

SUPERIOR COURT
(Commercial Division)

Canada
Province of Quebec
District of Montreal
S.C. No.: 500-11-064927-243

Date: November 20, 2024

PRESIDED BY THE HON. CÉLINE LEGENDRE J.S.C.

IN THE MATTER OF THE RECEIVERSHIP OF:

11475584 CANADA INC.

Debtor

-and-

KINGSETT MORTGAGE CORPORATION

Applicant

-and-

RICHTER INC.

Receiver

COPIE CERTIFIÉE CONFORME AU
DOCUMENT DÉTENU PAR LA COUR

LR
PERSONNE DÉSIGNÉE PAR LE GREFFIER
EN VERTU DE 67 C.P.C.

Order Appointing a Receiver

(Sections 31, 243 and ff. of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3)

ON READING of the *Application for the Appointment of a Receiver and Authorizing Sale of Assets* (the "**Motion**") dated November 19, 2024 filed by Applicant KingSett Mortgage Corporation (the "**Applicant**"), made pursuant to sections 31, 243 and ff. of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"), and of the exhibits and sworn declarations filed in support thereof;

CONSIDERING the testimony of Mr. Olivier Benchaya, CPA, CIRP, LIT, of Richter Inc. ("**Richter**" or the "**Receiver**");

CONSIDERING the representations of counsel;

CONSIDERING the provisions of the BIA;

CONSIDERING that it is just and appropriate to appoint Richter to act as receiver of the Debtor's Property (as defined below);

CONSIDERING that it is appropriate, among other things, to issue an order providing for the stay of all proceedings against the Debtor and the Property (including any proceedings regarding claims to such Property and notice of legal hypothecs);

CONSIDERING that it is appropriate and necessary to entrust the Receiver with the powers provided for herein;

CONSIDERING the provisions of Section 2767 C.C.Q.;

CONSIDERING the urgency of proceeding on the Motion;

THE COURT:

[1] **GRANTS** the Motion.

NOTIFICATION

[2] **ORDERS** that any prior notice for the presentation of the Motion be, hereby, abridged and accepted so as to make it validly presentable at the presentation date and **DISPENSES** the Applicant from any further notification of the Motion.

[3] **PERMITS** the notification of this Order (the "**Order**") at any time, anywhere and by any means, including by email.

APPOINTMENT

[4] **APPOINTS AND AUTHORIZES** Richter Inc. (Mr. Olivier Benchaya, CPA, CIRP, LIT) to act as receiver to the movable and immovable property of the Debtor, whatever they may be, of any nature whatsoever, in any place and in any hands whatsoever, excepting for the Debtor's right of action in Court file no. 500-11-064564-244 which is excluded from said property and shall remain with the Debtor (the "**Property**"), until the first occurrence of the following events:

- (a) the bankruptcy of the Debtor;
- (b) the approval of a proposal by the Court; or
- (c) the issuance of an order by the Court terminating this Order.

POWERS OF THE RECEIVER

[5] **AUTHORIZES** the Receiver to exercise, without having any obligation to do so, the following powers, subject to the terms of this Order:

- (a) all necessary powers allowing it to access all books and records of the Debtor, as well as any document, contract, register, correspondence, of any kind whatsoever, relating to the operations of the Debtor or the Property of the Debtor, wherever situated and regardless of the medium (the "**Registers**"), as well as all necessary powers to take copies of all Registers necessary or useful for the performance of its duties;

- (b) all necessary powers related to the protection and preservation of the Property;
- (c) all necessary powers to continue, in whole or in part, the operations of the Debtor in connection with the Project (as defined in the Motion), including completing construction work, as deemed necessary by the Receiver;
- (d) all necessary powers to negotiate sale transactions with prospective buyers and execute any document necessary in that respect;
- (e) all necessary powers to control the receipts and disbursements of the Debtor, and to initiate transfers of funds or payments as the Receiver deems appropriate, necessary or useful to the operations of the Debtor;
- (f) all necessary powers to retain the services of professionals, consultants, agents, service providers and/or experts, as well as to terminate any mandate or contract of this nature;
- (g) all necessary powers to pay its professional fees and those of counsel;
- (h) all necessary powers to review the security and hypothecs published on the Lot (as defined in the Motion) and to seek further instructions from this Court;
- (i) all necessary powers to collect all accounts receivable and other claims of the Debtor and to transact with them, and to sign any document or contract required or useful for this purpose;
- (j) all powers required to enter into payment arrangements or agreements and to issue any payment which, in the opinion of the Receiver, is appropriate, necessary or useful to continue, in whole or in part, the operations of the Debtor, including with respect to claims of subcontractors, suppliers and other creditors required in connection with the Project and to maintain the operations of the Debtor generally;
- (k) all necessary powers to open any required bank account, on such terms and conditions as it shall determine, with any Canadian chartered bank, or other financial institutions, for the purpose of collecting any amount payable to the Debtor and to issue any payment which, in the opinion of the Receiver, is necessary or useful for the operations of the Debtor or the continuance of the Project; and
- (l) all necessary powers to interest or solicit one or more prospective purchasers for the Property.

