

**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**

**FACTUM OF THE APPLICANT  
(Returnable January 17, 2022)**

January 13, 2022

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

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

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

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

Lawyers for the Applicant

## FACTUM OF THE APPLICANT

### PART I: OVERVIEW

1. KingSett Mortgage Corporation ("**KingSett**" or the "**Applicant**") seeks an order (the "**Receivership Order**") pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-33, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43 (as amended, the "**CJA**").

2. The proposed Receivership Order, among other things, appoints KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacities, the "**Receiver**") of (i) the real property legally described in Schedule "A" to the proposed Receivership Order (the "**Real Property**"), (ii) all of the 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 (collectively with (i), (ii) and (iii), the "**Property**").

3. The Debtor is a privately held company and the registered owner of the Real Property. The Real Property consists of nine residential condominium units (collectively, the "**Condominium Units**") within a thirty-five storey, 397-unit condominium known as "Minto 30 Roe" located at 30 Roehampton Avenue in Toronto, Ontario. In connection with the Debtor's acquisition of the Condominium Units, KingSett extended a second mortgage, non-revolving demand loan (the "**Loan Facility**") in the principal amount of \$1,875,000.

4. Notwithstanding KingSett's accommodation of multiple extensions to the Loan Facility's maturity date, the Loan Facility has now matured and the Debtor is in default of its obligations in respect of the Loan Facility and the Loan Documents (as defined below). In response to the

Debtor's default, the Applicant issued a demand for the repayment of the Debtor's indebtedness to KingSett and delivered a notice of intention to enforce security in accordance with section 244 of the BIA (the "NITES"). The ten-day period afforded to the Debtor to repay its indebtedness to KingSett prior to the Applicant taking enforcement action has elapsed.

5. The Loan Documents confer upon KingSett a contractual right to appoint a receiver or receiver manager over the Property. In furtherance of its contractual rights, KingSett has commenced these proceedings (the "**Receivership Proceedings**") with a view to preserving the Property and ultimately facilitating the sale of the Condominium Units to maximize recoveries for the Debtor's stakeholders.

6. The proposed form of Receivership Order is appropriate in the circumstances and is limited to the scope of the Applicant's Security (as defined below). The appointment of the Receiver pursuant to the proposed Receivership Order is equally appropriate and is just and convenient in the circumstances.

## **PART II: FACTS**

7. The facts underlying this application are more fully set out in the affidavit of Daniel Pollack sworn January 7, 2022 (the "**Pollack Affidavit**").<sup>1</sup> All capitalized terms used but not defined herein have the meanings ascribed to them in the Pollack Affidavit.

8. All monetary amounts referred to herein are in Canadian currency unless otherwise stated.

### **A. The Parties**

9. KingSett is incorporated pursuant to the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended (the "**CBCA**") and is headquartered in Toronto, Ontario. KingSett is a

---

<sup>1</sup> Affidavit of Daniel Pollack sworn January 7, 2022 [Pollack Affidavit], Applicant's Application Record at Tab 4 [Application Record].

subsidiary of KingSett Capital Inc., a private equity real estate investment firm with approximately \$16 billion in assets under management.<sup>2</sup>

10. The Debtor is a privately held company incorporated under the CBCA. The Debtor's registered head office is located at 2 Bloor Street East, Suite 3500, Toronto, Ontario, M4W 1A8. The Debtor is also extra-provincially registered under the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended (the "**OBCA**").<sup>3</sup>

11. The Debtor is the registered owner of, among other things, the Real Property. The Real Property consists of the Condominium Units located at 30 Roehampton Avenue in Toronto, Ontario. Certain or all of the Condominium Units may be tenanted.<sup>4</sup>

#### **B. Indebtedness to KingSett and Other Secured Creditors**

12. The Applicant is a party to a commitment letter dated March 29, 2019 with the Debtor (the "**Original Commitment Letter**"), pursuant to which the Applicant agreed to provide, among other things, the Loan Facility. The Loan Facility was originally advanced on April 8, 2019.<sup>5</sup>

13. The parties have entered into four amendments to the Original Commitment Letter (as amended, the "**Commitment Letter**"), which, among other things, increased the Loan Facility from \$1,500,000 to \$1,875,000 and provided three extensions to the Maturity Date (as defined in the Commitment Letter) to December 1, 2021. As at December 13, 2021, the total indebtedness under the Commitment Letter is \$1,895,958.85 (the "**Indebtedness**").<sup>6</sup>

---

<sup>2</sup> *Ibid* at para 6, Application Record at Tab 4.

