

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

**FIFTH REPORT OF DELOITTE RESTRUCTURING INC.
IN ITS CAPACITY AS RECEIVER OF P.O.S.E. INVESTMENTS**

JUNE 18, 2014

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I. Introduction

1. By Order of the Honourable Mr. Justice Thompson dated April 2, 2012 (the “**Initial Order**”), Deloitte Restructuring Inc. (formerly 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 corporations (“**Unitholders**”) and held real property through 910912 Ontario Inc. and 910913 Ontario Inc. and the partnership commenced in 1990.
3. The real properties held by 910912 Ontario Inc. and 910913 Ontario Inc., in trust for POSE, were 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. Pursuant to the Order of the Honourable Mr. Justice Parayeski, dated January 22, 2013, the Receiver obtained an approval and vesting order vesting in the purchaser the Receiver’s right, title and interest in and to the Georgina Property. The order was subsequently varied on January 25, 2013 (collectively “**Approval and Vesting Order – Georgina Property**”). A copy of the Approval and Vesting Order – Georgina Property is attached as **Appendix “C”**.
7. On January 25, 2013, the sale transaction for the Georgina Property was successfully closed.
8. Pursuant to the Order of the Honourable Mr. Justice Reid, dated May 28, 2013, the Receiver obtained an order that outlined the procedures that creditors, unitholders may prove a claim with the Receiver (“**Claims Procedure Order**”). A copy of the Claims Procedure Order is attached as **Appendix “D”**.

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9. Pursuant to the Order of the Honourable Mr. Justice Talian, dated March 4, 2014, the Receiver obtained an order approving the fees and disbursements of the Receiver and those of its counsel, Gowling Lafleur Henderson LLP.
 10. The Court Orders, Receiver's reports and letters written to update the Unitholder have been posted on the Receiver's website www.deloitte.ca.
 11. Unless otherwise provided, all other capitalized terms not otherwise defined previous Reports and Orders.

II. Purpose of Report

12. The purpose of the Receiver's Fifth Report to Court is to:
 - a) report on the activities of the Receiver since our last report;
 - b) 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 agreement of purchase and sale between the Receiver and Rick Pereira and Nancy Pereira signed June 5, 2014 (the "**Meaford Purchase and Sale Agreement**") together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Meaford Property to Rick Pereira and Nancy Pereira, or as it may further direct in writing, upon closing of the Meaford Purchase and Sale Agreement;
 - ii) approving to seal the Receiver's Supplemental Report to this Fifth Report (the "Supplemental Report") which summarizes previous offers received by the Receiver, and includes the appraisal received by the Receiver for the Meaford Property as well as a copy of the Meaford Purchase and Sale Agreement;
 - iii) approving of the Receiver's Interim Receipts and Disbursements for the period from February 1, 2014 to May 31, 2014; and
 - iv) approving the conduct and activities of the Receiver to June 18, 2014 and the activities of the Receiver as described in this Fifth Report including, without limitation, the steps taken by the Receiver pursuant to the marketing process and the activities related to executing the Claims Procedure Order.

III. Receiver's Activities to Date

Meaford Tenants

13. To date, the Receiver has collected \$20,971.61 in rent from the nine tenants, including the 2014 interim taxes.

Claims Procedure / Interim Distribution

14. In March, 2014, the Receiver wrote a letter to all of the Unitholders to update the status of the receivership administration, specifically the claims process, the Receiver's plan to make a partial distribution to the Cost Claimants and the marketing and sales efforts with respect to the Meaford Property.
15. A copy of the letter is attached hereto as **Appendix "E"** and it was sent by ordinary mail to the Unitholders and posted on the Receiver's website.
16. Following the mailing of the letter, the Receiver was contacted by certain of the Unitholders for clarification of the letter and the status of the administration.
17. In response to an inquiry, the Receiver in its discretion and consistent with paragraph 8 of the Claims Procedure Order, amended the claims of two Unitholders resulting in the admission of two additional Cost Claims totaling approximately \$1,800.00, in aggregate, as a result of further review of the claims documentation received previously.
18. In March and April, 2014, the Receiver made interim dividend payments totaling \$73,432.13 to 20 Unitholders with Cost Claims, which represented 50% of the total Cost Claims.

