Court File No. CV-23-00701672-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

-and-

CONACHER KINGSTON HOLDINGS INC. and **5004591 ONTARIO INC.**

Respondents

AIDE MEMORANDUM OF THE TORONTO PURCHASER

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TO: Service List

1. The Toronto Purchaser, as defined in the Factum of the Receiver, adapts the submissions as made by the Receiver.

2. As set out in the Third Report of the Receiver, on October 7, 2024, the Receiver executed an Agreement of Purchase and Sale ("**APS**") with the Toronto Purchaser.[1] The Toronto Purchaser complied with the Sale Process and complied with the bid deadlines and all other requirements (as set out by the Receiver and CBRE). In good faith, the Toronto Purchaser completed its due diligence and waived all conditions.[2] There is now a firm and binding APS subject only to court approval.

3. It is improper and unfair to ignore the Sale Process because another purchaser has appeared over six weeks after the Bid Deadline in an attempt to vary the completed Sales Process and attempt to wrestle control out of the hands of the court appointed Receiver and implement their own wishes.

4. The subject property has been listed for sale for over one year.

Opposition to Sale

5. The Debtors and related parties' arguments are three fold:

   (a) They criticize the Receiver as not having maximized the value of the Toronto Property arguing that a different marketing and sales procedure ought to have been followed.[3]

[1] Third Report, para. 25, Receiver's Motion Record ("RMR") at Tab 2, pgs. 29-30
[2] Third Report, para. 23-24, RMR, Tab 2, pg. 29
[3] Affidavit of James Erlick sworn December 3, 2024, ("Erlick Affidavit") at paras. 11-16

(b) They are asking that this court and all others completely disregard the Sales Process that has been implemented and followed which resulted in a binding APS and instead, in essence, implement an auction; and

(c) That the sale of the Toronto Property ought not to proceed unless and until the sale of the Kingston Property (as defined in the Factum of the Receiver) has been completed.

Sales Process and Request to Ignore Same

6. As it relates to the Sales Process, the only "evidence" put forth by the Debtors and those opposed to the sale of the Toronto Property is that they have "*concern that the Properties might have been sold for undervalue*".[4] There is no actual evidence of an improvident sale.

7. As this court has consistently held and as set out clearly in *Royal Bank v. Soundair Corp.*:

> *"If the court were to reject the recommendation of the Receiver in any* ***but the most exceptional circumstances, it would materially diminish and weaken the role and function of the Receiver both in the perception of receivers and in the perception of any others who might have occasion to deal with them****. It would lead to the conclusion that the decision of the Receiver was of little weight and that the real decision was always* made *upon the motion for approval. That would be a consequence susceptible of immensely damaging results to the disposition of assets by court-appointed receivers."*[5]

8. In the present case, while the Debtors criticize the Receiver, there are no "*exceptional circumstances*" which would warrant a rejection of the Receiver's recommendations.

[4] Erlick Affidavit at para. 11
[5] ***Royal Bank v. Soundair Corp***, 1991 CanLII 2727 (ON CA) at para. 21

9. Justice Conway in her recent decision in *AFC Mortgage Administration Inc. v. Sunrise Acquisitions (Elmvale)* (**Tab 1**), was faced with a similar argument by the debtor ("Sunrise Debtor") who was not pleased with the Stalking Horse Sales bid process implemented by the Receiver. The Sunrise Debtor was seeking to wrestle control of the sales process out of the hands of the Receiver and wanted to implement what they thought was a better sales process.[6]

10. As correctly stated by Justice Conway:

> *"I do not accept these arguments. The Receiver, as a court appointed officer, has conducted its own assessment of the market and engaged and negotiated with the Stalking Horse Bidder. The Respondents* ***do not dictate the process and the Receiver is not bound to accept their views on pricing****, ……, or* ***the optimal way to market the property."***[7]

Staging: Sell one land first

11. Similar to the within matter, in *AFC v. Sunrise* the debtor argued that not all properties needed to be sold but rather, there should be a "staging" whereby the sale of certain properties would be deferred.

12. At the time that the Debtors wanted the money from the Lenders, they raised no issues with respect to any of the collateral being provided as security. They did not ask for any staging of deferring of enforcement. They freely gave the security when they needed the money. The Debtors are now trying to renegotiate the terms of the contractual documents and impose additional terms.

[6] Endorsement of Justice Conway dated August 15, 2024, in Court File No. CV-24-00713287-00CL **Tab 1**
[7] Endorsement of Justice Conway dated August 15, 2024, in Court File No. CV-24-00713287-00CL, para. 7 **Tab 1**

13. Justice Black rejected the request for a staging in his endorsements of February 29, 2024 and April 5, 2024 (**Tab 2 and 3**).[8] As stated by Justice Conway who subsequently approved the sale and granted the Approval and Vesting Orders (**Tab 4**):

> *[10] In my view, this is essentially the same argument that Justice Black considered and rejected in his endorsements of February 29, 2024 and April 5, 2024 when he granted the receivership order. He stated in the April 5, 2024 endorsement:*
>
> > *…the Debtors seek to modify the proposed order - closely based on the model order - to effectively carve out the Collateral Properties (as defined in my endorsement for the February 29 hearing), and to keep them to a significant extent within the ongoing control of the individual Debtors.*
> >
> > *Despite the able submissions of Mr. Wadden, I am not prepared to approve an order with the modifications he urges.*
> >
> > *The Debtors made submissions before me on February 29, effectively seeking that same relief, and, in particular at paragraphs 83-86 of my endorsement for that hearing, I declined to accept those submissions.*
> >
> > *In my view, it is in fact desirable here, in all of the circumstances outlined in my endorsement for the February 29 hearing, that the Receiver have control over all properties for which it was appointed.*
>
> *[11]* ***Again, the Respondents are seeking to carve out or defer the sale of the two properties, essentially seeking to wrest the control over the sale process that this court granted to the Receiver. There is no basis for them to do so.*** [9]

14. The Sunrise Debtors sought to appeal the decision of Justice Conway. Leave to appeal was denied.[10]

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[8] Endorsement of Justice Conway dated August 15, 2024, in Court File No. CV-24-00713287-00CL **Tab 1**
[9] Endorsement of Justice Conway dated August 15, 2024, in Court File No. CV-24-00713287-00CL, para. 10 and 11 **Tab 1**
[10] *AFC Mortgage Administration Inc. v. Sunrise Acquisitions (Elmvale) Inc.*, 2024 ONCA 764 (CanLII)

Conclusion

15. There are no exceptional circumstances. Rather, the Debtors are abusing the Sale Process and are bidding against themselves in the hopes that their 11th hour bid made several weeks after the Bid Deadline, will derail the Sales Process.

16. The Toronto Purchaser acted in good faith and has entered into the APS. There is no reason why this court should not accept the recommendations of the Receiver. To do otherwise would set the extremely dangerous precedent which would have the effect of materially diminishing and weakening the "*role and function of the Receiver within the perception of receivers"* and in the opinion of the public at large. Potential purchasers would be very hesitant to take the time, effort and costs in submitting offers and proceeding with their diligence only to have their efforts be completely disregarded by an 11th hour attempt to wrestle control out of the hands of the Receiver. [11]

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of December, 2024.

