

**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 RECEIVER
(PH04 and PH09 Sale Approval and Ancillary Relief)**

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its capacity as Court-appointed Receiver and
not in its personal capacity

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**FACTUM OF THE RECEIVER
(PH04 and PH09 Sale Approval and Ancillary Relief)**

I. INTRODUCTION

1. More than nine months after this Court granted the Receivership Order, the Receiver seeks approval of the sale of two of the nine condominium Units that are subject to these proceedings, together with ancillary relief.¹

2. The two Purchased Units were extensively marketed in accordance with the Sale Process previously approved by this Court in July 2022 (as amended in December 2022), and the proposed purchased price represents fair market value for the respective Units. The Transactions are recommended by the Receiver, including based on market advice from its experienced realtor. The Transactions will see CIBC, as first mortgagee, repaid its

¹ Capitalized terms used in this introduction section have the meaning ascribed to them later in this factum, or in the Third Report (as defined below).

related mortgage loans in full. They are also supported by KingSett, the fulcrum secured creditor of the Company, who is likely to suffer a shortfall even after all of the Units are sold.

3. Although no responding materials have been filed as yet, the Receiver expects that the only party who may oppose the Receiver's motion is the debtor Company and/or its principal, Raymond Zar ("**Zar**"). Following several extensions, the Company's debt to KingSett matured on December 1, 2021, and KingSett brought a receivership application on January 7, 2022. Despite being given every opportunity to complete a refinancing (including multiple adjournments of the receivership application through May 2022 and the Receiver agreeing to pause the Sale Process in August 2022 to facilitate a potential refinancing), the Company was unable to do so, necessitating a sale of the Units as the only means of repaying the Company's secured creditors.
4. In prior filings, the Company has asserted that the Units should be sold collectively as a "going concern hospitality business" to maximize value. The Receiver rejects this contention. There is little, if any, evidence that the Company operated any business beyond the straightforward rental of furnished Units on a short or long-term basis. Further, despite numerous requests, the Company failed to provide any information to the Receiver (including financial records) to support its contention that it was operating a business that potential third party purchasers would be interested in paying a premium for. Based on the information available to the Receiver, selling the Units as individual residences represents the best means of achieving the goals of the Sale Process; namely, to maximize the value of the Units in a timely fashion.

5. In the circumstances, the Court should approve the proposed Transactions and grant the ancillary relief requested by the Receiver so that the Company's secured creditors can begin to recover the debts owed to them.

II. FACTS

A. Background

6. Pursuant to an order of the Ontario Superior Court of Justice (the "**Court**") made on May 9, 2022 (the "**Receivership Order**"), KSV Restructuring Inc. was appointed as receiver and manager (in such capacity, the "**Receiver**") of certain property of 30 Roe Investments Corp. (the "**Company**"), including nine penthouse condominium units, nine parking spaces and nine storage units and/or lockers in a condominium development known as "**Minto 30 Roe**", located at 30 Roehampton Avenue in Toronto, Ontario (collectively, the "**Units**").
7. This motion is brought by the Receiver for: (i) an order (the "**PH04 Approval and Vesting Order**"), *inter alia*, approving a sale of the PH04 condominium unit and related parking and storage units at the Minto 30 Roe ("**PH04**"); (ii) an order (the "**PH09 Approval and Vesting Order**"), *inter alia*, approving a sale of the PH09 condominium unit and relating parking and storage units at the Minto 30 Roe ("**PH09**" and with PH04, the "**Purchased Units**") ((i) and (ii), collectively, the "**Transactions**"); and (iii) an order (the "**Ancillary Matters Order**"), *inter alia*, (a) authorizing the Receiver to disconnect, remove and dispose of the Monitoring Equipment (as defined below), (b) approving certain distributions in connection with the Transactions, (c) approving the activities of the Receiver described in the Supplement to the Second Report of the Receiver dated

December 13, 2022 (the “**Supplement to the Second Report**”) and the Third Report of the Receiver dated January 26, 2023 (the “**Third Report**”), and (d) sealing the confidential appendices to the Third Report on the terms specified.

