CV-22-00677227-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(appointing Receiver)**

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO #54100A)
Tel: (416) 218-1161
E-mail: maya@chaitons.com

Lawyers for the Applicant

APPENDIX B



Court File No.: CV-22-00677227-00CL

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

THE HONOURABLE)
)
JUSTICE CAVANAGH) WEDNESDAY, THE 14th
)
) DAY OF SEPTEMBER, 2022

BETWEEN:

**PRUDENT EXCELLENCE MORTGAGE INVESTMENT
CORPORATION**

Applicant

-and-

TRIUMPH DEVELOPMENT HK BRADFORD TWIN REGENCY INC.

Respondent

APPLICATION UNDER 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

ORDER

(Approval and Vesting Order)

THIS MOTION made by the BDO Canada Limited ("**BDO**"), in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of the of the Property municipally known as 2362 Line 8, Bradford West Gwillimbury, Ontario (the "**Property**") owned by Triumph Development HK Bradford Twin Regency Inc.'s (the "**Debtor**"), for the relief set out in the Notice of Motion dated September 8, 2022, including the approval of the sale transaction (the

"**Transaction**") contemplated by an Asset Purchase Agreement between the Receiver in its capacity as Receiver of the Property and 2792523 Ontario Inc. (in Trust) (the "**Purchaser**" which shall include any party the Purchaser may nominate or direct) dated July 27, 2022 (the "**Sale Agreement**"), and vesting in the Purchaser the Debtor's right, title, benefit and interest in the assets described in the Sale Agreement (the "**Purchased Assets**") was heard this day by videoconference as a result of the Covid-19 pandemic.

ON READING the Motion Record of the Receiver and the First Report of the Receiver dated September 8, 2022 (the "**Receiver's First Report**"), the Confidential Supplemental Report of the Receiver dated September 8, 2022 (the "**Confidential Supplemental Report**"), the Affidavit of Irving Marks sworn September 7, 2022 (the "**Robins Fee Affidavit**") and the Affidavit of Gary Cerrato sworn September 8, 2022 (the "**BDO Fee Affidavit**") and on hearing the submissions of counsel for the Receiver and any such other counsel or individual as were present, no one appearing for any other person on the service list, although properly served as evidenced by the Affidavit of Wendy Lee sworn September 8, 2022, filed.

1. **THIS COURT ORDERS** that unless otherwise defined herein or the context otherwise requires, capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as

may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the "**Receiver's Certificate**"), all of Debtor's right, title, benefit and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order dated the 1st day of March, 2022; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule B** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule C**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the applicable land registry office or land titles office of a Transfer/Deed of Land or equivalent document, or of an application for registration of this Order in the applicable prescribed form, the applicable land registrar or

equivalent official is hereby directed to enter the Purchaser as the owner of the subject real property in fee simple, and is hereby directed to delete and expunge from title to the real property all of the Claims listed in **Schedule B** hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Debtor,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Debtor and shall not be void or

voidable by creditors of Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

 Digitally signed by
Mr. Justice
Cavanagh

SCHEDULE A
FORM OF RECEIVER'S CERTIFICATE

Court File No.: CV-22-00677227-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

**PRUDENT EXCELLENCE MORTGAGE INVESTMENT
CORPORATION**

Applicant

-and-

TRIUMPH DEVELOPMENT HK BRADFORD TWIN REGENCY INC.

Respondent

APPLICATION UNDER 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

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Conway of the Ontario Superior Court of Justice (the "**Court**") dated March 1st, 2022, BDO Canada Limited was appointed as receiver (the "**Receiver**") of the Property municipally known as 2362 Line 8, Bradford West Gwillimbury, Ontario, Toronto, Ontario (the "**Property**") owned by Triumph Development HK Bradford Twin Regency Inc. (the "**Debtor**").

B. Pursuant to an Order of the Court dated September 14, 2022, the Court approved the asset purchase agreement made as of July 27, 2022 (the "**Sale Agreement**") between the Receiver and 2792523 Ontario Inc. (in Trust) (the "**Purchaser**") and provided for the vesting in the Purchaser of Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser

of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets, (ii) that the conditions to closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser, and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Asset Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;
2. The conditions to closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser, respectively; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**BDO Canada Limited, in its capacity as
Receiver of the Property municipally known
as 2362 Line 8, Bradford West Gwillimbury,
Ontario, and not in its personal capacity**

Per: _____

Name: Josie Parisi

Title: Senior Vice-President

SCHEDULE B

CLAIMS TO BE DELETED AND EXPUNGED FROM TITLE TO REAL PROPERTY

PIN 58041-0010

1. Charge from Triumph Development HK Bradford Twin Regency Inc. to Peter Vander Kooij and Leni Vander Kooij registered on June 19, 2017 as Instrument No. SC1421256.
2. Notice Amending Charge from Triumph Development HK Bradford Twin Regency Inc. to Peter Vander Kooij and Leni Vander Kooij registered on June 20, 2019 as Instrument No. SC1602179.
3. Charge from Triumph Development HK Bradford Twin Regency Inc. to Prudent Excellence Mortgage Investment Corporation registered on June 19, 2017 as Instrument No. SC1760648.
4. Construction Lien from Delbrook Triumphant Builders Inc. to Triumph Development HK Bradford Twin Regency Inc. registered on April 6, 2021 as Instrument No. SC1768859.
5. Construction Lien from 10853828 Canada Inc. to Triumph Development HK Bradford Twin Regency Inc. registered on April 6, 2021 as Instrument No. SC1768866.
6. Construction Lien from Gerrits Engineering Limited to Triumph Development HK Bradford Twin Regency Inc. registered on April 30, 2021 as Instrument No. SC1776388.
7. Certificate of Action from Delbrook Triumphant Builders Inc. to Triumph Development HK Bradford Twin Regency Inc. registered on May 20, 2021 as Instrument No. SC1783814.
8. Certificate of Action from 10853828 Canada Inc. to Triumph Development HK Bradford Twin Regency Inc. registered on May 20, 2021 as Instrument No. SC1783823.
9. Certificate of Action from Gerrits Engineering Limited to Triumph Development HK Bradford Twin Regency Inc. registered on June 11, 2021 as Instrument No. SC1791485.
10. Charge from Triumph Development HK Bradford Twin Regency Inc. to Xiaofeng Fu and Meng Sun registered on as Instrument No. SC1802980.
11. Court Order registered on March 8, 2022 as Instrument SC1876393.

SCHEDULE C
PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS
RELATED TO THE REAL PROPERTY (UNAFFECTED BY THE VESTING ORDER)

1. The reservations, limitations, provisions and conditions expressed in the original grant from the Crown and all unregistered rights, interests and privileges in favour of the Crown under or pursuant to any applicable statute or regulation.
2. Any subdivision agreement, development agreement, servicing agreement, site plan agreement or any other agreement, document, regulation, subdivision control by-law or other instrument containing provisions relating to the Lands or the use, development, installation of services and utilities or the erection of buildings or other improvements in or on the Lands.
3. All easements, licenses, rights-of-way, watercourses and rights (and all reference plans with respect thereto), whether registered or unregistered, including without limitation those for access or for the installation and maintenance of public and private utilities and other services including without limitation, telephone lines, hydro-electric lines, gas mains, water mains, sewers and drainage and other services or for the maintenance, repair or replacement of any adjoining building or lands, including any cost sharing agreement relating thereto, or any right of re-entry reserved by a predecessor in title.
4. Any restrictive covenants and building restrictions affecting the Lands.
5. Any defects of title or encroachments by or onto the Lands, whether by gardens, fences, trees, buildings, foundations, or other structures or things, which may be revealed by any survey or reference plan of the Lands, whether now in existence or not.
6. Utility agreements, and other similar agreements with Authorities or private or public utilities affecting the Lands.
7. Liens for taxes, local improvements, assessments or governmental charges or levies not at the time due or delinquent.
8. Undetermined, inchoate or statutory liens and charges (including, without limitation, the liens of public utilities, workers, suppliers of materials, contractors, subcontractors, architects and unpaid Receivers of moveable property) incidental to any current operations of the Lands which have not been filed pursuant to any legal requirement or which relate to obligations not yet due or delinquent.
9. Zoning restrictions, restrictions on the use of the Lands or minor irregularities in title thereto.
10. The reservations, limitations, conditions and exceptions to title set out in the *Land Titles Act (Ontario)*.
11. Instrument No. 51R37039.

**SCHEDULE D
LEGAL DESCRIPTION**

PIN 58041-0138 (LT)

PT LT 16 CON 8 WEST GWILLIMBURY AS IN RO261979 SAVE & EXCEPT PTS 1 & 3
51R37039; TOWN OF BRADFORD WEST GWILLIMBURY

PRUDENT EXCELLENCE
MORTGAGE INVESTMENT
CORPORATION

- and - TRIUMPH DEVELOPMENT HK
BRADFORD TWIN REGENCY INC.

Applicant

Respondent

Court File No.: CV-22-00677227-00CL

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

APPLICATION UNDER 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

PROCEEDING COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER

ROBINS APPLEBY LLP

Barristers + Solicitors
2600 - 120 Adelaide Street West
Toronto, ON M5H 1T1

Dominique Michaud LSO No.: 56871V

dmichaud@robapp.com
Tel: (416) 360-3795

Anisha Samat LSO No. 82342Q

Email: asamat@robapp.com
Tel: (416) 360-3728

Lawyers for the Receiver, BDO Canada Limited

APPENDIX C

Court File No. CV-22-00677227-00CL

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

B E T W E E N:

**PRUDENT EXCELLENCE MORTGAGE INVESTMENT
CORPORATION**

Applicant

- and -

TRIUMPH DEVELOPMENT HK BRADFORD TWIN REGENCY INC.

Respondent

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

October 7, 2022

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INTRODUCTION AND PURPOSE OF THIS REPORT

Introduction

1. By Order of the Honourable Madam Justice Conway of the Ontario Superior Court of Justice (the “**Court**”) dated March 1, 2022 (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 Triumph Development HK Bradford Twin Regency Inc. (“**Triumph**” or the “**Debtor**”) municipally known as 2362 Line 8, Bradford West Gwillimbury, ON (the “**Property**”). A copy of the Receivership Order is attached hereto as **Appendix “A”**. The within proceeding is referred to herein as the “**Receivership Proceeding**”.
2. The Receiver delivered its First Report dated September 8, 2022 (the “**First Report**”) in connection with its motion returnable September 14, 2022. A copy of the First Report (excluding appendices) is attached hereto as **Appendix “B”**. At that motion, the Receiver obtained an Approval and Vesting Order approving a sale transaction for the Property as described in the Receiver’s First Report. Additionally, the Receiver obtained an Administration and Interim Distribution Order: (i) approving the Receiver’s activities; (ii) sealing the Confidential Supplemental Record until completion of the sale transaction for the Property or further order of the Court; and (iii) approving a final distribution to Peter and Leni Vander Kooij (“collectively, “**Vander Kooij**”) and an interim distribution to Prudent Excellence Mortgage Investment Corporation (“**Prudent**”), the first and second mortgagees respectively. Copies of the Approval and Vesting Order and the Administration and Interim Distribution Order dated September 14, 2022 are attached hereto as **Appendix “C”**.
3. At the last return date in the Receivership Proceeding, the Receiver advised Justice Cavanagh that the Receiver would bring a motion for directions to deal with the issue of the validity of the liens registered against the Property by Delbrook Triumphant Builders Inc. (the “**Delbrook Lien**”) and 10853828 Canada Inc. (the “**108 Lien**”).
4. The sale transaction for the Property (the “**Sale Transaction**”) closed on September 29, 2022 and pursuant to the Administration and Interim Distribution Order, the Receiver has made a final distribution to Vander Kooij and an interim distribution to Prudent in the amounts of \$2,187,793.44 and \$711,878.41 respectively.

Purpose of this Report

5. The purpose of this Second Report of the Receiver dated October 7, 2022 (the “**Second Report**”) is to obtain Order(s):

- i. providing advice and directions in relation to the validity of the Delbrook and 108 Liens as a result of alleged ownership interests in the Debtor;
- ii. lifting the sealing of the Confidential Supplemental Report to the First Report (the “**Confidential Supplement**”) as provided by Paragraph 3 of the Administration and Interim Distribution Order; and
- iii. such further and other relief as this Honourable Court may deem just.

DISCLAIMER

6. In preparing this Second Report, the Receiver may have been provided with, and has relied upon, unaudited, draft and/or internal financial information, the Debtors' books and records, discussions with management of the Debtors (“**Management**”), and information from third-party sources (collectively, the “**Information**”). Except as described in this Second Report:
 - a) the Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited 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 (“**CAS**”) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
 - b) the Receiver has prepared this Second Report in its capacity as a Court-appointed officer in connection with its motion for advice and directions with respect to certain construction liens. Parties using the Second Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.
7. Unless otherwise stated, all monetary amounts contained in this Second Report are expressed in Canadian dollars.
8. This Second Report, and other all court materials and orders issued and filed in this Receivership Proceeding are or will be made available on the Receiver's case website at the following URL: https://www.bdo.ca/en-ca/extranets/triumph_twin_regency/ and will remain available on the website for a period of six (6) months following the Receiver's discharge.

BACKGROUND

9. The Debtor is a corporation governed by the *Canadian Business Corporations Act* with a registered head office located at A10-3000 Highway 7, Markham, ON. The Debtor was incorporated on June 8, 2017. The Receiver understands that the Debtor's corporate head office was moved to Room 28, Suite 310, 350 Highway 7, Richmond Hill, Ontario and that the lease to that premises was terminated by the landlord a year prior to the Receivership Proceeding.

10. It appears the Debtor was incorporated for the sole purpose of purchasing and developing the Property. The Receiver has been provided with a corporate organization chart from Paul Hancock counsel for 108 Canada and Delbrook, attached as **Appendix “D”**, which indicates that the Debtor is owned by Bradford Holding Limited Partnership which is ultimately owned through corporations wholly owned by Lu (Wilson) Shen (“**Shen**”), his spouse, Yuerong Wang (“**Wang**”) and Jun Chen (“**Chen**”). The Receiver has also been provided with a Shareholder Register from Paul Hancock, counsel for 108 Canada and Delbrook, attached as **Appendix “E”**, of the Debtor which shows that Wang was the sole shareholder from incorporation to September 1, 2018 when Bradford Holding Limited Partnership became an equal shareholder. Curiously, the Receiver received a copy of the Debtor’s corporate income tax return, enclosed as **Appendix “F”**, for the fiscal period ending December 31, 2019, which on Schedule 50, reports Wang as the sole shareholder of the Debtor. In view of the conflicting ownership information, the Receiver is not sure who in fact are the shareholders of Triumph. The listed Directors of Triumph as at February 14, 2022 are Chen and Shen, although Wang also served as a Director of the Debtor from incorporation to March 29, 2021.
11. The Debtor’s principal asset was the Property which was an undeveloped parcel of land consisting of approximately 9.45 acres of land fronting onto Line 8 Bradford with a municipal address of 2362 Line 8 Bradford West Gwillimbury, ON.
12. Despite repeated attempts, the Receiver has not been able to contact the Debtor’s Officers or Directors to obtain any information with respect to the Debtor or the Property. The Receiver has obtained all of its information in regard to the Debtor and the Property from the first and second mortgagees and from the Project and Construction Managers contracted by the Debtor to manage and complete the proposed development. The Project and Construction Managers are related entities, 10853828 Canada Inc. (“**108 Canada**”) and Delbrook Triumphant Builders Inc. (“**Delbrook**”), respectively.
13. The Property has been sold by the Receiver and pursuant to the Approval and Vesting Order, the net proceeds of sale stand in the place and stead of the Property in respect of the competing claims registered against the Property.

Creditor Claims

14. Prior to the Sale Transaction, the Property was subject to the following encumbrances:

Chargor	Encumbrance	Amount	Instrument	Registration Date
Vander Kooij, Peter and Leni	Mortgage	\$2,795,000	SC1421256	June 19, 2017

Prudent Excellence Mortgage Investment Corporation	Mortgage	\$800,000	SC1760648	March 5, 2021
Delbrook Triumphant Buildings Inc.	Construction Lien	\$1,404,036	SC1768859	April 6, 2021
10853828 Canada Inc.	Construction Lien	\$1,870,538	SC1768866	April 6, 2021
Gerrits Engineering Limited	Construction Lien	\$16,385	SC1776388	April 30, 2021
Fu, Xiaofeng and Sun, Meng	Mortgage	\$10,000,000	SC1802980	July 12, 2021

15. As stated, the Receiver has retired the Vander Kooij first mortgage and made an interim distribution to Prudent in respect of the second mortgage from the net sale proceeds from the Property.
16. The Delbrook and 108 Liens allegedly relate to supplied labour and consulting services for project and construction management and other “soft-costs” for improvement/work completed by other sub-contractors towards an application for site plan approval that remain unpaid by the Debtor.
17. The lien of Gerrits Engineering Limited also allegedly relates to unpaid “soft-costs” incurred for engineering work for conceptual design and is included in the Delbrook Lien and/or the 108 Lien.
18. The charge in favour of Fu, Xiaofeng and Sun, Meng appears to “back-stop” personal loans provided to Shen and Wang. Further investigation into the details of the third mortgage remain ongoing by the Receiver.
19. CTBC Bank Corp. (“**CTBC**”) is a secured creditor with a registration against the Debtor under the *Personal Property Security Act* (Ontario) (the “**PPSA**”) in the amount of \$5,000,000 with a registration against Triumph’s Accounts described as term deposits and credit balances held with CTBC in respect of Letter of Credit security against Shen and Wang.
20. CTBC has advised the Receiver that its position is that the 108 and Delbrook Liens are invalid due to common ownership interests in Triumph, 108 Canada and Delbrook.

