SUPERIOR COURT OF JUSTICE

# COUNSEL SLIP/ ENDORSEMENT FORM

**COURT FILE NO.:** CV-25-00736577-00CL **DATE:** March 6 and 7, 2025

**NO. ON LIST:** 4

**TITLE OF PROCEEDING:** FUKIAGE, MIZUE et al v CLEARVIEW GARDEN ESTATES INC. et al

**BEFORE:** MADAM JUSTICE STEELE

## PARTICIPANT INFORMATION

**For Plaintiff, Applicant, Moving Party, Receiver:**

| Name of Person Appearing | Name of Party | Contact Info |
|---|---|---|
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| Noah Goldstein | KSV Restructuring Inc., the Proposed Receiver | ngoldstein@ksvadvisory.com |
| Mark van Zandvoort | Aird & Berlis LLP, lawyer for the Proposed Receiver | mvanzandvoort@airdberlis.com |

**For Defendant, Respondent, Responding Party, Defence, Purchasers:**

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**For Other, Self-Represented:**

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| Karen Bernofsky | Gardiner Roberts LLP, lawyers for Pam Hundal and Parminder Hundal Law Professional Corporation | kbernofsky@grllp.com |

**ENDORSEMENT OF JUSTICE STEELE:**

[1] The applicants seek an order appointing KSV Restructuring Inc. as receiver over the respondents' Property, including the Real Property and the Segregated Funds.

[2] Capitalized terms that are not defined herein have the meaning set forth in the applicant's factum.

[3] The applicants had also sought an order declaring that certain of the Respondents hold the applicable Real Property in trust for the benefit of the Co-Owners thereof. I was not satisfied that it was appropriate or necessary for the Court to grant this declaratory relief. The applicants relied upon Rule 14.05(3)(e) but were unable to point the Court to another case where the court has granted this type of declaratory relief on an unopposed application.[1] As noted by the applicants the Co-Owners Agreements provide for the delivery of a declaration of trust or certificate of interest to each applicable Co-Owner, wherein the applicable Nominee Respondent declared or acknowledged that it holds title to the applicable Land Banking Project as nominee and bare trustee for an on behalf of such Co-Owner to the extent of such Co-Owner's interest.

[4] There is no opposition to the relief sought, despite notice having been provided to the respondents.

[5] For the reasons set out below, the requested Receivership Order is granted.

**Background**

[6] The Respondents are privately held special purpose companies incorporated pursuant to the OBCA.

[7] The Respondents, other than 2533430 Ontario Inc., were formed to hold title to, as nominees and bare trustees, or operate various Land Banking Projects involving the Real Property. The applicants and other investors who financed the acquisition of the Land Banking Projects (the "Co-Owners") are the beneficial owners of the Real Property.

[8] The Kobayashi Group holds fractional undivided beneficial interests in each of the Land Banking Projects ranging between approx. 3%-72% further to certain Sale Agreements. The Sale Agreements were accompanied by Co-Owner Agreements that govern the ownership of the undivided beneficial interest in the applicable Land Banking Project, any sale, financing and/or development of such Land Banking Project, among other things. Each of the Co-Owner agreements prohibits certain steps being taken without the written consent of 51% of the owners of the project.

[9] The application became more urgent when the applicants learned of the sale of one of the properties (LV IV) for $2 million, on February 5, 2025, in violation of the First Global Injunction granted in the Hamilton Proceedings, and in violation of the Co-Owner agreement. The applicant beneficially owns approx. 72% of that property and was not consulted prior to the sale. The proceeds of sale were wired to a TD bank account in the name of Parminder Hundal Law Professional Corporation. As a result, part of the relief sought on this motion is a *Norwich* Order.

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[1] The applicant referred to *Jansari v. Jansari*, 2020 ONSC 2473, at paras. 36 and 37. However, in that case the court indicated that where an application is made under Rule 14.05(3), such as a declaration in or charge in land, an application judge has the jurisdiction to resolve disputes over material facts. There is no dispute in the instant case regarding

**Analysis**

*Do the Applicants have Standing to bring the application?*

[10] The applicants rely on Rule 14.05(3) of the *Rules of Civil Procedure* and section 101 of the *Courts of Justice Act*.

