

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688
SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. AND
2226 ROYAL WINDSOR LP

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

FACTUM OF THE RECEIVER

**(MOTION FOR APPROVAL OF SECOND AMENDED AND RESTATED
RECEIVERSHIP ORDER AND CLAIMS PROCESS ORDER)**

April 25, 2025

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PART I - NATURE OF THE APPLICATION

1. On May 30, 2024, the Ontario Superior Court of Justice (the “**Court**”) issued an order (the “**Receivership Order**”) appointing KSV Restructuring Inc. (“**KSV**”) as the receiver and manager (the “**Receiver**”) of certain real property (the “**Real Property**”) and all present and future assets, undertakings and personal property belonging to 759 Winston Churchill GP Inc. (“**Churchill GP**”), 759 Winston Churchill L.P. (“**Churchill LP**”), 688 Southdown GP Inc., 688 Southdown LP, 2226 Royal Windsor GP Inc., and 2226 Royal Windsor LP (collectively, the “**Debtors**” and each a “**Debtor**”) including all permits and deposits paid and obtained on behalf of a Debtor, 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, excluding all security granted by Churchill GP to The Toronto-Dominion Bank in connection with certain letters of credit (collectively, the “**Property**”).

2. Prior to the receivership proceedings, the Debtors were engaged in developing various projects on their respective Real Property, all of which is located in Mississauga, Ontario (the “**Projects**”), including the Churchill Project (as defined below). Following the commencement of the receivership proceedings, the Receiver, in order to maximize the realizations obtained from the Property, endeavored to negotiate potential sales transactions. While these negotiations led to the execution of non-binding letters of intent for the sale of each of the Projects (the “**Project Sale LOIs**”), the transactions contemplated in the Project Sale LOIs ultimately did not proceed and the Project Sale LOIs were terminated.

3. Based on discussions with the Project Sale LOI counterparties and other potentially interested purchasers, the Receiver has concluded that, in order to facilitate a future sale transaction, potential priority claims held by construction lien claimants for each of the Projects

should first be identified and quantified. Further, with respect to the Churchill Project in particular, the Receiver has concluded that the completion of certain uncompleted industrial buildings and the completion of all civil works related thereto would increase the Churchill's Project's value and expand the pool of potentially interested purchasers.

4. In order to facilitate the completion of the Churchill Project, the Receiver therefore seeks an Amended and Restated Receivership Order (the "**Second Amended and Restated Receivership Order**") which will, among other things:

- (a) approve the Churchill Construction LOI (as defined below) entered into with Leeswood Design Build (Alberta) Ltd., ("**Leeswood**"), and authorize the subsequent execution of the Second Churchill CM Contract (as defined below), pursuant to which Leeswood will act as construction manager with respect to the Churchill Project;
- (b) authorize the sealing of the Confidential WC Budgets (as defined below) pending the completion of the Churchill Project or further order of the Court; and
- (c) 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 (as defined below) in order to fund the completion of the Churchill Project, and grant a charge to secure the amounts borrowed.

5. Further, in order facilitate further potential sale transactions with respect to the Projects, the Receiver seeks a Claims Process Order (the "**CPO**"), which will, among other things, approve a claims process (the "**Claims Process**") in respect of Construction Priority Claims potentially held by Lien Claimants (each as defined below).

6. The requested relief is required for the Receiver to maximize the value of the Projects for the benefit of the debtor's stakeholders generally and is supported by KingSett Mortgage Corporation ("**KingSett**"), the principal secured creditor of the Debtors.

PART II - SUMMARY OF FACTS

7. The facts are more fully set out in the Second Report of the Receiver.¹

A. The Projects and Prior Sale Efforts

(a) The Projects

8. The Debtors are privately held entities which are collectively the registered and beneficial owners of the Real Property.² Prior to these proceedings, the Debtors intended to develop three real-estate development projects on the Real Property:

(a) The "**Churchill Project**," which was being developed on property located at 759 Winston Churchill Boulevard, Mississauga, Ontario (the "**Churchill Lands**"). The Churchill Lands were intended to be developed into 750,354 square feet of industrial facilities, comprised of three industrial buildings. Currently, one of buildings is complete and fully leased (the "**WC Building**"), one building is partially constructed, and one building has not commenced construction (the "**Remaining WC Buildings**").³

¹ Second Report of the Receiver dated April 11, 2024 [Second Report]. Capitalized terms not otherwise defined have the same meaning as in the Second Report. Dollar amounts are given in Canadian dollars unless otherwise specified.

