

ONTARIO
SUPERIOR COURT OF JUSTICE

**ORLANDO IERACI, GIUSEPPE MELECA, FRANK TROIANO, CONCEZIO
BATTAGLINI, CARMELO COMMISSO, FRANCESCO GAGLIANO,
GIUSEPPE GAGLIANO, DAVID MEADOWS, GIUSEPPE COMMISSO, JOHN
KOLOVOS, BORDEN KENT, GABRIEL DIVITTORIO, 747304 ONTARIO
LIMITED, RITA BENNETT, MAGGIORINO TORRESAN, MARCO
BATTAGLINI, DAVE BATTAGLINI, LEO BATTAGLINI, VINCENZO
MINNELLA, DINO MINNELLA, FERRUCCIO AGOSTINO, TONY MINNELLA,
VITO MINNELLA, ROCCO MINNELLA, ANNA M. MINNELLA and JOHN
PETROSINO**

Applicants

- and -

**VINCENZO POLSINELLI, RODOLFO GRANATA, GARA HOLDINGS,
NAJEEB WAHAB, P.O.S.E. INVESTMENTS, 910911 ONTARIO INC., 910912
ONTARIO INC., 910913 ONTARIO INC. and TERRY HOPKINS**

Respondents

SECOND REPORT OF THE RECEIVER AND MANAGER

January 9, 2013

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I. Introduction

1. By Order of the Honourable Justice Thompson dated April 2, 2012 (the “Initial Order”), Deloitte & Touche Inc. was appointed receiver and manager (the “Receiver”), without security, over all of the current and future assets, undertakings and properties of P.O.S.E. Investments. (“POSE” or the “Company”) pursuant to section 101 of the *Courts of Justice Act*. A copy of the Initial Order is attached hereto as **Appendix “A”**.
2. The Company operated as a partnership of individuals and held real property through 910912 Ontario Inc. and 910913 Ontario Inc.
3. The real properties held by 910912 Ontario Inc. and 910913 Ontario Inc., in trust for POSE, are located in the Municipality of Meaford (the “Meaford Property”) and in the Town of Georgina (the “Georgina Property”), previously defined in the First Report of the Receiver and Manager, dated May 31, 2012 (the “First Report”), and more particularly described in Schedule “A” and Schedule “B” of the Initial Order and collectively referred to as the “Real Properties”.
4. The Initial Order authorized the Receiver to, among other things, take possession of and exercise control over the Real Properties and any and all proceeds, receipts and disbursements arising out of or from the Real Properties. In addition, the Receiver was authorized to sell, convey, transfer, lease or assign the Real Properties or any part thereof out of the ordinary course of business.
5. By Order of the Court dated June 28, 2012, the Receiver obtained approval for the plan to market and sell the Real Properties (the “Marketing Order”). A copy of the Marketing Order is attached as **Appendix “B”**.
6. The Initial Order, First Report, Marketing Order, together with related Court documents and the Notice and Statement of the Receiver have been posted on the Receiver’s website www.deloitte.ca .
7. Unless otherwise provided, all other capitalized terms not otherwise defined in this Second Report are as defined in the First Report or the Marketing Order.

II. Purpose of Report

8. The purpose of the Receiver’s Second Report to Court is to:
 - a) report on the results of the operations and Receiver’s activities to date;

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- b) provide a summary of the marketing process and details of the marketing activities undertaken by the Receiver with respect to the Real Properties since the granting of the Marketing Order; and
 - c) provide the Court with the evidentiary basis to make an Order:
 - i) approving and authorizing the Receiver to enter into and carry out the terms of the agreement of purchase and sale between the Receiver and Daniel M. Newton, an individual (“Daniel Newton”) signed December 21, 2012 (the “Purchase and Sale Agreement”) together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Georgina Property in Daniel Newton, or as it may further direct in writing, upon closing of the Purchase and Sale Agreement;
 - ii) approving to seal the Receiver’s Supplemental Report to this Second Report (the “Supplemental Report”) which summarizes the offers received by the Receiver, and includes the appraisal received by the Receiver for the Georgina Property as well as a copy of the Purchase and Sale Agreement;
 - iii) approving the Receiver’s Interim Receipts and Disbursements for the period April 2, 2012 to December 31, 2012; and
 - iv) approving the conduct and activities of the Receiver to January 8, 2013 and the activities of the Receiver as described in this Second Report including, without limitation, the steps taken by the Receiver pursuant to the marketing process.

III. Receiver’s Activities to Date

Financing

- 9. Due to the lack of liquid assets in the administration, the Receiver required a mortgage to fund remittances for property taxes, legal expenses, insurance, and property maintenance costs during the receivership.
- 10. Due to the fact that the Real Properties were raw development lands, the Receiver could not obtain conventional mortgage financing from a financial institution.
- 11. On July 12, 2012 the Receiver obtained a financing commitment from BFT Capital Inc. on a first mortgage against the Georgina Property in the sum of \$100,000. The Receiver has currently drawn on \$80,000 of the funding available.
- 12. A Pre-Authorized Debit plan agreement has been signed by the Receiver to pay the monthly interest charge on the drawn mortgage at 8.5%. Currently, the Receiver is paying \$566.67 per month in automatic interest withdrawals, on the \$80,000 draw. Financing fees were 5.5% of the full mortgage

amount. These rates reflect the developmental nature of the property, however these market rates are believed to be fair and reasonable in the circumstances and more advantageous than the comparable rates for property tax arrears and therefore, the mortgage funding benefited the estate.

