



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-22-00674810-00CL

DATE: January 17, 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: KINGSETT MORTGAGE CORPORATION v.
30 ROE INVESTMENTS CORP.

BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Richard Swan	Lawyer for Kingsett Mortgage Corporation	swanr@bennettjones.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Sam Presvelos	Lawyer for 30 Roe Investments Corp.	spresvelos@presveloslaw.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Mark Dunn	Lawyer for Receiver KSV Restructing Inc.	mdunn@goodmans.ca
Noah Goldstein	Receiver KSV Restructuring Inc.	ngoldstein@ksvadvisory.com
Sean Dewart	Lawyer for Blaney McMurtry LLP	sdewart@dglp.ca
Rob Stellick	Lawyer for Ken Rosenberg & Paliare Roland LLP	rstellick@agblp.com

ENDORSEMENT OF JUSTICE CONWAY:

- [1] This 9:30 attendance before me was scheduled to provide direction to the Receiver about whether it is required to post Mr. Zar's affidavit sworn November 7, 2023 (the "**Affidavit**") on the Receiver's case website. I had originally scheduled today's attendance to determine the issue in advance of the Receiver's discharge motion that is scheduled to proceed on February 7, 2024. Mr. Zar has brought a motion returnable the same date for leave to bring a claim against the Receiver.
- [2] In the Affidavit, which is lengthy (approximately 151 pages long), Mr. Zar raises issues with the conduct of the Receiver, Kingsett, and numerous professionals that have been involved throughout the receivership.
- [3] I heard submissions from counsel for each of the Receiver, Mr. Zar, Kingsett and Paliare Roland today about whether the Affidavit should be posted on the Receiver's website pursuant to The Guide Concerning Commercial List E-Service effective July 1, 2014 (the "**Protocol**").
- [4] The Receiver's counsel submits that the Affidavit is potentially defamatory, that much of it is irrelevant to the upcoming motions, and that publication on the Receiver's website is prejudicial and does not serve the purposes underlying the Protocol.
- [5] Mr. Zar's counsel submits that the Receiver should be publishing the Affidavit on the website along with all other materials for the case; otherwise, he submits it is imbalanced and creates a double standard for the Receiver and Mr. Zar. He says that the information in the Affidavit is relevant to the motions. In particular, he says that the Receiver is seeking a release of Kingsett at the discharge motion and that the conduct of these firms and individuals are relevant to that issue. He also submits that the Receiver should have brought a motion to strike all or part of the affidavit if it felt that it was scandalous, vexatious, or otherwise improper. He submits that there is no evidentiary basis before me to conclude that the Affidavit is improper or should be struck and that, accordingly, it should be published on the website.
- [6] I have decided to defer this determination until the February 7, 2024 motions. That hearing will give the judge (whether it is scheduled before me or another CL judge) the necessary context and evidentiary basis to decide whether the Affidavit should be posted on the Receiver's website. The judge hearing the motions will be in a much better position to make that determination in the context of a proper record for this receivership rather than the document brief (that only contains the Protocol, the Affidavit, and the Third Report of the Receiver dated January 26, 2023) and the aide memoires that are before me today.
- [7] In the meantime, there is no issue about access to the Affidavit if any stakeholder or member of the public wishes to review it. The Affidavit is contained in the court file.

There is no sealing order in effect. The open court principle is not affected or compromised in any respect.

- [8] **Further, I have directed the Receiver to post this endorsement and my previous endorsement of December 1, 2023 on its website.**

Conway J.