

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF ASHCROFT URBAN DEVELOPMENTS INC., 2067166
ONTARIO INC., 2139770 ONTARIO INC., 2265132 ONTARIO INC., ASHCROFT
HOMES – LA PROMENADE INC., 2195186 ONTARIO INC., ASHCROFT HOMES –
CAPITAL HALL INC. AND 1019883 ONTARIO INC.**

**FACTUM OF KSV RESTRUCTURING INC.,
IN ITS CAPACITY AS COURT-APPOINTED INTERIM RECEIVER**

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TO: THE SERVICE LIST

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PART I - INTRODUCTION

1. KSV Restructuring Inc. ("**KSV**"), in its capacity as interim receiver (in such capacity, the "**Interim Receiver**") of the lands listed on Schedule "A" of the order of this Court dated December 20, 2024 (the "**Interim Receivership Order**") and the property, assets and undertaking (collectively, the "**Property**") of each of Ashcroft Urban Developments Inc. ("**ReStays**"), 2067166 Ontario Inc. ("**Park Place Senior**"), 2265132 Ontario Inc. ("**Ravines Senior**"), Ashcroft Homes – La Promenade Inc. ("**Promenade Senior**"), 2195186 Ontario Inc. ("**Envie I**"), Ashcroft Homes – Capital Hall Inc. ("**Envie II**"), 1019883 Ontario Inc. (the "**Head Office Company**") and 1384274 Ontario Inc. ("**138 Ontario**" and collectively with ReStays, Park Place Senior, Ravines Senior, Promenade Senior, Envie I, Envie II, and the Head Office Company, the "**Debtors**"), brings this motion seeking Orders, among other things:

- (a) appointing KSV as receiver and manager (in such capacity, the "**Receiver**") over the Property of Park Place Senior, Ravines Senior, Promenade Senior, Envie I, 138 Ontario and the Head Office Company (collectively, the "**Companies**");¹

¹ Separate applications will be brought by the principal secured creditors of ReStays and Envie II to appoint KSV as the Receiver over those entities.

- (b) amending the title of proceedings in this matter to reflect the receivership and the Companies involved in the receivership proceeding;
- (c) approving the First Report of KSV in its capacity as the Interim Receiver dated February 14, 2025² (the “**First Report**”) and the Interim Receiver’s activities described therein;
- (d) staying the rights of the Ottawa-Carleton Standard Condominium Corporation No. 1081 (“**OCSCC 1081**”) to serve or register liens with respect to the real property of Envie II (the “**Envie II Property**”) set out in Schedule “B” to the draft Order attached at Tab 7 of the Interim Receiver’s motion record (the “**Condo Lien Regularization Order**”) for the duration that any such Unit is owned by Envie II or until the discharge of the Receiver;
- (e) requiring OCSCC 1081 to assert any lien claims it may have by delivering a lien notice (the “**Lien Notice**”) in accordance with the terms of the Condo Lien Regularization Order; and
- (f) granting a charge against each unit in the Envie II Property over which a Lien Notice is made, equivalent to, and only to the extent of, any security granted under the *Condominium Act*³ (the “**Condo Act**”).

PART II - SUMMARY OF FACTS

2. The facts with respect to this motion are set out in more detail in the First Report. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the First Report.

Background

3. On December 5, 2024, the Ontario Superior Court of Justice (“**Court**”) issued an order granting the Debtors (other than 138 Ontario) and 2139770 Ontario Inc. (“**Ravines Retirement**”) protection under the *Companies’ Creditors Arrangement Act*⁴ (the “**CCAA**” and the “**CCAA Proceedings**”).⁵

² First Report of the Interim Receiver, KSV Restructuring Inc., dated February 14, 2025 (the “**First Report**”), Motion Record (“**MR**”), Tab 2.

³ *Condominium Act*, 1998, S.O. 1998, c. 19 [**Condominium Act**].

⁴ *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36.

⁵ First Report at para 1.0.1, MR, Tab 2, p 12.

