

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

BETWEEN:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

30 ROE INVESTMENTS CORP.

Respondent

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

SUPPLEMENTAL AND RESPONDING FACTUM OF THE RECEIVER

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I. OVERVIEW

1. This is the Supplemental and Responding Factum of KSV Restructuring Inc. (“**KSV**”) in its capacity as the receiver and manager of certain property of 30 Roe Investments Corp. (the “**Debtor**”).
2. In October 2023, the Receiver brought a motion for, among other things, its discharge and the passing of its accounts and those of its counsel. In response (and following failure to comply with Court-ordered timelines and weeks of unexplained delay), the Debtor and its principal, Raymond Zar, served a motion (the “**Zar Motion**”) for: (i) leave to commence or continue a claim against the Receiver (the “**Zar Claim**”); and (ii) an Order referring the Receiver’s fees, and those of its counsel, to an assessment officer. In his factum, Mr. Zar seems to have abandoned his request for an assessment and, instead, asks this Court to reduce the fees of the Receiver and its counsel by an unspecified (and unjustified) amount.
3. The Receiver’s discharge motion is an attempt to bring this receivership to a close. The Zar Motion is, at its core, an attempt to prolong the Receiver’s involvement (by embroiling it in prolonged litigation) and shift some portion of the costs caused by Mr. Zar’s conduct onto the Receiver and its counsel. It is entirely without merit, and it should be dismissed.
4. Mr. Zar interfered with and opposed every step that the Receiver tried to take. This resulted in a total of 21 contested court hearings. By his own admission, Mr. Zar sent hundreds or thousands of e-mails in connection with this matter. Mr. Zar chose to do everything he could to make this Receivership more complicated, and more expensive. He cannot now complain that it should have been simpler and cheaper.

5. Worse still, Mr. Zar seeks to sue the Receiver for doing *exactly* what this Court authorized it to do, based on the *exact* arguments rejected repeatedly by this Court and once by the Ontario Court of Appeal.
6. The Zar Claim is founded on the allegation that the Receiver could and should have sold the nine penthouse condominium units that the Debtor owned (the “**Units**”) as a going-concern hospitality enterprise (the “**Enterprise Sale Theory**”). Mr. Zar alleges that it was *gross negligence* for the Receiver to sell the Units individually. But this Court – and the Ontario Court of Appeal – disagreed. Each of these decisions is final and binding. Each rejects the Enterprise Sale Theory. Mr. Zar now seeks leave to sue the Receiver based on the *same* arguments that were put to – and rejected by – the Court. The Zar Claim is an abuse of process. It should not be allowed to proceed.

II. FACTS

A. Procedural History

7. This receivership has been long, expensive and acrimonious because of Mr. Zar’s conduct. In his factum, Mr. Zar claims that he “cannot be endlessly blamed and pejoratively [*sic*] labelled for exercising his legal rights”.¹ But this misses the point. Mr. Zar caused the Receiver and its counsel to incur costs. His bald assertion that the Receivership should have been cheaper rings hollow.
8. Mr. Zar did not simply exercise his legal rights. At every stage, he maximized the time and money required to accomplish the Receiver’s mandate in an attempt to delay and frustrate the progress of this case. This Court has repeatedly found that

¹ Factum of the Respondent, 30 Roe Investments Corp. dated January 31, 2024 (“**Zar Factum**”), at para. 90.

Mr. Zar failed to co-operate with the Receiver and abide by the Court's procedural rules:

- (a) by Endorsement dated May 9, 2022, Justice Cavanagh found that the Debtor “has not acted reasonably and in accordance with my February 22, 2022 and March 8, 2022 endorsements.”² The Court of Appeal affirmed this conclusion;³
- (b) by Endorsement dated July 20, 2022, Justice McEwen found that the “Record does not support” Mr. Zar’s contention that he had been “generally cooperative” and that the Receiver’s motion for a second order to compel production of documents “should not be necessary”;⁴
- (c) by Endorsement dated May 18, 2023, Justice Steele found that “Zar’s conduct on this motion and throughout these proceedings has added complexity and costs. [...] By not respecting the Court’s procedures, requirements and timelines, time and expense has been unnecessarily added”;⁵
- (d) by Reasons for Decision dated March 27, 2023, Brown J.A. noted that “one therefore is left with the distinct impression that [the Debtor’s] attempt to appeal...is nothing more than a delay tactic.”; and ⁶

² Endorsement of Justice Cavanagh dated May 9, 2022, at para. 15, Brief of Orders and Endorsements (“**BOE**”), Tab 6.

³ *KingSett Mortgage Corporation v. 30 Roe Investments Corp.* [2022 ONCA 479](#), at para. 30.

⁴ Endorsement of Justice McEwen, dated July 20, 2022 (“**July 20th Endorsement**”), at p. 2-3, BOE, Tab 11.

⁵ Endorsement of Justice Steele, dated May 18, 2023, at para. 22, BOE, Tab 24.

⁶ *KingSett Mortgage Corporation v. 30 Roe Investments Corp.*, [2023 ONCA 219](#), at para. 42.

(e) by Endorsement dated May 30, 2023, Justice Osborne found that Mr. Zar’s conduct, including “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.”⁷

9. In all, this case required 21 contested court attendances, including both hearings and case conferences. These attendances are listed at Appendix “A”. Almost every motion in this matter became a procedural circus involving adjournment requests, judicial recusal requests, a rotating cast of counsel that ultimately included *six* law firms that acted for the Debtor (and two contested motions for counsel to be removed from the record) and last minute filing of materials.⁸
10. There can be no doubt that all of this substantially increased the cost of the Receivership. This is illustrated in the graph attached as Appendix “B”. The costs incurred in this Receivership correlate almost exactly with Mr. Zar’s attempts to interfere with the Receivership. When the Receiver was forced to litigate with Mr. Zar, costs were high. When the Receiver was not forced to litigate with Mr. Zar, costs were not high.
11. Nor can Mr. Zar claim that these attendances were required so that he could vindicate his legal rights: Mr. Zar was almost entirely unsuccessful. The Receiver was granted almost all of the substantive relief that it sought. Put differently, this Court repeatedly determined that Mr. Zar did not *have* the legal rights he tried to exercise.

⁷ Endorsement of Justice Osborne, dated May 30, 2023 (“**May 30th Endorsement**”), at para. 71, BOE, Tab 30.

⁸ These matters are summarized in Appendix “A” to this Factum.

12. Mr. Zar supplemented his litigation strategy with a steady stream of correspondences to the Receiver and its counsel. On cross-examination, he bragged that he sent “hundreds, maybe thousands of e-mails” in this matter.⁹ These e-mails included a number of outlandish allegations that were never substantiated, including an assertion that someone involved with the case had deployed electronic surveillance against him at a cost of more than \$1 million,¹⁰ and that various judges of this Court and the Court of Appeal had ruled on the case despite unspecified conflicts of interest.¹¹

(i) This motion is an example of the costs caused by Mr. Zar

13. The procedural chaos that preceded this motion perfectly encapsulates Mr. Zar’s strategy, and its impact. A discharge motion has taken more than four months, and cost a very substantial amount, because of Mr. Zar’s repeated adjournment requests, unexplained failures to comply with Court-imposed timelines, the late filing of voluminous and irrelevant materials and shifting requests for relief. A brief timeline is set out below.
14. The Receiver’s motion was served October 4, 2023, and originally returnable October 13, 2023, but it was adjourned on consent to November 14, 2023, so that Mr. Zar could bring a Rule 15 motion and serve responding materials in accordance with an agreed-upon and court-ordered schedule. Mr. Zar did not serve any

⁹ Cross-examination of Raymond Zar dated November 20, 2023 (“**Zar Cross**”), Question 417, p. 92: 7-8, Brief of Cross-examination Transcripts (“**BCT**”), Tab 1.

