

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

THE HONOURABLE MR.) THURSDAY, THE 13TH
)
JUSTICE HAINEY) DAY OF MAY, 2021

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

**APPLICATION UNDER SECTION 37 OF THE
MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006, S.O. 2006,
c. 29 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43**

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

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.

**AND IN THE MATTER OF A MOTION PURSUANT TO 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**

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

BETWEEN:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

**IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK (445 PRINCESS
STREET) INC.**

**AND IN THE MATTER OF AN 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**

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

BETWEEN:

**GRANT THORNTON LIMITED IN ITS CAPACITY AS THE COURT-APPOINTED
TRUSTEE OF TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE
CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE
CORPORATION AND 7743718 CANADA INC.**

Applicant

- and -

**TEXTBOOK (774 BRONSON AVENUE) INC., TEXTBOOK ROSS PARK INC. and
MCMURRAY STREET INVESTMENTS INC.**

Respondents

**IN THE MATTER OF A MOTION PURSUANT TO 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**

· ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION, AND KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO LTD., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC. AND TEXTBOOK ROSS PARK INC.

Plaintiffs

- and -

AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, GREGORY HARRIS IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, HARRIS + HARRIS LLP, NANCY ELLIOT, ELLIOT LAW PROFESSIONAL CORPORATION, WALTER THOMPSON, 1321805 ONTARIO INC., BRUCE STEWART, THE TRADITIONS DEVELOPMENT COMPANY LTD., DAVID ARSENAULT, JAMES GRACE, BHAKTRAJ SINGH A.K.A. RAJ SINGH, RS CONSULTING GROUP INC., TIER 1 TRANSACTION ADVISORY SERVICES INC., JUDE CASSIMY, FIRST COMMONWEALTH MORTGAGE CORPORATION, MEMORY CARE INVESTMENTS LTD., TEXTBOOK SUITES INC., TEXTBOOK STUDENT SUITES INC. AND MICHAEL CANE

Defendants

SETTLEMENT APPROVAL ORDER

THIS MOTION, made by Grant Thornton Limited (“**GTL**”), solely in its capacity as the Court-appointed trustee (in such capacity, the “**Trustee**”) of each of the Trustee Companies (as defined below), and not in its personal capacity or in any other capacity, and by KSV Restructuring Inc. (formerly KSV Kofman Inc.), solely in its capacity as receiver (in such capacity, the “**Receiver**” and, together with the Trustee, the “**Moving Parties**”) of certain property of the Development Companies (as defined below), and not in its personal capacity or in any other capacity, for an Order, *inter alia*: (i) approving and giving effect to the Settlement Agreement dated April 19, 2021 and all schedules attached thereto (collectively, the “**Agreement**”) as between the Trustee and the Receiver, on the one hand, and the defendants, Nancy Elliott and Elliott Law Professional Corporation (respectively, “**Ms. Elliott**” and “**ELPC**,” and collectively, the “**Settling Defendants**”), on the other hand, subject in all cases to the terms, conditions and exceptions provided in the Agreement; and (ii) authorizing and directing the Moving Parties to take any and all steps necessary to give effect to the Agreement, was heard this day via video conference due to the COVID-19 pandemic,

ON READING the Fourteenth Report of the Trustee dated May 3, 2021, the Twenty-First Report of the Receiver dated May 5, 2021, and the Factum and Brief of Authorities of the Moving Parties dated May 3, 2021, and on hearing the submissions of counsel for the Trustee, counsel for the Receiver, and such other counsel as were present, no one appearing for any other person on the service lists although duly served as appears from the affidavits of service of Diana McMillen, sworn May 6, 2021 and Madison van Doorn sworn May 6, 2021.

1. **THIS COURT ORDERS** that, to the extent necessary, the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT DECLARES** that the Agreement is fair and reasonable in all the circumstances and for the purposes of these proceedings.
3. **THIS COURT ORDERS AND DECLARES** that the Agreement is hereby approved, that the Moving Parties and the Settling Defendants are hereby authorized and directed to

comply with their obligations thereunder and that the Moving Parties are hereby authorized to take such further acts and steps as may be necessary to give effect to the terms of the Agreement and this Order.

