

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

**MCAP FINANCIAL CORPORATION**

Applicant

- and -

**VANDYK-BACKYARD KINGS MILL LIMITED**

Respondent

**APPLICATION UNDER SECTION 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**

**MOTION RECORD  
(Approval and Vesting Order and Distribution Order)**

June 27, 2024

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capacity as Receiver

TO: **SERVICE LIST**

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

**ONTARIO****SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)****B E T W E E N:****MCAP FINANCIAL CORPORATION**

Applicant

**- and -****VANDYK-BACKYARD KINGS MILL LIMITED**

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 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**

**SERVICE LIST**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

**MCAP FINANCIAL CORPORATION**

Applicant

- and -

**VANDYK-BACKYARD KINGS MILL LIMITED**

Respondent

**APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND  
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**INDEX**

<b>Tab</b>	<b>Description</b>	<b>Page No.</b>
1	Notice of Motion dated June 27, 2024	12
2	Draft Approval and Vesting Order	23
3	Draft Distribution Order	41

# TAB 1

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

B E T W E E N:

M C A P F I N A N C I A L C O R P O R A T I O N

Applicant

- and -

V A N D Y K - B A C K Y A R D K I N G S M I L L L I M I T E D

Respondent

**APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND  
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*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**

**NOTICE OF MOTION  
(Approval and Vesting Order and Distribution Order)**

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 (“BIA”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.30 (“CJA”), without security, and Construction Lien Trustee, pursuant to section 68 of the *Construction Act*, R.S.O. 1990, c. C.30 (in such capacities, the “Receiver”), without security, over all property, assets and undertakings of Vandyk-Backyard Kings Mill Limited (“Vandyk-Kings Mill”) acquired for or used in relation to Vandyk-Kings Mill’s business and the Project (defined below), including the proceeds therefrom (collectively, the “Property”) will make a Motion to a Judge presiding over the Commercial List on Thursday, July 4, 2024 at 11:00 a.m., or as soon after that time as the Motion can be heard.

- 2 -

**PROPOSED METHOD OF HEARING:** The Motion is to be heard

- In writing under subrule 37.12.1(1);
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference

at the following location:

<https://ca01web.zoom.us/j/67927063702?pwd=c1Z2eFN3NXB1N0xOK0lYSWtCL2ZBZz09#success>

**THE MOTION IS FOR**

1. an Approval and Vesting Order (“**AVO**”), substantially in the form of the draft order included in the Motion Record, among other things:
  - (a) abridging the time for, and validating service of, this Notice of Motion and supporting materials such that the motion is properly returnable on July 4, 2024, and dispensing with further service thereof;
  - (b) appointing KSV as receiver pursuant to section 243(1) of the BIA and section 101 of the CJA, without security, over the beneficial title to the Real Property (defined below) of Vandyk Humberside (defined below);
  - (c) approving the Transaction (defined below);

- 3 -

- (d) following the Receiver's delivery of the Receiver's certificate substantially in the form attached as Schedule "A" to the proposed AVO (the "**Receiver's Certificate**"), transferring and vesting all of the Receiver's and the Debtors' (defined below) right, title and interest in and to the Purchased Assets (as defined in the APA, defined below) in the Purchaser (defined below), free and clear of all liens, charges, security interests and encumbrances, other than certain permitted encumbrances; and
  - (e) sealing the Offer Summary (as defined below) and the unredacted APA until the closing of the Transaction;
2. an Ancillary Matters and Distribution Order (the "**Distribution Order**"), among other things:
- (a) authorizing and directing the Receiver to make a distribution to MCAP (defined below);
  - (b) approving the fees and disbursements of the Receiver and its counsel, Osler, Hoskin & Harcourt LLP ("**Osler**"), as detailed in the Fee Affidavits (attached as appendices to the First Report); and
  - (c) approving the Consolidated Report of the Receiver dated March 1, 2024 with respect to all matters relating to the Property and/or Vandyk-Kings Mill and the Receiver's First Report dated June 27, 2024 (the "**First Report**"), and in each case the Receiver's conduct and activities described herein; and
3. such further and other Relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE:*****Background and the Proceedings***