¹⁰ Third Report of KSV Restructuring Inc. dated January 26, 2023 (“**Third Report**”), at Section 2.4, para. 2(d)(ii), Motion Record Returnable dated October 13, 2023 (“**Motion Record**”), Tab 2F.

¹¹ Third Report, at Section 2.4, para. 2(d)(iii), Motion Record, Tab 2F.

materials by the agreed-upon deadline. More than 23 days after that deadline, and less than one week before the scheduled return date for the motion, Mr. Zar served a 151 page affidavit (the “**Zar Affidavit**”) and a Notice of Cross-Motion dated November 7, 2023. The original version of the Zar Motion sought (among other relief):

- (a) leave for Mr. Zar (who is not a lawyer) to represent the Debtor;
- (b) leave for Mr. Zar to sue the Receiver;
- (c) an Order referring the Receiver’s fees, and the fees of its counsel, to an assessment officer.¹²

15. On November 14, 2023, Mr. Zar cross-examined representatives of the Receiver and its counsel Goodmans LLP (“**Goodmans**”). By Endorsement dated October 12, 2023, Osborne, J. specifically told Mr. Zar that he could only cross-examine on the fee affidavits and that any questions about the Receiver’s reports had to be posed in writing.¹³ Mr. Zar ignored this admonition, arrived one hour late for the cross-examination and then spent almost the entire cross-examination asking improper questions and forcing the witnesses to watch irrelevant videos.¹⁴

16. On November 20, 2023, Mr. Zar amended his Notice of Motion to include a request to sue the Receiver’s counsel, and various third parties.

¹² Notice of Cross Motion, at paras. 3-5, Responding and Cross-Motion Record of the Respondent dated October 16, 2023, served on November 7, 2023 (“**Original Zar Motion Record**”), Tab 1.

¹³ Endorsement of Justice Osborne, dated October 12, 2023, at para. 7, BOE, Tab 31.

¹⁴ Cross-examination of Christopher Armstrong dated November 17, 2023, BCT, Tab 2A; Cross-examination of Noah Goldstein dated November 17, 2023, BCT, Tab 2B.

17. Also on November 20, 2023, KingSett and the Receiver cross-examined Mr. Zar. But he made effective cross-examination on the Zar Affidavit impossible. He arrived an hour late again,¹⁵ and answered almost every question with a lengthy monologue articulating his position. He refused to provide a straight answer to even the simplest question. By way of example, Mr. Zar refused to admit that he reviewed surveillance cameras installed in the hallway outside the Units, even though he attached several videos recorded by those cameras to his affidavit.¹⁶
18. On January 17, 2023, Mr. Zar forced a separate hearing about whether the Zar Affidavit had to be posted on the Receiver's website. He argued strenuously that the Zar Affidavit contained relevant and reliable evidence.¹⁷ But Mr. Zar's own factum puts the lie to this allegation. As noted below, it does not contain a *single* reference to the Zar Affidavit.
19. Mr. Zar did not ask the Receiver any questions in writing until January 26, 2024 – 106 days after Justice Osborne told him any questions had to be in writing. On January 30, 2024, Mr. Zar served a Supplementary Affidavit and Fresh as Amended Notice of Motion.¹⁸ The Supplementary Affidavit disclosed the substance of the Zar Claim to the Receiver for the first time.¹⁹
20. On January 31, 2024, one week before the hearing, Mr. Zar served a factum that significantly changed the relief sought *yet again*. Instead of seeking to refer the

¹⁵ Zar Cross, Question 8, p. 5: 21-23, BCT, Tab 1.

¹⁶ Zar Cross, Question 846-857, pp. 190:7-192:12, BCT, Tab 1.

¹⁷ Aide Memoire of the Respondent, 30 Roe Investments Corp. dated January 16, 2023, at paras. 19-23.

¹⁸ Fresh and Amended Notice of Motion, Supplementary Motion Record of the Respondent, 30 Roe Investments Corp., dated January 30, 2024 ("**Zar Supplementary Motion Record**"), Tab 1.

¹⁹ Notice of Motion and Amended Statement of Claim (Draft), Zar Supplementary Motion Record, Exhibit E, Tab 3E.

fees to an assessment officer, he now asks this Court to reduce them by an unspecified (and unjustified) amount.²⁰

B. The Zar Affidavit

21. The overall theme of the Zar Affidavit is that KingSett and a deceased developer named Ruparell conspired to “trick” him into giving up his interest in a property located at 935 Queen Street.²¹ This conspiracy theory takes up most of the Zar Affidavit. But it has nothing to do with the Receiver, or the relief sought by or against the Receiver on this motion.
22. The Zar Affidavit is 151 pages (412 paragraphs) without exhibits. It is replete with salacious allegations, surreptitious recordings and surveillance footage. But it contains almost no relevant and admissible evidence. It includes, for example, a dissertation by Mr. Zar on the duties of court-appointed officers²² and several reasons why various orders made by this Court²³ and the Court of Appeal should not have been made.²⁴
23. Indeed, Mr. Zar spends the first 124 pages of the Zar Affidavit addressing events that preceded the Receivership Order. The apparent purpose of these paragraphs is to demonstrate that the Receivership Order should not have been made, because he was “ambushed” and KingSett sought the Receivership on “false pretenses”.²⁵

²⁰ Zar Factum, Part III (B).

²¹ The Affidavit of Raymond Zar sworn November 7, 2023 (“**Zar Affidavit**”), at para. 14, Original Zar Motion Record, Tab 2.

²² Zar Affidavit, at paras. 320 – 323, Original Zar Motion Record, Tab 2.

²³ Zar Affidavit, at paras. 30-31, Original Zar Motion Record, Tab 2.

²⁴ Zar Affidavit, at paras. 317-318, Original Zar Motion Record, Tab 2.

²⁵ Zar Affidavit, at para. 21, Original Zar Motion Record, Tab 2.

24. Mr. Zar claims that the Receivership decision contained various “errors” that would cause a “real loss of confidence” in the “legal system”.²⁶ He is similarly unimpressed with the decision that quashed his appeal. He asserts that the Debtor had a “bulletproof” response to KingSett’s motion to quash.²⁷ The necessary inference, according to Mr. Zar, is that the Court of Appeal erred by granting the motion.
25. Indeed, even Mr. Zar seems to know that the Zar Affidavit is not relevant to the motion. His factum does not contain a *single* reference to it. Most of the allegations leveled at the Receiver in the Zar Affidavit are not repeated in the Zar Claim. Mr. Zar targets Goodmans in the Zar Affidavit, but dropped it as a defendant in the Zar Claim.

