

**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**

**WRITTEN SUBMISSIONS OF THE APPLICANT,
KINGSETT MORTGAGE CORPORATION
(Motion and Cross-Motion Returnable February 7, 2024)**

February 5, 2024

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Introduction

1. The Applicant submits these written submissions in support of the motion of KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of certain property of the Respondent (the "**Property**"), for an order (the "**Discharge Order**"), among other things, discharging the Receiver and granting certain releases. These submissions also address the Respondent's cross-motion to commence frivolous additional litigation.

2. These receivership proceedings have been marred, elongated, and made unnecessarily costly entirely by the conduct of the Respondent and its principal, Raymond Zar ("**Mr. Zar**"), to the significant detriment of the Applicant, the Respondent's fulcrum creditor, who will suffer a shortfall. Notwithstanding these challenges, the Receiver has completed its mandate and now seeks the Discharge Order to effect the orderly conclusion of these receivership proceedings. Consistent with its approach throughout, the Respondent seeks to frustrate the Receiver's efforts, relitigate numerous issues already definitively determined by judicial decisions and orders in these proceedings, and now seeks in addition to pursue utterly meritless litigation against, *inter alia*, the Receiver, the Applicant, and nearly every lawyer who acted for *the Respondent* itself during these proceedings.

3. The relief sought by the Receiver pursuant to the proposed Discharge Order is fully appropriate in the circumstances. The relief sought by the Respondent is not. It is premised on baseless assertions and amounts to a collateral attack on numerous prior orders of this Court and the Court of Appeal for Ontario (the "**Court of Appeal**"). Such litigation would waste further judicial and legal resources, impede the orderly completion of matters and draw participants into frivolous litigation to satisfy the Respondent's conspiracy-based personal objectives.

Background to These Receivership Proceedings

4. The Applicant commenced these receivership proceedings in January 2022, following the Respondent's multiple defaults under loan agreements with the Applicant.¹

5. The Respondent and its lawyer Paliare Roland LLP ("**Paliare**") had a breakdown in their relationship and in April 2022 Penny J. permitted Paliare to withdraw, over the Respondent's objection. The Respondent now seeks to sue Paliare and two of its partners.

6. After three adjournments, all requested by the Respondent, Cavanagh J. heard and granted the Applicant's application for an order (the "**Receivership Order**"), among other things, appointing the Receiver over the Property on May 9, 2022.² The Respondent now seeks to sue the senior lawyer, Mr. Zucker, who represented it on the receivership appointment hearing.

7. Contrary to the Court of Appeal's clear authority, the Respondent, represented by another new lawyer, served a notice of appeal purporting to appeal the Receivership Order as of right.³

8. The Applicant moved to strike the appeal, and on June 17, 2022, the Court of Appeal released a decision granting the Applicant's motion to quash the Respondent's appeal of the Receivership Order, dismissing a conditional motion for leave to appeal, and awarding the Applicant its costs in the aggregate amount of \$15,000 (which costs award remains unpaid) (the

¹ [KingSett Mortgage Corporation v 30 Roe Investments Corp., 2022 ONSC 2777](#) at para 4.

² [Ibid](#) at paras 2, 4-6.

³ [KingSett Mortgage Corporation v 30 Roe Investments Corp., 2022 ONCA 479](#) at paras 13-15 [*June 17 Decision*]. The Applicant notes that 170 Willowdale Investments Corp., on behalf of which Mr. Zar acted as agent in a receivership application heard on May 23, 2023, similarly purported to appeal a receivership order of this Court as of right. See [Business Development Bank of Canada v 170 Willowdale Investments Corp., 2023 ONSC 3230](#) [*Willowdale*]; Transcript of Cross-Examination of Raymond Zar taken on November 20, 2023 at qq. 608-610, pp. 135-136 [Zar Transcript].