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[11] *Royal Bank v. Soundair Corp, supra* at para. 21

TAB 1

ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00713287-00CL **DATE: August 15, 2024**

NO. ON LIST: 6

TITLE OF PROCEEDING: AFC MORTGAGE ADMINISTRATION INC. v. SUNRISE ACQUISITIONS (ELMVALE) INC., SAJJAD HUSSAIN, MAHVESH HUSSAIN, MUZAMMIL KODWAVI and SAFINA KODWAVI

BEFORE: JUSTICE CONWAY

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ENDORSEMENT OF JUSTICE CONWAY:

[1] All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Applicant dated August 7, 2024.

[2] The Receiver brings this motion seeking three orders: (i) an AVO approving sale transactions in respect of the Cicada and Abbruzze Properties; (ii) a Sale Procedure Order approving a sale procedure, listing agreement, and Stalking Horse Agreement in respect of the Elmvale Property; and (iii) an Ancillary Relief Order approving fees and activities, and sealing confidential appendices.

[3] The Respondents filed materials and a factum opposing the relief with respect to the Stalking Horse Agreement and the sale of the Cicada and Abbruzze Properties. I heard submissions today, and said I was dismissing the objections of the Respondents and granting the orders.

[4] With respect to the Stalking Horse Agreement, the Receiver explains the background in its First Report and the affidavit of Mr. Rosen sworn August 15, 2024. The Receiver originally considered proceeding by way of a listing and bid process. It was then approached by an interested party and entered into lengthy negotiations with that party over the terms of the stalking horse agreement. The Receiver considered the price in the Stalking Horse Agreement and whether it was too low. The Receiver's evidence is that based on discussions with CBRE and the significant uncertainty currently in the marketplace, it believes that the purchase price is reasonable. It entered into the Stalking Horse Agreement on June 5, 2024.

[5] After the Receiver entered into the Stalking Horse Agreement, the Respondents put forth a Letter of Intent dated July 24, 2024 for a higher purchase price (the "**Other Bidder**"). The Receiver responded that it had already entered into the Stalking Horse Agreement and that the Other Bidder could participate in the sale process.

[6] The Respondents submit that the Other Bidder should replace the Stalking Horse Bidder. They are critical of the way that the Receiver engaged with the Stalking Horse Bidder and say the Receiver did not act with sufficient urgency. They further argue that the Stalking Horse Agreement will send the wrong message to the market and ultimately yield a lower price for the Elmvale Property. They argue that the Stalking Horse Agreement is now stale and does not reflect the state of the market.

[7] I do not accept these arguments. The Receiver, as a court-appointed officer, has conducted its own assessment of the market and engaged and negotiated with the Stalking Horse Bidder. The Respondents do not dictate the process and the Receiver is not bound to accept their views on pricing, stalking horse bidder, or the optimal way to market the property. I

am satisfied that the Receiver's assessment that the Stalking Horse Agreement is the best way to move forward should be accepted in this case. If the Other Bidder wishes to bid on the Elmvale Properties, it is free to do so. The market will speak. In addition, the Receiver has its duties as a court officer and will have to satisfy the court that the *Soundair* principles have been met when it seeks approval of any transaction arising out of the process.

[8] The break fee in the Stalking Horse Agreement is in line with others approved by this court (2.5%). The timelines in the Sale Process Order are acceptable (and the dates have been modified by the Receiver to respond to concerns raised by other stakeholders). I approve the Sale Procedure Order.

[9] With respect to the sale of the Cicada and Abbruzze Properties, these are unoccupied residential properties that cross collateralize the Second Elmvale Mortgage. The Respondents wish to defer the sale of these properties until after the Elmvale Property is sold. They say that it may be unnecessary to sell these properties once Elmvale is sold and that they can top up the sale price to pay all amounts owing to the Applicant.

[10] In my view, this is essentially the same argument that Justice Black considered and rejected in his endorsements of February 29, 2024 and April 5, 2024 when he granted the receivership order. He stated in the April 5, 2024 endorsement:

> …the Debtors seek to modify the proposed order - closely based on the model order - to effectively carve out the Collateral Properties (as defined in my endorsement for the February 29 hearing), and to keep them to a significant extent within the ongoing control of the individual Debtors.
>
> Despite the able submissions of Mr. Wadden, I am not prepared to approve an order with the modifications he urges.
>
> The Debtors made submissions before me on February 29, effectively seeking that same relief, and, in particular at paragraphs 83-86 of my endorsement for that hearing, I declined to accept those submissions.
>
> In my view, it is in fact desirable here, in all of the circumstances outlined in my endorsement for the February 29 hearing, that the Receiver have control over all properties for which it was appointed.

[11] Again, the Respondents are seeking to carve out or defer the sale of the two properties, essentially seeking to wrest the control over the sale process that this court granted to the Receiver. There is no basis for them to do so.

[12] The Receiver has conducted the sale process for these properties in compliance with the court order. It has met the *Soundair* principles. In particular, I accept its view that the

market was sufficiently canvassed and that each APS represents the highest and best offer for the Real Property in the circumstances. I approve the AVOs for these properties.

[13] The materials contain a sealing order for the Confidential Appendices pending the closing of the transactions contemplated by the purchase agreements. I am satisfied that the requested sealing order for the Confidential Appendices meets the test in *Sierra Club/Sherman Estates* and that disclosure of this information would pose a risk to the public interest in enabling stakeholders of a company in receivership to maximize the realization of assets if the properties have to be remarketed. To the extent that any responding materials inadvertently included any confidential information from the Confidential Appendices, Mr. Wadden has undertaken to address and refile those materials. **I direct counsel for the Receiver to file a hard copy of the Confidential Appendices with the Commercial List office in a sealed envelope with a copy of the AVO and this Endorsement.**

[14] I have signed the three orders today. Orders to go as signed by me and attached to this Endorsement. These orders are effective from today's date and are enforceable without the need for entry and filing.

[15] Counsel for the Respondents advised that his clients will be seeking a stay of my orders pending appeal and has asked that the Receiver and its counsel not do anything to make their request moot in the meantime. It is my expectation that nothing be done to undermine any stay and/or appeal rights that the Respondents may have with respect to my decision today.

TAB 2

SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00710361-00CL
CV-24-00713287-00CL
CV-24-00715345-00CL

DATE: February 29, 2024

NO. ON LIST: 1, 2, 3

TITLE OF PROCEEDING:

AFC MORTGAGE ADMINISTRATIVE INC. v. SUNRISE ACQUISITIONS (STAYNER) INC. et al
AFC MORTGAGE ADMINISTRATIVE INC. v. SUNRISE ACQUISITIONS (ELMVALE) INC. et al

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SUNRISE ACQUISITONS (STAYNER) INC., 2846862 ONTARIO INC. AND SUNRISE ACQUISITIONS (ELMVALE) INC.

BEFORE: JUSTICE BLACK

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ENDORSEMENT OF JUSTICE BLACK:

Overview

[1] Before me in this matter were competing sets of applications: the lenders' applications seeking to appoint receivers pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"); and the debtors' application seeking protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA").

[2] The procedural history of these matters, and other related proceedings, is somewhat complex. In order to decide between the proposed approaches, it is necessary to consider and weigh a host of competing considerations against a set of criteria established by the growing case law on this choice between statutory paths.

Conclusion

[3] Having done so, for the reasons set out in detail below, I have decided to grant the receiverships sought by the Lenders, rather than making the CCAA Order sought by the Debtors.