B. The Company and its Known Creditors

8. The Company is indebted to the Canadian Imperial Bank of Commerce (“**CIBC**”) in the total amount of approximately \$4.29 million as at January 25, 2023 (plus ongoing interest, fees and expenses). CIBC holds a first mortgage on each of the Units and other security. Each CIBC mortgage only secures the indebtedness owing by the Company in respect of a particular Unit.
9. The Company is also indebted to KingSett Mortgage Corporation (“**KingSett**”) in the total amount of approximately \$2.6 million as at January 26, 2023 (plus ongoing interest, fees and expenses). KingSett holds a second mortgage on each of the Units, a general security agreement and other security. The KingSett loan matured on December 1, 2021.
10. The Company also owes Canada Revenue Agency (“**CRA**”) approximately \$40,000 on account of unremitted HST and \$60,000 to the Royal Bank of Canada (“**RBC**”) on account of a Canada Emergency Benefit Account loan. To date, no information has been provided to the Receiver regarding the Company’s other creditors and the Receiver has been unable to compile a complete creditor list.

Third Report at pages 4-5; Motion Record of the Receiver (PH04 and PH09 Sale Approval and Ancillary Relief) (“**MR**”), Tab 2 [[CL p. E599;E27](#) – [E600;E28](#)].

C. The Receivership Order

11. The receivership application was originally brought by KingSett on January 7, 2022, and, following multiple adjournments, was ultimately heard and granted on May 9, 2022.
12. The Company sought to appeal the Receivership Order. On June 13, 2022, the Court of Appeal granted a motion by KingSett to quash the Company's appeal and dismissed the Company's motion for leave to appeal the Receivership Order.

Receivership Order, Third Report, App A; MR, Tab 2 [[CL p. E616;E44](#)].

[KingSett Mortgage Corporation v 30 Roe Investments Corp](#), 2022 ONCA 479.

D. Sale Process and Amended Sale Process

13. The Court approved the Receiver's proposed sale process (the "**Sale Process**") for the Units pursuant to an Order dated July 18, 2022 (the "**Sale Process Order**"). The Sale Process Order also approved the Receiver's engagement of HomeLife Landmark Realty ("**HomeLife**") as listing brokerage pursuant to a Listing Agreement dated July 7, 2022 (the "**HomeLife Listing Agreement**").
14. In summary, the Sale Process contemplates that:
 - (a) the Receiver, with the assistance of its advisors, will administer, supervise, facilitate and oversee the Sale Process with a view to maximizing value for the Units in a timely manner. Without limiting the generality of the foregoing, the Receiver shall have the authority to determine, from time to time and its sole discretion: (i) which and how many of the Units are to be listed for sale; and (ii) the listing prices for the Units, including any changes to listing prices;

- (b) HomeLife would, among other things, prepare marketing materials for the Units and post them on MLS;
- (c) The Units will be marketed on an “as is, where is” basis;
- (d) Any offer(s) to purchase a Unit will be reviewed and considered by the Receiver as and when received. The Receiver shall have the sole discretion to determine whether or not to accept or reject an offer and how to otherwise deal with an offer, including, without limitation, as relates to any negotiations with a prospective purchaser and entering into any agreement of purchase of sale in respect of a Unit, provided that any transaction in respect of a Unit will be subject to Court approval; and
- (e) Without limiting the factors that may be considered by the Receiver in reviewing and considering an offer for a Unit, the Receiver will have regard to: (i) the consideration offered; (ii) any conditions to closing or other factors that may impact the ability of a transaction to be consummated; and (iii) the proposed closing date.

Sale Process Approval Order dated July 18, 2022 [[CL p. G48](#)].

First Report of the Receiver dated July 7, 2022, p. 11; Third Report, App C; MR, Tab 2 [[CL p. E661;E89](#)].

15. Based on their occupancy status and the advice of Homelife, the Receiver elected to list PH04 and PH09 for sale and began marketing them in August 2022. HomeLife marketed PH04 and PH09 for sale by: (a) staging the Units, as required; (b) arranging for painting and minor repairs to the Units; (c) arranging for professional photographing of the Units and the creation of a 3D virtual tour, including floor plan, available via a dedicated

webpage; (d) listing the Units for sale on MLS; and (e) providing the Receiver with weekly updates on viewings and feedback from prospective purchasers.

