



ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
JUSTICE OSBORNE)
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MONDAY, THE 29TH
DAY OF MAY, 2023

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

30 ROE INVESTMENTS CORP.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-13, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

ORDER
(Ancillary Matters)

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) without security, of (i) the real property legally described in Schedule “A” to the Order (Appointing Receiver) of this Court dated May 9, 2022 (the “**Real Property**”), (ii) all assets, undertakings and properties of 30 Roe Investments Corp. (the “**Debtor**”) acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor’s rights, claims, advantages, benefits, title and interest in, to

and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder, for an order, *inter alia* (i) approving the Distributions (as defined below), (ii) sealing the confidential appendices to the Fourth Report of the Receiver dated May 16th, 2023 (the “**Fourth Report**”), and (iii) approving the activities of the Receiver as described in the Fourth Report, was heard this day by Zoom videoconference.

ON READING the Fourth Report and on hearing the submissions of counsel for the Receiver, counsel for the Canadian Imperial Bank of Commerce (“**CIBC**”), counsel for KingSett Mortgage Corporation (“**KingSett**”) and Raymond Zar as Agent for the Debtor, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Brennan Caldwell sworn May 16, 2023, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Fourth Report.

DISTRIBUTIONS

3. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to make (or cause to be made) the following distributions and payments (collectively, the “**Distributions**” and each a “**Distribution**”) from the proceeds of each Transaction:
 - (a) to such parties as are required in respect of: (i) property tax arrears (including, without limitation, vacant home tax) and condominium common expense arrears in respect of the applicable Purchased Unit; and (ii) such other disbursements as are required to be paid by the Receiver in connection with the closing of such Transaction;

- (b) to Remax in respect of the commissions payable pursuant to the Remax Listing Agreement in respect of the Transaction (including, for the avoidance of doubt, commissions payable to the cooperating brokerage and applicable HST);
- (c) to CIBC in respect of the full amount of the indebtedness (including, without limitation, all principal, interest, expenses and costs) of the Debtor owing to CIBC and secured by the first mortgage in favour of CIBC on the applicable Purchased Unit; and
- (d) to KingSett in respect of the full amount of the indebtedness of principal of \$1,875,000 and interest thereof of the Debtor owing to KingSett and secured by the second mortgage in favour of KingSett on the applicable Purchased Unit, subject to such holdback as the Receiver considers appropriate to fund the receivership, including the fees and expenses of the Receiver and its counsel.

4. **THIS COURT ORDERS** that the Distributions authorized in subparagraphs 3(a) and (c) hereof are approved *nunc pro tunc* with respect to Transactions that closed prior to the date hereof.

5. **THIS COURT ORDERS** that the Receiver, its counsel and other agents are hereby authorized to take all necessary steps and actions to effect each of the Distributions in accordance with the provisions of this Order from time to time, and shall not incur any liability as a result of making any Distributions.

6. **THIS COURT ORDERS** that each of the Distributions shall be made free and clear of all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order (Appointing Receiver) of this Court made in the within proceedings dated May 9, 2022; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

each of the Distributions shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT ORDERS** that the Receiver and its agents shall be entitled to deduct and withhold from any Distribution such amounts as may be required to be deducted or withheld with respect to the Distribution under the *Income Tax Act* (Canada) or other applicable laws and to remit such amounts to the appropriate governmental authority (“**Governmental Authority**”) or other person entitled thereto. To the extent that amounts are so withheld or deducted and remitted to the appropriate Governmental Authority or other person, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order to such person as the remainder of the Distribution in respect of which such withholding or deduction was made.

SEALING

9. **THIS COURT ORDERS** that, subject to further Order of this Court, the Confidential Appendices to the Fourth Report shall be sealed and kept confidential.

APPROVAL OF RECEIVER’S ACTIVITIES

10. **THIS COURT ORDERS** that the Fourth Report, and the activities of the Receiver referred to therein, be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

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 and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order without the need for entry or filing.

**APPLICATION UNDER SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, Court File No.: CV-22-00674810-00CL
C. C.43, AS AMENDED, AND SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY
ACT, R.S.C. 1985, C. B-3 AS AMENDED**

**KINGSETT MORTGAGE
CORPORATION**

-and-

30 ROE INVESTMENTS CORP.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**ORDER
(Ancillary Matters)**

GOODMANS LLP

Barristers & Solicitors

333 Bay Street, Suite 3400

Toronto, Canada M5H 2S7

Christopher Armstrong LSO#: 55148B

carmstrong@goodmans.ca

Tel: (416) 979-2211

Fax: (416) 979-1234

Lawyers for KSV Restructuring Inc. in its capacity as
Court-appointed Receiver