

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

- and -

FINGAL PROPERTIES HOLDINGS INC.

Respondents

THIRD REPORT OF THE RECEIVER

June 5, 2019

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I. INTRODUCTION

1. Pursuant to an application made by M.O.S. MORTGAGEONE SOLUTIONS LTD. (“**MOS**”), by Order of the Ontario Superior Court of Justice (“the **Court**”) dated September 12, 2018, entered and issued on September 18, 2018 (the “**Appointment Order**”), RSM Canada Limited was appointed as receiver (the “**Receiver**”) of the assets and undertakings and properties of Fingal Properties Holdings Inc. (“**Fingal**”) acquired for or used in relation to a business carried on by Fingal, including the lands and premises municipally known as 39232 Fingal Line, St. Thomas, ON (the “**Property**”). A copy of the Appointment Order is attached hereto as **Appendix “A**”. A copy of the accompanying endorsement dated September 12, 2018 is attached as **Appendix “B**”.
2. The Appointment Order authorized the Receiver to, among other things, take possession and control of the Property, market any or all of the Property and negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate and sell, convey, transfer, lease or assign the Property or any part or parts thereof with the approval of the Court.
3. The Appointment Order and other court documents, except as detailed in paragraph 4 below, have been posted on the Receiver’s website, which can be found at <https://rsmcanada.com/fingal-properties-holdings-inc.html>.
4. The Receiver prepared its First Report to the Court (the “**First Report**”) on October 15, 2018, attached hereto without Appendices as **Appendix “C**”. The Order of Justice Wilton-Siegel dated October 31, 2018 approving, in part, a sale

process (discussed below) is attached as **Appendix “D”** (the “**Sale Process Order**”). The Receiver prepared its Second Report to the Court (the “**Second Report**”) on March 14, 2019, attached hereto without Appendices, and with the purchaser’s name redacted, as **Appendix “E”**. The Order of Justice Penny dated March 22, 2019 (the “**Approval and Vesting Order**”), approving the sale of the Property to the purchaser (the “**Purchaser**”) that submitted the best offer, dated as of February 13, 2019 (the “**Approved APS**”), in the sale process discussed in the Second Report and below, is attached as **Confidential Appendix “1”**. Attached as **Appendix “F”** is a copy of the related endorsement (including an unofficial transcription thereof prepared by the Receiver’s counsel). In such endorsement, in order to protect future marketing efforts if the Approved APS did not close, Justice Penny ordered that the Approval and Vesting Order be sealed pending closing. In addition, Justice Penny directed that the name of the Purchaser be redacted in the Receiver’s publicly filed Motion Record.

5. Justice Penny made an additional order on March 22, 2019 (the “**General Order**”), a copy of which is attached as **Appendix “G”**, *inter alia* (a) directing Michael, Olynyk, Italo Ferrari, Wilsondale Assets Management Inc. (“**WAM**”), Fingal and others to provide certain information and documentation to the Receiver, as further discussed below, (b) increasing the amount of permitted borrowings by the Receiver from \$425,000 to \$500,000, (c) authorizing the Receiver to make interim distribution payments to the first mortgagee, First Source Mortgage Corporation (“**First Source**”), out of available net proceeds,

on the terms set out therein, and (d) approving the Second Report and Confidential Supplement thereto and the activities described therein.

II. PURPOSE OF THIRD REPORT

6. The purpose of this third report (the “**Third Report**”) is to:
- (a) provide the Court with an update on the Approved APS, which has been terminated;
 - (b) provide the Court with an update on the sale process undertaken by the Receiver, as approved in the Sale Process Order (the “**Sale Process**”);
 - (c) provide the Court with an update on the other activities of the Receiver subsequent to the date of the Second Report;
 - (d) provide the Court with a summary of the Receipts and Disbursements in the estate for the period September 12, 2018 to May 31, 2019 and estimated cash requirements to August 31, 2019;
 - (e) provide the Court with the professional fees of the Receiver and its legal counsel from April 9, 2018 to May 31, 2019; and
 - (f) seek orders:
 - i. requesting authority for additional Receiver’s borrowings in the amount of \$150,000;
 - ii. approving the professional fees of the Receiver and its legal counsel to May 31, 2019; and
 - iii. approving the Third Report and the Receiver’s conduct and activities described therein.

Terms of Reference

7. In preparing this report and making the comments herein, the Receiver has relied upon certain unaudited financial information provided by Fingal and information received from third-party sources (collectively, the “**Information**”). The Receiver has, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
8. Unless otherwise stated, all dollar amounts contained in this report are expressed in Canadian dollars.

