

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

B E T W E E N:

**KINGSETT MORTGAGE CORPORATION**

Applicant

- and -

**MAPLEVIEW DEVELOPMENTS LTD., PACE MAPLEVIEW LTD. and  
2552741 ONTARIO INC.**

Respondents

**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**

**NOTICE OF MOTION**

Portland Private Income Fund and Portland Investment Counsel Inc. (together, “**Portland**”) will make a motion to a judge presiding over the Commercial List on a date to be determined, at 330 University Avenue, Toronto, Ontario, M5G 1R7.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. A declaration that the MZGI 274 Mortgage has priority over the MZGI 273 Mortgage (all as defined below);
2. An accounting of all advances and repayments made under the MZGI 273 Mortgage;

3. An order directing that the Portland Reserve, as defined in the Sale Approval, Vesting and Ancillary Matters Order dated August 16, 2024, be paid to Portland;
4. Costs of this motion on a partial indemnity basis, payable by any party opposing the motion; and
5. Such further and other relief as counsel may advise and this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

1. On September 18, 2019, MarshallZehr Group Inc. (“**MZGI**”) as lender issued two commitment letters in relation to two proposed syndicated financing investments for a residential real estate townhouse project at a property on Maplevue Drive East, Barrie, Ontario (the “**Project Lands**”):

- (a) a loan of \$6,725,000 to Maplevue Developments Ltd. as borrower, to be secured by an \$11,000,000 mortgage (the “**MZGI 273 Commitment Letter**”); and
- (b) a loan of \$6,450,000 to Urban North on the Go Ltd. as borrower, to be secured by a \$9,000,000 mortgage (the “**MZGI 274 Commitment Letter**”).

2. Portland entered into agreements with MZGI to participate as an investor in the above-noted investments, with MZGI as administrator.

3. Portland made the following loan advances pursuant to the MZGI 273 and MZGI 274 Commitment Letters:

- (a) in relation to the MZGI 273 Commitment Letter, an advance of the full \$6,725,000 loan amount in two installments on September 25 and 30, 2019 (the “**MZGI 273 Portland Advance**”); and
- (b) in relation to the MZGI 274 Commitment Letter, an initial advance of \$2,310,000 on September 30, 2019 (the “**MZGI 274 Portland Advance**”).

4. On October 4, 2019, in relation to the MZGI 273 Commitment Letter, a Charge/Mortgage was registered on title to the Project Lands as Instrument SC1629459. The principal amount of the Charge/Mortgage was \$11,000,000. A further commitment letter refinancing the Charge/Mortgage was issued on July 9, 2021 (the “**2021 Commitment Letter**”), and it was subsequently amended as follows:

- (a) A Notice was registered on title to the Project Lands on January 28, 2022 as Instrument SC1865269, whereby the Charge/Mortgage was amended to increase the principal amount to \$30,000,000 (“**Amending Agreement #1**”).
- (b) A second Notice was registered on title to the Project Lands on August 16, 2022 as Instrument SC1922627, whereby the Charge/Mortgage and Amending Agreement #1 were amended to increase the principal amount to \$49,500,000 (“**Amending Agreement #2**”).

(collectively, the “**MZGI 273 Mortgage**”).

5. Portland did not receive notice of either Amending Agreement #1 or Amending Agreement #2 being registered on title to the Project Lands.

6. Also on October 4, 2019, in relation to the MZGI 274 Commitment Letter, a Charge/Mortgage was registered on title to the Project Lands as Instrument SC1629461 (the “**MZGI 274 Mortgage**”). The principal amount of the MZGI 274 Mortgage was \$9,000,000.

7. By payments made on June 24, 2020 and August 4, 2020, Portland's interest in the MZGI 273 Mortgage was repaid in full (the "**MZGI 273 Repayment**").

8. Prior to the MZGI 273 Repayment, MZGI had advised Portland that the priority position of the MZGI 274 Mortgage would not be affected.

9. In accordance with the MZGI 273 Mortgage, subsequent incremental loan advances were made (the "**Subsequent Advances**"). Portland neither had notice of nor consented to the Subsequent Advances.

10. It is settled law that after a mortgagee has notice of a subsequent mortgage, the subsequent mortgage has priority over subsequent advances made under the first mortgage.

11. The MZGI 274 Mortgage has priority over the MZGI 273 Mortgage because:

(a) the Subsequent Advances were made subsequent to the MZGI 274 Portland Advance and the registration of the MZGI 274 Mortgage on title to the Project Lands; and

(b) Portland neither had notice of nor consented to the Subsequent Advances.

12. Such further and other grounds as counsel may advise and this Honourable Court deems just.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The affidavit of a representative of Portland, to be sworn; and

2. Such further and other evidence as counsel may advise and this Honourable Court may permit.

Date: September 30, 2024

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TO: SERVICE LIST

**KINGSETT MORTGAGE CORPORATION**  
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- and -

Court File No. CV-24-00716511-00CL  
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PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION**

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