

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ED MIRVISH ENTERPRISES LIMITED AND 1 KING WEST INC.

Applicants

- and -

**STINSON HOSPITALITY INC., DOMINION CLUB OF CANADA CORPORATION
AND HARRY STINSON**

Respondents

MOTION RECORD

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receiver and manager of Stinson
Hospitality Inc., Dominion Club of
Canada Corporation, The Suites at 1
King West Inc. and 2076564 Ontario
Inc.

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Tab 1

**ONTARIO
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Applicants

- and -

**STINSON HOSPITALITY INC., DOMINION CLUB OF CANADA CORPORATION
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Respondents

**NOTICE OF MOTION
(Returnable February 4, 2008)**

Ira Smith Trustee & Receiver Inc., in its capacity as court-appointed receiver and manager (the "Receiver") of Stinson Hospitality Inc., Dominion Club of Canada Corporation, The Suites at 1 King West and 2076564 Ontario Inc. (collectively, the "Debtors"), will make a motion before this Honourable Court on Monday, the 4th day of February, 2008, at 2:15 p.m. or as soon thereafter as the motion can be heard at 330 University Avenue, Toronto, Ontario.

THE MOTION WILL BE HEARD ORALLY.

THE MOTION IS FOR:

1. an order approving the Fifth Report of the Receiver dated January 31, 2008 (the "Fifth Report"); and
2. such other relief as this Honourable Court may deem appropriate.

THE GROUNDS FOR THE MOTION ARE:

1. By Order of Madam Justice Pepall dated August 24, 2007 (the "Receivership Order"), the Receiver was appointed receiver and manager of the Debtors;
2. Since its appointment, the Receiver has been overseeing the day-to-day operations of the Debtors. The Receiver has also made substantial efforts to communicate with all of the Debtors' stakeholders in the course of its mandate.
3. The Fifth Report of the Receiver has been filed with this Honourable Court and details the Receiver's actions and activities from January 18, 2008, the date of its Fourth Report (the "Fourth Report") to January 31, 2008, the date of the Fifth Report;
4. Rule 3.02(1) of the *Rules of Civil Procedure*;
5. Section 100 of the *Courts of Justice Act*; and
6. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. the Fifth Report, and the exhibits thereto; and
2. such further and other materials as counsel may advise and this Honourable Court may permit.

Date: January 31, 2008

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**ED MIRVISH ENTERPRISES
LIMITED AND 1 KING WEST INC.**

and

**STINSON HOSPITALITY INC.,
DOMINION CLUB OF CANADA
CORPORATION AND HARRY
STINSON**

Court File No: 07-CL-6913

Applicants

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable February 4, 2008)**

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Tab 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

FIFTH REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.

**IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
STINSON HOSPITALITY INC.,
DOMINION CLUB OF CANADA CORPORATION,
THE SUITES AT 1 KING WEST INC. AND
2076564 ONTARIO INC.**

DATED JANUARY 31, 2008

1.0 INTRODUCTION

This report (the “**Fifth Report**”) is filed by Ira Smith Trustee & Receiver Inc. (“**ISI**”) in its capacity as court-appointed receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of Stinson Hospitality Inc. (“**SHI**”), Dominion Club of Canada Corporation (“**DCC**”), The Suites at 1 King West Inc. (“**Suites**”) and 2076564 Ontario Inc. (“**Housekeeping**”) (collectively referred to as the “**Debtors**” or the “**Companies**”), appointed pursuant to an Order dated August 24, 2007 (the “**Appointment Order**”) issued by the Honourable Madam Justice Pepall. A copy of the Appointment Order is attached as **Exhibit “A”**.

The Receiver filed its first report (the “**First Report**”) on October 1, 2007. The First Report was approved by the Honourable Madam Justice Pepall by Order dated October 5, 2007 (the “**First Approval Order**”).

The Receiver filed its Second Report to Court on October 22, 2007 (the “**Second Report**”) and its Supplementary Report to the Second Report on October 23, 2007 (the “**Supplementary**”).

Second Report). Certain of the Receiver's recommendations in the Second Report were approved by the Honourable Madam Justice Pepall by Order dated October 24, 2007 (the "**Second Approval Order**"). However, the approval of the Receiver's accounts, and those of its legal counsel, Goodmans LLP ("**Goodmans**"), and of the Receiver's actions and activities, all as detailed in the Second Report, was adjourned to permit counsel for Toronto Standard Condominium Corporation No. 1703 ("**TSCC 1703**" or the "**residential condo corporation**") an opportunity to review the Second Report. A return date of November 14, 2007 was established for the scheduling of any issues in that regard. The Second Approval Order approved all of the relief requested at that time by the Receiver, other than for the aforesaid actions, activities and accounts.

The Receiver filed its Third Report on December 28, 2007 (the "**Third Report**"). The Third Report and the balance of the matters not approved by the Second Approval Order were approved by the Honourable Madam Justice Pepall by Order dated January 9, 2008 (the "**Third Approval Order**").

The Receiver filed its fourth report (the "**Fourth Report**") on January 18, 2008. The Fourth Report dealt only with the Receiver's motion for approval of the proposed sales process for the assets, properties and undertakings of the Debtors. The Fourth Report, with some minor amendments, was approved by the Honourable Madam Justice Pepall by Order dated January 24, 2008 (the "**Fourth Approval Order**"). Attached as **Exhibit "B"** is a copy of the Fourth Approval Order.

1.1 Purpose of this Report

The purpose of this Fifth Report is to advise this Honourable Court of:

1. the actions and activities of the Receiver since the date of its Third Report;
2. the financial position of each of the Debtors as at their respective fiscal year ends, December 31, 2007 (on an unaudited basis);
3. the comparison of actual to projected statements of cash flow for the period September 1, 2007 to December 31, 2007, inclusive, and the revised projected statement of cash flow for the period January 1, 2008 to June 30, 2008, reflecting assumptions which give effect to further operational changes implemented by the Receiver's hospitality consultant, CK Atlantis Inc. ("CK"), with the concurrence of Mr. S. O'Brien, General Manager of the Hotel, and Mr. H. Guraya, CFO, Hotel Operations, since the projections contained in the Third Report;
4. the Receiver's position concerning the amended motion of Unite Here Local 75 (the "Union"), which had entered into an Ontario Card Check Neutrality Agreement dated April 18, 2007 (the "Agreement") with SHI, Suites and Housekeeping and which carried out a program to attempt to sign up the majority of the balance of employees of the Hotel Operations to union cards after the appointment of the Receiver;
5. the Receiver's position concerning the application of Segura Investments Ltd. ("Segura"), 1392964 Ontario Limited ("1392964") and Tim Kwan ("Kwan"), in

response to the Receiver's position contained in the Third Report that Segura is an unsecured creditor of SHI for any advances it made to SHI; and

6. the accounting for the receipts and disbursements of the Receiver for the Debtors from August 25, 2007 to December 31, 2007.

