



COURT FILE NUMBER 25-1890619, 25-1890623
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
DOCUMENT THE SECOND REPORT OF THE TRUSTEE OF THE
ESTATES OF TRIMOR MORTGAGE INVESTMENT
CORPORATION AND TRIMOR EQUITY CORPORATION

DATED NOVEMBER 7, 2014

**ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
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- Appendix 2 Statement of Receipts and Disbursements for Trimor Equity Corporation for the period from July 15, 2014 to November 5, 2014

Introduction

Background

1. Trimor Mortgage Investment Corporation (“TMIC”) was incorporated under the laws of the Province of Alberta on February 7, 2005. TMIC is a mortgage investment corporation which raised funds from investors, referred to as the “Preferred Shareholders”, and invested these funds in various real estate properties and mortgages located in Alberta and Saskatchewan.
2. Trimor Equity Corporation (“TEC”) was incorporated under the laws of the Province of Alberta on March 15, 2004. The Trustee (defined below) understands that TEC was incorporated in order to hold properties in trust for TMIC as evidenced in a Declaration of Bare Trust Agreement between TMIC and TEC (the “Trust Agreement”) for certain properties. TMIC and TEC are referred to collectively as the “Companies” and the directors were Jim Irvine and Randy Smyth (the “Directors”).
3. The Companies experienced financial difficulty as a result of the non-performance of several mortgages and the decline in values of certain real estate properties. As a result of these difficulties, the Directors assigned the Companies into bankruptcy pursuant to the *Bankruptcy and Insolvency Act* on July 15, 2014 (the “Date of Bankruptcy”), and Deloitte Restructuring Inc. (“Deloitte”) was appointed as the Trustee (the “Trustee”) of the bankrupt estates (the “Estates”).
4. At the Date of Bankruptcy, TMIC had reported approximately \$15.5 million in debt owing to various unsecured creditors and Preferred Shareholders, while TEC had reported approximately \$47,000 in debt owing to various unsecured creditors. The status of the Preferred Shareholders is at issue and is discussed later in the report. In addition, TEC reported secured claims of approximately \$2.1 million at the Date of Bankruptcy, and there are no known secured creditors in TMIC.
5. Information on the bankruptcy proceedings can be accessed on the website of Deloitte located at www.insolvencies.deloitte.ca.

Notice to Reader

6. This report constitutes the second report of the Trustee (this “Report” or the “Second Report”). The Second Report should be read in conjunction with the first report of the Trustee dated September 24, 2014 (the “First Report”). Details of the First Report are outlined later in this Report.
7. In preparing this Report, the Trustee has relied on unaudited financial information, the books and records of the Companies and discussions with interested parties and stakeholders. The Trustee has not performed an independent review or audit of the information provided.

8. The Trustee assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction, or use of this Report.
9. All amounts are in Canadian dollars, unless otherwise indicated.

Purpose of this Report

10. The purpose of this Report is to provide an update of matters arising since the Date of Bankruptcy (the First Report was restricted in scope), and is in support of the Trustee's motion for an order:
 - 10.1 Approving the actions and conduct of the Trustee as outlined in this Report and the First Report; and
 - 10.2 Approving the settlement terms relating to the Brooks Mortgage (defined below).

