

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

**KINGSETT MORTGAGE CORPORATION AND FIRST SOURCE FINANCIAL
MANAGEMENT INC.**

Applicants

- and -

MAPLEQUEST VENTURES INC. AND DIGRAM DEVELOPMENTS CALEDON INC.

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985 c. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C. 43 AS AMENDED**

FACTUM OF THE RECEIVER

October 2, 2024

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in its capacity as Court-appointed Receiver
and not in its personal capacity

TO: THE SERVICE LIST

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PART I: OVERVIEW

1. On June 26, 2024, the Court granted an order (the “**Receivership Order**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager without security (in such capacities, the “**Receiver**”), of the real property legally described in Schedules “A” to “D” of the Receivership Order (the “**Real Property**”) and the Personal Property (as defined in the affidavit of Daniel Pollack sworn June 14, 2024, and together with the Real Property, the “**Property**”) of Maplequest Ventures Inc. (“**Maplequest**”) and Digram Developments Caledon Inc. (“**Digram**” and together with Maplequest, the “**Debtors**”).

2. The Debtors’ senior secured creditors are KingSett Mortgage Corporation (“**KingSett**”) and First Source Financial Management Inc. (“**First Source**” and together with KingSett, the “**Applicants**”) who extended certain loan facilities (collectively, the “**Loan Facilities**”) to Maplequest, under which Loan Facilities there are aggregate principal amounts outstanding as of September 30, 2024, of approximately \$51.6 million (the “**Heritage Loan**”) and \$49 million (the “**Countryside Loan**”), respectively, with interest and fees continuing to accrue (the “**Indebtedness**”). KingSett holds a participation interest of approximately \$31.5 million in the Countryside Loan, with its participation interest in the first position within the loan structure. As such, KingSett is the principal financial stakeholder in both the Heritage Loan and Countryside Loan.

3. The Receiver now brings a motion seeking an order (the “**Sale Process Order**”), among other things:

- (a) approving a proposed sale process (the “**Sale Process**”) for certain of the Real Property, which includes approving the listing agreement (the “**Listing Agreement**”) between the Receiver, Jones Lang Lasalle Real Estate Services, Inc. (“**JLL**”) and RE/MAX Excel Realty Limited (“**Remax**” and together with JLL, the “**Listing Agents**”);

- (b) sealing Confidential Appendix “1” until the earlier of: (i) the closing of all transactions related to the Real Property following the culmination of the Sale Process; and (ii) further Order of the Court; and
- (c) approving the First Report of the Receiver dated September 30, 2024 and the Supplement to the First Report of the Receiver dated October 2, 2024 (together, the “**First Report**”) and the activities and conduct of the Receiver described therein.

4. The Receiver submits that the proposed Sale Process Order is the next logical step in these receivership proceedings and is in the best interest of the Debtors’ stakeholders.

5. If granted, the relief proposed under the Sale Process Order will allow for a flexible, efficient and competitive process for canvassing the market for potential buyers of the relevant Real Property. The proposed relief is supported by KingSett and First Source.

PART II: FACTS

6. The facts underlying this motion are more fully set out in the First Report.¹ All capitalized terms used but not defined herein have the meanings ascribed to them in the First Report.

A. Background and Overview

7. Each of the Debtors is incorporated pursuant to the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended, with a registered head office located at 40 Vogell Road, Suite 51, Richmond Hill, Ontario, L4B 3N6. The directors of both the Debtors are Ali Muhammad Memon and Muhammad Ikhlq Memon.²

8. Each of Maplequest and Digram is a real estate development company that owns certain Real Property on which it intended to develop a residential project. The Real Properties are all located in the Greater Toronto Area.³ With the exception of the Phyllis Real Property, construction

¹ First Report of the Receiver dated September 30, 2024 [First Report]; Supplement to the First Report of the Receiver dated October 2, 2024 [Supplement].

² *Ibid* at s. 2.0, para 2.

