

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

THE HONOURABLE) FRIDAY, THE 22nd
)
JUSTICE KOEHNEN) DAY OF MAY, 2020

BETWEEN:

MELVYN EISEN, TRUSTEE

Applicant

- and -

DIAM DANFORTH PROPERTY INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*
Section 101 of the *Courts of Justice Act*, and Section 68(1) of the *Construction Act*

**ORDER
(Sale Procedure Approval)**

THIS MOTION, made by Rosen Goldberg Inc., in its capacity as the Court-appointed non-possessory receiver and construction lien trustee (in this capacity, the “**Receiver**”) of the real property municipally known as 2359 Danforth Avenue, Toronto, Ontario (the “**Real Property**”), and all other property, assets and undertakings of DIAM Danforth Property Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, for an order (i) if necessary, abridging the time for service of the notice of motion and motion record herein, (ii) approving the First Report of the Receiver dated

May 19, 2020 (the “**First Report**”) and the activities described therein, (iii) approving the sale procedure (the “**Sale Procedure**”) presently being conducted by the Receiver pursuant to the terms of the Order of the Honourable Mr. Justice Koehnen dated May 4, 2020 (the “**Appointment Order**”), (iv) approving *nunc pro tunc* the listing agreement the Receiver has entered into with Lennard Commercial Realty, Brokerage as listing broker for the sale of the Real Property, also pursuant to the terms of the Appointment Order, (v) sealing Confidential Appendices “1”, “2”, “3” and “4” to the First Report, being appraisals of the Real Property, until the completion of a sale transaction in respect of the Real Property, or until further Order of this Honourable Court; and (vi) authorizing the Receiver to arrange for the shoring remediation work required to be carried out pursuant to the report of Thornton Tomasetti Inc. dated May 11, 2020 (the “**Thorntons First Report**”), was heard this day by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

ON READING the First Report, and on hearing the submissions of counsel for the Receiver, counsel for the City of Toronto, counsel for the Applicant, and counsel for the Respondent, no one appearing for any other person on the Service List, although properly served as appears from the affidavit of service of Chad Kopach sworn May 20, 2020, filed:

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Receiver’s Notice of Motion dated May 19, 2020 (the “**NOM**”), and related motion material filed in support of that NOM, inciuding the Motion Record dated May 19, 2020, and the First Report

(collectively, the “**Motion Material**”), be and is hereby abridged, that service of the NOM and Motion Material is hereby validated, and that further service thereof is hereby dispensed with.

APPROVAL OF RECEIVER’S REPORT

3. **THIS COURT ORDERS** that the First Report, and the activities of the Receiver described therein, are hereby approved.

SALE PROCEDURE AND RETAINER OF BROKER

4. **THIS COURT ORDERS** that the Sale Procedure presently being conducted by the Receiver as set out in the First Report is hereby approved.

5. **THIS COURT ORDERS** that the Receiver be and is hereby authorized, *nunc pro tunc*, to enter into the listing agreement with Lennard Commercial Realty, Brokerage as set out in Appendix “I” to the First Report, and the listing agreement is hereby approved.

6. **THIS COURT ORDERS** that the Receiver is hereby authorized to carry out the Sale Procedure and to take such steps and execute such documentation as may be necessary or incidental to the Sale Procedure.

CONFIDENTIAL APPENDICES

7. **THIS COURT ORDERS** that the appraisals of the Real Property attached as Confidential Appendices “1”, “2”, “3” and “4” to the First Report, being, respectively, appraisals of Michael F. Potashnyk dated April 3, 2020, Cushman & Wakefield dated

January 9, 2018, Altus Group dated December 12, 2018, and Avison Young dated December 28, 2018 (collectively, the “**Confidential Appraisals**”), shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order.

8. **THIS COURT ORDERS** that the Confidential Appraisals shall remain under seal until the completion of a sale transaction in respect of the Real Property, or until further Order of the Court.

RETAINER OF CONTRACTOR

9. **THIS COURT ORDERS** that the Receiver is hereby authorized to retain a contractor to carry out the Immediate Remediation Work (as that term is defined in the First Report) as set out in the Thorntons First Report.

GENERAL

10. **THIS COURT ORDERS** that the Receiver may apply from time to time to this Court for advice and directions in the discharge of its powers and duties hereunder.

MISCELANEOUS

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that this order is effective from today's date and is not required to be entered.

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MELVYN EISEN, TRUSTEE
Applicant

and

DIAM DANFORTH PROPERTY INC.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**
Proceeding commenced at Toronto

**ORDER
(Sale Procedure Approval)**

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