

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:



KINGSETT MORTGAGE CORPORATION

Applicant

- and -

SUNRISE ACQUISITIONS (HWY 7) INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**NOTICE OF APPLICATION
(Application for Appointment of Receiver)**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In person
- By telephone conference
- By video conference

at the following location:

Join Zoom Meeting

<https://cassels.zoom.us/j/99989215900?pwd=SWZHdDJmcmcxUTR1VTRENk8rSjRYdz09>

Meeting ID: 999 8921 5900

Password: 750545

on **June 9, 2021 at 12:00 p.m.**

Further details for attending the video conference hearing can be found at **Schedule "A"** to this Notice of Application. Kindly email bgoodis@cassels.com and identify your name, email address, phone number, and the party who you act for if you intend to appear at the video conference.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: 28 May 2021 Issued by: _____
Local Registrar
Address of court office: 330 University Avenue, ⁹~~7~~th Floor
Toronto, ON
M5G 1R7

TO:	SUNRISE ACQUISITIONS (HWY 7) INC. 50 West Wilmot Street Suite 100 Richmond Hill, ON L4B 1M5 shussain@sunrisehomes.ca mkodwavi@sunrisehomes.ca <i>Respondent</i>
AND TO:	KSV RESTRUCTURING INC. 150 King Street West Suite 2308 Toronto, ON M5H 1J9 Noah Goldstein Tel: 416.932.6207 ngoldstein@ksvadvisory.com

	<i>Proposed Receiver</i>
AND TO:	<p>BENNETT JONES LLP 100 King Street West Suite 3400 Toronto, ON M5X 1A4</p> <p>Sean H. Zweig Tel: 416.777.6254 zweigs@bennettjones.com</p> <p>Aiden C.R. Nelms Tel: 416.777.4642 nelmsa@bennettjones.com</p> <p><i>Counsel to the Proposed Receiver</i></p>
AND TO:	<p>FAAN MORTGAGE ADMINISTRATORS INC. 920-20 Adelaide Street East Toronto, ON M5C 2T6</p> <p>Naveed Manzoor Tel: 416.258.6145 naveed@faanadvisors.com</p> <p>Daniel Sobel Tel: 647.272.8383 daniel@faanadvisors.com</p> <p><i>Court-appointed Trustee of the 2nd Mortgagee, Sorrenti Law Professional Corporation</i></p>
AND TO:	<p>OSLER HOSKIN & HARCOURT LLP 100 King Street West 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto, ON M5X 1B8</p> <p>Jeremy Dacks Tel: 416.862.4923 jdacks@osler.com</p> <p>Michael De Lellis Tel: 416.862.5997 mdelellis@osler.com</p> <p><i>Counsel to FAAN Mortgage Administrators Inc.</i></p>
AND TO:	<p>OLYMPIA TRUST COMPANY 125 9th Avenue SE, Suite 2200</p>

	Calgary, Alberta T2G 0P6
AND TO:	REHANNA AMEERULLAH AND MANSI KUMARI c/o 6 Dalewood Drive Richmond Hill, ON L5B 3C3
AND TO:	SAJJAD HUSSAIN shussain@sunrisehomes.ca
AND TO:	MUZAMMIL KODWAVI mkodwavi@sunrisehomes.ca
AND TO:	NORMAN WINTER 21 Dundas Sq 11th Floor Toronto, ON M5B 1B7 nw@nwinlaw.com
AND TO:	DIRECTOR OF PLANNING AND URBAN DESIGN FOR THE CORPORATION OF THE CITY OF MARKHAM Planning and Urban Design Department 101 Town Centre Boulevard (Thornhill entrance) Markham, ON L3R 9W3 Tel: 905.475.4861 Fax: 905.479.7768 dsc@markham.ca

APPLICATION

1. The applicant, KingSett Mortgage Corporation (“**KingSett**”), makes an application for an order (the “**Appointment Order**”), substantially in the form included in KingSett’s application record, *inter alia*:

