

**IN THE MATTER OF THE BANKRUPTCY OF
TARN CONSTRUCTION CORPORATION**

**TRUSTEE'S REPORT TO THE FIRST MEETING OF CREDITORS
ON PRELIMINARY ADMINISTRATION**

BACKGROUND

Tarn Construction Corporation (“**Tarn Construction**”) is a corporation governed by the *Business Corporations Act* (Ontario) and was incorporated on June 17, 2015. Tarn Construction is a wholly-owned subsidiary of Tarn Financial Corporation (“**Tarn Financial**”), a corporation formed under the *Business Corporation Act* (Ontario). Tarn Financial owned (1) the Delta Toronto East hotel in Toronto, Ontario (the “**Delta Hotel**”) and (2) certain lands adjacent to the Delta Hotel on which a condominium project was planned (the “**Development Lands**”, and together with the Delta Hotel, the “**Tarn Financial Real Property**”).

Tarn Construction was formerly involved in a three-phase condominium development project on the Development Lands known as “The Kennedys” (the “**Development Project**”). The first phase of the Development Project contemplated the construction of a 644-unit condominium development encompassing a 32-storey tower and a 30-storey tower, of which substantially all of the units were pre-sold (“**Phase 1**”) by Tarn Construction.

Tarn Construction, as vendor, entered into agreements of purchase and sale (“**APSs**”, and each an “**APS**”) with purchasers for the condominium units in Phase 1 of the Development Project (the “**Purchasers**”), pursuant to which, among other things, each Purchaser was to make a deposit following execution of the respective APS (collectively, the “**Purchasers’ Deposits**”). In connection with the sale of the Phase 1 condominium units, Tarn Construction entered into Agreements to Co-operate (“**ATCs**”, and each an “**ATC**”) with real estate brokers and agents (the “**Brokers**”), whereby a commission would be earned by the Brokers at various stages of the Development Project (the “**Commission**”). The terms of the ATCs contemplated that the first portion of the Commission would be payable after an APS was entered into by a Purchaser and Tarn Construction, and the respective Purchasers’ Deposits, post-dated cheques and mortgage pre-approval were received.

Based on the books and records of Tarn Construction, various consultants, engineers, architects, contractors and other sale agents (collectively, the “**Consultants**”) were also utilized in connection with the Development Project.

Tarn Financial Winding Up Proceedings

On February 13, 2017, Volkan Basegmez, Cem Bleda Basegmez, Anil Rukan Basegmez, BA&B Capital Inc., Serdar Kockturk and Kaan Holdings Inc. commenced an application before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16 seeking an Order (the “**Winding Up Order**”) winding up Tarn Financial (the “**Winding Up Proceedings**”) and appointing KPMG Inc. (“**KPMG**”) as liquidator over the

effects and estate of Tarn Financial (in such capacity, the “**Liquidator**”) for that purpose. The Winding Up Order was granted on September 17, 2017 and was effective on September 25, 2017.

Tarn Construction Purchasers’ Deposits

Immediately following its appointment, the Liquidator confirmed that Purchasers’ Deposits were being held in trust with Tarn Financial’s development and real estate counsel, Bennett Jones LLP (“**Bennett Jones**”). Effective on September 25, 2017, the Liquidator retained Bennett Jones to continue to provide services with respect to the Development Project under the direction of the Liquidator, and certain Purchasers’ Deposits continued to be received by Tarn Construction in accordance with the terms of the APSs and held in trust by Bennett Jones.

Tarn Financial Claims Procedure

On April 13, 2018, the Court issued an Order approving a procedure for the solicitation, resolution and barring of certain claims against Tarn Financial (the “**Claims Process**”). The Liquidator sent a Claims Process notice and proof of claim to, among others, all known creditors of Tarn Financial as of September 25, 2017. Due to the interrelated operations of Tarn Financial and Tarn Construction, the Liquidator also sent notice of the Claims Process to all known creditors of Tarn Construction as of September 25, 2017 (as evidenced by the books and records of Tarn Construction) in the event that any of the known creditors of Tarn Construction may have claims against Tarn Financial.