³ *Ibid* at s. 2.0, para 3.

has not yet commenced on any of the Real Properties and there are no pre-sale agreements that have been signed with any homebuyers.⁴

9. As previously noted, KingSett and First Source are the Debtors' senior secured creditors. (with KingSett being the principal financial stakeholder in both the Heritage Loan and Countryside Loan).⁵

10. In connection with the Heritage Loan, KingSett was granted certain security including, among other things:

- (a) a first ranking mortgage charge against the Heritage Real Property;
- (b) a first ranking mortgage charge over the various Real Properties owned by Digram, being the Dotchson Real Property, the Portman Real Property, the Breckonwood Real Property and the Phyllis Real Property, which were each given as collateral security interest; and
- (c) a second ranking mortgage charge (behind First Source) against the Countryside Real Property.⁶

11. In connection with the Countryside Loan, First Source was granted certain security including, among other things, a first ranking mortgage charge against the Countryside Real Property.⁷

12. In addition to the Applicants, there are certain other secured creditors of the Debtors, including, among others, certain construction lien claimants and other parties with registered security against certain property of the Debtors under the *Personal Property Security Act*, R.S.O. 1990, c. P.10 (Ontario).⁸ Maplequest and Digram owe approximately \$215,709.75 and \$57,217.54, respectively, in respect of unremitted source deductions to the Canada Revenue Agency (the

⁴ *Ibid* at s. 2.0, para 5.

⁵ *Ibid* at s. 1.0, para 2.

⁶ *Ibid* at s. 3.1, para 3.

⁷ *Ibid* at s. 3.1, para 4.

⁸ *Ibid* at s. 3.1, para 5.

“CRA”). The CRA is asserting a priority trust claim in respect of certain of the aforementioned amounts, which the Receiver has not yet investigated or formed a view on.⁹

13. According to the Debtors’ books and records, as of the date of the Receivership Order, their unsecured and other obligations totaled approximately: (i) \$2.1 million for Maplequest; and (ii) \$2.3 million for Diagram, which amounts in each case were primarily owing to construction trade vendors and professional advisors.¹⁰

14. The principal purpose of these receivership proceedings is to conduct a Court-supervised sale process for the Real Property within a stabilized environment for the benefit of the Debtors’ stakeholders.¹¹

B. The Sale Process

15. Shortly after the commencement of these receivership proceedings, the Receiver solicited proposals (the “RFP”) from two national real estate brokerages to act as the listing agent to market and sell the Real Property, with the exception of the Phyllis Real Property.¹²

16. In consultation with KingSett, the Receiver selected JLL as the primary broker to market the Development Lands for sale. In addition, in consultation with KingSett and JLL, the Receiver selected Remax to co-list the Development Lands for sale, due to its expertise in the local market and familiarity with local developers.

17. In light of the fact that the marketing process for the Individual Lots will not require the same level of sophistication as the Development Lands, the Receiver, in consultation with KingSett, selected only Remax to list the Individual Lots.¹³

18. Subject to Court approval of the Listing Agreement, the Receiver has engaged JLL and Remax to conduct the Sale Process.¹⁴

⁹ *Ibid* at s. 3.2, para 1.

¹⁰ *Ibid* at s. 3.3, para 1.

¹¹ *Ibid* at s. 1, para 3.

¹² *Ibid* at s. 4.1, para 1.

¹³ *Ibid* at s. 4.1, para 5.

¹⁴ *Ibid* at s. 4.1, para 7.