<sup>3</sup> *Ibid* at paras 7, 9, Application Record at Tab 4.

<sup>4</sup> *Ibid* at para 10, Application Record at Tab 4.

<sup>5</sup> *Ibid* at para 11, Application Record at Tab 4.

<sup>6</sup> *Ibid* at paras 12-15, Application Record at Tab 4.

14. As general and continuing security for the payment and performance of its obligations under the Commitment Letter, the Debtor granted the Applicant various security (collectively, the "**Security**"), including:

- (a) a \$1,875,000 second charge/mortgage in respect of the Real Property (the "**Mortgage**") governed by, among other things, the additional provisions registered therewith (the "**Mortgage Terms**");
- (b) a General Assignment of Rents and Leases dated April 8, 2019 (the "**Assignment of Rents**"), pursuant to which, among other things, the Debtor assigned, set over, and transferred to KingSett all of its rights, benefits, title and interest under, in and to the Leases and Rents (each as defined in the Assignment of Rents) in respect of the Real Property;
- (c) an Assignment of Material Agreements dated April 8, 2019, pursuant to which, among other things, the Debtor assigned all of its rights, benefits, title and interest in and to, and all claims of whatsoever nature or kind that the Debtor has under or pursuant to, all material agreements with respect to the Real Property, including, all agreements of purchase and sale and all deposits paid or payable thereunder; and
- (d) a General Security Agreement dated April 8, 2019 (the "**GSA**" and collectively with the Commitment Letter, the Mortgage, the Mortgage Terms and the Assignment of Rents, the "**Loan Documents**"), pursuant to which, among other things, KingSett was granted a security interest in all of the present and future undertaking and property, both real and personal, of the Debtor, which is located at

or related to or used or acquired in connection with or arising from or out of the Charged Property (as defined in the Mortgage Terms).<sup>7</sup>

15. The Mortgage and the Assignment of Rents are registered on title to the Real Property. The Applicant's security interest granted by the Debtor pursuant to the GSA is registered under Ontario's *Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended (the "PPSA").<sup>8</sup>

16. In addition to the Security granted to KingSett, the Debtor has granted security interests to other creditors in both its personal property and the Real Property. These creditors include the Canadian Imperial Bank of Commerce ("CIBC") and Loop Funding Inc. ("Loop").<sup>9</sup>

17. CIBC has been granted a first charge/mortgage on the Real Property, which secures the aggregate amount of \$4,296,827. There is no intercreditor agreement between KingSett and CIBC with respect to the Property.<sup>10</sup>

18. Loop has a security registration under the PPSA in respect of a security interest taken in all of the Debtor's present and after-acquired personal property, which was registered subsequent to KingSett's PPSA registration.<sup>11</sup>

### **C. The Debtor's Default**

19. The original Maturity Date of the Loan Facility was in April 2021. As previously noted, KingSett afforded the Debtor the benefit of three extensions to the Maturity Date to and until December 1, 2021. The most recent of these extensions was provided to the Debtor after the then

---

<sup>7</sup> *Ibid* at para 18, Application Record at Tab 4.

<sup>8</sup> *Ibid* at paras 20-21, Application Record at Tab 4.

<sup>9</sup> *Ibid* at para 22, Application Record at Tab 4.

<sup>10</sup> *Ibid* at para 23, Application Record at Tab 4.

<sup>11</sup> *Ibid* at para 24, Application Record at Tab 4.

applicable Maturity Date of November 1, 2021 had passed without repayment of the Loan Facility to afford the Debtor more time to, among other things, pursue refinancing.<sup>12</sup>

20. On December 1, 2021, the Debtor failed to make its monthly interest payment (the "**December Interest Payment**") in accordance with its obligations under the Commitment Letter (the "**December Interest Default**").<sup>13</sup> By letter dated December 6, 2021 (the "**December 6 Letter**"), KingSett advised the Debtor that:

- (a) as a result of the December Interest Default, the Loan Facility was in default and an event of default had occurred under the Loan Documents;
- (b) the December Interest Default was particularly concerning to KingSett as it was not the Debtor's first interest-related default under the Loan Facility;
- (c) the Loan Facility matured on December 1, 2021; and
- (d) unless the Debtor paid the December Interest Payment by 4:00 p.m. (Eastern Standard Time) on December 8, 2021, KingSett would demand the immediate repayment of the Loan Facility and enforce the Security.<sup>14</sup>

