

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 December 21, 2023)**

December 15, 2023

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

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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
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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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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VANDYK – UPTOWNS LIMITED, VANDYK – HEART LAKE LIMITED, 2402871
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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 December 21, 2023)**

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 (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**”), pursuant and subject to the terms of the Receivership Order, will make a Motion to a Judge presiding over the Commercial List on Thursday, December 21, 2023 at 10:30 a.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard

[] In writing under subrule 37.12.1(1);

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- 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=c1Z2eFN3NXB1N0xOK0IYSWtCL2ZBZz09#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 December 21, 2023 and dispensing with further service thereof;
 - (b) amending paragraph 25 of the Receivership Order (as defined below) to increase the Receiver's Borrowing Limit (as defined below) from \$1,000,000 to \$3,000,000; 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 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**”);

2. 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**”);

3. The Receivership Order is not effective as against Lakeview, Heart Lake, 240 and Ravine or their respective Property at this time;

Receiver’s Borrowing Limit

4. Pursuant to the Receivership Order, 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 \$1,000,000 (the “**Borrowing Limit**”), for the purpose of funding the exercise of its powers and duties;

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5. 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; (ii) winterizing the Uptowns Project to protect it from deterioration over the winter months; (iii) addressing certain deficiencies in the dewatering 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**”);

6. Since the commencement of these proceedings, the Receiver has borrowed \$727,000 to fund the exercise of its powers and duties, the majority of which has been used to fund the Urgent Uptowns Activities;

7. 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;

8. 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;

9. The Receiver estimates that an additional \$2,000,000 of availability beyond the Borrowing Limit is required to complete the Urgent Uptowns Activities and maintain a buffer for other unforeseen costs;

10. If the Receiver is not able to borrow the additional funds, it may 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;

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11. KingSett has consented to the increase in the Borrowing Limit and has agreed to make these funds available to the Receiver;
12. 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;
13. Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
14. 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 first report of KSV in its capacity as Receiver dated December 14, 2023; and
2. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

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December 15, 2023

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

TO: **THE ATTACHED SERVICE LIST**

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

NOTICE OF MOTION

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TAB 2

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

THE HONOURABLE)	THURSDAY, THE 21ST
)	
JUSTICE STEELE)	DAY OF DECEMBER, 2023

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-
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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 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 First Report of the Receiver dated December 14, 2023, 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 Marleigh Dick sworn December 1, 2023;

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 “\$1,000,000” to “\$3,000,000” 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 \$3,000,000 (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 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

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PROCEEDING COMMENCED AT TORONTO

ORDER

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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

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