(i) Mr. Zar and the Debtor breached the Receivership Order by commencing a claim against the Receiver without leave

26. On November 20, 2023, Mr. Zar informed the Receiver and KingSett’s counsel that he had filed a Notice of Action to commence the Zar Claim on his own behalf and on behalf of the Debtor against, *inter alia*, the Receiver, Goodmans, KingSett, and some of the Debtor’s former law firms, Paliare Roland Rosenberg Rothstein LLP and Blaney McMurtry LLP.²⁸
27. This filing was in direct contravention of the Receivership Order which forbids the commencement or continuation of any proceeding against the Receiver without

²⁶ Zar Affidavit, at para. 313, Original Zar Motion Record, Tab 2.

²⁷ Zar Affidavit, at para. 316, Original Zar Motion Record, Tab 2.

²⁸ Amended Notice of Cross-Motion dated November 20, 2023.

written consent of the Receiver or leave of this Court.²⁹ Mr. Zar also had no right to commence a claim on behalf of the Debtor, since the Receivership Order confers that right on the Receiver.³⁰

C. Mr. Zar’s Collateral Attack on the Many Decisions Rejecting the Enterprise Sale Theory and Approving the Sale of the Units

28. The crux of Mr. Zar’s case against the Receiver is that it should not have sold the Units individually. According to Mr. Zar, the Receiver “knew or ought to have known” that an individual Unit sale would “destroy value for the estate”.³¹ Mr. Zar says that the Receiver should have sold the Units all together, as part of his Enterprise Sale Theory.

29. However, the Enterprise Sale Theory has been rejected *three times* by this Court and once by the Court of Appeal.³² The HST issue at the heart of the Zar Claim was squarely before the Court when Mr. Zar’s arguments were rejected.

30. **Mr. Zar knew that evidence was required to support the Enterprise Sale Theory.** Beginning July 6, 2022, Mr. Zar asserted that the Debtor operated a hospitality business that should be sold as a going concern.³³ But he *refused* to provide the evidence the Receiver required to evaluate that option.

31. Mr. Zar raised the prospect of a going concern sale during a phone conversation with the Receiver that he surreptitiously recorded on July 6, 2022. Mr. Zar claimed

²⁹ Receivership Order of Justice Cavanagh dated May 9, 2022 (“**Receivership Order**”), at para. 7, BOE, Tab 7.

³⁰ Receivership Order, at para. 8, BOE, Tab 7.

³¹ Zar Affidavit, at para. 347, Original Zar Motion Record, Tab 2.

³² Endorsement of Justice Steele dated February 7, 2023 (“**February 7th Endorsement**”), BOE, Tab 18; July 20th Endorsement, BOE, Tab 11; *KingSett Mortgage Corporation v. 30 Roe Investments Corp.*, [2023 ONCA 219](#).

³³ First Report of the KSV Restructuring Inc. dated July 7, 2022, Appendix U, Motion Record, Tab 2B.

that the Debtor's enterprise earned "phenomenal" EBITDA (earnings before interest, tax and depreciation) and that a purchaser would pay a premium for the enterprise.

32. The Receiver asked Mr. Zar to provide the Debtor's financial information so that his claim could be assessed.³⁴ Mr. Zar promised to provide it.³⁵ He did not. The Receiver asked for this information repeatedly, and in writing.³⁶ Mr. Zar *still* did not provide it.
33. Even now, more than 18 months since Mr. Zar first advanced the Enterprise Sale Theory, he has *never* provided *any* reliable or admissible evidence to show that it was a viable option. He did not even provide the Debtor's financial statements to the Receiver or the Court. There was (and is) no reliable and admissible evidence that the Debtor ever operated a profitable hospitality enterprise or that there was any market for that enterprise.
34. **Justice McEwan rejected the Enterprise Sale Theory.** The Enterprise Theory came before this Court for the first time when the Receiver brought a motion for approval of a sale process in July 2022 (the "**Sale Process Approval Motion**"). The Debtor opposed the Sale Process Approval Motion, and advanced the Enterprise Sale Theory.³⁷ The Debtor filed no evidence until the day of the motion,³⁸ and the evidence that it filed consisted of a two page affidavit sworn by

³⁴ Third Report, at section 4.5 and Appendix M, Motion Record, Tab 2F.

³⁵ Transcript of discussion held July 6, 2022, Exhibit "C" to the Affidavit of Raymond Zar dated January 30, 2024, Zar Supplementary Motion Record, p. 43-44.

³⁶ Third Report, at section 4.5 and Appendices N and O, Motion Record, Tab 2F.

³⁷ July 20th Endorsement, at p. 4, BOE, Tab 11.

³⁸ July 20th Endorsement, at p. 7, BOE, Tab 11.

Mr. Zar.³⁹ Although Mr. Zar now says that the HST benefits of the Enterprise Sale Theory are critical, he did not say *anything* about those alleged benefits in the affidavit he filed on the motion.⁴⁰

35. Justice McEwen rejected the Enterprise Sale Theory and approved the Receiver's proposed sale process over the Debtor's objection by Order dated July 18, 2022 (the "**Sale Process Order**").⁴¹ Justice McEwen noted that: Mr. Zar provided no evidence apart from a "brief, bare" affidavit to support his position; the units are located in a condominium, not a hotel; the Debtor's own appraisals concluded that the sale of individual Units were preferable to an *en bloc* sale.⁴²
36. The Company did not appeal the Sale Process Order.
37. **Justice McEwen approved an amendment to the sale process.** The Receiver moved for some minor amendments to the sale process, before any Units were sold, on December 20, 2022.
38. The Receiver noted that the Debtor was likely to pay a substantial amount for HST in its Second Report, but that it could not yet analyze the issues because the Debtor had not yet provided the necessary information.⁴³ Justice McEwan noted this concern, and said it could be addressed (if necessary) at the sale approval hearing.⁴⁴
39. Mr. Zar did not provide the requested HST information in advance of the hearing, or at all. Instead, he made "a number of allegations against the Receiver, the

³⁹ July 20th Endorsement, at p. 7, BOE, Tab 11.

⁴⁰ Affidavit of Raymond Zar sworn February 6, 2023, Zar Cross, Exhibit 5, BCT, Tab 1.

⁴¹ Sale Process Approval Order of Justice McEwen dated July 18, 2022, BOE, Tab 9.

⁴² July 20th Endorsement, pp. 7-13, BOE, Tab 11.

⁴³ Endorsement of Justice McEwen dated December 20, 2022 ("**December 20th Endorsement**"), p. 5, BOE, Tab 14.

⁴⁴ December 20th Endorsement, p. 5, BOE Tab 14.