"**June 17 Decision**").⁴ In the June 17 Decision, the Court of Appeal held that the Respondent's proposed appeal was not "*prima facie* meritorious".⁵

9. The Respondent did not seek leave to appeal the June 17 Decision to the Supreme Court and the Receiver's appointment was thus finally determined on the merits.

10. Following the June 17 Decision, the Receiver sought and obtained an order (the "**July Sales Order**") approving an individual unit sale process to canvass the market for the Property (the "**Sale Process**"). The July Sales Order was subsequently amended by an order dated December 14, 2022 (the "**December Sales Order**").

11. On the December Sales Order motion, which took place by videoconference, Mr. Zar represented 30 Roe (without an order) and, as detailed in McEwen J.'s December 14 endorsement, threatened to broadcast a recording of the hearing. Mr. Zar then flatly refused to answer McEwen J.'s inquiry whether he was videorecording the Zoom hearing, and asked McEwen J. to recuse himself. The Court issued a special endorsement prohibiting any broadcast of the hearing.⁶

12. On both the July and December Sales Order motions, 30 Roe took the position, rejected by the Court, that the condominium units should be sold *en bloc* rather than individually. No appeal was taken from the July Sales Order or the December Sales Order.⁷

13. In accordance with the Sale Process, the Receiver entered into agreements of purchase and sale in respect of two condominium units owned by the Respondent in January 2023 (the "**Initial**

⁴ See generally, [June 17 Decision](#), *ibid.*

⁵ *Ibid* at para 35.

⁶ See generally, [KingSett Mortgage Corporation v 30 Roe Investments Corp.](#) (December 14, 2022), Toronto, CV-22-00674810-00CL (Endorsement) (ONSC) [December 14 Endorsement].

⁷ See generally, [KingSett Mortgage Corporation v 30 Roe Investments Corp.](#) (July 20, 2022), Toronto, CV-22-00674810-00CL (Endorsement) (ONSC); [KingSett Mortgage Corporation v 30 Roe Investments Corp.](#) (December 20, 2022), Toronto, CV-22-00674810-00CL (Endorsement) (ONSC) [December 20 Endorsement]. See also, [KingSett Mortgage Corporation v 30 Roe Investments Corp.](#), 2023 ONCA 219 at paras 6-7 [March 29 Decision].

Sale Agreements"). The Initial Sale Agreements and the transactions contemplated therein were approved pursuant to two approval and vesting orders granted by this Court on February 7, 2023 (the "**Initial AVOs**").

14. The Respondent, then represented by Blaney McMurtry LLP ("**Blaneys**"), served a notice of appeal purporting to appeal the Initial AVOs as of right and, in the alternative, requested leave to appeal.⁸ Blaneys then sought to get off the record, alleging a breakdown in the relationship. It was permitted to withdraw in the Superior Court but not in respect of the appeal.⁹ The Respondent now seeks to sue Blaneys and three of its then partners and one associate.

15. Mr. Zar personally made argument in the Court of Appeal and asked two different judges of the Court of Appeal to recuse themselves. On March 29, 2023, the Court of Appeal released its decision granting the Receiver's motion to quash the Respondent's appeal of the Initial AVOs, denying the Respondent leave to appeal and entitling the Receiver to seek its costs before this Court (the "**March 29 Decision**"). In the March 29 Decision, the Court of Appeal held that the Respondent's appeal of the Initial AVOs was "not *prima facie* meritorious", was nothing more "than a delay tactic" and "a collateral attack on the July and December Sales Orders", and repetitive of the Respondent's previously rejected *en bloc* sale argument based on evidence that "carried virtually no weight".¹⁰ The Respondent did not seek leave to appeal the March 29 Decision to the Supreme Court.

⁸ [March 29 Decision](#), *ibid* at paras 6-13.

⁹ See generally, [KingSett Mortgage Corporation v 30 Roe Investments Corp.](#), 2023 ONCA 196.

¹⁰ [March 29 Decision](#), *supra* note 7 at paras 34, 42.

