

**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-MÉMOIRE OF THE APPLICANT
(Case Conference before Justice Cavanagh, March 8, 2022 at 12 noon)**

March 7, 2022

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Richard Swan (LSO# 32076A)
Email: swanr@bennettjones.com

Sean Zweig (LSO# 57307I)
Email: zweigs@bennettjones.com

Joshua Foster (LSO# 79447K)
Email: fosterj@bennettjones.com

Tel: (416) 863-1200
Fax: (416) 863-1716

Lawyers for the Applicant

1. The Applicant submits this Aide-mémoire in connection with the case conference to be held on March 8, 2022, the purpose of which is to set a schedule in respect of the Applicant's twice-adjourned (at the request of the Respondent) receivership application (the "**Application**").
2. The Applicant is party to a commitment letter dated March 29, 2019 (the "**Commitment Letter**") with the Respondent, pursuant to which the Applicant extended a \$1,875,000 second mortgage, non-revolving demand loan (the "**Loan Facility**"). The Respondent granted various security to the Applicant to secure the payment and performance of its obligations under the Commitment Letter.
3. The Loan Facility matured on December 1, 2021. Notice of a default under the Loan Facility and the Loan Facility's maturity was provided to the Respondent on December 6, 2021. On December 13, 2021, the Applicant issued a demand letter (the "**Demand Letter**") to the Respondent demanding repayment of the indebtedness under the Commitment Letter. The Demand Letter was sent contemporaneously with a notice of intention to enforce security.
4. These proceedings were commenced on January 7, 2022, and the Application was originally returnable on January 17, 2022.
5. Despite the Respondent having received a default notice on December 6, 2021, it did not have counsel by the January 17, 2022 return date. At the request of the Respondent's Chief Executive Officer, Raymond Zar, and over the Applicant's objection, the hearing of the Application was adjourned to February 22, 2022. As noted in the email endorsement of Justice Cavanagh dated January 17, 2022 (the "**Endorsement**"), the adjournment was intended to "(i) allow the Respondent to retain counsel and respond to the application; and (ii) give time for CIBC to file responding materials if so advised."

6. Despite the imperative of the pending Application, the Respondent's previous alleged difficulty in retaining counsel and the Endorsement, the Respondent waited until February 10, 2022 before attempting to retain counsel. On February 22, 2022 – the morning of the return date of the Application – the Applicant was advised that the Respondent had retained Paliare Roland LLP ("**Paliare**") as counsel.

7. Based on the late timing of Paliare's retention, the Respondent sought and obtained a further adjournment of the Application, over the Applicant's objection to March 28, 2022.

8. Pursuant to the email endorsement of Justice Cavanagh dated February 22, 2022, counsel were to agree to a timetable with respect to the Application, failing which a case conference could be arranged. On February 22, 2022, *Paliare proposed* the following timetable:

Date	Proposed Step
Friday, March 4, 2022	Deadline for the submission of the Respondent's responding materials
Friday, March 11, 2022	Deadline for any reply evidence to be delivered by the Applicant and/or the Canadian Imperial Bank of Commerce (" CIBC ")
Friday, March 18, 2022	Deadline for cross-examinations
Thursday, March 24, 2022	Deadline for Factums to be served

9. On February 23, 2022, counsel to the Applicant advised that it was agreeable to the Respondent's proposed timeline subject to a minor variation on cross-examinations dates (the "**Timeline**"). Counsel to CIBC then confirmed that it was agreeable to the Timeline.

10. No response confirming the Respondent's acceptance of the Timeline was received from Paliare. On February 28, 2022, following a number of follow-up emails from the Applicant's counsel, Paliare advised counsel that it would be bringing a motion to remove itself as the lawyers of record for the Respondent (the "**Removal Notice**").

11. The Removal Notice also stated that the Respondent (i) intends to examine two non-affiant employees of the Applicant and (ii) (despite its own proposal to deliver the Responding material by March 4) would now need until March 11, 2022 to file responding materials so that it may transcribe phone calls the Respondent purports to have recorded with the Applicant's employees.

12. Despite this Court's accommodations, the Respondent has yet to produce any documentary support for its stated position that "Kingsett agreed to extend its mortgage (or at least forbear in its enforcement), until April 1, 2022."

13. Instead, the Respondent appears to be attempting to exhaust all tactics to seek a further adjournment, render the Timetable untenable and delay the Application. If permitted, the Respondent's conduct will result in a further *de facto* extension to a matured Loan Facility, needlessly waste judicial and other resources and unduly impede the Application.

14. In setting a timeline with respect to the Application, this Court should not condone the Respondent's conduct nor grant a further adjournment. Rather, the timeline to be set should be commensurate with the Application's current – and already twice adjourned – return date of March 28, 2022.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 7th DAY OF MARCH 2022

Bennett Jones LLP

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Lawyers for the Applicant

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

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SUPERIOR COURT OF JUSTICE
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Proceedings commenced in Toronto

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BENNETT JONES LLP
One First Canadian Place, Suite 3400
P.O. Box 130
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Richard Swan (LSO# 32076A)
Tel: (416) 777-7479
Email: swanr@bennettjones.com

Sean Zweig (LSO# 57307I)
Tel: (416) 777-6254
Email: zweigs@bennettjones.com

Joshua Foster (LSO# 79447K)
Tel: (416) 777-7906
Email: fosterj@bennettjones.com

Lawyers for the Applicant