Lien Claims and Statements of Defence

21. All three lien claimants have issued Statements of Claim against Triumph and Prudent (the “**Lien Claims**”). The Lien Claims and Statements of Claim are attached hereto as **Appendix “G”**. Prudent and Triumph have delivered Statements of Defence to 108 Canada and Delbrook. The Statements of Defence are attached hereto as **Appendix “H”**.
22. Prudent’s Statement of Defence to 108 Canada and Delbrook deny that the 108 or Delbrook Liens have priority over the Prudent mortgage and state that:

- i. They did not have notice of the lien prior to any advance made to Triumph (Paragraph 10); and
 - ii. The controlling interest of 108 Canada and Delbrook, Mohammed Mehdi Haj-Shafiei (“**Mehdi**”), was also a Director or Officer of Triumph when Prudent’s mortgage was committed and thus had ample opportunity to provide notice to Prudent regarding any alleged payments leading to the lien claims (Paragraph 12).
23. Triumph’s Statements of Defence to 108 Canada and Delbrook allege, among various other things, defences and counter claims, the following:

108 Lien:

- i. Montanaro Project Management Professional Inc. (“**Montanaro**”) was incorporated to be the project management company to manage development of the Property. Montanaro is owned by Mehdi, his father, Ali Haj-Shafiei (“**Ali**”), a real estate agent, Da Zhang (“**Zhang**”) and Wang. Mehdi, Zhang and Wang were the Directors of Montanaro. Montanaro entered into a Project Management Agreement with Triumph on June 8, 2017 (the “**Montanaro Project Management Agreement**”).
- ii. Pursuant to the Montanaro Project Management Agreement, Montanaro would receive a fixed monthly fee of \$3,000 (the “**Monthly Fixed Fee Amount**”) for the duration of the project and that upon achieving substantial completion of the construction, the ownership group would be entitled, in proportion to their shareholdings, to split an amount equal to 8% of the servicing and construction hard costs incurred (the “**Contingent Fee**”). In the event of early termination, Montanaro would only be entitled to payment of the Monthly Fixed Fee Amount to the date of termination, with any right to further compensation (described in the agreement as an undefined “**Participation Amount**”) to be determined by either mutual agreement or arbitration.
- iii. In or about 2019, however, Zhang exited the project following an insolvency. Montanaro ceased to be operative and the Montanaro Project Management Agreement was terminated.
- iv. 108 Canada was not assigned or otherwise obtained rights under the Montanaro Project Management Agreement. Therefore 108 Canada does not have privity of contract with Triumph and thus has no right to demand payment under the Montanaro Project Management Agreement.
- v. Even if 108 Canada was assigned or otherwise had rights under the Montanaro Project Management Agreement, which is not admitted but denied, Triumph denies that 108 Canada sustained any losses or damages or is owed any monies as alleged in the Statement of Claim, including without limitation because:
 - a. The project is still in the development phase.
 - b. No amount for Servicing and Building Hard Costs (as such term is used in the Montanaro Project Management Agreement) have been incurred.
 - c. The Contingent Fee is not payable.
 - d. An amount equal to the Fixed Monthly Fee Amounts that had been payable under the Montanaro Project Management Agreement were paid to Mehdi until the time 108 Canada repudiated the agreement and abandoned the project.

- e. 108 Canada repudiated the Montanaro Project Management Agreement and is not entitled to further payment thereunder; and
- f. 108 Canada breached its duty of good faith owed to Triumph.

Delbrook Lien:

- vi. The purpose of Triumph entering into the CCDC 5B contract with Delbrook (for construction management) was for the sole purpose of facilitating registration with Tarion Warranty Corporation (“**Tarion**”) as a builder.
 - vii. The Property was in the development phase and no construction has started and therefore no construction management services were provided by Delbrook.
 - viii. Delbrook has also not provided any preconstruction management services to the development and that the work Delbrook claims payment for is duplicative of the development management work claimed and relied on by 108 Canada in its lien action against Triumph.
 - ix. Triumph further states that the work upon which Delbrook bases its claim for lien is not lienable, including that it relates to preconstruction management work on a project that has not progressed to construction and further represents a claim for damages at large.
24. The Receiver has focused its investigation into the alleged common ownership interests in Triumph, 108 Canada and Delbrook and is seeking the Court’s advice and directions in this regard. The details of this investigation and the Receiver’s preliminary findings are set out below.

INVESTIGATION CONDUCTED BY THE RECEIVER’S COUNSEL

25. The issue of whether the 108 and Delbrook Liens are valid and enforceable due to alleged common ownership interests in Triumph was first brought to the Receiver’s counsel’s attention by Chad Kopach, counsel for CTBC. Receiver’s counsel scheduled a telephone call with Mr. Kopach of Blaney McMurtry LLP on June 8, 2022 to further discuss this issue, where Mr. Kopach brought to the Receiver’s attention Mehdi’s possible ownership interest in Triumph. Eric Golden, also counsel for CTBC, emailed Gary Cerrato from the Receiver’s office on June 13, 2022 stating CTBC’s position on the 108 and Delbrook Liens as set out below:

“Construction liens: our preliminary view is that the liens are not valid (the two larger ones representing about 98% of the liens). As per below, our position is that CTBC’s security over Triumph HK covers any and all proceeds after the first two mortgages (and that the third mortgage is null and void)”

A copy of the email dated June 13, 2022 is attached as **Appendix “I”**.

26. On June 21, 2022, Mr. Kopach emailed Josie Parisi from the Receiver’s office providing further information on the issue:

“Generally speaking, the Construction Act does not allow an owner of a property to maintain a lien over their own property. This prohibition has been expanded from situations of direct ownership, to indirect ownership (i.e. a common owner of Corp A that owns the land, and Corp B that has the registered lien), which I gather may be the situation for the two liens registered by Delbrook (\$1.4M) and 108 Canada (\$1.8M). Both of these liens were “signed” by the same person – “Mohammed Mehdi Haj-Shafiei” in one instance, and Mehdi Shafiei in the other – and in the defences filed by Prudent, it alleges that this individual had a controlling interest in the owner of the subject lands.”

A copy of the email dated June 21, 2022 is attached hereto as **Appendix “J”**.

27. Following initial discussions with CTBC’s counsel, the Receiver’s counsel commenced its own investigation. The investigation involved multiple meetings through June to August 2022 with CBTC’s counsel to understand the nature of the aforementioned allegations, determine and analyze the source of the information as stated by Mr. Kopach and reviewing any evidence relating to same, and to discuss the relevant case law on the matter. On August 3, 2022 Mr. Kopach emailed the Receiver and the Receiver’s counsel with:

- i. The Director history for Triumph, which showed that Mehdi was a Director from April 14, 2020 to March 29, 2021;
- ii. The Director history for both 108 Canada and Delbrook showing Mehdi is a Director for both, and that Shen, a Director for Triumph, was also a Director at Delbrook’s inception from February 24, 2020 to November 11, 2020; and
- iii. That 108 Canada was not incorporated until June 2018 even though the 108 Lien claims for services and materials dating back to June 8, 2017.

28. The Receiver’s counsel also sought to investigate the matter by:

- i. Inquiring on multiple occasions with Prudent’s counsel, Maya Poliak of Chaitons LLP and Xin Sun, of XS Law Professional Corporation, to obtain any relevant evidence relating to their statement in Paragraph 12 of the Statements of Defence (i.e., that Mehdi was a Director or Officer of Triumph and also the controlling interest of both 108 Canada and Delbrook). Ms. Poliak informed the Receiver’s counsel that she did not have any information regarding Mehdi’s role as a Director and/or Officer of Triumph. Mr. Sun only provided one document to the Receiver’s counsel on August 2, 2022, which was an undated corporate profile search for Triumph, attached as **Appendix “K”**, that listed Mehdi as one of three directors, along with Shen and Wang; and
- ii. Making a formal inquiry to 108 Canada and Delbrook’s counsel, Paul Hancock of Daoust Vukovich LLP, on August 5, 2022. This letter is attached as **Appendix “L”**, and Mr. Hancock’s response is further discussed below.

29. The Receiver's counsel received a letter from CTBC's counsel on September 22, 2022, attached as **Appendix "M"**, outlining particulars of various documents that will be required on a Motion for Directions regarding the issue of the validity and enforceability of the 108 and Delbrook Liens. The Receiver's counsel sent a follow-up inquiry to Mr. Hancock on September 26, 2022, requesting this information. A copy of the follow up inquiry to Mr. Hancock is included hereto as **Appendix "N"**.
30. The Receiver has obtained updated corporate profile searches for 108 and Delbrook. Mehdi is the sole director for 108. Delbrook has three directors listed, Mehdi, Ali, and Sandro Soscia ("**Soscia**").

DOCUMENTS PROVIDED BY COUNSEL FOR 108 CANADA AND DELBROOK

31. Following inquiries made by the Receiver's counsel, Mr. Hancock provided a letter dated August 19, 2022 (the "**Letter**"), attached as **Appendix "O"**, and various documents to support his clients' position that neither Mehdi nor any of the other Directors or Officers of 108 Canada or Delbrook had an ownership interest in Triumph at any juncture. The Letter states, and in some instances provides documentary evidence of, the following:

- i. Mehdi is the sole Officer and Director of 108 Canada and no person related to Triumph has ever been an Officer or Director of 108 Canada.
- ii. Delbrook was incorporated to act as Construction Manager for the project. The shareholders of Delbrook are Soscia, Mehdi and Ali, no other person has ever owned shares in Delbrook. As Delbrook was assisting Triumph with Tarion registration, Triumph was required to be part of Delbrook's umbrella group and shared at least one common Officer or Director per the Home Construction Regulatory Authority's ("**HRCA**") guidelines. Documentation to this effect has been provided. As such, Mehdi was listed as a Director of Triumph from April 14, 2020 to March 29, 2021 but had no financial interest in Triumph. The Letter states that Mehdi was removed as Director by Triumph and was not involved in his removal, Mr. Hancock suspects it was due to Triumph's refusal to pay 108 Canada or Delbrook. There is no documentary evidence to support this, however.
- iii. Triumph's Shen and Gary Chan ("**Chan**") were also listed as Directors of Delbrook from February 24, 2020 to November 11, 2020; however, the Letter states that this was done erroneously as 108 Canada and Delbrook were under the impression that Tarion required this. Both Shen and Chan tendered resignations which have been provided.

Other documents attached to the Letter include:

- iv. A Construction Management Agreement between Triumph and Delbrook dated March 3, 2020 and executed by Mehdi and Shen.
- v. A Vendor Agreement between Triumph and Tarion executed by Shen on behalf of Triumph.
- vi. An organizational chart showing that Triumph's sole shareholder was Bradford Holding Limited Partnership, whose shareholders were various companies owned by Shen, Wang, and Chen.

- vii. An undated Shareholder Registry showing that Wang owned 100 Class A shares of Triumph.
 - viii. A Shareholder Registry showing that Wang owned 100 Class A shares of Triumph from June 8, 2017 to September 1, 2018 and that Bradford Holding Limited Partnership owned 100 Class A Shares from September 1, 2018 onwards.
 - ix. A Project Cooperation Contract between Wiseway Global Canada Consulting Ltd. (“**Wiseway**”) and Triumph Development Bradford Limited, Shen, and Wang dated February 2020 (no specific date provided).
 - x. A certificate of funds for Wiseway dated January 7, 2021.
 - xi. A Project Cooperation Contract between Canada Sunlike Limited, Triumph Development Bradford Limited, Shen, and Wang dated February 2020 (no specific date provided); and
 - xii. A Limited Partnership Agreement dated September 14, 2018 between:
 - a) Canada Landmark Industrial Ltd. (GP)
 - b) 10989273 Canada Ltd.
 - c) Canada Sunlike Ltd.
 - d) Triumph
32. In response to the Receiver’s counsel follow-up inquiry to Mr. Hancock on September 26, 2022, requesting additional information as requested by counsel for CTBC, Mr. Hancock provided another letter dated October 3, 2022, attached as **Appendix “P”**, providing much of the same information as included in the Letter with the inclusion of two additional documents as follows:
- xiii. A Triumph resolution which appears to be signed by Shen and Wang appointing CTBC as the company bank and authorizing signatories; and
 - xiv. Triumph incorporation documents.
33. The Receiver’s counsel again followed up with some additional questions to Mr. Hancock via email on September 26, 2022 to obtain information in regards to (i) the alleged assignment of the Montanaro Project Management Agreement; (ii) confirmation of whether Wang was a shareholder of Montanaro through a unanimous shareholders agreement (“**USA**”) as alleged by Triumph in its lien defence; and (iii) confirmation of whether any individual related to the Debtor retained any ownership interest (both legal or beneficial) in 108 Canada.
34. Mr. Hancock responded to the Receiver’s September 26, 2022 email with a copy of the Shareholder Register for 108 Canada and with the following responses:

“The assignment was not reduced to writing. The evidence of the assignment is set out at paragraphs 5 to 8 of Mehdi Shafiei’s September 8, 2022, affidavit, as well as the correspondence/invoices between Triumph and 108 Co.”

“My client, Mehdi Shafiei, does not recall ever signing a USA regarding Montanaro. Wang was a director of Montanaro, but did not have any shares or interest in Montanaro. My client does not believe he has the minute book et cetera for Montanaro (he has been unable to locate same in his records).”

“No individual related to the debtor company had any ownership (legal or beneficial) in 108 co. Mehdi Shafiei is and always has been the sole shareholder of 108. Please find attached the shareholder register for 108.”

A copy of the October 3, 2022 email response from Mr. Hancock together with the Shareholder Register for 108 Canada are included hereto as **Appendix “Q”**.

PRELIMINARY CONCLUSION OF THE RECEIVER

35. The Receiver finds it unusual that the Debtor, 108 Canada and Delbrook had common directors at certain points in time. However, based on the evidence that has been provided to the Receiver to date, the Receiver is unable to conclude that Mehdi has ever had any ownership or controlling interest (legal or beneficial) in Triumph nor has Wang, Shen, Chen or Chan had any ownership or controlling interest (legal or beneficial) in Montanaro, 108 Canada or Delbrook.

LIFTING OF SEALING ORDER

36. Pursuant to Paragraph 3 of the Administration and Interim Distribution Order, the Confidential Supplement was sealed pending closing of the Sale Transaction or further order of the Court.

37. As the Sale Transaction has now closed, the Receiver is seeking an Order to unseal the Confidential Supplement as the concern in respect of the commercially sensitive information contained therein no longer applies.

All of which is respectfully submitted this 7th day of October 2022.

BDO CANADA LIMITED,
in its capacity as the Court-appointed Receiver of
Triumph Development HK Bradford Twin Regency Inc.
Per:



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

Court File No. CV-22-00677227-00CL

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

B E T W E E N:

**PRUDENT EXCELLENCE MORTGAGE INVESTMENT
CORPORATION**

Applicant

- and -

TRIUMPH DEVELOPMENT HK BRADFORD TWIN REGENCY INC.

Respondent

**SUPPLEMENT TO THE SECOND REPORT OF BDO CANADA LIMITED, IN ITS CAPACITY
AS COURT APPOINTED RECEIVER**

November 11, 2022

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INTRODUCTION BACKGROUND

Introduction

1. By Order of the Honourable Madam Justice Conway of the Court of Justice (the “**Court**”) dated March 1, 2022 (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 Triumph Development HK Bradford Twin Regency Inc. (“**Triumph**” or the “**Debtor**”) municipally known as 2362 Line 8, Bradford West Gwillimbury, ON (the “**Property**”). A copy of the Receivership Order is attached hereto as **Appendix “A”**. The within proceeding is referred to herein as the “**Receivership Proceeding**”.

Background

2. This Supplement to the Second Report dated November 11, 2022 (the “**Second Supplemental Report**”) provides additional information and findings of the Receiver obtained from further investigation conducted after filing the Receiver’s Second Report to Court dated October 7, 2022 (the “**Second Report**”). All definitions and capitalized terms in the Second Report remain the same in this Second Supplemental Report.
3. The Receiver delivered its Second Report in connection with its motion seeking advice and directions with regard to issue of the validity of the Delbrook and 108 Liens returnable October 12, 2022. A copy of the Second Report (excluding appendices) is attached hereto as **Appendix “B”**. At the October 12, 2022 hearing, a scheduling conference was adjourned to October 21, 2022 at 9:30 a.m. to allow an opportunity for the stakeholders to review the Receiver’s motion record. Counsel for the interested parties were invited to circulate letters stating their clients’ positions in respect of the Delbrook and 108 Liens. Attached as **Appendix “C”** are the Endorsements of Justice Cavanagh adjourning the scheduling conference to October 21, 2022.
4. On October 17, 2022, the Receiver received a letter from Rebecca Huang of Weh Weintraub Erskine Huang LLP, counsel for Wiseway Global Canada Consulting Ltd. (“**WiseWay**”). WiseWay’s position is that the Delbrook and 108 Liens are invalid. WiseWay provided a corporate organization chart and requested the Receiver to further investigate the issue of whether the 108 and Delbrook Liens are valid and enforceable due to alleged common ownership interests in Triumph. The letter also alleged that a number of documents provided to the Receiver and appended to the Second Report contained Chen’s forged signature, none of which appear to directly relate to the issue of common ownership among Triumph, Delbrook, 108 Canada or Montanaro. The Receiver understands that WiseWay is the plaintiff in a civil proceeding against Shen and Wang and CTBC. WiseWay has apparently obtained a monetary judgement against Shen and Wang and the court

has issued a *Mareva* injunction over the assets of Shen and Wang. A copy of the letter received from Rebecca Huang is attached hereto as **Appendix “D”**.

