

June 27/17

For Handwritten reviews attached
order signed appointing a 'Reviewer
as usual.

MJC

Court File Number: CV-17-11837-0002

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

KINGSETT MORTGAGE CORPORATION
Plaintiff(s)

AND

GENERX (BYWARD HALL) INC.
Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: _____
 Time Table approved (as follows):

THE IT IS 1ST AND 2ND MORTGAGES ^{OWED} ~~APPROX.~~ APPROX. \$8.8 MILLION TODAY. THE MORTGAGES ARE IN DEFAULT. PROPER DEFAULT AND BIA NOTICES HAVE BEEN GIVEN. THE IT GAVE NOTICE OF SALE TO LET IT MOVE PRIVATELY TO SELL THE SUBJECT LAND. THE STATUTORY 35 DAYS HAVE EXPIRED. IN THE INTERIM, THE RECEIVER OF A NUMBER OF ENTITIES, WAS OBTAINED AND REGISTERED ON TITLE A CPL SUPPORTING CLAIMS TO TRACE \$1.5 MILLION INTO THE

June 27/16
Date


Judge's Signature

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Judges Endorsment Continued

SUBJECT PROPERTY THAT WAS ALLEGEDLY MISAPPROPRIATED BY COMMON MANAGEMENT OF THE COMPANIES IN RECEIVERSHIP AND THE Δ MORTGAGOR IN THIS CASE.

THE Δ SEEKS TO LIFT THE CPL AND OPPOSES THE RECEIVERSHIP. IT SAYS THE JUST AND CONVENIENT OUTCOME IS FOR IT TO REFINANCE TO PAY OUT THE Π AND TO SECURE THE RECEIVER'S CLAIMS.

THE Π SAYS THAT AS THE RECEIVER REPRESENTS ENTITIES WITH PUBLIC INVESTORS WHO APPEAR TO HAVE SUFFERED ~~LOSSES~~ LOSSES OF FUNDS DUE TO MISAPPROPRIATION, A COURT-SUPERVISED PROCESS IS REQUIRED TO ENSURE THAT A TRANSPARENT VALUE-MAXIMIZING SALE OCCURS TO PROTECT NOT JUST Π BUT \$1 MILLION IN LIEN-CLAIMANTS AND THE INTERESTS OF THE RECEIVER AND PUBLIC INVESTORS. THE TRUSTEE APPOINTS OVER A NUMBER OF RELATED ENTITIES AT THE MOTION OF

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Judges Endorsment Continued

THE REGULATOR AGREES. ALL CREDITORS WANT AN ASSURANCE OF A COURT-BASED PROCESS WITH TRANSPARENCY AND ACCOUNTABILITY TO ALL INTERESTED PARTIES.

THE Δ FEARS THAT A FIRE-SALE BY A ~~RE~~ RECEIVER WILL DESTROY ITS "EQUITY" IN THE SUBJECT PROPERTY. I PUT THE WORD IN QUOTATION MARKS AS THE RECEIVER ~~IS~~ HAS SHOWN THAT MOST, IF NOT ALL, OF THE SUPPOSED EQUITY IS IN FACT FUNDS MISAPPROPRIATED FROM RELATED ENTITIES IN RECEIVERSHIP OR TRUSTESHIP.

THE Δ 'S EVIDENCE IS THAT THE LIQUIDATION VALUE OF THE SUBJECT PROPERTY IS AROUND \$11 MILLION. ~~B~~ IF I LIFT THE CPL, Δ HAS A LENDER WHO WILL ADVANCE UP TO \$3 MILLION UNDER A NEW 3RD MORTGAGE. THAT MONEY WILL BE USED TO BRING THE MORTGAGES UP-TO-DATE, TO PAY \$250,000 INTO COURT AS PART SECURITY FOR THE

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Judges Endorsement Continued

RELEASERS TO CLAIM OF \$1.5 MILLION
(AT ^{TAT} CURRENT TIME) AND TO PROVIDE A
SECURITY DEPOSIT OF \$2 MILLION TO
ANOTHER LENDER WHO AGREES TO
ADVANCE \$15.5 MILLION ON AN UNSECURED
BASIS IN 45 DAYS.