19. The terms of the Sale Process are consistent with other sale processes approved by the Court in real estate receiverships.¹⁵ The key terms are:

- (a) the Receiver and the Listing Agents will prepare marketing materials including, among other things, a teaser and confidential information memorandum (collectively, the “**Marketing Materials**”);
- (b) for the Individual Lots, the Receiver and Remax will prepare marketing materials to be posted on the Multiple Listing Services;
- (c) potential bidders will be required to execute and return a Confidentiality Agreement before receiving any confidential Marketing Materials and access to a virtual data room (the “**VDR**”);
- (d) the Real Property will be marketed on an “*as is, where is*” basis, with standard representations and warranties for a receivership real property sale transaction;
- (e) the Listing Agents and the Receiver will facilitate diligence by interested parties;
- (f) prospective purchasers will be asked to submit offers in the form of a purchase and sale agreement (the “**Form of PSA**”) made available by the Receiver in the VDR with any changes to the Form of PSA blacklined;
- (g) the Receiver will select successful bid(s), having regard to, among other things: (i) total consideration (cash and assumed liabilities); (ii) form of consideration being offered; (iii) any third-party approvals required; (iv) any conditions and the time required to satisfy or waive same; and (v) such other factors affecting the speed and certainty of closing and the value of the offers as the Receiver considers relevant;
- (h) the Receiver, after consultation with the applicable mortgagees, will have the right to reject any and all offers and shall not be under any obligation to accept any offer, including the highest and best offers;

¹⁵ *Ibid* at s. 4.3, para 1.

- (i) any mortgagee of a Real Property retains the right to credit bid the debt owing to it in respect of a Real Property at the conclusion of the Sale Process if there are no acceptable offers that the Receiver is prepared to bring forward for Court approval, following consultation with the applicable mortgagees; and
- (j) completion of any transaction contemplated by the Sale Process will be subject to Court approval, upon a further motion by the Receiver in these receivership proceedings.¹⁶

C. The Receiver's Activities

20. Since its appointment, the Receiver, with the assistance of its counsel, Bennett Jones LLP, has diligently advanced these receivership proceedings, including by, *inter alia*:

- (a) corresponding extensively with KingSett and First Source regarding, among other things, the status of the Real Properties, the proposed realization plan with respect to each of the Real Properties and the Sale Process;
- (b) corresponding with representatives of the Debtors, to obtain information concerning the Real Properties and the business of the Debtors;
- (c) reviewing information provided by the Debtors, KingSett and First Source regarding each of the Real Properties, including appraisals, development budgets, site plans and other consulting reports;
- (d) corresponding with the Debtors' insurance broker to confirm coverage;
- (e) corresponding with various vendors regarding amounts owing by the Debtors;
- (f) corresponding with CRA regarding the Debtors' HST and source deduction accounts;
- (g) arranging for the maintenance, security and general upkeep of the Real Properties;

¹⁶ *Ibid* at s. 4.2, para 2.

- (h) conducting the RFP and corresponding with the Listing Agents in connection with their proposals, the Sale Process and the Listing Agreement;
- (i) preparing and sending to creditors and to the Official Receiver the statutory notices required pursuant to subsections 245(1) and 246(1) of the BIA; and
- (j) preparing the First Report.¹⁷

21. Pursuant to the proposed Sale Process Order, the Receiver is seeking approval of the First Report as well as its activities and conduct as described therein.¹⁸

PART III: ISSUES

22. The issues to be considered on this motion are whether this Court should:

- (a) approve the Sale Process, including the Listing Agreement;
- (b) seal Confidential Appendix “1”; and
- (c) approve the First Report and the activities and conduct of the Receiver described therein.

PART IV: LAW AND ANALYSIS

A. The Sale Process

23. Subsection 243(1) of the BIA empowers the Court to confer broad powers to receivers in respect of their exercise of control over a debtor’s property:¹⁹

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

¹⁷ *Ibid* at s. 6.0, para 1.

¹⁸ *Ibid* at s. 1.1, para 1.

¹⁹ [Bankruptcy and Insolvency Act](#), RSC 1985, c B-3 s. 243(1) [BIA].

