

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

THE HONOURABLE) WEDNESDAY, THE 16TH
)
JUSTICE PENNY) DAY OF OCTOBER, 2024

B E T W E E N:

MCAP FINANCIAL CORPORATION

Applicant

- and -

**VANDYK-BACKYARD KINGS MILL LIMITED AND VANDYK-BACKYARD
HUMBERSIDE LIMITED**

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C., 1985, c. B-3, AS AMENDED; SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED; AND SECTION 68 OF
THE *CONSTRUCTION ACT*, R.S.O. 1990, c. C.30**

DEPOSIT RETURN PROTOCOL APPROVAL ORDER

THIS MOTION, made by KSV Restructuring Inc. in its capacity as receiver and manager pursuant to section 243 of the Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3 (the “**BIA**”) and section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43 without security, over all property, assets and undertakings of Vandyk-Backyard Kings Mill Limited (“**Vandyk-Kings Mill**”) acquired for or used in relation to the Vandyk-Kings Mill’s business and the Project, including the proceeds thereof (collectively, the “**Vandyk-Kings Mill Property**”), and the beneficial title to the Real Property of Vandyk-Backyard Humberside Limited (“**Vandyk**

Humberside”, together with Vandyk-Kings Mill, the “**Debtors**”), and Construction Lien Trustee, pursuant to section 68 of the *Construction Act*, R.S.O. 1990, c. C.30, without security, over the Vandyk-Kings Mill Property (in such capacities, collectively, the “**Receiver**”) for an order approving a deposit return protocol, was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Notice of Motion of the Receiver and the Second Report of the Receiver dated October 8, 2024 (the “**Second Report**”), and on hearing the submissions of counsel for the Receiver and such other parties as were present, no one appearing for any other party although duly served as appears from the affidavit of service of Marleigh Dick affirmed October 15, 2024,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record are hereby abridged and validated such that this Motion is properly returnable today and hereby dispenses with further service hereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Second Report.

DEPOSIT RETURN PROTOCOL

3. **THIS COURT ORDERS** that the Deposit Return Protocol and the schedules attached thereto are hereby approved. The Receiver is hereby authorized and directed to implement the Deposit Return Protocol in conjunction with Tarion and Aviva, on the terms set forth therein.

Notwithstanding the foregoing, the Receiver may, from time to time, make minor changes to the forms, in its sole discretion, as may be necessary or desirable, subject to the consent of Tarion and Aviva.

4. **THIS COURT ORDERS** that the Receiver and its affiliates, partners, directors, officers, employees, legal advisors, representatives, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the Deposit Return Protocol, except to the extent of losses, claims, damages or liabilities that arise or result from the gross negligence or wilful misconduct of the Receiver in performing its obligations under the Deposit Return Protocol, as determined by this Court in a final order that is not subject to appeal or other review.

5. **THIS COURT ORDERS** that, in conducting the Deposit Return Protocol, the Receiver shall have all of the benefits and protections granted to it under the BIA and any other Order of this Court in the within proceeding.

GENERAL

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any other foreign jurisdiction to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01a.m. Toronto Time on the date of this Order and are enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Ray J.", is written above a horizontal line.

(Signature of judge, officer or registrar)

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; SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED; AND SECTION 68 OF THE *CONSTRUCTION ACT*, R.S.O. 1990, c. C.30

**MCAP FINANCIAL
CORPORATION**
Applicant

and

**VANDYK-BACKYARD KINGS MILL
LIMITED AND VANDYK-BACKYARD
HUMBERSIDE LIMITED**
Respondents

Court File No: CV-23-00710267-00CL

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

PROCEEDING COMMENCED AT TORONTO

DEPOSIT RETURN PROTOCOL APPROVAL ORDER

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)

Tel: 416.862.4908

Email: mwasserman@osler.com

Dave Rosenblat (LSO# 64586K)

Tel: 416.862.5673

Email: drosenblat@osler.com

Fax: 416.862.6666

Lawyers for KSV Restructuring Inc., in its capacity as
Receiver