16. PH04 was listed for sale on MLS from on or about August 11, 2022, to on or about October 18, 2022, although showings were conducted until November 2, 2022. The listing price for PH04 started at \$859,900 and was reduced several times, with a final listing price of \$745,000. Despite approximately 24 viewings, no offers were received to purchase PH04 during this period.
17. PH09 was listed for sale on MLS from on or about August 5, 2022, to on or about October 18, 2022, although showings were conducted until November 2, 2022 (PH09 was briefly delisted in the second half of August 2022 to allow the Company to pursue a potential refinancing). The listing price for PH09 started at \$1.189 million and was reduced to \$1.035 million. Despite approximately 18 viewings, no offers were received to purchase PH09 during this period.
18. HomeLife provided feedback to the Receiver that buyer agents consistently advised that the asking prices for PH04 and PH09 were too high.
19. Following the expiry of the HomeLife Listing Agreement by its terms and consultation with KingSett, the Receiver sought approval of certain amendments to the Sale Process, including the engagement of RE/MAX Hallmark Realty Ltd., Brokerage (“**Remax**”) as the new listing brokerage (with Gloria Yeung (“**Yeung**”) as lead agent) and confirmation of the Receiver’s authority to: (i) list any number of the Units for sale at any time as it, following consultation with Remax, determines is appropriate in its sole discretion; (ii) list all of the Units for sale; and (iii) list Units for sale that are occupied (the “**Amended**

Sale Process”). The Amended Sale Process is otherwise substantially the same as the Sale Process. The Court approved the Amended Sale Process by Order dated December 14, 2022.

Third Report at pages 11-12; MR, Tab 2 [[CL p. E605;E33](#) – [E606;E34](#)].

Second Report of the Receiver dated December 5, 2022, at pages 10-11; Third Report, App D; MR, Tab 2 [[CL p. E677;E105](#)]

Amended Sale Process Approval Order dated December 14, 2022 [[CL p. G58](#)].

E. The Proposed Transactions

20. Following consultation with Remax, the Receiver initially planned to re-list PH04 for \$729,000 on January 9, 2023. On or about January 3, 2023, the Receiver received an unsolicited offer for PH04 based on the PH04 Purchaser’s agent having reviewed the expired MLS listing for PH04. The Receiver and Yeung subsequently negotiated with the PH04 Purchaser (including making two counter-offers), which ultimately resulted in the PH04 APS.
21. The Receiver, in consultation with Remax, re-listed PH09 for sale at a listing price of \$979,000 on January 11, 2023. On January 19, 2023, the Receiver received an offer for PH09. The Receiver and Remax entered into negotiations with the PH09 Purchaser (including making a counter-offer), ultimately resulting in the PH09 APS.
22. Each of the Transactions:
 - (a) is for an all cash purchase price and includes a market deposit of 5%;
 - (b) is not subject to any remaining conditions aside from granting of the applicable approval and vesting order;

- (c) has a near term closing date; and
 - (d) is on an “as is, where is” basis with minimal representations and warranties by the Receiver and no surviving representations and warranties of the Receiver.
23. The Receiver consulted with Yeung prior to accepting the offers for PH04 and PH09, including reviewing recent comparable transactions.
24. The Receiver recommends the Court approve the Transactions for the following reasons, among others:
- (a) the market for PH04 and PH09 has been extensively canvassed by qualified real estate agents with considerable experience in the midtown Toronto condo market at multiple listing prices;
 - (b) the purchase prices under the Transactions are not materially different from the most recent intended listing price (in the case of PH04) and most recent listing price (in the case of PH09);
 - (c) Remax believes the Transactions are the best ones available in the present market and they are consistent with recent comparable transactions in the market;
 - (d) the Transactions represent the best (and only) offers received for the Units to date;
 - (e) the Receiver does not believe that further time spent marketing the Purchased Units will result in a superior transaction, including because the Purchased Units are vacant and property taxes, condominium fees and other expenses continue to

accrue (approximately \$900 per month in the case of PH04, and \$1,100 per month in the case of PH09); and

- (f) KingSett, the fulcrum creditor, supports the Transactions.

Third Report at pages 12-16 and 15-16; MR, Tab 2 [[CL p. E607;E35](#) – [E611;E39](#)].

F. The Monitoring Equipment

25. The penthouse floor of the Minto 30 Roe (where all of the Units are located) contains security equipment, including camera and audio surveillance equipment (the “**Monitoring Equipment**”). Based on various events described in the Third Report and prior Reports, it is evident that Zar has continued to access the Monitoring Equipment following the commencement of the receivership. The Receiver proposes to disconnect and remove the Monitoring Equipment. It does not believe that the Monitoring Equipment is required to preserve the Units, or for any other legitimate business purpose. Moreover, third party purchasers will occupy the Units if sales are approved and completed. These third purchasers should not be monitored by the Company.
26. Based on discussions with the property manager, the Receiver understands that the Monitoring Equipment is owned by the Company, not the condominium corporation. Accordingly, the Receiver believes the Monitoring Equipment is “Property” within the meaning of the Receivership Order such that it is entitled to take possession of it and dispose of it.

