



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00714543-00CL

DATE: April 28, 2025

NO. ON LIST: 3

TITLE OF PROCEEDING: KINGSETT MORTGAGE CORPORATION v. 759 WINSTON
CHURCHILL GP INC. ET AL.
BEFORE: JUSTICE CONWAY

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Evan Cobb	Kenaidan Contracting Ltd.	evan.cobb@nortonrosefulbright.com
Daniel Fridmar	Tri-Con Concrete Finishing Co. Ltd.	dan@fridmar.com
David Winer	Noram Glass, a lien claimant	dwiner@ksllp.ca
Aiden Nelms	KingSett Mortgage Corporation	nelmsa@bennettjones.com
Marco Drudi	Observer - CSL for JC Infrastructure Ltd. and Montana Electrical Contractors Lt.	mdrudi@daklip.com

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Murtaza Tallat	KSV Restructuring Inc.	mtallat@ksvadvisory.com

ENDORSEMENT OF JUSTICE CONWAY:

- [1] There are two motions before me today.
- [2] One is by Kenaidan Contracting Ltd. seeking an amendment to the Receivership Appointment Order. That motion may be opposed by one or more parties. Tri-Con may be bringing a cross motion. Counsel have agreed to adjourn the Kenaidan motion to come up with a timetable and process for hearing that motion and any cross-motion. Once they have agreed on that timetable and process, they may arrange a scheduling appointment before me (or another CL judge, if I am unavailable) through the CL office.
- [3] The other motion is brought by the Receiver. All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Receiver dated April 25, 2025. The Receiver filed the Second Report on this motion.
- [4] The Receiver seeks two orders:
- a. The Second Amended and Restated Receivership Order that will:
 - i. approve the Churchill Construction LOI entered into with Leeswood, and authorize the subsequent execution of the Second Churchill CM Contract pursuant to which Leeswood will act as construction manager with respect to the Churchill Project;
 - ii. authorize the sealing of the Confidential WC Budgets pending the completion of the Churchill Project or further order of the Court; and
 - iii. authorize the Receiver to borrow up to \$90,250,000 (plus a \$2,000,000 letter of credit facility) pursuant to the Churchill Commitment Letter in order to fund the completion of the Churchill Project, and grant a charge to secure the amounts borrowed.
 - b. The Claims Process Order (CPO) that will approve a claims process in respect of Construction Priority Claims potentially held by Lien Claimants.

- [5] The motion is unopposed. There had been some opposition to the Second Amended and Restated Receivership Order but the Receiver has made certain changes such that it is now unopposed.
- [6] The Second Amended and Restated Receivership Order will permit the Receiver, with Leeswood as construction manager, to complete the Remaining WC Buildings, all for the purpose of enhancing value for the Debtors' stakeholders. The Receiver's opinion is that the terms of the Churchill CM Contract are favourable and reasonable, and will avoid the further delays that would occur if a request for proposal was sent out. Kingsett, the primary economic stakeholder and the party funding these proceedings, supports the engagement of Leeswood and the terms of the Churchill Construction LOI.
- [7] The sealing order for the Confidential WB Budgets meets the test in *Sierra Club/Sherman Estates*. The order is restricted to the Confidential WB Budgets, which contain sensitive financial information regarding the Churchill Project's economics, the disclosure of which could undermine ongoing negotiations with construction trade vendors and financial stakeholders, thereby posing a significant risk to the successful completion of the Churchill Project and the recovery for stakeholders. There are no reasonable alternatives to sealing and the benefits of the order outweigh any negatives. **I direct counsel for the Receiver to file a hard copy of the Confidential WB Budgets with the Commercial List office in a sealed envelope with a copy of Second Amended and Restated Receivership Order and this Endorsement.**
- [8] The Churchill Construction Facility is to be secured by the Receiver's WC Borrowings Charge, which will rank subordinate to the Receiver's Charge and *pari passu* with the Receiver's General Borrowings Charge. The Receiver recommends the terms of the facility as reasonable. The facility is required to complete the Remaining WC Buildings, thereby maximizing value for stakeholders. Kingsett is providing the facility and requires the charge to advance funding for construction. Both the facility and the charge are approved.
- [9] With respect to the Claims Process Order, crystallization of the quantum of the Construction Priority Claims will facilitate the sale of the Property and the making of future distributions. I approve the CPO.
- [10] Two orders to go as signed by me and attached to this Endorsement. These orders are effective from today's date and are enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", is located at the bottom left of the page.