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

24. The Receivership Order was granted pursuant to Section 243(1) of the BIA and Section 101 of the CJA, and explicitly authorizes and empowers the Receiver to market any and all of the Property, which includes advertising and soliciting offers in respect of the Real Property and negotiating such terms and conditions as the Receiver in its discretion may deem appropriate.²⁰ In accordance with the Receivership Order, the Receiver, in collaboration with the Listing Agents and KingSett, has developed the Sale Process to solicit offers from prospective purchasers with a view to executing one or more transactions that maximize value for all of the Debtors' stakeholders, including KingSett and First Source.²¹

25. While the decision to approve a sale process is distinct and separate from the decision to approve the ultimate sale, this Court has held that "the reasonableness and adequacy of any sales process proposed by a court-appointed receiver must be assessed in light of the factors which a court will take into account when considering the approval of a proposed sale."²²

26. In *Royal Bank v. Soundair*, the Ontario Court of Appeal held that a court was to consider the following factors when deciding whether to approve the sale of property subject to a receivership:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;

²⁰First Report, *supra* note 1 at s. 1, para 1.

²¹*Ibid* at s. 1, para 3.

²²*CCM Master Qualified Fund v blutip Power Technologies, 2012 ONSC 1750* at para 6 [CCM] citing *Royal Bank of Canada v Soundair, 1991 CanLII 2727 (ONCA)* at para 16 [*Soundair*].

- (b) the efficacy and the integrity of the process by which offers are obtained;
- (c) whether there has been unfairness in the working out of the process; and
- (d) the interests of all parties.²³

27. In *CCM Master Qualified Fund Ltd v. blutip Power Technologies Ltd*, the Court held that the factors identified in *Soundair* should also be applied when determining whether to approve a proposed sale process.²⁴ Specifically, when reviewing a sales and marketing process proposed by a receiver, the Court is to assess:

- (a) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver;
- (b) the fairness, transparency and integrity of the proposed process; and
- (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.²⁵

28. When reviewing a sales process, the court generally defers to the business expertise of the receiver and does not intervene or “second-guess” the receiver’s recommendations.²⁶ It is only in “exceptional” circumstances that a court will intervene and proceed contrary to the recommendation of the receiver.²⁷

29. Each of the factors outlined in *Soundair* and *CCM* support the approval of the Sale Process:

- (a) *Whether the Sale Process is commercially efficient* - The Sale Process is proposed to be overseen and conducted by the Receiver and the Listing Agents, who are reputable brokers, have experience selling similar properties in the Greater Toronto

²³ *Soundair*, *Ibid* at para 16.

²⁴ *CCM*, *supra* note 22 at para 6.

²⁵ *Ibid* at para 6.

²⁶ *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857 at paras. 43-45 citing *Marchant Realty Partners Inc. v. 2407533 Ontario Inc.*, 2021 ONCA 375 at para 15.

²⁷ *Ibid*.

Area, have experience with the local market and have the teams with the requisite expertise. The Listing Agents' commission rates are consistent with market rates.²⁸

- (b) *Whether the Sale Process is fair and transparent* – The proposed Sale Process will provide for a fair, open and transparent process intended to market the relevant Real Property broadly on an orderly basis.²⁹ Further, the Sale Process encourages all potential bidders to submit their bid(s) in accordance with the Form of PSA made available by the Receiver in the VDR, thereby establishing a standard baseline.³⁰ Any successful bid and the related transaction will be subject to Court approval.³¹ The proposed Sale Process is consistent with other sale processes approved by the Court for real property.³²
- (c) *Whether the Sale Process optimizes the chances of securing the best possible price* – The duration of the proposed Sale Process is sufficient to allow interested parties to perform diligence and to submit an offer on or before the offer deadline.³³ The Receiver, if it determines, in its sole discretion, that it will assist to maximize recoveries, will have the right to: (i) waive strict compliance with the terms of the Sale Process; and (ii) modify and adopt such other procedures that will better promote the sale of the Debtors' respective Property, including the Real Properties. Further, the Receiver may invite bidders to participate in as many rounds of bidding as is required to maximize the consideration and minimize closing risk and may, if it deems advisable, also seek to clarify terms of the offers submitted and to negotiate such terms.³⁴

²⁸ *First Report*, *supra* note 1 at s. 4.1, para 6.

²⁹ *Ibid* at s. 4.2, para 1.