4. **THIS COURT ORDERS AND DECLARES** that the Settling Defendants and, as applicable, their predecessors, successors, heirs and insurers (collectively, the “**Released Parties**”) are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any and all manners of action, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues, damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief, losses, injuries and liabilities of any and every nature whatsoever, whether in law or in equity (each a “**Claim**”, and collectively, the “**Claims**”) that the Trustee (as defined in the Agreement) and/or the Receiver (as defined in the Agreement) has or may have against them arising out of or in any way relating to the Released Matters (as defined below).

5. **THIS COURT ORDERS AND DECLARES** that the Released Parties are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any Claim or Claims that the Non-Settling Defendants (as defined in the Agreement) or any one of them, including Aeolian Investments Ltd., John Davies in his personal capacity and in his capacity as trustee of both the Davies Arizona Trust and the Davies Family Trust, Judith Davies in her personal capacity and in her capacity as trustee of the Davies Family Trust, Gregory Harris in his personal capacity and in his capacity as trustee of the Davies Family Trust, Harris + Harris LLP, Walter Thompson, 1321805 Ontario Inc., Bruce Stewart, the Traditions Development Company Ltd., David Arsenault, Jude Cassimy, First Commonwealth Mortgage Corporation, Memory Care Investments Ltd., Textbook Suites Inc., Textbook Student Suites Inc., and/or Michael Cane, has or may have against them for contribution or indemnity in the Action or in a separate claim or proceeding commenced by the Trustee or the Receiver, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action or which in any way relate to the Released Matters (as defined below).

6. **THIS COURT ORDERS AND DECLARES** that the Receiver and the Trustee shall not be entitled to recover from the Non-Settling Defendants (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) any damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief (“**Monetary Relief**”) that corresponds to the proportion of any judgment that, had the Settling Defendants not settled, the Court would have apportioned to the Settling Defendants. The Receiver and the Trustee shall (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) only be entitled to recover from the Non-Settling Defendants such claims for Monetary Relief attributable to the aggregate of the several liability of the Non-Settling Defendants. For greater certainty, if the Court ultimately awards Monetary Relief to the Receiver or the Trustee against the Non-Settling Defendants, the Trustee and the Receiver shall (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) have no right to recover any such portion of such Monetary Relief attributable to the Settling Defendants.

7. **THIS COURT ORDERS AND DECLARES** that, for the purposes of this Order, the “**Released Matters**” means: (1) the proceedings in the Ontario Superior Court of Justice (Commercial List) in Toronto bearing Court File No. CV-18-606314-00CL (the “**Action**”); (2) all of the known and unknown facts and issues in dispute amongst the Trustee (as defined in the Agreement) and the Receiver (as defined in the Agreement), on the one hand, and the Settling Defendants, on the other hand, and all of the known and unknown Claims that have been or could be commenced or asserted by the Trustee or the Receiver against the Settling Defendants, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action; and (3) facts and issues arising from or relating to: (i) the syndicated mortgage investments with Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation (collectively, the “**Trustee Companies**”); and (ii) the real estate development projects of Scollard Development Corporation, Memory Care Investments (Kitchener) Ltd., Memory Care Investments (Oakville) Ltd., 1703858 Ontario Inc., Legacy Lane

Investments Ltd., Textbook (525 Princess Street) Inc., Textbook (555 Princess Street) Inc., Textbook (445 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc., Textbook Ross Park Inc. and McMurray Street Investments Inc. (collectively, the “**Development Companies**”).

