

**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
(Discharge and Ancillary Relief)**

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

Christopher G. Armstrong LSO# 55148B
Mark Dunn LSO # 55510L

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for KSV Restructuring Inc., solely
in its capacity as Court-appointed Receiver
and not in its personal capacity

TABLE OF CONTENTS

| | |
|--|-----------|
| PART I - INTRODUCTION..... | 1 |
| PART II - FACTS..... | 4 |
| (A) BACKGROUND | 4 |
| (B) ACTIVITIES OF THE RECEIVER..... | 5 |
| (i) Completion of the Sale Process..... | 5 |
| (ii) HST Matters | 6 |
| (iii) Distributions to Creditors | 7 |
| (C) PASSING OF THE ACCOUNTS OF THE RECEIVER AND ITS COUNSEL.... | 8 |
| (D) RELEASES..... | 9 |
| PART III - ISSUES AND LAW..... | 9 |
| (A) THE HST REMITTANCES SHOULD BE AUTHORIZED | 10 |
| (B) THE FEES AND ACTIVITIES OF THE RECEIVER SHOULD BE APPROVED | 11 |
| (i) Jurisdiction and Test..... | 11 |
| (ii) The Fees are Reasonable, and should be Approved..... | 13 |
| (iii) The Receiver had to Overcome Significant Obstacles Imposed by Zar..... | 14 |
| (iv) The Receiver took steps to keep costs reasonable..... | 21 |
| (C) RECEIVER’S FIFTH REPORT AND ACTIVITIES | 22 |
| (D) DISCHARGE AND RELEASE OF THE RECEIVER..... | 23 |
| (E) KINGSETT RELEASE | 24 |
| PART IV - RELIEF REQUESTED | 25 |

Schedule A - List of Authorities

Schedule B – Statutory References

**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
(Discharge and Ancillary Relief Order)**

PART I - INTRODUCTION

1. This is the factum of KSV Restructuring Inc. (“**KSV**”) in its capacity as the receiver and manager of certain property of 30 Roe Investments Corp. (the “**Debtor**”) in respect of the Receiver’s motion for an order discharging the Receiver, passing its accounts and those of its counsel, authorizing standard releases in favour of the Receiver and its counsel and granting other ancillary relief to bring this case to its conclusion, including authorizing the HST Remittances (as defined below) (the “**Discharge and Ancillary Relief Order**”).¹

¹ Capitalized terms used herein and not otherwise defined have the meaning given to them in the Fifth Report of the Receiver dated October 4, 2023 (the “**Fifth Report**”). All monetary amounts are expressed in Canadian dollars.

2. With one exception (which is discussed below), the relief sought by the Receiver on this motion is routinely granted by this Court at the conclusion of receivership proceedings. That relief is supported by the Applicant and fulcrum creditor, KingSett Mortgage Corporation (“**KingSett**”), and it is opposed only by the Debtor’s principal, Raymond Zar (“**Zar**”). Zar has not filed any evidence, despite being granted an adjournment so that he could do so. His objections appear to be the latest in a long list of attempts to delay, complicate and frustrate the receivership.

3. In May 2022, the Receiver was appointed by the Court upon application of KingSett to take possession and control of nine penthouse condominium units and related storage and parking spaces (collectively, the “**Units**”) owned by the Debtor at the Minto 30 Roe, a large condominium tower in mid-town Toronto.

4. As is typical in a case of this nature, the Receiver designed a sale process for the Units, then sought and received Court approval for that process. It subsequently obtained Court approval to enter into and complete sales of the Units, ultimately generating proceeds in excess of \$8.3 million. Those sale proceeds have, following Court approval, been distributed by the Receiver to repay the entirety of the debt owing to the Debtor’s senior secured creditor, CIBC, and to make a significant distribution to the Debtor’s second ranking secured creditor, KingSett.

5. In short, the Receiver has completed what it was appointed and authorized by the Court to do: complete sales of the Units that maximized value for stakeholders.

6. However, while the scope and objective of this receivership was entirely typical, the reality has been anything but.

7. Rather than accept the orders of this Court that authorized all of the foregoing (even when final and not subject to any further appeal rights), Zar did everything he could to frustrate the progress of the receivership, from refusing to deliver keys to the Units, failing to provide business records, opposing virtually all relief sought by the Receiver, purporting to appeal orders without seeking leave, to advancing a myriad of baseless allegations against the Receiver and others.

8. Even at this late hour, Zar's disregard for the receivership process and the orders of this Court continues: despite requesting that the Receiver adjourn this motion to allow him further time to respond and bring a Rule 15 motion and the Court scheduling a peremptory hearing for November 14, 2023, Zar has so far failed to deliver any materials or take any other steps in accordance with litigation schedule this Court endorsed on October 12, 2023.²

9. Zar's conduct has resulted in significant professional time being spent dealing with numerous contested hearings and appeal proceedings before this Court and the Court of Appeal, obtaining information relevant to the performance of the Receiver's duties from third parties, and addressing his actions (and inactions). While the Receiver remained steadfast in pursuing the objective of this receivership and delivering significant value to creditors, Zar's tactics have imposed a cost, including on KingSett who will suffer a shortfall.

10. For the reasons that follow, the Receiver respectfully requests that the Court grant the requested relief on the terms of the proposed Discharge and Ancillary Relief Order.

² Should Zar subsequently deliver any materials, the Receiver reserves the right to object to the filing of those materials, to deliver responding or reply evidence, to cross-examine Zar and/or to file a supplemental factum.

PART II - FACTS

(A) BACKGROUND

11. The Debtor owned nine penthouse condominium Units and related parking spaces and storage units/lockers in a thirty-five storey, 397-unit condominium building at 30 Roehampton Avenue in Toronto, Ontario known as the Minto 30 Roe.³

12. The Debtor's secured creditors were:

(a) CIBC, owed a total of approximately \$4.2 million at the outset of these proceedings. CIBC held a first mortgage on each of the Units and other security; and,

(b) KingSett, owed a total of approximately \$2.2 million at the outset of these proceedings. KingSett held a second mortgage on each of the Units, together with a general security agreement and other security.⁴

13. KingSett commenced an application to appoint the Receiver in early January 2022. After a series of delays and adjournments requested by the Debtor, the Receiver was appointed by Order of Justice Cavanagh dated May 9, 2022 (the "**Receivership Order**").⁵ The Debtor sought to appeal the Receivership Order. On June 13, 2022, the Court of Appeal granted a motion by KingSett to quash the Debtor's appeal.⁶

³ Fifth Report at para 1.0(2), Motion Record, Tab 2 [CL p [E2218;E23](#)].

⁴ [Fourth Report of the Receiver dated May 16, 2023](#) (the "**Fourth Report**") at para 2.2.1, Motion Record, Tab 2G [CL p [E2611;E416](#)].

