

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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.

Respondent

FIRST REPORT OF THE RECEIVER

INTRODUCTION AND BACKGROUND

- 1) MNP Ltd. ("**MNP**") was appointed Receiver, without security, of the properties municipally known as 91-93 Scollard Street, Toronto (the "**Property**") then owned by Metropolis Properties Inc. (the "**Debtor**"), pursuant to the Order of the Honourable Justice Brown of the Ontario Superior Court of Justice (the "**Court**") dated June 16, 2014 (the "**Appointment Order**"). Attached hereto and marked as **Appendix "A"** is a copy of the Appointment Order.

PURPOSE OF THE FIRST REPORT

- 2) The purpose of the Receiver's first report to Court (the "**First Report**") is as follows:
 - a) Report to the Court on the activities of the Receiver since its appointment, particularly with respect to the taking of possession and control of the Property and obtaining information and cooperation from the Debtor in order for the Receiver to carry out its mandate;

- b) To request confirmation of the Receiver's appointment in light of the events described herein that have transpired since the of the Appointment Order; and,
- c) Such other relief as the Court deems just.

BACKGROUND

- 3) As provided in the application materials for the appointment of the Receiver:
 - a) the Debtor is a corporation incorporated pursuant to the *Canada Business Corporations Act* that has its registered head office in Concord, Ontario.
 - b) The Property is encumbered by 12 mortgages. The applicants in this proceeding comprise the 2nd through 12th mortgagees (the "Applicants").
 - c) All of the 2nd through 12th mortgages are in default, and have been since early 2013.
 - d) the Applicants have made demand, and issued section 244 notices as of June 4, 2014.
 - e) In total, the 2nd through 12th mortgages secure indebtedness totaling \$5,724,210.70 as at June 4, 2014.
 - f) The 1st ranking mortgagee, Canada Investment Corporation ("CIC") is related to the Debtor.
 - g) The 1st mortgagee delivered a Notice of Attornment of rents, and it is believed that this mortgage is also in default.
 - h) The 1st mortgagee was applying funds received from the attornment of rents against realty taxes arrears on the Property.

RECEIVER'S INITIAL ACTIVITIES

- 4) On June 17, 2014, the Receiver sent a letter by email to Orie Niedzviecki, counsel to the Debtor, requesting the necessary information for the Receiver to carry out its duties including the management of the Property (the "**Initial Information Request**"). A copy of the Initial Information Request is attached hereto as **Appendix "B"**.
- 5) In an email on June 17, 2014 Mr. Niedzviecki responded to the Receiver's Initial Information Request. In this email Mr. Niedzviecki advised that he could not confirm the address of the Debtor or a contact person for the Debtor due to solicitor client

privilege. Mr. Niedzviecki also advised that he would forward the Initial Information Request to the Debtor. A copy of the June 17, 2014 email exchange between the Receiver and Mr. Niedzviecki is attached hereto as **Appendix "C"**.

Cancelled Meetings by the Debtor

- 6) On the morning of Friday June 20, 2014 Mr. Niedzviecki sent an email to the Receiver requesting a meeting with the Receiver and his client to be held on Monday June 23, 2014. The Receiver accepted this meeting request.
- 7) On the evening of June 22, 2014 Mr. Niedzviecki sent the Receiver an email to confirm his client was unable to attend the meeting scheduled for June 23rd. A copy of the email exchanges between the Receiver and Mr. Niedzviecki in respect of the cancelled June 23rd meeting is attached as **Appendix "D"**.
- 8) On June 24, 2014 Mr. Niedzviecki requested a meeting between his client and the receiver to be held on June 26, 2014. The Receiver accepted this meeting request.
- 9) On June 25, 2014 at 5:03 PM Mr. Niedzviecki sent the Receiver an email to confirm that his client would not be attending the meeting scheduled for June 26th. A copy of the email exchanges between the Receiver and Mr. Niedzviecki in respect of the cancelled June 26th meeting is attached as **Appendix "E"**.
- 10) It should be noted that despite repeated requests from the Receiver Mr. Niedzviecki would not disclose the name(s) of the representative(s) for his client.
- 11) Mr. Niedzviecki has not contacted the Receiver since his email of June 26th when he advised that he would try to schedule a meeting for the following week.
- 12) To the date of writing this report, the Debtor has not provided any of the information requested in the Initial Information Request.
- 13) Due to the outstanding reporting from the Debtor, at this time the Receiver is unable to provide a complete report to the Court as requested in the Endorsement of Justice Brown dated June 16, 2014.

Taking Possession of the Property

- 14) The Property contains five (5) occupied commercial units; one (1) vacant residential unit and one (1) vacant basement unit which includes the primary utility room for the Property;

- 15) On June 17, 2014, the Receiver's staff attended at the Property to take possession including: (i) serving representatives of each of the five (5) commercial tenants with the Appointment Order and explaining the duties of the Receiver including providing instructions to pay monthly rents to the Receiver.
- 16) As noted above, the Debtor did not provide the Receiver with any information requested in the Initial Information Request including copies of leases for the five (5) occupied commercial units. Therefore, the Receiver has requested copies of these leases from the tenants. To date, the Receiver has obtained copies of four (4) of these five (5) commercial leases.
- 17) The Receiver has collected rent for the month of July 2014 from each of the five (5) commercial retail tenants in the total amount of approximately \$27,494.32 inclusive of HST.
- 18) The Receiver's other actions since taking possession include:
- a) Notifying the City of Toronto of the Receivership and requesting a statement of outstanding property taxes in respect of the Property and to arrange for accounts to be opened in the name of the Receiver;
 - b) Notifying the respective utility providers to determine the status of accounts for the vacant units and common areas and to arrange for corresponding accounts be opened in the name of the Receiver;
 - c) Arranged insurance for the Property;
 - d) Prepared and filed the Notice and Statement of Receiver pursuant to s.245 and s.246 of the *Bankruptcy and Insolvency Act* (the "**Act**"). Attached as **Appendix "F"** is a copy of the Notice;
 - e) Contacted former legal counsel to the Company requesting details of any funds held on behalf of the Company;

