



**Third Supplement to the Fifth Report of
KSV Restructuring Inc. as
Receiver of certain property of
30 Roe Investments Corp.**

February 1, 2024

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

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

B E T W E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

30 ROE INVESTMENTS CORP.

Respondent

**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**

**THIRD SUPPLEMENT TO THE FIFTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER**

February 1, 2024

1.0 Introduction

1. This report ("Third Supplemental Report") supplements the Receiver's Fifth Report to Court dated October 4, 2023 ("Fifth Report"), the Supplement to the Fifth Report of the Receiver dated November 6, 2023 (the "First Supplemental Report") and the Second Supplement to the Fifth Report of the Receiver dated November 15, 2023 (the "Second Supplemental Report").
2. Unless otherwise stated, capitalized terms used in this Third Supplement Report have the meanings provided to them in the Fifth Report, the First Supplemental Report and/or the Second Supplemental Report.
3. On January 26, 2024, Presvelos Law LLP, counsel to the Company, delivered a letter to counsel to the Receiver enclosing written questions to the Receiver and requesting responses on certain refusals and under advisements made on the cross-examinations of the representatives of the Receiver and the Receiver's counsel. A copy of this letter is attached as Appendix "A".
4. The Receiver notes that the Company was directed to pose any questions relating to the Receiver's reports in writing by Endorsement of Justice Osborne dated October 12, 2023 when the Receiver's motion was adjourned from the original date (October 13, 2023) to November 14, 2023. The Company has not explained why it waited so long to deliver its questions. However, in order to ensure that the motion can proceed

as planned on February 7, 2024, the Receiver has answered the letter despite its late delivery.

5. On January 31, 2024, the Receiver delivered its response to counsel to the Company's letter, a copy of which is attached as Appendix "B".

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS COURT APPOINTED RECEIVER AND MANAGER OF
CERTAIN PROPERTY OF 30 ROE INVESTMENTS CORP.
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITIES**

A



Delivered via Email

January 26, 2024

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

Attention: Christopher Armstrong and Mark Dunn

Messrs. Armstrong and Dunn:

Re: KingSett Mortgage Corporation v. 30 Roe Investments Corp. (CV-22-00674810-00CL)

As you know, we are counsel to 30 Roe Investments Corp. (the “**Company**”).

Further to our correspondence yesterday, my client, the Company, has the following questions arising from your reports and the motion record. The questions are relevant and proportionate, and we reserve our rights to rely on this communication for the motion and, only if necessary, to seek cross-examination. Please note that any reference to the Receiver includes its agents and counsel, as applicable.

Questions Arising from KSV’s Report and Motion Record

1. Please advise the exact date(s) the Receiver first requested that the CRA provide it with the Company’s HST returns and filings. According to the Supplement of the 5th Report, it seems that the CRA provided the Company’s Notice of Assessments and Input Tax Credits to the Receiver in October 2023.
2. Please advise whether the Receiver prepared, or arranged to prepare, any tax memo or report on possible HST liabilities concerning the disposition of the 30 Roe Units (as previously defined in Court records between the parties). If a tax memo or other report has been prepared, please provide a copy of that memo or a basis upon which it is not being disclosed in these proceedings.
3. Please advise whether the Receiver consulted with external professionals on possible HST liabilities arising from the disposition of some or all the 30 Roe Units. Please provide particulars such as: who was consulted, when such person(s) was consulted and what was decided.
4. Please advise whether the Receiver requested copies of previous corporate tax filings from the CRA or from the Company’s accountant. If so, please provide the following particulars: when were such requests made to the CRA or other person(s), whether tax filings were received, and if so, when were they received. A copy of all supporting documentation should be produced.
5. Please advise whether the Receiver approached any real estate investment, property management, corporate housing, or related companies to entertain the sale of the 30 Roe Units, as a collective asset or business. If this was never done, please provide an explanation for this decision. If this was done, provide all particulars of this solicitation including supporting documentation.
6. Please confirm you had unfettered access to the bank account for the Company and whether you reviewed bank statements, including the period for which such bank statements were reviewed.