The Liquidator received numerous claims in the Claims Process which the Liquidator determined were not claims against Tarn Financial, but which were potential claims against Tarn Construction (the “**Tarn Construction Claims**”), including certain claims submitted by Brokers pursuant to ATCs, and by Consultants in respect of services rendered in connection with the Development Project. The Tarn Construction Claims were expressly disallowed against Tarn Financial pursuant to an Order of the Court. The Liquidator recorded the Tarn Construction Claims but did not validate the Tarn Construction Claims as they did not form part of the Claims Process.

Certain matters remain in the Winding Up Proceedings, however all of the Tarn Financial Real Property – including the Development Lands – was sold by the Liquidator, on behalf of Tarn Financial, during the Winding Up Proceedings and the proceeds thereof have been and/or will be distributed pursuant to Orders of the Court in the Winding Up Proceedings

Tarn Construction Receivership Proceedings

Also on April 13, 2018, KPMG was appointed as receiver and manager of the properties, assets and undertakings of Tarn Construction (in such capacities, the “**Receiver**”) by Order of the Court pursuant to section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43 (such proceedings being the “**Receivership Proceedings**”).

As previously noted, the Purchasers’ Deposits were held in trust for the benefit of the Purchasers. In connection with the Receivership Proceedings, the Court also granted a separate Order on April 13, 2018, among other things, approving the Receiver to undertake a procedure in connection with the confirmation and assertion of the Purchasers’ Deposits remitted to Tarn Construction (the “**Deposit Confirmation Procedure**”).

As the Development Lands were owned by Tarn Financial, Tarn Construction did not have any assets and was financially reliant on Tarn Financial. As such, the Receiver did not undertake a claims process for claims against Tarn Construction.

Following its appointment, the Receiver determined that Tarn Construction would be unable to satisfy the terms of the APSs, and on May 9, 2018, the Court granted an Order (the “**Deposit Return Procedure Order**”), among other things, entitling the Receiver to terminate the APSs on behalf of Tarn Construction, without damages, and declaring that upon termination of the APSs the only obligation of the Receiver thereafter would be to return the Purchasers’ Deposits on behalf of Tarn Construction, in accordance with the terms of the APSs and further Order of the Court regarding the return of the Purchasers’ Deposits.

The Receiver, on behalf of Tarn Construction, terminated 626 APSs and returned (either in person or via regular mail) 626 Purchasers’ Deposits totaling \$29,751,544 in aggregate, pursuant to the Deposit Return Procedure Order in the Receivership Proceedings.

On May 30, 2023, the Court granted an Order (the “**May 30 Order**”), among other things, authorizing the Receiver to make an assignment in bankruptcy on behalf of Tarn Construction and authorizing KPMG to act as trustee in bankruptcy of Tarn Construction, and discharging the Receiver subject to the Receiver filing a certificate with the Court certifying that it had completed its administration of the Receivership Proceedings. The Receiver delivered its discharge certificate on June 15, 2023.

BANKRUPTCY PROCEEDINGS

On June 14, 2023, the Receiver filed an assignment in bankruptcy on behalf of Tarn Construction pursuant to section 49 of the *Bankruptcy and Insolvency Act* (the “**BIA**”), and KPMG was appointed as trustee of the bankrupt estate (the “**Trustee**”) by the Official Receiver, subject to affirmation by the creditors of the Trustee’s appointment or substitution of another trustee by creditors at the first meeting of creditors.

On June 20, 2023, notice of the first meeting of creditors, a list of creditors, proof of claim form and proxy were sent to all known creditors of Tarn Construction and on June 21, 2023, a notice of the bankruptcy and the first meeting of creditors was published in the National Post.

The activities of the Trustee since its appointment have primarily consisted of statutory work in accordance with the provisions of the BIA.