² Second Report at paras. 2.1.1-2.1.3

³ Second Report at para. 2.2.1(a).

(b) The “**Southdown Project**,” which was being developed on property located at 688 Southdown Road, Mississauga, Ontario (the “**Southdown Lands**”). There is no active construction on the Southdown Lands.⁴

(c) The “**Royal Windsor Project**,” which was being development property located at 2226 Royal Windsor Drive, Mississauga, Ontario (the “**Royal Windsor Lands**”). There is no active construction on the Royal Windsor Lands.⁵

9. On November 15, 2024, the Court issued the Amended and Restated Receivership Order, which, among other things, authorized the retention of Leeswood as the construction manager to oversee the completion of an extension of Hazelhurst Road designed to facilitate more efficient access to the WC Building (the “**Extension**”). The completion of the Extension is on-budget and substantially advanced, and is scheduled to be completed by late spring 2025.⁶

(b) Prior Sale Efforts

10. Since the commencement of these receivership proceedings, the Receiver has been assessing options for maximizing the realizations from the Property. Owing to the status of the Projects and lack of available financing at that time, the Receiver’s efforts have been focused on the pursuit of sale transactions, which resulted in the Receiver negotiating and executing Project Sale LOIs for the sale of each of the Projects. Unfortunately, each the Project Sale LOIs were ultimately terminated.⁷

⁴ Second Report at para. 2.2.1(b).

⁵ Second Report at para. 2.2.1(c).

⁶ Second Report at paras. 3.1.1-3.1.5.

⁷ Second Report at paras. 2.3.1-2.3.2.

11. Based on its conversations with counterparties to the Project Sale LOIs (as well as conversations with other potential buyers), it became clear that, with respect to all of the Projects, the identification and quantification of Construction Priority Claims would potentially facilitate a sale transaction by permitting the Receiver to canvas a broader pool of potential transaction structures, such as an assumption of mortgage debt and/or credit bid, which may require the payment of any Construction Priority Claims. Further, with respect of the Churchill Project specifically, it became clear that the completion of the Remaining WC Buildings would materially increase the Churchill Projects value and increase the pool of potential acquirors.⁸

B. Construction of the Remaining WC Buildings

(a) The Churchill Construction LOI

12. Following the termination of the Project Sale LOI in respect of the Churchill Project, the Receiver, in consultation with KingSett, evaluated the Remaining WC Buildings and determined that their completion should materially enhance the value received in a sales process. Owing to their existing involvement with the Churchill Project in respect of the Extension, the Receiver commenced discussions with Leeswood regarding the potential expansion of its scope of work to include completion of the Remaining WC Buildings.⁹

13. As a result of these discussions, Leeswood submitted a formal letter of intent setting out its proposal for key terms to be included in a definitive construction management contract (the “**Churchill Construction LOI**”), which was executed by the Receiver with the support of KingSett. Under the terms of the Churchill Construction LOI, the parties have agreed to negotiate a definitive CCDC-5A (Construction Management Contract – for Services) (the “**Second**

⁸ Second Report at para. 2.3.2.

⁹ Second Report at para. 3.2.1-3.2.2.

Churchill CM Contract”), pursuant to which Leeswood will act as construction manager for the purpose of completing the Remaining WB Buildings. Leeswood will be paid a construction management fee comprised of: (i) 2.8% (inclusive of all offsite overheads), (ii) a bonus of 15% of any cost savings relative to the overall construction budget, and (iii) bonuses if certain milestone schedules are met.¹⁰

(b) The Churchill Construction Facility

14. In order to finance the completion of the work to be performed under the Churchill Construction LOI and Second Churchill CM Contract, KingSett has committed to providing a construction financing facility (the “**Churchill Construction Facility**”) pursuant to a commitment letter dated April 10, 2025 (the “**Churchill Commitment Letter**”). Under the terms of the Churchill Commitment Letter, the Churchill Construction Facility consists of a \$90,250,000 loan at an interest rate equal to the prime rate plus 6.5% per annum (in addition to a \$2,000,000 letter of credit facility). The Churchill Construction Facility matures 24 months after the first calendar day of the month following the date of the initial advance on the loan, which can be extended for two three month periods on the request of the Receiver, with the consent of KingSett.¹¹

15. Advances under the Churchill Construction Facility are subject to various conditions, including that the Second Amended and Restated Receivership Order be granted.¹²

¹⁰ See Second Report at para. 3.2.4 for a full summary of the terms of the Second Churchill CM Contract.

