

**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**

**RESPONDING MOTION RECORD
(VOLUME 2 OF 3)**

January 13, 2025

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TO: THE SERVICE LIST

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

BETWEEN:

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SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

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Court File No.: CV-24-00716511-00CL

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KSV Restructuring Inc.
as Receiver and Manager of certain property,
assets and undertakings of
Mapleview Developments Ltd.,
Pace Mapleview Ltd. and
2552741 Ontario Inc.**

July 26, 2024

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COURT FILE NUMBER: CV-24-00716511-00CL

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**SECOND REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER**

JULY 26, 2024

1.0 Introduction

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) made on March 21, 2024 (the “Receivership Order”), KSV Restructuring Inc. (“KSV”) was appointed receiver and manager (the “Receiver”) of the real property described in Schedule “A” to the Receivership Order (the “Real Property”), and all present and future assets, undertakings and personal property, with the exception of the Deposit Monies (as defined below), of Maplevue Developments Ltd. (“Maplevue”), Pace Maplevue Ltd. (“Pace”) and 2552741 Ontario Inc. (“255 Ontario”) and together with Maplevue and Pace, the “Debtors” and each a “Debtor”, located at, related to, used in connection with or arising from or out of the Real Property (collectively, the “Property”). A copy of the Receivership Order is attached as Appendix “A”.
2. Maplevue’s principal asset is the Real Property, municipally known as 700-780 Maplevue Drive East, Barrie, Ontario, on which it was developing a residential real estate townhome project (the “Project”) known as “Urban North Townhomes”.
3. Maplevue is the registered owner of the Real Property which it holds for the mutual benefit of Pace and 255 Ontario.

4. In the Receiver's First Report to Court dated May 21, 2024 (the "First Report"), the Receiver recommended, and the Court approved pursuant to an Order dated May 30, 2024 (the "Sale Process Order"):

- a) a sale process for the Property (the "Sale Process"); and
- b) a Stalking Horse Agreement of Purchase and Sale dated May 9, 2024 (the "APS") between the Receiver and Dunsire Homes Inc. (the "Purchaser"), to be used as a "stalking horse bid" in the Sale Process.

A copy of the First Report (without the Appendices thereto) is attached at Appendix "B" and a copy of the [First Report](#) (with the Appendices thereto) is available on the Receiver's website (the "Website"). A copy of the Sale Process Order is attached at Appendix "C".

1.1 Purposes of this Report

1. The purposes of this report (the "Report") are to:
- a) provide background information about the Project;
 - b) summarize the results of the Sale Process for the Property;
 - c) summarize a proposed transaction (the "Transaction") between the Receiver and the Purchaser for the sale of substantially all of the Property;
 - d) discuss a proposed distribution from the proceeds of the Transaction (the "Proceeds") to KingSett Mortgage Corporation ("KingSett");
 - e) discuss a proposed reserve (the "Portland Reserve") to be held by the Receiver from the cash proceeds of the Transaction pending a determination of whether amounts claimed by Portland (defined below) are Priority Payables as that term is defined in the APS;
 - f) discuss a proposed reserve (the "Holdback Reserve") to be held by the Receiver from the cash proceeds of the Transaction pending a determination of the Holdback Claims (as defined below);
 - g) discuss certain relief being sought by KingSett, including seeking an order authorizing the Receiver to file an assignment in bankruptcy in respect of the Debtors and name KSV as trustee in bankruptcy in connection therewith;
 - h) summarize the fees and disbursements of: (i) the Receiver from the commencement of these proceedings to July 22, 2024, and (ii) the Receiver's counsel, Osler, Hoskin & Harcourt LLP ("Osler"), from the commencement of these proceedings to July 24, 2024; and
 - i) recommend that this Court issue the following Orders:
 - i. an Approval and Vesting Order ("AVO"), among other things:
 - approving the Transaction;

