

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

B E T W E E N:

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**

**ORDERS AND ENDORSEMENTS BRIEF OF THE RECEIVER
(Re: Motion for Discharge and Ancillary Relief
Returnable February 7, 2024)**

February 1, 2024

GOODMANS LLP
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Chris Armstrong LSO#: 55148B
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Lawyers for KSV Restructuring Inc. solely in its
capacity as Court-appointed Receiver and not in its
personal capacity

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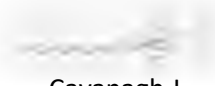
From: Cavanagh, Justice Peter (SCJ) <Peter.Cavanagh@scj-csj.ca>
Sent: Monday, January 17, 2022 10:43 AM
To: Joshua Foster; Sean Zweig; rz@roehamptoncapital.com; carmstrong@goodmans.ca; Darren Marr
Cc: JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Subject: In the Matter of the Receivership of 30 Roe Investments Corp. - Receivership Application - CV-222-00674810-00CL

Appearances:

Sean Zweig and Joshua Foster for Applicant
Chris Armstrong for proposed receiver
Darren Marr for CIBC, first mortgagee
Raymond Zar – in person - a director of the Respondent and a guarantor

Endorsement:

The hearing of this application for the appointment of a receiver is adjourned, at the request of Mr. Zar and supported by CIBC, to February 22, 2022 at 2:00 p.m. for 2 hours. The adjournment is to (i) allow the Respondent to retain counsel and respond to the application; and (ii) give time for CIBC to file responding materials if so advised.



Cavanagh J.

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COUNSEL SLIP

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COURT FILE

NO.: CV-22-00674810-00CL

DATE: February 22, 2022

NO. ON LIST 2

TITLE OF
PROCEEDING

Kingsett Mortgage Corp. v 30 Roe Investments Corp.

COUNSEL FOR:

PLAINTIFF(S) **Sean Zweig** zweigs@bennettjones.com

PHONE _____

APPLICANT(S) **Joshua Foster** fosterj@bennettjones.com

FAX _____

PETITIONER(S)

EMAIL _____

COUNSEL FOR:

DEFENDANT(S)

PHONE _____

RESPONDENT(S)

FAX _____

Ken Rosenberg (counsel for 30 Roe Investments Corp.)

ken.rosenberg@paliareroland.com

Noah Goldstein (proposed receiver)

ngoldstein@ksvadvisory.com

Murtaza Tallet (proposed receiver)

mtallat@ksvadvisory.com

EMAIL _____

Chris Armstrong (counsel for proposed receiver)

carmstrong@goodmans.ca

Darren Marr (counsel for CIBC)

ben@chaitons.com / dmarr@chaitons.com

JUDICIAL NOTES:

The applicant brings this application for the appointment of a receiver over real property and other property of the respondent. The application was first before me on January 17, 2022. At that appearance, I granted the request made by Mr. Zar for an adjournment so that the respondent could retain counsel and respond to the application. The hearing was adjourned to today.

This morning, Mr. Rosenberg appeared on behalf of the respondent. He had just been retained. There was evidence that the respondent had made other attempts to retain counsel but there were conflicts. Mr. Rosenberg requested an adjournment on behalf of the respondent. In support of this request, the respondent filed the affidavit of Mr. Zar.

The request for an adjournment was opposed by the applicant. After reviewing Mr. Zar's affidavit and hearing submissions from counsel, I granted the request for an adjournment.

The application is adjourned to March 28, 2022 at 10 o'clock a.m. for two hours. Counsel will agree on a timetable and, if there is difficulty, a case conference before me may be arranged.



Digitally signed by
Mr. Justice
Cavanagh

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SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-22-674810-00CL DATE: 8 March 2022

NO. ON LIST: 05

TITLE OF PROCEEDING KINGSETT MORT CORP V. 30 ROE
BEFORE MISTER JUSTICE P. CAVANAGH

Counsel For:

Plaintiff(s) Richard Swan, Sean Zweig and Joshua Foster for Applicant, KingSett Mortgage Corporation Email: swanr@bennettjones.com
zweigs@bennettjones.com
foster@bennettjones.com

Applicant(s) Email: _____

Counsel For:

Defendant(s) Email: _____

Respondent(s) Chris Armstrong for KSV Restructuring Inc Email: carmstrong@goodmans.ca
Darren Marr for CIBC dmarr@chaitons.com
Ben@chaitons.com
Massimo Starnino and Ken Rosenberg max.starnino@paliareroland.com
ken.rosenberg@paliareroland.com

Self-Represented Parties Raymond Zar (representative of respondent) Email: rz@roehamptoncapital.com

ENDORSEMENT OF JUSTICE P. CAVANAGH:

Paliare Roland Rosenberg Rothstein LLP, the lawyers of record for the Respondent 30 Roe Investments Corp., are moving for an order removing them as lawyers for record for the Respondent. The Respondent opposes. After consultation with counsel and with Mr. Zar, a principal of the Respondent, I set the hearing date for this motion to be April 11, 2022 at 10:00 for 90 minutes.

As a result of this motion, the hearing of the Applicant's application for an order appointing a receiver which is scheduled for March 28, 2022 will need to be postponed. This hearing date is vacated.

The Applicant's application will be heard before me on May 6, 2022 at 10:00 for 2 hours. The Respondent is responsible for retaining counsel, if necessary, and following a timetable to meet this hearing date.



Digitally signed by
Mr. Justice
Cavanagh

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SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-22-674810-00CL DATE: 8 March 2022

NO. ON LIST: 05

TITLE OF PROCEEDING **KINGSETT MORT CORP V. 30 ROE**
BEFORE MISTER JUSTICE **P. CAVANAGH**

Counsel For:

Plaintiff(s) Richard Swan, Sean Zweig and Joshua Foster for Applicant, KingSett Mortgage Corporation Email: swanr@bennettjones.com zweigs@bennettjones.com foster@bennettjones.com

Applicant(s) Email:

Counsel For:

Defendant(s) Email:

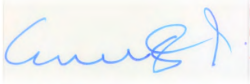
Respondent(s) Chris Armstrong for KSV Restructuring Inc Email: carmstrong@goodmans.ca Darren Marr for CIBC dmarr@chaitons.com Ben@chaitons.com Massimo Starnino and Ken Rosenberg max.starnino@paliareroland.com ken.rosenberg@paliareroland.com

Self-Represented Parties Raymond Zar (representative of respondent) Email: rz@roehamptoncapital.com

SUPPLEMENTARY ENDORSEMENT OF JUSTICE P. CAVANAGH:

Mr. Zar has written seeking clarification of the wording of my endorsement released earlier today.

To be clear, the law firm Paliare Roland is and remains the lawyers of record for the Respondent unless and until an order is made removing the firm. Mr. Zar is not a lawyer. He does not represent the Respondent. Mr. Zar is not a party to this application, and he is not self-represented. He appeared at the hearing today because the Respondent opposes the motion by Paliare Roland.



Digitally signed by
Mr. Justice Cavanagh

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SUPERIOR COURT OF JUSTICE

COUNSEL SLIPCOURT FILE NO.: CV-22-00674810-00CL DATE: 11 April 2022NO. ON LIST: 02TITLE OF PROCEEDING: **KINGSETT MORTGAGE CORPORATION. v. 30 ROE
INVESTMENTS CORP.**BEFORE JUSTICE: **PENNY****PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Richard B. Swan	KingSett	swanr@bennettjones.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Raymond Zar	Director of 30 Roe Investments Corp.	rz@roehamptoncapital.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Darren Marr	CIBC	Ben@chaitons.com
Rob Stellick	Paliare Roland Rosenberg Rothstein LLP	rstellick@agblp.com
Massimo Starnino	Paliare Roland	max.starnino@paliareroland.com

ENDORSEMENT OF JUSTICE PENNY:

This is a receivership application by Kingsett Mortgage Corporation against 30 Roe Investments Corp. Paliare Roland brings this motion to be removed as solicitor of record for its client, 30 Roe.

Paliare Roland was retained by the Client on February 21, 2022 to respond to the receivership application scheduled for February 22 before Cavanagh J. It took instructions from Mr. Zar. Paliare Roland sought an adjournment on behalf of the Client, which was granted, to March 28, 2022.

By February 23, Paliare Roland advised Mr. Zar that the Client should seek other counsel. On February 26, Paliare Roland advised Mr. Zar that it would be bringing a motion to be removed as counsel of record. Mr. Zar disagreed in both instances.

This matter came back before Cavanagh J. on March 8, 2022. The removal motion was scheduled for today, April 11; the receivership application was further adjourned to May 6, 2022. Cavanagh J.'s endorsement states "the Respondent is responsible for obtaining counsel, if necessary, and following a timetable to meet this hearing date".

Mr. Zar requested an adjournment of the Paliare Roland motion to cross examine Mr. Rosenberg. I denied that request. First, it was not made clear what would be gained by cross examination, given a number of undisputed facts relating to Paliare Roland's ability to act in the circumstances. In any event, the request was not made on a timely basis. Mr. Zar has had since March 8 to arrange for this cross examination but only made the request last Thursday, April 7, when it was too late.

The basis for Paliare Roland's decision to withdraw as counsel for the Client involves highly confidential matters which are no one else's business but the firm and the Client. As a result, the motion was conducted *in camera* without the participation of other parties to the litigation. Further, I will not be outlining the details of any of the grounds presented or the disagreements discussed during the submissions of both sides.

Suffice it to say that, considering the evidence as a whole, I am satisfied that the relationship between the Client, Mr. Zar and Paliare Roland has been irreparably damaged, lacks the fundamental requirements of trust and confidence and cannot continue. Indeed, Mr. Zar went so far as to say that Paliare Roland (as well as possibly Bennett Jones) may need to testify at the receivership application. On this basis alone, Paliare Roland could not possibly continue to act and Mr. Zar recognized and accepted that.

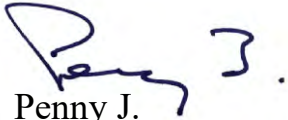
The May 6 return date for the receivership application was set on March 8 knowing of today's pending motion. The Client has had since February 23 to seek out new counsel.

In all of the circumstances, the order removing Paliare Roland as counsel of record for the Client is granted.

Paliare Roland agreed to return the retainer of \$25,000 (on an entirely without prejudice b.G9). The Client has provided the banking details for that transfer.

Nothing in this endorsement affects Cavanagh J.'s ongoing management of this case or restricts the Client from responding to the receivership application on a timely basis as contemplated by the March 8 endorsement of Cavanagh J.

There is no order as to costs.


Penny J.

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CITATION: KingSett Mortgage Corporation v. 30 Roe Investments Corp., 2022 ONSC 2777
COURT FILE NO.: CV-22-00674810-00CL
DATE: 20220509

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: KINGSETT MORTGAGE CORPORATION, Applicant

AND:

30 ROE INVESTMENTS CORP., Respondent

BEFORE: Cavanagh J.

COUNSEL: *Richard Swan, Sean Zweig, and Joshua Foster*, for the Applicant

Symon Zucker, for the Respondent

Ben Frydenberg and Darren Marr for Canadian Imperial Bank of Commerce

Chris Armstrong for proposed Receiver, KSV Restructuring Inc.

HEARD: May 6, 2022

ENDORSEMENT

Introduction

[1] The Applicant, Kingsett Mortgage Corporation, brings this application for an order appointing KSV Restructuring Inc. (“KSV”) as receiver and manager, without security, of real property owned by the Respondent, 30 Roe Investments Corp., (the “Real Property”) and other property as described in the Notice of Application (collectively, the “Property”).

[2] For the following reasons, I grant the Applicant’s application.

Procedural background

[3] The Real Property consists of nine residential condominium units within a thirty-five story, 397 unit, condominium known as “Minto 30 Roe” located at 30 Roehampton Avenue in Toronto. The Applicant is a second mortgagee in respect of the Real Property.

[4] This application was commenced by a Notice of Application issued on January 7, 2022. The application first came before me on January 17, 2022. At that appearance, the Respondent was not represented by legal counsel. Mr. Raymond Zar, a director and principal of the Respondent, requested an adjournment of the application to allow the Respondent to retain counsel and respond to the application. The request for an adjournment was supported by the first mortgagee, Canadian Imperial Bank of Commerce

("CIBC"). I granted the request for an adjournment and the application was adjourned to be heard on February 22, 2022.

- [5] On February 22, 2022, counsel who had just been retained appeared on behalf of the Respondent. There was evidence that the Respondent had made other attempts to retain counsel but had been unable to do so because of conflicts. Counsel for the Respondent requested an adjournment to prepare responding materials and respond to the application. This request was opposed by the Applicant. I granted the Respondent's request for an adjournment and the application was adjourned to March 28, 2022. I directed counsel to agree on a timetable for the application.
- [6] A case conference was held before me on March 8, 2022. At that case conference, counsel for the Respondent advised that they were moving for an order removing them as lawyers of record for the Respondent. I was advised that the Respondent would be opposing this motion. A hearing date for this motion was set for April 11, 2022. As a result of the scheduling of this motion, I concluded that the hearing of the Applicant's application seeking the appointment of a receiver needed to be adjourned. The adjournment was opposed by the Applicant. A new hearing date for the application was set for May 6, 2022. In my endorsement, I wrote that "[t]he Respondent is responsible for retaining counsel, if necessary, and following a timetable to meet this hearing date".
- [7] The motion by counsel for the Respondent to be removed as counsel of record was heard on April 11, 2022. On that day, Justice Penny released an endorsement and made an order removing counsel for the Respondent as counsel of record. The Respondent was served with the formal Order on April 20, 2022.
- [8] A case management conference was held before me on April 20, 2022. This was arranged at the request of the Applicant to set a timetable for the hearing of the application on May 6. I approved a timetable and I directed the parties to comply with it.
- [9] The Respondent retained new legal counsel on May 2, 2022. A supplemental affidavit of Mr. Zar was sworn on May 5, 2022. Some other documents relating to the Respondent's efforts to refinance were uploaded to CaseLines, including a letter of intent from Firm Capital Corporation dated May 4, 2022.

Analysis

- [10] The issues raised at the hearing of the application were (i) whether the Respondent's request for an adjournment of the hearing should be granted, and, if not, (ii) whether the Applicant's application for the appointment of a receiver should be granted.

Request for adjournment

- [11] The Respondent requested an adjournment of the hearing of the application for 30 days to allow time for the Respondent to complete the refinancing of the Real Property and pay out the second mortgage. The Applicant opposed this request. At the hearing, I denied the request for an adjournment. These are my reasons.

- [12] The Firm Capital letter of intent is not a binding commitment and is simply an expression of interest in providing refinancing. The Respondent has had many months to arrange to refinance. There is no assurance that if a further adjournment were to be granted for 30 days, as requested, the Respondent would be successful in paying out the indebtedness secured by the applicant's second mortgage.
- [13] I granted adjournments to allow the Respondent to retain counsel and to accommodate the motion by former counsel to move to be removed as counsel of record. These adjournments were opposed by the Applicant. I set the hearing date for this application on February 22, 2022 that would have regard to the motion by former counsel for the Respondent to be removed as counsel of record.
- [14] In his May 5, 2022 affidavit, Mr. Zar gives evidence of his attempts to retain counsel for the Respondent. According to his affidavit, Mr. Zar did not contact any prospective counsel between February 22, 2022 and April 11, 2022. After April 11, 2022, Mr. Zar contacted several counsel who had conflicts or were not available. Mr. Zucker was retained on May 2, 2022.
- [15] In my view, the Respondent has not acted reasonably and in accordance with my February 22 and March 8, 2022 endorsements by not seeking to identify counsel who could represent the Respondent after February 22, 2022 and waiting until April 11, 2022 to contact new counsel who would be available to replace former counsel for the Respondent, if the motion by former counsel to be removed were to succeed. I made it clear in my March 8, 2022 endorsement that May 6, 2022 was a firm date, and that the Respondent was expected to act diligently to ensure that counsel was retained and able to meet this hearing date. In my view, there was ample time for the Respondent to do so if efforts to contact counsel who could act on this matter were made between February 22 and April 11, 2022.
- [16] The Applicant's mortgage loan has been past due for many months. The Applicant is entitled to seek remedies to enforce payment of this loan. In the circumstances, I concluded that it would not be just to the Applicant to grant a further adjournment to accommodate the Respondent's continuing efforts to refinance. The request for an adjournment was denied.

Has the Applicant shown that it would be just or convenient for a receiver to be appointed?

Loan and security

- [17] The Applicant is a party to a commitment letter dated March 29, 2019 with the Respondent pursuant to which the Applicant agreed to provide, among other things, a non-revolving demand loan secured by a second mortgage against the Real Property. This loan was originally advanced on April 8, 2019.
- [18] The parties entered into four amendments to the original commitment letter which, among other things, increased the loan facility from \$1,500,000 to \$1,875,000 and provided three extensions to the maturity date to December 1, 2021. The Applicant's evidence is that as at December 13, 2021, the total indebtedness under the commitment letter, as amended, is \$1,895,958.85.

[19] As general and continuing security for the payment and performance of its obligations under the commitment letter, as amended, the Respondent granted the Applicant various security including (a) a second charge/mortgage in respect of the Real Property securing the principal amount of \$1,875,000, (b) a General Assignment of Rents and Leases dated April 8, 2019 pursuant to which, among other things, the Respondent assigned to the Applicant all of its rights in and to the Leases and Rents (as defined in the Assignment of Rents) in respect of the Real Property, (c) an Assignment of Material Agreements dated April 8, 2019, (d) a General Security Agreement dated April 8, 2019 pursuant to which, among other things, the Applicant was granted a security interest in all of the present and future undertakings and property of the Respondent which is located at or related to or used or required in connection with or arising from or out of the Charged Property (as defined in the second mortgage).

Default by Respondent

[20] The original maturity date of the loan facility was in April 2021. The Applicant granted extensions to the maturity date to and until December 1, 2021. In the amendment letter dated October 25, 2021 in respect of the fourth amendment, the Respondent acknowledged that “there shall be no further extensions of the Term beyond December 1, 2021”.

[21] On December 1, 2021, the Respondent failed to make its monthly interest payment. By letter dated December 6, 2021, the Applicant advised the Respondent that (a) as result of the defaulted payment of interest, the loan facility was in default and an event of default had occurred under the loan documents; (b) the December 1, 2021 interest default was particularly concerning because it was not the first interest-related default under the loan facility; (c) the loan facility matured on December 1, 2021; and (d) unless the Respondent paid the December interest payment by 4 o'clock p.m. on December 8, 2021, the Applicant would demand the immediate repayment of the loan facility and enforce the security it held.

[22] On December 13, 2021, the Applicant issued a demand letter to the Respondent advising that the mortgage was in default and demanding repayment of the indebtedness. The demand letter was delivered to the Respondent contemporaneously with a Notice of Intention to Enforce Security in accordance with s. 244 of the *Bankruptcy and Insolvency Act*. The Applicant demanded payment of \$1,895,958.85.

[23] Mr. Zar submits that there is evidence that the Applicant implicitly agreed to extend the loan until April 1, 2022 by debiting the extension fee from the Respondent's account on January 4, 2022, and again in February 2022, and leaving the interest rate at 9%. Mr. Zar's evidence is that the Applicant only returned the extension fee after he brought it to the Applicant's attention in settlement talks. He states that it was a shock and surprise to him when he heard about the application seeking the appointment of a receiver.

[24] In the affidavit of the Applicant's Senior Director with responsibility for this loan, Daniel Pollack, he explains that the Applicant's finance department made an error in debiting the extension fee. A draft fifth amendment to the commitment letter (that, if agreed upon, would have extended the maturity date to January 1, 2022) had had been under

consideration and would have provided for an extension fee. The draft fifth extension was not executed and did not become effective. When the error was discovered, the Applicant's finance department was instructed to correct the error (which was done when the Applicant debited the Respondent's account for the December interest payment, less the extension fee).

- [25] I accept the evidence from Mr. Pollack that the extension fee was debited in error and, when the error was discovered, it was corrected. I do not accept the Respondent's submission that by debiting the extension fee in error, the Applicant should be taken to have implicitly agreed to extend the maturity date for the mortgage until April 1, 2022. I note that, in any event, April 1, 2022 has passed, and the mortgage debt remains unpaid.
- [26] Section 243 (1) of the *BIA* and s. 101 of the *Courts of Justice Act* provide that the Court may appoint a receiver where it is just or convenient to do so.
- [27] In determining whether it is just or convenient to appoint a receiver, the court must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto: *Bank of Nova Scotia v. Freure Village on Clair Creek*, [1996] O.J. No. 5088, at para. 11.
- [28] In *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866, Morawetz J., at para. 27, accepted the submission that while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties. Morawetz J., at para. 28, accepted that in such circumstances, the "just or convenient" inquiry requires the court to determine whether it is in the interests of all concerned to have a receiver appointed.
- [29] In *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, 2020 ONSC 1953, Koehnen J., at paras. 43-44, held that when the court is dealing with a default under a mortgage, the relief becomes even less extraordinary, citing *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511, at para. 20. Koehnen J., at para. 45, referenced four additional factors set out by Farley J. in *Confederation Life*, at paras. 19-24, that the court may consider in determining whether it is just or convenient to appoint a receiver:
- a. the lenders' security is at risk of deteriorating;
 - b. there is a need to stabilize and preserve the debtors' business;
 - c. loss of confidence in the debtors' management; and
 - d. positions and interests of other creditors.
- [30] In the third and fourth amendments to the commitment letter, the Respondent consented to the Applicant's appointment of a receiver, either privately or court appointed, in the event of a default by the Respondent beyond the applicable cure period. In the General Security

Agreement, the Respondent agreed that after the occurrence of an event of default, the Applicant will have the right to appoint a receiver.

- [31] On this application, there is no evidence that the second mortgage against the Real Property is at risk of deteriorating. The evidence is that the condominium units are rented and rents are being paid. The Respondent is continuing to pay interest on the mortgage debt. The first mortgagee, CIBC, is willing to continue to defer and forbear from taking any enforcement steps in connection with its mortgages for a period of thirty days commencing May 6, 2022, in order to allow the Respondent an opportunity to complete its refinancing with Firm Capital Corporation. CIBC does not take a position in opposition to the application.
- [32] Mr. Pollack has stated in his affidavit that the Applicant has lost confidence in the Respondent's management to continue to satisfy the Respondent's obligations, obtain refinancing and manage the Real Property. I do not regard this to be a statement in the air and without objective evidentiary support, as the Respondent submits. The Applicant's mortgage loan matured on December 1, 2021 and the Respondent has had five months to refinance but has not done so. The Respondent submits that the appointment of a receiver is an extreme remedy that is not needed when "less aggressive" remedies are available, but the only alternative course of action the Respondent submits should have been taken was for the Applicant to have commenced private power of sale proceedings. The Applicant was under no obligation to do so, and has brought this application to seek a remedy to which the Respondent has contractually agreed.
- [33] The Respondent submits that there is evidence that the Applicant is not acting in good faith by seeking to appoint a receiver. In support of this submission, the Respondent relies on the evidence of Mr. Zar in his May 5, 2022 affidavit that in discussions between his former lawyer and a lawyer for the Applicant, the Applicant's lawyer advised "in highly defamatory terms what his clients thought of me and wanted to do to me". Mr. Zar states that it was clear to him and his former counsel that the Applicant is using the application to appoint a receiver to cause him significant harm, such that this application is excessive and unnecessary, and is brought in bad faith.
- [34] The Applicant's application was brought after extensions of the maturity date for the loan had been given, the mortgage debt had matured, and demands for payment had been made. This, objectively, provides a good faith basis for this application. The information given by Mr. Zar in his affidavit (that he obtained from the Respondent's former counsel) of what was said in the telephone conversation in question is vague and accompanied by Mr. Zar's characterization of what was said. Mr. Zar does not recite any particular statements that were made by the Applicant's counsel to the Respondent's former counsel. If Mr. Zar's hearsay evidence is admitted into evidence notwithstanding rule 39.01(5) of the *Rules of Civil Procedure*, it is far from sufficient to allow me to draw the inference I am invited to make, that the Applicant lacks good faith in bringing this application. I do not draw this inference.
- [35] The Applicant's loan has been overdue since December 1, 2021. The Applicant is entitled to take steps under its security to enforce payment of the indebtedness owing to it. The


[36] Applicant is not required to do so only through private power of sale proceedings. The appointment of a receiver will provide an effective and appropriate means to realize on the mortgage security by a court-appointed officer who owes duties to all stakeholders. I have considered the relevant circumstances and I am satisfied that the Applicant has shown that the appointment of receiver is just and convenient in the circumstances.

Disposition

[37] For these reasons, I grant the Applicant's application.

[38] Order to issue in form of Order signed by me today.

Digitally signed by Mr. Justice Cavanagh



Cavanagh J.

Date: May 9, 2022

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

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

Electronically issued : 09-May-2022
Délivré par voie électronique : 09-May-2022
Toronto

THE HONOURABLE)

MONDAY, THE 9TH

JUSTICE CAVANAGH)

DAY OF MAY, 2022

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**

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by KingSett Mortgage Corporation (the "**Applicant**") for an Order pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacities, the "**Receiver**") without security, of (i) the real property legally described in Schedule "A" hereto (the "**Real Property**"), (ii) all of the assets, undertakings and properties of 30 Roe Investments Corp. (the "**Debtor**") acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor's rights, claims, advantages, benefits, title and interest in, to and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder

(collectively with (i), (ii) and (iii), the "**Property**"), was heard on May 6, 2022 via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Daniel Pollack sworn January 7, 2022 and the Exhibits thereto, the affidavit of Elizabeth Fimio affirmed on February 17, 2022 and the Exhibits thereto, and the affidavit of Lorraine Klemens sworn April 26, 2022 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, the Debtor, the Canadian Imperial Bank of Commerce ("**CIBC**") and such other parties listed on the Participant Information Form, no one appearing for any other party although duly served as appears from the affidavits of service sworn and filed, and on reading the consent of KSV to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to subsection 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of the Property.

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security

personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage the Property, including the powers to enter into any agreements or incur any obligations in connection with the Property, or cease to perform or disclaim any contracts of the Debtor in respect of the Property;
- (d) to engage consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets as necessary or desirable to preserve or maintain the Property or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor in connection with the Property (including, without limitation, any rent payments in respect of the Real Property) and to exercise all remedies of the Debtor in collecting such monies and accounts, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor in connection with the Property;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor (as such proceedings relate to the Property or any portion thereof), the Property or the Receiver, and to settle

or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the Ontario *Mortgages Act* as the case may be, shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions in respect of the Property as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to undertake any investigations deemed appropriate by the Receiver with respect to the location and/or disposition of assets reasonably believed to be, or to have been, Property;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to the Debtor,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence

of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, information and cloud-based data of any kind related to the Property, and any computer programs, computer tapes, computer disks, cloud or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software, cloud and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer, in a cloud or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer, cloud or other system and providing the Receiver with any and all access codes, account names, account numbers and account creating credentials that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor and relating to the Property, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor relating to the Property or statutory or regulatory mandates for the supply of goods and/or services,

including without limitation, all computer software, communication and other data services, accounting services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor relating to the Property are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in subsection 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act* or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person except those in favour of CIBC, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. THIS COURT ORDERS 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.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000 (or such greater amount that is acceptable to the Applicant and as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person except those in favour of CIBC, but subordinate in priority to the Receiver's Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

24. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List

website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: ksvadvisory.com/experience/case/30-roe-investments-corp-.

25. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

26. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

29. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the net realizations from the Property with such priority and at such time as this Court may determine.

31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

32. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Toronto Time on the date of this Order and are enforceable without the need for entry and filing.



Digitally signed by
Mr. Justice
Cavanagh

SCHEDULE "A"
DESCRIPTION OF REAL PROPERTY

PIN 76559 - 0508 LT *Interest/Estate Fee Simple*

Description UNIT 1, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 1 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0509 LT *Interest/Estate Fee Simple*

Description UNIT 2, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 2 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0510 LT *Interest/Estate Fee Simple*

Description UNIT 3, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 3 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0511 LT *Interest/Estate Fee Simple*

Description UNIT 4, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 4 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0512 LT *Interest/Estate Fee Simple*

Description UNIT 5, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 5 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0513 LT *Interest/Estate Fee Simple*

Description UNIT 6, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 6 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0514 *LT* *Interest/Estate Fee Simple*

Description UNIT 7, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 7 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0515 *LT* *Interest/Estate Fee Simple*

Description UNIT 8, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 8 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0516 *LT* *Interest/Estate Fee Simple*

Description UNIT 9, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address PH09 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0582 *LT* *Interest/Estate Fee Simple*

Description UNIT 59, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0583 *LT* *Interest/Estate Fee Simple*

Description UNIT 60, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0584 *LT* *Interest/Estate Fee Simple*

Description UNIT 61, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0585 LT *Interest/Estate Fee Simple*

Description UNIT 62, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0586 LT *Interest/Estate Fee Simple*

Description UNIT 63, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0587 LT *Interest/Estate Fee Simple*

Description UNIT 64, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0588 LT *Interest/Estate Fee Simple*

Description UNIT 65, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0589 LT *Interest/Estate Fee Simple*

Description UNIT 66, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0590 LT *Interest/Estate Fee Simple*

Description UNIT 67, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0621 LT *Interest/Estate Fee Simple*

Description UNIT 98, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0622 LT *Interest/Estate Fee* Simple

Description UNIT 99, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0623 LT *Interest/Estate Fee* Simple

Description UNIT 100, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0624 LT *Interest/Estate Fee* Simple

Description UNIT 101, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0625 LT *Interest/Estate Fee* Simple

Description UNIT 102, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0626 LT *Interest/Estate Fee* Simple

Description UNIT 103, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0627 LT *Interest/Estate Fee* Simple

Description UNIT 104, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0628 LT *Interest/Estate Fee* Simple

Description UNIT 105, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0629 LT *Interest/Estate Fee* Simple

Description UNIT 106, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 30 ROEHAMPTON AVENUE TORONTO

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver and manager (the "**Receiver**") of (i) the real property legally described in Schedule "A" to the Order (as defined below) (the "**Real Property**"), (ii) all of the assets, undertakings and properties of 30 Roe Investments Corp. (the "**Debtor**") acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor's rights, claims, advantages, benefits, title and interest in, to and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder (collectively with (i), (ii) and (iii), the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 6th day of May, 2022 (the "**Order**") made in an application having Court file number CV-22-00674810-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2022.

