

**ONTARIO
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY AND INSOLVENCY]
(COMMERCIAL LIST)**

THE HONOURABLE)	TUESDAY, THE 14 TH
)	
JUSTICE PATTILLO)	DAY OF DECEMBER, 2021

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
CLAIREVILLE PROPERTY HOLDINGS INC.
A CORPORATION INCORPORATED UNDER
THE ONTARIO *BUSINESS CORPORATIONS ACT***

ORDER

THIS MOTION, made by Cannect Mortgage Investment Corporation (“**Cannect**”), as the DIP lender in this proposal proceeding of Claireville Property Holdings Inc. (the “**Debtor**”), in which KSV Restructuring Inc. (“**KSV**”) is the proposal trustee of the Debtor (the “**Proposal Trustee**”), under the *Bankruptcy and Insolvency Act* R.S.C. 1985 c.B-3 (“**BIA**”) to, among other things, (i) terminate the period for making a proposal by the Debtor or Proposal Trustee in this BIA proposal proceeding (the “**Proposal Proceeding**”) and obtain ancillary relief in respect of same; (ii) lift the stay of proceedings with respect to Cannect in the Proposal Proceeding; (iii) permit the commencement of a receivership proceeding by Cannect against the Debtor *nunc pro tunc* by the issuance of the notice of application on the Commercial List (the “**Receivership Proceeding**”); and (iv) allow for the use of, reference to, and reliance upon the Affidavit of Marcus Tzaferis, and the Factum, filed in this motion, for the Receivership Proceeding, was heard on this day by videoconference due to the COVID-19 crisis.

ON READING the Motion Record, Factum and Brief of Authorities of Cannect and the Fourth Report of the Proposal Trustee dated December 8, 2021 (the “**Fourth Report**”), and on hearing the submissions of counsel for Cannect, the Proposal Trustee, and any other person listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Michelle Pham, filed;

SERVICE

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

TERMINATION OF TIME TO FILE A PROPOSAL AND ANCILLARY RELIEF

2. **THIS COURT ORDERS** that pursuant to section 50.4 (11) of the BIA, the period for the Debtor or the Proposal Trustee, on behalf of the Debtor, to file a proposal to creditors in the Proposal Proceeding be and is hereby terminated.

3. **THIS COURT ORDERS** that the Fourth Report be and is hereby approved and the conduct and activities of the Proposal Trustee described therein be and are hereby approved.

4. **THIS COURT ORDERS** that Confidential Appendix “1” to the Fourth Report be and is hereby sealed until closing of the Transaction (as defined in the Fourth Report) or further Order of this Court.

5. **THIS COURT ORDERS** that, subject to paragraph 7 of this Order, KSV be and is hereby discharged and relieved from any further obligations, liabilities, responsibilities or duties in its

capacity as Proposal Trustee, including, without limitation, as described in the Order of The Honourable Mr. Justice Pattillo made on July 28, 2021, provided however, that notwithstanding its discharge herein, the Proposal Trustee shall remain the Proposal Trustee for the performance of such incidental duties as may be required to complete the administration of the Proposal Proceeding including payment of any outstanding and reasonable fees and disbursements of Cannect's counsel incurred in the Proposal Proceeding.

6. **THIS COURT ORDERS** that, in addition to the protections in favour of the Proposal Trustee as set out in: (i) the BIA; (ii) any Order of this Court in the Proposal Proceeding; and (iii) any reasons provided by this Court in the Proposal Proceeding, the Proposal Trustee shall not be liable for any act or omission on the part of the Debtor, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Proposal Trustee.

7. **THIS COURT ORDERS** that the Proposal Trustee and its counsel be and are at liberty to bring a motion in the Receivership Proceeding to seek approval of the fees and disbursements of the Proposal Trustee and its counsel that have been incurred in the Proposal Proceeding and not yet been approved by the Court.

LIFT THE STAY OF PROCEEDINGS

8. **THIS COURT ORDERS** that pursuant to section 69.4 of the BIA, the stay of proceedings in effect pursuant to section 69(1) of the BIA on the Debtor's filing of a notice of intention under section 50.4 of the BIA, is hereby lifted with respect to Cannect.

RECEIVERSHIP PROCEEDING

9. **THIS COURT ORDERS** that Cannect is hereby permitted and granted leave to commence the Receivership Proceeding against the Debtor *nunc pro tunc* by the issuance of the notice of application on the Commercial List, attached as **Schedule "A"** to this Order.

10. **THIS COURT ORDERS** that Cannect is hereby permitted to use, reference, and rely upon the Affidavit of Marcus Tzaferis sworn December 1, 2021, the Factum and Brief of Authorities, filed in this motion by Cannect, for the Receivership Proceeding, and Cannect shall file these materials in the Receivership Proceeding.