- following the Receiver's delivery of the Receiver's certificate substantially in the form attached as Schedule "A" to the proposed AVO (the "Receiver's Certificate"), transferring and vesting all of the Receiver's and the Debtors' right, title and interest in and to the Purchased Assets (as defined in the APS) in the Purchaser, free and clear of all liens, charges, security interests and encumbrances, other than certain permitted encumbrances;
 - authorizing the Receiver to terminate and disclaim any agreements of purchase and sale for the purchase of any or all of the Real Property by a builder, homeowner and/or any other Person (the "Buyer Agreements");
 - authorizing the Receiver to establish the Portland Reserve and the Holdback Reserve, establishing a process for the determination of the Holdback Reserve, and authorizing the Receiver to release funds from the Holdback Reserve in respect of Holdback Claims if: (i) the Receiver determines any such amounts are Priority Payables, with the consent of the Purchaser and the applicable claimant; or (ii) further order of the Court; and
- ii. an Ancillary Matters and Distribution Order (the "Distribution Order"), among other things:
- authorizing and directing the Receiver to make a distribution to KingSett to repay all secured debt owing to KingSett;
 - approving the fees and disbursements of the Receiver and Osler, as detailed in the Fee Affidavits (as defined below); and
 - approving the First Report and this Report, and in each case the Receiver's conduct and activities described herein.

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon: (i) discussions with the Debtors' management ("Management"); (ii) the Debtors' unaudited financial information; (iii) information provided by KingSett, the Debtors' principal secured creditor; (iv) discussions with various stakeholders in these proceedings (including their legal representatives) and information and documentation provided by such stakeholders; and (v) the receivership application materials (collectively, the "Information").
2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information should perform its own diligence and the Receiver accepts no responsibility for any reliance placed on the Information in this Report by any party.

3. Additional background information regarding the Debtors and the reasons for the appointment of the Receiver are provided in the application materials of KingSett. Copies of the Court materials filed to-date in these proceedings are available on the [Receiver's website](#) (the "Website").

2.0 Background

2.1 Debtors

1. Maplevue is a single purpose entity that owns the Real Property on which the Project is being developed. Maplevue holds such Real Property for the mutual benefit of Pace and 255 Ontario.
2. Pace is an entity that is an affiliate of the Pace Developments group of companies (collectively, the "Pace Group"). The Pace Group is a residential real estate developer with its head office in Richmond Hill, Ontario. The Receiver understands that the development of the Project was being led by the Pace Group.
3. The Receiver understands that the Debtors do not have any employees and that all employees involved with the developing of the Project are employed by one or more of the companies within the Pace Group.

2.2 The Project

1. Urban North Townhomes is a residential townhome project consisting of approximately 1,057 units across six phases, that is being developed on 50 developable acres of land in Barrie, Ontario. Construction at the Project has been halted due to the commencement of the receivership proceedings.
2. The Project is being conducted through multiple phases. Construction of Phases I and II is significantly advanced, where sale transactions for approximately 265 of 311 units in Phases I and II have closed, and the remaining 46 units are partially complete.
3. Construction has not yet commenced on Phases III, IV, V and VI, although the Receiver understands that lots at Phases III and IV have been partially serviced. The Receiver understands that there are approximately 576 pre-sale homebuyers¹ for the remaining units at Phase I and II and Phases III and IV. There are no pre-sales for Phases V and VI.

2.3 Homebuyers

1. The Receiver understands that there are approximately 494 homebuyers of pre-sale units that have not yet closed, of which approximately (i) 173 are homebuyers of freehold units where the deposits were paid directly to Maplevue; and (ii) 321 are homebuyers of stacked condo-townhouse units where deposits were paid into a trust account with Devry Smith Frank LLP ("DSF LLP").

¹ As detailed in Section 4.2 of the First Report, the Receiver understands that certain of the pre-sale agreements of purchase and sale were terminated by Maplevue in the weeks prior to the granting of the Receivership Order.

2. The Receiver understands that all deposits relating to freehold homes that were paid directly to Mapleview have been spent by Mapleview.
3. The Receiver further understands that certain of the deposits for stacked condo-townhouse units that were paid into trust were released, but that these deposits are fully insured by an excess condominium deposit insurance provided to Mapleview by Westmount Guarantee Insurance Company ("Westmount").