Applicant and others” and asked that the motion be deferred until the “Superior Court” conducted an investigation into his allegations. He then asked Justice McEwen to recuse himself, and threatened to hold a press conference to broadcast the Zoom hearing. Justice McEwen granted the Receiver’s motion, despite these objections.⁴⁵

40. **Justice Steele approved the two Unit sales, and rejected the Enterprise Sale Theory.** The Receiver carried out the sale process that Justice McEwan specifically approved. It entered into Agreements of Purchase and Sale in respect of two of the Units and moved for Approval and Vesting Orders in respect of each transaction as well as ancillary relief (the “**Sale Approval Motion**”).
41. Mr. Zar opposed the Sale Approval Motion, and again advanced the Enterprise Sale Theory. He argued that an enterprise sale would maximize value and that individual Unit sales could have adverse tax consequences.⁴⁶ In other words, the allegations in the Zar Claim were before the Court at the Sale Approval Motion.
42. But Mr. Zar’s position was, again, not supported by relevant or admissible evidence. By Endorsement dated February 7, 2023, Justice Steele rejected the Enterprise Sale Theory again and approved the proposed sales (the “**Sale Approval Order**”).⁴⁷
43. **Brown, J.A. rejected the Enterprise Sale Theory.** The Debtor purported to appeal the Sale Approval Order. The appeal was quashed by the Court of Appeal. Brown, J.A. characterized the Enterprise Sale Theory as “bald assertion[s]” that

⁴⁵ December 20th Endorsement, pp. 2-3, BOE, Tab 14.

⁴⁶ February 7th Endorsement, at paras. 5-8, BOE, Tab 18.

⁴⁷ February 7th Endorsement, BOE, Tab 18.

were “not supported by an independent valuation” and “advanced against a history of 30 Roe refusing requests by the Receiver for financial information about the ‘Enterprise’”.⁴⁸

44. **Justice Osborne approved the sale of the remaining Units.** On May 30, 2023, Justice Osborne approved the sale of the remaining Units owned by the Debtor.⁴⁹ Mr. Zar *supported* the sale of two Units,⁵⁰ although he now seeks to sue the Receiver for executing them. Mr. Zar opposed the sale of other Units without his consent based on a host of allegations against KingSett and the Receiver, but Justice Osborne found there is “no evidence or basis to support any of” Mr. Zar’s allegations, and approved the sales.⁵¹
45. Mr. Zar claimed, at the hearing of the motion, to have a tax opinion that no HST was payable in connection with the sales. He was ordered to provide that opinion to the Receiver, but never did, despite the Court’s direction and several requests by the Receiver for this information.⁵²
46. **The Receivership functioned exactly as it should.** In summary, each and every step that the Receiver took towards selling the Units was approved by this Court on notice to Mr. Zar. He had a full and fair opportunity to advance the Enterprise Sale Theory, including its alleged tax benefits. His arguments were not accepted, and

⁴⁸ *KingSett Mortgage Corporation v. 30 Roe Investments Corp.*, [2023 ONCA 219](#) at para 34.

⁴⁹ May 30th Endorsement, at para. 85, BOE, Tab 30.

⁵⁰ May 30th Endorsement, at para. 64, BOE, Tab 30.

⁵¹ May 30th Endorsement, at paras. 81-82, BOE, Tab 30.

⁵² Fifth Report of KSV Restructuring Inc. dated October 4, 2023 (“**Fifth Report**”), at Section 3.3, para. 1, Motion Record, Tab 2; May 30th Endorsement, at paras. 97-98, BOE, Tab 30.

the Receiver implemented the process and completed the sales that were specifically authorized by this Court.

47. Mr. Zar cannot now sue the Receiver for doing exactly what this Court authorized it to do.

48. **The HST issues raised by Mr. Zar are part of the Enterprise Sale Theory.** In the Zar Affidavit, Mr. Zar focuses on the *potential* tax benefits of the Enterprise Sale Theory. He claims that if the Units had been sold pursuant to the Enterprise Sale Theory, then the Debtor could have avoided paying HST in the amount of approximately \$1.1 million.⁵³

49. The HST allegations were, or could have been, part of the Enterprise Sale Theory. In any event, Mr. Zar's theory requires that this Court accept that the Receiver *could* and *should* have pursued the Enterprise Sale Theory to potentially minimize the Debtor's HST obligation and, by extension, that this Court was wrong when it authorized the Receiver to implement the sales process and approved sales of the Units on an individual basis. It also presumes an alternative reality – unsupported by any evidence in this proceeding to date and repeatedly rejected by the Court – that the penthouse Units could have been sold as a going concern business as a means of maximizing value.

50. **Mr. Zar's HST allegations are, in any event, not supported by the evidence.** The foregoing issues are more than enough to dispose of the revived Enterprise Sale Theory. But even if the HST issue was being raised for the first time, it would *still*

⁵³ Zar Affidavit, at para. 348, Original Zar Motion Record, Tab 2.

fail because there is *no* evidence that the Enterprise Sale Theory would actually have yielded a sale, avoided HST or produced a better overall result for creditors.

51. Contrary to Mr. Zar’s allegation, the Receiver *did* consider the tax implications associated with the sales. It is *possible* that HST on the sale of the units could have been deferred, but if a purchaser is not engaged in a “commercial activity” then it would still have to pay HST. A properly advised purchaser would also reduce the price to account for this HST obligation.⁵⁴ And even if some HST savings could have been achieved by a theoretical going concern sale, there is no evidence to suggest that the overall benefit to the Debtor’s creditors would have been greater than the results that were in fact obtained, and have resulted in the repayment of the entire first position secured debt of CIBC and a substantial repayment on KingSett’s second position secured debt.

D. Mr. Zar’s abandoned allegations against the Receiver and its counsel

52. The Zar Affidavit also includes additional allegations against the Receiver and Goodmans. These allegations are not referenced in the Zar Claim or Mr. Zar’s factum, but they are addressed briefly below.
53. **The Receiver did not interfere with Mr. Zar’s refinancing effort.** Mr. Zar alleges that the Receiver prevented the Debtor from refinancing the debts owed to KingSett and ending the Receivership by insisting on a release for KingSett. But this is not what happened. KingSett initially requested a release in exchange for

⁵⁴ Receiver’s Response to Written Questions posed by Mr. Zar, Question #3, Third Supplement to the Fifth Report of KSV Restructuring Inc. dated February 1, 2023, Appendix “B”, Supplemental and Responding Motion Record of the Receiver (“**Receiver’s Supplemental Motion Record**”), Tab 1B.

supporting the proposed refinancing.⁵⁵ But the Receiver subsequently communicated to Mr. Zar that KingSett had agreed not to require this relief in the discharge order being negotiated.⁵⁶ The refinancing and discharge did not proceed because no funds were ever paid to discharge KingSett's mortgage, and not because of anything that the Receiver did or did not do.

54. The Debtor raised this *exact* argument before Justice Steele at the sale approval hearing on February 7, 2023. It was rejected.⁵⁷
55. **No Goodmans conflict of interest.** Mr. Zar alleges in the Zar Affidavit that Goodmans has a "sworn duty of loyalty" to KingSett. Mr. Zar is wrong. Goodmans owes no duty of loyalty to KingSett. Goodmans acted for KingSett on a few small, and unrelated, mandates several years before this case began.⁵⁸ A law firm owes a duty of loyalty to *current* clients. The duty ends when the mandate ends.⁵⁹ Mr. Zar's assertion that Goodmans' limited historical representation of KingSett imposed an indefinite duty of loyalty has no basis in either the facts or the law.
56. **The Receiver did not cause the Police to assault Mr. Zar's mother.** Mr. Zar's most bizarre allegation is that the Receiver caused the Toronto Police Service to arrest his mother.⁶⁰ This did not happen. The Receiver, quite properly, investigated

⁵⁵ Email of Noah Goldstein to Raymond Zar dated August 30, 2022, Second Supplement to the Fifth Report of KSV Restructuring Inc. dated November 15, 2023 ("**Second Supplement to the Fifth Report**"), Appendix E, Receiver's Supplemental Motion Record, Tab 1A.

