

COUNSEL SLIP

COURT FILE

NO.: CV-21-00663051-00CL

DATE: March 10, 2022

NO. ON LIST 6

TITLE OF
PROCEEDING

KINGSETT MORTGAGE CORPORATION v. SUNRISE ACQUISITIONS (HWY
7) INC.

COUNSEL FOR:

PLAINTIFF(S)

PHONE _____

APPLICANT(S) KINGSETT MORTGAGE CORP.

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JUDICIAL NOTES:

Endorsement of Penny J.

This motion concerns the priority of payment of proceeds of sale in relation to certain deposits allegedly paid by the spouses of principals of the debtor company. The creditors (syndicated mortgage lenders) engaged by this potential dispute are individual participants in a syndicated mortgage financing. They are represented by a court-appointed trustee. The principals are, and the spouses were, represented by counsel.

The receiver over this residential housing development in Markham was appointed in June 2021. This motion was initiated in October 2021.

An agreed timetable was established. The spouses and principals entirely failed to comply with that timetable and have, to date, filed no material. An order of the court was made in December 2021 establishing a new deadline. The spouses and principals failed to comply with that order.

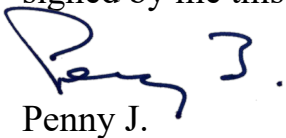
The spouses' counsel had himself removed as their solicitor of record in January 2022. Counsel for the receiver gave repeated notice to the spouses that the motion would proceed and that, if they wanted to oppose the relief sought on the motion, they had to file material in advance of the hearing.

There was no response from anyone until about midnight of March 9/10. One spouse indicated she would be seeking an adjournment. Ms. Kodwavi appeared on March 10 to seek an adjournment for "one-week". She said she had a new lawyer but could only give his first name. She said all her "papers" were ready to file but she could not say what those papers were. There has been no attempt whatsoever to put forward any defence on the merits to the receiver's motion. Ms. Kodwavi gave no reason for failing to comply with the previously agreed or ordered schedules and no explanation for why she waited until midnight of the night before the motion to reach out to the receiver's counsel, other than to say that it has been a challenging time and that she and her family had been struggling with various personal setbacks. There is no evidence, or even plausible explanation, for the delay. The request for an adjournment is denied. This request is nothing but a blatant delay tactic. To grant an adjournment in the circumstances would be to permit an abuse of process. It would also be highly prejudicial to the syndicated mortgage lenders, as every dollar of receivership and related cost is a dollar less they will receive.

The relief sought by the receiver is fully justified on the record. The purchase and sale agreements provide that, on default, the deposits are forfeit. There is ample evidence that the spouses are in default. In any event, under the purchase and sale agreements, the deposits are subordinated to the interests of registered security holders against the property. The syndicated mortgage lenders have such a mortgage. There are, in addition, highly suspicious circumstances surrounding the payment of the deposits and the alleged interim occupancy of the properties by the spouses. All of this is completely unanswered by the spouses or the principals. On the evidence, they can in no way be considered *bona fide* purchasers for value.

On this record, there is only one conclusion available. The trustee's interest on behalf of the syndicated mortgage lenders must prevail over any theoretical claim by the spouses for the return of their alleged deposits.

The receiver is no longer obliged to maintain the deposit holdback of \$2 million. These funds may be distributed in accordance with the second sales process order. Order to issue in the form signed by me this day.

A handwritten signature in blue ink, appearing to read "Penny J.", followed by a period.

Penny J.