Court File No. CV-23-00703161-00CL

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

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

TUNG KEE INVESTMENT CANADA LTD. and TUNG KEE INVESTMENT LIMITED PARTNERSHIP

Respondents

THIRD REPORT OF THE RECEIVER AND MANAGER DATED MAY 16, 2024

INTRODUCTION

1. This third report of the Receiver and Manager (the "**Third Report**") is filed by Ernst & Young Inc. ("**EYI**" or the "**Receiver**") in its capacity as receiver and manager of all the assets, undertakings and properties of the Respondents acquired for, or used in relation to a business carried on by them, pursuant to the Order of Justice Osborne dated October 19, 2023 (the "**Appointment Order**"). A copy of the Appointment Order is attached hereto as **Appendix** "**A**".

2. A pre-filing Report of the proposed Receiver dated October 4, 2023 (the "**Pre-Receivership Report**") provided, among other things:

    a) background information regarding the Respondents and the property municipally known as 3143 19th Avenue, Markham, Ontario (the "**Real Property**");

b) a summary of the Sale Process that was undertaken by the Applicant and first-ranking mortgagee, Romspen Investment Corporation ("**Romspen**") prior to the Appointment Order being made;

c) the Receiver's views on the issuance of an Approval and Vesting Order ("**AVO**") without the Receiver launching its own marketing and sale process for the Real Property; and

d) a request for a Sealing Order sealing certain terms of the Times APS (defined below), the competing offers, and appraisals for the Real Property (the "**Confidential Information**").

A copy of the Pre-Receivership Report, without appendices, is attached hereto as **Appendix "B"**.

3. The Receivership Application proceeded as a "pre-packaged" receivership, with two competing transactions. The first transaction (the "**Times Transaction**") was set out in an agreement of purchase and sale between Romspen and Times 1010 Inc. dated September 15, 2023, as amended by a waiver, assignment and amending agreement dated September 29, 2023 (the "**Times APS**"), between Romspen and Times 1010 Inc., 3143 Holdings Inc., and Times 3143 Limited Partnership (collective, the "**Times Group**"). The Times APS was conditional on the Appointment Order and the AVO being issued.

4. The second transaction (the "**281 Transaction**") was between SOW Capital Ontario Limited ("**SOW**", the majority holder of the fifth-ranking mortgage) and 2816513 Ontario Inc. ("**281 Ontario**"), pursuant to an agreement of purchase and sale dated July 18, 2023 (the "**281 APS**"). SOW was seeking to sell the Real Property under power of sale.

5. The Respondents, SOW and 281 Ontario opposed the AVO.

6. On October 19, 2023, Justice Osborne released his Reasons for Decision appointing the Receiver, issuing the AVO, approving the Times Transaction and sealing the Confidential Information.

7. On October 27, 2023, 281 Ontario served a Notice of Appeal seeking, among other things, an Order setting aside the Appointment Order and the AVO, and leave to hear its appeal on an expedited basis.

8. On October 30, 2023, the Respondents filed a Notice of Appeal, also seeking, among other things, an Order setting aside the Appointment Order and the AVO. As alterative relief, the Respondent sought, "if necessary", leave to appeal the Appointment Order and the AVO, and staying those Orders pending appeal.

9. As the Times Transaction was scheduled to close on November 15, 2023, on October 31, 2023, the Receiver delivered the First Report of the Receiver (the "**First Report**") in support of its motion for advice and directions before a single judge of the Court of Appeal, regarding, among other things, whether the Appointment Order and AVO could be appealed as of right, whether leave to appeal was required, and if leave was required, whether it should be granted. A copy of the First Report, without appendices, is attached hereto as **Appendix "C"**.

10. On November 10, 2023, the parties attended before Justice Trotter who, on the same day, issued his decision which, among other things, held that 281 Ontario had no standing to appeal the Appointment Order and the AVO, and that leave to appeal the Appointment Order and the AVO was required. Justice Trotter dismissed the Respondents' motion for leave to appeal. A copy of Justice Trotter's decision is attached hereto as **Appendix** "**D**".

11. On November 15, 2023, upon the Receiver filing the required Receiver's certificate, the Times Transaction closed. Immediately following closing, the Receiver made distributions to Romspen (the first mortgagee), and to the second mortgagee Amber Mortgage Investment Corporation ("**Amber**").

12. On November 30, 2023, Justice Conway issued two Orders on consent. The first was with respect to the distribution by the Receiver to Romspen for its legal fees paid to Dickinson Wright, with a reservation of rights to challenge Dickinson Wright's legal fees. The second was to terminate the 281 Transaction, and direct the return of the deposit thereunder. Copies of Justice Conway's orders are attached hereto as **Appendix** "**E**", together with the

related endorsement (the "**November 30 Endorsement**").

13. On December 4, 2023, the Receiver filed the second report of the Receiver (the "**Second Report**") to, among other things, report on the closing of the Times Transaction and the distributions made from the sale proceeds of that transaction pursuant to the AVO and the distribution Order of Justice Conway made November 30, 2023, provide a summary of the independent security opinions obtained by the Receiver with respect to the enforceability and validity of the mortgages registered against the Real Property, provide an update on the Receiver's review of the DX Strategies Inc. ("**DX**") lien claim over the Real Property, and obtain approval to make an interim distribution to the third and fifth ranking mortgagees. A copy of the Second Report, without appendices, is attached hereto as **Appendix "F"**.

14. On December 5, 2023, Justice Conway issued a further order (the "**December 5 Interim Distributions Order**") approving an interim distribution to the third and fifth mortgagees. A copy of the December 5 Interim Distributions Order is attached hereto as **Appendix** "**G**".

PURPOSE

15. The purpose of this Third Report is to:

a) provide an update on the status of the Five Mortgages (defined below);
b) provide an update on the determination of the DX lien claim;
c) report on the activities of the Receiver since the Second Report; and
d) provide the evidentiary basis to make an Order:
    i) directing that Alectra Utilities Corporation ("**Alectra**") produce to the Receiver copies of any work orders, agreements or similar documents in support of Alectra's application of the Alectra Charges (defined below) against the Alectra Deposit (defined below), and provide the Receiver with documents particularizing the work, services and materials supplied by Alectra in respect of the Alectra Charges;
    ii) approving the activities of the Receiver as described in the Third Report;

iii) approving and accepting the Receiver's interim statement of receipts and disbursements;

iv) unsealing the Confidential Information, if necessary; and,

v) approving the fees and disbursements of the Receiver and its legal counsel Blaney McMurtry LLP ("**Blaney**").

TERMS OF REFERENCE

16. In preparing this Third Report and making the comments herein, the Receiver has been provided with, and has relied upon the application and motion materials filed in respect of these proceeding, and discussions with management's counsel (collectively, the "**Information**"). Future oriented financial information relied upon in the Third Report is based on assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material.

17. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants Canada Handbook*. Accordingly, the Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

18. The Receiver will make a copy of the Third Report, and related documents with respect to this Receivership application, available on the Receiver's website at www.ey.com/ca/tungkee. The Receiver has also established a toll-free phone number that is referenced on the Receiver's website so that parties may contact the Receiver if they have questions with respect to this proceeding.

19. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

BACKGROUND

20. The Respondent Tung Kee Investment Canada Ltd. ("**Tung Kee Ltd.**") is an Ontario corporation, and was the registered owner of the Real Property. The Respondent Tung Kee Investment Limited Partnership is an Ontario limited partnership, and was the beneficial owner of the Real Property. Tung Kee Ltd. is the general partner of Tung Kee Investment Limited Partnership. The directors of Tung Kee Ltd. are Pui Ling Lai, Philip Kun To Wong, and Man Tung Yung.

21. The Real Property consists of three separate parcels which collectively comprise approximately 66.29 acres of developable vacant land at the southeast corner of 19^{th} Avenue and Woodbine Avenue East in Markham, and collectively bear the municipal address of 3143 19^{th} Avenue, Markham, Ontario. The Respondents had planned to develop the Real Property as a mixed-used development comprised of film studios, offices, a hotel and retail.

22. On or about September 1, 2022, the Respondents defaulted in payment of interest due under the loan that Romspen had extended to the Respondents (the "**Romspen Mortgage Loan**"). On October 7, 2022, Romspen made formal written demand for payment of the Romspen Mortgage Loan, and delivered a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (the "**BIA**"). The Respondents failed to repay the Romspen Mortgage Loan following the expiry of the ten-day statutory notice period under the BIA.

23. On October 25, 2022, Romspen, by its lawyers, issued a Notice of Sale under the Romspen Mortgage. In early-April 2023, Romspen engaged Royal LePage Your Community Realty, and launched a process for the marketing and sale of the Real Property (the "**Sale Process**"). The Sale Process undertaken by Romspen resulted in a firm and binding agreement between Romspen and the Times Group (i.e., the Times APS), subject to the Times Group's condition of the appointment of a receiver and the issuance of an AVO. The Times APS contemplated a closing date of November 15, 2023.

24. In July 2023, SOW, the majority owner of the fifth-ranking mortgage on title to the Real Property, under its own power of sale in respect of the Real Property, entered into the 281 APS, for a purchase price that was less than the Times APS (on a net basis).

25. On October 19, 2023, Justice Osborne released his Reasons for Decision issuing the Appointment Order and issuing the AVO approving the Times Transaction. The Sale Process undertaken prior to the Appointment Order, the Times Transaction, the Times APS and the 281 APS are described in detail in the Pre-Receivership Report (Appendix B). A copy of the AVO is attached hereto and marked as **Appendix "H"**.

26. Pursuant to paragraph 6 of the AVO, the Receiver was authorized and directed to make distributions to Romspen and to the second mortgagee Amber in respect of all of the secured obligations owing to each of them from the sales proceeds forthwith after the Times Transaction closed, subject to obtaining an opinion from the Receiver's counsel that the security held by Romspen and Amber over the Real Property was valid and enforceable.

27. Between November 10, 2023 (the date the Respondents' motion for leave to appeal was dismissed), and November 15, 2023, the Receiver, its counsel, and counsel for the Times Group worked diligently to prepare all of the documents and agreements necessary to be in a position to close the Times Transaction, and to make the required payments to Romspen and Amber.

28. On November 15, 2023, upon the Receiver filing the Receiver's certificate, the Times Transaction closed.

ENCUMBRANCES/SECURED CLAIMS AGAINST THE REAL PROPERTY

29. There were five mortgages (the "**Five Mortgages**") and one lien claim registered on title to the Real Property as of the closing date of the Times Transaction, summarized below:

Ranking Priority	**Creditor(s)**	**Approximate Amount Owing (per latest payout statements)**
First	Romspen	$33.989 million
Second	Amber	$10.182 million
Third	2149602 Ontario Inc.	$12.479 million
Fourth	Frank Pa and Steven Tung	$3.54 million
Fifth	SOW Miltom Services Limited	$13.001 million
Lien Claim	DX	$4,653,028

30. Pursuant to Subordination and Postponement Agreements dated January 2022 between Romspen and each of Amber, the fifth mortgagee SOW, the third mortgagee 2149602 Ontario Inc. ("**214 Ontario**"), the fourth mortgagees Frank Pa and Steven Tung ("**Pa and Tung**" and collectively with Amber, SOW and 214 Ontario, the "**Subordinate Encumbrancers**"), each of the Subordinate Encumbrancers subordinated and postponed in favour of Romspen all of their rights under their respective security over the Real Property.

Romspen Mortgage Loan

31. The Romspen Mortgage Loan was the first-ranking mortgage registered against title to the Real Property. It was registered on January 27, 2022, and was in the principal amount of $30 million.

32. On November 16, 2023, the Receiver distributed $33,787,897.39 to Romspen pursuant to the AVO. On November 30, 2023, the Receiver distributed a final payout amount of $268,410.50 to Romspen pursuant to Justice Conway's Order dated November 30, 2023. The Romspen Mortgage Loan has now been repaid in full, subject to any adjustment if Romspen's legal fees are challenged, and the challenge is successful.

Amber Mortgage Loan

33. Amber was the holder of the second-ranking mortgage registered against title to the Real Property. It was registered on January 27, 2022, in the principal amount of $9.5 million, as amended pursuant to a Charge Amending Agreement dated June 16, 2022, notice of which was registered on title to the Real Property on July 4, 2022 (the "**Amber Mortgage Loan**").

34. On November 16, 2023, the Receiver distributed $9,087,542.27 to Amber pursuant to the AVO. On November 30, 2023, the Receiver distributed a final payout amount to Amber of $984,797.75 pursuant to Justice Conway's Order dated November 30, 2023. The Amber Mortgage Loan has now been repaid in full.

214 Ontario Mortgage Loan

35. 214 Ontario was the holder of the third-ranking mortgage registered against title to the Real Property. It was registered on January 27, 2022, in the principal amount of $8.0 million, as amended pursuant to a Charge Amending Agreement dated February 23, 2022, notice of which was registered on title to the Real Property on February 24, 2022 (the "**214 Ontario Mortgage Loan**").

36. The Receiver received a payout statement from 214 Ontario's counsel indicating that as of November 15, 2023, the outstanding balance under the 214 Ontario Mortgage Loan was

$12,479,345.38, comprised of principal, unpaid interest, and other fees and charges. The Receiver understands this outstanding balance is subject to further other charges and accrued interest incurred up to the date that the 214 Ontario Mortgage Loan is repaid in full.

37. Pursuant to the December 5 Interim Distributions Order, the Receiver distributed $7 million as an interim distribution to 214 Ontario in partial satisfaction of its third mortgage over the Real Property.

Pa and Tung Mortgage Loan

38. Pa and Tung were the holders of the fourth ranking mortgage registered against title to the Real Property. It was registered on January 27, 2022, in the principal amount of $3.54 million (the "**Pa and Tung Mortgage Loan**").

39. The Receiver received a payout statement from Pa and Tung's counsel indicating that, as at November 15, 2023, the outstanding balance under the Pa and Tung Mortgage Loan was $3,540,000.00.

SOW Mortgage Loan

40. SOW was the holder of the fifth-ranking mortgage registered against title to the Real Property. It was registered on March 26, 2022, in the principal amount of USD $5.0 million, and amended by a charge/mortgage amending agreement dated February 1, 2023 to USD $20 million (the "**SOW Mortgage Loan**"). On January 9, 2023, SOW transferred a 14% interest in the SOW mortgage to Miltom Services Limited ("**Miltom**"), a tenant in common, securing an indebtedness of CAD $700,000.00.

41. The Receiver received a payout statement from SOW's counsel indicating that as of October 31, 2023, the outstanding balance under the SOW Mortgage Loan was CAD $13,000,572.88, comprised of the loan facility, unpaid interest and other fees and charges. The Receiver understands this outstanding balance is subject to further other charges and accrued interest incurred up the date that the SOW Mortgage Loan is repaid in full.

42. Pursuant to the December 5 Interim Distributions Order, the Receiver distributed $757,846.02 to Miltom in full and final satisfaction of its interest in the SOW fifth mortgage over the Real Property, and $7,242,153.98 to SOW in partial satisfaction of its fifth mortgage over the Real Property.

DX Claim for Lien

43. DX registered a Claim for Lien on April 14, 2023, in the amount of $4,653,028.11 (the "**Claim for Lien**"). In its Claim for Lien, DX alleges it supplied "Project management and architectural services" to Tung Kee Ltd. from November 7, 2020, to March 7, 2022.

44. On November 11, 2023, counsel for DX delivered documentation that purported to prove "quantum, timeliness of supply, and confirmation that the services/material supplied by DX are lienable pursuant to the terms of the *Construction Lien Act* [sic]", as well as DX's entitlement to a priority claim over certain of the Five Mortgages.

45. Blaney's lien analysis of the Claim for Lien and the documents delivered by DX in support thereof, was attached to the Second Report (the "**Lien Analysis**"), and is attached hereto, without attachments, as **Appendix "I"**. Among other things, the Lien Analysis determined that DX's lien did not appear to be perfected within the time required by the *Construction Act*, and it therefore expired. The Lien Analysis stated, among other things, that the net effect of the various errors of the Claim for Lien as set out in the Lien Analysis would be to invalidate DX's lien claim and, as a result, DX would be left with an unsecured claim for some amount of the approximately $4.6 million sought by it in its Claim for Lien.

46. Blaney invited DX's counsel to provide further documentation/information to address the deficiencies noted in the Lien Analysis. As of the date of this Third Report, Blaney has received no further documentation/information from DX or its counsel regarding the deficiencies.

DETERMINATION OF THE THIRD, FOURTH AND FIFTH MORTGAGES AND THE DX LIEN CLAIM

47. Pursuant to the November 30 Endorsement, counsel to the Respondent, SOW, 214 Ontario, Pa and Tung, and DX agreed to schedule a full day motion for the determination of the amounts owing to the outstanding registered mortgages, and the validity and quantum of the DX Claim for Lien (the "**Surplus Funds Motion**"). The parties agreed to a timetable for, among other things, delivery of materials for a full day motion scheduled for February 16, 2024.

48. That timetable was not complied with and the hearing was initially rescheduled for a full-day motion on April 18, 2024, and ultimately to May 23, 2024.

49. The Receiver understands that a settlement in principle has been entered into in respect of the Surplus Funds Motion, subject to formalization and execution of settlement documents.

50. Summarized below is the current status of the Five Mortgages (excluding additional interest and cost since the closing of the Times Transaction):

Ranking Priority	**Creditor**	**Approximate Remaining Claim**
First	Romspen	Repaid in full
Second	Amber	Repaid in full
Third	214 Ontario	$7 million paid as interim distribution. $5.5 million remaining
Fourth	Pa and Tung	$3.5 million remaining
Fifth	SOW Miltom	$8 million paid as interim distribution (Miltom repaid). $5 million remaining
Lien Claim	DX	$4,653,028 remaining

ACTIVITIES OF THE RECEIVER TO DATE

51. Since the Second Report, the Receiver has taken the following actions in connection with its obligations under the Appointment Order, as set out below:

a) maintained a statement of receipts and disbursements and an accounting record for ongoing disbursement requirements and general banking responsibilities;
b) cancelled insurance coverage for the Real Property upon closing of the Times Transaction;
c) corresponded with the principal of the Tung Kee Ltd, Pui Ling Lai and received certain limited financial information from the Respondents;
d) posted the Receiver's Reports, Court materials and other documents on the Receiver's website to keep creditors and other stakeholders apprised of the status of this receivership proceeding;
e) corresponded with Alectra to seek a refund to the Receiver of amounts held on account of the Respondents, and to obtain an accounting for amounts paid to Alectra from deposit funds that had been provided to Alectra by or on behalf of Tung Kee Ltd. prior to the Appointment Order in respect of utilities work required for the proposed development of the Real Property;
f) received and responded to requests for information from various stakeholders;
g) responded to inquiries relating to the nature of the Respondents' receivership proceeding;
h) filed an interim report with the Superintendent of Bankruptcy pursuant to subsection 246(2) of the BIA;
i) corresponded with Canada Revenue Agency regarding outstanding tax returns;
j) prepared and filed ongoing HST returns; and
k) prepared this Third Report.

<u>Alectra Deposit</u>

52. Alectra is an electrical utility distributor that, among other things, services York Region, including Markham (where the Real Property is located). The Receiver understands that, upon request from property owners, and at their expense, Alectra will temporarily relocate

hydro poles and other utility assets to facilitate construction and development.

53. On December 14, 2023, SOW's counsel informed the Receiver that significant deposits had been made to Alectra between 2022 and 2023 by or on behalf of Tung Kee Ltd. with respect to relocating hydro poles for the development of the Real Property, and requested that the Receiver make efforts to obtain a refund of any remaining deposit funds held by Alectra.

54. In this regard, the Respondents provided the Receiver documentation that included deposit requests from Alectra totaling approximately $930,000 for design and materials related to hydro relocation associated with the development of the Real Property. Based on this documentation, the deposit was funded in several tranches paid to Alectra in 2021 and 2022.

55. During the period from January, 2024 to May, 2024, the Receiver and its counsel made multiple requests of Alectra for, among other things, particulars of the agreement(s) between Alectra and Tung Kee Ltd. pursuant to which Tung Kee Ltd. agreed to reimburse Alectra in respect of electrical servicing work, a statement of account of funds received by Alectra from or on behalf of Tung Kee Ltd., and the transfer of any remaining deposit funds to the Receiver

56. Alectra received deposit funds of approximately $930,790.95 (the "**Alectra Deposit**") from or on behalf of Tung Kee Ltd. between December 29, 2021 and July 28, 2022. It is Alectra's position that it incurred costs totaling $596,497.48 (the "**Alectra Charges**"), and that funds from the Alectra Deposit were used to pay these costs in or about June and July, 2022.

57. Alectra has produced pre-receivership correspondence from Tung Kee Ltd. referencing a "request to cancel work" from Tung Kee Ltd. to Alectra in May, 2023, following which $49,000 was refunded by Alectra to Tung Kee Ltd. on June 19, 2023, and a further $124,832.60 was refunded to Tung Kee Ltd. on July 17, 2023 (the cancellation and the two refunds referenced above took place prior to the Receiver's appointment on October 19, 2023).

58. Alectra delivered the remaining Alectra Deposit funds of $160,460.87 to the Receiver on or about March 22, 2024. However, Alectra has not yet complied with the Receiver's request for particulars of the agreement(s) between Alectra and Tung Kee Ltd., and particulars of the services and material supplied by Alectra in respect of the Alectra Charges, and copies of any relevant documents in this regard.

59. The documents that the Receiver has been provided to date reference work order number 644117 (referenced in the Alectra-Tung Kee Ltd. correspondence and a summary of costs provided by Alectra), as well as work order numbers 644412 and 647658 (referenced in the summary of costs). To date, Alectra has not provided the Receiver with copies of these work orders.

60. Similarly, Alectra has not provided the Receiver with particulars and documents regarding the work described in the Alectra Summary. Attached hereto as **Appendix "J"** is a copy of certain correspondence between the Receiver, its counsel, and Alectra (among others) dated January 24, 2024 and May 6, 2024, together with certain documents received from Alectra, being a pre-Receivership exchange of email between Tung Kee Ltd. and Alectra dated August 4 to 11, 2023, and Alectra's "cost review" summary as of May 5, 2024.