5. The Receiver also received a letter dated October 17, 2022 from Catherine Fangqi Qin from Sunsion Law Professional Corporation on behalf of the third mortgagees, Meng Sun and Xiaofeng Fun (together the **“Third Mortgagees”**). The Third Mortgagees’ position is that the Delbrook and 108 Liens are invalid given the alleged common ownership of Triumph, Montanaro, 108 Canada and Delbrook, among other reasons given that the Delbrook and 108 Liens are impugned. A copy of the letter received from Catherine Fangqi Qin is attached hereto as **Appendix “E”**.
6. On October 19, 2022 the Receiver received a letter from Chad Kopach from Blaney McMurtry LLP on behalf of his client CTBC. Mr. Kopach reiterates CTBC’s position in his letter that the Delbrook and 108 Liens are invalid due to commonality of ownership among Triumph, 108 Canada and Delbrook. Mr. Kopach’s letter addresses issues that he feels require further explanation and/or evidence from 108 Canada and Delbrook in support of their liens as well as sets out issues that he feels warrant further investigation by the Receiver. The Receiver did not pursue every suggestion made by Mr. Kopach as some of them would not likely lead to any meaningful information regarding co-ownership among the various parties. A copy of the letter received from Mr. Kopach is attached hereto as **Appendix “F”**.
7. At the last return date in the Receivership Proceeding being October 21, 2022, the Receiver submitted a Memorandum dated October 21, 2022 with a proposed timetable to deal with the matter. A copy of the Memorandum with the proposed timetable is attached hereto as **Appendix “G”**.

DISCLAIMER

8. In preparing this Second Supplemental Report, the Receiver may have been provided with, and has relied upon, unaudited, draft and/or internal financial information, the Debtors’ books and records, discussions with management of the Debtors (**“Management”**), and information from third-party sources (collectively, the **“Information”**). Except as described in this Second Report:
 - a) the Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited 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 (**“CAS”**) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
 - b) the Receiver has prepared this Second Supplemental Report in its capacity as a Court-appointed officer in connection with its motion for advice and directions with respect to certain construction liens. Parties using the Second Supplemental Report other than for

the purposes outlined herein are cautioned that it may not be appropriate for their purposes.

9. Unless otherwise stated, all monetary amounts contained in this Second Supplemental Report are expressed in Canadian dollars.
10. This Second Supplement Report, and other all court materials and orders issued and filed in this Receivership Proceeding are or will be made available on the Receiver's case website at the following URL: https://www.bdo.ca/en-ca/extranets/triumph_twin_regency/ and will remain available on the website for a period of six (6) months following the Receiver's discharge.

FURTHER INVESTIGATION CONDUCTED BY THE RECEIVER

11. Attached as **Appendix "H"** is a memorandum prepared by the Receiver's counsel dated November 2, 2022 which summarizes the Receiver's additional requests for information and the responses received from the various parties (the "**Memorandum**").
12. As set out in the Memorandum, the Receiver made additional inquiries to obtain the corporate books and records and information with regard to the ownership of Triumph from the following parties:
 - i. Chen through his counsel Rebecca Huang;
 - ii. Shen and Wang through their counsel Eric Wang (Yixin Wang) with a follow-up email to Shen's former assistant Maggie Wu who allegedly took possession of Triumph's corporate records and will not release them to Shen until she is paid her outstanding wages according to Shen;
 - iii. WJDS Times CPA Inc., Triumph's former accountant (the "**Accountant**"); and
 - iv. Tarion.
13. The Receiver received additional information from Chen, the Accountant and Tarion. The Receiver has not received any response from Maggie Wu after sending an email to what appears to be her personal email address provided by Shen.
14. The Receiver received numerous documents, some of which are duplicates of the documents previously provided to the Receiver and included in the Second Report. Given the volume of information received and to keep the motion record manageable, the Receiver only discusses and appends to this Second Supplemental Report new information that the Receiver believes may provide further insight into the ownership of Triumph, Delbrook, 108 Canada and Montanaro. Notwithstanding, the Receiver will make all of the documents provided it available to the stakeholders for review upon request.
15. The following documents are attached as **Appendix "I"**:

- (i) Tarion application form dated “8/10/2020” (the “**Tarion Application**”) which reports Wang as the only listed “Principal” (owner/shareholder) for Triumph and reports Delbrook as the “Umbrella Company” for Triumph and reports Mehdi as a contact for Delbrook and as a director, among other listed directors, of Triumph. The Tarion Application was provided by Tarion.
- (ii) Form T2057-Election on Disposition of Property by a Taxpayer to a Taxable Canadian Corporation (“**Form T2057**”) supposedly from Wang’s personal income tax return dated August 31, 2019 for the taxation year ending December 31, 2019, shows that Wang transferred 100 “Class A” shares of Triumph with a value of \$1,300,000 on September 1, 2018 to Triumph Development Bradford Limited (“**Triumph Bradford**”) (a corporation purportedly solely owned by Wang) for consideration of, or in exchange for, 100 “Class A” Triumph Bradford shares worth \$1,300,000. Form 2057 is unsigned and was provided by Chen.
- (iii) Form T2059-Election on Disposition of Property by a Taxpayer to a Canadian Partnership (“**Form T2059**”) apparently from Triumph Bradford’s corporate income tax return dated August 31, 2019 for the taxation year ending August 31, 2019, shows Triumph Bradford transferred 100 “Class A” shares of Triumph with a value of \$1,300,000 on September 14, 2018 to Bradford Holding Limited Partnership for consideration of, or in exchange for, 100 “Class B” Units worth \$1,300,000 in Bradford Holding Limited Partnership. Form 2059 is unsigned and was provided by Chen.
- (iv) Bradford Project Cooperation Contract signed September 12, 2018 (pre-dating the previous Project Cooperation Contract dated February 2020 included in Appendix O of the Second Report) which reports in Recital “A” that Triumph Bradford owns 100% equity of the project company (the project company is defined as “Triumph Development Hong Kong Bradford Twin Regency Inc.”, company registration number 1027140-3 (consistent with Triumph’s registration number as set out in its Articles of Incorporation)). This document was produced by Chen. It appears two days after the Bradford Project Cooperation Contract was signed on September 12, 2018, Triumph Bradford transferred its Triumph shares to Bradford Holding Limited Partnership as set out in paragraph 15 (iii) above.

16. Triumph's corporate income tax return for the period ending December 31, 2019 filed in April 2020 (Appendix F of the Second Report) reports Wang as the 100% shareholder of Triumph is consistent with what is reported in the Tarion Application in 2020. In contradiction, the Receiver has been furnished with the Corporate Organization Chart (Appendix D of the Second Report) and Triumph's shareholder Register (Appendix E of the Second Report) together with Forms T2059 and T2057 which suggest that Wang ultimately transferred her Triumph shares to Bradford Holding Limited Partnership. The only conclusion that can be drawn from the conflicting ownership information for Triumph is that either Wang or Bradford Holding Limited Partnership is the 100% shareholder of Triumph. None of the information reviewed indicates that Medhi has ever had an ownership interest in Triumph.
17. The Receiver also contacted Zhang, the real estate agent that allegedly owned shares in Montanaro and is known to have held office on the boards of directors of both Montanaro (Secretary) and Triumph (CEO). Zhang confirmed that he was: (i) a director and shareholder of Montanaro; (ii) a director of Triumph although never a shareholder of Triumph; and (iv) that he does not have possession of any books and records of Triumph or Montanaro. A copy of the Receiver's email to Zhang and his responding email are included as **Appendix "J"**.
18. The Receiver also provided Mr. Kopach with a link to the sale process data room that was created by Avison Young which included reports, sub-contracts and documentation and communications with regard to obtaining site plan approval for the development. A copy of the email dated October 19, 2022 to Mr. Kopach providing the link to Avison Young's sale process data room is attached as **Appendix "K"**.
19. Lastly, the Receiver made an inquiry to Medhi, through Paul Hancock, to disclose Montanaro's corporate counsel in an attempt to locate Montanaro's corporate minute book. A copy of the email to Paul Hancock including his response are included hereto as **Appendix "L"**. The Receiver notes that a review of Montanaro's minute book and share register appears to be the only remaining item to be reviewed by the Receiver. For convenience, the Receiver again attaches as **Appendix "M"** the shareholder registers for Triumph, Delbrook and 108 Canada.

PRELIMINARY CONCLUSION OF THE RECEIVER

20. Based on the Receiver's review of the additional information provided by Chen, Tarion and the Accountant, nothing has been produced that is inconsistent with the Receiver's preliminary findings. Based on the evidence that has been provided to the Receiver to date, the Receiver is unable to conclude that Mehdi has ever had any ownership or controlling interest (legal or beneficial) in Triumph nor has Wang, Shen, Chen or Chan had any ownership or controlling interest (legal or beneficial) in Montanaro, 108 Canada or Delbrook.

All of which is respectfully submitted this 11th day of November 2022.

**BDO CANADA LIMITED,
in its capacity as the Court-appointed Receiver of
Triumph Development HK Bradford Twin Regency Inc.
Per:**



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

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APPENDIX D



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-22-00677227-00CL DATE: October 21st, 2022

NO. ON LIST: 1

TITLE OF PROCEEDING: **PRUDENT EXCELLENCE V TRIUMPH DEVELOPMENT**

BEFORE JUSTICE: **CAVANAGH:**

PARTICIPANT INFORMATION
For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
N/A		

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
CHAD KOPACH	CTBC (SECURED PARTY)	CKOPACH@BLANEY.COM
REBECCA HUANG	WISEWAY GLOBAL CANADA CONSULTING LTD.	REBECCA.HUANG@WEHLITIGATION.COM
DOM MICHAUD	BDO CANADA LIMITED	DMICHAUD@ROBAPP.COM
PAUL HANCOCK	DELBROOK TRIUMPHANT BUILDERS INC. AND 10853828 CANADA INC.	PHANCOCK@DV-LAW.COM
CATHERINE QIN	MENG SUN AND XIAOFENG FU	CATHERINE@SUNSIONLAW.COM

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE CAVANAGH:

Counsel appeared before me today to schedule a hearing for the Receiver's motion for an order providing advice and directions regarding the validity of certain construction liens.

The motion is scheduled to be heard on March 1, 2023 at 10 o'clock a.m. for 2 hours. Counsel have agreed upon the timetable proposed by the Receiver in the memorandum from its counsel dated October 21, 2022. This timetable is approved with the hearing date as set out above.

APPENDIX E



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

COUNSEL SLIP / ENDORSEMENT

COURT FILE

NO.: CV-22-00677227-00CLDATE: 08-DEC-2022TITLE OF
PROCEEDING

PRUDENT EXCELLENCE MORTGAGE INVESTMENT CORPORATION
v.
TRIUMPH DEVELOPMENT HK BRADFORD TWIN REGENCY INC. ET AL.

BEFORE JUSTICE OSBORNE

NAMES OF COUNSEL AND PARTY: APPLICANT(S)- Ziyi Tang (Counsel to Prudent Excellence
Mortgage Investment Corporation)

PHONE _____

 PLAINTIFF(S)EMAIL tang@xsunlaw.com**NAMES OF COUNSEL AND PARTY:** RESPONDENT(S)

PHONE _____

 RESPONDENT(S) DEFENDANT(S)

EMAIL _____

 DEFENDANT(S)

PHONE _____

EMAIL _____

NAMES OF COUNSEL AND OTHER PARTIES:

PHONE _____

- Catherine Qin (Counsel to the 3rd Mortgagees,
Xiaofeng Fu and Meng Sun)catherine@sunsionlaw.com- Dom Michaud and Anisha Samat (Counsel to
the Receiver)

EMAIL

dmichaud@robapp.comasamat@robapp.com- Paul Hancock (for 10853828 Canada Inc. and
Delbrook Triumphant Builders Inc.)phancock@dv-law.com

PHONE _____

EMAIL _____

ENDORSEMENT OF JUSTICE OSBORNE:

- [1] BDO Canada Limited [”BDO”], in its capacity as Court-appointed Receiver, seeks an order:
- a. approving the settlement of a lien claim;
 - b. approving a distribution in respect of administration expenses claimed under the mortgage that was the subject of the receivership;
 - c. approving the Receiver’s fees and those of its counsel; and
 - d. for advice and directions regarding a claim made by the mortgagee for three months interest pursuant to either or both of the terms of the mortgage at issue and/or section 17 of the *Mortgages Act*.
- [2] The first three heads of relief are unopposed. As to the fourth, the Receiver seeks direction with respect to the claim for interest given its concern that the contractual basis in the mortgage terms relied upon contravene section 8 of the *Interest Act* and its further concern that section 17 of the *Mortgages Act* is not applicable in the circumstances, with the result that it cannot be relied upon as the basis for the payment claimed.
- [3] The Property was subject to a construction lien in favour of Gerritts Engineering Limited registered prior to sale. Proceeds of sale have been distributed, subject to a holdback related to the issues that are the subject of this motion.
- [4] The Receiver has settled the lien claim. For the reasons set out in the motion materials and the Third Report of the Receiver dated November 28, 2022, and given that the priority of the lien is acknowledged by the other lien claimants, I am satisfied that the settlement as reflected in the settlement agreement among the Receiver, Gerritts [the lien claimant] and the subsequent-ranking lien claimants is appropriate, reasonable and should be approved in the amount of \$16,385.15 together with the corresponding distribution to the lien claimant.
- [5] The mortgagee claims an expense reimbursement for administrative costs in the amount of \$14,150 relating to mortgage enforcement. The Receiver requested and received supporting documentation as backup for these costs claimed and is satisfied that they are appropriate. Section 8 of the Standard Charge Terms in the mortgage provides that all enforcement costs incurred by the mortgagee are recoverable. They are approved.
- [6] The fees and disbursements of the Receiver and its counsel are fully set out, as against the activities to which they relate, in the Third Report. They are appropriate and are approved.
- [7] The mortgagee claims an additional amount equal to three months interest on the mortgage, to which it submits it is entitled to be paid according to the terms of the mortgage agreed to and in any event pursuant to section 17 of the *Mortgages Act*.
- [8] The relevant contractual terms are found in section 7 of the Additional Charge Provisions and Schedule B to the Loan Agreement, both of which are incorporated by reference into the mortgage agreement.
- [9] Section 7 reads:

7. In the event that the full principal amount is not paid on or before the maturity date hereof, the Chargees shall be entitled to require a payment equal to three (3) months' interest on the principal amount outstanding prior to permitting repayment thereof by the Chargor.

[10] Schedule B reads:

Payment: N.S.F. fee: \$250 each for any reasons.

Holding a payment/delaying payment while permitted: \$100 each.

Default bonus: 3 month interest.

[11] Section 8 of the *Interest Act* provides:

No fine, etc., allowed on payments in arrears

8 (1) No fine, penalty or rate of interest shall be stipulated for, taken, reserved or exacted on any arrears of principal or interest secured by mortgage on real property or hypothec on immovables that has the effect of increasing the charge on the arrears beyond the rate of interest payable on principal money not in arrears.

Marginal note: Interest on arrears

(2) Nothing in this section has the effect of prohibiting a contract for the payment of interest on arrears of interest or principal at any rate not greater than the rate payable on principal money not in arrears.

[12] The Supreme Court of Canada has clearly stated that the purpose of this statutory provision is to prohibit increases in the applicable rate of interest tied to an event of default: *Krayzel Corp. v. Equitable Trust Co.*, 2016 SCC 18, [2016] 1 S.C.R. 273 at para. 24:

“An interest rate increase triggered by default infringes s. 8 of the *Interest Act*, R.S.C. 1985, c. I-15, regardless of whether it is cast as imposing a penalty on the mortgagor for default or a bonus or compensation to the mortgagee because of the default. If the effect of the interest rate, regardless of how it is framed – e.g., as a bonus, a penalty or other – is to impose “a higher charge on arrears than that imposed on principal money not in arrears”, it infringes s. 8.”

[13] The mortgagee submits that *Krayzel* does not apply in the present circumstances. I cannot agree with the submission. In *Krayzel*, the Supreme Court was asked to decide whether s. 8 of the *Interest Act* is offended by terms of a mortgage agreement imposing an interest rate that takes effect only where the mortgagor falls into default. Brown J., for the majority, found that “a rate increase triggered by default does infringe s. 8, irrespective of whether the impugned term is cast as imposing a higher rate penalizing default, or as allowing a lower rate by way of a reward for the absence of default”: *Krayzel*, at para. 3.

[14] The purpose of s. 8, according to Brown J., is “to protect landowners from charges “that would make it impossible for [them] to redeem, or to protect their equity”: at para. 21 (brackets in original), citing *Reliant Capital Ltd. v. Silverdale Development Corp.*, 2006 BCCA 226, 52 BCLR (4th) 13, at para. 53.

[15] Brown J. goes on state that this purpose does not support drawing a distinction between a higher interest rate as penalty for default and a discounted interest rate for punctual payment because “the effect” of doing so imposes a higher charge on arrears than that imposed on principal money not in arrears”: *Krayzel*, at para. 24 (emphasis in original), citing s. 8(1) of the *Interest Act*.

[16] Accordingly, and applying those principles to this case, in my view so long as the three-month “bonus interest” has the effect of imposing a higher rate of interest on arrears than that rate applicable to principal amount outstanding, it violates s. 8.

[17] This is further confirmed by Brown J., at para. 25:

“by directing the inquiry to the effect of the impugned mortgage term, Parliament clearly intended that mortgage terms guised as a “bonus”, “discount” or “benefit” would not as such comply with s. 8. Substance, not form, is to prevail. What counts is how the impugned term operates, and the consequences it produces, irrespective of the label used. If its effect is to impose a higher rate on arrears than on money not in arrears, then s. 8 is offended.” [Emphasis added.]