3.0 Creditors

3.1 Secured Creditors

1. The Receiver understands that:
 - a) As more fully detailed in the receivership application materials, KingSett is the principal secured creditor of the Debtors pursuant to various mortgages registered on title to the Real Property. Aside from the property subject to the Transferred Vector Charge (as defined below), KingSett holds the first-priority charge on the Real Property. As at July 26, 2024, KingSett was owed approximately \$50.3 million (together with interest and costs as they continue to accrue) (the "KingSett Indebtedness").
 - b) Aggregated Investments Inc. ("AI"), through MarshallZehr Group Inc. ("MarshallZehr") as the bare trustee of its rights under the charges, is the sole beneficial owner of the second-ranking mortgage charge (behind KingSett) registered on title to certain of the Real Property (the "AI Mortgage"). MarshallZehr also holds two other charges. As at the date of the Receivership Order, MarshallZehr was owed approximately \$99 million in respect of its second, third and fourth-ranking mortgages, of which approximately \$75 million was in respect second-ranking mortgages under which AI is the beneficiary (interest and costs continue to accrue in respect of each mortgage) (the "MarshallZehr Mortgages"). As described further below, the Receiver has been advised by Portland Private Income Fund and Portland Investment Counsel Inc. (collectively, "Portland"), that Portland is the sole investor in, and has a 100% interest in, the third-ranking mortgage, which Portland believes should rank ahead of the AI Mortgage.
 - c) Prior to the date of the Receivership Order, Vector Financial Services Limited had a first-priority charge on PIN 58091-4802, which is included in the Real Property, in the principal amount of \$3,285,000 (the "Transferred Vector Charge"), which was transferred to AI.
 - d) Westmount has made available to Mapleview certain surety facilities in respect of the deposit monies received from the pre-sale purchasers of the non-freehold townhomes being developed on the Real Property (the "Deposit Monies"). Westmount's security charge is subordinate to KingSett and MarshallZehr (and is not registered on title to certain portions of the Real Property, including the Real Property that is subject to the Transferred Vector Charge), except as against the Deposit Monies held in trust at DSF LLP, on which it has a first ranking charge. As provided in the Receivership Order, the Deposit Monies are

excluded from the definition of “Property” over which the Receiver has been appointed. As at the date of this Report, the Receiver understands that Westmount’s exposure is approximately \$6,380,000 (the “Westmount Indebtedness”), which represents the Deposit Monies that were previously released to Maplevue.

3.2 CRA

1. The Receiver understands that Maplevue collected HST on the sales of 266 closed townhomes, of which approximately \$7.3 million was not remitted to the Canada Revenue Agency (“CRA”).

3.3 Other Creditors

1. Based on the Debtors’ books and records, as at the date of the Receivership Order, the Debtors’ other pre-filing obligations total approximately \$91.7 million. These amounts include:
 - a) approximately \$57.3 million owing to MarshallZehr for unsecured amounts; and
 - b) approximately \$34.4 million owing to other creditors, including construction contractors and other vendors.
2. Certain parties have registered construction liens on the Real Property and, accordingly, a portion of the amounts owing to such parties referenced above may have priority over the secured claims of the mortgagees, as discussed further below.

4.0 Sale Process

4.1 Marketing Process

1. The Receiver carried out the Sale Process for the Property in accordance with the Sale Process Order. A summary of the Sale Process is as follows:
 - a) following the issuance of the Sale Process Order, the Receiver launched the Sale Process on June 3, 2024 by distributing an interest solicitation letter detailing the acquisition opportunity (the “Teaser”);
 - b) attached to the Teaser was a bid process letter and a form of non-disclosure agreement (an “NDA”) that interested parties were required to sign in order to obtain access to a virtual data room (the “VDR”); and
 - c) the VDR contained information regarding the Project, including financial information, contracts, permits, designs, drawings and other diligence information that had been provided to the Receiver by Management or the mortgagees.