Cross-Examinations

The following refusals were maintained during the cross-examination of Mr. Armstrong:

Q. 134 and 158: Why the Receiver did not conduct an analysis to determine whether the Company should be sold for parts or as a going concern (paraphrase). Refused.

The following refusals and under advisements were provided during the cross-examination of Mr. Goldstein:

Q. 52 – 54 and 151: Mr. Goldstein to provide his dockets. Refused.

Q. 129: Whether the Receiver sought tax advice in respect of the receivership of 30 Roe. Refused.

Q. 130: whether the Receiver conducted an analysis to determine whether, and why 30 Roe should be sold as a going concern or for parts. Refused.

Q. 167 - 168. To advise whether the Receiver had access to the 30 Roe bank account.

Q. 229. To advise as to specific information the Receiver believed only the debtor had and refused to provide. Under Advisement.

Please advise by **Monday at 5:00pm** whether you will reconsider these refusals and provide a response to the questions asked by Mr. Zar on behalf of the Company to each of Mr. Armstrong and Mr. Goldstein, respectively.

Finally, I note that information is again missing from your website. Please immediately upload the Second Supplement to the 5th Report.

I look forward to a cooperative and productive dialogue and resolution of these issues.

Sincerely,

Sam Presvelos

Sam A. Presvelos

B

January 31, 2024

KingSett Mortgage Corporation v. Roe Investments Corp. (CV-22-00674810-00CL)

Responses to Written Questions Posed to KSV Restructuring Inc. in its capacity as receiver (the “Receiver”) and Refusals and Under Advisements on the Cross-Examinations of Christopher Armstrong and Noah Goldstein

The below responses are provided without prejudice to: (i) the Receiver’s position that the time for posing questions to the Receiver or otherwise seeking to introduce evidence into the record is past; and (ii) the relevance of any of the questions to the motions scheduled to be heard by the Court on February 7, 2024.

#	Question	Response
Questions Arising from Receiver’s Report and Motion Record		
1.	Please advise the exact date(s) the Receiver first requested that the CRA provide it with the Company’s HST returns and filings. According to the Supplement of the 5th Report, it seems that the CRA provided the Company’s Notice of Assessments and Input Tax Credits to the Receiver in October 2023.	The Receiver asked the CRA to provide the Company’s HST returns and filings in or around September 2023. The CRA provided the HST information contained at Appendix “D” to the Supplement to the 5 th Report to the Receiver on October 10, 2023.
2.	Please advise whether the Receiver prepared, or arranged to prepare, any tax memo or report on possible HST liabilities concerning the disposition of the 30 Roe Units (as previously defined in Court records between the parties). If a tax memo or other report has been prepared, please provide a copy of that memo or a basis upon which it is not being disclosed in these proceedings.	No tax memo or report was prepared by the Receiver on possible HST liabilities concerning the disposition of the 30 Roe Units, although the Receiver has considered this issue as described in numerous prior Reports to the Court.
3.	Please advise whether the Receiver consulted with external professionals on possible HST liabilities arising from the disposition of some or all the 30 Roe	The Receiver sought tax advice from its counsel, Goodmans LLP (“ Goodmans ”), on possible HST liabilities arising from the disposition of some or all of the 30 Roe Units.

#	Question	Response
	<p>Units. Please provide particulars such as: who was consulted, when such person(s) was consulted and what was decided.</p>	<p>The consultation began in and around summer 2022 when the sale process was commenced and has continued from time to time throughout the case as the Receiver obtained additional information.</p> <p>The content of the advice provided by Goodmans LLP is privileged. Without any further waiver of privilege, the Receiver is prepared to advise as follows:</p> <ol style="list-style-type: none">1. Generally, the sale of a used “residential complex” is exempt from HST; however, short-term rental units are excluded from the definition of “residential complex” and are subject to HST upon their sale;2. Even if the 30 Roe Units were residential complexes, the Receiver understands that input tax credits were claimed in respect of the original acquisition of the 30 Roe Units. The fact that input tax credits were claimed on the acquisition of the 30 Roe Units eliminates any potential exemption and results in HST being required to be remitted upon their sale;3. Section 167 of the <i>Excise Tax Act</i> relieves the vendor from collecting HST when all or substantially all of the assets of a business are sold. However, section 167 does not necessarily relieve the transaction from HST. If a purchaser is acquiring capital property and is not using that property in a “commercial activity” for HST purposes, the purchaser is required to self-assess the HST payable on such property;

