SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00703161-00CL **DATE: October 26, 2023**

NO. ON LIST: 2

TITLE OF PROCEEDING: ROMSPEN INVESTMENT CORPORATION v. TUNG KEE INVESTMENT CANADA LTD. et al.

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE OSBORNE:

[1] This case conference was scheduled to address three orders relating to, and/or arising out of, my Endorsement of October 19, 2023 made in this proceeding.

[2] The parties have now agreed on the form of order for each of the Receivership Appointment Order and the Sealing Order. The draft orders provided are appropriate and I have signed them.

[3] Submissions were made about the terms of the approval and vesting order. The terms of that order, also, were ultimately agreed.

[4] The Receiver has been appointed and the Times 1010 Transaction has been approved. It is scheduled to close on November 15, 2023.

[5] There are five mortgages registered against title to the property, and DX asserts a lien.

[6] In my earlier Endorsement, I directed that issues of priority and distribution were for another day, and that the lien motion should be determined before the result on that motion was foreclosed or prejudiced by prior distributions.

[7] All parties are in agreement that whatever the result on the DX lien motion, net proceeds of sale will be more than sufficient to pay out the first and second mortgagees. Accordingly, there is no reason to delay distribution to those mortgagees following the closing of the sale.

[8] As of today, however, there are still disagreements between Amber, the second mortgagee, and the Receiver, as to the precise amount to which Amber will be entitled on payout, arising out of disagreements or at least requests for clarification with respect to the calculations on the payout statement, and disagreements about the entitlement to a renewal fee.

[9] The parties are continuing to have discussions with a view to resolving those issues on consent as I expect them to do. If that occurs, those two mortgagees can be paid out, at the respective agreed amount payable to each, as soon as practicable following closing of the sale.

[10] If Amber and the Receiver cannot agree on Amber's payout amount, the parties may schedule a brief hearing before me (which given other commitments of the Commercial List may have to be at 9 AM or 4:30 PM) and I will determine the issue.

[11] The Debtors/Respondents counsel has requested, I think reasonably, to review the payout statements as there is the potential for them to be prejudiced in the event that the statements were erroneous and there were sufficient funds to provide a distribution to those Respondents. No party objects and the Receiver and the mortgagees will provide those payout statements for review.

[12] If, following the closing of the sale, there are remaining issues with respect to the priority and distribution as among the third, fourth and fifth mortgagees and the lienholder, the parties may schedule a motion before me to determine the issues.

[13] I directed counsel for the Receiver to provide to me a revised AVO to reflect the disposition of this matter and that was provided subsequent to the hearing of the motion. That draft is inappropriate form, and I have signed that order also.

[14] All three orders to go in the form signed by me today, which orders are effective immediately and without the necessity of issuing and entering.

Conway, J.