⁵⁶ Email of Noah Goldstein to Raymond Zar dated August 30, 2022, Second Supplement to the Fifth Report, Appendix E, Receiver's Supplemental Motion Record, Tab 1A.

⁵⁷ February 7th Endorsement, at para. 10, BOE, Tab 18.

⁵⁸ Second Supplement to the Fifth Report, s. 3.0, paras. 3-11, Receiver's Supplemental Motion Record, Tab 1A.

⁵⁹ *Canadian National Railway Co. v. McKercher LLP*, [2013] 2 S.C.R. 649.

⁶⁰ Zar Affidavit, at paras. 401-408, Original Zar Motion Record, Tab 2.

a potential squatter living in one of the Units. Mr. Zar denied any knowledge of the issue, but the unidentified occupant turned out to be his mother (who is also a shareholder of the Debtor, and previously sued Mr. Zar for allegedly improperly taking control of it.) The facts relating to this matter were reported to the Court, and they⁶¹ are summarized in the Endorsement of Justice Osborne dated May 30, 2023.⁶² In the result, Mr. Zar's mother appears to have lived rent-free in one and, at some points during the Receivership, two of the Units.

III. ISSUES AND LAW

57. The issues addressed in this factum are whether this Court should:

- (a) grant leave for the Debtor to commence or continue a claim against the Receiver; and
- (b) issue an order referring the accounts of the Receiver and its counsel for assessment to an assessment officer, or reduce its fees by an unspecified amount.

58. The Receiver respectfully submits that both issues should be answered in the negative and that the Zar Motion should be dismissed in its entirety.

⁶¹ See, among other references, Supplement to the Second Report of the KSV Restructuring Inc. dated December 13, 2022, Motion Record, Appendix E, Tab 2E; Second Supplement to the Fifth Report, s. 3.0, para. 24, Receiver's Supplemental Motion Record, Tab 1A.

⁶² May 30th Endorsement, paras. 28-54, BOE, Tab 30.

A. Zar’s Request for Leave to Commence a Claim Against the Receiver Should be Dismissed

(i) The Receiver can only be sued for gross negligence or wilful misconduct

59. Mr. Zar alleges in the Zar Affidavit that the Receiver was “negligent”.⁶³ But the Receiver cannot be sued for negligence. The Receivership Order specifically states that the Receiver can only incur liability for gross negligence or wilful misconduct. It states, in relevant part: “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”. [emphasis added]⁶⁴
60. Gross negligence is a high bar. The test requires either wilful misconduct or a “very marked departure” from how reasonable and competent people would have acted in the circumstances.⁶⁵
61. This high bar rests on sound principle. Receiverships are often contentious. A receiver rarely satisfies every stakeholder. But, as the Court of Appeal noted (citing from the Model Order published by the Commercial List Users Committee), a receiver “is not a legitimate target” for dissatisfied creditors.⁶⁶ This “limited liability shield” allows for the “proper and orderly conduct of the receivership” and avoids “unnecessary and unjustified proceedings.”⁶⁷

⁶³ Notice of Cross Motion, at para. 14, Original Zar Motion Record, Tab 1; Zar affidavit, at para. 344, Original Zar Motion Record, Tab 2.

⁶⁴ Receivership Order, at para. 16, BOE, Tab 7.

⁶⁵ *Holmes v. Schonfeld Inc.*, [2016 ONCA 148](#), at para. [31](#).

⁶⁶ *Potentia Renewables Inc. v. Deltro Electric Ltd.*, [2019 ONCA 779](#), at para. [48](#). (“*Potentia Renewables*”)

⁶⁷ *Potentia Renewables Inc.*, at para. [49](#).

62. The limited liability shield in the Receivership Order is designed to protect court officers against *exactly* the sort of claim advanced in the Zar Claim.

(ii) Mr. Zar must demonstrate a strong prima facie case

63. There is a second, and equally important, reason why the Zar Claim must clear a high bar. This Court has already *approved* the Receiver's actions. Mr. Zar now asserts that the *same* actions that this Court approved constitute actionable wrongdoing.

64. Once a receiver's activities are approved, the receiver cannot be sued for those activities unless the moving party demonstrates a strong *prima facie* case.⁶⁸ This, too, rests on sound principle. Court supervision is a critical part of the insolvency process, and a stakeholder must tender strong evidence of actionable wrongdoing before suing for activities that have already been approved. Otherwise, court approval would serve little purpose.⁶⁹

65. The test applied is, in any event, not terribly relevant in this case. The Zar Claim is the very definition of a frivolous and vexatious claim.

(iii) The Zar Claim is a collateral attack and barred by issue estoppel

66. As noted above, this Court approved the Receiver's sale process and the sales that it generated. Mr. Zar had a full and fair opportunity to raise the Enterprise Sale Theory, and he raised it repeatedly. The Receiver and Mr. Zar each told the Court

⁶⁸ *Bank of America Canada v. Willann Investments Ltd* (1993), 23 CBR (3d) 98 (Ont. Gen Div), at paras 9-10.

⁶⁹ *Bank of America Canada v. Willann Investments Ltd* (1993), 23 CBR (3d) 98 (Ont. Gen Div), at paras 9-10,

that individual Unit sales would likely create an HST liability. The Court approved the sales process and the sales.

67. Mr. Zar's attack on the Receiver's conduct is, therefore, an attack on the prior Orders of this Court approving the sales and the Receiver's conduct. Mr. Zar can only be right if this Court was wrong. This is a classic collateral attack: Mr. Zar is attacking this Court's prior orders in a new proceeding.⁷⁰ The Zar Claim is also barred by issue estoppel: Mr. Zar seeks to re-litigate issues that have already been decided against him.⁷¹
68. Mr. Zar's conduct in this case also has many hallmarks of frivolous and vexatious litigation: repeated attempts to litigate the same issues; actions against lawyers who have acted before or against the litigant; unsuccessful appeals; and frivolous and unsubstantiated allegations (including allegations of judicial bias) both in and out of Court.⁷²

(iv) The Zar Claim does not, in any event, meet the test for leave

69. Even if Mr. Zar were somehow entitled to re-litigate the Enterprise Sale Theory (and he is not), that re-litigation would fail. The Enterprise Sale Theory still suffers from the same fundamental flaw: there is no evidence that the Debtor *ever* operated a profitable enterprise or that *anyone* was (or would have been) interested in buying it.

⁷⁰ *Toronto (City) v. C.U.P.E., Local 79*, [2003 SCC 63](#) at para. 33.

⁷¹ *Danyluk v. Ainsworth Technologies Inc.*, [2001 SCC 44](#) at para. 18.

⁷² Some of these factors are listed in: *Re Lang Michener* (1987), [1987 CanLII 172](#) (ON SC), 37 D.L.R. (4th) 685 (Ont. H.C.J.) at para. 691.