⁵ [KingSett Mortgage Corporation v. 30 Roe Investments Corp., 2022 ONSC 2777](#) at paras [4-9](#).

⁶ [KingSett Mortgage Corporation v. 30 Roe Investments Corp., 2022 ONCA 479](#) at paras [39-40](#) [*June 17 2022 Court of Appeal*]; [First Report of the Receiver](#) dated July 7, 2022 (the "**First Report**") at para 2.3(11), Motion Record, Tab 2B [CL p [E2257;E62](#)].

(B) ACTIVITIES OF THE RECEIVER

(i) Completion of the Sale Process

14. The core purpose of this proceeding was to sell the Units to realize value for the Debtor's stakeholders. Pursuant to the sale process approved by the Court on July 18, 2022, and amended on December 14, 2022 (the "**Sale Process**"), the Receiver, with the assistance of its brokers, extensively canvassed the market for the Units over the course of the second half of 2022 and into 2023.

15. The Debtor – through Zar – opposed the Sale Process, and asserted, repeatedly and over the course of several months, that all of the Units should be sold together as a going concern hospitality business. But Zar never provided evidence to support this assertion, and the Court repeatedly rejected it.

16. In January 2023, the Receiver entered into sale agreements for PH04 and PH09, which the Court approved pursuant to two Approval and Vesting Orders dated February 7, 2023 (the "**PH04 & PH09 AVOs**").⁷ Zar opposed the granting of the PH04 & PH09 AVOs, with the Court overruling his opposition.

17. The Debtor sought to appeal the PH04 & PH09 AVOs, and took the position that the orders were stayed pending appeal. This forced the Receiver to bring an urgent motion to quash the Debtor's appeal, so that the sales could proceed.

18. On March 29, 2023, the Court of Appeal granted the Receiver's motion to quash the Debtor's purported appeal. The Court of Appeal's decision noted the Debtor's extraordinary

⁷ [Third Report of the Receiver dated January 26, 2023](#) (the "**Third Report**") at paras 4.3 and 4.4, Motion Record, Tab 2F [CL p [E2487;E292](#) - [E2489;E294](#)].

dispute with its counsel, and its unsuccessful attempts to use that dispute to adjourn the motion.⁸
The PH04 and PH09 sale transactions closed on March 31, 2023 and April 5, 2023, respectively.⁹

19. The Receiver continued to market the Units with the assistance of its real estate agent and subsequently entered into agreements of purchase and sale for PH02 and PH03, which the Court approved on May 29, 2023. Both sales closed on May 31, 2023.¹⁰

20. On May 29, 2023, the Court also granted an Order (the “**Remaining Units AVO**”) that authorized the Receiver to complete transactions for the five remaining Units (the “**Remaining Units**”) without returning to Court, subject to certain conditions being satisfied.¹¹ The Receiver proceeded to sell the Remaining Units in accordance with the Remaining Units AVO. The sale of the last Remaining Unit closed on September 7, 2023.¹²

(ii) *HST Matters*

21. Since August 2022, the Receiver has sought information from Zar that would allow it to assess and remit any HST owing in connection with the sale of the Units. Zar has repeatedly failed to provide any information in response to the Receiver’s requests, nor did he comply with the Endorsement of this Court dated May 30, 2023, which required him to provide certain HST tax advice he purportedly received from BDO Dunwoody to the Receiver by June 2, 2023.

22. The Receiver was recently able to obtain the Debtor’s HST returns from the Canada Revenue Agency (“**CRA**”). Those returns disclose the Debtor claimed input tax credits (“**ITCs**”)

⁸ [KingSett Mortgage Corporation v. 30 Roe Investments Corp., 2023 ONCA 219](#) at para 18 [March 29 2023 Court of Appeal].

⁹ [Fourth Report](#) at paras 3.2(1), 3.2(3)-(4), 3.2(8) and 3.3, Motion Record, Tab 2G [CL p [E2612;E417 – E2614;E419](#)].

¹⁰ [Endorsement of Justice Osborne in 30 Roe Investments Corp. dated May 30, 2023](#) [May 30th Endorsement] at para 64, Motion Record, Tab 2H [CL p [E2836;E641](#)].

¹¹ [May 30th Endorsement](#) at para 85 [CL p [E2838;E643](#)].

¹² [Fifth Report](#) at para 3.2(3), Motion Record, Tab 2 [CL p [E2222;E27](#)].

totalling \$708,818.54 for the tax year 2017, being the year it acquired the Units. That amount corresponds closely to 13% of the purchase price of the Units.¹³

23. Based on the sale price of the Units, there is a potential HST obligation of approximately \$956,000. In addition, the CRA has asserted a trust claim of \$39,225.38 in respect of unremitted HST by the Debtor.¹⁴ Based on the information available to the Receiver, it believes HST should be remitted to the CRA on the sale of the Units as well as the deemed trust claim, and, accordingly, seeks authorization of the Court to make a distribution to CRA in respect of HST owing on the sale transactions and such other amounts as may be due and owing by the Debtor in respect of HST, if any, as the Receiver determines is required (the “**HST Remittances**”).¹⁵

(iii) Distributions to Creditors

24. Proceeds from the sales of the Units totaled approximately \$8.3 million and total receivership receipts are in excess of \$8.5 million.

25. On May 29, 2023, this Court issued a distribution order (the “**Distribution Order**”) which, among other things, authorized and directed the Receiver to make distributions to CIBC and KingSett (up to the principal amount of \$1.875 million and interest thereon). To date, the Receiver has repaid the full amount of the debt owing to CIBC (\$4.371 million) and \$1.4 million to KingSett. KingSett is expected to suffer a shortfall on the principal and interest owing to it.¹⁶

¹³ Fifth Report at para 3.3(1) and Appendix “I”, Motion Record, Tab 2 [CL p [E2222:E27](#) and [E2842:E647](#)]; [May 30th Endorsement](#), *supra*, at para 98; Supplement to the Fifth Report of the Receiver dated November 6, 2023 (the “**Supplement to the Fifth Report**”) at para 3.0(3).

¹⁴ Fifth Report at paras 3.3(1) and 4.1(1), Motion Record, Tab 2 [CL p [E2222:E27](#) and [E2224:E29](#)].

¹⁵ Fifth Report at paras 3.3(3) and 4.1, Motion Record, Tab 2 [CL p [E2223:E28](#)].

¹⁶ Fifth Report at Appendix “K”, Motion Record, Tab 2 [CL p [E2850:E655](#)].