#	Question	Response
		<p>4. Since section 167 does not eliminate HST that would otherwise be payable on the sale of a business, a properly advised purchaser will often account for potential future HST obligations in negotiating the purchase price for the business.</p> <p>5. Furthermore, if section 167 did apply or the purchaser was registered for HST, so that the Receiver was not obligated to collect HST, and the purchase price for the 30 Roe Units were HST-included (as is standard for the sale of residential complexes) a prudent purchaser would reduce the amount remitted to the vendor by the amount of HST included in the price.</p> <p>In addition, the Receiver notes that Mr. Zar claimed to have received a tax memorandum from BDO with respect to the HST liabilities. Justice Osborne directed Mr. Zar to provide this analysis to the Receiver within five days of May 30, 2023 but it was never provided.</p> <p>As outlined in the Supplement to the 5th Report, the Receiver has decided it is appropriate to seek an order authorizing it to make the HST Remittances (as such term is defined in the 5th Report) and, based on the information available to it at present, it believes the HST Remittances are required to be made.</p>
4.	Please advise whether the Receiver requested copies of previous corporate tax filings from the CRA or from the Company’s accountant. If so, please provide the following particulars: when were such requests made to the CRA or other person(s), whether tax filings were received, and if so, when were they	No, the Receiver has not requested copies of previous corporate tax filings from the CRA or from the Company’s accountants. The Receiver asked Mr. Zar and the Company to provide the Company’s income tax returns for the period 2019 through 2021 by letter from the Receiver’s counsel dated July 19, 2022 (see Appendix “D” to the Receiver’s

#	Question	Response
	received. A copy of all supporting documentation should be produced.	Second Report), which records the Company and Mr. Zar were required to provide to the Receiver pursuant to the Order of the Court dated July 18, 2022, to the extent in their power, possession or control. Despite this, no income tax returns were provided by the Company or Mr. Zar.
5.	Please advise whether the Receiver approached any real estate investment, property management, corporate housing, or related companies to entertain the sale of the 30 Roe Units, as a collective asset or business. If this was never done, please provide an explanation for this decision. If this was done, provide all particulars of this solicitation including supporting documentation.	<p>No, the Receiver did not approach any real estate investment, property management, corporate housing, or related companies to entertain the sale of the 30 Roe Units as a collective asset or business.</p> <p>The Receiver’s decision to sell the 30 Roe Units individually, and not as a going concern business, was addressed in the Endorsement of McEwen, J. dated July 20, 2022, the Endorsement of Steele, J. dated February 7, 2023 and the Endorsement of Brown, J.A. dated March 29, 2023. The Receiver fully explained its position in the materials filed on these appearances, and the Court made final and binding determinations with respect to whether the 30 Roe Units should or could be sold as a going concern. That issue cannot now be litigated again.</p> <p>Without derogating from the foregoing, the Receiver advises that it did consider whether the 30 Roe Units could or should be sold as a going concern. It determined that there was no credible basis to conclude that the 30 Roe Units could be sold as a going concern hospitality business or otherwise on an <i>en bloc</i> basis as a means of maximizing value because: (i) In order to sell the 30 Roe Units as a going concern business, the Receiver would need to know whether (and to what extent) the business had been profitable. The Receiver asked Mr. Zar for the information required to assess this issue</p>