4. Several of the Debtors' lenders opposed the continuation of the CCAA Proceedings at the comeback motion heard on December 12, 2024, and instead brought motions seeking the appointment of KSV as the Interim Receiver over the Property of the Debtors.⁶

5. Pursuant to the Honourable Justice Mew's decision dated December 20, 2024, the Court dismissed the motion to extend the CCAA Proceedings and approved the appointment of KSV as the Interim Receiver.⁷

6. On January 3, 2025, the Court issued the Interim Receivership Order appointing KSV as the Interim Receiver, pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*⁸ (as amended, the "**BIA**") and section 101(1) of the *Courts of Justice Act*⁹ (as amended, the "**CJA**").¹⁰

Overview of the Debtors

7. The Debtors are incorporated in Ontario and are entities within the Ashcroft Homes Group, a residential and commercial real estate developer owned, directly or indirectly, by David Choo. The Debtors manage several properties from the Head Office Company in Nepean, Ontario. The Debtors' real property consists of the following:¹¹

- (a) three seniors facilities (namely, Park Place Senior, Ravines Senior and Promenade Senior, and collectively, the "**Senior Residences**");
- (b) two student residences (Envie I and Envie II); and
- (c) a hotel and condominium (ReStays).

⁶ First Report at para 1.0.2, MR, Tab 2, p 12. A separate motion was sought for the appointment of BDO Canada Ltd. ("**BDO**") as receiver of Ravines Retirement.

⁷ *Ibid.*

⁸ *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 47(1) [**BIA**].

⁹ *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 101 [**CJA**].

¹⁰ First Report at para 1.0.3, MR, Tab 2, p 13.

¹¹ First Report at paras 1.0.5 and 2.1.1, MR, Tab 2, pp 13 and 15.

8. The Property owned by the Debtors is subject to one or more mortgages and additional security, including as follows:

(a) **Park Place Senior:**¹²

- (i) ACM Advisors Ltd. (“ACM”): a first-ranking mortgage, a general assignment of rents, and a general security agreement;
- (ii) Institutional Mortgage Capital Canada Inc. (“IMC”): a second-ranking mortgage, a general assignment of rents, and a general security agreement;

(b) **Ravines Senior and 138 Ontario:**¹³

- (i) ACM: a first-ranking mortgage, a general assignment of rents, and a general security agreement in respect of both Ravines Senior and 138 Ontario;
- (ii) IMC: a second-ranking mortgage, a general assignment of rents, and a general security agreement in respect of Ravines Senior, and an agreement to grant a mortgage over the parking facility owned by 138 Ontario;

(c) **Promenade Senior:**¹⁴

- (i) IMC: a first-ranking mortgage, a general assignment of rents, and a general security agreement;

(d) **Envie I:**¹⁵

- (i) People’s Trust Company: a first-ranking mortgage, a general assignment of rents, and a general security agreement;
- (ii) ACM: a second-ranking mortgage and a general assignment of rents;

¹² First Report at paras 2.1.2 and 2.1.4 (Park Place), MR, Tab 2, pp 15-16.

¹³ First Report at paras 2.1.4 (Park Place) and 2.1.2 (Ravines Senior), MR, Tab 2, p 16.

¹⁴ First Report at para 2.1.3 (Promenade Senior), MR, Tab 2, p 17.

¹⁵ First Report at paras 2.1.3 and 2.1.5 (Envie I), MR, Tab 2, p 17.

(e) **Envie II:**¹⁶

- (i) Equitable Bank: a first-ranking mortgage, a general assignment of rents, and a general security agreement;

(f) **Head Office Company:**¹⁷

- (i) Canadian Western Bank: a first-ranking mortgage, a general assignment of rents, and a general security agreement; and

(g) **ReStays:**¹⁸

- (i) CMLS Financial Ltd. (“CMLS”): a first-ranking mortgage and general assignment of rents.

Operations During the Course of the Interim Receivership

9. Since its appointment, the Interim Receiver has taken several steps to familiarize itself with the Debtors’ operations and to stabilize operations. In that regard, the Interim Receiver has, among other things:

- (a) engaged Brightwater Senior Living (“**Brightwater**”) to provide consulting services for each of the Senior Residences and is in the process of retaining Brightwater as property manager of the Senior Residences;¹⁹
- (b) engaged Varsity Properties Inc. (“**Varsity**”), which owns and operates student housing residences, to provide consulting services in respect of Envie I and Envie II;²⁰

¹⁶ First Report at para 2.1.3 (Envie II), MR, Tab 2, p 18.

