



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND:

**6511 SUSSEX HEIGHTS DEVELOPMENT LTD.
and
MINORU SQUARE DEVELOPMENT LIMITED PARTNERSHIP
and
MINORU VIEW HOMES LTD.**

RESPONDENTS

APPLICATION RESPONSE

Application response of the Attorney General of Canada on behalf of His Majesty the King in right of Canada as represented by the Minister of National Revenue (“His Majesty”).

THIS IS A RESPONSE TO the notice of application of the Petitioner (“KingSett”) filed January 13, 2025.

The application respondent estimates that the application will take 90 minutes.

Part 1: ORDERS CONSENTED TO

His Majesty consents to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: Nil.

Part 2: ORDERS OPPOSED

His Majesty opposes the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: Paragraphs 1 and 2.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

His Majesty takes no position on the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: Nil.

Part 4: FACTUAL BASIS

1. The Respondent, 6511 Sussex Heights Development Ltd. (“6511 Sussex”) is indebted to His Majesty for unremitted goods and services tax (“GST”) amounts for the reporting periods ending December 31, 2023, January 31, 2024, April 30, 2024, May 31, 2024, June 30, 2024, July 31, 2024, August 31, 2024, and October 31, 2024.
2. His Majesty is the beneficiary of a statutory deemed trust for unremitted GST in the amount of \$7,551,095.38, which is the amount collected by 6511 Sussex but not yet remitted to His Majesty.
3. According to the affidavit relied upon by KingSett to initiate this receivership, 6511 Sussex absconded with the GST funds and used them for internal obligations.¹
4. The statutory deemed trust for GST is comprised only of the tax collected; it does not include penalties or interest.
5. KingSett’s loan (the “Highline Loan”) was granted and the corresponding mortgage was registered against the Highline property in March 2024. The loan is also secured by a general security agreement, a collateral mortgage, and a guarantee.²
6. As of November 1, 2024, 6511 Sussex owed KingSett \$146,020,840.41.³
7. As of January 6, 2025, the total indebtedness owed by 6511 Sussex to KingSett had been reduced to \$102,776,573.97.⁴
8. According to the Receiver, the aggregate gross market value of the remaining units available for sale in the Highline Sale Process is expected to exceed \$100 million.⁵

Part 5: LEGAL BASIS

KingSett’s Application is Premature

9. KingSett has not established that it will receive a shortfall because of the statutory priority provided to His Majesty’s GST deemed trust.
10. It is unknown what the total realizations will be from the receivership overall and the Highline Sale Process specifically; the latter is expected by the Receiver to gross over 100 million dollars. The amount owing to KingSett has already been substantially

¹ Affidavit #1 of Daniel Pollack, sworn November 5, 2024 at para 49.

² *Ibid* at para 21.

³ *Ibid* at para 28.

⁴ Notice of Application of the Petitioner, filed January 13, 2025 at para 6.

⁵ First Report of the Receiver, dated January 13, 2025 at 4.1(2).

reduced in the past few months and the Highline Loan is secured by more than just the mortgage registered against the Highline property.

11. KingSett has a prescribed security interest (“PSI”) under the *Excise Tax Act*, RSC 1985, c E-15 that provides partial priority over the GST deemed trust. Approximately \$5.9 million of the GST deemed trust has priority over KingSett’s PSI. KingSett has not established that there will be insufficient total proceeds to pay both the Highline Loan and this priority amount of GST.

KingSett Filed the Wrong Application

12. If KingSett seeks to place 6511 Sussex into bankruptcy, it should have brought an application seeking to lift the stay of proceedings under paragraph 8 of the receivership order to be permitted to apply for a bankruptcy order against 6511 Sussex pursuant to section 43 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“BIA”).⁶
13. The statutory stay provided for various BIA proceedings is meant to preserve the status quo and prevent proceedings by a creditor that would give that creditor an advantage over others or otherwise improve its position.⁷ The court ordered stay in this receivership that limits proceedings against the debtors or their property serves the same purpose.⁸
14. KingSett has not sought leave of the court to bring a bankruptcy application against 6511 Sussex. Instead, it has sought an order authorizing and directing the Receiver to assign 6511 Sussex into bankruptcy solely in order to reverse priorities entirely in KingSett’s favour.
15. It is not the Receiver’s role to place 6511 Sussex into bankruptcy to solely benefit KingSett. The Receiver is a court ordered receiver with a fiduciary duty to the debtor and all creditors and is not beholden to the secured creditor who caused its appointment.⁹ This is not a case where the Receiver requires the powers of bankruptcy to deal with fraudulent preferences or leases.¹⁰
16. The Receiver is properly focused on the Highline Sale Process and its overall task of maximizing the realizations and minimizing the costs during the receivership, not in

⁶ Receivership Order, dated December 13, 2024 at para 8.