16. On May 29, 2023, the Receiver obtained three orders (the "**May Sale Orders**") authorizing sale and prospective sale transactions for the then remaining Property.¹¹ No appeal was taken from the May Sale Orders and the transactions approved thereby have closed.

17. The Receiver has since made distributions to Canadian Imperial Bank of Commerce, the Respondent's previous first mortgagee, and the Applicant pursuant to an order granted on May 29, 2023 (the "**Ancillary Order**"). No appeal was taken from the Ancillary Order.

18. Despite the distributions authorized under the Ancillary Order, the Applicant will suffer a significant shortfall. As is apparent from the above summary of steps in these proceedings, considerable time and expense was wasted on frivolous steps by the Respondent.

Background to the Motion and Cross-Motion

19. Having conveyed all of the Property and distributed substantially all of the net proceeds thereof, the Receiver served its motion for the proposed Discharge Order on October 4, 2023. In response to the Respondent's opposition to the proposed Discharge Order and Mr. Zar's stated intention to file a motion under Rule 15 of the *Rules of Civil Procedure* to represent 30 Roe, the Receiver, the Applicant and the Respondent agreed to a litigation timetable (the "**Timetable**").

20. By endorsement dated October 12, 2023 (the "**October 12 Endorsement**"), the Timetable was approved by this Court and a deadline of October 16, 2023 for the delivery of the Respondent's Rule 15 motion record and any responding motion record was fixed. The October 12 Endorsement also set a hearing date of November 14, 2023 on a peremptory basis.¹²

¹¹ See generally, [KingSett Mortgage Corporation v 30 Roe Investments Corp. \(May 30, 2023\), Toronto, CV-22-00674810-00CL \(Endorsement\) \(ONSC\)](#).

¹² See generally, [KingSett Mortgage Corporation v 30 Roe Investments Corp. \(October 12, 2023\), Toronto, CV-22-00674810-00CL \(Endorsement\) \(ONSC\)](#).

21. Contrary to the October 12 Endorsement, the Respondent waited until November 7, 2023 to serve a responding and cross-motion record, which included a 151 page, 412 paragraph affidavit of Mr. Zar sworn as of that date (the "**Zar Affidavit**"). The Zar Affidavit is littered with baseless allegations and conspiratorial assertions and conjecture, which in many instances, are contradicted by the findings of this Court and the Court of Appeal and addressed in the Receiver's reports to this Court.

22. Pursuant to an endorsement dated November 14, 2023, this Court adjourned the Receiver's motion for the proposed Discharge Order to, among other things, allow the Receiver and the Applicant to cross-examine Mr. Zar on the Zar Affidavit.¹³ Mr. Zar arrived for his cross-examination on November 20, 2023 nearly an hour late.¹⁴

23. On cross-examination, Mr. Zar provided a myriad of utterly non-responsive and incredible answers, and frequently either denied having any recollection of events that he obviously would remember (such as purporting not to recall if he recorded the December 2022 hearing before McEwen J.).¹⁵ His evidence is reflective of a contumacious disregard for the process and judicial and legal resources.

24. With respect to Mr. Zar's recording of videoconference hearings before this Court, in contravention of section 136 of the *Courts of Justice Act*, Mr. Zar deposed as follows:

207. Q. I just want to be clear. You did record this hearing on May the 8th, 2022?

A. To supplement my notes in accordance with the practice direction.

208. Q. But I need a clear answer from you.

¹³ See generally, [KingSett Mortgage Corporation v 30 Roe Investments Corp. \(November 14, 2023\), Toronto, CV-22-00674810-00CL \(Endorsement\) \(ONSC\)](#).

¹⁴ Zar Transcript, *supra* note 3 at qq. 8-13, 21-25, pp. 5-8.

¹⁵ See generally, Zar Transcript, *ibid*.