2. The Sale Process contemplated a phased bid deadline, with a 30-day deadline to submit a letter of intent, which, among other things, reflects a reasonable prospect of culminating in a Qualified Bid (as defined in the Sale Process Order) (a “Qualified LOI”). This allowed interested parties the flexibility of an additional 15 days to prepare a Qualified Bid (as defined in the Sale Process) thereafter. The Court-approved bid deadline to submit a Qualified LOI under the Sale Process was July 3, 2024 (the “LOI Deadline”). Pursuant to the Sale Process Order, if, by the LOI Deadline, no Qualified LOI had been received, the Sale Process shall have been deemed terminated and the stalking horse bid contemplated by the APS would be the successful bid.

4.2 Sale Process Results

1. A summary of the results of the Sale Process results is as follows:
 - a) 277 parties were sent the Teaser and the NDA;
 - b) 5 parties executed the NDA and were provided access to the data room to perform additional due diligence; and
 - c) no Qualified LOIs were submitted prior to the LOI Deadline (July 3, 2024). One proposal was received that did not comply with the requirements of the Sale Process given that, among other things: (i) the proposed deposit was inadequate under the terms of the Sale Process; and (ii) the offer provided insufficient consideration. The Receiver advised the party that had provided this proposal of same; however, the party did not ultimately provide a Qualified LOI (or any other offer).
2. As no Qualified LOI was received, the APS was deemed to be the successful bid pursuant to the Sale Process.

5.0 The Transaction²

5.1 The APS

1. The following constitutes a summary description of the APS only. Reference should be made directly to the APS for all of its terms and conditions. A copy of the APS is attached as Appendix “D”.
2. The key terms and conditions of the APS are provided below.
 - **Vendor:** the Receiver.
 - **Purchaser:** Dunsire Homes Inc., an affiliate of AI.

² Capitalized terms in this section have the meaning provided to them in the APS or the Sale Process unless otherwise defined herein.

- **Purchased Assets:** substantially all of Debtors' and the Vendor's right, title and interest in and to the Debtor Property, including the following:
 - a) the Real Property, being the real property legally described in Schedule "A" of the APS;
 - b) the Buildings, being all buildings, structures, improvements, appurtenances, attachments and fixtures located on, in or under the Real Property including without limitation all incomplete buildings and all systems including heating, ventilation, air-conditioning, electrical, lighting, plumbing and water systems;
 - c) the Inventory and Securities;
 - d) the Development Approvals, to the extent transferable without consent or subject to any required consent being received by the time all conditions to Closing are satisfied if consent is required;
 - e) such other Property as the Purchaser may advise the Receiver of, in writing before Closing, to the extent transferable without consent or subject to any required consent being received by the time all conditions to Closing are satisfied if consent is required; and
 - f) the Books and Records relating to the Purchased Assets.
- **Excluded Assets:** all property and assets of the Debtors other than the Purchased Assets.
- **Purchase Price:** the Purchase Price is equal to the sum of:
 - a) the amount outstanding under the Receiver's Charge and the Receiver's Borrowing Charge (as such terms are defined in the Receivership Order) on the Closing Date. As at the date of this Report, the Receiver has not borrowed any funds under the Receiver's Borrowing Charge;
 - b) the amount owing under the KingSett Indebtedness, including all principal, accrued interest, fees, costs and amounts on account of protective disbursements;
 - c) the amount outstanding in respect of any Priority Payables on the Closing Date;
 - d) \$400,000, which shall be used by the Receiver to fund costs incurred in connection with necessary post-Closing matters, with any unused portion to be returned to the Purchaser; and
 - e) the amounts outstanding under the AI Mortgage and the Transferred Vector Charge (together the "Assumed Mortgages") on the Closing Date, including all fees or costs associated with the Assumed Mortgages.