61. The Receiver seeks information and documentation to substantiate the Alectra Charges to determine whether there may be any additional refunds of the Alectra Deposit that ought to be paid by Alectra.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

62. Attached hereto as **Appendix** "**K**" is the Receiver's Interim Statement of Receipts and Disbursements for the period from October 19, 2023, to May 16, 2024, which indicates actual receipts over disbursements of $7,568,963.57.

PROFESSIONAL FEES

63. The Appointment Order provides that:

a) the Receiver and its legal counsel shall pass their accounts from time to time, and for the purpose, the accounts of the Receiver and its legal counsel are hereby referred to a Judge of the Courts; and

b) prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its renumeration and disbursements when and as approved by this Court.

64. For the period from September 18, 2023, to March 31, 2024, the Receiver's accounts amount to $98,055.00 in fees, and $12,747.15 in HST, for a total amount of $110,802.15. A copy of the accounts rendered in this proceeding by the Receiver in respect of such period, together with a summary of the personnel, hours and hourly rates of the Receiver during the same, support by the Affidavit of Jeffrey Kerbel sworn May 16, 2024, is attached hereto as **Appendix "L"**.

65. For the period from August 25, 2023, to April 29, 2024, the Blaney's accounts as counsel to the Receiver, amount to $227,684.50 in fees, $1,787.08 in out of pocket disbursements and $29,689.07 in HST for a total amount of $259,160.65. A copy of the accounts rendered in this proceeding by Blaney in respect of such period, together with a summary of the personnel, hours and hourly rates of Blaney during the same, support by the Affidavit of Chad Kopach sworn May 16, 2024, is attached hereto as **Appendix "M"**.

66. The Receiver is seeking the Court's approval of its fees and those of its legal counsel Blaney.

RECOMMENDATION

67. For the reasons enumerated above, the Receiver requests an order approving the relief sought in paragraph 15(d).

All of which is respectfully submitted this 16th day of May 2024.

ERNST & YOUNG INC.,
solely in its capacity as Receiver of the assets, property and undertaking of the Tung Kee Investment Canada Ltd. and Tung Kee Investment Limited Partnership and not in its personal capacity
Per:

Jeffrey D. Kerbel
Senior Vice-President

Appendix “A”

Court File No. CV-23-00703161-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	THURSDAY THE 19TH
	)	
JUSTICE OSBORNE	)	DAY OF OCTOBER, 2023

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

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

TUNG KEE INVESTMENT CANADA LTD. AND
TUNG KEE INVESTMENT LIMITED PARTNERSHIP

Respondents

ORDER
(appointing Receiver)

THIS APPLICATION made by the Applicant Romspen Investment Corporation (the "Applicant") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Ernst & Young Inc. as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of the Respondents (collectively, the "Debtors"), acquired for, or used in relation to a business carried on by the Debtors, was heard on October 6, 2023 by Zoom videoconference.

ON READING the Affidavit of Wesley Roitman sworn July 19, 2023, and the Exhibits thereto, including Confidential Appendices A through G, the Affidavit of Wesley Roitman sworn September 29, 2023 and the exhibits thereto, including Confidential Exhibits 1 through 3, the

Affidavit of Philip Wong sworn September 26, 2023, and the exhibits thereto, the pre-filing report of Ernst & Young Inc., as proposed receiver of the Respondents, dated October 4, 2023, and the Appendices thereto, including Confidential Appendix A, the Affidavit of Hunter Lam sworn October 4, 2023, and the Exhibits thereto, the Affidavit of Pui Ling Lai sworn October 5, 2023, and the Exhibits thereto, and the Affidavit of Dan Teh sworn October 5, 2023, and the Exhibits thereto, and on hearing the submissions of counsel for Romspen, counsel for Amber Mortgage Investment Corp., counsel for 2149602 Ontario Inc., Frank Pa and Stephen Tung, counsel for SOW Capital Ontario Limited, counsel for the Respondents, counsel for the Receiver, counsel for DX Strategies Inc., counsel for 2816513 Ontario Inc., and counsel for Times 1010 Inc., no one appearing for any other person on the service list, although properly served as appears from the Affidavits of Janet Nairne sworn August 23, 2023, and October 2, 2023, filed:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Ernst & Young Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including and without in any way limiting the generality of the foregoing, the lands and premises described in Schedule “A” hereto, and all proceeds thereof (collectively, the “Property”).

RECEIVER’S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

(a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;

(d) to engage consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;

(g) to settle, extend or compromise any indebtedness owing to the Debtors;

(h) to deal with any lien claims, trust claims, and trust funds that have been or may be registered (as the case may be) or which arise in respect of the Property, including any part or parts thereof, and, with approval of this Court, to make any required distribution(s) to any contractor or subcontractor of the Debtors or to or on behalf of any beneficiaries of such trust funds pursuant to section 85 of the *Construction Act*;

(i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;

(j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof, whether directly, or through such real estate broker(s) as the Receiver may in its discretion engage, and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business subject to the approval of the Court;

(m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

(q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;

(r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and

(s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's

possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

12. THIS COURT ORDERS that in the event that an account for the supply of goods and/or services is transferred from the Debtors to the Receiver, or is otherwise established in the Receiver's name, no Person, including but not limited to a utility service provider, shall assess or otherwise require the Receiver to post a security deposit as a condition to the transfer/establishment of the account.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and

limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings. The Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

The charges granted in this paragraph 21 as security for the payment of monies borrowed by the Receiver are hereinafter referred to as to the "Receiver's Borrowing Charge".

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/tungkee.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the

records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

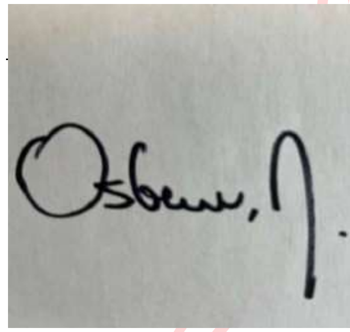
28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

29. 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.

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estates with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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SCHEDULE "A"

Municipal Address: 3143 19th Avenue, Markham, Ontario

PIN: 03055-0377 (LT) in LRO #65

Legal Description: PART LOT 30 CONCESSION 4 DESIGNATED AS PARTS 8 AND 9 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 1 TO 3 INCLUSIVE PLAN 65R39880 AS IN YR3454770; CITY OF MARKHAM

PIN: 03055-0379 (LT) in LRO #65

Legal Description: PART LOT 30, CONCESSION 4, PARTS 1, 4 & 5 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 7 & 8 PLAN 65R39880 & PART 2 PLAN 65R39948 AS IN YR3455770; CITY OF MARKHAM

PIN: 03055-0380 (LT) in LRO #65

Legal Description: PART LOT 30, CONCESSION 4, PARTS 2, 6 & 7 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 4 & 5 PLAN 65R39880 AS IN YR3455770; CITY OF MARKHAM

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. ______________

AMOUNT $_____________________

1. THIS IS TO CERTIFY that Ernst & Young Inc., the receiver (the "Receiver") of the assets, undertakings and properties of Tung Kee Investment Canada Ltd., and Tung Kee Investment Limited Partnership (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 19th day of October, 2023 (the "Order") made in an action having Court file number CV-23-00703161-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of $___________, being part of the total principal sum of $___________ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _______ day of each month] after the date hereof at a notional rate per annum equal to the rate of ______ per cent above the prime commercial lending rate of Bank of _________ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of ______________, 2023.

ERNST & YOUNG INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: ____________________________________

Name:

Title:

ROMSPEN INVESTMENT CORPORATION -and- TUNG KEE INVESTMENT CANADA LTD. et al.
Applicant Respondents

Court File No. CV-23-703161-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER APPOINTING A RECEIVER

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Barristers & Solicitors
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Tel: 416-646-6867

Lawyers for the Applicant

Appendix “B”

Court File No. CV-23-00703161-00CL

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

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant

\- and -

TUNG KEE INVESTMENT CANADA LTD. and TUNG KEE INVESTMENT LIMITED PARTNERSHIP

Respondents

REPORT OF THE PROPOSED RECEIVER
DATED OCTOBER 4, 2023

INTRODUCTION

1. Ernst & Young Inc. ("**EY**" or the "**Receiver**") is filing this pre-filing report (the "**Pre-Filing Report**") in connection with an application by Romspen Investment Corporation ("**Romspen**" or the "**Applicant**") to appoint EY as the Court-appointed receiver and manager (the "**Receiver**") of the undertaking, assets and properties of Tung Kee Investment Canada Ltd. ("**TKIC**") and Tung Kee Investment Limited Partnership ("**TKI LP**" and together with TKIC, collectively, the "**Debtors**"), acquired for, or used in relation to a business carried on by the Debtors, including and without in any way limiting the generality of the foregoing, the property known municipally as 3143 19th Avenue, Markham, Ontario (the "**Property**").

2. This Pre-Filing Report has been prepared by the proposed Receiver prior to its appointment as Receiver, should this Court grant the receivership Order being sought, to provide information to the Court for its consideration in respect of the Applicant's receivership Application.

PURPOSE

3. The purpose of this Pre-Filing Report is to:

(a) provide background information to the Court regarding the Property and the Debtors;

(b) summarize the Sale Process (defined below) undertaken by Romspen, and related offers made for the Property therein;

(c) summarize the appraisals for the Property;

(d) summarize the terms of the competing Agreements of Purchase and Sale entered into by Romspen and by Sow Capital Ontario Limited ("**Sow Capital**") under power of sale proceedings, in their respective capacities as first and fifth mortgagees over the Property;

(e) provide the proposed Receiver's views on the following:

a) the Receivership Order;

b) the issuance of an Approval and Vesting Order without the Receiver (if appointed) launching a marketing and sale process for the Property, which:

i. approves the pre-Receivership Sale Process undertaken by Romspen that resulted in the Times APS (as defined below) between Romspen and Times 3143 Limited Partnership (as buyer) and 3143 Holdings Inc. (as nominee, collectively the "**Times Group**"); and

ii. authorizes the Receiver (if appointed) to execute and implement the Times APS; and

c) the Sealing Order sealing the terms of the Times APS, the Competing Offers (as defined below) and the appraisals for the Property.

TERMS OF REFERENCE

4. Capitalized terms used but not defined in this Pre-Filing Report are as defined in the Affidavit of Wesley Roitman sworn July 19, 2023 (the "**Moving Roitman Affidavit**") and the Supplemental Affidavit of Wesley Roitman sworn September 29, 2023 (the "**Reply Roitman Affidavi**t") sworn in support of the Romspen Application herein, and the responding Affidavit of Philip Wong sworn September 26, 2023 on behalf of Sow Capital (the "**Sow Affidavit**").

5. In preparing this Pre-Filing Report and making the comments herein, the proposed Receiver has been provided with, and has relied upon, certain materials prepared and provided by Romspen and materials as filed in these proceedings (collectively, the "**Information**"). The proposed Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided.

6. The proposed Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the proposed Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information. Some of the Information referred to in this Pre-Filing Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.

7. Unless otherwise indicated, the proposed Receiver's understanding of factual matters expressed in this Pre-Filing Report concerning the Debtors and their business is based on the materials filed in these proceedings, and not independent factual determinations made by the proposed Receiver.

8. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

BACKGROUND AND FINANCIAL POSITION OF THE DEBTORS

9. TKIC is an Ontario corporation, and is the registered owner of the Property. TKI LP is an Ontario limited partnership, and is the beneficial owner of the Property. The Property consists of three separate legally described parcels which collectively comprise approximately 66.29 acres of developable vacant land at the southeast corner of 19th Avenue and Woodbine Avenue East in Markham, and collectively bear the municipal address of 3143 19th Avenue, Markham, Ontario. The Debtors planned to develop the Property as a mixed used development comprised of film studios, offices, a hotel and retail.

Secured Creditors

10. The proposed Receiver understands there are five mortgages registered on title to the Property, summarized below:

Ranking Priority	**Creditor**	**Principal Face Amount**
First	Romspen	$30 million
Second	Amber Mortgage Investment Corporation	$8.5 million
Third	2149602 Ontario Inc.	$3,744,759.41 (CAD) and $26,279,223.54 (HKD) (which is equivalent to approximately $4,600,000 CAD)
Fourth	Frank Pa and Steven Tung	$3.54 million
Fifth	Sow Capital	$20 million

11. The proposed Receiver understands that pursuant to Subordination and Postponement Agreements dated January 2022 (see Exhibits 47 to the Moving Roitman Affidavit) between Romspen and each of Amber Mortgage Investment Corporation (“**Amber**”), Sow Capital, 2149602 Ontario Inc. (“**214**”), Frank Pa and Steven Tung (“**Pa and Tung**” and collectively with Amber, Sow Capital and 214, the “**Subordinate Encumbrancers**”), each of the Subordinate Encumbrancers subordinated and postponed all of their rights under their security over the Property of the Debtors in favour of Romspen.

12. The proposed Receiver has not yet performed an independent security review of any of the five mortgages to determine validity or priority.

13. On or about September 1, 2022, the Debtors defaulted in payment of interest due under the loan that Romspen extended to the Debtors (the “**Romspen Mortgage Loan**”). On October 7, 2022, Romspen made formal written demand for payment of the Romspen Mortgage and delivered a Notice of Intention to Enforce Security pursuant to section 244 of the BIA (see Exhibit 49, Moving Roitman Affidavit). The proposed Receiver understands the Debtors failed to repay the Romspen Mortgage Loan following the expiry of the ten-day statutory notice period under the BIA.

POWER OF SALE BY ROMSPEN

14. On October 25, 2022, Romspen, by its lawyers, issued a Notice of Sale under the Romspen Mortgage (see Exhibit 50, Moving Roitman Affidavit) . After the redemption period under Romspen’s Notice of Sale expired, Romspen commissioned an appraisal of the Property, which is marked as Confidential Exhibit “3” to the Reply Roitman Affidavit.

15. On or about April 3, 2023, Royal LePage Your Community Realty (“**Royal LePage**”) and Romspen entered into a listing agreement (the “**Royal LePage Listing Agreement**”) whereby Royal LePage was engaged to conduct a process for the marketing and sale of the Property. The Royal Lepage Listing Agreement provides for a commission of 2% plus HST of the gross sale price if there is no co-operating broker. If there is a co-operating broker, the commission increases to 3% plus HST. A copy of the Royal LePage listing agreement for the Property is attached hereto as **Appendix** “**A**”.

16. On April 4, 2023, Royal LePage launched its sale process for the Property (the "**Sale Process**"). It listed the Property for sale for $69.5 million, and set a bid deadline of April 27, 2023 (the "**Initial Bid Deadline**"). A copy of the initial Royal Lepage marketing brochure is part of Exhibit "B" to the Reply Roitman Affidavit

17. On the same day, the Property was listed on Multiple Listing Service (MLS#: N6007225). A copy of the MLS listing is attached hereto as **Appendix** "**B**".

18. From April 4, 2023, through to the Initial Bid Deadline, Royal LePage received two offers (discussed below). However, neither of these offers resulted in an unconditional Agreement of Purchase and Sale.

19. On July 12, 2023, Royal LePage, with Romspen's consent, lowered the listing price of the Property to $64.5 million. A copy of the Royal Lepage marketing brochure with the updated purchase price is also part of Exhibit "B" to the Reply Roitman Affidavit.

20. Below is a summary of the timeline setting out the key dates with respect to the Sale Process:

Timeline	**Activity**
April 3, 2023	Romspen engaged Royal LePage
April 4, 2023	Royal LePage launched the Sale Process and listed the Property on MLS
April 4, 2023 through April 27, 2023	Royal LePage took steps to implement the Sale Process, as further described below
April 27, 2023	Initial Bid Deadline for submission of an executed and binding agreement of purchase and sale
April 27, 2023 / April 28, 2023	Two offers received, as further described below.
May 1, 2023	Romspen selected and signed back the First Offer (as defined below) which was subject to a 45-day due diligence condition.

June 19, 2023	Due diligence condition in the First Offer is not waived. Romspen and the proposed purchaser under the First Offer execute a mutual release
July 12, 2023	Listing Price was amended to $64.5 million
July 14, 2023 – July 18, 2023	Two amended offers and a Letter of Intent were received, as further described below.
August 25, 2023	Times Offer delivered, as further described below
September 15, 2023	Romspen and Times Group enter into the Times APS. First deposit received.
September 28, 2023	Letter from Times Group's financier serving as a positive reference for the Times Group
September 29, 2023	Times Group waives due diligence condition albeit with a lower purchase price, subject to the issuance of an Approval and Vesting Order
October 4, 2023	Second deposit received. Times APS is firm, subject to issuance of an Approval and Vesting Order

21. In addition to the marketing and sales steps in the Sale Process set out in paragraph 8 of the Reply Roitman Affidavit, the proposed Receiver understands that Royal LePage also undertook the following additional steps during the marketing period to sell the Property:

(a) attended the 2023 Building Industry luncheon in April 2023 to meet with local developers and builders to promote the Property, and followed up with emails with certain potentially interested parties;

(b) on April 4, 2023, emailed the acquisition opportunity internally to over 900 Royal LePage sales agents, and emailed them again on July 12, 2023, to indicate the revised listing price;

(c) created and posted a listing on Multiple Listing Service (MLS#: N6007225);

(d) communicated with potential interested parties via email and phone calls;

(e) established a Google Drive link to provide information for interested parties to conduct their due diligence; and

(f) gathered information for interested parties to conduct due diligence.

Results of the Sale Process

22. On or around the Bid Deadline of April 27, 2023, two parties submitted conditional binding offer to Romspen. In July 2023, two additional binding offers and a letter of intent were submitted with various conditions. A summary of these offers and the letter of intent (the "**Competing Offers**") received by Romspen (the "**Summary of Offers**") is attached hereto as **Confidential Appendix "A"**.

The First Offer and Revised First Offer

23. The first offer dated May 1, 2023 (the "**First Offer**"), included the highest cash purchase price and was subject to a 45-day due diligence condition in favour of the buyer. A copy of the First Offer is attached as the Confidential Appendix A to the Moving Roitman Affidavit.

24. On May 3, 2023, Romspen entered into an agreement of purchase and sale with the first offeror (the "**First APS**"), and an initial deposit was submitted to Romspen. However, the proposed purchaser did not waive the due diligence condition prior to the due diligence deadline. On June 19, 2023, the parties executed a mutual release terminating the First APS, and the deposit was returned.

25. On or around July 12, 2023, the first offeror submitted a revised offer (the "**Revised First Offer**") to Romspen that was for approximately 25% less than the First APS. Romspen did not accept this offer. A copy of the Revised First Offer is attached as Confidential Appendix B to the Moving Roitman Affidavit.

The Second Offer and Revised Second Offer

26. The second offer, dated April 28, 2023 (the "**Second Offer**"), provided for a cash purchase price that was approximately 45% lower than the First Offer, and subject to a 60-day due diligence condition in favour of the buyer. Romspen did not accept this offer. A copy of the Second Offer is included as part of Confidential Exhibit 1 to the Reply Roitman Affidavit**.**

27. On or around July 18, 2023, this buyer submitted a revised offer to Romspen for the Property. However, it was for an amount that was lower than the proposed purchase price in a letter of intent received the day before (as further described below) (the "**Revised Second Offer**"). Romspen did not accept the Revised Second Offer. A copy of the Revised Second Offer is included as part of Confidential Exhibit 1 in the Reply Roitman Affidavit**.**

28. Romspen and Royal LePage continued to market the property after the First Offer was terminated in June 2023. On July 12, 2023, the listing price of the Property was reduced to $64.5 million.

The Letter of Intent

29. A letter of intent dated July 17, 2023 (the "**Letter of Intent**"), was for a purchase price higher than the Revised Second Offer and subject to a 45-day due diligence condition. The proposed Receiver understands that Romspen negotiated with the party who delivered the Letter of Intent in an effort to convert it into an agreement of purchase and sale. However, the negotiations did not result in the parties advancing to that stage. A copy of the Letter of Intent is included as part of Confidential Exhibit 1 to the Reply Roitman Affidavit.

SUCCESSFUL BID

The Times APS

30. On August 25, 2023, Romspen received a conditional offer (the "**Times Offer**") from the Times Group. The proposed Receiver understands Romspen entered into discussions with the Times Group, which resulted in an increase in the cash value of the offer. On September 15, 2023, Romspen and the Times Group entered into the Times APS that provided for a

due diligence condition deadline of September 30, 2023.

31. The Times APS represents the highest and best offer received through Romspen's marketing and sale process (or through Sow Capital's attempts to market and sell the Property, as set out below under the heading "Sow Capital").

32. The proposed Receiver understands that Times Group made the first deposit required under the Times APS. While the Times Group subsequently requested, and Romspen granted, an extension of the due diligence deadline to October 2, 2023, this condition was waived on September 29, 2023 subject to the appointment of Ernst & Young Inc. as receiver and manager of the Debtors and the issuance of an order approving the sale, authorizing the Receiver to complete the Transaction, and vesting title to the Property in Times (see paras. 11 and 14 of the Reply Roitman Affidavit). On the same date, the Times APS was amended to, among other things, substitute the proposed purchaser, and to reduce the purchase price, although the net purchase price remained higher than the purchase price in the Sow APS (as defined below).

33. A redacted copy of Times APS as amended is marked as Exhibits "D" and "G" to the Reply Roitman Affidavit, and an unredacted copy with the purchase price is marked as Confidential Exhibits "2A"and "2B" to the Reply Roitman Affidavit.

34. On October 4, 2023, the Times Group delivered the second deposit due under the Times APS. Upon the payment of the second deposit, Times APS became a firm and binding agreement, subject to the issuance of a Receivership Order and an Approval and Vesting Order.

Evaluation of the Times APS

35. The Times APS is the result of a competitive sale process, and the negotiation between Romspen, the Times Group and their respective counsel. The Times Group and the Debtors are not related parties pursuant to section 65.13 of the BIA.

36. The Times APS provides that closing will occur on November 15, 2023.

37. The background and ability of the Times Group to complete the Times APS is set out at paragraphs 12 and 13 of the Reply Roitman Affidavit, and Exhibits “E” and “F to that affidavit.