GENERAL

11. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of the date of this Order, and this Order is enforceable without the need for entry and filing.



(Signature of Judge)

Schedule “A”



Court File No.

Electronically issued : 01-Dec-2021
Délivré par voie électronique : 01-Dec-2021
Toronto

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

(Court Seal)

CANNECT MORTGAGE INVESTMENT CORPORATION

Applicant

and

CLAIREVILLE PROPERTY HOLDINGS INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- ☐ In writing
- ☐ In person
- ☐ By telephone conference
- ☒ By video conference

at the following location:

330 University Avenue, Toronto, Ontario or video conference

on a date and time to be fixed or set by the Commercial List Office or registrar, before a judge presiding over the Commercial List.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not

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have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date December 1 , 2021 Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: **Claireville Property Holdings Inc.**
c/o KSV Restructuring Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

Noah Goldstein
Tel: (416) 932-6207
Email: ngoldstein@ksvadvisory.com

Proposal Trustee of Claireville Property Holdings Inc.

AND TO: **WEISZ FELL KOUR LLP**
200 Bay Street, Suite 2305
P.O. Box 120
Toronto, ON M5J 2J3

Caitlin Fell
Tel: (416) 613-8282
Email: cfell@wfkllaw.ca

Lawyers for Claireville Property Holdings Inc.

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APPLICATION

1. **THE APPLICANT**, Cannect Mortgage Investment Corporation (“Cannect”), makes an application for:

- (a) an Order abridging the time for service of this Notice of Application and the materials filed in support of the application, authorizing service via electronic mail and dispensing with further service thereof;
- (b) an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Claireville Property Holdings Inc. (the “**Debtor**”) including, but not limited to, the Debtor’s leasehold interest (the “**Leasehold Interest**”) in the premises or buildings municipally known as 18/20/22/24/26 Huddersfield Road, 350/354/358 Humberline Drive and 93/101/123/130/160 Claireville Drive, Toronto, Ontario (the “**Real Property**”), and more specifically described as: PIN 07368-0036 (LT): PT LT 38 CON 4 FRONTING THE HUMBER, PT 8 64R2980 EXCEPT PTS 2, 3 & 1 EXPROP PLAN 11716. ETOBICOKE; CITY OF TORONTO; and PIN 07368-0037 (LT): PT LT 38 CON 4 FRONTING THE HUMBER, PT 5 64R2980. ETOBICOKE; CITY OF TORONTO (collectively, the “**Property**”);

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- (c) staying all rights and remedies against the Debtor, the Receiver, or affecting the Property; and
- (d) such other relief as counsel may request and this Honourable Court may deem just.

2. **THE GROUNDS FOR THE APPLICATION ARE:**

Background

- (a) The Debtor's principal asset is its Leasehold Interest.
- (b) The Debtor is the registered owner of the Leasehold Interest.
- (c) The Leasehold Interest is subject to a 99-year ground lease with Kornwood Investments Ltd. dated September 1, 1973, which expires on August 31, 2073.

Proposal Proceedings and DIP Loan

- (d) The Debtor filed a notice of intention ("NOI") to make a proposal under the BIA on July 2, 2021.
- (e) At the commencement of the NOI proceedings, the Debtor's principal secured creditor was DUCA Financial Services Credit Union Ltd. ("DUCA"), which was owed approximately \$2.4 million. The Debtor also had accrued unpaid property tax arrears of approximately \$2 million. DUCA issued a demand letter together with a Notice of Intention to Enforce Security pursuant to section 244 of the BIA

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in June 2021. The Debtor filed its NOI prior to the expiry of the statutory 10-day notice period.

- (f) In July 2021, the Debtor obtained a commitment from Cannect to repay DUCA and bring the outstanding property taxes current by way of a DIP loan in the principal amount of \$4.5 million. The July 28 Order (defined below) approved, among other things, the DIP loan, which funding was advanced on July 30, 2021 and used to repay DUCA and the property tax arrears.
- (g) On July 28, 2021 (the “**July 28 Order**”), the Honourable Justice Pattillo granted various relief including the following:
 - (i) approving the debtor-in-possession financing from Cannect in the principal amount of \$4.5 million (the “**DIP Loan**”), the debtor-in-possession financing term sheet between Cannect and the Debtor dated July 23, 2021 (the “**DIP Term Sheet**”), the priority charges to secure the DIP Loan (the “**DIP Lender's Charge**”) and certain professional costs (the “**Administration Charge**”), and a payout of property tax arrears and DUCA;
 - (ii) extending the Proposal Trustee’s powers in respect of the Debtor, to the exclusion of all others Persons (as defined in the July 28 Order), including the Debtor itself;
 - (iii) approving a sale and investment solicitation process (“**SISP**”);