CAUSES OF INSOLVENCY

As previously discussed, Tarn Construction incurred obligations in connection with the Development Project, but it did not have any assets as the Development Lands were owned by Tarn Financial and construction on the Development Lands did not commence. Further, financing for the Development Project had not been secured at the time of the Liquidator’s appointment, and as such the only funding available to Tarn Construction was through intercompany loans from Tarn Financial. In light of Tarn Financial’s Winding Up Proceedings, Tarn Construction had no reasonable prospect of continuing the Development Project.

The limited books and records available for Tarn Construction (including the Tarn Construction Claims) indicate significant amounts outstanding to Brokers and Consultants, among Tarn Financial and other creditors.

FINANCIAL POSITION/ASSETS

For the reasons noted above, Tarn Construction's Statement of Affairs does not indicate any assets. As a result, it is anticipated that there will be no funds available for distribution to the creditors of Tarn Construction.

BOOKS AND RECORDS OF THE BANKRUPT

As at the date of this report, the Liquidator is in possession of the limited books and records of Tarn Construction and has taken steps to preserve same in accordance with statutory requirements. As a result, the Trustee has not taken possession of Tarn Construction's books and records.

SECURED CREDITORS

The Tarn Construction's Statement of Affairs indicates that there were no known secured creditors as at the date of bankruptcy.

Pursuant to a deemed trust audit conducted by Canada Revenue Agency ("CRA") on or about March 2, 2018, for the period from January 1, 2017 to January 31, 2018, deductions at source owing by Tarn Construction were assessed in the amount of \$220.48.

SECURITY FOR UNPAID WAGES – S.81.3 CLAIMS

The Trustee understands that certain individuals who worked on a contract basis for Tarn Construction, were terminated on or before November 2, 2017, and that there are no outstanding amounts for unpaid wages.

PREFERRED CREDITORS

The Tarn Construction's Statement of Affairs indicates that there were no known preferred creditors as at the date of bankruptcy.

UNSECURED CREDITORS

The Company's Statement of Affairs indicates that there are 77 unsecured creditors with claims totaling approximately \$11.5 million, including amounts owing to Brokers, Consultants, and approximately \$9.6 million owing to Tarn Financial.

PROVABLE CLAIMS

As at 9:00 a.m. on the date of this report, the Trustee has recorded Proof of Claims filed, as follows:

| | | Claims Filed | Amount | Proxies in Favour | Amount |
|------------------|--------------|---------------------|-------------------|--------------------------|-------------------|
| | Notes | (#) | (\$) | of Trustee | (\$) |
| | | | | (#) | |
| Secured | | Nil | Nil | Nil | Nil |
| Unsecured | <i>1</i> | 3 | 420,711.52 | 2 | 414,725.97 |
| Total | | 3 | 420,711.52 | 2 | 414,725.97 |

Note 1: The Trustee received a total of 3 proofs of claim against Tarn Construction. The Trustee received 3 proofs of claim containing unsecured claims, 1 of these proofs of claim also included preferred claims.

PREFERENCE PAYMENTS AND TRANSFERS AT UNDER VALUE

The Trustee has not performed a review of the Tarn Construction's books and records, with respect to potential fraudulent preferences, settlements or transfers at undervalue, as defined in the BIA. It is the intention of the Trustee to discuss the scope of its review with the Inspectors to be appointed at the first meeting of creditors.

TRUSTEE'S FEES

Pursuant to the May 30 Order, the Liquidator was directed to set aside and hold monies to fund the fees and disbursements of these bankruptcy proceedings, as needed, up to the amount of \$25,000.

OTHER

Further information related to Tarn Construction's bankruptcy proceedings may be obtained from the Trustee's website at www.kpmg.com/ca/TarnConstruction

Dated at Toronto, Ontario this 5th day of July, 2023

KPMG Inc.,
in its capacity as Trustee of the estate of
Tarn Construction Corporation and not in its personal capacity

Per: *Katherine Forbes*
Katherine Forbes, LIT