- (a) if necessary, abridging the time for service and filing of this notice of application and application record or, in the alternative, dispensing with the same;
- (b) appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties of Sunrise Acquisitions (Hwy 7) Inc. (“**Sunrise**”) acquired for, or used in relation to a business carried on by Sunrise and the proceeds therefrom, including, without limitation, the real property legally described within PINs 02985-0591 (LT), 02985-0595 (LT), 02985-0596 (LT), 02985-0597 (LT), 02985-0598 (LT), and 29951-0001 (LT) (the “**Real Property**” and, collectively with the Sunrise’s other assets, undertakings and properties, “**Property**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, RSO 1990, c C-43, as amended (the “**CJA**”);
- (c) granting a charge (the “**Receiver’s Charge**”) over the Property in favour of the Receiver and the Receiver’s counsel to secure their fees and disbursements in respect of these proceedings;
- (d) granting a charge (the “**Receiver’s Borrowings Charge**”) over the Property for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by the Appointment Order; and

- (e) such further and other relief as counsel may advise and this Honourable Court may permit.

2. The grounds for the application are:

(i) The Parties

- (a) KingSett is a private mortgage lender headquartered in Toronto.
- (b) Sunrise is a privately held company that is part of the Sunrise Homes property development group. Sunrise is developing the 52-unit “Unionvillas” townhome development project located in Markham, Ontario, which is an advanced state of development.
- (c) Sunrise is the registered owner of the Real Property, with the exception of the property legally described within PIN 29951-0001(LT), which is commonly owned as an access route within the Unionvillas development. The balance of the existing Real Property currently consists of the five townhome units that have not yet been transferred to a purchaser (the “**Remaining Units**”), as described in further detail below.

(ii) The Loan

- (d) KingSett is the senior secured lender to Sunrise and has been funding the development of the Unionvillas project since 2015.
- (e) On May 5, 2015, KingSett and Sunrise entered into a Commitment Letter (the “**Commitment Letter**”) for the provision of senior secured financing pursuant to four separate loan facilities.

- (f) The Commitment Letter has subsequently been amended multiple times, most recently on January 26, 2021, which amendments have from time to time changed the nature of the facilities offered and extended the maturity of the loan facilities.
- (g) Presently, the loan consists of a single non-revolving demand loan facility in the maximum principal amount of \$4,410,000 and bearing interest at the Royal Bank of Canada prime rate + 6.05% (floor rate of 10%) per annum, calculated on the daily outstanding balance, compounded and payable monthly, not in advance, both before and after maturity. The maturity date of the facility is July 1, 2021.
- (h) The loan is personally guaranteed by Sajjad Hussain and Muzammil Kodwavi, who are the directors and officers of Sunrise.
- (i) As security for the loan, Sunrise granted to KingSett, among other things: (i) a first-ranking mortgage against the Real Property ("**Mortgage**"), (ii) a general assignment of rents in respect of the Real Property, and (iii) a general security agreement.
- (j) The Mortgage was registered on title to the Real Property on June 2, 2015.

(iii) Default and Demand

- (k) On May 1, 2021, Sunrise failed to make its required interest payment, thereby defaulting under the terms of the Commitment Letter and security. Following the default, KingSett declared the entire amount of the indebtedness due and payable.
- (l) On May 11, 2021, KingSett delivered a demand letter to Sunrise demanding that the Indebtedness be repaid in full by no later than May 21, 2021. Concurrently,

KingSett delivered a notice of intention to enforce security to Sunrise under the BIA (the “NITES”).

- (m) The 10-day period specified in the NITES expired on May 21, 2021. Sunrise did not repay the indebtedness in full nor in part by that date.
- (n) As at May 10, 2021, the outstanding indebtedness owing by Sunrise to KingSett is in the amount to \$1,950,807.35, plus accrued and accruing interest, fees and costs.