The Debtors - The Sunrise Group

[4] Sunrise Acquisitions (Stayner) Inc., 2846862 Ontario Inc. ("284") (together "Sunrise Stayner"), and Sunrise Acquisitions (Elmvale) Inc. ("Sunrise Elmvale" and, together with Sunrise Stayner, the "Sunrise Entities") are part of a broader group of companies (the "Sunrise Group"). The Sunrise Group also includes Sunrise Acquisitions (Hwy 7) Inc. ("Sunrise Hwy 7").

[5] The Sunrise Group includes a number of real estate development companies, in each case "single purpose" corporations incorporated under the *Business Corporations Act* (Ontario) R.S.O. 1990, c. B.16 for the purposes of a particular project.

[6] The principals of the Sunrise Group and the Sunrise Entities include Sajjad Hussain and Muzammil Kodwavi. Mr. Hussain and Mr. Kodwavi have provided certain guarantees relative to loans at issue (The Sunrise Group, the Sunrise Entities, Mr. Hussain, and Mr. Kodwavi will sometimes be referred to collectively as the "Debtors").

[7] Mr. Hussain and Mr. Kodwavi also own certain personal properties involved in this matter, together with their respective spouses, Mahvesh Hussain and Safana Kodwavi.

The Lenders – AFC and Brexit

[8] AFC Mortgage Administration Inc. ("AFC") and Brexit Holdings Inc. ("Brexit") are privately held lenders that provided mortgage financing to the Sunrise Entities and Sunrise Hwy 7 (AFC and Brexit will sometimes be referred to as the "Lenders").

The Stayner Loan

[9] In the case of Sunrise Stayner, pursuant to a Commitment Letter dated April 12, 2022 (amended May 10, 2022), AFC and Brexit (together with another lender that subsequently transferred its interest to Brexit) provided mortgage financing to the Debtors in the principal amount of $11,000,000.00 (the "Staynor Loan"). The Stayner Loan was guaranteed by Mr. Hussain and Mr. Kodwavi, (the "Stayner Guarantees").

[10] The Stayner Loan was for a 12-month term, maturing June 1, 2023, and was secured by a first mortgage charge (the "Stayner Mortgage") on a 66-acre parcel of vacant land in Stayner (the "Stayner Property"), as well as the Stayner Guarantees, and various other security. Under their security, AFC and Brexit had the right to appoint a receiver in the event of default.

[11] In April of 2023 Sunrise Stayner advised AFC and Brexit that it was unable to repay the Stayner Loan on the maturity date, and the loan accordingly went into default.

[12] The parties to the Stayner Loan entered into a Forbearance Agreement dated July 6, 2023 as a result of which 284 (a company wholly owned and controlled by the Guarantors) provided an additional guarantee of Sunrise Stayner's obligations. The Forbearance Agreement also provides AFC and Brexit a further right to appoint a receiver in the event of a default.

[13] 284 also granted to the Lenders, as additional security, a second charge on a property at 299 Mowat Street North in Stayner (the "Mowat Property"). There is a first charge on the Mowat Property in favour of Louis Harvey Bellwood. Mr. Bellwood, who sold his farm on the Mowat Property to the Debtors, financed by a Vendor Take-Back mortgage (the "VTB"), has a claim outstanding against the Debtors, currently the subject of Power of Sale proceedings. Mr. Bellwood was represented by counsel before me. He supports a receivership and opposes a CCAA Order.

[14] Sunrise Stayner has defaulted under the Forbearance Agreement and remains in default on the Stayner Loan (and under Mr. Bellwood's VTB).

The Elmvale Loan

[15] In the case of Sunrise Elmvale, AFC has two mortgages registered against a 10-acre collection of lands beneficially owned by Sunrise Elmvale in Elmvale, Ontario (the "Elmvale Property"). The Elmvale Property is approved for a 65 freehold townhome development.

[16] A first mortgage on the Elmvale Property (the "First Elmvale Mortgage") was transferred to AFC on June 30, 2022. It is in the principal amount of $1,960,000.00 and contains a right for the mortgagee to appoint a receiver in the event of default.

[17] On October 27, 2022, Sunrise Elmvale granted a second mortgage to AFC (the "Second Elmvale Mortgage") in the principal amount of $2,010,000.00. The Second Elmvale Mortgage also contains a right for AFC to appoint a receiver in the event of default.

[18] The Second Elmvale Mortgage is collateralized over four additional (residential) properties (the "Collateral Properties") owned, in each case, by Mr. Hussain, Mr. Kodwavi, Ms. Hussain and/or Ms. Kodwavi. These properties are at 9 Cicada Court in Toronto (the "Cicada Property"), 72 Grand Vellore Crescent in Vaughan (the "Grand Vellore Property"), 88 Abbruzze Court in Woodbridge (the "Abbruzze Property") and 91 Longshore Way in Whitby (the "Longshore Property").

[19] While there was initially some confusion about this in the evidence, it appears now to be common ground that, among the Collateral Properties, only the Longshore Property is occupied by any of the Debtors (specifically Mr. and Ms. Hussain and their three children).

[20] The Cicada Property is unoccupied and in the midst of a major renovation, the Grand Vellore Property is rented to a tenant or tenants, and the Abbruzze Property was the subject of a catastrophic fire. It appears that the proceeds of insurance coverage are currently in dispute and the subject of litigation.

[21] The Debtors owe various amounts to other creditors, secured by various additional charges on the Collateral Properties.

[22] There is also a third mortgage on the Elmvale Property (the "Third Elmvale Mortgage"). The Third Elmvale Mortgage was registered by KSV Restructuring Inc. ("KSV") on May 10, 2023. The Third Elmvale Mortgage secures (in part) a debt owed by Sunrise Hwy 7 to KSV arising from the settlement of proceedings involving property near Highway 7 owned by Sunrise Hwy 7 (the "Hwy 7 Property"). The principal amount of the Third Elmvale Mortgage is $10,500,000.00.

[23] Sunrise Elmvale is in default under the First, Second and Third Elmvale Mortgages, and the Lenders have taken various steps to enforce their loans, including serving notices under s. 243 of the BIA.

Events Arising in the Highway 7 Receivership Proceedings

[24] The significance of events within the proceedings relative to the Hwy 7 Property is the subject of debate before me.

[25] In those proceedings, Wilton-Seigel J. appointed KSV as the receiver on June 9, 2021.

[26] During the course of its investigations, KSV discovered and reported that certain funds had been improperly diverted from Sunrise Hwy 7 to one or more of the principals of Sunrise Hwy 7. In an affidavit filed in response to KSV's motion to recover these funds, which affidavit Kimmel J. referred to in an endorsement from a case conference on November 2, 2022, Mr. Kodwavi admitted that he and other Debtors had received the funds at issue, and that the funds ought to be repaid to Sunrise Hwy 7. Justice Kimmel ordered these amounts to be repaid.

[27] The same issue came on before Osborne J. on December 20, 2022. At that time, His Honour noted that KSV's position was that the Debtors had misappropriated over $14 million from Sunrise Hwy 7, that the Debtors had themselves admitted that they owed over $5 million to Sunrise Hwy 7 that had not been repaid despite Kimmel J.'s Order, and that in fact the Debtors now accepted that they owed at least a net amount of about $12.6 million to Sunrise Hwy 7. Justice Osborne wrote that the Debtors admitted to paying a portion of the funds at issue to a Mr. Shabbar, that all parties agreed that "there is no evidence in the Record justifying these payments" and "no evidence of any justification or basis for the payments made to him whatsoever."