¹¹ Second Report at paras. 4.1.1(a)-(g). See Second Report at para. 4.1.1 for a full summary of the terms of the Churchill Construction Facility.

¹² Second Report at para. 4.1.1(k).

C. Determination of Construction Priority Claims

16. A total of nine lien claimants (each a “**Lien Claimant**” and collectively, the “**Lien Claimants**”) have registered construction liens against the Real Property, which are comprised of (i) seven Lien Claimants that have registered nine construction liens on title to some or all of the Churchill Lands; and (ii) two Lien Claimants that have registered two construction liens on title to some or all of the Southdown Lands.¹³ As the Lien Claimants potentially have priority claims against the Real Property pursuant to the *Construction Act*¹⁴, the Receiver seeks to administer the proposed Claims Process in order to identify and quantify any Construction Priority Claims (as defined in the proposed CPO).¹⁵

17. Under the terms of the proposed Claims Process, any Lien Claimant who wishes to assert a Construction Priority Claim must deliver a completed proof of claim (“**Proof of Claim**”) to the Receiver on or before the claims bar date of 5:00 p.m. on June 30, 2025 (the “**Claims Bar Date**”). The Receiver will then review the filed Construction Priority Claims, in consultation with Kenaidan Contracting Limited (“**KCL**”), within sixty days of the Claims Bar Date and, to the extent that the Receiver, in consultation with KCL, disputes, revises, or disallows any Proof of Claim, will notify the applicable Lien Claimant of its basis for doing so (a “**Notice of Revision or Disallowance**”). A Lien Claimant that disputes a Notice of Revision or Disallowance must in turn deliver a notice of dispute (“**Notice of Dispute**”) to the Receiver no later than 5:00 p.m. on the business day which is seven business days after the delivery of the Notice of Revision or

¹³ Second Report at para. 5.1.1. No construction liens have been registered against the Royal Windsor Lands.

¹⁴ R.S.O. 1990, c. C.30

¹⁵ Second Report at para. 5.1.4.

Disallowance, or such later date as the Receiver may agree in writing. Disputes identified in a Notice of Dispute will then be resolved in accordance with the procedures set forth in the CPO.¹⁶

PART III - THE ISSUES AND THE LAW

18. This Factum addresses the following issues:

- (a) the Second Amended and Restated Receivership Order should be granted, including:
 - (i) the Churchill Project LOI and the subsequent Second Churchill CM Contract should be approved;
 - (ii) the Confidential WC Budget should be sealed; and
 - (iii) the Churchill Commitment Letter and the Receiver's WC Borrowings Charge should be approved; and
- (b) the CPO should be granted, including the approval of the proposed Claims Process.

A. The Second Amended and Restated Receivership Order Should be Approved

- (a) The Churchill Construction LOI and Second Churchill CM Contract Should be Approved**

19. The broad discretion contained in s. 243(1)(c) of the BIA permits the court to authorize a receiver to "take any other action that the court considers advisable," which has been held to include entering into key contracts to facilitate the receivership.¹⁷ The courts have approved the

¹⁶ Second Report at paras. 5.3.1-5.4.3

¹⁷ *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) at para. 85.

retention of a construction manager on a number of occasions, the terms of which approval are consistent with those provided for in the Second Amended and Restated Receivership Order.¹⁸

20. The Receiver has determined that retaining Leeswood as construction manager for the purpose of completing the Remaining WC Buildings is in the best interest of the Churchill Project. The Receiver submits that the Churchill Construction LOI and the subsequent Second Churchill CM Contract should be approved for the following reasons:

- (a) **Experience:** Leeswood is an experienced and reputable construction manager which is already familiar with and engaged on the Churchill Project.¹⁹
- (b) **Reasonable Terms:** In the judgment of the Receiver, the terms of the Churchill CM Contract are favourable and reasonable. The Receiver, in consultation with KingSett, is of the view that conducting a request for proposal would result in further delays and likely yield the same results.²⁰
- (c) **Stakeholder Benefits:** Completing the Remaining WC Buildings is intended to enhance value for the Debtors' stakeholders, and engagement of a construction manager will be required to accomplish the same.²¹
- (d) **Avoiding Unnecessary Cost and Delay:** If the Churchill Construction LOI and Second Churchill CM Contract are not approved, the Receiver would be required

¹⁸ See, e.g., *KingSett Mortgage Corporation et al. v. Vandyk – Uptowns Limited et al.*, (June 13, 2024), Ont S.C.J. [Commercial List], Court File No. CV-23-709180-00CL ([Endorsement of Justice Black](#)) at paras. 6-7; *Keb Hana Bank as Trustee v. Mizrahi Commercial (The One) LP et al.*, (March 7, 2024), Ont S.C.J. [Commercial List], Court File No. CV-23-00707839-00CL ([Endorsement of Justice Osborne](#)) at para. 20; *KingSett Mortgage Corporation v. 759 Winston Churchill GP et al.*, (November 15, 2024), Ont S.C.J. [Commercial List], Court File No. CV-24-00714573-00CL ([Endorsement of Justice Kimmel](#)) at paras. 7-8.

