

FORMS 27 AND 32
[RULES 6.3, 6.31, 6.32 AND 10.52(1)]

CLERK'S STAMP

COURT FILE NUMBER 1903-08169
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF FORTIS LGS STRUCTURES INC.
DEFENDANTS STATION POINT DEVELOPMENTS LTD. and
BCM DEVELOPMENTS LTD.

DOCUMENT **APPLICATION (APPROVING INCREASED
BORROWING BY RECEIVER AND
RESTRICTING COURT ACCESS)**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

BENNETT JONES LLP
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Attention: Katherine J. Fisher and Sean Zweig
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NOTICE TO RESPONDENTS:

This application is made against you. You are a respondent.

The Applicant wishes to apply for, *inter alia*, an order increasing the maximum amount the Applicant is permitted to borrow and restricting access to court proceedings or records.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date: Friday, June 26, 2020
Time: 10:00 a.m.
Where: Alberta Court of Queen's Bench Edmonton, via WebEx
Before Whom: The Honourable Mr. Justice J.J. Gill

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. The Applicant, KSV Kofman Inc., as Trustee and Receiver and Manager of certain property of Station Point Developments Ltd. (in all such capacities, the "**Receiver**") pursuant to an Order (Appointing Builders' Lien Trustee and Receiver and Manager) granted by the Honourable Mr. Justice K.G. Nielsen on June 18, 2019 (the "**Receivership Order**") in these proceedings (the "**Receivership Proceedings**"), seeks an Order, substantially in the from attached hereto as **Schedule "A"**:
 - (a) abridging the time for service of the Application and deeming such service good and sufficient;
 - (b) amending paragraph 21 of the Receivership Order to increase the maximum amount the Receiver may borrow from \$17 million to \$34.8 million;
 - (c) sealing the confidential Altus Budget (the "**Confidential Project Budget**") appended to the Second Report of the Receiver, dated June 19, 2020 (the "**Second Report**"), notwithstanding Division 4 of Part 6 of the *Alberta Rules of Court*; and
 - (d) such further and other relief as counsel may advise and this Honourable Court may permit.

Grounds for making this application:

Approval of Increased Borrowing by the Receiver

2. In or around 2012, BCM Developments Ltd. ("**BCM**") entered into negotiations and subsequently an agreement of purchase and sale (the "**Agreement**") to purchase the real property municipally described as 403 Belvedere Gate NW Edmonton (the "**Real Property**") from the City of Edmonton. Prior to closing, the Agreement was assigned by BCM to Station Point Developments Ltd. (the "**Company**").
3. In 2016, the Company obtained a construction loan from KingSett Mortgage Corporation ("**KingSett**") in the maximum amount of \$17 million (the "**Facility Agreement**") to

develop and construct on the Real Property a 112 unit residential apartment building, together with a ground floor retail space (the "**Project**"). Construction of the Project commenced in 2016 and was expected to be completed in 2018. Approximately \$12.1 million was owing to KingSett at the commencement of the Receivership Proceedings.

4. The issues that gave rise to the Receivership Proceedings included significant cost overruns, the registration of builders' liens against title to the Real Property, and a dispute between the Company and Fortis LGS Structures Inc., the Project's prior general contractor. The principal purpose of the Receivership Proceedings is to complete the Project in order to maximize recovery for the Company's stakeholders.
5. Pursuant to the Receivership Order, the Receiver is empowered to borrow in accordance with the Facility Agreement by way of further advances under the mortgage granted in favour of KingSett (the "**Mortgage**"), such that the aggregate principal amount under the Mortgage does not exceed \$17 million. The Real Property is secured by a charge in favour of KingSett as security for the payment of monies borrowed during the receivership, subject only to the Receiver's Charge, as defined in the Receivership Order.
6. Pursuant to an Order granted September 27, 2019, the Receiver entered into a contract with RMS Developments Inc. ("**RMS**"), a real estate contractor based in Edmonton, pursuant to which RMS was engaged to act as the construction manager to complete the Project.
7. RMS originally budgeted the total construction costs to complete the Project to be approximately \$9.5 million. Since that time, RMS and consultants retained by the Receiver have identified significant construction deficiencies that predate the Receivership Proceedings, which issues have contributed to further delays and cost overruns. The most recent construction schedule provided by RMS forecasts the completion of construction by the end of November 2020.
8. As of June 17, 2020, the total current principal amount outstanding under the Facility Agreement is \$16.1 million, including approximately \$3 million borrowed by the Receiver since the commencement of the Receivership Proceedings. Funds borrowed by

the Receiver during the Receivership Proceedings have been used to fund construction costs, professional fees, and Project insurance.

