

Court File No.: CV-24-00716511-00CL

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

BETWEEN:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

**MAPLEVIEW DEVELOPMENTS LTD., PACE MAPLEVIEW LTD. and 2552741
ONTARIO 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 APPLICANT
(Appointment of Receiver)**

March 18, 2024

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FACTUM OF THE APPLICANT

PART I: OVERVIEW

1. KingSett Mortgage Corporation (“**KingSett**” or the “**Applicant**”) seeks an order (the “**Receivership Order**”) pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-33, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43 (as amended, the “**CJA**”).
2. The proposed Receivership Order, among other things:
 - (a) appoints KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacities, the “**Receiver**”) without security of the real property legally described in Schedule “A” to the proposed Receivership Order (collectively the “**Real Property**”) and all present and future assets, undertakings and personal property, with the exception of the Deposit Monies (as defined below), located at, related to, used in connection with or arising from or out of the Real Property or which is necessary to the use and operation of the Real Property, including all of the proceeds therefrom (collectively with the Real Property, the “**Property**”);
 - (b) grants a first-ranking super-priority charge (the “**Receiver’s Charge**”) over the Property in favour of the Receiver and the Receiver’s counsel to secure their fees and disbursements in respect of these proceedings (the “**Receivership Proceedings**”); and
 - (c) granting a second-ranking super-priority charge (the “**Receiver’s Borrowings Charge**”) over the Property for the purpose of funding the exercise of the powers and duties conferred upon the Receiver pursuant to the proposed Receivership Order.

3. Mapleview Developments Ltd. (“**Mapleview**”), Pace Mapleview Ltd. (“**Pace**”) and 2552741 Ontario Inc. (“**255 Ontario**”, and together with Mapleview and Pace, the “**Debtors**”) are privately held real estate development companies. Mapleview is the registered owner of the Real Property for the mutual benefit of Pace and 255 Ontario.

4. The Real Property is located at 700-780 Mapleview Drive East, Barrie, Ontario (the “**Lands**”) and is a residential real estate development being conducted through multiple phases (together, the “**Projects**” and each a “**Project**”) on 50 developable acres of land.

5. In connection with the Debtors’ acquisition and development of the Real Property, KingSett extended certain Loan Facilities (as defined below). As of February 1, 2024, there was in aggregate \$47,099,842.63 outstanding (the “**Indebtedness**”) under the Loan Facilities with interest, fees and costs continuing to accrue.

6. In response to the Debtors’ failure to repay the Indebtedness on the maturity date and the other Listed Events of Default (as defined and enumerated below), the Applicant issued demands for the repayment of the Indebtedness to the Applicant and delivered notices of intention to enforce security in accordance with section 244 of the BIA (each a “**NITES**”). The ten-day period afforded to the Debtors to repay the Indebtedness has elapsed.

7. The Applicant has lost all confidence in the Debtors’ management to protect the Property by which the Indebtedness is secured and continue to satisfy the Debtors’ significant obligations, specifically due to their significant debt load and dire liquidity issues. The appointment of the proposed Receiver will provide the stability, structure and supervision required to preserve the value of the Property, including the Projects, and provide the most effective and appropriate method of effecting an orderly, efficient and transparent sale of the Property, with a view to maximizing recoveries for, and distributing funds to, the Debtors’ stakeholders.

8. The Loan and Security Documents (as defined below) confer upon the Applicant a contractual right to the appointment of a receiver upon the occurrence of a default or event of default, as applicable. In furtherance of its contractual rights, the Applicant has commenced these Receivership Proceedings in order to protect its investment and preserve and maximize the value of the Property.

9. The proposed form of Receivership Order is appropriate in the circumstances. The appointment of the Receiver pursuant to the proposed Receivership Order is equally appropriate and is just and convenient in the circumstances.

PART II: FACTS

10. The facts underlying this application are more fully set out in the affidavit of Daniel Pollack sworn March 14, 2024 (the “**Pollack Affidavit**”).¹ All capitalized terms used but not defined herein have the meanings ascribed to them in the Pollack Affidavit.

