

**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.

**SIXTH REPORT OF THE RECEIVER**

**INTRODUCTION AND BACKGROUND**

1. On June 16, 2014, MNP Ltd. (“**MNP**”) was appointed receiver (the “**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 issued by The Honourable Mr. Justice Brown of the Ontario Superior Court of Justice (the “**Court**”) (the “**Appointment Order**”). 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 registered first mortgagee of the Property, Canada Investment Corporation (“**CIC**”), sold the Property under power of sale to 2413913 Ontario Limited (“**241**”) (the “**241 Transaction**”).

3. The Applicants brought a motion returnable July 10, 2014 seeking an order confirming MNP’s appointment as Receiver, requiring CIC to produce records and an accounting regarding the 241 Transaction, and setting a timetable for the hearing of a motion to set aside the 241 Transaction. The Receiver filed its first report dated July 7, 2014 (the “**First Report**”) in connection with the motion. A copy of the First Report, without appendices, is attached hereto and marked as **Appendix “B”**.

4. On July 10, 2014, Justice Brown ordered that a number of parties, including 241 and Ginkgo Mortgage Investment Corp. (“**Ginkgo**”), the registered first mortgagee of the Property following the 241 Transaction, were restrained on an interim basis from exercising any rights with respect to the Property, and ordered the continuation of the hearing of the motion on July 18, 2014. A copy of the order is attached hereto and marked as **Appendix “C”**.

5. In connection with the continuation of the motion, the Receiver filed its second report dated July 14, 2014 (the “**Second Report**”), a copy of which, without appendices, is attached hereto and marked as **Appendix “D”**.

6. On July 18, 2014, Justice Brown issued an order, on consent of the parties, which 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, and scheduled the hearing of the motion to set aside the 241 Transaction for October 3, 2014. A copy of the order is attached hereto and marked as **Appendix “E”**.

7. On September 12, 2014, the parties appeared before The Honourable Mr. Justice Penny in chambers, at which time, on the consent of the parties, the October 3, 2014 application was vacated and the motion to set aside the 241 Transaction was converted to a hybrid trial.

8. The hybrid trial proceeded in June and July 2015 before The Honourable Madam Justice Matheson. On August 21, 2015, Justice Matheson released Reasons for Judgment that held that the 241 Transaction was invalid and was to be set aside.<sup>1</sup>

9. As discussed further below, several parties appealed the decisions of Justice Matheson to the Court of Appeal.

10. Because of information obtained by the Applicants with respect to the Property, including that 241 was in default of its mortgage with Gingko and that 241 was in arrears of property taxes, the Applicants brought a motion, which was heard on January 6, 2016, seeking an order reinstating MNP as Receiver.

11. On January 6, 2016, The Honourable Mr. Justice Hailey issued an order that required 241 to provide proof of insurance and deliver information regarding rents that had been collected for the Property. The reinstatement motion was adjourned to February 1, 2016. Attached hereto and collectively marked as **Appendix “F”** are copies of the order and endorsement of the Court.

12. On February 1, 2016, The Honourable Mr. Justice Newbould issued an order that reinstated MNP as Receiver. Attached hereto and collectively marked as **Appendix “G”** are copies of the order and endorsement of the Court.

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<sup>1</sup> On February 22, 2016, Justice Matheson released an Endorsement with respect to priority matters between the various parties.

13. The Applicants brought a motion returnable May 27, 2016, seeking an order authorizing the Receiver to conduct a sale process with respect to the Property. The Receiver filed its third report dated May 18, 2016 (the “**Third Report**”) in connection with the motion.

14. On May 27, 2016, The Honourable Madam Justice Conway issued an order that authorized and directed the Receiver to conduct the sale process and approved the Third Report and the conduct and activities of the Receiver described therein. Attached hereto and collectively marked as **Appendix “H”** are copies of the order and endorsement of the Court.

15. The Receiver completed the sale process and entered into a sale agreement dated October 27, 2016, which was conditional upon, among other things, approval of the Court and a vesting order.

16. The Receiver brought a motion on January 26, 2017 seeking an approval and vesting order with respect to the sale agreement. The Receiver filed its fourth report dated January 11, 2017 (the “**Fourth Report**”) in connection with the motion.

17. On January 26, 2017, The Honourable Madam Justice Conway issued an approval and vesting order (the “**Approval and Vesting Order**”) with respect to the sale transaction. Attached hereto and collectively marked as **Appendix “I”** are copies of the Approval and Vesting Order and endorsement of the Court.