General Update

First Meeting of Creditors

11. The first meeting of creditors (the “FMOC”) for the Companies were held at the office of the Trustee on August 7, 2014 and there were approximately 40 Preferred Shareholders represented at the meeting.
12. There were no creditors present for the TEC meeting. The claims of Robert Fox et al (the “Fox TEC Claims”) filed against TEC were disallowed for voting purposes only at the FMOC. The Fox TEC Claims and subsequent disallowances are discussed in more detail later in this Report. As such, there was no quorum and the Trustee’s appointment for TEC was deemed confirmed and the TEC FMOC was adjourned.
13. The financial statements of TMIC for the year-ending December 31, 2013 reported the Preferred Shareholders as creditors of TMIC as opposed to holders of equity positions. The Trustee recognized this treatment of the Preferred Shareholders as holding potential creditor claims for the purposes of the TMIC FMOC, however, the Trustee has not yet finalized its position on the standing of the Preferred Shareholders as either creditor or equity claims in the Estates. This is discussed in further detail later in this Report.
14. The TMIC FMOC proceeded with the Preferred Shareholders in attendance and the Trustee’s appointment was confirmed and five inspectors were appointed (the “Inspectors”). The Inspectors consist of five Preferred Shareholders including Kevin Kelly, Cliff Swan, Don Friesen, Jim Irvine and Elizabeth Bouillet which represent a significant amount of the total Preferred Shareholder claims and total claims in TMIC.
15. Robert Fox et al have disputed the treatment of their claims, the validity of the assignments of the Companies into bankruptcy and the validity of the TMIC FMOC and the appointment of the Inspectors. Some of these issues are discussed in further detail later in this Report.

Creditor Claims Received

16. The Trustee continues to receive claims in the Estates of both TMIC and TEC.
17. To date, the following claims have been received in the Estate of TMIC:
 - 17.1 Two unsecured creditor claims totalling approximately \$41,500;

- 17.2 Four claims filed by Robert Fox et al totalling approximately \$272,000 (the “Fox TMIC Claims”), which have been disallowed but are the subject of an ongoing appeal (as discussed later in this Report); and
- 17.3 Sixty-five claims from Preferred Shareholders totalling approximately \$9,387,000.
18. To date, the following claims have been received in the Estate of TEC:
- 18.1 Two unsecured creditor claims totalling approximately \$15,000;
- 18.2 A single secured claim in the amount of approximately \$330,000 related to a builder’s lien (the “Lien Claim”); and
- 18.3 The Fox TEC Claims totalling approximately \$272,000. These claims were disallowed and the time period for appealing the disallowance has expired.
19. The Trustee is continuing to review and assess the quantum and validity of the claims that have been filed.

Property and Mortgage Assets and Realizations

20. The following is an update on the assets of the Companies that include two properties which were owned by TMIC through TEC at the Date of Bankruptcy pursuant to the Trust Agreement.

Calgary Property

21. 1213 – 1st Street SW, Calgary, Alberta (the “Calgary Property”) – the sale of the Calgary Property had been scheduled to close on or about July 15, 2014 at a price of \$2.45 million (plus GST). However, as a result of the bankruptcies of the Companies, the closing of the sale of this commercial property was postponed.
22. Immediately following the Date of Bankruptcy, the Trustee contacted the potential purchaser for the Calgary Property (the “Calgary Property Purchaser”) and informed them of the bankruptcy. The Calgary Property Purchaser expressed their willingness to continue with the purchase of the Calgary Property, conditional on the sale terms being substantially similar to what they had negotiated with Bernhardt Mortgage Group Inc. (“BMG”), the former Investment Fund Manager for the Companies.
23. BMG commissioned an appraisal of the Calgary Property by Linnell Taylor Lipman & Associates Ltd. (“Linnell Taylor”) effective January 10, 2014 and the appraisal amount was \$2.55 million.
24. The Trustee discussed the Linnell Taylor appraisal of the Calgary Property with its internal real estate group (“Deloitte Real Estate”). The Trustee also attended at the Calgary Property and discussed the marketing and sale of the Calgary Property with the realtor retained by BMG. The Trustee understands that the Calgary Property had been listed for sale since January 2014, but had been vacant for a significant length of time and was not generating any revenue to service the mortgage, property taxes, insurance, utilities, etc. The space was partially renovated, however it was unknown whether such renovations were safe or useful for another tenant. Based on these factors and related

discussions and analysis, the Trustee, with the concurrence and approval of the Inspectors, determined that the sale price of the Calgary Property and terms of the sale were reasonable, the significant details of which were as follows:

- Purchase price of \$2,450,000 plus GST, which was within 5% of the Linnell Taylor appraised value of the Calgary Property;
- As is where is sale, with no representations or warranties provided by the Trustee;
- Closing within 30 days of an executed purchase and sale agreement, or other mutually agreeable timeframe; and
- A portion of the purchase price, specifically \$1,250,000, was established as a vendor take-back mortgage (the "Calgary VTB"), due to be paid by the Calgary Property Purchaser within six months of the closing of the sale. Interest of 6% per annum accumulates on the Calgary VTB and this interest is payable on a monthly basis beginning on November 15, 2014.