KSV Restructuring Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per:

Name:

Title:

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**KINGSETT MORTGAGE
CORPORATION**

and

30 ROE INVESTMENTS CORP.

Applicant

Respondent

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

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

Proceedings commenced in Toronto

**ORDER
(APPOINTING RECEIVER)**

BENNETT JONES LLP

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Lawyers for the Applicant

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COURT OF APPEAL FOR ONTARIO

CITATION: KingSett Mortgage Corporation v. 30 Roe Investments Corp.,
2022 ONCA 479
DATE: 20220617
DOCKET: M53449 & M53510 (C70638)

Brown, Roberts and Paciocco JJ.A.

BETWEEN

KingSett Mortgage Corporation

Applicant
(Moving Party/Responding Party)

and

30 Roe Investments Corp.

Respondent
(Responding Party/Moving Party)

Richard Swan and Sean Zweig, for the moving party (M53449)/responding party (M53510) KingSett Mortgage Corporation

Nancy J. Tourgis and Laney Paddock, for the responding party (M53449)/moving party (M53510) 30 Roe Investments Corp.

Mark Dunn, for KSV Restructuring Inc. in its capacity as court-appointed receiver

Darren Marr, for Canadian Imperial Bank of Commerce

Heard: June 13, 2022

On appeal from the order of Justice Peter J. Cavanagh of the Superior Court of Justice, dated May 9, 2022, with reasons reported at 2022 ONSC 2777.

Brown J.A.:

I. OVERVIEW

[1] The respondent, KingSett Mortgage Corporation (“KingSett”), moves to quash the appeal brought by 30 Roe Investments Corp. (“30 Roe”) from the order of Cavanagh J. dated May 9, 2022 (the “Receivership Order”). That order appointed KSV Restructuring Inc. as the receiver and manager of nine residential condominium units owned by 30 Roe in a 397-unit condominium building located at 30 Roehampton Avenue, Toronto (the nine units are hereafter referred to as the “Real Property”).

[2] 30 Roe opposes the motion to quash, arguing that it enjoys an appeal as of right from the Receivership Order under s. 193(c) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“*BIA*”).¹ As well, it moves for leave to appeal the Receivership Order pursuant to s. 193(e) of the *BIA*.

¹ *BIA* s. 193 provides as follows:

193 Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:

- (a) if the point at issue involves future rights;
- (b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;
- (c) if the property involved in the appeal exceeds in value ten thousand dollars;
- (d) from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars; and
- (e) in any other case by leave of a judge of the Court of Appeal.

[3] At the conclusion of the hearing of the motions, the panel granted KingSett's motion to quash and dismissed 30 Roe's motion for leave to appeal with reasons to follow. These are those reasons.

II. BACKGROUND FACTS

[4] On April 8, 2019, KingSett advanced a non-revolving demand loan to 30 Roe, which originally was for the principal amount of \$1.5 million, but later increased to \$1.875 million. The advance was secured, in part, by a second mortgage on the Real Property. The advance is also secured by an April 8, 2019 General Security Agreement and other security.

[5] The Canadian Imperial Bank of Commerce ("CIBC") holds a first mortgage on the Real Property.

[6] The original loan maturity date was in April 2021. The loan facility was extended several times, with the final maturity date set for December 1, 2021.

[7] 30 Roe defaulted on the December 1, 2021 interest payment, as it had on some other interest payments, and it did not pay out the loan upon maturity. KingSett served a notice of default. On December 13, 2021, KingSett issued a demand letter and gave notice of intention to enforce security in accordance with s. 244 of the *BIA*.

[8] As of December 31, 2021, the amount due under the loan was \$1,895,958.85.

[9] KingSett applied on January 7, 2022 for the appointment of a receiver and manager of the Real Property pursuant to s. 243(1) of the *BIA* and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (“*CJA*”). 30 Roe sought and received three adjournments of the application, including one to enable the hearing of a motion brought by former counsel to get off the record. Cavanagh J. approved a timetable for all pre-hearing steps. Ultimately, KingSett’s application was scheduled to be heard on May 6, 2022.

[10] On that date, 30 Roe sought a further adjournment. Cavanagh J. refused an adjournment for two reasons: (i) although 30 Roe had obtained an expression of interest to provide refinancing, the letter of intent was not a binding commitment letter and the application judge concluded there was no assurance 30 Roe would secure refinancing to pay out its debt to KingSett if a further adjournment was granted; and (ii) 30 Roe had not acted reasonably or in accordance with prior court endorsements to find new counsel.

[11] As of the hearing date, the state of affairs regarding the Real Property was as follows: (i) CIBC took no position in opposition to the application; (ii) all units were rented and rents were being paid; (iii) 30 Roe was paying interest on the second mortgage debt; and (iv) CIBC was willing to defer enforcement steps for 30 days commencing May 6, 2022 to allow 30 Roe an opportunity to put in place refinancing.

[12] On May 9, 2022, Cavanagh J. made the Receivership Order.

[13] The next day, May 10, 2022, 30 Roe delivered a notice of appeal in which the grounds of appeal are essentially three-fold: (i) the motion judge erred in refusing its fourth adjournment request; (ii) he misapplied the factors applicable to whether it would be just and convenient to appoint a receiver; and (iii) he erred in failing to recognize that KingSett had impliedly extended the loan facility until April 1, 2022, by debiting the amount of an extension fee to 30 Roe's mortgage debt account in January and February 2022. (The application judge accepted KingSett's evidence that the debits were the result of an administrative error, which KingSett had reversed once advised of the mistake.)

[14] KingSett moves to quash the appeal on the basis that 30 Roe does not enjoy an appeal of right under *BIA* s. 193 but requires leave to appeal.

[15] 30 Roe takes the position that an appeal lies as of right under *BIA* s. 193(c), as the "the property involved in the appeal exceeds in value ten thousand dollars". 30 Roe has brought a separate motion for leave to appeal the Receivership Order pursuant to *BIA* s. 193(e).

III. KINGSETT'S MOTION TO QUASH

[16] In its jurisprudence regarding the appeals of orders appointing a receiver under *BIA* s. 243 and *CJA* s. 101, this court has consistently made two points:

- (i) Where a receivership order is made pursuant to both *BIA* s. 243 and *CJA* s. 101, the more restrictive appeal provisions of *BIA* s. 193 govern the rights of appeal and appeal routes: *Business Development Bank of Canada v. Astoria Organic Matters Ltd.*, 2019 ONCA 269, 69 C.B.R. (6th) 13, at paras. 66 and 67; *Buduchnist Credit Union Limited v. 2321197 Ontario Inc.*, 2019 ONCA 588, 72 C.B.R. (6th) 245, at paras. 10 and 11;
- (ii) No appeal as of right exists under *BIA* ss. 193(a) or (c) from an order appointing a receiver: *Hillmount Capital Inc. v. Pizale*, 2021 ONCA 364, 462 D.L.R. (4th) 228, at para. 38; *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, 2013 ONCA 282, 115 O.R. (3d) 617, at paras. 15-17; and *Buduchnist*, at para. 12.

[17] In an effort to avoid the effect of that jurisprudence, 30 Roe fashions two arguments about the availability of a right of appeal under *BIA* s. 193(c). The first draws upon several decisions of judges of this court sitting in Chambers; the second is based on a sales approval “carve-out” provision in the Receivership Order.

[18] First, 30 Roe relies on several Chambers decisions of this court to contend that s. 193(c) authorizes an automatic right of appeal from a receivership order. The first decision is that of the Chambers judge in *Comfort Capital Inc. v. Yeretsian*, 2019 ONCA 1017, 75 C.B.R. (6th) 217. However, that case did not involve an

appeal from an order appointing a receiver; the nature of the order in *Comfort Capital* was quite different. There, the order under appeal directed payment of part of the proceeds of the receiver's sale of property to one set of claimants that was otherwise payable to another claimant. The order resulted in a loss to the second claimant and, therefore, the nature of the order fell within *BIA* s. 193(c). *Comfort Capital* has no application to the order at issue in the present case.

[19] The other Chambers decisions are those in *Royal Bank of Canada v. Bodanis*, 2020 ONCA 185, 78 C.B.R. (6th) 165² and *Shaver-Kudell Manufacturing Inc. v. Knight Manufacturing Inc.*, 2021 ONCA 202, 88 C.B.R. (6th) 1. Neither case provides support for 30 Roe's submission that *BIA* s. 193(c) grants an automatic right of appeal from a receivership order, because neither case involved an attempt to appeal a receivership order. The order at issue in *Bodanis* was a bankruptcy order; that in *Shaver-Kudell* an order declaring that a bankrupt's debts and liabilities would survive his discharge from bankruptcy.

[20] Moreover, 30 Roe's submission based on those Chambers decisions ignores the more recent panel decision of this court in *Hillmount Capital Inc. v. Pizale*, 2021 ONCA 364, 462 D.L.R. (4th) 228. In the course of discussing the

² While the court concluded that *BIA* s. 193(c) provided for the right to appeal a bankruptcy order, the Chambers judge cancelled the automatic stay on appeal under *BIA* s. 195.

types of orders that fall outside of s. 193(c), the court in *Hillmount Capital* stated, at para. 38:

By its nature the second type of order - one that does not bring into play the value of the debtor's property - would not result in a loss or put property value in jeopardy. For example, it is well-established in the BIA s. 193(c) jurisprudence that an order appointing a receiver or interim receiver usually does not bring into play the value of the debtor's property as it simply appoints an officer of the court to preserve and monetize those assets subject to court approval. [Emphasis added.]

[21] 30 Roe's second argument is based on para. 3(k) of the Receivership Order, which deals with the powers of the receiver and authorizes the receiver to sell any part of the Real Property out of the ordinary course of business "without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000."

[22] Drawing on that provision, 30 Roe argues as follows: (i) in *Pine Tree Resorts* the Chambers judge described the nature of a receivership order as one that does not bring into play the value of the debtor's property but simply appoints an officer of the court to preserve and monetize those assets subject to court approval: at para. 17; (ii) in *Pine Tree Resorts* the court relied on that description of the nature of a receivership order to conclude that BIA s. 193(c) does not provide an automatic right of appeal from such an order; (iii) however, para. 3(k) of the Receivership Order identifies a sub-set of 30 Roe's property that the receiver may

sell without applying for court approval; so, therefore, (iv) the nature of the Receivership Order containing para. 3(k) differs from that which led the court in *Pine Tree Resorts* to conclude that no appeal as of right existed. It follows, according to 30 Roe, that the presence of the para. 3(k) carve-out in the Receivership Order places that order in the class of orders for which an automatic right of appeal exists under *BIA* s. 193(c).

[23] This submission is not persuasive. First, 30 Roe does not cite any authority involving a receivership order to support its proposition. Second, as KingSett points out, the receivership order made in *Pine Tree Resorts* contained the same carve-out granting the receiver the power to sell assets without court approval in any transaction not exceeding \$250,000. The presence of such a carve-out provision did not affect Blair J.A.'s characterization of the *Pine Tree Resorts* receivership order as one that did not bring into play the value of the debtor's property but simply appointed an officer of the court to preserve and monetize those assets subject to court approval: at para. 17. No doubt Blair J.A. reached that conclusion in part because the initial receivership order itself granted court approval for the monetization of assets of less than \$250,000. As well, while a sale transaction of less than \$250,000 would not require a further approval motion, the court ultimately reviews the receiver's conduct for such transactions as part of its periodic review and approval of receiver's reports. Accordingly, the presence of a "carve-out" provision such as para. 3(k) in the Receivership Order does not alter the essential

nature of that order: namely, an order that does not bring into play the value of the debtor's assets for the purpose of a *BIA* s. 193(c) analysis.

[24] In its notice of appeal, 30 Roe also asserts that an appeal to the Court of Appeal is provided under *BIA* s. 195.³ With respect, that assertion does not accurately describe the operation of s. 195, which deals with stays of orders pending appeal to an appellate court, not with when rights of appeal lie, or with appeal routes.

[25] To summarize, two recent panel decisions of this court, *Buduchnist* and *Hillmount Capital*, confirmed the court's jurisprudence that no appeal as of right exists under *BIA* s. 193(c) from an order appointing a receiver. The Receivership Order was made under *BIA* s. 243(1); *BIA* s. 193 therefore governs the availability of appeals; with the result that 30 Roe does not enjoy an automatic right to appeal the Receivership Order under *BIA* s. 193(c). Accordingly, 30 Roe must seek leave to appeal pursuant to *BIA* s. 193(e).

³ *BIA* s. 195 states:

Except to the extent that an order or judgment appealed from is subject to provisional execution notwithstanding any appeal therefrom, all proceedings under an order or judgment appealed from shall be stayed until the appeal is disposed of, but the Court of Appeal or a judge thereof may vary or cancel the stay or the order for provisional execution if it appears that the appeal is not being prosecuted diligently, or for such other reason as the Court of Appeal or a judge thereof may deem proper.

IV. 30 ROE'S MOTION FOR LEAVE TO APPEAL

[26] The test for leave to appeal under *BIA* s. 193(e) is well-established:

- Does the proposed appeal raise an issue of general importance to the practice in bankruptcy/insolvency matters or to the administration of justice as a whole and therefore is one that an appellate court should consider and address?
- Is the proposed appeal *prima facie* meritorious and does it involve a point that is of significance to the proceeding?
- Would the proposed appeal unduly hinder the progress of the bankruptcy/insolvency proceedings?

See: *Pine Tree Resorts*, at para. 29; *Buduchnist*, at para. 17; *Essar Steel Algoma Inc. (Re)*, 2017 ONCA 478, 49 C.B.R. (6th) 259, at para. 19.

Issue of general importance

[27] The proposed appeal does not raise an issue of general importance to insolvency practice or to the administration of justice as a whole. The grounds of appeal are rooted in the specifics of the relationship between a mortgagor – 30 Roe – and a mortgagee – KingSett, including the effect on the maturity date of the loan facility by KingSett debiting an extension fee against 30 Roe's mortgage account in January and February 2022. It is also grounded in the fact-specific, discretionary decision of the application judge to refuse a fourth adjournment request by 30 Roe.

Merits of the appeal

[28] Nor does the notice of appeal disclose a *prima facie* meritorious appeal. The application judge's reasons disclose that he fairly considered all relevant factors in refusing the fourth adjournment request, especially in circumstances where, by the May 6, 2022 hearing date, it was clear 30 Roe had no ability to make payments of principal, remained in default, and offered no tangible prospect of refinancing. There was nothing premature or disproportionate about the application judge's appointment of a receiver.

[29] 30 Roe argues that r. 15.04(6) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 gave it the right until May 20, 2022 to appoint new counsel, with the consequence that the scheduled May 6 hearing had to be adjourned until after that date. 30 Roe's submission is without any merit. During the course of case managing the matter, the application judge set a timetable that governed the date of the hearing. That timetable took precedence over any time specified in r. 15.04(6). As the application judge stated at para. 15 of his reasons, "I made it clear in my March 8, 2022 endorsement that May 6, 2022 was a firm date". In that circumstance, the language of r. 15.04(6) that a corporation must appoint counsel "within 30 days" after receiving the order removing former counsel from the record has no effect on the hearing date already set by a judge. It should go without saying that where a removal order is made in the face of a hearing date fixed by the judge

managing an application, the corporation obviously must appoint new counsel before the hearing date or risk the hearing proceeding without representation.

[30] Finally, 30 Roe has not demonstrated any palpable and overriding error or unreasonableness in the application judge's conclusion, at para. 15, that 30 Roe "has not acted reasonably and in accordance with my [prior endorsements] by not seeking to identify counsel who could represent it ..."

[31] As to the ground of appeal that the application judge failed to have regard to the evidence that KingSett debited 30 Roe's mortgage account for extension fees in January and February, 2022, the reasons disclose that the application judge dealt squarely with that issue, accepting KingSett's explanation that the debits were simply administrative errors: at paras. 23-25.

[32] That conclusion by the application judge was reasonable in light of the evidence that: (i) 30 Roe acknowledged in the October 25, 2021 fourth amendment letter that "there shall be no further extensions of the Term beyond December 1, 2021"; and, (ii) KingSett sent a December 13, 2021 demand letter and notice of intention to enforce to 30 Roe – acts inconsistent with granting an extension of the maturity date.

[33] According to the affidavit of a director of 30 Roe, Raymond Zar, the debtor also takes the position that the maturity date of the second mortgage was extended until April 1, 2022 as he had sent a December 16, 2021 email to KingSett

requesting an extension of the maturity date to that time. However, KingSett did not respond to that email, and the record contains no evidence that KingSett granted such an extension. Instead, KingSett moved to enforce its security. In any event, the April 1, 2022 date has come and gone, and there is no evidence that 30 Roe has paid the mortgage debt. It remains in default.

[34] Finally, the reasons of the application judge do not disclose that his analysis was based on any error of law. While 30 Roe obviously does not agree with how the application judge weighed the various factors relevant to whether a receiver should be appointed, his decision to appoint a receiver was not unreasonable given 30 Roe's default and inability to cure its default.

[35] Accordingly, the proposed appeal is not *prima facie* meritorious.

Effect of an appeal on the progress of the receivership

[36] Finally, the proposed appeal would unduly hinder the progress of the administration of the receivership. Granting leave would trigger the automatic stay contained in *BIA* s. 195, thereby preventing the receiver from exercising its power under the Receivership Order to market and sell the Real Property. No purpose would be served by such a delay. It is apparent from the record that 30 Roe has been unable to secure third party financing to take out the KingSett second mortgage notwithstanding several extensions of the mortgage maturity date and the lapse of almost half a year since KingSett initiated its receivership application.

[37] To delay the ability of KingSett to enforce its second mortgage – the validity and enforceability of which are not in dispute – would be unfair to KingSett, especially given 30 Roe’s consent, in the third and fourth amendments to the commitment letter, to KingSett’s appointment of a receiver, either privately or court-appointed, in the event of a default by 30 Roe going beyond the applicable cure period.

Summary

[38] For these reasons, the panel did not grant 30 Roe leave to appeal the Receivership Order.

V. DISPOSITION

[39] As stated at the end of the hearing, KingSett’s motion to quash 30 Roe’s appeal C70638 is granted and 30 Roe’s motion for leave to appeal is dismissed.

[40] As agreed by the parties, KingSett is entitled to its costs of both motions fixed in the aggregate amount of \$15,000, inclusive of disbursements and applicable taxes.

Released: June 17, 2022



I agree. J.B. Raluts J.A.

I agree - J.A.

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

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

THE HONOURABLE)
JUSTICE MCEWEN)
MONDAY, THE 18TH
DAY OF JULY, 2022

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**

SALE PROCESS APPROVAL ORDER

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) without security, of (i) the real property legally described in Schedule “A” hereto (the “**Real Property**”), (ii) all assets, undertakings and properties of 30 Roe Investments Corp. (the “**Debtor**”) acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor's rights, claims, advantages, benefits, title and interest in, to and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder

(collectively with (i), (ii) and (iii), the “**Property**”), for an order, among other things: (i) abridging and validating service of the Notice of Motion and Motion Record herein; (ii) approving the proposed Sale Process (as defined and described in the First Report of the Receiver dated July 7, 2022 (the “**First Report**”)) in respect of the Real Property; and (iii) approving the activities of the Receiver described in the First Report, was heard this day by Zoom videoconference due to the COVID-19 pandemic.

ON READING the Motion Record of the Receiver dated July 7, 2022, including the First Report (including the appendices thereto), the Supplement to the First Report of the Receiver dated July 15, 2022 (including the appendix thereto) (the “**Supplement to the First Report**”), and on hearing the submissions of counsel for the Receiver, counsel for the Debtor, counsel for KingSett Mortgage Corporation and such other counsel as were present, no one else appearing although properly served as appears from the Affidavits of Service of Brennan Caldwell sworn July 7 and July 11, 2022.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms used in this Order and not otherwise defined shall have the meanings ascribed to them in the First Report.

SALE PROCESS APPROVAL

3. **THIS COURT ORDERS** that the Sale Process be and is hereby approved. The Receiver is hereby authorized to carry out the Sale Process and to take such steps as it considers necessary

or desirable in carrying out its obligations thereunder, subject to prior approval of this Court being obtained before completion of any transaction under the Sale Process.

4. **THIS COURT ORDERS** that, without limiting the generality of paragraph 3 hereof, the execution of the Listing Agreement by the Receiver is hereby authorized and approved, with such minor amendments (if any) as the Receiver and HomeLife may agree.

5. **THIS COURT ORDERS** that the Receiver and its affiliates, partners, directors, officers, employees, advisors, lawyers, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the Receiver performing its duties under the Sale Process, except to the extent such losses, claims, damages or liabilities arise or result from the gross negligence or wilful misconduct of the Receiver, as determined by a final order of this Court.

6. **THIS COURT ORDERS** that the Receiver, on at least five (5) days' notice to the service list established in these proceedings, may apply to the Court for directions with respect to the Sale Process at any time.

PIPEDA

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is hereby authorized and permitted to disclose and provide to its agents and any potential purchasers in the Sale Process personal information of identifiable individuals, but only to the extent desirable or required to negotiate or attempt to complete a transaction pursuant to the Sale Process (a "**Transaction**"). Each person to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to the purpose of effecting a Transaction, and if a potential purchaser does not complete a Transaction, they shall return all such information to the Receiver or, in the alternative, destroy all such information and provide confirmation of its destruction to the Receiver. Any purchaser under a Transaction shall maintain the privacy of such information and, upon closing of a Transaction, shall be entitled to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure

that all other personal information is destroyed and provide confirmation of its destruction to the Receiver.

APPROVAL OF THE FIRST REPORT, SUPPLEMENT TO THE FIRST REPORT AND RECEIVER'S ACTIVITIES

8. **THIS COURT ORDERS** that the First Report and the Supplement to the First Report, and the activities of the Receiver referred to therein, be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that this Order and all of its provision are effective as of 12:01 a.m. on the date of this Order.



A handwritten signature in dark ink, appearing to be 'M. [unclear]', is written over a horizontal line.

SCHEDULE A

DESCRIPTION OF REAL PROPERTY

PIN 76559 - 0508 LT *Interest/Estate Fee Simple*

Description UNIT 1, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 1 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0509 LT *Interest/Estate Fee Simple*

Description UNIT 2, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 2 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0510 LT *Interest/Estate Fee Simple*

Description UNIT 3, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 3 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0511 LT *Interest/Estate Fee Simple*

Description UNIT 4, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 4 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0512 LT *Interest/Estate Fee Simple*

Description UNIT 5, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 5 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0513 LT *Interest/Estate Fee Simple*

Description UNIT 6, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 6 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0514 LT *Interest/Estate Fee Simple*

Description UNIT 7, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 7 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0515 LT *Interest/Estate Fee Simple*

Description UNIT 8, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 8 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0516 LT *Interest/Estate Fee Simple*

Description UNIT 9, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address PH09 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0582 LT *Interest/Estate Fee Simple*

Description UNIT 59, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0583 LT *Interest/Estate Fee Simple*

Description UNIT 60, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0584 LT *Interest/Estate Fee Simple*

Description UNIT 61, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0585 LT *Interest/Estate Fee Simple*

Description UNIT 62, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0586 LT *Interest/Estate Fee Simple*

Description UNIT 63, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0587 LT *Interest/Estate Fee Simple*

Description UNIT 64, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0588 LT *Interest/Estate Fee Simple*

Description UNIT 65, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0589 LT *Interest/Estate Fee Simple*

Description UNIT 66, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0590 LT *Interest/Estate Fee Simple*

Description UNIT 67, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0621 LT *Interest/Estate Fee Simple*

Description UNIT 98, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0622 LT *Interest/Estate Fee Simple*

Description UNIT 99, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0623 LT *Interest/Estate Fee Simple*

Description UNIT 100, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0624 LT *Interest/Estate Fee Simple*

Description UNIT 101, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0625 LT *Interest/Estate Fee Simple*

Description UNIT 102, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0626 LT *Interest/Estate Fee Simple*

Description UNIT 103, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0627 LT *Interest/Estate Fee Simple*

Description UNIT 104, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0628 LT *Interest/Estate Fee Simple*

Description UNIT 105, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0629 LT *Interest/Estate Fee Simple*

Description UNIT 106, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 30 ROEHAMPTON AVENUE TORONTO

KINGSETT MORTGAGE CORPORATION

- and -

30 ROE INVESTMENTS CORP.

Applicant

Respondent

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

Proceeding commenced at Toronto

SALE PROCESS APPROVAL ORDER

GOODMANS LLP

Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Chris Armstrong (LSO# 55148B)
carmstrong@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

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

10



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

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

THE HONOURABLE)
JUSTICE MCEWEN)
MONDAY, THE 18TH
DAY OF JULY, 2022

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**

ORDER

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") without security, of (i) the real property legally described in Schedule "A" hereto (the "**Real Property**"), (ii) all assets, undertakings and properties of 30 Roe Investments Corp. (the "**Debtor**") acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor's rights, claims, advantages, benefits, title and interest in, to and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder

(collectively with (i), (ii) and (iii), the “**Property**”), for an order, among other things: (i) abridging and validating service of the Notice of Motion and Motion Record herein; and (ii) directing the Debtor and Raymond Zar (“**Zar**”) to deliver various Records and Property to the Receiver further to the terms of the Receivership Order granted in the within proceedings dated May 9, 2022 (the “**Receivership Order**”), was heard this day by Zoom videoconference due to the COVID-19 pandemic.

ON READING the Motion Record of the Receiver dated July 7, 2022, including the First Report of the Receiver dated July 7, 2022 (including the appendices thereto), the Supplement to the First Report of the Receiver dated July 15, 2022 (including the appendix thereto), and on hearing the submissions of counsel for the Receiver, counsel for the Debtor and counsel for KingSett Mortgage Corporation and such other counsel as were present, no one else appearing although properly served as appears from the Affidavits of Service of Brennan Caldwell sworn July 7 and July 11, 2022.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms used in this Order and not otherwise defined shall have the meanings ascribed to them in the Receivership Order or the First Report.
3. **THIS COURT ORDERS** that each of the Debtor and Zar are hereby directed to forthwith, and by no later than 3:00 pm (Toronto time) on the date that is three days following the date of this Order, deliver to the Receiver the following Records and Property to the extent in the power, possession or control of the Debtor or Zar:

- (a) a list of the creditors of the Debtor, including the addresses and amounts owing to each creditor;
- (b) details of all Property (other than the Real Property and the RBC Bank Account);
- (c) copies of any leases in respect of the Real Property;
- (d) any post-dated rent cheques in respect of the Real Property; and
- (e) the keys for the Real Property and any security cards, fobs or similar items required to access the Real Property or the Minto 30 Roe at 30 Roehampton Avenue, Toronto, Ontario.

4. **THIS COURT ORDERS** that each of the Debtor and Zar are hereby directed to deliver such further Records or Property as may be requested in writing by the Receiver from time to time to the extent in the power, possession or control of the Debtor or Zar by no later than the day and time specified by the Receiver in any such request; provided, however, that the day and time specified by the Receiver in any such request shall be no less than three (3) days following the sending of such request by the Receiver.

GENERAL

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

6. **THIS COURT ORDERS** that this Order and all of its provision are effective as of 12:01 a.m. on the date of this Order.



SCHEDULE A

DESCRIPTION OF REAL PROPERTY

PIN 76559 - 0508 LT Interest/Estate Fee Simple

Description UNIT 1, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 1 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0509 LT Interest/Estate Fee Simple

Description UNIT 2, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 2 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0510 LT Interest/Estate Fee Simple

Description UNIT 3, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 3 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0511 LT Interest/Estate Fee Simple

Description UNIT 4, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 4 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0512 LT Interest/Estate Fee Simple

Description UNIT 5, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 5 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0513 LT Interest/Estate Fee Simple

Description UNIT 6, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 6 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0514 LT Interest/Estate Fee Simple

Description UNIT 7, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 7 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0515 LT Interest/Estate Fee Simple

Description UNIT 8, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 8 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0516 LT Interest/Estate Fee Simple

Description UNIT 9, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address PH09 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0582 LT Interest/Estate Fee Simple

Description UNIT 59, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0583 LT Interest/Estate Fee Simple

Description UNIT 60, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0584 LT Interest/Estate Fee Simple

Description UNIT 61, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0585 LT Interest/Estate Fee Simple

Description UNIT 62, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0586 LT Interest/Estate Fee Simple

Description UNIT 63, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0587 LT Interest/Estate Fee Simple

Description UNIT 64, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0588 LT Interest/Estate Fee Simple

Description UNIT 65, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0589 LT Interest/Estate Fee Simple

Description UNIT 66, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0590 LT Interest/Estate Fee Simple

Description UNIT 67, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0621 LT Interest/Estate Fee Simple

Description UNIT 98, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0622 LT Interest/Estate Fee Simple

Description UNIT 99, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0623 LT Interest/Estate Fee Simple

Description UNIT 100, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0624 LT Interest/Estate Fee Simple

Description UNIT 101, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0625 LT Interest/Estate Fee Simple

Description UNIT 102, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0626 LT Interest/Estate Fee Simple

Description UNIT 103, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0627 LT Interest/Estate Fee Simple

Description UNIT 104, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0628 LT Interest/Estate Fee Simple

Description UNIT 105, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0629 LT Interest/Estate Fee Simple

Description UNIT 106, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 30 ROEHAMPTON AVENUE TORONTO

KINGSETT MORTGAGE CORPORATION

- and -

30 ROE INVESTMENTS CORP.

Applicant

Respondent

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

Proceeding commenced at Toronto

ORDER

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

Chris Armstrong (LSO# 55148B)
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Tel: (416) 979-2211
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Counsel to KSV Restructuring Inc., solely in its capacity as
Court-appointed Receiver and not in its personal capacity

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Kingsett Mortgage Corporation
Plaintiff(s)
AND
30 Roe Investments Corp
Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
see counsel slip		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

The Receiver brings this matter seeking two orders:

- ① an order requiring the Respondent and its principal Raymond Zar (Zar^u) to deliver various Records and Property to the Receiver by specified timelines, all of which is set out in the draft order;
- ② a Sales Process Approval Order.