70. Mr. Zar was the best – and probably only – source of information about the Debtor’s business and profitability. He claimed that the business consisted of renting furnished Units to short term tenants and providing various services to those Units. Some of these services were said to be provided by parties related to the Debtor and the Receiver had no ability to assess the real cost of these services. If, as Mr. Zar claimed, the enterprise was highly profitable, then evidence of that profitability should have been readily available to the Debtor. Conversely, the Debtor’s insolvency weighs heavily against the conclusion that it was operating a thriving business.
71. But Mr. Zar did not provide any evidence. The logical inference is that the Debtor’s financial information would not have helped his case (or that it simply did not exist).⁷³
72. Mr. Zar ignores his own responsibility, and claims that the Receiver ought to have somehow assembled the information he refused to provide from other sources in order to validate and pursue the Enterprise Sale Theory (while at the same time complaining about the fees incurred by the Receiver). But the Receiver had no obligation to spend stakeholder resources to validate Mr. Zar’s unsubstantiated assertions. There is no evidence at all that any receiver would take the steps that Mr. Zar now claims the Receiver should have taken. Mr. Zar’s theory about how the Receiver should have behaved falls well short of establishing a *prima facie* case of gross negligence.

⁷³ *Lévesque v. Comeau et al.*, 1970 CanLII 4 (SCC), [\[1970\] S.C.R. 1010](#), at pp. 1012-13.

B. Mr. Zar's Attack on the Receiver's Fees, and Those of its Counsel, is Without Merit

(i) This Court is the appropriate venue for the determination of fees

73. Mr. Zar asserts that the fees incurred by the Receiver and its counsel were too high. But he has not identified any specific fees that should not have been incurred or provided any legally cognizable basis to reduce them.

74. In his three Notices of Motion, Mr. Zar sought to have the fees referred to an assessment officer. Instead of addressing the fee approval motion directly, Mr. Zar sought to commence yet another proceeding before an assessment officer.

75. Mr. Zar's request should be rejected. The Receivership Order explicitly states that this Court, not an assessment officer, will approve fees incurred by the Receiver and its counsel.⁷⁴ This practice makes perfect sense: insolvency proceedings are specialized, and this Court has the specialized expertise required to assess whether the fees incurred are reasonable.⁷⁵

76. Mr. Zar has not even tried to provide a reason to refer the matter to an assessment. And there is none. An assessment would require a new, costly and time-consuming assessment process. As this Court noted in *Re: Nortel Networks Corporation et al.*, [2017 ONSC 673](#):

[17] The time and expense of referring the accounts to someone else would be very time consuming, create further expense and delay completion of this matter that has gone on far too long. The Initial Order directed the accounts to be passed by this Court. That makes sense, particularly as no other person has the familiarity of what has gone on in the Nortel insolvency as the Court has. These considerations have led other courts to decline to send the accounts out for review by others. See *Tepper Holdings Inc., Re* (2011), [2011](#)

⁷⁴ Receivership Order, at para. 18, BOE, Tab 7.

⁷⁵ *Farley Windoor Ltd. (Re)*, [2013 ONSC 5150](#), at para 21.

[NBQB 311 \(CanLII\)](#), 381 N.B.R. (2d) 1 (Q.B.) at para. 3; *Triton Tubular Components Corp., Re* (2006), [2006 CanLII 11446 \(ON SC\)](#), 20 C.B.R. (5th) 278 (Ont. S.C.J. [Comm. List]) at para. 83.

77. Mr. Zar seems to have abandoned this request in his factum. Instead, he lists a handful of allegedly “questionable time entries” and asks this court to reduce the fees by an unspecified amount. But Mr. Zar’s bald allegations do not establish that the Receiver’s fees were too high. To the contrary, they show that the Receiver had to spend time and money responding to Mr. Zar’s various allegations and tactics. Indeed, most of the fees attacked by Mr. Zar were incurred to respond *directly* to positions that *he took*. Mr. Zar cannot blame the Receiver for steps taken to consider and respond to his positions.

(ii) Mr. Zar caused the fees he now complains about

78. As set out in paragraph 50 of the Receiver’s factum dated November 6, 2023 (the “**November 6th Factum**”), and explained further above, Zar has continually complicated these proceedings and increased their costs. In almost every case, Mr. Zar opposed the substantive or procedural steps taken by the Receiver. In almost every case, Mr. Zar failed. This litigiousness was the primary driver of the fees at issue.

79. Indeed, Mr. Zar’s response to this motion is a perfect illustration of the issues that he caused. This motion seeks a discharge of the Receiver and ancillary relief. Apart from the proposed release of KingSett, the motion is standard fare. It *should* have been relatively straightforward.


80. Mr. Zar chose to fight almost every procedural and substantive step that the Receiver took. The Receiver had to respond, in order to fulfill its mandate.⁷⁶ Mr. Zar chose to ignore the Receiver's requests for information. The Receiver had to take cumbersome and expensive steps to obtain the information it needed.
81. All of this was expensive. All of it could have been avoided, if Mr. Zar had made different choices. Mr. Zar is the only person attacking the fees, and the only one that caused them.

IV. CONCLUSION AND RELIEF REQUESTED

82. For the reasons set out herein, and in addition to the submissions made in the November 6th Factum, the Receiver respectfully submits that it is time to bring this matter to a close. The Receiver's motion (which seeks to accomplish this goal) should be granted and the Zar Motion (which seeks to keep the Receiver involved in this matter for months or years to come) should be dismissed and costs should be awarded against Mr. Zar personally.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4TH DAY OF FEBRUARY, 2024.

Per:



GOODMANS LLP
Lawyers for the Receiver,
KSV Restructuring Inc.

⁷⁶ *Del Grande v. McCleery*, 1998 CarswellOnt 681, at paras 9-11.

SCHEDULE A
LIST OF AUTHORITIES

1. *KingSett Mortgage Corporation v. 30 Roe Investments Corp.* [2022 ONCA 479](#).
2. *KingSett Mortgage Corporation v. 30 Roe Investments Corp.*, [2023 ONCA 219](#).
3. *Canadian National Railway Co. v. McKercher LLP*, [\[2013\] 2 S.C.R. 649](#).
4. *Holmes v. Schonfeld Inc.*, [2016 ONCA 148](#).
5. *Potentia Renewables Inc. v. Deltro Electric Ltd.*, [2019 ONCA 779](#).
6. *Bank of America Canada v Willann Investments Ltd* (1993), 23 CBR (3d) 98 (Ont. Gen Div).
7. *Toronto (City) v. C.U.P.E., Local 79*, [2003 SCC 63](#).
8. *Danyluk v. Ainsworth Technologies Inc.*, [2001 SCC 44](#).
9. *Re Lang Michener* (1987), [1987 CanLII 172](#) (ON SC), 37 D.L.R. (4th) 685 (Ont. H.C.J.)
10. *Lévesque v. Comeau et al.*, 1970 CanLII 4 (SCC), [\[1970\] S.C.R. 1010](#).
11. *Re: Nortel Networks Corporation et al.*, [2017 ONSC 673](#).
12. *Farley Window Ltd. (Re)*, [2013 ONSC 5150](#).
13. *Del Grande v. McCleery*, 1998 CarswellOnt 681.