- **Payment of Purchase Price:**
 - a) **Deposit** – a cash deposit of \$10 million payable upon execution of the APS. The Receiver confirms that it has received the Deposit and placed it in an interest bearing account, which interest will be applied to the balance of the Purchase Price due on Closing;
 - b) **Assumed Mortgages** – on the Closing Date, the Purchaser shall have the option to either pay the amount outstanding pursuant to the Assumed Mortgages, or assume either or both of the Assumed Mortgages (the Receiver understands that the Purchaser is electing to assume the Assumed Mortgages); and
 - c) **Balance due on Closing** – the balance of the Purchase Price shall be payable in cash on the Closing Date.
- **Assumed Liabilities:** include: (i) Liabilities incurred in respect of the Permitted Encumbrances (as provided in Schedule “D” to the APS), including the Assumed Mortgages (if not paid on closing); (ii) all liabilities and obligations arising from the possession, ownership and/or use of the Purchased Assets arising after Closing; and (iii) any Environmental Liabilities.
- **Excluded Liabilities:** means any: (i) Claim against any Debtor or the Receiver; (ii) Encumbrance on the Purchased Assets other than the Assumed Liabilities; or (iii) other Liability of any Debtor or the Receiver including, without limitation, Liability arising in respect of the APS Matters (being all Buyer Agreements), or the Construction Contracts.
- **Treatment of Pre-Sale Homebuyers:** The APS contemplates that the **Buyer Agreements** will not be assumed by the Purchaser.
- **Representations and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an “as is, where is” basis, with limited representations and warranties.
- **Outside Date:** August 31, 2024.
- **Material Conditions:** include, among other things:
 - a) no provision of any applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase of the Purchased Assets pursuant to the APS shall be in effect;
 - b) the Sale Process Order shall have been obtained and the APS shall be selected by the Receiver as the successful bid in accordance with the Sale Process Order and the Sale Process;
 - c) the Approval and Vesting Order shall have been granted and shall be a Final Order;
 - d) the Approval and Vesting Order shall contain a term providing that the Receiver is authorized and directed, on or prior to Closing, to terminate and disclaim all of the Buyer Agreements relating to the Project; and

- e) the Court shall have issued the Bankruptcy Order, authorizing and directing the Receiver to file an assignment in bankruptcy in respect of the Debtors pursuant to the *Bankruptcy and Insolvency Act* (Canada), and the Bankruptcy Order shall be a Final Order.
- **Termination:** the APS can be terminated:
 - a) upon mutual written consent of the Receiver and the Purchaser;
 - b) if any of the conditions in favour of the Receiver or the Purchaser, as applicable, are not satisfied, waived or performed by the Outside Date;
 - c) automatically and immediately upon the selection by the Receiver of a Successful Bid, if the APS is neither the Successful Bid nor the Back-Up Bid; and
 - d) if Closing has not taken place by the Outside Date, being August 31, 2024, provided, however, that a party may not exercise such termination right if they are in material breach of their obligations under the APS.

5.2 Disclaimer of Buyer Agreements

1. The APS includes a condition that the AVO include the following term: "THIS COURT ORDERS that the Receiver is hereby authorized and directed, on or prior to Closing, to terminate and disclaim all of the agreements of purchase and sale for the purchase of any or all of the Property by a builder, homeowner and/or any other Person and, following the delivery of the Receiver's Certificate in accordance with this Order, such agreements shall cease to be continuing obligations effective against the Property or binding on the Purchaser," which term is included in the proposed AVO.
2. The Receiver recommends that the Court approve the Receiver's authority to terminate and disclaim the Buyer Agreements as the APS represents the best and only Qualified Bid received for the Property, and its terms and conditions require this approval.
3. The forms of pre-sale homebuyer agreements that have been provided to the Receiver expressly provide that: (i) the homebuyer subordinates and postpones their agreement to any mortgages on the applicable Real Property and any advances under such mortgages; and (ii) the agreement does not confer an interest in the applicable Property and/or the homebuyer will not register the agreement on title to the Real Property.
4. No Buyer Agreements are registered on title to the Real Property.
5. The Receiver intends to serve each of the homebuyers of the Project with this motion by email (if available) or by registered mail. The Receiver will also post a notice to the homebuyers of the Project on the Website informing them of the motion.
6. The Receiver understands that the deposits paid by certain of the homebuyers under the Buyer Agreements are guaranteed by the Westmount surety policy.