1.2 Disclaimer

The Receiver has relied upon the financial records and financial statements of the Debtors, as well as other information supplied by management and employees of the Debtors, its accountants, appraisers, valuers, and other advisors. Our procedures did not constitute an audit or review engagement.

Therefore, the Receiver is unable to and does not express an opinion on any financial statements, or elements of accounts referred to in this Fifth Report, or any of the attached Appendices or Exhibits forming part of this Fifth Report. Our procedures and enquiries did not include verification work or constitute an audit in accordance with generally accepted auditing standards. In the event any of the information we relied upon was inaccurate or incomplete, the results of our analysis could be materially affected. We reserve the right to review all calculations included or referred to in this Fifth Report and, if we consider it necessary, to revise our calculations or conclusions in light of new information as such information becomes available.

2.0 BACKGROUND INFORMATION

In its capacity as Monitor and now as Receiver, ISI has reported in detail to this Honourable Court on the nature of the Debtors' business operations and on the complexities of the legal structure and relationships between each of the corporations comprising the Debtors. The

Receiver refers the readers of this Fifth Report to the previous receivership Reports and the Monitor's Reports for a complete overview of the business, its background and structure.

3.0 ACTIVITIES OF THE RECEIVER

Since its Third Report, the major activities undertaken by the Receiver can be summarized as follows:

- Continued CK's retainer to oversee the day-to-day hotel operations, in accordance with the Interim Management Agreement contained in the First Report as approved by this Honourable Court.
- Continued to provide overall financial controls over the Hotel Operations and to deal with issues arising from the receivership, including creditor, unit owner and potential purchaser inquiries.
- Worked with CK and senior management to explain to the employees of the Hotel Operations the 2008 operating budget for the Hotel Operations and the new incentive based component of all employees' remuneration.
- Continued dialogue with Messrs. B. Smith and A. Wilson, members of the TSCC 1703 Board of Directors, on various issues impacting both TSCC 1703 and Hotel Operations.
- Through its counsel, L. J. Latham of Goodmans, participated in the settlement conference on January 17, 2008 before the Honourable Mr. Justice Lederman between the Applicants and the Board of TSCC 1703.

- Consideration of a proposed Receiver's sales process (the "**Sales Process**"), preparation of the Fourth Report and the documents enclosed as Exhibits to the Fourth Report and attendance in Court for approval of the Fourth Report on January 24, 2008.
- As discussed in Court on January 24, 2008, Mr. I. Smith and Ms. C. Williams of the Receiver, Mr. Latham, certain members of the Board of TSCC 1703 and its legal counsel, Mr. R. Gardiner of Gardiner Miller Arnold LLP, met to discuss certain concerns the Board had with the Sales Process and to provide TSCC 1703 with additional information as to how the Sales Process will operate.
- Maintaining owners' distributions in accordance with existing Rental Management Agreements (the "**RMA's**").
- Obtaining and reviewing the Union and Segura Notices of Motion and related materials.
- Continuing negotiations with certain equipment lessors regarding ongoing lease payments or acquisition of the relevant leased equipment.
- On January 23, 2008, as Receiver of SHI, issued Receiver's Certificate no. 1 to the Receiver of Suites, borrowing the principal amount of \$255,000, with interest, from Suites' Capital Expense Reserve Fund (the "**FF&E fund**"), to fund the outstanding fees and costs of the Receiver and Goodmans, including the unpaid amounts described in the Third Report. No funds were borrowed to make any advances against the Receiver's or Goodmans' fees and costs incurred subsequent to the Third Report. It is anticipated that this Receiver's Certificate will be repaid in a matter of weeks from incentive fees earned by SHI.

4.0 OPERATING RESULTS FOR THE DEBTORS

The corporate structure and operations of each of the Debtors are fully set out in the Monitor's Reports and the First Report and the Receiver refers the reader to those Reports.

4.1 SHI

As reported by the Monitor in its First Report, SHI's revenue stream consists primarily of management fees charged to the rental management program (\$165/unit per month), and an annual management incentive fee calculated as 5% of the aggregate annual net rental revenue of the rental management program.

As DCC and Housekeeping are wholly owned subsidiaries of SHI, and DCC is now operating on a profitable basis, the Receiver has from time to time, as available, obtained funds from DCC and Housekeeping which are in excess of their respective needs, to assist in funding the costs of the receivership. The accounting records for the operations of DCC, Suites and Housekeeping in receivership are maintained by the Hotel's accounting staff. The revenue and expenses of SHI are accounted for by the Receiver on a cash basis as disclosed in the Receiver's Reports to Court in the Statement of Receipts and Disbursements (included in this Fifth Report as **Exhibit "H"**).

4.2 DCC

DCC Operations accounts for the revenue and direct costs of the F&B operations. DCC Operations' financial results are included in DCC Corporate's income statement. DCC's F&B program had been operating at a loss since inception. The Receiver, with the assistance and advice of CK, has implemented various changes to the manner in which F&B was operated by prior management, as previously disclosed in the Receiver's Third Report.

The Receiver has prepared a summary of DCC's operating results for the month of December, 2007 and for the twelve month period ended December 31, 2007. This analysis shows a year to date operating profit of \$183,304 on revenue of \$4.47 million. During the month of December, 2007, DCC produced a net income before tax of \$10,514 on gross revenue of \$517,180. A full summary is attached hereto as **Exhibit "C"**.

The performance of DCC in December 2007, is attributable mainly to continuing strong banquet and catering sales and careful monitoring of labour hours. In December, a \$50,000 charge was taken to reflect overhead expenses.