[18] Finally, this approach is consistent with that taken by this Court in *Benson Custodian Corporation v. Situ*, (2019) ONSC 3077, where a mortgage term providing that the mortgagee was entitled to three months’ interest on the principal amount owing following an event of default was held to be unenforceable. The Court concluded that once a lender initiates enforcement of its rights under the terms of the mortgage, it can collect only the actual interest owing and not the additional three months of interest which the borrower could pay to cure the default. Enforcing such a provision would amount to punishing or penalizing the borrower with the practical effect of increasing the applicable rate of interest contrary to section 8 of the *Interest Act*.

[19] The relevant provisions of the mortgage here are to the same effect. Section 7 provides that the additional three months interest is payable in the event that the full principal amount “is not paid on or before the maturity date” [i.e., payable upon default]. Schedule B expressly states that a “Default Bonus” is 3 months’ interest.

[20] The mortgagee has already received a distribution from the Receiver in an amount equal to the total amount owing to the date of default, including interest.

[21] For all of these reasons, I find that the mortgagee is not entitled to recover the additional three months interest pursuant to the terms of the mortgage since they violate section 8 of the *Interest Act*.

[22] I further conclude that section 17 of the *Mortgages Act* is not applicable here so as to provide an alternative basis for the payment of the three months interest to the mortgagee.

[23] That statutory provision is primarily designed to offer protection to mortgagors by giving them the right, when in default, to repay the mortgage on giving three months’ notice to the mortgagee of their intent to pay arrears [including interest, up to the date of payment] without penalty. However, the option is that of the mortgagor. Section 17 does not provide a right of the mortgagee to demand an additional three months interest beyond the principal, interest and costs due under the mortgage upon default. (See: *Mastercraft Properties Ltd. v. El Ef Investments Inc.*, 1993 CanLII 8545 (ON CA)).

[24] The Court of Appeal has also refused to enforce a claim by a mortgagor for an additional payment of three months’ interest where the property at issue was sold by a receiver and not the mortgagor. The Court rejected as a mischaracterization of the role of a receiver, the argument that the receiver was acting as agent of the mortgagor. (See *58 Cardill Inc. v. Rathcliffe Holdings Limited*, 2018 ONCA 672).

[25] Finally, in *Comfort Capital Inc. v. Yeretsian*, 2018 ONSC 5040, this Court held that a distribution of proceeds by a receiver to entitled parties arising from a court-ordered sale of land does not involve any party seeking relief from anything and falls outside the range of circumstances contemplated by section 17 of the *Mortgages Act*.

[26] The Court noted that by its terms, section 17 applies only to “persons entitled to make payment” in respect of a mortgage default and that a receiver [whether creditor appointed or court-appointed] is not such a person. A receiver is not “entitled” to pay a sum of money, has no beneficial interest in the money nor in the property being sold. As the Court noted: “in directing the receiver to pay over proceeds of sale, the court is making a

determination of the secured creditor's entitlement to receive the funds, not a determination of the receiver's entitlement to pay." (See paras. 18-22).

[27] In that case, Dunphy, J. observed, and I agree, that it would be regrettable if courts were dissuaded from allowing receivership applications for fear that an undue benefit might be thereby conferred on a single class of creditor to the detriment of others as no such advantage exists or was intended under section 17 of the *Mortgages Act*. (para. 24).

[28] The mortgagee here submits that it would be inequitable to deny its claim for the payment since it was the creditor who had requested the appointment of the receiver in the first place. I disagree for the reasons expressed in the *Comfort Capital* case, where I note that the appointment of the receiver was sought by the very creditor making the additional interest claim.

[29] The mortgagee also submits that the decision of the Divisional Court in *O'Shanter Development Company Ltd. v. Gentra Canada Investments Inc.*, 1995 CanLII 10674 (ON SC) is authority for the proposition that it is entitled to the additional three months' interest.

[30] I disagree. The mortgagee in *O'Shanter* was acting pursuant to power of sale proceedings. The Divisional Court held that section 17 is a reduction of the equitable rule requiring a mortgagor to pay six months' interest to claim a right to relief from forfeiture. As was the case in *Comfort Capital*, however, this is a receivership. The Receiver here was appointed by Court order dated March 1, 2022, over a residential condominium development that has now been sold, also pursuant to Court order [the Approval and Vesting Order dated September 14, 2022].

[31] The principles set out by Dunphy, J. in *Comfort Capital* and summarized above are applicable to the present case.

[32] I observe that none of the three cases on which the mortgagee relies here as having followed *O'Shanter* involved court-appointed receivers or other court-appointed officers (see: *Irwin Mintz, in Trust v. Mademont Yonge Inc.*, 2010 ONSC 116; *2088300 Ontario Limited v. 2184592 Ontario Limited*, 2011 ONSC 2986; and *1746534 Ontario Inc. v Phillips*, 2015 ONSC 2232).

[33] For of the above reasons, I find that section 17 of the *Mortgages Act* is not applicable in the circumstances as a basis for the additional three months' interest claimed by the mortgagor. The Receiver is directed to reject that claim.

[34] No costs are requested by any party, and none are ordered.

[35] Order to go in the form signed by me today, which is effective immediately and without the necessity of issuing and entering.

O'Shanter, J.



Court File No.: CV-22-00677227-00CL

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

THE HONOURABLE) **THURSDAY, THE 8th**
)
JUSTICE OSBORNE) **DAY OF DECEMBER, 2022**

BETWEEN:

**PRUDENT EXCELLENCE MORTGAGE INVESTMENT
CORPORATION**

Applicant

-and-

TRIUMPH DEVELOPMENT HK BRADFORD TWIN REGENCY INC.

Respondent

APPLICATION UNDER 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

**ORDER
(Lien Settlement Approval and Distribution)**

THIS MOTION made by the BDO Canada Limited ("**BDO**"), in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of the property municipally known as 2362 Line 8, Bradford West Gwillimbury, Ontario (the "**Property**") owned by Triumph Development HK Bradford Twin Regency Inc.'s (the "**Debtor**"), for the relief set out in the Notice of Motion dated November 28, 2022, including the approval settlement of the lien claim of Gerrits Engineering Limited ("**Gerrits**") and authorizing a final distribution to Gerrits and

Prudent Excellence Mortgage Investment Corporation (“**Prudent**”) was heard this day by videoconference as a result of the Covid-19 pandemic.

ON READING the Motion Record of the Receiver and the Third Report of the Receiver dated November 28, 2022 (the “**Receiver’s Third Report**”), the Affidavit of Irving Marks sworn November 28, 2022 (the “**Robins Fee Affidavit**”) and the Affidavit of Gary Cerrato sworn November 25, 2022 (the “**BDO Fee Affidavit**”) and on hearing the submissions of counsel for the Receiver and any such other counsel or individual as were present, no one appearing for any other person on the service list, although properly served as evidenced by the Affidavit of Rachel Cheung sworn November 28, 2022, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service hereof.

GERRITS LIEN SETTLEMENT

2. **THIS COURT ORDERS** that the settlement of the lien claim of Gerrits in accordance with the terms of the Settlement of Lien Claim Agreement between the Receiver, Gerrits, Delbrook Triumphant Builders Inc. and 10853828 Canada Inc. (the “**Lien Settlement Agreement**”) is hereby approved and the Receiver is hereby authorized to make a distribution to Gerrits in the amount of \$16,385.15 (the “**Gerrits Distribution**”) as outlined and in accordance with the Lien Settlement Agreement.

DISTRIBUTIONS TO PRUDENT

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to make a final

distribution in the amount of \$14,150.00 (the "**Prudent Final Distribution**") to Prudent in full satisfaction of any and all amounts secured by the mortgage registered by Prudent as Instrument Number SC1760648 and any claim of Prudent as against the Property and the Debtor.

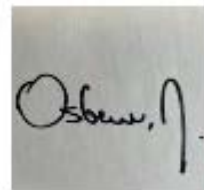
APPROVAL OF ACTIVITIES

4. **THIS COURT ORDERS** that the activities of the Receiver as described in the Receiver's Third Report are hereby approved.

5. **THIS COURT ORDERS** that the of the Interim Receipts and Disbursements of the Receiver as described in the Receiver's Third Report are hereby approved.

APPROVAL OF FEES AND EXPENSES OF THE RECEIVER

6. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its legal counsel as described in the Receiver's Third Report, the BDO Fee Affidavit and the Robins Fee Affidavit are hereby approved.



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**PRUDENT EXCELLENCE
MORTGAGE INVESTMENT
CORPORATION**

- and -

**TRIUMPH DEVELOPMENT HK
BRADFORD TWIN REGENCY INC.**

Applicant

Respondent

Court File No.: CV-22-00677227-00CL

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

APPLICATION UNDER 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

PROCEEDING COMMENCED AT TORONTO

**ORDER
(Lien Settlement Approval and Distribution)**

ROBINS APPLEBY LLP

Barristers + Solicitors
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Lawyers for the Receiver, BDO Canada Limited

APPENDIX F



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-22-00677227-00CL

DATE: 1 March 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: PRUDENT EXCELLENCE MORTGAGE INVESTMENT CORPORATION v
TRIUMPH DEVELOPMENT HK BRADFORD
TWIN REGENCY INC.

BEFORE JUSTICE: PENNY

PARTICIPANT INFORMATION**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info

For Defendant, Respondent, Responding Party, Defence:


Name of Person Appearing	Name of Party	Contact Info
Paul Hancock	10853828 Canada Inc Delbrook Triumphant Builders Inc.	phancock@dv-law.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Dom Michaud	BDO Canada Limited	dmichaud@robapp.com
Patrick Healy	Global Canada Consulting Ltd	patrick.healy@wehLitigation.com

ENDORSEMENT OF JUSTICE PENNY:

The Confidential Supplemental Report sealed by the Order of Justice Cavanagh dated September 14, 2022 shall be unsealed effective immediately. The motion for directions originally returnable today has been withdrawn.

A handwritten signature in blue ink, appearing to read "Penny J.", with a stylized flourish at the end.

Penny J.



Court File No.: CV-22-00677227-00CL

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

THE HONOURABLE)
)
JUSTICE PENNY) **WEDNESDAY, THE 1st**
) **DAY OF MARCH, 2023**

BETWEEN:

**PRUDENT EXCELLENCE MORTGAGE INVESTMENT
CORPORATION**

Applicant

-and-

TRIUMPH DEVELOPMENT HK BRADFORD TWIN REGENCY INC.

Respondent

APPLICATION UNDER 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

ORDER

THIS MOTION made by BDO Canada Limited ("**BDO**"), in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of the property municipally known as 2362 Line 8, Bradford West Gwillimbury, Ontario (the "**Property**") owned by Triumph Development HK Bradford Twin Regency Inc. (the "**Debtor**"), for the relief set out in the Notice of Motion dated October 7, 2022, including the lifting of the sealing of the Confidential Supplemental Report to the First Report of the Receiver dated September 8, 2022 (the "**Confidential Supplemental Report**") as provided for by paragraph 3 of the Administration and Interim Distribution Order of

Justice Cavanagh dated September 14, 2022 (the "**A&D Order**") was heard this day by videoconference as a result of the Covid-19 pandemic.

ON READING the Motion Record of the Receiver, the Second Report of the Receiver dated October 7, 2022 (the "**Receiver's Second Report**") the Supplementary Motion Record of the Receiver, the Supplement to the Receiver's Second Report dated November 11, 2022, the Responding Motion Record of 10853828 Canada Inc. and Delbrook Triumphant Builders Inc. and the Reply Record of 10853828 Canada Inc. and Delbrook Triumphant Builders Inc., and on hearing the submissions of counsel for the Receiver and any such other counsel or individual as were present, no one appearing for any other person on the service list, although properly served as evidenced by the Affidavits of Wendy Lee sworn October 7, 2022 and November 11, 2022, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record and Supplementary Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service hereof.

UNSEALING OF THE CONFIDENTIAL SUPPLEMENTAL REPORT

2. **THIS COURT ORDERS** that the Confidential Supplemental Report sealed pursuant to the Order of Justice Cavanagh dated September 14, 2022 shall be unsealed effective immediately.



**PRUDENT EXCELLENCE
MORTGAGE INVESTMENT
CORPORATION**

- and -

**TRIUMPH DEVELOPMENT HK
BRADFORD TWIN REGENCY INC.**

Applicant

Respondent

Court File No.: CV-22-00677227-00CL

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

APPLICATION UNDER 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

PROCEEDING COMMENCED AT TORONTO

ORDER

ROBINS APPLEBY LLP

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Anisha Samat LSO No. 82342Q

Email: asamat@robapp.com
Tel: (416) 360-3728

Lawyers for the Receiver, BDO Canada Limited

APPENDIX G

Ref	Triumph Twin Regency Development - Receivership
To	Gary Cerato
From	Sathish Kumar
Date	June 28, 2023

Subject	Progress Measurement Methodology
---------	----------------------------------

Introduction:

1. The Project Management (“PM Agreement”)¹ Agreement stipulates that the Project Manager (“PM”) prepare and submit periodic reports on the progress of the development of the Development (including construction progress) in conformity with Approved Business Plans and the Project Management Schedule (“PM Schedule”).
2. A review of the PM Schedule and the periodic updates provided by the Claimant revealed that the overall project progress was not monitored, and the reports were issued sporadically. Furthermore, the records provided did not record the progress achieved on the individual components under the PM Agreement.
3. The Claimant, along with its Lien claim, provided a schedule update (“PM Schedule Update”)² with a status date of 19 October 2020. Similarly, a schedule update (“CM Schedule Update”)³ for the Construction Management Contract⁴ with a status update date of 20 October 2020 was provided.
4. The start and finish dates recorded in the PM Schedule update were found to be pre-dated and more importantly lacked substantiation. The progress recorded against each activity in both the schedule updates was based on the duration completed not the physical progress achieved.

Methodology for Project Management & Construction Management Progress Calculation:

5. Therefore, in the absence of the implementation of any progress measurement system, based on the records available, a weighted average methodology was adopted to measure the progress achieved under the PM Agreement and Construction Management Contract.
6. The weighted average methodology is a commonly used technique in the construction industry to measure and assess the overall status of the project.
7. This involves assigning weights to different project components based on their relative importance in the project and combining the completion percentages to derive a comprehensive progress metric.

¹ Project Management Agreement - Bradford Project - June 8, 2017.pdf

² 2022-10-19_Bradford-Project-Schedule_V02.pdf

³ 2022-10-20_Bardford-Project-Schedule (CCDC 5B)_V02.pdf

⁴ CCDC 5B Signed Twin Regency - Compressed - March 3, 2020.pdf

8. Given the absence of a robust progress measurement system and the quality of records provides, the weighted average methodology will provide a meaningful assessment of the status of the project and progress achieved under the Project Management Agreement and Construction Management Contract.

Methodology Implementation:

9. A step-by-step explanation of the progress measurement using the weighted average methodology is provided below:
- i) Identify Scope: The overall scope of work was identified from the Agreement/Contract.
 - ii) Assign Weights: Assess the relative significance of each scope of work on the overall success of the project. The weights are assigned based on key factors like:
 - a. Duration
 - b. Criticality
 - c. Resource requirements
 - d. Time Sensitivity
 - e. Actual work performed
 - iii) Track Completion Percentages: Review the provided records to determine the percentage of work completed for each scope of work based on the predetermined criteria such as deliverable submission, physical progress, invoices, or specific performance indicators such as approvals, permits etc.,
 - iv) Calculate Weighted Completion Percentages: Multiply the completion percentage of each component by its assigned weight. This yields the weighted completion percentage for each component. The formula for calculating the weighted completion percentage is as follows:

$$\text{Weighted Completion Percentage} = \text{Completion Percentage} \times \text{Weight}$$
 - v) Sum Weighted Completion Percentages: Add up the weighted completion percentages for the overall scope of work. This results in a cumulative progress metric that reflects the overall progress of the project under the PM Agreement. The formula for calculating the weighted average progress is as follows:

$$\text{Weighted Average Progress} = \text{Sum of (Weighted Completion Percentages)}$$

APPENDIX H



TO: BDO Canada Limited.: Josie Parisi, Gary Cerrato
FROM: Robins Appleby LLP: Dominique Michaud, Anisha Samat
SUBJECT: Receivership - Triumph Development HK Bradford Twin Regency Inc.
DATE: June 30, 2023
FILE NO.: 2200186

I. OVERVIEW AND BRIEF CONCLUSIONS

This memorandum has been prepared for the Receiver to assess:

1. the validity and enforceability of the Construction Liens under the *Act*, and
2. the priority of the Construction Liens over the Third Mortgage registered against the Property.

All terms used in this section are further defined below.

Based on our legal research and the information currently available to us, we are of the opinion that:

1. The Construction Liens are valid and enforceable pursuant to the *Construction Act*, R.S.O. 1990, c. C.30¹ (the "**Act**"); and
2. the Construction Liens have full priority over the Third Mortgage.² Under the *Act*, lien claimants have priority over all interests affecting the owner's interest in property. Accordingly, mortgagees have a subsequent priority to lien claimants unless they can fit within the express exceptions found in section 78 of the *Act*. The Third Mortgage and the Third Mortgagees do not fall within the parameters of these exceptions.

¹ *Construction Act*, [R.S.O. 1990, c. C.30](#)

² Our conclusions are subject to the information we currently hold. We also rely on various other standard assumptions and qualifications as outlined in a legal opinion previously provided by our office to the Receiver.