[28] Justice Osborne granted an amended and restated Order on April 14, 2023, requiring the Debtors to pay the amount of $14,510,545.24 to KSV forthwith. Then, on May 8, 2023, Osborne J. made an Order approving a settlement agreement, pursuant to which KSV agreed to accept $10,500,000.00 in full and final settlement of the amounts owing under the Debtors' obligations.

[29] Despite the settlement confirmed in Osborne J.'s May 8, 2023 Order, the Debtors have failed to pay the amounts owing. The settlement contemplated the Debtors paying off the settlement debt in instalments of $2,000,000.00. Having made one $25,000.00 payment in December of 2022 (before the settlement), the Debtors made one partial payment under the settlement agreement, in the amount of $1,000,000.00 on June 13, 2023, but since then have made no further voluntary payments. KSV has garnished some relatively modest amounts from certain bank accounts of the Debtors, but the vast majority of the debt (which, given the Debtors' failure to comply with the settlement, has reverted to the full debt of over $14 million) remains outstanding.

[30] The evidence also confirms that the Debtors have not been particularly co-operative in KSV's efforts to identify and attach assets. Mr. Hussain and Mr. Kodwavi failed to attend at a number of appointments for examinations in aid of execution, and when they finally did attend, did so without bringing any documentation (despite being directed to do so in the Notice of Examination). They have also failed to provide answers to undertakings that they gave in that setting. It was during the examinations in aid of execution that KSV determined, despite Mr. Hussain's affidavit evidence that the Collateral Properties are "currently occupied by Mr. Kodwavi and my families" that that was, with the exception of one property (the Longshore Property), not the case.

[31] KSV had of course registered writs of seizure and sale against the Debtors in various jurisdictions in Ontario. KSV agreed to temporarily lift some or all of those writs to permit the Debtors to make payment of the settlement confirmed in May of 2023, but once it became apparent that the Debtors would not be paying any amounts beyond the initial partial payment, KSV re-registered the various writs.

[32] For the most part, the Debtors do not contest this description of events.

Acknowledgement of Misappropriation

[33] In the materials, relative to the funds that admittedly were diverted from Sunrise Hwy 7 into the hands of individuals, which funds largely remain outstanding and unaccounted for, the Debtors at one point described Osborne J.'s finding about the diversion of funds as being a finding that the funds were "misallocated", a characterization with which the Lenders took umbrage.

[34] However, in his submissions, counsel for the Debtors fairly acknowledged that the apt description is "misappropriation" rather than "misallocation." He also fairly acknowledged that the asserted debts are owing and have largely not been repaid (and not repaid at all in the case of the Stayner Property and the Elmvale Property).

[35] While not engaging particularly with the complaints about his clients' non-co-operation with the execution process, he also did not deny that lack of co-operation.

[36] Rather, he purported to argue that all of that backdrop is "water under the bridge" and is not really germane to the currently pressing imperative, which is to determine the way forward that will maximize value for all concerned.

Justice Kimmel's February 21, 2024 Endorsement

[37] In terms of significant recent procedural history, the parties in the matter in relation to the Stayner Property were before Kimmel J. on February 21, 2024. Her Honour's endorsement on that date is instructive.

[38] At that time, AFC and Brexit were seeking to have a receiver appointed over the Stayner Property and the Collateral Properties.

[39] Justice Kimmel noted that AFC's receivership application relative to the Elmvale Property was also pending, at that point scheduled to proceed on February 28, 2024. Her Honour observed that "there are a number of bankruptcies and receiverships involving other affiliated Sunrise entities" and made specific mention of the Sunrise Hwy 7 proceedings, leading to the "December 20, 2022 judgment of Osborne J. that was granted against various Sunrise entities and Kodwavi and Hussain, with a finding of misappropriation."

[40] Justice Kimmel remarked, as I have, that "it is not disputed by the respondent Borrowers that the loan that is the subject of this application [the Stayner Loan] matured on June 1, 2023 and that they are in default." She continued "They are also in default of the Forbearance Agreement dated July 6, 2023."

[41] Her Honour found that "The Lenders have been patient and have granted the Borrowers many indulgences," that the "Lenders' security grants them a contractual right to appoint a receiver, and that in addition "Under the Forbearance Agreement, the Borrowers consented to the appointment of a receiver if there were further defaults."

[42] The Lenders submitted before Kimmel J. that they had "lost faith in the Borrowers and their ability to manage the situation," and highlighted various reasons why the immediate appointment of a receiver would be appropriate in the circumstances. They argued that they met the "just and convenient" test under s. 243 of the BIA and relevant case law.

[43] There was also discussion of the fact that the Debtors had had at least since June 1, 2023 to obtain refinancing or new investors, were given extra time to do so by way of the Forbearance Agreement, and that they nonetheless provided no evidence of the Debtors making any progress on those fronts, nor that "they have any ability to do so."

[44] In response to the proposed receivership, the Debtors filed materials, including an affidavit from Mr. Hussain, asserting that in the circumstances, an Order bringing the matters, collectively, under the CCAA would be preferable and would better maximize the value for all concerned.

[45] Justice Kimmel described the contents of Mr. Hussain's affidavit before her as "aspirational", and in her endorsement implicitly analogized the circumstances before her to Penny J.'s endorsement in *1180554 Ontario Limited v. CBJ Developments Inc. et al*, in which His Honour had labelled the basis for an adjournment request before him as "nothing more than a wing and a prayer."

[46] However, Kimmel J., while acknowledging that "the Lenders are not wrong to be skeptical about whether the Borrowers will be able to come up with a concrete plan," found that there was "not obvious immediate prejudice to the Lenders in affording the Borrowers this brief further adjournment to allow them to deliver their CCAA Application material and make their arguments so that the question of the appropriate manner of proceeding can be decided with the benefit of their CCAA Application material before the Court."

[47] Justice Kimmel also expressed the view that "While it remains to be seen whether the Borrowers can put together a CCAA package that makes sense and accomplishes what they aspire to, the court sees some advantage to one judge hearing both this receivership application, the receivership application involving Sunrise (Elmvale) and the CCAA application at the same time."

[48] All of Kimmel J.'s comments are supported in the record, and factor into the analysis required by the caselaw, discussed in more detail below.

[49] Against that backdrop, the matters – and all interested parties – came before me on February 29, 2024.

Agreement That the Threshold Requirements for Either Receiverships or CCAA Met

[50] I should note at the outset that the Debtors do not contest the appropriateness of receiverships in the event that I find that route is preferable to the CCAA here. That is, the Debtors acknowledge that they are insolvent and in default in each proceeding, that the evidence in the record satisfies the requirement that a receivership is "just and convenient", and they confirm that AFC and Brexit are entitled, under their security in each

case, to the appointment of a receiver. Even more specifically, the Debtors' counsel advised at the outset that the Debtors consent, should I find a receivership to be the preferable approach, to a receivership Order (and indeed counsel made submissions about a couple of items that the Debtors say should be included in the receivership Order if that is the result).

[51] However, the Debtors argue that in the circumstances, an Order under the CCAA is preferable, in a number of ways, to the receiverships sought by the Lenders.

[52] At the outset of the argument, I advised all counsel that I had formed the view from the materials that the technical threshold requirements for either receiverships or a protective Order under the CCAA were met.

[53] In other words, focusing on the CCAA criteria, I was satisfied that each of the Sunrise Entities is a "debtor company" as defined in the CCAA, meeting the definition of an "insolvent person" under the BIA (which has been adopted for purposes of CCAA proceedings), with a place of business in Ontario, and with a total indebtedness in excess of $5 million.