25. Prior to the Date of Bankruptcy, BMG and the Calgary Property Purchaser had agreed that the vendor take-back amount would be \$1,470,000. However, when the Trustee began to investigate this proposed transaction, it recognized that the Companies would have had to source additional funds of approximately \$235,000 to clear title and close the sale or, alternatively, the mortgage holder would have had to maintain a mortgage for a similar amount instead of being paid out in full. At the Date of Bankruptcy, the Companies had cash on hand of approximately \$6,900 and it is uncertain as to whether BMG would have been able to close this sale prior to the Date of Bankruptcy.

26. The Trustee also wanted to confirm that the Calgary Property Purchaser had the financial ability to meet the terms of the Calgary VTB and, accordingly, the Trustee met with a representative of the Calgary Property Purchaser to discuss these concerns and was satisfied with the financial covenant of the Calgary Property Purchaser. The Trustee requested that a personal guarantee be provided by a related third-party (who ultimately controls the Calgary Property Purchaser) in support of the VTB and the personal guarantee has been provided.

27. The sale of the Calgary Property to the Calgary Property Purchaser closed on October 1, 2014 and the proceeds were or will be used as follows:

- Payment in full of the first mortgage of approximately \$752,000;
- Payment of realtor commissions of \$102,900;
- Payment of the outstanding property taxes of approximately \$32,000; and
- An undertaking to pay into Court of approximately \$330,000 related to the Lien Claim.

28. The Calgary VTB is for a term of no greater than six months. The Calgary Property Purchaser also has the option to pay off any portion of the Calgary VTB without penalty.

29. The Trustee's view is that the Lien Claim is not valid and it is working with its legal counsel to resolve this matter in due course, which will result in most or all of the corresponding funds being available for the benefit of the creditors of the Estates.

Bearspaw Property

30. 261049 Glendale Road, Bearspaw, Alberta (the "Bearspaw Property") – the Trustee, with the approval of the Inspectors, has retained Royal LePage Foothills to market the Bearspaw Property, setting a list price of \$2.8 million (plus GST) for the approximately 64 acre parcel of land and accompanying house.
31. An outstanding mortgage of \$1.0 million remains on the Bearspaw Property. Since the Date of Bankruptcy, two quarterly interest payments of \$15,000 have been paid by the Trustee to service this mortgage and keep it out of potential foreclosure proceedings.

Mortgages

32. In addition to the two owned properties, the Trustee has continued to pursue the collection of investments that the Companies hold in various mortgages, as summarized below:
 - 32.1 First mortgage of approximately \$3.2 million on serviced home / resort sites near Lake Newell in Brooks, Alberta (the "Brooks Mortgage"). The Brooks Mortgage is discussed in further detail later in this Report.
 - 32.2 Second mortgage on a house and third position on secondary lands, both of which are located in Calgary, as security on a loan amount of approximately \$101,000. The Trustee understands that the holder of the first mortgage holder has foreclosed on and sold the properties. Based on the sales prices obtained by the first mortgage holder, it appears that there will be no funds available to the Estates. The Trustee's counsel is reviewing to see if other avenues are available to collect any funds from the borrower.
 - 32.3 Mortgage of approximately \$322,000 as part of a syndicated construction loan totaling \$1,945,000 on a 12-unit commercial condominium warehouse project located near Calgary. Following the sale of several of the condominiums in August 2014, the Trustee received approximately \$170,000 from the loan administrator as a partial repayment of this loan. Further amounts are expected to be received; however they are contingent on the timing of the sale of the remaining condominiums.
 - 32.4 Mortgage of approximately \$67,000, as part of a syndicated loan totaling approximately \$4.3 million, on a resort / lake land development in Saskatchewan. The Trustee is continuing to review options for realizing on TMIC's position for this loan.