II. FACTS

Prudent Excellent Mortgage Investment Corp. (“**Prudent**” or the “**Second Mortgagee**”) brought an Application in February, 2022, to appoint a receiver (BDO Canada Ltd. or “**BDO**” or the “**Receiver**”) over the property municipally known as 2362 Line 8, Bradford West Gwillimbury, Ontario (the “**Property**”) that was owned by Triumph Development HK Bradford Twin Regency Inc. (“**Triumph**” or “**the Debtor**”). BDO was subsequently appointed as Receiver by Order of Justice Conway dated March 1, 2022.

At the time of BDO’s appointment, the following mortgages were registered against the Property, in order of priority:

1. Vendor-take-back mortgage in the amount of \$2,795,000 registered as instrument number SC1421256 on June 19, 2017 in favour of Peter Vander Kooij and Leni Vander Kooij (the “**First Mortgage**”);
2. Mortgage in the amount of \$800,000 (\$600,000 of which was advanced) registered as SC17606648 on March 5, 2021 in favour of Prudent (the “**Second Mortgage**”); and
3. Mortgage in the amount of \$10,000,000 registered as instrument number SC1802980 on **July 12, 2021** in favour of Xiaofeng Fu and Meng Sun (collectively “**Sun**” or the “**Third Mortgagee**”, and the “**Third Mortgage**”). This appears to “back-stop” personal loans provided to certain owners of the Debtor.

At the time of BDO’s appointment, the following construction liens were registered against the Property:

1. Lien in the amount of \$1,870,538 registered as instrument number SC1768866 (the “**108co Lien**”) on **April 6, 2021** in favour of 10853828 Canada Inc. (“**108co**”) and perfected on **May 30, 2021**;
2. Lien in the amount of \$1,404,036 registered as instrument number SC1768859 (the “**Delbrook Lien**”) on **April 6, 2021** in favour of Delbrook Triumphant Builders Inc. (“**Delbrook**”) and perfected on **May 30, 2021**; and
3. Lien in the amount of \$16,385 registered as instrument number SC1776388 (the “**Gerrits Lien**”) on **April 30, 2021** in favour of Gerrits Engineering Limited (“**Gerrits**”) and perfected on **June 11, 2021**.

All of the liens above were registered and perfected prior to the registration of the Third Mortgage.

Together the 108co Lien and the Delbrook Lien are referred to as the “**Construction Liens**”. Both 108co and Delbrook have commenced actions in the Ontario Superior Court of Justice with court



file numbers CV-21-00000701-0000 and CV-21-00000698-0000 respectively. As of the date of this memorandum, both lien claimants have set respective lien actions down for trial.

The 108co Lien is in respect of work completed for project management services provided by 108co to Triumph. 108co alleges that this work was done pursuant to the Project Management Agreement between Triumph and Montanaro Project Management Professional Inc. ("**Montanaro**") dated June 8, 2017. 108co alleges that this agreement was assigned to it by Montanaro on consent of Triumph. The Receiver has no record of the Project Management Agreement ever having been formally assigned, however, the Triumph records do support the position that 108co was providing these project management services.

The Delbrook Lien is in respect of work completed for construction management services provided by Delbrook to Triumph pursuant to the CCDC 5B Agreement dated March 3, 2020.

On September 14, 2022, the Court granted an Approval and Vesting Order which, among other things, approved the asset purchase agreement dated July 27, 2022 between the Receiver and 2792523 Ontario Inc. (the "**Purchase Agreement**") for the sale of the Property. The sale transaction closed pursuant to the terms of the Purchase Agreement and the Receiver has held the net sale proceeds in trust pending court ordered distributions to the various stakeholders.

Pursuant to the Administration and Interim Distribution Order dated September 14, 2022, the Receiver made a distribution to fully repay the First Mortgage and to partially repay the Second Mortgage.

As part of a Settlement Agreement executed on November 10, 2022 between the Receiver, Gerrits, Delbrook and 108co, Delbrook and 108co agreed that Gerrits was entitled to receive payment under the Gerrits Lien (the "**Gerrits Settlement**") in priority to the Delbrook Lien and the 108co Lien. The Gerrits Settlement also stipulated that upon making payment for the Gerrits Lien, that the Delbrook Lien and the 108co Lien would be reduced accordingly, to the extent that each of these liens included amounts claimed in the Gerrits Lien.

Pursuant to the Lien Settlement Approval and Distribution Order dated December 8, 2022, the Receiver made a final distribution in respect of repayment of the Second Mortgage and repayment of the Gerrits Lien pursuant to the Gerrits Settlement.

The Receiver has since conducted a thorough analysis of the Constructions Liens and is satisfied that both 108co and Delbrook have performed services that warranted the registration and perfection of the Constructions Liens. Accordingly, the Receiver is in advanced settlement discussions with Delbrook and 108co to settle the Constructions Liens. Prior to completing any Settlement of the Construction Liens, the Receiver has requested this memorandum that confirms the enforceability and validity of the Constructions Liens.



III. CREATION, VALIDITY AND ENFORCEABILITY OF CONSTRUCTION LIENS

(a) Law

i. Creation of Lien

The *Act* sets out criteria that must be adhered to if such a party wishes to assert a lien claim against any land where services and/or materials were supplied. Section 14(1) of the *Act* states:

Creation of lien

14 (1) A person who supplies services or materials to an improvement for an owner, contractor or subcontractor, has a lien upon the interest of the owner in the premises improved for the price of those services or materials.

According to the *Act's* interpretation, as outlined in section 1(1), to be entitled to a valid and enforceable lien, a party must have performed or supplied one of the following:

- an "improvement", which refers to any changes, additions, or repairs made to the land, as well as any construction, erection, or installation on the land. This includes the installation of essential equipment, such as industrial, mechanical, electrical, or other equipment, on the land or any buildings, structures, or works that are crucial for the land's normal or intended use. It also encompasses the complete or partial demolition or removal of any buildings, structures, or works on the land.
- "materials", which pertains to any movable property that either becomes or is intended to become a part of the improvement. This includes property directly used in the creation of the improvement or property used to directly facilitate the improvement. It also includes the rental of equipment without an operator, specifically for use in the improvement.
- a "supply of services", which encompasses any work done or services performed related to the improvement. This includes the rental of equipment with an operator. Additionally, if the planned improvement has not yet commenced, the supply of a design, plan, drawing, or specification that enhances the value of the owner's interest in the land is also considered a supply of services.

Quantum Meruit Lien Claims

The definition of the term "price" under the *Act* is broad enough to permit the price of services and materials to be determined on a quantum meruit basis, typically where no specific price has been agreed to, and it is possible for a trade/supplier to register a lien based on the reasonable value of the work. The cases set out below support this legal position.



In *Consolidate Ventures Inc. v. Amico Contracting Engineering* (1992) Inc. 2007, Carswell Ont. 2627, [2007 ONCA 324](#), the Court of Appeal held at para. [99](#):

Thus, where the claim for restitutionary relief is based on quantum meruit, as in this case, an explicit mutual agreement to compensate for services rendered is not a prerequisite to recovery. It suffices if the services in question were furnished at the request, or with the encouragement or acquiescence, of the opposing party in circumstances that render it unjust for the opposing party to retain the benefit conferred by the provision of the services. See Fridman, *supra*, at pp. 290-92; *Nicholson v. St. Denis* (1975), [1975 CanLII 393 \(ONCA\)](#), 57 D.L.R. (3d) 699 (Ont. C.A.), leave to appeal to S.C.C. refused, [1975] 1 S.C.R. x (S.C.C.).

In *Landmark Construction Ltd. v. Parvis Sanei-Kashani*, 2010, SC 09, 81211-00 the Court held that:

“It is an issue or remedy that only arises where there is no enforceable contract, but goods or services have been supplied in circumstances where it would be unconscionable to let the recipient keep their benefit without providing some reasonable compensation to the supplier.” In other words, “Although no actual agreement has been made between the parties, the law will imply a promise to pay a reasonable amount if the circumstances of bringing the doctrine into play exist.”

ii. Preservation (Registration) and Perfection of the Lien

Properly advancing a lien claim is a two-step process: the claim must be preserved and consequently perfected.

In order to be preserved in time, a lien claimant must, with certain exceptions, register a claim for lien over title to the property. The registration must take place within either 45 or 60 days according to sections 31 and 34 of the *Act*, and it must be perfected within 90 days according to section 36(2) of the *Act*.

Section 36(3) of the *Act* shows that a lien claimant perfects the lien claimant’s preserved lien in either of the two scenarios:

(a) where the lien attaches to the premises, when the lien claimant commences an action to enforce the lien and, except where an order to vacate the registration of the lien is made, the lien claimant registers a certificate of action in the prescribed form on the title of the premises; or

(b) where the lien does not attach to the premises, when the lien claimant commences an action to enforce the lien:



Section 37(1) of the *Act* provides that a perfected lien expires immediately after the *second anniversary* of the commencement of the action that perfected the lien, unless one of the following occurs on or before that anniversary:

1. An order is made for the trial of an action in which the lien may be enforced.
2. An action in which the lien may be enforced is set down for trial.

(b) Application and Analysis

The Receiver has reviewed the work that has been conducted and/or materials supplied by 108co and Delbrook, and satisfied itself that the Construction Liens have been validly created as they have been registered due to unpaid work/supply of materials relating to improvements made on the Property. As to the payment in respect of the Constructions Liens, the Receiver believes that the contemplated settlement amounts are fair and reasonable on a quantum meruit basis.

In the circumstances, is our opinion that Construction Liens are valid and enforceable as they have been registered and perfected in time as:

- 1) They were registered within a 45 day window of the date of last service/supply;
- 2) Both 108co and Delbrook perfected their respective liens and issued claims and commenced proceedings in the Ontario Superior Court. These matters were also set down for trial on or before the two-year anniversary of the commencement of the claims, in compliance with the *Act*.

IV. CONSTRUCTION LIEN PRIORITY

(a) Law

The basic rule under s. 78 of the *Act* is that liens will have priority over mortgages. There are a few exceptions to this basic rule which change the priority scheme – building mortgages, and subsequent mortgages. The onus to persuade the court that a section 78 exception is triggered rests on the mortgagee, not the lien claimant.³

i. Building Mortgages

Under s. 78(2) of the *Act*, lien claimants have priority over “building mortgages” to the extent of any deficiency in the holdback. It provides the following:

78(2): Where a mortgagee takes a mortgage with the intention to secure the financing of an improvement, the liens arising from the improvement have priority over that mortgage,

³ *Boehmers v. 794561 Ontario Inc.*, [1995 CanLII 660 \(ON CA\)](#)



and any mortgage taken out to repay that mortgage, to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV, irrespective of when that mortgage, or the mortgage taken out to repay it, is registered.

In *Dal Bianco v. Deem Management Services et. Al.* (“**Dal Bianco**”)⁴, Justice Gilmore noted that while the *Act* does not define the term “building mortgage”, it should be interpreted in a manner that is consistent with the overall intention of section 78 – which is to grant priority to lien claimants. In that regard, section 78(2) infers that the mortgage is being taken by the mortgagee with a future intention to secure financing. In this case, that meant that the mortgage must be registered prior to the advance of funds and not the other way around, even if it is to “secure the financing of an improvement”.

ii. **Subsequent Mortgages**

If the lender's mortgage is not registered prior to the time when the first lien arose in respect of an improvement, then section 78(5) of the *Act* applies and the mortgage is treated exactly like a building mortgage: it will be subordinate to the liens arising from an improvement to the extent of any deficiency in the holdbacks required to be retained by the owner under the *Act*.

However, with respect to subsequent mortgages as well, there is an exception to when lien claims take priority. Section 78(6) of the *Act* provides that a subsequent advance made after the time that the first lien arose will have priority over any liens arising from the improvement **unless, at the time when the advance was made, there was a preserved or perfected lien against the property** or the lender had received written notice of a lien.

In *XDG Ltd. v. 10996f06 Ontario Ltd.*⁵, the court also addressed the issue of whether a mortgage registered on title as collateral security for a prior indebtedness gained priority. In considering s.78(6), the court made a distinction between “amounts secured” and “amounts advanced.” Given that the monies were advanced under a financial arrangement to pay prior indebtedness, and then subsequently secured by a mortgage, s.78(6) was not engaged and no priority was gained over the lien claimants.

In *Dal Bianco*, Justice Gilmore noted that section 78(6) was not triggered because the funds at issue were not advanced “in respect of” the third mortgage. When amounts are advanced under a different financial arrangement and then subsequently secured by a mortgage, section 78(6) does not apply.

(b) Application and Analysis

⁴ *Dal Bianco v. Deem Management Services et al.*, [2020 ONSC 1500 \(CanLII\)](#)

⁵ *XDG Ltd. v. 1099606 Ontario Ltd.*, 2002 CarswellOnt 4535



Based on the information known to date, the Third Mortgage does not have priority over the Construction Liens as it does not fall within the s. 78 exemptions for the following reasons:

1. The Third Mortgage is not a “building mortgage” as defined by the *Act*. As we understand it, the Third Mortgage was taken out in order to finance prior indebtedness of several owners of the Debtor in their personal capacities. There is no indication at the moment that it was taken out to directly or indirectly “secure the financing of an improvement”; and
2. The Third Mortgage was registered after all of the Construction Liens were perfected, which automatically makes it ineligible for the “subsequent mortgage” exemption under s. 78(6).

DM/as

SETTLEMENT OF LIEN CLAIMS

B E T W E E N:

BDO CANADA LIMITED, solely in its capacity as receiver of the property municipally known as 2362 Line 8, Bradford West Gwillimbury, Ontario and not in its personal capacity

and

DELBROOK TRIUMPHANT BUILDERS INC.

and

10853828 CANADA INC.

(Collectively, the "**Parties**")

WHEREAS:

- a. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) dated March 1, 2022 in Court File No. CV-22-00677227-00CL (the "**Receivership Proceedings**"), BDO Canada Limited (the "**Receiver**") was appointed Receiver of the property municipally known as 2362 Line 8, Bradford West Gwillimbury, Ontario (the "**Property**") owned by Triumph Development HK Bradford Twin Regency Inc. (the "**Debtor**");
- b. On September 14, 2022, the Court granted an Approval and Vesting Order which, among other things, approved the asset purchase agreement dated July 27, 2022

between the Receiver and 2792523 Ontario Inc. (the "**Purchase Agreement**") for the sale of the Property;

- c. The sale transaction closed pursuant to the terms of the Purchase Agreement;
- d. Registered on title of the Property were three (3) mortgages securing debt obligations owing by the Debtor as follows (in order of priority): (i) Peter Vander Kooij and Leni Vander Kooij registered as instrument SC1421256 (the "**Vander Kooij Mortgage**"); (ii) Prudent Excellence Mortgage Investment Corporation registered as instrument SC1760648 (the "**Prudent Mortgage**"); and Xiaofeng Fu and Meng Sun (the "**Third Mortgage**");
- e. Delbrook Triumphant Builders Inc. ("**Delbrook**") filed a lien against the Property on April 6, 2021 in the amount of \$1,404,036.78, a copy of which lien claim is attached as **Schedule "A"** herein (the "**Delbrook Lien**");
- f. Delbrook commenced an action in respect of the Delbrook Lien bearing Court File No. CV-21-00000698-0000 (the "**Delbrook Lien Action**");
- g. 10853828 Canada Inc. ("**108co**") filed a lien against the Property on April 6, 2021 in the amount of \$1,870,538.95, a copy of which lien claim is attached as **Schedule "B"** herein (the "**108co Lien**");
- h. 108co commenced an action in respect of the 108co Lien bearing Court File No. CV-21-00000701-0000 (the "**108co Lien Action**");

- i. The Receiver has obtained an opinion from its legal counsel Robins Appleby LLP, confirming that:
 - a. the Vander Kooij Mortgage and the Prudent Mortgage, subject to customary assumptions and qualifications, constitute legal, valid and binding security interests in favour of these mortgagees that are properly registered on title to the Property; and
 - b. the Vander Kooij Mortgage and the Prudent Mortgage have priority over, the Delbrook Lien and the 108co Lien save for to the extent there is a deficiency in the lien holdback to be held by the Debtor;
- j. Pursuant to the Order of Justice Cavanagh dated September 14, 2022, the Receiver has held back \$400,000 in respect of the deficiency in the lien holdback to be held by the Debtor (the “**Holdback Funds**”) and made a full distribution in respect of the Vander Kooij Mortgage and a partial distribution in respect of the Prudent Mortgage;
- k. A dispute has arisen with the Receiver regarding the validity of the Delbrook Lien and the 108co Lien; and
- l. The Receiver, Delbrook and 108co have resolved to settle the Delbrook Lien , the Delbrook Lien Action, the 108co Lien and the 108co Lien Action on the terms set out herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein including, without limitation, the agreement by the Receiver to make payment of the amount of \$114,800.00 (inclusive of HST) to Delbrook (the “**Delbrook Payment**”) and payment of the amount of \$705,200 (inclusive of HST) to 108co (the “**108co Payment**”), the Receiver, Delbrook and 108co agree to settle all the disputes between them in relation to the Delbrook Lien, the Delbrook Lien Action, the 108co Lien and the 108co Lien Action, including any and all claims which the Receiver, Delbrook or 108co have or could have asserted on the following terms:

Settlement

1. The Receiver agrees to make the Delbrook Payment in full satisfaction of all amounts owing in respect of the Delbrook Lien and the Delbrook Lien Action:
 - (a) upon Delbrook consenting to and taking out an Order dismissing the Delbrook Lien Action without costs in the form set out in **Schedule “C”**; and
 - (b) upon the granting of the Approval Order (as defined below).