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on December 11, 2023 (the “**Receivership Order**”), which became effective on January 8, 2024, KSV was appointed as the Receiver, without security, over the Property;
2. Pursuant to five additional orders granted by the Court on November 14, 2023, December 12, 2023, January 18, 2024 and January 23, 2024, KSV was also appointed receiver and manager of certain property of other companies within the Vandyk Group (as defined below);
3. On March 8, 2024, the Court issued an order (the “**Sale Process Order**”) approving a sale process (the “**Sale Process**”) for the Property and the property of certain other entities within the Vandyk Group;
4. Vandyk-Kings Mill is part of a broader group of development companies (collectively, the “**Vandyk Group**”), which is a real estate developer with its head office in Mississauga, Ontario. The Vandyk Group mainly develops low, mid and high-rise residential projects in the Greater Toronto Area;
5. Vandyk-Kings Mill is a single-purpose real estate development company that owns the real property located at 15 Neighbourhood Lane, Etobicoke, Ontario, on which it is developing a residential condominium project consisting of approximately 234 units with a 3-storey underground parkade (the “**Project**”). Construction at the Project has been at a standstill since the commencement of these receivership proceedings;

- 5 -

6. While Vandyk-Kings Mill is the registered owner of the real property that is included in the Purchased Assets (as described in Schedule B of the proposed AVO, the “**Real Property**”), the Receiver understands that a related entity, Vandyk-Backyard Humberside Limited (“**Vandyk Humberside**” and collectively with Vandyk-Kings Mill, the “**Debtors**”), is the beneficial owner of the Real Property (such beneficial interest referred to herein as the “**Beneficial Interest**”);

7. MCAP Financial Corporation (“**MCAP**”) is Vandyk-Kings Mill’s senior secured creditor and holds a mortgage and certain other security on the Property. As at June 27, 2024, MCAP was owed \$38,674,530.87 million<sup>1</sup> (together with interests and costs as they accrue, the “**MCAP Indebtedness**”);

8. Vandyk Humberside is a guarantor of the MCAP Indebtedness and, in its capacity as beneficial owner of the Real Property, provided MCAP with certain security in connection therewith by way of an acknowledgement, consent and charge of beneficial owner;

9. The Receiver carried out the Sale Process for the Property in accordance with the Sale Process Order. The Receiver retained Jones Lang LaSalle Real Estate Services, Inc. (“**JLL**”) to list the Property for sale. A summary of the Sale Process is included in the First Report;

10. At the end of the Sale Process, the Receiver selected PAD Investments Ltd. (the “**Purchaser**”) as the successful bidder for the Property, resulting in the execution of an Asset Purchase Agreement dated June 11, 2024 (the “**APA**”). A summary description of the APA is included in the First Report;

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<sup>1</sup> Excludes amounts advanced under Construction Receiver’s Borrowing Charge.



*The AVO*

11. The Receiver requests that the Court approve the proposed AVO;
12. The process undertaken by the Receiver to market the Property was commercially reasonable and conducted in accordance with the terms of the Sale Process Order;
13. JLL has extensive experience selling development properties in and around the Greater Toronto Area and widely canvassed the market for prospective purchasers;
14. The Receiver is of the view that the proposed sale transaction pursuant to the APA (the “**Transaction**”) provides for the most certain highest recovery available for the benefit of Vandyk-Kings Mill’s stakeholders in the circumstances, given the conditional nature of the other offers;
15. MCAP, Vandyk-Kings Mill’s senior secured lender, is supportive of the Transaction; and
16. The Receiver is not aware of any objections to the relief being sought pursuant to the proposed AVO;
17. The Receiver also requests that the offer summary in respect of the final bids received for the Property (the “**Offer Summary**”) and the unredacted APA be filed with the Court on a confidential basis and remain sealed pending closing of the Transaction;
18. The Offer Summary contains sensitive information, including the identity of other bidders and the value of other bids received for the Property, that, along with the Purchase Price under the APA, could adversely impact the future marketability of the Property should the Transaction not close. Therefore, sealing this information is necessary for ensuring recoveries in these proceedings are maximized;

- 7 -

19. The salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so under the circumstances. The Receiver is not aware of any party that will be prejudiced if the information is sealed or any public interest that will be served if such details are disclosed in full. The Receiver is of the view that the sealing of these documents (the “**Confidential Appendices**”) is consistent with the decision in *Sherman Estate v. Donovan*, 2021 SCC 25. Accordingly, the Receiver believes the proposed sealing of the Confidential Appendices is appropriate in the circumstances;