38. The purchase price for the Property will be paid in cash and is sufficient to repay the indebtedness to the First, Second, Third and Fourth ranking secured creditors in full. Sow Capital, the Fifth ranking secured creditor, will receive a substantial payment but is not expected to be repaid in full.

39. A general summary of the key terms and conditions of the Times APS are set out below under the headings “Comparison of the Key Terms under the Times APS and the Sow APS”.

POWER OF SALE BY SOW CAPITAL

40. On July 18, 2023, Sow Capital and 2816513 Ontario Inc. (“**281 Ontario**”) entered into an agreement of purchase and sale which was amended on August 17, 2023 (the “**Sow APS**”, which is marked as Exhibit “C” to the Sow Affidavit and Exhibit “G” to the Reply Romspen Affidavit).

41. The proposed purchase price under the Sow APS is also lower than the proposed net purchase price under the Times APS.

42. As with the Times APS, the purchase price under the Sow APS will be paid in cash and is also sufficient to repay the indebtedness to the First, Second, Third and Fourth ranking secured creditors in full. However, while Sow Capital (the Fifth ranking secured creditor) will also not be repaid in full by the Sow APS (like with the Times APS), it will receive even less net proceeds under the Sow APS than the Times APS.

43. Romspen’s concerns regarding Sow Capital, 281 Ontario and the Sow APS, and why Sow Capital would want to proceed with the Sow APS instead of the Times APS, are set out in paragraphs 16 to 34 of the Reply Roitman Affidavit.

44. As set out in the Factum Sow Capital delivered in the herein proceeding dated September 26, 2023 (the “**Sow Factum**”), 281 Ontario waived the due diligence condition period and

paid the first and second deposits to Sow Capital. However, while the Sow APS has allegedly gone firm, for reasons not explained yet by Sow Capital, even though the Sow APS provides that closing will occur on October 16, 2023, the closing date has been amended to November 30, 2023, contrary to the terms of the Sow APS (or 15 days after the scheduled closing date under the Times APS).

45. Furthermore, while the Sow APS indicates that the purchase price is not subject to payment of a sale commission, as set out in paragraph 35 of the Reply Roitman Affidavit, the proposed Receiver understands that Royal LePage may assert that it is entitled to a commission from the sale under the Sow APS because the authorized signing officer for 281 Ontario that executed the Sow APS had initially reached out to Royal LePage about the Property on June 20, 2023, while Royal LePage was acting as sales broker.

46. A general summary of the key terms and conditions of the Sow APS are set out below.

COMPARISON OF THE KEY TERMS IN THE TIMES APS AND THE SOW APS

47. A summary and comparison of the significant terms of the Times APS and the Sow APS is attached hereto as **Confidential Appendix "A"**. A comparison, excluding financial information, is set out below:

	Times APS	**Sow APS**
Purchase Price	Higher than Sow APS	Lower than Times APS
Closing Date	November 15, 2023	November 30, 2023
Conditions	Approval and Vesting Order	None
Deposit	Same as Sow APS	Same as Times APS
Ability to Close	Romspen satisfied with evidence of financial wherewithal to close	No evidence of financial wherewithal to close provided to Romspen.

Relationship to Debtors	Unrelated	Appears Related
Commission	2%	None, but potentially subject to claim by Royal Lepage for its commission

COMPARISON OF THE APPRAISALS, TIMES APS AND THE SOW APS

48. A total of three appraisals were commissioned for this Property.

49. Romspen commissioned an appraisal from Altus Group with the effective date of January 28, 2023 (see Confidential Exhibit “3” to the Reply Roitman Affidavit).

50. Sow Capital commissioned two appraisal reports from Wagner Andrews Kovacs and Avison Young, each with the effective date of July 17, 2023 (see Exhibits “K” and “L” to the Sow Affidavit).

51. The Times APS provides for a gross purchase price that is higher than all three appraisals. The proposed Receiver notes that the purchase price in the Times APS, net of sale commission, is also higher than all three appraisals.

52. The Sow APS provides for a gross purchase price that is higher than the two appraisals it commissioned, but lower than the Altus Group appraisal.

53. A summary of these three appraisals for the Property is attached hereto as **Confidential Appendix “B”.**

OBSERVATIONS OF ROMSPEN’S SALE PROCESS

54. The proposed Receiver believes that Romspen’s Sale Process was conducted in a manner that:

(a) was fair to all who participated in it and considered the interests of all parties;

(b) maintained appropriate efficacy, integrity, and a level playing field for all potential and actual bidders;

(c) was marketed to a wide range of audience, including land developers and commercial brokers;

(d) made sufficient efforts to obtain the best price and not act improvidently;

(e) resulted in an offer for the Property that provides certainty as to closing; and

(f) resulted in an offer for the Property that is higher than all other offers, and higher than the three appraisals commissioned for the Property.

55. In the circumstances, the proposed Receiver does not believe that further marketing campaign of the Property would yield any higher or better offers.

56. The proposed Receiver notes that when Sow Capital filed its responding material, it did not redact confidential information in the Sow APS (including the purchase price), or in the appraisals that it had commissioned. These amounts are also reproduced in the Sow Factum (paras 6, 18 and 19), which the proposed Receiver understands was also filed with the Court in an unredacted form. Disclosure of this confidential information is likely to have a negative impact on any future sales process, as it effectively sets a price ceiling at an amount between the two appraisal values disclosed by Sow Capital.

Approval and Vesting Order

57. The proposed Receiver has reviewed the terms of the proposed Approval and Vesting Order and believes that it is reasonable.

Sealing Order

58. The Confidential Appendices attached hereto contain financial and other information. The proposed Receiver believes that disclosure of this information could further adversely affect any further sale process for the Property in the event the Times APS does not close.

Receivership Order

59. The proposed Receiver has reviewed the terms of the proposed Receivership Order. The draft order is substantially similar to the model receivership order of this Court.

All of which is respectfully submitted this 4th day of October, 2023.

ERNST & YOUNG INC.,
solely in its capacity as Proposed Receiver of the assets, property and undertaking of the Tung Kee Investment Canada Ltd. and Tung Kee Investment Limited Partnership and not in its personal capacity

Per:
Jeffrey D. Kerbel
Senior Vice-President

Appendix "C"

Court File No. CV-23-00703161-00CL

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

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

TUNG KEE INVESTMENT CANADA LTD. and TUNG KEE INVESTMENT LIMITED PARTNERSHIP

Respondents

FIRST REPORT OF THE RECEIVER AND MANAGER DATED OCTOBER 31, 2023

INTRODUCTION

1. This first report of the Receiver and Manager (the "**First Report**") is filed by Ernst & Young Inc. ("**EYI**" or the "**Receiver**") in its capacity as receiver and manager of all the assets, undertakings and properties of the Respondents acquired for, or used in relation to a business carried on by them, pursuant to the Order of Justice Osborne dated October 19, 2023 (the "**Appointment Order**"). A copy of the Appointment Order is attached hereto as **Appendix** "**A**".

2. The Report of the Proposed Receiver dated October 4, 2023 (the "**Pre-Receivership Report**") provided, among other things, background information regarding the Respondents and the property known municipally as 3143 19th Avenue, Markham, Ontario (the "**Real Property**"), a summary of the Sale Process that was undertaken by the Applicant prior to the Appointment Order being made, the Receiver's views on the

issuance of an Approval and Vesting Order ("**AVO**") without the Receiver launching its own marketing and sale process for the Real Property, and a request for a Sealing Order sealing terms of the Times APS (defined below), and the competing offers and appraisals for the Real Property. A copy of the Pre-Receivership report is attached hereto as **Appendix** "**B**", without the confidential appendices thereto.

3. The Receivership Application proceeded as a "pre-packaged" receivership, with two competing transactions. The first transaction (the "**Times Transaction**") was contemplated in an agreement of purchase and sale between the Applicant and first-ranking mortgagee Romspen Investment Corporation ("**Romspen**") and Times 1010 Inc. dated September 15, 2023, as amended by a waiver, assignment and amending agreement dated September 29, 2023 (the "**Times APS",** attached hereto as **Confidential Appendix "1"**) between the Applicant and Times 1010 Inc., 3143 Holdings Inc., and Times 3143 Limited Partnership (collective, the "**Times Group**"). The Times APS was conditional on the Appointment Order and the AVO being issued.

4. The second transaction (the "**281 Transaction**") was between SOW Capital Ontario Limited ("**SOW**", the fifth-ranking mortgagee) and the Appellant 2816513 Ontario Inc. ("**281 Ontario**") pursuant to an agreement of purchase and sale dated July 18, 2023 (the "**281 APS**", attached to the affidavit filed by SOW, reproduced at Appendix H, described below).

5. On October 19, 2023, Justice Osborne issued the AVO approving, among other things, the Times Transaction. A copy of the AVO and the related endorsement of Justice Osborne are attached hereto as **Appendices "C"** and **"D"**, respectively.

6. On October 19, 2023, Justice Osborne issued an Order (the "**Sealing Order**") sealing, among other things, confidential information attached to the Affidavit of Wesley Roitman sworn July 19, 2023 (copy attached hereto as **Appendix "E"**, without confidential exhibits thereto), the Affidavit of Wesley Roitman sworn September 26, 2023 (copy attached hereto as **Appendix "F"**, without confidential exhibits thereto), and to the Pre-Receivership Report.

7. The Sealing Order and the Appointment Order were not opposed by any of the mortgagees or the Respondents. In fact, the Respondents delivered a responding Affidavit of Pui Ling Lai sworn October 5, 2023 (attached hereto **as Appendix "G"**) supporting the appointment of a Receiver.

8. The Respondents, SOW and 281 Ontario opposed the AVO. SOW brought a separate motion to approve the sale of the Real Property to 281 Ontario, and in support of that motion delivered an Affidavit of Philip Wong sworn September 26, 2023, a copy of which is attached at **Appendix "H"**. In support of SOW's motion, 281 Ontario delivered an Affidavit of Hunter Lam sworn October 4, 2023, a copy of which is attached at **Appendix "I"**.

9. The Receiver's Pre-Receivership Report included a summary of the competing offers for the Real Property, including the Times APS and the 281 APS. A copy of the Receiver's summary is attached at **Confidential Appendix "2"**.

10. On October 19, 2023, among other things Justice Osborne approved the AVO authorizing the Times Transaction and the Times APS.

PURPOSE

11. The First Report is being filed in connection with an urgent motion regarding the Appointment Order, the AVO and the Times Transaction, which is scheduled to close on **Wednesday, November 15, 2023**.

12. On October 27, 2023, 281 Ontario served a Notice of Appeal seeking, among other things, an Order setting aside the Appointment Order and the AVO, and for leave to hear its Appeal on an expedited basis.

13. On October 30, 2023, the Respondents filed a Notice of Appeal, among other things, to set aside the Appointment Order and the AVO. As alterative relief, the Respondents seek, "if necessary" leave to appeal the Appointment Order and the AVO, and staying the Orders pending Appeal.

14. Neither 281 Ontario nor the Respondents have delivered a notice of motion seeking leave to appeal the AVO, nor seeking a stay of either the Appointment Order or the AVO.

15. The Receiver seeks directions before a single judge of the Court of Appeal regarding, among other things:

a) whether 281 Ontario has standing to appeal, and if so, whether 281 Ontario's appeal of the Appointment Order and the AVO is as of right, or whether it requires leave to appeal;

b) whether the Respondents have an appeal as of right of the Appointment Order and AVO, or whether they require leave to appeal;

c) if leave to appeal is required (and if 281 Ontario has standing with respect to its purported appeal), whether leave should be granted; and

d) if leave is not required (and if 281 Ontario has standing with respect to its purported appeal), whether the Appointment Order and the AVO are stayed by the Notices of Appeal, and if stayed, whether the stays should be lifted.

16. The Receiver's position is that 281 Ontario had no standing on the underlying Application and continues to have no standing on its purported appeal. Furthermore, the Receiver's position is that there is no automatic right of appeal with respect to the Appointment Order or the AVO, pursuant to subsections 193(a) through (d) of the *Bankruptcy and Insolvency Act* (the "**BIA**"), and as a result of Respondents' consent to the Appointment Order, section 133 of the *Courts of Justice Act*, R.S.O. 1990, c C.43 precludes its appeal of the Appointment Order. In the alternative, the Receiver 's position is that the Appointment Order and the AVO are not automatically stayed pursuant to section 195 of the *BIA* by the filing of the Notices of Appeal, and that a stay is required to preclude the Times Transaction from closing on November 15, 2023.

TERMS OF REFERENCE

17. In preparing this First Report and making the comments herein, the Receiver has been provided with, and has relied upon, certain unaudited, draft and/or internal financial statements, the motion materials filed in respect of these proceeding, and discussions with management and its counsel (collectively, the "**Information**"). Future oriented financial information relied upon in the First Report is based on assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material.

18. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

19. The Receiver will make a copy of the First Report, and related documents with respect to this Receivership application, available on the Receiver's website at www.ey.com/ca/tungkee. The Receiver has also established a toll-free phone number that is referenced on the Receiver's website so that parties may contact the Receiver if they have questions with respect to this proceeding.

20. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

BACKGROUND

21. The Respondent Tung Kee Investment Canada Ltd. is an Ontario corporation and is the registered owner of the Real Property. The Respondent Tung Kee Investment Limited Partnership is an Ontario limited partnership and is the beneficial owner of the Real Property. The Real Property consists of three separate legally described parcels which collectively comprise approximately 66.29 acres of developable vacant land at the southeast corner of 19th Avenue and Woodbine Avenue East in Markham, and collectively bear the municipal address of 3143 19th Avenue, Markham, Ontario. The Respondents

planned to develop the Real Property as a mixed used development comprised of film studios, offices, a hotel and retail.

22. On or about September 1, 2022, the Respondents defaulted in payment of interest due under the loan that Romspen extended to the Respondents (the "**Romspen Mortgage Loan**"). On October 7, 2022, Romspen made formal written demand for payment of the Romspen Mortgage Loan and delivered a Notice of Intention to Enforce Security pursuant to section 244 of the BIA. The Respondents failed to repay the Romspen Mortgage Loan following the expiry of the ten-day statutory notice period under the BIA.

23. On October 25, 2022, Romspen, by its lawyers, issued a Notice of Sale under the Romspen Mortgage. In early April 2023, the Applicant engaged Royal LePage Your Community Realty and launched a process for the marketing and sale of the Real Property (the "**Sale Process**"). The Sale Process undertaken by Romspen resulted in a firm and binding agreement between Romspen and the Times Group, subject to the appointment of a receiver and the issuance of an AVO. The Times APS contemplates a closing date of November 15, 2023.

24. In July 2023, SOW, the fifth ranking mortgage on title to the Real Property, under its own power of sale in respect of the Real Property entered into an agreement of purchase of sale with 281 Ontario (the "**281 APS**"), for a purchase price that is less than the Times APS (on a net basis).

25. On October 19, 2023 Justice Osborne released his Reasons for Decision issuing the Appointment Order and issuing the AVO approving the sale transaction and the Times APS. The Sale Process undertaken prior to the Appointment Order, the Times APS, and the 281 APS are described in detail in the Pre-Receivership Report.

26. The same day (October 27, 2023) counsel for 281 Ontario delivered its client's Notice of Appeal and counsel to the Respondents advised in writing of its clients' intention to appeal, the Receiver's counsel advised counsel for 281 Ontario and the Respondents that their clients' required leave to appeal, and that the Receiver would be seeking directions in a motion before a single judge of the Court of Appeal the week of November 6, 2023, as the

Times Transaction was scheduled to close on November 15, 2023.

27. The relevant email correspondence from counsel for the Receiver on October 27, 2023 is attached at **Appendix "J"**.

ENCUMBRANCES/SECURED CLAIMS AGAINST THE REAL PROPERTY

28. There are five mortgages (the "**Five Mortgages**") registered on title to the Real Property, summarized below:

Ranking Priority	**Creditor**	**Approximate Amount Owing (per Romspen factum)**
First	Romspen	\$33.552 million
Second	Amber Mortgage Investment Corporation	\$9.869 million
Third	2149602 Ontario Inc.	\$11.394 million
Fourth	Frank Pa and Steven Tung	\$3.54 million
Fifth	SOW	\$11.965 million

29. On April 14, 2023, DX Strategies Inc.("**DX**") registered a claim for a lien over the Real Property in the amount of \$4,653,028 and perfected the lien by registering a certificate of action on June 16, 2023. DX seeks priority over the mortgages registered on title to the Real Property.

30. The Receiver is in the process of performing an independent security review of the Five Mortgages, and of DX's lien, to determine validity and priority.

APPRAISED VALUE OF THE REAL PROPERTY

31. The Times Transaction reflects a purchase price higher than the value of the Real Property as reflected by the appraisals commissioned by Romspen and SOW. Romspen produced the appraisal of Altus Group Limited dated January 28, 2023 as a confidential appendix (attached hereto as **Confidential Appendix "3"**), and sought (and obtained) the Sealing Order keeping the purchase price in the Times APS and the value in the appraisal confidential. SOW, on the other hand, did not seek a sealing order, and has publicly disclosed the purchase price in the 281 APS, and the valuations set out in the two appraisals SOW had commissioned.

RISKS ASSOCIATED WITH A STAY OF THE APPOINTMENT ORDER AND AVO

32. The prejudice associated with a stay of the Appointment Order and the AVO would include:

    a. erosion of the net recovery through per diem interest of approximately $22,871, plus continued costs of the Receivership;

    b. a likely cap or ceiling on the amount of any future offer for the Real Property at an amount below the two appraisal values publicly disclosed by SOW (both of which are below the purchase price in the Times APS);

    c. the risk of losing the Times APS in the face of not just uncertainty, but in the face of a strong likelihood that a superior offer will not be received; and,

    d. the risk that a second sale process is likely to have a chilling effect on the market for the Real Property.

All of which is respectfully submitted this 31st day of October, 2023.

ERNST & YOUNG INC.,
solely in its capacity as Receiver of the assets, property and undertaking of the Tung Kee Investment Canada Ltd. and Tung Kee Investment Limited Partnership and not in its personal capacity
Per:

Jeffrey D. Kerbel
Senior Vice-President

Appendix “D”

COURT OF APPEAL FOR ONTARIO

BEFORE: TROTTER J.A.

DATE: NOVEMBER 10, 2023

DISPOSITION OF COURT HEARING:

COURT FILE NO.: M54659, M54664, M54665 (COA-23-CV-1129 & COA-23-CV-1163)

TITLE OF PROCEEDING:

ROMSPEN INVESTMENT CORPORATION V. TUNG KEE INVESTMENT CANADA LTD. ET AL

Background

On October 19, 2023, Justice Peter Osborne, sitting as a judge on the Commercial List in Toronto, made an Appointment Order naming Ernst & Young Inc. as the Receiver over the assets and undertakings of Tung Lee Investment Canada Ltd. and Tung Lee Investments Limited Partnership ("the mortgagors"). On the same day he made an Approval and Vesting Order ("AVO"), which involves the purchase and sale of a 66 acre, undeveloped piece of land in Markham, Ontario ("the property") between the first mortgagee, Romspen Investment Corporation ("Romspen"), to Times 1010 Inc., 3143 Holdings Inc., and Times 3143 Limited Partnership (collectively, "the Times Group" and the "Times Transaction").

During the same proceeding, Osborne J. refused to approve a competing proposal that would have permitted the fifth mortgagee, SOW Capital Ontario Limited ("SOW"), to sell the property to 2816513 Ontario Inc. ("281"), albeit at a lower price. The approved Times Transaction is scheduled to close on November 15, 2023.

The Appeals

The mortgagors have filed a Notice of Appeal of both aspects of the October 19, 2023 order (i.e., the appointment of the Receiver and the AVO). 281 purports to appeal the approved sale and lead fresh evidence on its appeal, even though Osborne J. concluded that 281, as an unsuccessful bidder, had no standing in the proceedings.

The Receiver brings a Motion for Directions, on an emergency basis, with the ultimate goal of facilitating the approved sale on November 15, 2023. The mortgagors and 281 also seek directions with the joint goal of derailing the sale. The latter both contend that they have appeals as of right under s. 193 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*"), and that their appeals result in an automatic stay of the November 15, 2023 Times transaction under s. 195 of the *BIA*. Alternatively, they seek leave to appeal today, again with an automatic stay. All parties agree that it is common practice for a single judge hearing a motion for directions to consider and determine leave applications in the context of *BIA* proceedings.

The Receiver, joined by Romspen, take the position that 281 has no standing to appeal the order of Osborne J. Alternatively, they contend that 281 has no appeal as of right. They further submit that leave to appeal is required and it should be refused. In the further alternative, if leave is granted, they request that I exercise my discretion under s. 195 and cancel the stay.

With respect to the mortgagors, the Receiver takes the position that, having consented to the appointment of a Receiver, the mortgagors require leave to appeal to resile from a consent order. The Receiver also submits that the mortgagors have no appeal as of right to this court and that, alternatively leave to appeal should be refused. Again, they request that I exercise my discretion under s. 195 of the *BIA* to permit the transaction to close on November 15, 2023.

Discussion

Given the urgency of the matter, time does not permit the preparation of extensive reasons. I briefly set out my conclusions that I have reached on these dueling motions.

(1) No Appeals as of Right

I have concluded that 281 has no standing to appeal from the Order of Osborne J., who gave cogent reasons on this very issue, at paras. 89 to 92.

Mr. Klaiman for 281 submits that Osborne J. erred in concluding that 281 was a “bitter bidder”; instead, he submitted that his client is a successful purchaser who is entitled at law to have its agreement approved. Osborne J. considered and rejected the same arguments made before me concerning the doctrine of equitable conversion. He further dismissed the submission that, because the SOW/281 APS was entered into before the Receiver was appointed, 281 was put in a better position. As Osborne J. said, it did not permit SOW, the fifth mortgagee, to “jump the line” ahead of others with superior security. I agree with Osborne J.’s analysis. 281 had no standing before him; it has no standing in the Court of Appeal, for the same reasons: paras. 98-101. Accordingly, insofar as 281 is concerned, no statutory stay of proceedings, either based on an appeal as of right or by leave, is triggered by its filing of a Notice to Appeal.

