

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Kingsett Mortgage Corporation Plaintiff(s)
AND
30 Roe Investments Corp Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
see counsel slip		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

The Receiver brings this motion seeking two orders:

- ① an order requiring the Respondent and its principal Raymond Zar (Zar^u) to deliver various Records and Property to the Receiver by specified timelines, all of which is set out in the draft order;
- ② a Sales Process Approval Order.

20 July 22
Date

[Signature]
Judge's Signature

Additional Pages 13 total

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The motions were heard by me on July 18/22. At the motion I granted the relief sought in both motions with reasons to follow. I am now providing those reasons.

I will now deal with each motion in turn.

① The Motion to Compel Production

The Respondent did not meaningfully oppose this motion, but rather generally submitted that it had been generally cooperative.

The Record does not support this submission.

The Receivership Order provides that the Receiver shall take possession of and exercise control over the Property, and requires all persons (including the Respondent and Zar) to deliver all Property to the Receiver upon the

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Receiver's request.

Despite repeated requests, as set out in the Receiver's First Report, the Receiver has been unable to obtain a number of Records and Properties from the Respondent ^{including} including, critically, a list of credits and details of all Property.

A second order should not be necessary as the Respondent should have complied with the First Receivership Order.

I agree with the Receiver, however I think it is appropriate to grant this order to compel production of specific items, as set out in the order to ensure both the Respondent and Zar are full placed on notice of their duty to comply.

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I agreed to a tight timeline given the late outstanding failure of the Respondent / Zar to comply with the provisions of the Receivership Order and the importance of the Records and Property sought.

All of the Records and Property sought are relevant and important to the Receivership.

(2) The Sales Process Approval Order.

The Respondent raises two primary objections to this order.

First, the Respondent submits that he has obtained refinancing to repay the Kingsett loan and discharge the Receiver.

I do not accept this is the case. For a number of reasons:

- The purported refinancing surfaced the morning of the

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motion. This is the second time that the Respondent has delivered a commitment for purported financing on the eve of a hearing. Justice Cavanagh rejected similar type financing in his May 9/22 decision and his reasons resonate here (see para 12).

- The proposed financing does not satisfy the Kingsett obligation, CIBC arrears and amounts owing to CRA / RBC / proptax / Receiver Fees and this assumes there are no other debts, which I will not do, given the Respondent's failure to provide a list of its creditors to the Receiver.

- Zar has advised the Receiver that he would find any shortfall, but when the Receiver asked for

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evidence that he could do so, he did not reply.

- The purported financing is subject to numerous conditions precedent - in favour of the proposed lender.

These include staying this proceeding satisfactory appraisal reports of values of at least \$9.956 million (which values would be higher than previous assessments), need to provide info for a credit review and other conditions - none of which the Respondent has indicated it can do in a timely way. Nor is there any belief the lender would accept the responses provided.

- The COA, in dismissing the Respondent's appeal, of Justice Cavanagh's decision, noted (at para 36) that the Respondent has had a

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lengthy amount of time to obtain financing and has failed to do so.

The same rings true again where the Respondent brings to the Court last minute, conditional and here, insufficient, speculative financing.

Last, it is worth noting that Respondent's counsel spent very little time responding to the above concerns, rather focussing on the Respondent's second objection to the Sales Process Order which I will now turn to.

The second objection again raised the day of the hearing when Zar filed a 2 1/2 page affidavit, is that the methodology used by the Receiver to market the Units is wrong-headed.

Zar deposes that the entire

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Floor containing the 9 Units (which comprise the Penthouse Floor) should be sold en masse, essentially as ^{an} income producing hospitality-type of model akin to a hotel.

The Respondent relies mainly on the fact that there is security in the hall, housekeeping and internet services to support its view that its model for sale ought to be preferred.¹

It also submits that it was short served with this motion and did not have a chance to adequately respond by obtaining a business valuation.

On the other hand, the Receiver (again supported by Kingsoff) submits that the Respondent's submissions ought to be rejected.

¹ The Receiver points to the fact

¹: The Respondent submits that these services make the Units an attractive business opportunity.

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that the Respondent has not provided any evidence to support its claim that an en masse / going concern sale (which would presumably be retired out via Airbus or like co.) is preferable to the Receiver preferred strategy. Instead it relies on Zar's brief, have affidavit delivered the day of the hearing. Zar of course, says the Receiver acts objectively, and has delayed this matter and pursued an unsuccessful appeal.

The Receiver, insofar as the merits are concerned, also points to an earlier group of appraisal reports ^{the previous} relied on by the Respondent that concluded the sale of individual units, instead of a going concern business, was

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preferable.

It bears noting that the Units are located in a condominium building w/o hotel services or similar mixed use purposes.

The Receiver further submits that, pursuant to the Receivership Order, which grants it broad discretion, it has solicited proposals from four realtors with extensive experience with the building; engaged in discussion with three of them who submitted proposals; and, selected HomeLife to act as the listing agent.

HomeLife had the lowest Commission rate and the lead agent Erkan Sen, has extensive experience selling Units in this building. HomeLife is also a large, well-recognized

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brokerage.

HomeLife has proposed a process where two of the Units are listed for sale, so as not to depress the market.

Extensive marketing will take place and the Receiver will of course determine, subject to Court approval, whether to accept offer.²

HomeLife and the Receiver believe this Sales Process is commercially reasonable and provides broad exposure. This also potentially allows the company to rebalance

Primarily for the above reasons I approved the Sales Process.

I further do not accept that the Respondent dealt with the motion on short notice.

It has known of the date of the motion since June 22/22

2. The entire Sales Process is set out in Section 4.0 of the Receiver's First Report which I have reviewed

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and was well aware before that, that the Receiver was pursuing a sale. The materials were served on July 7/22 and no adjournment was sought.

The submission of short notice is also somewhat ironic given the Respondent's history of delay and providing materials at the last moment.

I also reject another argument raised at that hearing and dealt with briefly ⁱⁿ in Zar's affidavit that the values of the Receiver are too low. Again, HomeLife is well qualified ~~to~~ set a sales price on the individual units when marketing begins.

In any event, any sale is subject to Court approval.

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Further, nothing in the aforementioned orders precludes the Respondent from attempting to secure financing and satisfy its obligations.

Last, I am concerned that the Respondent's last minute submission if accepted (and I reject them on the merits) would lead to intolerable delay to the detriment of the creditors in circumstances where the Respondent has had every opportunity to remedy its defaults.

McE...