7. For the purchasers of freehold townhomes who do not get the benefit of the Westmount surety policy, if the motion is granted by the Court, the Receiver notes that there will be no funds available in the Debtors' estate to reimburse homebuyer deposits. However, the Receiver understands that Tarion Warranty Corporation ("Tarion") provides deposit protection for these homebuyers as per the below table:

	Sale Price	Deposit Coverage
Deposit Protection	\$600,000 or less	Up to \$60,000
Deposit Protection	Over \$600,000	10% of purchase price (up to a maximum of \$100,000)

8. The Receiver intends to work with Tarion to assist with the deposit claim for those homebuyers.

5.3 Transaction Recommendation

1. The Receiver recommends the Court issue the proposed AVO for the following reasons:
 - a) the process undertaken by the Receiver to market the Property was commercially reasonable and conducted in accordance with the terms of the Sale Process Order;
 - b) the market was widely canvassed by the Receiver. In the Receiver's view, it is unlikely that exposing the Property to the market for additional time will result in a superior transaction;
 - c) the Receiver is of the view that the Transaction provides for the highest recovery available for the benefit of the Debtors' stakeholders in the circumstances;
 - d) KingSett, the Debtors' senior secured lender, is supportive of the Transaction; and
 - e) as at the date of this Report, the Receiver is not aware of any objections to the relief being sought pursuant to the proposed AVO.

6.0 Proposed Bankruptcy of the Debtors

1. Based on the Debtors' books and records, and as described above, the Receiver understands that there is approximately \$7.3 million of potential HST claims.
2. The Receiver understands that KingSett intends to bring a motion for an order (the "Bankruptcy Order") authorizing and directing the Receiver to file an assignment in bankruptcy in respect of the Debtors pursuant to the *Bankruptcy and Insolvency Act*, naming KSV as trustee in bankruptcy (in such capacity, the "Trustee") and authorizing and empowering KSV to act in this capacity. The proposed Bankruptcy Order contemplates, among other things, that all proceeds of the Property of Debtors that are realized by the Receiver prior to, on or after the commencement of the bankruptcy proceedings in respect of the Debtors will continue to be maintained by the Receiver in a segregated account, separate and apart from the bankrupt estate, to be

distributed by the Receiver as directed by the Court in the within receivership proceedings.

3. The Receiver notes that it is not unusual for the Court to grant orders in a similar form to the proposed Bankruptcy Order in these circumstances and that courts have commented that it is not inappropriate for secured creditor to seek the commencement of a bankruptcy in similar circumstances as this instance. Accordingly, the Receiver is supportive of the relief being sought in the Bankruptcy Order.
4. The payments and distributions recommended in this Report assume that the Bankruptcy Order is granted by the Court.

7.0 KingSett Distribution

1. If the proposed Transaction is approved, the Receiver is seeking authorization and direction to distribute proceeds therefrom to repay: (i) the amounts owing under the Receiver's Borrowings Charge (which are nil as at the date of this Report, although the Receiver notes that it may need to borrow funds under the Receiver's Borrowing Charge to fund certain operating costs between the date of this Report and the closing date of the Transaction); and (ii) the KingSett Indebtedness.
2. KingSett is the principal secured creditor of the Debtors. The purchase price under the Transaction specifically provides for a cash portion of the Purchase Price in the amount of the KingSett Indebtedness (along with the other items set forth in the APS).
3. The Receiver requested that Osler, as independent legal counsel, conduct a review of the security granted by the Debtors in respect of the KingSett Indebtedness. Osler provided the Receiver with an opinion that, subject to standard assumptions and qualifications, pursuant to applicable security documentation, KingSett created valid security interests or charges, as applicable, against the Property to be sold pursuant to the Transaction.

7.1 Holdback Reserve & Distributions for Priority Payables

1. The APS provides for a Purchase Price equal to the sum of, among other things, Priority Payables. "Priority Payables" is defined in the APS as "... any payables that have priority over the Assumed Mortgages, excluding any HST owing by the Debtors, but including amounts that have priority pursuant to s.78 of the *Construction Act*, RSO 1990, c C30, as determined by the Receiver in consultation with the Purchaser, both acting reasonably, or as determined by the Court, after application of any amount of cash on hand of the Debtors, excluding the Deposit, immediately prior to Closing".
2. According to searches of title to the Real Property conducted and reviewed by Osler from the Land Registry Office, a total of 21 construction liens have been registered on title to the Real Property. A summary of such liens prepared by Osler is attached at Appendix "E". The Receiver intends to serve this motion on all parties (or their counsel) who have registered liens against the Real Property.