#		Question	Response
			<p>(including, without limitation, any financial statements, financial projections or budgets, listing of rents or potential buyers) but Mr. Zar was unwilling or unable to provide it. The Receiver did not believe that any potential purchaser of the 30 Roe Units as a going concern would proceed without this basic financial information; (ii) To the Receiver's knowledge, the Debtor's business model was relatively unique. The Receiver is not aware of other companies operating nine condominium units in the same building as short term rentals, including one unit generating no rent because Zar's mother was an occupant. Although the Receiver does not have access to financial statements for the Company, the business of the Company appears to have been loss making (as evidenced by the receivership); (iii) Prior appraisals filed by the Company in the receivership valued the 30 Roe Units on an individual basis and indicated the highest and best use for the 30 Roe Units was a "a continuation of the existing residential use"; (iv) The 30 Roe Units were in a condominium and the declaration of the condominium prohibits rentals of furnished units for a period of less than thirty (30) days; (v) Rather than being rented out on a short-term basis, many of the 30 Roe Units were in fact being rented out by the Company on a long-term rental basis, including for lease terms of up to a year; and (vi) Although Minto 30 Roe includes usual condominium amenities (e.g. concierge, fitness room and party room), it is not a hybrid condominium/hotel project with hotel-style amenities (see also Second Report at para. 3.5 and Third Report at para. 2.5).</p>
6.		Please confirm you had unfettered access to the bank account for the Company and whether you reviewed	It is not clear what is meant by "unfettered access". Following the granting of the Receivership Order, the

#		Question	Response
		bank statements, including the period for which such bank statements were reviewed.	Receiver requested that the Company’s RBC account be frozen and transferred the funds on deposit in the Company’s RBC account to the receivership account. The Receiver also obtained and reviewed the RBC account bank statements for the period January 2022 to June 2022 to the extent relevant to its mandate (e.g. to identify critical expenses and sources of receipts, such as Airbnb and tenant receipts); however, the Receiver did not conduct a forensic review of the RBC bank statements it obtained.
Cross-Examinations			
7.	134 and 158	Why the Receiver did not conduct an analysis to determine whether the Company should be sold for parts or as a going concern (paraphrase).	Refused in the context of Mr. Armstrong’s cross-examination (although see answer to Question # 5, above, which is responsive to this question).
8.	52 – 54 and 151	Mr. Goldstein to provide his dockets.	Refused. Mr. Goldstein has provided detailed information about the activities underlying the fees claimed. KSV does not provide this information in its fee approval applications that are routinely approved by the Court.
9.	129	Whether the Receiver sought tax advice in respect of the receivership of 30 Roe.	Refused in the context of Mr. Goldstein’s cross-examination (although see answer to Question # 3, above, which is responsive to this question).
10.	130	Whether the Receiver conducted an analysis to determine whether, and why 30 Roe should be sold as a going concern or for parts.	Refused in the context of Mr. Goldstein’s cross-examination (although see answer to Question # 5, above, which is responsive to this question).
11.	167 - 168	To advise whether the Receiver had access to the 30 Roe bank account.	Refused in the context of Mr. Goldstein’s cross-examination (although see answer to Question # 6, above, which is responsive to this question).
12.	229	To advise as to specific information the Receiver believes only the debtor had and refused to provide.	This is not a proper question, since the cross-examination was limited to the fee affidavit. Without derogating from this

#		Question	Response
			<p>position, the Receiver is prepared to provide the following information under reserve of objection.</p> <p>The specific information the Receiver believes only the debtor had and refused to provide to the Receiver includes: (i) listing of creditors; (ii) details of any receivership property aside from the 30 Roe Units and the RBC Account; (iii) comprehensive record of leases of the 30 Roe Units (the Receiver was able to acquire certain leases from tenants) (iv) post-dated rent cheques for the 30 Roe Units; (v) comprehensive listing of the tenants of the 30 Roe Units and rental terms as at the commencement of the receivership; (vi) details of any parking spots/lockers rentals that were separate from 30 Roe Unit rentals; (vii) financial statements, financial projections and budgets for the Company; and (viii) identity of the unknown occupant of PH01/PH07 (who was subsequently determined to be Zar's mother).</p>

**KINGSETT MORTGAGE
CORPORATION**

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

Applicant

Respondent

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

**THIRD SUPPLEMENT TO THE FIFTH REPORT
OF THE RECEIVER
(DATED FEBRUARY 1, 2024)**

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