

**From:** Gilmore, Madam Justice Cory (SCJ) <Cory.Gilmore@scj-csj.ca>  
**Sent:** Tuesday, September 8, 2020 2:30 PM  
**To:** Gertner, Thomas; 'rann@rannwang.com'; 'george.jada2@gmail.com'; 'Ran He'; Weisz, Daniel; 'Jeff.Larry@paliareroland.com'  
**Cc:** JUS-G-MAG-CSD-Toronto-SCJ Commercial List  
**Subject:** Vector Financial Services Limited v. Highyon Development et al  
**Attachments:** Signed Receivership Order September 8, 2020.pdf

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Counsel: See my endorsement below.

### **Endorsement of Gilmore, J.**

This is Vector Financial's Application to appoint RSM Canada Limited as Receiver over certain lands on Bathurst Street in Richmond Hill, Ontario. The Application was originally scheduled to be heard on March 20, 2020. The parties entered into a Forbearance Agreement on March 20, 2020 which provided that Vector would not take steps to enforce unless certain Terminating Events occurred. During the course of the Forbearance Agreement, the Respondent agreed to continue making monthly interest payments and provide a binding offer committing to refinancing or sale of the subject lands by September 10, 2020. On the expiration of the forbearance period, Vector would be entitled to appoint a Receiver. A Terminating Event occurred when the Respondents failed to make the interest payment due on August 10, 2020. Further, the Respondents granted a third mortgage on the subject lands in the amount of \$2.8M in breach of the Forbearance Agreement.

Mr. Wang seeks an adjournment on behalf of the Respondents. He was only retained today and has not had a chance to conduct a factual investigation. He also wants to determine if his clients can acquire the first mortgage. His client communicates primarily in Mandarin so additional time is needed for document translation. Mr. Wang is available throughout the next three weeks.

Mr. He appeared on behalf of the third mortgagee. He only received notice of this hearing on Friday of last week. He needs time to formulate a position. His client is considering paying out the first mortgage or there may be a buyer for the property. His view is that this matter can resolved without the necessity of a Receivership Order. Mr. He is available on September 18, 23-25<sup>th</sup>.

Mr. Gertner opposes the requested adjournments. His position is that the Respondents have known about this matter since March 20, 2020. They can in no way be surprised by any of this given the terms of the Forbearance Agreement and their breach of it by registering a third mortgage. As for any refinancing, there has been no evidence provided by way of commitment letter or offer. The Applicant is concerned that yet another interest payment may be missed if an adjournment is granted to allow the Respondents time to take steps they have had months to complete.

I agree with the Applicants. There was a breach of the Forbearance Agreement by way of non-payment of interest and the registration of a third mortgage. The Respondent seeks a further indulgence. However, a Receivership is costly and counsel should have a brief period to consult with their clients.

Given all of the above, I make the following Orders:

1. The Receivership Order shall issue as requested.
2. The Receivership Order shall be suspended for a period of 10 days until 5:00 p.m. on September 18, 2020 at 5:00 p.m. to permit the Respondents and the third mortgagee to investigate refinancing or sale options.
3. In the event that there is no agreement as to refinancing or sale, the Receivership Order shall take effect on September 18, 2020 at 5:00 p.m.

*C. Gilmore, J.*

*September 8, 2020*

**Madam Justice Cory A. Gilmore  
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