The Receiver and Romspen submit that the mortgagors have no appeal as of right from the Appointment order because they consented to it before Osborne J. As he said at para. 35: “While certainly not determinative of the issue, the fact that the appointment of a receiver is not opposed by any party, and the somewhat unusual fact that the appointment of the receiver is in fact consented to and indeed supported by the respondents/debtors themselves, is very telling.”

On this motion, Ms. Poliak for the mortgagors submits that her clients’ consent was not open ended. As noted in an affidavit filed before Osborne J., the consent was qualified: “The Respondents do not oppose the appointment of the Receiver for the purpose of marketing the Real Property for sale in a court supervised process.” But that is precisely what happened in this case; Osborne J. took steps to assure the purchase price of the Times Transaction was determined on a basis that was fair and commercially sound, yielding the best outcome for all creditors. The mortgagors have provided no explanation, let alone a compelling one, to justify its reversal from its position before Osborne J.

The mortgagors further submit that their appeals fall under s. 193(a) of the *BIA*, being an appeal that affects it's "future rights." The future right identified is the loss of the mortgagors' right to sue Romspen based on an improvident sale of the property. However, I agree with Mr. Preger for Romspen that, once a Receiver is in place, that right is lost: see *2403177 Ontario Inc. v. Bending Lake Iron Group*, 2016 ONCA 225. Upon the appointment of the Receiver, they lost a "present" or existing right to sue for an improvident sale, not a future right. Leave is required in the circumstances.

With respect to their appeal from the approval of the sale, the mortgagors have no appeal as of right, as defined in s. 193(a) to (d) of the *BIA*. Leave is required.

(2) Leave to Appeal Dismissed

Section 193(e) provides that leave to appeal may be granted on grounds that do not come within paras. (a) to (d) of that provision.

The mortgagors make a number of submissions that are largely factual in nature. Ms. Poliak submits that there was no reason why either of the proposed transactions – the Times Transaction and the SOW/281 sale – could not have gone under Power of Sale proceedings. But this is grounded in the same submission mentioned above, that the mortgagors complain that they lost their rights to commence an action for an improvident sale of the property. However, Osborne J. engaged in a process specifically designed to avoid an improvident sale. He would not have approved the Times Transaction if he thought it was improvident. Ms. Poliak submits that Osborne J. ignored two appraisals produced by the mortgagors that suggested that the property was worth far more than the Times Transaction would yield. In my view, Osborne J. sufficiently addressed this evidence in his reasons, at paras. 81-82.

To summarize, the grounds on which the mortgagors seek leave are fact-specific; whereas leave to appeal requires much more: *Kingsett Mortgage Corporation v. 30 Roe Investments Corp.*, 2022 ONCA 479, at para. 26. In particular, an application for leave to appeal under the *BIA* must raise an issue of general importance to the practice in bankruptcy/insolvency matters, or to the administration of justice as a whole. Another question to be asked is whether the appeal would unduly hinder the progress of the bankruptcy/insolvency proceedings: *Business Development Bank of Canada v. Pine Tree Resorts*, 2013 ONCA 282, 115 O.R. (3d) 617, at para. 29. In my view, the grounds on which the mortgagors seek leave to appeal do not transcend the facts of this case. Moreover, they would not only hinder the progress of the proceedings, they will largely derail them, an issue addressed further below.

Accordingly, I am not persuaded that this is a proper case for leave to appeal on any of the submissions advanced by Ms. Poliak in her submissions. Once again, a stay of proceedings is not triggered in the circumstances.

(3) No Stay of Proceedings

Given my conclusions above, neither appellant is entitled to an automatic stay of proceedings. If I am mistaken in any of these conclusions, and an automatic stay is somehow triggered, I exercise my discretion under s. 195 of the *BIA* and cancel the stay.

Section 195 of the *BIA* provides as follows:

> s. 195 Except to the extent that an order or judgment appealed from is subject to provisional execution notwithstanding any appeal therefrom, all proceedings under an order or judgment appealed from shall be stayed until the appeal is disposed of, <u>but the Court of Appeal or a judge thereof may vary or cancel the stay or the order for provisional execution if it appears that the appeal is not being prosecuted diligently, or for such other reason as the Court of Appeal or a judge thereof may deem proper</u>. [Emphasis added.]

The approach to s. 195 is guided by a similar test for granting an injunction in *RJR-MacDonald Inc. v. Canada*, [1994] 1 S.C.R. 311. See *Matco Capital Limited v. Interex Oil Field Services Ltd.*, 2007 ABCA 317, at para. 11.

In all of the circumstances, this is an appropriate case to cancel a stay. This conclusion draws on the reasons offered by Osborne J. to approve the Times Transaction, as well as the almost inevitable damage (i.e., irreparable harm) that would be caused by not doing so:

- A fair sales process was conducted by Romspen, but only after previous efforts had failed to result in a sale;
- Prior attempts to sell the property, both by the mortgagors and by SOW, yielded potential sales, but at lower purchase prices;
- Preventing the Times Transaction now would reduce the marketability of the property in the future;
- There is no guarantee that the Times Transaction will close if the November 15, 2023 closing date is postponed;
- The improper disclosure of prior appraisals by SOW may adversely impact on the purchase price of any future deal;
- There is no guarantee that, if returned to the market, any better offer would be generated;
- Interest on the outstanding debt was accumulating at a rate of $23,000 a day or $710,000 a month;
- The closing date for the proposed SOW/281 sale had been postponed on more than one occasion without explanation; and
- The proposed SOW/281 sale is now scheduled to close more than two weeks after the Times Transaction, resulting in the accumulation or even more interest.

All of these factors justify the denial of a stay of proceedings.

Conclusion

There will be no stay of proceedings. The Times Transaction is free to close on November 15, 2023.

The parties agreed that the costs of today's proceedings should be dealt with by a judge on the Commercial List after the sale of the property. I wish to thank all counsel for their helpful written and oral submissions.

[illegible] J.A.

Appendix “E”

Court File No. CV-23-00703161-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	THURSDAY, THE 30th
	)	
JUSTICE CONWAY	)	DAY OF NOVEMBER, 2023

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

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant

-and-

TUNG KEE INVESTMENT CANADA LTD., and
TUNG KEE INVESTMENT LIMITED PARTNERSHIP

Respondents

ORDER

THIS MOTION made by Romspen Investment Corporation ("**Romspen**") was heard this day by judicial video conference.

ON BEING advised of the Consent of Romspen, Sow Capital Ontario Limited and the Respondents (the "**Debtor**s") and on hearing the submissions of each their counsel and counsel for Ernst & Young Inc. in its capacity as receiver and manager of the Respondents (in such capacities, the "**Receiver**"),

1. **THIS COURT ORDERS** that the remaining balance of Romspen's legal fees to date, being $268,410.50, shall be released forthwith by the Receiver to Dickinson Wright LLP ("**DW**")

from the remaining proceeds of sale of the property known municipally as 3143 19th Avenue, Markham, Ontario (the "**Real Property**").

2. **THIS COURT ORDERS** that any rights of the fulcrum stakeholder to the proceeds of sale of the Real Property (the "**Fulcrum Stakeholder**") to challenge the legal fees charged by DW for services rendered to Romspen from the time of the Debtors' engagement of Chaitons LLP until today be and are hereby reserved (the "**Impugned Period**").

3. **THIS COURT ORDERS** that any challenge to DW's legal fees during the Impugned Period shall be heard by Justice Osborne, subject to his availability, or as the Court may otherwise direct.

4. **THIS COURT ORDERS** that any challenge to DW's legal fees during the Impugned Period shall not proceed until after the validity of the subordinate mortgages and the construction lien registered against the Real Property, and the *quantums* owing thereunder, are determined by the Court, or agreed upon between the required stakeholders and approved by the Court.

5. **THIS COURT ORDERS** that the Receiver shall hold a reserve of $50,000 as security for Romspen's costs in defending any challenge by the Fulcrum Stakeholder to DW's legal fees during the Impugned Period (the "**Reserve**").

6. **THS COURT ORDERS** that the Debtors shall immediately produce to DW unredacted copies of all invoices for legal services rendered by Chaitons LLP to the Debtors during the Impugned Period. If the invoices do not reflect itemized dockets and hourly rates of those involved in rendering the services, the underlying dockets and hourly rates shall also be provided. DW shall hold same on a "counsel's eyes only" basis, shall not to share them with Romspen and any claim that the Debtors have waived privilege in providing same is hereby waived.

7. **THIS COURT ORDERS** that prior to any challenge of DW's legal fees during the Impugned Period, upon written request by Romspen, the Debtors shall produce the invoices of Miller Thomson LLP and Teplitsky Colson LLP and any other lawyer who has rendered services to the Debtors during the period since DW's engagement on behalf of Romspen to date (and not limited only to the Impugned Period). If the invoices do not reflect itemized dockets and hourly rates of those involved in rendering the services, the underlying dockets and hourly rates shall also

be provided. DW shall hold same on the same basis as set out in paragraph 6 and any claim that the Debtors have waived privilege in providing same is hereby waived.

8. **THIS COURT ORDERS** that in the event that the Fulcrum Stakeholder is not the Debtor, prior to any challenge of DW's legal fees during the Impugned Period, upon written request by Romspen, such Fulcrum Stakeholder shall produce the invoices of all lawyers who have rendered services to the Fulcrum Stakeholder during the period since DW's engagement on behalf of Romspen to date (and not limited only to the Impugned Period). If the invoices do not reflect itemized dockets and hourly rates of those involved in rendering the services, the underlying dockets and hourly rates shall also be provided. DW shall hold same on the same basis as set out in paragraph 6 and any claim that the Fulcrum Stakeholder has waived privilege in providing same is hereby waived.

9. **THIS COURT ORDERS** that the Fulcrum Stakeholder's reservation of rights to challenge DW's fees during the Impugned Period shall remain in place and the Reserve shall remain in the hands of the Receiver until the earlier of the Receiver's discharge, further Order of the Court, or the waiver of such rights by the Fulcrum Stakeholder.

Conway J.

ROMSPEN INVESTMENT CORPORATION -and- TUNG KEE INVESTMENT CANADA LTD. et al.
Applicant Respondents

Court File No. CV-23-703161-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER

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Court File No. CV-23-00703161-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	THURSDAY, THE 30TH
	)	
JUSTICE CONWAY	)	DAY OF NOVEMBER, 2023

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

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant

and

TUNG KEE INVESTMENT CANADA LTD., and
TUNG KEE INVESTMENT LIMITED PARTNERSHIP

Respondents

ORDER

THIS MOTION, made by the Sow Capital Ontario Limited ("**Sow**") for an order, inter alia, permitting the completion of the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between Sow and 2816513 Ontario Inc. dated July 18, 2023, (the "**Sale Agreement**") for all rights, title and interests of Tung Kee Investment Canada Ltd., in and to the property municipally known as 3143 19th Avenue, Markham, Ontario and legally described in Schedule "A" hereto (the "**Property**"), was heard this day at 330 University Avenue, Toronto, Ontario, via judicial videoconference.

ON READING the Affidavit of Wesley Roitman sworn July 19, 2023, and the Exhibits thereto, including Confidential Appendices A through G, the Affidavit of Wesley Roitman sworn September 29, 2023 and the exhibits thereto, including Confidential Exhibits 1 through 3, the Affidavit of Philip Wong sworn September 26, 2023, and the exhibits thereto, the pre-filing report of Ernst & Young Inc., as proposed receiver of the Respondents, dated October 4, 2023, and the Appendices thereto, including Confidential Appendix A, the Affidavit of Hunter Lam sworn October 4, 2023, and the Exhibits thereto, the Affidavit of Pui Ling Lai sworn October 5, 2023, and the Exhibits thereto, and the Affidavit of Dan Teh sworn October 5, 2023, and the Exhibits thereto, and on hearing the submissions of counsel for Romspen, counsel for Amber Mortgage Investment Corp., counsel for 2149602 Ontario Inc., Frank Pa and Stephen Tung, counsel for SOW Capital Ontario Limited, counsel for the Respondents, counsel for the Receiver, counsel for DX Strategies Inc., counsel for 2816513 Ontario Inc., and counsel for Times 1010 Inc., 3143 Holdings Inc. and the Partnership, no one appearing for any other person on the service list, although properly served as appears from the Affidavits of Janet Nairne sworn August 23, 2023, and October 2, 2023, filed:

1. THIS COURT ORDERS that the time for service of Sow's Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today, and all further service thereof is hereby dispensed with.

2. THIS COURT ORDERS that Sow's Notice of Motion and Motion Record along with the relief sought therein is dismissed.

3. THIS COURT ORDERS AND DECLARES that the Transaction and Sale Agreement are hereby terminated and cancelled and shall be of no further effect without the need for additional

steps or additional documents and Sow is hereby released and discharged from any and all obligations under the Transaction and Sale Agreement.

4. THIS COURT ORDERS that Keyser Mason Ball LLP shall forthwith return to 2816513 Ontario Inc. any and all deposit funds so held by Keyser Mason Ball LLP in trust pursuant to the Transaction and Sale Agreement.

5. THIS COURT FURTHER ORDERS that upon the return of the deposit as ordered in paragraph four (4) above Keyser Mason Ball LLP shall be released from any and all obligations in relation to the said deposit.

Conway J.

Schedule "A" - Property

Municipal Address: 3143 19th Avenue, Markham, Ontario

PIN: 03055-0377 (LT) in LRO #65

Legal Description: PART LOT 30 CONCESSION 4 DESIGNATED AS PARTS 8 AND 9 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 1 TO 3 INCLUSIVE PLAN 65R39880 AS IN YR3454770; CITY OF MARKHAM

PIN: 03055-0379 (LT) in LRO #65

Legal Description: PART LOT 30, CONCESSION 4, PARTS 1, 4 & 5 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 7 & 8 PLAN 65R39880 & PART 2 PLAN 65R39948 AS IN YR3455770; CITY OF MARKHAM

PIN: 03055-0380 (LT) in LRO #65

Legal Description: PART LOT 30, CONCESSION 4, PARTS 2, 6 & 7 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 4 & 5 PLAN 65R39880 AS IN YR3455770; CITY OF MARKHAM

ROMSPEN INVESTMENT CORPORATION
Applicant

-and-

TUNG KEE INVESTMENT CANADA LTD. et al.
Respondents

Court File No. CV-23-703161-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER

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SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00703161-00CL **DATE: NOVEMBER 30, 2023**

NO. ON LIST: 2

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

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
PREGER, DAVID PAUL	ROMSPEN INVESTMENT CORPORATION	dpreger@dickinsonwright.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
POLLAK, MAYA	TUNG KEE INVESTMENT CANADA LTD.	Maya@chaitons.com
	TUNG KEE INVESTMENT LIMITED PARTNERSHIP	

For Other:

Name of Person Appearing	Name of Party	Contact Info
BOTA, MCNAMARA	SOW CAPITAL ONTARIO LIMITED	bmcnamara@kmblaw.com
GOLDEN, ERIC	ERNST & YOUNG, Intervenor	egolden@blaney.com
CHAN, JUSTIN	DX STRATEGIES, Lien claimant	jchan@jtcprofcorp.com
DARE, VERN	2149602 ONTARIO INC.	vdare@foglers.com
	PA, FRANK & TUNG, STEPHEN	

ENDORSEMENT OF JUSTICE CONWAY:

[1] Scheduling appointment held today. Two orders are sought, both on consent. The first is with respect to the distribution by the Receiver to Romspen of $268,410.50 for legal fees and the reservation of rights to challenge DW's fees, all as set out in the order.

[2] The second, also on consent/unopposed, is the termination of the Agreement of Purchase and Sale between Sow Capital Ontario Limited and 281653 Ontario Inc. dated July 18, 2023 and the return of the deposit paid thereunder.

[3] The parties in attendance seek to schedule a full day motion for the determination of the amounts owing to the third mortgagee, the fourth mortgagee and the fifth mortgagee and the validity and quantum of DX Strategies' lien claim.

[4] **The full day motion is scheduled for a hearing for February 16, 2024 (any judge, confirmed with the CL office)**. The parties have agreed to the following timetable for, among other things, delivery of materials:

- Receiver shall deliver its report attaching all security opinions by December 11, 2023;
- Any settlement conference will take place by December 16, 2023;
- Mortgage, lien claimants and respondents deliver their materials by January 12, 2024;
- Any responding materials are to be delivered by January 24, 2024; and
- Cross examinations to be conducted during the week of January 29 and are to be completed by February 2, 2024;
- Facta due by February 9, 2024.

[5] Two 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.

Conway J.

Appendix “F”

Court File No. CV-23-00703161-00CL

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

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

TUNG KEE INVESTMENT CANADA LTD. and TUNG KEE INVESTMENT LIMITED PARTNERSHIP

Respondents

SECOND REPORT OF THE RECEIVER AND MANAGER DATED DECEMBER 4, 2023

Table of Contents

Court File No. CV-23-00703161-00CL

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

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant

\- and -

TUNG KEE INVESTMENT CANADA LTD. and TUNG KEE INVESTMENT LIMITED PARTNERSHIP

Respondents

SECOND REPORT OF THE RECEIVER AND MANAGER
DATED DECEMBER 4, 2023

INTRODUCTION

1. This second report of the Receiver and Manager (the "**Second Report**") is filed by Ernst & Young Inc. ("**EYI**" or the "**Receiver**") in its capacity as receiver and manager of all the assets, undertakings and properties of the Respondents acquired for, or used in relation to a business carried on by them, pursuant to the Order of Justice Osborne dated October 19, 2023 (the "**Appointment Order**"). A copy of the Appointment Order is attached hereto as **Appendix** "**A**".

2. A pre-filing Report of the Proposed Receiver dated October 4, 2023 (the "**Pre-Receivership Report**") provided, among other things, background information regarding the Respondents and the property municipally known as 3143 19th Avenue, Markham, Ontario (the "**Real Property**"), a summary of the Sale Process that was undertaken by the Applicant prior to the Appointment Order being made, the Receiver's views on the issuance of an Approval and Vesting Order ("**AVO**") without the Receiver launching its

own marketing and sale process for the Real Property, and a request for a Sealing Order sealing certain terms of the Times APS (defined below), the competing offers, and appraisals for the Real Property. A copy of the Pre-Receivership-Report, without appendices, is attached hereto as **Appendix "B"**.

3. The Receivership Application proceeded as a "pre-packaged" receivership, with two competing transactions. The first transaction (the "**Times Transaction**") was contemplated in an agreement of purchase and sale between the Applicant and first-ranking mortgagee Romspen Investment Corporation ("**Romspen**") and Times 1010 Inc. dated September 15, 2023, as amended by a waiver, assignment and amending agreement dated September 29, 2023 (the "**Times APS")** between the Applicant and Times 1010 Inc., 3143 Holdings Inc., and Times 3143 Limited Partnership (collective, the "**Times Group**"). The Times APS was conditional on the Appointment Order and the AVO being issued.

4. The second transaction (the "**281 Transaction**") was between SOW Capital Ontario Limited ("**SOW**", the majority holder of the fifth-ranking mortgage) and 2816513 Ontario Inc. ("**281 Ontario**") pursuant to an agreement of purchase and sale dated July 18, 2023 (the "**281 APS**").

5. The Respondents, SOW and 281 Ontario opposed the AVO. SOW brought a separate motion to approve the sale of the Real Property to 281 Ontario.

6. On October 19, 2023, Justice Osborne released his Reasons for Decision, appointing the Receiver, and issuing the AVO approving the Times Transaction.

7. Justice Osborne also issued an Order (the "**Sealing Order**") sealing, among other things, confidential information attached to the Affidavit of Wesley Roitman sworn July 19, 2023, the Affidavit of Wesley Roitman sworn September 26, 2023, and the Pre-Receivership Report.

8. On October 27, 2023, 281 Ontario served a Notice of Appeal seeking, among other things, an Order setting aside the Appointment Order and the AVO, and leave to hear its appeal on an expedited basis.

9. On October 30, 2023, the Respondents filed a Notice of Appeal, also seeking, among other things, to set aside the Appointment Order and the AVO. As alterative relief, the Respondent sought, “if necessary”, leave to appeal the Appointment Order and the AVO, and staying the Orders pending appeal.

10. As the Times Transaction was scheduled to close on November 15, 2023, on October 31, 2023, the Receiver delivered the First Report of the Receiver (the “**First Report**”) in support of its motion for advice and directions before a single judge of the Court of Appeal, regarding the issue of whether the Appointment Order and AVO could be appealed as of right, whether leave to appeal was required, and if leave was required, whether it should be granted. A copy of the First Report, without appendices, is attached hereto as **Appendix “C”**.

11. On November 10, 2023, the parties attended before Justice Trotter who, on the same day, issued his decision which, among other things, held that 281 Ontario had no standing to appeal the Appointment Order and the AVO and that leave to appeal the Appointment Order and the AVO was required. Justice Trotter dismissed the Respondents’ motion for leave to appeal. A copy of the Justice Trotter’s decision is attached hereto as **Appendix** “**D**”.

12. On November 15, 2023, upon the Receiver filing the required Receiver’s certificate, the Times Transaction closed.

PURPOSE

13. The purpose of this Second Report is to:

a) report on the closing of the Times Transaction and the distributions made to date from the sale proceeds of that transaction pursuant to the AVO and the subsequent Order of Justice Conway made November 30, 2023;

b) provide a summary of the independent security opinions obtained by the Receiver with respect to the enforceability and validity of the Five Mortgages (as defined below) registered against the Real Property;

c) provide an update on the Receiver's review of the DX Strategies Inc. ("**DX**") lien claim over the Real Property;

d) report on the activities of the Receiver since its appointment; and

e) provide the evidentiary basis to make an Order approving:
   i) the activities of the Receiver as described in the First Report and the Second Report; and
   ii) an interim distribution to the third and fifth ranking mortgagees.