[54] No party took issue with these preliminary observations, and the argument turned to an application of the growing body of case law - regarding the choice between receivership and CCAA protection – to the facts at hand.

Initial Problem for the Debtors – No Progress on a Plan

[55] A significant shortcoming for the Debtors' position is that, notwithstanding Kimmel J.'s admonition that the Debtors would have to "put together a CCAA package that makes sense and accomplishes what they aspire to", the Debtors came before me with no concrete plan whatsoever.

[56] Counsel for the Debtors said that the "plan" is to establish a Sales and Investment Solicitation process (a "SISP") to be presented at a Comeback hearing in 10 days. He also explained that, inasmuch as the Debtors have expressed a willingness to engage - as the monitor for purposes of the intended CCAA proceedings - the same person whom AFC/Brexit propose as the receiver for one of the matters, and given the uncertainty and attendant awkwardness about that person's role going forward, the Debtors have not yet been able to have a meaningful discussion with their proposed monitor about the relevant details of the plan including the SISP.

[57] Accordingly, there is really nothing concrete, or really any elements of a plan at all before me, and so the Debtors' proposal remains aspirational.

[58] That is not to say that I would have expected an elaborate or close-to-final plan to be presented before me. I understand and accept that there was only so much that could have been done between February 21 and February 29, 2024, particularly given the limited meaningful access that the Debtors had with their would-be monitor during that interim period.

[59] On the other hand, I also find that it is reasonable to have expected the Debtors to show up on February 29 with even a modicum of flesh on the bones. They knew from the Lenders' position before Kimmel J. that whatever proposal they showed up with would be carefully scrutinized.

[60] It was suggested in argument by the Lenders, and I agree, that one might have expected at least some evidence that the Debtors had approached and not been rebuffed out of hand by potential investors, or even just a list of players within the industry to be approached in the proposed SISP process. The Debtors did

none of that and saying that a SISP will be developed in time for a comeback hearing 10 days down the road effectively amounts to saying that nothing has yet been done.

[61] Consistent with this lack of a plan, the Debtors' materials, and their counsel's submissions, were replete with references to the "possibility" that a SISP might lead to enhanced creditor recovery. In my view, given the history of this matter, the Lenders had the right to expect something more tangible.

Overarching Observations About Relevant Cases in Real Estate Development Context

[62] Apart from this significant threshold problem, the situation in this case also fits better in other respects with the cases in which receiverships have been chosen rather than a CCAA Order.

[63] I should note at the outset of this discussion that it is no longer the case that there is or should be any presumption that, when it comes to real property, a receivership will inevitably be the preferred choice over a CCAA proceeding.

[64] In a very helpful article: "Receivership versus CCAA in Real Property Development; Constructing a Framework for Analysis" (2020 CanLIIDocs 3602), Opolsky et al. confirm that, when it comes to choosing receivership over CCAA in the real estate context, "this is not the legal rule; there is nothing barring a CCAA proceeding for a real estate development company or other real property-centric company. Nor is it absolute: there are examples of a CCAA being granted instead of a receivership."

[65] The article goes on to acknowledge that, notwithstanding that it is not a "legal rule" it is nonetheless the case that "in a significant majority of [real estate] cases, secured creditors' receivership applications will be granted instead of competing debtors' CCAA applications."

[66] In discussing the reasons why, despite the continuously increasing recognition of the CCAA as a flexible and helpful mechanism for preserving assets and restructuring insolvent entities, and even, increasingly, for facilitating liquidations, receiverships are more often granted in the real estate development context than CCAA orders, the authors identify factors in recent cases that incline courts in that direction.

Reliance on Koehnen J.'s Decision in The Clover on Yonge

[67] In particular, by way of a recent illustrative example, the authors focus on Koehnen J.'s decision in *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, 2020 ONSC 1953, 78 CBR (6th) 299.

[68] The Lenders also rely on *The Clover on Yonge*, and aptly describe it as a case that not only synthesizes and discusses various important considerations in choosing between receivership and CCAA in the real estate development setting, but which shares many evidentiary similarities with the case at hand.

Relevant Considerations Emerging from Previous Cases

[69] Before discussing the application of *The Clover on Yonge* to the facts before me, the Lenders identify, fairly in my view, a number of relevant factors arising from such cases as *Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp.*, 2008 BCCA 327, 296 DLR (4th) 577, *Romspen Investment Corporation v. 6711162 Canada Inc.*, 2014 ONSC 2781, *Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.*, 2023 ONSC 5911, and *Octagon Properties Group Ltd.*, 2009 ABQB 500, 486 A.R. 296.

[70] These factors include:

(a) While CCAA can apply to companies whose sole business is a single land development, such companies do have difficulty proposing an arrangement or compromise acceptable to secured creditors;
(b) The priorities of security are often straightforward and there is little incentive for secured creditors having greater priority to agree to an arrangement that involves money being paid to more "junior creditors." (And on this parameter, the Lenders note that in this case even the "junior creditors" oppose the relief sought by the Debtors);
(c) If a developer is insolvent and not able to complete a development "without further funding, the secured creditors may feel that they will be in a better position by exercising the remedies rather than letting the developer remain in control of the failed development while attempting to rescue it by means of obtaining refinancing, capital injection by a new partner or a DIP financing; and
(d) Where a mortgagor has provided an express "covenant" agreeing to the appointment of a receiver, the Court "should not ordinarily interfere with the contract between the parties."

Application of Relevant Factors by Koehnen J. in The Clover on Yonge

[71] Against the backdrop of these and other factors arising in the cases comparing receiverships to CCAA protection, Koehnen J. summarized, in *The Clover on Yonge*, the law and issues bearing on the choice. His Honour wrote:

1. Although receivership is generally considered to be an extraordinary remedy, there is ample authority for the proposition that its extraordinary nature is significantly reduced when dealing with a secured creditor who has the right to a receivership under its security arrangements;
2. The relief becomes even less extraordinary when dealing with a default under a mortgage;
3. The court should consider factors as set out by Justice Farley in *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 at para 20:

    (a) the lenders' security is at risk of deteriorating;
    (b) There is a need to stabilize and preserve the debtors' business;
    (c) Loss of confidence in the debtors' management; and
    (d) Positions and interests of other creditors.

4. In choosing between receivership or CCAA process, the court must balance the competing interests of various stakeholders to determine which process is more appropriate; and
5. The factors to be considered are:

    (a) Payment of the receivership applicants;
    (b) Reputational damage;
    (c) Preservation of employment;
    (d) Speed of the process;
    (e) Protection of all stakeholders;
    (f) cost;
    (g) nature of the business.

Argument re Application of Case Law to the Matter

[72] Applying these factors to the case at hand, the Lenders first argue that there is no doubt that their security is at risk of deteriorating, inasmuch as interest continues to accrue, at significant rates, on a daily basis, and defaults continue, with no servicing of the debts and evidence, by way of construction liens being registered on title, that trades are not being paid.

[73] The Lenders argue that there is also no dispute about the need to stabilize the business, and that, given the need to avoid leaving the "foxes in the henhouse" (discussed a bit more below) a receivership will achieve more stability than a CCAA order.

