

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

**STANBARR SERVICES LIMITED, JANODEE INVESTMENTS LTD.,
MEADOWSHIRE INVESTMENTS LTD., REGARD INVESTMENTS LTD., 1563503
ONTARIO LIMITED, BEAVER POND INVESTMENTS LTD., THE CANADA TRUST
COMPANY, RITA ROSENBERG and 527540 ONTARIO LIMITED**

Applicants

- and -

**METROPOLIS PROPERTIES INC. GINKGO MORTGAGE INVESTMENT
CORPORATION, CANADA INVESTMENT CORPORATION, 2413913 ONTARIO
LIMITED, 2421955 ONTARIO INC. and SAI MOHAMMED**

Respondents

APPLICATION UNDER Sections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

FIFTH REPORT OF THE RECEIVER

INTRODUCTION AND BACKGROUND

1. On June 16, 2014 MNP Ltd. (“MNP”) was appointed Receiver, without security, of the properties municipally known as 91-93 Scollard Street, Toronto (the “**Property**”) then thought to be owned by Metropolis Properties Inc. (the “**Debtor**”), pursuant to the Order (the “**Appointment Order**”) issued by Mr. Justice Brown of the Ontario Superior Court of Justice (the “**Court**”) (as he then was). Attached hereto and marked as **Appendix “A”** is a copy of the Appointment Order.
2. Unbeknownst to the Applicants, shortly before the receivership application was heard, the first mortgagee, Canada Investment Corporation (“**CIC**”), sold the Property under power of sale to 2413913 Ontario Limited (“**241**”).

3. The Receiver filed its first report (the “**First Report**”) with this Court in support of a motion heard on July 10, 2014.
4. In response to the July 10, 2014 motion, Mr. Justice Brown issued an Endorsement (the “**July 10th Endorsement**”) providing for, among other things, the following orders:
 - a) Restraining the parties named (the “**Named Parties**”) in the July 10th Endorsement from interfering with the Receiver;
 - b) Directing CIC to deliver to the Receiver the following:
 - i. its complete file in respect of the sale of the Property;
 - ii. a full accounting of the sale; and
 - iii. all proceeds realized from the sale of the Property; and
 - c) That on July 18, 2014 the Named Parties shall appear for a continuation hearing of the hearing held on July 10, 2014.
5. The Receiver filed its second report (the “**Second Report**”) dated July 14, 2014 to provide the Court with an update on its activities since the First Report.
6. On July 18, 2014, Mr. Justice Brown issued an Order (the “**Suspension Order**”) which, among other things, suspended the receivership and returned day to day management and control over the Property to 241 pending the determination of ownership interests in the Property.
7. On August 21, 2015, Madam Justice Matheson determined that the impugned sale under power of sale by CIC was invalid and was to be set aside.
8. On February 22, 2016, Madam Matheson issued a further endorsement addressing the priority issues as between the various parties.
9. On February 1, 2016, Mr. Justice Newbould issued an Order (the “**Reinstatement Order**”) providing for, among other things, the following;

- a) That MNP be reinstated as Receiver for the Property;
- b) That the suspension of MNP as Receiver is lifted and the Appointment Order is in full force and effect; and,
- c) That all rental amounts collected from the tenants at the Property and currently held in trust by 241 and/or its agents, lawyers, and representatives, including all funds held by David Marcovitch pursuant to the Order of Mr. Justice Hainey dated January 6, 2016, are to be transferred to the Receiver immediately.

Copies of the January 6, 2016 Order of Mr. Justice Hainey and the Reinstatement Order are attached hereto as **Appendix “B”** and **Appendix “C”**, respectively.

10. The Receiver filed its third report dated May 18, 2016 to provide this Court with an update on its activities since the Second Report and to seek approval of its proposed sales process for the Property (the “**Sales Process**”) which included the following:

- a) Obtain three (3) listing proposals for the sale of the Property;
- b) At the sole discretion of the Receiver, engage the services of a realtor (the “**Selected Realtor**”);
- c) Enter into a listing agreement for the sale of the Property with the Selected Realtor including, at the sole discretion of the Receiver, establishing in consultation with the Selected Realtor, terms for the listing price, marketing strategy and deadline for offers; and
- d) Report to this Court on the results of the Sales Process for the purpose of obtaining an approval and vesting order in respect of the sale of the Property.