(C) PASSING OF THE ACCOUNTS OF THE RECEIVER AND ITS COUNSEL

26. The proposed Discharge and Ancillary Relief Order provides for the approval of the fees and disbursements of the Receiver and its counsel incurred during the Period, together with the Fee Accrual.¹⁷ The accounts of the Receiver and its counsel for the Period total approximately \$251,180 and \$583,581, respectively, exclusive of disbursements and applicable taxes.¹⁸

27. The Receiver delivered the Fifth Report in support of this motion, which attaches affidavits from representatives of the Receiver and its counsel that provide a comprehensive listing of the accounts sought to be passed, including each account, and summary tables identifying the individual professionals who have worked on this matter, their hourly billing rates and total number of hours worked, among other information.¹⁹

28. The Receiver has reported that total professional costs of this proceeding are in excess of expected costs based on the Receiver's experience with similar mandates. In the Receiver's view, these excess costs have been entirely due to the conduct of Zar, as detailed herein.²⁰

29. Zar advised that he intended to cross-examine on the fee affidavits and file evidence relevant to the Receiver's motion. The original return date for the Receiver's motion was adjourned to permit Zar to file evidence and conduct cross-examinations, and the parties agreed to a schedule for the exchange of material. But Zar did not file material in accordance with the schedule, or at

¹⁷ Draft Discharge and Ancillary Relief Order, paras 5-6; Motion Record, Tab 3 [CL p [E2992;E797](#)].

¹⁸ Fifth Report at para 7.0(2), Motion Record, Tab 2 [CL p [E2225;E30](#)].

¹⁹ Affidavit of Noah Goldstein sworn October 4, 2023 (the "**Goldstein Affidavit**"), Motion Record, Tab 2L [CL p [E2852;E657](#)]; Affidavit of Christopher Armstrong sworn October 4, 2023 (the "**Armstrong Affidavit**"), Motion Record, Tab 2M [CL p [E2886;E691](#)].

²⁰ Fifth Report at para 7.0(6), Motion Record, Tab 2 [CL p [E2226;E31](#)].

all. Zar also took no steps to cross-examine on the fee affidavits or pose written questions to the Receiver.²¹

(D) RELEASES

30. The proposed Discharge and Ancillary Relief Order also provides, *inter alia*, that the Receiver and the other Released Persons be forever released and discharged released and discharged from any and all liability that any Released Person now has or may hereafter have by reason of, or in any way arising out of or in connection with, the acts or omissions of KSV while acting in its capacity as Receiver or the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.²²

31. The proposed Discharge and Ancillary Relief Order also provides, *inter alia*, that the KingSett Released Persons are released and discharged from any and all liability that any KingSett Released Person now has or may hereafter have by reason of, or in any way arising out of or in connection with, KingSett's loan to the Debtor or the within receivership proceedings, save and except for any gross negligence or wilful misconduct on KingSett's part.²³

PART III - ISSUES AND LAW

32. The issues on this motion are whether this Court should:

- (a) approve the HST Remittances;
- (b) pass the accounts of the Receiver and its counsel and approve the Fee Accrual;

²¹ Supplement to the Fifth Report at para 2.0.

²² Draft Discharge and Ancillary Relief Order at para 10, Motion Record, Tab 3 [CL p [E2994;E799](#)].

²³ Draft Discharge and Ancillary Relief Order at para 11, Motion Record, Tab 3 [CL p [E2994;E799](#)].

- (c) approve the Fifth Report and activities of the Receiver;
- (d) grant the discharge of the Receiver and the proposed release of the Released Persons; and
- (e) grant the release of the KingSett Released Persons.

33. The Receiver respectfully submits that all of the foregoing should be approved.

(A) THE HST REMITTANCES SHOULD BE AUTHORIZED

34. It is well established that the Court has the authority to grant an order approving distributions, such as the HST Remittances, in receiverships; indeed, the Court approved various distributions in its order in this proceeding dated May 29, 2023, but deferred approval of the HST Remittances to allow Zar to provide further information and analysis to the Receiver.

35. Zar apparently objects to the HST Remittances, but he has steadfastly refused to provide information to substantiate his position. Indeed, Zar failed to provide any HST information to the Receiver.

36. The Receiver was forced to investigate the HST issue without any assistance from Zar. It obtained the Debtor's HST returns from the CRA, which confirm that ITCs were claimed by the Debtor on the acquisition of the Units.

37. The Receiver has sought advice from tax lawyers at its counsel, Goodmans LLP. Generally speaking, the sale of a used "residential complex" is exempt from HST. However, Zar has described the Debtor's business as the rental of short-term furnished units. Short-term rental units are excluded from the definition of "residential complex" and are subject to HST upon their sale.

Further, even if the Units were residential complexes, the fact that ITCs were claimed on the acquisition of the Units results in HST being required to be remitted upon their sale.²⁴

38. With respect to the CRA's HST deemed trust claim of approximately \$40,000, as that claim relates to the tax year 2018 (*i.e.* prior to the registration of the KingSett mortgage in 2019) and the Debtor has not been declared bankrupt, it is also appropriate to authorize a distribution to CRA on account thereof.²⁵

(B) THE FEES AND ACTIVITIES OF THE RECEIVER SHOULD BE APPROVED

(i) Jurisdiction and Test

39. The jurisdiction of this Court to pass the accounts of the Receiver and its counsel is confirmed in the Receivership Order, which directs that: “the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.”²⁶

40. The Receiver and its counsel charged standard hourly rates that are consistent with market rates. Those rates have been approved by this Court in numerous other matters. This weighs in favour of fee approval, although it does not shield the fees from scrutiny to ensure that they are fair and reasonable.²⁷

²⁴ Affidavit of Raymond Zar, sworn February 6, 2022; [Motion Record of the Applicants dated February 6, 2023](#) at Tab 1; [Excise Tax Act, RSC 1985, c. E-15](#), as amended [ETA], s. 123(1), s. 165 and [paragraph 2 of Part I of Schedule V](#); [Wotherspoon v. Canada, 2011 TCC 343](#) at para 6, aff'd [2012 FCA 271](#).

²⁵ [ETA](#), s. 222; [Security Interest \(GST/HST\) Regulations, SOR/2022-55, s. 2](#).

²⁶ [Receivership Order](#) at para 18, Motion Record, Tab 2A [CL p [E2237:E42](#)].

²⁷ [Receivership Order](#) at para 17 Motion Record, Tab 2A [CL p [E2237:E42](#)]; [Bank of Nova Scotia v Diemer, 2014 ONCA 851](#) at para 48 [*Diemer*]; [Confectionately Yours Inc \(Re\), 219 DLR \(4th\) 72, 36 CBR \(4th\) 200 \(Ont Sup Ct\)](#) at paras [52-54](#).