2. The Receiver agrees to make the 108co Payment in full satisfaction of all amounts owing in respect of the 108co Lien and the 108co Lien Action:
 - (a) upon 108co consenting to and taking out an Order dismissing the 108co Lien Action without costs in the form set out in **Schedule “D”**; and
 - (b) upon the granting of the Approval Order (as defined below).

Release

3. Subject to paragraph 4 below, Delbrook and 108co agree, by virtue of this Settlement Agreement and delivery of the Delbrook Payment by the Receiver to Delbrook and delivery of the 108co Payment by the Receiver to 108co, that they hereby release:
- (a) any and all claims, whether known or unknown, which it may have ever had, may have, or at any time hereafter can, shall or may have advanced in respect of the Delbrook Lien and the 108co Lien;
 - (b) any and all claims, whether known or unknown, which it may have ever had, may have, or at any time hereafter can, shall or may have advanced
 - (c) against the Receiver and/or the Debtor; and
 - (d) any and all claims, whether known or unknown, which it may have ever had, may have, or at any time hereafter can, shall or may have advanced in priority to the Vander Kooij Mortgage and the Prudent Mortgage.

Court Approval

4. The Receiver, Delbrook and 108co agree that this Settlement Agreement remains subject to obtaining a Court Order in the Receivership Proceedings:
- (a) approving the settlement of Delbrook Lien and the 108co Lien on the terms set out in this Settlement Agreement;
 - (b) authorizing the Receiver to take all steps necessary to give effect to the Settlement Agreement; and
 - (c) authorizing the Receiver to make the Delbrook Payment to Delbrook and the 108co Payment to 108co.

General

5. The Parties agree that the recitals to this Settlement Agreement are accurate, true and form part of this Settlement Agreement.

6. All monetary amounts referred to in this Settlement Agreement shall be in CAD currency.
7. This Settlement Agreement shall be governed by and construed in accordance with the laws of Ontario.
8. Any amendment to this Settlement Agreement shall be made in writing and shall be duly executed by the parties.
9. The parties hereby covenant and agree to do such further and other things that any party may reasonably request to give full effect or better effect to the provisions of this Settlement Agreement.
10. This Settlement Agreement may be executed in counterparts and the executed copies may be exchanged in electronic form without any requirement to provide original executed copies.

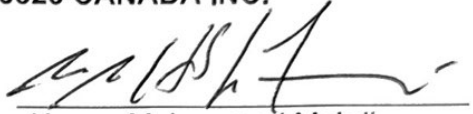
Dated as of this 30th day of June, 2023.

**DELBROOK TRIUMPHANT
BUILDERS INC.**

Per: 
Name: Ali Haj-Shafiei
Title: Director

I have the authority to bind the corporation

10853828 CANADA INC.

Per: 

Name: Mohammad Mehdi
Haj-Shafiei
Title: Director

I have the authority to bind the corporation

BDO CANADA LIMITED, solely
in its capacity as receiver of the
property municipally known as
2362 Line 8, Bradford West
Gwillimbury, Ontario and not in
its personal capacity

Per: 

Name: Gary Cerrato
Title: Senior Vice President

I have the authority to bind the corporation

SCHEDULE "A" – The Delbrook Lien

LRO # 51 Construction Lien

Registered as SC1768859 on 2021 04 06 at 14:05

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 1

Properties

PIN 58041 - 0138 LT
 Description PT LT 16 CON 8 WEST GWILLIMBURY AS IN R0261979 SAVE & EXCEPT PTS 1 & 3
 51R37039; TOWN OF BRADFORD WEST GWILLIMBURY
 Address BRADFORD

Consideration

Consideration \$1,404,036.78

Claimant(s)

Name DELBROOK TRIUMPHANT BUILDERS INC.
 Address for Service c/o Goldman Sloan Nash & Haber LLP
 Barristers & Solicitors
 1600-480 University Avenue
 Toronto, ON M5G 1V2
 Attention: Paul Hancock
 Tel: 416-597-7881; Fax: 416-597-3370
 Email: hancock@gsnh.com

I, Mehdi Shaifiei, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

I, Mehdi Shaifiei, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner Triumph Development HK Bradford Twin Regency Inc., A10-3000 Highway 7, Markham, ON L3R 4X9
 Name and address of person to whom lien claimant supplied services or materials Triumph Development HK Bradford Twin Regency Inc., A10-3000 Highway 7, Markham, ON L3R 4X9 Time within which services or materials were supplied from 2020/03/03 to 2021/04/06
 Short description of services or materials that have been supplied Drawings, construction management services, and labour and material for 239 condominium unit project Contract price or subcontract price \$3,827,113.00 inclusive of HST Amount claimed as owing in respect of services or materials that have been supplied \$1,404,036.78 inclusive of HST

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Signed By

Paul Leigh Hancock 480 University Ave, # 1600 acting for Signed 2021 04 06
 Toronto Applicant(s)
 M5G 1V2

Tel 416-597-9922

Fax 416-597-3370

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

GOLDMAN SLOAN NASH & HABER LLP 480 University Ave, # 1600 2021 04 06
 Toronto
 M5G 1V2

Tel 416-597-9922

Fax 416-597-3370

Fees/Taxes/Payment

Statutory Registration Fee \$65.30
 Total Paid \$65.30

File Number

Claimant Client File Number : 0093020001

SCHEDULE "B" – The 108co Lien

LRO # 51 Construction Lien

Registered as SC1768866 on 2021 04 06 at 14:10

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 1

Properties

PIN 58041 - 0138 LT
 Description PT LT 16 CON 8 WEST GWILLIMBURY AS IN RO261979 SAVE & EXCEPT PTS 1 & 3
 51R37039; TOWN OF BRADFORD WEST GWILLIMBURY
 Address BRADFORD

Consideration

Consideration \$1,870,538.95

Claimant(s)

Name 10853828 CANADA INC.
 Address for Service c/o Goldman Sloan Nash & Haber LLP
 Barristers & Solicitors
 1600-480 University Avenue
 Toronto, ON M5G 1V2

Attention: Paul Hancock
 Tel.: 416-597-7881; Fax: 416-597-3370
 Email: hancock@gsnh.com

I, Mohammad Mehdi Mehdi Haj-Shaifei, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

I, Mohammad Mehdi Mehdi Haj-Shaifei, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner Triumph Development HK Bradford Twin Regency Inc., A10-3000 Highway 7, Markham, ON L3R 4X9
 Name and address of person to whom lien claimant supplied services or materials Triumph Development HK Bradford Twin Regency Inc., A10-3000 Highway 7, Markham, ON L3R 4X9 Time within which services or materials were supplied from 2017/06/08 to 2021/04/06
 Short description of services or materials that have been supplied Provided project management services to develop 10 acre subject land including obtaining all approvals and engaging consultants and related parties to prepare drawings and reports Contract price or subcontract price \$2,613,290.00 inclusive of HST Amount claimed as owing in respect of services or materials that have been supplied \$1,870,538.95 inclusive of HST

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Signed By

Paul Leigh Hancock 480 University Ave, # 1600 acting for Signed 2021 04 06
 Toronto Applicant(s)
 M5G 1V2

Tel 416-597-9922

Fax 416-597-3370

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

GOLDMAN SLOAN NASH & HABER LLP 480 University Ave, # 1600 2021 04 06
 Toronto
 M5G 1V2

Tel 416-597-9922

Fax 416-597-3370

Fees/Taxes/Payment

Statutory Registration Fee \$65.30
 Total Paid \$65.30

File Number

Claimant Client File Number : 0093020001

SCHEDULE "C" – Draft Delbrook Lien Action Dismissal Order

Court File No. CV-21-00000698-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c. C. 30

THE HONOURABLE)
)
JUSTICE) DAY THE ___TH
)
) DAY OF JULY 2023

B E T W E E N:

DELBROOK TRIUMPHANT BUILDERS INC.

Plaintiff

- and -

**TRIUMPH DEVELOPMENT HK BRADFORD TWIN REGENCY INC. and
PRUDENT EXCELLENCE MORTGAGE INVESTMENT CORPORATION**

Defendants

ORDER

THIS MOTION made by the plaintiff Delbrook Triumphant Builders Inc. was read this day at the court house, 75 Mulcaster Street, Barrie, Ontario,

ON READING the consent of the parties, filed,

1. THIS COURT ORDERS that this action, including all counterclaims and crossclaims, are dismissed without costs.

JUSTICE

DELBROOK

- and -

TRIUMPH ET AL.

Plaintiff

Defendant

Court File No: CV-21-00000698-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
In the Matter of the *Construction Lien Act*
R.S.O. 199, c. C-30

Proceeding commenced at BARRIE

ORDER

DAOUST VUKOVICH LLP

Barristers and Solicitors
3000 - 20 Queen Street West
Toronto, ON M5H 3R3

Paul Hancock
LSO # 56791T

Tel: 416-597-6824

Email: phancock@dv-law.com

Lawyers for the Plaintiff

SCHEDULE "D" – Draft 108co Lien Action Dismissal Order

Court File No. CV-21-00000701-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c. C. 30

THE HONOURABLE)
) __DAY THE __TH
JUSTICE)
) DAY OF JULY 2023

BETWEEN:

10853828 CANADA INC.

Plaintiff

- and -

**TRIUMPH DEVELOPMENT HK BRADFORD TWIN REGENCY INC. and
PRUDENT EXCELLENCE MORTGAGE INVESTMENT CORPORATION**

Defendants

ORDER

THIS MOTION made by the plaintiff 10853828 Canada Inc. was read this day at the court house, 75 Mulcaster Street, Barrie, Ontario,

ON READING the consent of the parties, filed,

- 1. THIS COURT ORDERS that this action, including all counterclaims and crossclaims, are dismissed without costs.

JUSTICE

10853828 CANADA INC.

- and -

**TRIUMPH DEVELOPMENT HK
BRADFORD TWIN REGENCY INC.,
et al.**

Court File No: CV-21-00000701-0000

Plaintiff

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
In the Matter of the *Construction Lien Act*
R.S.O. 199, c. C-30

Proceeding commenced at BARRIE

ORDER

DAOUST VUKOVICH LLP
Barristers and Solicitors
3000 - 20 Queen Street West
Toronto, ON M5H 3R3

Paul Hancock
LSO # 56791T

Tel: 416-597-6824

Email: phancock@dv-law.com

Lawyers for the Plaintiff

APPENDIX I

Court File No. CV-22-00677227-00CL

ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

PRUDENT EXCELLENCE MORTGAGE INVESTMENT
CORPORATION

Applicant

- and -

TRIUMPH DEVELOPMENT HK BRADFORD TWIN REGENCY INC.

Respondents


AFFIDAVIT OF GARY CERRATO

I, GARY CERRATO, of the Town of Newmarket, in the Province of Ontario, **MAKE OATH AND SAY** that:

1. I am a Senior Vice President of BDO Canada Limited, and as such have personal knowledge of the matters referred to herein.
2. By Order of the Honourable Madam Justice Conway, dated March 1, 2022 (the "Order"), BDO Canada Limited was appointed as Receiver (the "**Receiver**") over the real property owned by Triumph Development HK Bradford Twin Regency Inc.
3. Pursuant to the Order, the Receiver has provided services and incurred disbursements which are more particularly described in the detailed accounts attached hereto and marked as **Exhibit "A"**.

- 4. The time shown in the detailed accounts attached as **Exhibit "A"** are a fair and accurate description of the services provided and the amounts charged by the Receiver, which reflect the Receiver's time as billed at its standard billing rates.
- 5. The Receiver requests that the Court approve its interim accounts for the period from November 16, 2022 to June 27, 2023 in the amount of \$58,290.46 inclusive of HST of \$6,705.96, for the services set out in **Exhibit "A"**.
- 6. This affidavit is sworn in support of the Receiver's motion for, among other things, approval of its fees and disbursements and those of its legal representatives and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto,)
 in the Province of Ontario, this)
 29th day of June 2023.)



 Commissioner for Taking Affidavits, etc)



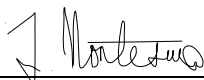
 Gary Cerrato, CIRP, LIT)

Antonio Montesano, a Commissioner, etc.,
 Province of Ontario, for BDO Canada LLP
 and BDO Canada Limited, and
 their subsidiaries, associates and affiliates
 Expires December 21, 2023

This is Exhibit "A" referred to in the affidavit of

Gary Cerrato

Sworn before me this 29th day of June 29, 2023



A COMMISSIONER FOR TAKING AFFIDAVITS

Antonio Montesano, a Commissioner, etc.,
Province of Ontario, for BDO Canada LLP
and BDO Canada Limited, and
their subsidiaries, associates and affiliates
Expires December 21, 2023



Tel: 416 865 0210
 Fax: 416 865 0904
 www.bdo.ca

BDO Canada Limited
 20 Wellington Street E, Suite 500
 Toronto ON M5E 1C5 Canada

Strictly Private & Confidential

Triumph Development HK Bradford Twin Regency Inc.
 A-10-3000 Highway 7
 Markham, ON
 L3R 4X9

Date	Invoice
December 7, 2022	CINV2058508

RE: Triumph Development HK Bradford Twin Regency Inc.

TO OUR FEE FOR PROFESSIONAL SERVICES rendered in connection with our engagement as Court Appointed Receiver for the period November 16, 2022 to November 30, 2022 for the above noted entity.

Our Fee	\$ 13,888.50
HST - 13.00% (#R101518124)	1,805.50
TOTAL	<u>\$ 15,694.00</u>

Summary of Time Charges:

	Hours	Rate	Amount
G. Cerrato, Partner	19.7	525.00	10,342.50
J. Parisi, Partner	6.6	525.00	3,465.00
Administration	0.3	270.00	81.00
Total	<u>26.6</u>		<u>\$ 13,888.50</u>

Staff	Date	Comments	Hours
Cerrato, G	16-Nov-22	Reviewing lien timeline schedules and lien information; prepare R&D; review of correspondence received from counsel.	3.9
Cerrato, G	17-Nov-22	Review of motion record for further distributions; drafting court report.	2.5
Cerrato, G	18-Nov-22	Court report, investigating providing additional lien information received to the service list with IT group; updating Receiver's Website.	2.3
Parisi, J	23-Nov-22	Review memos from Robins Appleby on priority of liens and other payments.	2.2
Cerrato, G	23-Nov-22	Review of legal opinion on Gerrits Lien; review of memo re Prudent mortgage expenses; review of draft notice of motion for Receiver's third report; drafting report.	5.0
Parisi, J	24-Nov-22	Review third report and provide comments to G. Cerrato.	1.3
Cerrato, G	24-Nov-22	Drafting Receiver's 3rd Report; review of comments from J. Parisi; update report; prepare appendices; review of invoice for professional services; update invoice; prepare affidavit of time.	5.0
Parisi, J	25-Nov-22	Review 108's and Delbrook's responding Motion Record.	2.2
Parisi, J	27-Nov-22	Review changes to report as proposed by Robins Appleby.	0.3
Parisi, J	28-Nov-22	Call with G. Cerrato re outstanding matters.	0.6
Cerrato, G	29-Nov-22	Call with counsel; upload documents to site for service list.	1.0



Tel: 416 865 0210
 Fax: 416 865 0904
 www.bdo.ca

BDO Canada Limited
 20 Wellington Street E, Suite 500
 Toronto ON M5E 1C5 Canada

Strictly Private & Confidential

Triumph Development HK Bradford Twin Regency Inc.
 A-10-3000 Highway 7
 Markham, ON
 L3R 4X9

Date	Invoice
June 12, 2023	CINV2376790

RE: Triumph Development HK Bradford Twin Regency Inc.

TO OUR FEE FOR PROFESSIONAL SERVICES rendered in connection with our engagement as Court Appointed Receiver for the period December 1, 2022 to June 8, 2023 for the above noted entity.