TERMS OF REFERENCE

14. In preparing this Second Report and making the comments herein, the Receiver has been provided with, and has relied upon, certain unaudited, draft and/or internal financial statements, the motion materials filed in respect of these proceeding, and discussions with management's counsel (collectively, the "**Information**"). Future oriented financial information relied upon in the Second Report is based on assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material.

15. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

16. The Receiver will make a copy of the Second Report, and related documents with respect to this Receivership application, available on the Receiver's website at www.ey.com/ca/tungkee. The Receiver has also established a toll-free phone number that is referenced on the Receiver's website so that parties may contact the Receiver if they have questions with respect to this proceeding.

17. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

BACKGROUND

18. The Respondent Tung Kee Investment Canada Ltd. is an Ontario corporation and was the registered owner of the Real Property. The Respondent Tung Kee Investment Limited Partnership is an Ontario limited partnership and was the beneficial owner of the Real Property. The Real Property consists of three separate legally described parcels which collectively comprise approximately 66.29 acres of developable vacant land at the southeast corner of 19th Avenue and Woodbine Avenue East in Markham, and collectively bear the municipal address of 3143 19th Avenue, Markham, Ontario. The Respondents planned to develop the Real Property as a mixed used development comprised of film studios, offices, a hotel and retail.

19. On or about September 1, 2022, the Respondents defaulted in payment of interest due under the loan that Romspen extended to the Respondents (the "**Romspen Mortgage Loan**"). On October 7, 2022, Romspen made formal written demand for payment of the Romspen Mortgage Loan and delivered a Notice of Intention to Enforce Security pursuant to section 244 of the BIA. The Respondents failed to repay the Romspen Mortgage Loan following the expiry of the ten-day statutory notice period under the BIA.

20. On October 25, 2022, Romspen, by its lawyers, issued a Notice of Sale under the Romspen Mortgage. In early April 2023, Romspen engaged Royal LePage Your Community Realty and launched a process for the marketing and sale of the Real Property (the "**Sale Process**"). The Sale Process undertaken by Romspen resulted in a firm and binding agreement between Romspen and the Times Group, subject to the appointment of a receiver and the issuance of an AVO. The Times APS contemplated a closing date of November 15, 2023.

21. In July 2023, SOW, the majority owner of the fifth ranking mortgage on title to the Real Property, under its own power of sale in respect of the Real Property, entered into an agreement of purchase of sale with 281 Ontario (the "**281 APS**"), for a purchase price that was less than the Times APS (on a net basis).

22. On October 19, 2023, Justice Osborne released his Reasons for Decision issuing the Appointment Order and issuing the AVO approving the Times Transaction. The Sale Process undertaken prior to the Appointment Order, the Times Transaction, the Times APS and the 281 APS are described in detail in the Pre-Receivership Report. A copy of the AVO is attached hereto and marked as **Appendix "E"**.

23. Pursuant to paragraph 6 of the AVO, the Receiver is authorized and directed to make distributions to Romspen and the second mortgagee Amber Mortgage Investment Corporation ("**Amber**") in respect of all of the secured obligations owing to each of them from the sales proceeds forthwith after the Times Transaction closed, subject to obtaining an opinion from its counsel that the security held by Romspen and Amber over the Real Property is valid and enforceable.

24. Between November 10, 2023, and November 15, 2023, the Receiver, its counsel and counsel for the Times Group worked diligently to prepare all of the documents and agreements necessary to be in a position to close the Times Transaction and make the required payments to Romspen and Amber.

25. On November 15, 2023, upon the Receiver filing the Receiver's certificate, the Times Transaction closed.

ENCUMBRANCES/SECURED CLAIMS AGAINST THE REAL PROPERTY

26. There were five mortgages (the "**Five Mortgages**") and one lien claim registered on title to the Real Property as of the closing date of the Times Transaction, summarized below:

Ranking Priority	**Creditor**	**Approximate Amount Owing (per latest payout statements)**
First	Romspen	$33.989 million
Second	Amber	$10.182 million
Third	2149602 Ontario Inc.	$12.479 million
Fourth	Frank Pa and Steven Tung	$3.54 million
Fifth	SOW Miltom Services Limited	$13.001 million
Lien Claim	DX	$4,653,028

27. Pursuant to Subordination and Postponement Agreements dated January 2022 between Romspen and each of Amber, SOW, 2149602 Ontario Inc. ("**214 Ontario**"), Frank Pa and Steven Tung ("**Pa and Tung**" and collectively with Amber, SOW and 214 Ontario, the "**Subordinate Encumbrancers**") each of the Subordinate Encumbrancers subordinated and postponed all of their rights under their security over the Real Property of the Debtors in favour of Romspen.

<u>Romspen Mortgage Loan</u>

28. The Romspen Mortgage Loan was the first ranking mortgage registered against title to the Real Property. It was registered on January 27, 2022, and was in the principal amount of $30 million.

29. The Receiver has obtained an independent security opinion from Blaney McMurtry LLP ("**Blaney**") with respect to the validity and enforceability of the security granted by the Respondents in favour of Romspen. Blaney has opined that, subject to customary assumptions and qualifications, the security held by Romspen was valid and enforceable

as against the Real Property (the "**Romspen Security Opinion**"). A copy of the Romspen Security Opinion is attached hereto as **Appendix** "**F**".

30. The Receiver received a payout statement from Romspen which reflected that as at November 10, 2023, the outstanding balance under the Romspen Mortgage Loan was $33,988,530.50, comprised of the loan facility, unpaid interest and other fees and charges (the "**Romspen Payout Statement**"). A copy of the Romspen Payout Statement is attached hereto as **Appendix** "**G**".

31. Prior to the closing of the Times Transaction, the Respondents disputed certain amounts on each of Romspen's and Amber's payout statements, as well as the legal fees sought by those mortgagees.

32. Romspen's counsel and the Respondents agreed that an amount of $239,180.82 be held back by the Receiver until Romspen and the Respondents reach an agreement.

33. On November 16, 2023, the Receiver distributed $33,787,897.39 to Romspen pursuant to the AVO, representing the amount owing as per the Romspen Payout Statement, plus accrued interest to the date of distribution, less the holdback mentioned above.

34. On November 30, 2023, counsel for the Receiver, Romspen, SOW, the Respondents and the third and fourth mortgagees attended before Justice Conway in Chambers, who granted an Order on consent of the parties, among other things, confirming the payment of the remaining balance of Romspen's legal fees of $268,410.50 (the "**Romspen Final Payout Amount**"). The Order also reserves the rights of the fulcrum stakeholder to challenge Romspen's legal fees, and requires the Receiver to hold back a reserve of $50,000 as security for Romspen's costs in defending any challenge to its legal costs by the fulcrum stakeholder. A copy of Justice Conway's Order made November 30, 2023, and the related Endorsement are attached hereto as **Appendix "H"**.

35. On November 30, 2023, the Receiver distributed the Romspen Final Payout Amount. Accordingly, the Romspen Mortgage Loan has now been repaid in full, subject to any adjustment if the fulcrum creditor challenges Romspen's legal fees, and is successful in that regard.

<u>Amber Mortgage Loan</u>

36. Amber was the holder of the second ranking mortgage registered against title to the Real Property. It was registered on January 27, 2022, in the principal amount of $9.5 million, as amended pursuant to a Charge Amending Agreement dated June 16, 2022, notice of which was registered on title to the Real Property on July 4, 2022 (the "**Amber Mortgage Loan**").

37. The Receiver has obtained an independent security opinion from Blaney with respect to the validity and enforceability of the security granted by the Respondents in favour of Amber. Blaney has opined that, subject to customary assumptions and qualifications, the security held by Amber is valid and enforceable as against the Real Property (the "**Amber Security Opinion**"). A copy of the Amber Security Opinion is attached hereto as **Appendix "I"**.

38. The Receiver received a payout statement from Amber indicating that as of November 15, 2023, the outstanding balance owing under the Amber Mortgage Loan was $10,182,160.16, comprised of the loan facility, unpaid interest and other fees and charges (the "**Amber Payout Statement**"). This outstanding balance was subject to further other charges that were incurred until payout. A copy of the of the Amber Payout Statement is attached hereto as **Appendix "J"**.

39. As previously described, the Respondents disputed certain charges on the Amber Payout Statement. Prior to the Times Transaction closing, Amber's counsel and the Respondents agreed that an amount of $1,109,797.75 be held back by the Receiver until Amber and the Respondents reached agreement, or a determination was made by the Court.

40. On November 16, 2023, the Receiver distributed $9,087,542.27 to Amber pursuant to the AVO.

41. On November 29, 2023, counsel for Amber, SOW (as a potential fulcrum creditor) and the Respondents advised the Receiver that these parties had agreed to a final payout amount to Amber of $984,797.75 (the "**Amber Final Payout Amount**"). The Amber Final Payout Amount represents the full and final determination of all issues with the Amber Payout

Statement, with no rights of any party to challenge any amounts paid out to Amber.

42. On November 30, 2023, the Receiver distributed the Amber Final Payout Amount. Accordingly, the Amber Mortgage Loan has now been repaid in full.

214 Ontario Mortgage Loan

43. 214 Ontario is the holder of the third ranking mortgage registered against title to the Real Property. It was registered on January 27, 2022, in the principal amount of $8.0 million, as amended pursuant to a Charge Amending Agreement dated February 23, 2022, notice of which was registered on title to the Real Property on February 24, 2022 (the "**214 Ontario Mortgage Loan**").

44. The Receiver has obtained an independent security opinion from Blaney with respect to the validity and enforceability of the security granted by the Respondents in favour of 214 Ontario. Blaney has opined that, subject to customary assumptions and qualifications, the security held by 214 Ontario is valid and enforceable as against the Real Property (the "**214 Ontario Security Opinion**"). A copy of the 214 Ontario Security Opinion is attached hereto as **Appendix** "**K**".

45. The Receiver received a payout statement from 214 Ontario's counsel indicating that as of November 15, 2023, the outstanding balance under the 214 Ontario Mortgage Loan was $12,479,345.38, comprised of the loan facility, unpaid interest and other fees and charges (the "**214 Ontario Payout Statement**"). The Receiver understands this outstanding balance is subject to further other charges and accrued interest incurred up to the date that the 214 Ontario Mortgage Loan is repaid in full. A copy of the of the 214 Ontario Payout Statement is attached hereto as **Appendix** "**L**".

Pa and Tung Mortgage Loan

46. Pa and Tung were the holders of the fourth ranking mortgage registered against title to the Real Property. It was registered on January 27, 2022, in the principal amount of $3.54 million (the "**Pa and Tung Mortgage Loan**").

47. The Receiver has obtained an independent security opinion from Blaney with respect to the validity and enforceability of the security granted by the Respondents in favour of Pa and Tung. Blaney has opined that, subject to customary assumptions and qualifications, the security held by Pa and Tung is valid and enforceable as against the Real Property (the "**Pa and Tung Security Opinion**"). A copy of the Pa and Tung Security Opinion is attached hereto as **Appendix** "**M**".

48. The Receiver received a payout statement from Pa and Tung's counsel indicating that as at November 15, 2023, the outstanding balance under the Pa and Tung Mortgage Loan was $3,540,000.00 (the "**Pa and Tung Payout Statement**"). A copy of the of the Pa and Tung Payout Statement is attached hereto as **Appendix** "**N**".

<u>SOW Mortgage Loan</u>

49. SOW was the holder of the fifth ranking mortgage registered against title to the Real Property. It was registered on March 26, 2022, in the principal amount of USD $5.0 million and amended by a charge/mortgage amending agreement dated February 1, 2023 to USD $20 million (the "**SOW Mortgage Loan**"). On January 9, 2023, Sow transferred a 14% interest in the SOW mortgage to Miltom, a tenant in common, securing an indebtedness of $700,000.00.

50. The Receiver has obtained an independent security opinion from Blaney with respect to the validity and enforceability of the security granted by the Respondents in favour of SOW. Blaney has opined that, subject to customary assumptions and qualifications, the security held by SOW (including the assignment to Miltom) is valid and enforceable as against the Real Property (the "**SOW Security Opinion**"). A copy of the SOW Security Opinion is attached hereto as **Appendix** "**O**".

51. The Receiver received a payout statement from SOW's counsel indicating that as of October 31, 2023, the outstanding balance under the SOW Mortgage Loan was $13,000,572.88, comprised of the loan facility, unpaid interest and other fees and charges (the "**SOW Payout Statement**"). The Receiver understands this outstanding balance is subject to further other charges and accrued interest incurred up the date that the SOW

Mortgage Loan is repaid in full. A copy of the SOW Payout Statement is attached hereto as **Appendix** "**P**".

DX Lien Claim

52. DX registered a Claim for Lien on April 14, 2023, in the amount of $4,653,028.11 (the "**Claim for Lien**"). In its Claim for Lien, DX alleges it supplied "Project management and architectural services" to Tung Kee Investment Canada Inc. from November 7, 2020, to March 7, 2022.

53. On November 11, 2023, counsel for DX delivered documentation that purported to prove "quantum, timeliness of supply, and confirmation that the services/material supplied by DX are lienable pursuant to the terms of the *Construction Lien Act* [sic]", as well as DX's entitlement to a priority claim over certain of the Five Mortgages. The documentation consisted of a cover letter from counsel to DX dated November 11, 2023, and the attachments thereto, including the affidavit of Dan Teh sworn November 11, 2023, and a document titled the "Construction Lien Legal Brief" dated November 11, 2023 (collectively, the "**DX Lien Backup Documents**"). On November 17, 2023, counsel for DX provided a copy of DX's Claim for Lien, along with DX's Statement of Claim and related Certificate of Action (none of which had been included in DX's initial material). A copy of the DX Lien Backup Documents is attached hereto as **Appendix "Q"**. DX's Claim for Lien registered April 14, 2023, and its Statement of Claim and Certificate of Action, both issued June 16, 2023, are attached hereto as **Appendix "R"**.

54. Blaney provided an analysis of DX's lien, and the DX Lien Backup Documents, under cover of letter from Chad Kopach to DX's counsel dated November 24, 2023 (the "**Lien Analysis**"). A copy of the Lien Analysis, without the attachments thereto, is attached hereto as **Appendix "S"**.

55. The Lien Analysis details discrepancies and evidentiary gaps in the DX Lien Backup Documents, including the following:

    a. the contract between DX and Tung Kee Investment Canada Inc. has not been produced in full;

b. there are insufficient particulars of the work that DX says it performed in respect of the improvement to the Real Property;
c. there is a lack of backup documents confirming whether the work DX says it performed, was actually performed;
d. on its face, the Claim for Lien was registered at least one year out of time;
e. DX's Statement of Claim does not specifically seek to enforce DX's lien (and in fact does not even include an allegation that DX has a lien);
f. the Statement of Claim does not name any of mortgagees as defendants, and does not allege priority over any one of the Five Mortgages;
g. the DX Lien Backup Documents are inconsistent on which of the Five Mortgages DX claims priority over, in what amount, and on what basis;
h. DX claims priority over SOW's mortgage on the basis of an alleged written notice of lien, but the document that purports to constitute the written notice of lien makes no reference to DX having a lien, and there is no evidence that the document was actually given to SOW; and
i. DX claims priority over SOW's mortgage on the basis of a "directorship conflict", but this is not a basis for a lien claimant to assert a priority claim over a mortgage under the *Construction Act*.

56. Most significantly, however, it appears that DX's lien was not perfected within the time required by the *Construction Act*, and it therefore expired. Even if DX's date of last supply was March 7, 2023, as a result of a typographical error (and not 2022 as alleged in the Claim for Lien), then DX only had until June 6, 2023, to perfect its lien by issuing the Statement of Claim and Certificate of Action, and registering the Certificate of Action on title to the Real Property. The Statement of Claim and Certificate of Action were not issued until June 16, 2023, and the Certificate of Action was registered on title to the Real Property on that day.

57. The Lien Analysis stated, among other things, that the likely net effect of the various errors set out above would be to invalidate DX's lien claim, and that DX would be left with an unsecured claim for some amount of the approximately $4.6 million sought by DX in its Claim for Lien.

58. Blaney invited DX's counsel to provide further documentation/information to address the deficiencies noted in the Lien Analysis. As of the date of this Second Report, Blaney has received no further documentation/information from DX or its counsel.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

59. Attached hereto as **Appendix "T"** is the Receiver's Interim Statement of Receipts and Disbursements for the period from October 19, 2023, to November 30, 2023, which indicates actual receipts over disbursements of $22,181,107.53

PROPOSED FURTHER INTERIM DISTRIBUTION

60. Pursuant to the Endorsement of Justice Conway made November 30, 2023, counsel to the Respondent, SOW, 214 Ontario, Pa and Tung, and the lien claimant agreed to schedule a full day motion for the determination of the amounts owing under the outstanding registered mortgages, and the validity and quantum of the DX lien claim. The parties have agreed to a timetable for, among other things, delivery of materials for a full day motion scheduled for February 16, 2024.

61. The Respondents, DX, 241 Ontario, Pa and Tung, SOW and Miltom have negotiated an interim distribution Order that would see interim distributions made to 241 Ontario and SOW/Miltom in the amounts of $7 million and $8 million, respectively, or totaling $15 million.

62. As set out above, as at the date of this Second Report, the Receiver is currently holding approximately $22,181,000 in remaining proceeds of sale from the Real Property.

ACTIVITIES OF THE RECEIVER TO DATE

63. The Receiver has taken, among other things, the following actions in connection with its obligations under the Appointment Order as set out below:

a) opened a new bank account in the name of the Receiver;

b) maintained a statement of receipts and disbursements and an accounting record for ongoing disbursement requirements and general banking responsibilities;

c) registered the Appointment Order against title to the Real Property;

d) made arrangement for the Times Transaction deposit to be transferred to the bank account held by the Receiver;

e) arranged for insurance coverage for the Real Property and set up the Receiver as loss payee to the insurance policy;

f) arranged to meet with the principal of the Respondents to better understand the state of the books and records and other financial information of the Respondents;

g) posted the Receiver's Reports, Court materials and other documents on the Receiver's Website to keep creditors and other stakeholders apprised of the status of this receivership proceeding;

h) established a toll-free number: 1-833-453-2978 for creditors and other interested parties to contact the Receiver;

i) prepared the First Report in connection with a motion by the Receiver for directions before a single judge of the Court of Appeal on an expedited basis;

j) received and responded to requests for information from various stakeholders;

k) dealt with all ancillary matters relating to the closing of the Times Transaction including, but not limited to, negotiating an assignment agreement and assumption and amendment agreement relating to the Times APS;

l) corresponded with stakeholders in respect of the quantum to hold back from the distributions to Romspen and Amber;

m) made distributions to Romspen and Amber pursuant to the AVO;

n) prepared a distribution waterfall to understand the potential distribution available from the proceeds of the Times Transaction;

o) corresponded with the real estate agent in respect of the closing of the Times Transaction;

p) responded to inquiries relating to the nature of the Respondent's receivership proceeding;

q) reviewed and analyzed the payout statements for the Five Mortgages;

r) reviewed the independent security opinions for each of the Five Mortgages;

s) reviewed Blaney's Lien Analysis on the validity and quantum of the DX lien claim (and mortgage priority claims); and

t) attended multiple Court hearings.

RECOMMENDATION

64. For the reasons enumerated above, the Receiver requests an order approving the relief sought in paragraph 13(e).

All of which is respectfully submitted this 4th day of December 2023.

ERNST & YOUNG INC.,
solely in its capacity as Receiver of the assets, property and undertaking of the Tung Kee Investment Canada Ltd. and Tung Kee Investment Limited Partnership and not in its personal capacity
Per:

Jeffrey D. Kerbel
Senior Vice-President

Appendix “G”

Court File No. CV-23-00703161-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	TUESDAY, THE 5th
	)	
JUSTICE CONWAY	)	DAY OF DECEMBER, 2023

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

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant

-and-

TUNG KEE INVESTMENT CANADA LTD., and
TUNG KEE INVESTMENT LIMITED PARTNERSHIP

Respondents

INTERIM DISTRIBUTION ORDER

THIS MOTION made by Ernst & Young Inc. in its capacity as receiver and manager of the Respondents (in such capacities, the "**Receiver**"), for a further interim distribution from the remaining proceeds of sale (the "**Sale Proceeds**") of the property known municipally as 3143 19th Avenue, Markham, Ontario (the "**Real Property**"), was heard this day by judicial video conference.

ON BEING advised of the Consent of 2149602 Ontario Inc. (the third mortgagee), Frank Pa and Stephen Tung (the fourth mortgagee), Sow Capital Ontario Limited and Miltom Services Limited (collectively, the fifth mortgagee), DX Strategies Inc. (the lien claimant) and the Respondents, and on hearing the submissions of each of their counsel and counsel for the Receiver,

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion returnable December 5, 2023, and related motion material filed in support of that Notice of Motion (collectively, the "**Motion Record**"), be and is hereby abridged, that service of the Motion Record is hereby validated, and that further service thereof is hereby dispensed with.

2. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to make an interim distribution from the Sale Proceeds in the sum of $7,000,000 to 2149602 Ontario Inc. (the "**214 Interim Distribution**") in partial satisfaction in respect of its third mortgage over the Real Property, which shall be remitted by the Receiver to Fogler, Rubinoff LLP ("**Foglers**") in trust.

3. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to make an interim distribution from the Sale Proceeds in the sum of $757,846.02 to Miltom Services Limited ("**Miltom**") in full and final satisfaction of its interest in the fifth mortgage of Sow Capital Ontario Limited and Miltom over the Real Property, which shall be remitted by the Receiver to Miller Thomson LLP in trust.

4. **THIS COURT ORDERS** that subject to paragraph 4 of this Order, the Receiver is hereby authorized and directed to make an interim distribution from the Sale Proceeds in the sum of $7,242,153.98 to Sow Capital Ontario Limited ("**Sow**") in partial satisfaction in respect of its fifth mortgage over the Real Property (the "**Sow Interim Distribution**"), which shall be remitted by the Receiver to Keyser Mason Ball LLP ("**KMB**") in trust.