27. The property manager has advised the Receiver that it does not object to the removal of the Monitoring Equipment, and the Receiver is of the view that the Minto 30 Roe otherwise has sufficient security features.

Third Report at page 10; MR, Tab 2 [[CL p. E605;E33](#)].

G. Proposed Distributions

28. The Receiver is requesting authority from the Court to make certain distributions (the “**Distributions**”) from the proceeds of each Transaction, which include distributions and payments (a) in respect of property tax arrears; (b) HST on the Transactions, if any; (c) to Remax in respect of the commission payable pursuant to the Remax Listing Agreement previously approved by the Court; (d) to CIBC in respect of the indebtedness of the Company owing to CIBC and secured by the first mortgage in favour of CIBC on the applicable Purchased Unit; and (e) to KingSett in respect of the indebtedness of the Company owing to KingSett and secured by the second mortgage in favour of KingSett on the Purchased Units, subject to such holdback as the Receiver considers appropriate to fund the receivership.
29. The Receiver believes that the proposed Distributions are reasonable and appropriate in the circumstances, including because they represent payments necessary to close the Transactions, are consistent with relevant legal priorities and, in the case of the commissions payable to Remax, are being made pursuant to the Court-approved Remax Listing Agreement.
30. The Receiver’s counsel, Goodmans LLP (“**Goodmans**”), has provided an opinion to the Receiver that, subject to standard qualifications and assumptions, the relevant CIBC and

KingSett mortgages constitute a good and valid mortgage of and fixed charge on the Purchased Units to the extent of the principal, interest and costs secured thereby.

Third Report at pages 17-19; MR, Tab 2 [[CL p. E612:E40](#) – [E614:E42](#)].

H. Receiver's Activities

31. The Receiver served the Supplement to the Second Report on the evening before the December 14, 2022, hearing, describing certain events that occurred from the date of the Second Report to December 12, 2022, pertaining to the apparent unlawful occupation of PH01 and PH07 by Maryam Rezaee, Zar's mother. In the Endorsement of Justice McEwen dated December 20, 2022, which provided reasons for approving the Amended Sale Process and the activities of the Receiver described in the Second Report, Justice McEwen deferred approval of the Supplement to the Second Report to a further hearing as the Company had not had sufficient opportunity to respond. Accordingly, on this motion the Receiver is seeking approval of its activities described in the Supplement to the Second Report, as well as approval of its activities described in the Third Report.
32. The activities of the Receiver described in the Supplement to the Second Report and the Third Report have primarily consisted of: (i) dealing with matters pertaining to the apparent unlawful occupation of PH01 and PH07 by Rezaee; (ii) advancing the Amended Sale Process with the assistance of Remax; (iii) negotiating and entering into the proposed Transactions; and (iv) preparing the Third Report and bringing the present motion.

Third Report at pages 17-19; MR, Tab 2 [[CL p. E612:E40](#) – [E614:E42](#)].

I. Sealing

33. The Receiver seeks an Order sealing the Confidential Appendices to the Third Report, being copies of the unredacted PH04 APS and PH09 APS, Remax's recommendations to the Receiver in respect of the Transactions and the Receiver's Waterfall Analysis.
34. The Confidential Appendices contain sensitive financial information (the purchase price under the Transactions and Remax's estimate of the value of the Purchased Units together with comparable transactions), which, if not sealed, could negatively impact realizations on the Purchased Units if the Transactions do not close. Further, the Waterfall Analysis contained in Confidential Appendix 4 contains the Receiver's estimate of the value of the other Units. If made publicly available, the Waterfall Analysis could negatively impact realizations from the sale of other Units and impact the integrity of the Amended Sale Process.
35. Confidential Appendices 1, 2 and 3 are proposed to be unsealed upon closing of the Transactions. Confidential Appendix 4 is proposed to remain sealed pending further Order of the Court (which the Receiver would expect to seek once all Units have been sold).
36. Disclosure of the Confidential Appendices at this time poses a serious risk to the objective of maximizing value in these proceedings, there are no reasonably alternative measures aside from a sealing order to prevent this risk and, as a matter of proportionality, the benefits of a sealing order outweigh its negative effects.