### ***Distribution Order***

20. If the Transaction is approved by the Court, the Receiver is seeking authorization and direction to distribute the proceeds of the Transaction (the “**Proceeds**”) to repay: (i) the amounts owing under the Construction Receiver’s Borrowings Charge (as defined in the Receivership Order) (approximately \$200,000), to MCAP; and (ii) the MCAP Indebtedness, in full after payment of closing costs of the Transaction (i.e. JLL commissions, property taxes);

21. Based on the Purchase Price under the APA, the Receiver is of the view that the Proceeds will be sufficient to address any claims that are in priority to the secured amounts owing to MCAP for which the proposed distribution is contemplated. The Purchase Price is greater than the sum of the proposed distribution plus (i) approximately \$1.2 million that will be required for the purposes of paying tax arrears, broker commissions and case costs, and (ii) the estimated Maximum Potential Holdback Deficiency Priority Claims (as defined in the First Report) of \$2,964,385 (the amounts set forth in (i) and (ii) collectively being the “**Potential Priority Amounts**”);

22. The fees of the Receiver as of May 31, 2024 total \$115,640, excluding disbursements and HST. Osler’s fees as of June 14, 2024 total \$168,672, excluding disbursements and HST. The

- 8 -

average hourly rate for the referenced billing period was (i) \$567 for the Receiver; and (ii) \$827.23 for Osler;

23. The Receiver is of the view that Osler's hourly rates for each of the mandates are consistent with the rates charged by other law firms practicing in the area of insolvency in the Toronto market, and that its fees are reasonable and appropriate in the circumstances;

***Other Grounds***

24. The provisions of the BIA, and section 101 of the CJA, and the inherent and equitable jurisdiction of this Court;

25. Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

26. Such further and other grounds as counsel may advise and this Honourable Court may deem just.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

1. The First Report of the Receiver dated June 27, 2024; and
2. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

- 9 -

June 27, 2024

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

**TO: SERVICE LIST**

**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; AND SECTION 68 OF THE *CONSTRUCTION ACT*, R.S.O. 1990, C. C.30**

**MCAP FINANCIAL  
CORPORATION**  
Applicant

and

**VANDYK-BACKYARD  
KINGS MILL LIMITED**  
Respondent

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

***ONTARIO*  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION**

**OSLER, HOSKIN & HARCOURT LLP**

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

# TAB 2

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

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

THE HONOURABLE	)	THURSDAY, THE 4 <sup>th</sup>
	)	
JUSTICE STEELE	)	DAY OF JULY, 2024

B E T W E E N:

**MCAP FINANCIAL CORPORATION**

Applicant

- and -

**VANDYK-BACKYARD KINGS MILL LIMITED**

Respondent

**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**

**APPROVAL AND VESTING 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 (the “**CJA**”) without security, and Construction Lien Trustee, pursuant to section 68 of the *Construction Act*, R.S.O. 1990, c. C.30, without security, over all property, assets and undertakings of Vandyk-Backyard Kings Mill Limited (“**Vandyk-Kings Mill**”) acquired for or used in relation to Vandyk-Kings Mill’s business and the Project, including the proceeds thereof (in such capacities, collectively, the “**Receiver**”) for an order approving the sale transaction (the “**Transaction**”)

contemplated by the Asset Purchase Agreement (the “**Sale Agreement**”) between the Receiver and PAD Investments Ltd., as assigned to [●] (the “**Purchaser**”) dated June 11, 2024 appended to the First Report of the Receiver dated June 27, 2024 (the “**First Report**”), and vesting in the Purchaser the Purchased Assets (as defined in the Sale Agreement), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion of the Receiver, the First Report and on hearing the submissions of counsel for the Receiver, the Purchaser and those other parties that were present as listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [●] sworn [●], 2024 filed:

1. **THIS COURT ORDERS** that unless otherwise indicated herein, capitalized words and terms have the meanings given to them in the Sale Agreement or the First Report, as applicable.

