

Ontario
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

DAST PROPERTIES LIMITED

Applicant

- and -

RIADH HOLDINGS INC.

Respondent

SECOND 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. The Receivership Order was attached to the First Report of the Receiver as Appendix “A”.

OVERVIEW

2. On August 18, 2015, Justice Mew granted an order approving a sale of the property located at 1 Arrow Road, Toronto, Ontario (the “**Property**”) to Verza Investments Inc. in Trust. At the hearing for the approval motion, the principal of the corporate owner of the Property appeared and sought to deliver a bid for the Property. Justice Mew ordered that the approval order was null and void if the sale was not completed on September 8, 2015, as planned.

3. The sale did not close on September 8, 2015. However, the purchaser has demonstrated that (a) it is now in funds to close the transaction; and (b) it is prepared to increase the price by \$20,000.00 to compensate the Receiver and the creditors for the delay and additional costs. Accordingly, the Receiver seeks an order approving the amended sale.

4. The purposes of this Report are to:

- (a) report on the Receiver's activities since the order of Justice Mew dated August 18, 2015;
- (b) recommend to this Court that it make an Order:
 - (i) approving the agreement of purchase and sale, as amended (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 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) approving the Receiver's conduct, activities and actions as described herein; and
 - (iv) approving the distribution of the sale proceeds and cash on hand as proposed herein.

BACKGROUND

5. The background to this motion is described in the First Report of the Receiver, which is attached hereto (complete with appendices) as **Appendix "A"**.

6. Justice Mew granted the relief sought by the Receiver approving the sale described in the First Report. Attached hereto as **Appendix "B"** is Justice Mew's sale approval order.

7. However, in His Honour's endorsement, he noted that "For the avoidance of any doubt, the closing date of 8 September 2015...shall not be further extended for the purpose of this order. In other words, if the sale is not completed by 8 September 2015, the approval provided by this order will be moot and the receiver would thereafter have to re-market the property." Attached hereto as **Appendix "C"** is Justice Mew's endorsement.

THE RECEIVER'S ACTIVITIES

8. The Receiver, through its counsel, indicated to the Purchaser's counsel that the Receiver was ready, willing and able to close the sale transaction on September 8, 2015. Executed sale documents were delivered by the Receiver's counsel to counsel for the Purchaser. Attached as **Appendix "D"** are the e-mails from Receiver's counsel to the Purchaser's lawyer.

9. The Purchaser did not have funds available to close the Transaction on September 8, 2015. However, it did advise that its financing was available to close on Monday, September 14, 2015. The availability of financing was confirmed by counsel to the Purchaser's lender. The Receiver's counsel advised that, pursuant to Justice Mew's endorsement, an extension was not available, and that a further court order would be required.

10. As a result of the failure of the Purchaser to close on September 8, 2015, the Receiver was obliged to consider whether there was another purchaser that ought to have an opportunity to bid on the Property, as the owner appeared at the August 17, 2015 hearing and sought the opportunity to bid. Accordingly, at 5:39 p.m. on September 8, 2015, Receiver's Counsel wrote to counsel for the owner, in part, as follows:

We understand that your client wishes to have the Receiver consider a further offer for the Property. Before embarking on a course of action that would involve soliciting new offers from all potential purchasers, kindly provide evidence that your client has financing in place to complete a transaction.

We require evidence of that ability to complete by the **end of business tomorrow, September 9, 2015**. If confirmation is provided, we will entertain new bids from all parties.

The e-mail to the owner's counsel is attached as **Appendix "E"**.

11. On Wednesday, September 9, 2015, counsel to the owner wrote, in part:

As for your condition re: funds, we are working on it and hope to be able to confirm by the end of today.

The owner's counsel's e-mail is attached as **Appendix "F"**.

12. Neither the Receiver nor its counsel received any further response from the owner, or its counsel.

13. Accordingly, the Receiver set forth its terms to the Purchaser in respect of an extension of the existing Transaction. Specifically, the Receiver required an agreement from the Purchaser that the purchase price be increased by \$20,000.00 to compensate for the additional costs and losses to creditors resulting from the Purchaser's failure to close. Attached as **Appendix "G"** is the e-mail setting forth the Receiver's terms to the Purchaser.

14. The Purchaser, through counsel, agreed to these terms.

RECEIVER'S REMAINING ACTIVITIES AND DISCHARGE

15. 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

16. 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 of the First Report;
- (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.

All of which is respectfully submitted this 15th day of September, 2015

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

Per: 

Alan Shiner

Senior Vice President