11. On May 27, 2016, Madam Justice Conway issued an Order which, among other things, approved the Sales Process.

12. The Receiver filed its Fourth Report, dated January 11, 2017 and the Supplemental Fourth Report of Receiver, dated January 11, 2017 (collectively, the “**Fourth Report**”), in support of a motion returnable January 26, 2017 (the “**January 26th Motion**”) seeking a Court Order approving and authorizing the Receiver to enter into and carry out the terms of the agreement of purchase and sale, as amended, in respect of the Property (the “**APS**”) and vesting title to the Property upon closing of the transaction contemplated by the APS (the “**Transaction**”).
13. On January 26, 2017, the Court ordered (the “**January 26th Order**”), *inter alia*, the approval of the Transaction contemplated by the APS and the vesting of title to the Property upon the closing of the Transaction in the Purchaser (the “**Approval and Vesting Order**”). A copy of the January 26th Order and related endorsement are attached as **Appendix “D”**.

PURPOSE OF THE FIFTH REPORT

14. The purpose of this report (the “**Fifth Report**”) is as follows:
- a) Provide an update on the Receiver’s activities since its activities described in the Fourth Report.
 - b) To detail certain amendments to the terms of the APS (the “**Proposed Amendments**”) that arose subsequent to the issuance of the Approval and Vesting Order.
 - c) To provide the Court with an update on the closing of the Transaction.
 - d) Request that this Court issue an Order as follows:
 - i. Approving the Fourth Report and the Fifth Report;
 - ii. Approving the conduct and activities of the Receiver as described in the Fourth Report and Fifth Report, including an order authorizing the Receiver amending the APS to provide for the Proposed Amendments;
 - iii. Approving the fees and disbursements of the Receiver as set out in the affidavit attached as Appendix “L” to the Fourth Report which is included as part of **Appendix “I”** of the Fifth Report and authorizing the Receiver to pay the amount of the fees and disbursements to itself;

- iv. Approving the fees and disbursements of Chaitons LLP, the Receiver's legal counsel ("**Chaitons**") as set out in the affidavit attached as **Appendix "J"**; and
- v. Such other relief as the Court deems just.

DISCLAIMER

15. In preparing the Fifth Report and in making the comments herein, the Receiver has received and relied upon books and records, financial information and email and verbal correspondence (the "**Information**") from, *inter alia*:

- (1) Representatives of 241;
- (2) Discussions with the current and former tenants or occupants of the Property; and
- (3) The affidavit sworn by Sai Mohammed, dated January 3, 2016.

16. Except as described in the Fifth Report, the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountant's Handbook.

RECEIVER'S ACTIVITIES SINCE THE FIFTH REPORT

General

17. Since the filing of the Fourth Report, the Receiver has:

- a) As described in greater detail below, prepared for, and with assistance of its legal counsel, completed the closing of the Transaction; and
- b) Managed the Property, including arranging for insurance coverage to replace the Debtor's existing coverage that expired on February 13, 2017.

Tenant Estoppel Certificates

18. Section 5.2 of the APS stated that the Receiver utilize commercially reasonable efforts to obtain signed Estoppel Certificates from each tenant prior to closing. The APS also states that “in no event shall the failure to obtain an Estoppel Certificate from any tenant be a condition of closing.”
19. The provision of s.5.2 of the APS was amended to state that “notwithstanding the provisions of section 5.2 of Schedule “A”, seller agrees to contact the tenants occupying units 1BA and 2BA (Hair Studio 91 Inc.) on one more occasion prior to closing and request that said tenants provide a tenant acknowledgement certificate in the form attached to the APS as Schedule “B” prior to closing; it being acknowledged and agreed by the Buyer that the delivery of same is not a condition of closing.”
20. At the January 26th Motion, Chaitons, on behalf of the Receiver, agreed to an undertaking that the Receiver make one further attempt to secure a tenant acknowledgement certificate from Mad Dash.
21. The Receiver’s efforts to obtain the various tenant acknowledgement certificates is summarized in a memorandum attached as **Appendix “E”** to this report.

