



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00710267-00CL

DATE: 11 December 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: MCAP FINANCIAL CORPORATION v. VANDYK-BACKYARD KINGS
MILL LIMITED et al
BEFORE: JUSTICE PENNY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|-------------------------------|------------------------------|
| C. Haddon Murray | Lawyer for Farm Credit Canada | haddon.murray@gowlingwlg.com |
| Heather Fisher | | eather.fisher@gowlingwlg.com |

For Defendant, Respondent, Responding Party:

| Name of Person Appearing | Name of Party | Contact Info |
|------------------------------|-----------------------|-------------------------------------|
| Daniel Rosenbluth | | daniel.rosenbluth@paliareroland.com |
| John Vandyk (Did not appear) | Lawyer for Respondent | jvandyk@vandyk.com |
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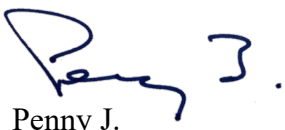
For Other, Self-Represented:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|--|---------------------------|
| Dave Rosenblat | KSV Advisory, Proposed Receiver of MCAP | drosenblat@osler.com |
| Mark Adilman | Primeline Windows | madilman@mblaw.ca |
| Rob Moubarak | | rmoubarak@sutherlaw.com |
| J. Frustaglio | | jfrustaglio@sutherlaw.com |
| Pani Sarkis | Counsel for lien claimant, Venice Construction | psarkis@rarlitigation.com |
| Jason Dutrizac | Counsel for Aviva Insurance Company of Canada. | jdutrizac@blg.com |
| Fabio M. Soccol | Lawyer for the Lien Claimant | fabio@soccollaw.com |
| Michael Fazzari | | mfazzari@millertomson.com |

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| Paul Guaragna | | pguaragna@millerthomson.com |
| Dan Fridmar | | dan@fridmar.com |

ENDORSEMENT OF JUSTICE PENNY:

- [1] MCAP advanced funds to the respondents for the purpose of constructing a residential real estate development consisting of a two-tower, 234-unit residential condominium building with a 3-storey underground parkade.
- [2] In August, the debtors began to encounter financial problems. Liens began to be registered for significant amounts claimed to be owing and unpaid. There is now evidence of a number of defaults under the terms of the loan documents.
- [3] MCAP is a secured creditor of the debtors in respect of the property and is therefore entitled to bring an application under s. 243 of the BIA. MCAP issued demand, which expired on October 16, 2023. KSV is qualified to act as a receiver in accordance with the requirements of the BIA and has consented to serving as Receiver in these proceedings.
- [4] It is clear that the Receiver is required to impose order and stability and to preserve value. There are many stakeholders with an interest in the debtors' projects. The loan documents contemplate the appointment of a receiver.
- [5] Section 68 of the *Construction Act* provides for the appointment of a trustee in respect of lien and trust claims under the Act. I am satisfied that a trustee is needed to manage the premises in order to prevent deterioration, among other things.
- [6] Appointing the same entity as both Receiver and Trustee in the presence circumstances makes sense as it will enable KSV to deal with the projects in an efficient and organized manner.
- [7] The provisions of the revised order have been reviewed by the applicant, KSV, the debtors and a number on the lien claimants (although not all). The debtors consent to the order being made. There is a proviso that the order will not take effect until January 8, 2024. This is to provide the debtors with an opportunity to refinance. The stakeholders are not opposing this limited additional time and it appears reasonable and properly conditioned so that there will be no inordinate delays.
- [8] The other variations from the Model Order have been explained and are reasonable.
- [9] Order to issue in the form signed by me this day.



Penny J.