Brooks Mortgage Settlement

33. As at the Date of Bankruptcy, TMIC held a first mortgage of approximately \$3.2 million that is secured by 26 serviced recreational sites (the "26 Lots") near Lake Newell in Brooks, Alberta (the "Brooks Property"). The Trustee understands that the Brooks Mortgage has been in default since August 2012 and that BMG had been taking steps to realize on this investment through a foreclosure application process prior to the Date of Bankruptcy.

34. On June 5, 2014, Nathan Bernhardt, President of BMG, filed an affidavit of default under Court file number 1401-02541 indicating that the mortgage balance owing at June 4, 2014 was approximately \$3.2 million. Since that time, no payments have been made on the Brooks Mortgage and the Trustee understands that the borrower has not sold any of the 26 Lots.
35. The Trustee also understands that BMG retained Linnell Taylor to prepare an appraisal on the 26 Lots effective May 1, 2014. A copy of the appraisal report is included in Appendix 1 of the Trustee's Confidential Supplement to the Second Report dated November 7, 2014 (the "Confidential Second Report").
36. In order to assess any settlement offer, the Trustee had Deloitte Real Estate tour the site and conduct an evaluation and review of the Brooks Property and other surrounding properties for sale in the area. Deloitte Real Estate prepared a net present valuation of the 26 Lots, taking into consideration the following:
 - 36.1 The Linnell Taylor appraisal of the 26 Lots;
 - 36.2 Discussions with realtors concerning general market conditions such as housing starts, absorption rates, and land and housing prices;
 - 36.3 The highest and best use potential in relation to current zoning in place and surrounding uses;
 - 36.4 Land comparables, reflecting listings to further substantiate comparables and conclusions provided within the appraisal;
 - 36.5 Estimated absorption periods and a discount rate relative to market conditions and subject property locational and physical attributes; and
 - 36.6 An estimated en bloc value for the 26 Lots.The details of the analysis are included in Appendix 2 of the Confidential Second Report.
37. Following several discussions between the Trustee and the borrower, the Trustee received an initial settlement offer from the borrower (the "Initial Brooks Offer"), the terms of which are disclosed in the Confidential Second Report. The Trustee discussed the Initial Brooks Offer with the Inspectors, and was granted approval to continue negotiations with the borrower to settle within a specific range. The Trustee continued such negotiations with the borrower and has recently come to an agreement, the details of which are set out in the Confidential Second Report (the "Revised Brooks Offer").
38. The Trustee believes that the Revised Brooks Offer presented by the borrower is reasonable when compared to the appraisal and analysis completed by Deloitte Real Estate, as outlined in the Confidential Second Report.
39. In addition, acceptance of a settlement offer will not require the Estates to fund the corresponding holding costs for the 26 Lots, such as ongoing property taxes. In addition, acceptance of the settlement offer will avoid the costs of realtor commissions or legal costs associated with selling the 26 Lots en bloc or to individual buyers.

40. The Trustee is also aware that there are outstanding property taxes of approximately \$151,000 that would be required to be paid if the Trustee took ownership of the 26 Lots through the foreclosure proceeding and settling in accordance with the Revised Brooks Offer allows the Trustee to avoid this cost.
41. The Trustee is also aware that there is an annual common property assessment charge that is allocated to each of the 26 Lots, and the Revised Brooks Offer allows the Trustee to avoid this cost as well.
42. The Linnell Taylor appraisal and Deloitte Real Estate analysis of the 26 Lots were presented to the Inspectors, along with the other financial details noted above, including the Revised Brooks Offer, and the Inspectors voted to accept the Revised Brooks Offer.
43. The Trustee recommends acceptance of the Revised Brooks Offer, which is scheduled to close within five days of this corresponding Court application.