21. On December 13, 2021, KingSett issued a demand letter (the "**Demand Letter**") to the Debtor, advising that the Mortgage was in default and demanding repayment of the Indebtedness. The Demand Letter was delivered to the Debtor contemporaneously with the NITES in accordance with section 244 of the BIA. As discussed previously, the total amount of the Indebtedness secured by the Security as at December 13, 2021, is \$1,895,958.85.<sup>15</sup>

---

<sup>12</sup> *Ibid* at paras 28-29, Application Record at Tab 4.

<sup>13</sup> *Ibid* at para 32, Application Record at Tab 4.

<sup>14</sup> *Ibid* at para 33, Application Record at Tab 4.

<sup>15</sup> *Ibid* at para 35, Application Record at Tab 4.

22. The ten-day period provided to the Debtor under the Demand Letter and NITES to repay the Indebtedness prior to KingSett taking any enforcement action expired on December 23, 2021. Notwithstanding the Debtor's later efforts to pay its monthly interest obligations for December 2021 and January 2022, the Loan Facility has matured, demand for payment of the entirety of the Indebtedness has been made and the Indebtedness remains outstanding.<sup>16</sup>

### **PART III: ISSUES**

23. The issues to be considered on this application are whether:

- (a) this Court has jurisdiction to appoint the Receiver;
- (b) it is just and convenient to appoint the Receiver; and
- (c) the terms of the proposed Receivership Order are appropriate in the circumstances.

### **PART IV: LAW AND ARGUMENT**

#### **A. This Court has the Jurisdiction to Appoint the Receiver**

24. Subsection 243(1) of the BIA and section 101 of the CJA vest this Court with jurisdiction to appoint a receiver where it is "just or convenient to do so".<sup>17</sup> In the case of the BIA, subsections 243(1)-(1.1) provides as follows:

#### **Court may appoint receiver**

**243 (1)** Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

---

<sup>16</sup> *Ibid* at para 40, Application Record at Tab 4.

<sup>17</sup> [Bankruptcy and Insolvency Act, RSC 1985, c. B-3](#) s 243(1) [BIA]; [Courts of Justice Act, RSO 1990, c. C. 43](#) s 101 [CJA]; [Meridian v Okje Cho & Family Enterprise Ltd, 2021 ONSC 3755](#) at para 19 [*Meridian*], Applicant's Book of Authorities at Tab 1 [BOA]; [Elleway Acquisitions Ltd v Cruise Professionals Ltd, 2013 ONSC 6866](#) at paras 24-25 [*Elleway*], BOA at Tab 2; [Bank of Montreal v Sherco Properties Inc, 2013 ONSC 7023](#) at paras 39-40, BOA at Tab 3 [*Sherco*]; [Bank of Montreal v Carnival National Leasing Ltd, 2011 ONSC 1007](#) at para 23 [*Carnival*], BOA at Tab 4.

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

#### **Restriction on appointment of receiver**

**(1.1)** In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

(a) the insolvent person consents to an earlier enforcement under subsection 244(2); or

(b) the court considers it appropriate to appoint a receiver before then.<sup>18</sup>

25. As indicated above, the Applicant is a secured creditor of the Debtor with a perfected security interest pursuant to its real property registrations and PPSA registration.<sup>19</sup> As such, it is permitted to bring the within application to appoint the Receiver under subsection 243(1) of the BIA. Such appointment is not precluded by subsection 243(1.1) of the BIA as the Applicant has delivered the NITES in accordance with section 244 of the BIA and the ten-day notice period prescribed thereunder has expired.<sup>20</sup>

26. As set out immediately below, each of the remaining technical requirements enumerated under the BIA for the appointment of the Receiver are satisfied.

#### **1. The Locality of the Debtor is Ontario**

27. Where an application is brought for the appointment of a receiver under subsection 243(1) of the BIA, subsection 243(5) requires that it be filed in "a court having jurisdiction in the judicial

---

<sup>18</sup> [BIA](#), *ibid* s 243(1), s 243(1.1). See also, [CJA](#), *ibid* s 101(1), which provides that "[i]n the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so."

<sup>19</sup> Pollack Affidavit, *supra* note 1 at paras 20-21, Application Record at Tab 4.