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- (iv) extending the time for the Proposal Trustee to file a proposal on the Debtor's behalf under the BIA to and including September 15, 2021; and
 - (v) approving the First Report of the Proposal Trustee dated July 26, 2021 and the conduct and activities of the Proposal Trustee described therein.
- (h) On September 15, 2021 (the "**September 15 Order**"), the Honourable Justice Cavanagh granted various relief including the following:
- (i) extending the time for the Proposal Trustee to file a proposal on the Debtor's behalf under the BIA up to and including October 30, 2021;
 - (ii) approving the Second Report of the Proposal Trustee dated September 7, 2021 (the "**Second Report**"), and the conduct and activities of the Proposal Trustee described therein; and
 - (iii) approving the fees and disbursements of the Proposal Trustee and its lawyer as set out in the Second Report.
- (i) On October 27, 2021 (the "**October 27 Order**"), the Honourable Justice Koehnen granted various relief including the following:
- (i) extending the time for the Proposal Trustee to file a proposal on the Debtor's behalf under the BIA up to and including December 14, 2021;

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- (ii) approving the Third Report of the Proposal Trustee dated October 20, 2021 (the “**Third Report**”), and the conduct and activities of the Proposal Trustee described therein; and
- (iii) approving the fees and disbursements of the Proposal Trustee and its lawyer as set out in the Third Report.
- (j) During the NOI period and as further detailed in the various court reports of the Proposal Trustee, the Proposal Trustee has advanced the SISP through its sales advisor, CB Richard Ellis Limited (“**CBRE**”). In accordance with the July 28 Order, the Proposal Trustee solicited listing proposals from five commercial realtors to act as listing agent for the Leasehold Interest in the Real Property. Following consultation with Cannect, the Proposal Trustee entered into a listing agreement for the Leasehold Interest on or about August 25, 2021 with CBRE. CBRE subsequently made marketing materials available and created a data room to share these materials with potential purchasers; and the Proposal Trustee, in consultation with CBRE, set down a timeline to receive offers.
- (k) On or about December 1, 2021, the Proposal Trustee has entered into or is about to enter into an agreement of purchase and sale regarding the Leasehold Interest in the Real Property with the successful purchaser. The Proposal Trustee has indicated that it is not possible to complete or close this sale transaction, if it closes, by January 1, 2022 or during the NOI period.

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- (l) The Proposal Trustee or Debtor is not seeking an extension of the NOI stay of proceedings, which expires on December 15, 2021.
- (m) The time referenced in section 50.4(9) of the BIA and the October 27 Order currently expires on December 15, 2021, and the Court is not authorized pursuant to section 50.4(9) of the BIA to extend the time referenced in such section beyond January 1, 2022.
- (n) The Debtor will be deemed to have made an assignment in bankruptcy pursuant to section 50.4(8) of the BIA on the expiry of the stay period on December 15, 2021.

Appointing a Receiver

- (o) On December 14, 2021 or December 15, 2021, the Debtor will be indebted to Cannect in the amount of \$4.5 million plus interest and costs under the DIP Term Sheet
- (p) The maturity or termination date (the “**Termination Date**”) of the DIP Loan under the DIP Term Sheet is generally the earliest of the following: (a) on or about January 30, 2022; (b) the date the NOI stay of proceedings expires without being extended (i.e., December 15, 2021) or the date the NOI proceedings are terminated (i.e., December 14, 2021, if these proposal proceedings are terminated on that date) or the Debtor becomes bankrupt; and (c) an Event of Default.
- (q) The expiry of the NOI stay of proceedings, the termination of the BIA proposal proceedings or bankruptcy regarding the Debtor also constitute an Event of

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Default under the DIP Term Sheet. Also, any action (or inaction) of the Debtor which would, in the sole determination of Cannect, have a material adverse effect on the Debtor or the collateral (i.e., Leasehold Interest) constitutes an event of default under the DIP Term Sheet. In Cannect's sole determination, the intended failure of the Debtor to file a proposal during the NOI period and the resulting deemed bankruptcy will have a material adverse effect on the Debtor's collateral.