20 July 22
Date

[Signature]
Judge's Signature

Additional Pages 13 total

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Judges Endorsment Continued

The motions were heard by me on July 18/22. At the motion I granted the relief sought in both motions with reasons to follow. I am now providing those reasons.

I will now deal with each motion in turn.

① The Motion to Compel Production:

The Respondent did not meaningfully oppose this motion, but rather generally submitted that it had been generally cooperative.

The Record does not support this submission.

The Receivership Order provides that the Receiver shall take possession of and exercise control over the Property, and requires all persons (including the Respondent and Zar) to deliver all Property to the Receiver upon the

Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

Receiver's request.

Despite repeated requests, as set out in the Receiver's First Report, the Receiver has been unable to obtain a number of Records and Properties from the Respondent including, critically, a list of creditore and detail of all Property.

A second order should not be necessary as the Respondent should have complied with the First Receivership Order.

I agree with the Receiver, however I think it is appropriate to grant this order to compel production of specific items, as set out in the order to ensure both the Respondent and Zar are full placed on notice of their duty to comply.

Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

I agreed to a tight timeline given the late outstanding failure of the Respondent / Zar to comply with the provisions of the Receivership Order and the importance of the Records and Property sought.

All of the Records and Property sought are relevant and important to the Receivership.

② The Sales Process Approval Order.

The Respondent raises two primary objections to this order.

First, the Respondent submits that he has obtained refinancing to repay the Kingsett loan and discharge the Receiver.

I do not accept this is the case for a number of reasons:

- The purported refinancing surfaced the morning of the

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Judges Endorsment Continued

motion. This is the second time that the Respondent has delivered a commitment for purported financing on the eve of a hearing. Justice Cavanagh rejected similar type financing in his May 9/22 decision and his reasons resonate here (see para 12).

- The proposed financing does not satisfy the Kingsett obligation, CIBC arrears and amounts owing to CRA / RBC / prop taxes / Receiver Fees and this assumes there are no other debts, which I will not do, given the Respondent's failure to provide a list of its creditors to the Receiver.

- Zar has advised the Receiver that he would find any shortfall, but when the Receiver asked for

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Judges Endorsment Continued

evidence that he could do so, he did not reply.

- The purported financing is subject to numerous conditions precedent - in favour of the proposed lender.

These include staying this proceeding, satisfactory appraisal reports of values of at least \$9.956 million (which values would be higher than previous assessments), need to provide info for a credit review and other conditions - none of which the Respondent has indicated it can do in a timely way. Nor is there any belief the lender would accept the responses provided.

- The COA, in dismissing the Respondent's appeal, of Justice Cavanagh's decision, noted (at para 36) that the Respondent has had a

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Judges Endorsment Continued

lengthy amount of time to obtain financing and has failed to do so.

The same rings true again where the Respondent brings to this Court last minute, conditional and here, insufficient, speculative financing.

Last, it is worth noting that Respondent's counsel spent very little time responding to the above concerns, rather focussing on the Respondent's second objections to the Sales Process Order which I will now turn to.

The second objection again raised the day of the hearing when Zar filed a 2 1/2 page affidavit, is that the methodology used by the Receiver to market the Units is wrong-headed.

Zar deposes that the entire

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Judges Endorsment Continued

Floor containing the 9 Units (which comprise the Penthouse Floor) should be sold en masse, essentially ^{in an} ^{income} producing hospitality-type model akin to a hotel.

The Respondent relies mainly on the fact that there is scanty evidence in the hall, housekeeping and internet services to support its view that its model for sale ought to be preferred.¹

It also submits that it was short served with this motion and did not have a chance to adequately respond by obtaining a business valuation.

On the other hand, the Receiver (again supported by Kingsott) submits that the Respondents' submissions ought to be rejected. ^{The} Receiver points to the fact

¹: The Respondent submits that these services make the Units an attractive business opportunity.

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Judges Endorsment Continued

that the Respondent has not provided any evidence to support its claim that an en masse going concern sale (which would presumably be effected out via Airbnb or like co.) is preferable to the Receiver preferred strategy. Instead it relies on Zar's brief, have affidavit delivered the day of the hearing. Zar of course, says the Receiver lacks objectivity, and has delayed this matter and pursued an unsuccessful appeal.

The Receiver, insofar as the merits are concerned, also points to an earlier group of appraisal reports ^{the previous} relied ^{on} by the Respondent that concluded the sale of individual Units, instead of a going concern business, was

Superior Court of Justice
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Judges Endorsment Continued

preferable.

It bears noting that the Units are located in a condominium building w/o hotel services or similar mixed use purposes.

The Receiver further submits that, pursuant to the Receivership Order, which grants it broad discretion, it has solicited proposals from four realtors with extensive experience with the building; engaged in discussion with three of them who submitted proposals; and, selected HomeLife to act as the listing agent.

HomeLife had the lowest Commission rate and the lead agent, Erkan Sen, has extensive experience selling Units in this building. HomeLife is also a large, well-recognized

Superior Court of Justice
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Judges Endorsment Continued

brokerage.

HomeLife has proposed a process where two of the Units are listed for sale, so as not to depress the market.

Extensive marketing will take place and the Receiver will of course determine, subject to Court approval, whether to accept offer. 2.

HomeLife and the Receiver believe this Sales Process is commercially reasonable and provides broad exposure. This also potentially allows the company to rebalance

Primarily for the above reasons I approved the Sales Process.

I further do not accept that the Respondent dealt with the motion on short notice.

It has known of the date of the motion since June 22/22

2. The entire Sales Process is set out in Section 4.0 of the Receiver's First Report which I have reviewed

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Judges Endorsment Continued

and was well aware before that, that the Receiver was pursuing a sale. The materials were served on July 7/22 and no adjournment was sought.

The submission of short notice is also somewhat ironic given the Respondent's history of delay and providing materials at the last moment.

I also reject another argument raised at that hearing and dealt with briefly ⁱⁿ in Zar's affidavit that the value of the Receiver are too low. Again, HomeLife is well qualified to set a sales price on the individual units when marketing begins.

In any event, any sale is subject to Court approval.

Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

Further, nothing in the aforementioned orders precludes the Respondent from attempting to secure financing and satisfy its obligations.

Last, I am concerned that the Respondent's last minute submission if accepted (and I repeat them on the merits) would lead to intolerable delay to the detriment of the creditors in circumstances where the Respondent has had every opportunity to remedy its defaults.

McE...

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Kingsett Mortgage Corporation Plaintiff(s)
AND
30 Roe Investments Corp. Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
see counsel slip		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

I heard the Receiver's motion today concerning the order it seeks to amend the sales process. At the conclusion of the motion I granted the order sought concerning the amendments and a separate endorsement will follow concerning that order.

14 Dec 22
Date

[Signature]
Judge's Signature

Additional Pages 4 in total

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Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

The purpose of this endorsement is to deal with comments made by Raymond Zar at the hearing.

Notwithstanding the fact that Mr Zar has not obtained an order pursuant to Rule 15, to represent the Respondent, I allowed him to make submissions.

At the conclusion of his submissions he stated that he planned to "hold a press conference" and planned to "broadcast" this hearing. This of course would be in violation of s. 136 of the Courts of Justice Act. At the outset of the motion the Court Registrar read aloud the prohibition of recording the motion.

When I asked Mr Zar if he recorded the hearing, he refused.

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Commercial List

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Judges Endorsement Continued

to answer.

I then ordered that Mr Zar not broadcast this hearing and to do so may lead to contempt proceedings.

I offered him a copy of the transcript and urged him to seek legal counsel before taking any further steps.

For the sake of clarity, however, I am issuing this endorsement ordering and directing that Mr. Zar not in any way shape or form, broadcast or publish the audio and/or video of today's hearing.

Further, I am ordering that Mr Zar, if he in fact recorded the hearing in violation of s. 136, destroy any such recording that

Court File Number: _____

Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

he may have made - effective
immediately.

McEWT



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-22-00674810-00CL DATE: DECEMBER 14, 2022

NO. ON LIST: 1
9:30 AM

TITLE OF PROCEEDING: KINGSETT MORTGAGE -v- 30 ROE INVESTMENTS
BEFORE JUSTICE: MCEWEN

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
RAYMOND ZAR	RE – 30 Roe Investments	rz@roehamptoncapital.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
CHRISTOPHER ARMSTRONG	Counsel for Receiver – KSV Restructuring	carmstrong@goodmans.ca
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BEN FRYDENBERG & DARREN MARR	Counsel to Secured Creditor – CIBC	ben@chaitons.com / dmarr@chaitons.com

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

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

THE HONOURABLE
JUSTICE MCEWEN

)
)
)

WEDNESDAY, THE 14TH
DAY OF DECEMBER, 2022

B E T W E E N :

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**

AMENDED SALE PROCESS APPROVAL ORDER

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") without security, of (i) the real property legally described in Schedule "A" hereto (the "**Real Property**"), (ii) all assets, undertakings and properties of 30 Roe Investments Corp. (the "**Debtor**") acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor's rights, claims, advantages, benefits, title and interest in, to and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder

(collectively with (i), (ii) and (iii), the “**Property**”), for an order, among other things: (i) abridging and validating service of the Notice of Motion and Motion Record herein; (ii) approving the proposed Amended Sale Process (as defined and described in the Second Report of the Receiver dated December 5, 2022 (the “**Second Report**”)) in respect of the Real Property; and (iii) approving the activities of the Receiver described in the Second Report and the Supplement to the Second Report of the Receiver dated December 13, 2022 (the “**Supplemental Report**”), was heard this day by Zoom videoconference.

ON READING the Motion Record of the Receiver dated December 5, 2022, including the Second Report (including the appendices thereto) and the Supplemental Report, and on hearing the submissions of counsel for the Receiver, counsel for KingSett Mortgage Corporation, Raymond Zar and such other counsel as were present, no one else appearing although properly served as appears from the Affidavits of Service of Brennan Caldwell sworn December 6th, 9th and 13th, 2022.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms used in this Order and not otherwise defined shall have the meanings ascribed to them in the Second Report, it being understood that: (i) references to “Remax” shall be construed so as to include reference to any successor or assignee brokerage consented to by the Receiver; and (ii) references to the “Remax Listing Agreement” shall be construed so as to include any listing agreement substantially in the form of the Remax Listing Agreement entered into between the Receiver and any such successor or assignee brokerage.

AMENDED SALE PROCESS APPROVAL

3. **THIS COURT ORDERS** that the Amended Sale Process be and is hereby approved. The Receiver is hereby authorized to carry out the Amended Sale Process and to take such steps as it considers necessary or desirable in carrying out its obligations thereunder, subject to prior approval of this Court being obtained before completion of any transaction under the Amended Sale Process.

4. **THIS COURT ORDERS** that, without limiting the generality of paragraph 3 hereof, the execution of the Remax Listing Agreement by the Receiver is hereby authorized and approved, with such minor amendments (if any) as the Receiver and Remax may agree.

5. **THIS COURT ORDERS** that the Receiver and its affiliates, partners, directors, officers, employees, advisors, lawyers, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the Receiver performing its duties under the Amended Sale Process, except to the extent such losses, claims, damages or liabilities arise or result from the gross negligence or wilful misconduct of the Receiver, as determined by a final order of this Court.

6. **THIS COURT ORDERS** that the Receiver, on at least five (5) days' notice to the service list established in these proceedings, may apply to the Court for directions with respect to the Amended Sale Process at any time.

PIPEDA

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is hereby authorized and permitted to disclose and provide to its agents (including Remax) and any potential purchasers in the Amended Sale Process personal information of identifiable individuals, but only to the extent desirable or required to negotiate or attempt to complete a transaction pursuant to the Amended Sale Process (a "**Transaction**"). Each person to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to the purpose of effecting a Transaction, and if a potential purchaser does not complete a Transaction, they shall return all such information to the Receiver or, in the alternative, destroy all such information and provide confirmation of its destruction to the Receiver. Any purchaser under a

Transaction shall maintain the privacy of such information and, upon closing of a Transaction, shall be entitled to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed and provide confirmation of its destruction to the Receiver.

APPROVAL OF THE SECOND REPORT, SUPPLEMENT TO THE SECOND REPORT AND RECEIVER'S ACTIVITIES

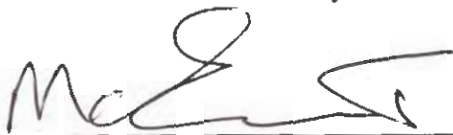
8. **THIS COURT ORDERS** that the Second Report, TM~~the Supplemental Report,~~ TM and the activities of the Receiver referred to therein be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

9. **THIS COURT ORDERS** that nothing herein shall be construed so as to limit or modify the approvals, protections or other provisions of the Sale Process Approval Order of this Court granted in the within proceedings dated July 18, 2022.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

11. **THIS COURT ORDERS** that this Order and all of its provision are effective as of 12:01 a.m. (Toronto time) on the date of this Order without the need for issuance or entry.



SCHEDULE A

DESCRIPTION OF REAL PROPERTY

PIN 76559 - 0508 LT *Interest/Estate Fee Simple*

Description UNIT 1, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 1 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0509 LT *Interest/Estate Fee Simple*

Description UNIT 2, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 2 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0510 LT *Interest/Estate Fee Simple*

Description UNIT 3, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 3 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0511 LT *Interest/Estate Fee Simple*

Description UNIT 4, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 4 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0512 LT *Interest/Estate Fee Simple*

Description UNIT 5, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 5 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0513 LT *Interest/Estate Fee Simple*

Description UNIT 6, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 6 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0514 LT *Interest/Estate* Fee Simple

Description UNIT 7, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 7 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0515 LT *Interest/Estate* Fee Simple

Description UNIT 8, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 8 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0516 LT *Interest/Estate* Fee Simple

Description UNIT 9, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address PH09 PENTHOUSE 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0582 LT *Interest/Estate* Fee Simple

Description UNIT 59, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0583 LT *Interest/Estate* Fee Simple

Description UNIT 60, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0584 LT *Interest/Estate* Fee Simple

Description UNIT 61, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0585 LT *Interest/Estate* Fee Simple

Description UNIT 62, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0586 LT *Interest/Estate* Fee Simple

Description UNIT 63, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0587 LT *Interest/Estate* Fee Simple

Description UNIT 64, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0588 LT *Interest/Estate* Fee Simple

Description UNIT 65, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0589 LT *Interest/Estate* Fee Simple

Description UNIT 66, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0590 LT *Interest/Estate* Fee Simple

Description UNIT 67, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 30 ROEHAMPTON AVENUE TORONTO

PIN 76559 - 0621 LT *Interest/Estate Fee Simple*

Description UNIT 98, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0622 LT *Interest/Estate Fee Simple*

Description UNIT 99, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0623 LT *Interest/Estate Fee Simple*

Description UNIT 100, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0624 LT *Interest/Estate Fee Simple*

Description UNIT 101, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0625 LT *Interest/Estate Fee Simple*

Description UNIT 102, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0626 LT *Interest/Estate Fee Simple*

Description UNIT 103, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0627 LT *Interest/Estate* Fee Simple

Description UNIT 104, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0628 LT *Interest/Estate* Fee Simple

Description UNIT 105, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address TORONTO

PIN 76559 - 0629 LT *Interest/Estate* Fee Simple

Description UNIT 106, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Address 30 ROEHAMPTON AVENUE TORONTO

KINGSETT MORTGAGE CORPORATION

- and -

30 ROE INVESTMENTS CORP.

Applicant

Respondent

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

Proceeding commenced at Toronto

AMENDED SALE PROCESS APPROVAL ORDER

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

Chris Armstrong (LSO# 55148B)
carmstrong@goodmans.ca

Tel: (416) 979-2211
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Counsel to KSV Restructuring Inc., solely in its capacity as
Court-appointed Receiver and not in its personal capacity

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Kingsett Mortgage Corporation Plaintiff(s)
AND
30 Roe Investments Corp. Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
see counsel slip - attached		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

This matter appeared before me on December 14/22.

The Receiver brought a motion seeking amendments to the Sales Process and other related relief.

At the conclusion of the motion I granted the relief sought. Counsel forwarded a draft order which I have signed and attached to this

20 Dec 22
Date

[Signature]
Judge's Signature

Additional Pages seven total

i. Subject to one amendment discussed below.

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

endorsement. The order shall go as of Dec 14/22, as amended.

Raymond Zar attended the motion. He is the principal of the Respondent. Notwithstanding that he has not sought leave to represent the Respondent, pursuant to Rule 15, I allowed him to make submissions.

Although the Respondent filed no material, Mr Zar made a number of allegations against the Receiver, Applicant and others.

Mr Zar asked that I not proceed with the motion until investigations could be carried out and claimed that it was the duty of the Superior Court to carry out the investigation. I disagreed.

Mr Zar further asked me to recuse myself after I refused to

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

grant him permission to record the proceeding and advised that he planned to conduct a press conference and broadcast the zoom hearing.

As a result, I issued an endorsement on an urgent basis on Dec 14/22 prohibiting him from broadcasting or publishing the hearing and to destroy any recordings that he might have made.

Insofar as the motion itself is concerned, the motion to amend the Sales Process essentially involved two changes - both of which are fair and reasonable.

The first amendment involved changing the listing agent. The Receiver proposes to use Gloria Young of Remax. Ms Young is well qualified to act, as is Remax, based

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

on the comments in the Receiver's Second Report, which I accept.

Mr Zar did not note any problems with Ms. Yeng or Remax. His comments were generally directed at the previous listing agent who is being replaced; thus, he should be pleased with a new agent being appointed.

I also note that Remax's Commission will be 0.5% higher than the previous agent's commission, but I agree with the Receiver that the change will assist in attracting buyers since it goes to the cooperating brokerage. Mr Zar did not raise any ⁱⁿ ~~real~~ ⁱⁿ real opposition in this regard.

The second amendment involves the Receiver's request that it be allowed to sell all of the units, including those being occupied.

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Once again, based on the contents of the Second Report this is fair and reasonable. Market dynamics are changing and the market is becoming more challenging. The Receiver ought to be allowed greater flexibility to deal with these challenges.

There also may be tax implications which cannot yet be analyzed, as the Respondent has not yet provided the Receiver with the necessary information. Mr. Zar also raised concerns about this issue. The tax implications may be relevant and this can be dealt with at a later date, if necessary, and particularly when approval for the sales is sought.

Both amendments are therefore, as noted, fair and reasonable. I

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

pause here to note that a person, apparently Mr Zar's mother, recently occupied one of the condominium units. She was removed by police, but now may be occupying another unit. Such occupation is improper given the ongoing Sales Process and the sales ought to proceed despite any occupation. Details of this issue are set out in the Receiver's Supplement to the Second Report.

I am also prepared to approve the contents of the Second Report and the activities set out therein. As noted, Mr Zar has been critical of ~~the~~ some of the Receiver's activities, but the Respondent filed no materials and my review of the activities satisfies me that approval is appropriate.

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

I am, however, deferring approval of the Receiver's activities in the Supplement to the Second Report to a further hearing. This report was delivered the evening before the hearing. The Respondent ought to have an opportunity to respond, if it wishes. I have therefore deleted this portion of the order.

The remainder of the ancillary relief sought is fair and reasonable.

Last, as I did at the hearing, I urge Mr Zar to retain counsel to deal with this matter on behalf of the Respondent.

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ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) TUESDAY, THE 7th
)
JUSTICE STEELE) DAY OF FEBRUARY, 2023
)

B E T W E E N:

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-13, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

ORDER
(Ancillary Matters)

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) without security, of (i) the real property legally described in Schedule “A” to the Order (Appointing Receiver) of this Court dated May 9, 2022 (the “**Real Property**”), (ii) all assets, undertakings and properties of 30 Roe Investments Corp. (the “**Debtor**”) acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor’s rights, claims, advantages, benefits, title and interest in, to

and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder (collectively with (i), (ii) and (iii), the “**Property**”), for an order, *inter alia* (i) authorizing the Receiver to disconnect the Monitoring Equipment, (ii) approving the Distributions (as defined below), (iii) sealing the confidential appendices to the Third Report of the Receiver dated January 26, 2023 (the “**Third Report**”), and (iv) approving the activities of the Receiver as 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, was heard this day by Zoom videoconference.

ON READING the Supplement to the Second Report and the Third Report, and on hearing the submissions of counsel for the Receiver, counsel for the Debtor, counsel for the Canadian Imperial Bank of Commerce, counsel for KingSett Mortgage Corporation and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Brennan Caldwell sworn January 27, 2023, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Third Report.

DISCONNECTION OF MONITORING EQUIPMENT

3. **THIS COURT ORDERS AND DECLARES** that the Monitoring Equipment is “Property” within the meaning of the Order (Appointing Receiver) of this Court made in the within proceedings dated May 9, 2022 (the “**Receivership Order**”).
4. **THIS COURT ORDERS** that the Receiver and its agents be and are hereby authorized to disconnect, uninstall and otherwise take such steps as they consider necessary or appropriate to render the Monitoring Equipment inoperable and to remove the Monitoring Equipment from the Minto 30 Roe.

5. **THIS COURT ORDERS** that the Receiver and its agents be and are hereby authorized to dispose of the Monitoring Equipment as they consider fit.

SEALING

6. **THIS COURT ORDERS** that, subject to further Order of this Court, Confidential Appendix 1 to the Third Report shall be sealed and kept confidential pending closing of the PH04 Transaction.

7. **THIS COURT ORDERS** that, subject to further Order of this Court, Confidential Appendix 2 to the Third Report shall be sealed and kept confidential pending closing of the Transactions.

8. **THIS COURT ORDERS** that, subject to further Order of this Court, Confidential Appendix 4 to the Third Report shall be sealed and kept confidential.

APPROVAL OF RECEIVER'S ACTIVITIES

9. **THIS COURT ORDERS** that the Supplement to the Second Report, and the activities of the Receiver referred to therein, be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

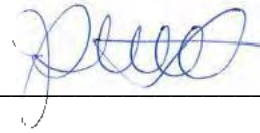
10. **THIS COURT ORDERS** that the Third Report, and the activities of the Receiver referred to therein, be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this

Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.



**APPLICATION UNDER SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, Court File No.: CV-22-00674810-00CL
C. C.43, AS AMENDED, AND SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY
ACT, R.S.C. 1985, C. B-3 AS AMENDED**

**KINGSETT MORTGAGE
CORPORATION**

-and-

30 ROE INVESTMENTS CORP.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**ORDER
(Ancillary Matters)**

GOODMANS LLP

Barristers & Solicitors

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

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ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) TUESDAY, THE 7th
)
JUSTICE STEELE) DAY OF FEBRUARY, 2023
)

B E T W E E N:

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-13, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**APPROVAL AND VESTING ORDER
(PH09)**

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) without security, of (i) the real property legally described in Schedule “A” to the Order (Appointing Receiver) of this Court dated May 9, 2022 (the “**Real Property**”), (ii) all assets, undertakings and properties of 30 Roe Investments Corp. (the “**Debtor**”) acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor’s rights, claims, advantages, benefits, title and interest in, to

and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder (collectively with (i), (ii) and (iii), the “**Property**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (as amended, the “**Sale Agreement**”) between the Receiver and Mingjun Hu (the “**Purchaser**”) dated January 19, 2023, and appended to the Third Report of the Receiver dated January 26, 2023 (the “**Third Report**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the Real Property described in Schedule B hereto (the “**Purchased Units**”), was heard this day by Zoom videoconference.

ON READING the Third Report and on hearing the submissions of counsel for the Receiver, counsel for the Debtor, counsel for the Canadian Imperial Bank of Commerce, counsel for KingSett Mortgage Corporation and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Brennan Caldwell sworn January 27, 2023, filed:

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved *nunc pro tunc*, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Units to the Purchaser.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Receiver’s Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased Units described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured,

unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh in the within proceedings dated May 9, 2022; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the “**Encumbrances**”, provided “Claims” shall not include the permitted encumbrances, easements, restrictive covenants, and other matters listed on Schedule D hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Units are hereby expunged and discharged as against the Purchased Units.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Toronto (No. 66) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Purchased Units identified in Schedule B hereto in fee simple, and is hereby directed to delete and expunge from title to such Purchased Units all of the Claims listed in Schedule C hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Units shall stand in the place and stead of the Purchased Units, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Units with the same priority as they had with respect to the Purchased Units immediately prior to the sale, as if the Purchased Units had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;

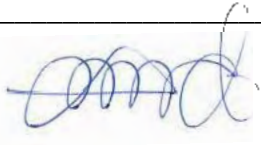
(b) any applications for a bankruptcy order now or hereafter issued pursuant to the

Bankruptcy and Insolvency Act (Canada) (the "BIA") in respect of the Debtor and
any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Units in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



Schedule A – Form of Receiver’s Certificate

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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

B E T W E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and –

30 ROE INVESTMENTS CORP.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (the “**Court**”) dated May 9, 2022 (the “**Receivership Order**”), KSV Restructuring Inc. was appointed as the receiver and manager (in such capacity, the “**Receiver**”) without security, of (i) the real property legally described in Schedule “A” to the Receivership Order (the “**Real Property**”), (ii) all assets, undertakings and properties of 30 Roe Investments Corp. (the “**Debtor**”) acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor’s rights, claims, advantages, benefits, title and interest in, to and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder (collectively with (i), (ii) and (iii), the “**Property**”).

B. Pursuant to an Order of the Court dated [DATE] (the “**Sale Approval Order**”), the Court approved the agreement of purchase and sale made as of January 19, 2023 (as amended, the “**Sale Agreement**”) between the Receiver and Mingjun Hu (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Units, which vesting is to be effective with respect to the Purchased Units upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Units; and (ii) the Transaction (as defined in the Sale Approval Order) has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Units payable pursuant to the Sale Agreement; and
2. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

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

Per: _____
Name:
Title:

Schedule B – Legal Description of Purchased Units

Dwelling Unit:

PIN 76559-0516 (LT)

UNIT 9, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Parking Unit:

PIN 76559-0590 (LT)

UNIT 67, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Storage Unit:

PIN 76559-0629 (LT)

UNIT 106, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Schedule C – Claims to be deleted and expunged from title to the Purchased Units

1. Instrument No. AT4476987, registered February 1, 2017, being a Charge in favour of Canadian Imperial Bank of Commerce (“**CIBC**”) securing the principal amount of \$494,722.
2. Instrument No. AT4477148, registered February 1, 2017, being a Notice of Assignment of Rents: General in favour of CIBC.
3. Instrument no. AT5110272, registered April 8, 2019, being a Charge in favour of Kingsett Mortgage Corporation (“**KS**”) securing the principal amount of \$1,875,000 (the “**KS Charge**”).
4. Instrument no. AT5110273, registered April 8, 2019, being a Notice of Assignment of Rents: General in favour of KS.
5. Instrument no. AT5731082, registered May 7, 2021, being a Notice in favour of KS in respect of the KS Charge.
6. Instrument no. AT6073332, registered May 10, 2022, being an Application to Register Court Order in respect of the Order (Appointing Receiver) of the Ontario Superior Court of Justice (Commercial List) dated May 9, 2022

For the avoidance of doubt, each of the aforementioned instruments is to be deleted and expunged from each of the PINs identified on Schedule B hereto.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Purchased Units**

(unaffected by the Vesting Order)

1. Encumbrances for real property taxes (which term includes charges, rates and assessments) for amounts the payment of which is not yet due or delinquent;
2. permits, reservations, covenants, water course, right of water, right of access or user licenses, easements, rights of way, restrictions, building schemes, licenses, restrictive covenants and servitudes, rights of access or user, airport zoning regulations and other similar rights in land (including, without limitation, licenses, easements, rights of way, servitudes and rights in the nature of easements for walkways, sidewalks, public ways, sewers, drains, gas, soil, steam and water mains or pipelines, electrical lights and power, telephone, television and cable conduits, poles, wires or cables) granted to, reserved or taken by any person;
3. title defects or irregularities which do not materially impair the use or marketability of the Purchased Units;
4. any rights of expropriation, access or use, or any other right conferred or reserved by or in any statute of Canada or the Province of Ontario;
5. improvements on adjoining lands encroaching onto any portion of the Purchased Units, and/or improvements situated on the Purchased Units encroaching onto any portion of an adjoining property, in both instances in a non-material manner;
6. any subdivision agreements, site plan control agreements, development agreements or other similar agreements with governmental authorities affecting the development or the use of the Purchased Units;
7. any facility, cost sharing, servicing, reciprocal or other similar agreements, which are necessary or of advantage to the use, operation, and/or enjoyment of the Purchased Units;
8. all rights reserved to or vested in any governmental authority or public or private utility by the terms of any lease, licence, franchise, grant, agreement or permit held by such authority or utility affecting the Purchased Units, or by any statutory provision to terminate any such lease, licence, franchise, grant, agreement or permit or to require annual or periodic payments as a condition of the continuance thereof or to distrain against or to obtain a lien on any property in the event of failure to make such annual or other periodic payments;
9. any subsisting restrictions, exceptions, reservations, limitation, provisos and conditions (including, without limitation, royalties, reservation of mines, mineral rights and timber rights, access to navigable waters and similar rights) expressed in any original grants from the Crown and any statutory limitations, exceptions, reservations and qualifications;

10. the provisions of applicable law including, without limitation, zoning, land use and building restrictions, by-laws, regulations and ordinances of governmental authorities, including municipal by-laws and regulations, airport zoning regulations, restrictive covenants and other land use limitations, public or private, by-laws and regulations and other restrictions as to the use of the Purchased Units;
11. the declaration, description, by-laws, and rules and regulations of the condominium corporation, and all leases, service, maintenance or license agreements of portions of common elements of the condominium; and
12. save and except for the Encumbrances listed in Schedule "C" to this Order, all other registrations against title to the Purchased Units, or any one of them.