4.3 Housekeeping

Housekeeping provides all of the housekeeping services for the Hotel Operations. For the twelve month period ending December 31, 2007, housekeeping revenue is \$2.21 million and net income before tax is \$563,088.

A full summary is attached hereto as **Exhibit "D"**.

4.4 Suites

Suites is effectively a nominee on behalf of the residential condominium unit owners in the rental management program. In previous Reports, the Receiver advised of the distributions to the owners during the receivership as at those dates. Exhibit "H" in this Fifth Report indicates the cash receipts and disbursements of Suites.

- Hotel performance, and therefore the rental management program, continues to strengthen. December 2007 revenue was consistent with the prior year being \$878,476 as compared to \$872,169 for a modest gain of \$6,307. The improved performance of Suites,

as described in the Third Report, is due to increases in occupancy on a targeted basis, as established by CK, so that in addition to occupancy increasing, the target market for Suites changes from the price driven, and costly, Expedia business to higher rate corporate business. The average daily rate has increased by 7.8% from \$141.28 for the 2006 fiscal year to \$152.35 in the 2007 fiscal year. This is a reflection of the change in the sales strategy implemented by the Receiver.

- Operating profit for fiscal 2007 was \$5.35 million, representing an increase of \$1.93 million from \$3.42 million in fiscal 2006.

4.5 Owners' distributions

As per the RMA's, the rental manager is required to pay to the Owners their share of net rental revenue (as defined in the RMA's) from the Hotel Operations. The Receiver has not altered the practice of prior management in calculating and paying such distributions.

4.6 Summary of December 2007 Owners' Distribution

A profit distribution calculation schedule is prepared monthly and is sent to the Owners along with their distribution payment. Attached as **Exhibit "E"** is a summary of the December, 2007 distribution. Payments were issued by the Receiver.

Attached as **Exhibit "F"** are the December 2007 and January 2008 communications to owners regarding the Hotel Operations and the owners' distributions.

5.0 REVISED PROJECTED CASH FLOW TO JUNE 30, 2008

Attached as **Exhibit "G"** is the revised consolidated cash flow statement summary showing actual performance in receivership for the months of September through December 2007 inclusive, and the revised budgeted performance for the months of January 2008 through June 2008, inclusive.

This statement shows that, as at December 31, 2007, the operations of SHI, DCC and Housekeeping in receivership, had a cumulative positive cash flow of \$319,879. In the First Report, the Receiver advised that, based on the operations inherited by the Receiver, if no changes were made, the draft preliminary cumulative cash flow at December 30, 2007 was estimated to be a cash deficiency of \$63,055 (Exhibit "K" to the First Report). In the Second Report, the Receiver revised this same estimate to be a cash surplus of \$261,965, after accounting for estimated impact of improvements made by the Receiver, based on CK's recommendations, to the Hotel Operations (Exhibit "F" to the Second Report).

In the Third Report, the Receiver revised this same estimate to be a cash surplus of \$450,241, after accounting for the estimated impact of further improvements made by the Receiver, based on CK's recommendations, to the Hotel Operations (Exhibit "J" to the Third Report). All of these estimates were prior to consideration of the Receiver and legal fees and costs.

The actual positive cash flow as at December 31, 2007 of \$319,879 is after the payment of the expenses totalling \$557,077, as detailed in Exhibit "H" to this Fifth Report, including, the Receiver and legal fees and costs noted in **Exhibit "H"**.

6.0 SEGURA, 1392964 AND KWAN

As the Receiver has previously advised this Honourable Court, the Receiver requested Goodmans to provide its opinion on the Segura security. Such opinion was contained in Exhibit "K" to the Third Report. As described in paragraph 1.1(5) above, Segura, Mr. Kwan and 1392964 have filed an Application (the "**Segura Application Record**") for, among other things, declaratory relief in the form of a rectification of the Loan Agreement and the schedules thereto and an order determining the validity, perfection and priority of the Segura security. The Receiver has reviewed the Segura Application Record, the Affidavit of Tim Kwan sworn January 22, 2008 (the "**Kwan Affidavit**"), and the Affidavit of Harry Stinson sworn January 30, 2008 (the "**Stinson Affidavit**").

The Receiver, as a court officer with obligations to all stakeholders (including Segura) does not formally oppose the rectification of the security. However, the Receiver notes that a rectification of the Segura security will adversely impact unsecured creditors and their recoveries by reducing the amount of money available to them. Therefore, since none of the significant unsecured creditors have come forward on the service list herein and asserted themselves, and given the potential prejudice to the unsecured creditors, the Receiver wishes to ensure that the Court notes the following:

- In paragraph 6 of the Kwan Affidavit, Mr. Kwan swears that Segura agreed to advance the amount of \$1.4 million to SHI and Mr. H. Stinson (the "**Segura Loan**") under a loan agreement dated August 18, 2005, attached to the Kwan Affidavit as Exhibit "A" (the "**Loan Agreement**"). However, no documentary evidence of any advances, such as cancelled cheques, are provided by Mr. Kwan or Segura to confirm how and when

monies were advanced.^{1 2} In fact, the Receiver has confirmed that the banking records of SHI show no receipt of funds from Segura. In the Stinson Affidavit, Mr. Stinson similarly provides no evidence of receipt of funds. However, in paragraph 3 of the Stinson Affidavit, Mr. Stinson swears that the funds were advanced for construction of the Dominion Club. Query then why or how SHI would acknowledge itself indebted for monies it did not receive, and which were used for DCC's facilities and assets, and then pledge SHI's assets as security for such advances. DCC is not a borrower and SHI is not a guarantor.

- Paragraph 7 of the Kwan Affidavit states that Mr. Stinson retained and instructed the late Mr. S. Cohen of the law firm Hacker Gignac Rice, and that he did not participate in providing any instructions to Mr. Cohen. Notwithstanding this, there is a signature on the last page of the Loan Agreement (page 24 of the Segura Application Record) that indicates that Mr. Kwan, in his capacity as President of Segura, and with authority to bind the corporation, has executed the document on behalf of Segura. Mr. Kwan does not swear that it is not his signature or that he did not read the Loan Agreement and the schedules thereto before signing. The Receiver notes that both of the Security documents, which were Schedules "B" and "C" to the Loan Agreement, name Mr. Kwan as secured party, not Segura, and that they were signed as such by Mr. Kwan and SHI. It

¹ In Section 4.2, page 8 of the Monitor's First Report to Court dated June 6, 2007, ISI as Monitor noted that the Segura loan was not even recorded in SHI's books until questioning by the Monitor, and then only \$700,000 was booked as owing to Segura.

