



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00716511-00CL

DATE: August 16, 2024

NO. ON LIST: 4

TITLE OF PROCEEDING: KINGSETT MORTGAGE CORPORATION v. MAPLEVIEW DEVELOPMENTS LTD. ET AL

BEFORE: JUSTICE CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE CAVANAGH:

- [1] I heard two motions today.
- [2] KSV Restructuring Inc. (“KSV”), in its capacity as the Court-appointed receiver and manager (the “Receiver”) of the “Property” (as defined in the Receivership Order) moves for (i) an Approval, Vesting and Ancillary Matters Order in relation to a proposed transaction for the sale of substantially all of the Property; and (ii) a Distribution Order.
- [3] KingSett Mortgage Corporation moves for an order authorizing and directing the Receiver to assign Mapleview Developments Ltd. (“Mapleview”), Pace Mapleview Ltd. (“Pace”) and 2552741 Ontario Inc. (“255 Ontario”) (together, the “Debtors”) into bankruptcy and authorizing and empowering KSV to act a licensed trustee of the Debtors.
- [4] The Debtors are indebted to the Canada Revenue Agency (“CRA”) in the amount of approximately \$7.3 million in respect of unremitted HST on the sales of 266 closed townhomes.
- [5] It is a condition precedent to closing the proposed transaction that the order requested on KingSett’s motion be granted.
- [6] Robert Choi filed responding materials on behalf of Mapleview and Pace and he appeared at the hearing to oppose KingSett’s motion.
- [7] No other interested party opposes the requested orders.

Does Mr. Choi have standing to represent Mapleview and Pace?

- [8] The Receiver and KingSett submit that Mr. Choi is not entitled to represent Mapleview and Pace in opposition to these motions in the receivership proceeding.

- [9] The Receivership Order provides, in paragraph 4, that the Receiver is empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

...

- (d) to engage ... counsel ... to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including each of the Debtors, and without interference from any other Person.

- [10] The Receiver retained counsel to assist with the exercise of its powers and duties. Counsel for the Receiver supports the motion by KingSett. The Receivership Order expressly provides that in these circumstances, the power to appoint counsel is to the exclusion of the power of each of the Debtors to do so.
- [11] I conclude that Mapleview and Pace lacked the authority to retain counsel to oppose KingSett's motion and, therefore, Mr. Choi does not have standing as counsel for these parties to make submissions in opposition to KingSett's motion.
- [12] In any event, I heard Mr. Choi's submissions in opposition to KingSett's motion and I take them into account in my disposition of this motion.

Does this Court have jurisdiction to make an order authorizing and directing the Receiver to assign the Debtors into bankruptcy?

- [13] In *Royal Bank v. Sun Squeeze Juices Inc.*, 1994 CarswellOnt 266, Farley J. addressed the question of whether this Court has the jurisdiction to authorize a Court-appointed receiver and manager to assign a debtor company into bankruptcy order to consent to a receiving order being issued against the debtor company. Farley J. held, at para. 6, citing several authorities, that there is no dispute that the Court has the power to authorize the Court-appointed receiver to do so.
- [14] In *Bank of Montreal v. Owen Sound Golf and Country Club*, 2012 ONSC 557, at para. 7, D. M. Brown J. (as he then was) held, citing *Sun Squeeze*, that "[i]t is well settled that a court possesses the power to authorize a receiver to file an assignment in bankruptcy or consent to a bankruptcy order".
- [15] This Court regularly makes such orders.
- [16] I am satisfied that this Court has jurisdiction to make the requested Order.

Should this Court make the requested Order?

- [17] Mapleview is indebted to KingSett pursuant to loan facilities executed two Mapleview in connection with the development and purchase of the lands in question. As of February 1, 2024 there was in the aggregate \$47,099,842.63 owing to KingSett, plus accruing interest, fees and costs.
- [18] A Direction, Acknowledgement and Security Agreement was made as of November 30, 2022 between pace and 255 Ontario and Mapleview and KingSett. Paragraph 2.4 (c) of this agreement provides that "Subject in all cases to the provisions of the Mortgage, the Beneficial Owner hereby: ... (c) agrees to observe, perform and be bound by all covenants, obligations, representations and

warranties of the Registered Owner in the Commitment Letter, the Mortgage and the other Loan Documents, and agrees to observe and be bound by all remedies that the Assignee thereunder.

- [19] According to the plain and unambiguous language of this agreement, Pace and 255 Ontario agreed to perform the covenants of Maplevue including the covenant in the Mortgage to pay the mortgage debt.
- [20] I am satisfied that all of the Debtors are indebted to KingSett.
- [21] KingSett asks for the requested Order to invoke the distribution mechanism provide for under the BIA to alter priorities in its favour. This Court has held that a bankruptcy order may be sought for the express purpose of affecting priorities. See, for example, *American General Life Insurance Company et al. v. Victoria Avenue North Holdings Inc.*, 2023 ONSC 3322, at para. 17.
- [22] KingSett had no involvement in the Debtors' decision not to remit HST and did not benefit from that decision. The Debtors are indebted to KingSett (and to CRA) for substantial amounts and are insolvent.
- [23] KingSett is not making an application under section 43 of the *BIA* and I do not accept that this motion should be treated as such an application. I disagree that KingSett is seeking a "backdoor" way to obtain an order to reverse statutory priorities. KingSett is following a process that has been followed in many other cases and is not inappropriate.
- [24] I am satisfied that the Receiver would be acting properly and within its authority under the Receivership Order to assign the Debtors into bankruptcy.

Receiver's Motion

- [25] I am satisfied that the Orders requested by the Receiver should be made. In this respect, I accept the submissions made by the Receiver in its factum, at paras. 22-44.
- [26] Orders to issue in forms of Orders signed by me today.