41. On a motion to pass accounts, the Court must consider the “overriding principle of reasonableness”, focusing on the overall value contributed by the Receiver and its counsel. As stated by this Court in *Laurentian* “the Court does not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of a professional services may not be instructive when looked at in isolation.” In *Diemer*, the Ontario Court of Appeal stated “the focus of the fair and reasonable assessment should be on what was accomplished, and not how much time it took.”²⁸

42. Critically, Courts considering fee approval consider both what was accomplished as well as any obstacles to the Receiver’s mandate. In *Triple-I*, this Court held that the “measurement of accomplishment may include consideration of complications and in difficulties encountered in the receivership.”²⁹

43. The following factors assist courts in evaluating the quantum of a court-appointed officer’s and its counsel’s fees. These factors are not intended to be an exhaustive list and other factors may be material in any particular case:

- (a) the nature, extent and value of the assets being handled;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the company, its officers or its employees;
- (d) the time spent;

²⁸ *Diemer*, *supra* at para 45.

²⁹ *Laurentian University of Sudbury*, 2022 ONSC 2927 at para 9 [*Laurentian*]; *Diemer*, *supra* at para 45; *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400 at para 26 [*Triple-I*]; see also *Servus Credit Union Ltd v Trimove Inc.*, 2015 ABQB 745 at paras 33, 36 and 38.

- (e) the Receiver's knowledge, experience and skill;
- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results achieved; and
- (i) the cost of comparable services when performed in a prudent and economical manner.³⁰

(ii) *The Fees are Reasonable, and should be Approved*

44. The Receiver submits that its fees are reasonable, having regard to all of the relevant factors. Fee approval is supported by KingSett, even though it is the fulcrum creditor and will suffer a loss.

45. The purpose of this proceeding was to complete sales in respect of the Units that maximized value for the Debtor's stakeholders. The Receiver accomplished this objective, designing and obtaining Court approval of a sale process, overseeing the marketing and management of the Units over the course of 17 months, and entering into and completing nine separate transactions that realized approximately \$8.3 million that has been used to repay CIBC in full and make a significant distribution to KingSett.³¹ The Receiver has delivered significant value to the Debtor's creditors.

³⁰ *Laurentian*, *supra* at para 10, *Triple-I*, *supra*, at para 23.

³¹ Fifth Report at para 1.0(4), Motion Record, Tab 2 [CL p [E2219;E24](#)].

46. The only stakeholder opposing approval is Zar, but Zar *caused* most of the fees that he now complains about. In any event, Zar has filed no evidence to support whatever complaints he plans to raise. His opposition should carry little weight.

(iii) *The Receiver had to Overcome Significant Obstacles Imposed by Zar*

47. Instead of assisting the Receiver – as the Receivership Order required him to do – Zar did everything he could to delay, complicate and frustrate the Receiver’s mandate. Zar’s conduct followed the same basic pattern throughout these proceedings. In response to virtually every step that the Receiver tried to take, Zar:

- (a) refused or ignored the Receiver’s requests and demands for information or assistance;
- (b) sought to adjourn the Receiver’s motions to file evidence or retain counsel. The Debtor was represented by *five* separate law firms in this proceeding;
- (c) made outlandish (and unsupported) assertions against various participants in this case, including an allegation that someone involved in this case had used sophisticated electronic surveillance to blackmail him; and
- (d) filed evidence on the eve of motions, or not at all.

48. Zar was entirely unsuccessful. He did not substantiate any of his allegations or obtain any meaningful relief. His actions (including those taken ostensibly on behalf of the Debtor) only served to significantly complicate – and increase the costs of – these proceedings.

49. Because of Zar's conduct, what could have been a relatively straight forward receivership instead turned into a highly litigious case that involved seven contested hearings before this Court and three hearings before the Court of Appeal (including a full day appeal in March 2023).

50. Some (but not all) of Zar's actions that complicated, caused difficulties and increased the cost of this receivership are listed below:

- (a) Purporting to appeal the Receivership Order as of right and taking the position (incorrectly) that the Receivership Order was stayed. This first appeal was quashed by the Ontario Court of Appeal on June 17, 2022.³²
- (b) Failing to provide the keys to the Units and various other critical business records and property, including a list of creditors, financial statements, leases for the Units and post-dated rent cheques, despite numerous demands. The Receiver was ultimately forced to seek a further order (granted by the Court on July 20, 2022) specifically compelling Zar to deliver specific items and records. Even following this order, Zar failed to deliver the keys to the Units, only delivering them once the Receiver advised it was proceeding to have the locks changed. In light of Zar's repeated and ongoing failure to deliver various records, the Receiver was forced to expend significant additional effort pursuing third party sources (e.g. tenants of the Units, Airbnb and CRA) to obtain relevant information.³³

³² [First Report](#) at Appendices E, H, I and J, Motion Record, Tab 2B [CL p [E2284;E89](#) and [E2306;E111](#) – [E2314;E119](#)].

³³ [First Report](#) at paras 3.0, 3.1, 5.0 and Appendices F, J, K, L, N, Motion Record, Tab 2B [CL p [E2258;E63](#) – [E2260;E65](#), [E2265;E70](#), [E2300;E105](#) – [E2301;E71](#); [E2311;E116](#) – [E2322;E127](#) and [E2328;E133](#) – [E2331;E136](#)]; [Second Report](#) at Appendix "C" – Records and Property Order, Motion Record, Tab 2D [CL p [E2389;E194](#) – [E2397;E202](#)]; [Endorsement of Justice McEwen in 30 Roe Investments Corp. dated July 20, 2022](#) at pages 2-4 [*July 20 Endorsement*]; [Second Report](#) at paras 3.1 and Appendices D, E, F, G, Motion Record, Tab 2D [CL p [E2376;E181](#) – [E2377;E182](#) and [E2399;E204](#) – [E2508;E313](#)].

- (c) Continuing to deal with the property subject to the receivership, including renting a Unit, notwithstanding the granting of the Receivership Order and the Receiver's advice to not deal with the property.³⁴
- (d) Pursuing numerous refinancings, none of which closed. Zar's refinancing efforts required the Receiver to perform diligence and make other inquiries in respect of the proposed refinancings, facilitate the exchange of information with CIBC and KingSett, and, in the case of the August 2022 potential refinancing, negotiate and prepare draft documentation regarding a potential consensual discharge.³⁵
- (e) Unsuccessfully opposing the Receiver's motion in July 2022 for approval of a sale process for the Units, arguing that the Units should be sold *en bloc* as a going concern hospitality business. Despite multiple requests, Zar refused to provide any information to the Receiver that supported his contention that there was a going concern value to the Debtor's business, including any financial statements. The Court granted the Receiver's motion, rejecting Zar's position and authorizing a sale process based on individual marketing of the Units.³⁶
- (f) Unsuccessfully opposing the Receiver's motion in December 2022 seeking approval of minor amendments to the sale process, including the engagement of a new real estate agent by the Receiver. Zar again opposed the Receiver's motion, arguing that it should not proceed until the Court had carried out an investigation

³⁴ [First Report](#) at para 3.4, Motion Record, Tab 2B [CL p [E2261:E66](#)]; [Second Report](#) at para 3.2, Motion Record, Tab 2D [CL p [E2376:E181](#)].