5. **THIS COURT ORDERS** that from the amount of the Sow Interim Distribution, KMB and Sow are directed and shall cause forthwith the sum of $3,242,153.98 to be "clawed-back" and placed into a joint trust GIC account at the Royal Bank of Canada in the names of Foglers and KMB (the "**Reserve**"). For greater certainty, Sow shall be entitled to retain at this time the balance of the Sow Interim Distribution in the amount of $4,000,000.

6. **THIS COURT ORDERS** that if there are any outstanding provable claims against the Sale Proceeds that rank in priority to Sow and are not paid or settled from the Sale Proceeds (the "**Prior Ranking Claims**"), then the Reserve shall be used to pay or satisfy the Prior Ranking Claims (or partially pay or partially satisfy the Prior Ranking Claims if they are greater than the Reserve).

7. **THIS COURT ORDERS** that the 214 Interim Distribution and the Sow Interim Distribution shall be binding on 2149602 Ontario Inc. (the third mortgagee), Frank Pa and Stephen Tung (the fourth mortgagee), Sow and Miltom (collectively, the fifth mortgagee), DX Strategies Inc. (the lien claimant) and the Respondents.

Conway J.

Court File No. CV-23-00703161-00CL

ROMSPEN INVESTMENT CORPORATION -and- **TUNG KEE INVESTMENT CANADA LTD. et al.**

Applicant Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

INTERIM DISTRIBUTION ORDER

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Lawyers for the Court-appointed Receiver,
Ernst & Young Inc.

Appendix “H”

Court File No. CV-23-00703161-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	THURSDAY, THE 19TH
	)	
JUSTICE OSBORNE	)	DAY OF OCTOBER, 2023

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

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant

and

TUNG KEE INVESTMENT CANADA LTD., and
TUNG KEE INVESTMENT LIMITED PARTNERSHIP

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicant, Romspen Investment Corporation ("**Romspen**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between Romspen and Times 1010 Inc. dated September 15, 2023, as amended by a waiver, assignment and amending agreement dated September 29, 2023 between Romspen, Times 1010 Inc., 3143 Holdings Inc., and Times 3143 Limited Partnership (such agreement of purchase and sale, as so amended, the "**Sale Agreement**") and attached to the Supplementary Affidavit of Wesley Roitman sworn September 29, 2023, authorizing and directing Ernst & Young Inc., in its capacity as Court-appointed receiver and manager of the Respondents (in such capacities, the "**Receiver**"), to complete the Transaction as vendor and vesting in 3143 Holdings Inc. all rights, title and interests of Tung Kee Investment Canada Ltd. in and to the property municipally known as 3143 19th Avenue, Markham, Ontario and legally described in Schedule "B" hereto (the "**Property**"), was heard this day at 330 University Avenue, Toronto, Ontario, via judicial videoconference.

ON READING the Affidavit of Wesley Roitman sworn July 19, 2023, and the Exhibits thereto, including Confidential Appendices A through G, the Affidavit of Wesley Roitman sworn September 29, 2023 and the exhibits thereto, including Confidential Exhibits 1 through 3, the Affidavit of Philip Wong sworn September 26, 2023, and the exhibits thereto, the pre-filing report of Ernst & Young Inc., as proposed receiver of the Respondents, dated October 4, 2023, and the Appendices thereto, including Confidential Appendix A, the Affidavit of Hunter Lam sworn October 4, 2023, and the Exhibits thereto, the Affidavit of Pui Ling Lai sworn October 5, 2023, and the Exhibits thereto, and the Affidavit of Dan Teh sworn October 5, 2023, and the Exhibits thereto, and on hearing the submissions of counsel for Romspen, counsel for Amber Mortgage Investment Corp. ("**Amber**"), counsel for 2149602 Ontario Inc., Frank Pa and Stephen Tung, counsel for SOW Capital Ontario Limited, counsel for the Respondents, counsel for the Receiver, counsel for DX Strategies Inc., counsel for 2816513 Ontario Inc., and counsel for Times 1010 Inc., 3143 Holdings Inc. and Times 3143 Limited Partnership, no one appearing for any other person on the service list, although properly served as appears from the Affidavits of Janet Nairne sworn August 23, 2023, and October 2, 2023, filed:

1. THIS COURT ORDERS that the time for service of Romspen's Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today, and all further service thereof is hereby dispensed with.

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the Receiver is hereby authorized and directed to complete the Transaction as vendor, in accordance with the Sale Agreement, with such minor amendments as the Receiver may deem necessary, and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Property to 3143 Holdings Inc.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to 3143 Holdings Inc., substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all rights, title and interests of Tung Kee Investment Canada Ltd. in and to the Property shall vest absolutely in 3143 Holdings Inc., 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 Osborne dated October 19, 2023 appointing Ernst & Young Inc. as Receiver; (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 "C1", Schedule "C2" and Schedule "C3" 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 "D") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Property are hereby expunged and discharged as against the Property.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of York Region LRO No. 65 of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter 3143 Holdings Inc. as the registered owner of the Property in fee simple, and is hereby directed to delete and expunge from title to the Property all of the Claims listed in Schedule “C1”, Schedule “C2” and Schedule “C3” hereto.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Property shall stand in the place and stead of the Property, 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 Property with the same priority as they had with respect to the Property immediately prior to the sale, as if the Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. THIS COURT ORDERS that, subject to the Receiver obtaining an opinion from its counsel that the respective security held by Romspen and Amber over the Property is valid and enforceable, subject to the usual assumptions and qualifications, the Receiver is authorized and directed to make distributions to Romspen and Amber in respect of all of the secured obligations owing to each of Romspen and Amber, in accordance with payout statements to be delivered by each of Romspen and Amber to the Receiver, from the proceeds derived from the Transaction, which distributions will be made forthwith after the closing of the Transaction.

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

8. THIS COURT ORDERS that, notwithstanding:

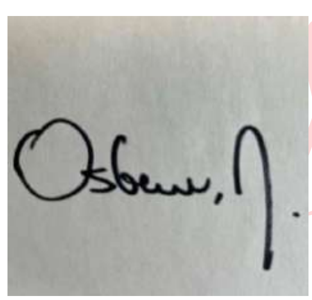
(a) the pendency of these proceedings;

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

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

the vesting of the Property in 3143 Holdings Inc., pursuant to this Order shall be binding on any Trustee in bankruptcy that may be appointed in respect of the Respondents and shall not be void or voidable by creditors of the Respondents, 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.

9. 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.



2023.10.26 15:40:17 -04'00'

Schedule "A" - Form of Receiver's Certificate

Court File No. CV-23-00703161-00CL

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

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant

and

TUNG KEE INVESTMENT CANADA LTD., and
TUNG KEE INVESTMENT LIMITED PARTNERSHIP

Respondents

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Ontario Superior Court of Justice (the "**Court**") dated October 19, 2023, Ernst & Young Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Tung Kee Investment Canada Ltd., and Tung Kee Investment Limited Partnership (collectively, the "**Debtors**").

B. Pursuant to an Order of the Court dated October 19, 2023, the Court approved the agreement of purchase and sale between Romspen and Times 1010 Inc. dated September 15, 2023, as amended by a waiver, assignment and amending agreement dated September 29, 2023 between Romspen, Times 1010 Inc., 3143 Holdings Inc., and Times 3143 Limited Partnership (such agreement of purchase and sale, as so amended, the "**Sale Agreement**") and authorized the

Receiver to complete the Transaction as vendor and provided for the vesting in 3143 Holdings Inc. all rights, title and interests of Tung Kee Investment Canada Ltd. in and to the property municipally known as 3143 19th Avenue, Markham, Ontario (the "**Property**"), which vesting is to be effective with respect to the Property upon the delivery by the Receiver to 3143 Holdings Inc. of a certificate confirming (i) the payment by Times 3143 Limited Partnership of the Purchase Price for the Property; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and Times 3143 Limited Partnership; 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. Times 3143 Limited Partnership has paid and the Receiver has received the Purchase Price for the Property 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 Times 3143 Limited Partnership; and

3. The Transaction has been completed to the satisfaction of the Receiver.

4. This Certificate was delivered by the Receiver at ________ [TIME] on ________________2023.

Ernst & Young Inc., in its capacity as Receiver of the undertaking, property and assets of Tung Kee Investment Canada Ltd., and Tung Kee Investment Limited Partnership and not in its personal capacity

Per: ________________________________
Name:
Title:

Schedule "B" - Property

Municipal Address: 3143 19th Avenue, Markham, Ontario

PIN: 03055-0377 (LT) in LRO #65

Legal Description: PART LOT 30 CONCESSION 4 DESIGNATED AS PARTS 8 AND 9 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 1 TO 3 INCLUSIVE PLAN 65R39880 AS IN YR3454770; CITY OF MARKHAM

PIN: 03055-0379 (LT) in LRO #65

Legal Description: PART LOT 30, CONCESSION 4, PARTS 1, 4 & 5 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 7 & 8 PLAN 65R39880 & PART 2 PLAN 65R39948 AS IN YR3455770; CITY OF MARKHAM

PIN: 03055-0380 (LT) in LRO #65

Legal Description: PART LOT 30, CONCESSION 4, PARTS 2, 6 & 7 PLAN 65R39839; SUBJECT TO AN EASEMENT IN GROSS OVER PARTS 4 & 5 PLAN 65R39880 AS IN YR3455770; CITY OF MARKHAM

Schedule "C1"

Claims to be deleted and expunged from PIN 03055-0377 (LT)

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
YR1618190	2011/03/07	TRANS PARTNERSHIP		TUNG KEE INVESTMENT LIMITED PARTNERSHIP	TUNG KEE INVESTMENT CANADA LTD.
YR3083072	2020/03/26	CHARGE	$5,000,000	TUNG KEE INVESTMENT CANADA LTD.	SOW CAPITAL ONTARIO LIMITED JIAYI INTERNATIONAL INVESTMENTS LTD.
YR3083073	2020/03/26	NO ASSGN RENT GEN		TUNG KEE INVESTMENTS CANADA LTD.	SOW CAPITAL ONTARIO LIMITED JIAYI INTERNATIONAL INVESTMENTS LTD.
YR3247257	2021/05/07	TRANSFER OF CHARGE		JIAYI INTERNATIONAL INVESTMENTS LTD.	SOW CAPITAL ONTARIO LIMITED
YR3247258	2021/05/07	NO ASSGN RENT GEN		JIAYI INTERNATIONAL INVESTMENTS LTD.	SOW CAPITAL ONTARIO LIMITED
YR3300382	2021/08/18	TRANSFER OF CHARGE		SOW CAPITAL ONTARIO LIMITED	F A CREDIT SOLUTIONS CANADA INC. SOW CAPITAL ONTARIO LIMITED
YR3373212	2022/01/27	CHARGE	$30,000,000	TUNG KEE INVESTMENT CANADA LTD.	ROMSPEN INVESTMENT CORPORATION
YR3373213	2022/01/27	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	ROMSPEN INVESTMENT CORPORATION
YR3373214	2022/01/27	CHARGE	$8,500,000	TUNG KEE INVESTMENT CANADA LTD.	AMBER MORTGAGE INVESTMENT CORP.
YR3373215	2022/01/27	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	AMBER MORTGAGE INVESTMENT CORP.
YR3373216	2022/01/27	CHARGE	$8,000,000	TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3373217	2022/01/27	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3373218	2022/01/27	TRANSFER OF CHARGE		F A CREDIT SOLUTIONS CANADA INC.	SOW CAPITAL ONTARIO LIMITED
YR3373219	2022/01/27	CHARGE	$3,540,000	TUNG KEE INVESTMENT CANADA LTD.	PA, FRANK TUNG, STEPHEN
YR3373403	2022/01/28	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	ROMSPEN INVESTMENT CORPORATION
YR3373404	2022/01/28	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	AMBER MORTGAGE INVESTMENT CORP.
YR3373405	2022/01/28	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	2149602 ONTARIO INC.
YR3385745	2022/02/24	NOTICE	$8,000,000	TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3397627	2022/03/22	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	THE CORPORATION OF THE CITY OF MARKHAM
YR3397628	2022/03/22	POSTPONEMENT		ROMSPEN INVESTMENT CORPORATION	THE CORPORATION OF THE CITY OF MARKHAM

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
YR3397629	2022/03/22	POSTPONEMENT		AMBER MORTGAGE INVESTMENT CORP.	THE CORPORATION OF THE CITY OF MARKHAM
YR3397630	2022/03/22	POSTPONEMENT		2149602 ONTARIO INC.	THE CORPORATION OF THE CITY OF MARKHAM
YR3397631	2022/03/22	POSTPONEMENT		PA, FRANK TUNG, STEPHEN	THE CORPORATION OF THE CITY OF MARKHAM
YR3440956	2022/06/17	NOTICE	$9,500,000	TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3440959	2022/06/17	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	PA, FRANK TUNG, STEPHEN
YR3441040	2022/06/17	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	2149602 ONTARIO INC.
YR3447697	2022/07/04	NOTICE	$8,500,000	TUNG KEE INVESTMENT CANADA LTD.	AMBER MORTGAGE INVESTMENT CORP.
YR3454771	2022/07/20	POSTPONEMENT		2149602 ONTARIO INC.	ALECTRA UTILITIES CORPORATION
YR3454772	2022/07/20	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	ALECTRA UTILITIES CORPORATION
YR3454773	2022/07/20	POSTPONEMENT		ROMSPEN INVESTMENT CORPORATION	ALECTRA UTILITIES CORPORATION
YR3454774	2022/07/20	POSTPONEMENT		AMBER MORTGAGE INVESTMENT CORP.	ALECTRA UTILITIES CORPORATION
YR3454775	2022/07/20	POSTPONEMENT		PA, FRANK TUNG, STEPHEN	ALECTRA UTILITIES CORPORATION
YR3470726	2022/08/30	CHARGE	$8,500,000	TUNG KEE INVESTMENT CANADA LTD.	AMBER MORTGAGE INVESTMENT CORP.
YR3470727	2022/08/30	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	AMBER MORTGAGE INVESTMENT CORP.
YR3505530	2022/12/06	NOTICE	$9,500,000	TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3505547	2022/12/06	POSTPONEMENT		PA, FRANK TUNG, STEPHEN	2149602 ONTARIO INC.
YR3505567	2022/12/06	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	2149602 ONTARIO INC.
YR3513700	2023/01/09	TRANSFER OF CHARGE		SOW CAPITAL ONTARIO LIMITED	MILTOM SERVICES LIMITED SOW CAPITAL ONTARIO LIMITED
YR3538686	2023/04/05	NOTICE	$2	TUNG KEE INVESTMENT CANADA LTD.	SOW CAPITAL ONTARIO LIMITED
YR3541410	2023/04/14	CONSTRUCTION LIEN	$4,653,028	DX STRATEGIES INC.	
YR3541425	2023/04/17	NO CHNG ADDR INST		SOW CAPITAL ONTARIO LIMITED	
YR3563830	2023/06/16	CERTIFICATE		ONTARIO SUPERIOR COURT OF JUSTICE	DX STRATEGIES INC.

Schedule "C2"

Claims to be deleted and expunged from PIN 03055-0379 (LT)

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
YR3412266	2022/04/21	TRANSFER		TUNG KEE INVESTMENT CANADA LTD.	TUNG KEE INVESTMENT CANADA LTD.
YR3470724	2022/08/30	CHARGE	$30,000,000	TUNG KEE INVESTMENT CANADA LTD.	ROMSPEN INVESTMENT CORPORATION
YR3470725	2022/08/30	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	ROMSPEN INVESTMENT CORPORATION
YR3470726	2022/08/30	CHARGE	$8,500,000	TUNG KEE INVESTMENT CANADA LTD.	AMBER MORTGAGE INVESTMENT CORP.
YR3470727	2022/08/30	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	AMBER MORTGAGE INVESTMENT CORP.
YR3470728	2022/08/30	CHARGE	$9,500,000	TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3470729	2022/08/30	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3470730	2022/08/30	CHARGE	$3,540,000	TUNG KEE INVESTMENT CANADA LTD.	PA, FRANK TUNG, STEPHEN
YR3470731	2022/08/30	CHARGE	$5,000,000	TUNG KEE INVESTMENT CANADA LTD.	SOW CAPITAL ONTARIO LIMITED
YR3470732	2022/08/30	NO ASSGN RENT GEN		TUNG KEE INVESTMENTS CANADA LTD.	SOW CAPITAL ONTARIO LIMITED
YR3505533	2022/12/06	NOTICE	$9,500,000	TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3505555	2022/12/06	POSTPONEMENT		PA, FRANK TUNG, STEPHEN	2149602 ONTARIO INC.
YR3505559	2022/12/06	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	2149602 ONTARIO INC.
YR3513701	2023/01/09	TRANSFER OF CHARGE		SOW CAPITAL ONTARIO LIMITED	MILTOM SERVICES LIMITED SOW CAPITAL ONTARIO LIMITED
YR3538687	2023/04/05	NOTICE	$2	TUNG KEE INVESTMENT CANADA LTD.	SOW CAPITAL ONTARIO LIMITED
YR3541410	2023/04/14	CONSTRUCTION LIEN	$4,653,028	DX STRATEGIES INC.	
YR3541426	2023/04/17	NO CHNG ADDR INST		SOW CAPITAL ONTARIO LIMITED	
YR3563830	2023/06/16	CERTIFICATE		ONTARIO SUPERIOR COURT OF JUSTICE	DX STRATEGIES INC.

Schedule "C3"

Claims to be deleted and expunged from PIN 03055-0380 (LT)

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
YR3412266	2022/04/21	TRANSFER		TUNG KEE INVESTMENT CANADA LTD.	TUNG KEE INVESTMENT CANADA LTD.
YR3470724	2022/08/30	CHARGE	$30,000,000	TUNG KEE INVESTMENT CANADA LTD.	ROMSPEN INVESTMENT CORPORATION
YR3470725	2022/08/30	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	ROMSPEN INVESTMENT CORPORATION
YR3470726	2022/08/30	CHARGE	$8,500,000	TUNG KEE INVESTMENT CANADA LTD.	AMBER MORTGAGE INVESTMENT CORP.
YR3470727	2022/08/30	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	AMBER MORTGAGE INVESTMENT CORP.
YR3470728	2022/08/30	CHARGE	$9,500,000	TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3470729	2022/08/30	NO ASSGN RENT GEN		TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3470730	2022/08/30	CHARGE	$3,540,000	TUNG KEE INVESTMENT CANADA LTD.	PA, FRANK TUNG, STEPHEN
YR3470731	2022/08/30	CHARGE	$5,000,000	TUNG KEE INVESTMENT CANADA LTD.	SOW CAPITAL ONTARIO LIMITED
YR3470732	2022/08/30	NO ASSGN RENT GEN		TUNG KEE INVESTMENTS CANADA LTD.	SOW CAPITAL ONTARIO LIMITED
YR3505533	2022/12/06	NOTICE	$9,500,000	TUNG KEE INVESTMENT CANADA LTD.	2149602 ONTARIO INC.
YR3505555	2022/12/06	POSTPONEMENT		PA, FRANK TUNG, STEPHEN	2149602 ONTARIO INC.
YR3505559	2022/12/06	POSTPONEMENT		SOW CAPITAL ONTARIO LIMITED	2149602 ONTARIO INC.
YR3513701	2023/01/09	TRANSFER OF CHARGE		SOW CAPITAL ONTARIO LIMITED	MILTOM SERVICES LIMITED SOW CAPITAL ONTARIO LIMITED
YR3538687	2023/04/05	NOTICE	$2	TUNG KEE INVESTMENT CANADA LTD.	SOW CAPITAL ONTARIO LIMITED
YR3541410	2023/04/14	CONSTRUCTION LIEN	$4,653,028	DX STRATEGIES INC.	
YR3541426	2023/04/17	NO CHNG ADDR INST		SOW CAPITAL ONTARIO LIMITED	
YR3563830	2023/06/16	CERTIFICATE		ONTARIO SUPERIOR COURT OF JUSTICE	DX STRATEGIES INC.

