

**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**

December 15, 2023

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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 (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 \$1,000,000 to \$3,000,000.

3. Pursuant to the Receivership Order (as defined below), the Receiver is empowered to borrow from KingSett Mortgage Corporation (“**KingSett**”), Uptowns’ senior secured lender, such monies from time to time as it may consider necessary or desirable, provided that the outstanding amount does not exceed the Borrowing Limit, for the purpose of funding the exercise of its powers and duties.

4. The Receiver seeks to increase the Receiver’s Borrowing Limit in order to commission the additional work required to complete certain urgent activities for the Uptowns Project (as defined below) to avoid material deterioration in the value of the Uptowns Project to the detriment of its stakeholders.

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

### **A. Background on the Proceedings**

5. 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 receiver and manager 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>

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<sup>1</sup> First Report of KSV Restructuring Inc. as Receiver and Manager of certain real property, assets and undertakings of Vandyk – Uptowns Limited dated December 14, 2023 [“First Report”], s. 1.0, para. 1.

6. The Debtors are part of a broader group of development companies known as “Vandyk Properties”. Each of the Debtors is a single-purpose real estate development company that owns certain real property on which it is developing a residential project.<sup>2</sup>

7. Uptowns is a single-purpose real estate development company that owns the real property located at 10302 Heart Lake Road, Brampton, Ontario, on which it is developing a residential project consisting of approximately 342 stacked townhomes (the “**Uptowns Project**”). Construction of the Uptowns Project is approximately 28% complete. The Receiver understands that construction of the Uptowns Project has been halted for several months prior to the commencement of these proceedings.<sup>3</sup>

8. The Receivership Order is not effective as against Lakeview, Heart Lake, 240 and Ravine or their respective Property at this time.<sup>4</sup>

9. Since the issuance of the Receivership Order, the Receiver has been, among other things, taking steps to prevent erosion to the value of the Uptowns Project, including by: (i) addressing certain deficiencies in the shoring at the Uptowns Project which Uptowns’ engineering consultant advised must be addressed immediately in order to allow for further work to be completed on the Uptowns Project and to maintain site safety during the winter months; (ii) winterizing the Uptowns Project to protect it from deterioration over the winter months, including through blanketing the shoring and other elements of the foundation; (iii) addressing certain deficiencies in the dewatering

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<sup>2</sup> First Report, s. 2.0, para. 1.

<sup>3</sup> First Report, s. 2.0, para. 2.

<sup>4</sup> First Report, s. 1.0, para. 2.

systems to prevent groundwater from rising to the surface level; and (iv) maintaining site security by placing signage, additional fencing and cameras around the perimeter of the construction site (collectively, the “**Urgent Uptowns Activities**”).<sup>5</sup>

## **B. Receiver’s Borrowing Limit**

10. Pursuant to the Receivership Order, the Receiver is empowered to borrow from KingSett such monies from time to time as it may consider necessary or desirable, provided that the outstanding amount does not exceed \$1,000,000 (the “**Borrowing Limit**”), for the purpose of funding the exercise of its powers and duties.<sup>6</sup>

11. Since the commencement of these proceedings, the Receiver has borrowed \$727,000, the majority of which has been used to fund the Urgent Uptowns Activities.<sup>7</sup> 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>8</sup>

12. Based on estimates received to date, the Receiver is of the view that the remaining availability under the Borrowing Limit (\$273,000) is not sufficient to complete the Urgent Uptowns Activities. The Receiver estimates that it will require an additional \$2,000,000 of availability beyond the current Borrowing Limit to complete the Urgent Uptowns Activities and maintain a buffer for other unforeseen costs, noting that the estimates received to date are generally

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<sup>5</sup> First Report, s. 2.1, para. 1.

<sup>6</sup> First Report, s. 3.0, para. 1.

<sup>7</sup> First Report, s. 3.0, para. 2.

<sup>8</sup> First Report, s. 3.0, para. 2. See Appendix “B” to the First Report for the Receiver’s interim statement of receipts and disbursements for the period from the commencement of the proceedings to December 14, 2023.

structured as daily or hourly work fees with a range of potential completion times and a requirement to reimburse applicable providers for materials, the cost of which cannot be known definitively until work at the Uptowns Project commences.<sup>9</sup>

### PART III - ISSUES AND THE LAW

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

14. 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>10</sup>

15. 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>11</sup>

16. Given the critical nature of the Urgent Uptowns Activities, the Receiver requests that the Borrowing Limit be increased to \$3,000,000.<sup>12</sup> The additional borrowing will be on the same terms. Similar relief has been granted in other non-contested motions by Receivers.<sup>13</sup>

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<sup>9</sup> First Report, s. 3.0, para. 3.

<sup>10</sup> *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s. 243(1)(c).

<sup>11</sup> First Report, Appendix A, para. 25.

<sup>12</sup> First Report, s. 3.0, para. 4.

<sup>13</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).

17. If the Receiver is not able to borrow the additional funds, it will not be able to commission the additional work required to complete the Urgent Uptowns Activities, which may result in material deterioration in the value of the Uptowns Project to the detriment of its stakeholders.<sup>14</sup>

18. 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.<sup>15</sup>

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

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

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<sup>14</sup> First Report, s. 3.0, para. 4.

<sup>15</sup> First Report, s. 3.0, para. 4.



**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 15th day of December, 2023.



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per Marleigh Dick

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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)

## 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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