III. ISSUES AND LAW

37. The issues to be considered on this motion are whether the Court should:
- (a) approve the PH04 APS and grant the PH04 Approval and Vesting Order;
 - (b) approve the PH09 APS and grant the PH09 Approval and Vesting Order;
 - (c) approve the Distributions (as defined below) from the proceeds of the Transactions;
 - (d) approve the activities of the Receiver as described in the Supplement to the Second Report and the Third Report; and
 - (e) seal the Confidential Appendices to the Third Report on the terms specified.
38. The Receiver respectfully submits that the Court should grant all of the foregoing relief for the reasons that follow.
- A. The Transactions Should be Approved**
39. The Receivership Order authorizes the Receiver “...to sell, convey, transfer, lease or assign the Property or any part or parts thereof out [*sic*] of the ordinary course of business [...] with the approval of the Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds [\$250,000]...”
40. Further, this Court previously approved the Sale Process and Amended Sale Process for the Units and authorized the Receiver to carry them out.

41. Section 100 of the *Courts of Justice Act* authorizes this Court to grant an order vesting “in any person an interest in real or personal property that the Court has authority to order be conveyed.” Section 243 of the *Bankruptcy and Insolvency Act* further grants the Court broad authority to authorize the Receiver to “take any other action that the court considers advisable.”

[*Courts of Justice Act*, RSO 1990, c. C-43, as amended, s. 100 \[CJA\]](#)

[*Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended, ss. 243\(1\)\(c\).](#)

42. The principles for the Court to consider on a motion for the approval of a sale of assets by a receiver are well established and set out in *Royal Bank v. Soundair Corp.* These principles are:

- (a) whether sufficient effort has been made to obtain the best price and that the receiver has not acted improvidently;
- (b) whether the interests of all parties have been considered;
- (c) the efficacy and integrity of the process by which offers have been obtained; and
- (d) whether there has been unfairness in the working out of the process.

43. The Ontario Court of Appeal has emphasized that in assessing a sale by a court-appointed receiver, the Court is to rely on the expertise and business judgment of the receiver, only interfering in exceptional circumstances.

[*Royal Bank v Soundair Corp* \(1991\), 83 DLR \(4th\) 76, CBR \(3d\) 1 \(Ont CA\) \[Soundair\] at paras 16 and 58.](#)

44. The Transactions satisfy the *Soundair* criteria for the following reasons:

- (a) The Purchased Units were marketed extensively over a number of months with the assistance of qualified real estate professionals and in accordance with the Sale Process and Amended Sale Process previously approved by this Court, as applicable. While the Receiver initially attempted to obtain higher prices, the lack of any offers for PH04 and PH09 during fall 2022, together with consistent feedback from prospective buyers, revealed that the initial listing prices were too high in the current market and that reduced listing prices were necessary. The final agreed purchase prices are consistent with recent comparable transactions and recommended by Remax as the best available transactions in the circumstances. In the case of PH04, its recent prior exposure to the market in fall 2022 and proposed selling price (relative to both the intended new listing price of \$729,0000 and comparable transactions) readily demonstrate that sufficient effort was made to obtain the best price and that fair market value has been obtained.
- (b) The Transactions are the result of arm's length negotiations with the respective third-party purchasers, which included counter-offers by the Receiver in response to the purchasers' initial offers. The Transactions are on standard "as is, where is" terms for an all-cash purchase price, have no remaining conditionality (aside from approval of the Court) and near term closing dates, all of which factors are specifically referenced in the Sale Process and Amended Sale Process as germane to the Receiver's considerations of whether or not to accept an offer.
- (c) The Transactions are supported by the fulcrum creditor, KingSett, who has been consulted throughout the process. The Transactions will also result in CIBC being repaid the mortgage debt secured by the Purchased Units in full.

(d) The Receiver has also considered (or attempted to consider) the Company's views and interests. Despite repeated requests to provide information to the Receiver in support of its contention that the Units should be sold as a going concern hospitality business, the Company failed to provide any such information, including financial information. Based on the Receiver's own observations (as outlined at Section 4.5 to the Third Report), the Receiver does not believe there is any merit to the suggestion that the Units could be sold as a going concern business hospitality business for a premium relative to the individual resale value of the Units. Specifically, there is no evidence that a market exists for a block of condominiums operated as a hospitality business or that the Company operated such a business profitably. The Company may suggest, as it has throughout, that it should be given a chance to refinance. But the Company has had ample time to attempt to complete a refinancing of the Units, including the Receiver's agreement to pause the Sale Process for a period of time in August 2022 to facilitate a potential refinancing that ultimately did not close. In the circumstances, there can be no suggestion from the Company that there has been any unfairness in the working out of the process.