A. That's the answer I'm going to give.

209. Q. Did you record the attendance before Justice Cavanagh on March 8, 2022?

A. Would you like me to cite the practice direction?

210. Q. No, I want you to answer the question. Did you record the attendance before Justice Cavanagh on March 8, 2022?

A. Paragraph 100(v), V as in Victor, of the practice direction specifically says – so it's paragraph 100(v), and it says:¹⁶

25. Mr. Zar also refused to answer whether he recorded all business phone calls, despite having written an email saying that he did precisely that:

224. Q. Sir, you do record all business telephone calls, don't you?

A. I'm going to refuse that question.

225. Q. Why is that?

A. I'm refusing the question. I'm not going to provide an explanation.

226. Q. Do you record all of your calls?

A. Asked and answer.

227. Q. Well, asked and not answered. Do you record all of your calls?

A. You have my refusal.

... 242. Q. So just to be clear, since you answered something slightly different, do you acknowledge that you said in this e-mail to Jon Love of KingSett on March 3rd, 2022, I record all my calls? Did you say that?

A. That's what the e-mail says.

243. Q. And is it true?

A. I am not going to answer that question. So refused.

... 246. Q. You're refusing to acknowledge something that you wrote in an e-mail and put in your own affidavit. Do I have that clear?

A. You have my refusal to your question.¹⁷

¹⁶ *Ibid* at qq. 207-210, pp. 43-44.

¹⁷ *Ibid* at qq. 224-227, 242-243, 246, pp. 47, 50.

26. Mr. Zar incredibly, and in disregard of the process, either denied or purported to struggle to recall his statements made to McEwen J. on the motion for the December Sales Order, including in respect of whether he recorded the hearing,¹⁸ deposing as follows:

288. Q. ... Did you refuse to answer Justice McEwen's question whether you recorded the hearing?

A. I don't recall. That's why at the onset of this questioning, I said that the transcripts show what happened and why. There's no point of my opining on what happened and why. The transcripts will show what happened and why.

289. Q. I just want to be perfectly clear about this because this is an important point. Did you refuse to answer Justice McEwen's question whether you recorded the hearing?

A. I don't recall.

290. Q. Justice McEwen in his endorsement written on that day said the following: When I asked Mr. Zar if he recorded the hearing, he refused to answer. Is that an accurate statement?

A. I would have to review the transcripts of the hearing and get back to you. I can undertake to do that if you wish.

... 295. Q. It's a pretty memorable event, that a judge asked you if you had recorded a hearing. Do you not remember that?

A. I don't. I mean, perhaps in a casual conversation I could answer that, but I am under oath and I take my oath very seriously. So I need to make sure that what I'm telling you is a hundred percent accurate.

296. Q. And you refused to answer his question, didn't you?

A. I don't recall. As I said, I need to see the transcripts to answer any questions about what was said at that hearing.

297. Q. Sir, you're under oath here. Did you record the hearing on December 14, 2022?

A. Well, I was self-represented at that hearing, so I may have recorded it. I don't recall for certain. I do know that the Court did record it.

298. Q. My question is, did you record it?

A. I don't recall.

299. Q. You may have?

A. I may have, yes, in accordance with the practice direction.

¹⁸ See generally, [December 14 Endorsement](#), *supra* note 6; [December 20 Endorsement](#), *supra* note 7.

...

307. Q. Sir, a judge is going to read this transcript and I just want to be absolutely clear that you have a full opportunity to give the answer that you want to give, and I'm going to put it to you square up, sir. Did you record the hearing on December 14, 2022, yes or no?

A. I did not record it because Justice McEwen, I believe, ordered me not to record it, so I did not record it.

308. Q. No, he didn't do that. He recorded (sic) you --

A. That's my recollection.

309. Q. -- to destroy any recording that you had.

A. Yes, and in doing so, I would interpret that as being the same as not allowing a recording, and so, no, I did not record it.