SCHEDULE B
STATUTORY REFERENCES

Excise Tax Act, RSC 1985, c E-15

Section 167

Supply of assets of business

167 (1) Where a supplier makes a supply of a business or part of a business that was established or carried on by the supplier or that was established or carried on by another person and acquired by the supplier, and, under the agreement for the supply, the recipient is acquiring ownership, possession or use of all or substantially all of the property that can reasonably be regarded as being necessary for the recipient to be capable of carrying on the business or part as a business,

(a) for the purposes of this Part, the supplier shall be deemed to have made a separate supply of each property and service that is supplied under the agreement for consideration equal to that part of the consideration for the supply of the business or part that can reasonably be attributed to that property or service; and

(b) except where the supplier is a registrant and the recipient is not a registrant, the supplier and the recipient may make a joint election in prescribed form containing prescribed information to have subsection (1.1) apply to those supplies.

Effect of election

(1.1) Where a supplier and a recipient make a joint election under subsection (1) in respect of a supply of a business or part of a business and the recipient, if a registrant, files the election with the Minister not later than the day on or before which the return under Division V is required to be filed for the recipient's first reporting period in which tax would, but for this subsection, have become payable in respect of the supply of any property or service made under the agreement for the supply of the business or part, or on such later day as the Minister may determine on application of the recipient,

(a) no tax is payable in respect of a supply of any property or service made under the agreement other than

(i) a taxable supply of a service that is to be rendered by the supplier,

(ii) a taxable supply of property by way of lease, licence or similar arrangement, and

(iii) where the recipient is not a registrant, a taxable supply by way of sale of real property; and

(b) for the purposes of this Part,

(i) where, but for this subsection, tax would have been payable by the recipient in respect of a supply made under the agreement of property that was capital property of the supplier and that is being acquired by the recipient for use as capital property of the recipient, the recipient shall be deemed to have so acquired the property for use exclusively in the course of commercial activities of the recipient, and

(ii) where, notwithstanding this subsection, tax would not have been payable by the recipient in respect of a supply made under the agreement of property that was capital property of the supplier and that is being acquired by the recipient for use as capital property of the recipient, the recipient shall be deemed to have so acquired the property for use exclusively in activities of the recipient that are not commercial activities.

Appendix A

Receivership of 30 Roe Investments Corp. (Court File No.: CV-22-00674810-00CL)

Summary of adjournment requests and late filing

	Motion	Date Heard	Judge	Reason	Reference
1.	Appoint Receiver	January 17, 2022	Cavanagh, J.	Adjournment requested by Debtor. Granted to allow Debtor to retain counsel, and allow CIBC to file materials.	Tab 1 ¹
2.	Appoint Receiver	February 22, 2022	Cavanagh, J.	Adjournment requested by Debtor. Granted to allow Debtor's newly retained counsel (Paliare Roland Rosenberg Rothstein LLP ("Paliare")) to prepare.	Tab 2
3.	Appoint Receiver	March 8, 2022	Cavanagh, J.	Adjournment granted due to contested motion relating to withdrawal of Paliare.	Tabs 3 & 4
4.	Remove Counsel	April 11, 2022	Cavanagh, J.	Adjournment requested by Debtor to cross-examine counsel on motion to withdraw. Request denied.	Tab 5
5.	Appoint Receiver	May 6, 2022	Cavanagh, J.	Receiver appointed. Adjournment requested by Debtor. Refused because "the Debtor has not acted reasonably and in accordance with my...endorsements." "[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."	Tabs 6 & 7

¹ The Receiver's Brief of Orders and Endorsements.

				<p>“[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.”</p>	
6.	Quash Appeal of Receivership Order	June 13, 2022	Brown, J.A.	<p>Motion to quash appeal granted.</p> <p>[25] To summarize, two recent panel decisions of this court, <i>Buduchnist</i> and <i>Hillmount Capital</i>, 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).</p> <p>[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.</p>	Tab 8

7.	Sales Process Approval/ Motion to Compel Productions	July 18, 2022 7	McEwen, J.	<p>Sales process approved, over the Debtor’s objection. Debtor ordered to provide information requested by the Receiver.</p> <p>“a second order should not be necessary as the Respondent should have complied with the First Receivership Order.” (p. 3)</p> <p>“all of the Records and Property sought are relevant and important to the Receivership” (p.4)</p> <p>“This is the second time that the Respondent has delivered a commitment for purported financing on the even of a hearing” (p.5)</p> <p>“The proposed financing does not satisfy the KingSett obligations, 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.” (p.5)</p> <p>“The purported financing is subject to numerous conditions precedent – in favour of the proposed lender” (p.6)</p> <p>“The second objection, again raised the day of the hearing when Zar filed a 2.5 page affidavit, is that the methodology used by the Receiver to market the 9 units is wrong-headed” (p. 7)</p> <p>“the Receiver points to the fact that the Respondent has not provided any evidence to support its claim” (p. 9)</p> <p>“The submission of short notice is also somewhat ironic given the Respondent’s history of delay and providing materials at the last moment” (p. 13)</p>	Tabs 9-11
8.	Sales Process Amendment Order	December 14, 2022	McEwan, J.	<p>Amendment to sales procedure granted. Adjournment requested by Debtor until an “investigation” could be carried by Court into alleged wrongdoing. The request was denied.</p>	Tabs 12-14

				<p>“Although the Respondent filed no materials, 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 investigations. I disagreed.” (p. 2)</p> <p>“Mr. Zar further asked me to recuse myself after I refused to grant him permission to record the proceeding and advised that he planned to conduct a press conference and broadcast the zoom hearing.” (p.2)</p> <p>“There also may be tax implications, which cannot yet be analyzed as the Respondent has not yet provided the Receiver with the necessary information...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.” (p. 5)</p>	
9.	Sale Approval and Vesting Orders	February 7, 2023	Steele, J.	<p>Two sales approved, over the Debtor’s objection. Enterprise Sales Theory not accepted.</p> <p>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.</p> <p>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</p>	Tabs 15-18

				<p>not provide the information. Accordingly, the Receiver made its own assessment based on the information it had available.</p> <p>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. <u>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.</u> [emphasis added]</p>	
10.	Hearing Concerning Provisional Execution	February 16, 2023	Steele, J.	<p>The Receiver unsuccessfully sought an Order for a provisional execution of the sale of PH04 and PH09. Purpose of the Order was to avoid incurring further delays and costs in light of the Debtors false assertion that he had a right of appeal with respect to the Approval and Vesting Orders.</p> <p>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.</p>	Tab 19
11.	Removal of Counsel	March 10, 2023	Steele, J.	<p>Justice Steele granted Blaney McMurtry’s request to be removed as lawyers of record for 30 Roe.</p> <p>[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).</p>	Tab 20

