



Court File No.: CV-23-710267-00CL

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

THE HONOURABLE)
JUSTICE W.D. BLACK)
MONDAY, THE 15TH DAY
OF JULY, 2024

BETWEEN:

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**

ANCILLARY MATTERS AND DISTRIBUTION ORDER

THIS MOTION made by KSV Restructuring Inc. (“**KSV**”) 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 Debtor’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, among other things (a) approving the Consolidated Report of the Receiver dated March 1, 2024 with respect to all matters relating to the Property or Vandyk-Kings Mill (the “**Consolidated Report**”) and the First Report of the Receiver dated June 27, 2024 (the “**First Report**”) and the Receiver’s conduct and activities described therein; (b) approving the fees and disbursements of the Receiver and the Receiver’s counsel, Osler, Hoskin & Harcourt LLP (“**Osler**”), as set out in the Affidavit of Noah Goldstein sworn June 27, 2024 attached at Appendix “E” to the First Report (the “**Goldstein Affidavit**”) and the Affidavit of David Rosenblat sworn on June 27, 2024 attached at Appendix “F” to the First Report (the “**Rosenblat Affidavit**” and, together with the Goldstein Affidavit, the “**Fee Affidavits**”); and (c) authorizing and directing the Receiver to make certain payments and distributions as recommended and described in the First Report, was heard by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Notice of Motion of the Receiver, the Consolidated Report, the First Report, the Fee Affidavits, the Supplement to the First Report dated July 12, 2024 (the “**Supplement**”), and on hearing the submissions of counsel for the Receiver, MCAP Financial Corporation (“**MCAP**”) and the other parties listed on the Participant Information Form, no one appearing for any other party although duly served as appears from the affidavit of service of Marleigh Dick affirmed July 2, 2024,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that all terms not otherwise defined herein shall have the meaning ascribed to them in the Asset Purchase Agreement attached at Appendix “B” to the First Report (the “APA”), the First Report, or the Supplement, as applicable.

APPROVAL OF RECEIVER’S REPORTS AND ACTIVITIES

3. **THIS COURT ORDERS** that each of the Consolidated Report and the First Report, and the actions, conduct and activities of the Receiver referred to therein, be and are hereby approved; provided, however, that only KSV, in its capacity as Receiver and not in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver up until May 31, 2024, as set out in the First Report and the Goldstein Affidavit, are hereby approved.

5. **THIS COURT ORDERS** that the fees and disbursements of Osler up until June 14, 2024, as set out in the First Report and the Rosenblat Affidavit, are hereby approved.

MCAP DISTRIBUTIONS

6. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed, without further order of the Court, to make the following distributions from the proceeds of the sale transaction contemplated by the APA following Closing (collectively, the “**Distributions**”):

- (a) \$200,000 plus applicable interest accrued until the date of such Distribution to MCAP in satisfaction of amounts owing with respect to the Construction Receiver’s Borrowings Charge; and
- (b) \$36,680,929.96 plus applicable interest and costs accrued until the date of such Distribution to MCAP in satisfaction of the MCAP Indebtedness.

7. **THIS COURT ORDERS** that, in the event the Lien Claimants do not provide evidence or a notice of intention to examine by July 19, 2024, the Receiver is authorized to distribute the remaining portion of the Distribution in satisfaction of the MCAP Indebtedness, in the amount of \$1,993,600.91 (the “**Remaining Portion**”). In the event that the Lien Claimants do provide a notice of intention to examine, such notice will be provided pursuant to Rule 39.03 of the *Rules of Civil Procedure* and any examination will be limited to the Remaining Portion. Further, in the event that the Lien Claimants provide evidence or a notice of intention to examine by July 19, 2024, the Receiver, MCAP and the Lien Claimants shall agree to a timetable with a deadline of August 2, 2024 for determination of the issues related to the Remaining Portion, subject to court availability.

8. **THIS COURT ORDERS** that the Receiver is hereby authorized to take all reasonably necessary steps and actions to effect the Distributions in accordance with the provisions of this Order, and shall not incur any liability as a result of making the Distributions.

9. **THIS COURT ORDERS** that the Distributions to MCAP in accordance with this Order shall be permanent and indefeasible payment of the MCAP Indebtedness.

GENERAL

10. **THIS COURT ORDERS** that notwithstanding anything else contained in this Order, each of the payments and distributions provided for in this Order shall be made free and clear of all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by orders in the receivership proceedings of the Debtors; and (b) all charges, security interests, liens, trusts, or claims evidenced by registrations pursuant to the *Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended or any other personal property or real property registry system.

11. **THIS COURT ORDERS** that the Receiver or any other person facilitating payments and distributions pursuant to this Order shall be entitled to deduct and withhold from any such payment or distribution such amounts as may be required to be deducted or withheld under any applicable law and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person entitled thereto, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order.

12. **THIS COURT ORDERS** that, notwithstanding:

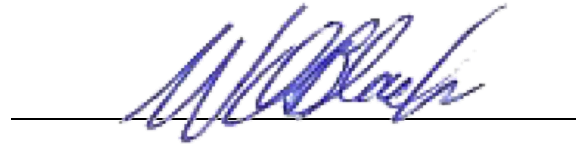
- (a) the pendency of these proceedings and receivership proceedings in respect of Vandyk-Humberside;
- (b) any applications for a bankruptcy order issued pursuant to the BIA in respect of the Debtors and any bankruptcy order issued pursuant to any such application; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

any payment or distributions made pursuant to this Order are final and irreversible and shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

13. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

14. **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.

15. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.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 is positioned above a solid horizontal line. The signature is cursive and appears to read 'M. Blach'. The line extends across the width of the signature.

**APPLICATION UNDER SUBSECTION 43(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.O. 1990,
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
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MCAP FINANCIAL CORPORATION

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**ONTARIO
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(COMMERCIAL LIST)**

Proceedings commenced in Toronto

ANCILLARY MATTERS AND DISTRIBUTION ORDER

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