11. All monetary amounts referred to herein are in Canadian currency unless otherwise stated.

A. Parties and the Projects

12. KingSett is incorporated pursuant to the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended, and is headquartered in Toronto, Ontario. KingSett is a subsidiary of KingSett Capital Inc., a private equity real estate investment firm with approximately \$19.5 billion in assets under management.²

13. Each of the Debtors is a privately held company incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended (“**OBCA**”), for the purposes of developing and holding the Lands. The registered head offices of the Debtors are as follows:

¹ Affidavit of Daniel Pollack sworn March 14, 2024 (“the **Pollack Affidavit**”), Applicant’s Application Record at Tab 4 (the “**Application Record**”).

² *Ibid* at para 12, Application Record at Tab 4.

- (a) Mapleview - 30 Wertheim Court, Building A3, Richmond Hill, Ontario, Canada, L4B 1B9;
- (b) Pace – 1370 Don Mills Road Suite 202, Building A3, Toronto, Ontario, Canada, M3B 3N7; and
- (c) 255 Ontario – 412 Albert Street, Suite 100, Waterloo, Ontario, Canada, N2L 3V3.³

14. A previously discussed, the Debtors were in the process of constructing various Projects on the Lands.⁴ Such Projects are being carried out in phases, which, as set out in the Pollack Affidavit, contemplate different numbers and types of units, are at varied stages of completion and have had different percentages of transactions close.

B. Indebtedness Owing to the Applicant and Related Security

15. KingSett entered into an amended and restated commitment letter dated September 23, 2022 with, among others, Mapleview (as may be further amended and restated from time to time, the “**Commitment Letter**”). The Commitment Letter expressly superseded three (3) commitment letters dated June 26, 2019, rendering them of no further force or effect.⁵

16. Pursuant to the terms of the Commitment Letter, KingSett agreed to extend the following loan facilities to Mapleview (collectively, the “**Loan Facilities**”), with an aggregate maximum principal amount of \$105,762,112:

- (a) a 1st Mortgage, Non-Revolver, Demand, Land Development Loan with a maximum principal amount of \$43,719,480;

³ *Ibid* at para 14, Application Record at Tab 4.

⁴ *Ibid* at paras 5-6, Application Record at Tab 4.

⁵ *Ibid* at paras 5-6, Application Record at Tab 4.

- (b) a 1st Mortgage, Non-Revolver, Demand, Construction Loan with a maximum principal amount of \$15,261,465;
- (c) a 1st Mortgage, Non-Revolver, Demand, Land Development Loan with a maximum principal amount of \$15,000,000;
- (d) a 1st Mortgage, cash in lieu of Letter(s) of Credit with a maximum principal amount of \$5,286,418;
- (e) a 1st Mortgage, Non-Revolver, Demand, Land Development Loan with a maximum principal amount of \$18,062,627;
- (f) a 1st Mortgage, Non-Revolver, Demand, Land Development Loan with a maximum principal amount of \$5,776,707; and
- (g) a 1st Mortgage, cash in lieu of Letter(s) of Credit with a maximum principal amount of \$2,655,415.⁶

15. The payment and performance of all of the obligations under the Loan Facilities have been unconditionally, absolutely and irrevocably guaranteed by Dino Sciavilla and Yvonne Sciavilla (together, the “**Guarantors**”) pursuant to a Guarantee dated November 30, 2022 (the “**Guarantee**”).⁷

16. As general and continuing security for the payment and performance of the obligations under the Commitment Letters, KingSett was granted various security by the Debtors (collectively, the “**Security**”, and together with the Commitment Letter and Guarantees, the “**Loan and Security Documents**”), including:

⁶ *Ibid* at para 16, Application Record at Tab 4.

⁷ *Ibid* at paras 20, Application Record at Tab 4.