³⁰ *Ibid* at s. 4.2, para 1.

³¹ *Ibid* at s. 4.3, para 1.

³² *Ibid* at s. 4.3, para 1. See for example [*Kingsett Mortgage Corporation And Dorr Capital Corporation v Stateview Homes \(Minu Towns\) Inc., Stateview Homes \(Nao Towns\) Inc., Stateview Homes \(On The Mark\) Inc., Tlsfd Taurasi Holdings Corp. And Stateview Homes \(High Crown Estates\) Inc.*](#) (June 5, 2023), Toronto, CV-23-00698576-00CL; [*Dorr Capital Corporation v Highview Buildings Corp. Inc.*](#) (June 5, 2023), Toronto, CV-23-00698632-00CL and [*NHE Capital Corp. and 111 Sherwood Investments Inc.*](#) (June 3, 2024), Toronto, CV-23-00699908-00CL.

³³ *First Report*, *supra* note 1 at s. 4.3, para 1.

³⁴ *Ibid* at s. 4.3, para 1.

B. Sealing of Confidential Appendix “1”

30. The Receiver is seeking an order from this Court sealing Confidential Appendix “1” to the First Report which contains confidential minimum bid information pertaining to the Sale Process.

31. Pursuant to the CJA, the Court has the discretion to order that any document filed in a civil proceeding be treated as “confidential”, sealed and not form part of the public record.³⁵

32. In *Siera Club of Canada v. Canada (Minister of Finance)*, commonly applied in the insolvency context, the Supreme Court of Canada held that courts should exercise their discretion to grant sealing orders where:

- (a) the order is necessary to prevent a serious risk to an important interest, including a commercial interest, because reasonable alternative measures will not prevent the risk; and
- (b) the salutary effects of the order outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.³⁶

33. More recently, in *Sherman Estate v. Donovan*, the Supreme Court of Canada reiterated that it is a fundamental element of Canadian democracy that court proceedings are open to the public. The Court noted that a person asking the court to exercise discretion in a way that limits the open court presumption must establish the following:

- (a) court openness poses a serious risk to an important public interest (which captures a broad array of public objectives, including commercial interests);
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent this risk; and

³⁵ *Courts of Justice Act, R.S.O. 1990, c C. 43*, s. 137(2).

³⁶ *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para. 53.

- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.³⁷

34. With respect to the first consideration in *Sherman Estate*, courts have acknowledged that there is a public interest in the “general commercial interest of preserving confidential information” and in maximizing recoveries in an insolvency, each of which goes beyond the individual’s case.³⁸ Courts have recognized that the disclosure of highly sensitive commercial information, including purchase prices, can be “harmful to stakeholders by undermining the integrity of the sale process”.³⁹

35. As noted, an important public interest includes commercial interest and the proposed sealing language has been narrowly tailored to only redact the Minimum Bid Amounts in respect of certain Real Property. The Listing Agreement with redactions has been made publicly available.⁴⁰ The sealing relief is sought to avoid a risk of impairing realization and marketability by disclosing commercially sensitive information regarding potential value of certain of the Real Property and is appropriately limited in time and scope.⁴¹

36. The salutary effects of sealing Confidential Appendix “1” outweigh any deleterious effects and thus, the Receiver is of the view that it ought to be sealed.⁴²

C. The Receiver’s Activities

37. This Court has inherent jurisdiction to approve a Court-appointed receiver’s reports and present and past activities.⁴³ This Court frequently grants such approval in the context of receivership proceedings,⁴⁴ recognizing that it:

³⁷ *Sherman Estate v. Donovan*, 2021 SCC 25 at paras. 30, 38, 41.

³⁸ *Ibid* at para. 41; *Danier Leather Inc., Re*, 2016 ONSC 1044 at para. 84.

³⁹ *Elleway Acquisitions Limited v. 4358376 Canada Inc.*, 2013 ONSC 7009 at para 48.

⁴⁰ *Supplement*, *supra* note 1, at s 2.0, para 2.