The Vacant Residential Unit

- 19) Several representatives of the commercial retail tenants advised the Receiver's staff that the residential unit of the Property had been occupied by Property manager Grant Erlick until he vacated these premises in early June of 2014 or approximately two weeks prior to the Appointment Order.
- 20) On June 19, 2014 the Receiver made arrangements to change the locks on the vacant residential and basements units of the Property.
- 21) The Receiver's initial inspection of the vacant residential unit on June 19th confirmed the following:
- a) The entrance to the residential unit is on the second floor of the building. This unit is approximately 2500 square feet and features three (3) floors including: a large open concept kitchen and living room with a fire place, approximately 4 bedrooms and 4 bathrooms, a sauna, a balcony and a bar.
 - b) There is very serious water damage throughout the residential unit. Most significantly there is a pool of standing water on the second floor of this unit approximately three (3) feet wide by six (6) feet in length with a depth of approximately two 2 to 4 (four) inches. Other water damage includes missing dry wall and significantly rusted steel framing.
 - c) It appears that a portion of the residential unit on the second floor containing the above noted pool of water may have been used to operate a small grow op (the "Grow Op Area"). Items found in the Grow Op Area by the Receiver's staff include: a large bag of soil; approximately 20 flower pots containing soil, but no plants, approximately 200 square foot section of floor tiled with rubber tiles; approximately four feet of electrical wiring hard wired through an electrical outlet; a curtain wall enclosing the entire Grow Op Area and as noted above there is significant water/moisture damage throughout the residence, but particularly most significantly in the Grow Op Area. Photographs of the items found in the Grow Op area are attached hereto as **Appendix "G"**.

22) On June 20, 2014 the Receiver reported its findings with respect to the suspected Grow Op to the Financial Crimes Unit - Corporate Section of the Toronto Police Service. The Receiver's report included the above noted pictures of the Grow Op Area (Appendix G).

INTERFERENCE WITH TAKING POSSESSION AND CONTROL

23) On June 26, 2014, the Receiver's staff attended at the Property to complete a further inspection of the Property in order to assess the scope of repairs needed.

24) On June 26, 2014 the Receiver's staff found that the locks to the vacant residential and basements units had been changed. In addition, copies of a letter dated June 23, 2014 from solicitor Jonathane Ricci were posted on the entrance doors to these units.

25) The June 23rd letter from Mr. Ricci advises that ownership of the Property was transferred to a new registered owner, 2413913 Ontario LTD, under Power of Sale from the entitled transferor Canada Investment Corporation, the 1st Mortgagee, effective June 6, 2014. A copy of this letter is attached hereto as **Appendix "H"**.

26) On June 27, 2014 the Receiver's staff made arrangements to again change the locks of the vacant residential and basement units. At this time the Receiver also posted notices on the entrance doors to these units confirming that entry to these units without permission of the Receiver is unlawful and in violation of the Appointment Order and that the Receiver's office should be contacted for additional information. A Copy of the door notice posted by the Receiver's staff is attached hereto as **Appendix "I"**.

27) On July 2, 2014 the Receiver's staff attended at the Property in response to calls from the retail tenants who reported that the Receiver's door notices had been removed. At this time the locks to the vacant units were not changed.

28) On July 4, 2014, the retail tenants reported to the Receiver's staff that individuals who advised they were contractors hired by the new owners had arrived at the property that morning and drilled the locks to the vacant residential and basement units and entered.

29) The above noted individuals would identify themselves to the representatives of the retail tenants and did not contact the Receiver.

30) As of the evening of July 4, 2014, the locks to the vacant basement and residential remained drilled and unlocked.

CREDITORS

31) The Receiver requested a list of the creditors in its Initial Information Request, but as noted above none of the information requested by the Receiver has been provided by the Debtor.


CONCLUSION

32) The Receiver respectfully requests that this Court issue an Order:

- a) An order confirming the appointment of MNP Ltd. (the "**Receiver**") as Receiver of the property municipally known as 91-93 Scollard Street, Toronto, Ontario (the "**Scollard Property**");
- b) An order requiring Canada Investment Corporation to produce to the Receiver its entire file (including that of its lawyer) in connection with the sale of the Scollard Property on June 6, 2014;
- c) An order requiring Canada Investment Corporation to provide to the Receiver a full and complete accounting of the June 6, 2014 sale of the Scollard Property;
- d) An order requiring the payment of the sale proceeds to the Receiver pending further order of the Court;
- e) An order setting a timetable for the hearing of a motion to set aside the sale transaction;
- f) An order vacating the September 17, 2014 application date in court file no. CV-14-5058351;
- g) Approving the Receiver's First Report and the actions of the Receiver set out therein; and
- h) Such further and other relief as this Court deems just.

All of which is respectfully submitted this 7th day of July, 2014.

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

Per: 

Mark Thomson, CPA, CMA, CIRP