

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

BETWEEN:

DAST PROPERTIES LIMITED

Applicant

- and -

RIADH HOLDINGS INC.

Respondent

FIRST REPORT OF THE RECEIVER

INTRODUCTION

1. MNP Ltd. was appointed as interim receiver and receiver (the "**Receiver**") over the Property (as defined below) of Riadh Holdings Inc. ("**Riadh**" or the "**Debtor**") pursuant to the order of the Honourable Justice Penny dated October 14, 2014 (the "**Receivership Order**") made on application by Dast Properties Limited ("**Dast**") pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended and section 47(1) of the *Bankruptcy and Insolvency Act* R.S.C. 1985 c. B.3, as amended. Attached as **Appendix "A"** is a copy of the Receivership Order.

2. The purposes of this Report are to:

- (a) report on the Receiver's activities since its appointment by this Court, including the Receiver's efforts to sell the real property of Riadh municipally known as 1 Arrow Road, Toronto, Ontario (the "**Property**");
- (b) recommend to this Court that it make an Order:
 - (i) approving the agreement of purchase and sale (the "**APS**") between the Receiver and Verza Investments Inc. in Trust (the "**Purchaser**" or "**Verza**") for the sale of the Property, the building and fixtures thereon (collectively, the "**Purchased Assets**") and authorizing the Receiver

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to complete the transactions contemplated therein (the "Transaction"). Verza is also the second mortgagee;

- (ii) vesting title to the Purchased Assets in the Purchaser free and clear of encumbrances;
- (iii) sealing Confidential Appendices through pending completion of the Transaction;
- (iv) approving the Receiver's conduct, activities and actions as described herein; and
- (v) approving the distribution of the sale proceeds and cash on hand as proposed herein.

BACKGROUND

3. The Property comprises a free standing commercial building of 50,974 square feet on approximately 2.58 acres located Toronto, Ontario. Prior to and subsequent to the appointment of the Receiver, the Property was occupied by Pacific Furniture and Upholstery Inc. ("Pacific" or "Tenant"). The Tenant is owned, controlled and directed by the same persons as the Respondent and owner of the Property, Riadh.

4. Pacific entered into a lease (the "Lease") dated January 20, 2014 with Verza as mortgagee in possession. A copy of the lease is attached hereto as **Appendix "B"**. The lease is on a monthly basis commencing on January 20, 2014 and ending thirty days from the date on which either party delivers by registered mail written notice to the other that the tenancy is at an end.

5. As described in greater detail below, the Debtor is indebted to Dast in excess of \$3.8 million. The Debtor's obligations to Dast are secured by, *inter alia*, a charge/mortgage of land granted by Riadh in the principal amount of \$2,700,000 registered against the Property on August 4, 2009 as instrument no. CA813276, which charge was subsequently assigned to Dast by instrument no. AT2967807 on March 16, 2012 (the "Mortgage").

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6. The Debtor's relationship with Dast is described in the affidavit of Harvey Fruitman president of Dast sworn on September 3, 2014, previously filed in these proceedings in support of the application of the Receivership Order (the "**Fruitman Affidavit**"). A copy of the Fruitman Affidavit (without Exhibits) is attached hereto as **Appendix "C"**.

THE RECEIVER'S ACTIVITIES

7. Upon its appointment, the Receiver met with representatives of the Tenant and left the Tenant in possession and control of the Property. Among other things, the Receiver arranged for insurance coverage, collected rent, coordinated roof repair, dealt with tenant issues including the vacating of the leased premises. The Receiver has collected approximately \$153,000 of rent.

MARKETING OF THE PROPERTY

8. Since its appointment, the Receiver has worked diligently to solicit interest in the Property.

9. The Receiver requested two nationally recognized commercial real estate brokerage firms to present listing proposals. The Receiver received presentations from Avison Young Commercial Real Estate (Ontario) and CB Richard Ellis Limited (the "**CBRE**"). Both presentations were similar except that CBRE's commission rate was lower.

