

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE HAINEY

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)
)

THURSDAY, THE 3RD
DAY OF SEPTEMBER, 2020

2478888 ONTARIO INC.

Applicant

- and -

3070 ELLESMERE DEVELOPMENTS INC.

Respondent

**ORDER
(Approving Distributions)**

THIS MOTION, made by RSM Canada Limited in its capacity as the Court-appointed receiver (the “**Receiver**”) without security, of the undertaking, property and assets of 3070 Ellesmere Developments Inc. (the “**Debtor**”) for an order, *inter alia*, approving the distributions proposed in the Receiver’s Second Report, was heard this day by videoconference due to the COVID-19 crisis.

ON READING the Receiver’s Second Report, the Supplement to the Receiver’s Second Report dated September 2, 2020, the Fee Affidavit of Bryan Tannenbaum, sworn August 5, 2020, the Fee Affidavit of Joseph Fried, sworn August 6, 2020, the Fee Affidavit of Rebecca L. Kennedy sworn August 10, 2020, and the written submissions of the Trust Claim Plaintiffs (as that term is defined in the Supplement to the Receiver’s Second Report) and on hearing the submissions of counsel for the Receiver, and all other parties listed on the Counsel Slip, no one else appearing for any other person, although all parties appearing on the Service List in this

proceeding were duly served as it appears from the Affidavit of Service of Bobbie-Jo Brinkman sworn September 1, 2020:

SERVICE

1. **THIS COURT ORDERS** that service of the Notice of Motion and the Motion Record including the Receiver's Second Report is hereby validated so that this Motion is properly returnable today and hereby dispenses with further service thereof. All capitalized terms used herein and not otherwise defined are as defined in the Receiver's Second Report.

DISTRIBUTION

2. **THIS COURT ORDERS** that the Receiver be and hereby is authorized to distribute to 2478888 Ontario Inc. ("247") the sum of \$8,234,646.57 and shall not pay 247, and shall hold in reserve, the \$229,290.53 claimed by 247 on account of the three months' interest charge pending further order of this Court.

3. **THIS COURT ORDERS** that the Receiver be and hereby is authorized to distribute up to the maximum amount of \$7,603,561.82 to 2615333 Ontario Inc. ("261"), in such instalments from time to time as the Receiver may determine without further order of this Court and shall not pay 261, and shall hold in reserve an amount up to a maximum of, the \$177,764.97 claimed by 261 on account of the three months' interest charge and charge for default proceeding pending further order of this Court.

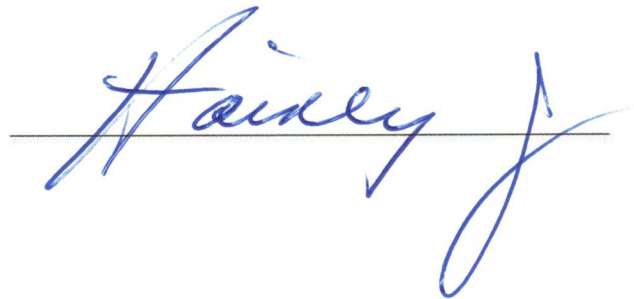
GENERAL

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

5. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

6. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

7. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service.

A handwritten signature in blue ink, appearing to read "Hainey J", is written over a horizontal line. The signature is fluid and cursive.

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and in the matter of Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

2478888 ONTARIO INC.

Applicant

- and -

3070 ELLESMERE DEVELOPMENTS INC.

Respondent

Court File No.: CV-19-00627187-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto, Ontario

ORDER
(Approving Distributions)

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Lawyers for RSM Canada Limited, as Receiver

Court File Number: CV-19-00627 187

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FILE/DIRECTION/ORDER

2478888 ONTARIO INC
Plaintiff(s)

AND

3070 ELLES MERE DEVELOPMENTS INC.
Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

① This motion was heard by
videokonferens due to the
Covid-19 Crisis.

② There is no opposition to
the motion seeking

_____ Date

_____ Judge's Signature

Additional Pages _____

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FILE/DIRECTION/ORDER

Judges Endorsement Continued

an approval and vesting order with respect to the sale transaction referred to in the order. The motion is therefore granted on the terms of the attached approval and vesting order.

(3) The Receiver's proposed distribution of the net

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FILE/DIRECTION/ORDER

Judges Endorsment Continued

proceeds of the sale to
The first and second
Mortgages, 247 and
261 is opposed by
certain Trust claimants
represented by Mr
Hodder.

(4) The trust claimants
oppose distribution of the
sale proceeds to the

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Judges Endorsment Continued

extent of \$2,323,523.13
representing the funds
allegedly advanced
by the Trust Claimants
& 3070 Elmore Development
Inc. The payment
relates to an immigration
scheme allegedly developed
by the debtor, Thomas
Jin, and is the subject

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Judges Endorsment Continued

Matter of an action in which
pleadings have been exchanged
(5) I have considered the
submissions made by Mr
Hodder, Ms Kennedy and
Ms Greenpeace and I
have concluded that I
will grant the distribution
order requested by the
Receiver for the following

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Judges Endorsment Continued

persons:

(6) No evidence has been
adduced before me to
support the trust claims. Mr
Hodder has only filed pleadings,
Ms Kennedy and Ms Greenwood
have adduced evidence
of a valid and enforceable
Mortgage in favour of 247
and 261.

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Judges Endorsment Continued

⑦ Mr Hodder's clients have had notice of this receivership and sale since December, 2019 and have only now shown up in the proceeding. I agree with Mr Kennedy that this amounts to a collateral attack against the Receivership Order.

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Judges Endorsment Continued

⑧ The Hodder's clients, who have a property claim as opposed to an unsecured claim have not made a claim to the Receiver. It is not appropriate for them to "lay in the needs" until now to advance their alleged claim to a property interest.

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Judges Endorsment Continued

9 In any event, their
alleged claim could not
rank in priority over
the valid mortgages
and the fact the
mortgages advanced
funds under the mortgages
without notice of their
alleged claims - the
distributions are in effect

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Judges Endorsment Continued

going to innocent purchasers
for value without notice
of the alleged claims.

(10) For these reasons the order
approving distributions is
granted on the terms of the
attached.

Haine J.

September 3, 2020

Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

⑪ The order Disclaiming
Purchase Agreements and
approving the Receiver's
activities and fees is also
granted on the terms of
the attached.

Judith J.

September 3, 2020