[6] **DECLARES** that, subject to the powers conferred upon the Receiver and which the Receiver may exercise to the extent it deems advisable, this Order shall not require the Receiver to occupy or take control of, or otherwise administer, all or part of the Property.

[7] **DECLARES** that the Receiver may provide information to creditors and other interested parties upon written request. A copy of such request must be sent to

counsel to the Applicant and the Receiver. The Receiver shall not, however, communicate information considered confidential, exclusive or competitive by the Applicant to third parties without the prior consent of the Applicant, and without the signature of a confidentiality undertaking by the recipient of such information, unless otherwise directed by the Court.

- [8] **AUTHORIZES** the Receiver to retain the services of any counsel, consultant, agent, person or firm in order to effectively carry out its duties.
- [9] **PROVIDES** the Receiver with all necessary powers to bring and institute any proceedings it deems appropriate in the performance of its duties.

DUTIES OF DEBTOR

- [10] **ORDERS** that the Debtor, its directors, officers, employees, agents and representatives grant the Receiver, without delay, access to the Property, to the Debtor' places of business and premises, and to the Registers;
- [11] **ORDERS** the Debtor, its directors, officers, employees, agents and representatives to cooperate with the Receiver in the exercise of the powers conferred upon it by the Order;
- [12] **ORDERS** the Debtor not to dispose of, alienate, encumber or otherwise deal with the Property in any manner whatsoever other than in the ordinary course of business and with the express consent of the Receiver;

NON-INTERFERENCE WITH THE RECEIVER, THE DEBTOR AND THE PROPERTY

- [13] **ORDERS** that, subject to any other order of the Court, which shall not be issued without at least five (5) business days prior notice having been duly given to the Receiver, the Applicant and the Debtor, no proceedings, seizures, claims, security or legal hypothec registrations, or other execution measures may be instituted, continued or enforced against the Debtor and the Property.
- [14] **ORDERS** that no person shall interrupt, modify, terminate, cease to perform or refuse to renew any of its obligations under any right, contract, agreement, license, insurance policy or permit entered into with the Debtor without the prior consent of the Receiver and the Applicant, or the authorization of the Court.

SUPPLY OF GOODS AND SERVICES

- [15] **ORDERS** that any person party to a written or oral agreement with the Debtor, as well as any supplier of goods or services to the Debtor, be enjoined and precluded, until the issuance of any further order of the Court, from terminating, modifying, refusing to renew or ceasing to perform any agreement for the supply of goods or services, as may be required by the Receiver, and that the Receiver be authorized to continue to use the telephone number, fax number, Internet addresses and other services, including the Internet and the Debtor's web sites, provided that the normal prices and other normal charges for such goods and services supplied or provided after the date of this Order are paid by the Receiver in accordance with the normal payment practices of the Debtor or such other practice as may be

agreed upon between the supplier of goods or services and the Receiver, or as may be ordered by the Court.

PROTECTION OF PERSONAL INFORMATION

- [16] **DECLARES** that, in accordance with subparagraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and comparable provisions of any provincial legislation, the Receiver is authorized to communicate personal information concerning identifiable individuals, in its possession or under its control, to interested parties or potential investors, financiers, purchasers or strategic partners, as well as to its advisors, but only to the extent that it is appropriate or necessary to do so, and provided that the persons to whom such personal information is communicated execute confidentiality agreements with the Receiver to preserve and protect the confidentiality of such information, and to limit its use.

LIMITATION OF LIABILITY

- [17] **DECLARES** that, without limiting the powers conferred upon the Receiver under this Order, nothing herein imposes an obligation upon the Receiver to take possession, control or otherwise assume management of any portion or part of the Property which may be contaminated, which may be a pollutant or contaminant or which may cause or contribute to environmental damages, release deposits of substances contrary to any provincial, federal or other legislation concerning the protection, conservation or rehabilitation of the environment or regarding the disposal of products, wastes or other contaminants including, without limitation, the *Environment Quality Act (Québec)*, the *Canadian Environmental Protection Act (1999)* or any other federal, provincial or municipal legislation or regulation of any kind, provided that nothing herein shall relieve the Receiver of the obligation to report or disclose as it may be required to do by any environmental legislation. The Receiver shall not, by the issuance of this Order, be presumed to be in possession of any of the Property, as provided in any environmental legislation, the whole in accordance with the terms of the BIA.
- [18] **DECLARES** that the powers of the Receiver shall be exercised at its sole discretion and in accordance with its judgment and that the Receiver is released from any liability or obligation in connection with its appointment and the execution of its powers, except in respect of any liability or obligation arising from its gross negligence or wilful misconduct.
- [19] **DECLARES** that the Receiver shall not be liable for the payment of debts and obligations contracted by the Debtor or imposed by law, unless the Receiver accepts to assume such obligations.
- [20] **DECLARES** that the Receiver is not, nor is deemed to be, an employer or successor-employer of the Debtor's employees, as the case may be, or an employer related to the Debtor within the meaning of any federal, provincial or municipal legislation governing employment, labour relations, pay equity, employment equity, human rights, health and safety or pension benefits or any other statute, regulation or other rule of law or in *equity* for all similar purposes and, further, that the Receiver does not occupy or have possession, charge, management or control of the Property or the business and finances of the Debtor,

nor is deemed to occupy or have possession, charge, management or control of the Property or of the business and finances of the Debtor, within the meaning of any federal, provincial or municipal statute, regulation or rule of law or in *equity* imposing liability in this regard, including the *Environment Quality Act* (Quebec), the *Canadian Environmental Protection Act, 1999* or the *Act respecting occupational health and safety* (Quebec) or other similar federal or provincial legislation, and **DECLARES** that the Receiver shall benefit fully from the protection of section 14.06 of the BIA.

- [21] **DECLARES** that section 215 of the BIA applies *mutatis mutandis*, and therefore, no action or other proceeding may be brought against the Receiver by reason of its appointment or the execution of the powers conferred upon it by the Court, except with the prior authorization of the Court and upon not less than ten (10) business days' notice to the Receiver and to counsel. Entities related to the Receiver or belonging to the same group, as well as any professionals, consultants or agents retained by the Receiver, also benefit from the same protection afforded to the Receiver under the BIA and this Order.

ADMINISTRATION CHARGE

- [22] **ORDERS** the Debtor to pay the reasonable fees and disbursements of the Receiver, the Receiver's counsel (McCarthy Tétrault, LLP), directly related to the BIA Proceedings, whether incurred before or after the date of this Order, and to pay in advance to each of them a reasonable provision for such fees and disbursements upon such request.
- [23] **DECLARES** that, as security for the professional fees and disbursements of the Receiver and the Receiver's counsel, incurred both before and after the date of this Order and directly related to the BIA Proceedings and the restructuring undertaken by the Debtor thereunder, such professionals, on a *pari passu* basis, shall benefit from and are hereby granted a charge, security interest and hypothec on the Property of the Debtor, up to a total amount of \$200,000 (the "**Administration Charge**").
- [24] **DECLARES** that the Administration Charge ranks senior and in priority to all other hypothecs, mortgages, pledges, security interests, prior claims, charges or guarantees of any kind whatsoever (collectively, the "**Security Interests**"), including deemed trusts in favour of the provincial and federal governments, encumbering any of the Debtor's Property affected by the Administration Charge.
- [25] **ORDERS** that, except as otherwise expressly provided herein, the Debtor shall not grant or encumber any Security Interests in respect of the Debtor's Property ranking senior to or equal to the Administration Charge, unless they have obtained the prior written approval of the Receiver, the Applicant and the prior approval of the Court.
- [26] **DECLARES** that the Administration Charge encumbers, as of the date of this Order, all of the Debtor's Property, present and future, notwithstanding any requirement to obtain the consent of any party to such a charge or to comply with any condition precedent.

- [27] **DECLARES** that the Administration Charge and the rights and remedies of the beneficiaries of such Administration Charge, as the case may be, are valid and enforceable and are not otherwise limited or impaired in any way by reason of: (i) these proceedings and the declaration of insolvency made herein; (ii) the fact that a petition for a receivership order has been filed with respect to the Debtor under the BIA, that a receivership order has been made pursuant to such petition or that an assignment of property has been made or is deemed to have been made with respect to the Debtor, or (iii) the fact that restrictive covenants, prohibitions or other similar provisions relating to borrowings, indebtedness incurred or Security Interests are contained in any agreement, lease, sublease, offer to lease or other arrangement binding on the Debtor (a "**Third Party Agreement**") and, notwithstanding anything to the contrary contained in any Third Party Agreement:
- (i) the creation of the Administration Charge does not result in and shall not be deemed to constitute a breach by the Debtor of a Third Party Agreement to which they are a party; and
 - (ii) the beneficiaries of the Administration Charge shall not be liable to any Person whatsoever for any breach of any Third Party Agreement arising out of or resulting from the implementation of the BIA Charges.
- [28] **DECLARES** that notwithstanding: (i) this proceeding and any declaration of insolvency made therein, (ii) any motion for a bankruptcy order issued under the BIA or petition for a receivership order filed with respect to the Debtor in accordance with the BIA and any receivership order in satisfaction thereof or any assignment of property involving the Debtor that is made or deemed to have been made, and (iii) any federal or provincial law, the payments or dispositions of property made by the Debtor in accordance herewith and the granting of the Administration Charge do not and will not constitute settlements, fraudulent preferences, fraudulent transfers or other questionable or reviewable transactions or acts giving rise to a remedy for abuse under any applicable law.
- [29] **DECLARES** that the Administration Charge is valid and enforceable against all the Property of the Debtor and all Persons.