3. The Claim for Lien of the Project consultant, Schaeffer Dzaldov Purcell Ltd., confirms that it began supplying services/materials to the Project on December 5, 2016. This is the date the first lien “arose” on the project, and was prior to the date the mortgages of both Kingsett and MarshallZehr were registered on title. Therefore, both the Kingsett and the MarshallZehr mortgages were registered after the date when the first lien arose on the Project. Osler has advised the Receiver that, as a result:
 - a) Pursuant to section 78(6) of the *Construction Act*, the Kingsett mortgages and the MarshallZehr mortgages enjoy priority over the lien claimants for all advances made, provided those advances were not made at a time when a Claim for Lien was registered on title, or a Notice of Lien had been received.
 - b) Pursuant to section 78(5) of the *Construction Act*, both mortgages lose priority to the lien claimants with respect to any deficiency in the 10% holdback that was to be retained by the Owner (the “Holdback Deficiency”).
4. The Receiver has confirmed that all advances were made under the Kingsett and MarshallZehr mortgages (the “Advances”) prior to the date the first construction lien was registered on title. Therefore, the Advances were not made at a time when a Claim for Lien was registered on title.
5. The Receiver has not received any evidence, from any Construction Lien Claimant (as defined below) or otherwise, that any Notice of Lien was served prior to any of the Advances. Therefore, the Receiver concludes that none of the Advances was made at a time when a Notice of Lien had been received.
6. Osler has advised the Receiver that the mortgages of Kingsett and MarshallZehr therefore have priority over the lien claimants with respect to all Advances, but lose priority to the lien claimants with respect to any Holdback Deficiency.
7. The Receiver understands, and has confirmed with the Debtors’ Management, that Maplevue is not holding any funds for the 10% statutory holdback that Maplevue was required to retain pursuant to the *Construction Act* (the “Statutory Holdback”), from payments to parties that supplied services or materials to the Project. Accordingly, the Holdback Deficiency is equal to the Statutory Holdback.
8. The Project structure followed the “Construction Management” model, whereby no general contractor was retained by Maplevue, but instead, direct contracts were entered into with each of the primary Trade Contractors. Under this arrangement, Osler has advised the Receiver that a separate Statutory Holdback is created with respect to each trade contractor.
9. The Receiver and Osler conducted an extensive review of the Statutory Holdback amount, and the Priority Payables that may be owed to construction lien holders (collectively, the “Construction Lien Claimants”), given the shortfall in the Statutory Holdback (such claims being “Holdback Claims”). This review included:
 - a) A review of the Debtors’ books and records to determine the total amount of goods and services provided by the Construction Lien Claimants, along with the outstanding indebtedness thereto;

- b) Contacting the Construction Lien Claimants by e-mail on July 8, 2024 and July 9, 2024 (a copy of such e-mail is attached as Appendix “F”) to request: (i) an accounting of the state of accounts between the Construction Lien Claimant and the Debtors, including a listing of all invoices, an indication of which invoices were paid and which were unpaid, and copies of such invoices; and (ii) any other document(s) or information they may wish the Receiver to consider;
 - c) Subsequent correspondence with the Construction Lien Claimants or their counsel, requesting the underlying contract (where a contract was signed), and other records as appropriate;
 - d) Searches of publicly-available records, including the registry of published Certificates of Substantial Performance relating to the Project in the Daily Commercial News; and
 - e) A review of each of the foregoing with a view to determining potential Priority Payables to Construction Lien Claimants.
10. On the basis of the review noted above, the Receiver has created a table of what it has calculated with Osler to be the maximum potential Priority Payable to each Construction Lien Claimant, along with the basis for calculating same, which amounts are collectively referred to herein as the “Holdback Reserve” and set out in Appendix “G”.
11. The Receiver understands that the Debtors did not hold any cash as of the date of the Receivership Order. The Receiver is advised by Osler that, as a result, no trust funds were in existence against which any trust claim pursuant to the *Construction Act* could have been asserted.

