

FORMS 27 AND 32
[RULES 6.3, 6.31 AND 6.32]

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 – APPROVAL AND VESTING
ORDER and ORDER RESTRICTING COURT
ACCESS**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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NOTICE TO THE RESPONDENTS:

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

The Applicant wishes to apply for, *inter alia*, an order restricting access to court 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: December 14, 2021
Time: 10:00 a.m.
Where: Alberta Court of Queen's Bench Edmonton
Before Whom: The Honourable Justice J.A. Fagnan

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 Restructuring Inc. (formerly 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) of the Court of Queen's Bench of Alberta dated June 18, 2019 (the "**Receivership Order**"), seeks Orders substantially in the forms attached hereto as **Schedules "A" and "B"**, among other things:
 - (a) declaring service of the Application and all supporting materials to be good and sufficient, and abridging the time for service of the Application to the time actually given, if necessary;
 - (b) approving and authorizing the Sale Agreement (as defined and described herein) for the Purchased Assets (as defined in the Sale Agreement) and vesting title in the purchaser, Arris Homes Ltd. (the "**Purchaser**");
 - (c) authorizing the Receiver to conclude the sale transaction (the "**Transaction**") contemplated by the Sale Agreement and to take all such steps and execute all such documents as reasonably necessary to complete the Transaction;
 - (d) temporarily sealing the Confidential Appendices, as defined herein, notwithstanding Division 4 of Part 6 of the *Alberta Rules of Court*; and
 - (e) such further and other relief as counsel may advise and this Honourable Court may permit.

Grounds for making this application:

Approval of the Sale Agreement

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 the Company. The City provided a vendor-take-back mortgage to the Company.

3. In 2016, the Company obtained a construction loan from KingSett Mortgage Corporation ("**KingSett**") to develop and construct on the Real Property a 112 unit residential apartment building, together with a ground floor commercial space (the "**Project**"). Construction of the Project commenced in 2016 and was expected to be completed by the Company in 2018.
4. The issues that gave rise to the receivership proceedings included significant cost overruns on the construction of the Project, 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. The Project was completed in March 2021. Approximately 95% of the residential units have been leased, and it is expected that the balance of the units will be leased within the next two months. The Receiver has entered into two commercial leases for the ground floor space, including a daycare and pharmacy. The pharmacy is currently open and the daycare is scheduled to open in February 2021.
6. The Company originally intended to build five apartment buildings on the Real Property; however, only two buildings have been constructed and the balance of the Real Property remains undeveloped (the "**Vacant Lands**"). In an effort to increase the value of the Vacant Lands, the Receiver sought, and has received approval, to subdivide and rezone the Vacant Lands.
7. In June 2020, the Receiver engaged Jones Lang LaSalle ("**JLL**") to list the Real Property, for sale and launched a sale process (the "**Sale Process**"). JLL marketed the Purchased Assets extensively across Canada over approximately 18 months.

8. As a result of the Sale Process, 46 parties requested and were provided with information concerning the Project, including access to a data room; six parties toured the Project; and two parties submitted offers, including the Purchaser. After consultation with KingSett, the Receiver rejected one offer, as the consideration offered was inadequate.
9. The second offer was submitted by the Purchaser. The Purchaser has expressed interest in purchasing the Purchased Assets since commencement of the receivership proceedings. The Receiver and the Purchaser entered into the Offer to Purchase dated September 24, 2021 (as amended from time to time) (the "**Sale Agreement**").
10. The Sale Agreement is subject to three conditions:
 - (a) the Court issuing an Approval and Vesting Order;
 - (b) the Purchaser arranging financing to purchase the Purchased Assets by December 31, 2021, subject to the Receiver's unilateral option to extend such date in accordance with the Sale Agreement;
 - (c) the Transaction closing on or before December 31, 2021, subject to the Receiver's unilateral option to extend such date in accordance with the Sale Agreement.
11. Based on the results of the extensive marketing efforts undertaken to date and the valuation analyses performed by the Receiver, KingSett, which is the senior ranking creditor of the Company, is the only creditor with an economic interest in the Transaction. KingSett has requested that the Receiver seek Court approval of the Transaction, notwithstanding that all conditions have not yet been satisfied and that KingSett will realize a loss if the Transaction closes.
12. The Receiver recommends approval of the Transaction for the following reasons:
 - (a) the market has been widely canvassed by JLL since June 2020, a significant and reputable realtor, using several customary marketing techniques for real estate developments;

- (b) 46 parties signed CAs; however, only two offers have been submitted;
- (c) the Transaction provides for the greatest recovery available in the circumstances;
- (d) JLL is familiar with the local real estate market and is of the view that the Transaction is the best one available at this time;
- (e) KingSett, the only creditor with an economic interest in the Transaction, consents to the relief in this motion and supports completion of the Transaction, notwithstanding that it will incur a shortfall on its loans to the Company;
- (f) absent the Transaction, further marketing efforts will be required. The ongoing professional fees will erode the recoveries to KingSett with no certainty that a superior transaction could be completed;
- (g) the receivership commenced in June 2019. The receivership has lasted longer and cost more than originally contemplated;
- (h) KingSett has requested that the Receiver seek Court approval at this time so that the Transaction can be expediently closed if all conditions are waived or satisfied, including, most materially, the financing condition. In the circumstances, the Receiver believes that it is appropriate that Court approval be sought at this time so that the Transaction can close immediately following the waiver or satisfaction of all conditions;
- (i) if the Transaction does not close, the Purchased Assets will continue to be marketed for sale. If the relief sought is granted, the Receiver will file an update report with the Court by no later than March 31, 2022 advising of the status of the Transaction. The Report will be served on the Service List and made available on the Receiver's case website at that time.

Sealing of the Confidential Proposal Summary

13. The confidential appendices to the Fourth Report contain the Offer Summary and the un-redacted Sales Agreement (collectively, the "**Confidential Appendices**"). The Confidential Appendices contains confidential information concerning the value of the Purchased Assets and purchase price. The publication or dissemination of such confidential information, before the closing of the Transaction, could negatively affect these receivership proceedings. In particular, should the Court not approve the Transaction and the Sale Agreement, or the Transaction does not close, the Receiver will need to solicit further offers of purchase. As such, the Receiver is of the reasonable opinion that the Confidential Appendices should be temporarily sealed in order to preserve any further sales activity for the Purchased Assets in the event that the Transaction is not concluded.
14. It is just and appropriate to temporarily seal the Confidential Appendices.
15. The Receiver is not aware of any party that will be prejudiced if the information contained in the Confidential Appendices are sealed.
16. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Material or evidence to be relied on:

17. The pleadings and proceedings in this action;
18. The Fourth Report, filed; and
19. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

20. Part 6, Division 4 of the *Alberta Rules of Court*; and

21. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

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

Any irregularity complained of or objection relied on:

25. None.

How the application is proposed to be heard or considered:

26. In person before the Honourable Mr. Justice J.A. Fagnan 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.