

**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 MOTION  
(for Repayment of Amounts Owing)**

KSV Restructuring Inc. ("KSV"), solely in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") of all of the assets, undertakings and properties of Sunrise Acquisitions (Hwy 7) Inc. (the "**Company**") acquired for or used in relation to the business carried on by the Company and the proceeds therefrom, including, without limitation, certain real property owned by the Company in Markham, Ontario (the "**Real Property**"), will make a motion to the Court, with notice, at a date and time to be set by the Court, or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard:

- In writing under subrule 37.12.1(1);
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;

- By telephone conference;
- By video conference;

at a Zoom videoconference link to provided by the Court, and emailed to the Service List, in advance of the motion. Please advise if you intend to join the hearing of the motion by email to Joshua Foster at [fosterj@bennettjones.com](mailto:fosterj@bennettjones.com).

**THE MOTION IS FOR:**

1. An Order, *inter alia*:
  - (a) if necessary, abridging the time for service and filing of this notice of motion and the motion record, and validating service or, in the alternative, dispensing with same;
  - (b) if necessary, authorizing the Receiver to proceed with this motion in accordance with paragraphs 3 and 4 of the order of the Honourable Justice Wilton-Siegel dated June 9, 2021 appointing the Receiver (the "**Receivership Order**");
  - (c) directing the Principals (as defined below), the Spouses (as defined below), the Related Sunrise Parties (as defined below), the shareholders of the Dissolved Related Sunrise Parties (as defined below), and such other parties as may be necessary or appropriate, to immediately pay to the Receiver the Amounts Owing (as defined below); and
  - (d) such further and other relief and orders incidental, ancillary or related to the relief requested in paragraph 1(c) above;
2. The costs of this motion on a full indemnity basis; and
3. Such further and other relief as this Court may deem just.

## THE GROUNDS FOR THE MOTION ARE:

### *Background*

4. The Company is part of a real property development group known as Sunrise Homes, which develops residential and commercial projects in southern Ontario. The Company's sole directors and officers are Sajjad Hussain ("**Mr. Hussain**") and Muzammil Kodwavi ("**Mr. Kodwavi**", and together with Mr. Hussain, the "**Principals**").

5. The Company is a privately held company incorporated under the *Business Corporations Act* (Ontario), RSO 1990, c. B. 16, with its registered head office address in Richmond Hill, Ontario. The Company is a special purpose vehicle created solely for the purpose of developing the "Unionvillas" development project on the Real Property (the "**Unionvillas Project**").

6. Since 2015, KingSett Mortgage Corporation ("**KingSett**") provided secured financing to the Company in connection with the development of the Unionvillas Project. KingSett entered into a Commitment Letter with the Company on May 5, 2015 (as amended from time to time, the "**Commitment Letter**"). As at May 10, 2021, KingSett was owed approximately \$2,000,000 by the Company under the Commitment Letter (the "**KingSett Indebtedness**"). The KingSett Indebtedness was secured by, among things, mortgages against the Real Property, a general assignment of rents in respect of the Real Property and a general security agreement.

7. The Company's other primary source of financing for the Unionvillas Project was a syndicated mortgage financing arranged by Fortress Real Developments Inc. ("**Fortress**") and its affiliates, which was previously administered by an Ontario lawyer, Derek Sorrenti ("**Sorrenti**"), through his law firm, Sorrenti Law Professional Corporation ("**Sorrenti Law**"), pursuant to a loan agreement between the Company and Sorrenti Law dated August 6, 2015 (the "**Sorrenti Loan Agreement**"). On August 18, 2015, Sorrenti Law registered a charge against the Real Property in the amount of \$8,000,000, which was later amended by the registration of a notice on September 15, 2016 to increase the principal amount of the charge to \$9,873,262 and to list Sorrenti Law and Olympia Trust Company as chargees (as amended from time to time, the "**Sorrenti Charge**").

8. Sorrenti Law, KingSett and the Company entered into two Subordination and Standstill Agreements under which Sorrenti Law subordinated and postponed all indebtedness owing by the

Company to Sorrenti Law and all security in favour of Sorrenti Law in respect thereof in favour of the KingSett Indebtedness and KingSett's security. As a result, KingSett was the Company's first secured creditor, with Sorrenti Law being the Company's second secured creditor.

