



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00722148-00CL

DATE: Wednesday, June 26, 2024

NO. ON LIST: 3

TITLE OF PROCEEDING:

KINGSETT MORTGAGE CORPORATION et al v. MAPLEQUEST VENTURES INC. et al

BEFORE: MR JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Mare Wasserman	Applicants	mwasserman@osler.com
Dave Rosenblat	Applicants	drosenblat@osler.com
Marleigh Dick	Applicants	mdick@osler.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Ian J. Cantor	Respondents	icantor@rarlitigation.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Aiden Nelms	Counsel to KSV Restructuring	nelmsa@bennettjones.com
Noah Goldstein	KSV Restructuring	ngoldstein@ksvadvisory.com

ENDORSEMENT OF JUSTICE OSBORNE:

- [1] The Applicants seek the appointment of a Receiver pursuant to both section 243 of the *BIA* and section 101 of the *CJA*, over the Property (as defined in the materials), a first ranking super priority Receiver's Charge and the second ranking super priority Receiver's Borrowing's Charge.
- [2] Defined terms in this Endorsement have the meaning given to them in the Application materials. The Applicants rely upon the affidavit of Daniel Pollock sworn June 14, 2024, together with Exhibits thereto, and the consent of KSV to act in the capacity of Court-appointed Receiver.
- [3] The Debtors are represented in Court today, and they do not oppose the relief sought.
- [4] Defined terms in this Endorsement have the meaning given to them in the Application materials.
- [5] The background for, and context of, the relief sought is fully set out in the Application materials. The Applicants are the senior secured lenders of Maplequest Ventures Inc. Diagram Developments Caledon Inc. and Maplequest (collectively the "Debtors") have granted security to the Applicant KingSett in connection with borrowings from KingSett.
- [6] First Source has issued three notes secured by the Indebtedness owing under the First Source Facility, with KingSett holding notes totaling \$26,554,622 of the \$41,250,000 First Source Facility.
- [7] The Real Property and Projects being developed thereon include:
- a. the Heritage Road Real Property in Brampton, Ontario, comprising a 50 acre residential site being developed into 147 townhome units, 288 midrise apartment units and 1599 high-rise apartment units;
 - b. the Countryside Real Property in Brampton, Ontario comprising a site area of approximately 20 acres being developed into 144 low-density single-family dwellings and 27 freehold in density townhome dwellings;
 - c. the Mayfield Development Land Real Property in Caledon, Ontario; and
 - d. the Mayfield Remainder Parcel Real Property located in Caledon, Ontario.

- [8] In connection with the development by Maplequest of certain of these properties, KingSett and First Source extended Loan Facilities under which the aggregate principal amounts outstanding as of April 22, 2024 are \$47,954,224.90 and \$41,250,000, respectively.
- [9] Security granted as against that Indebtedness includes mortgages over the relevant properties and general security agreements in favour of KingSett and First Source.
- [10] The Loan Facilities are in default. Maplequest failed to pay two months of interest payments as a result of which the underlying loan matured on March 1, 2024 in favour of KingSett and on May 8, 2024 in favour of First Source.
- [11] Demands were issued and section 244 *BIA* notices were served. The 10 day notice period has expired in each case. However, the entire Indebtedness remains outstanding with no prospect for immediate repayment in whole or in part.
- [12] The property of the Debtors over which the receivership is sought includes certain letters of credit posted by Maplequest to municipalities in respect of other projects of Maplevue. The Applicants wish the Receiver to undertake efforts to have these letters of credit cancelled and the corresponding funds made available to satisfy, in part, the Indebtedness.
- [13] The test for the appointment of a receiver pursuant to section 243 of the *BIA* or section 101 of the *CJA* is not in dispute. Is it just or convenient to do so?
- [14] In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, the Court must have regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto. These include the rights of the secured creditor pursuant to its security: *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258.
- [15] Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties: *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 at para. 27. However, the presence or lack of such a contractual entitlement is not determinative of the issue.
- [16] The appointment of a receiver becomes even less extraordinary when dealing with a default under a mortgage: *BCIMI Construction Fund Corporation et al v. The Clover on Yonge Inc.*, 2020 ONSC 1953 at paras. 43-44.

[17] As observed in *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186, the Supreme Court of British Columbia, citing Bennett on Receivership, 2nd ed. (Toronto, Carswell, 1999) listed numerous factors which have been historically taken into account in the determination of whether it is appropriate to appoint a receiver and with which I agree: *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para. 25):

- a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
- b. the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
- c. the nature of the property;
- d. the apprehended or actual waste of the debtor's assets;
- e. the preservation and protection of the property pending judicial resolution;
- f. the balance of convenience to the parties;
- g. the fact that the creditor has a right to appointment under the loan documentation;
- h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
- i. the principle that the appointment of a receiver should be granted cautiously;
- j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
- k. the effect of the order upon the parties;
- l. the conduct of the parties;
- m. the length of time that a receiver may be in place;
- n. the cost to the parties;
- o. the likelihood of maximizing return to the parties; and

p. the goal of facilitating the duties of the receiver.

- [18] How are these factors to be applied? The British Columbia Supreme Court put it, I think, correctly: “these factors are not a checklist but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient: *Pandion Mine Finance Fund LP v. Otso Gold Corp.*, 2022 BCSC 136 at para. 54).
- [19] It is not essential that the moving party establish, prior to the appointment of a receiver, that it will suffer irreparable harm or that the situation is urgent. However, where the evidence respecting the conduct of the debtor suggests that a creditor’s attempts to privately enforce its security will be delayed or otherwise fail, a court-appointed receiver may be warranted: *Bank of Montreal v. Carnival National Leasing Ltd.*, 2011 ONSC 1007 at paras. 24, 28-29.
- [20] Accordingly, is it just or convenient to appoint a receiver in the particular circumstances of this case?
- [21] In my view, it is, for the above reasons, including but not limited to the consent of the Debtors to the appointment of a receiver if a default has occurred, as it clearly has, and further including the fact that the Debtors do not oppose the relief sought. Moreover, the property over which the receivership is sought here includes more than simply vacant land, but also other assets such as the letters of credit referred to above, which will need to be managed to be monetized for recovery. The Receiver can determine the best path forward (continuation of development of the Projects or a sale, or some combination of both) to maximize recovery.
- [22] The terms of the proposed receivership order are appropriate and consistent with the Commercial List model order. KSV Restructuring Inc. is well qualified to act as Receiver and consents to do so.
- [23] The Application is granted.
- [24] Order to go in the form signed by me which is effective immediately.

Osawa, J.