Schedule "D" – Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property

(Unaffected by the Vesting Order)

"Permitted Encumbrances" means the following:

1. The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act*, R.S.O. 1990, and any amendments thereto or any successor legislation, except paragraph 11;
2. The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
3. As of the date hereof, any registered easements or rights of way in favour of any governmental authority or public utility provided same are in good standing and that none of the foregoing interfere in any material adverse respect with the current use of the Property;
4. Any unregistered hydro easements provided same are in good standing and that none of the foregoing interfere in any material adverse respect with the current use of the Property
5. Inchoate liens for taxes, assessments, public utility charges, governmental charges or levies not at the time due;
6. Any registered agreements, for utilities and services for hydro, water, heat, power, sewer, drainage, cable and telephone serving the Property, adjacent or neighbouring properties, provided none of the foregoing interfere in any material adverse respect with the current use of the Property and same are in good standing;
7. Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property provided that in either case same do not materially adversely impair the use, operation, or marketability of the Property;
8. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders;
9. Any breaches of any applicable laws, including work orders, if any;
10. Any registered subdivision agreements, site plan agreements, developments and any other agreements with the Municipality, Region, publicly regulated utilities or other governmental authorities having jurisdiction provided that same are in good standing;
11. Minor title defects, if any, that do not in the aggregate materially affect the use of the Property for the purposes for which it is used as of the date hereof;
12. The following instruments registered on title against the Property:

Permitted Instruments on PIN 03055-0377 (LT)

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
YR688928	2005/08/24	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF	

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
				CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT	
YR3397626	2022/03/22	NOTICE		THE CORPORATION OF THE CITY OF MARKHAM	TUNG KEE INVESTMENT CANADA LTD.
65R39839	2022/04/07	PLAN REFERENCE			
65R39880	2022/05/16	PLAN REFERENCE			
YR3454770	2022/07/20	TRANSFER EASEMENT	$2	TUNG KEE INVESTMENT CANADA LTD.	ALECTRA UTILITIES CORPORATION

Permitted Instruments on PIN 03055-0379 (LT)

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
YR688928	2005/08/24	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT	
YR3397626	2022/03/22	NOTICE		THE CORPORATION OF THE CITY OF MARKHAM	TUNG KEE INVESTMENT CANADA LTD.
65R39839	2022/04/07	PLAN REFERENCE			
65R39880	2022/05/16	PLAN REFERENCE			
65R39948	2022/07/12	PLAN REFERENCE			
YR3454770	2022/07/20	TRANSFER EASEMENT	$2	TUNG KEE INVESTMENT CANADA LTD.	ALECTRA UTILITIES CORPORATION

Permitted Instruments on PIN 03055-0380 (LT)

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO
YR688928	2005/08/24	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT	
YR3397626	2022/03/22	NOTICE		THE CORPORATION OF THE CITY OF MARKHAM	TUNG KEE INVESTMENT CANADA LTD.
65R39839	2022/04/07	PLAN REFERENCE			
65R39880	2022/05/16	PLAN REFERENCE			
YR3454770	2022/07/20	TRANSFER EASEMENT	$2	TUNG KEE INVESTMENT CANADA LTD.	ALECTRA UTILITIES CORPORATION

ROMSPEN INVESTMENT CORPORATION -and- TUNG KEE INVESTMENT CANADA LTD. et al.
Applicant Respondents

Court File No. CV-23-703161-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

APPROVAL AND VESTING ORDER

DICKINSON WRIGHT LLP
Barristers & Solicitors
199 Bay Street
Suite 2200, Box 447
Commerce Court Postal Station
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Lawyers for the Applicant

Appendix “I”

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Blaney.com

Chad Kopach
D: 416-593-2985 F: 416-594-5095
ckopach@blaney.com

November 24, 2023

BY EMAIL

Justin T. Chan
390 Bay Street, Suite 300
Toronto, ON M5H 2Y2

Dear Mr. Chan:

Re: Romspen v Tung Kee - DX Strategies Inc. Lien and Priority Claim

This email is further to your letter dated November 11, 2023 (the "**November 11 Letter**", attached at **Tab 1**) and the enclosures thereto, including the affidavit of Dan Teh sworn November 11, 2023 (the "**Teh Affidavit**", **Tab 2**), and the "Construction Lien Legal Brief" dated November 11, 2023 (**Tab 3**). It is also further to your email dated November 17, 2023, which enclosed (a) the claim for lien (the "**Claim for Lien**", **Tab 4**) and (b) certificate of action (the "**Certificate of Action**", **Tab 5**) of your client, DX Strategies Inc. ("**DX**"), both of which were registered on title to the properties bearing PINs 03055-0379, 03055-0380 and 03055-0377 (collectively, the "**Property**"), along with (c) DX's statement of claim issued June 16, 2023 (the "**Statement of Claim**", **Tab 6**).

The purpose of your correspondence, as per your November 11 Letter, was to provide "documentation proving quantum, timeliness of supply, and confirmation of the services/materials supplied by DX are lienable pursuant to the terms of the *Construction Lien Act* [sic]". Your correspondence also purports to provide the basis for your client's priority claim over the first-ranking mortgage of Romspen Investment Corporation ("**Romspen**"), and over the fifth-ranking mortgage of SOW Capital Ontario Ltd. ("**SOW**").

There are significant concerns with many facets of DX's claim, and this letter sets out the Receiver's analysis of the material you have provided in support thereof.

Summary of the Claim and the Receiver's Conclusion

DX asserts that it completed its contract (the "**DX Contract**") with the Property owner Tung Kee Investment Canada Inc. ("**Tung Kee**"). The Claim for Lien indicates that the last date of supply by DX was March 7, 2022, but the document was not registered (and the lien not purportedly preserved) until April 14, 2023. The lien was purportedly perfected upon the issuance of the Statement of Claim and registration of the Certificate of Action on June 16, 2023.

DX is seeking priority over Romspen's first-ranking mortgage in the event it was a building mortgage. DX is seeking priority over SOW's fifth-ranking mortgage on the basis that DX gave SOW written notice of its lien on August 9, 2021, and on the basis of a "directorship conflict" (that is, one of Tung Kee's directors has a similar name to one of SOW's directors).

DX has produced various iterations of what it says is the DX Contract, and four invoices in support of the quantum of its claim.

The Receiver's position is that, on its face, the Claim for Lien was registered out of time. DX had 45 days from the date it completed its contract to register the Claim for Lien. It was more than a year late in doing so. If "2022" in the Claim for Lien was an error that is capable of being corrected, then the last date on which DX had to perfect its lien was June 6, 2023, but in that event it was still 10 days late in purporting to perfect its lien. In addition, the Statement of Claim has serious deficiencies. The pleading alleges breach of the DX Contract by Tung Kee, but does not reference the Claim for Lien, nor does it seek to enforce any lien rights against the Property.

The Statement of Claim also does not name either Romspen or SOW as defendants, and does not allege that DX has a lien that takes priority over any mortgage registered over the subject Property. The documentation delivered by DX's lawyer acknowledges that where any mortgage funds were not intended by the mortgagee to be used for construction, DX does not have a "building mortgage" priority claim over that mortgage. The only mortgage specifically referenced as being subject to a building mortgage priority is that of Romspen, but Romspen's commitment letter has a representation and warranty from Tung Kee that confirms the funds were not to be used for construction.

With regards to the priority claim over the SOW mortgage, the document that DX asserts was a written notice of lien from DX to SOW makes no mention of DX having a lien, and there is no evidence when it was given to SOW, if at all. It is not likely to be found to be a written notice of lien. Finally (vis-à-vis the priority claim over SOW's mortgage), a "directorship conflict" is not a basis for a lien claimant to assert a priority claim over a mortgage under the *Construction Act*.

Even if DX had a properly perfected lien claim, and had a legal basis for a priority claim against Romspen and/or SOW, DX has not made full production of its contract with Tung Kee, there is a lack of particularity of the work that DX says it performed in respect of the improvement to the Property, and DX has produced next to no evidence to back up the work it says it performed. As well, counsel for SOW has raised questions regarding when the work was performed (including if it was performed at all), and whether some of the work performed was not for Tung Kee, but for a third party potential purchaser.

Timeliness

The most significant issues are with respect to timeliness in preservation and perfection. DX's position is that it entered into the DX Contract with the owner of the Property, Tung Kee, and that it has completed its work under the DX Contract (per para 16 of the Teh Affidavit at Tab 2). As is further discussed below under "Quantum and Timeliness", the terms of the DX Contract are difficult to decipher based on the documents produced to date.

DX's Claim for Lien (Tab 4) indicates that DX supplied services from "2020/11/07 to 2022/03/07". The timelines for expiry of construction liens following completion of a contract are dictated by section 31 of the *Construction Act*, and the timeline to preserve a lien by registration was changed on July 1, 2018 (from 45 days to 60 days). None of the material referenced above addresses the version of the *Construction Act* that your client says applies (more on this below), but DX's Claim for Lien was registered on April 14, 2023, well out of time regardless as to which version applies based on a completion date of March 7, 2022 (the "**Lien Preservation Error**").

That said, in the event the Lien Preservation Error is capable of correction, it is important for the balance of the analysis to review which version of the *Construction Act* applies. Based on the material produced by DX, the pre-July 1, 2018 version of the *Construction Act* applies. The relevant transition provision is section 87.3, which reads as follows:

Transition

Continued application of *Construction Lien Act* and regulations

87.3 (1) This Act and the regulations, as they read on June 29, 2018, continue to apply with respect to an improvement if,

(a) a contract for the improvement was entered into before July 1, 2018;

(b) a procurement process for the improvement was commenced before July 1, 2018 by the owner of the premises; or

(c) in the case of a premises that is subject to a leasehold interest that was first entered into before July 1, 2018, a contract for the improvement was entered into or a procurement process for the improvement was commenced on or after July 1, 2018 and before the day subsection 19 (1) of Schedule 8 to the *Restoring Trust, Transparency and Accountability Act, 2018* came into force. 2018, c. 17, Sched. 8, s. 19 (1).

Same

(2) For greater certainty, clauses (1) (a) and (c) apply regardless of when any subcontract under the contract was entered into. 2018, c. 17, Sched. 8, s. 19 (1).

In the Teh Affidavit, Daniel Teh confirms that he started planning work on the Property "in or around August 2014" (para 3). The exhibits attached to the Teh Affidavit indicate that the work performed in 2014 and 2015 was pursuant to a contract between the owner Tung Kee and CXT Architects Inc. ("**CXT**"), not DX (which did not exist until the fall of 2019). The fact that the work under this prior contract was done by CXT and not DX is of no consequence to the transition analysis, because the provision applies if "a contract" was entered into before July 1, 2018, meaning any contract (i.e. including the contract between the Owner and CXT) and not the contract that is the subject of a claim for lien (i.e. the DX Contract).

The net effect of all this is because CXT was retained to perform work back in 2014/2015 in respect of the same improvement that DX's lien relates to, the section 87.3(1) transition provision makes the "old version" of the *Construction Act* applicable to all liens (among other things) that relate to the subject improvement. This interpretation (and effect) has been confirmed in *Crosslinx Transit Solutions Constructors v. Form & Build Supply (Toronto) Inc.*, 2021 ONSC 3396 (CanLII).

Given that the "old" Construction Act timelines apply, and DX had 45 days to preserve its lien and a further 45 days to perfect, even if the Lien Preservation Error can be corrected - from March 7, 2022 to March 7, 2023 (which is by no means certain) - then this means that the last date to preserve DX's lien was April 21, 2023 (45 days from March 7, 2023 – DX met this deadline). DX's lien therefore had to be perfected by commencing an action to enforce the lien and registering a certificate of action on title to the Property within the next 45 days, which period expired on June 6, 2023.

Unfortunately, while DX did issue a Statement of Claim, and issued and registered the Certificate of Action on title to the Property, it did not do so until June 16, 2023. This was 10 days out of time (if the date of last supply in the Claim for Lien can be corrected), based on the version of the *Construction Act* applicable to DX's work (the "**First Lien Perfection Error**").

As well, the contents of the Statement of Claim itself raised significant questions. As noted above, to perfect a lien, an action has to be commenced "to enforce the lien". In the usual course, this is done by, among other things, alleging in the body of the pleading that the claimant has a lien pursuant to the *Construction Act*, and in the prayer for relief seeking the enforcement of the lien as against the subject property and/or any security posted into court as security for the lien (among other things).

DX's Statement of Claim alleges a contract between DX and the Tung Kee (among other things), but makes no reference to DX having a lien over the Property, and does not seek to enforce the lien as against the Property. In fact, the only place the word "lien" appears in the pleading is in the style of cause, where the old name of the "*Construction Lien Act*" is used. In the circumstances, as drafted the Statement of Claim does not appear to be "an action to enforce the lien" as required by s.36(3)(a) of the *Construction Act* (the "**Second Lien Perfection Error**").

It may be possible to correct the Second Lien Perfection Error, though a review of the caselaw indicates no similar circumstances where an amendment has been sought. It is not, however, possible to relieve against a missed deadline to perfect (i.e. the First Lien Perfection Error).

Quantum and Lienability

The Claim for Lien indicates that DX's lien is for $4,653,028.11. The Statement of Claim indicates that the claimed amount is pursuant to an "Agreement", but references an execution date of August 9, 2021. It is unclear when DX (or, rather a predecessor, given its incorporation date) first entered into a contract with Tung Kee, but based on paragraph 9 of the Teh Affidavit, the date was likely prior to July 5, 2019 (the paragraph references sending a "new contract dated July 5, 2019", which presupposes an existing contract in place prior to July 5, 2019).

The first available version of what appears to be the DX Contract is dated July 5, 2019, and while it was not attached as an exhibit to the Teh Affidavit, was included as an attachment to your November 11 Letter (Tab A to that document, which is attached at Tab 1). This document describes development management services that will be supplied for a fixed fee of $1,300,000 plus HST "over the duration of 42 months". It is also on CXT's letterhead, not DX's.

The next version of what appears to be the DX Contract is dated July 19, 2021 (Tab B to your November 11 Letter –Tab 1 hereto). This document indicates "unpaid fees" of $527,630, and introduces the concept of an "MZO Bonus" of $1,130,000 inclusive of HST, as well as a "Post MZO/Block 1,2,3 Bonus" of $1,412,500 inclusive of HST. It is not clear what additional services beyond those referenced in the July 5, 2019 DX Contract justified these bonuses of over $2.5M.

A further version of the DX Contract is dated August 9, 2021 (Tab C to your November 11 Letter – Tab 1 hereto). Despite being only approximately 3 weeks later than the prior document, the "unpaid fees" in this DX Contract appear to be $1,306,858.38 ($466,138.38 plus $840,720). This DX Contract also references the MZO Bonus and Post MZO Bonus in the same amounts ($1.13M and $1.4125M).

The last version of the DX Contract is dated June 6, 2022 (Tab D to your November 11 Letter – Tab 1 hereto). The unpaid fees are set out as $1,381,142.50 including HST, a fixed monthly rate of $57,912.50 including HST is referenced, and there are references to consultants' fees of $325,161.38 including HST ($32,191.89 plus $292,969.49). This document continues to reference to an MZO Bonus in the amount of $1.13M. The reference to a Post MZO Bonus is removed, but in its place is an "incentive payment in recognition of payment delay" in the amount of "3% of final cost of land upon closing and or $1,130,000 inclusive of HST, whichever is higher in amount".

Counsel for SOW has raised as an issue whether DX performed all of its services for Tung Kee, and alleges that some were performed for a potential purchaser of the Property. In order to be in a position to properly analyse the contractual relationship at issue between the Owner and DX (or a third party and DX), all copies of the DX Contract need to be produced.

It appears that several iterations of invoices were prepared starting at Tab E to your November 11 Letter (Tab 1 hereto), but it is not possible to determine what work was done or services paid by DX in respect of several of the invoices that would constitute a lienable supply.

For example, the Tab J invoice dated May 18, 2023 in the amount of $1,130,000 states that it is in respect of “professional services rendered”, but also that it is a “DX incentive payment in recognition of payment delay”. On its face, the invoice does not appear to relate to “supply of services” as defined under the *Construction Act* (which is important, as a lien only arises in respect of the price of services or materials), but rather appears to be more in the nature of interest given what appears to be non-payment from the Owner since the inception of the DX Contract (whatever date that may be).

Similarly, the Tab H invoice also dated May 18, 2023, and also in the amount of $1,130,000 references obtaining a ministerial zoning order, but on its face indicates it is a “bonus”, or a success fee in respect of this result (i.e. the MZO Bonus that was not originally referenced in the contract documents, but made its first appearance in the July 19, 2021 version). It is questionable whether this relates to the supply of services as well.

The Tab G invoice and Tab I invoice, again both dated May 18, 2023, and in the amounts of $1,960,267.50 and $389,922.71, respectively, may be in respect of lienable supply of services, but the description of the work performed is lacking. The Tab G invoice consists of six enumerated sentences on less than half of page that purports to describe the services supplied. The Tab I invoice simply states “fees owed to consultants”. These invoices are insufficiently particularized, and the Teh Affidavit does not attempt to describe the work purportedly done by DX, or by its subcontractors.

As noted above, counsel for SOW has raised as an issue that some of the work that purports to be the basis of the invoices was performed for a third party. SOW’s counsel also alleges that some of the work invoiced was not actually done (work on part of the Property described as “Block 1 & 2”, which appears to be included in the $1,130,000 “bonus” invoice discussed above).

In order to properly analyse whether the work purportedly done as set out in the invoices was (a) actually done, and (b) is lienable, DX will need to produce backup documents to support the amounts claimed.

Priority Claims

It is unclear what mortgages DX claims priority over, and what is the basis for any claim.

In the material that accompanied your November 11 Letter, DX has only specifically alleged priority over the first-ranking charge of Romspen, and fifth-ranking charge of SOW, though there are inconsistencies in the material that DX has delivered regarding whether DX is actually seeking priority over the Romspen mortgage.

In your November 11 letter, you state that DX is making a priority claim for 10% of its lien “against any mortgagees that have not specifically set out in their respective loan agreements that those advances of money were not supposed to be used to improve the land”. As I understand this allegation, DX is asserting priority over any mortgage that was taken with the intention of financing the improvement to the Property pursuant to section 78(2) of the *Construction Act* (which provides for a priority claim over building mortgages, but limited to deficiencies in holdbacks that were to be maintained by an owner). I further understand that DX acknowledges it does not have a "building mortgage" priority claim over the Romspen charge, given that in the commitment letter for Romspen's loan (Romspen Application Record dated August 18, 2023, page 46 – reproduced at **Tab 7**) there is a representation and warranty from Tung Kee that "no portion of the Loan will be used for the supply of any services or for the erection, installation, addition, removal, construction, renovation, alteration, or repair to the Property or to any building, structure or works thereon."

However, in DX's "Construction Lien Legal Brief" (Tab 3), at para 33, DX states that it "deserves to have its construction lien properly deemed as preceding the Romspen Loan" because DX "held an interest in being paid since before Romspen held any interest or charge over the Property", though the "Legal Brief" does not set out a legal basis for this position.

At paragraph 38 of the "Construction Lien Legal Brief", DX states that it "takes the position that the Holdback Amount ranks ahead of all mortgages in these proceedings, unless a mortgagee's advances of money have been specifically restricted from being used for the improvement of the Property, because DX's lien first arose latest in or around July 5, 2019". This is not a properly articulated priority claim, and the date of when DX's lien is alleged to have first arose ("July 2019") is confusing, given DX's acknowledgment in its Statement of Claim that DX was only incorporated on September 12, 2019.

The claim against SOW alleges that DX gave a written notice of lien to SOW on August 9, 2021, and that SOW may have advanced only "the original $5,000,000 USD" prior to August 9, 2021 ("Construction Lien Legal Brief" para 43 to 49). DX relies on section 78(6) of the *Construction Act*, which, among other things, affords a lien claimant priority over any advances made where the person who made the advance "had received written notice of a lien".

DX will need to particularize what part of SOW's mortgage it is seeking priority over. As well, the document that DX relies on in this regard is the version of the DX Contract dated August 9, 2021 (see your November 11 Letter at Tab 1 hereto, and specifically Tab C thereto), which from a plain reading does not appear to state that DX has a lien. As well, it is not clear that this August 9, 2021 document was provided to SOW. Only a photograph of a hard copy of the letter has been produced. The photographed document indicates that it was sent to two email addresses, ty69300300@gmail.com and Philip.wong@sowcapital.com.hk, but there is no evidence it was actually sent to the "sowcapital" email address.

Your client's brief also seems to assert a priority over SOW's fifth ranking mortgage based on "conflict of interest", pursuant to an allegation that the "Philip Wong" who is an officer and director of Tung Kee is the same "Philip Kun To Wong" who is an officer and director of SOW. It is not clear that these two individuals are the same person, but in any event the resultant relationship, which DX has characterized as a "Directorship Conflict" is not a basis for a lien claimant to advance a priority claim under the *Construction Act*.

More fundamentally, DX has failed to name any of the mortgagees as defendant parties to the Statement of Claim. The pleading references both Romspen and SOW as secured creditors, but makes no claim to priority over their respective mortgages, let alone alleging a legal basis for any such claim (the "**Priority Claim Perfection Error**").

I expect that the net effect of one or all of the Lien Preservation Error, the First Lien Perfection Error, the Second Lien Perfection Error, and the Priority Claim Perfection Error, will be to invalidate the DX Claim for Lien and in any event the DX priority claim. What will be left will be an unsecured claim for some amount of the approximately $4.6 million claimed by DX.

However, I am available to discuss the above, and any additional documentation/information DX may have that it has not yet produced.

Yours very truly,

Blaney McMurtry LLP

Chad Kopach
CK/kv

Encl.

Appendix “J”

From: Chad Kopach
To: "Lawrence Wilde"
Cc: Eric Golden; Jeffrey Kerbel; Edmund Yau; Chris Kafel; Alida Stancato
Subject: RE: Romspen v Tung Kee Investment et al - CV-23-00703161-00CL
Date: Monday, May 6, 2024 9:55:00 AM
Attachments: TungKee Summary 05.03.24.xlsx
image001.png
image002.png
image003.jpg
image004.png
image005.gif

Hi Lawrence,

Thank you for the attached document you sent Friday evening, but unfortunately it is not what the Receiver has been asking for. What you sent is a spreadsheet that purports to be a summary of services and material supplied in respect of the $596,497.48 that Alectra says it incurred. It is difficult to discern the information in the spreadsheet, as certain of the totals do not match the sums they purport to be adding up, but this appears to be an attempt to demonstrate the total amount that Alectra charged Tung Kee Investment Canada Ltd. ("**Tung Kee Ltd.**") for the work done up to and including June, 2022 ($596,497.48).

In any event, the Receiver requires not just a summary, but rather copies of the agreement (or agreements) between Alectra and Tung Kee Ltd. Based on the information in the spreadsheet, it appears there were three work orders, bearing numbers WO644117, WO644412, and WO647658. The Receiver will also require the backup documentation or other information for each of the line items in the spreadsheet. As I noted in my email of February 22, 2024 (below), the Receiver requires this information and documentation to confirm that Alectra properly deducted the $596,497.48 in costs from the funds that had been deposited by Tung Kee Ltd. prior to the Receivership.

416 593 2985 if you wish to discuss.

Chad

Chad Kopach
Partner
ckopach@blaney.com
416-593-2985 | 416-594-5095

From: Lawrence Wilde <lawrence.wilde@alectrautilities.com>
Sent: Friday, May 3, 2024 5:33 PM
To: Chad Kopach <ckopach@blaney.com>
Cc: Eric Golden <egolden@blaney.com>; Jeffrey Kerbel <Jeffrey.D.Kerbel@parthenon.ey.com>; Edmund Yau <Edmund.Yau@parthenon.ey.com>; Chris Kafel <Chris.Kafel@alectrautilities.com>; Alida Stancato <alida.stancato@alectrautilities.com>
Subject: RE: Romspen v Tung Kee Investment et al - CV-23-00703161-00CL

Chad:

See attached.

