

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

<p>THE HONOURABLE)) JUSTICE STEELE)</p>	<p>)))</p>	<p>MONDAY, THE 24TH DAY OF JUNE, 2024</p>
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**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES
REGULATORY AUTHORITY OF ONTARIO**

Applicant

- and -

FIRST SWISS MORTGAGE CORP.

Respondent

**APPLICATION UNDER SECTION 37 OF THE *MORTGAGE BROKERAGES, LENDERS
AND ADMINISTRATORS ACT, 2006, S.O. 2006, c. 29, AS AMENDED, AND SECTION
101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c.C.43, AS AMENDED***

**ORDER
(Second Ancillary Order)**

THIS MOTION, made by KSV Restructuring Inc. (“KSV”) as receiver (in such capacity, the “Receiver”) without security, of all of the assets, undertakings and properties of First Swiss Mortgage Corp. (the “Debtor”) acquired for, or used in relation to a business carried on by the Debtor, for an Order pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006, S.O. 2006, c. 29, as amended*, and section 101 of the *Courts of Justice Act, R.S.O. 1990, c. C.43, as amended*, was heard this day by judicial videoconference via Zoom.

ON READING the Motion Record of the Receiver dated June 14, 2024, including the Third Report of the Receiver dated June 14, 2024 (the “Third Report”) and on hearing the submissions of counsel for the Receiver and such other parties in attendance at the hearing of this

motion, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Thomas Gray, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Motion Record of the Receiver is hereby abridged and validated, and service is hereby validated, so that this Motion is properly returnable today, and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms used within this Order and not expressly defined herein shall have the meanings set forth in the Third Report.

DISTRIBUTIONS

3. **THIS COURT ORDERS** that the Receiver is hereby authorized, following the closing of the Transaction, at such time or times and in such amounts as it determines appropriate, in its sole discretion, to make distributions of cash:

- (a) first, to the Investors identified in the table in Section 5.1, paragraph 2 of the Third Report for the full amount of the Invoices;
- (b) second, *pro rata*, to the Investors and the four creditors referenced in Section 5, paragraph 9 of the Third Report (collectively, the “**Distributions**”).

4. **THIS COURT ORDERS** that the Fee Accrual is hereby approved and, in connection with making the Distributions, the Receiver shall retain sufficient funds necessary to satisfy the Fee Accrual.

5. **THIS COURT ORDERS** that the Distributions shall be free and clear of and from any and all security interests (whether contractual, statutory or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges or other financial or monetary claims, whether or not they have attached or been

perfected, registered or filed and whether secured, unsecured or otherwise including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by Order in these proceedings; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system in any province or territory in Canada.

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings or the termination of these proceedings;
- (b) any assignment in bankruptcy made in respect of the Debtor; and
- (c) the provision of any federal, provincial or other statute;

any Distributions made pursuant to this Order are final and irreversible and shall be binding upon any trustee in bankruptcy or receiver that has been or may be appointed in respect of the Debtor or its property, and shall not be void or voidable by creditors of the Debtor, nor shall any such distributions constitute or be deemed to be fraudulent preferences, assignments, fraudulent conveyances, transfers-at-undervalue or other reviewable transactions under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended or any other applicable federal, provincial or other law, nor shall they constitute conduct which is oppressive, unfairly prejudicial to or which unfairly disregards the interests of any person, and shall, upon the receipt thereof, be free of all claims, liens, security interests, charges or other encumbrances granted by or relating to the Debtor or its property.

DISCHARGE

7. **THIS COURT ORDERS** that upon the Receiver filing a certificate substantially in the form attached as Schedule “A” hereto (the “**Discharge Certificate**”) certifying that all matters to be attended to in connection with these receivership proceedings of the Debtor have been completed to the satisfaction of the Receiver, the Receiver shall be discharged as receiver and manager of the Debtor, provided however that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver in respect of the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall

continue to have the benefit of all Orders made in these Receivership Proceedings, including, without limitation, all approvals, protections and stays of proceedings in favour of KSV in its capacity as Receiver.

8. **THIS COURT ORDERS AND DECLARES** that, upon the filing of the Discharge Certificate, KSV is hereby released and discharged from any and all liability that KSV now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KSV while acting in its capacity as Receiver herein, save and except for any liability arising from the gross negligence or willful misconduct on the Receiver's part. Without limiting the generality of the foregoing, upon the filing of the Discharge Certificate, KSV is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or willful misconduct on the Receiver's part.

APPROVAL OF RECEIVER'S REPORT, FEES AND ACTIVITIES

9. **THIS COURT ORDERS** that the Receiver's Third Report dated June 14, 2024 and its activities as set out therein are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

10. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and the Receiver's legal counsel, Bennett Jones LLP ("**Bennett Jones**"), as set out in the Third Report and as more particularized within the fee affidavits of Mitch Vininsky and Thomas Gray appended thereto be and are hereby approved.

GENERAL

11. **THIS COURT ORDERS** that the Receiver and Bennett Jones shall have no liability with respect to any losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of carrying out the provisions of this Order, except to the extent such losses, claims, damages or liability results from the gross negligence or wilful misconduct of the Receiver or Bennett Jones, as determined by this Court. Nothing in this Order shall

derogate from the protections afforded to the Receiver under the Appointment Order or any other Order of this Court.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

13. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

14. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order without the need for entry or filing.

Schedule "A"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

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MONDAY, THE 24TH

JUSTICE STEELE

)

DAY OF JUNE, 2024

)

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES
REGULATORY AUTHORITY OF ONTARIO**

Applicant

- and -

FIRST SWISS MORTGAGE CORP.

Respondent

**APPLICATION UNDER SECTION 37 OF THE *MORTGAGE BROKERAGES, LENDERS
AND ADMINISTRATORS ACT, 2006*, S.O. 2006, c. 29, AS AMENDED, AND SECTION
101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED**

RECEIVER'S DISCHARGE CERTIFICATE

RECITALS

A. Pursuant to an Order of the Ontario Superior Court of Justice (the "**Court**") dated March 17, 2023 (as amended on May 19, 2023, the "**Receivership Order**"), KSV Restructuring Inc. was appointed receiver and manager (in such capacity, the "**Receiver**") of First Swiss Mortgage Corp. (the "**Debtor**") and all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor.

B. Pursuant to an Order of the Court dated June 24, 2024, the Court ordered the discharge of the Receiver to become effective (and conditional) upon the filing with the Court by the

Receiver of a certificate confirming that all matters to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver.

THE RECEIVER CERTIFIES the following:

1. All matters to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver.

This Certificate was filed by the Receiver with the Court on the _____ day of _____, 2024.

KSV Restructuring Inc., solely in its capacity
as Receiver over First Swiss Mortgage Corp.,
and not in its personal capacity

Per: _____

Name:

Title:

CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO and FIRST SWISS MORTGAGE CORP.

Applicant

Respondent

Court File No.: CV-23-00696362-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**SECOND ANCILLARY ORDER
(June 24, 2024)**

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