III. BACKGROUND

9. Fingal is an Ontario corporation incorporated in 2014 to acquire the Property and is currently its registered owner. Mr. Italo Ferrari is the president, treasurer, secretary and sole director of Fingal.
10. Fingal intended to complete the development of a partially constructed independent living and assist living facility for seniors to be known as Meadow Creek Retirement Residence (“**Meadow Creek**” or “the **Development**”), which had previously been in receivership under a different owner.
11. Fingal is an affiliate or subsidiary of WAM, which is an asset management group specializing in commercial real estate services and was involved with oversight

of the Development. Mr. Ferrari is also the sole shareholder and general manager of WAM. WAM owns and manages other commercial real estate companies.

12. As noted in paragraph 38 of the Second Report, in paragraph 2(x) of the Application of MOS, originally returnable May 29, 2018, MOS alleged that “It appears that the Debtor has used investor funds for other purposes than completion of the construction of the Development”. In an affidavit filed by MOS, the deponent swore that Mr. Ferrari responded to this allegation by informing the deponent that “the Debtor had made loans to related companies to allow them to purchase and maintain other properties”. This is discussed in more detail in paragraphs 38 to 42 below.

IV. SALE PROCESS, OFFERS RECEIVED AND EXTENSION OF LISTING

Status of Approved APS

13. In accordance with the Sale Process, the Property was marketed by the broker engaged by the Receiver, Cushman & Wakefield ULC, Brokerage (“**CW**”), under a listing agreement entered into on November 22, 2018. The Second Report and Confidential Supplement thereto reported extensively on the activities of CW and the Receiver, the offers submitted under the two rounds of bidding, the Approved APS the Receiver entered into with the Purchaser on February 27, 2019 and the appraisal obtained by the Receiver. As indicated above, on March 22, 2019 the Approval and Vesting Order was made in respect of the Approved APS.

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14. The Approved APS contained a Purchaser's condition providing the Purchaser with 45 days (to April 15, 2019) within which to conduct due diligence on a broad range of matters. In the intervening period, the property continued to be listed on MLS as "Sold Conditionally".
 15. On April 15, 2019, the Purchaser requested that the Receiver grant a 60-day extension to the due diligence condition. Given the significant additional time being requested and the matters at issue, extensive consultations and emails took place resulting in a two-day extension to April 17, 2019 which was subsequently further extended by one day to April 18, 2019, in each case effected by an exchange of emails between counsel for the Receiver and counsel for the Purchaser.
 16. After the Receiver completed its consultations with the three mortgagees holding charges on the Property, on April 18, 2019 an amending agreement to the Approved APS the ("**AAPS**") was entered into between the Purchaser and the Receiver. The AAPS provided the Purchaser with a further 20 days (to May 8, 2019), within which to complete its due diligence and required closing to occur 9 days after the due diligence condition was waived or satisfied. The Purchaser was also required to provide the Receiver, if requested, with its third-party due diligence reports, studies, audits, etc. if the Purchaser terminated the APS.
 17. On May 6, 2019 the Purchaser sent the Receiver's counsel a letter terminating the Approved APS after a request for a further extension of the due diligence period was denied by the Receiver.

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18. The Purchaser complied with all the terms of the Mutual Release Agreement with the Receiver dated as of May 27, 2019 respecting the Approved APS and on May 29, 2019 the Receiver returned the Purchaser's deposit.
 19. As the Approved APS sale did not close, in accordance with the General Order and the endorsement relating thereto, the Confidential Supplement to the Second Report and the appendices thereto and the Approval and Vesting Order remain sealed. In addition, the name of the Purchaser is to remain redacted in all materials.

Continuation of the Listing of the Property

20. After the Purchaser first requested an extension of the due diligence period under the Approved APS and continuing until and after the termination of the Approved APS, the Receiver considered, in consultation with CW and the mortgagees, the appropriate steps to take to actively continue the Sale Process. As noted in paragraph 14 above, during the conditional period under the Approved APS the Property continued to be listed on MLS as "Sold Conditionally", and the For Sale sign remained on the property. However, the existence of a conditional agreement significantly dampened any potential purchaser interest in the Property. In addition, the initial steps in the Sale Process to market the Property, as described in detail in the Second Report, had been taken in late 2018 and early 2019 and needed to be refreshed.
21. Based on the results of the Sale Process to date and market feedback, CW updated the marketing plan and recommended that there now be a specific

listing price, set at \$8,800,000, and no formal bid submission date. Under the initial stage of the Sale Process, there had been no listing price and an initial bid submission date of January 30, 2019. CW's view is that the specific listing price will uncover new prospective purchasers and likely incentivize previously interested parties. The Receiver, after consulting with the mortgagees, accepted CW's recommendations. The updated marketing plan sets the listing price of the Property at \$8,800,000 and is open-ended, where bids will be considered as received, in contrast with the bid process used in the initial stage of the Sale Process.

