



March 22, 2021

Sent via E-mail

TO THE SERVICE LIST

Sherry A. Kettle
Direct Line: 519.931.3534
Direct Fax: 519.858.8511
skettle@millerthomson.com

File: 082873.0010

Dear Sirs/Mesdames:

Re: Kevin D'Amore v. Banwell Development Corporation et al.
Court File No. CV-11-17088

Attached and being served upon you is the Receiver's Supplementary Motion Record relating to its Thirteenth Report dated February 25, 2021 (the "**Thirteenth Report**") for a motion to be heard on a date to be determined by Regional Senior Justice Thomas.

The Supplementary Report to the Thirteenth Report dated March 22, 2021 (the "**Thirteenth Report Supplement**") sets out a number of developments following the service of the Motion Record containing the Thirteenth Report that has resulted in, among other things:

1. a draft revised Approval and Vesting Order ("**AVO**") in respect of the Banwell Road Parcels 5-10 Transaction, as defined and described in the Receiver's Thirteenth Report;
2. a draft revised Order amending the AVO of Regional Senior Justice Thomas dated June 18, 2019 in respect of the Part 24 Transaction, as defined and described in the Thirteenth Report;
3. a draft revised Ancillary Order removing distributions to unsecured creditors of Royal Timbers; and
4. three (3) alternate Distribution Orders.

The amendments to the AVO in respect of the Banwell Road Parcels 5-10 Transaction and the further amendments to the AVO in respect of the Part 24 Transaction arise from PIN corrections made by the Land Registrar.

The Receiver's recommended distribution to unsecured creditors of Royal Timbers has been amended to include post-receivership interest on the amount owing to Affleck Greene McMurtry LLP and to add an amount owing to D'Amore Construction (2000) Ltd. ("**DAC**"), including post-receivership interest, which was inadvertently omitted.

DAC has advised that it opposes the payment of post-receivership interest to unsecured creditors of Royal Timbers until such time as there is a determination of whether or not there will be a surplus of funds available in the combined estates of Royal Timbers and Banwell after paying principal in full to unsecured creditors of both Royal Timbers and Banwell. DAC's submissions on the interest stops rule and its application to the distribution of post-

receivership interest to unsecured creditors of Royal Timbers is included in the Thirteenth Report Supplement. DAC relies upon the reasons of Regional Senior Justice Thomas dated June 12, 2017 on a motion heard on May 29, 2017 (the "**May 2017 Motion**") in *D'Amore v. Banwell Development Corporation et al*, 2017 ONSC 3455 (the "**Reasons on the May 2017 Motion**") in support of its position.

As further explained in the Thirteenth Report Supplement, the Receiver does not interpret the Reasons on the May 2017 Motion in the same manner as DAC and remains of the view that the "interest stops rule" does not apply to the payment of post-receivership interest in the Royal Timbers estate as there is an anticipated surplus remaining in Royal Timbers following the completion of the Banwell Road Parcels 5-10 Transaction and the payment in full of principal to unsecured creditors of Royal Timbers. Further the Banwell and Royal Timbers receivership estates have not been consolidated and there is no need to consolidate the receivership estates. The Receiver's submissions on the May 2017 Motion, including the interest stops rule, are included in the Thirteenth Report Supplement.

There is no fixed return date in the notice of motion. The motion is to be heard by Regional Senior Justice Thomas on a date to be determined.

The motion is time sensitive. The closing of the Banwell Road Parcels 5-10 Transaction and the Part 24 Transaction have been delayed while the reconfiguration of the lots was completed. The purchasers are anxious to proceed.

If there is no further opposition to the motion, we will be forwarding the materials to Regional Senior Justice Thomas for the motion to be heard in writing or as further directed by his Honour. Accordingly, I would appreciate it if you would let me know by the end of the day on Thursday, March 25, 2021 whether you will be taking any position on the motion or opposing same. Assuming there is no further opposition, other than as already indicated by DAC, the materials will be forwarded to Regional Senior Justice Thomas on or about Friday, March 26, 2021.

If you have any concerns or want to discuss the matter let me know.

