

Court File No. CV-23-00709180-00CL

**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

MOTION RECORD

**(Motion for an Order Approving Increased Borrowing Power by Receiver,
returnable April 22, 2024)**

April 15, 2024

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)

Tel: 416.862.4908

Email: mwasserman@osler.com

Shawn T. Irving (LSO# 50035U)

Tel: 416.862.4733

Email: sirving@osler.com

David Rosenblat (LSO# 64586K)

Tel: 416.862.5673

Email: drosenblat@osler.com

Fax: 416.862.6666

Lawyers for KSV Restructuring Inc., in its
capacity as Receiver

TO: **THE ATTACHED SERVICE LIST**

Court File No. CV-23-00709180-00CL

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

BETWEEN:

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
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SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

SERVICE LIST

As at April 8, 2024	
<p>BENNETT JONES LLP 3400 One First Canadian Place P.O. Box 130 Toronto, ON M5X 1A4</p> <p><i>Lawyers for the Applicants</i></p>	<p>Sean Zweig Tel: (416) 777-6254 Email: zweigs@bennettjones.com</p> <p>Aiden Nelms Tel: (416) 777-4642 Email: nelmsa@bennettjones.com</p> <p>Joshua Foster Tel: (416) 777-7906 Email: fosterj@bennettjones.com</p>

- 2 -

<p>KSV RESTRUCTURING INC. 220 Bay Street, 13th Floor Toronto, ON M5J 2W4</p> <p><i>The Receiver</i></p>	<p>Noah Goldstein Tel: (416) 932-6207 Email: ngoldstein@ksvadvisory.com</p> <p>David Sieradzki Tel: (416) 932-6030 Email: dsieradzki@ksvadvisory.com</p> <p>Murtaza Tallat Tel: (416) 932-6031 Email: mtallat@ksvadvisory.com</p>
<p>OSLER, HOSKIN & HARCOURT LLP 1 First Canadian Place 100 King Street West, Suite 6200 Toronto, ON M5X 1B8</p> <p><i>Lawyers for the Receiver</i></p>	<p>Marc Wasserman Tel: (416) 862-4908 Email: mwasserman@osler.com</p> <p>David Rosenblat Tel: (416) 862-5673 Email: drosenblat@osler.com</p> <p>Chloe Duggal Tel: (437) 684-0852 Email: cduggal@osler.com</p>
<p>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1</p> <p><i>Lawyers for Vandyk – Uptowns Limited, Vandyk – Heart Lake Limited, 2402871 Ontario Inc., Vandyk – The Ravine Limited and Vandyk – Lakeview-Dxe-West Limited</i></p>	<p>Jeffrey Larry Tel: (416) 646-4330 Email: jeff.larry@paliareroland.com</p> <p>Dan Rosenbluth Tel: (416) 646-6307 Email: dan.rosenbluth@paliareroland.com</p> <p>Ryan Shah Tel: (647) 865-4702 Email: ryan.shah@paliareroland.com</p>
<p>GOWLING WLG 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, Ontario M5X 1G5</p> <p><i>Lawyers for Otéra Capital Inc.</i></p>	<p>Virginie Gauthier Tel: (416) 369-7256 Email: virginie.gauthier@gowlingwlg.com</p> <p>Thomas Gertner Tel: (416) 369-4618 Email: thomas.gertner@gowlingwlg.com</p>
<p>BORDEN LADNER GERVAIS LLP Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3400 Toronto, ON M5H 4E3</p>	<p>James W. MacLellan Tel: (416) 367-6592 Email: jmaclellan@blg.com</p>

- 3 -

<i>Lawyers for Trisura Guarantee Insurance Company</i>	Richard Yehia Tel: (416) 367-6186 Email: ryehia@blg.com
1820277 ONTARIO LIMITED 300 - 90 Burnhamthorpe Road West Mississauga, ON L5B 3C3	
WESTMOUNT GUARANTEE SERVICES INC. 600 Cochrane Drive, Suite 205 Markham, ON L3R 5K3	
O CANADA CAPITAL INC. 409 - 7130 Warden Avenue Markham, ON L3R 1S2	
2471867 ONTARIO LIMITED 300 - 90 Burnhamthorpe Road West Mississauga, ON L5B 3C3	
TARION WARRANTY CORPORATION 5160 Yonge Street North York, ON M2N 6L9	
MERIDIAN CREDIT UNION 75 Corporate Park Drive St. Catharines, ON L2S 3W3	
ATTORNEY GENERAL OF CANADA Department of Justice 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1	Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca
ONTARIO MINISTRY OF FINANCE (INSOLVENCY UNIT) Ministry of Finance – Legal Services Branch 11-777 Bay Street Toronto, ON M5G 2C8	Email: insolvency.unit@ontario.ca