² Paragraph 88 of the Stinson Affidavit contained in the Application Record of the Debtors under the *Companies' Creditors Arrangement Act* states that the amount owing to Segura is \$1.35 million. The amount of \$700,000 is an internal accounting allocation to SHI and the balance is allocated elsewhere. Under the Loan Agreement, SHI and Mr. Stinson are the borrowers, Segura is the lender, and Stinson Properties Inc., Harry Stinson Realty Corp. and High Park Lofts Ltd., other corporations that Mr. Stinson is affiliated with, are also parties to the agreement due to additional security being taken from them in connection with this loan.

thus appears to be more than a mere typographical or clerical error. Accordingly, Segura or Mr. Kwan may have a cause of action as against either Mr. Stinson (independent of the debt described in the Loan Agreement) or the law firm Hacker Gignac Rice for not completing the security documents in the name of Segura, if that is what they were instructed to do. This may be an alternate source of recovery for Segura, in addition to the items discussed below.

- There are other parties to the Loan Agreement who have agreed to pledge additional assets as security for the Segura Loan, namely, Stinson Properties Inc., Harry Stinson Realty Corp., and High Park Lofts Ltd. Segura has not provided any evidence as to the value of such security nor has it indicated whether it has taken any efforts to realize on such security. The Receiver is of the view that Segura should avail itself of its claim to such security before seeking to lift the stay of proceedings ordered by this Honourable Court, amend the Loan Agreement and thereby affect the rights and priorities of other creditors in these proceedings.
- Paragraph 11 of the Kwan Affidavit indicates that Mr. Stinson is prepared to assist in executing whatever documents are necessary to correct the Segura security. Paragraph 13 of the Kwan Affidavit states that: "...It is my genuine belief that Mr. Stinson knew of my intentions....". The Stinson Affidavit is then sworn to concur with the Kwan Affidavit. However, it should be noted that Mr. Stinson is a signatory to the Loan Agreement in his personal capacity and that he would have an incentive to swear the Stinson Affidavit and to sign the requested amendment agreement because it might reduce his personal liability to Segura. The Receiver also notes that Mr. Stinson, in seeking leave to bankrupt SHI and DCC, has adduced evidence of support from a number

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of unsecured creditors who indicate that they wish their interests to be protected. Thus, Mr. Stinson's support of the Segura Application could be seen as contrary to his stated suggestion that he wishes to assist unsecured creditors.

- The Receiver also notes that Segura's request for its costs of the Application are inappropriate as this is an issue of their own making.

As an officer of the Court with duties to all creditors, the Receiver is of the view that the relief sought by Segura would be prejudicial to other creditors and is therefore not appropriate in the circumstances.

7.0 UNITE HERE LOCAL 75

In the Third Report, the Receiver explained its understanding that (i) the Union has been certified as the official bargaining agent of the employees who provide housekeeping services, except for any management, supervisory, clerical or sales staff, (ii) such individuals are all employees of 2076564, and (iii) there is no collective bargaining agreement, or any other written documentation covering the employees and the Union, except for an agreement dated April 18, 2007 between the Union, SHI, Suites and Housekeeping named an Ontario Card Check Neutrality Agreement (the "Neutrality Agreement"). The Receiver's understanding is that this is the only written agreement between the Companies and the Union. In return for no labour disruptions, which had occurred prior to the entering into the Neutrality Agreement, SHI, Suites and Housekeeping agreed to "...take a positive approach to the unionization of Employees...".

A copy of the Neutrality Agreement was enclosed as Exhibit "N" to the Third Report.³

The Union has brought a motion returnable February 4, 2008 for an Order granting the Union leave, if required, to apply to the Ontario Labour Relations Board (the "OLRB") to be certified as the exclusive bargaining agent for certain of the Debtors' employees, or in the alternative, an Order varying the stay provisions of the Appointment Order to require the Receiver to abide by the terms of the Neutrality Agreement.

The Court has determined that the stakeholders in these proceedings would be best served by the Sales Process being run by the Receiver without delay. The Receiver believes that in order to generate the best possible return under the circumstances, the Sales Process must be carried-out efficiently and without unnecessary complications. It is possible that if potential purchasers are already bound by certain collective bargaining obligations, a pending certification proceeding involving the Union before the OLRB could negatively impact the Sales Process. The Receiver believes that lifting or modifying the stay of proceedings to allow the Union's application before the OLRB would not be in the best interests of the stakeholders, including the employees.

Moreover, the Receiver believes it would be inappropriate at this time to devote considerable attention and expense in having to comply with the requirements of the Neutrality Agreement. Therefore, the Receiver intends to contest the Union's motion on a number of grounds, including the following:

³ For all background information reported by the Receiver regarding the Union and correspondence between the Receiver and the Union, see Section 11.0 of the Receiver's Third Report dated December 27, 2007 and Exhibits "N" through "P" inclusive, attached thereto.

- The Receiver is of the view that it is not bound by the Neutrality Agreement as that agreement was entered into prior to the commencement of the receivership. The Receiver advised in a letter dated December 17, 2007 that it had disclaimed the Neutrality Agreement.
- The Receiver believes that there is nothing in the *Labour Relations Act, 1995* or otherwise that prevents it from repudiating the Neutrality Agreement.
- The Receiver believes that the stay of proceedings imposed by this Honourable Court in the Appointment Order precludes the Union from commencing an application for certification at the OLRB without first obtaining leave from this Honourable Court.
- The Union's certification application is not an appropriate circumstance in which to lift the stay of proceedings.
- To the Receiver's knowledge, there are no outstanding and unresolved employee complaints or concerns, as all issues which have been brought to the attention of the Receiver or management have been appropriately addressed.

In contesting the Union's motion, the Receiver is not opposing the Union's exercise of its right to initiate certification proceedings before the OLRB. Rather, the Receiver simply believes that, weighing the interests of all stakeholders, including employees, who will likely benefit from an expedient and efficient Sales Process, now is not an appropriate time for certification proceedings to go forward in this matter.