B. The Monitoring Equipment is "Property"

45. The Receivership Order empowers and authorizes the Receiver to, among other things, "...take possession of and exercise control over the Property [...] where the Receiver considers it necessary or desirable...". "Property" is defined in the Receivership Order to include "...all of the assets, undertakings and properties of [the Company] acquired for,

used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property...”²

Receivership Order, preamble and para 3(a) [[CL p. G11](#) and [p. G12](#)].

46. As indicated above, the Monitoring Equipment is an asset of the Company that it apparently used to monitor the penthouse Units, including following the commencement of these proceedings. Accordingly, the Monitoring Equipment is “Property” inasmuch as it is an asset of the Company used in connection with and/or arising from ownership or use of the Real Property.
47. For these reasons, the Receiver believes that it is entitled to remove and dispose of the Monitoring Equipment as it sees fit, and seeks a declaratory order to this effect. The removal of the Monitoring Equipment is appropriate at this juncture of the case, including because third party purchasers will begin moving into certain of the Units in the near term if the Transactions are approved.

C. Distributions

48. The Receiver is requesting authority from the Court to make the Distributions. Courts routinely approve interim distributions in insolvency proceedings. In *AbitibiBowater*, the Court was guided by a number of factors in its consideration of an interim distribution to creditors in a proceeding under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, which remain relevant in the context of a receivership. The Court considered whether (i) the payee’s security is valid and enforceable; (ii) the amounts owed to the

² “Real Property” is defined by reference to the legal description of the Units on Schedule “A” to the Receivership Order.

payee exceed the contemplated distribution, (iii) the distribution will result in interest savings; and (iv) the distribution will leave the estate with sufficient liquidity.

2665405 Ontario Inc v 1033803 Ontario Inc et al, ([11 July 2019](#)), Commercial List, Toronto CV-18-608978-00CL (ONSC); *BCIMC Construction Fund Corporation and Otera Capital Inc v 33 Yorkville Residents Inc. and 33 Yorkville Residences Limited Partnership*, ([3 March 2022](#)), Commercial List, Toronto CV-20-00637297-00CL (ONSC).

[AbitibiBowater inc. \(Arrangement relatif à\)](#), 2009 QCCS 6461 at para [75](#).

49. The Receiver submits that it is reasonable and appropriate for the Court to exercise its discretion and approve the Distributions to CIBC and KingSett as:

- (a) Goodmans has reviewed the mortgages granted by the Company to CIBC and KingSett in respect of the Purchased Units and issued opinions to the Receiver that, subject to standard assumptions and qualifications, the CIBC and KingSett mortgages constitute a good and valid mortgage of and fixed charge on the Purchased Units. Further, the Receiver is not aware of any other claim against the proceeds of the Transactions that may rank in priority to the CIBC indebtedness or the KingSett Loan (aside from the Receiver's Charge and, potentially, a CRA HST deemed trust claim, each of which are appropriately reserved for); and
- (b) the Distributions will pay down a portion of the Company's secured indebtedness, resulting in interest savings.

Third Report at page 17; MR, Tab 2 [[CL p. E612;E40](#)].

50. In the case of the Distributions relating to the closing of the Transactions:

- (c) Pursuant to each APS, the Receiver has covenanted to remit sufficient funds from the applicable purchase price to satisfy property taxes and condominium expenses

that are in arrears prior to the closing date. Such payments are appropriate as they are necessary to close the Transactions and the underlying obligations may also enjoy priority at law;

- (d) Pursuant to the Remax Listing Agreement, the Receiver has agreed to pay a commission of 3.5% of the purchase price of the Transactions when they close (1% to Remax, and 2.5% to the respective cooperating brokers). This Court previously approved the Receiver's entry into the Remax Listing Agreement in the Amended Sale Process Order, and the commission represents the lowest of the broker proposals received by the Receiver prior to the commencement of the Sale Process;
- (e) Pursuant to the terms of each APS, the purchase price is inclusive of applicable HST, if any, and the Receiver is obligated to remit any applicable HST as required by law. The Receiver and its counsel continue to consider whether HST is applicable on the sale of the Purchased Units, and have an outstanding information request to the Company in this regard. To the extent HST is required to be remitted at law, it is appropriate for the Court to authorize the Receiver to pay it.

Third Report, App K, PH04 APS at s.s. 6(a) and (b); MR, Tab 2 [[CL p. E729;E157](#)].

Third Report at page 18; MR, Tab 2 [[CL p. E613;E41](#)].