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of the Trustee Proceedings (as defined in the Agreement);
- (b) the pendency of the Receiver Proceedings (as defined in the Agreement);
- (c) the pendency of the Action;
- (d) any applications for any bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of one or more of any of the Settling Defendants, the Non-Settling Defendants, the Trustee Companies, the Development Companies or any of their respective predecessors, successors or heirs (collectively, the “**Identified Parties**”), and any bankruptcy order issued pursuant to any such applications; and
- (e) any assignment in bankruptcy made in respect of any of the Identified Parties.

the payment to the Trustee and the Receiver, or as they may direct, of the Guaranteed Settlement Funds (as defined in the Agreement) and the Contingent Settlement Funds (as defined in the Agreement) (collectively, the “**Payments**”) shall be binding on any trustee in bankruptcy that is now or that may be appointed in respect of any of the Identified Parties and shall not be void or voidable by creditors of any of the Identified Parties, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT ORDERS** that, in respect of the policy of insurance issued by LAWPRO to the Settling Defendants bearing Policy #2021-001 and effective January 1, 2018 (the “Policy”):

- (a) The Payments made on behalf of the Settling Defendants do not violate the interests of any person or entity potentially covered under the Policy;
- (b) The Payments constitute covered Loss as defined in the Policy;
- (c) The Payments reduce the Liability Coverage Limit of Liability (as defined in the Policy) under the Policy for all purposes, regardless of any subsequent finding by any court, tribunal, administrative body or arbitrator, in any proceeding or action, that the Settling Defendants engaged in conduct that triggered or may have triggered any exclusion, term or condition of the Policy, or any of them, so as to disentitle them to coverage under the Policy;
- (d) The Payments are without prejudice to any coverage position or reservations of rights taken by LAWPRO in relation to any other matter advised to LAWPRO or any other Claim (as defined in the Policy) made or yet to be made against the Insured (as defined in the Policy), provided that neither coverage nor Payments in respect of the settlement as set out in the Agreement will be voided or impacted by any such coverage position or reservation of rights;
- (e) The Payments fully and finally releases LAWPRO from any further obligation, and from any and all claims against it under or in relation to the Policy, in respect of the portion of the Liability Coverage Limit of Liability that were expended to fund the Payments; and
- (f) LAWPRO is directed to make the Payments on behalf of the Settling Defendants in full satisfaction of the payment obligations under the Agreement.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee, the Receiver and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee and the Receiver, as officers of this Court, as may be necessary or desirable to give effect to this order or to assist the Trustee, the Receiver and their respective agents in carrying out the terms of this Order.

11. **THIS COURT ORDERS** that leave be and is hereby granted to amend the Third Amended Statement of Claim in the form attached hereto as Schedule "A".

12. **THIS COURT ORDERS** that the Trustee and the Receiver may from time to time apply to this Court for advice and directions in the discharge of their powers, duties and obligations under the Agreement and hereunder.



The Honourable Mr. Justice Hainey

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and - **TEXTBOOK STUDENTS SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION ET AL.**

Respondents

Court File No: CV-16-11567-00CL

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, ET AL.

Court File No: CV-17-11689-00CL

KINGSETT MORTGAGE CORPORATION

Applicant

- and - **TEXTBOOK (445 PRINCESS STREET) INC.**

Respondent

Court File No. CV-17-589078-00CL

GRANT THORNTON LIMITED IN ITS CAPACITY AS THE COURT- APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, ET AL.

Applicant

- and - **TEXTBOOK (774 BRONSON AVENUE) INC., ET AL.**

Respondents

Court File No. CV-18-598788-00CL

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, ET AL, AND KSV KOFGAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, ET AL.

Plaintiffs

- and - **AEOLIAN INVESTMENTS LTD., ET AL.**

Defendants

Court File No. CV-18-606314-00CL

ONTARIO

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

**PROCEEDING COMMENCED AT
TORONTO**

SETTLEMENT APPROVAL ORDER

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Lawyers for KSV Restructuring Inc. (formerly KSV Kofman Inc.), solely in its capacity as the Court-Appointed Receiver of certain property of Scollard Development Corporation, Memory Care Investments (Kitchener) Ltd., Memory Care Investments (Oakville) Ltd., 1703858 Ontario Inc., Legacy Lane Investments Ltd., Textbook (525 Princess Street) Inc., Textbook (555 Princess Street) Inc., and Textbook (445 Princess Street) Inc. and in its capacity as Proposed Court-Appointed Receiver of Textbook (Ross Park) Inc., Textbook (774 Bronson Avenue) Inc. and McMurray Street Investments Inc. Lawyers for Grant Thornton Limited, solely in its capacity as Court-Appointed Trustee of Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 2223947 Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation