

COUNSEL SLIP

COURT FILE NO CV-19-06622054-00CL DATE July 19, 2019

NO ON LIST 10

TITLE OF PROCEEDING First Source Financial Management Inc et AL
vs.

Ideal (BC) Developments Inc.

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July 19/19
Applications granted for
The reasons attached.

Heidy J.

Court File Number: 19-00622084-CC

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

FIRST SOURCE FINANCIAL MANAGEMENT INC Plaintiff(s)
AND
IDEAL (BC) DEVELOPMENTS INC Defendant(s)
et al et al

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

① This is an application to
 appoint KSV Korman Inc. ("KSV")
 as receiver over real
 property owned by the
 Respondents. ~~(KSV)~~

Date

Judge's Signature

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Judges Endorsement Continued

- ② In February 2017 First Source and Home Trust loaned \$13 million to the Respondents ("Debtor"). The loan was secured by a mortgage in the same amount registered in first priority against the real property ("Property").
- ③ In 2018 The Debtor

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Judges Endorsment Continued

defaulted with respect
to payment of principal
and monthly interest
payments. First Source
and Kingsett Mortgage
Corporation (which had
acquired Home Trust's
interest in the loan) agreed
to bridge the debtor's
financing and extended

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Judges Endorsment Continued

The terms of their security
a number of times. At
the time of the most
recent extension in
March 2019 The Debtors,
through their legal
counsel, agreed to consent
to the appointment of a
receiver in the event of
a default under the

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Judges Endorsment Continued

loan.

④ The Debtors breached
the Terms of the loan
and the mortgage
external agreements.

The loan matured
on May 30, 2019 without
payment by the Debtors.

The Debtors have made
no interest or ~~payments~~

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Judges Endorsment Continued

principal payments

since May 2, 2019 and

They remain in default.

As of May 31, 2019 The

outstanding loan amount

was \$13,264,958. and

interest and costs

continue to accrue.

⑤ On June 3, 2019

First Source and Kings H

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Judges Endorsment Continued

issued a written demand
for payment of the full
amount outstanding under
the mortgage and gave
the debtors notice of their
intentions
to enforce security
pursuant to s. 244 of the
Bankruptcy and Insolvency
Act. ("BIA")
(b) The debtors have not

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Judges Endorsment Continued

paid
+
many amounts outstanding

under the Mortgage and

the term period in

the 5,244 notice has

expired. The debtors

remain in default.

⑦ Since this application

was commenced the

debtors have, once again,

indicated that they
+

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Judges Endorsment Continued

will obtain replacement
financing from another
lender, Romsper Investment
Corporation ("Romsper") and
have provided a
commitment letter
from Romsper for a
"\$13 Million loan" to
assist in repayment of
the existing registered

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Judges Endorsment Continued

first mortgage on the
property".

⑧ As a result of receiving
this commitment letter
the debtors seek a
delay in the appointment
of a Receiver until
September 1, 2019, to
allow them an
opportunity to complete

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Judges Endorsment Continued

replacement financing

① First Source and

Kingzett oppose their

request for a delay in

the appointment of a

Receiver and submit

that I should appoint

a Receiver immediately

to protect First Source's

and Kingzett's' positions.

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Judges Endorsment Continued

⑩ Under the Terms of the
Commitment Letter from
First Savell and Home
Trust to the Debtor, they
agreed that "The Lender
in addition to any other
rights which it may have,
shall be entitled to
appoint a receiver
manager or receiver,

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Judges Endorsment Continued

either privately or
court appointed ...
& sell the property.)

A similar provision is
also contained in the
General Security Agreements
executed by the Debtor.

(11) The issue on this
application is whether I
should make an order

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Judges Endorsment Continued

pursuant to s. 243 of
The BIA and/or s. 101
of the Courts of Justice Act
appointing KSV as the
Receiver over the
Property now or
wait until September, 2019
to do so.