9. By Order of the Honourable Justice Hailey of the Court dated September 30, 2019, FAAN Mortgage Administrators Inc. (the "**Sorrenti Trustee**") was appointed as trustee over all of the assets, undertakings and properties of Sorrenti and Sorrenti Law relating to their trusteeship and the administration of syndicated mortgage loans in projects affiliated with Fortress, including the Sorrenti Charge, and any other real property mortgages registered in the names of Sorrenti and Sorrenti Law.

10. As of May 31, 2022, the total amount owing to the 145 investors in the syndicated mortgage loan under the Sorrenti Charge administered by the Sorrenti Trustee was over \$9,000,000, including approximately \$3,000,000 of unpaid interest.

11. In addition to the foregoing, in contravention of the Commitment Letter and the Sorrenti Loan Agreement, a further charge in favour of Rehanna Amerrulah and Mansi Kumari in the principal amount of \$575,750 was registered on title to the Real Property on September 9, 2020 (the "**September 2020 Charge**"). The registration of the September 2020 Charge constitutes a default under both the Commitment Letter and the Sorrenti Loan Agreement. The Receiver presently has no additional knowledge with respect to the September 2020 Charge or the indebtedness it purports to secure.

12. The Company is also a defendant to certain construction lien and small claims litigation matters, and is indebted to several other unsecured creditors.

### ***The Company's Defaults under its Mortgages***

13. In 2017, the Company defaulted on the Sorrenti Charge pursuant to the terms of the Sorrenti Loan Agreement. The Company has remained in default on the Sorrenti Charge at all times since. In particular, the Sorrenti Charge matured in August 2017 and no payments have been made by the Company in respect of the Sorrenti Charge since that time (save and except for the payments described below that were made in the context of these Receivership proceedings).

14. On May 1, 2021, the Company committed another act of default on the first mortgage in favour of KingSett by failing to make a required interest payment due on that date, which default continued and was not remedied by the Company. On May 11, 2021, KingSett delivered a demand letter and a notice of intention to enforce security (the "NITES") in accordance with subsection 244(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3. KingSett then applied to Court for the Receivership Order following expiry of the notice period under the NITES.

15. As a result of recoveries made in the Receivership arising from the Receiver's sale of the remaining townhome units in the Unionvillas Project following the granting of the Receivership Order, funds were distributed to KingSett. The KingSett Indebtedness has now been repaid in full.

16. While limited distributions were also made to the Sorrenti Trustee in connection with the Receivership, the Company owes substantial amounts under the Sorrenti Charge (over \$9,000,000), in addition to further amounts to other creditors of the Company.

17. The Company continues to owe millions of dollars to its secured and unsecured creditors, without the means to satisfy such indebtedness.

***Restrictions and Requirements under the Commitment Letter***

18. The Commitment Letter contains several relevant restrictions and covenants. Among other things, the Commitment Letter sets minimum purchase price thresholds for sales of townhome units in the Unionvillas Project. Specifically, the Commitment Letter provides that the Company shall not be permitted to sell townhomes for prices of less than \$930,000 before deduction for HST, absent the consent of KingSett. As set out below, the Principals caused the Company to breach this covenant by purporting to have it sell townhomes to the Spouses at prices below the minimum purchase price thresholds required by the Commitment Letter without KingSett's consent.

19. Additionally, the Commitment Letter requires the Company to maintain a minimum equity position of \$3,336,897 in the Unionvillas Project until the KingSett Indebtedness is repaid in full. The Principals caused the Company to breach this covenant by failing to maintain the minimum equity position required by the Commitment Letter at relevant times.

***Restrictions on Use of Advanced Funds under the Sorrenti Loan Agreement***

20. Under the Sorrenti Loan Agreement, the syndicated mortgage funds advanced to the Company were required to be used exclusively to fund the acquisition of the Real Property and to pay for other expenses associated with the Unionvillas Project (as set out in the project budget) for which the funds were specifically invested and advanced, but specifically excluding development fees (i.e. development management fees and construction management fees to be paid by the Company or related parties). As set out in more detail below, the Principals caused the Company to breach this covenant.

***The Receiver's Investigative Efforts***

21. Since its appointment, the Receiver has engaged in investigative efforts in accordance with the Receivership Order by, among other things, reviewing the receipts and disbursements of the Company, as provided for in the unaudited general ledger of the Company (the "**General Ledger**"), and certain requested information provided by the Company's banks (the "**Bank Information**").

22. As set out in its Third Report to Court dated October 20, 2021, the Receiver's review of the General Ledger and Bank Information uncovered a number of issues of very significant concern.