**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- 30 ROE INVESTMENTS CORP.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER
(PH09)**

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

17

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) TUESDAY, THE 7th
)
JUSTICE STEELE) DAY OF FEBRUARY, 2023
)

B E T W E E N:

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-13, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**APPROVAL AND VESTING ORDER
(PH04)**

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) without security, of (i) the real property legally described in Schedule “A” to the Order (Appointing Receiver) of this Court dated May 9, 2022 (the “**Real Property**”), (ii) all assets, undertakings and properties of 30 Roe Investments Corp. (the “**Debtor**”) acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor’s rights, claims, advantages, benefits, title and interest in, to

and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder (collectively with (i), (ii) and (iii), the “**Property**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (as amended, the “**Sale Agreement**”) between the Receiver and Kevin Matthew Windsor, Carolyn Dunn-Windsor and Randall Windsor (collectively, the “**Purchaser**”) dated January 6, 2023, and appended to the Third Report of the Receiver dated January 26, 2023 (the “**Third Report**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the Real Property described in Schedule B hereto (the “**Purchased Units**”), was heard this day by Zoom videoconference.

ON READING the Third Report and on hearing the submissions of counsel for the Receiver, counsel for the Debtor, counsel for the Canadian Imperial Bank of Commerce, counsel for KingSett Mortgage Corporation and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Brennan Caldwell sworn January 27, 2023, filed:

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved *nunc pro tunc*, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Units to the Purchaser.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Receiver’s Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased Units described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims,

whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh in the within proceedings dated May 9, 2022; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the “**Encumbrances**”, provided “**Claims**” shall not include the permitted encumbrances, easements, restrictive covenants, and other matters listed on Schedule D hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Units are hereby expunged and discharged as against the Purchased Units.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Toronto (No. 66) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Purchased Units identified in Schedule B hereto in fee simple, and is hereby directed to delete and expunge from title to such Purchased Units all of the Claims listed in Schedule C hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Units shall stand in the place and stead of the Purchased Units, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Units with the same priority as they had with respect to the Purchased Units immediately prior to the sale, as if the Purchased Units had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the

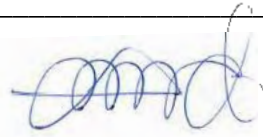
Bankruptcy and Insolvency Act (Canada) in respect of the Debtor and any

bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Units in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



Schedule A – Form of Receiver’s Certificate

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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

30 ROE INVESTMENTS CORP.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (the “**Court**”) dated May 9, 2022 (the “**Receivership Order**”), KSV Restructuring Inc. was appointed as the receiver and manager (in such capacity, the “**Receiver**”) without security, of (i) the real property legally described in Schedule “A” to the Receivership Order (the “**Real Property**”), (ii) all assets, undertakings and properties of 30 Roe Investments Corp. (the “**Debtor**”) acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor’s rights, claims, advantages, benefits, title and interest in, to and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder (collectively with (i), (ii) and (iii), the “**Property**”).

B. Pursuant to an Order of the Court dated [DATE] (the “**Sale Approval Order**”), the Court approved the agreement of purchase and sale made as of January 6, 2023 (as amended, the “**Sale Agreement**”) between the Receiver and Kevin Matthew Windsor, Carolyn Dunn-Windsor and Randall Windsor (collectively, the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Units, which vesting is to be effective with respect to the Purchased Units upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Units; and (ii) the Transaction (as defined in the Sale Approval Order) has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Units payable pursuant to the Sale Agreement; and
2. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**KSV Restructuring Inc., in its capacity as
receiver and manager of certain property of
30 Roe Investments Corp. and not in its
personal or corporate capacity**

Per: _____

Name:

Title:

Schedule B – Legal Description of Purchased Units

Dwelling Unit:

PIN 76559-0511 (LT)

UNIT 4, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Parking Unit:

PIN 76559-0585 (LT)

UNIT 62, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Storage Unit:

PIN 76559-0624 (LT)

UNIT 101, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Schedule C – Claims to be deleted and expunged from title to the Purchased Units

1. Instrument No. AT4477090, registered February 1, 2017, being a Charge in favour of Canadian Imperial Bank of Commerce (“**CIBC**”) securing the principal amount of \$368,462.
2. Instrument No. AT4477178, registered February 1, 2017, being a Notice of Assignment of Rents: General in favour of CIBC.
3. Instrument no. AT5110272, registered April 8, 2019, being a Charge in favour of Kingsett Mortgage Corporation (“**KS**”) securing the principal amount of \$1,875,000 (the “**KS Charge**”).
4. Instrument no. AT5110273, registered April 8, 2019, being a Notice of Assignment of Rents: General in favour of KS.
5. Instrument no. AT5731082, registered May 7, 2021, being a Notice in favour of KS in respect of the KS Charge.
6. Instrument no. AT6073332, registered May 10, 2022, being an Application to Register Court Order in respect of the Order (Appointing Receiver) of the Ontario Superior Court of Justice (Commercial List) dated May 9, 2022

For the avoidance of doubt, each of the aforementioned instruments is to be deleted and expunged from each of the PINs identified on Schedule B hereto.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Purchased Units**

(unaffected by the Vesting Order)

1. Encumbrances for real property taxes (which term includes charges, rates and assessments) for amounts the payment of which is not yet due or delinquent;
2. permits, reservations, covenants, water course, right of water, right of access or user licenses, easements, rights of way, restrictions, building schemes, licenses, restrictive covenants and servitudes, rights of access or user, airport zoning regulations and other similar rights in land (including, without limitation, licenses, easements, rights of way, servitudes and rights in the nature of easements for walkways, sidewalks, public ways, sewers, drains, gas, soil, steam and water mains or pipelines, electrical lights and power, telephone, television and cable conduits, poles, wires or cables) granted to, reserved or taken by any person;
3. title defects or irregularities which do not materially impair the use or marketability of the Purchased Units;
4. any rights of expropriation, access or use, or any other right conferred or reserved by or in any statute of Canada or the Province of Ontario;
5. improvements on adjoining lands encroaching onto any portion of the Purchased Units, and/or improvements situated on the Purchased Units encroaching onto any portion of an adjoining property, in both instances in a non-material manner;
6. any subdivision agreements, site plan control agreements, development agreements or other similar agreements with governmental authorities affecting the development or the use of the Purchased Units;
7. any facility, cost sharing, servicing, reciprocal or other similar agreements, which are necessary or of advantage to the use, operation, and/or enjoyment of the Purchased Units;
8. all rights reserved to or vested in any governmental authority or public or private utility by the terms of any lease, licence, franchise, grant, agreement or permit held by such authority or utility affecting the Purchased Units, or by any statutory provision to terminate any such lease, licence, franchise, grant, agreement or permit or to require annual or periodic payments as a condition of the continuance thereof or to distrain against or to obtain a lien on any property in the event of failure to make such annual or other periodic payments;
9. any subsisting restrictions, exceptions, reservations, limitation, provisos and conditions (including, without limitation, royalties, reservation of mines, mineral rights and timber rights, access to navigable waters and similar rights) expressed in any original grants from the Crown and any statutory limitations, exceptions, reservations and qualifications;

10. the provisions of applicable law including, without limitation, zoning, land use and building restrictions, by-laws, regulations and ordinances of governmental authorities, including municipal by-laws and regulations, airport zoning regulations, restrictive covenants and other land use limitations, public or private, by-laws and regulations and other restrictions as to the use of the Purchased Units;
11. the declaration, description, by-laws, and rules and regulations of the condominium corporation, and all leases, service, maintenance or license agreements of portions of common elements of the condominium; and
12. save and except for the Encumbrances listed in Schedule "C" to this Order, all other registrations against title to the Purchased Units, or any one of them.

**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- 30 ROE INVESTMENTS CORP.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER
(PH04)**

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

Christopher Armstrong LSO#: 55148B
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Tel: (416) 979-2211
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Lawyers for KSV Restructuring Inc. in its capacity
as Court-appointed Receiver

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SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT

COURT FILE NO.: CV-22-00674810-00CL DATE: **07-FEB-2023**

NO. ON LIST: 8

TITLE OF PROCEEDING: **KINGSETT MORTGAGE CORP V 30 ROE INVESTMENT**

BEFORE JUSTICE: **Madam Justice STEELE**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
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Noah Goldstein	KSV Restructuring Inc.	ngoldstein@ksvadvisory.com
Mark Dunn	KSV Restructuring Inc.	mdunn@goodmans.ca
Murtaza Tallat	KSV Restructuring Inc.	mtallat@ksvadvisory.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
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Ben Frydenberg	CIBC	ben@chaitons.com
Lou Brzeninski	30 Roe Investment Corp	lbrzezinski@blaney.com
Lucas Strezos	30 Roe Investment Corp	LStrezos@blaney.com
Daniel Pollak	Kingsett Mortgage	DPollack@Kingsettcapital.com
Raymond Zar	30 Roe Investment Corp	rz@roehamptoncapital.com
Darren Marr	CIBC	dmarr@chaitons.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE STEELE:

1. Motion by the Receiver for, among other things, approval of the sale of two of the properties: PH04 and PH09. The proposed sale was opposed by 30 Roe Investments Corp. (the “Company” or the “Debtor”).
2. The facts of this case are well known to the parties and do not need to be repeated here.

The Proposed Sale

3. The sales process was approved by Justice McEwen in July 2022. The amended sales process was approved in December 2022. Among other things, the Receiver was empowered to determine, in its sole discretion, which and how many of the units are to be listed for sale and the listing prices for the units.
4. The Receiver determined, with advice from the realtor, that the preferred course was not to flood the market with all of the condo units being listed at the same time. Accordingly, the Receiver implemented the sales process in respect of 2 of the condo units and now has firm sale agreements for PH04 and PH09. The Receiver seeks an approval and vesting order in respect of these sales.
5. The Debtor has made the same argument on this motion with regard to the proposed sale as was made before Justice McEwen when the sales process was determined. Specifically, the Debtor is of the view that the 9 condo units at 30 Roehampton Avenue ought to be sold as a going concern hospitality business, not sold as individual units. That argument was rejected by Justice McEwen. I note that the Debtor reserved its right to object to future sales of the units on the basis that an *en bloc* sale would generate more value.
6. The Receiver asked the Debtor for evidence supporting the Debtor’s view that a going concern sale would be preferable. This was not provided to the Receiver. There is correspondence from the Receiver following up on the request, including a list of what was required, but the Debtor did not provide the information. Accordingly, the Receiver made its own assessment based on the information it had available.
7. On the evening before this motion, the Debtor filed some evidence, which the Receiver asks the Court to disregard because the purported valuation that the Debtor provided was not prepared by a valuation expert, it was not supported by any of the underlying financial records of the Company and it is more than two years stale. The Receiver states that there is no evidence that the Debtor obtained the gross rents the report is premised on. The Receiver submits that what is most noteworthy about the late-breaking information is what is not there – the Debtor has still not provided up to date financial statements for the Company or information about the market for this type of business, among other things.

8. The Debtor also raised the issue of HST on the condo sales. The Debtor argues that if the units are sold individually HST will be levied, whereas if they are sold as a going concern business, there should not be HST. The Receiver acknowledged that HST may be an issue and has tried to analyze the issue. However, the Receiver states that the Debtor has not provided the Receiver with the information necessary to determine this issue. Further, the Receiver notes that there is no evidence that a going concern type of transaction would be available.
9. The Receiver states that the sales that have been secured will start to return money to the creditors whose interests are at stake. The proposed transactions will see CIBC, as first mortgagee, repaid its related mortgage loans in full. They are also supported by KingSett, the fulcrum secured creditor of the Company.
10. I also note that the Debtor previously asked for some time to permit refinancing, which was granted, and the sales process was paused. However, this did not come to fruition, and the sales process was restarted. It has been more than a year since the receivership application was first served.
11. The Debtor also argues that it tried to repay the debt to KingSett, but the Receiver asked for the insertion of a clause in the discharge order that prohibited the Company from taking any action against KingSett except with leave of the Court. The Debtor argues that the insertion of this clause effectively stopped the transaction, however it is not clear how. Further, the Receiver states that no money was tendered to either the Receiver or KingSett.
12. Under section 100 of the *Courts of Justice Act* (Ontario) the Court has the power to vest in any person an interest in real or personal property that the Court has the authority to order be disposed of, encumbered or conveyed.
13. Paragraph 3(1) of the receivership order expressly empowers and authorizes the Receiver “to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property.”
14. The Court of Appeal in *Royal Bank of Canada v. Soundair Corporation*, 1991 CanLII 2727 (Ont. C.A.) set out the criteria to be applied when considering the approval of a sale by a receiver:
 - a. Whether the receiver has made a sufficient effort to get the best price and 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 are obtained; and
 - d. Whether there has been unfairness in the workout of the process.
15. Initially HomeLife was engaged as the listing agent. HomeLife took steps to market the two units, including staging them, as needed, arranging for painting and minor repairs, and arranging for professional photographing of the units and a 3D virtual tour available on a dedicated website.
16. The two units were listed on MLS from about August 11, 2022 to about October 18, 2022. There were approximately 24 viewings of PH04 during this period, but no offers were received. There were approximately 18 views of PH09 during this period, but no offers were received. Feedback was provided that buyer agents advised that the asking prices were too high. Following the expiry of the listing agreement with HomeLife, RE/MAX was engaged as the new listing brokerage.

17. The Receiver planned to re-list PH04 at a reduced price on January 9, 2023. However, prior to such listing, the Receiver received an unsolicited offer. The Receiver and its agent negotiated with the potential buyer (including making two counter-offers), which resulted in the PH04 APS.
18. PH09 was re-listed at a reduced price on January 11, 2023. An offer was received on January 19, 2023. The Receiver and its agent negotiated with the potential buyer (including making a counter-offer), which resulted in the PH09 APS.
19. The Receiver recommends the Court approve the Transactions for several reasons. The Receiver states that:
 - 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 units will result in a superior transaction, including because the units are vacant and property taxes, condominium fees and other expenses continue to accrue; and
 - f. KingSett, the fulcrum creditor, supports the Transactions.
20. The Ontario Court of Appeal has emphasized that in assessing a sale by a court-appointed receiver, the Court must rely on the expertise and business judgment of the receiver and should only interfere in exceptional circumstances: *Soundair*, at paras. 16 and 58.
21. The Receiver sets out in detail at paragraph 44 of its factum how the *Soundair* criteria have been satisfied.
22. I am satisfied that the *Soundair* criteria have been met. The sale transactions are approved.

Interim Distributions

23. The Receiver proposes to make interim distributions, relying upon *AbitibiBowater Inc. (Arrangement relatif á)*, 2009 QCCS 6461 (CanLII), at para 87. The Debtor opposes the proposed interim distributions and states that the *AbitibiBowater* case is inapplicable to the facts. That case concerns a motion for the approval of DIP financing and the interim distribution of certain proceeds.
24. This is court monitored process. In my view, the Receiver ought to return to Court to seek approval for any distributions sought once the transactions have closed and the Receiver has additional information, in the usual way.

Removal of the Monitoring Equipment

25. The penthouse floor, where the 9 condominium units are located, contains security equipment, including camera and audio surveillance equipment (the “Monitoring Equipment”). The Company’s principal, Mr. Zar, has continued to access the Monitoring Equipment following the commencement of the

receivership. The Receiver proposes to disconnect and remove the Monitoring Equipment, which is opposed by the Debtor and Mr. Zar.

26. Mr. Zar takes the position that as a director of the condominium corporation he has the right to view the Monitoring Equipment and all cameras in the building as they are in the common elements.
27. The Receiver states that 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 is of the view that the Monitoring Equipment is “Property” within the meaning of the receivership order such that the Receiver may take possession and dispose of it.
28. The Receiver provided the Court with an email sent from the condominium corporation’s counsel, dated Feb. 6, 2023, which stated:

I can confirm that the Corporation will not be taking a position in the context of your upcoming motion.

The Corporation does not have, nor does it claim, any interest in the monitoring equipment referred to in your materials. This equipment does not belong to, and was not installed by or for the Corporation, despite said equipment having been installed on common elements. The Corporation has requested from Mr. Zar that the recording equipment be removed.

29. 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 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...”
30. I am satisfied that the Monitoring Equipment is “Property” within the meaning of the receivership order such that the Receiver may take possession of it and dispose of it.

Request for a Sealing Order

31. The Receiver seeks an order sealing the confidential appendices to the Third Report, which are copies of the unredacted agreements for the sale of PH04 and PH09, Remax’s recommendations to the Receiver in respect of the transactions and the Receiver’s Waterfall Analysis. The Receiver’s request is that the sealing order be time limited pending closing of the transactions or further order of the court. There is no opposition to the Receiver’s request for a sealing order.
32. Subsection 137(2) of the *Courts of Justice Act* provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record.
33. The Supreme Court of Canada, in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 38, articulated the test applicable when determining whether a sealing order ought to be granted:
 1. Court openness poses a serious risk to an important public interest;
 2. The order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
 3. As a matter of proportionality, the benefits of the order outweigh its negative effects.

34. Courts have acknowledged that there is public interest in maximizing recoveries in an insolvency that goes beyond the individual case: *Danier Leather Inc., Re*, 2016 ONSC 1044, at para. 84. In *Yukon (Government of) v. Yukon Zinc Corporation*, 2022 YKSC 2, the Yukon Supreme Court determined that generally where there is a sale process, all aspects of the bidding or sales process ought to be kept 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.

35. With regard to the second principle from *Sherman Estate*, this Court has recognized that public disclosure of a purchase price may jeopardize dealings with future prospective purchasers, which would pose a serious risk to stakeholders and the sale process. The Receiver states that if the purchase price of the two units were made publicly available, this could negatively impact the selling price if one or both of the transactions failed to close. Further, as noted above, there are other condominium units to be marketed and sold.

36. I agree that the benefits of the sealing order outweigh the negative effects. Importantly, the sealing order will preserve the integrity of the sale process. This greatly outweighs any negative effect that may result from temporarily restricting public access to a limited amount of information.

37. The requested sealing order is granted.

Provisional Execution Provision

38. On February 3, 2023, the Receiver served an updated version of the form of Order requested, which contained a new provision:

“THIS COURT ORDERS that this Order is subject to provisional execution notwithstanding any appeal brought in respect of this Order, pursuant to section 195 of the BIA.”

39. The respondents objected to the inclusion of this provision in the Order.

40. At the hearing of the motion on February 7, 2023, this issue was adjourned to February 13, 2023 to give the Company the opportunity to respond. The respondents gave an undertaking that they would not file a Notice of Appeal until this issue had been addressed by the Court.

41. On February 13, 2023, the hearing of this issue was further adjourned *sine die* on consent.

42. Orders to go in accordance with the attached.

Dated: February 13, 2023



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SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT

COURT FILE NO.: CV-22-00674810-00CL DATE: **16-FEB-2023**

NO. ON LIST: 8

TITLE OF PROCEEDING: **KINGSETT MORTGAGE CORP V 30 ROE INVESTMENT**

BEFORE JUSTICE: **Madam Justice STEELE**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

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Murtaza Tallat	KSV Restructuring Inc.	mtallat@ksvadvisory.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
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Mervyn Abramowitz	30 Roe Investment Corp	mabramowitz@blaney.com
Lucas Strezos	30 Roe Investment Corp	LStrezos@blaney.com
Raymond Zar	30 Roe Investment Corp	rz@roehamptoncapital.com
Darren Marr	CIBC	dmarr@chaitons.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF Justice STEELE:

1. Further to my endorsement, dated February 13, 2023, the parties returned on February 16, 2023 to address the issue of whether the Orders ought to include the following provision requested by the Receiver:

THIS COURT ORDERS that this Order is subject to provisional execution notwithstanding any appeal brought in respect of this Order, pursuant to section 195 of the BIA.

2. The Receiver requests the inclusion of the provisional execution clause largely as a result of the history of this matter. There have been numerous delays and adjournments. Further, after the receivership order was granted 30 Roe Investment Corp. (the “Company”) filed a Notice of Appeal and took the position that it had an automatic right of appeal under section 193 of the *Bankruptcy and Insolvency Act* (the “BIA”) and accordingly was entitled to an automatic stay under section 195 of the BIA pending the disposition of the appeal. KingSett brought a motion successfully quashing the Company’s appeal.
3. The Receiver is concerned about further delays, as the sales of PH04 and PH09 are scheduled to close on February 28, 2023. It is a condition of closing that the relevant approval and vesting order be in full force and effect on the closing date.
4. Sections 193 and 195 of the BIA provide:


193. Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge or the court in the following cases:

- (a) If the point at issue involves future rights;
- (b) If the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;
- (c) If the property involved in the appeal exceeds in value ten thousand dollars;
- (d) From the grant or a refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars; and
- (e) In any other case by leave of a judge of the Court of Appeal.

195. Except to the extent that an order or judgment appealed from is subject to provisional execution notwithstanding any appeal therefor, all proceedings under an order or judgment appealed from shall be stayed until the appeal is disposed of, but the Court of Appeal for a judge thereof may vary or cancel the stay or the order for provisional execution if it appears that the appeal is not being prosecuted diligently, or for such other reason as the Court of Appeal or a judge thereof may deem proper.

5. Although the Receiver does not believe that the Company would have an automatic right of appeal, and an automatic stay from the February 13, 2023 Orders, the Receiver is concerned that the Company will take the contrary position in light of the history of this matter.
6. The Court has the jurisdiction to make an order for provisional execution, however, such jurisdiction ought to be “exercised sparingly and with caution, given the normal operation of a notice of appeal:” *Century Services Inc. v. Brooklin Concrete Products Inc.*, [2005] O.J. No. 1246, 10 C.B.R. (5th) 169, at para. 5.
7. The Receiver points to the recent case, *YG Limited Partnership and YSL Residences (Re)*, 2021 ONSC 5206 (“*YSL*”), where this Court ordered provisional execution in the context of approving a BIA order. In *YSL* the Court found that provisional execution was appropriate for two reasons. First, there were delays and the Court wanted to preclude any further delay by way of a “simple expedient of filing a Notice of Appeal”. In that case the receivership application had been adjourned for about nine months pending the negotiation and approval of the debtor’s proposal. Second, provisional execution brought a “degree of uniformity” between BIA and *Companies’ Creditors Arrangement Act* proceedings, as there is no automatic stay pending appeal in CCAA proceedings.
8. The *YSL* matter involved a large project for an 85-story complex planned in downtown Toronto. There had been pre-sales of numerous condo units and the demolition of the old structures and shoring up of the excavation had been largely completed. The project had ground to a halt and was on hold at a point where it was just a big hole in the ground. When the provisional execution order was sought it had been about nine months since the adjournment of receivership application. The Court was concerned about further delays. The *YSL* matter involved a huge project that had essentially been put on hold, impacting numerous stakeholders.
9. The Receiver also relied upon *Computershare Trust Company of Canada v. Beachfront Developments Inc. and Beachfront Realty Inc.*, 2010 ONSC 4833. In that case, the Court permitted the order to be subject to provisional execution. In finding that the order could include the provisional execution clause the Court noted the concern of the receiver that there was a substantial risk that Canada Post, a tenant in the premises at issue, would not renew its lease and would move elsewhere. If this were to occur, “the value of the property under receivership would likely deteriorate substantially without Canada Post being a tenant.”
10. *YSL* and *Computershare* both involved extraordinary circumstances. That is not the case here.
11. The Receiver acknowledges that the circumstances do not appear extraordinary. However, the Receiver argues that the lengths the debtor has gone to in order to thwart the receivership process have been extreme.
12. The Company argues that the unusual and rare relief of provisional execution is not appropriate in this case.
13. The Company submits that following the release of my judgment on February 13, 2023, it has 10 days to contemplate whether to appeal and whether to take the position that an automatic stay applies. The respondents are considering whether to appeal and require time to consider. It argues that the Court should not cut short the respondents’ appeal rights. The Receiver’s position is that the respondents would still have time to seek leave from the Court of Appeal if the provision is included.

14. The Company further submits that the parties who purchased the condo units were aware that they are subject to an approval and vesting process, which could delay their closing. Further, the Company argues that the respondents will be potentially prejudiced by the inclusion of this provision.
15. I agree with the Company. The sales of properties subject to approval and vesting orders are common occurrences in insolvency proceedings. The fact that there is an upcoming closing date for a sale of a property is not sufficient as to constitute the type of extraordinary circumstances necessary to alter a party's appeal rights. There is a statutory scheme regarding appeals in the BIA. Although section 195 of the BIA contemplates that an order may be subject to provisional execution, it is clear from the few cases cited that this is an extraordinary provision.
16. The Receiver's request to include the provisional execution provision in the Orders is dismissed.

 Digitally signed
by Jana Steele
Date: 2023.02.16
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SUPERIOR COURT OF JUSTICE
COUNSEL SLIP

COURT FILE

NO.: CV-22-00674810-00CL

DATE: 10-MAR-2023

TITLE OF
PROCEEDING

KINGSETT MORTGAGE CORPORATION
v.
30 ROE INVESTMENTS CORP.

BEFORE JUSTICE STEELE

NAMES OF COUNSEL AND PARTY:

<input checked="" type="checkbox"/> APPLICANT(S)		PHONE	_____
Richard Swan			
(Counsel to KINGSETT MORTGAGE CORPORATION)			
<input type="checkbox"/> PLAINTIFF(S)		EMAIL	<u>swanr@bennettjones.com</u>

NAMES OF COUNSEL AND PARTY:

RESPONDENT(S)			
<input checked="" type="checkbox"/> Lucas Strezos and Mervyn D. Abramowitz– Moving to get off the Record		PHONE	_____
(Counsel to 30 ROE INVESTMENTS CORP.)			
<input type="checkbox"/> RESPONDENT(S)			
<input type="checkbox"/> DEFENDANT(S)		EMAIL	<u>lstrezos@blaney.com;</u> <u>mabramowitz@blaney.com</u>
<input type="checkbox"/> DEFENDANT(S)		PHONE	_____
		EMAIL	_____

NAMES OF COUNSEL AND OTHER PARTIES:

Mark Dunn		PHONE	_____
(Counsel to The Receiver, KSV RESTRUCTURING)			
Brian N. Radnoff and James M. McKeon		EMAIL	<u>mdunn@goodmans.ca;</u> <u>bradnoff@dickinson-wright.com;</u> <u>jmckweon@dickinson-wright.com;</u> <u>wngai@loonix.com</u>
<input checked="" type="checkbox"/> (Counsel to 729171 ALBERTA INC.)			
Wendy Ngai		PHONE	_____
(Counsel to ANGELA FONG AND JACK FONG in CV-22- 00676835-0000)			
<input type="checkbox"/>		EMAIL	_____

ENDORSEMENT OF JUSTICE STEELE:

[1] This is a motion by Blaney McMurtry LLP (“Blaneys”) to be removed as lawyer of record for 30 Roe Investments Corp. (“30 Roe”) pursuant to Rule 15.04 of the *Rules of Civil Procedure* in respect of this matter (Kingsett Mortgage Corporation v. 30 Roe Investments Corp.) (the “Kingsett Matter”).

[2] Blaneys also seeks to be removed as lawyer of record for Raymond Zar and companies in respect of which Mr. Zar is the principal in four other matters currently before this Court: Epic Paving & Contracting Ltd. v. 170 Willowdale Investment Corp. c.o.b. as The Willowdale Hotel, Raymond Zar and 729171 Alberta Inc. (CV-21-00671802-0000) (the “Epic Paving Matter”), Jack Fong and Angela Fong v. 170 Willowdale Investments Corp. and Raymond Zar (CV-22-00676835-0000) (the “Jack and Angela Fong Matter”), Alexis Girgis v. Raymond Zar, Zar Advisory Corporation and Roehampton Capital (CV-22-00677148-0000) (the “Alexis Girgis Matter”), Esmaeil Mehrabi and Mehrabi Law Office v. Raymond Zar, Roehampton Capital Corporation, 30 Roe Investments Corporation, Mary-Am Hospitality Corporation, Maryam Travel Inc., Mary-Am Corporation, Maryam Maids Inc., 170 Willowdale Investments Corporation and Zar Advisory Corp. (CV-22-00685217-0000) (the “Mehrabi Law Matter”).

[3] In his endorsement, dated March 3, 2023, Justice Osborne considered whether Blaneys had to appear on five separate occasions seeking removal as counsel of record, with the same evidence, or whether this could be addressed at one motion (including the notice of motion for each of the five matters). In determining that one appearance in respect of the 5 matters made practical sense, Justice Osborne stated:

It makes practical sense to avoid requiring counsel to bring five identical motion records, with the identical evidence, in each of the five proceedings. Such duplicates the work for both the parties and for the Court. The motion materials will reflect the fact that the same relief (removal from the record) is being sought in each of the five proceedings, to be identified by title of proceeding and Court file number....

If the judge hearing the motions on March 10 is so inclined to grant relief, and subject to whatever that judge may determine to do or not do, one endorsement or order can be made with effect in all five proceedings.

[4] I agree with Justice Osborne. Blaneys advised that all the parties the five matters were notified of the motion.

[5] Counsel appeared on the Kingsett Matter, the Epic Paving Matter, and the Jack and Angela Fong Matter.

