



SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

**COUNSEL SLIP/ENDORSEMENT**

COURT FILE NO.: CV-21-00663051-00CL DATE: DECEMBER 20, 2022

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TITLE OF PROCEEDING: **KINGSETT MORTGAGE -v- SUNRISE ACQUISITIONS ET AL**

BEFORE JUSTICE: **OSBORNE**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
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**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
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**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
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**ENDORSEMENT OF JUSTICE OSBORNE:**

1. This is a motion by the court-appointed Receiver for an order directing the Principals, Spouses, Related Sunrise Parties and the shareholders of the Dissolved Related Sunrise Parties to immediately pay to the Receiver all funds improperly diverted from and/or owing to the Company. Defined terms in this Endorsement have the meaning given to them in the motion materials.
2. The position of the Receiver is that the Principals and the Related Sunrise Parties misappropriated over \$14 million from the Company for their own benefit and to the detriment of the Company. By the admission of the Responding Parties themselves, over \$5 million is owing to the Company and has already been ordered to be repaid by Justice Kimmel on November 30, 2022. It has not, however, yet been repaid.
3. At the outset of the hearing of this motion, counsel for the Receiver and the Responding Parties advised the Court that they had reached a settlement of many, albeit not all, of the disputed issues. Still, significant progress has been made as a result of the cooperative and collaborative discussions among counsel and the parties.
4. The parties jointly provided a draft order which was sought, on consent [subject to the caveat discussed below], and which incorporates the terms of the agreement reached between and among the parties.
5. I signed the order following the hearing of this matter on December 20, with reasons to follow. These are those reasons.
6. The draft order contemplates that the amount of CAD \$14,359,012 is due and payable to the Receiver forthwith, with liability of the Acknowledged Debtors as set out in paragraph two of the draft order. Essentially, the amounts are agreed to be owing, and are agreed to be owing by the individuals and/or parties so indicated. What is not yet agreed is whether that liability is joint and several with other parties, and if so, which parties and in what amounts.
7. At the hearing of the motion, the parties sought that order and the adjournment of the balance of the motion for a hearing on the remaining issues of the joint and several liability of the amounts referenced above, and the entitlement of the Receiver to Occupancy Fees [as defined in the motion materials but essentially amounts in respect of monthly occupancy fees due to the Company under the PSAs by the Spouses in the amount of \$176,533.24], together with costs and interest.
8. Counsel made extensive submissions about the relief sought, the outstanding issues, and the positions of the parties. Having heard those submissions, and having reviewed all of the materials, I am satisfied that the draft order sought reflects the settlement of many though not all of the outstanding issues and represents significant progress in the right direction and for the benefit of the Company and all of its stakeholders. Significant funds are acknowledged to be owing and to be repaid.
9. The amount reflected in the draft order of CAD \$14,359,012 is fully explained in the factum of the Receiver [see in particular paragraphs 22 and 23]. It flows from a chart prepared by MNP, which firm was

retained by the Responding Parties. The chart details the Net Payments totaling \$12,665,912 paid to the Principals, Mr. Shabbar [described below] and the Corporate Related Sunrise Parties. The Responding Parties accept that the Net Payments comprising the Undisputed Amount are owed to the Company. The chart is set out below. The information and amounts in red were added to the MNP chart by the Receiver.

Entity	Advances	Other Assets	Equity and Dividends	Expenses	Unrecorded Net Payments/Deposits	Total
Muzammil Kodwavi	\$ 102,260	\$ 372,636	\$ 118,429	\$ 2,010,637	\$ 98,004	\$ 2,701,966
Sajjad Hussain	10,000	246,600	1,657,055	532,427	29,341	2,475,423
SH & MK Management Inc.	17,000			1,738,154	48,000	1,803,154
Nayyar Shabbar			300,000	424,443		724,443
Sunrise Homes Ltd.	613,650					613,650
Sunrise Acquisitions (Bronte) Inc	2,480,550				10,000	2,490,550
Sunrise Acquisitions (Unionville) Inc	1,528,100					1,528,100
Sunrise Acquisitions (Keswick) Inc	1,247,475					1,247,475
Sunrise Acquisitions (Keswick II) Inc.	282,200					282,200
Sunrise Acquisitions (Tisdale) Inc	281,300					281,300
Sunrise Acquisitions (Tisdale II) Inc.	80,650					80,650
Sunrise Acquisitions Inc.	57,040					57,040
Sunrise Acquisitions (Burlington) Inc	300					300
Sunrise Acquisitions (Barrie I) Inc.	(89,700)					(89,700)
Sunrise Acquisitions (Bond Head II) Inc.	(124,000)					(124,000)
Sunrise Acquisitions (Bond Head) Inc.	(655,750)					(655,750)
IKH Holdings Inc.	63,432					63,432
Ama I Financial Inc.	9,079					9,079
2303484 Ontario Inc	250					250
2356266 Ontario Inc	(823,650)					(823,650)
<b>Total (As Recorded by MNP)</b>	<b>5,080,186</b>	<b>619,236</b>	<b>2,075,484</b>	<b>4,705,661</b>	<b>185,345</b>	<b>12,665,912</b>
<b>Total Owing to the Company</b>	<b>6,773,286</b>	<b>619,236</b>	<b>2,075,484</b>	<b>4,705,661</b>	<b>185,345</b>	<b>14,359,012</b>