23. In contravention of the Company's commitments to its secured lenders and the Principals' fiduciary duties and other legal obligations owed to the Company, the Principals collectively paid or caused to be paid a net amount of approximately \$5.5 million to themselves from the Company, and the Principals also paid or caused to be paid further net amounts totalling approximately \$5.5 million to non-arm's length parties related to them, including, without limitation, Sunrise Homes Ltd., Sunrise Acquisitions Inc., Sunrise Acquisitions (Unionville) Inc., Sunrise Acquisitions (Bronte) Inc., Sunrise Acquisitions (Keswick) Inc., Sunrise Acquisitions (Tisdale) Inc., SH & MK Management Inc., Sunrise Acquisitions (Keswick II) Inc. and Nayyar Shabbar (collectively, the "**Related Sunrise Parties**"). Most of the Related Sunrise Parties are single purpose entities within the "Sunrise Homes" real property development group involved in the construction of other Sunrise projects not related to the Unionvillas Project, and in respect of which the Principals have direct financial interests. While at least one of these entities – Sunrise Acquisitions (Keswick II) Inc. – has since been voluntarily dissolved (collectively with any other dissolved Related Sunrise

Parties, the "**Dissolved Related Sunrise Parties**"), the Receiver relies on the provisions of the *Business Corporations Act*, RSO 1990, c B 16, including sections 242 and 243 thereof, in support of the relief sought in respect of the Dissolved Related Sunrise Parties and the shareholders of the Dissolved Related Sunrise Parties.

24. While the Company's General Ledger reflects net payments of only approximately \$840,000 flowing from the Company to the Principals and the Related Sunrise Parties, the Bank Information reveals that the Principals in fact paid and/or facilitated net payments of over \$11 million by the Company to themselves and the Related Sunrise Parties.

25. The General Ledger, which was prepared by or at the direction of the Principals, contains several material discrepancies, primarily related to amounts that were improperly recorded in the General Ledger as being paid to suppliers but were, in fact, amounts paid to the Principals and the Related Sunrise Parties. The following chart sets out a comparison of payments to the Principals and the Related Sunrise Parties as reflected in the Bank Information and the General Ledger:

(unaudited; \$) Related Party	Net (Advances) per Bank Information	Net (Advances) per General Ledger	Variance
<b>Principals</b>			
Muzammil Kodwavi	(3,828,996)	753,534	(4,582,530)
Sajjad Hussain	(1,820,576)	93,064	(1,913,640)
Subtotal	(5,649,572)	846,598	(6,496,170)
<b>Related Parties</b>			
Sunrise Acquisitions (Keswick) Inc.	(767,875)	356,350	(1,124,225)
SH & MK Management Inc.	(1,396,454)	(405,062)	(991,392)
Sunrise Acquisitions (Unionville) Inc.	(1,103,750)	(292,350)	(811,400)
Sunrise Acquisitions (Bronte) Inc.	(1,411,800)	(793,250)	(618,550)
Nayyar Shabbar	(1,361,312)	(760,442)	(600,870)
Sunrise Acquisitions (Burlington) Inc.	-	(300)	300
Sunrise Acquisitions Inc.	(30,740)	(38,250)	7,510
Sunrise Acquisitions (Tisdale II) Inc.	-	(9,150)	9,150
Sunrise Acquisitions (Keswick II) Inc.	(6,500)	(72,200)	65,700
Sunrise Acquisitions (Tisdale) Inc.	(211,500)	(352,800)	141,300
Sunrise Homes Ltd.	(291,900)	(461,800)	169,900
Subtotal	(6,581,831)	(2,829,254)	(3,752,577)
Receipts from Related Party	869,950	1,143,450	(273,500)
<b>Total</b>	<b>(11,361,453)</b>	<b>(839,206)</b>	<b>(10,522,247)</b>

26. There is no legitimate basis for the above-noted payments to the Principals or the Related Sunrise Parties. For instance, on or around November 9, 2015, Sorrenti Law advanced a net amount of approximately \$400,000 to the Company. Most of these funds were immediately disbursed to certain Related Sunrise Parties between November 10 and November 12, 2015, with the Company obtaining no benefit from these disbursed funds, which were required to be used in connection with the Unionvillas Project pursuant to the Sorrenti Loan Agreement.