[6] The motion was heard via Zoom. Raymond Zar, the principal of 30 Roe Investments and the defendants in the other actions (other than 729171 Alberta Inc.), did not attend, despite having been provided with the motion materials (including the unredacted motion record).

Kingsett Matter

[7] Counsel for the Receiver on the Kingsett Matter advised that Blaneys is the fifth firm the debtor has retained in the receivership proceedings.

[8] The Receiver states that Blaneys’ withdrawal should not interfere with the progress of the receivership. The Receiver advised the Court that its efforts will continue in accordance with the existing orders of this Court.

In the event that 30 Roe intends to take a position or act in these proceedings, it should act expeditiously to retain counsel.

[9] The Receiver further advised the Court that Blaneys filed a Notice of Appeal on behalf of the Company at the Ontario Court of Appeal to prevent two sales approved by Court Orders dated February 7, 2023 from closing. The Receiver has brought a motion to quash this appeal so that the sales may proceed.

[10] Accordingly, the Receiver states that while it is not opposing Blaneys' removal in these proceedings, this is without prejudice to the Receiver's right to oppose Blaneys' removal as counsel of record at the Court of Appeal, as the matter before the Court of Appeal is urgent.

[11] Kingsett reiterated that my Order removing Blaneys as counsel of record for 30 Roe is restricted to the Superior Court of Justice proceedings and emphasized the urgency of the matter pending before the Court of Appeal. Although Kingsett does not oppose Blaneys removal as counsel of record for 30 Roe in this Court, Kingsett is concerned about further delays by Mr. Zar given the history of this matter.

The Jack and Angela Fong Matter

[12] Jack and Angela Fong do not oppose Blaneys' motion. However, counsel indicated that they wish to continue to move the matter forward and do not want to suffer a delay as a result of this.

Epic Paving Matter

[13] With regard to the Epic Paving Matter, Blaney informed the Court that the firm was retained by Mr. Zar in respect of all three defendants (including 729171 Alberta Inc., "729"). However, Blaney was very recently notified that 729 is not related to Mr. Zar. Accordingly, Blaney has agreed to remain as counsel of record until 729 can retain counsel.

[14] 729's regular counsel (not retained at this point in respect of the Epic Paving Matter) advised the Court that 729 did not know about the Epic Paving Matter litigation until last Friday. He asked that 729 be given 30 days to assess the claim to determine who will be retained as their counsel and reach out to the plaintiff.

[15] Further to Rule 1.05, no steps may be taken against 729 in the Epic Paving Matter for 30 days in order to provide 729 with the opportunity to assess the claim and retain counsel.

Blaneys' Motion

[16] Blaneys provided the Court with unredacted Motion materials. The reasons for Blaneys' decision to withdraw as counsel are confidential. That portion of the motion was conducted *in camera* without the participation of any of the parties. I am satisfied that there has been an irreparable breakdown in the relationship between Blaneys and Mr. Zar.

[17] Having read the motion materials, including the affidavit of Chad Kopach, and heard the submissions of Blaneys, the requested orders are granted (attached).



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COURT OF APPEAL FOR ONTARIO

CITATION: KingSett Mortgage Corporation v. 30 Roe Investments Corp.,
2023 ONCA 196
DATE: 20230320
DOCKET: M54109 (COA-23-CV-0215)

Lauwers J.A. (Motion Judge)

BETWEEN

KingSett Mortgage Corporation

Plaintiff
(Responding Party/Respondent)

and

30 Roe Investments Corp.

Defendant (Appellant)

Mervyn D. Abramowitz and Lucas Strezos, for the moving party

Carlie Fox, for the Receiver of 30 Roe Investment Corp., KSV Restructuring Inc.

Richard Swan, for the responding party

Heard: March 17, 2023

ENDORSEMENT

[1] Blaney McMurtry LLP (“Blaneys”) moved for an order under r. 15.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, seeking to remove the firm as lawyer of record for the Appellant, 30 Roe Investment Corp. (“30 Roe”). I dismissed the motion with reasons to follow. These are the reasons.

A. CONTEXT FOR THE MOTION

[2] Blaneys served a notice of appeal dated February 23, 2023 from the decision of Steele J. dated February 13, 2023 granting and approving a vesting order relating to the sale of two condominium units by KSV Restructuring Inc., the Receiver of 30 Roe, to close by the end of March 2023. The appeal jeopardizes the transaction.

[3] On March 1, 2023, the Receiver served a motion for an Order to quash 30 Roe's appeal, to expedite the hearing of the Appeal, and to lift any automatic stay of proceedings arising as a result of the appeal. The Receiver's motion is scheduled before a panel of three Judges of the Court of Appeal on March 27, 2023.

[4] The background to the motion is taken from the affidavit of Chad Kopach, a Blaneys partner.

[5] The lender, KingSett Mortgage Corporation, brought a receivership application against 30 Roe. On May 9, 2022, KSV Restructuring Inc. was appointed as receiver and manager over certain assets and undertakings of 30 Roe, including but not limited to certain real property. The principal of 30 Roe is Raymond Zar.

[6] On February 7, 2023, the Receiver brought a motion for two approval and vesting orders from the Superior Court in respect of the sale of two condominium units.

[7] Arguments started before Steele J. of the Commercial List on February 7, 2023 and were adjourned to February 13, 2023, when the decision was expected. Due to the illness of one of 30 Roe's lawyers at Blaneys, the matter was again adjourned to February 16, 2023.

[8] In her endorsement dated February 13, 2023, Steele J. approved the transactions and granted the approval and vesting orders.

[9] Mr. Kopach states that: "On or about February 17, 2023, Zar advised Blaneys that he wished to appeal the AYO Orders, and instructed Blaneys to proceed with the appeal." On February 23, 2023, Blaneys served the notice of appeal but advised Zar that it would be bringing a motion to get off the record if he did not retain new counsel. Mr. Kopach also attests that Blaneys "advised Zar on multiple occasions... that it will no longer act for 30 Roe, the Remaining Zar Companies or Zar personally."

[10] By endorsement dated March 10, 2023, Steele J. removed Blaneys as lawyers of record for 30 Roe in the underlying matter before the Superior Court of Justice (Commercial List). Her endorsement provides additional context:

Counsel for the Receiver on the Kingsett Matter advised that Blaneys is the fifth firm the debtor has retained in the receivership proceedings.

The Receiver states that Blaneys' withdrawal should not interfere with the progress of the receivership. The Receiver advised the Court that its efforts will continue in accordance with the existing orders of this Court. In the event that 30 Roe intends to take a position or act in these proceedings, it should act expeditiously to retain Counsel.

The Receiver further advised the Court that Blaneys filed a Notice of Appeal on behalf of the Company at the Ontario Court of Appeal to prevent two sales approved by Court Orders dated February 7, 2023 from closing. The Receiver has brought a motion to quash this appeal so that the sales may proceed.

Accordingly, the Receiver states that while it is not opposing Blaneys' removal in these proceedings, this is without prejudice to the Receiver's right to oppose Blaneys' removal as counsel of record at the Court of Appeal, as the matter before the Court of Appeal is urgent.

Kingsett reiterated that my Order removing Blaneys as counsel of record for 30 Roe is restricted to the Superior Court of Justice proceedings and emphasized the urgency of the matter pending before the Court of Appeal. Although Kingsett does not oppose Blaneys removal as counsel of record for 30 Roe in this Court, Kingsett is concerned about further delays by Mr. Zar given the history of this matter.

...

Blaneys provided the court with unredacted motion materials. The reasons for Blaneys' decision to withdraw as counsel are confidential. That portion of the motion was conducted *in camera* without the participation of any of the parties. I am satisfied that there has been an

irreparable breakdown in the relationship between Blaneys and Mr. Zar.

[11] As noted, Steele J. granted an order taking Blaneys off the record.

B. ANALYSIS

[12] I too was provided with an unredacted record and in ordinary circumstances would not hesitate to give a similar order respecting Blaneys' involvement in the appeal. But these are not ordinary circumstances.

[13] There is relatively sparse law on when the court should exercise its discretion to refuse to take a law firm off the record. The cases focus on the interests of the client: see *R. v. Cunningham*, 2010 SCC 10, [2010] 1 S.C.R. 331, at paras. 49-50, and *Todd Family Holdings Inc. v. Gardiner*, 2015 ONSC 6590, 127 O.R. (3d) 714. The administration of justice must also be considered: *Cunningham*, at para. 45.

[14] I am satisfied that Blaneys gave 30 Roe and Mr. Zar adequate notice of the need to appoint new counsel expeditiously. That has not yet occurred and might not. However, the other parties fear that a lawyer will show up on the eve of the argument of the motion to quash and request an adjournment, which, if granted, would give Mr. Zar the result he wants, that the transactions do not close.

[15] In this case the court-appointed receiver has given its best advice to the court, which the court accepted. Priority should in this case be given to the

administration of justice, not to the interests of Blaneys in avoiding the possibly unremunerated expense of further involvement.

[16] It is clear from the affidavit of Mr. Kopach that Blaneys had no intention of proceeding with the appeal. There is, in my view, an ethical obligation on an officer of the court to do no harm to court proceedings. Here, by launching a zombie appeal in which it intended to have no involvement, Blaneys knew that it was throwing a grenade into receivership proceedings in which it had participated. This action is disrespectful of the court. What Blaneys ought to have done was not to have filed a notice of appeal, leaving it to 30 Roe and Mr. Zar to take whatever steps they thought appropriate once Blaney exited, as the firm could have done under the order of Steele J. on March 10. Instead, Blaneys permitted its status as an officer of the court and the solicitor of record to be abused.

[17] Mr. Kopach's affidavit of March 1 states, at para. 18: "There are no other approaching deadlines in the Receivership, nor in the other four SCJ Matters for that matter." But, as Steele J. noted in her March 10 endorsement, this does not tell the whole story:

The Receiver further advised the Court that Blaneys filed a Notice of Appeal on behalf of the Company at the Ontario Court of [Appeal] to prevent two sales approved by Court Orders dated February 7, 2023 from closing. The Receiver has brought a motion to quash this appeal so that the sales may proceed.

[18] While it is rare for a court to exercise its discretion and refuse to permit a law firm to get off the record, this is one such instance. There is some ceremony around a lawyer getting on and off the record before the court, as is revealed in r. 15, for good reason. Lawyers are in many ways the privileged gatekeepers to the courts and should take their obligations seriously, both to clients, the other parties in lawsuits, and to the court.

C. DISPOSITION

[19] For these reasons, I dismissed Blaneys' motion for an order under r. 15.04 of the *Rules of Civil Procedure* removing the firm as lawyer of record for the appellant, 30 Roe Investment Corp. Unless the appellant appoints new counsel, Blaneys is to remain counsel of record until the final disposition of the motion to quash on March 27, 2023.

Plawers J.A.

22

COURT OF APPEAL FOR ONTARIO

CITATION: KingSett Mortgage Corporation v. 30 Roe Investments Corp.,
2023 ONCA 219
DATE: 20230329
DOCKET: M54133 (COA-23-CV-0215)

Brown, Trotter and Paciocco JJ.A.

BETWEEN

KingSett Mortgage Corporation

Applicant
(Respondent/Responding Party)

and

30 Roe Investments Corp.

Respondent
(Appellant/Responding Party)

Mark Dunn, for the moving party Receiver, KSV Restructuring Inc.

Mervyn Abramovitz and Lou Brzezinski, for the responding party 30 Roe Investments Corp.

Richard Swan, for the respondent KingSett Mortgage Corporation

Darren Marr, for the Canadian Imperial Bank of Commerce

Raymond Zar, acting in person in his capacity as a guarantor of the responding party's debt

Heard: March 27, 2023

On appeal from the orders of Justice Jana Steele of the Superior Court of Justice, dated February 7, 2023.

REASONS FOR DECISION

I. OVERVIEW

[1] The court-appointed receiver, KSV Restructuring Inc., moves for: (i) an order quashing the February 23, 2023 appeal initiated by the respondent debtor, 30 Roe Investments Corp. (“30 Roe”), from the two February 7, 2023 approval and vesting orders made by Steele J. (the “Approval Orders”); (ii) alternatively, an order expediting the appeal; (iii) in the further alternative, an order denying 30 Roe leave to appeal the Approval Orders under s. 193(e) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“*BIA*”); and (iv) in the further alternative, an order pursuant to *BIA* s. 195 lifting any automatic stay of the proceedings.

[2] The Approval Orders authorized the Receiver to complete sale transactions for two of the nine units owned by 30 Roe at the Minto 30 Roe condominium building, specifically units PH04 and PH09.

[3] Although the agreements for purchase and sale of those two units between the receiver and the purchasers contemplated an end of February closing, amending agreements filed in the motion record extended the closing dates for both transactions to the end of this week, Friday, March 31, 2023.

[4] A personal guarantor of the company’s indebtedness, Raymond Zar, who is also the principal of 30 Roe, opposes the Receiver’s motion.

II. KEY EVENTS CONCERNING THE RECEIVERSHIP

[5] The events leading up to the appointment of a receiver over 30 Roe were described by this court in its decision quashing the company's appeal from the May 9, 2022 Receivership Order: 2022 ONCA 479.

[6] Since that time, the Receiver obtained from McEwen J. a July 18, 2022 Sale Process Approval Order, which authorized the Receiver to proceed with an individual-unit sales process described in s. 4.0 of its First Report (the "July Sales Order"). In approving that marketing and sales approach, McEwen J. rejected 30 Roe's submission that the nine units should "be sold en masse, essentially as an income producing hospitality-type of model akin to a hotel." No appeal was taken from the July Sales Order.

[7] McEwen J. subsequently authorized the Receiver to change listing agents for the sale of the units in his December 14, 2022 order (the "December Sales Order"). No appeal was taken from the December Sales Order.

[8] Earlier this year, the Receiver negotiated sale agreements for PH04 and PH09. The Receiver provided details of the events leading up to those agreements, including the listing history for the two units, in s. 4.0 of its Third Report dated January 26, 2023. In s. 4.5 of that report, the Receiver addressed the debtor's continued insistence that the nine units be sold as a block. In s. 4.5(6) the Receiver stated: "Based on its own review of the information

available to it, the Receiver continues to believe there is no merit to the suggestion that the Units could be sold as a going concern hospitality business for a premium relative to the individual resale value of the Units”.

[9] The Receiver moved before Steele J. for approval of the two sale transactions.

[10] The day before the return of that motion, 30 Roe filed an affidavit from Mr. Zar that repeated the company’s criticism of the Receiver’s plan to market the units individually. Mr. Zar contended that individual sales would not realize the units’ optimum value. He deposed, at paras. 12 and 13 of his affidavit, that an income approach was more suitable for determining the aggregate value of the units (which he described as a business). Mr. Zar deposed that he valued the units on a “going concern” basis at approximately \$12.476 million as of February 6, 2023.

[11] Steele J. was not persuaded by Mr. Zar’s personal valuation and advocacy of an *en bloc* sale. She noted in her February 7, 2023 endorsement that:

- McEwen J. had rejected the “same argument” when he made the July Sales Approval Order;
- The Receiver had asked 30 Roe several times for evidence supporting the debtor’s view that a going concern sale would be preferable but 30 Roe did not provide such information; and

- The Receiver challenged the reliability of the valuation proffered by Mr. Zar, observing that 30 Roe had not provided up-to-date financial statements or information about the market for the type of business it contended was operated using the nine condominium units.

[12] Steele J. was satisfied that the criteria enumerated by this court in *Royal Bank of Canada v. Soundair Corporation* (1991), 83 D.L.R. (4th) 76 (Ont. C.A.) had been met. She approved the two sale transactions and granted the Approval Orders.

[13] On February 23, 2023, 30 Roe served a notice of appeal from the Approval Orders (the “Notice of Appeal”).

III. PROCEDURAL ISSUES

[14] Before dealing with the relief sought by the Receiver in its notice of motion, we wish to recount several procedural issues raised by Mr. Zar during this appeal.

[15] On the initial return of the motion on Monday, March 27, 2023 before a slightly differently constituted panel, Mr. Zar asked Lauwers J.A. to recuse himself from the panel. The previous week, Lauwers J.A. had heard and denied a motion by 30 Roe’s counsel of record, Blaney McMurtry LLP, to remove itself from the record: 2023 ONCA 196. Lauwers J.A. acceded to Mr. Zar’s request and recused himself. As a result, one of the scheduled duty judges, Brown J.A., joined the panel.

[16] Upon the resumption of the hearing before the reconstituted panel, Mr. Zar requested a 24-hour adjournment of the hearing to permit the filing of a responding factum. By way of background, on Friday, March 24, 2023, Blaneys had sent a letter to the court advising that “our client has instructed us to not to file any responding material” on the Receiver’s motion to quash. As a result, no responding materials were before the panel.

[17] When this correspondence was brought to Mr. Zar’s attention, he orally changed his instructions to Blaneys in open court. Mr. Zar wanted Blaneys to make submissions on behalf of 30 Roe as they were still on the record. Counsel from Blaneys was not prepared to do so.

[18] From the interaction between counsel from Blaneys and Mr. Zar, it was clear to the panel that a complete breakdown had occurred between the law firm and its client. In those circumstances, the panel had no confidence that if we were to compel Blaneys to make submissions, Mr. Zar as the principal of 30 Roe or on his own behalf would accept the adequacy or appropriateness of those submissions or their faithfulness to instructions he had given Blaneys. Consequently, we informed Mr. Zar that we would not call on Blaneys but would hear submissions from him on behalf of 30 Roe.

[19] We advised Mr. Zar that if he wished to file with our court registrar a draft respondent’s factum that he was holding in his hands, we would have the registrar

make copies for the panel so that we could review it before the continuation of the hearing. We granted Mr. Zar a 30-minute adjournment to decide whether he would file the factum and send electronic copies to the other parties. We thereupon recessed for 30 minutes.

[20] Upon resuming, the panel learned that Mr. Zar had not filed a factum for the panel's consideration or provided copies to the other parties.

[21] Instead, Mr. Zar requested that Brown J.A. recuse himself because, according to Mr. Zar, some familial relationship created a conflict of interest. When questioned, Mr. Zar was not prepared to name the person who allegedly had some familial relationship with Brown J.A. that might create a conflict. Consequently, the panel called on the moving party Receiver's counsel to make his submissions on the motion.

[22] When the panel called upon Mr. Zar to make responding submissions, he advised that a medical condition of his was making it difficult for him to formulate submissions. The panel offered, and Mr. Zar accepted, a 10-minute recess to allow him to collect his thoughts. Upon reconvening, argument of the motion proceeded to its conclusion, with the panel taking the matter under reserve.

[23] Throughout the hearing Mr. Zar took the position that the submissions he made were solely in his capacity as a guarantor of the corporate debt of 30 Roe

and not on behalf of the company, although the substance of his submissions certainly conveyed a response by the debtor corporation to the Receiver's motion.

IV. ANALYSIS

The Receiver's motion to quash

[24] Although in a factum filed on a provisional execution motion below 30 Roe agreed that an appeal in the matter could only proceed with leave, apparently it "walked back" that admission during the course of argument. Consequently, we will examine whether in the specific circumstances of this case an appeal as of right lies under s. 193 from the Approval Orders.

[25] Consideration of the Receiver's motion to quash must begin with an examination of the order sought to be appealed and the grounds of appeal pleaded by 30 Roe in its Notice of Appeal.

[26] The Approval Orders follow the form of standard Commercial List approval and vesting orders: they approve the sale transactions; authorize the Receiver to execute the sale agreements "with such minor amendments as the Receiver may deem necessary" and to "execute such additional documents as may be necessary or desirable for the completion" of the transactions; and provide that upon the delivery of a Receiver's Certificate all of the debtor's right, title, and interest in the purchased units shall vest absolutely in the purchaser free and clear from all security interests. The Approval Orders make no provision for the distribution of

the sale proceeds. Pursuant to para. 12 of the initial Receivership Order, the Receiver must deposit those funds into an account and hold the monies “to be paid in accordance with the terms of this Order or any further Order of this Court.”

[27] The grounds of appeal advanced by 30 Roe in its Notice of Appeal reflect the debtor’s repeatedly expressed view that the nine units should be sold *en bloc*, not individually. The Notice of Appeal alleges that:

- the Receiver ought not to have marketed the units as separate properties;
- the evidence on the motion was clear that the units were part of a larger commercial “Enterprise”, a term 30 Roe and Mr. Zar use to describe a hospitality business they contend the nine units collectively supported;
- the failure to market the units for sale together led to a marked diminution in the value of the Enterprise;
- the motion judge “failed to appreciate the entire concept of the Enterprise and the loss in value of the Enterprise, if the Units were sold off separately”;
- the motion judge failed to apply the *Soundair* test “as the Units ought not to have been marketed or offered for sale in the first place”; and
- the motion judge “failed to find that the marketing and offering of the Units for sale here, on their own, would not be in the best interests of the creditors or other stakeholders here.”

[28] The Notice of Appeal states that 30 Roe has an appeal as of right pursuant to *BIA* ss. 193(a)-(c). We shall consider each provision.

[29] As to *BIA* s. 193(a), 30 Roe’s Notice of Appeal from the Approval Orders does not raise any “point in issue [that] involves future rights”. The narrow scope of the concept of future rights was described in *Business Development Bank of*

Canada v. Pine Tree Resorts Inc., 2013 ONCA 282, 115 O.R. (3d) 617, at para. 15: “Future rights’ are future legal rights, not procedural rights or commercial advantages or disadvantages that may accrue from the order challenged on appeal. They do not include rights that presently exist but that may be exercised in the future”.

[30] In the present case, the Notice of Appeal challenges the Approval Orders on the basis of the methodology, or procedure, followed by the Receiver for the unit sale process and alleged commercial disadvantages caused by that process. 30 Roe’s appeal concerns rights that presently exist, not ones that may be exercised in the future. Consequently, the appeal of the Approval Orders does not engage *BIA* s. 193(a).

[31] Under *BIA* s. 193(c), an appeal as of right lies “if the property involved in the appeal exceeds in value ten thousand dollars.” There is no dispute that the sale price for both units exceeds \$10,000. However, the jurisprudence on *BIA* s. 193(c), as summarized by this court in *Hillmount Capital Inc. v. Pizale*, 2021 ONCA 364, 462 D.L.R. (4th) 228, at paras. 36-39, identifies three types of orders that do not fall within the ambit of that section:

- an order that does not result in a loss or does not “directly involve” property exceeding \$10,000 in value;
- an order that does not bring into play the value of the debtor’s property; or
- an order that is procedural in nature.

[32] To determine whether an order sought to be appealed falls within *BIA* s. 193(c), a court must analyze the economic effect of the order: *Hillmount*, at para. 41. As stated in *Hillmount*, at para. 42:

What is required in any consideration of whether the appeal of an order falls within *BIA* s. 193(c) is a critical examination of the effect of the order sought to be appealed. Such an examination requires scrutinizing the grounds of appeal that are advanced in respect of the order made below, the reasons the lower court gave for the order, and the record that was before it. The inquiry into the effect of the order under appeal therefore is a fact-specific one; it is also an evidence-based inquiry, which involves more than merely accepting any bald allegations asserted in a notice of appeal: *Bending Lake [infra]*, at para. 64. [*MNP Ltd. v. Wilkes*, 2020 SKCA 66, 449 D.L.R. (4th) 439] concurs on this point, holding, at para. 64, that the loss claimed must be “sufficiently grounded in the evidence to the satisfaction of the Court determining whether there is a right of appeal,” a point repeated in the subsequent chambers decision in *Re Harmon International Industries [Inc.]*, 2020 SKCA 95, 81 C.B.R. (6th) 1], at para. 32.

[33] In the present case, the Approval Orders authorized the Receiver to proceed with sale transactions for two units. Section 4.0 of the Receiver’s Third Report detailed the listing history (including listing prices) for both units. Unredacted copies of the negotiated agreements of purchase and sale were provided to the debtor and were before the motion judge. No evidence was put before the motion judge that the sale prices for both transactions were unreasonable or not reflective of prevailing market conditions. Accordingly, there was no basis to suggest that

approval of the two transactions would result in a “loss” of value for the properties when compared to available market prices.

[34] Instead, 30 Roe sought to oppose the sale transactions by repeating the “*en bloc* sale” argument it had made at the time of the July Sales Order but which McEwen J. had rejected. On its face, the evidence 30 Roe filed before Steele J. carried virtually no weight, consisting as it did of a bald assertion by Mr. Zar about the possible value of an *en bloc* transaction that was not supported by an independent valuation and was advanced against a history of 30 Roe refusing requests by the Receiver for financial information about the “Enterprise”.

[35] Moreover, the position taken by 30 Roe before Steele J. amounted to a collateral attack on the July and December Sales Orders, which it had not appealed. 30 Roe repeated its *en bloc* arguments before McEwen J. in December and then before Steele J., taking the position that it had “reserved” its right to object to future sales on the basis that an *en bloc* sale would generate more value. That unilateral reservation of rights did not alter the legal effect of the July and December Sales Orders under which the court authorized the Receiver to market and sell the units individually, which the Receiver did.

[36] By failing to appeal and set aside the July and December Sales Orders, 30 Roe lost the legal basis to advance an argument that the Approval Orders would create a loss of value by reason of the individual-unit marketing and sales

methodology used by the Receiver as compared to an “*en bloc*” sales process. It was the July Sales Order, not the Approval Orders, that put in jeopardy any difference in value of the property that might arise from an “individual-unit” sales approach as compared to an “*en bloc*” sales approach. Given that 30 Roe’s Notice of Appeal asserts no other basis on which to reverse the Approval Orders, in the circumstances of this case its appeal from the Approval Orders does not fall within the ambit of *BIA* s. 193(c).

[37] Finally, 30 Roe’s appeal does not fall within the ambit of *BIA* s. 193(b), which provides an appeal as of right “if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings.” The jurisprudence has consistently interpreted *BIA* s. 193(b) as meaning that a right of appeal will lie where “the decision in question will likely affect another case raising the same or similar issues in the same bankruptcy proceedings” as the provision concerns “real disputes” likely to affect other cases raising the same or similar issues in the same bankruptcy or receivership proceedings: see *2403177 Ontario Inc. v. Bending Lake Iron Group Limited*, 2016 ONCA 225, 396 D.L.R. (4th) 635, at para. 32.

[38] As mentioned, by failing to appeal and set aside the July and December Sales Orders, 30 Roe lost the legal basis to advance an argument that the Approval Orders – or subsequent approval orders for other individual units – would create a loss of value by reason of the individual-unit marketing and sales methodology used by the Receiver. Further, subsequent motions by the Receiver

for the approval of sale transactions for other units will be decided upon the evidence related to those sale transactions, not the transactions for PH04 and PH09 authorized by the Approval Orders.

[39] For these reasons, we conclude that 30 Roe's appeal does not fall within the ambit of *BIA* ss. 193(a)-(c). Accordingly, we quash its appeal.

Leave to appeal

[40] Although 30 Roe did not file a notice of motion seeking leave to appeal the Approval Orders pursuant to *BIA* s. 193(e), it did seek such alternative relief in its Notice of Appeal. As well, several of the submissions made by Mr. Zar during the hearing dealt with elements of the leave to appeal test. Accordingly, we will consider whether leave should be granted to 30 Roe to appeal the Approval Orders.

[41] In considering whether to grant leave to appeal an order under *BIA* s. 193(e) a court will look to whether the proposed appeal: (i) raises an issue that is of general importance to the practice in bankruptcy/insolvency matters or to the administration of justice as a whole, and is one that this court should therefore consider and address; (ii) is *prima facie* meritorious; and (iii) would unduly hinder the progress of the bankruptcy/insolvency proceedings: *Pine Tree Resorts*, at para. 29; *Impact Tool & Mould Inc. v. Impact Tool & Mould Inc. Estate*, 2013 ONCA 697, at para. 3.

[42] 30 Roe's proposed appeal does not raise an issue of general importance, based as it is on the fact-specific sales process approved in its receivership. Its proposed appeal is not *prima facie* meritorious: as discussed, it amounts to nothing more than a collateral attack on the July and December Sales Orders. Finally, its appeal would unduly hinder the progress of the receivership. Granting leave to appeal probably would put in jeopardy the pending closings of the sales of PH04 and PH09. 30 Roe has not filed any evidence of equivalent or superior offers for those two units or of its present ability to satisfy the claims of its creditors. One therefore is left with the distinct impression that its attempt to appeal the Approval Orders is nothing more than a delay tactic.

[43] For these reasons, we deny 30 Roe leave to appeal the Approval Orders.

Lifting the automatic stay

[44] Since we have quashed 30 Roe's appeal and denied it leave to appeal, there is no need to consider the Receiver's alternative request for an order lifting the automatic stay under *BIA* s. 195.

V. DISPOSITION

[45] For the reasons set out above, we grant the Receiver's motion. The appeal of 30 Roe from the Approval Orders is quashed. We deny 30 Roe leave to appeal the Approval Orders.

[46] The Receiver is entitled to seek its costs of this motion when it applies in the ordinary course for the approval of the supervising judge below of its activities and accounts.



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SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-22-00674810-00CL DATE: 1 May 2023

NO. ON LIST: 4

TITLE OF PROCEEDING: Kingsett Mortgage Corporation v. 30 Roe Investments Corp.

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Sean Zweig	Counsel for the Applicant	zweigs@bennettjones.com

For Defendant, Respondent, Responding Party, Defence:


Name of Person Appearing	Name of Party	Contact Info
Raymond Zar	Representative of the Respondent	rz@roehamptoncapital.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Darren Marr	Counsel for CIBC	dmarr@chaitons.com Ben@chaitons.com
Chris Armstrong	Counsel for KSV as Receiver	carmstrong@goodmans.ca

ENDORSEMENT OF JUSTICE STEELE:

1. Scheduling conference convened via Zoom on May 1, 2022. The receiver seeks to schedule a motion for: (i) sale approvals of further condo units; (ii) distributions of sale proceeds; and (iii) writ of possession for a condominium unit that is subject to the receivership.
2. Receiver's motion scheduled for May 25, 2023 at 10 am (2 hours).
3. Mr. Zar seeks to schedule a motion for funding for legal expenses. Mr. Zar's motion is scheduled for May 18, 2023 at 9:30 am (30 minutes).