10. Against the benefits to the stakeholders reflected by the settlement, I must balance other factors, including but not limited to the fact that Justice Kimmel ordered the repayment of almost \$6 million one month ago, and those amounts have not been repaid. As provided for in the draft order, however, the Acknowledged Debtors have agreed to pay the Receiver the sum of at least CAD \$500,000 by no later than December 29, 2022.
11. The draft order also provides that the status quo will be maintained in that the Acknowledged Debtors are enjoined, with their consent, from selling, transferring, conveying, pledging or similarly dealing with any assets outside the ordinary course.
12. In the main, I am satisfied as stated above that the settlement represents significant progress and should be approved. Significant admissions by the Acknowledged Debtors have been made, and the remaining issues have been materially narrowed. In my view, approval of the [limited] settlement represents a better outcome in the sense of maximizing the chances of the Receiver receiving more funds for the benefit of stakeholders, sooner, than if the settlement reflected in the draft order were not approved.
13. One element of the relief sought requires further explanation. The draft order provides that the amount of CAD \$724,443 is due and payable to the Receiver forthwith by Nayyar Shabbar.
14. Following the issuance of the Receivership Order, the Receiver undertook an extensive investigation of the affairs of the Company including but not limited to its receipts and disbursements.

15. As reflected in the chart above, the amount of CAD \$724,443 is reflected in the books and records of the company as reviewed by the Receiver as having been paid to Mr Shabbar, and admitted by the Responding Parties to be owing to the Company by Mr. Shabbar as reflected in the chart prepared by their expert, MNP. That total is comprised of what are said to be equity and dividends of \$300,000 and expenses of \$424,443.
16. Mr. Shabbar is not present today in Court and nor is he represented by counsel. Mr. Shabbar has not participated in these lengthy proceedings at all, although he has been served with all materials, including but not limited to the motion materials in respect of the relief sought today, via email. That email was sent to the address on file with the Company and is the email address reflected in the records of the Company as that to and from which Mr. Shabbar are communicated.
17. Moreover, the Supplementary Affidavit of Service of Joshua Foster, counsel for the Receiver, states that the Receivership Order approves and adopts the E-Service Protocol of the Commercial List. By email dated July 6, 2022, and at the request of the Receiver, Mr. Kodwavi [one of the Responding Parties and the only one to file an affidavit] provided the email address for Mr. Shabbar. The affidavit confirms that the Receiver had been unable to locate any other contact information for Mr. Shabbar in the records of the Company currently available to the Receiver.
18. Later on the same day, July 6, 2022, Mr. Shabbar was served by counsel for the Receiver with a PDF copy of the Notice of Motion. On August 5, 2022, Mr. Shabbar was served with the complete Motion Record, and on November 4 was served with the Third Supplement to the Third Report of the Receiver. On December 2, Mr. Shabbar was served with the factum and authorities of the Receiver as well as the Reply Motion Record and the Brief of Transcripts, and on December 16 he received the Reply Factum and Authorities. On December 19, he received the Compendium.
19. The affidavit reflects and confirms that the Receiver has at my request conducted, or caused to be conducted on its behalf, a skip trace report to locate a physical address for Mr. Shabbar. That has now been done, and it confirms that Mr. Shabbar resides at 51 Silvestre Ave., Woodbridge, ON, L4H 0L9. Also at my direction, the Receiver served a copy of my December 20, 2022 order on Mr. Shabbar both by email and by courier to the physical address noted above.
20. I am satisfied that Mr. Shabbar has had notice of these proceedings, and in particular this motion and therefore notice of the fact that the Receiver was seeking an order that he repay the amounts paid to him by the Company as reflected by the investigation of the Receiver and the report of MNP retained on behalf of the Responding Parties.
21. The Responding Parties accept and agree that the funds were paid by the Company to Mr. Shabbar. All parties present today are in agreement that there is no evidence in the Record justifying those payments, reflecting any investment, equity, loan or indeed any funds advanced or transferred to the Company by Mr. Shabbar. In fact, there is no evidence of any justification or basis for the payments made to him whatsoever. As noted above, he has not filed any evidence or participated in this proceeding whatsoever.
22. Counsel for the Responding Parties was clear in submissions, and I accept, that while the Responding Parties agree with the facts referred to above, and otherwise consent to the order, they obviously do not act for Mr. Shabbar with the result that while they do not oppose the specific provision ordering the repayment by him, neither do they consent.

23. I direct counsel for the Receiver to serve a copy of this Endorsement on Mr. Shabbar forthwith, both by email and by courier to the above-noted physical address.
24. For all of the above reasons, I am satisfied that the relief sought should be granted.
25. The hearing with respect to the two remaining issues, being the balance of the issues on this motion not resolved [i.e., the issue of joint and several liability and the Occupancy Fees] will be heard on January 31, 2023 beginning at 10 AM before me.
26. As the order provides, if the Acknowledged Debtors pay to the Receiver the CAD \$500,000 by no later than December 29, they may file a supplementary factum not exceeding 10 pages on or before January 10, 2023, relating to [and only 2] the two issues still to be determined. The Receiver may file a reply factum, also not longer than 10 pages, on or before January 19. The parties are agreed that no further evidence will be filed.

O'Shea, J.