³⁵ [First Report](#) at para 3.5, Motion Record, Tab 2B [CL p [E2261:E66](#) – [E2262:E67](#)]; [Second Report](#) at para 3.3, Motion Record, Tab 2D [CL p [E2378:E183](#) – [E2379:E184](#)].

³⁶ [Second Report](#) at para 3.5, Motion Record, Tab 2D [CL p [E2379:E184](#) – [E2380:E185](#)]; [July 20 Endorsement](#) at pages 4-9.

of Zar's allegations against the Receiver. When Justice McEwen declined to grant that request, Zar sought to have Justice McEwen recuse himself and, when Justice McEwen declined to do so, Zar advised he planned to conduct a press conference and broadcast the Court hearing, prompting Justice McEwen to release a specific endorsement ordering and directing Zar not to broadcast or publish the audio and/or video of the hearing and to destroy any recording thereof.³⁷

- (g) In December 2022, the Receiver discovered that a squatter was occupying PH01. In response to being asked by the Receiver if he had any information about who the person in PH01 was, Zar advised that he did not "...remember the units' occupancy status off the top of my head." When police attended at PH01 to investigate, they determined the occupant was Zar's mother, Maryam Rezaee, who is also a shareholder of the Debtor's parent company and had previously occupied PH07. Zar monitored the police investigation in real time via video and audio surveillance equipment, and advised the police they did not have a warrant to enter the premises and that he did not authorize the police to continue their investigation. Following the police investigation, Rezaee vacated PH01 and purported to re-occupy PH07, necessitating numerous letters (including translations) demanding that Rezaee vacate PH07, and ultimately a motion by the Receiver for a writ of possession for PH07 that was granted by the Court on May 29, 2023.³⁸

³⁷ [Endorsement of Justice McEwen in 30 Roe Investments Corp. dated December 14, 2022](#) at pages 2-3; [Endorsement of Justice McEwen in 30 Roe Investments Corp. dated December 20, 2022](#) at pages 2-3.

³⁸ [Supplement to the Second Report of the Receiver](#) dated December 13, 2022 (the "**Supplement to the Second Report**") at para 2.0, Motion Record, Tab 2E [CL p [E2455:E260](#) – [E2458:E263](#)]; [Third Report](#) at para 3.0, Motion Record, Tab 2F [CL p [E2482:E287](#) – [E2486:E291](#)]; [May 30th Endorsement](#) at para 57, Motion Record, Tab 2H [CL p [E2836:E641](#)].

- (h) Continuing to monitor the penthouse floor via video and audio surveillance equipment, necessitating the Receiver seeking relief to remove the monitoring equipment (with Zar taking the position the monitoring equipment was the property of the condominium corporation even though the condominium corporation had expressly confirmed to the Receiver that this was not the case).³⁹

- (i) Unsuccessfully opposing the Receiver's motion in February 2023 seeking approval of the sales of the first two Units, again taking the position that the Units should be sold *en bloc* as a going concern hospitality business. Once again, Zar did not provide any information to the Receiver supporting his contention, and only filed responding evidence the evening before the hearing, which the Court rejected.⁴⁰

- (j) Purporting to appeal the approval of the sale of the first two Units as a matter of right, again taking the (incorrect) position that the approval and vesting orders were stayed. The delay and uncertainty caused by this baseless appeal put the initial sales in jeopardy, requiring the Receiver to negotiate closing extensions and bring a motion to quash the appeal. In the course of this appeal, the Debtor's counsel moved to get off the record, creating the possibility of further delay. The Receiver successfully opposed the Debtor's former counsel getting off the record on the appeal, with the Court of Appeal finding that:

Here, by launching a zombie appeal in which it intended to have no involvement, [Debtor's former counsel] knew that it was throwing

³⁹ [Third Report](#) at para 3.2, Motion Record, Tab 2F [CL p [E2485:E290](#)]; [Endorsement of Justice Steele in 30 Roe Investments Corp. dated February 7, 2023](#) at paras 25-30 [*February 7th Endorsement*].

⁴⁰ [February 7 Endorsement](#) at paras 5-7, 30.

a grenade into receivership proceedings in which it had participated. This action is disrespectful of the court.

The Receiver was also successful in quashing the appeal, with the Court of Appeal finding that: (i) the Debtor had no right to appeal the approval and vesting orders absent leave being granted; (ii) the *en bloc* sale position amounted to a collateral attack on the sale process approval orders of this Court; and (iii) it was “...left with the distinct impression that [the Debtor’s] attempt to appeal the [approval and vesting orders] is nothing more than a delay tactic.”⁴¹

- (k) Failing to respond to inquiries regarding the occupancy status of the Units prior to the Receiver’s appointment, which information was required by the Receiver in order to consider the applicability of the City of Toronto vacant home tax (“VHT”) to the Units. As a result, the Receiver was unable to complete a VHT declaration for certain of the Units and required to pay VHT taxes on those Units to the detriment of all stakeholders.⁴²
- (l) Bringing a motion in May 2023 seeking to compel the Receiver to fund the Debtor’s legal expenses from receivership funds. The Court adopted the submissions of the Receiver and dismissed the motion, finding that it would be inappropriate to further erode KingSett’s potential recovery by funding the Debtor’s legal expenses. The Court also awarded costs of the motion personally against Zar, specifically finding

⁴¹ [KingSett Mortgage Corporation v. 30 Roe Investments Corp., 2023 ONCA 196](#) at para 16 [March 20 2023 Court of Appeal]; [March 29 2023 Court of Appeal](#), *supra* at paras 35, 39, 42-43.

⁴² [Fourth Report](#) at para 3.6, Motion Record, Tab 2G [CL p [E2615;E420](#)].

that “Zar’s conduct on this motion and throughout these proceedings has added complexity and costs.”⁴³

- (m) Despite repeated requests dating back to August 2022, failing to provide any information to the Receiver required to consider the issue of HST payable on the sale of the Units, including whether ITCs had been claimed on their acquisition. Zar also appears to have attempted to mislead the Receiver by suggesting, in June 2023, that he had filed updated HST returns without the Receiver’s consent; however, CRA has advised the Receiver that no returns were in fact filed.⁴⁴
- (n) After requesting that the Receiver agree to adjourn the present motion such that he could file responding materials and bring a Rule 15 motion for leave to represent the Debtor (among other agreed litigation steps), Zar failed to file any materials or take any of the steps contemplated by the Court-approved litigation schedule, again needlessly delaying the progress of the case and increasing costs.⁴⁵
- (o) Advancing numerous unsubstantiated allegations against the Receiver, its counsel, KingSett and the Court (amongst others), including:
 - (i) that the Receivership Order is “tainted by alleged fraud”. Zar has not produced evidence of the alleged fraud, or taken any steps to address it;⁴⁶

⁴³ [Endorsement by Justice Steele in 30 Roe Investments Corp.](#) dated May 18, 2023 at paras 14-23 [*May 18th Endorsement*], Motion Record, Tab 2J [CL p [E2847:E652](#) – [E2848:E653](#)].