8.0 OTHER MATTERS

8.1 Complaint by Mr. J.R. (Bob) Verdun

Mr. Verdun issued a letter dated December 17, 2007 to The Institute of Chartered Accountants of Ontario ("ICAO"), which was received by them on December 19, 2007. The purpose of Mr. Verdun's letter was to file a formal complaint and to request disciplinary action against Mr. Ira Smith, in his professional capacity as a chartered accountant. Mr. Verdun alleged various breaches by Mr. Smith of the ICAO Rules of Professional Conduct, all connected with Mr. Smith's handling of the within receivership. ICAO, under cover of its letter dated January 8, 2008 addressed to Mr. Smith, provided a copy of Mr. Verdun's written complaint and requested a response no later than January 22, 2008.

A review of Mr. Verdun's letter to ICAO indicates that the matters complained of arose solely from the activities of ISI as both Monitor and Receiver of the Debtors. Substantially all of the matters complained of were copied from Mr. Verdun's affidavits sworn April 19, 2007 and October 3, 2007 in these proceedings, both of which were considered by this Honourable Court. Any other matters in his letter were, in the Receiver's view, inaccurate and unsubstantiated.

The Receiver incurred time in assisting Mr. Smith in replying to ICAO. By his letter dated January 21, 2008, Mr. Smith responded to the complaint.

Mr. Smith advised ICAO that the Receiver would advise this Honourable Court of the filing of the complaint and his reply thereto, but would not provide any documentation between Mr. Verdun, ICAO and Mr. Smith, unless this Honourable Court so directed.

9.0 RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

The consolidated statement of receipts and disbursements of the Receiver for the period from August 25, 2007 to December 31, 2007 is attached hereto as **Exhibit "H"**.

10.0 CONCLUSION AND RECOMMENDATIONS

For the reasons set out in this Fifth Report, the Receiver respectfully requests that this Honourable Court:

1. dismiss the application of Segura, 1392964 and Kwan and deny the relief requested therein;
2. dismiss the application of the Union and deny the relief requested therein;
3. approve the Fifth Report, the actions and activities of the Receiver described therein; and
4. such other advice and directions from this Honourable Court that the Receiver or its legal counsel deems appropriate in the circumstances.

**

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All of which is respectfully submitted at Toronto, Ontario this 31st day of January, 2008.

IRA SMITH TRUSTEE & RECEIVER INC.

solely in its capacity as the Court-Appointed Receiver
of Stinson Hospitality Inc., Dominion Club of Canada Corporation,
The Suites at 1 King West Inc., and 2076564 Ontario Inc. and not in its
personal Capacity



Per:

President

GOODMANS\5547709.5

Tab A

Court File No.07-CL-6913

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAM) FRIDAY, THE 24TH DAY
)
JUSTICE PEPALL) OF AUGUST, 2007



ED MIRVISH ENTERPRISES LIMITED AND 1 KING WEST INC.

Applicants

- and -

STINSON HOSPITALITY INC., DOMINION CLUB OF CANADA CORPORATION AND
HARRY STINSON

Respondents

ORDER

THIS MOTION, made by the Applicants for an Order, *inter alia*, pursuant to section 101 of the *Courts of Justice Act*, R.S.O 1990 c. C.43, as amended (the "CJA") appointing Ira Smith Trustee & Receiver Inc. as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Stinson Hospitality Inc. ("SHI"), Dominion Club of Canada Corporation ("Club Corp."), The Suites at 1 King West Inc. ("The Suites") and 2076564 Ontario Inc. ("2076564") was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the motion record of the Applicants (the "Applicants' Motion Record"), the Affidavits of David Mirvish, sworn March 26, 2007, August 1, 2007, and August 16, 2007, the Affidavit of Hank Kates sworn August 16, 2007 the Affidavits of Harry Stinson sworn February 27, 2007, April 18, 2007, August 14, 2007, and August 17, 2007, the Affidavit of Camillo Casciato sworn June 5, 2007, the Affidavit of Steve O'Brien sworn August 17, 2007, the Affidavit of Robert Verdun sworn June 6, 2007, the Affidavit of Christopher Jaglowitz sworn

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August 14, 2007, the Affidavit of Johan Demeester sworn August 8, 2007, and the exhibits to the foregoing, the Minutes of Settlement dated April 20, 2007 between the Applicants, SHI and DCC, and the reports of Ira Smith Trustee & Receiver Inc. (the "**Monitor**"), court-appointed monitor of all of the assets, undertaking and property of SHI, Club Corp. The Suites and 2076564 (collectively, the "**Companies**") dated June 6, 2007, June 22, 2007, August 3, 2007 and August 16, 2007 and the exhibits thereto, and the Affidavit of David Mirvish sworn March 26, 2007 and the exhibits thereto, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for the Companies and Mr. Stinson, and counsel for Toronto Standard Condominium Corporation No. 1703 (the "**Residential Condo**") and Mr. Demeester, and on reading the consent of Ira Smith Trustee & Receiver Inc. to act as receiver:

SERVICE

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

APPOINTMENT AS RECEIVER

2. THIS COURT ORDERS that, pursuant to section 101 of the CJA, Ira Smith Trustee & Receiver Inc. (the "**Receiver**") is hereby appointed Receiver, without security, of all of the Companies' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, whether or not used in the hotel rental management and food and beverage program carried on at the premises known municipally as One King West, Toronto, Ontario (collectively, the "**Property**").

DISCHARGE OF MONITOR

3. THIS COURT ORDERS that the appointment of Ira Smith Trustee & Receiver Inc. as monitor of the Companies pursuant to the Order of Mr. Justice Campbell dated April 23, 2007, as amended by the Order of Mr. Justice Campbell dated June 7, 2007 and the Order of Mr. Justice Campbell dated June 26, 2007, in these proceedings be and the same be hereby terminated and that the actions and activities of the Monitor as described in its report dated August 3, 2007 and August 16, 2007 be and the same be hereby approved, and that the Monitor be and is hereby discharged and any claims of any nature whatsoever against the Monitor, in

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relation to its activities as Monitor (save in respect of gross negligence and wilful misconduct), shall be forever barred and extinguished and no proceedings alleging gross negligence or wilful misconduct shall be commenced against the Monitor without leave of the Court on notice to the Monitor.