[74] The Lenders place particular emphasis on their loss of confidence in the Debtors' management. The Lenders say that in fact, having regard to past and ongoing irregularities, they have lost complete confidence in management. They point in particular to the Debtors' mismanagement and a specific judicial finding of misappropriation by the Debtors' principals. The Lenders also allege irregularities in recent financial statements produced by the Debtors, suggesting that still more funds are unaccounted for. To allow management to remain in place, they say, would be akin to leaving proverbial "foxes in the henhouse." They also rely on their contractual rights to appoint receivers and note the disappointing absence of any concrete plan by the Debtors (even in the face of the need, confirmed by Kimmel J. about a week before the attendance before me, for some evidence that the Debtors have some semblance of a plausible way forward).

[75] Turning to the seven factors articulated by Koehnen J., the Lenders reiterate that the Debtors have known for many months that the mortgages at issue would mature and have had ample opportunity to refinance during the forbearance period, and even for several months after the forbearance had expired. Despite this opportunity, the Lenders assert, the Debtors have still come to court with nothing more than continued aspirations (and no evidence of potential financing, or even potential financiers).

[76] With respect to potential reputational damage, the Lenders note Koehnen J.'s conclusion in *The Clover on Yonge* that "in the circumstances of this case, that is irrelevant. Any reputational damage to [the debtor] is of its own making. Similarly here, the Lenders argue, given the earlier findings of misappropriation, previous receiverships and bankruptcies, given the Sunrise Group's ongoing lack of transparency and cooperation, and given additional irregularities that the Lenders allege appear in recent financial statements of the Debtors, any reputational damage to the Debtors is "of their own making."

[77] The Lenders also note (and the Debtors concede) that there is no evidence in this case of any employees whose employment will be at risk if a receivership is granted rather than CCAA protection.

[78] They also argue that, in terms of the speed of the competing proposed processes, it would be preferable "to have a receiver acting as an officer of the Court who can act without being hamstrung by closing a transaction that favours equity over creditors" and that "CCAA proceedings are inherently expensive," requiring as they do "regular court attendances, probably with greater frequency than a receivership does."

[79] Finally, the Lenders rely on jurisprudence relating to single-use land development companies showing that "Courts are inclined against using CCAA proceedings for single purpose land development companies." The Lenders astutely acknowledge that "this is not as a result of them being single purpose land use companies, but rather "they turn on the nature of the security and the position of a security holder with respect to a CCAA proceeding." On this point, they again rely on Koehnen J.'s findings (in *The Clover on Yonge*) as follows:

"In a much quoted paragraph from *Cliffs Over Maple Bay*, the British Columbia Court of Appeal stated at paragraph 36

> Although the CCAA can apply to companies whose sole business is a single land development as long as the requirements set out in the CCAA are met, it may be that, in view of the nature of its business and financing requirements, such companies would have difficulty proposing an arrangement or compromise that was more advantageous than the remedies available to its creditors. The priorities of the security against the land development are often straightforward, and there may be little incentive for the creditors having senior priority to agree to an arrangement or compromise that involves money being paid to more junior creditors before the senior creditors are paid in full. If the developer is insolvent and not able to complete the development without further funding, the secured creditors may feel that they will be in a better position by exerting their remedies rather than letting the developer remain in control of the failed development while attempting to rescue it by means of obtaining financing, capital injection by a new partner of DIP financing…..Although the paragraph refers to the nature of the business, the real thrust of the analysis turns on the nature of the security and the attitudes of the secured creditors….In the case at hand, where the breakdown in the relationship was caused by persistent and deliberate wrongdoing by the debtor, where there were no significant differences to the outcome to other stakeholders between a receivership or a CCAA proceeding, and where there were no material employment concerns, three was no reason to restrain the exercise of the Receivership Applicants' contractual rights."

Key Considerations and Findings

[80] I find that many of these same factors have direct application to the situation before me. Distilling and applying some of the key considerations, I note as follows:

(a) the Lenders have clear and uncontested rights, under various of their security instruments, to appoint receivers;
(b) in terms of other stakeholder, there is not a single person or entity who expresses support for the Debtors' proposed CCAA protection. In fact, all stakeholders who have expressed a view strongly favour receiverships;
(c) the Lenders have a legitimate evidentiary basis for their avowed lack of confidence in the Debtors' management. There are uncontested findings of past misappropriation, more recent concerns the Lenders see arising in the Debtors' recent financial statements, and an abiding lack of cooperation and transparency on the part of the Debtors and their principals;
(d) while in general there is ostensible appeal to the notion that appointing a single monitor rather than two receivers should yield costs savings, here the Lenders assert, fairly in my view, that the Stayner Property and the Elmvale Property are very different projects giving rise to the need for independent analysis and decision-making for each of them. As such, the Lenders argue, the notional savings associated with having a single monitor rather than two receivers will prove illusory, inasmuch as two separate and independent exercises will be required, meaning that there will be no economies of scale or other efficiencies readily achieved;

(e) although the Debtors propose to imbue the monitor with "super monitor" powers, it seems evident that nonetheless the Debtors, and their principals, envision retaining a role in the CCAA proceedings they seek. The Lenders' level of distrust is such (and reasonably so in my view) that proposing "super powers" for the monitor does not entirely allay these concerns in the way that appointing receivers will;
(f) the priorities here, and the Lenders' strong preference simply to realize on their security in accordance with those priorities, is reasonable when compared to a SISP process which, although as yet undefined, will inevitably forestall to some extent the Lenders' recovery, and may well lead to payments to more junior creditors – in the fashion described in the caselaw – before the Lenders are fully paid out; and
(g) this concern is particularly apt and pronounced, in circumstances in which, as stated at the outset, the Debtors have come back to court before me with nothing more than aspirations.

Receiverships Granted

[81] For all of these reasons, and others set out in the review of the caselaw set out above, I am granting the receiverships sought by the Lenders relative to the Stayner Property and the Elmvale Property respectively.

Debtors' Requests Concerning Certain Contents of Receivership Orders

[82] Counsel for the Sunrise entities asked, in the event I would order receiverships, that I make allowances for a couple of factors.

[83] First, since the evidence shows that one of the principals (Mr. Hussain) and his family are living at the Longshore Property, the Debtors asked that I carve that property out of the potential set of assets to be used by the Lenders to recover the debts. Alternatively, counsel asked that there be a "staging" of recovery, and that resort to the Longshore Property not be taken unless and until there is a demonstrated shortfall from the realizations of other assets.

[84] The Lenders fairly point out that the Longshore Property is among the Collateral Properties offered by the Debtors as security for the Stayner Loan and should not be excluded from resort by the Lenders if necessary. That said, the Lenders expressed a willingness to resort to the Longshore Property last in sequence, and only in the event of an evident shortfall. I find that this is an entirely reasonable position, and that this can be addressed in the fullness of the Stayner receivership.

[85] The Debtors also asked that I provide them with a period within which they should be entitled to redeem the debts on the Stayner and Elmvale Properties, in priority to other proposed realizations, and they asked that they be given until June 15, 2024, or at least until May 15, 2024.

[86] While it may well prove to be the case that, as a practical matter the Debtors will have an opportunity to redeem until those dates (because the properties may not be sold before then) I decline to build in a specific protected priority for the Debtors beyond whatever ordinary right or ability they may have to redeem. As noted, the Debtors have had ample time and opportunity to source financing and repay the debts, and I see no benefit in giving them yet more time to do so. Again, as a practical matter if they can source financing, it may prove to be the case that the Debtors will have an opportunity to redeem before other sales are made, but to put it bluntly they have not earned the right to additional protection for their potential redemption.

Costs

[87] The Lenders are entitled, as the successful parties here, to their costs of these motions. No costs outlines were uploaded before me, and I have no insight into how the labour was divided among the Lenders in terms of preparing the written and oral submissions. I direct the parties to discuss the costs issue and to propose both the amount of costs and a proposed allocation.