310. Q. So your evidence now is that you did not record it?

A. Well, you're giving me time to refer to my memory about the matter and I do recall that His Honour at the hearing, I did seek permission to record and His Honour didn't grant permission, so I did not record.¹⁹

27. Mr. Zar also gave the following evidence in respect of his request that McEwen J. recuse himself:

319. Q. I just want to be clear. Did you ask Justice McEwen to recuse himself because he wouldn't let you record the hearing or because he wouldn't allow you to be heard?

A. I don't recall exactly, but as I said, the transcript of the hearing will show exactly what was said.

320. Q. You're not able to say why you asked him to recuse?

A. It was almost a year ago, sir. I don't recall every detail. There's been a lot of hearings in this matter and that endorsement I haven't read in a very long time.²⁰

28. Mr. Zar also purported to be unable to recall his request that Justice Osborne recuse himself from hearing a different receivership application filed against 170 Willowdale Investments Corp., of which Mr. Zar is the president, secretary and director,²¹ deposing as follows:

¹⁹ Zar Transcript, *supra* note 3 at qq. 288-290, 295-299, 307-310, pp. 59-62, 64-65.

²⁰ *Ibid* at qq. 319-320, p. 68.

²¹ *Willowdale*, *supra* note 3 at para 15.

590. Q. So my first question is, did you ask Justice Osborne to recuse himself?

A. I don't recall.

591. Q. And did you allege that he was biased and had prejudged the matter?

A. I don't recall.

592. Q. Did you allege that he should in addition recuse himself because his former law firm had at one time been retained by you?

A. I don't recall.

593. Q. Did you allege that Mr. Justice Osborne was [biased] or that you had a reasonable apprehension of bias because he had read or had access to a confidential motion record?

A. I don't recall.

594. Q. You don't recall any of that?

A. No.

595. Q. On a matter that took place 6 six months ago?

A. I don't recall.

596. Q. Well, before Justice Osborne in May, you opposed the appointment of a receiver, didn't you?

A. I don't recall.

597. Q. You don't recall whether you opposed it?

A. I don't recall.²²

29. Mr. Zar later refused to answer whether he had initiated Law Society complaints:

355. Q. Well, have you filed complaints with the Law Society? Have you or Roehampton or 30 Roe filed complaints or caused complaints to be filed?

A. I don't recall if the complaints were originated by us. I do know that the Law Society does have or is keeping an eye on this matter because it involves various -- many lawyers.²³

²² Zar Transcript, *supra* note 3 at qq. 590-597, pp. 131-132.

²³ *Ibid*, at q. 355, p. 77.

30. Incredibly, Mr. Zar denied any intention to threaten the Receiver's counsel, when copying a member of the Law Society on correspondence accusing him of misconduct and refused to answer certain questions related thereto. In this regard, Mr. Zar's evidence includes the following:

376. Q. In your e-mail to Mr. Armstrong you wrote:

Out of respect for the Court, at least pretend to be impartial and disinterested from now on. If you want the allegations to go away, you should focus on preparing evidence to support your defence instead of excuses to avoid accountability, excuses which amount to a violation of your professional obligations to the Law Society.

You then copy Ms. Clarke at the Law Society. Is your evidence that you weren't meaning to threaten Mr. Armstrong?

A. I haven't filed a complaint against Mr. Armstrong with the Law Society.

377. Q. That wasn't the question I asked. Is it your evidence that you were intending or not intending to threaten Mr. Armstrong with this e-mail?

A. No, I absolutely was not intending to threaten Mr. Armstrong. ...

379. Q. So when you said, you should focus on preparing evidence to support your defence instead of excuses to avoid accountability, excuses which amount to a violation of your professional obligations of the Law Society, did you write that?

A. Well, Mr. Swan, I don't know the context.

380. Q. No, did you write that, sir?

A. I don't know. You're looking at it. I'm not.

381. Q. Did you write that?

A. Well, this e-mail is in relation to the receiver.

...

390. Q. The first page. Look at the first page to Mr. Armstrong.

A. I'm not looking at random pieces of paper.

391. Q. You have to, sir.²⁴

²⁴ *Ibid* at qq. 376-377, 379-381, 390-391, pp. 82-85, 86-87.