- 4 -

<p>FOGLER RUBINOFF LLP 77 King Street West, Suite 3000 TD Centre North Tower Toronto, ON M5K 1G8</p> <p><i>Lawyers for Kohn Partnership Architects Inc., a Construction Lien Claimant</i></p>	<p>Kenneth W. Movat Tel: (416) 365-3720 Email: kmovat@foglers.com</p>
<p>FRIDMAR PROFESSIONAL CORPORATION 242 Applewood Crescent, Unit 5-Ground Concord, ON L4K 4E5</p> <p><i>Lawyers for Myer Salit Limited, a Construction Lien Claimant</i></p>	<p>Daniel Fridmar Tel: (416) 697-0107 Email: dan@fridmar.com</p>
<p>KAYANI LAW FIRM 2246 Britannia Road West Mississauga, ON L5M 1R3</p> <p><i>Lawyers for Mohammed Tariq</i></p>	<p>Junaid Kayani Tel: (905) 281-8600 Ext 204 Email: junaid@kayanilaw.com</p>
<p>KENNALEY CONSTRUCTION LAW Winney Mills 305-31 Mechanic Street Paris, ON N3L 1K1</p> <p><i>Lawyers for Roni Excavating Limited and Orin Enterprises Inc., Construction Lien Claimants</i></p>	<p>Robert J. Kennaley Tel: (519) 805-8186 Email: rjk@kennaley.ca</p>
<p>MILLER THOMSON LLP Vaughan Metropolitan Centre 100 New Park Place, Suite 700 Vaughan, ON L4K 0H9</p> <p><i>Lawyers for Viola Ready Mix Inc., a Construction Lien Claimant</i></p>	<p>Paul Guaragna Tel: (905) 532-6679 Email: pguaragna@millerthomson.com</p>
<p>SCOCCO LAW 1 Dundas Street West, Suite 2500 Toronto, ON M5G 1Z3</p> <p>Tel: (647) 243-5111</p> <p><i>Lawyers for Emaduddin Chowdhury, Refayat Tahsina Alam, Suhail Syed, et al</i></p>	<p>Rocco Giordano Scocco Email: rocco@scoccolaw.ca</p> <p>Anique N. G. Dublin Email: anique@scoccolaw.ca</p>

- 5 -

<p>SUTHERLAND LAW 3300 Highway 7, Suite 904 Vaughan, ON L4K 4M3</p> <p><i>Lawyers for Stephenson's Rental Services Inc., a Construction Lien Claimant</i></p>	<p>Rob Moubarak Tel: (905) 695-5500 Ext. 2800 Email: rmoubarak@sutherlaw.com</p>
<p>WEIRFOULDS LLP 4100 – 66 Wellington Street West P.O. Box 35, TD Bank Tower Toronto, ON M5K 1B7</p> <p><i>Lawyers for PCL Constructors Canada Inc.</i></p>	<p>Krista Chaytor Tel: (416) 947-5074 Email: kchaytor@weirfoulds.com</p> <p>Cassandra Chaloux Tel: (416) 619-6286 Email: cchaloux@weirfoulds.com</p>
<p>CONSOLIDATED SHOTCRETE INC. 700 Flint Road Toronto, ON M3J 2J5</p> <p><i>A Construction Lien Claimant</i></p>	
<p>560789 ONTARIO INC. o/a R&M CONSTRUCTION 254 Main Street North, Unit #2 Acton, ON L7J 1W9</p> <p><i>A Construction Lien Claimant</i></p>	
<p>MGI CONSTRUCTION CORP. 11 Dansk Court Etobicoke, ON M9W 5N6</p> <p><i>A Construction Lien Claimant</i></p> <p>With a copy to:</p> <p>DRUDI ALEXIOU KUCHAR LLP 4950 Yonge Street, Suite 508 Toronto, ON M2N 6K1</p>	

