

**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.

FOURTH 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 the Honourable Justice Brown of the Ontario Superior Court of Justice (the “**Court**”). 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 1st 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. A copy of the First Report (without appendices) is attached hereto as **Appendix “B”**.
- 4) In response to the July 10, 2014 motion, the Honourable 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.
 - c) That on July 18, 2014 the Named Parties shall appear for a continuation hearing of the hearing held on July 10, 2014.

A copy of the July 10th, 2014 Endorsement and an unofficial transcript of same is attached hereto as **Appendix “C”**.

- 5) The Receiver filed its second report (the “**Second Report**”) dated July 14, 2014 to provide this Court with an update on its activities since the First Report. A copy of the Second Report (without appendices) is attached hereto as **Appendix “D”**.
- 6) On July 18, 2014, the Honourable 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. A copy of the Suspension Order is attached hereto as **Appendix “E”**.
- 7) On August 21, 2015 the Honourable Justice Matheson determined that the impugned sale under power of sale by CIC was invalid and was to be set aside. Her Honour’s Reasons for Decision are attached as **Appendix “F”**.

- 8) On November 30, 2015, Justice Matheson issued a further endorsement addressing the priority issues as between the various parties. Her Honour's Reasons are attached as **Appendix "G"**.
- 9) On February 1, 2016, the Honourable 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 Justice Hainey dated January 6, 2016, are to be transferred to the Receiver immediately.

Copies of the January 6, 2016 Order of Justice Hainey and the Reinstatement Order are attached hereto as **Appendix "H"** and **Appendix "I"**, respectively.

- 10) The Receiver filed its third report (the "**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.

A copy of the Third Report (without appendices) is attached hereto as **Appendix "J"**.

11) On May 27, 2016, the Honourable Justice Conway issued an Order (the “**Sale Process Order**”) which, among other things, approved the Sales Process. A copy of the Sales Process Order is attached hereto as **Appendix “K”**.

PURPOSE OF THE FOURTH REPORT

12) The purpose of this report (the “**Fourth Report**”) is as follows:

- a) Provide an update on the Receiver’s activities since its activities described in the Third Report.
- b) Request that this Court issue an Order as follows:
 - i. Approving and authorizing the Receiver to enter into and carry out the terms of the agreement of purchase and sale in respect of the Property as further detailed herein (the “**Proposed Sale Agreement**”) and vesting title to the Property upon closing of the Proposed Sale Agreement;
 - ii. Approving the sealing of the Receiver’s supplemental report to this Fourth Report (the “**Supplemental Fourth Report**”) until the closing of the Proposed Sale Agreement. The Supplemental Fourth Report includes a summary of the offers received for the Property, a copy of the appraisal of the Property prepared for the Receiver and a copy of the Proposed Sale Agreement;
 - iii. Approving the Fourth Report and Supplemental Fourth Report;
 - iv. Approving the conduct and activities of the Receiver as described in the Fourth Report and Supplemental Fourth Report;
 - v. Approving the fees and disbursements of the Receiver as set out in the corresponding affidavit attached hereto as **Appendix “L”** and authorizing the Receiver to pay the amount of the fees and disbursements to itself; and
 - vi. Such other relief as the Court deems just.

DISCLAIMER

13) In preparing the Fourth 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.

14) Except as described in this 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 THIRD REPORT*Sales Process*

15) The Receiver obtained listing proposals for the sale and marketing of the Property from five (5) commercial real estate firms (the “**Prospective Realtors**”).

16) Based on the Receiver’s discussions with representatives of the Prospective Realtors and review of their respective proposals, Avison Young was selected as its commission rate was the lowest and presented the most distinctive marketing plan.

17) Avison Young recommended that the Property be listed without an asking price to let the market determine its value.

18) As approved by the Court, the Receiver entered into a listing agreement for the Property with Avison Young on June 29, 2016. A copy of the listing agreement is attached hereto as **Appendix “M”**.

19) After entering into the listing agreement, the Receiver corresponded regularly with Avison Young staff in order to review weekly status reports and provide information requested by prospective purchasers.

20) As part of the Sale Process, Avison Young marketed the Property by, *inter alia*:

- (i) listing it on the Toronto Real Estate Board MLS system;
- (ii) sending e-mail blasts to over 7,300 individuals and companies;
- (iii) listing the Property on Avison Young's website;
- (iv) direct calling over 200 individuals; and
- (v) advertising in the Globe and Mail.