⁴¹ *Ibid* at s. 2.0, para 5.

⁴² *Ibid* at s. 2.0, para 6.

⁴³ *BIA*, *supra* note 19, s 183(1); *Re Confectionately Yours Inc* (2002), OJ No. 3569 at para 36 citing F. Bennett, *Bennett on Receiverships*, 2nd ed. (Scarborough: Carswell, 1999) at 459-460.

⁴⁴ *Truist bank v Kew Media Group Inc. and Kew Media International (Canada) Inc.* (May 25, 2023), Toronto, CV 20-00637081-00CL (Fee Approval and Discharge Order) (ONSC) at para 1; *Bank of Montreal v 2243080 Ontario Inc. and 2496287 Ontario Inc.* (April 29, 2024), Toronto, CV-23-00698764-00CL (Discharge Order) at para 3; *Farm Credit Canada v Aqua Greens Inc.* (March 22, 2023), Toronto, CV-22-00676530-00CL (Order (Approval of Activities and Fees and Discharge)) (ONSC) at para 2; *BCIMC Construction Funds Corporation and Otéra Capital Inc. v 33 Yorkville Residences Inc. and 33 York Yorkville Residences Limited Partnership* (March 22, 2023), Toronto, CV-20-00637297-00CL (Approval and Discharge Order) (ONSC) at paras 6 and 7.

- (a) brings the receiver's activities before the Court;
- (b) enables the Court to satisfy itself that the receiver's activities have been conducted prudently and diligently;
- (c) allows the concerns of stakeholders to be considered and addressed;
- (d) provides stakeholders with an opportunity to bring to the fore any concerns they may have regarding the receiver's diligence and prudence;
- (e) provides protection for the receiver not otherwise provided by statute;
- (f) permits the receiver to move forward with the next steps in the proceedings; and
- (g) protects creditors from the delay and expense that would be caused by:
 - (i) the re-litigation of the steps taken in the proceedings to date; and
 - (ii) potential indemnity claims by the receiver.⁴⁵

38. Given the aforementioned benefits of approving a Court-appointed receiver's activities and the context of its particular mandate,⁴⁶ the Receiver submits that it is appropriate for this Court to exercise its jurisdiction to approve the First Report as well as its activities and conduct as described therein.

PART V: RELIEF REQUESTED

39. The Receiver submits that the relief sought on the within motion is appropriate in the circumstances and consistent with prior orders of this Court, and respectfully requests that the proposed form of Sale Process Order be granted.

⁴⁵ [Re Hanfeng Evergreen Inc., 2017 ONSC 7161](#) at paras 15-17, 21; [Triple-I Capital Partners Limited v 12411300 Canada Inc., 2023 ONSC 3400](#) at paras 65-66 [*Triple-I*].

⁴⁶ [Triple-I](#), *ibid* at para 66.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 2ND DAY OF OCTOBER, 2024

Bennett Jones LLP

BENNETT JONES LLP

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. [CCM Master Qualified Fund v blutip Power Technologies, 2012 ONSC 1750](#)
2. [Danier Leather Inc., Re, 2016 ONSC 1044](#)
3. [Elleway Acquisitions Limited v. 4358376 Canada Inc., 2013 ONSC 7009](#)
4. [Marchant Realty Partners Inc. v. 2407533 Ontario Inc., 2021 ONCA 375](#)
5. [Ontario Securities Commission v. Bridging Finance Inc., 2022 ONSC 1857](#)
6. [Re Confectionately Yours Inc \(2002\), OJ No. 3569](#)
7. [Re Hanfeng Evergreen Inc, 2017 ONSC 7161](#)
8. [Royal Bank of Canada v Soundair, 1991 CanLII 2727 \(ONCA\)](#)
9. [Sherman Estate v. Donovan, 2021 SCC 25](#)
10. [Sierra Club of Canada v. Canada \(Minister of Finance\), 2002 SCC 41](#)
11. [Triple-I Capital Partners Limited v 12411300 Canada Inc, 2023 ONSC 3400](#)