- (a) a first ranking mortgage/charge over the Real Property registered in the amount of \$132,500,000 (the “**Mortgage**”);
- (b) a General Security Agreement executed by the Debtor dated November 30, 2022 (the “**GSA**”);
- (c) a General Assignment of Leases and Rents dated November 30, 2022;
- (d) a General Assignment of Material Contracts dated November 30, 2022;
- (e) a Specific Assignment of Construction Management Agreement with an acknowledgement of Pace Group Investments Inc. dated November 30, 2022;
- (f) a General Assignment of Agreements of Purchase and Sale and Deposits dated November 30, 2022;
- (g) an Assignment of Insurance dated November 30, 2022; and
- (h) a Direction, Acknowledgement and Security Agreement dated November 30, 2022.⁸

17. KingSett’s security interest in and to all of the Debtors’ present and after acquired personal property pertaining to the Lands, and the proceeds thereof, granted pursuant to the GSA, was registered under the *Personal Property Security Act*, R.S.O. 1990, c. P.10.⁹

⁸ *Ibid* at para 21, Application Record at Tab 4.

⁹ *Ibid* at para 24, Application Record at Tab 4.

C. The Debtors' Other Creditors

18. In addition to the Security granted to the Applicant, the Debtors have granted security interests to other creditors - Vector Financial Services Limited ("**Vector**"), Westmount Guarantee Services Inc. ("**Westmount**"), and the MarshallZehr Group Inc. ("**MarshallZehr**").¹⁰ There are also a number of parties that have registered construction liens against the Real Property.¹¹

1. Vector

19. Vector holds a first-priority mortgage over the property at 750 Mapleview Drive East, Barrie, Ontario, being PIN 58091-4802 (the "**Vector Senior Secured Property**"), in the amount of \$2,885,000 (the "**Vector Charge**").¹² In accordance with a priority and postponement agreement between Mapleview, KingSett and Vector, dated December 8, 2022 (the "**Vector Priority Agreement**"), the Security is postponed and subordinated in favor of the Vector Charge.¹³

20. Due to the Vector Priority Agreement, KingSett is currently not seeking to enforce on its security as it relates to the Vector Senior Secured Property, thus the Vector Senior Secured Property is not included in the "Real Property".¹⁴

2. Westmount

21. Westmount made available to Mapleview a surety facility in the amount of \$5,000,000, pursuant to which Westmount was granted certain security (the "**Westmount Security**").¹⁵

22. Pursuant to a Subordination and Standstill Agreement dated November 30, 2022 by and between Westmount, the Guarantors and KingSett, the Westmount Security is subordinated and

¹⁰ *Ibid* at paras 25-33, Application Record at Tab 4.

¹¹ *Ibid* at para 34, Application Record at Tab 4.

¹² *Ibid* at para 27, Application Record at Tab 4.

¹³ *Ibid* at para 27, Application Record at Tab 4.

¹⁴ *Ibid* at para 29, Application Record at Tab 4.

¹⁵ *Ibid* at para 30, Application Record at Tab 4.

postponed to the Security, save and except for all deposit monies received from purchasers of town homes being developed on the Real Property (the “**Deposit Monies**”).¹⁶

23. The proposed Receivership Order explicitly excludes the Deposit Monies from the definition of “Property”.¹⁷

3. MarshallZehr

24. MarshallZehr granted certain loans and received certain security from the Debtors (the “**MarshallZehr Security**”).¹⁸ Pursuant to three separate Subordination and Standstill Agreements dated November 30, 2022, the MarshallZehr Security is subordinated and postponed in favor of the Security.¹⁹

4. Construction Lien Claimants

25. Ten construction lien claimants have registered against the Lands (the “**Construction Liens**” and each a “**Construction Lien**”).²⁰ The most sizable Construction Lien is held by Con-Drain Company (1983) Limited in the amount of \$4,133,280.68.²¹

D. The Debtors’ Defaults

26. Certain events of default (the “**Listed Events of Default**”) have occurred and are continuing under the Loan and Security Documents (as defined below).²² Such Listed Events of Default, include, among others:

¹⁶ *Ibid* at para 31, Application Record at Tab 4.

¹⁷ *Ibid* at para 32, Application Record at Tab 4.

¹⁸ *Ibid* at para 33, Application Record at Tab 4.

¹⁹ *Ibid* at para 33, Application Record at Tab 4.