Meaford Property – Marketing Process

19. In March, 2014 the Receiver received a second offer on the Meaford Property. The Receiver, in consultation with the agent and the appraiser, attempted to negotiate with the prospective purchaser; however, it was not successful as the value of the purchaser's final offer was below the appraised value set out by the appraiser.
20. As previously reported, the Receiver has made a series of price reductions since July, 2012 when the listing was commenced in response to the unsuccessful attempts to negotiate a sale of the property and the challenging attributes of the property, including the land leases.
21. Following the unsuccessful negotiations with the prospective purchaser in March, 2014, the Receiver reduced the listing price for the Meaford Property to \$699,000.00 from \$875,000.00 effective April 14, 2014.

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22. On April 17, 2014, Rick Pereira and Nancy Pereira (Collectively the “**Purchaser**”) made a conditional offer to purchase all three parcels of land comprising of the Meaford Property.
 23. The Purchaser’s conditions were extended to June 5, 2014 to facilitate additional due diligence, in particular in reviewing the terms and conditions of land leases with the nine tenants.
 24. The Meaford 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 Meaford Property in the Purchaser.
 25. The Receiver respectfully recommends that the Court make an Order to approve the Meaford 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 for nearly 2 years;
 - b) The process undertaken by the Receiver in the disposition of the Meaford Property was consistent with the Marketing Order;
 - c) The property was broadly exposed to the marketplace;
 - d) The Receiver updated the Unitholders on the status of the listing of the Meaford Property and the Receiver directly contacted certain unitholders and other parties familiar with the previous marketing attempts undertaken by POSE several years ago;
 - e) Since the property was listed July, 2012 there have been 3 offers, approximately 22 inquiries about the property and there have been 5 parties attend on-site;
 - f) The effect of the proposed sale will result in a partial return of capital to the Unitholders and wind down the affairs of POSE;
 - g) No parties will be prejudiced by the acceptance of the Meaford Purchase and Sale Agreement;
 - h) The Meaford Purchase and Sale Agreement represents the highest and best offer, in terms of both price and conditions, received by the Receiver; and
 - i) The price is consistent with the appraised value as provided by Ron Hopper Real Estate Ltd. of Owen Sound, Ontario and in the context of the marketing exposure, is therefore considered to be fair and reasonable.
 26. 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 report and subsequent email correspondence outlining the appraised value and a summary of offers received and a copy of the

Meaford Purchase and 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.

IV. Receiver's Interim Statement of Receipts and Disbursements

34. Attached as **Appendix "F"** is a copy of the Receiver's Interim Statement of Receipts and Disbursements for the period April 2, 2012 to May 31, 2014, showing an excess of receipts over disbursements of \$73,975.14, after interim distributions to Cost Claimants.
35. Upon collection of the net proceeds of the proposed sale transaction, it is the Receiver's intention to pay any administration costs, complete the distribution the Unitholders for their Cost Claims and make a final distribution to the Unitholders on a *pro rata* basis pursuant to the Claims Procedure Order and complete a Sixth and Final Report to the Court and seek approval of all activities and seek a discharge.

V. Conclusion and Recommendations

36. The Receiver submits to this Court that it has taken all reasonable actions in the circumstances and has represented itself in the best interests of all the stakeholders in the course of administering its duties as Receiver.
37. The Receiver respectfully requests that this Court grant an Order *inter alia*:
 - a) approving the Meaford Purchase and Sale Agreement and Vesting the Meaford Property in the Purchaser.
 - b) approving of the Receiver's Interim Statement of Receipts and Disbursements for the period February 1, 2014 to May 31, 2014; and
 - c) approving of the conduct and activities of the Receiver since the Fourth Report dated February 21, 2014.

All of the foregoing is respectfully submitted to this Court as of this 18th day of June, 2014.

Deloitte Restructuring 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, CPA, CA, CIRP
Senior Vice-President

APPENDIX “A” – INITIAL ORDER

APPENDIX “B” – MARKETING ORDER

**Appendix “C” – Approval and Vesting Order – Georgina
Property**

Appendix “D” – Claims Procedure Order

APPENDIX “E” – UNITHOLDER LETTER

**APPENDIX “F” – RECEIVER’S INTERIM STATEMENT OF
RECEIPTS AND DISBURSEMENTS**