#### **APPOINTMENT OF RECEIVER**

2. **THIS COURT ORDERS** that KSV is hereby appointed receiver pursuant to section 243(1) of the BIA and section 101 of the CJA, without security, over the beneficial title to, and interest in, the real property identified in Schedule B hereto (the “**Vandyk Real Property**”) of Vandyk-Backyard Humberside Limited (“**Vandyk Humberside**”, together with Vandyk-Kings Mill, the “**Debtors**”), which shall constitute “Property” pursuant to the Order granted by this Court on December 11, 2023 in these proceedings.

#### **APPROVAL AND VESTING**

3. **THIS COURT ORDERS** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser and the assumption of the Assumed Liabilities.

4. **THIS COURT ORDERS** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Receiver's Certificate**”), all of the Debtors’ (legal and beneficial) and Receiver’s right, title and interest in and to the



Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and 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 (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by orders in the receivership proceedings of the Debtors; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (iii) all mortgages, pledges, charges, liens, debentures, trust deeds, assignments by way of security, security interests, conditional sales contracts or other title retention agreements or similar interests or instruments charging, or creating a security interest in, the Purchased Assets or any part thereof or interest therein, and any agreements, leases, options, easements, rights of way, restrictions, executions, or other encumbrances (including notices or other registrations in respect of any of the foregoing) affecting legal or beneficial title to the Purchased Assets or any part thereof or interest therein, including but not limited to any of the foregoing which are registered on title to the Purchased Assets following the date hereof but prior to the registration in the Land Registry Office for the Land Titles Division of Metro Toronto (No. 80) of an Application for Vesting Order to which this Order is attached; (iv) all rights and claims of any condominium purchasers pursuant to Purchase Agreements, which are to be terminated or disclaimed in accordance with paragraph 7 of this Order; and (v) those Claims listed on Schedule C hereto (all of which are, together with those items set out in Section 4(i), (ii), (iii) and (iv), above, collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets upon delivery of the Receiver's Certificate.

5. **THIS COURT ORDERS** that upon the registration in the Land Titles Division of Metro Toronto (No. 80) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, which the Purchaser is hereby authorized to submit for registration, the Land Registrar is hereby directed to (a) enter the Purchaser as the owner of the Vandyk Real Property in fee simple, (b) delete and expunge from title to the Vandyk Real

Property all of the Claims, including those listed in Schedule C hereto, and (c) register this Order on title to the Vandyk Real Property.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed on or prior to Closing, to terminate and disclaim the Purchase Agreements and, following the delivery of the Receiver's Certificate in accordance with this Order, such Purchase Agreements shall cease to be continuing obligations effective against the Vandyk Real Property or binding on the Purchaser.

8. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof by the Receiver to the Purchaser.

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser any human resources and payroll information in the Debtors' records pertaining to the Debtors' past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtors.

10. **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 now or hereafter issued pursuant to the BIA in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Purchased Assets in the Purchaser and the assignments pursuant to this Order 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 it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

#### **SEALING PROVISION**

11. **THIS COURT ORDERS** that Confidential Appendix “1” and “2” to the First Report shall be sealed, kept confidential and not form part of the public record until closing of the Transaction contemplated under the Sale Agreement.

#### **GENERAL**

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States 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.

13. **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.

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**Schedule A – Form of Receiver’s Certificate**

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

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

B E T W E E N:

**MCAP FINANCIAL CORPORATION**

Applicant

- and –

**VANDYK-BACKYARD KINGS MILL LIMITED**

Respondent

**RECEIVER’S CERTIFICATE****RECITALS**

A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice (the "**Court**") dated December 11, 2023, KSV Restructuring Inc. ("**KSV**") was appointed 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 (the "**CJA**") without security, and Construction Lien Trustee, pursuant to section 68 of the *Construction Act*, R.S.O. 1990, c. C.30, without security, over all property, assets and undertakings of Vandyk-Backyard Kings Mill Limited ("**Vandyk-Kings Mill**") acquired for or used in relation to Vandyk-Kings Mill’s business and the Project, including the proceeds thereof (in such capacities, collectively, the "**Receiver**").