18. Pursuant to paragraph 4 of the Approval and Vesting Order, all claims and encumbrances against the Property attached to the net sale proceeds with the same priority as they had immediately prior to the sale, subject to the pending appeals of the decisions of Justice Matheson.

19. The sale transaction closed on March 9, 2017.

20. On November 23, 2017, the Court heard a motion brought by the Receiver seeking an order approving the Fourth Report, the Fifth Report, and the conduct and activities of the Receiver described therein, and approving the fees and disbursements of the Receiver and its counsel. The order was granted by Justice Hainey. Attached hereto and collectively marked as **Appendix “J”** are copies of the order and endorsement of the Court.

21. On January 24 and 25, 2018, the Court of Appeal heard the appeals of the decisions of Justice Matheson with respect to the 241 Transaction.

22. On March 14, 2018, the Court of Appeal released its decision which overturned Justice Matheson’s finding that the 241 Transaction should be set aside, and held that Gingko and the other parties holding mortgages that were registered against the Property following the completion of the 241 Transaction (the “**Subsequent Mortgagees**”) had valid mortgages against the Property and by extension, the proceeds thereof.

### **PURPOSE OF THE SIXTH REPORT**

23. The purpose of this report (the “**Sixth Report**”) is as follows:

- (a) to provide the Court with an update regarding the positions of Gingko and the Subsequent Mortgagees with respect to their entitlement to the net sale proceeds of the Property, in connection with the Receiver’s motion for advice and direction as to the amounts owed to Gingko and the Subsequent Mortgagees;
- (b) request that this Court issue an order:
  - (i) approving the First Report, the Second Report, the Sixth Report, and the conduct and activities of the Receiver described therein and herein;

- (ii) authorizing and directing the Receiver to distribute the net sale proceeds of the Property to the mortgagees of the Property, in amounts as determined by the Court, following payment of the fees and disbursements of the Receiver and its counsel;
- (iii) approving the fees and disbursements of the Receiver and its counsel, Chaitons LLP (“**Chaitons**”), as set out herein and in the affidavits attached hereto, and authorizing the Receiver to pay such amounts from the net sale proceeds from the Property;
- (iv) approving the Receiver’s interim statement of receipts and disbursements to April 23, 2018; and
- (v) discharging MNP as Receiver upon the Receiver filing a certificate with the Court that all matters have been completed, and releasing the Receiver from any and claims and liabilities, save and except for any gross negligence or willful misconduct on the Receiver's part.

**DISCLAIMER**

24. In preparing the Sixth 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*:

- (a) representatives of 241;
- (b) discussions with the current and former tenants or occupants of the Property; and
- (c) representatives of Gingko and the Subsequent Mortgagees.

25. Except as described in this Sixth 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.

### **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

26. The Receiver's Statement of Receipts and Disbursements for the period ending April 23, 2018 (the "**R&D**") is attached hereto as **Appendix "K"**. The R&D reflects receipts over disbursements of \$6,171,560.27, which includes payment of the fees and disbursements of the Receiver and Chaitons as described in paragraphs 34 and 35.

### **DISTRIBUTION OF NET SALE PROCEEDS**

27. As noted above, the sale of the Property was completed by the Receiver on March 9, 2017. In connection with the sale, the Receiver received gross sale proceeds of \$6,800,000.

28. The Receiver has been advised by Chaitons that, as a result of the decision of the Court of Appeal, and in accordance with paragraph 4 of the Approval and Vesting Order, the following mortgages were registered against the Property as of closing of the sale:

- (a) charge/mortgage in favour of Gingko in the principal amount of \$3,650,000 registered against title to the Property on June 6, 2014 as instrument number AT3601912 (the "**Gingko Mortgage**"), a copy of which is attached hereto and marked as **Appendix "L"**;
- (b) charge/mortgage in favour of CIC in the principal amount of \$1,252,000 registered against title to the Property on June 6, 2014 as instrument number AT360194, as

assigned by CIC to 2421955 Ontario Inc. (“**2421955**”) pursuant to a transfer of charge registered on title to the Property on June 11, 2014 as instrument number AT3604850 (collectively, the “**242 Second Mortgage**”), copies of which are collectively attached hereto and marked as **Appendix “M”**;

- (c) charge/mortgage in favour of 2421955 in the principal amount of \$49,999 registered against title to the Property on June 17, 2014 as instrument number AT3609575 (the “**242 Third Mortgage**”), a copy of which is attached hereto and marked as **Appendix “N”**; and
- (d) charge/mortgage in favour of Sai Mohammed (“**Mohammed**”) in the principal amount of \$49,999 registered against title to the Property on June 17, 2014 as instrument number AT3609576 (the “**Mohammed Mortgage**”), a copy of which is attached hereto and marked as **Appendix “O”**.