Yours truly,



Sherry Kettle

Enclosure

c. Stephen N. Cherniak



SERVICE LIST

TO: **Lerners LLP**
Toronto Office
130 Adelaide Street West
Suite 2400
Toronto, ON M5H 3P5

Cynthia B. Kuehl
Tel: 416.601.2363
Fax: 416.867.2433
Email: ckuehl@lerners.ca

Lawyers for the Applicant, Kevin D'Amore

AND TO: **Pickard Law**
214 St. Clair St.
Chatham, ON N7L 3J7
Tel: 226.996.8770
Fax: 226.996.8771

Steven Pickard
E-mail: steven.pickard@pickardlaw.ca

Lawyers for the Respondent, Scott D'Amore

AND TO: **Chodola Reynolds Binder**
720 Walker Road
Windsor, ON N8Y 2N3

Robert J. Reynolds
Tel: 519.254.6433
Fax: 519.254.7990
Email: r.reynolds@crblaw.ca

Lawyers for the Respondent, J. Murray Troup and 928579 Ontario Limited

AND TO: **Marusic Law**
2491 Ouellette Avenue
Windsor, ON N8X 1L5

Sheri Medaglia
Tel: 519.969.1817
Fax: 519.969.9655
Email: smedaglia@marusiclaw.com



Lawyers for the Execution Creditor, J. Lepera Contracting Inc.

AND TO: **Strosberg Sasso Sutts LLP**
1561 Ouellette Avenue
Windsor, ON N8X 1K5

James K. Ball
Tel: 519.561.6220
Fax: 1.866.316.5311
Email: ballj@strosbergco.com

Lawyers for the Execution Creditor, M.R. Dunn Contractors Ltd.

AND TO: **Strosberg Sasso Sutts LLP**
1561 Ouellette Avenue
Windsor, ON N8X 1K5

William V. Sasso
Tel: 519.561.6222
Fax: 1.866.316.5311
Email: wvs@strosbergco.com

Lawyers for D'Amore Construction (2000) Ltd.

AND TO: **Bartlet & Richardes LLP**
Barristers & Solicitors
374 Ouellette Avenue
Suite 1000
Windsor, ON N9A 1A9

Philip S. Chandler
Tel: 519.253.7461
Fax: 519.253.2321
Email: pchandler@bartlet.com

Lawyer for the Estate of Patrick D'Amore and Simba Group Developments Limited

AND TO: **Law Office of James Branoff**
1710 Golfview Drive
LaSalle, ON N9J 1Y9

Tel: 519.978.2968
Fax: 519.987.0058
Email: jamesbranoff@sympatico.ca

Lawyer for the Estate of Patrick D'Amore and Simba Group Developments Limited



AND TO: **Affleck Greene McMurtry**
Barristers and Solicitors
365 Bay Street
Suite 200
Toronto, ON M5H 2V1

Peter R. Greene
Tel: 416-360-8767
Fax: 519.360.5960
Email: pgreene@agmlawyers.com

Jacob Millar
Tel: 416-360-8732
Fax: 519.360.5960
Email: jmillar@agmlawyers.com

AND TO: **BDO Canada Limited**
633 Colborne Street
Suite 100
London, ON N6B 2V3

Stephen N. Cherniak
Tel: 519.660.2666
Fax: 519.439.4351
Email: scherniak@bdo.ca

Court appointed Receiver of Banwell Development Corporation and Royal Timbers Inc.

AND TO: **MINISTRY OF FINANCE**
33 King Street West, 6th Floor
Oshawa, ON L1H 8E9

Email: Insolvency.Unit@ontario.ca

AND TO: **THE CORPORATION OF THE CITY OF WINDSOR**
400 City Hall Square West
Suite 201
Windsor, ON N9A 7K6

Mark P. Nazarewich, Senior Legal Counsel
Email: mnazarewich@city.windsor.on.ca

AND TO: **GATTI LAW PROFESSIONAL CORPORATION**
400-267 Pelissier Street
Windsor, ON N9A 4K4
Tel: 519.258.1010



Fax: 519.258.0163

Attention: Alfredo R. Gatti
Email: di@argatti.com

AND TO: **HARRISON PENZA LLP**

450 Talbot Street
P.O. Box 3237
London, ON N6A 5J6
Tel: 519.679.9660
Fax: 519.667.3362

David B. Williams
Email: dwilliams@harrisonpensa.com

Lawyer for Anthony Giannotti