¹⁹ Second Report at para. 3.3.1(a).

²⁰ Second Report at para. 3.3.1(b)-(c).

²¹ Second Report at para. 3.3.1(d).

to negotiate a new construction management contract with another party, which the Receiver anticipates would be on less favourable terms and cause further delay.²²

- (e) **Stakeholder Support:** The engagement of Leeswood and the terms of the Churchill Construction LOI are supported by KingSett, who is the primary economic stakeholder and the party providing funding in these receivership proceedings.²³

(b) The Confidential WC Budgets Should be Sealed

21. Pursuant to s. 137(2) of the *Courts of Justice Act*, R.S.O. c. C.43, the Receiver requests that the budgets for the completion of the Remaining WB Buildings attached as Attachments 1 and 2 to the Churchill Construction LOI (the “**Confidential WC Budgets**”) be filed with the Court on a confidential basis and remain sealed pending the earlier of: (i) the completion of the Churchill Project; or (ii) further order of the Court.

22. The test for a sealing order was established by the Supreme Court in *Sierra Club* and subsequently recast in *Sherman Estate*. The test requires the court to consider whether:²⁴

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measure will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

²² Second Report at para. 3.3.1(e).

²³ Second Report at para. 3.3.1(f).

²⁴ *Sherman Estate v. Donovan*, [2021 SCC 25](#) at para. 38.

23. Each of these considerations supports the proposed sealing order:

- (a) **Public Interest:** The maximization of recovery in insolvency has been found to constitute an important public interest for the purpose of obtaining a sealing order. The granting of a sealing order in respect of commercially sensitive information is therefore “standard practice” in insolvency proceedings,²⁵ and courts have approved sealing orders where they are required to protect commercially sensitive information, including where the disclosure would jeopardize “value-maximizing dealings” with third parties moving forward.²⁶ The Confidential WB Budgets 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.²⁷
- (b) **Lack of a Reasonable Alternative:** Courts in insolvency proceedings have found that no reasonable alternative to a sealing order exists where declining to grant the proposed order would materially impair the maximization of asset value for the benefit of stakeholders.²⁸ In the present case, there are no reasonable alternatives to a sealing order which would prevent the risks to the Debtors’ stakeholders outlined above.

²⁵ *Yukon (Government of) v. Yukon Zinc Corporation*, [2022 YKSC 2](#) at para. 39.

²⁶ *Danier Leather Inc., Re*, [2016 ONSC 1044](#) at para. 84. See also *Elleway Acquisitions Limited v. 4358376 Canada Inc.*, [2013 ONSC 7009](#) at para. 48 [*Elleway Acquisitions*].

²⁷ Second Report at para. 3.4.2.

²⁸ *Original Traders Energy Ltd. (Re)*, (January 30 2023), Ont. S.C.J. [Commercial List], Court File No. CV-23-00693758-00CL ([Endorsement of Justice Osborne](#)), at para. 62.

(c) **Proportionality:** The benefits of the proposed sealing order greatly exceed any negatives. No party will be prejudiced by the temporary sealing of the commercially sensitive information, and no public interest will be served if they are made public prior to closing, prejudicing stakeholder recoveries in the process.²⁹ Further, the sealing is appropriately limited in both time and scope.

(c) **The Churchill Construction Facility and the Receiver's WC Borrowings Charge Should be Approved**

24. The obligations of the Receiver under the Churchill Construction Facility are to be secured by a priority charge on all of the Property of Churchill GP and Churchill LP (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.³⁰ Advances will not be available under the Churchill Construction Facility if the Receiver's WC Borrowings Charge is not approved.

25. Section 31(1) of the BIA authorizes a receiver to borrow in order to fund the duties of the receiver, and further permits a receiver to give security on the debtor's property in any amount, on any terms and on any property that may be authorized by the court. The advances obtained must be repaid out of the debtor's property in priority to creditors' claims.³¹ The jurisdiction to authorize

²⁹ Second Report at para. 3.4.2. See *Elleway Acquisitions*, at para. 48, in which the court held that the beneficial effects of maximizing recoveries in insolvency greatly outweigh any deleterious effects which could result for sealing documents containing highly sensitive commercial information.