27. In addition to improperly diverting funds from the Company and maintaining a materially inaccurate General Ledger to conceal the true nature of transactions that only served to enrich the Principals and other non-arm's length parties to the detriment of the Company and its creditors, throughout the Receivership the Principals have also failed to provide certain required information and documentation to the Receiver despite repeated requests by the Receiver. The Principals have also engaged in other deceitful tactics by providing certain other incomplete, inaccurate and misleading information and documentation to the Receiver, such as altered email correspondence from legal counsel for the Sorrenti Trustee.

#### *Funds Owning by the Spouses*

28. Additionally, based on the Receiver's investigative efforts, it has determined that the spouses of the Principals, Mahvesh Hussain ("**Ms. Hussain**") and Safana Kodwavi ("**Ms. Kodwavi**") and, together with Ms. Hussain, the "**Spouses**"), entered into four purchase and sale agreements with the Company (the "**PSAs**") in respect of four townhomes in the Unionvillas Project (collectively, the "**Townhome Units**" and, individually, a "**Townhome Unit**"). In particular, Ms. Kodwavi entered into three PSAs, respectively dated January 25, 2017 (for two of the PSAs) and November 26, 2019 (for the third PSA), and Ms. Hussain entered into one PSA dated January 25, 2017.

29. Each of the PSAs had a purchase price of \$950,000, and the Spouses purported to pay unusually high and off-market deposits under each PSA for each Townhome Unit, amounting to \$500,000 for each (representing over 50% of the purchase price).

30. The purchase price under the PSAs does not meet the net minimum purchase price thresholds under the Commitment Letter. The funds purportedly paid as deposits under the PSAs



were all paid by Mr. Kodwavi, despite the fact that the purchasers under the PSAs were the Spouses (including one PSA where the purchaser was Ms. Hussain, the spouse of Mr. Hussain).

31. Because of, among other things, the improper diversion of substantial funds from the Company to the Principals and the Related Sunrise Parties, the Company required funding to complete construction of the Unionvillas Project. Mr. Kodwavi injected required funding into the Company via the purported deposits under the PSAs, while also purporting to entitle the Spouses to purchase the Townhome Units under the PSAs. The purported deposit funds paid by Mr. Kodwavi were, in fact, the equity contribution required from the Principals to fund construction because of having paid out such significant sums to various related parties, including the Principals themselves, in excess of \$11 million, contrary the Company's commitments to its secured lenders and the Principals fiduciary and other legal obligations owed to the Company.

32. The Spouses purported to take interim occupancy of the Townhome Units pursuant to section 80 of the *Condominium Act*, SO 1998, c 19, as amended, and the related regulations (the "**Condominium Act**"). The Spouses also leased the Townhome Units to third parties, and collected rent from such parties, pursuant to lease agreements for an initial term of up to one year (collectively, the "**Lease Agreements**" and, individually, a "**Lease Agreement**"), with each such Lease Agreement having then been extended by the lessors on a month-to-month basis.

33. Pursuant to the terms of the PSAs, the Spouses were required to pay, among other things, monthly occupancy fees (the "**Occupancy Fees**") to the Company until the transactions contemplated under the PSAs closed. However, no Occupancy Fees were ever paid to the Company by the Spouses as required.

34. Despite the fact that the Spouses purported to take interim occupancy of the Townhome Units and received rent payments from third party tenants who occupied the Townhome Units, the Spouses failed to pay the required Occupancy Fees to the Company in accordance with the terms of the PSAs. The Occupancy Fees that were required to be paid by the Spouses to the Company, but were never paid, total approximately \$175,000.

35. In the context of the Receivership, the Spouses also purported to have an entitlement to the Townhome Units, as well as to the funds purportedly paid as deposits under the PSAs.

36. Ultimately the PSAs were disclaimed by order of the Honourable Justice Koehnen of the Court dated October 27, 2021 (the "**Second Sales Process and Disclaimer Order**"), with the Spouses not opposing such disclaimer but reserving their rights to assert an entitlement to the funds that were purportedly paid as deposits under the PSAs. Pursuant to the Second Sales Process and Disclaimer Order, a sales process in respect of the Townhome Units subject to the PSAs was also approved. The Receiver carried out the Second Sale Process, and sale transactions in respect of all of the Townhome Units closed. The Second Sale Process and Disclaimer Order required the Receiver to hold \$500,000 from each sale in trust for a total holdback of \$2,000,000 (the "**Holdback**") pending resolution of the dispute between the Spouses and the Receiver regarding entitlement to the Holdback.

37. On March 10, 2022, the Honourable Justice Penny of the Court issued an order, among other things, authorizing the Receiver to distribute the Holdback to the Sorrenti Trustee. In connection with the Receiver's motion for that order, the Honourable Justice Penny issued an endorsement providing that there are "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."

