



Court File No. CV-23-00709180-00CL
CV-23-00710573-00CL
CV-23-00710267-00CL
CV-23-00708970-00CL
CV-23-00711612-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)

)

FRIDAY, THE 8TH

JUSTICE STEELE)

)

DAY OF MARCH, 2024

B E T W E E N:

(Court Seal)

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 – LAKEVIEWDXE-
WEST LIMITED

Respondents

MCAP FINANCIAL CORPORATION

Applicant

- and -

VANDYK-THE BUCKINGHAM NORTH - GRAND CENTRAL LIMITED AND JOHN
VANDYK

Respondents

MCAP FINANCIAL CORPORATION

- 2 -

Applicant

- and –

VANDYK-BACKYARD KINGS MILL LIMITED

Respondent

OTÉRA CAPITAL INC.

Applicant

- and –

2495065 ONTARIO INC.

Respondent

FIERA FP REAL ESTATE FINANCING FUND, L.P.

Applicant

- and –

VANDYK – 41 WABASH LIMITED, 10000318652 ONTARIO INC., VANDYK
PROPERTIES INCORPORATED AND JOHN VANDYK

Respondents

APPLICATION UNDER SECTION 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
(Sale Process)**

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager and, as applicable, construction lien trustee (in such capacity, the “Receiver”), without security, of certain real property, assets, undertakings and property of Vandyk – Heart Lake Limited, 2402871 Ontario Inc., Vandyk – The Ravine Limited, Vandyk – Backyard Kings Mill Limited, Vandyk – The Buckingham North, 2495065 Ontario Inc., Vandyk

- 3 -

– 41 Wabash Limited and 1000318652 Ontario Inc. (collectively, the “**Debtors**”, and such property, collectively, the “**Property**”), pursuant and subject to the terms of the Orders of this Court dated November 14, 2023, December 11, 2023, December 12, 2023, January 18, 2024 and January 23, 2024 (collectively, the “**Receivership Orders**”) for an order, *inter alia*, approving the proposed Sale Processes (as defined and described in the Consolidated Report of the Receiver dated March 1, 2024 (the “**Consolidated Report**”)) in respect of the Property was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Notice of Motion of the Receiver, the Consolidated Report (including the appendices thereto), and on hearing the submissions of counsel for the Receiver and such other parties as were present, no one else appearing although duly served as appears from the Affidavit of Service of Marleigh Dick dated March 6, 2024,

SERVICE AND DEFINITIONS

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 hereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Consolidated Report.

APPROVAL OF SALE PROCESSES

3. **THIS COURT ORDERS** that the Sale Processes be and are hereby approved. The Receiver is hereby authorized to carry out the Sale Processes and to take such steps as it considers necessary or desirable in carrying out its obligations thereunder, including entry into realtor listing

- 4 -

agreements as set out in the Consolidated Report. For greater certainty, the completion of any transaction pursuant to the Sale Processes (each, a “**Transaction**”) shall be subject to prior approval of this Court being obtained.

4. **THIS COURT ORDERS** that the Receiver and its affiliates, partners, directors, officers, employees, legal advisors, representatives, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the Receiver performing its duties under the Sale Processes, except to the extent such losses, claims, damages or liabilities arise or result from gross negligence or wilful misconduct of the Receiver, as determined by this Court in a final order that is not subject to appeal or other review.

5. **THIS COURT ORDERS** that the Receiver may apply to the Court for directions with respect to the Sale Processes at any time on at least seven (7) days’ notice to the service lists established in these proceedings or such other notice as directed or permitted by the Court.

PIPEDA

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and any similar legislation in any other applicable jurisdictions the Receiver is hereby authorized and permitted to disclose and provide to its agents and any potential purchasers in the Sale Processes personal information of identifiable individuals, but only to the extent required to negotiate or attempt to complete a Transaction. Each person to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and, if it does not complete a Transaction, shall return all such information to the

- 5 -

Receiver or, in the alternative, destroy all such information and provide confirmation of its destruction to the Receiver. Any purchaser under a Transaction shall maintain and protect the privacy of such information and, upon closing of a Transaction, shall be entitled to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed and provide confirmation of its destruction to the Receiver.

APPROVAL OF THE CONSOLIDATED REPORT AND THE RECEIVER'S ACTIVITIES


7. **THIS COURT ORDERS** that the Consolidated Report, and the activities of the Receiver described therein, be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

GENERAL

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal and regulatory or administrative bodies, having jurisdiction in Canada or in any other foreign jurisdiction, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

- 6 -

9. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.

 Digitally signed
by Jana Steele
Date: 2024.03.08
14:10:11 -05'00'

(Signature of judge, officer or registrar)

APPLICATION UNDER SECTION 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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**ORDER
(SALE PROCESS APPROVAL 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

Dave Rosenblat (LSO# 64586K)

Tel: 416.862.5673

Email: drosenblat@osler.com

Chloe Duggal (LSO# 88142K)

Tel: 437.684.0852

Email: cduggal@osler.com

Fax: 416.862.6666

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