Our Fee	\$ 29,389.00
HST - 13.00% (#R101518124)	3,820.56
TOTAL	<u>\$ 33,209.56</u>

Summary of Time Charges:

	Hours	Rate	Amount
G. Cerrato, Partner	40.0	525.00 / 565.00	22,348.00
J. Parisi, Partner	9.3	525.00 / 565.00	5,170.50
T. Montesano, Administrator	5.4	175.00	945.00
I. Dula, Administrator	4.8	175.00	840.00
W. Labonte, Administrator	0.3	285.00	85.50
Total	<u>59.8</u>		<u>\$ 29,389.00</u>

Staff	Date	Comments	Hours
Cerrato, G	1-Dec-22	Review of Delbrook/108 responding motion record.	1.0
Cerrato, G	1-Dec-22	Meeting with R. Cheung from Robins Appleby to discuss lien information.	0.8
Parisi, J	6-Dec-22	Review letter from Blaney's regard WJDS and provide comments to D. Michaud re same. Review factum of receiver.	1.1
Cerrato, G	6-Dec-22	Review of correspondence from counsel on suggested follow up information to be requested as suggested by Chad Kopach; review of details of corporations on the list; responding email to counsel.	1.0
Cerrato, G	8-Dec-22	Attend court hearing for distribution motion.	1.0
Parisi, J	13-Dec-22	Review and approve bank reconciliation	0.1
Parisi, J	14-Dec-22	Review and approve bank reconciliation.	0.1
Parisi, J	15-Dec-22	Review decision of Justice Osborne and corresponding order.	0.8
Cerrato, G	19-Dec-22	Reviewing further information received in support of liens;	2.5
Dula, L	4-Jan-23	Prepared outgoing wire letters, efaxed one to RBC received confirmation, entered, posted wire entry, entered, posted entries & processed printed esigned cheques.	2.7
Montesano, T	4-Jan-23	Prepare and process payment of invoices.	0.8
Cerrato, G	4-Jan-23	Review of legal bills and reconcile; process distribution to Prudent; review of lien settlement; review of GL; review of emails exchanges re lien documentation with accountant.	1.5
Dula, L	5-Jan-23	Received wire confirmation, entered, posted wire entries.	0.5
Cerrato, G	10-Jan-23	Review of legal invoices; review of emails re follow up lien information.	0.5
Parisi, J	11-Jan-23	Review and approve bank reconciliation.	0.2
Dula, L	12-Jan-23	Entered ,posted & processed & printed cheque for mailing.	0.3
Montesano, T	12-Jan-23	Prepare and process payment of invoice.	0.4
Dula, L	19-Jan-23	Entered, posted entries & processed cheque for esignature.	0.2
Labonte, W	20-Jan-23	Prepare bank reconciliation-December 2022.	0.1
Cerrato, G	25-Jan-23	Review of correspondence received; return calls to individuals that paid deposits for the purchase of units.	0.8
Parisi, J	30-Jan-23	Review email related court hearing.	0.1
Cerrato, G	31-Jan-23	Review of correspondence received re upcoming motion re liens; review of financial information for call with counsel.	1.5
Cerrato, G	1-Feb-23	Call with counsel to discuss next steps in dealing with lien claims.	1.0

Staff	Date	Comments	Hours
Parisi, J	6-Feb-23	Discussions with Gary regarding liens, distribution next steps.	1.2
Parisi, J	7-Feb-23	Call with G. Cerrato re lien vetting.	0.6
Parisi, J	9-Feb-23	Call with Sathish to discuss lien issues.	1.1
Cerrato, G	9-Feb-23	Review of information for meeting with S. Kumar to discuss lien review; call with S. Kumar to review lien information.	1.5
Parisi, J	13-Feb-23	Review and approve bank reconciliation.	0.2
Parisi, J	14-Feb-23	Review and respond to email from Sathish.	0.1
Cerrato, G	14-Feb-23	Review of summary prepared by S. Kumar re progress; visit A&Y data room to review reports produced; review of invoice information received to date; draft email to Delbrook to obtain cost ledger for the development.	1.7
Labonte, W	23-Feb-23	Prepare bank reconciliation-January 2023.	0.1
Parisi, J	27-Feb-23	Review information provided related to liens.	0.3
Cerrato, G	27-Feb-23	Review of additional documentation received in support of liens; email exchange with counsel; respond to calls re pre sales event.	1.7
Parisi, J	28-Feb-23	Review info provided by Delbrook's counsel. Review correspondence re March 1 court date.	0.9
Parisi, J	1-Mar-23	Review court order.	0.2
Parisi, J	1-Mar-23	Discussions with Satish regarding liens and information received.	0.2
Cerrato, G	2-Mar-23	Review of additional lien information; call with counsel to strategize on vetting liens.	2.5
Parisi, J	2-Mar-23	Review Delbrook motion materials.	0.5
Cerrato, G	6-Mar-23	Review of lien information.	1.3
Montesano, T	7-Mar-23	Process payment of legal bill.	0.3
Dula, L	9-Mar-23	Entered, posted entries & processed & printed esigned cheque for mailing.	0.3
Parisi, J	15-Mar-23	Call with G. Cerrato regarding liens and issues identified during lien review.	0.6
Cerrato, G	15-Mar-23	Attend to correspondence received; review of updated reporting from S. Kumar; call with S. Kumar to discuss status.	1.0
Labonte, W	17-Mar-23	Prepare bank reconciliation-February 2023.	0.1
Cerrato, G	23-Mar-23	Review of invoice; review of materials and financial information to determine whether any deposits with the City have been made to reconcile with job costs.	1.5
Dula, L	24-Mar-23	Entered, posted & processed cheque or esignature	0.2

Staff	Date	Comments	Hours
Cerrato, G	30-Mar-23	Call with Sathish to discuss issues with his percentage of completion calculations and review of records for pro-forma construction results.	1.0
Cerrato, G	31-Mar-23	Calls to Town of Bradford re deposits on hand; follow up correspondence to Town of Bradford; review of information to understand development charges on the project.	1.5
Parisi, J	3-Apr-23	Review emails regarding lien validation.	0.2
Cerrato, G	6-Apr-23	Call with Sathish to review his analysis of the completion of the project; review of analysis and tie in with invoicing.	1.5
Parisi, J	12-Apr-23	Discussions with G. Cerrato regarding Delbrook's claims.	0.6
Cerrato, G	12-Apr-23	Conference call with D. Michaud and S. Kumar to discuss lien issues and settlement discussions with Delbrook/108; respond to email from Delbrook; review of financial and lien information.	1.5
Parisi, J	14-Apr-23	Review email from Satish regarding Delbrook's lien claim.	0.1
Cerrato, G	17-Apr-23	Review of preliminary lien analysis in preparation for meeting with Delbrook.	1.0
Cerrato, G	18-Apr-23	Pre meeting with S. Kumar; without prejudice meeting with Delbrook/108 and counsel to review quantitative analysis of project completion and lien claim entitlement.	2.5
Montesano, T	19-Apr-23	Review CRA correspondence; e-mail same to G. Cerrato.	0.2
Cerrato, G	20-Apr-23	Conference call together with S. Kumar with Delbrook/108 to review in detail documents in support of their lien claims.	2.0
Cerrato, G	21-Apr-23	Review of further information provided in support of liens from Delbrook/108 Canada.	1.5
Montesano, T	25-Apr-23	Prepare payment of legal bill.	0.3
Cerrato, G	28-Apr-23	Review of correspondence received; call with S. Kumar to review revised percentage of completion calculations; further review of documents in support of percentage of completion.	1.7
Montesano, T	1-May-23	Prepare payment of legal fees; send requisition for approval to G. Cerrato.	0.3
Montesano, T	2-May-23	Prepare Receivers 1st and 2nd Interim reports.	1.5
Parisi, J	2-May-23	Review email from P. Hancock re preserving loans. Instructions to D. Michaud.	0.1
Montesano, T	5-May-23	Send Receivers Interim Reports to G. Cerrato.	0.2
Montesano, T	8-May-23	Fax Receivers 1st and 2nd interim reports to the OSB; send G. Cerrato requisition for approval.	0.7
Dula, L	9-May-23	Entered, posted entries, processed cheque for esignature.	0.2

Staff	Date	Comments	Hours
Cerrato, G	10-May-23	Conference call with S. Kumar and D. Michaud to review updated percentage of completion calculations re liens.	1.0
Cerrato, G	12-May-23	Conference call with S. Kumar and D. Michaud to discuss legal issues with liens and strategize.	1.0
Dula, L	16-May-23	Took notes, entered, posted, disbursement entries& processed cheques for esignatures	0.4
Montesano, T	16-May-23	Prepare and process payment of invoices.	0.4
Montesano, T	23-May-23	Receive and e-mail RT0001 statement to J. Parisi.	0.3
Cerrato, G	26-May-23	Review of updated review of CCDC contract prepared by S. Kumar; discussion with S. Kumar.	1.0



Tel: 416 865 0210
 Fax: 416 865 0904
 www.bdo.ca

BDO Canada Limited
 20 Wellington Street E, Suite 500
 Toronto ON M5E 1C5 Canada

Strictly Private & Confidential

Triumph Development HK Bradford Twin Regency Inc.
 A-10-3000 Highway 7
 Markham, ON
 L3R 4X9

Date	Invoice
June 29, 2023	CINV2395800

RE: Triumph Development HK Bradford Twin Regency Inc.

TO OUR FEE FOR PROFESSIONAL SERVICES rendered in connection with our engagement as Court Appointed Receiver for the period June 5, 2023 to June 27, 2023 for the above noted entity.

Our Fee	\$ 8,307.00
HST - 13.00% (#R101518124)	<u>1,079.90</u>
TOTAL	<u>\$ 9,386.90</u>

Summary of Time Charges:

	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
G. Cerrato, Partner	12.8	565.00	7,232.00
J. Parisi, Partner	1.5	565.00	847.50
T. Montesano, Administrator	0.9	175.00	157.50
l. Dula, Administrator	<u>0.4</u>	<u>175.00</u>	<u>70.00</u>
Total	<u>15.6</u>		<u>\$ 8,307.00</u>

Staff	Date	Comments	Hours
Cerrato, G	5-Jun-23	Review of updated lien analysis; call with S. Kumar to review same.	1.0
Parisi, J	6-Jun-23	Update call with G. Cerrato.	0.6
Montesano, T	7-Jun-23	Discussion with G. Cerrato re opening of RT0002 account, prepare and send request to CRA to open an RT0002 account.	0.5
Dula, L	8-Jun-23	Took notes, entered, posted & processed cheque for esignature.	0.2
Cerrato, G	12-Jun-23	Conference call with Delbrook together with S. Kumar and counsel to review finalized lien analysis; pre call with D. Michaud re same.	1.5
Montesano, T	13-Jun-23	Prepare and process payment of invoice.	0.4
Dula, L	13-Jun-23	Took notes, entered, posted & processed cheque for esignatures.	0.2
Cerrato, G	13-Jun-23	Review of lien settlement agreement; review of draft motion record.	1.0
Cerrato, G	13-Jun-23	Review of GL and review of invoice for professional fees.	0.8
Cerrato, G	22-Jun-23	Review of lien priority memo; review of correspondence from D. Michaud re future fee estimate; drafting report; updating Receiver's website for prior orders.	3.7
Cerrato, G	23-Jun-23	Review of GL; review of previous report; drafting report.	2.0
Parisi, J	26-Jun-23	Review memo regarding priority of liens. Call with G. Cerrato regarding memo and issues with Montenegro.	0.7
Cerrato, G	26-Jun-23	Working on report.	0.8
Parisi, J	27-Jun-23	Review email from Lu Shen and respond to D. Michaud.	0.2
Cerrato, G	27-Jun-23	Drafting fourth report to court.	2.0

APPENDIX J

Court File No.: CV-22-00677227-00CL

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

BETWEEN:

**PRUDENT EXCELLENCE MORTGAGE INVESTMENT
CORPORATION**

Applicant

-and-

TRIUMPH DEVELOPMENT HK BRADFORD TWIN REGENCY INC.

Respondent

APPLICATION UNDER 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

AFFIDAVIT OF IRVING MARKS

I, **IRVING MARKS** of the City of Toronto, in the Province of Ontario **MAKE**

OATH AND SAY:

1. I am a partner of the law firm of Robins Appleby LLP (“**Robins**”), the lawyers for BDO Canada Limited (the “**Receiver**”), as the Court-appointed receiver of the properties municipally known as 2362 Line 8, Bradford West Gwillimbury, Ontario (the “**Property**”) and, as such, have knowledge of the matters contained in this Affidavit.
2. Pursuant to the Order of Justice Conway dated March 1, 2022, the Receiver was appointed as the Receiver of the Property (the “**Receivership Order**”).

- 2 -

3. This affidavit is made in connection with the Receiver's motion for, *inter alia*, the approval of the fees and disbursements of Robins with respect to legal services rendered as independent counsel to the Receiver in connection with these receivership proceedings from November 28, 2022 up to June 27, 2023 (the "**Billing Period**"). Attached as **Exhibit "A"** is a record of the legal services rendered by Robins to the Receiver and disbursements incurred during this period (the "**Robins Invoices**"). To the best of my knowledge, the Robins Invoices provides a fair and accurate description of the activities undertaken and the services rendered by Robins during this period.

4. Attached as **Exhibit "B"** is a summary of the names, year of call, hourly rates, time expended by the lawyers and other professionals at Robins whose time is reflected in the dockets recorded in Exhibit "A".

5. During the Billing Period, the total fees billed by Robins were \$33,233.00 plus disbursement of \$1,120.00 and applicable taxes of \$4,424.29 for an aggregate amount of \$38,777.29.

6. I have reviewed the Robins Invoices and consider the time expended for legal fees charged to be fair and reasonable for the services performed. To the best of my knowledge, the rates charges by Robins are comparable to the rates charged for legal services of a similar nature and complexity by other medium sized firms in the Toronto market.

SWORN remotely by Irving Marks, of the
City of Toronto, in the Province of Ontario,
before me on 6/29/2023, in
accordance with *O. Reg. 431/20*,
Administering Oath or Declaration
Remotely.



DocuSigned by:

Dominique Michaud

5295B6ADCEAA451...

Commissioner for Taking Affidavits
(or as may be)

Dominique Michaud

DocuSigned by:

Irving Marks

G5CB24A4335540C...

IRVING MARKS

THIS IS **EXHIBIT "A"** REFERRED TO IN
THE AFFIDAVIT OF **IRVING MARKS**
SWORN BEFORE ME ON THE 29TH
DAY OF JUNE, 2023

DocuSigned by:
Dominique Michaud
5295B6ADCEAA451...

A Commissioner, Notary, Etc.

DOMINIQUE MICHAUD



ROBINS APPLEBY
BARRISTERS + SOLICITORS

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INVOICE


BDO Canada Limited
500-20 Wellington Street East
Toronto, ON M5E 1C5

DATE: December 31, 2022
CLIENT No.: 7796
FILE No.: 2200186
INVOICE No.: 176742
H.S.T. No.: 12139 1205 RT0001

Attention: Josie Parisi

RE: Receivership - Triumph Development HK Bradford Twin Regency Inc.	
	FOR ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including the following:
28-Nov-22	Complete motion materials; review 108 and Delbrook Affidavit regarding lien validity motion; email to Rebecca Huang regarding scope of lien validity motion and next steps following March hearing;
29-Nov-22	Telephone conference with Gary Cerrato regarding uploading documents; email to Gary Cerrato regarding final report and fee Affidavit; Conference between Anisha Samat and Dominique Michaud regarding Factum for motion for directions; brief review of Receiver's Third Report;
01-Dec-22	Email between Chad Kopach and Dominique Michaud regarding lien motion; telephone conference between Chad Kopach, Eric Golden and Dominique Michaud; coordinate document delivery;
03-Dec-22	Review Responding Factum of Prudent and case law cited; draft Factum for motion for directions;
05-Dec-22	Review and revise Factum; review Prompt I Factum;
06-Dec-22	Telephone conference between Dominique Michaud and Anisha Samat regarding Factum; review and revise final Factum; Revise and finalize Factum; conference between Anisha Samat and Dominique Michaud and Anisha Samat and Wendy Lee regarding same;
07-Dec-22	Email to Chad Kopach from Dominique Michaud;
08-Dec-22	Attend to settlement approval and section 17 motion; various telephone conferences regarding lien investigation; review and revise draft letter to debtor accountant;



12-Dec-22	Receipt and review of Justice Osborne's Endorsement and Order regarding Prudent interest entitlements;	
14-Dec-22	Engage file regarding lien investigation;	
20-Dec-22	Email correspondence regarding various receivership distributions;	
21-Dec-22	Email correspondence regarding document request and status of March 1st motion;	
22-Dec-22	Email correspondence regarding lien investigation;	
23-Dec-22	Engage file regarding lien investigation;	
29-Dec-22	Email regarding lien investigation;	
	OUR FEE	\$7,989.00
	DISBURSEMENTS	
	<i>* Indicates not subject to H.S.T.</i>	
	Notice of Motion/Motion Record	*320.00
	Total Disbursements	\$320.00
	<u>H.S.T. (13%)</u>	
	on \$7,989.00 Fees	1,038.57
	on \$0.00 Disbursements	0.00
	Total H.S.T.	\$1,038.57
	TOTAL FEES, DISBURSEMENTS and H.S.T.	<u>\$9,347.57</u>
	ROBINS APPLEBY LLP	
	Per:	
		
	Dominique Michaud	
	E. & O.E.	
	/WL	

Online bill payment is now available through most major banks. Please use the "Client No." located on this invoice as your online bill payment Account No., save "Robins Appleby LLP" as a "Payee" and proceed to "Pay Bills". If you require assistance, please call our office at 416-868-1080 and a member of the Robins Appleby accounting team would be pleased to help.

Account Due When Rendered. In accordance with section 33 of the *Solicitors Act*, interest will be charged at the rate of **3.00%** per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this statement is delivered.



ROBINS APPLEBY
BARRISTERS + SOLICITORS

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INVOICE


BDO Canada Limited
500-20 Wellington Street East
Toronto, ON M5E 1C5

DATE: January 31, 2023
CLIENT No.: 7796
FILE No.: 2200186
INVOICE No.: 177052
H.S.T. No.: 12139 1205 RT0001

Attention: Josie Parisi

RE: Receivership - Triumph Development HK Bradford Twin Regency Inc.	
FOR ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including the following:	
04-Jan-23	Email regarding lien investigation;
05-Jan-23	Email correspondence regarding lien documentation;
	Email to Catherine Qin from Dominique Michaud regarding common ownership;
10-Jan-23	Engage file regarding completion of Gerrits lien settlement; email to Gary Cerrato regarding lien repayment; email correspondence regarding debtor's accountant documents;
12-Jan-23	Telephone call from Eric Golden; email to Eric Golden from Dominique Michaud;
13-Jan-23	Email correspondence regarding delivery of documents from accounting firm;
16-Jan-23	Telephone conference between Rebecca Huang and Dominique Michaud; email to Eric Golden from Dominique Michaud regarding documents; engage file regarding cross-examinations;
18-Jan-23	Telephone conference between Paul Stewart and Dominique Michaud regarding lien disclosure;
19-Jan-23	Email correspondence between Eric Gionet, Gary Cerrato and Dominique Michaud regarding payment to lien claimants and mortgagee;
25-Jan-23	Review Reply Record for Delbrook; email correspondence regarding cross-examination schedule;



26-Jan-23	Email regarding cross-examinations;	
27-Jan-23	Engage file regarding cross-examination; telephone conference between Paul Hancock and Dominique Michaud; telephone conference between Chad Kopach and Dominique Michaud regarding lien motion;	
30-Jan-23	Engage file regarding common ownership lien motion; email to service list from Dominique Michaud regarding release of court time and abandonment of opposition; email from Patrick Healey to Dominique Michaud;	
31-Jan-23	Engage file regarding construction lien matters;	
	OUR FEE	\$4,060.00
	DISBURSEMENTS	
	<i>* Indicates not subject to H.S.T.</i>	
	Agency Fees – Invoice from WJDS-Times CPA Professional Corp.	800.00
	Total Disbursements	\$800.00
	<u>H.S.T. (13%)</u>	
	on \$4,060.00 Fees	527.80
	on \$800.00 Disbursements	104.00
	Total H.S.T.	\$631.80
	TOTAL FEES, DISBURSEMENTS and H.S.T.	<u>\$5,491.80</u>
	ROBINS APPLEBY LLP	
	Per:	
		
	Dominique Michaud	
	E. & O.E.	
	/WL	

Online bill payment is now available through most major banks. Please use the "Client No." located on this invoice as your online bill payment Account No., save "Robins Appleby LLP" as a "Payee" and proceed to "Pay Bills". If you require assistance, please call our office at 416-868-1080 and a member of the Robins Appleby accounting team would be pleased to help.