⁴⁴ [Third Report](#) at para 5.2, Motion Record, Tab 2F [CL p [E2493:E298](#)]; [Fourth Report](#) at para 7.3, Motion Record, Tab 2G [CL p [E2626:E431](#)]; [Fifth Report](#) at para 3.3, Motion Record, Tab 2 [CL p [E2222:E27](#) – [E223:E28](#)]; Supplement to the Fifth Report at para 3.0.

⁴⁵ Supplement to the Fifth Report at para 2.0.

⁴⁶ [Third Report](#) at para 2.4(2)(d)(i), Motion Record, Tab 2F [CL p [E2481:E286](#)].

- (ii) accusing Justices of the Court of Appeal who dismissed the Debtor's appeals of having undisclosed conflicts of interest;⁴⁷
- (iii) alleging that the Receiver was misrepresenting itself and “disturbing and frightening guests” when its agents delivered a notice advising of the receivership to occupants of the Units, and advising that he had reported the Receiver to the Office of the Superintendent of Bankruptcy and would seek the appointment of an alternative receiver;⁴⁸
- (iv) accusing the Receiver of having Rezaee assaulted by Toronto police;⁴⁹
- (v) accusing the Receiver's counsel of acting for KingSett on the receivership;⁵⁰
and
- (vi) accusing an unspecified person of deploying surveillance software called Pegasus, which is alleged to cost \$1 million, against him in order to “intimidate and extort” him so that he would not “speak out” in this proceeding.⁵¹

(iv) *The Receiver took steps to keep costs reasonable*

51. In addition to managing the costs of this proceeding by using consistent core personnel and (as appropriate) delegating tasks to lower cost professionals, the Receiver employed various

⁴⁷ [Third Report](#) at para 2.4(2)(d)(iii), Motion Record, Tab 2F [CL p [E2481;E286](#)].

⁴⁸ [First Report](#) at para 3.0 and Appendices I, L, M, N, O and Q, Motion Record, Tab 2B [CL p [E2258;E63 – E2260;E65, E2308;E113 – E2309;E114, E2321;E126 – E2333;E138](#) and [E2338;E143 – E2340;E145](#)].

⁴⁹ [Supplement to the Second Report](#) at Appendix C, Motion Record, Tab 2C [CL p [E2466;E271](#)].

⁵⁰ [Supplement to the Second Report](#) at Appendix C, Motion Record, Tab 2C [CL p [E2466;E271](#)].

⁵¹ [Third Report](#) at para 2.4(2)(d) and Appendix O, Motion Record, Tab 2F [CL p [E2481;E286](#) and [E2599;E404 – E2600;E405](#)]; [June 17 2022 Court of Appeal](#); [March 29 2023 Court of Appeal](#); [March 20 Court of Appeal](#).

techniques to reduce the professional costs required to address Zar's tactics, such as: (i) bundling relief sought together into omnibus motions; (ii) seeking pre-approval of the sale of all five Remaining Units to reduce remaining required Court attendances; (iii) seeking provisional execution of orders; and (iv) advising Zar that the Receiver would not respond to his allegations on an ongoing basis unless and until brought on a proper motion before the Court (which Zar has never done).

52. Although these efforts assisted in controlling expenses, Zar's unrelenting opposition to, and interference with, the receivership required a corresponding amount of professional time to address and advance the case to a successful conclusion. While the professional fees of the Receiver and its counsel were higher than they ought to have been for a case of this size, the increased costs were entirely a result of Zar's conduct and the necessary (and entirely successful) actions of the Receiver to respond to them.

53. In the circumstances of this challenging receivership, the fees and expenses of the Receiver and its counsel are fair and reasonable and should be approved in their entirety.⁵²

(C) RECEIVER'S FIFTH REPORT AND ACTIVITIES

54. This Court has the inherent jurisdiction to approve the activities of a court-appointed receiver if the receiver demonstrates that it has acted reasonably, prudently and not arbitrarily. There are good policy and practical reasons for this, including that Court approval:

- (a) allows the court-officer to move forward with next steps in the proceeding;

⁵² Fifth Report at paras 7.0(4) and (5), Motion Record, Tab 2 [CL p [E2225;E30](#)].

- (b) brings the court-officer's activities before the court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the court-officer's activities have been conducted in prudent and diligent manners;
- (e) provides protection for the court-officer; and
- (f) protects the creditors from the delay in distribution that would be caused by: (i) re-litigation of steps taken to date, and (ii) potential indemnity claims by the court-officer.⁵³

55. In this case, the Fifth Report and the activities of the Receiver throughout the receivership should be approved. All activities of the Receiver were necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Receivership Order, and were in each case in the best interests of the Debtor's stakeholders generally.

(D) DISCHARGE AND RELEASE OF THE RECEIVER

56. Courts frequently grant an order discharging a Receiver on terms similar to those sought in the proposed Discharge and Ancillary Relief Order, which will provide flexibility to the Receiver to conclude remaining tasks and efficiently terminate the case.⁵⁴

⁵³ [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); *Laurentian*, *supra* at paras 13-14.

⁵⁴ [Bank of Montreal v. 1100225 B.C. Unlimited Liability Company \(formerly Ingenious Packaging Group ULC\), Discharge Order dated May 12, 2021](#) (Court File No. CV-18-601960-00CL) at paras 6-8; [Urbancorp \(Leslieville\) Developments Inc. et al., Order \(Final Distributions, Approval of Activities and Fees & Discharge\) entered on](#)

57. The Receiver also seeks approval of a release and related injunctive relief for the Receiver and the other Released Parties so as to achieve certainty and finality for the Released Parties. The proposed release is subject to the usual carve-outs for gross negligence and wilful misconduct.

58. The Receiver has diligently fulfilled its duties and has reported to the Court on an ongoing basis, including obtaining approvals of its activities and reports. While numerous allegations have been advanced against the Receiver and its counsel by Zar, he has not pressed these allegations before the Court or presented any evidence to support them. If Zar had any evidence of misconduct by the Receiver or its counsel then he could and should have presented it to this Court so that the Receiver could respond appropriately. He did not, because there is no evidence and no misconduct.

59. The release that is granted at the end of virtually every receivership is particularly appropriate in this case, given Zar's conduct. The Receiver has completed its mandate and it is entitled to close its books and move on. Neither the Receiver nor the Released Persons should not be subject to the possibility of harassing and baseless litigation by Zar, especially once the Receiver has completed distributions and costs cannot be recovered from the estate.⁵⁵

(E) KINGSETT RELEASE

60. At the request of KingSett, the proposed Discharge and Relief Order also includes a proposed release in favour of the KingSett Released Persons. The Receiver included this relief in its Notice of Motion as a matter of convenience to avoid the need for a separate motion. The Receiver understands that KingSett will make submissions with respect to this relief.