B. Pursuant to an Order of the Court dated July 4, 2024 (the "**AVO**"), the Court approved the Asset Purchase Agreement (the "**Sale Agreement**") between the Receiver and PAD Investments Ltd. (the "**Purchaser**") dated June 11, 2024, appointed KSV as receiver pursuant to

section 243(1) of the BIA and section 101 of the CJA, without security, over the beneficial title to, and interest in, the real property identified in Schedule B thereto of Vandyk-Backyard Humberside Limited (“**Vandyk Humberside**”, together with Vandyk-Kings Mill, the “**Debtors**”), and provided for the vesting in the Purchaser of the Debtors’ and Receiver’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of an executed certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that all of the conditions contained in Sections 7.1 and 7.3 of the Sale Agreement have been satisfied or waived by the Purchaser and all of the conditions contained in Sections 7.2 and 7.3 of the Sale Agreement have been satisfied or waived by the Receiver; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement or the AVO, as applicable.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Sections 7.1, 7.2 and 7.3 have been satisfied or waived by the Purchaser and the Receiver, as applicable, as confirmed by the respective parties to one another with respect to the conditions respectively applicable to each such party; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**KSV Restructuring Inc, in its capacity as  
Receiver and manager of certain undertaking,  
property and assets of the Debtors, and not in  
its personal or any other capacity**

Per: \_\_\_\_\_  
Name:  
Title:

**Schedule B – Legal Description of the Vandyk Real Property****PIN 07500-0082 (LT)**

PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 5, 6, 7 & 8 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 1 - 4, 10 - 14, 16, 18 & 28, 66R28992 AS IN AT4865050; T/W EASEMENT OVER PTS 1 - 4, 10 - 14, 16, 18 & 28, 66R28992 AS IN AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT IN GROSS OVER PART 5, 66R28992 AS IN AT5347804; SUBJECT TO AN EASEMENT IN GROSS OVER PART 7, 66R28992 AS IN AT5347808; SUBJECT TO AN EASEMENT IN GROSS OVER PART 6, 66R28992 AS IN AT5347812; SUBJECT TO AN EASEMENT AS IN AT5367415; SUBJECT TO AN EASEMENT IN GROSS OVER PART 5, 66R28992 AS IN AT5479699; CITY OF TORONTO

**Schedule C – Claims to be deleted and expunged from title to Vandyk Real Property****PIN 07500-0082 (LT)**

- 1) Instrument No. AT5380929 being a Charge/Mortgage granted by Vandyk - Backyard Kings Mill Limited in favour of Westmount Guarantee Services Inc. in the principal amount of \$30,000,000, registered on March 4, 2020 (the “**Westmount Mortgage**”).
- 2) Instrument No. AT5479701 being a Postponement of Interest registered on July 23, 2020, postponing the interest of Meridian Credit Union Limited in favour of the City of Toronto.
- 3) Instrument No. AT5479703 being a Postponement of Interest registered on July 23, 2020, postponing the interest granted by Vandyk - Backyard Kings Mill Limited in connection with the Westmount Mortgage in favour of the City of Toronto.
- 4) Instrument No. AT5581120 being a Charge/Mortgage granted by Vandyk - Backyard Kings Mill Limited in favour of MCAP Financial Corporation in the principal amount of \$104,500,000 registered on November 26, 2020 (the “**MCAP Mortgage**”).
- 5) Instrument No. AT5581121 being a General Assignment of Rents between Vandyk - Backyard Kings Mill Limited and MCAP Financial Corporation registered on November 26, 2020.
- 6) Instrument No. AT5581126 being a Postponement of Interest registered on November 26, 2020, postponing the interest granted by Vandyk - Backyard Kings Mill Limited in connection with the Westmount Mortgage in favour of the MCAP Mortgage.
- 7) Instrument No. AT5680014 being a Postponement of Interest registered on March 18, 2021, postponing the interest granted by Vandyk - Backyard Kings Mill Limited in connection with the Westmount Mortgage in favour of the City of Toronto.
- 8) Instrument No. AT5680015 being a Postponement of Interest registered on March 18, 2021, postponing the interest granted by Vandyk - Backyard Kings Mill Limited in connection with the MCAP Mortgage in favour of the City of Toronto.
- 9) Instrument No. AT6407063 being a Construction Lien in the amount of \$743,323 registered on August 25, 2023.
- 10) Instrument No. AT6408162 being a Construction Lien in the amount of \$103,508 registered on August 29, 2023.
- 11) Instrument No. AT6451921 being a Certificate of Action registered on November 1, 2023 in connection with Construction Lien registered as Instrument No. AT6407063 and/or AT6408162.
- 12) Instrument No. AT6423816 being a Construction Lien in the amount of \$61,359 registered on September 20, 2023.
- 13) Instrument No. AT6464285 being a Certificate of Action registered on November 22, 2023 in connection with Construction Lien registered as Instrument No. AT6423816.
- 14) Instrument No. AT6424435 being a Construction Lien in the amount of \$9,899,781 registered on September 20, 2023.