²⁰ *Ibid* at para 34, Application Record at Tab 4.

²¹ *Ibid* at para 34, Application Record at Tab 4.

²² *Ibid* at para 36, Application Record at Tab 4.

- (a) a failure to pay the Indebtedness in full by the Maturity Date (as defined in the Commitment Letter); and
- (b) a failure to pay monthly payments of interest in accordance with the Commitment and the Mortgage.²³

27. In addition to the Listed Events of Default, KingSett has recently been made aware of certain additional events of default, including, as set out in paragraph C.4.25, the registration of the Construction Liens.

PART III: ISSUES

28. The issues to be considered on this application are whether:

- (a) this Court has jurisdiction to appoint the Receiver;
- (b) it is just and convenient to appoint the Receiver; and
- (c) the terms of the proposed Receivership Order are appropriate in the circumstances.

PART IV: LAW AND ARGUMENT

A. This Court has the Jurisdiction to Appoint the Receiver

29. Subsection 243(1) of the BIA and section 101 of the CJA vest this Court with jurisdiction to appoint a receiver where it is “just or convenient to do so”.²⁴ In the case of the BIA, subsections 243(1)-(1.1) provides as follows:

²³ *Ibid* at para 36, Application Record at Tab 4.

²⁴ [Bankruptcy and Insolvency Act, RSC 1985, c. B-3 s 243\(1\) \[BIA\]](#); [Courts of Justice Act, RSO 1990, c. C. 43 s 101 \[CJA\]](#); [Meridian v Okje Cho & Family Enterprise Ltd, 2021 ONSC 3755](#) at para 19 [*Meridian*]; [Elleway Acquisitions Ltd v Cruise Professionals Ltd, 2013 ONSC 6866](#) at paras 24-25 [*Elleway*]; [Bank of Montreal v Sherco Properties Inc, 2013 ONSC 7023](#) at paras 38-40 [*Sherco*]; [Bank of Montreal v Carnival National Leasing Ltd, 2011 ONSC 1007](#) at para 23 [*Carnival*]; [Foremost Financial Corporation et al v Alai Developments Inc et al \(July 23, 2023\), Toronto, CV-23-00702528-00CL \(Endorsement\) \(ONSC\)](#) at para 27 [*Foremost*].

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:

- (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.²⁵

30. As indicated above, the Applicant is the Debtors' senior secured creditor, holding an aggregate claim against the Debtors in excess of \$47,099,842.63.²⁶ Additionally, the Applicant holds perfected security interests pursuant to its real property registrations and registrations under the *Personal Property Security Act*, R.S.O. 1990, c. P.10.²⁷ As such, the Applicant is permitted to bring the attached application to appoint the Receiver under subsection 243(1) of the BIA. Such appointment is not precluded by subsection 243(1.1) of the BIA as the Applicant delivered the NITES in accordance with section 244 of the BIA and the ten-day notice period prescribed thereunder has long since expired.²⁸

²⁵ *BIA*, *supra* note 24 s 243(1), s 243(1.1). See also, *CJA*, *supra* note 24 s 101(1), which provides that "[i]n the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so."

²⁶ Pollack Affidavit *supra* note 1 at para 36, Application Record at Tab 4.

²⁷ *Ibid* at para 24, Application Record at Tab 4.

²⁸ *BIA*, *supra* note 24 at s.244.

31. As set out immediately below, in the circumstances each of the remaining technical requirements enumerated under the BIA for the appointment of the Receiver is satisfied.

1. The Locality of the Debtor is Ontario

32. Where an application is brought for the appointment of a receiver under subsection 243(1) of the BIA, subsection 243(5) requires that it be filed in “a court having jurisdiction in the judicial district in the locality of the debtor”.²⁹ Section 2 of the BIA defines the “locality of a debtor” as the principal place:

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated.³⁰

33. The Real Property is located in Barrie, Ontario and the Debtors are entities registered under the OBCA.³¹ Thus, the locality of the Debtors is Ontario and this application is properly before the Ontario Superior Court of Justice.³²

34. Given the urgency in this Application, the significant value of the debt outstanding, and the potential complexities of the case (including the potential disclaimer of numerous purchase agreements), the Applicant is of the view that it is appropriate for this matter to be heard by the Commercial List.