21) Confidential details of the Sales Process and Proposed Sale Agreement are provided in the Supplemental Fourth Report. The Sales Process culminated in the Receiver entering into the Proposed Sale Agreement.

22) The Receiver recommends the approval of the Proposed Sale Agreement for the following reasons:

- (i) as a result of the Sales Process, the Property has been fully exposed to the market;
- (ii) the Purchaser's offer is commercially reasonable and represents the maximum possible price in these circumstances.

Building Maintenance

23) As detailed in the Third Report, the Property was not adequately maintained prior to the Receiver's appointment and required significant repair or capital expenditure. The Receiver has not had the authority or the funds for significant expenditures, and accordingly has limited its efforts to securing, preserving and maintaining the Property.

24) Since the filing of the Third Report, the Receiver has continued to maintain the Property, including fixing a door to the sub-basement unit in November 2016 and ensuring the plumbing in the Property's vacant units was adequately winterized in December 2016.

Flood and Plumbing Repairs

25) As detailed in the Third Report, on February 15, 2016, the Receiver was notified that there was a water leak at the Property, which the Receiver immediately attended to. The Receiver repaired the damages to the two shops affected (Mad Dash and Royal Custom Tailor (the "Tailor")). The Receiver understands that the Tailor was closed from February 17 to March 6, 2016.

26) On December 23, 2016, the Receiver was advised that its insurer has been put on notice of a potential subrogation claim from the Tailor's insurer, for \$51,089.18 on behalf of the Tailor. The insurer is currently investigating the claim. The Receiver's understanding is that its potential financial exposure in this matter will be limited to the amount of its policy deductible of \$5,000.

Other Activities

27) The Receiver's other actions since the Third Report include:

- a) Attending to all administrative matters related to the management of the Property;
- b) Taking such measures as necessary to assist in, and facilitate the Sales Process; and
- c) Responding to stakeholder inquiries.

28) Upon its reappointment, the Receiver's staff contacted the City of Toronto to provide notification of the receivership and to update obtain property tax account statements. A City of Toronto property tax lookup as at December 30, 2016, which is attached hereto as **Appendix "N"** confirms the following property tax arrears as of December 30, 2016. The realty tax arrears include unpaid water invoices.

Overdue Property Taxes - Tax Year	Amount Owed
Tax Year - 2014	\$ 51,985.20
Tax Year - 2015	132,965.45
Tax Year - 2016	141,740.55
Total arrears as at December 30, 2016	\$ 326,691.20

The realty tax will be paid on the day of closing of sale of the Property.

RECEIVER'S FEES AND DISBURSEMENTS

29) As reported in the Receiver's Third Report the Receiver issued an invoice for its fees for the period from June 17 to October 11, 2014 in the amount of \$28,565.95 exclusive of HST. The Receiver has prepared an invoice for the period October 12, 2014 to December 31, 2016 totalling fees of \$126,751.40 and disbursements of \$388.49 exclusive of HST. Attached as **Appendix "L"** is the affidavit of Alan Shiner sworn January 11, 2017 as to the fees of the Receiver.

30) The average hourly rate charged by the Receiver is \$389.85.

31) The Receiver respectively requests this Court approve the Receiver's fees and disbursements as described above.

RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

32) Attached hereto as **Appendix "O"** is the Interim Statement of Receipts and Disbursements for the period from the date of the initial Receiver's appointment on June 16, 2014 to January 9, 2017. Total receipts are \$231,494 and total disbursements are \$87,886. The balance of receipts less disbursements is \$143,608.

PROCEEDS TO REMAIN IN TRUST

33) Each of Justice Matheson's two decisions are currently under appeal by all parties. The outcome of the appeals will determine the proper recipients of the proceeds of the sale of the Property.


34) The Receiver does not intend to distribute the proceeds absent further Order, and will maintain the net proceeds of sale in trust upon completion of the transaction other than the payment of operational expenses and professional fees subject to the Receiver's Charge.

CONCLUSION

35) Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief detailed in paragraph 12b) of this report.

All of which is respectfully submitted this 11th day of January, 2017.

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

Per: 
Alan Shiner, CPA, CA, CIRP, LIT