22. As a result of these adjustments and since the term of the original listing agreement with CW had expired on March 22, 2019, the Receiver has entered into an amending agreement to the original listing agreement with CW dated as of May 17, 2019. This amending agreement incorporates the Sale Process adjustments described in the previous paragraph and extends the term of the listing till August 30, 2019.
23. Even before the entering into of the listing agreement amendment and continuing till the present time, there has been renewed interest in the Property and it has been toured by new prospective purchasers. Several parties have recently executed confidentiality agreements and offers have been submitted recently, which the Receiver is in the process of reviewing and considering.
24. The existing data room initially will be refreshed with additional documentation as deemed appropriate.

Continuation of Sale Process and Marketing Materials

25. CW prepared an updated Information Brochure (the “**Brochure**”) specifying a listing price of \$8,800,000 attached hereto as **Appendix “H”**. This Brochure stipulates that bidders are advised to do their due diligence prior to submitting an offer and that preference will be given to offers that substantially comply with the Receiver’s form APS and, in particular, do not add any conditions.
26. The Brochure was launched on May 30, 2019 and weekly emails blasts are being sent to approximately 2,500 contacts in the investor and broker communities. CW will be contacting all parties who have signed confidentiality agreements (“**CA’s**”) and all parties who have expressed an interest in the Property. CW agreed to cooperate with other brokers on the listing.
27. The Property was re-listed with the \$8,800,000 listing price on MLS in Toronto and London, Ontario on May 27, 2019 and an ad with that listing price was published in the *Globe and Mail* National Edition on May 30 and June 4, 2019, a copy of which attached hereto as **Appendix “I”**.

V. ADDITIONAL RECEIVER’S ACTIVITIES TO DATE

28. The Receiver has undertaken the additional activities set out below since the date of its Second Report dated March 14, 2019.

Funding of the Receivership - update

29. As detailed in paragraph 20 of the Second Report, the Receiver borrowed \$400,000 with Court authorization from Your Credit Union (“**YCU**”), a member

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- of MOYA's syndicate, pursuant to Receiver's Certificate No. 2 and repaid the \$100,000 it had borrowed from First Source pursuant to Receiver's Certificate No. 1 to fund protective disbursements.
30. The General Order increased the Receiver's authorized borrowing limit by \$75,000, from \$425,000 to \$500,000. This amount was based on the Receiver's borrowing budget with the majority of the increase related to the new insurance policy premiums, ongoing security and the payment of property tax arrears (to avoid ongoing interest and other charges).
31. YCU agreed to provide funding to the Receiver and on March 26, 2019 the Receiver borrowed an additional \$100,000 from YCU pursuant to Receiver's Certificate No. 3 attached as **Appendix "J"**.
32. As of the date of the Third Report, the Receiver has borrowed a total of \$500,000 leaving no available authorized borrowings.
33. Based on the cash on hand at May 31, 2019 and estimated costs to August 31, 2019, the Receiver requires additional funding (beyond the current authorized amount of \$500,000) of \$150,000. Further details are provided in paragraph 50 below.

Insurance

34. As noted in the Second Report, the Receiver obtained an extension of its insurance coverage (building and liability), from HUB Insurance ("**HUB**"), for three months at a cost of \$53,460 (\$49,500 plus PST). This coverage expires

June 27, 2019. The amount of the insurance coverage relates to rebuild values and the insurers insist on insurance to value.

35. Given the recent interest and the continuing listing of the Property, the Receiver recently contacted HUB to advise that it requires an extension of the existing coverage. HUB advised that the policy could be renewed for a further three months at an estimated cost of \$64,800 (\$60,000 plus PST).
36. The Receiver will request a refund of any unused premiums.

Property Taxes

37. The Receiver has paid the first instalment of the interim 2019 property tax bill. The second instalment of \$28,597.50 is now due.