<p>GOWLING WLG 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, ON M5X 1G5</p> <p><i>Lawyers for J. Lang Management Inc., a Litigation Claimant</i></p>	<p>Christopher Stanek Tel: (416) 862-4369 Email: christopher.stanek@gowlingwlg.com</p> <p>Alexandra Psellas Tel: (416) 369-7270 Email: alexandra.psellas@gowlingwlg.com</p>
<p>WJ GROUNDWATER CANADA LTD. 250 Eglinton Avenue West, Suite 253 Toronto, ON M4R 1A7</p>	<p>Tony Tomory Tel: (416) 792-3999 Email: tonytomory@wjgl.com</p> <p>Pourang Atashkadi Tel: (416) 792-3999 Email: PourangAtashkadi@wjgl.com</p> <p>Gabriel Pitassi Tel: (416) 792-3999 Email: GabrielPitassi@wjgl.com</p> <p>Gary Daley Tel: (416) 792-3999 Email: garydaley@wjgl.com</p>
<p>BORDEN LADNER GERVAIS LLP Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3400 Toronto, ON M5H 4E3</p> <p><i>Lawyers for Aviva Insurance Company of Canada</i></p>	<p>Denise Bambrough Tel: (416) 367-6008 Email: dbambrough@blg.com</p> <p>Jason Dutrizac Tel: (613) 787-3535 Email: jdutrizac@blg.com</p>
<p>DICKINSON WRIGHT LLP 199 Bay Street, Suite 2200, Box 447 Commerce Court Postal Station Toronto, ON M5L 1G4</p> <p><i>Lawyers for O Canada Capital Inc.</i></p>	<p>John D. Leslie Tel: (416) 646-3801 Email: jleslie@dickinsonwright.com</p>
<p>TORKIN MANES LLP Barristers & Solicitors 151 Yonge Street, Suite 1500 Toronto ON M5C 2W7</p> <p><i>Lawyers for Enercare Home and Commercial Services Limited Partnership</i></p>	<p>Jeffrey J. Simpson Tel: (416) 777-5413 Email: jsimpson@torkinmanes.com</p>

- 7 -

<p>TORYS LLP 79 Wellington St. W., Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2</p> <p><i>Lawyers for Tarion Warranty Corporation</i></p>	<p>Adam Slavens Tel: (416) 865-7333 Email: aslavens@torys.com</p>
<p>RECONSTRUCT LLP 200 Bay Street, Suite 2305 Royal Bank Plaza, South Tower P.O. Box 120 Toronto, ON M5J 2J3</p> <p><i>Lawyers for SVN ARCHITECTS + PLANNERS INC.</i></p>	<p>Sharon Kour Tel: (416) 613-8283 Email: skour@reconllp.com</p> <p>Brendan Bissell Tel: (416)613-0066 Email: bbissell@reconllp.com</p>
<p>GEORGE STREET LAW GROUP LLP 10 George Street, Suite 200 Hamilton, Ontario, L8P 1C8</p> <p><i>Lawyers for 560789 Ontario Inc. o/a R&M Construction</i></p>	<p>Ahmed Elahi Tel: (905) 526-2111 Email: aelahi@georgestreetlaw.ca</p> <p>Samuel Nash Tel: (905) 526-2106 Email: snash@georgestreetlaw.ca</p> <p>Dillon G. Beaulne Tel: (905) 526-2128 Email: dbeaulne@georgestreetlaw.ca</p>
<p>MARGIE STRUB CONSTRUCTION LAW LLP 2300 Yonge Street Suite 2001, Mailbox 2331 Toronto, Ontario, M4P 1E4</p> <p><i>Lawyers for Innocon, Green Infrastructure Partners Inc., formerly GFL Infrastructure Group Inc., and GFL Environmental Inc., Construction Lien Claimants</i></p>	<p>John Margie Tel: (647) 792-0010 Email: jmargie@margiestrub.com</p>
<p>SCHNEIDER RUGGIERO SPENCER MILBURN LLP 1000-120 Adelaide St. W Toronto, ON M5H 3V1</p> <p><i>Lawyers for the Creditor, Westmount Guarantee Services Inc.</i></p>	<p>George N. Ruggiero Tel: 416-363-2211 ext. 215 Email: gruggiero@SRlawpractice.com</p>

- 8 -

<p>MCMILLAN LLP Brookfield Place 181 Bay St, Suite 4400 Toronto ON M5J 2T3</p> <p><i>Lawyers for Schindler Elevator Corporation</i></p>	<p>Guneev Bhinder Tel: (416) 307-4067 Email: guneev.bhinder@mcmillan.ca</p>
<p>CASSELS BROCK & BLACKWELL LLP Bay Adelaide Centre – North Tower 40 Temperance St., Suite 3200 Toronto, ON M5H 0B4</p> <p><i>Counsel to Senator Homes (Discovery II) Inc.</i></p>	<p>Monique Sassi Tel: (416) 860 6886 Email: msassi@cassels.com</p> <p>Andrew Salem Tel: (416) 860 6762 Email: asalem@cassels.com</p>
<p>AZEVEDO & NELSON PROFESSIONAL CORPORATION, BARRISTERS & SOLICITORS 892 College Street Toronto, Ontario M6H 1A4</p> <p><i>Counsel to Triumph Roofing & Sheet Metal Inc.</i></p>	<p>William Ribeiro Tel: (416) 533-7133, ext. 222 Email: wribeiro@azevedonelson.com</p>

