

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF SUNGARD AVAILABILITY
SERVICES (CANADA) LTD./SUNGARD, SERVICES DE
CONTINUITE DES AFFAIRES (CANADA) LTEE

APPLICATION OF SUNGARD AVAILABILITY SERVICES
(CANADA) LTD./SUNGARD, SERVICES DE CONTINUITE
DES AFFAIRES (CANADA) LTEE UNDER SECTION 46 OF
THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED

**SUPPLEMENTARY AFFIDAVIT OF MITCHELL STEPHENSON
(Sworn August 15, 2022)**

I, Mitchell Stephenson, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:


1. I am an associate lawyer at the law firm of Fasken Martineau DuMoulin LLP, Canadian counsel to Digital Toronto Nominee, Inc. ("**Digital Realty**"). As such, I have personal knowledge of the matters described in this affidavit, except where such matters are based upon information and belief, in which case I have stated the source of that information and believe it to be true.

1. I swear this affidavit in support of the motion of Digital Realty for, among other relief, relief pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

2. Capitalized terms not defined herein have the meanings given to them in the affidavit of James Zografos, sworn August 11, 2022.

3. I am advised by Bryan T. Glover of Steel Rives LLP, U.S. counsel to Digital Realty and Digital Realty Trust, Inc., the ultimate parent company of Digital Realty, that on August 12, 2022, the U.S. Bankruptcy Court entered an order on Digital Realty's emergency motion for limited relief from the automatic stay. A copy of the entered order is attached as **Exhibit "A"**.

SWORN BY MITCHELL STEPHENSON
of the City of Toronto, in the Province of
Ontario, before me at the City of Toronto, in
the Province of Ontario, on August 15, 2022
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.

DocuSigned by:

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RAAJAN AERY
Commissioner for Taking Affidavits

DocuSigned by:

8A6E4EF09DF34D5...

MITCHELL STEPHENSON

This is Exhibit “A” referred to in the Supplementary Affidavit of Mitchell Stephenson sworn by Mitchell Stephenson at the City of Toronto, in the Province of Ontario, before me on August 15, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

2A8F12D4C051474...

Commissioner for Taking Affidavits (or as may be)

RAAJAN AERY

ENTERED

August 12, 2022

Nathan Ochsner, Clerk

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

SUNGARD AS NEW HOLDINGS, LLC, *et al.*,

Debtors.

Chapter 11

Case No. 22-90018 (DRJ)

(Jointly Administered)

(Docket No. 518)

**ORDER ON DIGITAL REALTY'S EMERGENCY MOTION
FOR LIMITED RELIEF FROM THE AUTOMATIC STAY**

THIS MATTER having come before the Court on *Digital Realty's Emergency Motion for Limited Relief from the Automatic Stay* [Dkt. No. 518] (the "**Motion**"),¹ the Court having reviewed the Motion, supporting declarations, and any responses thereto, and finding that proper notice of the Motion has been given, and finding that good cause exists to grant relief from the automatic stay as requested in the Motion, determines that the Motion should be granted. Therefore, it is hereby **ORDERED** as follows:

1. The Motion is **GRANTED**.
2. The automatic stay is modified to authorize Digital Realty to submit a notice of default and opportunity to cure to Debtor pursuant to Exhibit G and Section 15.1.1 of the Lease.
3. For the avoidance of uncertainty, the automatic stay does not preclude Digital Realty from submitting a claim against the Surety (as defined below) under the Lease Bond or the taking of any further steps necessary for seeking payment under the Lease Bond (collectively, "**Potential Claim**").

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

4. Notwithstanding anything in this Order or the Motion to the contrary, each of the following entities' rights, remedies, claims and defenses are preserved with respect to the Potential Claim under the Lease Bond: Westchester Fire Insurance Company, Chubb Insurance Company of Canada, Federal Insurance Company, each as surety in their role as an issuer of bonds, individually and collectively, and together with their respective direct and indirect subsidiaries, parent companies, and affiliates, whether in existence previously, now, or formed or acquired hereafter, co-sureties, fronting companies, companies which any of them may procure to issue or deliver any bonds and/or related instruments and/or similar instruments issued, executed or delivered by the "Surety" (as defined below) on behalf, at the request or with the consent of any of the Debtors and/or their non-debtor affiliates, and reinsurers, and the successor and assigns of each of them (individually and collectively, the "Surety"). Nothing in this Order or the Motion shall constitute a waiver or estoppel, in whole or in part, of any and all defenses which have accrued or which may in the future accrue with respect to the Potential Claim or otherwise, and the foregoing reservations of the Surety shall remain in full force and effect unless and until waived, in writing, by an authorized representative of the Surety. To the extent there is a conflict between terms used in this Order and/or the Motion ("Motion Documents") and the subject Lease Bond (including its related instruments and/or documents), the Lease Bond and its related instruments and/or documents shall govern.

5. Notwithstanding Bankruptcy Rule 4001(a)(3), this Order shall be effective immediately upon entry of it by the Court.

Signed: August 12, 2022.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**SUPPLEMENTARY AFFIDAVIT OF MITCHELL
STEPHENSON
(Sworn August 15, 2022)**

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