³⁰ Second Report at para. 1.1.(d).

³¹ BIA, s. 31(1): “With the permission of the court, an interim receiver, a receiver within the meaning of subsection 243(2) or a trustee may make necessary or advisable advances, incur obligations, borrow money and give security on the debtor's property in any amount, on any terms and on any property that may be authorized by the court and those advances, obligations and money borrowed must be repaid out of the debtor's property in priority to the creditors' claims.”

such borrowing also arises from the Court's powers under s. 243(1)(c) of the BIA to "take any other action that the court considers advisable."³²

26. This Court therefore has the jurisdiction and the discretion to approve the Churchill Construction Facility and the Receiver's WC Borrowings Charge, which are essential to the Receiver's ability to fulfill its mandate to maximize value of the Churchill Project for the benefit of all stakeholders. The Receiver submits that the Churchill Construction Facility and the Receiver's WC Borrowings Charge should be approved for the following reasons:

- (a) **Reasonable Terms:** In the business judgment of the Receiver, the terms of the Churchill Construction Facility are reasonable, and the effective annualized interest rate of the loans (estimated to be currently 11.45%) is consistent with or lower than market for a loan of this nature.³³ The Receiver compared the effective annualized interest rate of the loans to other debtor-in-possession facilities approved by the Canadian courts in similar insolvency proceedings commenced between 2022 and 2024 and is of the view that the interest rate is consistent with or lower than market for a loan of this nature.
- (b) **Stakeholder Value:** The Churchill Construction Facility is required to complete the Remaining WC Buildings and thereby maximize recoveries for all stakeholders. If the Receiver does not receive this funding, it will be unable to complete

³² See, i.e., *Keb Hana Bank as Trustee v. Misrahi Commercial (The One) LP et al.*, (October 18, 2023), Ont S.C.J. [Commercial List], Court File No. CV-23-00707839-00CL ([Endorsement of Justice Osborne](#)) at paras. 53-55, in which the court cited both ss. 31(1) and 243(1)(c) of the BIA for this principle; see also *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, [2021 ABCA 226](#) at para. 20.

³³ Second Report at para. 4.2.1(a)-(b).

construction, which will impair value and may result in the termination of the existing agreements of purchase and sale.³⁴

- (c) **Stakeholder Support:** The Churchill Construction Facility is to be provided by KingSett, who is the primary economic stakeholder in these proceedings. KingSett requires the Receiver's WC Borrowings Charge in order to provide the funding under the Churchill Construction Facility.³⁵

B. The Claims Process Should be Approved

27. Claims processes in a receivership are intended to create a "flexible and efficient process" which allows claims to be expeditiously established with a view to distributing assets as quickly as reasonably possible.³⁶ Claims procedures are therefore frequently approved by the court in receivership proceedings, including procedures which have been crafted to respond to the specific nature of the claims in question.³⁷

28. The Claims Process is fair and reasonable in the circumstances and should be approved by the Court. The granting of the CPO and crystallization of the quantum of the Construction Priority Claims will facilitate the sale of the Property, and will be required in the future in order affect any distributions which arise from any potential transactions. Further, the procedures set out in the CPO are consistent with those commonly approved by the courts and will allow Lien Claimants the necessary time and opportunity to assert and establish any Construction Priority Claims. In

³⁴ Second Report at para. 4.2.1(c), (f).

³⁵ Second Report at para. 4.2.1(d)-(e).

³⁶ *Computershare Trust Company of Canada v. Cookstown Holdings Ltd.*, [2014 ONSC 685](#) at para. 13.

³⁷ See, i.e., *BCIMC Construction Fund Corporation et al. v. 33 Yorkville Residences Inc. et al.*, (April 7, 2021) Ont. S.C.J. [Commercial List] Court File No. CV-20-00637297-00CL ([Priority Claims Procedure Order](#)), which approved a claims process specifically in relation to claims which were in priority to the claims of secured creditors.

particular, the Claims Bar Date, which is approximately 60 days from the date scheduled for this application, will be sufficient for Lien Claimants to file a Proof of Claim with the Receiver.³⁸

PART IV - NATURE OF THE ORDER SOUGHT

29. For the reasons set out above, the Receiver requests that this Court grant the proposed Second Amended and Restated Receivership Order and the proposed CPO.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of April, 2025:



OSLER, HOSKIN & HARCOURT, LLP per Sierra Farr
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Lawyers for the Receiver

TO: THE ATTACHED SERVICE LIST

³⁸ Second Report at para. 5.5.1.