Account Due When Rendered. In accordance with section 33 of the *Solicitors Act*, interest will be charged at the rate of **3.00%** per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this statement is delivered.



ROBINS APPLEBY
BARRISTERS + SOLICITORS

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INVOICE

BDO Canada Limited
500-20 Wellington Street East
Toronto, ON M5E 1C5

DATE: February 28, 2023
CLIENT No.: 7796
FILE No.: 2200186
INVOICE No.: 177485
H.S.T. No.: 12139 1205 RT0001

Attention: Josie Parisi

RE: Receivership - Triumph Development HK Bradford Twin Regency Inc.		
FOR ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including the following:		
01-Feb-23	Telephone conference with Gary Cerrato regarding go forward steps to complete lien analysis;	
14-Feb-23	Telephone conference between Paul Hancock and Dominique Michaud regarding lien settlement; email from Gary Cerrato regarding lien settlement;	
22-Feb-23	Email correspondence regarding construction lien settlement proposal;	
27-Feb-23	Review emails from Paul Hancock and respond to Paul Hancock regarding March 1st motion; email to Gary Cerrato regarding lien analysis progress;	
28-Feb-23	Prepare draft Order; review motion materials and prepare for motion;	
	OUR FEE	\$1,890.00
	<u>H.S.T. (13%)</u>	
	on \$1,890.00 Fees	245.70
	on \$0.00 Disbursements	0.00
	Total H.S.T.	\$245.70
	TOTAL FEES, DISBURSEMENTS and H.S.T.	<u>\$2,135.70</u>
	Outstanding account dated: 31-Jan-23 Ref. No. 177052	5,491.80
	TOTAL OUTSTANDING	<u>\$7,627.50</u>



ROBINS APPLEBY
BARRISTERS + SOLICITORS

ROBINS APPLEBY LLP

Per:

Dominique Michaud

E. & O.E.

/WL

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Account Due When Rendered. In accordance with section 33 of the *Solicitors Act*, interest will be charged at the rate of **3.00%** per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this statement is delivered.

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ROBINS APPLEBY
BARRISTERS + SOLICITORS

155

INVOICE

BDO Canada Limited
500-20 Wellington Street East
Toronto, ON M5E 1C5

DATE: March 31, 2023
CLIENT No.: 7796
FILE No.: 2200186
INVOICE No.: 177786
H.S.T. No.: 12139 1205 RT0001

Attention: Josie Parisi

RE: Receivership - Triumph Development HK Bradford Twin Regency Inc.		
FOR ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including the following:		
01-Mar-23	Prepare and attend motion; email correspondence and telephone conferences between Paul Hancock, Chad Kopach and Dominique Michaud; report to client regarding court attendance;	
02-Mar-23	Telephone conference with Gary Cerrato regarding review of lien analysis;	
06-Mar-23	Telephone conference between Paul Hancock and Dominique Michaud regarding lien analysis and interim distribution;	
12-Mar-23	Email correspondence regarding lien analysis;	
17-Mar-23	Review email and enclosures I from Paul Hancock; email to Gary Cerrato regarding timeline for response on lien matters;	
17-Mar-23	Email correspondence regarding lien analysis;	
29-Mar-23	Email to Gary Cerrato; email correspondence between Paul Hancock and Dominique Michaud regarding lien claim;	
	OUR FEE	\$3,220.00
	<u>H.S.T. (13%)</u> on \$3,220.00 Fees	418.60
	on \$0.00 Disbursements	0.00
	Total H.S.T.	\$418.60
	TOTAL FEES, DISBURSEMENTS and H.S.T.	<u>\$3,638.60</u>



ROBINS APPLEBY
BARRISTERS + SOLICITORS

ROBINS APPLEBY LLP

Per:

Dominique Michaud

E. & O.E.

/WL

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ROBINS APPLEBY
BARRISTERS + SOLICITORS

158

INVOICE

BDO Canada Limited
500-20 Wellington Street East
Toronto, ON M5E 1C5

DATE: April 28, 2023
CLIENT No.: 7796
FILE No.: 2200186
INVOICE No.: 178003
H.S.T. No.: 12139 1205 RT0001

Attention: Josie Parisi

	RE: Receivership - Triumph Development HK Bradford Twin Regency Inc.	
	FOR ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including the following:	
06-Apr-23	Email to Catherine Qin from Dominique Michaud regarding lien analysis;	
11-Apr-23	Email to Gary Cerrato regarding lien analysis;	
12-Apr-23	Review BDO lien analysis; telephone conference with BDO regarding lien analysis and prospective settlement;	
18-Apr-23	Prepare for and participate in conference call regarding lien settlement; telephone conference between Paul Hancock and Dominique Michaud regarding lien settlement;	
19-Apr-23	Telephone conference with Gary Cerrato regarding lien analysis;	
	OUR FEE	\$3,150.00
	<u>H.S.T. (13%)</u>	
	on \$3,150.00 Fees	409.50
	on \$0.00 Disbursements	0.00
	Total H.S.T.	\$409.50
	TOTAL FEES, DISBURSEMENTS and H.S.T.	<u>\$3,559.50</u>
	Outstanding account dated: 31-Mar-23 Ref. No. 177786	3,638.60
	TOTAL OUTSTANDING	<u>\$7,198.10</u>



ROBINS APPLEBY
BARRISTERS + SOLICITORS

ROBINS APPLEBY LLP

Per:

Dominique Michaud

E. & O.E.

/WL

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Account Due When Rendered. In accordance with section 33 of the *Solicitors Act*, interest will be charged at the rate of **3.00%** per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this statement is delivered.

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ROBINS APPLEBY
BARRISTERS + SOLICITORS

161

INVOICE

BDO Canada Limited
500-20 Wellington Street East
Toronto, ON M5E 1C5

DATE: May 31, 2023
CLIENT No.: 7796
FILE No.: 2200186
INVOICE No.: 178464
H.S.T. No.: 12139 1205 RT0001

Attention: Josie Parisi

	RE: Receivership - Triumph Development HK Bradford Twin Regency Inc.	
	FOR ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including the following:	
02-May-23	Email to Paul Hancock from Dominique Michaud regarding preservation of lien rights;	
09-May-23	Email to Nafi Zhou from Dominique Michaud regarding lien investigation; review Trial Record regarding Delbrook lien claim;	
10-May-23	Email correspondence regarding lien analysis; telephone conference with BDO regarding lien analysis; meet between Dominique Michaud and Samuel Mosonyi regarding lien research;	
11-May-23	Research proper lien claimant issue and draft memo to Dominique Michaud from Samuel Mosonyi regarding same;	
12-May-23	Telephone conference with BDO regarding lien analysis; draft lien validity opinion; review lien quantum meruit opinion;	
	OUR FEE	\$3,225.50
	<u>H.S.T. (13%)</u> on \$3,225.50 Fees	419.32
	on \$0.00 Disbursements	0.00
	Total H.S.T.	\$419.32
	TOTAL FEES, DISBURSEMENTS and H.S.T.	<u>\$3,644.82</u>
	ROBINS APPLEBY LLP Per: 	
	Dominique Michaud E. & O.E. /WL	



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BARRISTERS + SOLICITORS

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Account Due When Rendered. In accordance with section 33 of the *Solicitors Act*, interest will be charged at the rate of **3.00%** per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this statement is delivered.

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ROBINS APPLEBY
BARRISTERS + SOLICITORS

164

INVOICE


BDO Canada Limited
500-20 Wellington Street East
Toronto, ON M5E 1C5

DATE: June 29, 2023
CLIENT No.: 7796
FILE No.: 2200186
INVOICE No.: 178693
H.S.T. No.: 12139 1205 RT0001

Attention: Josie Parisi

RE: Receivership - Triumph Development HK Bradford Twin Regency Inc.	
FOR ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including the following:	
05-Jun-23	Email correspondence regarding lien claim analysis;
06-Jun-23	Review BDO lien analysis; meeting between Dominique Michaud, Ladislav Kovac and Anisha Samat regarding lien validity legal opinion; meeting with BDO regarding lien analysis position; Conference between Anisha Samat and Dominique Michaud regarding updated memorandum on lien priorities;
07-Jun-23	Telephone conference with BDO regarding application of marshalling doctrine to HST;
09-Jun-23	Email correspondence regarding lien settlement;
11-Jun-23	Commence revising memorandum regarding lien priorities and validity;
12-Jun-23	Telephone conference between Rebecca Huang and Dominique Michaud; telephone conference with BDO and Paul Hancock; Continue drafting memorandum regarding lien validity and priorities;
13-Jun-23	Telephone conference with Gary Cerrato regarding structure of report to court; email correspondence between the court and Dominique Michaud regarding motion for settlement approval; draft settlement agreement; draft motion materials regarding motion to approve settlement and expand Receiver powers;



15-Jun-23	Email correspondence and telephone conference between third mortgagee and Dominique Michaud regarding lien settlement;	
16-Jun-23	Meeting between Dominique Michaud and Anisha Samat regarding construction lien memo;	
19-Jun-23	Draft opinion regarding lien validity opinion; email correspondence with Gary Cerrato regarding quantum of fee reserve;	
21-Jun-23	Draft construction lien validity opinion;	
22-Jun-23	Complete lien validity opinion memorandum;	
26-Jun-23	Telephone conference with Gary Cerrato regarding lien report; review and revise settlement agreement; telephone conference between Rebecca Huang and Dominique Michaud;	
27-Jun-23	Telephone conference between Paul Hancock and Dominique Michaud regarding lien settlement; review email from Debtor regarding opposition to lien settlement;	
	OUR FEE	\$9,698.50
	<u>H.S.T. (13%)</u> on \$9,698.50 Fees	1,260.81
	on \$0.00 Disbursements	0.00
	Total H.S.T.	\$1,260.81
	TOTAL FEES, DISBURSEMENTS and H.S.T.	<u>\$10,959.31</u>
	Outstanding account dated: 31-May-23 Ref. No. 178464	3,644.82
	TOTAL OUTSTANDING	<u>\$14,604.13</u>
	ROBINS APPLEBY LLP Per: 	
	Dominique Michaud E. & O.E. AWL	

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Account Due When Rendered. In accordance with section 33 of the *Solicitors Act*, interest will be charged at the rate of **3.00%** per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this statement is delivered.

THIS IS **EXHIBIT "B"** REFERRED TO IN
THE AFFIDAVIT OF **IRVING MARKS**
SWORN BEFORE ME ON THE 29TH
DAY OF JUNE, 2023

DocuSigned by:

Dominique Michaud

5295B6ADCEAA451...

A Commissioner, Notary, Etc.

DOMINIQUE MICHAUD

**Fees and Disbursement Summary of Robins Appleby LLP for the period from November 28, 2022
up to June 27, 2023**

NAME	YEAR OF CALL	HOURLY RATE (2022/2023)	TOTAL HOURS	TOTAL FEES BILLS
Dominique Michaud	2009	\$630 (2022) \$700 (2023)	9.3 33	\$5,859.00 \$ 23,100
Ladislav Kovac	2014	\$575 (2023)	0.3	\$ 172.50
Samuel Mosonyi	2019	\$365 (2023)	2.7	\$ 985.50
Anisha Samat	2021	\$300 (2022) \$340 (2023)	7.1 2.9	\$2,130.00 \$ 986.00
SUBTOTAL FEES:				\$33,233.00
H.S.T. @13%				\$ 4,320.29
TOTAL FEES:				<u>\$37,553.29</u>
Disbursements				\$1,120.00
H.S.T. @13%				\$104.00
TOTAL DISBURSEMENTS:				<u>\$1,224.00</u>
TOTAL FEES, DISBURSEMENTS & H.ST.				<u>\$38,777.29</u>

**PRUDENT EXCELLENCE
MORTGAGE INVESTMENT
CORPORATION**

- and-

**TRIUMPH DEVELOPMENT HK
BRADFORD TWIN REGENCY INC.**

Applicant

Respondent

Court File No.: CV-22-00677227-00CL

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

APPLICATION UNDER 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

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF IRVING MARKS

ROBINS APPLEBY LLP

Barristers + Solicitors
2600 - 120 Adelaide Street West
Toronto, ON M5H 1T1

Dominique Michaud LSO No.: 56871V

dmichaud@robapp.com
Tel: (416) 360-3795

Anisha Samat LSO No. 82342Q

Email: asamat@robapp.com
Tel: (416) 360-3728

Lawyers for the Receiver, BDO Canada Limited

TAB 3

Court File No.: CV-22-00677227-00CL

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

THE HONOURABLE JUSTICE ●)))	WEDNESDAY, THE 12th DAY OF JULY, 2023
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BETWEEN:

**PRUDENT EXCELLENCE MORTGAGE INVESTMENT
CORPORATION**

Applicant

-and-

TRIUMPH DEVELOPMENT HK BRADFORD TWIN REGENCY INC.

Respondent

APPLICATION UNDER 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

**ORDER
(Lien Settlement Approval and Expansion of Scope of Receivership)**

THIS MOTION made by the BDO Canada Limited ("**BDO**"), in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of the property municipally known as 2362 Line 8, Bradford West Gwillimbury, Ontario (the "**Property**") owned by Triumph Development HK Bradford Twin Regency Inc.'s (the "**Debtor**"), for the relief set out in the Notice of Motion dated June 30, 2023, including the approval settlement of Delbrook Triumphant Builders Inc. ("**Delbrook**") and 10853828 Canada Inc. ("**108co**"); authorizing a final distribution to Delbrook

and 108co and amending the terms of the Order of Justice Conway dated March 1, 2022 (the "**Receivership Order**") to expand the scope of the Receiver's mandate beyond the Receiver of the Property to be the Receiver of the Debtor was heard this day by videoconference.

ON READING the Motion Record of the Receiver and the Fourth Report of the Receiver dated June 30, 2023 (the "**Receiver's Fourth Report**"), the Affidavit of Irving Marks sworn June 29, 2023 (the "**Robins Fee Affidavit**") and the Affidavit of Gary Cerrato sworn June 30, 2023 (the "**BDO Fee Affidavit**") and on hearing the submissions of counsel for the Receiver and any such other counsel or individual as were present, no one appearing for any other person on the service list, although properly served as evidenced by the Affidavit of Wendy Lee sworn July 1, 2023, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service hereof.

DELBROOK AND 108CO LIEN SETTLEMENT

2. **THIS COURT ORDERS** that the settlement of the lien claims of Delbrook and 108co in accordance with the terms of the Settlement of Lien Claims Agreement between the Receiver, Delbrook and 108co (the "**Lien Settlement Agreement**") is hereby approved and the Receiver is hereby authorized to make a distribution to Delbrook and 108co in the total combined amount of \$820,000 as outlined and in accordance with the Lien Settlement Agreement.

APPROVAL OF ACTIVITIES

3. **THIS COURT ORDERS** that the activities of the Receiver as described in the Receiver's

Fourth Report are hereby approved.

4. **THIS COURT ORDERS** that the of the Interim Receipts and Disbursements of the Receiver as described in the Receiver's Fourth Report are hereby approved.

APPROVAL OF FEES AND EXPENSES OF THE RECEIVER

5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its legal counsel as described in the Receiver's Fourth Report, the BDO Fee Affidavit and the Robins Fee Affidavit are hereby approved.

EXPANSION OF RECEIVER MANDATE

6. **THIS COURT ORDERS** that the Receivership Order is hereby amended to expand the scope of the herein receivership from a receivership of the Property to the receivership of the Debtor and accordingly paragraph 2 of the Receivership Order is hereby deleted and replaced with the language in paragraph 7 set out below.

7. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, BDO Canada Limited is hereby appointed Receiver, without security, over the Debtor and all of the assets, undertakings, and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof, and including the Property set out in Schedule "A".

**PRUDENT EXCELLENCE
MORTGAGE INVESTMENT
CORPORATION**

- and-

**TRIUMPH DEVELOPMENT HK
BRADFORD TWIN REGENCY
INC.**

Applicant

Respondent

Court File No.: CV-22-00677227-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

APPLICATION UNDER 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

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD OF THE RECEIVER,
BDO CANADA LIMITED

ROBINS APPLEBY LLP

Barristers + Solicitors
2600 - 120 Adelaide Street West
Toronto, ON M5H 1T1

Dominique Michaud LSO No.: 56871V

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Anisha Samat LSO No. 82342Q

Email: asamat@robapp.com
Tel: (416) 360-3728

Lawyers for the Receiver, BDO Canada Limited