[Municipal Act, SO 2001, c. 25, as amended, s.s. 349\(3\).](#)

[Condominium Act, 1998, SO 1998, c. 19, as amended s. 85\(1\) and 86\(1\).](#)

D. Activities of the Receiver

51. The Receiver served the Supplement to the Second Report on the evening before the December 14, 2022 hearing, describing certain events that occurred from the date of the Second Report to December 12, 2022, as relates to the Receiver's discovery that Maryam Rezaee, Zar's mother, was occupying PH01 without the knowledge or consent of the Receiver. In his Endorsement dated December 20, 2022, Justice McEwen deferred the approval of the Supplement to the Second Report to a further hearing as the Company had not had sufficient opportunity to respond.

Endorsement of Justice McEwen dated December 20, 2022 [[CL p. G68](#)].

52. The Court has the inherent jurisdiction to approve the activities of a court-appointed receiver if the receiver has met the objective test of demonstrating that it has acted reasonably, prudently and not arbitrarily.

[Bank of America Canada v Willann Investments Ltd, \[1993\] OJ No 1647, 20 CBR \(3d\) 223 \(Gen Div\)](#) at paras 3-5, aff'd [[1996\] OJ No. 2806, 65 ACWS \(3d\) 44 \(CA\)](#)].

53. All of the Receiver's activities were reasonable and in accordance with its powers and duties under the Receivership Order. As relates to the Receiver's activities described in the Supplement to the Second Report, the Receiver made appropriate inquiries and took appropriate actions in response to its discovery that PH01 was being occupied by a (then) unknown person, including filing a police report. As relates to the Receiver's activities described in the Third Report, the Receiver has primarily progressed the Amended Sale Process in accordance with the Court's order, negotiated and entered into the proposed Transactions and otherwise worked to advance these proceedings for the benefit of creditors.

54. The foregoing activities have been necessary, are consistent with the Receiver's duties and powers granted pursuant to the Receivership Order and other prior orders of this Court, undertaken with efficiency and reasonableness, and are in the interest of the Company's creditors. Accordingly, the Supplement to the Second Report and the Third Report and the activities of the Receiver described therein ought to be approved.

E. Sealing

55. The Receiver seeks an Order sealing the Confidential Appendices to the Third Report, being copies of the unredacted PH04 APS and PH09 APS, Remax's recommendations to the Receiver in respect of the Transactions and the Receiver's Waterfall Analysis.

56. Confidential Appendices 1 through 3 contain sensitive financial information (the purchase price under the Transactions and Remax's estimate of the value of the Purchased Units together with comparable transactions), which, if not sealed, could negatively impact realizations on the Purchased Units if the Transactions do not close. Further, the Waterfall Analysis contained in Confidential Appendix 4 also contains the Receiver's estimate of the value of the other Units. If made publicly available, the Waterfall Analysis could negatively impact realizations from the sale of other Units and impact the integrity of the Amended Sale Process.

57. This Court has discretion pursuant to [Section 137\(2\)](#) of the *CJA* to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.

58. The Supreme Court recently refined the seminal sealing test from *Sierra Club* in *Sherman Estate v Donovan*, 2021 SCC 25, where it held that three core prerequisites must be established in order to obtain a sealing order:

- (a) court openness poses a serious risk to an important public interest;
- (b) the sealing order sought is necessary to prevent the serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the sealing order outweigh its negative effects.

[*Sierra Club of Canada v Canada \(Minister of Finance\)*, 2002 SCC 41 \[Sierra Club\]](#) at para 53.

[*Sherman Estate v Donovan*, 2021 SCC 25 \[Sherman\]](#) at para 38.

59. In regards to the first principle, the Courts have acknowledged that there is a public interest in maximizing recoveries in an insolvency that goes beyond the individual case.

[*Danier Leather Inc. Re.*, 2016 ONSC 1044](#) at para 84.

60. In *Yukon (Government of) v Yukon Zinc Corporation*, 2022 YKSC 2, the Court held that it is standard practice in a sale process to keep all aspects of the bidding or sales process confidential:

Courts have found this appropriately meets the *Sierra Club* test as modified by *Sherman Estate*, as sealing this information ensures the integrity of the sales and marketing process and avoids misuse of information by bidders in a subsequent process to obtain an unfair advantage. The important public interest at stake is described as the commercial interests of the Receiver, bidders, creditors and stakeholders in ensuring a fair sales and marketing process is carried out, with all bidders on a level playing field.

[Yukon \(Government of\) v Yukon Zinc Corporation, 2022 YKSC 2](#) at para 39.

