

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

BETWEEN:

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-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS
AMENDED**

**AIDE MEMOIRE OF THE RECEIVER
(RE: 9:30 am Attendance to be held before
Justice Conway on December 1, 2023)**

November 30, 2023

GOODMANS LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Chris Armstrong LSO#: 55148B
carmstrong@goodmans.ca
Mark Dunn LSO#: 55510L
Mdunn@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

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

OVERVIEW

1. KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) of certain property of 30 Roe Investments Corp. (the “**Debtor**”) booked this 9:30 scheduling attendance to re-schedule the Receiver’s motion (served October 4, 2023) for a discharge, passing of accounts, and ancillary relief.

2. Raymond Zar (“**Zar**”), the Debtor’s principal, recently advised the Receiver that he intends to seek a direction from the Court at the 9:30 attendance requiring the Receiver to publish an affidavit he filed (the “**Zar Affidavit**”) on the Receiver’s website. The Zar Affidavit has not yet been published on the Receiver’s website because of concerns the Receiver has about its content, as detailed herein. The Receiver proposes deferring a determination about whether the Zar Affidavit should be published on the Receiver’s website to the hearing of the motion.

3. The Receiver also files this Aide-Memoire to advise the Court that Zar has recently commenced an action (purportedly on behalf of the Debtor) against, among others, the Receiver, in violation of the Receivership Order (as defined below).

BACKGROUND

4. The Debtor owned nine penthouse condominium units and related parking spaces and storage units/lockers (the “**Units**”) located at 30 Roehampton Avenue in Toronto, Ontario. The purpose of these proceedings was to complete sales in respect of the Units that maximized value for the Debtor’s stakeholders. The Receiver proceeded to complete Court-approved sales of the Units generating in excess of \$8 million. The sale of the last Unit closed on September 7, 2023. To date, distributions totaling nearly \$6 million have been

made to the Debtor's secured creditors, including CIBC and the fulcrum creditor, KingSett Mortgage Corporation ("KingSett"). The Receiver's mandate is substantially complete.

SCHEDULING OF THE RECEIVER'S DISCHARGE MOTION

5. On October 4, 2023, the Receiver served a motion returnable October 13, 2023, seeking, among other things, its discharge and the passing of the accounts of the Receiver and its counsel. On October 5, 2023, Zar advised the Receiver of his intent to oppose various aspects of the Receiver's motion and to bring a motion seeking leave to represent the Debtor pursuant to Rule 15 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

6. The Receiver agreed to adjourn its motion so that Zar could file material. The Receiver, KingSett and Zar agreed to a litigation timetable. By endorsement dated October 13, 2023, the Honourable Justice Osborne directed the parties to adhere to this timetable. Zar was required to serve his responding motion and Rule 15 motion record on October 16, 2023, and both the Receiver's motion and Zar's Rule 15 motion were to be heard on November 14, 2023.

7. Zar did not deliver any motion materials by the October 16, 2023, deadline and stopped responding to inquiries from the Receiver's counsel from October 20, 2023 to November 7, 2023.

8. On November 7, 2023 (23 days after Zar was to deliver his Rule 15 motion and responding motion record), Zar served the Debtor's responding and cross-motion record, alongside the 151-page Zar Affidavit. Zar's voluminous affidavit, and the timing of service, necessitated an adjournment of the November 14, 2023, date in order for cross-examinations and other remaining steps to be completed.

9. On November 14, 2023, the parties appeared before the Honourable Justice Wilton-Siegel to fix a new date. The earliest available date was November 27, 2023, but KingSett's counsel, Richard Swan, had a trial scheduled for that day. The motion was therefore tentatively scheduled for November 27, 2023, subject to Mr. Swan's availability given his scheduled trial. Unfortunately, Mr. Swan's other proceeding did not resolve in advance of the scheduled trial date and it became necessary to reschedule this motion (although the other matter ended up not getting reached in the scheduled trial sitting).

10. Accordingly, the Receiver requests that the Court fix a new date for the Receiver's motion and the Debtor's Rule 15 motion.

