



Superior Court of Justice – East Region

ENDORSEMENT SHEET FOR CIVIL MOTION/APPLICATION

SHORT TITLE OF PROCEEDINGS: *CMLS Financial v Ashcroft Urban Developments*

COURT FILE NO.: CV-25-00098804-0000

BEFORE: Mr. Justice Mew

HEARD ON: **24 February 2025** at Ottawa (by videoconference)

COUNSEL:

Sanjeev Mitra and Calvin Horsten (Aird & Berlis LLP), for the applicant
Alexander Bissonette (Mann Lawyers LLP), for the respondent Ashcroft Urban Developments Inc.
Eric Golden and Chad Kopach (Blaney McMurtry LLP), for KSV Restructuring Inc.

RELIEF REQUESTED: An order appointing KSV Restructuring Inc. as receiver of the assets, undertakings and properties of the respondent Ashcroft Urban Developments Inc. acquired for or used in relation to a business carried on by the respondent, including, without limitation, the real property at 101 Queen Street and 110 Sparks Street, Ottawa, Ontario.

ORDER SIGNED **ON CONSENT**

UNOPPOSED **NO ONE APPEARED**

ADJOURNED TO [Click here to enter a date.](#)

ENDORSEMENT:

The test for the appointment of a receiver is met. The applicant is contractually entitled to have a receiver appointed as a result of its default under the Financing Agreements with the applicant. Except as discussed below, the proposed order is not opposed.

The applicant asks that the order appointing the receiver provides, *inter alia*, the receiver with the authority of the court to make an assignment in bankruptcy of the respondent, and to act as trustee in bankruptcy on behalf of the respondent. The applicant submits that given the history of Ashcroft entities moving funds from one entity to another, the receiver should have the ability not only to investigate such transactions but also the power, if necessary, to assign the respondent into bankruptcy, with the attendant power of a trustee to examine the bankrupt. In the alternative, the



Ontario Superior Court of Justice – East Region

applicant seeks an exemption from term of the order imposing a stay of proceedings to enable the applicant to initiate bankruptcy proceedings against the respondent.

The respondent opposes the inclusion of such a power in the order, arguing that should the receiver seek to be empowered to file an assignment into bankruptcy on behalf of a debtor, it should be done by way of a separate proceeding before the court, supported by a full evidentiary record.

Footnote 4 of the Commercial List Model Receivership Order states that the model order does not include specific authority permitting a receiver to either file an assignment in bankruptcy on behalf of a debtor, or to consent to the making of a bankruptcy order against the debtor, because a bankruptcy could have the effect of altering the priorities among creditors, and that, accordingly, it is preferable that the specific authority of the court should be sought if a receiver wishes to take one of these steps in relation to a debtor. That said, such orders were made in *Royal Bank of Canada v. Sun Squeeze Juices Inc*, an unreported decision of Farley J. dated 16 March 1994, and by Rady J. in *RBC v. Gustin*, 2019 ONSC 5370. In the latter case Rady J. was of the view that the receiver should be able to avail itself of the enhanced powers available to a trustee in bankruptcy under ss. 158 and 161-167 of the *Bankruptcy and Insolvency Act* because of the debtor’s “lack of cooperation and misrepresentations”.

At the present time I would decline to include a term permitting the receiver to file an assignment in bankruptcy in the absence of more cogent evidence supporting the need for it to have the enhanced powers available to a trustee. However, I arrive at that determination without prejudice to any party seeking the Court’s leave to lift the stay of proceedings imposed by the order for the purposes of obtaining a bankruptcy order against the respondent.

I have signed a copy of the order (as amended).

Date: 24 February 2025

A handwritten signature in blue ink that reads "G. Mew J." is written over a horizontal line. Below the line, the name "Mew J." is printed in a bold, black font.