EMAIL ADDRESS LIST

zweigs@bennettjones.com; nelmsa@bennettjones.com; fosterj@bennettjones.com;
 ngoldstein@ksvadvisory.com; dsieradzki@ksvadvisory.com; mtallat@ksvadvisory.com;
 mwasserman@osler.com; drosenblat@osler.com; cduggal@osler.com;
 jeff.larry@paliareroland.com; dan.rosenbluth@paliareroland.com; ryan.shah@paliareroland.com;
 virginie.gauthier@gowlingwlg.com; thomas.gertner@gowlingwlg.com; jmaclellan@blg.com; ryehia@blg.com;
 AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; insolvency.unit@ontario.ca; kmovat@foglers.com;
 dan@fridmar.com; junaid@kayanilaw.com; rjk@kennaley.ca; pguaragna@millerthomson.com;
 rocco@scoccolaw.ca; anique@scoccolaw.ca; rmoubarak@sutherlaw.com;
 kchaytor@weirfoulds.com; cchaloux@weirfoulds.com; christopher.stanek@gowlingwlg.com;
 alexandra.psellas@gowlingwlg.com; tonytomory@wjgl.com; PourangAtashkadi@wjgl.com;
 GabrielPitassi@wjgl.com; garydaley@wjgl.com; dbambrough@blg.com; jdutrizac@blg.com;
 jleslie@dickinsonwright.com; jsimpson@torkinmanes.com; aslavens@torys.com; skour@reconllp.com;
 bbissell@reconllp.com; aelahi@georgestreetlaw.ca; snash@georgestreetlaw.ca; dbeaulne@georgestreetlaw.ca;
 jmargie@margiestrub.com; gruggiero@SRlawpractice.com; guneev.bhinder@mcmillan.ca;
 msassi@cassels.com; asalem@cassels.com; wribeiro@azevedonelson.com

Court File No. CV-23-00709180-00CL

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

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TAB 1

Court File No. CV-23-00709180-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

KINGSETT MORTGAGE CORPORATION and DORR CAPITAL CORPORATION

Applicants

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SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**NOTICE OF MOTION
(for an Order Approving Increased Borrowing Power by Receiver,
returnable April 22, 2024)**

KSV Restructuring Inc. (“**KSV**”), in its capacity as 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 applicable 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**”), pursuant and subject to the terms of the Receivership Order, will make a Motion to a Judge presiding over the Commercial List on Monday, April 22, 2024 at 10:00 a.m., or as soon after that time as the Motion can be heard.

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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 the following location

<https://ca01web.zoom.us/j/67927063702?pwd=c1Z2eFN3NXB1N0xOK0lYSWtCL2ZBZz09#success>

THE MOTION IS FOR:

1. An Order, substantially in the form of the draft order included in the Motion Record, among other things:
 - (a) abridging the time for, and validating service of, this Notice of Motion and supporting materials such that the motion is properly returnable on April 22, 2024 and dispensing with further service thereof; and
 - (b) amending paragraph 25 of the Receivership Order 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); and
2. Such further and other Relief as to this Honourable Court may seem just.

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THE GROUNDS FOR THE MOTION ARE:

Background

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) issued on November 14, 2023 (the “**Receivership Order**”), KSV was appointed 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**”);
2. 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;
3. 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;
4. 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**”);
5. 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;

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6. With respect to Uptowns and Lakeview, the Receiver, after discussions with key stakeholders, has determined that these Projects should be completed during the receivership proceedings in order to maximize the potential benefits to stakeholders;

Receiver's Borrowing Limit

7. At the commencement of these proceedings, pursuant to 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;

8. 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;

9. 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 which has been used to fund the Urgent Uptowns Activities;

10. 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;

11. 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

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been administering the Sale Processes with respect to the applicable Debtors and continuing to advance certain planning and pre-construction activities for each of Uptowns and Lakeview;

12. The Receiver therefore requests that the Borrowing Limit be increased to \$6,000,000. If the Receiver is not able to borrow the additional funds, it will not be able to complete the implementation of the Sale Processes or 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;

13. 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;

14. The provisions 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 and the inherent and equitable jurisdiction of this Court;

15. Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

16. Such further and other grounds as counsel may advise and this Honourable Court may deem just.

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

1. The second report of KSV in its capacity as Receiver dated April 15, 2024; and

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2. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

April 15, 2024

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)

Tel: 416.862.4908
Email: mwasserman@osler.com

Shawn T. Irving (LSO# 50035U)

Tel: 416.862.4733
Email: sirving@osler.com

David Rosenblat (LSO# 64586K)

Tel: 416.862.5673
Email: drosenblat@osler.com

Fax: 416.862.6666

Lawyers for KSV Restructuring Inc., in its
capacity as Receiver

TO: **THE ATTACHED SERVICE LIST**

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LIMITED, 2402871 ONTARIO INC., VANDYK – THE RAVINE
LIMITED AND VANDYK – LAKEVIEW-DXE-WEST LIMITED**

Applicants

Respondents

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

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

OSLER, HOSKIN & HARCOURT LLP

100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)

Tel: 416.862.4908

Email: mwasserman@osler.com

Shawn T. Irving (LSO# 50035U)

Tel: 416.862.4733

Email: sirving@osler.com

David Rosenblat (LSO# 64586K)

Tel: 416.862.5673

Email: drosenblat@osler.com

Fax: 416.862.6666

Lawyers for KSV Restructuring Inc., in its capacity as Receiver

TAB 2

Court File No. CV-23-00709180-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	MONDAY, THE 22ND
)	
JUSTICE STEELE)	DAY OF APRIL, 2024

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

ORDER
(Approving Increased Borrowing
Power by Receiver)

THIS MOTION, made by KSV Restructuring Inc. in its capacity as receiver and manager (in such capacity, the “**Receiver**”), without security, of the real property legally described in Schedule “A” to the Order (Appointing Receiver) of this Court dated November 14, 2023 (the “**Receivership Order**”) (the “**Real Property**”) and all present and future assets, undertakings and personal property of Vandyk – Lakeview-DXE-West Limited, Vandyk – Heart Lake Limited, 2402871 Ontario Inc., Vandyk – The Ravine Limited and Vandyk – Uptowns Limited 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, pursuant and

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subject to the terms of the Receivership Order, for an order amending the Receivership Order was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Notice of Motion of the Receiver, the Second Report of the Receiver dated April 15, 2024 and on hearing the submissions of counsel for the Receiver and the other parties listed on the counsel slip, no one appearing for any other party although duly served as appears from the affidavit of service of Chloe Duggal affirmed April ●, 2024,

SERVICE

1. THIS COURT ORDERS that 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.

RECEIVER BORROWINGS

2. THIS COURT ORDERS that paragraph 25 of the Receivership Order is hereby amended by replacing the existing reference to “\$3,000,000” with “\$6,000,000” such that, after giving effect to such amendment, paragraph 25 of the Receivership Order shall provide as follows:

The Receiver be at liberty and it is hereby empowered to borrow from KingSett Mortgage Corporation by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$6,000,000 (or such greater amount that is acceptable to the Applicants and as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver's Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and

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encumbrances, statutory or otherwise, in favour of any Person but subordinate in priority to the Receiver's Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

GENERAL

3. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Toronto Time on the date of this Order and are enforceable without the need for entry and filing.

(Signature of judge)

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

**KINGSETT MORTGAGE CORPORATION and
DORR CAPITAL CORPORATION**

and

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

Applicants

Respondents

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

PROCEEDING COMMENCED AT TORONTO

ORDER

OSLER, HOSKIN & HARCOURT LLP
100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)
Tel: 416.862.4908
Email: mwasserman@osler.com

Shawn T. Irving (LSO# 50035U)
Tel: 416.862.4733
Email: sirving@osler.com

David Rosenblat (LSO# 64586K)
Tel: 416.862.5673
Email: drosenblat@osler.com

Fax: 416.862.6666

Lawyers for KSV Restructuring Inc., in its capacity as Receiver

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

**KINGSETT MORTGAGE CORPORATION and
DORR CAPITAL CORPORATION**

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

Applicants

Respondents

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

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD

OSLER, HOSKIN & HARCOURT LLP
100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)
Tel: 416.862.4908
Email: mwasserman@osler.com

Shawn T. Irving (LSO# 50035U)
Tel: 416.862.4733
Email: sirving@osler.com

David Rosenblat (LSO# 64586K)
Tel: 416.862.5673
Email: drosenblat@osler.com

Fax: 416.862.6666

Lawyers for KSV Restructuring Inc., in its capacity as Receiver