



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-24-00714543-00CL HEARING DATE: November 15, 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: KINGSETT MORTGAGE CORPORATION v. 759 WINSTON CHURCHILL GP INC. et al
BEFORE JUSTICE: KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Sean Zweig	Applicant	zweigs@bennettjones.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE KIMMEL:

1. KSV Restructuring Inc. ("KSV") as the receiver and manager (the "Receiver") of certain real property (the "Real Property") and all present and future assets, undertakings and personal property belonging to 759 Winston Churchill GP Inc. ("Churchill GP"), 759 Winston Churchill L.P. ("Churchill LP"), 688 Southdown GP Inc., 688 Southdown LP, 2226 Royal Windsor GP Inc., and 2226 Royal Windsor LP (collectively, the "Debtors" and each a "Debtor") by order dated May 30, 2024 (the "Receivership Order").
2. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Receiver's factum filed in support of this motion.
3. The Receiver, having assessed its options with respect to maximizing realizations from the Property, has concluded that it is not possible to complete the Projects within the receivership proceeding and intends to seek court approval of a sale process in the near term.
4. In order to maximize the value of the Churchill Project prior to the anticipated sale process, the Receiver, in consultation with KingSett Mortgage Corporation ("KingSett"), the principal secured creditor of the Debtors, has determined that it is in the best interest of the Debtors' stakeholders to complete the extension of Hazelhurst Road to Winston Churchill Blvd. (the "Extension"), an improvement which will increase access to the Churchill Project.
5. In order to facilitate the completion of the Extension, the Receiver seeks an Amended and Restated Receivership Order (the "Amended and Restated Receivership Order") which will, among other things: (a) approve the Churchill CM Contract (as defined below) entered into with Leeswood Design Build (Alberta) Ltd., ("Leeswood") for the limited purpose of completing the Extension; and (b) increase the Receiver's Borrowing Limit (as defined below) from \$1,000,000 to \$2,000,000 in order to fund the completion of the Extension.
6. In order to complete the Extension, the Receiver, on behalf of Churchill LP, has executed a CCDC 5A Construction Management Contract - for Services (2010) contract (the "Churchill CM Contract") with Leeswood, subject to court approval. Under the terms of the Churchill CM Contract, Leeswood will act as construction manager and will provide services relating to the Churchill Project. Leeswood will be paid a fixed construction management fee of \$132,000 plus 3.0% of the actual cost of all elements of the project. Leeswood is also entitled to reimbursement for the actual expenses that it incurs performing the Services (as defined in the Churchill CM Contract), without mark-up.
7. It is within the court's broad discretion under s. 243(1)(c) of the BIA to authorize a receiver to enter into key contracts (see *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508, at para. 85), including the retention of a construction manager. This court has done so in other proceedings. See, for example, *KingSett Mortgage Corporation et al. v. Vandyk - Uptowns Limited et al.*, (June 13, 2024), Ont S.C.J. [Commercial List], Court File No. CV-23-709180-00CL (Endorsement of Justice Black), at paras. 6-7; *Keb Hana Bank as Trustee v. Mizrahi Commercial (The One) LP et al.*, (March 7, 2024), Ont. S.C.J. [Commercial List]. Court File No. CV-23-00707839-00CL (Endorsement of Justice Osborne), at para. 20, in which orders were made on similar terms to those proposed in this case.
8. The primary economic stakeholder supports the retention of Leeswood, an experienced contractor, on contractual terms that the Receiver considers to be favourable and reasonable. The Receiver recommends the approval of the Churchill CM Contract, for among other reasons, that completing the Extension is expected to enhance value for stakeholders and it cannot be done without a construction manager. Leeswood will be able to step in quickly so as to minimize delays.
9. The Receiver seeks to increase the amount the Receiver is empowered to borrow from KingSett (the "Borrowing Limit") from \$1,000,000 to \$2,000,000 in order to ensure the completion of the Extension.

The current authorized borrowings will be insufficient to fulfil the Leeswood Budget of \$2,732,000. The requested increase is reasonable in the circumstances. The court's authority to authorize the increased borrowing falls under s. 31(1) of the BIA and is also provided for, with the applicant's support, under paragraph 22 of the Receivership Order.

10. The Amended and Restated Receivership Order dated November 15, 2024 has been signed by me today, and shall be effective in accordance with its terms.

A handwritten signature in cursive script, appearing to read "Kimmel J.", written in black ink.

KIMMEL J.

November 18, 2024