APPLICATION TO TERMINATE THE RECEIVERSHIP

- [30] **ALLOWS** the Receiver, upon consultation with the Applicant and five (5) days' notice to the Debtor and any other interested party, to apply to the Court for leave to be released from its duties under this Order and the BIA.
- [31] **DECLARES** that in the event that the Receiver's mandate is terminated at its request, pursuant to the BIA or an order of the Court, the Receiver may apply to the Court without delay and obtain from the Court all instructions and orders required in connection with the termination of the mandate.

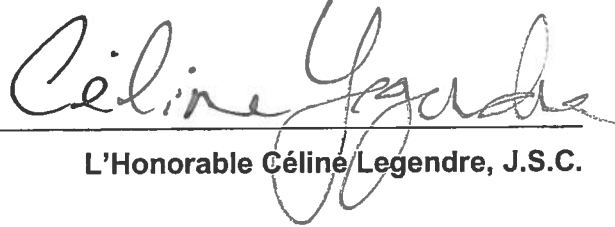
GENERAL

- [32] **DECLARES** that the Receiver shall be at liberty to serve any notice, information note or other document relating to these proceedings, by sending a copy by ordinary mail, postage prepaid, by courier, by hand delivery or by electronic transmission, to the persons or other parties concerned, at their last address

appearing in the Registers; the document so served shall be deemed to have been received on the date of delivery, if hand-delivered or electronically transmitted, on the next business day, if sent by courier, or three (3) business days after mailing, if sent by ordinary mail.

- [33] **DECLARES** that the Receiver may serve documents relating to these proceedings on all parties represented by counsel, by emailing a PDF document or other form of electronic copy of such documents, to counsel's email addresses, provided that the Receiver shall deliver paper copies of such documents to any party requesting same as soon as practicable thereafter.
- [34] **DECLARES** that any party to these proceedings may serve documents relating thereto by emailing a PDF document, or any other form of electronic copy of all documents, to the email addresses of counsel, provided that such party delivers PDF documents, or other electronic copies or paper copies of all documents, to the counsel to the Debtor, the Applicant, the Receiver and to the Receiver, and to any other party who so requests.
- [35] **DECLARES** that, except as otherwise provided herein or as otherwise ordered by the Court, it shall not be necessary to serve any document or order on any person in respect of these proceedings, unless such person has served an appearance, answer or statement of representation on counsel to the Debtor, the Applicant and the Receiver, or is on the distribution list.
- [36] **DECLARES** that any interested person may apply to the Court to vary or rescind the Order or to obtain other relief, upon five (5) business days' notice to the Receiver, the Applicant and the Debtor, and any other party likely to be affected by the order sought, or upon such other notice, if any, as the Court may order.
- [37] **ORDERS** that the Receiver may, from time to time, apply to this Court for directions in the exercise of its powers.
- [38] **DECLARES** that this Order and all other orders in these proceedings are fully enforceable and in force in all provinces and territories of Canada.
- [39] **AUTHORIZES** that the judgment to be rendered on the Motion may be served outside legal hours or legal days and under the door or by any electronic means or by registered mail, the whole subject to proper proof of service.
- [40] **DISPENSES** the Receiver, the Debtor and the Applicant from providing any bond or other security.
- [41] **DECLARES** that Exhibit P-11 in support of the Motion and Schedule A to the Approval and Vesting Orders and to the Ordonnance de radiation in support of the Motion are kept confidential and are filed under seal until otherwise ordered by the Court.
- [42] **DECLARES** that the Receiver is authorized to apply as it deems necessary or desirable, with or without notice, to any other court or administrative body in Canada to seek orders providing assistance with respect to this Order and any subsequent order of the court and supplementing them.

- [43] **REQUESTS** the assistance and recognition of any court or administrative body of any province or territory of Canada, of any federal court or administrative body of Canada, as well as of any federal or state court or administrative body of the United States of America and of any foreign court or administrative body, so that they may assist the Court and act as its auxiliary for the purpose of enforcing the terms of this Order.
- [44] **ORDERS** the provisional execution of this Order notwithstanding any appeal and without any requirement to provide security, bond or provision for costs.
- [45] **WITHOUT COSTS.**



L'Honorable Céline Legendre, J.S.C.

McCarthy Tétrault LLP
Counsel to the Applicant and to the Receiver
Mtre Marc-Étienne Boucher