[88] In the event that the parties cannot agree on costs, I can be spoken to.

Black J.

TAB 3

ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00713287-00CL **DATE: April 5, 2024**

NO. ON LIST: 4

TITLE OF PROCEEDING: AFC MORTGAGE ADMINISTRATION INC. v. SUNRISE ACQUISITIONS (ELMVALE) INC. Et Al

BEFORE: JUSTICE W.D BLACK

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Paul Mand	Lawyer for the Applicant – AFC Mortgage	pmand@mandlaw.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Jonathan Kulathungam	Lawyer for the Receiver	jkulathungam@teplitskyllp.com
Jason Wadden	Lawyer for the Respondents Sunrise Acquisitions (stayner) Inc. and 2846862 Ontario Inc	jwadden@tyrllp.com
Shimon Sherrington	Lawyer for the Respondents Sunrise Acquisitions (stayner) Inc. and 2846862 Ontario Inc	ssherrington@tyrllp.com

For Other,

Name of Person Appearing	Name of Party	Contact Info
Joseph Blinick	KSV Restructuring Inc. (court-appointed receiver in Court File CV-21-00663051-00CL, Mortgagee on the Elmvale Property, and Judgment Creditor in respect of all debtors)	blinickj@bennettjones.com

ENDORSEMENT OF JUSTICE:

[1] This case conference was convened to address a disagreement and delay in settling the terms of the order, arising from my decision released March 6, 2024, for the hearing on February 29, 2024, with respect to Sunrise Elmvale (an order relative to Sunrise Stayner has been issued and entered).

[2] At the time that the parties' case conference materials were prepared, the Receiver (for Sunrise Elmvale) was also expressing concerns about information/documentation it was seeking from the Debtors but had not yet received. However, the Debtors provided responsive information earlier in the week of this case conference, and so that issue was not pressed before me.

[3] With respect to the Sunrise Elmvale order, the concern, expressed by both the Elmvale Receiver and by the applicant, is that the Debtors seek to modify the proposed order - closely based on the model order – to effectively carve out the Collateral Properties (as defined in my endorsement for the February 29 hearing), and to keep them to a significant extent within the ongoing control of the individual Debtors.

[4] Despite the able submissions of Mr. Wadden, I am not prepared to approve an order with the modifications he urges.

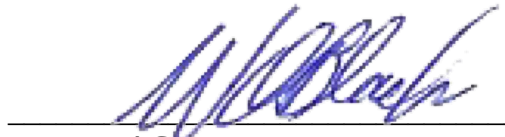
[5] The Debtors made submissions before me on February 29, effectively seeking that same relief, and, in particular at paragraphs 83-86 of my endorsement for that hearing, I declined to accept those submissions.

[6] In my view, it is in fact desirable here, in all of the circumstances outlined in my endorsement for the February 29 hearing, that the Receiver have control over all properties for which it was appointed.

[7] With respect to the Debtors' wish to provide input relative to specific issues impacting the Collateral Properties, they may do so at the request and discretion of the Receiver (and indeed their cooperation is required by the order proposed by the lender (and by the model order on which that order is based).

[8] The Receiver confirmed before me today, as it did on February 29, that it will resort to the Grand Vellore Property last in sequence (note that my endorsement referred in this context to the Longshore Property, but counsel have clarified, and agree, that it is the Grand Vellore Property that should be the last resort).

[9] In all of the circumstances I order that the applicant's proposed form of order should issue, and that order, with any modifications that have been agreed, may be provided to me for signature.



W.D. BLACK J.

DATE: April 5, 2024

TAB 4

Court File No. CV-24-00713287-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF SECTION 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

THE HONOURABLE	)	THURSDAY, THE 15TH
	)	
JUSTICE B. CONWAY	)	DAY OF AUGUST, 2024

B E T W E E N:

AFC MORTGAGE ADMINISTRATION INC.

Applicant

and

SUNRISE ACQUISITIONS (ELMVALE) INC., SAJJAD HUSSAIN, MAHVESH HUSSAIN, MUZAMMIL KODWAVI and SAFANA KODWAVI

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Rosen Goldberg Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Sunrise Acquisitions (Elmvale) Inc., Sajjad Hussain, Mahvesh Hussain, Muzammil Kodwavi and Safana Kodwavi (the "**Debtors**") for an order approving the sale transactions (the "**Transactions**") contemplated by an agreements of purchase and sale (the "**Sale Agreements**") between the Receiver:

i. Baomin Yi and Ting Fang Ge ("**Cicada Purchaser**") as contemplated in an Agreement of Purchase and Sale dated July 2, 2024 ("**Cicada APS**") as it relates to the Cicada Property (as defined below);

ii. Antonio Puopolo and Rosa Puopolo (the "**Abbruzze Purchaser**") as contemplated in the Agreement of Purchase and Sale dated July 4, 2024 ("**Abbruzze APS**") as it relates to the Abbruzze Property (as defined below)

(Hereinafter Cicada Purchaser and Abbruzze Purchaser collectively referred to as "**Purchasers**").

As appended to the Report of the Receiver dated August 1, 2024 (the "Report"), and vesting in the Purchasers the Debtor's right, title and interest in and to the assets described in the Cicada APS and Abbruzze APS (the "**Purchased Assets**"), was heard virtually this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Receiver, the Report and Affidavits contained therein and the Responding Record of the Debtors, the Affidavit of Brahm Rosen sworn August 15, 2024, and on hearing the submissions of counsel for the Receiver, counsel for the Debtors, counsel for the Applicant, no one appearing for any other person on the Service List, although properly served as it appears from the Affidavit of Sara Collins sworn August 6, 2024.

THIS COURT APPROVES a distribution of the net cash component of the sale proceeds on the following basis:

1. As it relates to the Cicada Property:

    a. payment of the first mortgage held by Home Trust Company registered as Instrument No. AT503572 ("**Home Trust Mortgage**");

    b. A holdback of $140,634.75 plus 25% for a total of $183,293.44 ("**Holdback**") as it relates to a construction lien registered by Mason's Masonry Supply Ltd. ("**Lien Claimant**") as Instrument No. AT6465836 with a Certificate of Action registered as Instrument No. AT6519170 (collectively "**Construction Lien**") which Holdback shall be held in lieu of security of the Cicada Property, without prejudice pending further court order or directions; and

    c. The remaining net sale proceeds to the Lender, AFC Mortgage Administration Inc. ("**AFC**" or "**Lender**");

2. As it relates to the Abbruzze Property:

a. Payment of the first mortgage registered as Instrument No. 3261530 in favour of Computer Share Trust Company of Canada ("**Computer Share Mortgage**"); and

b. The remainder to the Lender,

All of the above subject to the Receiver holding back any further amount as may be required to complete its mandate and obtain its discharge pursuant to the Order of Justice Black dated April 15, 2024.

1. THIS COURT ORDERS AND DECLARES that the Transactions are hereby approved, and the execution of the Sale Agreements 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 Transactions and for the conveyance of the Purchased Assets to the Purchasers.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchasers substantially in the form attached as Schedule A (regarding Cicada) and B (regarding Abbruzze) hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreements [and listed on Schedule C (regarding Cicada) and D (regarding Abbruzze) hereto 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 the Order of the Honourable Justice Black dated April 15, 2024; (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; and (iii) those Claims listed on Schedule E (regarding Cicada) and F (regarding Abbruzze) hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule G) (regarding Cicada) and H (regarding Abbruzze) 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, with the Construction Lien being vacated from title and the Lien Claimant having no further claims as against the Cicada Property but limited against the Holdback held in lieu of the Cicada Property.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Registry Division #66 (as it relates to the Cicada Property) and #65 (as it relates to Abbruzze Property) of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver], the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

4. 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.

