

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

B E T W E E N:

KINGSETT MORTGAGE CORPORATION and DORR CAPITAL CORPORATION

Applicants

- and -

VANDYK – UPTOWNS LIMITED, VANDYK – HEART LAKE LIMITED, 2402871  
ONTARIO INC., VANDYK – THE RAVINE LIMITED and VANDYK – LAKEVIEW-  
DXE-WEST LIMITED

Respondents

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

**FACTUM OF KSV RESTRUCTURING INC., IN ITS CAPACITY AS RECEIVER AND  
MANAGER**

April 16, 2024

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capacity as Receiver and Manager

TO: **THE SERVICE LIST**

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**PART I - NATURE OF THE MOTION**

1. This factum is filed in support of a motion by KSV Restructuring Inc. (“**KSV**”), in its capacity as the receiver and manager (in such capacity, the “**Receiver**”) of the real property described in Schedule “A” to the Receivership Order (as defined below) (the “**Real Property**”) and all present and future assets, undertakings and personal property of Vandyk – Lakeview-DXE-West Limited (“**Lakeview**”), Vandyk – Heart Lake Limited (“**Heart Lake**”), 2402871 Ontario Inc. (“**240**”), Vandyk – The Ravine Limited (“**Ravine**”) and Vandyk – Uptowns Limited (“**Uptowns**”, and collectively with Lakeview, Heart Lake, 240 and Ravine, the “**Debtors**”).

2. On this motion, the Receiver seeks an order (the “**Order Approving Increased Borrowing**”) to increase the Receiver’s Borrowing Limit (as defined below) from \$3,000,000 to \$6,000,000 and grant a corresponding increase to the Receiver’s Borrowings Charge (as defined in the Receivership Order).

3. At the commencement of these proceedings, under the terms of the Receivership Order, the Receiver was authorized to borrow from KingSett Mortgage Corporation (“**KingSett**”), the Debtors’ senior secured lender, such monies from time to time as it may consider necessary or desirable, provided that the outstanding amount did not exceed \$1,000,000 (the “**Borrowing Limit**”), for the purpose of funding the exercise of its powers and duties.

4. Pursuant to an Order of the Court dated December 21, 2023, the Receivership Order was amended such that the Borrowing Limit was increased from \$1,000,000 to \$3,000,000, primarily to allow the Receiver to complete certain urgent activities (the “**Urgent Uptowns Activities**”) to prevent erosion to the value of Uptowns’ Project (as defined below).

5. The Receiver seeks to further increase the Receiver’s Borrowing Limit to \$6,000,000 in order to complete the implementation of the Sale Processes (as defined below) for certain Debtors and advance the pre-construction and planning activities for Uptowns’ and Lakeview’s respective Projects to avoid further delays in construction to the detriment of such Projects’ stakeholders.

## **PART II - SUMMARY OF FACTS**

### **A. Background on the Proceeding**

6. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) issued on November 14, 2023 (the “**Receivership Order**”), KSV was appointed as the Receiver of the Real Property and all present and future assets, undertakings and personal property of the Debtors, located at, related to, used in connection with or arising from or out of the Real Property, or which

is necessary to the use and operation of the Real Property, including all proceeds therefrom (collectively with the Real Property, the “**Property**”).<sup>1</sup>

7. Notwithstanding the issuance thereof on November 14, 2023, the Receivership Order only became effective as against Lakeview, Heart Lake, 240 and Ravine on January 8, 2024.<sup>2</sup>

8. Pursuant to five additional orders granted by the Court on December 11, 2023, December 12, 2023, January 18, 2024 and January 23, 2024, KSV was also appointed receiver and manager of certain property of other companies within the Vandyk group (collectively, the “**Vandyk Group**”).<sup>3</sup>

9. Each of the Debtors is a single-purpose real estate development company that owns a specific project that it is developing on its respective Real Property (each a “**Project**”, and collectively the “**Projects**”). The Real Properties are all located in the Greater Toronto Area.<sup>4</sup>

10. Pursuant to an Order of the Court dated March 8, 2024, the Court approved a sale process (collectively, the “**Sale Processes**”) for the Real Property owned by each of Heart Lake, 240 and Ravine, along with certain other entities within the Vandyk Group.<sup>5</sup> The Sale Processes have

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<sup>1</sup> Second Report of KSV Restructuring Inc. as Receiver and Manager of certain real property, assets and undertakings of the Debtors dated April 15, 2024 [“Second Report”], s. 1.0, para. 1.

<sup>2</sup> Second Report, s. 1.0, para. 2.

<sup>3</sup> Second Report, s. 1.0, para. 3.

<sup>4</sup> Second Report, s. 2.0, para. 4.

<sup>5</sup> Second Report, s. 3.1, para. 1.

commenced and the Receiver, with the assistance of real estate brokers, is advancing the marketing of the Real Property of each of Heart Lake, 240 and Ravine.<sup>6</sup>

11. The Receiver, after discussions with key stakeholders, has determined that Uptowns' and Lakeview's respective Projects should be completed during the receivership proceedings in order to maximize the potential benefits to stakeholders, including the secured lenders and the existing pre-sale home buyers.<sup>7</sup> The Receiver is working to finalize construction manager contracts, construction financing arrangements, and other ancillary documents that are required prior to commencing construction of these Projects.<sup>8</sup>

#### **B. Receiver's Borrowing Limit**

12. At the commencement of these proceedings, under the terms of the Receivership Order, the Receiver was authorized to borrow from KingSett such monies from time to time as it may consider necessary or desirable, provided that the outstanding amount did not exceed \$1,000,000 (as defined above, the "**Borrowing Limit**"), for the purpose of funding the exercise of its powers and duties.<sup>9</sup>

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<sup>6</sup> Second Report, s. 3.1, para. 2.

