

**FORMS 27
[RULES 6.3 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 PROPERTY
MANAGEMENT AGREEMENT)**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

BENNETT JONES LLP
Barristers and Solicitors
3200 Telus House
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Edmonton, Alberta T5J 0N3

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

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

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: Thursday, February 4, 2021
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 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) 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 form attached hereto as **Schedule "A"**:
 - (a) deeming service of the Application good and sufficient;
 - (b) approving the property management services agreement between the Receiver and Braden Equities Inc. (the "**Agent**") dated November 16, 2020 (the "**PMA**"); and
 - (c) such further and other relief as counsel may advise and this Honourable Court may permit.

Grounds for making this application:

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**") 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.
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 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.
6. 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 in February 2021.
7. On June 23, 2020, the Receiver requested property management proposals from three local property managers. The deadline to provide the proposals was June 30, 2020. The Receiver requested that the proposals address, at a minimum:
 - (a) the range of proposed services;
 - (b) the proposed fee structure;
 - (c) a summary of comparable projects managed in Edmonton;
 - (d) a description of proposed reporting to owner; and
 - (e) client references.
8. The Receiver received proposals from three property managers. The Receiver and KingSett interviewed each of these property managers to obtain more information regarding their credentials. The Receiver, in consultation with KingSett, selected the Agent. Pursuant to the PMA, the Receiver is required to obtain an Order approving the PMA.

9. Property managers typically require an indemnity from the building owner. However, receivers do not typically provide indemnities and the Receiver is not prepared to do so in this instance. In order to address the Agent's concerns regarding the indemnity, a covenant was added to the PMA requiring the Receiver to seek an Order:
 - (a) approving the PMA;
 - (b) confirming that the Agent will have no liability to any person in connection with the PMA, except in the case of gross negligence or willful misconduct; and
 - (c) permitting the Agent to file a caveat against the Real Property to secure payment of the Agent's fees, disbursements and taxes.
10. KingSett, the principal secured creditor, supports the retention of the Agent.

Material or evidence to be relied on:

11. The pleadings and proceedings in this action;
12. The Third Report of the Receiver, dated January 25, 2021, filed; and
13. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

Applicable rules:

14. Such rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

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

Any irregularity complained of or objection relied on:

18. None.

How the application is proposed to be heard or considered:

19. 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.

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DOCUMENT **ORDER (APPROVING PROPERTY
MANAGEMENT AGREEMENT)**

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DATE ON WHICH ORDER WAS PRONOUNCED: Thursday, February 4, 2021
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 Restructuring Inc. (formerly 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 Third Report of the Receiver dated January 25, 2021 (the "**Third 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 PROPERTY MANAGEMENT AGREEMENT

2. The property management services agreement between the Receiver and Braden Equities Inc. (the "**Agent**") dated November 16, 2020 (the "**PMA**"), in the form attached as Appendix "B" to the Third Report, is hereby approved.
3. The Agent shall have no liability to any person in connection with the PMA, except in the case of gross negligence or willful misconduct.
4. The Agent is permitted to file with the Alberta Land Titles Office a caveat against the real property municipally described as 403 Belvedere Gate NW Edmonton, to secure payment of the Agent's fees, disbursements and taxes.

Justice of the Court of Queen's Bench of Alberta