**29.** On March 27, 2018, counsel to Gingko circulated by email a payout statement in the amount of \$4,926,710.76, with *per diem* interest of \$1,368.31, along with a summary of fees and disbursements totalling \$98,411.59, for a total amount claimed to be owed to Gingko in connection with the Gingko Mortgage of \$5,025,122.35 as of March 23, 2018. A copy of the email, along with the attachments, is attached hereto and marked as **Appendix “P”**.

**30.** On April 13, 2018, counsel to 2421955 and Mohammed, being the Subsequent Mortgages, circulated payment statements claiming the following amounts as of April 13, 2018:

- (a) \$1,734,620.79 with respect to the 242 Second Mortgage;
- (b) \$49,999.00 with respect to the 242 Third Mortgage; and



(c) \$49,999.00 with respect to the Mohammed Mortgage.

A copy of the email, along with the attachments, is attached hereto and marked as **Appendix “Q”**.

31. As a result, Gingko and the Subsequent Mortgagees are seeking payment in the aggregate amount of \$6,859,741.14 plus additional interest accrued to date of payment. As noted above, the net proceeds available to be distributed to Gingko and the Subsequent Mortgagees, is \$6,171,560.27. Accordingly, based on the amounts contained in the above-reference payout statements, there is insufficient funds available to repay 2421955 the full amount in connection with the 242 Mortgage, and there would be no funds available to be distributed to 2421955 and Mohammed with respect to the 242 Third Mortgage and the Mohammed Mortgage.

32. Counsel to the Subsequent Mortgagees has confirmed via email to Chaitons and counsel to Gingko, amongst others, that the Subsequent Mortgagees object to amounts contained in the Gingko payout statement, on the basis that the amount is “excessive, exaggerated [and] unauthorized”.

33. The Receiver is not able to opine on the appropriateness or legality of the amount sought by Gingko. As a result, the Receiver is bringing a motion for advice and direction to the Court with respect to the amounts owed to Gingko and the Subsequent Mortgagees, to allow parties to make submissions to the Court regarding the entitlement of the mortgagees to the amounts claimed in their respective payout statements.

**PROFESSIONAL FEES AND DISBURSEMENTS**

34. The Receiver has issued an invoice for the period from September 1, 2017 to April 22, 2018 in the amount of \$7,362.74, which is composed of fees of \$6,515.70, and HST of \$847.04. This is the only invoice that has not received court approval. The Receiver estimates that, assuming no other significant work is to be required to be completed by the Receiver following the hearing of the motion, there will be fees and expenses of \$7,500 plus HST from April 23, 2018 to complete the administration of the receivership estate. Attached hereto and marked as **Appendix "R"** is the affidavit of Sheldon Title sworn April 24, 2018.

35. The Receiver's legal counsel, Chaitons has issued an invoice for the period from May 17, 2017 to April 23, 2018, reflecting fees of \$3,811.50, disbursements of \$69.50 and HST of \$501.36. This is the only invoice that has not received court approval. Chaitons estimates that, assuming no other significant work is to be required to be completed following the hearing of the motion, there will be fees and expenses of \$5,000 plus HST from April 24, 2018 to complete the administration of the receivership estate. Attached as **Appendix "S"** is the affidavit of George Benchetrit sworn April 25, 2018.

36. It is the Receiver's opinion that the fees and disbursements of Chaitons, including its estimate of fees and disbursements to completion of this proceeding, 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.

**DISCHARGE**

37. As noted above, the sale of the Property closed on March 9, 2017. The Receiver has completed all necessary steps to administer the receivership estate, subject to the distribution of the net sale proceeds of the Property to the mortgagees.

38. As a result, the Receiver is requesting that the Court grant an order discharging it as Receiver upon the Receiver filing a certificate with the Court confirming that it has completed all remaining matters, which would be the distribution of amounts to the mortgagees following a final determination by the Court of the amounts the mortgagees are entitled to.

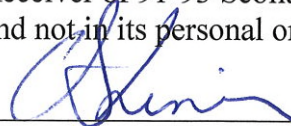
**CONCLUSION**

39. Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief detailed in paragraph 23(b) above.

All of which is respectfully submitted this 25<sup>th</sup> day of April, 2018.

**MNP LTD.**

solely in its capacity as Court-appointed  
Receiver of 91-93 Scollard Street, Toronto  
and not in its personal or corporate capacity



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Name: Alan Shiner

Title: Senior Vice President