Sales Transaction

22. Under the terms of the APS, the Transaction was to close within five (5) days of the Court’s approval of the Transaction which was on January 26, 2017.
23. Subsequent to the Court’s issuing the Approval and Vesting Order, Chaitons prepared the various closing documents, save and except the statement of adjustments, for the Receiver’s review.
24. On January 26, 2017, Chaitons delivered to the Feige Nawrocki LLP (“**Feige**”), the Purchaser’s counsel, a draft of the foregoing closing documents (except the statement of adjustments) in contemplation of the February 1, 2017 closing. On January 30, 2017, Chaitons sent Feige the draft statement of adjustments, which only provided for an adjustment of realty taxes.

25. On January 30, 2017, at 1:56 PM, Feige wrote to Chaitons to indicate that the statement of adjustments was to be delivered at least three days prior to closing “*so I presume this means that closing has been extended accordingly, correct?*”. Later that same day, Feige added that “*As for the closing date extension, I am not requesting it. We are entitled as of right under the APS. Please confirm you are in agreement.*”

26. On January 30, 2017, at 9:40 PM, Chaitons responded by noting:

“I have reviewed Section 6 of the APS and disagree with your assessment that your client is entitled to a 1-day extension of closing. That right is not specifically referred to anywhere in the APS. Practically speaking, however, if your client is seeking a 1-day extension, I am happy to seek instructions, once you confirm accordingly.”

27. During the period, January 30 to February 2, 2017 Chaitons and Feige exchanged numerous emails trying to resolve the timing of closing. In addition, Feige stated that the Purchaser was to receive vacant possession, the Receiver failed to deliver tenant estoppel certificates and was late in the delivery of Property Documents (as defined in the APS).

28. The Receiver disputes the allegations set out in paragraph 27. The issues raised by the Purchaser, except the late delivery of the statement of adjustments, were known to the Purchaser prior to the January 26th Motion.

The Amendment

29. On a without prejudice position, the Purchaser proposed terms under it which was prepared to close.

30. Subsequent to February 1, 2017, the Receiver and the Purchaser negotiated the terms of an amendment to the APS that were mutually acceptable. As a result, the risk of a potentially long protracted lawsuit and re listing of the Property was eliminated. As the terms of any amendment involved Mad Dash surrendering its lease, the Receiver concurrently entered into negotiations with Mad Dash in respect of the terms of Mad Dash vacating and surrendering the tenancy, culminating in it delivering to Mad Dash a draft form of Lease Termination Agreement.

31. The Receiver, Mad Dash and the Purchaser negotiated and agreed to a Lease Termination Agreement (**Appendix “F”**). The Receiver was of the opinion that the Lease Termination Agreement was entered into to ensure that there were no further issues concerning the closing of the Transaction and to avoid a potentially lengthy dispute with Mad Dash to obtain possession of the premises. The parties agreed to Mad Dash’s vacating the Property and surrendering the tenancy effective May 12, 2017 (the **“Surrender Date”**). In consideration, Mad Dash would receive:
- a) \$10,000 exclusive of HST immediately upon execution of the Lease Termination Agreement (the **“First Payment”**);
 - b) \$35,000 exclusive of HST upon the surrender of the premises by Mad Dash to the Purchaser in accordance with the terms of its lease and the Lease Termination Agreement (the **“Second Payment”**); and
 - c) the rent otherwise payable by the Tenant to the Purchaser (i.e., New Landlord) pursuant to the Tenancy for the period commencing as of March 1, 2017 to and including May 12, 2017 shall abate and not be payable (the **“Rent Free Period”**).

All terms of the Lease Termination Agreement have been fulfilled and Mad Dash vacated the premises on May 11, 2017. The Receiver remitted the First Payment and Second Payment on March 3, 2017 and May 15, 2017, respectively.