A handwritten signature in blue ink, appearing to be "J. Steele", is located in the lower right quadrant of the page.

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SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-22-00674810-00CL

DATE: May 18th, 2023

REGISTRAR: JC

NO. ON LIST: 1

TITLE OF PROCEEDING: **KingSett Mortgage Corporation v. 30 Roe Investments Corp**

BEFORE JUSTICE: **May 18th, 2023**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Richard Swan	KingSett mortgage corporation	Swanr@bennettjones.com
Sean Zweig	KingSett mortgage corporation	zweigs@bennettjones.com
Joshua Foster	KingSett mortgage corporation	fosterj@bennettjones.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Raymond Zar	30 Roe investments	rz@roehamptoncapital.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Nargis Fazil	Counsel for the Receiver	nfazil@goodmans.ca
Chris Armstrong	Goodmans LLP, counsel to the receiver	Carmstrong@goodmans.ca

Daniel Pollak	Kingsett Client representative	
Noah Goldstein	Receiver	

ENDORSEMENT OF JUSTICE STEELE:

1. This is a motion for funding of legal expenses for 30 Roe Investments Corp. (“30 Roe”) out of receivership assets. Raymond Zar (“Zar”) indicated that he was acting as agent for 30 Roe.

Background

2. Pursuant to an Order of the Court made on May 9, 2022, KSV Restructuring Inc. was appointed as receiver and manager of certain property of 30 Roe, including nine condominium units, nine parking spaces and nine storage units and/or lockers.
3. Thus far, the Receiver has closed two Court-approved sales of condo units and will seek approval of two more sales of condo units at a motion scheduled for May 25, 2023.
4. Kingsett is the fulcrum secured creditor.

Preliminary Matters

5. There was no Notice of Motion filed by 30 Roe, as required under Rule 37.01 of the *Rules of Civil Procedure* (the “RCP”). That section provides that a motion shall be made by a notice of motion unless the nature of the motion or its circumstances make a notice of motion unnecessary. The Receiver and Kingsett told Zar in advance that this was required, yet Zar did not file a notice of motion.
6. Further, there was no request for leave made by Zar to represent 30 Roe under Rule 15.01(2) of the RCP, which states that: “[a] party to a proceeding that is a corporation shall be represented by a lawyer, except with leave of the Court” (emphasis added).
7. Finally, Zar’s affidavit was late served and his factum was served just over a day prior to the hearing.
8. I decided to hear Zar’s motion despite the above procedural issues.

Request for Funding

9. Zar seeks an order (i) requesting the Receiver to reimburse the Board for 30 Roe’s legal expenses of \$50,740.01, and (ii) directing the Receiver to pay a \$50,000 monetary retainer as required by 30 Roe’s counsel, Heinen Hutchinson LLP.
10. Zar made submissions regarding the Board’s residual powers and ability to retain counsel. There was no dispute that 30 Roe’s Board would retain such residual powers.
11. What was in dispute, however, is whether the Receiver ought to provide funding to 30 Roe’s Board for the purpose of retaining counsel.

12. Zar states that the Board of 30 Roe has determined that the receivership is not in the company's best interest and that it requires counsel to prepare and argue that point on behalf of the company. He states that the Board is not seeking to delay the Receiver's motion, which is scheduled for May 25, 2023.
13. Zar argues that *Peterborough (City) v. Kawartha Native Housing Society Inc.*, [2009] 99 OR (3d) 573 (Ont. C.A.), 2009 CanLII 92134, is instructive. In *Kawartha*, there was a decision under appeal concerning the right of the board of directors to retain legal counsel in a receivership, and if they have the right, how the legal fees would be funded. The motion judge had determined that the boards of directors did not have the right to retain legal counsel in a receivership without approval of the court or the receiver. The corporations appealed the order. The Court of Appeal stated, at para. 2, that this issue "and other related issues regarding the ability of not-for-profit corporations that are raised on the appeal are important, in some respects difficult, and in some respects novel." The Court of Appeal noted, at para. 3, that as a result of the decision of the motion judge there was uncertainty regarding whether the boards could even retain counsel for the appeal. Relying on s. 134(2) of the *Courts of Justice Act*, which permits a court to which an appeal is taken to "make any interim order that is considered just to prevent prejudice to a party pending appeal," the Court of Appeal determined that the boards were entitled to retain counsel for the appeal. The Court of Appeal noted, at para. 8, that there were operating funds available in the companies. The Court of Appeal ordered that reasonable legal fees and expenses for the counsel retained for the purposes of the appeal by the companies were to be paid out of the companies' assets, after assessment. I further note that the evidence in *Kawartha*, as noted in para. 8, was that the directors did not have access to any other funds or assets other than the companies' assets.
14. Both Kingsett and the Receiver submit that it would be highly inappropriate in this case, at this stage, to provide funding for legal expenses for 30 Roe. The receivership is part way through. The Receiver states that it is unlikely that there will be sufficient assets of the estate to fully pay back the debt owed to Kingsett. Any funds directed to 30 Roe's legal expenses will further erode the estate.
15. There is no evidence before the Court that the guarantor of Kingsett's loan to 30 Roe, Zar, or the shareholders of 30 Roe, lack the financial resources to pay 30 Roe's legal expenses. Zar baldly deposes that the Board has no alternative sources of funding, but he has not provided any supporting evidence.
16. In this regard, *Kawartha* is distinguishable. First, that case dealt with funding for an appeal that the Court of Appeal noted was important and "in some respects novel." Second, there was no evidence in *Kawartha* that there would not be sufficient funds in the estate for the creditors, as the Receiver states is the case here. In *Kawartha* the court noted that there were operating funds available in the companies. Finally, unlike in *Kawartha*, there is no evidence before the Court that Zar, the guarantor of Kingsett's loan to 30 Roe, or the shareholders of 30 Roe lack the financial resources to pay 30 Roe's legal expenses.
17. The Receiver states that it is not aware of any instance in which a Court has ordered that a debtor company's legal expenses be funded from receivership assets in the commercial receivership context following the granting of a receivership order in circumstances where the secured creditor is expected to be impaired. The Receiver noted that there have been cases where the underlying right of the creditor to enforce its security against the assets in the manner proposed or the existence of the secured debt was in question, and the court ordered funding for the debtor at the receivership

application stage: *Royal Bank v. West-Can Resource Finance Corp.*, 77 Alta LR (2d) 43 (Alta. K.B.). As noted by the Receiver, these cases are distinguishable because the receivership order in the instant case is final, and the debtor has never disputed the existence of KingSett's secured debt or security.

18. The Receiver also noted that in *White Oak Commercial Finance, LLC v. Nygard Holdings (USA) Limited et al.*, 2022 MBQB 48, 97 C.B.R. (6th) 242, the court ordered funding of the debtor respondents' legal expenses from disputed non-receivership property held in trust and "net receivership proceeds" following confirmation from the receiver that the secured lenders had been repaid in full. *White Oak* is distinguishable from the instant case, as here the fulcrum secured creditor is expected to be impaired.
19. This is a commercial receivership. There are not expected to be sufficient funds to repay the debt owing to Kingsett, the fulcrum secured creditor. It would not be appropriate to further erode Kingsett's potential recovery by diverting funds to 30 Roe.
20. 30 Roe's motion is dismissed.

Costs

21. The Receiver seeks costs against Zar. The Receiver notes that although Zar purported to bring the motion on behalf of 30 Roe, he did not serve and file a motion seeking leave to represent the debtor (nor was a Notice of Motion filed in respect of this motion, as noted above). The Receiver argues that if costs are not awarded, or if costs are awarded against 30 Roe, then the debtor's fulcrum creditor will bear the costs.
22. Zar personally guaranteed Kingsett's loan to 30 Roe. Zar's conduct on this motion and throughout these proceedings has added complexity and costs. Although Zar did not have counsel on this motion, he has been before the Court with counsel for 30 Roe on prior occasions. By not respecting the Court's procedures, requirements and timelines, time and expense has been unnecessarily added.
23. Zar shall pay the Receiver's partial indemnity costs fixed in the amount of \$5,000 (inclusive of HST and disbursements).



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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
JUSTICE OSBORNE)
)
)
)

MONDAY, THE 29th
DAY OF MAY, 2023

B E T W E E N:

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-13, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**APPROVAL AND VESTING ORDER
(PH02)**

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) without security, of (i) the real property legally described in Schedule “A” to the Order (Appointing Receiver) of this Court dated May 9, 2022 (the “**Real Property**”), (ii) all assets, undertakings and properties of 30 Roe Investments Corp. (the “**Debtor**”) acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor’s rights, claims, advantages, benefits, title and interest in, to

and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder, for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (as amended, the “**Sale Agreement**”) between the Receiver and Jiancheng Chen (the “**Purchaser**”) dated March 9, 2023, and appended to the Fourth Report of the Receiver dated May 16, 2023 (the “**Fourth Report**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the Real Property described in Schedule B hereto, including all fixtures and chattels described in the Sale Agreement (the “**Purchased Units**”), was heard this day by Zoom videoconference.

ON READING the Fourth Report and on hearing the submissions of counsel for the Receiver, counsel for the Canadian Imperial Bank of Commerce, counsel for KingSett Mortgage Corporation and Raymond Zar as Agent for the Debtor, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Brennan Caldwell sworn May 16, 2023, filed:

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved *nunc pro tunc*, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Units to the Purchaser.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Receiver’s Certificate**”), all of the Debtor’s right, title and interest in and to the Purchased Units shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or

filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh in the within proceedings dated May 9, 2022; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the “**Encumbrances**”, provided “Claims” shall not include the permitted encumbrances, easements, restrictive covenants, and other matters listed on Schedule D hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Units are hereby expunged and discharged as against the Purchased Units.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Toronto (No. 66) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Purchased Units identified in Schedule B hereto in fee simple, and is hereby directed to delete and expunge from title to such Purchased Units all of the Claims listed in Schedule C hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Units shall stand in the place and stead of the Purchased Units, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Units with the same priority as they had with respect to the Purchased Units immediately prior to the sale, as if the Purchased Units had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

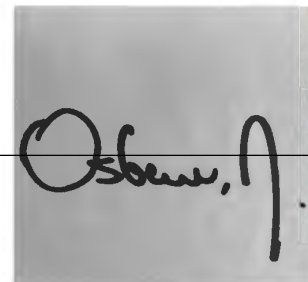
7. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Units in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



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Schedule A – Form of Receiver’s Certificate

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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

30 ROE INVESTMENTS CORP.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (the “**Court**”) dated May 9, 2022 (the “**Receivership Order**”), KSV Restructuring Inc. was appointed as the receiver and manager (in such capacity, the “**Receiver**”) without security, of (i) the real property legally described in Schedule “A” to the Receivership Order (the “**Real Property**”), (ii) all assets, undertakings and properties of 30 Roe Investments Corp. (the “**Debtor**”) acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor’s rights, claims, advantages, benefits, title and interest in, to and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder.

B. Pursuant to an Order of the Court dated [DATE] (the “**Sale Approval Order**”), the Court approved the agreement of purchase and sale made as of March 9, 2023 (as amended, the “**Sale Agreement**”) between the Receiver and Jiancheng Chen (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Units (as defined in the Sale Approval Order), which vesting is to be effective with respect to the Purchased Units upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Units; and (ii) the Transaction (as defined in the Sale Approval Order) has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Units payable pursuant to the Sale Agreement; and
2. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**KSV Restructuring Inc., in its capacity as
receiver and manager of certain property of
30 Roe Investments Corp. and not in its
personal or corporate capacity**

Per: _____

Name:

Title:

Schedule B – Legal Description of Purchased Units

Dwelling Unit:

PIN 76559-0509 (LT)

UNIT 2, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Parking Unit:

PIN 76559-0583 (LT)

UNIT 60, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Storage Unit:

PIN 76559-0622 (LT)

UNIT 99, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Schedule C – Claims to be deleted and expunged from title to the Purchased Units

1. Instrument No. AT4477003, registered February 1, 2017, being a Charge in favour of Canadian Imperial Bank of Commerce (“**CIBC**”) securing the principal amount of \$457,593.
2. Instrument No. AT4477068, registered February 1, 2017, being a Notice of Assignment of Rents: General in favour of CIBC.
3. Instrument no. AT5110272, registered April 8, 2019, being a Charge in favour of Kingsett Mortgage Corporation (“**KS**”) securing the principal amount of \$1,875,000 (the “**KS Charge**”).
4. Instrument no. AT5110273, registered April 8, 2019, being a Notice of Assignment of Rents: General in favour of KS.
5. Instrument no. AT5731082, registered May 7, 2021, being a Notice in favour of KS in respect of the KS Charge.
6. Instrument no. AT6073332, registered May 10, 2022, being an Application to Register Court Order in respect of the Order (Appointing Receiver) of the Ontario Superior Court of Justice (Commercial List) dated May 9, 2022

For the avoidance of doubt, each of the aforementioned instruments is to be deleted and expunged from each of the PINs identified on Schedule B hereto.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Purchased Units**

(unaffected by the Vesting Order)

1. Encumbrances for real property taxes (which term includes charges, rates and assessments) for amounts the payment of which is not yet due or delinquent;
2. permits, reservations, covenants, water course, right of water, right of access or user licenses, easements, rights of way, restrictions, building schemes, licenses, restrictive covenants and servitudes, rights of access or user, airport zoning regulations and other similar rights in land (including, without limitation, licenses, easements, rights of way, servitudes and rights in the nature of easements for walkways, sidewalks, public ways, sewers, drains, gas, soil, steam and water mains or pipelines, electrical lights and power, telephone, television and cable conduits, poles, wires or cables) granted to, reserved or taken by any person;
3. title defects or irregularities which do not materially impair the use or marketability of the Purchased Units;
4. any rights of expropriation, access or use, or any other right conferred or reserved by or in any statute of Canada or the Province of Ontario;
5. improvements on adjoining lands encroaching onto any portion of the Purchased Units, and/or improvements situated on the Purchased Units encroaching onto any portion of an adjoining property, in both instances in a non-material manner;
6. any subdivision agreements, site plan control agreements, development agreements or other similar agreements with governmental authorities affecting the development or the use of the Purchased Units;
7. any facility, cost sharing, servicing, reciprocal or other similar agreements, which are necessary or of advantage to the use, operation, and/or enjoyment of the Purchased Units;
8. all rights reserved to or vested in any governmental authority or public or private utility by the terms of any lease, licence, franchise, grant, agreement or permit held by such authority or utility affecting the Purchased Units, or by any statutory provision to terminate any such lease, licence, franchise, grant, agreement or permit or to require annual or periodic payments as a condition of the continuance thereof or to distrain against or to obtain a lien on any property in the event of failure to make such annual or other periodic payments;
9. any subsisting restrictions, exceptions, reservations, limitation, provisos and conditions (including, without limitation, royalties, reservation of mines, mineral rights and timber rights, access to navigable waters and similar rights) expressed in any original grants from the Crown and any statutory limitations, exceptions, reservations and qualifications;

10. the provisions of applicable law including, without limitation, zoning, land use and building restrictions, by-laws, regulations and ordinances of governmental authorities, including municipal by-laws and regulations, airport zoning regulations, restrictive covenants and other land use limitations, public or private, by-laws and regulations and other restrictions as to the use of the Purchased Units;
11. the declaration, description, by-laws, and rules and regulations of the condominium corporation, and all leases, service, maintenance or license agreements of portions of common elements of the condominium; and
12. save and except for the Encumbrances listed in Schedule “C” to this Order, all other registrations against title to the Purchased Units, or any one of them.

7353542

Application Issued Electronically on 31 May 2023
Toronto Superior Court of Justice / Cour supérieure de justice

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

**KINGSETT MORTGAGE
CORPORATION**

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

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER
(PH02)**

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

Christopher Armstrong LSO#: 55148B
carmstrong@goodmans.ca

Tel: (416) 979-2211
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Lawyers for KSV Restructuring Inc. in its capacity
as Court-appointed Receiver

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
JUSTICE OSBORNE)
)
)
)

MONDAY, THE 29TH
DAY OF MAY, 2023

B E T W E E N:

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-13, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**APPROVAL AND VESTING ORDER
(PH03)**

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) without security, of (i) the real property legally described in Schedule “A” to the Order (Appointing Receiver) of this Court dated May 9, 2022 (the “**Real Property**”), (ii) all assets, undertakings and properties of 30 Roe Investments Corp. (the “**Debtor**”) acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor's rights, claims, advantages, benefits, title and interest in, to

and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder, for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and 2755252 Ontario Inc. (the “**Purchaser**”) dated April 14, 2023 and appended to the Fourth Report of the Receiver dated May 16, 2023 (the “**Fourth Report**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the Real Property described in Schedule B hereto, including all fixtures and chattels described in the Sale Agreement (the “**Purchased Units**”), was heard this day by Zoom videoconference.

ON READING the Fourth Report and on hearing the submissions of counsel for the Receiver, counsel for the Canadian Imperial Bank of Commerce, counsel for KingSett Mortgage Corporation and Raymond Zar as Agent for the Debtor, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Brennan Caldwell sworn May 16, 2023, filed:

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved *nunc pro tunc*, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Units to the Purchaser.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Receiver's Certificate**”), all of the Debtor's right, title and interest in and to the Purchased Units shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or

filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh in the within proceedings dated May 9, 2022; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the “**Encumbrances**”, provided “**Claims**” shall not include the permitted encumbrances, easements, restrictive covenants, and other matters listed on Schedule D hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Units are hereby expunged and discharged as against the Purchased Units.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Toronto (No. 66) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Purchased Units identified in Schedule B hereto in fee simple, and is hereby directed to delete and expunge from title to such Purchased Units all of the Claims listed in Schedule C hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Units shall stand in the place and stead of the Purchased Units, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Units with the same priority as they had with respect to the Purchased Units immediately prior to the sale, as if the Purchased Units had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

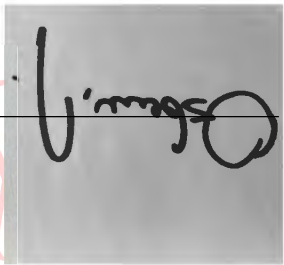
(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Units in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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Schedule A – Form of Receiver’s Certificate

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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and –

30 ROE INVESTMENTS CORP.

Respondent

**RECEIVER’S CERTIFICATE
(PH03)**

RECITALS

A. Pursuant to an Order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (the “**Court**”) dated May 9, 2022 (the “**Receivership Order**”), KSV Restructuring Inc. was appointed as the receiver and manager (in such capacity, the “**Receiver**”) without security, of (i) the real property legally described in Schedule “A” to the Receivership Order (the “**Real Property**”), (ii) all assets, undertakings and properties of 30 Roe Investments Corp. (the “**Debtor**”) acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor's rights, claims, advantages, benefits, title and interest in, to and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder.

B. Pursuant to an Order of the Court dated [DATE] (the “**Sale Approval Order**”), the Court approved the agreement of purchase and sale made as of April 14, 2023 (the “**Sale Agreement**”) between the Receiver and 2755252 Ontario Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Units (as defined in the Sale Approval Order), which vesting is to be effective with respect to the Purchased Units upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Units; and (ii) the Transaction (as defined in the Sale Approval Order) has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Units payable pursuant to the Sale Agreement; and
2. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**KSV Restructuring Inc., in its capacity as
receiver and manager of certain property of
30 Roe Investments Corp. and not in its
personal or corporate capacity**

Per: _____

Name:

Title:

Schedule B – Legal Description of Purchased Units

Dwelling Unit:

PIN 76559-0510 (LT)

UNIT 3, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Parking Unit:

PIN 76559-0584 (LT)

UNIT 61, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Storage Unit:

PIN 76559-0623 (LT)

UNIT 100, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Schedule C – Claims to be deleted and expunged from title to the Purchased Units

1. Instrument No. AT4477031, registered February 1, 2017, being a Charge in favour of Canadian Imperial Bank of Commerce (“**CIBC**”) securing the principal amount of \$540,385.
2. Instrument No. AT4477172, registered February 1, 2017, being a Notice of Assignment of Rents: General in favour of CIBC.
3. Instrument no. AT5110272, registered April 8, 2019, being a Charge in favour of Kingsett Mortgage Corporation (“**KS**”) securing the principal amount of \$1,875,000 (the “**KS Charge**”).
4. Instrument no. AT5110273, registered April 8, 2019, being a Notice of Assignment of Rents: General in favour of KS.
5. Instrument no. AT5731082, registered May 7, 2021, being a Notice in favour of KS in respect of the KS Charge.
6. Instrument no. AT6073332, registered May 10, 2022, being an Application to Register Court Order in respect of the Order (Appointing Receiver) of the Ontario Superior Court of Justice (Commercial List) dated May 9, 2022.

For the avoidance of doubt, each of the aforementioned instruments is to be deleted and expunged from each of the PINs identified on Schedule B hereto.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Purchased Units**

(unaffected by the Vesting Order)

1. Encumbrances for real property taxes (which term includes charges, rates and assessments) for amounts the payment of which is not yet due or delinquent;
2. permits, reservations, covenants, water course, right of water, right of access or user licenses, easements, rights of way, restrictions, building schemes, licenses, restrictive covenants and servitudes, rights of access or user, airport zoning regulations and other similar rights in land (including, without limitation, licenses, easements, rights of way, servitudes and rights in the nature of easements for walkways, sidewalks, public ways, sewers, drains, gas, soil, steam and water mains or pipelines, electrical lights and power, telephone, television and cable conduits, poles, wires or cables) granted to, reserved or taken by any person;
3. title defects or irregularities which do not materially impair the use or marketability of the Purchased Units;
4. any rights of expropriation, access or use, or any other right conferred or reserved by or in any statute of Canada or the Province of Ontario;
5. improvements on adjoining lands encroaching onto any portion of the Purchased Units, and/or improvements situated on the Purchased Units encroaching onto any portion of an adjoining property, in both instances in a non-material manner;
6. any subdivision agreements, site plan control agreements, development agreements or other similar agreements with governmental authorities affecting the development or the use of the Purchased Units;
7. any facility, cost sharing, servicing, reciprocal or other similar agreements, which are necessary or of advantage to the use, operation, and/or enjoyment of the Purchased Units;
8. all rights reserved to or vested in any governmental authority or public or private utility by the terms of any lease, licence, franchise, grant, agreement or permit held by such authority or utility affecting the Purchased Units, or by any statutory provision to terminate any such lease, licence, franchise, grant, agreement or permit or to require annual or periodic payments as a condition of the continuance thereof or to distrain against or to obtain a lien on any property in the event of failure to make such annual or other periodic payments;
9. any subsisting restrictions, exceptions, reservations, limitation, provisos and conditions (including, without limitation, royalties, reservation of mines, mineral rights and timber rights, access to navigable waters and similar rights) expressed in any original grants from the Crown and any statutory limitations, exceptions, reservations and qualifications;

10. the provisions of applicable law including, without limitation, zoning, land use and building restrictions, by-laws, regulations and ordinances of governmental authorities, including municipal by-laws and regulations, airport zoning regulations, restrictive covenants and other land use limitations, public or private, by-laws and regulations and other restrictions as to the use of the Purchased Units;
11. the declaration, description, by-laws, and rules and regulations of the condominium corporation, and all leases, service, maintenance or license agreements of portions of common elements of the condominium; and
12. save and except for the Encumbrances listed in Schedule “C” to this Order, all other registrations against title to the Purchased Units, or any one of them.

Application Issued Electronically on 31 May 2023
Toronto Superior Court of Justice / Cour supérieure de justice

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

**KINGSETT MORTGAGE
CORPORATION**

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

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER
(PH03)**

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

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ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
JUSTICE OSBORNE)
MONDAY, THE 29TH
DAY OF MAY, 2023

B E T W E E N:

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-13, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**ORDER
(Ancillary Matters)**

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) without security, of (i) the real property legally described in Schedule “A” to the Order (Appointing Receiver) of this Court dated May 9, 2022 (the “**Real Property**”), (ii) all assets, undertakings and properties of 30 Roe Investments Corp. (the “**Debtor**”) acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor’s rights, claims, advantages, benefits, title and interest in, to

and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder, for an order, *inter alia* (i) approving the Distributions (as defined below), (ii) sealing the confidential appendices to the Fourth Report of the Receiver dated May 16th, 2023 (the “**Fourth Report**”), and (iii) approving the activities of the Receiver as described in the Fourth Report, was heard this day by Zoom videoconference.

ON READING the Fourth Report and on hearing the submissions of counsel for the Receiver, counsel for the Canadian Imperial Bank of Commerce (“**CIBC**”), counsel for KingSett Mortgage Corporation (“**KingSett**”) and Raymond Zar as Agent for the Debtor, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Brennan Caldwell sworn May 16, 2023, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Fourth Report.

DISTRIBUTIONS

3. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to make (or cause to be made) the following distributions and payments (collectively, the “**Distributions**” and each a “**Distribution**”) from the proceeds of each Transaction:
 - (a) to such parties as are required in respect of: (i) property tax arrears (including, without limitation, vacant home tax) and condominium common expense arrears in respect of the applicable Purchased Unit; and (ii) such other disbursements as are required to be paid by the Receiver in connection with the closing of such Transaction;

- (b) to Remax in respect of the commissions payable pursuant to the Remax Listing Agreement in respect of the Transaction (including, for the avoidance of doubt, commissions payable to the cooperating brokerage and applicable HST);
- (c) to CIBC in respect of the full amount of the indebtedness (including, without limitation, all principal, interest, expenses and costs) of the Debtor owing to CIBC and secured by the first mortgage in favour of CIBC on the applicable Purchased Unit; and
- (d) to KingSett in respect of the full amount of the indebtedness of principal of \$1,875,000 and interest thereof of the Debtor owing to KingSett and secured by the second mortgage in favour of KingSett on the applicable Purchased Unit, subject to such holdback as the Receiver considers appropriate to fund the receivership, including the fees and expenses of the Receiver and its counsel.

4. **THIS COURT ORDERS** that the Distributions authorized in subparagraphs 3(a) and (c) hereof are approved *nunc pro tunc* with respect to Transactions that closed prior to the date hereof.

5. **THIS COURT ORDERS** that the Receiver, its counsel and other agents are hereby authorized to take all necessary steps and actions to effect each of the Distributions in accordance with the provisions of this Order from time to time, and shall not incur any liability as a result of making any Distributions.

6. **THIS COURT ORDERS** that each of the Distributions shall be made free and clear of all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order (Appointing Receiver) of this Court made in the within proceedings dated May 9, 2022; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

each of the Distributions shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT ORDERS** that the Receiver and its agents shall be entitled to deduct and withhold from any Distribution such amounts as may be required to be deducted or withheld with respect to the Distribution under the *Income Tax Act* (Canada) or other applicable laws and to remit such amounts to the appropriate governmental authority (“**Governmental Authority**”) or other person entitled thereto. To the extent that amounts are so withheld or deducted and remitted to the appropriate Governmental Authority or other person, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order to such person as the remainder of the Distribution in respect of which such withholding or deduction was made.

SEALING

9. **THIS COURT ORDERS** that, subject to further Order of this Court, the Confidential Appendices to the Fourth Report shall be sealed and kept confidential.

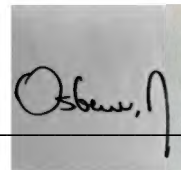
APPROVAL OF RECEIVER’S ACTIVITIES

10. **THIS COURT ORDERS** that the Fourth Report, and the activities of the Receiver referred to therein, be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order without the need for entry or filing.



2023.06.01

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**APPLICATION UNDER SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, Court File No.: CV-22-00674810-00CL
C. C.43, AS AMENDED, AND SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY
ACT, R.S.C. 1985, C. B-3 AS AMENDED**

**KINGSETT MORTGAGE
CORPORATION**

-and-

30 ROE INVESTMENTS CORP.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**ORDER
(Ancillary Matters)**

GOODMANS LLP

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
JUSTICE OSBORNE)
MONDAY, THE 29TH
DAY OF MAY, 2023

B E T W E E N:

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-13, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**APPROVAL AND VESTING ORDER
(Remaining Units)**

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) without security, of (i) the real property legally described in Schedule “A” to the Order (Appointing Receiver) of this Court dated May 9, 2022 (the “**Real Property**”), (ii) all assets, undertakings and properties of 30 Roe Investments Corp. (the “**Debtor**”) acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor’s rights, claims, advantages, benefits, title and interest in, to

and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder, for an order, *inter alia*, authorizing the Receiver to enter into and effect sale transactions for the Remaining Units described in Columns 1 and 2 of Schedule “B” hereto (each a “**Remaining Unit Transaction**”) contemplated by one or more condominium agreements of purchase and sale (each a “**Sale Agreement**”) each in a form substantially similar to that appended at Appendix “Z” to the Fourth Report of the Receiver dated May 16, 2023 (the “**Fourth Report**”), and vesting in one or more purchasers (each a “**Purchaser**”) the Debtor’s right, title and interest in and to one or more of the Remaining Units, including all fixtures and chattels, as designated and described in the relevant Sale Agreement and confirmed in the Receiver’s Certificate (as defined below) (the “**Purchased Units**” and each a “**Purchased Unit**”), was heard this day by Zoom videoconference.