(iv) Appointment of a Receiver

- (o) KingSett has a contractual right to appoint a receiver upon default by Sunrise.
- (p) The Remaining Units are subject to sale agreements that do not meet the net minimum purchase price thresholds under KingSett’s loan terms due to the deposits and raise significant issues and concerns.
- (q) In particular, four of these sale agreements are between Sunrise and related parties (including three that are between Sunrise and the spouse of one of Sunrise’s principals) and contain unusually high deposits (in some cases exceeding 50% of the total purchase price) which have been depleted by Sunrise and are no longer available.
- (r) In these circumstances, KingSett is not prepared to consent to the proposed sales or discharge its Mortgage and has lost faith with management of Sunrise.
- (s) FAAN Mortgage Advisors, in its capacity the Court-appointed trustee of a law firm that holds the second mortgage of the Real Property in trust for numerous

syndicated mortgage investors, had advised KingSett that it does not consent to Sunrise's proposed sales of the Remaining Units.

- (t) KingSett is seeking to appoint KSV as receiver of the Property to thoroughly examine the circumstances of the sales agreements for the Remaining Units with a view to completing a sale of the Remaining Units, distributing the proceeds to Sunrise's creditors and addressing any related outstanding issues.
- (u) Given Sunrise's default and the current circumstances, the appointment of a receiver over the Property is just and convenient.
- (v) The secured creditors who may be affected by the granting of the Receiver's Charge and Receiver's Borrowings Charge will be served with the present receivership application.
- (w) KSV is qualified and has consented to act as Receiver if so appointed.
- (x) Section 101 of the CJA.
- (y) Section 243(1) of the BIA.
- (z) Rules 1.04, 2.03, 3.02, and 38 of the *Rules of Civil Procedure*, RRO 1990, c. C.43.
- (aa) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Application:

- (a) The Affidavit of Daniel Pollack sworn on May 28, 2021;

- (b) The consent of KSV to act as Receiver; and
- (c) Such other materials as counsel may advise and this Honourable Court may permit.

May 28, 2021

CASSELS BROCK & BLACKWELL LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Ryan Jacobs LSO #: 59510J
Tel: 416.860.6465
Fax: 416.640.3189
rjacobs@cassels.com

Joseph Bellissimo LSO #: 46555R
Tel: 416.860.6572
Fax: 416.642.7150
jbellissimo@cassels.com

Ben Goodis LSO #: 70303H
Tel: 416.869.5312
Fax: 416-640-3199
Email: bgoodis@cassels.com

Lawyers for the Applicant

SCHEDULE "A"
ZOOM VIDEOCONFERENCE DETAILS

KingSett Mortgage Corporation v Sunrise Acquisitions (Hwy 7) Inc. - Videoconference Hearing
Beginning at 12:00 p.m.

Join Zoom Meeting

<https://cassels.zoom.us/j/99989215900?pwd=SWZHdDJmcmcxUTR1VTRENk8rSjRYdz09>

Meeting ID: 999 8921 5900

Password: 750545

One tap mobile

+15873281099,,99989215900#,,#750545# Canada

+16473744685,,99989215900#,,#750545# Canada

Dial by your location

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

+1 204 272 7920 Canada

+1 438 809 7799 Canada

855 703 8985 Canada Toll-free

Meeting ID: 999 8921 5900

Password: 750545

Find your local number: <https://cassels.zoom.us/u/aerW2kqCA4>

Join by SIP

99989215900@zoomcrc.com

Join by H.323

162.255.37.11 (US West)

162.255.36.11 (US East)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

Meeting ID: 999 8921 5900

Password: 750545

KINGSETT MORTGAGE CORPORATION
Applicant

and

SUNRISE ACQUISITIONS (HWY 7) INC.
Respondent

Court File No. CV-21- 00663051-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

Cassels Brock & Blackwell LLP

2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Ryan Jacobs LSO #: 59510J

Tel: 416.860.6465
Fax: 416.640.3189
rjacobs@cassels.com

Joseph Bellissimo LSO #: 46555R

Tel: 416.860.6572
Fax: 416.642.7150
jbellissimo@cassels.com

Ben Goodis LSO #: 70303H

Tel: 416.869.5312
Fax: 416-640-3199
bgoodis@cassels.com

Lawyers for the Applicant