61. In regards to the second principle in *Sherman*, this Court has previously recognized that public disclosure of a purchase price may jeopardize dealings with future prospective purchasers and pose a serious risk to stakeholders and the sale process. In this case, making the purchase prices publicly available could negatively impact the selling price for the Purchased Units should one or both of the Transactions not close. The same reasoning applies to the sealing of the Waterfall Analysis, which contains the Receiver's estimate of the value of the other Units to be marketed as well.

[Elleway Acquisitions Ltd v 4358376 Canada Inc, 2013 ONSC 7009](#) at para 48.

62. Finally, the benefits of the sealing order outweigh the negative effects. The sealing order will preserve the integrity of the sale process, which greatly outweighs any negative effects that result from temporarily limiting public access to a small amount of information.


IV. RELIEF REQUESTED

63. For the reasons set out herein, the Receiver respectfully requests that the Court:
- (a) grant the PH04 Approval and Vesting Order;
 - (b) grant the PH09 Approval and Vesting Order; and
 - (c) grant the Ancillary Relief Order, including declaring that the Monitoring Equipment is "Property" and authorizing the Receiver to disconnect it, approving the Distributions, approving the activities of the Receiver as described in the

Supplement to the Second Report and the Third Report, and sealing the Confidential Appendices to the Third Report on the terms specified.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 1st DAY OF FEBRUARY, 2023.

Per:

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a series of loops and a final flourish.

GOODMANS LLP

Lawyers for KSV Restructuring Inc., in its capacity as Court-appointed receiver and manager of certain property of 30 Roe Investments Corp. and not in its personal or corporate capacity

SCHEDULE A
LIST OF AUTHORITIES

[Royal Bank v. Soundair Corp \(1991\)](#), 83 DLR (4th) 76, CBR (3d) 1 (Ont CA).

[AbitibiBowater inc. \(Arrangement relatif à\)](#), 2009 QCCS 6461.

[Bank of America Canada v Willann Investments Ltd](#), [1993] OJ No 1647, 20 CBR (3d) 223 (Gen Div), aff'd [1996] OJ No. 2806 (CA), 65 ACWS (3d) 44.

[Sierra Club of Canada v Canada \(Minister of Finance\)](#), 2002 SCC 41.

[Sherman Estate v Donovan](#), 2021 SCC 25.

[Danier Leather Inc, Re](#), 2016 ONSC 1044.

[Yukon \(Government of\) v Yukon Zinc Corporation](#), 2022 YKSC 2.

[Elleway Acquisitions Ltd v 4358376 Canada Inc](#), 2013 ONSC 7009.

SCHEDULE B
STATUTORY REFERENCES

BANKRUPTCY AND INSOLVENCY ACT
R.S.C., 1985, c. B-3, as amended

s. 243 (1)

Court may appoint receiver – 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.

COURTS OF JUSTICE ACT
R.S.O., 1990, c. C.43, as amended

s. 100

Vesting Orders - A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

s. 137(2)

A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

MUNICIPAL ACT
S.O. 2001, c. 25, as amended

s. 349(3)

Special Lien – Taxes are a special lien on the land in priority to every claim, privilege, lien or encumbrance of every person except the Crown, and the lien and its priority are not lost or impaired by

any neglect, omission or error of the municipality or its agents or through taking no action to register a tax arrears certificate.

CONDOMINIUM ACT, 1998
S.O. 1998, c. 19, as amended

s. 85(1)

Lien upon default – If an owner defaults in the obligation to contribute to the common expenses payable for the owner’s unit, the corporation has a lien against the owner’s unit and its appurtenant common interest for the unpaid amount together with all interest owing and all reasonable legal costs and reasonable expenses incurred by the corporation in connection with the collection or attempted collection of the unpaid amount.

s. 86(1)

Priority of lien – Subject to subsection (2), a lien mentioned in subsection 85 (1) has priority over every registered and unregistered encumbrance even though the encumbrance existed before the lien arose but does not have priority over,

(a) a claim of the Crown other than by way of a mortgage;

(b) a claim for taxes, charges, rates or assessments levied or recoverable under the Municipal Act, 2001, the City of Toronto Act, 2006, the Education Act or the Local Roads Boards Act; or

(c) a lien or claim that is prescribed.

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

KINGSETT MORTGAGE CORPORATION - and -
Applicant

30 ROE INVESTMENTS CORP.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

FACTUM OF THE RECEIVER
(PH04 and PH09 Sale Approval and Ancillary Relief)

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capacity as Court-appointed Receiver and not in its
personal capacity