<sup>20</sup> [BIA](#), *supra* note 17 s 244.

district in the locality of the debtor".<sup>21</sup> Section 2 of the BIA defines the "locality of a debtor" as the principal place:

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated.<sup>22</sup>

28. As previously discussed, the Real Property is located in Toronto, Ontario and the Debtor is extra-provincially registered under the OBCA, with its registered head office in Toronto, Ontario.<sup>23</sup> Thus, the locality of the Debtor is Ontario and this application is properly before the Ontario Superior Court of Justice (Commercial List).

## **2. The Receiver is a Trustee under the BIA**

29. Pursuant to subsection 243(4), only a "trustee" may be appointed as a receiver under the BIA.<sup>24</sup> KSV is a trustee under the BIA, has provided its consent to act as the Receiver if so appointed and is qualified to act as such.<sup>25</sup>

### **B. The Receiver's Appointment is Just and Convenient**

30. In determining whether it is just and convenient to appoint the proposed Receiver under subsection 243(1) of the BIA and section 101 of the CJA, this Court must have regard to "all of the circumstances but in particular the nature of the property and the rights and interests of all

---

<sup>21</sup> *Ibid* s 243(5).

<sup>22</sup> *Ibid* s 2, "locality of a debtor".

<sup>23</sup> Pollack Affidavit, *supra* note 1 at paras 3, 7, 9, Application Record at Tab 4.

<sup>24</sup> BIA, *supra* note 17 s 243(4).

<sup>25</sup> Pollack Affidavit, *supra* note 1 at para 44, Application Record at Tab 4.

parties in relation thereto".<sup>26</sup> There is no requirement for the Applicant to establish that it will suffer irreparable harm if the proposed Receiver is not appointed.<sup>27</sup>

31. Although the appointment of a receiver has traditionally been considered an extraordinary remedy, it is now well established that "its extraordinary nature is significantly reduced when dealing with a secured creditor who has the right to a receivership under its security arrangements."<sup>28</sup> In such circumstances, the burden on the applicant secured creditor is relaxed as the applicant is simply seeking to enforce a term of an agreement assented to by the parties.<sup>29</sup> The appointment of a receiver "becomes even less extraordinary when dealing with a default under a mortgage".<sup>30</sup>

32. Where, as here, an applicant is seeking to enforce a term of an agreement assented to by the parties, the inquiry as to whether it is just and convenient to appoint a receiver "requires the court to determine whether it is in the interests of all concerned to have the receiver appointed".<sup>31</sup> In making this determination courts have been informed by, among others, the following factors:

- (a) the likelihood of preserving and maximizing the return on the subject property;
- (b) the relationship between the debtor and its creditors;
- (c) the risk of the lender's security deteriorating;

---

<sup>26</sup> [Bank of Nova Scotia v Freure Village on Clair Creek, \[1996\] OJ No. 5088](#) at para 11 [*Freure*], BOA at Tab 5; [Carnival](#), *supra* note 17 at para 24, BOA at Tab 4; [Elleway](#), *supra* note 17 at para 26, BOA at Tab 2; [Meridian](#), *supra* note 17 at para 20, BOA at Tab 1; [Sherco](#), *supra* note 17 at para 41, BOA at Tab 3.

<sup>27</sup> [Carnival](#), *ibid* at paras 24, 28, BOA at Tab 4; [Freure](#), *ibid*, BOA at Tab 5.

<sup>28</sup> [BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc, 2020 ONSC 1953](#) at para 43 [*BCIMC*], BOA at Tab 6; [Freure](#), *ibid* at para 13, BOA at Tab 5; [Meridian](#), *supra* note 17 at para 21, BOA at Tab 1; [Elleway](#), *supra* note 17 at para 27, BOA at Tab 2; [Carnival](#), *ibid* at paras 24-25, 27 BOA at Tab 4; [Sherco](#), *supra* note 17 at para 42, BOA at Tab 3.

<sup>29</sup> [Sherco](#), *ibid*, BOA at Tab 3; [Elleway](#), *ibid*, BOA at Tab 2.

<sup>30</sup> [BCIMC](#), *supra* note 28; at para 44, BOA at Tab 6. See also, *Confederation Life Insurance Co v Double Y Holdings Inc*, [1991] OJ No. 2613 at para 20, BOA at Tab 7.

<sup>31</sup> [Freure](#), *supra* note 26 at para 13, BOA at Tab 5; [Elleway](#), *supra* note 17 at para 28, BOA at Tab 2.