¹⁷ First Report at para 2.1.2 (Head Office Company), MR, Tab 2, p 18.

¹⁸ First Report at para 2.1.3 (ReStays), MR, Tab 2, p 15.

¹⁹ First Report at paras 4.1.1 and 4.1.3, MR, Tab 2, pp 20-21.

²⁰ First Report at paras 4.2.1-4.2.2, MR, Tab 2, p 21.

- (c) appointed Varsity as the property manager for Envie I and is in the process of engaging Ottawa Property Managers as the rental manager at Envie II, based on Varsity's review of the operations of Envie I and Envie II;²¹
- (d) solicited proposals from three national realtors to act as the listing agent to market and sell the ReStays property, and is currently evaluating these proposals in consultation with the principal secured creditor of ReStays, CMLS;²²
- (e) assisted with the sale process for Envie I, which commenced prior to the CCAA Proceedings, including working with the proposed purchaser's counsel to finalize the APS;²³ and
- (f) engaged in discussions with a potential refinancing party (the "**Potential Lender**") to refinance all of the mortgage obligations of the Debtors and Ravines Retirement, in consultation with certain of the mortgagees.²⁴

The Envie II Condo Lien Registration

10. The Envie II Property consists of 110 units in a 353-unit condo tower. The common elements of the condo tower are owned by OCSCC 1081. OCSCC 1081 charges monthly common expense fees for each unit at the Envie II property and raises funds from unit owners via special assessments when required.

11. Following its appointment, the Interim Receiver was contacted by counsel for OCSCC 1081, Davidson Hould Allen LLP ("**Davidson**"), who advised that as of January 7, 2025, the Envie II units were in arrears for condominium fees, legal costs, and interest (the "**Condo Arrears**"). Davidson also informed the Interim Receiver that a payment of \$68,752 was received on behalf of Envie II after the initial order in the CCAA Proceedings (the "**Initial Order**"). According to Davidson, after applying the December 2024

²¹ First Report at paras 4.2.3-4.2.5, MR, Tab 2, p 21.

²² First Report at paras 5.1.1 and 5.1.4, MR, Tab 2, p 23.

²³ First Report at paras 5.3.1 and 5.3.4, MR, Tab 2, p 24.

²⁴ First Report at paras 6.0.1 and 6.0.5, MR, Tab 2, p 26.

payment to the earliest arrears, the sum of \$124,360 remains outstanding for Condo Arrears. Davidson also took the position that OCSCC 1081 was entitled to give notices and register certificates of lien over the Envie II Property pursuant to Section 85 of the Condo Act,²⁵ and to add the legal costs of these steps to the Condo Arrears.²⁶

12. The Interim Receiver's view is that the Initial Order prohibited the December 2024 payment of \$68,752 from being applied against arrears, and that payment was in respect of the December 2024 condo fees. The Interim Receiver's position is that any Condo Act enforcement process was stayed by the Initial Order and continues to be stayed pursuant to the Interim Receivership Order.²⁷

13. Instead of seeking an urgent motion date to determine the issue, Davidson and the Interim Receiver agreed on the terms of the Condo Lien Regularization Order. Subject to Court approval, the proposed order will provide a process whereby OCSCC 1081 will be entitled to a Court-ordered charge which replicates the protection that it would receive under the Condo Act, while at the same time preserving the rights of the Interim Receiver or any stakeholder to challenge OCSCC 1081's right to the charge, as well as the timeliness and quantum of any claim made under the Condo Lien Regularization Order.²⁸

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

14. The issues for the Court to consider are as follows:

- (a) should the receivership order (the "**Receivership Order**") be granted, appointing KSV as the Receiver of the Property of the Companies pursuant to subsection 243(1) of the BIA and 101 of the CJA;
- (b) should the Condo Lien Regularization Order be granted; and
- (c) should the ancillary relief requested, including the amendment of the title of proceedings and the approval of the First Report and activities described therein, be approved.

²⁵ Condominium Act, s. [85](#).

²⁶ First Report at paras 5.5.2, 5.5.3 and 5.5.5, MR, Tab 2, p 25.

²⁷ First Report at paras 5.5.4 and 5.5.6, MR, Tab 2, p 25.

²⁸ First Report at para 5.5.7, MR, Tab 2, p 25.