- 15) Instrument No. AT6458916 being a Certificate of Action registered on November 14, 2023 in connection with Construction Lien registered as Instrument No. A6424435.
- 16) Instrument No. AT6426188 being a Construction Lien in the amount of \$558,195 registered on September 22, 2023.
- 17) Instrument No. AT6453188 being a Certificate of Action registered on November 2, 2023 in connection with Construction Lien registered as Instrument No. AT6426188.
- 18) Instrument No. AT6427885 being a Construction Lien in the amount of \$500,488 registered on September 26, 2023.
- 19) Instrument No. AT6456905 being a Certificate of Action registered on November 9, 2023 in connection with Construction Lien registered as Instrument No. AT6427885.
- 20) Instrument No. AT6439372 being a Construction Lien in the amount of \$240,354 registered on October 12, 2023.
- 21) Instrument No. AT6477629 being a Certificate of Action registered on December 12, 2023 in connection with Construction Lien registered as Instrument No. AT6439372.
- 22) Instrument No. AT6440475 being a Construction Lien in the amount of \$2,251,028 registered on October 13, 2023.
- 23) Instrument No. AT6456920 being a Certificate of Action registered on November 9, 2023 in connection with Construction Lien registered as Instrument No. AT6440475.
- 24) Instrument No. AT6445158 being a Construction Lien in the amount of \$42,222 registered on October 23, 2023.
- 25) Instrument No. AT6448252 being a Certificate of Action registered on October 26, 2023 in connection with Construction Lien registered as Instrument No. AT6445158.
- 26) Instrument No. AT6445871 being a Construction Lien in the amount of \$6,215 registered on October 24, 2023.
- 27) Instrument No. AT6456380 being a Construction Lien in the amount of \$849,376 registered on November 8, 2023.
- 28) Instrument No. AT6468348 being a Certificate of Action registered on November 29, 2023 in connection with Construction Lien registered as Instrument No. AT6456380.
- 29) Instrument No. AT6457030 being a Construction Lien in the amount of \$260,581 registered on November 9, 2023.
- 30) Instrument No. AT6512080 being a Certificate of Action registered on February 9, 2024 in connection with Construction Lien registered as Instrument No. AT6457030.
- 31) Instrument No. AT6457231 being a Construction Lien in the amount of \$359,360 registered on November 9, 2023.

- 32) Instrument No. AT6510590 being a Certificate of Action registered on February 7, 2024 in connection with Construction Lien registered as Instrument No. AT6457231.
- 33) Instrument No. AT6457806 being a Construction Lien in the amount of \$61,302 registered on November 10, 2023.
- 34) Instrument No. AT6460838 being a Certificate of Action registered on November 15, 2023 in connection with Construction Lien registered as Instrument No. AT6457806.
- 35) Instrument No. AT6459778 being a Construction Lien in the amount of \$18,552 registered on November 15, 2023.
- 36) Instrument No. AT6461236 being a Construction Lien in the amount of \$336,966 registered on November 16, 2023.
- 37) Instrument No. AT6464018 being a Construction Lien in the amount of \$86,438 registered on November 22, 2023.
- 38) Instrument No. AT6464046 being a Construction Lien in the amount of \$9,473 registered on November 22, 2023.
- 39) Instrument No. AT6519357 being a Certificate of Action registered on February 26, 2024 in connection with Construction Lien registered as Instrument No. AT6464046.
- 40) Instrument No. AT6465303 being a Construction Lien in the amount of \$117,938 registered on November 23, 2023.
- 41) Instrument No. AT6475541 being a Certificate of Action registered on December 7, 2023 in connection with Construction Lien registered as Instrument No. AT6465303.
- 42) Instrument No. AT6501215 being a Construction Lien in the amount of \$295,759 registered on January 1, 2024.
- 43) Instrument No. AT6518460 being a Certificate of Action registered on February 23, 2024 in connection with Construction Lien registered as Instrument No. AT6501215.
- 44) Instrument No. AT6549536 being a Construction Lien in the amount of \$51,301 registered on April 10, 2024.
- 45) Instrument No. AT6492443 being a Charge/Mortgage granted by Vandyk - Backyard Kings Mill Limited in favour of Diversified Capital Inc. in the principal amount of \$8,125,000 registered on January 9, 2024.
- 46) Instrument No. AT6492444 being a Charge/Mortgage granted by Vandyk - Backyard Kings Mill Limited in favour of Diversified Capital Inc. in the principal amount of \$7,500,000 registered on January 9, 2024.
- 47) Instrument No. AT6484901 being a Notice of Security Interest in favour of Metergy Solutions Inc. registered on December 20, 2023.
- 48) Instrument No. AT6492445 being an Application to Annex Restrictive Covenants by Vandyk - Backyard Kings Mill Limited in favour of Diversified Capital Inc. registered on January 9, 2024.