[September 14, 2020](#) (Court File No. CV-16-11409-00CL) at paras 16-19; [33 Yorkville Residences Inc. et al., Approval and Discharge Order entered on March 22, 2023](#) (Court File No. CV-20-00637297-00CL) at paras 11-12.

⁵⁵ [Yukon \(Government of\) v. Yukon Zinc Corporation, 2022 YKSC 58](#) at paras 26 – 28, citing [Ed Mirvish Enterprises Limited v Stinson Hospitality Inc. \(2009\)](#), 181 ACWS (3d) 471 (Ont Sup Ct) at para 8 and [Pinnacle Capital Resources Ltd. v Kraus Inc.](#), 2012 ONSC 6376 at para 47.

61. The Receiver notes that, from a practical perspective, the release sought by KingSett will help bring finality to these proceedings. Zar apparently believes that KingSett has engaged in some manner of conspiracy against him, although he has never produced evidence to support that belief. The Receiver is concerned that an action by Zar against KingSett would involve allegations relating to the Receiver and the receivership. There is, therefore, a possibility that the Receiver would be drawn into an action between Zar and KingSett as a witness or target of documentary production requests even if it is not named as a party. A release in favour of KingSett and the KingSett Released Persons, in the unique circumstances of this case, will assist in bringing closure and finality to the matters that were the subject of the within proceedings.

PART IV - RELIEF REQUESTED

62. For the reasons set out herein, the Receiver respectfully requests that this Court grant the proposed form of Discharge and Ancillary Relief Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 6TH DAY OF NOVEMBER, 2023.

Per: *M. Dunn*

GOODMANS LLP

Lawyers for the Receiver,
KSV Restructuring Inc.

SCHEDULE A - LIST OF AUTHORITIES

1. [KingSett Mortgage Corporation v. 30 Roe Investments Corp., 2022 ONSC 2777](#)
2. [KingSett Mortgage Corporation v. 30 Roe Investments Corp., 2022 ONCA 479](#)
3. [KingSett Mortgage Corporation v. 30 Roe Investments Corp., 2023 ONCA 219](#)
4. [Endorsement of Justice Osborne in 30 Roe Investments Corp. dated May 30, 2023](#)
5. [Wotherspoon v. Canada, 2011 TCC 343](#)
6. [Bank of Nova Scotia v. Diemer, 2014 ONCA 851](#)
7. [Confectionately Yours Inc \(Re\), 219 DLR \(4th\) 72, 36 CBR \(4th\) 200 \(Ont Sup Ct\)](#)
8. [Laurentian University of Sudbury, 2022 ONSC 2927](#)
9. [Triple-I Capital Partners Limited v. 12411300 Canada Inc., 2023 ONSC 3400](#)
10. [Servus Credit Union Ltd v Trimove Inc, 2015 ABQB 745](#)
11. [Endorsement of Justice McEwen in 30 Roe Investments Corp. dated July 20, 2022](#)
12. [Endorsement of Justice McEwen in 30 Roe Investments Corp. dated December 14, 2022](#)
13. [Endorsement of Justice McEwen in 30 Roe Investments Corp. dated December 20, 2022](#)
14. [Endorsement of Justice Steele in 30 Roe Investments Corp. dated February 7, 2023](#)
15. [KingSett Mortgage Corporation v. 30 Roe Investments Corp., 2023 ONCA 196](#)
16. [Bank of America Canada v Willann Investments Ltd, \[1993\] OJ No 1647, 20 CBR \(3d\) 223 \(Gen Div\)](#)
17. [Yukon \(Government of\) v. Yukon Zinc Corporation, 2022 YKSC 58](#)
18. [Ed Mirvish Enterprises Limited v Stinson Hospitality Inc, \(2009\), 181 ACWS \(3d\) 471 \(Ont Sup Ct\)](#)
19. [Pinnacle Capital Resources Ltd. v Kraus Inc, 2012 ONSC 6376](#)

SCHEDULE B – STATUTORY REFERENCES

EXCISE TAX ACT, R.S.C. 1985, c. E-15, as amended

s. 123(1) (“Residential Complex”)

residential complex means

- (a) that part of a building in which one or more residential units are located, together with
 - (i) that part of any common areas and other appurtenances to the building and the land immediately contiguous to the building that is reasonably necessary for the use and enjoyment of the building as a place of residence for individuals, and
 - (ii) that proportion of the land subjacent to the building that that part of the building is of the whole building,
- (b) that part of a building that is
 - (i) the whole or part of a semi-detached house, rowhouse unit, residential condominium unit or other similar premises that is, or is intended to be, a separate parcel or other division of real property owned, or intended to be owned, apart from any other unit in the building, and
 - (ii) a residential unit,

together with that proportion of any common areas and other appurtenances to the building and the land subjacent or immediately contiguous to the building that is attributable to the unit and that is reasonably necessary for its use and enjoyment as a place of residence for individuals,

- (c) the whole of a building described in paragraph (a), or the whole of a premises described in subparagraph (b)(i), that is owned by or has been supplied by way of sale to an individual and that is used primarily as a place of residence of the individual, an individual related to the individual or a former spouse or common-law partner of the individual, together with
 - (i) in the case of a building described in paragraph (a), any appurtenances to the building, the land subjacent to the building and that part of the land immediately contiguous to the building, that are reasonably necessary for the use and enjoyment of the building, and
 - (ii) in the case of a premises described in subparagraph (b)(i), that part of any common areas and other appurtenances to the building and the land subjacent or immediately contiguous to the building that is attributable to

the unit and that is reasonably necessary for the use and enjoyment of the unit,

- (d) a mobile home, together with any appurtenances to the home and, where the home is affixed to land (other than a site in a residential trailer park) for the purpose of its use and enjoyment as a place of residence for individuals, the land subjacent or immediately contiguous to the home that is attributable to the home and is reasonably necessary for that purpose, and
- (e) a floating home,

but does not include a building, or that part of a building, that is a hotel, a motel, an inn, a boarding house, a lodging house or other similar premises, or the land and appurtenances attributable to the building or part, where the building is not described in paragraph (c) and all or substantially all of the leases, licences or similar arrangements, under which residential units in the building or part are supplied, provide, or are expected to provide, for periods of continuous possession or use of less than sixty days; (*immeuble d'habitation*)

s. 165

(1) Subject to this Part, every recipient of a taxable supply made in Canada shall pay to Her Majesty in right of Canada tax in respect of the supply calculated at the rate of 5% on the value of the consideration for the supply.