The Receivership Order Should be Granted

15. Section 243(1) of the BIA provides: “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.”²⁹ Section 101(1) of the CJA similarly provides that a “receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.”³⁰

16. The requirements for the appointment of a receiver have been met. The lenders’ motions for the appointment of KSV as the Interim Receiver provided a comprehensive overview of the security held by each such lender in respect of the Debtors, as well as the issuance of all applicable statutory notices required under the BIA. KSV is qualified to act as the Receiver under the BIA and is consenting to do so. KSV is familiar with the Property given its appointment as Interim Receiver.

17. The lenders brought the original motions in respect of the appointment of KSV as the Interim Receiver pursuant to Section 47(1). As set out below, such appointment is, by its nature, temporary. With the consent of the affected lenders in the Interim Receivership proceeding, this motion by the Interim Receiver is brought given the efficiencies of a single court officer seeking a receivership order over the Property versus have each lender bringing motions for the same relief.

The Appointment of a Receiver is Just and Convenient

18. As this Court has already noted, the appointment of a receiver is discretionary in nature, and requires the Court to consider and balance the competing interests of the various economic stakeholders.³¹

19. There is no checklist of considerations, but instead, the specific factors taken into consideration by the Court will vary from case to case.³²

²⁹ BIA, s. [243\(1\)](#).

³⁰ CJA, s. [101\(1\)](#).

³¹ First Report, Appendix “A” (Reasons for Decision of the Honourable Justice Mew issued December 20, 2024), at para 92, MR, Tab 2, p 47.

³² *Ibid.*

20. However, in assessing whether it is just or convenient to appoint a receiver, this Court has considered several factors, including the following:³³

- (a) the need to stabilize and preserve the debtor's business;
- (b) the loss of confidence in the debtor's management;
- (c) the likelihood of maximizing return to the parties; and
- (d) the balance of convenience to the parties.

21. It is well established that the extraordinary nature of the appointment of a receiver as a remedy "is significantly reduced when dealing with a secured creditor who has the right to a receivership under its security arrangements [...] The relief becomes even less extraordinary when dealing with a default under a mortgage."³⁴

22. In the current circumstances, KSV has already been appointed as the Interim Receiver pursuant to motions sought by the lenders. In connection with the Court's decision, it noted, among other things:

- (a) the secured creditors have lost confidence in the Debtors' management due to several reasons, including:³⁵
 - (i) modest progress in meeting the Debtors' obligations to their secured lenders despite the involvement of investment advisors, Hawco Peters and Associates Inc.;
 - (ii) mounting unpaid taxes;
 - (iii) outstanding unsecured creditor debts; and
 - (iv) sub-optimal property occupancy rates;

³³ [BCIMC Construction Fund Corporation et al v. The Clover on Yonge Inc.](#), 2020 ONSC 1953 at para 45 [**BCIMC**]; See also [Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited](#), 2022 ONSC 6186 at para 25.

³⁴ **BCIMC** at paras 43-44; See also [C & K Mortgage et al. v. 11282751 Canada Inc. et al.](#), 2024 ONSC 1039 at paras 17-18.

³⁵ First Report, Appendix "A" (Reasons for Decision of the Honourable Justice Mew issued December 20, 2024), at paras 95, 106 and 111, MR, Tab 2, pp 48 and 50.

- (b) a single receiver will be able to coordinate the sale process for the Property in order to mitigate the risk of a forced liquidation;³⁶ and
- (c) the receivership remedy gives effect to the agreements made between the secured lenders and the Debtors, while transferring control of the process from the Debtors to the creditors, “who should be entitled to make good on their security while there are still good prospects of them being made whole.”³⁷

23. Section 47(1) specifies that an interim receiver’s appointment remains in effect “until the earliest of: ³⁸

- (a) the taking of possession by a receiver, within the meaning of subsection 243(2), of the debtor’s property over which the interim receiver was appointed;
- (b) the taking of possession by a trustee of the debtor’s property over which the interim receiver was appointed; and
- (c) the expiry of 30 days after the day on which the interim receiver was appointed or of any period specified by the court.”