SCHEDULE “A”: LIST OF AUTHORITIES

Cases

1. *BCIMC Construction Fund Corporation v. 33 Yorkville Residences Inc.*, (October 9, 2020), Ont S.C.J. [Commercial List], Court File No. CV-20-00637297-00CL ([Endorsement of Justice Conway](#))
2. *BCIMC Construction Fund Corporation et al. v. 33 Yorkville Residences Inc. et al.*, (April 7, 2021) Ont. S.C.J. [Commercial List] Court File No. CV-20-00637297-00CL ([Priority Claims Procedure Order](#))
3. *Computershare Trust Company of Canada v. Cookstown Holdings Ltd.*, [2014 ONSC 685](#)
4. *Danier Leather Inc., Re*, [2016 ONSC 1044](#)
5. *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, [2021 ABCA 226](#)
6. *Elleway Acquisitions Limited v. 4358376 Canada Inc.*, [2013 ONSC 7009](#)
7. *Keb Hana Bank as Trustee v. Misrahi Commercial (The One) LP et al.*, (October 18, 2023), Ont S.C.J. [Commercial List], Court File No. CV-23-00707839-00CL ([Endorsement of Justice Osborne](#))
8. *Keb Hana Bank as Trustee v. Misrahi Commercial (The One) LP et al.*, (March 7, 2024), Ont S.C.J. [Commercial List], Court File No. CV-23-00707839-00CL ([Endorsement of Justice Osborne](#))
9. *KingSett Mortgage Corporation v. 759 Winston Churchill GP et al.*, (November 15, 2024), Ont S.C.J. [Commercial List], Court File No. CV-24-00714573-00CL ([Endorsement of Justice Kimmel](#))
10. *KingSett Mortgage Corporation et al. v. Vandyk – Uptowns Limited et al.*, (June 13, 2024), Ont S.C.J. [Commercial List], Court File No. CV-23-709180-00CL ([Endorsement of Justice Black](#))
11. *Original Traders Energy Ltd. (Re)*, (January 30 2023), Ont. S.C.J. [Commercial List], Court File No. CV-23-00693758-00CL ([Endorsement of Justice Osborne](#))
12. *Sherman Estate v. Donovan*, [2021 SCC 25](#)
13. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#)
14. *Yukon (Government of) v. Yukon Zinc Corporation*, [2022 YKSC 2](#)

I certify that I am satisfied as to the authenticity of every authority.

Date

April 25, 2025



Signature
Sierra Farr

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

BANKRUPTCY AND INSOLVENCY ACT

R.S.C., 1985, c. B-3, as amended

Borrowing powers with permission of court

31 (1) With the permission of the court, an interim receiver, a receiver within the meaning of subsection 243(2) or a trustee may make necessary or advisable advances, incur obligations, borrow money and give security on the debtor’s property in any amount, on any terms and on any property that may be authorized by the court and those advances, obligations and money borrowed must be repaid out of the debtor’s property in priority to the creditors’ claims.

Security under Bank Act

(2) For the purpose of giving security under section 427 of the Bank Act, the interim receiver, receiver or trustee, when carrying on the business of the bankrupt, is deemed to be a person engaged in the class of business previously carried on by the bankrupt.

Limit of obligations and carrying on of business

(3) The creditors or inspectors may by resolution limit the amount of the obligations that may be incurred, the advances that may be made or moneys that may be borrowed by the trustee and may limit the period of time during which the business of the bankrupt may be carried on by the trustee.

Debts deemed to be debts of estate

(4) All debts incurred and credit received in carrying on the business of a bankrupt are deemed to be debts incurred and credit received by the estate of the bankrupt.

[...]

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or

(c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

(a) the insolvent person consents to an earlier enforcement under subsection 244(2); or

(b) the court considers it appropriate to appoint a receiver before then.

Definition of receiver

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

(a) is appointed under subsection (1); or

(b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of disbursements

(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

**KINGSETT MORTGAGE
CORPORATION**
Applicant

and

**759 WINSTON CHURCHILL GP INC., 759 WINSTON
CHURCHILL L.P., 688 SOUTHDOWN GP INC., 688
SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC.
AND 2226 ROYAL WINDSOR LP**
Respondents

Court File No: CV-24-00714543-00CL

**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**

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

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