<sup>7</sup> Second Report, s. 3.2, para. 4.

<sup>8</sup> Second Report, s. 3.2, para. 5.

<sup>9</sup> Second Report, s. 4.0, para. 1.

13. Pursuant to an Order of the Court dated December 21, 2023, the Receivership Order was amended such that the Borrowing Limit was increased from \$1,000,000 to \$3,000,000, primarily to allow the Receiver to complete the Urgent Uptowns Activities.<sup>10</sup>

14. Since the commencement of these proceedings, the Receiver has borrowed \$2,685,000 (\$2,467,000 of which it has received and \$218,000 of which it expects to receive prior to the return of this motion). The majority of the funds borrowed by the Receiver have been used to fund the Urgent Uptowns Activities. Virtually all of the borrowed funds are earmarked for work that has already been commissioned by the Receiver, for which payment will be made in the near term.<sup>11</sup>

15. Since the Borrowing Limit was increased in December 21, 2023, the scope of these receivership proceedings has increased as a result of the receivership becoming effective against each of Heart Lake, 240, Ravine and Lakeview on January 8, 2024. In addition, the Receiver has been administering the Sale Processes with respect to the applicable Debtors.<sup>12</sup>

16. The Receiver is also continuing to advance certain planning and pre-construction activities for each of Uptowns' and Lakeview's respective Projects. The activities include, among other things, engaging various consultants and engineers to perform surveys, prepare reports, prepare drawings, and provide professional opinions.<sup>13</sup>

17. In light of the expanded pool of Debtors within the Receivership and the aforementioned additional items, the Receiver requests that the Borrowing Limit be increased to \$6,000,000 to

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<sup>10</sup> Second Report, s. 4.0, para. 2.

<sup>11</sup> Second Report, s. 4.0, para. 3.

<sup>12</sup> Second Report, s. 4.0, para. 4.

<sup>13</sup> Second Report, s. 4.0, para. 5.

complete the implementation of the Sale Processes and advance the pre-construction and planning activities for Uptowns' and Lakeview's respective Projects.<sup>14</sup>

### PART III - ISSUES AND THE LAW

18. The issue now before this Court is whether the Order Approving Increased Borrowing should be granted.

19. Subsection 243(1) of the *Bankruptcy and Insolvency Act* allows a court to appoint a receiver to, among other things, "take any action that the court considers advisable".<sup>15</sup>

20. Paragraph 25 of the Receivership Order provides that the Borrowing Limit may be increased so long as it is acceptable to the Applicants and authorized by this Court.<sup>16</sup>

21. To complete the implementation of the Sale Processes and avoid further delays in construction to Uptowns' and Lakeview's respective Projects, the Receiver requests that the Borrowing Limit be increased to \$6,000,000.<sup>17</sup> The additional borrowing will be on the same terms. In addition to the prior motion heard in these proceedings,<sup>18</sup> similar relief has been granted in other non-contested motions by Receivers.<sup>19</sup>

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<sup>14</sup> Second Report, s. 4.0, para. 6.

<sup>15</sup> *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s. 243(1)(c).

<sup>16</sup> Second Report, Appendix A, para. 25.

<sup>17</sup> Second Report, s. 4.0, para. 6.

<sup>18</sup> See *Kingsett Mortgage Corporation et al v Vandyk et al.*, CV-23-00709180-00CL ([Endorsement of Steele J.](#) dated December 21, 2023).

<sup>19</sup> For example, see *BCIMC Construction Fund Corporation v. 33 Yorkville Residences Inc.*, CV-20-00637297-00CL ([Endorsement of Conway J.](#) dated October 9, 2020).



22. If the Receiver is not able to borrow the additional funds, it will not be able to complete the implementation of the Sale Processes and advance the pre-construction and planning activities for Uptowns' and Lakeview's respective Projects, which may result in further delays in construction to the detriment of such Projects' stakeholders.<sup>20</sup>

23. The Receiver understands that KingSett has consented to the increase in the Borrowing Limit and has agreed to make these funds available to the Receiver, pursuant to the terms of the Receivership Order and the proposed Order.<sup>21</sup>

#### **PART IV - ORDER REQUESTED**

24. For the reasons set out above, the Receiver requests that this Court grant the Order Approving Increased Borrowing.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 16th day of April, 2024.



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**OSLER, HOSKIN & HARCOURT LLP**  
per Marleigh Dick

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<sup>20</sup> Second Report, s. 4.0, para. 6.

<sup>21</sup> Second Report, s. 4.0, para. 6.

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## SCHEDULE “A”

### LIST OF AUTHORITIES

1. *BCIMC Construction Fund Corporation v. 33 Yorkville Residences Inc.*, CV-20-00637297-00CL ([Endorsement of Conway J.](#) dated October 9, 2020)
2. *Kingsett Mortgage Corporation et al v Vandyk et al.*, CV-23-00709180-00CL ([Endorsement of Steele J.](#) dated December 21, 2023)

## SCHEDULE “B”

### TEXT OF STATUTES, REGULATIONS & BY - LAWS

#### *Bankruptcy and Insolvency Act, RSC 1985, c B-3*

##### **Court may appoint receiver**

**243 (1)** Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

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**PROCEEDING COMMENCED AT TORONTO**

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