RECEIVER'S POWERS

4. 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 and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the 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 manage, operate and carry on the hotel management and food and beverage businesses of the Companies (collectively, the "**Business**"), including the power and authority to enter into any agreements or incur any obligations in the ordinary course of such Business, to cease to carry on all or any part of such Business, or to perform or cease to perform any contracts of the Companies;
- d) 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 powers and duties conferred by this Order;
- e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the Business of the Companies or any part or parts thereof;

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- f) to receive and collect all monies and accounts now owed or hereafter owing to the Companies and to exercise all remedies of the Companies in collecting such monies, including, without limitation, to enforce any security held by the Companies in relation to the Business;
- g) to settle, extend or compromise any indebtedness owing to the Companies in relation to the Business;
- h) to execute, assign, issue and endorse documents of whatever nature in respect of any or all of the Property, whether in the Receiver's name or in the name and on behalf of the Companies, for any purpose pursuant to this Order;
- i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Companies in relation to the Business;
- j) 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 Companies in relation to the Business, the Property or the Receiver, and to settle or compromise any such proceedings. *notice of such settlement will be provided by the receiver to Mr. Jacques, counsel to Mr. Ginnson. + the companies in recovery SWP*
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;
- k) subject to the terms of this Order, to market any or all of the Business or the Property, including advertising and soliciting offers in respect of the Business or the Property, or any part or parts thereof, and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- l) to sell, convey, transfer, lease, assign or refinance the Business or the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$1 million; and

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- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;

- m) subject to the terms of this Order, to apply for any vesting order or other orders necessary to convey the Business or the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- n) to report to, meet with and enter into discussions with such affected Persons (as defined below) as the Receiver deems appropriate concerning all matters relating to the Business, the Property or the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Companies;
- q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Companies, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Companies in relation to the Business;
- r) to exercise any shareholder, partnership, joint venture or other rights which the Companies may have, including, without limitation, any rights of the Companies in connection with or pursuant to (i) the declaration, by-laws or other constating

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documents of the Residential Condo or Toronto Standard Condominium Corporation No. 1726 (the "Commercial Condo"), (ii) the reciprocal agreement made with effect as of September 9, 2005 between the Residential Condo, the Commercial Condo and 1 King West Inc., as assigned and assumed pursuant to an assignment and assumption of reciprocal agreement dated as of March 6, 2006, and (iii) the lease operating agreement dated the 18th day of November, 2005 between the Residential Condo and Commercial Condo; and

s) to take any steps reasonably incidental to the exercise of these powers,

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 (as defined below), including the Companies, and without interference from any other Person.

5. THIS COURT ORDERS that the Receiver, in operating the Business of The Suites, subject to further of this Court, is hereby authorized and directed to make distributions to residential condominium unit owners who participate in the hotel program, all pursuant to existing arrangements between the Companies and such condominium units owners.

6. THIS COURT ORDERS that the Receiver shall, on or before September 4, 2007, determine which parties should receive notice in the event that the Applicants wish to seek the vesting order contemplated in the Applicants' Motion Record.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

7. THIS COURT ORDERS that (i) the Companies; (ii) all of the Companies' current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; (iii) Harry Stinson, Stinson Properties Inc. and all companies related to, or affiliated with, any of the Companies; (iv) the Residential Condo and 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; (v) the Commercial Condo and 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; (vi) the Applicants and all entities related to, or affiliated with, any of the Applicants; and (vii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice

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of this Order (all of the foregoing, collectively being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

8. 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 other affairs of the Companies, 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 8 or any other paragraph 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.

9. 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.

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NO PROCEEDINGS AGAINST THE RECEIVER

10. 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 COMPANIES OR THE PROPERTY

11. THIS COURT ORDERS that no Proceeding against or in respect of any aspect of the Companies, the Business or 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 Companies (in respect of any aspect of the Business) or the Property are hereby stayed and suspended pending further Order of this Court. For greater certainty, nothing in this Order shall prevent the continuation of the proceeding Court File No. 07-CV-329252PD1.

NO EXERCISE OF RIGHTS OR REMEDIES

12. THIS COURT ORDERS that all rights and remedies against the Companies in relation to the Business, 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 nothing in this paragraph shall (i) empower the Receiver or the Companies to carry on any business which the Companies are not lawfully entitled to carry on, (ii) exempt the Receiver or the Companies from compliance with statutory or regulatory provisions relating to health, safety or the environment, (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

13. 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 Companies, without written consent of the Receiver or leave of this Court.

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CONTINUATION OF SERVICES

14. THIS COURT ORDERS that all Persons having oral or written agreements with the Companies in relation to the Business 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 Companies in relation to the Business 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, and that the Receiver shall be entitled to the continued use of the Companies' current telephone numbers, facsimile numbers, internet addresses and domain names in relation to the Business, 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 Companies 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

15. 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 in relation to the Business, including without limitation, the sale or refinancing of all or any of the Business or the Property (in accordance with, and subject to the provisions of this Order) and the collection of any accounts receivable in relation to the Business in whole or in part, 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. Nothing herein shall prevent the Receiver from continuing with existing banking arrangements, subject to the Receiver maintaining management and control over existing bank accounts.

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EMPLOYEES

16. THIS COURT ORDERS that all employees of the Companies in relation to the Business shall remain the employees of the Companies until such time as the Receiver, on the Companies' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

17. 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 Business or 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 Business or the Property in accordance with, and subject to, the balance of the provisions of this Order (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 any part of the Business or the Property shall be entitled to continue to use the personal information provided to it, and related to the Business or the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Companies, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

18. 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 any 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

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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 any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

19. 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. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the *Bankruptcy and Insolvency Act* or by any other applicable legislation.

RECEIVER'S ACCOUNTS

20. THIS COURT ORDERS that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Business and the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "**Receiver's Charge**").

21. THIS COURT ORDERS the Receiver and its legal counsel shall pass their 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.

22. 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 normal 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.

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FUNDING OF THE RECEIVERSHIP

23. 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 \$500,000 (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 Business and 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.

24. 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.

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

26. 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.

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 Companies.

~~29. THIS COURT ORDERS that this Order shall apply notwithstanding the pendency of any other proceedings involving any of the Companies and the provisions of any federal or provincial statute, and any and all steps taken by the Receiver pursuant to this Order shall be valid as against any and all parties including any trustee in bankruptcy that may be appointed in respect of any of the Companies.~~ MP

30. 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.

31. 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.

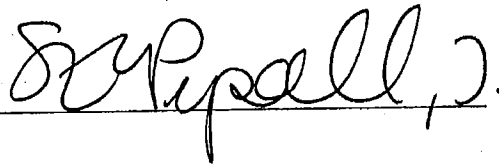
~~32. THIS COURT ORDERS that the Applicants shall have their costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicants' security or, if not so provided by the Applicants' security, then on a substantial indemnity basis to be paid by the Receiver from the Companies' estate with such priority and at such time as this Court may determine.~~ MP

33. 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.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

AUG 28 2007

PER/PAR: 



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SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Ira Smith Trustee & Receiver Inc., the receiver and manager (the "Receiver") of the assets, undertakings and properties of Stinson Hospitality Inc., Dominion Club of Canada Corporation, The Suites at 1 King West Inc. and 2076564 Ontario Inc. appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the 24th day of August, 2007 (the "Order") made in an action having Court file number 07-CL-6913, 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 (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, 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

SMR

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 defined in the Order) 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 _____, 2007

Ira Smith Trustee & Receiver Inc., solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: _____

Name:

Title:

SM

STINSON HOSPITALITY INC., DOMINION
CLUB OF CANADA CORPORATION AND
HARRY STINSON

Respondents

- and -

ED MIRVISH ENTERPRISES LIMITED AND
1 KING STREET WEST INC.

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

ORDER

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Solicitors for the Applicants

Tab B

Court File No. 07-CL-6913



ONTARIO
SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE)

FRIDAY, THE 24th DAY

MADAM JUSTICE PEPALL)

OF JANUARY, 2008

ED MIRVISH ENTERPRISES LIMITED AND 1 KING WEST INC.

Applicants

- and -

STINSON HOSPITALITY INC., DOMINION CLUB OF CANADA CORPORATION
AND HARRY STINSON

Respondents

ORDER
(SALES PROCESS ORDER)

THIS MOTION, made by Ira Smith Trustee & Receiver Inc., in its capacity as court-appointed receiver and manager (the "Receiver") of all of the assets, undertakings and property of Stinson Hospitality Inc., Dominion Club of Canada Corporation, The Suites at 1 King West Inc. and 2076564 Ontario Inc. (collectively, the "Debtors"), for an order, *inter alia*, approving the Fourth Report dated January 18, 2008 (the "Fourth Report") and the actions and activities of the Receiver detailed therein, and for an order approving the sales process outlined in the Fourth Report (the "Sales Process") in relation to the Receiver's right, title and interest in all of the assets, undertakings and property of the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fourth Report and the exhibits thereto, filed, and on hearing the submissions of counsel for the Receiver, the Debtors, Harry Stinson, Ed Mirvish Enterprises Limited, 1 King West Inc. and Toronto Standard Condominium Corporation 1703, ^{and Mr. DeMeester} no one appearing for the other persons listed in Schedule "A" hereto, although duly served as appears from the Affidavit of Service of Laura Bigham, sworn January 18, 2008, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged to the date of actual service, that the service, including the manner of service of the motion materials, is hereby approved and validated, that the motion is properly returnable today, and that all parties entitled to notice of this motion have been properly served and further service thereof is hereby dispensed with.

FOURTH REPORT

2. **THIS COURT ORDERS** that the Fourth Report and the actions and activities of the Receiver as reported therein be and are hereby approved.

SALE PROCESS

3. **THIS COURT ORDERS** that the sale process described in the Receiver's Fourth Report and the bid procedures and conditions contained therein (collectively, the "Sale Process") is approved, and the Receiver is authorized and directed to implement and to take all steps necessary or desirable to complete and fulfil all requirements, terms, conditions and steps contemplated therein, and any information received by the Receiver or its respective directors, officers, counsel, agents, professional advisors or employees related to or arising from the Sale

Process shall be kept confidential and be utilized only for the purposes of the Sale Process and for no other purpose.

4. **THIS COURT ORDERS** that, without limiting the effect of paragraphs 7 to 9 of the Receivership Order granted by the Honourable Madam Justice Pepall on August 24, 2007 (the "Receivership Order"), the Debtors and their respective directors, officers, counsel, agents, professional advisors and employees, and Harry Stinson, Ed Mirvish Enterprises Limited, 1 King West Inc., and ^{- Toronto -} Standard Condominium Corporation 1703 shall cooperate fully with the Receiver with regard to the Sale Process, and shall provide the Receiver with such assistance as the Receiver may request from time to time to enable the Receiver to conduct meetings ^{and/or} to negotiations with prospective purchasers, to review and evaluate all bids submitted in the course of the Sale Process, and to determine the preferred bid for submission to the Court if the Receiver determines in its sole discretion that there is a bid that is in the best interests of the estate to accept.

5. **THIS COURT ORDERS** that the confidentiality agreement to be executed by all prospective purchasers seeking to participate in the Sales Process, attached as Exhibit "D" to the Fourth Report, is hereby approved.

save + except that the words "unless otherwise agreed to in writing by the Receiver or authorized by the Court." are to be added to the end of Article 1(c).

6. This court orders that the wording in Exhibit "C", paragraph 6 should be changed from "a simple majority" to "the requisite number of".

ENTERED AT / INSCRIT À TORONTO
 ON / BOOK NO:
 LE / DANS LE REGISTRE NO.:

JAN 25 2008

S. Pepall, J.

PER/PAR: *[Signature]*

SCHEDULE "A"

SERVICE LIST

ED MIRVISH ENTERPRISES LIMITED
AND 1 KING WEST INC.

and
STINSON HOSPITALITY INC.,
DOMINION CLUB OF CANADA
CORPORATION AND HARRY STINSON

Court File No: 07-CL-6913

Applicants

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

ORDER

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Counsel to Ira Smith Trustee & Receiver Inc., in its
capacity as receiver and manager and former monit
of Stinson Hospitality Inc., Dominion Club of Cana
Corporation, The Suites at 1 King West Inc. and
2076564 Ontario Inc.

GOODMANS\5541416.3

Tab C

DOMINION CLUB OPERATIONS 12 MONTHS DECEMBER 31, 2007	DINING ROOM	BISTRO ON KING	ROOM SERVICE	BANQUET	GARAGE	THE VAULT	12th FLOOR	TOTAL	OCT ACTUAL	NOV ACTUAL	DEC ACTUAL	TOTAL	PROJECTED 3 MONTHS OCT-DEC
TOTAL F & B REVENUE	\$148,628	\$612,104	\$512,970	\$2,449,543	\$546,745	\$20,423	\$176,976	\$4,467,389	\$ 477,070	\$ 546,590	\$ 517,180	\$1,540,840	\$ 1,145,966
COST OF SALES	19,502	192,168	146,478	482,061	-	7,449	48,108	895,766	84,951	84,275	91,139	250,375	
TOTAL WAGES & BENEFITS	106,911	296,999	154,203	742,315	206,882	9,955	144,922	1,662,187	187,697	154,048	180,462	522,207	
	126,413	489,167	300,681	1,224,376	206,862	17,404	193,030	2,557,953	272,658	238,323	271,601	782,582	
INCOME BEFORE OPERATING EXPENSES	22,215	122,937	212,289	1,225,167	339,863	3,019	(16,054)	1,909,436	204,412	308,267	245,579	758,258	
OPERATING EXPENSES	5,792	33,151	3,348	101,123	239,943	268	-	383,625	18,919	41,358	32,305	92,582	
DEPARTMENT INCOME (LOSS)	16,423	89,786	208,941	1,124,044	99,920	2,751	(16,054)	1,525,811	185,493	266,909	213,274	665,676	469,448
NON ALLOCATED EXPENSES													
Administrative and General								229,432	7,899	12,263	87,284	107,386	47,100
Sales and Marketing								298,169	9,710	9,996	20,730	40,436	36,399
Repairs and Maintenance								360,613	20,949	56,921	34,861	112,751	74,946
Utilities								112,543	8,000	8,000	500	15,500	39,000
Property tax								154,550	13,750	13,750	13,750	41,250	41,250
Equipment lease								187,200	46,625	47,326	46,615	140,566	141,243
OPERATING PROFIT (LOSS)								1,342,507	106,873	148,256	202,760	457,889	387,938
								\$ 183,304	\$ 78,920	\$ 118,653	\$ 10,514	\$ 207,787	\$ 87,510

- NOTES:
- 1) Readers are cautioned that this statement must be read in conjunction with the Receiver's disclaimer contained in the Fifth Report to Court.
 - 2) No provision for depreciation or other non cash items are provided for in the above.
 - 3) Wages for the garage are net of \$400,512 paid by the TSCC 1703 to December 31, 2007.
 - 4) No provision for use of assets is included.
 - 5) The historical books and records cannot be relied upon. Also see the Receiver's Disclaimer contained in the Fifth Report.
 - 6) The projected income for Oct -Dec did not include the garage operation.
 - 7) Michie was renamed Bistro on King in December.
 - 8) Michie was renamed Bistro on King in December.

Tab D

HOUSEKEEPING OPERATIONS													
12 MONTHS ENDED DECEMBER 31, 2007													
# ROOMS	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	TOTAL
REVENUE	\$116,886	\$103,036	\$131,796	\$135,040	\$172,534	\$222,884	\$182,208	\$199,568	\$205,574	\$181,897	\$182,922	\$138,390	\$1,972,535
Guest Room Cleaning Charge	-	275	125	647	1,547	975	15,599	49,780	(31,135)	338	173	28,847	67,171
Special Cleaning Charge	-	-	22,586	-	-	-	-	-	-	-	-	-	22,586
Common Area Cleaning Charge	9,300	8,400	-	14,400	-	14,400	39,060	11,160	14,400	11,160	11,700	12,090	146,070
Dominion Club Cleaning Charge	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL REVENUE	126,186	111,711	154,507	150,087	174,081	238,059	236,867	260,508	189,839	193,395	194,795	179,327	2,209,362
WAGES & BENEFITS	8,086	8,615	9,339	9,549	9,340	8,017	6,471	6,471	6,263	6,471	6,263	6,478	91,363
Management	53,329	51,835	64,859	63,609	76,736	79,750	72,126	86,509	83,156	63,180	57,129	42,558	794,776
Room Attendants	14,013	11,626	13,952	12,932	18,546	22,872	19,987	17,834	18,540	19,680	15,844	14,164	199,990
Housekeeping Supervisor	17,373	15,846	20,801	19,091	20,863	24,220	23,641	24,972	22,083	20,969	23,109	20,384	253,352
Housepersons	(11,485)	(11,160)	(10,080)	(21,600)	(22,320)	-	(11,904)	(11,904)	(11,520)	(11,904)	(11,520)	(11,904)	(147,301)
Condo recovery	26,434	21,227	25,657	16,909	24,976	26,738	28,538	27,182	30,500	26,760	22,046	25,843	302,810
Benefits	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL WAGES & BENEFITS	107,750	97,989	124,528	100,490	128,141	161,597	138,859	151,064	149,022	125,156	112,871	97,523	1,494,990
OPERATING EXPENSES	1,038	1,344	2,213	143	1,211	2,959	21,142	1,089	4,380	2,084	51,340	61,341	160,284
OPERATING PROFIT	\$17,398	\$12,378	\$27,766	\$49,454	\$44,729	\$73,503	\$76,866	\$108,355	\$35,437	\$66,155	\$30,584	\$20,463	\$563,088

NOTES:
 1) Readers are cautioned that this statement must be read in conjunction with the Receiver's disclaimer contained in the Fifth Report to Court.

Tab E

**THE SUITES AT 1 KING WEST INC.
DECEMBER PROFIT DISTRIBUTION**

Net Rental Revenue - December, 2007	\$ 320,878
Income distributed as follows:	
Distribution amount paid	\$ 315,345
Non-resident tax deductions	2,863
TSCC 1703 condo fees	698
Accounts Receivable	<u>1,972</u>
Total	\$ 320,878

Tab F