⁷ *msi Spergel Inc. v I.F. Propco Holdings (Ontario) 36 Ltd.*, 2013 ONCA 550 at para 40; *Re 1635623 Alberta Ltd. (Adrenaline Diesel and Bonnie's Equipment Services Ltd.)*, 2022 ABQB 361 at paras 20-27, Lema J.

⁸ *Romspen Investment Corporation v Courtice Auto Wreckers Limited*, 2017 ONCA 301 at paras 72-73, 109; *Sequestration of Solution Highpoint Inc.*, 2022 QCCS 3505 at para 200, Pinsonnault J.

⁹ *QRD (Willoughby) Holdings Inc. v MCAP Financial Corporation*, 2024 BCCA 318 at para 48.

¹⁰ *Royal Bank of Canada v Sun Squeeze Juices Inc.*, 1994 CarswellOnt 266 at paras 11, 14, Farley J; *First Treasury Financial Inc. v Cango Petroleums Inc.*, 1991 CanLII 8338 (ONSC) at para 43, Austin J.

bringing a court application and accumulating further expenses that arise from a bankruptcy to favour KingSett. It is KingSett who has brought this application to seek to favour itself, and it cannot use the Receiver as a means to bypass the stay of proceedings under the receivership.

An Application to Lift the Stay Should Not be Granted

17. Even if an application to lift the stay had been filed, it should not be granted. KingSett has not established that it is materially prejudiced or that there is another equitable ground to lift the stay at this time.
18. The party seeking to lift the stay bears the onus of convincing the court that the relief should be granted, and in considering such a request the court should look to the totality of the circumstances and the relative prejudice to both sides.¹¹ The jurisprudence related to lifting statutory stays via section 69.4 of the *BIA* is relevant: the moving party should establish it is likely to be materially prejudiced if the stay is not lifted at this time or that it is equitable on other grounds to do so.¹²
19. KingSett has not established that it will receive a shortfall due to the partial priority of the GST deemed trust. There is no prejudice to KingSett by maintaining the status quo the stay of proceedings is meant to protect while the Receiver continues with its task of maximizing the realizations and minimizing the costs from the receivership. On the other hand, a bankruptcy order at this time would forcefully place the debtor into bankruptcy, nullify the entirety of the Crown's GST deemed trust, and incur additional expenses. The totality of the circumstances favours maintaining the status quo.
20. *Supreme Court Civil Rules*, BC Reg 168/2009, Rule 8-1.
21. *Excise Tax Act*, RSC 1985, c E-15, s 222.
22. *Security Interest (GST/HST) Regulations*, (SOR/2011-55), s 2.
23. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, ss 43, 69.4.
24. *Crown Liability and Proceedings (Provincial Court) Regulations*, (SOR/91-604), s 10.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of A. Wong-de Leon, sworn January 15, 2025.

¹¹ *Peoples Trust Company v Rose of Sharon (Ontario) Retirement Community*, 2012 ONSC 7319 at para 5, Brown J; *Romspen Investment Corporation v Courtice Auto Wreckers Limited*, 2017 ONCA 301 at para 30.

¹² *Ibid*; *Unity Health Toronto v 2442931 Ontario Inc.*, 2024 ONSC 1333 at paras 40-43, Kimmel J.

2. Affidavit #1 of Daniel Pollack, sworn November 5, 2024.
3. First Report of the Receiver, dated January 13, 2025.
4. The pleadings and proceedings herein and such further materials as counsel may advise and this Honourable Court may permit.

The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent's ADDRESS FOR SERVICE is:

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Dated: January 24, 2025



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