- 49) Instrument No. AT6493748 being an Application to Register Court Order by KSV Restructuring Inc registered on January 11, 2024.
- 50) Encumbrances which are registered on title to the Vandyk Real Property following the date hereof.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Vandyk Real Property**

**(unaffected by the Vesting Order)**

- 1) Instrument No. EB160013 being an Agreement Re: Sewer Connection registered on October 24, 1955.
- 2) Instrument No. EB163037 being a Certificate issued by the Township of Etobicoke Committee of Adjustment registered on January 3, 1956.
- 3) Instrument No. EB177163 being an Agreement Re: Sewer Connection registered on November 19, 1956.
- 4) Instrument No. EB181933 being an Agreement Re: Sewer Connection registered on April 4, 1957.
- 5) Instrument No. EB186721 being a By-law to close and stop up a portion of the highway known as Riverwood Parkway, registered on July 29, 1957.
- 6) Instrument No. EB188451 being an Agreement Re: Sewer Connection registered on September 6, 1957.
- 7) Instrument No. AT4478657 being a Notice of Site Plan Agreement between Vandyk-Backyard Humberside Limited and the City of Toronto, registered on February 2, 2017.
- 8) Instrument No. AT4865050 being a Transfer of Easement in connection with a severance of the Vandyk Real Property, registered on May 16, 2018.
- 9) Instrument No. AT5200718 being a Land Registrar's Order to amend the thumbnail description registered on July 31, 2019.
- 10) Instrument No. AT5347788 being a Notice of Site Plan Agreement between Vandyk-Shoppes of Stonegate Limited, Vandyk-Backyard Humberside Limited, Vandyk-Backyard Queensview Limited, Vandyk-Backyard Kings Mill Limited and the City of Toronto, registered on January 22, 2020.
- 11) Instrument No. AT5347793 being a Transfer Release and Abandonment regarding a partial release of easement registered as Instrument No. AT4865049, Parts 10, 13, 14 & 28, Plan 66R28992 and Part of Block A, Plan 5261, designated as Part 1, Plan 66R30958, registered on January 22, 2020.
- 12) Instrument No. AT5347804 being a Transfer of Easement registered on January 22, 2020.
- 13) Instrument No. AT5347808 being a Transfer of Easement registered on January 22, 2020.
- 14) Instrument No. AT5347812 being a Transfer of Easement registered on January 22, 2020.
- 15) Instrument No. AT5348063 being an Application (General) postponing Vandyk-Shoppes of Stonegate Limited's rights under Instrument No. AT4865050 to the rights under the Transfer of Easement registered as Instrument No. AT5347804, registered on January 22, 2020.
- 16) Instrument No. AT5348064 being an Application (General) postponing Vandyk-Backyard Queensview Limited's rights under Instrument No. AT4865050 to the rights under the Transfer of Easement registered as Instrument No. AT5347804, registered on January 22, 2020.