24. Pursuant to the Interim Receiver Order, the “comeback” motion date is on or before February 28, 2025.³⁹

25. Given the circumstances, the continuation of the interim receivership to a receivership is just and convenient in the circumstances. Among other things:

³⁶ First Report, Appendix “A” (Reasons for Decision of the Honourable Justice Mew issued December 20, 2024), at paras 96 and 112, MR, Tab 2, pp 48 and 50.

³⁷ First Report, Appendix “A” (Reasons for Decision of the Honourable Justice Mew issued December 20, 2024), at para 113, MR, Tab 2, pp 50-51.

³⁸ *BIA*, s. [47\(1\)](#).

³⁹ First Report, Appendix “B” (Interim Receivership Order of the Honourable Justice Mew issued January 3, 2025), at para 39, MR, Tab 2, p 67.

- (a) the Court has previously found that the appointment of a receiver (or interim receiver) is appropriate in the circumstances – which circumstances have not materially changed;
- (b) the receivership will provide for the continued management and supervision by the Receiver over the Companies' Property and business;⁴⁰
- (c) the receivership will assist in the ongoing efforts to stabilize the businesses;⁴¹
- (d) the Interim Receiver has been and the Receiver will continue to work with management, to the extent it requires, to further familiarize themselves with the Companies' operations;⁴²
- (e) the Interim Receiver has and the Receiver will continue to work with applicable regulatory authorities, including the Retirement Homes Regulatory Authority;⁴³
- (f) property managers are in the process of being retained by the Receiver to oversee the Senior Residences and the student residence facilities;⁴⁴
- (g) each of the lenders is supportive of the appointment of KSV being appointed the Receiver;⁴⁵
and
- (h) the appointment of the Receiver will not prohibit or prejudice Mr. Choo from continuing to pursue the refinancing efforts, including with the Potential Lender.

The Condo Lien Regularization Order Should be Granted

26. The Condo Lien Regularization Order is a form of claims process order. The general purpose of a claims process and any corresponding adjudication process is to “streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost-efficient manner.”⁴⁶

⁴⁰ First Report at para 8.0.1, MR, Tab 2, p 28.

⁴¹ *Ibid.*

⁴² First Report at para 3.0.6, MR, Tab 2, p 20.

⁴³ *Ibid.*

⁴⁴ See First Report at para 4.2.5, MR, Tab 2, p 21.

⁴⁵ First Report at para 3.0.6, MR, Tab 2, p 20.

⁴⁶ [Canwest Global Communications Corp.](#), 2011 ONSC 2215 at para 40.

27. Courts have routinely approved claims processes in the context of receiverships under the *BIA* and proceedings under the *CCAA*.⁴⁷ Lien Regularization Orders are regularly issued to mitigate the risk that *Construction Act* liens would imperil restructuring efforts.⁴⁸

28. The *CCAA* and the *BIA* receivership provisions are silent with respect to approval of claims processes. As such, the approval of a claims process is a matter within the discretion of the Court, grounded in the Court's statutory and/or inherent jurisdiction to control its own process and make an order it sees fit in the circumstances.⁴⁹

29. Claims process orders should be both flexible and expeditious, in order to achieve the remedial objectives of the statutes under which the proceedings were commenced and to ensure that stakeholders are treated as fairly as the circumstances permit. The Order must be drafted carefully to ensure that it is fair and reasonable to all stakeholders, including those who may be directly impacted by the acceptance of other claims.⁵⁰

30. The Condo Lien Regularization Order provides a mechanism for OCSCC 1081 to protect its position regarding any current or future claim it seeks to assert for arrears under the *Condo Act*, while at the same time preserving the right of the Receiver and any other stakeholder to contest the claim, all without placing undue administrative and financial burden on Envie II.⁵¹

The Ancillary Relief Should be Granted

31. If the receivership orders are granted:⁵²

⁴⁷ See [Laurentian University of Sudbury, 2021 ONSC 3885](#) at paras 15-53 [*Laurentian*]; see also [Claims Procedure Order of Justice Conway dated October 6, 2017](#) in the Receivership Proceeding of *Paramount Equity Financial Corporation et. al.*; see also [Claims Procedure and Unitholdings Identification Procedure Order of Chief Justice Morawetz dated July 19, 2022](#) in the Receivership Proceeding of *Bridging Finance Inc. et. al.*

⁴⁸ [EB Hana as Trustee v. Mizrahi Commercial \(THE ONE\) LP et al.](#), 2024 ONSC 1678 at para 33.