9. A budget prepared by Altus Group Limited ("**Altus**"), the Project construction consultant retained by the Receiver, estimates the remaining costs to complete the Project to be approximately \$18.7 million.
10. Based on the budget prepared by Altus, the Receiver estimates it will require an additional \$17.8 million from KingSett to complete construction of the Project (the "**Additional Borrowings**").
11. KingSett is prepared to finance the Additional Borrowings under the terms of the Facility Agreement. The only proposed amendment to the Facility Agreement is the increase in its limit by \$17.8 million.

Sealing of the Confidential Proposal Summary

12. The Confidential Project Budget contains costs estimates prepared by Altus. Such information is commercially sensitive, the publication or dissemination of which could negatively affect these Receivership Proceedings. In particular, the tendering process for certain trades is still ongoing and the public availability of the costs estimates contained in the Confidential Project Budget could affect the ongoing tendering process.
13. The Receiver is not aware of any party that will be prejudiced if the information contained in the Confidential Project Budget is sealed.
14. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

15. The pleadings and proceedings in this action;
16. The Second Report, filed; and

17. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

18. Part 6, Division 4 of the *Alberta Rules of Court*; and
19. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

20. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3;
21. The *Judicature Act*, RSA 2000, c J-2; and
22. Such further another Acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

23. None.

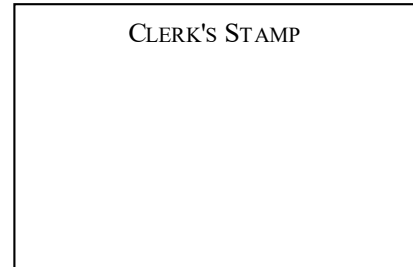
How the application is proposed to be heard or considered:

24. Via WebEx before the Honourable Mr. Justice J.J. Gill on the Commercial List.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

SCHEDULE "A"



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DOCUMENT **ORDER (APPROVING INCREASED
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zweigs@bennettjones.com

DATE ON WHICH ORDER WAS PRONOUNCED: Friday, June 26, 2020
NAME OF JUDGE WHO MADE THIS ORDER: The Honourable Mr. Justice J.J. Gill
LOCATION OF HEARING: Edmonton, Alberta, by WebEX

UPON the application (the "**Application**") of the trustee, receiver and manager, KSV Kofman Inc. (in such capacities, the "**Receiver**"); **AND UPON** reading the Order (Appointing Builders' Lien Trustee and Receiver and Manager) granted by the Honourable Mr. Justice K.G. Nielsen on

June 18, 2019 (the "**Receivership Order**"); AND UPON reading the Second Report of the Receiver dated June 19, 2020 (the "**Second Report**"); AND UPON hearing the submissions of counsel for the Receiver and any other persons present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Application for this Order is hereby deemed good and sufficient, and this Application is properly returnable today.

APPROVAL OF INCREASED BORROWING BY THE RECEIVER

2. Paragraph 21 of the Receivership Order is hereby amended such that the existing reference to "\$17,000,000" shall be "\$34,800,000". For clarity, after giving effect to such amendment, paragraph 21 of the Receivership Order shall provide as follows:

The Receiver be at liberty and it is hereby empowered to borrow in accordance with the Facility Agreement, by way of further advances under the Mortgage such that the aggregate principal amount under the Mortgage does not exceed the all-inclusive amount of \$34,800,000, for the purpose of exercising the powers and duties conferred by this Order, including interim expenditures. The whole of the Property and all monies and proceeds of realization received in respect thereof or relating thereto shall be secured by way of a fixed and specific charge as security for the payment of monies borrowed, together with interest and charges thereon, which shall rank in priority to all security interests, mortgages, liens, builders liens, charges, caveats and other encumbrances held by any Person on, in or to the same, whether or not registered, but subject to Receiver's Charge.

SEALING ORDER

3. The Altus Budget appended to the Second Report (the "**Confidential Exhibit**") as Confidential Appendix "1" shall be sealed on the Court file, kept confidential and not form part of the public record, notwithstanding Division 4 of Part 6 of the *Alberta Rules of Court*, until further Order of this Honourable Court.
4. The Clerk of the Court shall file the Confidential Exhibit in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states that:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED IN COURT FILE NO. 1903-08169. THE CONFIDENTIAL MATERIALS ARE SEALED PURSUANT TO THE SEALING ORDER GRANTED BY THE HONOURABLE MR. JUSTICE J.J. GILL ON JUNE 26, 2020, AND ARE NOT TO BE PLACED ON THE PUBLIC RECORD OR MADE PUBLICALLY ACCESSIBLE, UNTIL FURTHER ORDER OF THIS HONOURABLE COURT.

5. Leave is hereby granted to any person or party affected by this Order to apply to this Honourable Court for a further order modifying or varying the terms of paragraphs 3 and 4 of this Order, with such application to be brought on no less than seven (7) days' notice to the Receiver and any other affected party pursuant to the *Alberta Rules of Court*.

Justice of the Court of Queen's Bench of Alberta