ON READING the Fourth Report and on hearing the submissions of counsel for the Receiver, counsel for the Canadian Imperial Bank of Commerce, counsel for KingSett Mortgage Corporation and Raymond Zar as Agent for the Debtor, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Brennan Caldwell sworn May 16, 2023, filed:

1. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein have the meaning ascribed to them in the Fourth Report.
2. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
3. **THIS COURT ORDERS AND DECLARES** that, subject to the satisfaction of the Sale Conditions, the execution of any Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of any Remaining Unit Transaction and for the conveyance of any Purchased Unit to a Purchaser. For the avoidance of doubt, the Sale Condition specified in Section 6.0(5)(iii) of the Fourth Report shall be deemed to

be satisfied if a Sale Agreement is signed by the Receiver on or before August 31, 2023, even if the closing of a Remaining Unit Transaction occurs after August 31, 2023.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to a Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Unit specified in such Receiver's Certificate shall vest absolutely in the Purchaser specified in such Receiver's Certificate, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh in the within proceedings dated May 9, 2022; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed in Column 3 of Schedule "B" hereto pertaining to the relevant Purchased Unit (all of which are collectively referred to as the "**Encumbrances**", provided "Claims" shall not include the permitted encumbrances, easements, restrictive covenants, and other matters listed on Schedule "C" hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Units are hereby expunged and discharged as against the Purchased Units.

5. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Toronto (No. 66) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser specified in a Receiver's Certificate as the owner of the Purchased Unit specified in such Receiver's Certificate in fee simple, and is hereby directed to delete and expunge from title to such Purchased Unit all of the Claims listed in Column 3 of Schedule "B" hereto pertaining to such Purchased Unit.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of a Purchased Unit shall stand in the place and stead of

such Purchased Unit, and that from and after the delivery of the Receiver's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the sale of a Purchased Unit with the same priority as they had with respect to such Purchased Unit immediately prior to the sale, as if the such Purchased Unit had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of each Receiver's Certificate, forthwith after delivery thereof.

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of each of the Purchased Units in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT ORDERS** that: (i) the Amended Sale Process approved by this Court in the Amended Sale Process Approval Order dated December 14, 2022 (the "**Amended Sale Process Order**"), is, to the extent necessary, deemed amended by the terms hereof; and (ii) for the avoidance of doubt, this Order shall constitute the required approval of this Court contemplated by paragraph 3 of the Amended Sale Process Order for the completion of any Remaining Unit Transaction, and no further approval of this Court shall be required for the completion of any Remaining Unit Transaction.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
11. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order without the need for entry or filing.

2023.06.01 12:21:44
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 Osberg, J.

Schedule “A” – Form of Receiver’s Certificate

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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

30 ROE INVESTMENTS CORP.

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (the “**Court**”) dated May 9, 2022 (the “**Receivership Order**”), KSV Restructuring Inc. was appointed as the receiver and manager (in such capacity, the “**Receiver**”) without security, of (i) the real property legally described in Schedule “A” to the Receivership Order (the “**Real Property**”), (ii) all assets, undertakings and properties of 30 Roe Investments Corp. (the “**Debtor**”) acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor’s rights, claims, advantages, benefits, title and interest in, to and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder.

B. Pursuant to an Order of the Court dated [DATE] (the “**Sale Approval Order**”), the Court prospectively approved the Receiver entering into a condominium agreement of purchase and sale dated [DATE] (the “**Sale Agreement**”) between the Receiver and [NAME OF PURCHASER] (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the property described in the Sale Agreement (the “**Purchased Unit**”), which vesting is to be effective with respect to the Purchased Unit upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the name of the Purchaser to whom title to the Purchased Unit is to be vested in; (ii) the legal description of the Purchased Unit to be vested in the Purchaser; (iii) the payment by the Purchaser of the Purchase Price for the Purchased Unit; and (iv) that the transaction contemplated by the Sale Agreement has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser to whom title to the Purchased Unit is to be vested in is [NAME OF PURCHASER].
2. The legal description of the Purchased Unit which is to be vested in the Purchaser is [INSERT LEGAL DESCRIPTION OF PURCHASED UNIT].
3. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Unit payable pursuant to the Sale Agreement; and
4. The transaction contemplated by the Sale Agreement has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**KSV Restructuring Inc., in its capacity as
receiver and manager of certain property of
30 Roe Investments Corp. and not in its
personal or corporate capacity**

Per: _____

Name:

Title:

Schedule “B” – Purchased Units

<u>Column 1</u> <i>Municipal Address</i>	<u>Column 2</u> <i>Legal Description</i>	<u>Column 3</u> <i>Claims to be deleted and expunged from title</i>
<p>Unit PH01, 30 Roehampton Avenue, Toronto, ON M4P 0B9</p>	<p>Dwelling Unit: PIN 76559-0508 (LT) UNIT 1, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO</p> <p>Parking Unit: PIN 76559-0582 (LT) UNIT 59, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO</p> <p>Storage Unit: PIN 76559-0621 (LT) UNIT 98, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO</p>	<ol style="list-style-type: none"> 1. Instrument No. AT4468956, registered February 1, 2017, being a Charge in favour of Canadian Imperial Bank of Commerce (“CIBC”) securing the principal amount of \$665,127. 2. Instrument No. AT4468991, registered February 1, 2017, being a Notice of Assignment of Rents: General in favour of CIBC. 3. Instrument no. AT5110272, registered April 8, 2019, being a Charge in favour of KingSett Mortgage Corporation (“KS”) securing the principal amount of \$1,875,000 (the “KS Charge”). 4. Instrument no. AT5110273, registered April 8, 2019, being a Notice of Assignment of Rents: General in favour of KS (the “KS Notice of Assignment of Rents”). 5. Instrument no. AT5731082, registered May 7, 2021, being a Notice in favour of KS in respect of the KS Charge (the “Notice of KS Charge”). 6. Instrument no. AT6073332, registered May 10, 2022, being an Application to Register Court Order in respect of the Order (Appointing Receiver) of the Ontario Superior Court of Justice (Commercial List) dated May 9, 2022 (the “Application to Register Receivership Order”).
<p>Unit PH05, 30 Roehampton Avenue, Toronto, ON M4P 0B9</p>	<p>Dwelling Unit: PIN 76559-0512 (LT) UNIT 5, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT</p>	<ol style="list-style-type: none"> 1. Instrument No. AT4477130, registered February 1, 2017, being a Charge in favour of CIBC securing the principal amount of \$358,967. 2. Instrument No. AT4477185, registered February 1, 2017, being a

	<p>INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO</p> <p>Parking Unit:</p> <p>PIN 76559-0586 (LT)</p> <p>UNIT 63, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO</p> <p>Storage Unit:</p> <p>PIN 76559-0625 (LT)</p> <p>UNIT 102, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO</p>	<p>Notice of Assignment of Rents: General in favour of CIBC.</p> <ol style="list-style-type: none"> 3. KS Charge. 4. KS Notice of Assignment of Rents. 5. Notice of KS Charge. 6. Application to Register Receivership Order.
<p>Unit PH06, 30 Roehampton Avenue, Toronto, ON M4P 0B9</p>	<p>Dwelling Unit:</p> <p>PIN 76559-0513 (LT)</p> <p>UNIT 6, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO</p> <p>Parking Unit:</p> <p>PIN 76559-0587 (LT)</p> <p>UNIT 64, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO</p> <p>Storage Unit:</p> <p>PIN 76559-0626 (LT)</p>	<ol style="list-style-type: none"> 1. Instrument No. AT4477080, registered February 1, 2017, being a Charge in favour of CIBC securing the principal amount of \$474,338. 2. Instrument No. AT4477169, registered February 1, 2017, being a Notice of Assignment of Rents: General in favour of CIBC. 3. KS Charge. 4. KS Notice of Assignment of Rents. 5. Notice of KS Charge. 6. Application to Register Receivership Order.

	UNIT 103, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO	
Unit PH07, 30 Roehampton Avenue, Toronto, ON M4P 0B9	<p>Dwelling Unit:</p> <p>PIN 76559-0514 (LT)</p> <p>UNIT 7, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO</p> <p>Parking Unit:</p> <p>PIN 76559-0588 (LT)</p> <p>UNIT 65, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO</p> <p>Storage Unit:</p> <p>PIN 76559-0627 (LT)</p> <p>UNIT 104, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO</p>	<ol style="list-style-type: none"> 1. Instrument No. AT4477059, registered February 1, 2017, being a Charge in favour of CIBC securing the principal amount of \$395,208. 2. Instrument No. AT4477186, registered February 1, 2017, being a Notice of Assignment of Rents: General in favour of CIBC. 3. KS Charge. 4. KS Notice of Assignment of Rents. 5. Notice of KS Charge. 6. Application to Register Receivership Order.
Unit PH08, 30 Roehampton Avenue, Toronto, ON M4P 0B9	<p>Dwelling Unit:</p> <p>PIN 76559-0515 (LT)</p> <p>UNIT 8, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO</p>	<ol style="list-style-type: none"> 1. Instrument No. AT4477033, registered February 1, 2017, being a Charge in favour of CIBC securing the principal amount of \$542,025. 2. Instrument No. AT4477126, registered February 1, 2017, being a Notice of Assignment of Rents: General in favour of CIBC. 3. KS Charge.

	<p>Parking Unit:</p> <p>PIN 76559-0589 (LT)</p> <p>UNIT 66, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO</p> <p>Storage Unit:</p> <p>PIN 76559-0628 (LT)</p> <p>UNIT 105, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO</p>	<ol style="list-style-type: none">4. KS Notice of Assignment of Rents.5. Notice of KS Charge.6. Application to Register Receivership Order.
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**Schedule “C” – Permitted Encumbrances, Easements and Restrictive Covenants
Related to the Purchased Units**

(Unaffected by the Vesting Order)

1. Encumbrances for real property taxes (which term includes charges, rates and assessments) for amounts the payment of which is not yet due or delinquent;
2. permits, reservations, covenants, water course, right of water, right of access or user licenses, easements, rights of way, restrictions, building schemes, licenses, restrictive covenants and servitudes, rights of access or user, airport zoning regulations and other similar rights in land (including, without limitation, licenses, easements, rights of way, servitudes and rights in the nature of easements for walkways, sidewalks, public ways, sewers, drains, gas, soil, steam and water mains or pipelines, electrical lights and power, telephone, television and cable conduits, poles, wires or cables) granted to, reserved or taken by any person;
3. title defects or irregularities which do not materially impair the use or marketability of the Purchased Units;
4. any rights of expropriation, access or use, or any other right conferred or reserved by or in any statute of Canada or the Province of Ontario;
5. improvements on adjoining lands encroaching onto any portion of the Purchased Units, and/or improvements situated on the Purchased Units encroaching onto any portion of an adjoining property, in both instances in a non-material manner;
6. any subdivision agreements, site plan control agreements, development agreements or other similar agreements with governmental authorities affecting the development or the use of the Purchased Units;
7. any facility, cost sharing, servicing, reciprocal or other similar agreements, which are necessary or of advantage to the use, operation, and/or enjoyment of the Purchased Units;
8. all rights reserved to or vested in any governmental authority or public or private utility by the terms of any lease, licence, franchise, grant, agreement or permit held by such authority or utility affecting the Purchased Units, or by any statutory provision to terminate any such lease, licence, franchise, grant, agreement or permit or to require annual or periodic payments as a condition of the continuance thereof or to distrain against or to obtain a lien on any property in the event of failure to make such annual or other periodic payments;
9. any subsisting restrictions, exceptions, reservations, limitation, provisos and conditions (including, without limitation, royalties, reservation of mines, mineral rights and timber rights, access to navigable waters and similar rights) expressed in any original grants from the Crown and any statutory limitations, exceptions, reservations and qualifications;

10. the provisions of applicable law including, without limitation, zoning, land use and building restrictions, by-laws, regulations and ordinances of governmental authorities, including municipal by-laws and regulations, airport zoning regulations, restrictive covenants and other land use limitations, public or private, by-laws and regulations and other restrictions as to the use of the Purchased Units;
11. the declaration, description, by-laws, and rules and regulations of the condominium corporation, and all leases, service, maintenance or license agreements of portions of common elements of the condominium; and
12. save and except for the Encumbrances listed in Column 3 of Schedule "B" to this Order, all other registrations against title to the Purchased Units, or any one of them.

**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- 30 ROE INVESTMENTS CORP.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER
(Remaining Units)**

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

Christopher Armstrong LSO#: 55148B
carmstrong@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

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

29



ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
JUSTICE OSBORNE)
)
)

MONDAY, THE 29TH
DAY OF MAY, 2023

B E T W E E N:

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-13, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

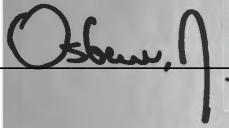
ORDER
(Writ of Possession)

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) without security, of (i) the real property legally described in Schedule “A” to the Order (Appointing Receiver) of this Court dated May 9, 2022 (the “**Real Property**”), (ii) all assets, undertakings and properties of 30 Roe Investments Corp. (the “**Debtor**”) acquired for, used in connection with, situate at, or arising from the ownership, development, use or disposition of, the Real Property, including the proceeds therefrom, and (iii) all of the Debtor's rights, claims, advantages, benefits, title and interest in, to

and under all agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder, was heard this day by Zoom videoconference.

ON READING the Fourth Report of the Receiver dated May 16, 2023, and on hearing the submissions of counsel for the Receiver, counsel for the Canadian Imperial Bank of Commerce, counsel for KingSett Mortgage Corporation and Raymond Zar as Agent for the Debtor, no one appearing for any other person on the service list or Maryam Rezaee, although properly served as appears from the affidavit of Brennan Caldwell sworn May 16, 2023, and the Affidavit of Service of Charlene Hare sworn May 19, 2023, filed:

1. **THIS COURT ORDERS** that the Receiver is entitled to vacant possession of the Real Property described in Schedule “A” hereto (“**Unit PH07**”).
2. **THIS COURT ORDERS** that Maryam Rezaee and any other occupant of Unit PH07 shall vacate Unit PH07 by no later than June 9, 2023.
3. **THIS COURT ORDERS** that leave to issue a writ of possession in respect of Unit PH07 substantially in the form attached as Schedule “B” hereto is hereby granted to the Receiver, which writ shall not be executed prior to June 9, 2023.
4. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
5. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order without the need for entry or filing.


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Schedule “A” – Legal Description of Unit PH07

Dwelling Unit:

PIN 76559-0514 (LT)

UNIT 7, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Parking Unit:

PIN 76559-0588 (LT)

UNIT 65, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Storage Unit:

PIN 76559-0627 (LT)

UNIT 104, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO

Schedule B – Form of Writ of Possession

[ATTACHED]

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

B E T W E E N:

(Court Seal)

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

30 ROE INVESTMENTS CORP.

Respondent

WRIT OF POSSESSION

TO the Sheriff of the City of Toronto

Under an Order of this Court made on May ●, 2023 in favour of KSV Restructuring Inc. in its capacity as Court-appointed receiver and manager of certain property of 30 Roe Investments Corp. (the “**Receiver**”), **YOU ARE DIRECTED** to enter and take possession of the following land and premises in your county or district:

- (a) **PIN 76559-0514 (LT), UNIT 7, LEVEL 34, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO;**

- (b) **PIN 76559-0588 (LT)**, UNIT 65, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO; and
- (c) **PIN 76559-0627 (LT)**, UNIT 104, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2559 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT4423506; CITY OF TORONTO.

AND YOU ARE DIRECTED to give possession of the above land and premises without delay to the Receiver.

Date _____ Issued by _____
Local Registrar
Address of court office: Superior Court of Justice
330 University Avenue, 7th Floor
Toronto, Ontario
M5G 1R7

Renewed by Order made on _____.

Local registrar

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 - **30 ROE INVESTMENTS CORP.**

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

WRIT OF POSSESSION

Goodmans LLP

Barristers & Solicitors
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333 Bay Street, Suite 3400
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Lawyers for KSV Restructuring Inc. in its capacity as Court-appointed Receiver

**KINGSETT MORTGAGE
CORPORATION**

-and- 30 ROE INVESTMENTS CORP.

Applicant

Respondent

**ONTARIO
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(COMMERCIAL LIST)
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**ORDER
(Writ of Possession)**

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SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: CV-22-00674810-00CL DATE: May 30, 2023

T. Patel

REGISTRAR:

NO. ON LIST: 3

TITLE OF PROCEEDING: *KINGSETT MORTGAGE CORPORATION v. 30 ROE INVESTMENTS CORP.*

BEFORE Justice Osborne

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Chris Armstrong	counsel to the receiver	carmstrong@goodmans.ca
Nargis Fazil	counsel to the receiver	nfazil@goodmans.ca
Sean Zweig	KingSett Mortgage	zweigs@bennettjones.ca

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Raymond Zar	30 Roe Investment	rz@roehamptoncapital.com
Darren Marr	CIBC	dmarr@chaitons.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Noah Goldstein	KSV, Receiver	ngoldstein@ksvadvisory.com
Murtaza Tallat	KSV, Receiver	mtallat@ksvadvisory.com

ENDORSEMENT OF JUSTICE OSBORNE:

Relief Sought

1. KSV Restructuring Inc., in its capacity as Court-appointed Receiver, brings two motions seeking various heads of relief:
 - a. an order declaring that the Receiver is entitled to vacant possession of the PH 07 condominium unit and related parking and storage units, and granting leave to issue a writ of possession and a writ of possession in respect of that unit;
 - b. an approval and vesting order (“AVO”) in respect of the proposed sale of the PH 02 condominium unit and related parking and storage units as contemplated in an APS dated March 9, 2023, as amended;
 - c. provisional execution in respect of the above-noted AVO for PH 02;
 - d. an approval and vesting order in respect of the proposed sale of the PH 03 condominium unit and related parking and storage units as contemplated in an APS dated March 9, 2023, as amended;
 - e. provisional execution in respect of the above-noted AVO for PH 03;
 - f. an AVO in respect of the remaining condominium units not as yet sold as listed on Schedule B, subject to the Sale Conditions (as defined in the motion materials and described below);
 - g. an order approving certain Distributions from the proceeds of the above-noted sales;
 - h. an order approving the activities of the Receiver as described in the Fourth Report dated May 16, 2023; and
 - i. a sealing order in respect of the confidential appendices to the Fourth Report.
2. The Receiver relies on the Fourth Report dated May 16, 2023. Defined terms have the meaning given to them in the Fourth Report or the motion materials unless otherwise stated.

Background and Preliminary Matters

3. The relief sought today is fully supported by KingSett and CIBC. It is not opposed by any party except as described below. CIBC holds a first mortgage on each of the condominium units. Each of those mortgages secures the indebtedness owing by the Debtor in respect of that particular unit only. As of May 25, 2023, the total indebtedness owing to CIBC by the Debtor is approximately \$4.35 million plus accruing interest fees and expenses.
4. KingSett is the fulcrum creditor. KingSett holds a second mortgage on each of the units, a general security agreement and other security, including a personal guarantee from Mr. Zar. As of May 1, 2023, the total indebtedness owing to KingSett by the Debtors is approximately \$2.95 million plus accruing interest, fees and expenses.
5. The Debtor is also indebted to the Canada Revenue Agency in the amount of approximately \$40,000 on account of unremitted HST. Other creditors include RBC. The Debtor has failed to provide sufficient information to the Receiver to identify additional creditors, or the amounts that may be owed to them, with certainty and precision.

6. Mr. Raymond Zar appears today for 30 Roe Investments Corp. (“30 Roe”). 30 Roe is not represented by counsel. Mr. Zar states that he is the president, secretary and a director of the Corporation, and the personal guarantor of the indebtedness owing to KingSett.
7. No motion for leave has been sought pursuant to Rule 15.01 for relief from the requirement that the corporation be represented by a lawyer. Mr. Zar submitted that this Court in other steps in this proceeding has permitted him to speak for the corporation, that the Court of Appeal for Ontario has permitted him to speak for the corporation in appeals in this proceeding, and that he requested that he be permitted to do so today with respect to these motions. I permitted him to do that.
8. A court reporter was present for the hearing of the motions.
9. Neither 30 Roe nor Mr. Zar served or filed any responding materials. Both were properly served with the motion materials, and service is not contested today. As is set out below, and following the hearing of submissions from counsel and Mr. Zar, much of the relief requested was ultimately on the consent of all parties. Other relief was not opposed by Mr. Zar or 30 Roe.
10. In the end, the only relief that was contested by Mr. Zar was the AVO in respect of condominium units not yet sold, although as explained below his consent with respect to other heads of relief was dependent upon certain terms.
11. I should also observe, particularly with respect to the motion for declaratory vacant possession and a writ of possession in respect of PH 07, that that unit was, apparently, occupied by an individual by the name of Ms. Maryam Rezaee.
12. The affidavit of service, filed, reflects that Ms. Rezaee was properly served with the motion materials in respect of that relief on May 17, 2023, and has been aware of these receivership proceedings since December, 2022. Neither Ms. Rezaee nor any counsel on her behalf has filed any responding materials, and nor did they appear today. Counsel for the Receiver confirms that they have not received any response from Ms. Rezaee or counsel acting on her behalf since the motion materials were served.
13. Ms. Rezaee is Mr. Zar’s mother. Mr. Zar confirmed that his mother was aware of this motion and the relief sought, and that she had advised him and he understood that she was retaining counsel to respond to the motion. While he observed that he was surprised that neither she nor counsel on her behalf appeared today, he was very clear that he was here in his capacity as a representative of 30 Roe and in his own capacity as personal guarantor, and did not purport to have any authority to speak on behalf of Ms. Rezaee.
14. This matter has a lengthy history and I have not repeated it all in this Endorsement.
15. As noted, KingSett is the fulcrum creditor. That indebtedness matured on December 1, 2021 and still today, has not been repaid. The Receiver was appointed on May 9, 2022. An appeal by the Debtor from the Receivership Order was quashed on June 13, 2022.
16. On July 20, 2022, this Court approved a Sale Process for the Debtor’s nine condominium units. That approval was opposed by the Debtor on the basis that refinancing was imminent and the units should be marketed together as a going concern hospitality business.
17. Amendments to the Sale Process were approved on December 14, 2022, also over the opposition of the Debtor. The Receiver then entered into sale agreements for two units earlier this year and sought court approval of same. That approval was opposed by the Debtor, and when it was granted, the Debtor purported to commence an appeal as of right.
18. The Court of Appeal for Ontario quashed the appeal of the Debtor, finding it was a collateral attack on the prior orders of this Court approving the Sale Process and the amendments thereto, finding also that it was a delay tactic.

19. Other events in the course of this proceeding are set out in the Fourth Report and in the earlier reports of the Receiver filed.
20. The Receiver has now sold two additional condominium units.
21. I will address each of the heads of relief in turn.

Declaration of Vacant Possession and Writ of Possession for Condominium Unit PH 07

22. This relief was not opposed, although as explained below Mr. Zar made certain observations and submissions to assist the Court.
23. The basis for this relief is set out in the motion materials and in particular, the Fourth Report and the Second Report and the Supplement thereto.
24. The Receiver submits that there is no lawful occupant or tenant and that it is entitled to vacant possession.
25. In summary, condominium unit PH 07 was previously occupied by Ms. Rezaee, who vacated that unit on or about August 27, 2022. When Mr. Rezaee vacated that unit, the Receiver obtained the keys from her. At the time, the Receiver was not aware that Ms. Raz was Mr. Zar's mother, or that there was any relationship between them. At the outset of the receivership, Receiver was advised by Mr. Zar that rent on PH 07 had been prepaid by its occupant through to July 25, 2022.
26. The records of the Receiver reflect that PH 01 was vacated on or around August 27, 2022 by its prior occupant. The Receiver obtained the keys from the previous occupant.
27. Neither PH 01 nor PH 07 PH 01 was re-let by the Receiver, pending an anticipated sale in this proceeding.
28. On December 7, 2022, representatives of the Receiver and certain creditors conducted a tour of the premises to prepare for the sale process. They observed that PH 01 was occupied, although without the knowledge or consent of the Receiver. Since the Receiver had changed the locks to PH 01 (as well as other units), the Receiver has no knowledge as to how the occupant was able to gain access to that unit.
29. Counsel to the Receiver sent, by process server, a letter to the occupant of PH 01 requesting a response by the next day as to the circumstances by which the occupant came to occupy PH 01. No response was received.
30. Accordingly, a representative of the Receiver attended at the premises on the afternoon of the following day, December 9. An adult woman answered the door although advised she could not speak English and the Receiver's representative left.
31. The individual who answered the door was the same person who the Receiver had previously seen in occupancy of PH 07. Mr. Zar had previously advised the Receiver that the occupant of PH 07 had prepaid rent until July 25, 2022. As noted above, PH 07 had already been vacated by the occupant (save for a suitcase and minor personal belongings).
32. On December 9, 2022, the Receiver wrote to Mr. Zar. The full contents of that correspondence are set out at paragraph 7 of the Fourth Report. In short, the Receiver advised that the female occupant living in PH 01 had previously lived in PH 07 but that, according to the records of the Receiver, should not be living there. The Receiver was concerned that the unit was therefore occupied by a squatter, or occupant with no legal rights. The Receiver advised Mr. Zar that it was considering filing a police report.
33. Mr. Zar replied the next day, on December 9, 2022, to advise that the last time he had been at the property was "around three months ago when you changed all the locks". He stated he did not recall the occupancy status of the units but that if there was a forced entry he could direct property management to intervene. No other details were provided.

34. In the absence of any further information, the Receiver then filed a police report and, on December 9, the police contacted the Receiver and requested that the Receiver attend at PH 01 to meet with the occupant, which occurred. When they arrived, the occupant of PH 01 was moving her belongings back into PH 07. Upon her advising the police that she could not speak English, the police called a translator, another police officer, to communicate with the occupant in Farsi. That translator attended.
35. The Fourth Report reflects that according to information disclosed by the police to the Receiver, the occupant advised that she was not allowed to be in PH 01, but was entitled to live in PH 07. Upon being advised by the police that they required her identification because she was trespassing, the occupant initially refused but then provided it. She advised the police that she did not have a lease for PH 07.
36. While the police were interviewing the occupant, Mr. Zar began speaking to the officers via electronic monitoring equipment located on the ceiling of the penthouse floor hallways in the building. He advised the police officers that they did not have a warrant to enter the premises, that he was a director of the condominium corporation and did not authorize the police to continue their investigation. The police continued nonetheless and refused to communicate with Mr. Zar.
37. The police then advised the Receiver that the occupant was Ms. Rezaee and that she was Mr. Zar's mother. This was the first time that the Receiver became aware of that relationship.
38. On December 19, 2022, counsel for the Receiver wrote a letter to Ms. Rezaee requiring that she explain the basis for any right to occupy PH 07, including any evidence of such right (i.e., a lease or rental agreement) and demanding that she vacate occupancy, absent any such right. She was given until January 15 to find alternative accommodations.
39. That letter was delivered to Ms. Rezaee in the English language together with a courtesy Farsi translation. The Receiver has filed an affidavit of service (Appendix V to the Fourth Report) confirming delivery of that letter. Ms. Rezaee has, as of the date of this motion, not responded in any way whatsoever.
40. Counsel to the Receiver wrote to the Debtor on January 17, 2023 and in the absence of any response, followed up with a letter to the Debtor's then counsel dated January 25, 2023. Both letters inquired as to whether Ms. Rezaee had vacated PH 07, requesting any documents regarding her entitlement to occupy PH 07 and any other information. Neither letter has been responded to.
41. The Receiver believes that Ms. Rezaee still occupies PH 07. In the circumstances, and since: Mr. Zar had previously advised that rent had been paid on that unit only through July 25, 2022; it had been vacated on or about that date by Ms. Rezaee; the locks had been subsequently changed by the Receiver; and the Receiver had not re-let the unit to Ms. Rezaee or anyone else nor received rent from her or anyone else; the Receiver is not aware of any lawful basis upon which Ms. Rezaee or any other person is entitled to occupy that unit, the Receiver seeks the declaratory relief and writ of possession as described above.
42. As stated at the outset of this endorsement, Mr. Zar advised the Court that his mother had consulted counsel and that he was not speaking in any way for her. On behalf of the Debtor, he did however offer submissions on the relief sought.
43. Mr. Zar submitted that he had not physically attended at the premises since the summer of 2022, with the result that he had no knowledge as to whether either of PH 01 or PH 07 were occupied, and if so by whom. He advised that he had no memory of who was in which unit.
44. Mr. Zar drew the attention of the Court to a photograph filed in respect of an earlier motion (Caselines B-1-1079) which appeared to depict a woman, a man and the door of PH 07. Mr. Zar advised that this photograph had been taken in July, 2022, that the woman was his mother, Ms. Rezaee, and that the man was a locksmith changing the locks to that unit (PH 01) on the instructions of the Receiver.