- (d) loss of confidence in the debtor's management;
- (e) the potential costs of the receiver; and
- (f) the best way of facilitating the work and duties of the receiver.<sup>32</sup>

33. Having regard to the foregoing considerations, it is just and convenient for the proposed Receiver to be appointed given that:

- (a) The Debtor has been provided the benefit of three prior extensions to the Maturity Date with a view to accommodating, among other things, its efforts to pursue refinancing. No refinancing has materialized.<sup>33</sup>
- (b) As at December 13, 2021, the Debtor was indebted to KingSett in the amount of \$1,895,958.85 (which continues to accrue). After receipt of the Demand Letter, the NITES and the expiration of the applicable notice period, the Debtor has failed to pay the Indebtedness. The Mortgage and the Loan Facility are in default.<sup>34</sup>
- (c) The Commitment Letter, the Mortgage Terms and the GSA each provide KingSett with a contractual right to the appointment of a receiver over the Property upon a default and/or event of default, as applicable. Moreover, pursuant to the Commitment Letter, the Debtor has consented to the appointment of a receiver or receiver manager, either privately or pursuant to Court-appointment. In the circumstances, there is no reason to deprive KingSett of the contractual rights for which it bargained.<sup>35</sup>

---

<sup>32</sup> *Elleway*, *ibid*, BOA at Tab 2; *BCIMC*, *supra* note 28 at para 45, BOA at Tab 6.

<sup>33</sup> Pollack Affidavit, *supra* note 1 at paras 4, 14, 28-30, Application Record at Tab 4.

<sup>34</sup> *Ibid* at paras 4, 33, 35, 40-41, Application Record at Tab 4.

<sup>35</sup> *Ibid* at paras 5, 41, Application Record at Tab 4.

- (d) KingSett has lost all confidence in the Debtor's management to continue to satisfy the Debtor's obligations, obtain refinancing and manage the Property.<sup>36</sup>
- (e) The Receiver's appointment will provide the stability and supervision required to preserve the value of the Property, including the maintenance of the Condominium Units (certain or all of which may be tenanted).<sup>37</sup>
- (f) The proposed Court-supervised Receivership Proceedings will provide the most effective and appropriate means to effect the sale of the Property, including the Condominium Units, with a view to maximizing recoveries for the Debtor's stakeholders.<sup>38</sup>
- (g) As previously noted, KingSett is not the only secured creditor of the Debtor.<sup>39</sup> The proposed Receiver will be able to equitably deal with the interests of all of the Debtor's creditors, including with respect to the distribution of funds realized from any Court-authorized sale of the Property.

### **C. The Terms of the Proposed Receivership Order are Appropriate**

34. The proposed Receivership Order is tailored to the scope of the Applicant's Security, is substantially similar to the terms of the Ontario Superior Court of Justice Commercial List's model receivership order (the "**Model Order**") and is appropriate in the circumstances.<sup>40</sup>

35. As contemplated by the Model Order, the proposed Receivership Order grants the following charges:

---

<sup>36</sup> *Ibid* at para 41, Application Record at Tab 4.

<sup>37</sup> *Ibid* at para 42, Application Record at Tab 4.

<sup>38</sup> *Ibid*, Application Record at Tab 4.

<sup>39</sup> *Ibid* at paras 22-24, Application Record at Tab 4.

<sup>40</sup> Blackline to CLUC Model Order, Application Record at Tab 3.

- (a) a charge (the "**Receiver's Charge**") over the Property in favour of the Receiver and the Receiver's counsel to secure their fees and disbursements in respect of the Receivership Proceedings; and
- (b) a charge (the "**Receiver's Borrowings Charge**") over the Property for the purpose of funding the exercise of the powers and duties conferred upon the Receiver pursuant to the proposed Receivership Order.

36. Priority charges sought by a receiver under the BIA, such as the Receiver's Charge and the Receiver's Borrowings Charge, provide the certainty required to ensure the integrity, fairness and predictability of insolvency proceedings.<sup>41</sup> In accordance with subsection 243(6) of the BIA, the Applicant has provided reasonable notice to the parties likely to be affected by such charges of the proposed Receivership Order.<sup>42</sup>

37. The Applicant submits that the proposed Receiver's Charge and the Receiver's Borrowings Charge are appropriate in the circumstances and commensurate with the administrative and borrowings charges granted by this Court in similar receivership proceedings.<sup>43</sup>

## **PART V: RELIEF REQUESTED**

38. Based on the foregoing, the Applicant submits that it is just and convenient to appoint KSV as Receiver over the Property, and respectfully requests that this Court grant the proposed form of Receivership Order.