⁴⁹ *Ibid* at para 31.

⁵⁰ *Laurentian* at paras 30-32.

⁵¹ First Report at para 5.5.8 and 5.5.9, MR, Tab 2, pp 25 and 26.

⁵² First Report at para 3.0.7, MR, Tab 2, p 20.

(a) Park Place Senior, Ravines Senior, Promenade Senior, Envie I and the Head Office Company will be subject to the Receivership Order in this court file number; and

(b) ReStays and Envie II will be subject to receivership orders in new court file numbers.

32. Ravines Retirement will continue to be subject to the BDO receivership.⁵³

33. The proposed amendments to the title of proceedings will accurately reflect the proceedings going forward including the applicable Debtors to which the proceedings continue to apply. Absent a change in the title of proceedings, there could be ongoing confusion as to which companies these proceedings apply and under which statute the proceedings are continuing.

34. The Court has the jurisdiction to grant an order amending the title proceeding. Under both Rule 1.05 of the Ontario *Rules of Civil Procedure*⁵⁴ and Section 101(2) of the CJA,⁵⁵ the Court is given a broad discretion to grant such orders and to impose such terms as are just. No prejudice will result from the proposed amendments.

The First Report and the Activities of the Interim Receiver Should be Approved

35. The Interim Receiver seeks an ancillary order approving the First Report along with the activities of the Interim Receiver referred to therein. In *Re Target Canada Co.* (“**Re Target**”), this Court noted that requests to approve a court-appointed officer’s reports and the activities are not unusual. The Court highlighted that there are good policy and practical reasons for doing so, including as follows: ⁵⁶

(a) allowing the court-appointed officer to bring its activities before the Court;

(b) allowing an opportunity for stakeholders’ concerns to be addressed;

⁵³ *Ibid.*

⁵⁴ [Rules of Civil Procedure](#), RRO 1990, Reg 194, s. [1.05](#).

⁵⁵ CJA, s. [101\(2\)](#).

⁵⁶ [Re Target Canada Co.](#), 2015 ONSC 7574 at para 22; see also *Laurentian* at para 13.

- (c) enabling the Court to satisfy itself that the court-appointed officer's activities have been conducted in prudent and diligent manners;
- (d) providing additional protection for the court-appointed officer; and
- (e) protecting the creditors from the delay and distribution that would be caused by re-litigation of steps taken to date and potential indemnity claims by the court-appointed officer.

28. Although *Re Target* was a case involving proceedings under the *Companies' Creditors Arrangement Act*, this Court has recognized that the same principles and policy considerations apply to receivership proceeding,⁵⁷ and such approvals are commonly granted in interim receivership proceedings.⁵⁸

29. In this case, the activities detailed in the First Report were necessary and carried out in good faith by the Interim Receiver, in accordance with its mandate set forth in the Interim Receivership Order. Furthermore, the Interim Receiver has acted reasonably and in the best interests of the Debtors' stakeholders while carrying out these activities. Accordingly, the Interim Receiver believes it is appropriate for this Court to approve the First Report and the activities of the Interim Receiver mentioned therein.

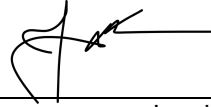
PART IV - ORDER REQUESTED

36. For the reasons set out above, KSV as the Interim Receiver, requests that this Court should grant the proposed Orders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of February, 2025.

⁵⁷ [Re Hanfeng Evergreen Inc.](#), 2017 ONSC 7161 at para 15.

⁵⁸ See the [Order of Justice Osborne dated July 4, 2024](#) in the *Matter of the Notice of Intention to Make a Proposal of Plant Energy (Ontario) Corp. et al.* at para 9; see also the [Order of Justice Conway dated August 16, 2024](#) in *Crowe Soberman LLP et al. v. Noir Property Management Ltd. et al.* at para 5.