[11] Rule 14.05(3)(e) provides:

> A proceeding may be brought by application where these rules authorize the commencement of a proceeding by application or where the relief claimed is,
>
> [...]
>
> (e) the declaration of an interest in or charge on land, including the nature and extent of the interest or charge or the boundaries of the land, or the settling of the priority of interests or charges;

[12] As noted by Kimmel J. in *Star America DPGI Acquisition Company, Inc. v. Demand Power Group Inc.* (November 22, 2023), CV-23-00709164-00CL, at para. 11:

> The CJA des not limit applicants strictly to creditors or require the filing of a bankruptcy as a pre-requisite to the appointment of a receiver or receiver-manager. Canadian Courts have found that an applicant need only be a "major stakeholder" to have standing to bring an application for receivership: [citations omitted].

[13] The applicants are major stakeholders, having invested or been caused to invest approximately $14 million in the respondents, with a significant financial interest in the Property, and therefore have standing to bring the application.

*Is it Just or Convenient to appoint a Receiver?*

[14] Under section 101 of the *Courts of Justice Act* and section 243(1) of the *Bankruptcy and Insolvency Act*, the Court may appoint a receiver where it is "just or convenient" to do so.

[15] The appointment of a receiver is generally an extraordinary remedy.

[16] In determining whether it is "just or convenient" to appoint a receiver, the Court must consider "all of the circumstances but in particular the nature of the property and the rights and interests of all relevant parties:" *Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258 (ONSC) at para. 10. The discretionary factors that the Court has historically considered in determining whether it is appropriate to appoint a receiver were recently summarized by the Court in *C&K Mortgage et al v. 11282751 Canada Inc. et al*, 2024 ONSC 1039, at para. 19.

[17] I have determined that the proposed receivership order is just and convenient in the circumstances.

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whether certain respondents hold the applicable Real Property in trust for the benefit of the Co-Owners thereof. Accordingly, it is not necessary for the Court to make such a declaration.

[18] For the reasons set out at para. 46 of the applicant's factum, I am satisfied that it is just or convenient for the proposed Receiver to be appointed. I note, in particular, that there appears to be significant risks to the Applicants and the other Co-Owners. The Respondents have allowed the Real Property to be lost to creditor enforcement efforts, inappropriately transferred, encumbered and/or sold (as summarized in paragraphs 20-38 of the applicants' factum). The Respondents have taken these actions without the requisite approval of the Co-Owners.

*Are the Terms of the Receivership Order Appropriate?*

[19] The proposed order is substantially similar to the Commercial List Model receivership order. There are certain additional investigative and tracing powers granted to the Receiver under the proposed order. The proposed order also directs the Vendors and Respondents to provide the Receiver with, among other things, the names, addresses and email addresses of the Co-Owners in these proceedings to the extent that the information is in their possession or control. This information is necessary to enable the Receiver to apprise the Co-Owners of these proceedings. The proposed Order also contains provisions requiring the Receiver to provide notice to the Co-Owners of its appointment.

[20] The proposed Receivership Order contains a *Norwich* Order, directing TD Bank to disclose and produce to the applicants and the Receiver copies of bank account statements and other documents related to the transfer of the LV IV Proceeds.

[21] TD Bank was served with the materials and did not oppose. As noted above, the respondents were also served and have not opposed.

[22] When considering whether to grant a *Norwich Pharmacal* order, the Court will consider the factors set out in *Isofoton SA v. Toronto Dominion Bank*, 2007 CanLII 14626 (ONSC) at para 40:

a. Whether the moving party/applicant has shown a valid, *bona fide* or reasonable claim;

b. Whether the moving party/applicant has established a relationship with a third party from whom the information is sought, such that it establishes that the third party is somehow involved in the acts complained of;

c. Whether a third party from whom the information is sought is the only practicable source of the information;

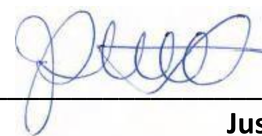
d. Whether a third party from whom the information is sought can be indemnified for costs to which the third party may be exposed because of the disclosure; and

e. Whether the interests of justice favour the obtaining disclosure from the third party.

[23] The applicant must show that the claim is not frivolous or vexatious to meet the threshold of whether there is a *bona fide* reasonable claim: *Isofoton*, at para. 42. I am satisfied based on the record that the applicants have met the threshold of a *bona fide* claim to, among other things, their proportionate share of the LV IV Proceeds.

[24] For the reasons set out at paras. 57-65 of the applicant's factum, I am satisfied that each of the above factors supports the granting of the *Norwich* Order in the instant case.

[25] Order attached.



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**Justice Steele**

**DATE OF RELEASE: 7 March 2025**