### ***Improper Conveyance/Encumbrance of Properties***

38. The Principals and Spouses appear to own several properties in Ontario. In the lead up to, and during the pendency of, these Receivership Proceedings, some or all of the Principals and Spouses appear to have taken steps to improperly convey/encumber their properties. For instance:

- (a) A property at the address municipally known as 91 Longshore Way, Whitby, Ontario was acquired by Mr. Hussain on October 30, 2018 for \$419,548. A mortgage from the Bank of Nova Scotia for \$422,500 was registered on title on May 13, 2020. A further mortgage from AFC Mortgage Administration for \$312,500 was registered on title on June 15, 2021 (mere days after the Receivership Order was issued on June 9, 2021).

- (b) A property at the address municipally known as 30 Horseshoe Drive, Whitby, Ontario was acquired by Mr. Hussain on April 16, 2020 for \$705,000, with a mortgage from Royal Bank of Canada for \$637,158. A further mortgage from RBC for \$980,000 was registered on title on January 26, 2022 (approximately six months following the Receivership Order and only several months after the Receiver delivered its Third Report to Court setting out the unlawful conduct of the Principals).
- (c) A property at the address municipally known as 2600 Glengarry Road, Unit 9, Mississauga, Ontario was jointly acquired by Mr. and Ms. Hussain on February 18, 2010 for \$348,740. On June 17, 2020 – less than a year before the Receivership Order – Mr. Hussain transferred his interest in the jointly owned property to Ms. Hussain for \$1. That same day, a mortgage from Scotiabank for \$560,000 was registered on title.
- (d) A property at the address municipally known as 9 Cicada Court, Toronto, Ontario was jointly acquired by Mr. and Ms. Hussain on December 17, 2018 for \$1,818,000 with a mortgage for \$995,000 from Home Trust Company. This mortgage was subsequently transferred from Home Trust to Computershare Trust Company of Canada on June 17, 2019. This property was then encumbered with another mortgage, from Scugog Developments Inc., for \$1,280,750 on May 12, 2020 – less than a year before the Receivership Order.

39. Additionally, Mr. and Ms. Kodwavi acquired a property at the address municipally known as 88 Abbruzze Ct, Woodbridge, Ontario on June 4, 2021 – just five days before the Receivership Order – for \$2,980,000, with a mortgage from Computershare Trust Company of Canada for \$1,980,000 registered on June 4, 2021. A further mortgage from AFC Mortgage Administration Inc. for \$312,500 was registered on title to this property on June 15, 2021 (mere days after the Receivership Order was issued on June 9, 2021).

***Repayment of Amounts Owing***

40. At this time, the Receiver is seeking repayment of all funds improperly diverted from and/or owing to the Company, including but not limited to the amounts set out in paragraphs 25 and 34 above, by the Principals, the Spouses, the Related Sunrise Parties and the shareholders of the Dissolved Related Sunrise Parties (collectively, the "**Amounts Owing**"), and such additional and ancillary relief as may be necessary to effect the repayment of the Amounts Owing.

***Additional Grounds***

41. The Receivership Order and related orders and endorsements in these proceedings;
42. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3;
43. *Business Corporations Act*, RSO 1990, c B 16;
44. *Condominium Act*, SO 1998, c 19;
45. *Fraudulent Conveyances Act*, RSO 1990, Chapter F 29;
46. *Assignments and Preferences Act*, RSO 1990, c A 33;
47. *Rules of Civil Procedure*, RRO 1990, Reg 194;
48. *Courts of Justice Act*, RSO 1990, c C 43;
49. The inherent and equitable jurisdiction of the Court; and
50. Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. the Receivership Order and the related orders and endorsements in these proceedings, including the endorsement of the Honourable Justice Wilton Siegel dated June 9, 2021;
2. the First Report of the Receiver dated July 27, 2021, with appendices;
3. the Third Report of the Receiver dated October 20, 2021, with appendices;

4. the Supplement to the Third Report of the Receiver dated February 25, 2022, with appendices;
5. such further and other Reports of the Receiver, to be filed; and
6. such further and other evidence as the lawyers may advise and this Honourable Court may permit.

July 6, 2022

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the Court-appointed Receiver

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-and-

SUNRISE ACQUISITIONS (HWY 7) INC.

Applicant

Respondent

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

**ONTARIO  
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PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF MOTION**

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