45. Mr. Zar then submitted, without any evidence, that the keys to the units PH 01 and PH 07 were in fact the same, and that he believed that his mother had accidentally gone to the wrong unit (PH 07) and not realized her error when her key opened the door. Even if this were factually correct, and there is no evidence beyond the statement, it would not explain how the occupant “accidentally” moved all of her belongings into a different unit.
46. Mr. Zar submitted that he first learned that his mother was apparently occupying PH 01 in December, 2022, when the police attended at the premises as described above.
47. In any event, Mr. Zar reiterated that he had no current knowledge as to the occupancy of either unit (or indeed any unit in the building), that he has no further information with respect to any lease agreement or rental agreement, or any other particulars or information. Accordingly, as of the date of this motion, the Receiver has still received no materials evidencing any lawful right to occupy either unit, such as a lease or rental agreement.
48. Finally, Mr. Zar submitted that, purely as a matter of efficiency and minimizing cost, this Court should not grant the possessory relief sought, but rather should refer the matter to the Landlord and Tenant Board (“LTB”) where it should bring an application to seek declaratory relief as to whether or not the current occupant of PH 01 was a “tenant” within the meaning of the relevant law.
49. *Residential Tenancies Act* matters, and the eviction of residential tenants, are subject to the exclusive jurisdiction of the LTB. However, the Receiver submits, and I accept, that Ms. Rezaee is not a “Tenant” within the meaning of that statute, with the result that this Court has jurisdiction to grant the relief requested by the Receiver.
50. Contrary to the definition of “Tenant” in the statute, Ms. Rezaee is not a person who pays rent, or a party to a tenancy agreement. She has never paid rent, there is no evidence she is paying rent presently (it is certainly not being paid to the Receiver and nor has any rent ever been paid by her to the Receiver), and such is a key factor in the determination of whether a landlord/tenant relationship exists: *Aim Health Group Inc. v. 40 Finchgate Ltd. Partnership*, 2012 ONCA 795, at paras. 95 and 97.
51. The Receivership Order entitles the Receiver to take possession of and exercise control over the Property, including all units. This Court has previously authorized the Receiver to pursue the sale of PH 07 as part of the sale process, and that requires that the unit be vacated in order that it can be listed for sale and sold.
52. I am satisfied that there is no evidence upon which I can conclude that Ms. Rezaee (nor anyone else) has any lawful right to occupy PH 07. Again, there is no evidence of any lease or agreement, nor rent paid.
53. Moreover, I am satisfied on the evidence filed that whatever rights Ms. Rezaee may have had, which itself is not clear on the record, such were abandoned and extinguished in July, 2022, when she voluntarily vacated PH 07. I observe as an aside that Mr. Zar’s submission that rent had been prepaid (which submission is itself without any evidence of such prepayment) was to the effect that the rent had been prepaid but only until July 25, 2022 in any event, which is consistent with the tenant or occupant not having any legal right to occupy the premises thereafter.
54. There is no evidence that Ms. Rezaee ever had any legal right to occupy PH 01, but in any event she has also vacated that the premises.
55. Ms. Rezaee received formal notice, in English and Farsi, in December through the correspondence of the Receiver noted above. She was served with the motion materials returnable today. She has not responded in any way, to anything, whatsoever, notwithstanding having had almost 5 months to find alternative accommodations (indeed, if she is not already done so), to provide any evidence of a lease or payment of rent, or indeed to oppose the relief sought today in any way.

56. I am satisfied that the Receiver is entitled to an order for vacant possession. The Receivership Order already authorizes that.
57. Rule 60.03 provides that an order for the recovery or delivery of the possession of land may be enforced by a writ of possession. I am satisfied that for the purposes of Rule 60.03, the Receivership Order and the vacant possession order sought on this motion, may be enforced by a writ.
58. I am also satisfied that such relief can be sought by way of application, as has been done here, and that no trial is required: *Fisgard Capital II Corp. v. Montgomery*, 2022 ONSC 978 at para. 15, *Gary Stevens, Linda Stevens and 1174365 Alberta Ltd. v. Hutchens et al*, Commercial List, Toronto CV-18-608271-00CL (ONSC) and *Kim (Re)*, 2022 ONSC 2731 at paras. 19 – 24.
59. As noted above, this relief is not opposed. The order declaring that the Receiver is entitled to vacant possession and granting leave to issue a writ of possession, together with that writ, is granted.

Approval and Vesting Orders for Condominium Units PH 02 and PH 03

60. The Receiver has sold two additional units, PH 02 and PH 03, pursuant to and consistent with the previously approved Amended Sale Process. The market has been extensively canvassed, the purchase prices for these units are not materially different from the most recent listing prices, the proposed transactions represent the best offers received, and the Receiver is of the view that further time and resources spent marketing units will not result in greater value being realized.
61. Moreover, the proposed sale of these two units is materially consistent, in form and substance, to the sales of PH 04 and PH 09 previously approved by this Court.
62. The Receivership Order authorizes the Receiver to sell the Property with the approval of the Court in respect of any transaction which the purchase price exceeds \$250,000. The Amended Sale Process and the authority of the Receiver to carry it out, have been previously approved.
63. The authority of this Court to grant a vesting order and related relief is clear from section 100 of the *Courts of Justice Act* and section 243 of the *Bankruptcy and Insolvency Act*. The principles set out in *Royal Bank v. Soundair Corp.*, (1991), 83 DLR (4th) 76, CBR (3d) 1 (ONCA) have been met.
64. These transactions are supported by the consent of all parties, and in particular KingSett, the fulcrum creditor and Mr. Zar. The approval and vesting orders in respect of PH 02 and PH 03 are approved.

Provisional Execution in respect of the AVOs

65. In my view, provisional execution in respect of the AVOs for the above-noted units is not required, given the consent of all parties, again specifically including Mr. Zar, and his clear statement in court that he would not seek to challenge or appeal those orders notwithstanding his consent today to the relief sought in any event.
66. If there is any challenge, the Receiver may seek an urgent appointment before me to consider the necessity of provisional execution.

Approval and Vesting Orders in respect of Remaining Units subject to Sale Conditions

67. The Receiver seeks approval of the sale of the five Remaining Units and the granting of an AVO now.
68. All principal stakeholders consent to this relief, with the caveat that, as explained below, the consent of Mr. Zar is conditional upon his approval, absent which he opposes this relief.

69. The nature of those Remaining Units are in all material respects similar to the units that have already been sold with Court approval. The Receiver submits, and I accept, that in the circumstances of this case, the market value of the Remaining Units is well known to the Receiver.
70. This receivership proceeding has been lengthy, contentious and expensive. There is no realistic prospect that the fulcrum creditor will recover its indebtedness. It follows that certain other stakeholders, particularly including the Debtor and Mr. Zar, are “out of the money” in the sense that neither is a fulcrum creditor in respect of which their interests are subordinate.
71. The Receiver has not enjoyed the benefit of cooperation from all stakeholders, and in particular the conduct of Mr. Zar, the baseless allegations of misconduct advanced and the failure to provide to the Receiver relevant information and documents, has contributed to the expense and delay. In the circumstances, the Receiver seeks to minimize additional professional costs, delay, and submits that it is appropriate today to approve the sale of the Remaining Units, subject to the Sale Conditions.
72. This Court has approved previously prospective sales and in particular prospective sales of residential housing units in the manner proposed by the Receiver here, in the course of which this Court has emphasized that proportionality and procedure should be a consideration in receiverships particularly when considering the submissions of “out-of-the-money” stakeholders here: *KingSett Mortgage Corporation v. Sunrise Acquisitions (Hwy 7) Inc.* Approval and Vesting Order (Remaining Units) dated October 27, 2021, Commercial List, Toronto CV-21-00663051-00CL (ONSC); and *Re Urbancorp. Toronto Management Inc.* Amended and Restated Approval and Vesting Order (Residential Condominium Units dated March 14, 2017), Commercial List, Toronto CV-16-11389-00CL (ONSC).
73. The Sale Conditions are critical elements of the approval sought. I am satisfied that they ensure that there is no prospect of a sale of a Unit for less than fair market value. The Sale Conditions provide that:
- a. the consent of CIBC and KingSett is required;
 - b. the minimum price per square foot is fixed, and it is based on the Transactions entered into by the Receiver to date together with the expectations of the experienced listing agent (Re/Max) as to sale prices for the Remaining Units; and
 - c. there is a sunset clause: any sale agreement for an approved Transaction must be entered into within approximately three months.
74. CIBC and KingSett are the two parties whose encumbrances will be vested out upon such sales. Moreover, since KingSett is expected to suffer a shortfall, it is incentivized to consent only to sales that are above fair market value as it is the party that stands to receive every incremental dollar generated from the sale.
75. The minimum price per square foot is an informed and appropriate baseline given the experience of the Receiver to date with respect to units in this building, in the broader experience and expectations of the listing agent.
76. The three-month sunset ensures that the possibility of changing market conditions moving forward is minimized given the relatively short period of time within which the preapproval is effective.
77. I am satisfied that with the imposition of the Sale Conditions, the approval sought is appropriate here. It is informed by the recent sales and the experience of the Receiver and listing agent in their respective areas of expertise. The reasonableness of the prospective sale approval with the Sale Conditions is informed by the consent in support of all economically affected stakeholders.
78. As noted above, Mr. Zar supports the relief sought, but only if the consent of the Debtor, in addition to that of CIBC and KingSett, is required.

79. In the circumstances, I am not prepared to impose that condition and decline to do so. The conduct and progress of this receivership to date suggests that such will serve only to further delay matters and increase costs. I am satisfied that the above noted Sale Conditions, and prospective sales to be conducted by the Receiver with its duties to this Court, adequately and appropriately protect the rights of stakeholders.
80. Moreover, Rule 1.04 requires a liberal construction of the Rules to secure the just, most expeditious and least expensive determination on its merits of every civil case. Here, it is appropriate to decrease the number of required future Court attendances and associated costs and use of scarce judicial resources: *George Weston Ltd. v. Domtar Inc.*, 2012 ONSC 5001 (Ont. S.C.) [Commercial List] at paras. 11 and 16-20; *Steelback Brewery Inc. v. 2184493 Ontario Ltd.*, 2012 ONSC 6510 at paras. 44-47.
81. Mr. Zar then submitted that the Court ought not to exercise its discretion to approve the sale of the Remaining Units in advance since the Receiver was not impartial, counsel for the Receiver was in a conflict of interest since that firm has previously acted for KingSett, and the conduct of KingSett has been “poor”.
82. None of these issues has been raised previously in this proceeding and there is no evidence or basis to support any of them.
83. I am satisfied that approval of the sale of the Remaining Units is appropriate, that such will not prejudice any party and indeed, through the minimization of costs and further delay in an already massively expensive proceeding, ought to operate to the benefit of all (including the Debtor and Mr. Zar).
84. KingSett is the fulcrum creditor economically affected by the sales and is entirely incentivized to maximize the sale price of the Remaining Units. It supports the relief sought. As has been observed by the Court of Appeal for Ontario, this Court ought to scrutinize with great care opposition of out-of-the-money stakeholders.
85. The sale of the Remaining Units, subject to the Sale Conditions as proposed by the Receiver, is approved.

Distributions and Approval of Receiver’s Activities

86. The Receiver seeks authority to make the Distributions as set out in the Fourth Report and the motion materials. There is no issue that this Court has on many occasions approved distributions during ongoing receivership proceedings at the same time as or following approval of a sale which generates proceeds.
87. Such distributions limit the accrual of interest, promote efficiency, and minimize costs.
88. In this case, counsel to the Receiver has reviewed the CIBC and KingSett mortgages and issued opinions that, subject to standard assumptions and qualifications, they constitute good and valid mortgages on the Units. The terms and mechanics of the proposed distributions are set out in the motion materials and the Fourth Report.
89. Mr. Zar submits that there have been errors on payout statements issued to him by KingSett. However, he acknowledged in argument that he does not dispute the principal amount owing nor the fact that if the proposed interim Distributions are made, including to creditors, KingSett will remain in a position of very material shortfall.
90. The proposed Distributions, including for greater certainty the Distribution in respect of the commissions to be paid to Re/Max, the listing agent in respect of the Units to be sold, enjoy the consent of all parties, with the caveat that Mr. Zar opposes the payment to the Canada Revenue Agency of HST payable on the sale of Units. He does so in his capacity as personal guarantor of the indebtedness to the senior creditors.
91. He takes the position that, rather than paying HST upon the closing of the sale of each Unit, the Receiver should be required to file HST returns on behalf of the Debtor, and then pay any amounts assessed as

being owing only following those filings, and that the Receiver should hold in trust the amounts in respect of possible HST remittances in the intervening period.

92. Mr. Zar submits that he as personal guarantor, and the Debtor, will be prejudiced by any overpayment to the CRA in respect of HST which he estimates, based on informal tax advice he says he and the Debtor have received from the accountant for the Debtor, BDO Dunwoody, could be as high as \$500,000.
93. I observe the fact to which all parties agree that the Debtor has not filed HST returns nor paid remittances for several years.
94. The Receiver takes the position that HST is payable on the sale of Units since, while sales of condominium units may be generally exempt from HST, that exemption is voided where such units have been used as short-term rentals as is the case here according to the information available to the Receiver. The quantum of HST owing may potentially be affected by whether input tax credits were claimed by the Debtor at the time the units were required, although the Receiver lacks the information to determine whether such credits were in fact claimed since Mr. Zar has not provided that information to the Receiver.
95. The Receiver also objects to any delay in the payment of HST on the basis that the objections and concerns being raised by Mr. Zar are being raised today in court for the first time, and as noted above the information deficiencies would largely be in his power to correct and remedy.
96. The Receiver submits that HST is payable within 60 days of a taxable event, in this case the closing of the sale of a Unit. The Receiver agreed that as the sale of the first Unit in respect of which this is an issue is scheduled to close at the end of May, HST would not in any event be payable before June 30, with the result that there is a brief window in which the objections raised by Mr. Zar and said to be supported by the informal tax advice he has received, can be considered by the Receiver.
97. In the circumstances, I am prepared to allow Mr. Zar, on his own behalf and on behalf of the Debtor, a brief opportunity to provide to the Receiver the relevant documents of the Debtor which he stated today he has, and the informal tax advice from BDO which he says he has received, prior to approving the Distribution in respect of HST payable on the sale of Units.
98. Accordingly, Mr. Zar will provide to the Receiver and its counsel, no later than end of day Friday, June 2, the tax advice he has received from BDO. It need not be in the form of a formal opinion, but rather the substance of the position may be set out in an email or short memorandum from BDO and supported as necessary by relevant primary documents such as those specifically informing the input tax credit issue.
99. If, following that provision of information, the issue is resolved on consent, the parties may advise me in writing and the Receiver will either remit the HST or hold it in trust, as may be agreed. If the issue is not resolved on consent, the Receiver may schedule a 30 minute appointment before me through the Commercial List office to seek an order authorizing the payment of HST. No other issue will be dealt with at that attendance. The Receiver and the Debtor may each file a written submission, not to exceed two pages in length, as to their respective position. If the Receiver is successful on the issue, Mr. Zar shall pay to the Receiver costs in respect of this additional work. If Mr. Zar and the Debtor are successful, the Receiver will pay the costs in respect of this additional work.
100. All parties have agreed to this format and to this schedule and to the payment of costs in respect of this issue.
101. All Distributions are approved, save for the payment of HST which will be addressed as set out above.
102. The activities of the Receiver are set out in the Fourth Report. Approval of those activities is consented to by all parties. Mr. Zar sought to clarify that by so consenting, he was not consenting to the

approval of fees of the Receiver in respect of those activities. No such fee approval request is before the Court today, and that is for another day.

103. I am satisfied that the activities of the Receiver as set out in the Fourth Report are appropriate and they are approved.

Sealing Order

104. The Receiver seeks a sealing order in respect of the Confidential Appendices to the Fourth Report. Those contain the minimum price per square foot Sale Condition referred to above, together with the detailed Receiver's waterfall analysis, including the anticipated sale price for each Remaining Unit.
105. The sealing order is to be in effect pending the closing of the sale transactions in respect of Units including the Remaining Units and would not be permanent. It is intended to protect the integrity of the sales process and the marketability of the Units which in turn will maximize recovery for all stakeholders.
106. This Court has the discretion pursuant to section 137 of the *Courts of Justice Act* to make such an order. I am satisfied that the sealing relief is appropriate and proportionate.
107. The sealing relief is recognized as potentially posing a serious risk to an important public interest in the openness of the court. The proportionate relief sought here is necessary to prevent a serious risk to the identified interest and there are no reasonably alternative measures that will prevent this risk. As a matter of proportionality, the benefits of the sealing order outweigh its negative effects. The test as set out in *Sierra Club* and *Sherman Estate* is satisfied.
108. The sealing order is granted.

Disposition

109. Orders to go in accordance with these reasons.
110. Each of the draft orders submitted requires housekeeping or clerical amendments. The draft ancillary matters order requires the deletion of paragraph 3(b) which would have authorized a Distribution to the Canada Revenue Agency in respect of HST.
111. Counsel for the Receiver may submit to me directly revised draft orders for signature in accordance with this Endorsement. Once signed, those orders are effective immediately and without the necessity of issuing and entering, although any party may take out any of the orders through the Commercial List Office if necessary.

Osawa, J.

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SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ENDORSEMENT

COURT FILE NO.: CV-22-00674810-00CL DATE: October 12, 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: KINGSETT MORTGAGE CORP. -v- 30 ROE INVESTMENTS CORP.

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Applicant:

Name of Person Appearing	Name of Party	Contact Info
RICHARD B. SWAN	APPLICANT	swanr@bennettjones.com

For Respondent:

Name of Person Appearing	Name of Party	Contact Info
RAYMOND ZAR	RESPONDENT (SELF-REP)	rz@roehamptoncapital.com

Other:

Name of Person Appearing	Name of Party	Contact Info
CHRIS ARMSTRONG	RECEIVER	carmstrong@goodmans.ca
NOAH GOLDSTEIN	"	ngoldstein@ksvadvisory.com

ENDORSEMENT OF JUSTICE OSBORNE:

[1] This scheduling case conference proceeded today. A court reporter was present.

[2] The Receiver and manager seeks to reschedule, on consent, its motion for discharge and passing of accounts of the Receiver and its counsel, and for authorization to make such HST remittances as the Receiver determines are required.

[3] Mr. Zar appears on behalf of 30 Roe, the Debtor. He seeks to oppose the Receiver's motion and to bring a motion pursuant to Rule 15 to seek leave permitting him, as a non-lawyer, to represent the Debtor in the balance of this proceeding.

[4] The parties have agreed upon a schedule for the delivery of materials and the completion of other matters to permit the determination of each of these two motions.

[5] Accordingly, the schedule set out below is approved and forms part of this Endorsement.

Date	Party	Step
October 16, 2023	Zar	Zar serves: (i) Rule 15 motion record; and (ii) responding motion record to Receiver's motion, including in each case all evidence Zar relies upon (including any video or audio recordings Zar seeks to have introduced into the record).
October 20, 2023	Receiver	Receiver serves: (i) Responding motion record to Zar's Rule 15 motion; and (ii) reply motion record in respect of Receiver's motion.
October 24-26, 2023	Zar & Receiver	Cross-examinations. Half-day in this timeframe that works for all parties.
October 31, 2023	Zar & Receiver	Receiver serves factum for Receiver's motion; Zar serves factum for Rule 15 motion.
November 6, 2023	Zar & Receiver	Receiver serves responding factum on Rule 15 motion and Zar serves responding factum on Receiver's motion.
Early November 2023	All parties	Proposed hearing date for two (2) hours, based on Court availability. Hearing date is peremptory.

To the extent KingSett wishes to deliver any motion materials, it will do so on the same date indicated for the Receiver serving its materials.

[6] These two motions will be heard on **November 14, 2023, via Zoom, commencing at 11 AM and continuing as necessary for up to two hours.** The parties have confirmed their availability for, and consent to, this date. Indeed, as reflected in the agreed-upon schedule, this date is peremptory on the parties.

[7] Mr. Zar stated that he would like to interview the Receiver with respect to its activities, whether under oath or otherwise. As is consistent with the practice of this court and absent extraordinary or other compelling circumstances, requests and inquiries of the Receiver should be made in writing and directed to the Receiver through its counsel. Mr. Zar understands this direction and I reminded all parties of the fact that the motion dates were being scheduled on the basis of their agreement that all steps would be completed, and materials filed, to permit the determination of the motions on the merits on the dates scheduled.

[8] Counsel for the Receiver indicated that the Receiver would likely consent to the Rule 15 motion, on condition that Mr. Zar agree that he would be personally liable for costs, given that the Debtor is the entity in receivership. Mr. Zar advised that he would not consent to this condition. Accordingly, the Rule 15 motion will proceed on a contested basis and the judge presiding over that motion will determine whether relief should be granted and if so, on what terms.

A handwritten signature in black ink, appearing to read "Osborne, J.", written in a cursive style.

OSBORNE, J.

Date: October 12, 2023

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SUPERIOR COURT OF JUSTICE

ENDORSEMENT

COURT FILE NO.: CV-22-00674810-00CL

DATE: November 14, 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: KINGSETT MORTGAGE CORPORATION v. 30 ROE INVESTMENTS CORP.

BEFORE: JUSTICE WILTON-SIEGEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Richard Swan	Counsel to the Applicant, KingSett Mortgage Corporation	swanr@bennettjones.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Raymond Zar	Director of 30 Roe Investments Corp	rz@roehamptoncapital.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Noah Goldstein	KSV Restructuring Inc., the proposed receiver	ngoldstein@ksvadvisory.com
Mark Dunn	Counsel to the Proposed Receiver	mdunn@goodmans.com
Chris Armstrong		carmstrong@goodmans.com

ENDORSEMENT

[1] The motions scheduled for today are adjourned to November 27 (2 Hours) peremptory to the parties subject only to Mr. Swan's availability.

[2] The Receiver is to file its Supplemental Report by the close of business on November 15. Mr Zar shall file any Reply Record, which shall be limited to reply to the Receiver's Supplemental Report, by 11:00pm on November 16.

[3] The cross-examination of the Receiver by Mr. Zar on the fee affidavits will take place on the morning of November 17. The cross-examination of Mr. Zar by counsel for KingSett on Mr. Zar's affidavit in his Cross-Motion Record will take place on November 20 (full day).



Justice Wilton-Siegel

Date: *November 14, 2023*

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ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-22-00674810-00CL DATE: 29 November 2023

NO. ON LIST: 5

TITLE OF PROCEEDING: **KINGSETT MORTGAGE CORPORATION v. 30 ROE
INVESTMENTS CORP.**

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Christopher Armstrong	Counsel to KSV Restructuring Inc. in its capacity as Court Appointed receiver and manager	carmstrong@goodmans.ca

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Raymond Zar	Agent for 30 Roe Investment Corp.	rz@roehamptoncapital.com

ENDORSEMENT OF JUSTICE KIMMEL:

1. KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the "Receiver"), without security, of certain property of 30 Roe Investments Corp. (the "Company") pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act* (the "BIA") and Section 101 of the *Courts of Justice Act* (Ontario) (the "CJA") seeks a Supplemental Vesting Order directing the Land Registrar to enter the purchaser of each Remaining Unit (as defined below) as the owner of such Remaining Unit in fee simple, and deleting and expunging from title to such Remaining Unit all of the specified Claims (as described therein) pertaining to it.
2. The following justification for this Supplemental Vesting Order (Remaining Units) is provided in the Receiver's Notice of Motion and Sixth Report dated November 22, 2023 filed in support of this motion:
 - a. Pursuant to a Sale Process Approval Order dated July 18, 2022, the Court approved a sale process for the Units (as amended pursuant to an Amended Sale Process Approval Order dated December 14, 2022, the "Sale Process").
 - b. In connection with the approval of the sale of nine individual Units under the court approved Sale Process, the Court also pre-approved the sale (each, a "Transaction") of the five remaining Units (the "Remaining Units"), subject to certain sale conditions (the "Sale Conditions") being satisfied court by the Approval and Vesting Order (Remaining Units) granted by the Court on May 29, 2023 (the "Remaining Units AVO"). The Receiver subsequently entered into and closed a Transaction for each of the Remaining Units in accordance with the Sale Conditions. The last Transaction closed on September 7, 2023.
 - c. As contemplated in the Remaining Units AVO, on the closing of each Transaction, the Remaining Units AVO and corresponding Receiver's Certificate were registered on title to the Remaining Unit and received by the relevant Ontario Land Registry Office (the "LRO").
 - d. The Purchasers of the Remaining Units are not specified in the body of the Remaining Units AVO, as they were not known at the time such Order was granted; however the Purchasers are identified in the relevant Receiver's Certificates delivered in connection with the closing of each Transaction and registered on title along with the Remaining Units AVO.
 - e. While the Remaining Units AVO was officially registered on title to one Remaining Unit without issue, the LRO has advised the Receiver it requires an Order of the Court specifying the Purchasers of the Remaining Units in order for an application for vesting order to be registered on title to the Remaining Units.
 - f. The LRO has given the Receiver a deadline of December 8, 2023 to obtain and register such Orders, failing which the existing filings of the Remaining Units AVO will be withdrawn by the LRO on December 11, 2023.
 - g. The granting of the Supplemental Order (Remaining Units) is necessary and appropriate to facilitate the Transactions and the implementation of the Remaining Units AVO.
3. The Receiver believes that the proposed Supplemental Vesting Order (Remaining Units) will address the concerns raised by the LRO and recommends it be made to give effect to the Court's previous orders and to the sales by the Receiver of the Remaining Units that were completed pursuant to those orders in Transactions that closed on September 7, 2023.

4. Order to go in the form signed by me today with immediate effect. This form of order has been amended to remove reference to provisional execution on the basis of representations made by Mr. Zar appearing as agent for the respondent 30 Roe Investment Corp. The preamble has also been amended to reflect his appearance today.

A handwritten signature in black ink, appearing to read "Kimmel J.", written in a cursive style.

KIMMEL J.

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SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-22-00674810-00CL

DATE: DECEMBER 1 2023

NO. ON LIST: 1

**TITLE OF PROCEEDING: KINGSETT
MORTGAGE CORPORATION v 30 ROE
INVESTMENTS CORPORATION**

BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
SEAN ZWEIG	KINGSETT MORTGAGE CORPORATION	zweigs@bennetjones.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
MARK DUNN	COUNSEL TO KSV	mdunn@goodmans.ca
NOAH GOLSTEIN	RECIEVER KSV	ngoldstein@ksvadvisory.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
RAYMOND ZAR	AGENT FOR 30 ROE INVESTMENTS CORP.	rz@roehamptoncapital.com

ENDORSEMENT OF JUSTICE CONWAY:

- [1] This 9:30 scheduling appointment proceeded before me today.
- [2] The Receiver's motion for a discharge and Mr. Zar's cross-motion are rescheduled for **a half day on February 7, 2024 (10 a.m., any judge, confirmed with the CL office).**
- [3] The Receiver will be seeking directions from the court, under the Commercial List's e-protocol, on whether it is required to post Mr. Zar's responding and cross motion record (including the affidavit of November 7, 2023 contained therein) on the Receiver's website. This issue requires additional time for the court to review materials and hear submissions, not just the 15 minutes booked for today. Accordingly, I have scheduled **a case conference of one hour on January 17, 2024 at 11 a.m. before me (confirmed with the CL office) to consider and provide directions on this issue before the motion and cross-motion are heard on February 7, 2024.**



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SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-22-00674810-00CL

DATE: January 17, 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: KINGSETT MORTGAGE CORPORATION v.
30 ROE INVESTMENTS CORP.

BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Richard Swan	Lawyer for Kingsett Mortgage Corporation	swanr@bennettjones.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Sam Presvelos	Lawyer for 30 Roe Investments Corp.	spresvelos@presveloslaw.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Mark Dunn	Lawyer for Receiver KSV Restructing Inc.	mdunn@goodmans.ca
Noah Goldstein	Receiver KSV Restructuring Inc.	ngoldstein@ksvadvisory.com
Sean Dewart	Lawyer for Blaney McMurtry LLP	sdewart@dglp.ca
Rob Stellick	Lawyer for Ken Rosenberg & Paliare Roland LLP	rstellick@agbllp.com

ENDORSEMENT OF JUSTICE CONWAY:

- [1] This 9:30 attendance before me was scheduled to provide direction to the Receiver about whether it is required to post Mr. Zar's affidavit sworn November 7, 2023 (the "**Affidavit**") on the Receiver's case website. I had originally scheduled today's attendance to determine the issue in advance of the Receiver's discharge motion that is scheduled to proceed on February 7, 2024. Mr. Zar has brought a motion returnable the same date for leave to bring a claim against the Receiver.
- [2] In the Affidavit, which is lengthy (approximately 151 pages long), Mr. Zar raises issues with the conduct of the Receiver, Kingsett, and numerous professionals that have been involved throughout the receivership.
- [3] I heard submissions from counsel for each of the Receiver, Mr. Zar, Kingsett and Paliare Roland today about whether the Affidavit should be posted on the Receiver's website pursuant to The Guide Concerning Commercial List E-Service effective July 1, 2014 (the "**Protocol**").
- [4] The Receiver's counsel submits that the Affidavit is potentially defamatory, that much of it is irrelevant to the upcoming motions, and that publication on the Receiver's website is prejudicial and does not serve the purposes underlying the Protocol.
- [5] Mr. Zar's counsel submits that the Receiver should be publishing the Affidavit on the website along with all other materials for the case; otherwise, he submits it is imbalanced and creates a double standard for the Receiver and Mr. Zar. He says that the information in the Affidavit is relevant to the motions. In particular, he says that the Receiver is seeking a release of Kingsett at the discharge motion and that the conduct of these firms and individuals are relevant to that issue. He also submits that the Receiver should have brought a motion to strike all or part of the affidavit if it felt that it was scandalous, vexatious, or otherwise improper. He submits that there is no evidentiary basis before me to conclude that the Affidavit is improper or should be struck and that, accordingly, it should be published on the website.
- [6] I have decided to defer this determination until the February 7, 2024 motions. That hearing will give the judge (whether it is scheduled before me or another CL judge) the necessary context and evidentiary basis to decide whether the Affidavit should be posted on the Receiver's website. The judge hearing the motions will be in a much better position to make that determination in the context of a proper record for this receivership rather than the document brief (that only contains the Protocol, the Affidavit, and the Third Report of the Receiver dated January 26, 2023) and the aide memoires that are before me today.
- [7] In the meantime, there is no issue about access to the Affidavit if any stakeholder or member of the public wishes to review it. The Affidavit is contained in the court file.

There is no sealing order in effect. The open court principle is not affected or compromised in any respect.

- [8] **Further, I have directed the Receiver to post this endorsement and my previous endorsement of December 1, 2023 on its website.**

Conway J.

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- 30 ROE INVESTMENTS CORP.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**ORDERS AND ENDORSEMENTS BRIEF
OF THE RECEIVER
(Re: Motion for Discharge and Ancillary Relief
Returnable February 7, 2024)**

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