- (r) Upon the Termination Date (i.e., December 14 or 15, 2021) or the occurrence of an Event of Default under the DIP Term Sheet, all of the indebtedness of the Debtor to Cannect, together with all interest and other amounts owing under the DIP Term Sheet, shall become immediately due and payable and Cannect is entitled to enforce its security.
- (s) Cannect holds the following security (collectively, the “**Security**”) regarding the DIP Loan: a court-ordered super-priority DIP Lender's Charge (ranking behind the Administration Charge); a general security agreement (“**GSA**”) dated August 16, 2021, granted by the Debtor to Cannect; and an indenture regarding the assignment of rents (“**Assignment of Rents**”) dated August 17, 2021, granted by the Debtor to Cannect.
- (t) The GSA was perfected by registering under the *Personal Property Security Act* on or about August 12, 2021 and the Notice of Assignment of Rents was registered on title of the Real Property on or about October 20, 2021. Under the GSA and DIP Lender's Charge or July 28 Order, on default, Cannect may, among

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other things, apply to this Court for the appointment of a receiver against the Debtor.

- (u) Under the DIP Term Sheet and July 28 Order, before Cannect can enforce its Security, including applying to this Court for the appointment of a receiver, it must provide five (5) days' notice to the Debtor and the Proposal Trustee. The Debtor and the Proposal Trustee, or their counsel, are included on the Service List in this application or motion and will be provided approximately seven (7) days' notice of this application or motion for the appointment of a receiver.

Necessity for the Appointment of a Receiver

- (v) Cannect's need for the appointment of a receiver is apparent based on the current circumstances, including the following:
 - (i) The need for a quick transition from NOI proceedings to receivership proceedings in order to complete the above sale transaction and if it does not close, any future sale transaction;
 - (ii) Cannect is under a tight deadline;
 - (iii) Debtor's NOI stay expires at 12:01 AM on December 15, 2021, and there is no intention of extending it, especially given that an extension would only take the stay period to January 1, 2022, the outside date of the NOI proceedings;

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- (iv) This is not a restructuring, no longer debtor-driven and the Debtor's bankruptcy is imminent;
 - (v) In terms of timing or sequence of proceedings, Cannect does not want an intervening bankruptcy or deemed bankruptcy before the receivership;
 - (vi) as noted above, the Proposal Trustee has entered into or is about to enter into an agreement of purchase and sale with a potential purchaser of the Leasehold Interest but needs more time beyond the NOI period to possibly close the transaction, if it closes. This potential sale, and any other possible sale if this one does not close, can be completed by a court-appointed receiver or in receivership proceedings;
 - (vii) the Debtor is or will be in default of its obligations to Cannect;
 - (viii) to preserve, protect and ultimately realize on the collateral or Leasehold Interest subject to the Security;
 - (ix) the Security provides for the court-appointment of a receiver; and
 - (x) it is just and convenient to appoint a receiver.
- (w) KSV has consented to act as Receiver in this matter.
- (x) The Order sought by Cannect provides for the retention of independent counsel by the Receiver to address any issue or matter where there may be an actual or perceived conflict with Cannect, including any and all potential priority disputes.

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In all other situations, the draft Order provides authorization for the Receiver to use Cannect's counsel as a matter of cost efficiency.

- (y) Rules 2.03, 3.02, 14.05(2), 16, 41 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, Section 243(1) of the BIA and Section 101 of the CJA
- (z) Such further and other grounds as the lawyers may advise and this Court may deem just.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this application or motion:

- (a) the Affidavit of Marcus Tzaferis, to be sworn;
- (b) the consent of KSV Restructuring Inc. to act as Receiver; and
- (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

December 1 , 2021

FOGLER, RUBINOFF LLP

Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Vern W. DaRe (LSO# 32591E)

vdare@foglerr.com
Tel: 416.941.8842
Fax: 416.941.8852

Lawyers for the Applicant,
Cannect Mortgage Investment Corporation

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43

CANNECT MORTGAGE INVESTMENT CORPORATION
Applicant

-and- CLAIREVILLE PROPERTY HOLDINGS INC.
Respondent

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

FOGLER, RUBINOFF LLP

Lawyers

77 King Street West

Suite 3000, P.O. Box 95

TD Centre North Tower

Toronto, ON M5K 1G8

Vern W. DaRe (LSO# 32591E)

vdare@foglers.com

Tel: 416.941.8842

Fax: 416.941.8852

Lawyers for the Applicant,
Cannect Mortgage Investment Corporation

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF CLAIREVILLE PROPERTY HOLDINGS INC.
A CORPORATION INCORPORATED UNDER THE ONTARIO BUSINESS
CORPORATIONS ACT**

Estate/Court File No. 31-2749576

***ONTARIO*
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY AND INSOLVENCY]
(COMMERCIAL LIST)**

**PROCEEDING COMMENCED AT
TORONTO**

ORDER

FOGLER, RUBINOFF LLP

Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Vern W. DaRe (LSO: 32591E)

Tel: 416.941.8842
Fax: 416.941.8852
Email: vdare@foglers.com

Lawyers for the DIP Lender,
Cannect Mortgage Investment Corporation