- 17) Instrument No. AT5348065 being an Application (General) postponing Vandyk-Backyard Humberside Limited's rights under Instrument No. AT4865050 to the rights under the Transfer of Easement registered as Instrument No. AT5347804, registered on January 22, 2020.
- 18) Instrument No. AT5348066 being an Application (General) postponing Vandyk-Shoppes of Stonegate Limited's rights under Instrument No. AT4865050 to the rights under the Transfer of Easement registered as Instrument No. AT5347808, registered on January 22, 2020.
- 19) Instrument No. AT5348067 being an Application (General) postponing Vandyk-Backyard Queensview Limited's rights under Instrument No. AT4865050 to the rights under the Transfer of Easement registered as Instrument No. AT5347808, registered on January 22, 2020.
- 20) Instrument No. AT5348068 being an Application (General) postponing Vandyk-Backyard Humberside Limited's rights under Instrument No. AT4865050 to the rights under the Transfer of Easement registered as Instrument No. AT5347808 registered on January 22, 2020.
- 21) Instrument No. AT5348069 being an Application (General) postponing Vandyk-Shoppes of Stonegate Limited's rights under Instrument No. AT4865050 to the rights under the Transfer of Easement registered as Instrument No. AT5347812, registered on January 22, 2020.
- 22) Instrument No. AT5348070 being an Application (General) postponing Vandyk-Backyard Queensview Limited's rights under Instrument No. AT4865050 to the rights under the Transfer of Easement registered as Instrument No. AT5347812, registered on January 22, 2020.
- 23) Instrument No. AT5348071 being an Application (General) postponing Vandyk-Backyard Humberside Limited's rights under Instrument No. AT4865050 to the rights under the Transfer of Easement registered as Instrument No. AT5347812, registered on January 22, 2020.
- 24) Instrument No. AT5367415 being a Transfer of Easement from Vandyk-Backyard Kings Mill Limited in favour of Rogers Communications Inc. registered on February 19, 2020.
- 25) Instrument No. AT5479699 being a Transfer of Easement from Vandyk-Backyard Kings Mill Limited in favour of the City of Toronto registered on July 23, 2020.
- 26) Instrument No. AT5479702 being a Postponement of Interest from Rogers Communications Inc. to the City of Toronto registered on July 23, 2020.
- 27) Instrument No. AT5479777 being an Application (General) postponing Vandyk-Backyard Humberside Limited's rights under Instrument No. AT4865050 to the rights under the Transfer of Easement registered as AT5479699 registered on July 23, 2020.
- 28) Instrument No. AT5479778 being an Application (General) postponing Vandyk-Backyard Queensview Limited's rights under Instrument No. AT4865050 to the rights under the Transfer of Easement registered as AT5479699, registered on July 23, 2020.
- 29) Instrument No. AT5479779 being an Application (General) postponing Vandyk-Backyard Humberside Limited's rights under Instrument No. AT4865050 to the rights under the Transfer of Easement registered as AT5479699, registered on July 23, 2020.
- 30) Instrument No. AT5531340 being a Notice of Cost Sharing and Easement Agreement between Vandyk-Shoppes of Stonegate Limited, Vandyk-Backyard Humberside Limited, Vandyk-Backyard Queensview Limited and Vandyk-Backyard Kings Mill Limited, registered on September 29, 2020.

- 31) Instrument No. AT5531477 being a Transfer Release and Abandonment regarding a partial release of the easement as set out in Instrument No. AT4865049, registered on September 29, 2020.
- 32) Instrument No. AT5680013 being a Notice of Section 45(9.1) Agreement between Vandyk-Backyard Kings Mill Limited and the City of Toronto registered on March 18, 2021.
- 33) Instrument No. AT5717411 being a Certificate of Requirement under Section 197(2) of the *Environmental Protection Act* registered on April 27, 2021.

**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**

and

**VANDYK-BACKYARD KINGS MILL LIMITED**

Applicant

Respondent

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

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

Proceedings commenced in Toronto

**APPROVAL AND VESTING ORDER**

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

# TAB 3



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

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

THE HONOURABLE

)

THURSDAY, THE 4<sup>TH</sup>

JUSTICE STEELE

)

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, 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 [●] affirmed [●], 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”) or the First Report, 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) \$38,674,530.87 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 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.

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

## GENERAL

9. **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.

10. **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.

11. **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.

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

13. **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.

14. **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.

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**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**

and

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

Applicant

Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(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

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; AND SECTION 68 OF THE *CONSTRUCTION ACT*, R.S.O. 1990, C. C.30

**MCAP FINANCIAL  
CORPORATION**  
Applicant

and

**VANDYK-BACKYARD  
KINGS MILL LIMITED**  
Respondent

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

**PROCEEDING COMMENCED AT TORONTO**

**MOTION RECORD**

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Receiver