31. As illustrated below, Mr. Zar purported to be unable to answer who authorized the filing of the Notice of Action naming Mr. Zar as well as 30 Roe and Roehampton Capital Corp. – corporations that Mr. Zar is the principal of – as plaintiffs, in respect of which leave is now sought:

516. Q. You seem to have no trouble understanding that. That's quite a technical rule, sir, but you don't seem to know who made the decision to list Roehampton Capital as a plaintiff. Let's cut through this, sir, and just let's be straight up because there's been far too much circularity.

Did you make the decision on behalf of Roehampton Capital to start this lawsuit?

A. I refer you to the Rules of Civil Procedure. There are mechanisms for you to ascertain if the claim was commenced by a corporation with proper authority, et cetera. So I don't see the purpose of me answering that question.

...

541. Q. Just answer this question or refuse it. Did you make the decision on behalf of 30 -- on behalf of Roehampton Capital to commence the lawsuit against these various named defendants, including KSV, Goodmans and other lawyers?

A. No, it wasn't just me. I'm not going to speak more to that. The Rules of Civil Procedure outline the steps you can go through to get information on authority to commence claims.

542. Q. So it wasn't just you, but were you one of the people who made the decision on behalf of Roehampton Capital?

A. Yes.²⁵

32. At a certain point in the examination, Mr. Zar realized that there was no judge or anyone else to direct him to answer questions and decided to give speeches unrelated to the questions asked. He showed utter contumacy for the process. Mr. Zar deposed as follows:

744. Q. -- did you ask two judges of the Court of Appeal to recuse themselves?

A. Mr. Swan, I'm not finished.

745. Q. This isn't an opportunity, sir, for you to give a speech.

A. I'm going to stop. Whenever you finish interrupting, I will continue my answer.

746. Q. This isn't an opportunity for you to give a speech about whatever comes to your mind. You do have to make a passing effort to answer questions.

²⁵ *Ibid* at qq. 516, 541-542, pp. 114, 120.

One of the things, just so that you know and you're not taken by surprise, is we will be asking the judge to read your transcript and have regard to whether you have any respect for the administration of justice, including by attempting to answer questions that you're asked on the cross-examination.

So my question, sir, was this --

A. I'm not finished my answer, Mr. Swan.

747. Q. -- did you or did you not ask two judges of the Court of Appeal to recuse themselves in the March 2023 hearing?

A. As I was saying, Mr. Coates of KingSett²⁶

33. At another point during his examination, Mr. Zar pulled a wad of cash and threw it on the table to suggest that he had lots of money.²⁷

34. Since completing Mr. Zar's cross-examination, the Respondent has served a supplemental affidavit of Mr. Zar sworn January 30, 2024, to which an issued Notice of Action and Amended Statement of Claim (the "**Statement of Claim**") are attached.

The Respondent's Request for Leave to Commence and/or Continue an Action

35. The Respondent seeks leave to commence and/or continue an action against the Receiver and, if required, the Applicant, KingSett Capital Inc., and several of the Respondent's former counsel, among others. The material facts relied on in the Statement of Claim consist of the same baseless allegations and irrelevant or conspiratorial assertions and conjecture contained in the Zar Affidavit. In many cases, they contradict findings of this Court and the Court of Appeal, including in respect of the Receiver's activities approved to date.

36. The Respondent's proposed action was commenced absent the Receiver's prior written consent. There is no factual foundation for the action, it is plainly frivolous and vexatious and, as

²⁶ *Ibid* at qq. 744-747, pp. 167-168. See also, [March 29 Decision](#), *supra* note 7 at paras [15](#), [21](#).

²⁷ Zar Transcript, *ibid* at q. 1076, p. 240.

in the case of the Respondent's prior appeals, it is manifestly unmeritorious. What's more, the gravamen of the proposed action, as against the Receiver, the Applicant and KingSett Capital Inc., concerns issues previously raised and addressed in these receivership proceedings on a final basis.