---

<sup>41</sup> [CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd, 2012 ONSC 1750](#) at paras 21-23, BOA at Tab 8.

<sup>42</sup> [BIA](#), *supra* note 17 s 243(6); Pollack Affidavit, *supra* note 1 at para 25, Application Record at Tab 4; Affidavit of Service of Joshua Foster sworn January 7, 2021 at paras 2-3; Affidavits of Service of Chris Eliopoulos sworn January 11, 2022 at paras 1-2.

<sup>43</sup> [In the Matter of the Receivership Proceedings of Sunrise Acquisitions \(Hwy 7\) Inc. \(June 9, 2021\), Toronto, CV-21-00663051-00CL](#) (Order Appointing Receiver) at paras 18, 21, BOA at Tab 9; [In the Matter of the Receivership of 2738283 Ontario Inc., 2738284 Ontario Inc. and 2738285 Ontario Inc. \(November 9, 2021\), Toronto, CV-21-00670723-00CL](#) (Order Appointing Receiver) at paras 18, 21, BOA at Tab 10.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 13<sup>th</sup> DAY OF JANUARY 2022**

*Bennett Jones LLP*

---

Bennett Jones LLP  
Lawyers for the Applicant

## SCHEDULE A – LIST OF AUTHORITIES

### *Cases Cited*

1. [\*Bank of Montreal v Carnival National Leasing Ltd\*, 2011 ONSC 1007](#)
2. [\*Bank of Montreal v Sherco Properties Inc\*, 2013 ONSC 702](#)
3. [\*Bank of Nova Scotia v Freure Village on Clair Creek\*, \[1996\] OJ No. 5088](#)
4. [\*BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc\*, 2020 ONSC 1953](#)
5. [\*CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd\*, 2012 ONSC 1750](#)
6. [\*Confederation Life Insurance Co v Double Y Holdings Inc\*, \[1991\] OJ No. 2613](#)
7. [\*Elleway Acquisitions Ltd v Cruise Professionals Ltd\*, 2013 ONSC 6866](#)
8. [\*In the Matter of the Receivership Proceedings of Sunrise Acquisitions \(Hwy 7\) Inc\*. \(June 9, 2021\), Toronto, CV-21-00663051-00CL \(Order Appointing Receiver\)](#)
9. [\*In the Matter of the Receivership of 2738283 Ontario Inc., 2738284 Ontario Inc. and 2738285 Ontario Inc\*. \(November 9, 2021\), Toronto, CV-21-00670723-00CL \(Order Appointing Receiver\)](#)
10. [\*Meridian v Okje Cho & Family Enterprise Ltd\*, 2021 ONSC 3755](#)

## SCHEDULE B – STATUTES RELIED ON

### Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

#### Section 2

*locality of a debtor* means the principal place

- (a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,
- (b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or
- (c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated.

#### Section 243

##### **Court may appoint receiver**

(1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

##### **Restriction on appointment of receiver**

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

##### **Definition of receiver**

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the

inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a "security agreement"), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

**Definition of receiver — subsection 248(2)**

(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

**Trustee to be appointed**

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

**Place of filing**

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

**Orders respecting fees and disbursements**

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

**Meaning of disbursements**

(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

**Section 244**

**Advance Notice**

(1) A secured creditor who intends to enforce a security on all or substantially all of

(a) the inventory,

(b) the accounts receivable, or

(c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

**Period of notice**

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

**No advance consent**

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

**Exception**

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

(a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

**Idem**

(4) This section does not apply where there is a receiver in respect of the insolvent person.

**Courts of Justice Act, R.S.O. 1990, c. C.43**

**Section 101**

**Injunctions and receivers**

(1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

**Terms**

(2) An order under subsection (1) may include such terms as are considered just.

**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**

**KINGSETT MORTGAGE  
CORPORATION**

and

**30 ROE INVESTMENTS CORP.**

Applicant

Respondent

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

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
Proceedings commenced in Toronto

---

**FACTUM OF THE APPLICANT  
(Returnable January 17, 2022)**

---

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

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

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

Lawyers for the Applicant