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SCHEDULE "A"

LIST OF AUTHORITIES

1. *BCIMC Construction Fund Corporation et al v. The Clover on Yonge Inc.*, 2020 ONSC 1953
2. *C & K Mortgage et al. v. 11282751 Canada Inc. et al.*, 2024 ONSC 1039
3. *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186
4. *Canwest Global Communications Corp.*, 2011 ONSC 2215
5. Claims Procedure and Unitholdings Identification Procedure Order of Chief Justice Morawetz dated July 19, 2022 in the Receivership Proceeding of *Bridging Finance Inc. et al.*
6. Claims Procedure Order of Justice Conway dated October 6, 2017 in the Receivership Proceeding of *Paramount Equity Financial Corporation et al.*
7. *EB Hana as Trustee v. Mizrahi Commercial (THE ONE) LP et al.*, 2024 ONSC 1678
8. *Laurentian University of Sudbury*, 2022 ONSC 2927
9. Order of Justice Conway dated August 16, 2024 in *Crowe Soberman LLP et. al v. Noir Property Management Ltd. et al.*
10. Order of Justice Osborne dated July 4, 2024 in the *Matter of the Notice of Intention to Make a Proposal of Plant Energy (Ontario) Corp. et al.*
11. *Re Hanfeng Evergreen Inc.*, 2017 ONSC 7161
12. *Re Target Canada Co.*, 2015 ONSC 7574

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. Courts of Justice Act, R.S.O. 1990, c. C-43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

2. Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Appointment of interim receiver

47 (1) If the court is satisfied that a notice is about to be sent or was sent under subsection 244(1), it may, subject to subsection (3), appoint a trustee as interim receiver of all or any part of the debtor's property that is subject to the security to which the notice relates until the earliest of (a) the taking of possession by a receiver, within the meaning of subsection 243(2), of the debtor's property over which the interim receiver was appointed, (b) the taking of possession by a trustee of the debtor's property over which the interim receiver was appointed, and (c) the expiry of 30 days after the day on which the interim receiver was appointed or of any period specified by the court.

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.

3. Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Orders on Terms

1.05 When making an order under these rules the court may impose such terms and give such directions as are just.

4. Condominium Act, 1998, S.O. 1998, c. 19

Lien upon default

85 (1) If an owner defaults in the obligation to contribute to the common expenses payable for the owner's unit, the corporation has a lien against the owner's unit and its appurtenant common interest for the unpaid amount together with all interest owing and all reasonable legal costs and reasonable expenses incurred

by the corporation in connection with the collection or attempted collection of the unpaid amount. 1998, c. 19, s. 85 (1); 2015, c. 28, Sched. 1, s. 78 (1).

Expiration of lien

(2) The lien expires three months after the default that gave rise to the lien occurred unless the corporation within that time registers a certificate of lien in a form prescribed by the Minister. 1998, c. 19, s. 85 (2).

Certificate of lien

(3) A certificate of lien when registered covers,

(a) the amount owing under all of the corporation's liens against the owner's unit that have not expired at the time of registration of the certificate;

(b) the amount by which the owner defaults in the obligation to contribute to the common expenses payable for the owner's unit after the registration of the certificate; and

(c) all interest owing and all reasonable legal costs and reasonable expenses that the corporation incurs in connection with the collection or attempted collection of the amounts described in clauses (a) and (b), including the costs of preparing and registering the certificate of lien and a discharge of it. 1998, c. 19, s. 85 (3); 2015, c. 28, Sched. 1, s. 78 (1).

Notice to owner

(4) At least 10 days before the day a certificate of lien is registered, the corporation shall give written notice of the lien to the owner whose unit is affected by the lien. 1998, c. 19, s. 85 (4).

(5) Repealed: 2015, c. 28, Sched. 1, s. 78 (2).

Lien enforcement

(6) The lien may be enforced in the same manner as a mortgage. 1998, c. 19, s. 85 (6).

Discharge of lien

(7) Upon payment of the amounts described in subsection (3), the corporation shall prepare and register a discharge of the certificate of lien in the form prescribed by the Minister and shall advise the owner in writing of the particulars of the registration. 1998, c. 19, s. 85 (7).

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36

AND IN THE MATTER OF ASHCROFT URBAN DEVELOPMENTS INC., 2067166 ONTARIO INC., 2139770 ONTARIO INC., 2265132 ONTARIO INC.,
ASHCROFT HOMES – LA PROMENADE INC., 2195186 ONTARIO INC., ASHCROFT HOMES – CAPITAL HALL INC. AND 1019883 ONTARIO INC.

Court File No: CV-24-00098058-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
OTTAWA

FACTUM OF THE INTERIM RECEIVER

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