Receipts and Disbursements and Funds on Hand

44. As of the date of this Report, the Trustee has funds on hand of approximately \$388,000 and its counsel is holding approximately \$266,000. Of this balance, the Trustee recovered \$226,021 from Court and these funds are not currently available for use by the Trustee, as discussed further below. A copy of the Statements of Receipts and Disbursements for TMIC and TEC for the period from July 15, 2014 to November 5, 2014 are attached to this Report as Appendices 1 and 2, respectively.

Ongoing Litigation

45. As outlined in the First Report, the Trustee continues to deal with issues relating to the Fox TMIC Claims and other matters raised by Robert Fox et al.
46. The Trustee disallowed the Fox TEC Claims as it was determined that the information accompanying the Fox TEC claims did not support a valid claim against the Estate of TEC. The disallowances of the Fox TEC claims have not been appealed and the time period to file such an appeal has expired.
47. The Trustee has also disallowed the Fox TMIC Claims on the understanding that such claims were filed as unsecured claims, as opposed to preferred shareholder claims, pursuant to a default judgment that Robert Fox et al obtained against TMIC in the amount of \$265,527 on May 26, 2014 (the "Default Judgement"). After obtaining the Default Judgement, Robert Fox et al filed a writ of enforcement with respect to the Default Judgment and costs in the amount of \$272,415. Pursuant to a garnishee summons, an amount of \$225,880 was paid from the TMIC bank account into Court prior to the Date of Bankruptcy. The proceedings in relation to the Default Judgment were stayed as a result of the bankruptcy of TMIC and funds in the amount of \$226,021 were recovered from the Court by the Trustee pursuant to an Order. These funds are being held by the Trustee until the outcome of the potential applications by Robert Fox et al to annul the bankruptcies of the Companies are heard. The Trustee understands that Robert Fox et al may be applying to the Court to annul the

bankruptcies based on their allegations that the Companies were not insolvent when they were assigned into bankruptcy. The Court ordered that any annulment applications needed to be brought by Robert Fox et al within two weeks of their appeals of the Fox TMIC Claims being decided.

48. The Trustee's position is that the Fox TMIC Claims should be treated no different than the claims of the other Preferred Shareholders. The Trustee understands that Robert Fox et al are seeking to have their Fox TMIC Claims treated as regular creditor claims, which would elevate the status of their claims above the other Preferred Shareholders, and thereby result in a lesser return to the general body of Preferred Shareholders. Robert Fox et al have appealed the disallowances and after several delays by Robert Fox et al, the Trustee has asked for this matter to be heard on November 12, 2014.

Status of Preferred Creditors

49. The Trustee is still assessing its position on the treatment of the claims of the Preferred Shareholders as debt claims versus equity claims, and the Trustee will likely have to make an application to Court to have this matter determined. No date has yet been set as, in the view of the Trustee, the potential annulment applications need to be dealt with first.

Other Matters

50. As part of its assessment of reviewable transactions and preference payments, the Trustee is continuing to review the Companies books and records for the twelve months prior to the Date of Bankruptcy and will report its findings to the Inspectors to determine if any further actions are requested or required.
51. The Trustee is aware of complaints that BMG filed with the Institute of Chartered Accountants of Alberta against two of the former auditors of the Companies. The Trustee's initial position is that any such action would not benefit the stakeholders of the Companies and discussions are ongoing with the Inspectors.
52. The Trustee is also aware of complaints from certain Preferred Shareholders about the fees that have been paid by TMIC and/or TEC to BMG and other parties who had oversight and management of the investments made through TMIC and TEC. The Trustee is continuing to gather and assess information as part of this analysis and will be reporting its findings in due course.