²⁹ BIA, *supra* note 24 at s.243(5).

³⁰ *Ibid* s 2, “locality of a debtor”.

³¹ Pollack Affidavit, *supra* note 1 at paras 5 and 13, Application Record at Tab 4.

³² See *Foremost*, *supra* note 24 at paras 15-22, where Kimmel J. observed that the Ontario Superior Court of Justice is the sole Court within the Province of Ontario with jurisdiction under subsection 183(1)(a) of the BIA and that there is no jurisdictional issue precluding a judge of the Ontario Superior Court of Justice (Commercial List) sitting in Toronto from hearing an application under subsection 243(1) of the BIA where the locality of the debtor is Ontario.

2. The Receiver is a Trustee under the BIA

35. Pursuant to subsection 243(4), only a “trustee” may be appointed as a receiver under the BIA.³³ KSV is a trustee under the BIA, has provided its consent to act as the Receiver if so appointed and is qualified to act as such.³⁴

B. The Receiver’s Appointment is Just and Convenient

36. In determining whether it is just and convenient to appoint the proposed Receiver under subsection 243(1) of the BIA and section 101 of the CJA, this 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”.³⁵ There is no requirement for the Applicant to establish that it will suffer irreparable harm if the proposed Receiver is not appointed.³⁶

37. Where, as is the case here, the moving secured creditor has a contractual right to the appointment of a receiver, the extraordinary nature of such remedy “is significantly reduced”.³⁷ In such circumstances, the burden on the moving secured creditor is relaxed as the applicant is simply seeking to enforce a term of an agreement assented to by the parties.³⁸ What is more, the “appointment of a receiver becomes even less extraordinary when dealing with a default under a mortgage”.³⁹

³³ *BIA*, *supra* note 24 s 243(4).

³⁴ Pollack Affidavit, *supra* note 1 at para 41, Application Record at Tab 4.

³⁵ *Bank of Nova Scotia v Freure Village on Clair Creek*, [1996] OJ No. 5088 at para 10 [*Freure*]; *Carnival*, *supra* note 24 at para 24; *Elleway*, *supra* note 24 at para 26; *Meridian*, *supra* note 24 at para 20; *Sherco*, *supra* note 24 at para 41; *Royal Bank of Canada v 1731861 Ontario Inc.*, 2023 ONSC 3292 at para 30 [1731861]; *Canadian Western Bank v 2563773 Ontario Inc.*, 2023, Toronto, CV-23-00695725-00CL ONSC 4766 (Endorsement) at para 6 [*Western Bank*]; *Macquarie Equipment Finance Limited v Validus Power Corp et al.*, 2023 (August 8, 2023), Toronto, CV-23-00703754-00CL ONSC 4772 (Endorsement) at para 5 [*Validus*].

³⁶ *Carnival*, *ibid* at paras 24, 28; *Freure*, *ibid*.

³⁷ *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc.*, 2020 ONSC 1953 at para 43 [*BCIMC*]; *Freure*, *ibid* at para 12; *Meridian*, *supra* note 24 at para 21; *Elleway*, *supra* note 24 at para 27; *Carnival*, *supra* note 24, at paras 24-25; *Sherco*, *supra* note 24 at para 42; *Foremost*, at para 29; *1731861*, at para 31; *Western Bank*, at para 7; *Validus*, at paras 6-7.

³⁸ *Sherco*, *supra* note 24 para 42; *Elleway*, *supra* note 24 para 27; *1731861*, at para 31; *Western Bank*, at para 7; *Validus*, at paras 6-7.

³⁹ *BCIMC*, at para 44; *Western Bank* at para 8; *Validus*, at para 7.