10. Prior to the appointment of the Receiver, Dast obtained an appraisal of the value of the Property from Rajesky & Associates Ltd. (the "**Rajesky Appraisal**") dated May 22, 2014. The Copy of the Rajesky Appraisal is attached hereto as **Confidential Appendix "1"**.

11. The Rajesky Appraisal provided a value estimate based on a 60 to 120 days marketing period and assumed maximum marketing exposure and that no environmental issues existed and the roof was in good condition.

12. Based on the Receiver's inspection of the Property, the assumption in the Rajesky Appraisal that the roof was in good condition is not tenable. The building requires a new roof, which the Receiver estimates could cost approximately \$400,000.00.

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13. On November 28, 2014, following consultation with Dast, review of the Rajesky Appraisal, and recommendation of CBRE, the Property was listed with CBRE at a listing price of \$4,550,000. A copy of such listing agreement is attached hereto as **Appendix "D"**.

14. As part of the sale process, CBRE marketed the Property by, *inter alia*:

- (i) posting it on the Toronto Real Estate Board MLS system, which is accessible by approximately 28,000 industrial/commercial real estate brokers in the Greater Toronto Area;
- (ii) erecting two eight foot by eight foot "For Sale" signs on the site fronting on Arrow Road and Sheppard Ave;
- (iii) placing a banner sign on the back of the Property fronting on Highway 400;
- (iv) sending e-mail blasts to over 600 cooperating real estate brokers;
- (v) listing the Property on CBRE's and Loopnet's web sites;
- (vi) mailing of 7,500 quarterly brochures featuring the Property to brokers and users;
- (vii) mailing of over 4,000 colour brochures to potential purchasers in December 2014 and March 2015.

15. In addition to the foregoing, CBRE provided comprehensive information packages to approximately 22 parties who expressed an interest in the Property. The Property was shown to potential purchasers on 7 occasions. A summary of CBRE's sales efforts are attached as **Appendix "E"**.

EXPRESSIONS OF INTEREST AND OFFERS TO PURCHASE THE PROPERTY

16. Between the listing of the Property on November 28, 2014 and April 24, 2015, the Receiver received a total of six offers to purchase the Property.

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17. The first five offers received did not result in a sale of the Property as either (i) the purchase price was too low, (ii) the Receiver and the respective offerors could not agree on mutually acceptable terms, (iii) the conditions were too onerous and/or (iv) the offerors abandoned their offers.

18. A summary of the offers received by the Receiver are attached as **Confidential Appendix "2"**.

THE APS

19. The sixth offer received during this period was from Verza. Following negotiations between these parties in respect of the purchase price, the parties entered into the APS. The APS is conditional on the Receiver providing vacant possession of the property and upon the Receiver obtaining an order of this Court approving the APS and vesting title to the Purchased Assets in the Purchaser, free and clear of any encumbrances. A redacted copy of the APS is attached as **Appendix "F"**. The final negotiated agreement of purchase and sale (the "APS") is attached hereto as **Confidential Appendix "3"**.

20. A lease termination letter to Pacific dated May 5, 2015 was sent by registered mail on May 6, 2015 as required in the Lease and is attached hereto as **Appendix "G"**. The termination date is June 30, 2015.

21. The Tenant requested, and the Receiver accepted, an extension of the occupancy to July 31, 2015, provided that the Tenant voluntarily vacate the Property, and remove all contents in advance of the departure.

22. As at August 4, 2015, the Tenant has removed approximately 99% of the contents of the Property, and the Receiver is making the necessary arrangements to prepare the Property for the sale. Specifically, the Receiver has required that the Tenant remedy certain deficiencies resulting from the departure, including (a) hydro connections; (b) garbage removal; and (c) final clean-up. The conclusion of these arrangements has delayed the filing of this Report.