A LENDER WILLING TO MAKE AN
UNSECURED ADVANCE OF MORE THAN THE
CURRENT FAIR MARKET VALUE OF THE SUBJECT
PROPERTY SOUNDS LIKE AN EXCELLENT
OPPORTUNITY. IN FACT IT SOUNDS TOO GOOD
TO BE TRUE. EVEN A QUICK REVIEW OF
THE PROPOSED LOAN AGREEMENT SHOWS IT
HAS MORE HOLE THAN SWISS CHEESE.
THE Δ IS ALREADY IN DEFAULT OF THE
AGREEMENT JUST DUE TO THESE PROBLEMS.
THERE IS A MATERIAL ADVERSE CHANGE
CONDITION THAT LETS THE PROPOSED LENDER
WALK AWAY ON SUBJECTIVE GROUNDS. THERE IS
NO CERTAINTY AT ALL OF THE PROPOSED TRANSACTION CLOSING

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Judges Endorsment Continued

IN GRANTING THE Δ AN ADVANCEMENT ON JUNE 15, 2017, THE COURT GRANT IT TWELVE DAYS TO RE-FINANCE. A CONDITION WAS DEAL 45 DAYS HENCE SUBJECT TO AN EARLIER \$3 MILLION BORROWING ON UNDISCLOSED TERMS ~~IS NOT~~ A RE-FINANCING THAT CAN INSTILL CONFIDENCE IN THE CREDITORS OR THE COURT AS TO THE LIKELIHOOD OF CLOSING.

BUT IS THERE PREJUDICE IN TRYING? THE RECEIVER FAIRLY NOTES THAT IF ITS CLAIMS COME BEHIND THOSE OF TR AND THE LIENS, THERE IS LITTLE EQUITY AVAILABLE FOR IT AT ~~THE~~ \$11 MILLION VALUE ASSERTED BY Δ . THE \$250,000 PAYMENT INTO COURT ~~BY~~ PROMISED TODAY FALLS FAR SHORT OF SECURING ITS CLAIM. THE NEW \$3 MILLION ADVANCE AND MORTGAGE ALLOWS MANAGEMENT TO SUEK ~~THE EQUITY~~ WHAT LITTLE EQUITY MIGHT REMAIN FROM

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Judges Endorsment Continued

THE BODY OF THE Δ . TRUST RECEIVERS
CLAIMS ARE PREJUDICED AND PROBABLY
PULSED OUT OF THE MONEY IF Δ DOES
NOT COMPLETE ITS RE-FINANCING AND THEN
SUCCESSFULLY DEVELOP THE PROPERTY.

PLZ, THE TRUST HAS LOST FAITH IN
MANAGEMENT. IT HAS GIVEN THEM
AMPLE TIME AND RECEIVED MULTIPLE
OFFERS FROM MANAGEMENT THAT HAVE NOT
COME TO FRUITION IN A SUCCESSFUL
REFINANCING. THE TRUST NOTES THAT Δ IS
EFFECTIVELY SEEKING A 95+ DAY ADJOURN-
MENT WHEN THIS MOTION WAS MADE
PEREMPTORY ON Δ ON JUNE 15, 2017.

IN MY VIEW IT IS JUST AND
CONVENIENT TO APPOINT A RECEIVER TO RUN
THE PROPOSED SALE WITH COURT SUPERVISION.
THERE ARE TOO MANY DISPARATE INTERESTS
AT PLAY FOR A PRIVATE SALE PROCESS TO
RUN SMOOTHLY WITHOUT PUTTING OTHER INTERESTS

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Judges Endorsment Continued

AT RISK. THE SECURITY PROPOSED FOR THE RECEIVER'S CLAIM OF \$250,000 PLUS AN UNDERTAKING TO TOP THAT AMOUNT UP IN 45 DAYS IF THE PROPOSED UNSURETY ADVANCE IS MADE, EXPOSES THE RECEIVER TO THE PREJUDICE OF SUBORDINATION IN THE FAR MORE LIKELY EVENT THAT A PROPOSAL THAT APPEARS TO BE TOO GOOD TO BE TRUE PROVES TO BE JUST THAT.

MOREOVER, THE POSITION OF THE ~~LENDER~~ IS PREJUDICED IF MANAGEMENT REMAINS IN PLACE. ~~LENDER'S POSITION IS PREJUDICED~~ AS ABOVE, THERE ARE GOOD GROUNDS TO SUPPORT A LENDER'S LOSS OF CONFIDENCE IN MANAGEMENT, REQUIRING THE LENDER TO STAND DOWN AT THE SUFFERANCE OF MANAGEMENT UNDERTAKING THE LENDER'S LEGAL RIGHTS.

IT FOLLOWS THAT I WILL SIGN THE RECEIVERSHIP ORDER AS SOUGHT. THE AS PROPOSAL TO LIST THE CPL IS DISMISSED AS

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Judges Endorsment Continued

17007 BUT I WOULD HAVE DISMISSED IT
ON THE MERITS IN ANY EVENT.