38. When evaluating whether, in all the circumstances, the appointment of a receiver is just or convenient, courts have considered numerous factors, including:

- (a) the nature of the property;
- (b) the likelihood of preserving and maximizing the return on the subject property;
- (c) the relationship between the debtor and its creditors;
- (d) the risk of the lender's security deteriorating;
- (e) loss of confidence in the debtor's management;
- (f) the potential costs of the receiver; and
- (g) the best way of facilitating the work and duties of the receiver.⁴⁰

39. Having regard to the foregoing considerations, it is just and convenient for the proposed Receiver to be appointed given that:

- (a) the Property is comprised of real estate development projects that are held by a single purpose corporation, which is well-suited to (and arguably presumptively appropriate for) receivership proceedings;
- (b) these Receivership Proceedings will provide the stability, structure and supervision required to preserve the value of the Property, including the Projects;
- (c) the Receivership Proceedings and the appointment of the proposed Receiver will, among other things, provide the most effective and appropriate method of effecting

⁴⁰ [Elleway](#), *supra* note 24 at para 28; [BCIMC](#), *supra* note 37 at para 45; [Western Bank](#), *supra* note 35 at para 9; [Validus](#), *supra* note 35 at para 8.

an orderly, efficient and transparent sale of the Property, with a view to maximizing recoveries for, and distributing funds to, the Debtors' stakeholders;

- (d) the Applicant is only seeking to enforce on property to which they are the senior-secured creditor and all creditors have been notified of the commencement of Receivership Proceedings;
- (e) numerous serious events of default have occurred and are continuing under the Loan and Security Documents, including: (i) a failure to pay the Indebtedness in full by the Maturity Date; (ii) a failure to pay monthly payments of interest owing to the Applicant; and (iii) the registration of the Construction Liens;
- (f) the Applicant has lost all confidence in the Debtors' management to continue to satisfy the Debtors' significant obligations, specifically due to their significant debt load and dire liquidity issues;
- (g) the Applicant lost all faith in the Debtors' ability to protect the Property by which the Indebtedness is secured;
- (h) the Loan and Security Documents provide the Applicant with a contractual right to the appointment of a receiver upon an event of default. There is no reason to deprive the Applicant of the contractual right for which it bargained for to protect its investments;
- (i) the costs of a receivership in these circumstances would be reasonable and appropriate; and
- (j) the proposed Receiver's appointment is sought at this time in light of, among other things, the critical and value-preserving steps that are required to prevent the further deterioration of certain of the Property. Such steps include engaging with the

necessary trades and contractors to ensure any necessary construction, including any construction that has stopped, is completed in an orderly and timely fashion.⁴¹

C. The Terms of the Proposed Receivership Order are Appropriate

40. The proposed Receivership Order is tailored to the scope of the Security, is substantially similar to the terms of the Ontario Superior Court of Justice Commercial List’s model receivership order (the “**Model Order**”) and is appropriate in the circumstances.

1. Critical Payments

41. The Proposed Receivership Order allows the Receiver to make certain limited critical pre-filing payments, with the written consent of the Applicant. Critical payments to pre-filing creditors have been permitted where they are critical to the continued operation of the debtor.⁴² The Applicant submits that the inclusion of a provision relating to critical payments is necessary and appropriate in the circumstances in the event that such payments become assistive in effectuating the necessary steps outlined above and advancing the Receivership Proceedings generally.

2. The Receiver’s Charge and Receiver’s Borrowings Charge

42. As contemplated in the Model Order, the proposed Receivership Order grants the following charges:

- (a) the Receiver’s Charge to secure the fees and disbursements of the Receiver and its counsel; and

⁴¹ Pollack Affidavit, supra note 1 at paras 5 and 13, Application Record at Tab 4.

⁴² [Macquarie Equipment Finance Limited v Validus Power Corp et al \(August 2, 2023\), Toronto, CV-23-00703754-00CL ONSC 4772 \(Order Appointing Receiver\)](#) at para 30; [33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership \(Cresford Group\)\(March 27, 2020\), Toronto, CV-20-00637297-00CL \(Order appointing receiver\)](#) at para 28.