32. The Receiver and the Purchaser agreed to revise the terms of closing on the following basis:
- a) The parties agreed to a revival of the APS, as amended, in accordance with the terms and conditions thereof, as may be revised herein if revival is required at law;
 - b) The Receiver shall: (i) have Mad Dash sign the Lease Termination Agreement; and (ii) pay the First Payment to Mad Dash in accordance with the terms thereof;
 - c) Upon the Receiver delivering a copy of the Lease Termination Agreement as executed by the tenant and itself, together with evidence that the First Payment had been paid,

the parties shall proceed to close the Transaction between them within two (2) business days thereof;

- d) The parties agreed that save and except for the documentation previously delivered to one another when the Transaction was tendered, no additional documentation shall be required to be signed by either party, other than the Lease Termination Agreement (and the Receiver's Certificate);
- e) The parties agreed that the statement of adjustments shall be revised as per the closing date and in addition, the parties shall be entitled to the following credits:
 - (1) The Receiver shall receive a credit equal to 50% of the First Payment and the Second Payment (as defined in the Lease Termination Agreement) which equates to the sum of \$25,425 (being \$45,000 plus HST divided by 2); and
 - (2) The Purchaser shall receive a credit equal to 50% of the monthly rent otherwise payable by Mad Dash for the Rent Free Period, which equates to the sum of \$3,179.30.
- f) All other terms and provisions of the APS, as amended, continued to apply, subject to the foregoing; and
- g) Time shall continue to remain of the essence.

Opposition to Sale

- 33. On February 10, 2017, Belmont and Associates, new counsel for Sai Mohammed, advised that his client would be seeking to set aside the January 26th Order approving the sale.
- 34. On February 21, 2017, Belmont and Associates filed an affidavit in support of a motion to set aside the January 26th Order. Counsel for the Receiver and Brian Belmont attended a 9:30 scheduling motion before Mr. Justice Hainey. His Honour was not prepared to interfere with the January 26th Order. A copy of the February 21, 2017 endorsement is attached as **Appendix "G"**. Sai Mohammed took no further steps to attempt to set aside the sale or otherwise interfere with its closing.

Closing of Sale

35. The Transaction was completed on March 9, 2017. The Receiver's Certificate was filed with the Court on March 10, 2017.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

36. The Receiver's Statement of Receipts and Disbursements for the period ending September 6, 2017 (the "R&D") is attached hereto as **Appendix "H"**. The R&D reflects receipts over disbursements of \$6,181,129.18, which are being held pursuant to Justice Conway's endorsement of January 26, 2017 wherein she ordered the proceeds of sale are to be held pending resolution of the appeal of Justice Matheson's decisions.

PROFESSIONAL FEES AND DISBURSEMENTS*Receiver's Fees and Disbursements*

37. The Receiver has issued five invoices for the period from June 17, 2014 to August 31, 2017 totaling \$200,554.15, exclusive of disbursements and HST. Attached as **Appendix "I"** is the affidavit of Sheldon Title sworn September 6, 2017 as to the fees of the Receiver.

Legal Fees and Disbursements

38. The Receiver's legal counsel, Chaitons LLP, has issued one (1) invoice for the period from August 16, 2016 to May 16, 2017, 2017 reflecting fees of \$35,260.50, disbursements of \$1,009.82 and HST of \$4,670.43. Attached as **Appendix "J"** is the affidavit of George Benchitrit, dated June 21, 2017 as to the fees of the Chaitons LLP.

39. It is the Receiver's opinion that the fees and disbursements of Chaitons LLP are fair and reasonable and justified in the circumstances and accurately reflect the work done on behalf of the Receiver by legal counsel in connection with the receivership.

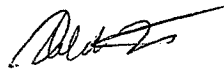
CONCLUSION

40. Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief detailed in paragraph 14 d) of this report.

All of which is respectfully submitted this 7th day of September, 2017.

MNP Ltd.
Court-appointed Receiver of
91-93 Scollard Street, Toronto

Per:



Sheldon Title, CPA, CA, CIRP, LIT