

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**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**

B E T W E E N:

2478888 ONTARIO INC.

Applicant

- and -

3070 ELLESMERE DEVELOPMENTS INC.

Respondent

**ENDORSEMENT
(JANUARY 27, 2020)**

RSM Canada Limited is the court-appointed receiver (the “**Receiver**”) of the property, assets and undertaking of 3070 Ellesmere Developments Inc. (the “**Borrower**”) appointed pursuant to my Order dated September 13, 2019, which Order was issued by the Court on September 27, 2019 on consent of the Borrower (the “**Receivership Order**”) in the proceeding commenced by 2478888 Ontario Inc. as Applicant, with the support of various other mortgagees and creditors of the Borrower (the “**Receivership Proceeding**”). The Receiver brings this motion seeking to expand the powers granted to it in the Receivership Order. The Borrower had commenced a separate proceeding on August 20, 2019 in file no. 31-2547832 pursuant to the *Bankruptcy and Insolvency Act* (the “**Proposal Proceeding**”). Capitalized terms in this Endorsement are as defined in the Receiver’s First Report to the Court dated January 20, 2020 (the “**First Report**”).

Counsel for the Receiver attended on a 9:30 Chambers appointment before me on January 24, 2020 for the purpose of scheduling the return date for the motion. Prior to that attendance, no party had advised the Receiver’s counsel that they intended to oppose the relief sought, and no other counsel attended on January 24, 2020 to speak to the scheduling the Receiver’s motion.

I have been advised that following the 9:30 Chambers attendance on January 24, 2020 counsel for the Receiver served a copy of my Endorsement of that date to the Service List in this proceeding by email, advising of the return of the motion to today’s date. No parties have advised the Receiver or its counsel that they will be attending to oppose the relief sought by the Receiver.

Given the history of this matter, however, the Receiver has requested that the Court provide some additional context to the Order I have granted today.

As set out in the First Report, the Borrower took steps to appeal the Receivership Order that had been issued on consent, and then abandoned that Appeal on the eve of the Applicant's Motion to Quash the Appeal that was scheduled to be heard by the Court of Appeal on January 7, 2020. This Endorsement does not address the issues of: (i) whether or not leave to appeal was required to be sought by the Borrower; or (ii) if the Appeal had the effect of staying the Receiver's implementation of the Receivership Order for a sale of the Real Property, as those are matters for the Court of Appeal alone.

Once the Receiver became aware of the commencement of the Appeal it suspended all steps for a sale of the Real Property pursuant to the Receivership Order. The implementation of the sales process for the Real Property by the Receiver was therefore delayed for several months while the Appeal was pending, until the Motion to Quash was heard by the Court of Appeal. The Receiver is concerned that: (i) the delay resulting from the Borrower's Appeal, (ii) the continuation of the Proposal Proceeding; and (iii) the filing of a Proposal by the Borrower on the date that the Receivership Order became effective (which Proposal was premised on the Borrower's ability to deal with the Real Property), may create confusion in the market regarding who has the authority to deal with the Real Property. It is also concerned that this situation is being used by the Borrower in order to continue to attempt to deal with the Real Property itself.

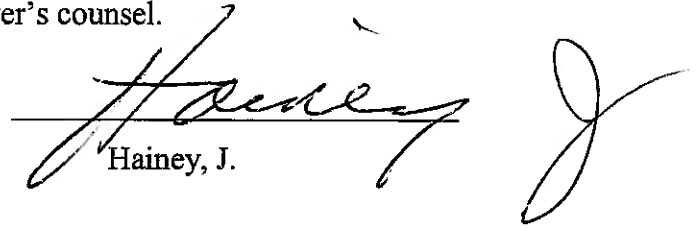
The Borrower, through its sole officer and director Thomas Liu, has continued to attempt to deal with the Real Property, contrary to the terms of the Receivership Order and a separate Order I granted on February 26, 2019 in court file no. 18-592726-00CL (the "**Prohibition Order**"), which Prohibition Order was never appealed and remains in full force and effect.

The Receiver has brought this motion to ensure that there is only one proceeding within which the Real Property will be marketed and sold and all of the Borrower's assets will be addressed, and to prevent the opportunity for any future confusion for creditors, prospective purchasers and any other interested parties. Further, this will create the stability required in the Receivership Proceeding for the Receiver to obtain the highest and best price for the Real Property. I concur in that assessment.

Given the circumstances, it is appropriate for the Receiver to file an assignment in bankruptcy on behalf of the Borrower, thereby removing any capacity whatsoever that the Borrower may have had to deal with the Real Property. In addition, it is to be clearly understood that:

- (i) the provisions of paragraph 2 of the Order granted today are in addition to, and not in substitution for the clear terms of the Receivership Order or the Prohibition Order;
- (ii) the information and document requests previously made by the Receiver to Thomas Liu in his capacity as the sole officer and director of the Borrower that remain unsatisfied at this date, as set out in paragraph 10 of the First Report, must be delivered to the Receiver within 3 days of the date hereof, failing which the Receiver may return to seek additional relief related to such failure to comply.

Order to go in the form presented by Receiver's counsel.


Hailey, J.

January 27, 2020