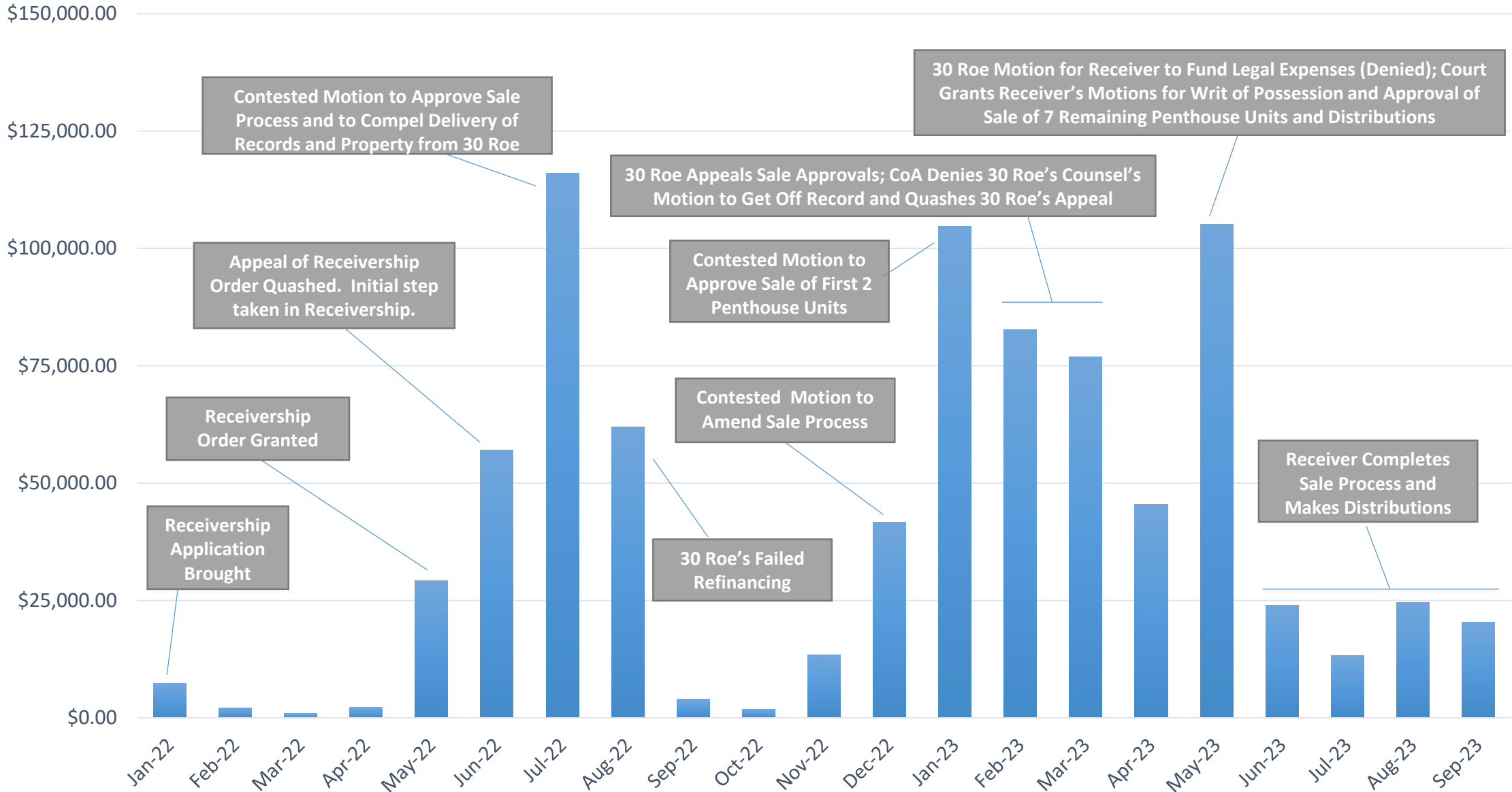
				<p>...</p> <p>[16] Blaneys [sic] provided the Court with unredacted Motion materials. The reasons for Blaneys' [sic] decision to withdraw as counsel are confidential. That portion of the motion was conducted in camera without the participation of any of the parties. I am satisfied that there has been an irreparable breakdown in the relationship between Blaneys [sic] and Mr. Zar.</p> <p>[17] Having read the motion materials, including the affidavit of Chad Kopach, and heard the submissions of Blaneys [sic], the requested orders are granted (attached).</p>	
12.	Removal of Counsel	March 17, 2023	Lauwers, J.A.	<p>The Court refused to allow the Debtor's counsel, Blaney McMurtry, to be removed as lawyers of record.</p> <p>[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. (p.7)</p>	Tab 21
13.	Motion to quash appeal of sale approval order	March 27, 2023	Brown, J.A.	<p>Appeal of sale approval order quashed.</p> <p>Mr. Zar requested adjournment to file a responding factum. Adjournment request was declined. The Debtor also sought the recusal of Brown, J.A. on the basis of an unspecified familial relationship that created a conflict of interest (para. 21). This request was also denied.</p> <p>[34] Instead, 30 Roe <u>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</u></p>	Tab 22

				<p><u>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”. [emphasis added]</u></p> <p>[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</p> <p>December Sales Orders under which the court authorized the Receiver to market and sell the units individually, which the Receiver did.</p> <p>[42] ...[the] proposed appeal is not <i>prima facie</i> meritorious: as discussed, it amounts to nothing more than a collateral attack on the July and December Sales Orders...”</p>	
14.	Motion seeking to Compel the Receiver to Fund Counsel for the Debtor	May 18, 2023	Steele, J.	<p>Motion to force Receiver to fund counsel dismissed. Mr. Zar’s affidavit was served late and factum was filed just over one day prior to the hearing.</p> <p>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.</p> <p>20. 30 Roe’s motion is dismissed.</p>	Tab 24

				<p>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. <u>By not respecting the Court's procedures, requirements and timelines, time and expense has been unnecessarily added</u> [emphasis added]</p>	
15.	Sale approval and vacant possession	May 30, 2023	Osborne, J.	<p>Receiver's motion for vacant possession granted. Mr. Zar ordered to provide HST information.</p> <p>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.</p> <p>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.</p> <p>HST issue.</p> <p>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.</p> <p>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</p>	Tabs 25-30

				from BDO and supported as necessary by relevant primary documents such as those specifically informing the input tax credit issue.	
16.	Motion for Discharge	October 12, 2023	Osborne, J.	Zar asked for an adjournment to file responding material. Adjournment request granted on consent. The Court set a schedule and preemptory motion date.	Tab 31
17.	Request to Adjourn Discharge	November 14, 2023	Wilton-Siegel, J.	The Receiver's motion was adjourned due to Zar's late filing of his motion materials. The late filing of Mr. Zar's materials necessitated an adjournment to allow for cross-examinations and other procedural steps to occur.	Tab 32
18.	Request for a new Date for the Motion for Discharge	December 1, 2023	Conway J.	A 9:30-case conference was needed to schedule a hearing date and address Zar's concern about the case website. A new hearing was set for the motion for discharge and a case conference was scheduled to address Mr. Zar's concern about his motion materials not being posted on the case website.	Tab 34
19.	Request to Schedule Hearing Date for Motion for Discharge	January 17, 2024	Conway J.	A case conference was held to determine whether the Receiver should post Mr. Zar's Affidavit on the case website. Justice Conway deferred determination of the question to the motion for discharge.	Tab 35

Appendix B – Receivership of 30 Roe Investments Corp.
 Combined Fees of Receiver and Counsel (excl. HST)



**KINGSETT MORTGAGE
CORPORATION**

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

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

Applicant

Respondents

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

**SUPPLEMENTAL AND RESPONDING
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personal capacity