REQUEST TO POST ZAR'S AFFIDAVIT

11. The Receivership Order incorporates the Commercial List's e-service protocol by reference (the "**Protocol**"). The Protocol provides that the "WebHost" (in this case, the Receiver) will post court documents filed in this proceeding but provides that if the Receiver is uncertain about whether any document should be posted then it can seek directions from the Court at a 9:30 appointment.

12. The Receiver has not yet posted the Zar Affidavit, because it is concerned about the content of that Affidavit. The Zar Affidavit is a 151-page document that alleges (among other things) a conspiracy between KingSett and a third party named Ruparell. Zar also makes allegations against the Receiver, counsel to the Receiver, counsel to KingSett, several lawyers that represented the Debtor in these proceedings, and a variety of others.

13. The Zar Affidavit is the latest in a series of allegations made by Zar. He has previously alleged (among other things) that someone involved in this case was listening to

his phone calls to blackmail him¹, and that members of this Court² and the Ontario Court of Appeal³ ruled on this case despite having undisclosed conflicts of interest.

14. The Receiver has significant concerns about publishing Zar's latest allegations on the case website. The Zar Affidavit makes potentially defamatory allegations against an array of professionals, among others. Every repetition and republication of a defamatory comment gives rise to a separate cause of action, even if a party other than the one that originally uttered the defamatory remark makes the repetition or republication. Publication of the Zar Affidavit could constitute defamation of a large number of professionals and other persons.

15. In the circumstances, at the hearing of the motion the Receiver intends to seek direction from the Court about whether the Zar Affidavit should be posted on its website. It respectfully submits that the judge hearing the motion is best placed to make this determination, after considering the totality of the evidence.

ZAR'S PURPORTED NOTICE OF ACTION

16. On November 20, 2023, Zar informed the Receiver and KingSett's counsel that a Notice of Action on behalf of the Debtor against, *inter alia*, the Receiver, the Receiver's counsel, KingSett, and the Debtor's former counsel, Paliare Roland Rosenberg Rothstein LLP and Blaney McMurtry LLP, had been filed. This is in direct contravention of the Receivership Order of Justice Cavanaugh dated May 9, 2022 (the "**Receivership Order**").

17. Sections 8 and 9 of the Receivership Order prohibit any action against the Receiver

¹ Fourth Report of the Receiver dated May 16, 2023 ("**Fourth Report**") at para 2.4(2)(d)(ii).

² Fourth Report at para 2.4(2)(d)(iv).

³ Fourth Report at para 2.4(2)(d)(iii). See also [KingSett Mortgage Corporation v. 30 Roe Investments Corp., 2023 ONCA 219 at para. 21.](#)

or “in respect of the Debtor” without written consent of the Receiver or leave of the Court. Zar’s purported action is against the Receiver and in respect of the Debtor and has been commenced without the written consent of the Receiver or leave of the Court.

18. Furthermore, section 3(i) of the Receivership Order confers on the Receiver the right “to initiate, prosecute and continue the prosecution of any and all proceedings” instituted with respect to the Debtor. When the Receiver exercises that right, it is “exclusively authorized and empowered to do so, to the exclusion of all other Persons”. The Receiver has and continues to exercise control over the commencement or continuation of any legal proceedings on behalf of the Debtor and has not authorized the commencement or continuation of any proceedings on behalf of the Debtor against any of the defendants listed in the purported Notice of Action.

19. Zar has refused to provide a copy of the Notice of Action to the Receiver, despite multiple requests.

20. The Receiver intends to ask the Court to strike the Notice of Action when its motion is heard, and may also seek further relief relating to the breach of the Receivership Order.

DIRECTION SOUGHT

21. For all the foregoing reasons, the Receiver respectfully requests that the Court: (a) re-schedule the Receiver’s motion to a date to be set by the Court for two (2) hours; and (b) direct that the issue of the publication on the Receiver’s website of the responding and cross-motion record filed by Zar (including the Zar Affidavit) be heard and determined by the presiding judge at the return of the motion.

APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED, AND SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3 AS AMENDED

Court File No.: CV-22-00674810-00CL

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Proceeding commenced at Toronto

AIDE MEMOIRE OF THE RECEIVER

GOODMANS LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Christopher G. Armstrong LSO# 55148B
carmstrong@goodmans.ca
Mark Dunn LSO# 55510L
Mdunn@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for KSV Restructuring Inc. in its
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