23. The closing date for the sale transaction under the APS is August 10, 2015.

24. The Receiver recommends approval of the APS for the following reasons:
- (i) the Property was marketed for sale for a period of approximately five months by a nationally recognized commercial real estate brokerage firm;
 - (ii) the APS represents the highest and best offer for the Property;
 - (iii) the APS has the support of Dast, who will suffer a deficiency on the sale; and
 - (iv) the next priority creditor, who will suffer a complete loss, is Verza, who is the purchaser of the Property.

THE DEBTOR'S SECURED CREDITORS

25. The following is a list of charges registered against the Property in order of registration and the amounts that each mortgagee claims to be owed:

Mortgagee	Amount of Charge	Current Outstanding Indebtedness
Dast Properties	\$2,700,000	\$3,845,163.54
Verza	\$1,500,000	unknown
First Capital Corp.	\$89,109.72	unknown

26. A copy of the parcel register for the Property current as at August 5, 2015 is attached hereto as **Appendix "H"**.

27. An execution search against the Property as at August 5, 2015 in the City of Toronto where the Property is located, evidences an execution registered against the owner of the Property on January 28, 2015. A copy of the execution search is attached hereto as **Appendix "I"**.

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28. A tax certificate has been requested from the Corporation of the City of Toronto in respect of the Property. The Receiver understands that there are tax arrears of approximately \$375,000.00. This amount is to be paid from the sale proceeds.

29. As evidenced by the aforementioned searches, Dast is the first registered secured creditor in respect of the Property. The second priority creditor is the Purchaser.

30. Jaffe & Peritz LLP has provided the Receiver a legal opinion on the validity and enforceability of the security held by Dast. Jaffe & Peritz LLP has advised the Receiver that, subject to the usual qualifications and assumptions, it is of the opinion that the Dast mortgage was validly and properly registered against title to the Property and constitutes a first registered charge against the Property.

PROPOSED INTERIM DISTRIBUTION

31. The debt claimed by Dast, the first registered secured creditor as at August 10, 2015 is \$3,845,163.54, exclusive of legal fees and expenses. The Receiver will be reviewing the claim prior to making any distribution to Dast.

32. There will not be sufficient funds to pay Dast in full, or any amount to any of the creditors subordinate to Dast.

33. Therefore, the Receiver requests the permission of this Court to distribute the available funds to Dast, subject to a reserve for the payment of the Receiver's and its counsel's fees and disbursements, priority claims and all costs to complete the administration of the receivership.

SEALING ORDER

34. The Receiver will be seeking an order of this Court sealing Confidential Appendices 1 through 4. In the opinion of the Receiver, the Confidential Appendices contain commercially sensitive information which if disclosed at this stage might adversely affect the interest of the creditors in the event the APS is not approved or completed and the Receiver is required to recommence the sale process for the Property.

RECEIVER'S REMAINING ACTIVITIES AND DISCHARGE

35. The Receiver's remaining activities to complete the administration of the receivership principally comprise:

- (i) completing the Transaction;
- (ii) distributing the sale proceeds and cash on hand to Dast, subject to the payment of priority claims and the Receiver's fees and disbursements; and
- (iii) completing any other administrative matters necessary to the Receiver's discharge.

REQUESTS FOR APPROVAL

36. The Receiver respectfully requests an order of this Court:

- (i) approving the Receiver's conduct, actions and activities as set out in this Report;
- (ii) approving the APS, authorizing the Receiver to complete the Transaction and vesting title to the Purchased Assets in the Purchaser upon completion of the Transaction;
- (iii) paying the outstanding realty taxes described in paragraph 28 above;
- (iv) sealing the Confidential Appendices pending the completion of the Transaction; and
- (v) approving the payment of priority claims and the distribution of all remaining funds to Dast, subject to a holdback for the payment of the Receiver's and its counsel's fees and disbursements.

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All of which is respectfully submitted this 6th day of August, 2015

**MNP Ltd., Court-appointed receiver of
1 Arrow Road, Toronto, Ontario**

Per: 

Alan Shiner

Senior Vice President