(12) In deciding whether
to appoint a Receiver I

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Judges Endorsment Continued

must consider all of
The circumstances and
determine whether it is
just or convenient to do
so. In determining
whether it is just or
convenient I must
take into account,
(a) The nature of the
property over which the

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Judges Endorsment Continued

Receiver is to be appointed;

(b) The rights and interests
of all parties in relation

to the property over
which the Receiver is to
be appointed; and

(c) Whether the secured
creditor has a right
under its security to
appoint a Receiver

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Judges Endorsment Continued

privately.

(13) In *Elleway Acquisitions Ltd v. Cruise Professionals Ltd*, Morawetz J. (as he then was) concluded that the burden upon the applicant seeking the appointment of a receiver is relaxed "because the applicant

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Judges Endorsment Continued

is merely seeking to
enforce a term of an
agreement that was
assented to by both
parties. In this
case the Debtor agreed
that the Lender could
appoint a receiver upon
default, in the original
Commitment Letter and

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Judges Endorsment Continued

mortgage and later

in their counsel's

letter in March 2019.

(14) The fact that the

applicants have a

contractual right to

The appointment of a

receiver is not

dispositive of the matter,

but it is an important

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factor to take into account.

(15) The debtors have been in default since May 31, 2019, a period of 49 days. They defaulted on more than one occasion before that and were successful in negotiating extensions

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Judges Endorsment Continued

agreements with the
Lender, they have
indicated before that
they would obtain
alternative financing
to pay off the mortgage
debt. This alternative
financing did not
materialize. The
Commitment Letter they

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Judges Endorsment Continued

have from Romsper
will not provide
sufficient funds to
pay off their debt in
full and it is still
subject to certain
conditions. In my
view, this case is
very similar to the case
of Bank of Montreal v.

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Carnival National Learning

Ltd in which

Newbold J. was

posed with the

same issue. At para

16 of his decision he

stated as follows:

"In argument, Mr Taylor

said Carnival needs

just a little more

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time to obtain financing
to pay out the BMO
loan. From a legal
point of view Carnival
has been provided with
more time than is
required. From a
practical point of view,
it is very unlikely that
Carnival will be able

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Judges Endorsment Continued

in any reasonably foreseeable
period of time to pay out BMO")

(16) These comments apply
equally to this case.

I have concluded that I
should appoint a Receiver
because the Judges have a
Contractual right to appoint
one and for the
following additional reasons:

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(a) The loan is in default and the indebtedness is not in dispute;

(b) The lenders have lost confidence in the Debtor's ability to obtain alternative financing;

(c) I am concerned about the Debtor's ability to

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Judges Endorsment Continued

obtain financing to repay
the loan because they
have made a number
of unsuccessful attempts
to obtain financing to pay
off the loan even
though they maintain
that the property is
worth over \$26 million;
(d) The property is vacant

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Judges Endorsment Continued

land so there is no
ability to use it to
generate income to make
continuing interest
payments;

(e) A Receiver will
ensure that there will be
a court-supervised
sales process;

(f) If a Receiver is

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appointed The Debtor
will have time to
obtain replacement
financing before a
Sales process is approved
by the Court;

(9) The costs concerned
paid by The Debtor
are not material in the
context of an indebtedness

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Judges Endorsment Continued

of \$13.5 million)

(H) As Herewith

concluded in G.E. Canada

Equipment Financing G.P. v.

Boyer Group Rental Inc.,

"The debtors are no

longer in a position to

control the process"

and The lender have

a contractual right

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I appoint a receiver.

(17) Despite Ms Hamilton's

able argument, I am

satisfied that it is

just and convenient

I appoint a receiver

for all of these reasons.

(18) KSV is appointed the

Receiver of the Property.

(19) I urge counsel to

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settle the issue of
costs. If they cannot
they may schedule a
9:30 AM attendance
with the D deal with
costs.

(20) I am grateful to counsel
for their helpful submission.

July 19, 2019 *Hailey J*