Property taxes

13. As noted in the First Report, the property taxes (including penalties and interest) were \$54,536.41 for the Meaford Properties (as at April 27, 2012) and \$12,307.62 for the Georgina Property (as at May 7, 2012).
14. On October 5, 2012, the Receiver issued a total payment of \$39,725.01 to significantly reduce the tax liability on the two properties. Of the \$39,725.01 payment, \$19,725.01 was issued to the Town of Georgina to repay the total outstanding liability owing at the time. The remaining \$20,000 was issued to the Municipality of Meaford to reduce the total balance owing.
15. The Municipality of Meaford provided a statement of account for all the Meaford Properties, indicating that a total of \$49,408.66 in property taxes, penalties and interest remain outstanding as at December 3, 2012.
16. After the October 5, 2012 remittance, there was no outstanding tax liability owing to the Town of Georgina. Any accrued property taxes will be paid on closing.

Legal counsel

17. The Receiver retained Gowling Lafleur Henderson LLP (“Gowlings”) to conduct title searches for the Real Properties, review Receiver reports, assess lease agreements with tenants and to advise on other miscellaneous legal matters.

Property maintenance

18. As referred to in the Receiver’s First Report, the Receiver engaged Paul Davis Systems to winterize the house at Meaford. Their work included the following:
 - a) cleaning the interior and exterior of the property and removing excess debris;
 - b) boarding up windows and securing all access points to the building;
 - c) securing access to the main entry of the house;
 - d) installing a handrail on the main floor which was exposed to the basement; and
 - e) ensuring no electricity or power connected to the building.

Books and records

19. The Receiver encountered challenges in locating and identifying the assets held by the Company. Due to the lack of funding and management resources, the Company's books and records were disorganized and required excessive time by the Receiver to identify potential assets of the Company.
20. The Receiver reviewed 24 months of POSE's Scotiabank bank statements for the 24 month period from March 31, 2010 to April 30, 2012. The review was conducted to assist in the identification of additional assets or liabilities potentially belonging to or owed by the Company. The Receiver did not locate any additional information that impacted the financial records of the Company. The Receiver has not noted any unusual activity that occurred in the account during the last 24 months, as the cash balance was historically insignificant and account activity was minimal.

Notices to Unitholders

21. The Receiver has updated its webpage to communicate important changes occurring during the receivership to Unitholders.
22. The Receiver responded to further telephone inquiries and address updates from Unitholders.
23. The Receiver provided a letter report dated November 20, 2012 to Smith Valeriotte LLP, the former legal counsel of the Unitholders. The report provided the law firm with an update regarding the Receiver's activities during the receivership. We were advised by one of the Unitholders that this letter was subsequently distributed by the law firm to some of the Unitholders. Attached hereto as **Appendix "C"** is a copy of the letter.

Meaford Tenants

24. The Receiver obtained copies of current lease agreements and insurance coverage from the nine (9) Meaford tenants.
25. The Receiver reviewed each property insurance policy and lease agreement. A copy of the property insurance was provided to the Receiver's insurance company for review and the lease agreements were given to the Receiver's legal counsel for review.
26. Upon review of the leases, the Receiver discovered a clause requiring the tenants' to pay their proportionate share of property taxes as rent.
27. The Receiver conducted a review of rent paid by each tenant since the 2010 calendar year. The Receiver found a substantial shortfall in the amount of rent collected in the two years preceding the receivership appointment.

28. The Receiver has recalculated the amount of rent owing from each tenant from 2010 to 2012 and now collected proceeds of \$12,432.17. All nine tenants have remitted the recalculated amounts and are up to date on all rent owing as of the 2012 calendar year.

IV. Marketing and Sales Process

29. As set out under the marketing process in the First Report, the Receiver engaged CBRE Limited Brokerage (“CBRE”) to act as the broker on the sale of the Real Properties.

30. Marketing initiatives undertaken by CBRE include the following:

- a) erecting multiple signs (4 feet by 8 feet) at each physical location;
- b) listing the properties with two brokerages on two real estate boards:
 - i) Georgian Triangle Real Estate Board; and
 - ii) London St. Thomas Association of Realtors.
- c) uploading the sales listings to MLS, ICX, LoopNet and CBRE.ca;
- d) creating and distributing sales brochures;
- e) placing an advertisement in Collingwood Homes Magazine in November 2012, and
- f) placing separate local agents at each location to show the properties and to reach out to their client base for additional interest.

31. As of the date of this report, CBRE provided an update on market activity to date which included the following:

- a) Georgina Property – seven inquiries and seven site visits, three of which expressed moderate interest. Two buyers submitted offers and as noted previously, one resulted into an agreement of purchase and sale.
- b) Meaford Property – nine inquiries and one site visit with minor interest. No offers have been placed on the property. One buyer expressed interest in placing an offer, however it never materialized.