8.0 Portland Priority Dispute

1. Portland has advised the Receiver that it is the sole investor in, and has a 100% interest in, the third-ranking mortgage on the Real Property (the “Portland Mortgage”), which Portland believes should rank ahead of the second-ranking mortgage AI Mortgage. Portland advised the Receiver that, as of July 9, 2024, \$2,212,498.35 was owing and secured by the Portland Mortgage (all of which Portland claims should rank ahead of the AI Mortgage).
2. The Receiver understands that the Purchaser disputes Portland’s position with respect to the ranking of the Portland Mortgage. The Purchaser has confirmed to the Receiver that it will include \$2,300,000 (the “Portland Reserve”) in the Priority Payables Reserve pending the resolution of this dispute.

9.0 Receiver’s Activities

1. In addition to dealing with the matters addressed above, the Receiver’s activities relating to the Debtors since its appointment have included, with the assistance of counsel, among other things, the following:
 - a) corresponding with the Debtors’ Management regarding the Debtors’ affairs and these proceedings;

- b) corresponding with KingSett regarding all aspects of this mandate, including providing periodic status updates;
- c) reviewing information provided by the Debtors and KingSett relating to the Project, including its development status;
- d) corresponding with the Purchaser and its counsel regarding the APS and the Transaction, including extensive negotiations;
- e) developing and carrying out the Court-approved Sale Process for the Property;
- f) drafting all Sale Process related materials, including the Teaser and NDA;
- g) compiling information in the VDR;
- h) facilitating due diligence requests submitted by prospective purchasers throughout the Sale Process;
- i) corresponding with representatives of the City of Barrie regarding the status of the Project and the Transaction;
- j) corresponding with representatives of Tarion regarding the status of the Project and the Transaction;
- k) arranging for the maintenance, security and general upkeep of the Property;
- l) corresponding with Westmount and its counsel regarding the Property and the status of the Sale Process;
- m) corresponding with Masters Insurance, the Debtors' insurance broker;
- n) corresponding with the Debtors' creditors;
- o) assessing various claims that may have priority over the security held by the Debtors' mortgagees;
- p) corresponding with the lienholders in respect of their potential priority claims;
- q) corresponding with the pre-sale homebuyers of the Project;
- r) corresponding with CRA regarding the Debtors' HST accounts; and
- s) preparing the First Report and this Report and reviewing the motion materials in respect of same.

10.0 Professional Fees

1. The fees of the Receiver from the commencement of these receivership proceedings to July 22, 2024 total \$297,447.25, excluding disbursements and HST. Osler's fees from the commencement of these receivership proceedings to July 26, 2024 total \$648,938.50, excluding disbursements and HST.
2. The average hourly rate for the referenced billing period was (i) \$535.17 for the Receiver; and (ii) \$742.24 for Osler.

3. Fee affidavits and accompanying invoices in respect of the fees and disbursements of the Receiver and Osler are attached as Appendices “H” and “I”, respectively, to this Report (together, the “Fee Affidavits”).
4. The Receiver is of the view that Osler’s hourly rates for each of the mandates are consistent with the rates charged by other law firms practicing in the area of insolvency in the Toronto market, and that its fees are reasonable and appropriate in the circumstances.

11.0 Conclusion

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make the order granting the relief detailed in Section 1.1(1) (i) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF CERTAIN PROPERTY,
ASSETS AND UNDERTAKINGS OF
MAPLEVIEW DEVELOPMENTS LTD., PACE MAPLEVIEW LTD.
AND 2552741 ONTARIO INC.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

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

KINGSETT MORTGAGE CORPORATION

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

Applicant

Respondents

Court File No.: CV-24-00716511-00CL

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

PROCEEDING COMMENCED AT TORONTO

SECOND REPORT OF THE MONITOR

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KINGSETT MORTGAGE CORPORATION

- and -

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

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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

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto, Ontario

RESPONDING MOTION RECORD
(VOLUME 2 OF 3)

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