Conclusion and Approvals Sought

53. Due to the ongoing disputes with Robert Fox et al regarding the treatment of their claims, the validity of the assignments of the Companies into bankruptcy and the validity of the TMIC FMOOC and the appointment of the Inspectors, the Trustee is seeking an order from this Honourable Court for the following:

- 53.1 Approving the actions and conduct of the Trustee as outlined in the First Report, this Second Report and the Confidential Second Report; and
- 53.2 Approving the settlement of the Brooks Mortgage in accordance with the terms of the Revised Brooks Offer.

DELOITTE RESTRUCTURING INC.,
in its capacity as Trustee of the Estates of
Trimor Mortgage Investment Corporation and
Trimor Equity Corporation and not in its personal
or corporate capacity



Jeff Keeble CA, CIRP, CBV
Senior Vice-President

Appendices

Appendix 1

Trimor Mortgage Investment Corporation - in Bankruptcy
Statement of Receipts & Disbursements
For the period July 15 to November 5, 2014

	Amount	Note
Cash Receipts		
Recovery of TMIC funds paid into Court	\$ 226,022	1
Receipt of mortgage payout	171,897	2
Cash in bank at date of Bankruptcy	336	
Total cash receipts	398,255	
 Cash Disbursements		
Legal fees and disbursements to August 28, 2014	33,923	
Payment to secured creditor re: mortgage on 1213 - 1st Street SW	18,295	
GST paid on disbursements	1,696	
Payment to Axxess Capital re: correction of pre-bankruptcy error	336	
Total cash disbursements	54,250	
 Excess of Cash Receipts over Cash Disbursements	344,005	
 Remaining cash on hand	\$ 344,005	
 Represented by		
Cash in general account	344,005	
	\$ 344,005	

Notes:

- 1 The Trustee recovered these funds from Court pursuant to an Order of the Court related to a default judgment and garnishee summons obtained by Robert Fox et al prior to the bankruptcy. These funds are to be held by the Trustee until the outcome of the potential applications to annul the bankruptcies of Trimor Mortgage Investment Corporation and Trimor Equity Corporation are heard, as discussed in more detail in the Trustee's Second Report dated November 7, 2014.

- 2 Funds received from a mortgage payout for a syndicated loan.

Appendix 2

Trimor Equity Corporation - in Bankruptcy
Statement of Receipts & Disbursements
For the period July 15 to November 5, 2014

	Amount	Note
Cash Receipts		
Sale of 1213 - 1st Street SW	\$ 1,152,900	1
Deposit re: sale of 1213 - 1st St. SW	47,100	1
Advance from Deloitte LLP	15,055	2
Rental income	12,000	
Cash in bank at date of Bankruptcy	6,606	
Total cash receipts	1,233,661	
Cash Disbursements		
Payment to secured creditor re: mortgage interest on Bears paw property	30,055	
Appraisal fees	3,562	
Insurance	1,640	
Operating costs	695	
GST paid on disbursements	230	
Newspaper advertising	217	
Change of locks	166	
Fees paid to Official Receiver	150	
Payments re: 1213 - 1st St. SW		
Payout of mortgage	752,325	1
Payment of realtor commissions	102,900	1
Payment of outstanding property taxes	31,834	1
Total cash disbursements	923,774	
Excess of Cash Receipts over Cash Disbursements	309,887	
Remaining cash on hand	\$ 309,887	
Represented by		
Cash held in Trustee's trust account	44,046	
Cash held in Trustee's counsel's trust account	265,841	1
	\$ 309,887	

Notes:

- 1 The sale of the 1213 - 1st Street SW Calgary property was for \$2.45 million, of which \$1.25 million is still to be received through a six month vendor take-back mortgage. Funds for the transaction were paid through the Trustee's counsel, a portion of which remains held in trust with the Trustee's counsel.
- 2 This advance was received from Deloitte LLP to pay the quarterly interest on the Bears paw mortgage as TEC did not have sufficient funds at the time the payment was required. TEC will reimburse Deloitte LLP these funds.