Sources and Uses Analysis

38. As noted in paragraph 38 of the Second Report and paragraph 12 above, in paragraph 2 (x) of the application of MOS, MOS alleged that “It appears that the Debtor has used investor funds for other purposes than completion of the construction of the Development”. Mr. Ferrari responded that “the Debtor had made loans to related companies to allow them to purchase and maintain other properties”.
39. As detailed in paragraph 41 of the Second Report, the Receiver emailed Mr. Olynyk of WAM on Nov. 27, 2018 requesting details to confirm balances owing from related companies as at the date of the receivership and setting out a summary of discrepancies. Despite numerous follow-ups to Messrs. Olynyk and

Ferrari, as of the date of the Second Report no explanation had been provided to the Receiver by either Mr. Olynyk or Mr. Ferrari, leading to the Receiver seeking the Court's assistance. The General Order directed Messrs. Olynyk and Ferrari or any other person affiliated with WAM to respond in writing to the Receiver's request for information and documentation, and WAM and Fingal, its directors, officers and shareholders, to provide information as to Fingal's T4 and T2 tax filings, within 30 days of March 22, 2019.

40. Based on recent correspondence with Mr. Olynyk, Fingal's records and a conference call on May 29, 2019 with Mr. Olynyk and Howard Manis (counsel to Fingal and WAM), the Receiver has confirmed that Fingal advanced funds to cover overdrafts and fund operations of certain related companies. Further, Mr. Olynyk has confirmed that these balances represent outstanding indebtedness owed to Fingal as at the date of the receivership. Details of amounts owing are as follows:
- a) WAM - \$4,517,249.73;
 - b) Wilsondale Ventures Inc. - \$39,000;
 - c) Ferrus Holdings Inc. - \$10,940.38;
 - d) Sarwin Holdings Inc. - \$2,836.30; and
 - e) Drawbridge - \$3,750.00 (correct legal name not yet determined).
41. The Receiver is in the process of sending demand letters to these entities.
42. The Receiver reports that it has now received the T4 summary for 2018 and Mr. Olynyk is following up on the 2016 T2 return as requested by the Receiver.

VI. STATEMENT OF RECEIPTS AND DISBURSEMENTS

43. Attached as **Appendix “K”** is a Statement of Receipts and Disbursements from September 13 to May 31, 2019 and Estimated Cash Requirements to August 31, 2019.
44. As indicated above, based on cash on hand at May 31, 2019 and cash requirements to August 31, 2019, the Receiver is requesting the Court to authorize additional borrowings in the amount of \$150,000, thus increasing the Receiver’s authorized borrowings limit to \$650,000. In addition to monthly expenses, this amount is required to cover insurance and property taxes.

VII. PROFESSIONAL FEES

45. Pursuant to paragraph 18 of the Appointment Order, the Receiver and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Appointment Order. Pursuant to paragraph 19 of the Appointment Order, the Receiver and its counsel shall pass their accounts from time to time, and for this purpose such accounts have been referred to a judge of the Commercial List of the Court.
46. Since the administration of this estate has now been on-going for a period of approximately 9 months, and the Receiver and its counsel have been required to perform extensive services, the Receiver is of the view that it is now appropriate that the Receiver and its counsel request that the Court approve their accounts.

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47. The total fees for the Receiver for the period from April 9, 2018 to May 31, 2019 were \$232,413.50 plus disbursements of \$418.65 plus HST of \$30,268.18 for a total of \$263,100.33. The time spent by the Receiver is more particularly described in the Affidavit of Bryan A. Tannenbaum sworn June 4, 2019, which is attached hereto and marked as **Appendix “L”**. This affidavit contains summary of the invoices that set out the services provided during this time period.
48. The total fees of GSNH, as counsel to the Receiver, for the period from September 13, 2018 to May 31, 2019 were \$200,906.00 plus disbursements of \$2,612.94 plus HST of \$26,390.43, for a total of \$229,909.40. The time spent is more particularly described in the affidavit of Michael B. Rotsztain affirmed June 5, 2019, which is attached hereto as **Appendix “M”**. This affidavit contains a summary of the invoices that set out the services provided during this time period.
49. The Receiver requests that the professional fees detailed in paragraphs 47 and 48 be approved by the Court. As no professional fees have been paid to date, the fees will be paid at a future date from the closing proceeds.

VIII. CONCLUSION

50. The Receiver respectfully requests that the Court grant the relief described in paragraph 6(f) above.

All of which is respectfully submitted to this Court as of this 5th day of June, 2019.

RSM CANADA LIMITED, solely in its capacity
as Receiver of all the assets, undertakings and
properties of Fingal Properties Holdings Inc.,
and not in its personal capacity
Per:



Name: Bryan A. Tannenbaum

Title: President

I have authority to bind the corporation