Other Materials

1. [Bank of Montreal v 2243080 Ontario Inc. and 2496287 Ontario Inc. \(April 29, 2024\), Toronto, CV-23-00698764-00CL \(Discharge Order\) \(ONSC\)](#)
2. [BCIMC Construction Funds Corporation and Otéra Capital Inc. v 33 Yorkville Residences Inc. and 33 York Yorkville Residences Limited Partnership \(March 22, 2023\), Toronto, CV-20-00637297-00CL \(Approval and Discharge Order\) \(ONSC\)](#)
3. [Dorr Capital Corporation v Highview Buildings Corp. Inc. \(June 5, 2023\), Toronto, CV-23-00698632-00CL \(Sale Process Approval Order\) \(ONSC\)](#)
4. [Farm Credit Canada v Aqua Greens Inc. \(March 22, 2023\), Toronto, CV-22-00676530-00CL \(Order \(Approval of Activities and Fees and Discharge\)\) \(ONSC\)](#)

5. [*Kingsett Mortgage Corporation And Dorr Capital Corporation v Stateview Homes \(Minu Towns\) Inc., Stateview Homes \(Nao Towns\) Inc., Stateview Homes \(On The Mark\) Inc., Tlsfd Taurasi Holdings Corp. And Stateview Homes \(High Crown Estates\) Inc. \(June 5, 2023\), Toronto, CV-23-00698576-00CL \(Sale Process Approval Order\) \(ONSC\)*](#)
6. [*NHE Capital Corp. and 111 Sherwood Investments Inc. \(June 3, 2024\), Toronto, CV-23-00699908-00CL*](#)
7. [*Truist bank v Kew Media Group Inc. and Kew Media International \(Canada\) Inc. \(May 25, 2023\), Toronto, CV 20-00637081-00CL \(Fee Approval and Discharge Order\) \(ONSC\)*](#)

SCHEDULE B – STATUTES AND REGULATIONS RELIED ON

Bankruptcy and Insolvency Act, R.S.C. 1985, c C-36

Section 183

Courts vested with jurisdiction

(1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

- (a) in the Province of Ontario, the Superior Court of Justice;
- (b) [Repealed, 2001, c. 4, s. 33]
- (c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;
- (d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;
- (e) in the Province of Prince Edward Island, the Supreme Court of the Province;
- (f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;
- (g) in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and
- (h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

Superior Court jurisdiction in the Province of Quebec

(1.1) In the Province of Quebec, the Superior Court is invested with the jurisdiction that will enable it to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during its term, as it is now, or may be hereafter, held, and in vacation and in chambers.

Courts of appeal — common law provinces

(2) Subject to subsection (2.1), the courts of appeal throughout Canada, within their respective jurisdictions, are invested with power and jurisdiction at law and in equity, according to their ordinary procedures, except as varied by this Act or the General Rules, to hear and determine appeals from the courts vested with original jurisdiction under this Act.

Court of Appeal of the Province of Quebec

(2.1) In the Province of Quebec, the Court of Appeal, within its jurisdiction, is invested with power and jurisdiction, according to its ordinary procedures, except as varied by this Act or the General Rules, to hear and determine appeals from the Superior Court.

Supreme Court of Canada

(3) The Supreme Court of Canada has jurisdiction to hear and to decide according to its ordinary procedure any appeal so permitted and to award costs.

Section 243

Court may appoint receiver

(1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

Definition of receiver

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
 - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
 - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of receiver — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives

the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of disbursements

(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

Courts of Justice Act, R.S.O. 1990, c. C.43

Section 137

Documents public

(1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record. Court lists public.

Court lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see.

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**KINGSETT MORTGAGE CORPORATION
AND FIRST SOURCE FINANCIAL
MANAGEMENT INC.**

and **MAPLEQUEST VENTURES INC. AND DIGRAM DEVELOPMENTS
CALEDON INC.**

Applicants

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceedings commenced in Toronto

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