(2) Subject to this Part, every recipient of a taxable supply made in a participating province shall pay to Her Majesty in right of Canada, in addition to the tax imposed by subsection (1), tax in respect of the supply calculated at the tax rate for that province on the value of the consideration for the supply.

(3) The tax rate in respect of a taxable supply that is a zero-rated supply is 0%.

(4) Subsection (2) does not apply to a supply of property or a service made in the Nova Scotia offshore area or the Newfoundland offshore area unless the supplier makes the supply in the course of an offshore activity or the recipient of the supply acquires the property or service for consumption, use or supply in the course of an offshore activity.

s. 222

(1) Subject to subsection (1.1), every person who collects an amount as or on account of tax under Division II is deemed, for all purposes and despite any security interest in the amount, to hold the amount in trust for Her Majesty in right of Canada, separate and apart from the property of the person and from property held by any secured creditor of the person that, but for a security interest, would be property of the person, until the amount is remitted to the Receiver General or withdrawn under subsection (2).

(1.1) Subsection (1) does not apply, at or after the time a person becomes a bankrupt (within the meaning of the [Bankruptcy and Insolvency Act](#)), to any amounts that, before that time, were collected or became collectible by the person as or on account of tax under Division II.

(2) A person who holds tax or amounts in trust by reason of subsection (1) may withdraw from the aggregate of the moneys so held in trust

- (a) amount of any input tax credit claimed by the person in a return under this Division filed by the person in respect of a reporting period of the person, and
- (b) any amount that may be deducted by the person in determining the net tax of the person for a reporting period of the person,

as and when the return under this Division for the reporting period in which the input tax credit is claimed or the deduction is made is filed with the Minister.

(3) Despite any other provision of this Act (except subsection (4)), any other enactment of Canada (except the *Bankruptcy and Insolvency Act*), any enactment of a province or any other law, if at any time an amount deemed by subsection (1) to be held by a person in trust for Her Majesty is not remitted to the Receiver General or withdrawn in the manner and at the time provided under this Part, property of the person and property held by any secured creditor of the person that, but for a security interest, would be property of the person, equal in value to the amount so deemed to be held in trust, is deemed

- (a) to be held, from the time the amount was collected by the person, in trust for Her Majesty, separate and apart from the property of the person, whether or not the property is subject to a security interest, and
- (b) to form no part of the estate or property of the person from the time the amount was collected, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to a security interest

and is property beneficially owned by Her Majesty in right of Canada despite any security interest in the property or in the proceeds thereof and the proceeds of the property shall be paid to the Receiver General in priority to all security interests.

(4) For the purposes of subsections (1) and (3), a security interest does not include a prescribed security interest.

Paragraph 2 of Part I of Schedule V

A particular supply by way of sale of a residential complex or an interest in a residential complex made by a particular person who is not a builder of the complex or, if the complex is a multiple unit residential complex, an addition to the complex, unless

- (a) the particular person claimed an input tax credit in respect of the last acquisition by the person of the complex or in respect of an improvement to the complex acquired, imported or brought into a participating province by the person after the complex was last acquired by the person; or

- (b) the recipient is registered under Subdivision D of Division V of Part IX of the Act and
 - (i) the recipient made a taxable supply by way of sale (in this paragraph referred to as the “prior supply”) of the complex or interest to a person (in this paragraph referred to as the “prior recipient”) who is the particular person or, if the particular person is a personal trust other than a testamentary trust, the settlor of the trust or, in the case of a testamentary trust that arose as a result of the death of an individual, the deceased individual,
 - (ii) the prior supply is the last supply by way of sale of the complex or interest to the prior recipient,
 - (iii) the particular supply is not made more than one year after the particular day that is the day on which the prior recipient acquired the interest, or that is the earlier of the day on which the prior recipient acquired ownership of the complex and the day on which the prior recipient acquired possession of the complex, under the agreement for the prior supply,
 - (iv) the complex has not been occupied by any individual as a place of residence or lodging after the construction or last substantial renovation of the complex was substantially completed,
 - (v) the particular supply is made pursuant to a right or obligation of the recipient to purchase the complex or interest that is provided for under the agreement for the prior supply, and
 - (vi) the recipient makes an election under this section jointly with the particular person in prescribed form containing prescribed information and filed with the Minister with the recipient’s return in which the recipient is required to report the tax in respect of the particular supply.

[Security Interest \(GST/HST\) Regulations,
SOR/2022-55, s. 2.](#)

(1) For the purpose of subsection 222(4) of the Act, a prescribed security interest, in relation to an amount deemed under subsection 222(1) of the Act to be held in trust by a person, is that part of a mortgage or hypothec securing the performance of an obligation of the person that encumbers land or a building, but only if the mortgage or hypothec is registered pursuant to the appropriate land registration system before the time the amount is deemed under subsection 222(1) of the Act to be held in trust by the person.

(2) For the purpose of subsection (1), if, at a particular time, an amount deemed to be held in trust by the person referred to in that subsection is not remitted to the Receiver General or withdrawn in the manner and at the time provided under Part IX of the Act, the amount of the

prescribed security interest referred to in that subsection may not exceed the amount determined by the following formula until such time as all amounts deemed under subsection 222(1) of the Act to be held in trust by the person are withdrawn in accordance with subsection 222(2) of the Act or are remitted to the Receiver General:

A – B

where

A

is the amount of the obligation secured by the mortgage or hypothec that is outstanding at the particular time; and

B

is the total of

- (a) all amounts, each of which is the value determined at the particular time, having regard to all the circumstances including the existence of any deemed trust for the benefit of Her Majesty pursuant to subsection 222(1) of the Act, of all the rights of the secured creditor securing the obligation, whether granted by the person or not, including guarantees or rights of set-off or of compensation but not including the mortgage or hypothec referred to in subsection (1), and
- (b) all amounts applied after the particular time on account of the obligation.

(3) A prescribed security interest under subsection (1) includes the amount of any insurance or expropriation proceeds relating to land or a building that is the subject of a registered mortgage interest or registered hypothecary right, adjusted in accordance with subsection (2), but does not include a lien, a priority or any other security interest created by statute, an assignment or hypothec of rents or leases, or a mortgage interest or hypothecary right in any equipment or fixtures that a mortgagee, hypothecary creditor or any other person has the right absolutely or conditionally to remove or dispose of separately from the land or building.

**KINGSETT MORTGAGE
CORPORATION**

- and - **30 ROE INVESTMENTS CORP.**

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

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FACTUM OF THE RECEIVER
(Approval of Discharge and Ancillary Relief)**

GOODMANS LLP

Barristers & Solicitors
Bay Adelaide Centre, West Tower
333 Bay Street, Suite 3400
Toronto, ON 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., solely in its
capacity as Court-appointed Receiver and not in its
personal capacity