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

6. THIS COURT ORDERS that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) 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.

7. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

8. 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.

Schedule A – Form of Receiver's Certificate

Court File No. CV-24-00713287-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

B E T W E E N:

AFC MORTGAGE ADMINISTRATION INC.

Applicant

and

SUNRISE ACQUISITIONS (ELMVALE) INC., SAJJAD HUSSAIN, MAHVESH HUSSAIN, MUZAMMIL KODWAVI and SAFANA KODWAVI

Respondents

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Black of the Ontario Superior Court of Justice (the "Court") dated April 15, 2024, Rosen Goldberg Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of Sunrise Acquisitions (Elmvale) Inc., Sajjad Hussain, Mahvesh Hussain, Muzammil Kodwavi and Safana Kodwavi (the "**Debtors**").

B. Pursuant to an Order of the Court dated April 15, 2024, the Court approved the agreement of purchase and sale made as of purchase and sale as of July 2, 2024 (the "Sale Agreement") between the Receiver and Baomin Yi and Ting Fang Ge (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor'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 a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; 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.

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 the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; 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].

Per: _____

Schedule B – Form of Receiver's Certificate

Court File No. CV-24-00713287-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

AFC MORTGAGE ADMINISTRATION INC.

Applicant

and

SUNRISE ACQUISITIONS (ELMVALE) INC., SAJJAD HUSSAIN, MAHVESH HUSSAIN, MUZAMMIL KODWAVI and SAFANA KODWAVI

Respondents

RECEIVER'S CERTIFICATE

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A. Pursuant to an Order of the Honourable Justice Black of the Ontario Superior Court of Justice (the "Court") dated April 15, 2024, Rosen Goldberg Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of Sunrise Acquisitions (Elmvale) Inc., Sajjad Hussain, Mahvesh Hussain, Muzammil Kodwavi and Safana Kodwavi (the "**Debtors**").

B. Pursuant to an Order of the Court dated April 15, 2024, the Court approved the agreement of purchase and sale made as of purchase and sale as of July 4, 2024 (the "Sale Agreement") between the Receiver and Antonio Puopolo and Rosa Puopolo (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor'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 a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; 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.

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 the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; 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].

Per: _____

SCHEDULE 'C'
DESCRIPTION OF LANDS

ADDRESS	**9 Cicada Court Toronto, Ontario**
PIN	10120-0064 (LT)
DESCRIPTION	LT 63 PL 4758 NORTH YORK; S/T NY200193; TORONTO (N YORK) , CITY OF TORONTO

SCHEDULE 'D'
DESCRIPTION OF LANDS

ADDRESS	**88 Abbruzze Court, Woodbridge, Ontario**
PIN	03345-0011 (LT)
DESCRIPTION	PCL 8-1 SEC 65M3001; LT 8 PL 65M3001; T/W BLK 36 PL 65M3001 AS IN LT1037812 (S/T LT1006180); CITY OF VAUGHAN

SCHEDULE "E"

REGISTRATIONS TO BE DELETED/VACATED FROM PINS

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
For PIN 10120-0064 (LT)					
AT5035271	Dec. 17, 2018	Transfer	$1,818,000	Ghahraman, Mitra	Hussain, Sajjad Hussain, Mahvesh
AT5035272	Dec. 17, 2018	Charge	$995,000	Hussain, Sajjad Hussain, Mahvesh	Home Trust Company
AT5161488	June 17, 2019	Transfer of Charge		Home Trust Company	Computershare Trust Company of Canada
AT6210829	Oct. 27, 2022	Charge	$2,010,000	Hussain, Sajjad Hussain, Mahvesh	AFC Mortgage Administration Inc.
AT6210830	Oct. 27, 2022	Notice of Assignment of Rents – General		Hussain, Sajjad Hussain, Mahvesh	AFC Mortgage Administration Inc.
AT6465836	Nov. 24, 2023	Construction Lien	$140,634	Mason's Masonry Supply Ltd.	
AT6519170	Feb. 26, 2024	Certificate		Mason's Masonry Supply Ltd.	
AT6554117	April 17, 2024	Application for Court Order		Ontario Superior Court of Justice	Rosen Goldberg Inc.

SCHEDULE "F"

REGISTRATIONS TO BE DELETED FROM PINS

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
For PIN 03345-0011 (LT)					
YR3261529	June 4, 2021	Transfer	$2,980,000	Wang, Min Cai, Yan Hua	Kodwavi,Muzammil Kodwavi, Safana
YR3261530	June 4, 2021	Charge	$1,980,000	Kodwavi,Muzammil Kodwavi, Safana	Computershare Trust Company of Canada
YR3491120	Oct. 27, 2022	Charge	$2,010,000	Kodwavi,Muzammil Kodwavi, Safana	AFC Mortgage Administration Inc.
YR3491121	Oct. 27, 2022	Notice of Assignment of Rents – General		Kodwavi,Muzammil Kodwavi, Safana	AFC Mortgage Administration Inc.
YR3667399	April 17, 2024	Application for Court Order		Ontario Superior Court of Justice	Rosen Goldberg Inc.
YR3688348	June 18, 2024	Transfer of Charge		Computershare Trust Company of Canada	Community Trust Company

SCHEDULE "G"

REGISTRATIONS TO BE PERMITTED ON PINS

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
For PIN 10120-0064 (LT)					
NY200193	June 3, 1955	Transfer Easement	$1		Bell Telephone Co. of Canada Hydro-Electric Commission of Township of North York
TB969713	June 1, 1995	Notice		Bell Canada	
TR53160	Dec. 6, 1999	Notice		Toronto-Hydro-Electric System Limited	

SCHEDULE "H"

REGISTRATIONS TO BE PERMITTED ON PINS

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
For PIN 03345-0011 (LT)					
LT1006180	Oct. 14, 1994	Notice of Subdivision Agreement			The Corporation of the City of Vaughan
LT1039181Z	May 26, 1995	Application To Annex Restrictive Covenants S. 119			

AFC MORTGAGE ADMINISTRATION INC.
Applicant

-and-

SUNRISE ACQUISITIONS (ELMVALE) INC. et al.
Respondents

Court File No. CV-24-00713287-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF

PROCEEDING COMMENCED AT
TORONTO

ORDER

TEPLITSKY LLP
Barristers
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Toronto ON M5B 1X3

Jonathan Kulathungam (42049N)
jkulathungam@teplitskyllp.com
Tel: (416) 365-9320

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All Occupants (72 Grand Vellore Crescent): [email]
All Occupants (72 Longshore Way): [email]
All Occupants (88 Abbruzze Court): [email]
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Neal Howard Roth: nealroth@on.aibn.com

Diane Winters: diane.winters@justice.gc.ca
Leslie Crawford: leslie.crawford@ontario.ca; insolvency.unit@ontario.ca

CAMERON STEPHENS MORTGAGE CAPITAL LTD.
Applicant

-and-

CONACHER KINGSTON HOLDINGS INC.
Respondent

Court File No. CV-23-00701672-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

AIDE MEMORANDUM

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Lawyers of the Toronto Purchaser