37. The Respondent's request for leave should be denied and its commencement of the action absent the Receiver's prior written consent or leave, should not be condoned.

The Proposed Releases

38. Pursuant to the proposed Discharge Order, the Receiver is seeking a release in favour of KSV Restructuring Inc. and other Released Persons (as defined in the Discharge Order). At the Applicant's request, the proposed Discharge Order also includes a release in favour of the Applicant and the other KingSett Released Persons (as defined in the Discharge Order). Such releases do not release claims arising from the Receiver's or the Applicant's gross negligence or wilful misconduct.

39. This Court's jurisdiction to discharge a Court-appointed receiver upon the completion of its mandate is well established.²⁸ When exercising such jurisdiction, this Court has held that a release in favour of the Court-appointed receiver "should issue", provided there is no evidence of improper or negligent conduct on its part.²⁹ The Applicant supports the Receiver's request for a release and is not aware of any conduct that would make such release inappropriate.

40. Referencing the broad discretion inherent in section 11 of the *Companies' Creditors Arrangement Act* (the "CCAA"), this Court has approved releases in favour of third parties,

²⁸ [Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 s 183\(1\)](#); [Ed Mirvish Enterprises Ltd v Stinson Hospitality Inc \(2009\)](#), OJ No. 4265 at paras 8-9; [Yukon \(Government of\) v Yukon Zinc Corporation, 2022 YKSC 58](#) at paras 26-28 [*Yukon Zinc*].

²⁹ [Pinnacle Capital Resources Ltd v Kraus Inc. 2012 ONSC 6376](#) at para 47. See also, [Yukon Zinc, ibid](#) at paras 26-29.

including absent a plan of compromise or arrangement.³⁰ Affording the CCAA and the *Bankruptcy and Insolvency Act* (the "**BIA**") harmonious interpretation, this Court, in *Re Kitchener Frame Ltd.*, approved third party releases in the context of a BIA proposal proceeding.³¹

41. Here, the proposed release in favour of the KingSett Released Persons is not overly broad and entirely appropriate given: the Applicant's funding and facilitation of these receivership proceedings; the Respondent's and Mr. Zar's conduct and disregard for this Court's processes that has resulted in an enormous waste of judicial and legal resources; the ample notice provided to the Respondent and its stakeholders; the significant shortfall incurred by the Applicant; and the risk of protracted and meritless litigation – a risk which, as demonstrated by the Statement of Claim, is not merely hypothetical. This Court also has authority to control its own process and to supervise the commencement of proceedings arising out of insolvency proceedings, and the Respondent's efforts to relitigate issues already determined should be carefully scrutinized and subject to this Court's authority.

42. The Applicant therefore supports the relief sought by the Receiver, and requests that the relief sought by the Respondent be dismissed, with such further directions if necessary, as the Court sees fit.

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³⁰ *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 s 11; *Re Green Relief Inc.*, 2020 ONSC 6837 at paras 16-17, 23-26; *CannaPiece Group Inc v Marzilli*, 2023 ONSC 3291 at para 22; *Re Harte Gold Corp.*, 2022 ONSC 653 at paras 78-79. See also, *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 at paras 43-44 where the Court of Appeal held that the CCAA permits the third party releases in light of a "combination of (a) the open-ended, flexible character of the CCAA itself, (b) the broad nature of the term 'compromise or arrangement' as used in the Act, and (c) the express statutory effect of the 'double-majority' vote and court sanction which render the plan binding on *all* creditors, including those unwilling to accept certain portions of it".

³¹ *Re Kitchener Frame Ltd.*, 2012 ONSC 234 at paras 41-47, 54-55, 63-64, 69, 71-74, 78-82. See also, *9354-9186 Quebec inc. v Callidus Capital Corp.*, 2020 SCC 10 at para 74.

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