32. CBRE is of the view that the purchasers of the Real Properties will likely be either farmers, speculators, or those looking for a recreation piece to build a residence. This is due to the fact that the properties are parcels of land rather than industrial buildings or office space. CBRE has also noted that there is little development potential at this time due to zoning issues and quality of land.

Georgina Property

33. The Receiver received its first offer on the Georgina Property from an individual buyer, on August 23, 2012. After some negotiation, the buyer submitted his counter offer conditional on financing and due diligence.
34. While the first offer was being negotiated on the Georgina Property, a much higher second offer was submitted on October 9, 2012, conditional on a 30 day due diligence period. However, upon completion of the due diligence period the buyers withdrew their offer due to their perception of challenges in developing the property.
35. The Receiver resurrected discussions with the first buyer and came to an agreement with a new offer signed on December 21, 2012. Details on these offers have been included in the sealed Supplemental Report.
36. The Purchase and Sale Agreement accepted by the Receiver from the current buyer is now only conditional upon the approval of this Court and the issuance of an order vesting the Georgina Property in the purchaser.
37. The Receiver respectfully recommends that the Court make an Order to approve the Purchase and Sale Agreement and authorize and direct the Receiver to complete the transaction for the following reasons:
 - a) The property was adequately and professionally marketed;
 - b) The process undertaken by the Receiver in the disposition of the Georgina Property was reasonable given the listing process undertaken and broad range of exposure of the property to the marketplace;
 - c) The effect of the proposed sale will result in a benefit to the Unitholders;
 - d) No parties will be prejudiced by the acceptance of the Purchase and Sale Agreement;
 - e) The Purchase and Sale Agreement represents the highest and best offer, in terms of both price and conditions, received by the Receiver; and
 - f) The Purchase and Sale Agreement agrees with the independently appraised value as provided by Royal LePage and is considered reasonable and fair taking into account the market value of the property.
38. The Receiver is of the view that it is appropriate that this Court order the sealing of the Supplemental Report which contains a copy of the independent appraisal, a summary of offers received and a copy

of the Sale Agreement until the closing of this transaction since disclosure of these details could prejudice future sales efforts should the transaction not close for any reason.

Meaford Property

39. The Meaford Property has not received any offers since the sales process was initiated. This is largely due to negative feedback received on the property for a number of reasons.
40. Given the limited interest in the Meaford Property, the Receiver requested CBRE to conduct market research within the Meaford locale to assist the Receiver in determining next steps.
41. As of the date of this report, CBRE has advised the Receiver that there have not been any comparable properties sold in the past six months, nor have any potential sales opportunities been missed in the local marketplace of Meaford.
42. As a result of the limitations encountered in divesting of the Meaford Property, CBRE has advised the Receiver to significantly reduce the listing price for the Meaford Property down from \$1,275,000 to below \$1 million. The Receiver is in agreement with the necessity and magnitude of the price adjustment proposed by CBRE and believes it more accurately reflects the market value of the Meaford Property.

V. Receiver's Interim Statement of Receipts and Disbursements

43. Attached as **Appendix "D"** is a copy of the Receiver's Interim Statement of Receipts and Disbursements for the period April 2, 2012 to December 31, 2012, showing an excess of receipts over disbursements of \$16,851.
44. As a result of the lack of financing available to date, no interim fees have been paid out to the Receiver as of the date of this report.

VI. Claims Bar Process

45. As previously discussed in the First Report, the Receiver has deferred the claims bar process until sufficient funds of the estate are on hand. Upon approval by the Court for the sale of the Georgina Property and completion of the transaction, the Receiver will submit the claims bar process at a later date.

VII. Conclusion

46. The Receiver submits to this Court that it has taken all reasonable actions in the circumstances to obtain the best possible price and terms in the Purchase and Sale Agreement. The Receiver has not acted improvidently and has represented itself in the best interests of all stakeholders in the course of its duties as Receiver.
47. The Receiver respectfully requests that this Court grant an Order which provides for the following:
- a) Approval of the Purchase and Sale Agreement with Daniel Newton and for a vesting order in connection with the sale of the Georgina Property;
 - b) The sealing of the Supplemental Report until after the closing of the Purchase and Sale Agreement;
 - c) Approval of the Receiver's Interim Statement of Receipts and Disbursements for the period April 2, 2012 to December 31, 2012; and
 - d) Approval of the conduct and activities of the Receiver since the First Report dated May 31, 2012;

All of the foregoing is respectfully submitted to this Court as of this 9th day of January, 2013.

Deloitte & Touche Inc.

In its capacity as Court-appointed Receiver
and Manager of P.O.S.E. Investments
and not in its personal capacity



Per:

Robert Biehler, CA•CIRP
Senior Vice-President

APPENDIX A – INITIAL ORDER

APPENDIX B – MARKETING ORDER

**APPENDIX C – LETTER TO SMITH VALERIOTE LLP DATED
NOVEMBER 20, 2012**

**APPENDIX D – RECEIVER’S INTERIM STATEMENT OF
RECEIPTS AND DISBURSEMENTS**