(b) the Receiver's Borrowings Charge for the purpose of funding the exercise of the powers and duties conferred upon the Receiver pursuant to the proposed Receivership Order.⁴³

43. Priority charges sought by a receiver under the BIA, such as the Receiver's Charge and the Receiver's Borrowings Charge, provide the certainty required to ensure the integrity, fairness and predictability of insolvency proceedings.⁴⁴ In accordance with subsection 243(6) of the BIA, the Applicant has provided reasonable notice to the parties likely to be affected by such charges of the proposed Receivership Order.⁴⁵

44. The Applicant submits that the proposed Receiver's Charge and the Receiver's Borrowings Charge are appropriate in the circumstances and commensurate with the administrative and borrowings charges granted by this Court in similar receivership proceedings.⁴⁶

PART V: RELIEF REQUESTED

45. Based on the foregoing, the Applicant submits that it is just and convenient to appoint KSV as Receiver over the Property, and respectfully requests that this Court grant the proposed form of Receivership Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18th DAY OF MARCH, 2024

Bennett Jones LLP

Bennett Jones LLP
Lawyers for the Applicant

⁴³ Pollack Affidavit, *supra* note 1 para 2.

⁴⁴ [CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd](#), 2012 ONSC 1750 at paras 21-23.

⁴⁵ [BIA](#), *supra* note 24 s.243(6);

⁴⁶ [In the Matter of the Receivership Proceedings of Sunrise Acquisitions \(Hwy 7\) Inc. \(June 9, 2021\), Toronto, CV 21-00663051-00CL \(Order Appointing Receiver\)](#) at paras 18, 21; [In the Matter of the Receivership of 2738283 Ontario Inc., 2738284 Ontario Inc. and 2738285 Ontario Inc. \(November 9, 2021\), Toronto, CV-21-00670723-00CL \(Order Appointing Receiver\)](#) at paras 18, 21.

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. [*Bank of Montreal v Carnival National Leasing Ltd*, 2011 ONSC 1007](#)
2. [*Bank of Montreal v Sherco Properties Inc*, 2013 ONSC 702](#)
3. [*Bank of Nova Scotia v Freure Village on Clair Creek*, \[1996\] OJ No. 5088](#)
4. [*BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc*, 2020 ONSC 1953](#)
5. [*Canadian Western Bank v 2563773 Ontario Inc*, 2023 ONSC4766 \(Endorsement\)](#)
6. [*CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd*, 2012 ONSC 1750](#)
7. [*Elleway Acquisitions Ltd v Cruise Professionals Ltd*, 2013 ONSC 6866](#)
8. [*Foremost Financial Corporation et al c. Alai Developments Inc. et al* \(Endorsement\)](#)
9. [*In the Matter of the Receivership Proceedings of Sunrise Acquisitions \(Hwy 7\) Inc. \(June 9, 2021\)*\(Order Appointing Receiver\)](#)
10. [*In the Matter of the Receivership of 2738283 Ontario Inc., 2738284 Ontario Inc. and 2738285 Ontario Inc.*\(Order Appointing Receiver\)](#)
11. [*Meridian v Okje Cho & Family Enterprise Ltd*, 2021 ONSC 3755](#)
12. [*Macquarie Equipment Finance Limited v Validus Power Corp et al* \(Order Appointing Receiver\)](#)
13. [*Macquarie Equipment Finance Limited v Validus Power Corp et al* \(Endorsement\)](#)
14. [*Royal Bank of Canada v. 1731861 Ontario Inc*, 2023 ONSC 3292](#)
15. [*33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership \(Cresford Group\)* \(Order Appointing Receiver\)](#)

SCHEDULE B – STATUTES RELIED ON

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Section 2

locality of a debtor means the principal place

- (a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,
- (b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or
- (c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated.

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.

Section 244

Advance Notice

(1) A secured creditor who intends to enforce a security on all or substantially all of

(a) the inventory,

(b) the accounts receivable, or

(c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

(a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

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

Section 101

Injunctions and receivers

(1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

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 MAPLEVIEW DEVELOPMENTS LTD., PACE MAPLEVIEW LTD. and
2552741 ONTARIO INC.**

Applicant

Respondents

Court File No.: CV-24-00716511-00CL

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

Proceedings commenced in Toronto

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