Thanks

From: Jeffrey Kerbel <Jeffrey.D.Kerbel@parthenon.ey.com>
Sent: Wednesday, January 24, 2024 4:56 PM
To: Lawrence Wilde <lawrence.wilde@alectrautilities.com>
Cc: Chad Kopach <ckopach@blaney.com>; Edmund Yau <Edmund.Yau@parthenon.ey.com>; Robert Ferguson <Robert.Ferguson@parthenon.ey.com>
Subject: Tung kee and Alectra

Hi Lawrence, thanks for taking the time to chat. Just to confirm, as the Receiver for Tung Kee, please ensure that any correspondence regarding this matter comes to my attention. While your counsel is preparing a response to us, it would be helpful if you could provide the letters you received from the other counsel claiming an interest in the funds held by Alectra. As I said on the phone, it is our position that any refunds should come to the Receiver and the other parties can deal with us on their potential entitlements. If you could also include a statement of account detailing the funds you received, less the amounts used and already refunded, and the balance remaining, that would be greatly appreciated.

Thanks for your help with this

Jeff

Jeffrey D. Kerbel, CPA, CA, CIRP, LIT | Senior Vice-President | EYP-Turnaround & Restructuring Strategy

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Wo 644117

Company	Business Unit	Object Account	Subsidiary	Subledger	Account Description	ITD Period 3 Actual 2024
00010	10	213111		W.00644117	HST Payable	(7,951.76)
	Total 10					**(7,951.76)**
00010	C0544	122250		W.00644117	CIP-AFUDC OH Prim	144.88
	Total C0544					**144.88**
00010	C0550	122250		W.00644117	CIP-AFUDC OH Prim	22,947.16
	Total C0550					**22,947.16**
00010	P0007	112605	170	W.00644117	DESR-Design-Unbill Rec Wrk	1,162.92
00010	P0007	112606	170	W.00644117	DESF-Design-Unbill Rec Wrk	674.50
00010	P0007	112608	170	W.00644117	DESO-Design-Unbill Rec Wrk	211.44
00010	P0007	112611	100	W.00644117	LABR-Prep-Unbill Rec Wrk	1,522.68
00010	P0007	112611	110	W.00644117	LABR-Rest Pd-Unbill Rec	250.94
00010	P0007	112611	205	W.00644117	LABR-Pole-Unbill Rec Wrk	4,297.18
00010	P0007	112611	235	W.00644117	LABR-Guy-Unbill Rec Wrk	4,771.30
00010	P0007	112612	1	W.00644117	LABF-NonAct-Unbill Rec Wrk	1,707.09
00010	P0007	112612	100	W.00644117	LABF-Prep-Unbill Rec Wrk	954.10
00010	P0007	112612	110	W.00644117	LABF-Travel-Unbill Rec Wrk	160.60
00010	P0007	112612	205	W.00644117	LABF-Pole-Unbill Rec Wrk	2,674.29
00010	P0007	112612	235	W.00644117	LABF-Guy-Unbill Rec Wrk	2,958.21
00010	P0007	112613	1	W.00644117	LABB-NonAct-Unbill Rec Wrk	20,136.13
00010	P0007	112613	100	W.00644117	LABB-Prep-Unbill Rec Wrk	317.07
00010	P0007	112613	110	W.00644117	LABB-Travel-CIP-OH Prim Distr	49.38
00010	P0007	112613	170	W.00644117	LABB-NonAct-Unbill Rec Wrk	245.86
00010	P0007	112613	205	W.00644117	LABB-Pole Install-Unbill Rec W	1,200.57
00010	P0007	112613	235	W.00644117	LABB-Guy I and R-Unbill Rec Wr	927.54
00010	P0007	112614	100	W.00644117	LABO-Prep-Unbill Rec Wrk	165.40
00010	P0007	112614	205	W.00644117	LABO-Pole-Unbill Rec Wrk	3,033.24
00010	P0007	112616	100	W.00644117	TRK-Prep-Unbill Rec Wrk	716.00
00010	P0007	112616	110	W.00644117	TRK-Travel-Unbill Rec Wrk	358.00
00010	P0007	112616	205	W.00644117	TRK-Pole-Unbill Rec Wrk	5,562.00
00010	P0007	112616	235	W.00644117	TRK-Guy-Unbill Rec Wrk	6,380.00
00010	P0007	112618	1	W.00644117	SC-Unbill Rec Wrk	173,172.92
00010	P0007	112621	1	W.00644117	MATC-Unbill Rec Wrk	(150,866.96)
00010	P0007	112622	1	W.00644117	MATB-Unbill Rec Wrk	(22,605.00)
00010	P0007	112634	1	W.00644117	NUO-NonAct-Unbill Rec Wrk	1,030.00
00010	P0007	112645		W.00644117	Contra-Unbill Rec Wrk	(61,167.40)
00010	P0007	217305		W.00644117	Advance Pay - Others	(160,460.86)
	Total P0007					**(160,460.86)**
00010	C0550C	122250		W.00644117	CIP-AFUDC OH Prim	(1,681.56)
	Total C0550C					**(1,681.56)**
Total 00010						**(147,002.14)**
Grand Total						**(147,002.14)**

WO Status 97

Work order costs	61,167.40
HST	7,951.76
Total	69,119.16

Summary of Costs	
Labour	48,450.44
Vehicle	13,016.00
Material	(173,471.96)
Contractor	173,172.92
Total	61,167.40

Refunded to date: ########

Refund produced:

#1 49000

Standard Voucher Entry - Work with Pay Item History

Row Tools

Document No/Ty/Co 471764 PV 00010 *Alectra Utilities Corporation*

Records 1 - 1

Payment Type	Payment Number	Payment Date	Payee	Payment Amount	Discount Taken
PT	964639	06/19/2023	Tung Kee Investment Canada Ltd	49,000.00-	

Standard Voucher Entry - G/L Distribution

Personal Form: (No Personalization) Layout: (No Layout)

Form Row Tools

Document No/Typ/Co 471764 PV 00010 Batch Number

Supplier 11441622 Explanation Tung Kee Investment Canada Ltd

G/L Date 06/19/2023

Currency CAD Exchange Rate Base Currency CAD

Records 1 - 2

Account Number *	Account Description	Amount	Explanation -Remark-	Co	Sub Type	Sub-ledger
C0550.217305	Advance Pay - Others	49,000.00	19 th Avenue in Markham	00010	W	00644117

#2 124832.6

Standard Voucher Entry - Work with Pay Item History

Row Tools

Document No/Ty/Co 481130 PV 00010 *Alectra Utilities Corporation*

Records 1 - 1

Payment Type	Payment Number	Payment Date	Payee	Payment Amount	Discount Taken
PT	966507	07/17/2023	Tung Kee Investment Canada Ltd	124,832.60-	

Standard Voucher Entry - G/L Distribution

Personal Form: (No Personalization) Layout (No Layout)

Form Row Tools

Document No/Typ/Co 481130 PV 00010 Batch Number

Supplier 11441622 Explanation Tung Kee Investment Canada Ltd

G/L Date 07/17/2023

Currency CAD Exchange Rate Base Currency CAD

Records 1 - 2

Account Number *	Account Description	Amount	Explanation -Remark-	Co	Sub Type	Sub-ledger
C0550.217305	Advance Pay - Others	124,832.60	Approved. Remaining Deposit f	00010	W	00644117

Company	Business Unit	Object Account	Subsidiary	Subledger	Account Description	ITD Period 3 Actual 2024		
00010	10	213111		W.00647658	HST Payable	(57,169.59)	HST now	- 57,169.59
	Total 10					**(57,169.59)**	Should be	- 57,169.59
00010	P0007	112605	1	W.00647658	DESR-Unbill Recoverable Work	376.86	Diff	0.00
00010	P0007	112605	170	W.00647658	DESR-Design-Unbill Rec Wrk	21,279.86		
00010	P0007	112606	1	W.00647658	DESF-NonAct-Unbill Rec Wrk	3,817.45		
00010	P0007	112606	170	W.00647658	DESF-Design-Unbill Rec Wrk	12,312.93		
00010	P0007	112608	170	W.00647658	DESO-Design-Unbill Rec Wrk	2,101.80		
00010	P0007	112613	1	W.00647658	LABB-NonAct-Unbill Rec Wrk	17,114.75		
00010	P0007	112613	170	W.00647658	LABB-NonAct-Unbill Rec Wrk	4,191.61		
00010	P0007	112616	100	W.00647658	TRK-Prep-Unbill Rec Wrk	190.00		
00010	P0007	112618	1	W.00647658	SC-Unbill Rec Wrk	140,061.14		
00010	P0007	112621	1	W.00647658	MATC-Unbill Rec Wrk	202,522.20		
00010	P0007	112622	1	W.00647658	MATB-Unbill Rec Wrk	33,831.20		
00010	P0007	112631	1	W.00647658	NUR-NonAct-Unbill Rec Wrk	1,966.25		
00010	P0007	112645		W.00647658	Contra-Unbill Rec Wrk	(439,766.05)		
	Total P0007					**0.00**		
Total 00010						**(57,169.59)**		
Grand Total						**(57,169.59)**		

	Work order costs	439,766.05
	HST	57,169.59
WO Status 99	**Total**	**496,935.64**

Summary of Costs

Labour	63,161.51
Vehicle	190.00
Material	236,353.40
Contractor	140,061.14
Total	**439,766.05**

Company	Business Unit	Object Account	Subsidiary	Subledger	Account Description	ITD Period 3 Actual 2024		
00010	10	213111		W.00644412	HST Payable	(3,502.26)	HST now	- 3,502.26
	Total 10					(3,502.26)	Should be	- 3,502.26
00010	P0007	112605	170	W.00644412	DESR-Design-Unbill Rec Wrk	10,390.98	Diff	0.00
00010	P0007	112606	170	W.00644412	DESF-Design-Unbill Rec Wrk	6,026.76		
00010	P0007	112608	170	W.00644412	DESO-Design-Unbill Rec Wrk	5,221.20		
00010	P0007	112613	1	W.00644412	LABB-NonAct-Unbill Rec Wrk	289.80		
00010	P0007	112613	170	W.00644412	LABB-NonAct-Unbill Rec Wrk	2,596.69		
00010	P0007	112618	1	W.00644412	SC-Unbill Rec Wrk	2,415.00		
00010	P0007	112645		W.00644412	Contra-Unbill Rec Wrk	(26,940.43)		
	Total P0007					(0.00)		
Total 00010						(3,502.26)		
Grand Total						(3,502.26)		

	Work order costs	26,940.43
	HST	3,502.26
WO Status 99	**Total**	**30,442.69**

Summary of Costs	
Labour	24,525.43
Vehicle	0.00
Material	0.00
Contractor	2,415.00
Total	**26,940.43**

From: Pui Lai <lai.pui.ling8@gmail.com>
Sent: Friday, August 11, 2023 10:54 AM
To: Lawrence Wilde <lawrence.wilde@alectrautilities.com>
Cc: Chris Kafel <Chris.Kafel@alectrautilities.com>; Tom Corriveau <tom.corriveau@alectrautilities.com>; Alida Stancato <alida.stancato@alectrautilities.com>; Doug Fairchild <Doug.Fairchild@alectrautilities.com>; Debbie Stangolis <debbie.stangolis@alectrautilities.com>; Jiacheng Zhang <Jiacheng.Zhang@alectrautilities.com>
Subject: Re: refund for Work Order #644117

Good morning Lawrence,

Thanks so much for your prompt reply after your vacation. Referring to our payments listed below, please note that the funds directly paid by RULS and 2149602 were all used up already. The balance of $334,293.47 before refund were paid by Tung Kee in 2022 Jul 26 and Jul 28, of which $49,000 and $124,832.60 were refunded to Tung Kee in Jun 19 and Jul 17 2023. There is still an outstanding balance of $160,460.87 to be refunded to Tung Kee.

Will you please advise your accounts department to release the funds to Tung Kee next Monday?

Thanks a lot,

Yvonne

	Cr	Dr	Balance	From
2021 Dec 29	50,000.00		50,000.00	Tung Kee Investment Canada Ltd.
2022 Feb 16	90,000.00		140,000.00	RULS Investments
2022 Jun 6	450,000.00		590,000.00	2149602 Ontario Inc.
		(596,497.48)	(6,497.48)	**Alectra WO cost**
2022 Jul 26	50,000.00		43,502.52	Tung Kee Investment Canada Ltd.

2022 Jul 28	290,790.95		334,293.47	Tung Kee Investment Canada Ltd.
2023 Jun 19		(49,000.00)	285,293.47	**Alectra refund**
2023 Jul 17		(124,832.60)	**160,460.87**	**Alectra refund**

On Thu, Aug 10, 2023 at 1:54 PM Lawrence Wilde <lawrence.wilde@alectrautilities.com> wrote:

Yvonne:

Our records show payment from three different entities: RVLS Investments Ltd., 2149602 Ontario Inc. and Tung Kee Investment Canada Ltd.

If the remaining money is all to be paid to a single entity, I think the appropriate course of action would be to have the other two companies each provide a written direction to Alectra Utilities Corporation directing that payment of any funds be made to the entity to which you want the money to go.

Happy to have a conversation with you or your lawyer if you wish.

thanks

Lawrence Wilde
General Counsel
Alectra Utilities Corporation
55 John Street North
Hamilton Ontario L8R 3M8

Tel: 289-339-5176
E-mail: lawrence.wilde@alectrautilities.com

From: Pui Lai <lai.pui.ling8@gmail.com>
Sent: Friday, August 4, 2023 1:17 PM
To: Lawrence Wilde <lawrence.wilde@alectrautilities.com>
Subject: refund for Work Order #644117

Hi Lawrence,

Total amount of $930,790.95 was paid to Alectra for the above Work Order. Request to cancel work was made in early May of this year. Refunds were received in June and July. There is still a refund balance of $160,460.87 being held by Alectra.

Alectra thinks there is an amount of $450,000 paid by 2149602 Ontario Inc. on Jun 6 2022. This amount was part of a mortgage loan our company with mortgagee 2149 closing on Jun 17 2022. However, $450,000 was advanced and paid directly by 2149 prior to closing due to urgency to pay Alectra.

I enclose herewith the closing statement for the mortgage loan from lawyer showing $450,000 was paid prior to closing. Due to privacy, I crossed out other sensitive details. As $450,000 was already registered charge against the property, there is no reason Alectra is withholding the balance of refund and not paying our company back.

Please help and release the funds to us early next week. Looking forward to hearing good news from you.

Thanks so much,
Yvonne

Confidentiality Warning: This message and any attachments are intended only for the use of the intended recipient(s), and may be confidential and/or privileged. If you are not the intended recipient, you are hereby notified that any review, retransmission, conversion to hard copy, copying, circulation or other use of this message and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender immediately by return e-mail, and delete this message and any attachments from your system. Thank you.

Appendix “K”

ERNST & YOUNG INC.
Court appointed Receiver and Manager of
Tung Kee Investment Canada Ltd. and Tung Kee Investment Limited Partnership
For the period October 19, 2023 to May 16, 2024

		October 19, 2023 to May 16, 2024
Receipts:		
Sale Proceeds	$	68,001,312.05
Interest Earned		221,916.91
HST Refunds		211,520.07
Return of Deposit from Alectra		160,460.87
HST Refund Interest		938.24
Total Receipts	$	68,596,148.14
Disbursements:		
Distribution to Romspen	$	33,787,897.39
Distribution to Amber Mortgage		9,087,542.27
Distribution to Sow Capital		7,242,153.98
Distribution to 2149602 Ontario		7,000,000.00
Real Estate Commissions		1,360,000.00
Amber - Final Payout Amount		984,797.75
Distribution to Miltom Services		757,846.02
Romspen - Final Payout Amount		268,410.50
HST Paid		217,513.73
Legal Fees		214,434.50
Receiver and Manager Fees		98,055.00
Property Taxes		6,058.87
Legal Disbursements		1,787.08
Insurance		550.00
Registration Fees		75.30
Bank Charges		62.18
Total Disbursements	$	61,027,184.57
Excess Receipts over Disbursements	$	7,568,963.57

Appendix “L”

Court File No. CV-23-00703161-00CL

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

AND IN THE MATTER OF A RECEIVERSHIP OF TUNG KEE INVESTMENT CANADA LTD. and TUNG KEE INVESTMENT LIMITED PARTNERSHIP

AFFIDAVIT OF JEFFREY D. KERBEL
Sworn May 16, 2024

I, **Jeffrey D. Kerbel** of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS**:

I am a Senior Vice President with Ernst & Young Inc. ("**EYI**"), the Court Appointed Receiver (the "**Receiver**") for Tung Kee Investment Canada Ltd. and Tung Kee Investment Limited Partnership (the "**Debtors**") and, as such, I have knowledge of the matters to which I hereinafter despose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

1. Attached hereto as **Exhibit "A"** is a schedule summarizing, for each invoice issued by the Receiver for the period from September 18, 2023 to March 31, 2024, the fees, disbursements, HST and total fees charged for each invoice.

2. Attached hereto as **Exhibit "B"** is a true copy of the invoices prepared by the Receiver for fees and disbursements incurred by the Receiver in the course of these proceedings in respect of the Debtors for the period from September 18, 2023 to March 31, 2024.

3. To the best of my knowledge, the rates charged by EYI throughout the course of these proceedings are comparable to the rates charged by other accounting firms in the Toronto market for the provision of similar services.

4. I make this affidavit in support of a motion by the Receiver for, *inter alia,* approval of the fees and disbursements of the Receiver.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 16th day of May, 2024.	))))	**Jeffrey D. Kerbel**

Donna Hatfull

A commissioner for taking oaths, etc.

DONNA MARIE HATFULL, a
Commissioner, etc., Province of Ontario,
for Ernst & Young Inc.
Expires August 25, 2025.

THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF JEFFREY KERBEL SWORN BEFORE ME THIS 16TH DAY MAY, 2024

Donna Hatfull

DONNA MARIE HATFULL, a
Commissioner, etc., Province of Ontario,
for Ernst & Young Inc.
Expires August 25, 2025.

Tung Kee investments Canada Ltd., Tung Kee Investment Limited Partnership
Professional Fees Invoice Summary - Ernst & Young Inc.
For the period up to March 31, 2024

Invoice Number	Invoice Date	Service Period	Fee	Taxes	Total
CA12C500009962	21-Nov-23	September 18 - November 17, 2023	53,995.00	7,019.35	61,014.35
CA12C500010026	11-Dec-23	November 18 - December 8, 2023	24,222.50	3,148.93	27,371.43
CA12C500010149	15-Jan-24	December 9, 2023 - January 12, 2024	2,482.50	322.73	2,805.23
CA12C500010353	08-Mar-24	January 13 - February 29, 2024	6,940.00	902.20	7,842.20
CA12C500010484	09-Apr-24	March 1 - March 31, 2024	10,415.00	1,353.95	11,768.95
		Grand Total	**98,055.00**	**12,747.15**	**110,802.15**

THIS IS EXHIBIT "B" REFERRED
TO IN THE AFFIDAVIT OF
JEFFREY KERBEL SWORN
BEFORE ME THIS 16TH DAY
MAY, 2024

Donna Hatfull

DONNA MARIE HATFULL, a
Commissioner, etc., Province of Ontario,
for Ernst & Young Inc.
Expires August 25, 2025.

Ernst & Young Inc.
Toronto, ON

Invoice

Tung Kee Investment Canada Ltd
286 Parkview Ave
North York, ON M2N 3Z4
Canada

Invoice No.: CA12C500009962
Please include this number with payment

Invoice Date:	November 21, 2023
Due Date:	Upon receipt
Client No.:	0013483589
Engagement No.:	E-67674771

Please see last page of the invoice for payment instructions.

Fees for professional services rendered for the period September 18 to November 17, 2023.

		Net	Tax	Rate	Tax Amount	CAD Total
Fee		53,995.00	HST	13 %	7,019.35	61,014.35
		53,995.00			**7,019.35**	**61,014.35**
Invoice summary		**53,995.00**				
Tax:	13% HST				7,019.35	
Total:		**53,995.00**			**7,019.35**	**61,014.35**

A member of Ernst & Young Global

Terms: Payment due upon receipt. Interest is charged at the rate of 12 % per annum on balances unpaid after 30 days from date of invoice. Any disbursements not charged to your account on the date of this invoice will be billed later.
GST/HST: R123425522 **QST:** 1006354498

Ernst & Young Inc.
Receiver & Manager re:
Tung Kee Investment Canada Ltd.
SUMMARY OF HOURS, FEES AND DISBURSEMENTS
FOR THE PERIOD SEPTEMBER 18 to November 17, 2023

EY Personnel	Title	Hours	Rate ($)	Total Fees
Jeffrey Kerbel	Senior Vice-President	43	700	30,100.00
Edmund Yau	Senior Vice-President	33.6	575	19,320.00
Cam Bear	Paraprofessional	6.3	375	2,362.50
Donna Hatfull	Paraprofessional	2.6	375	975.00
Marites Carandang	Paraprofessional	0.5	375	187.50
Robert Ferguson	Paraprofessional	2.8	375	1,050.00
Subtotal		88.8		53,995.00
HST 13%				7,019.35
Total				**$ 61,014.35**

For the Period September 18, 2023 to November 17, 2023

Person	Date	Hours	Description
Cam Bear	23-Oct-23	1.5	Organize account open documentation and circulate for approvals
Cam Bear	27-Oct-23	1.0	Update and send account open documents to bank
Cam Bear	7-Nov-23	0.5	Check account online for wire in from Dickinson Wright, advise Edmund. Write up deposit and record
Cam Bear	16-Nov-23	2.5	Review wires details and supporting documents. Emails with Jeff and Edmund. Call Romspen to confirm address. Have wires signed, scan and email to bank, follow ups. Forward confirmations.
Cam Bear	17-Nov-23	0.8	Review Edmunds closing proceeds entry, adjust and populate into an R&D to send Jeff for review.
Cam Bear Total		**6.3**	
Donna Hatfull	27-Oct-23	1.7	draft 245 notice
Donna Hatfull	30-Oct-23	0.8	mail notices and file with OSB
Donna Hatfull	3-Nov-23	0.1	call to OSB re certificate of appointment
Donna Hatfull Total		**2.6**	
Edmund Yau	19-Sep-23	6.0	draft pre-receivership report
Edmund Yau	21-Sep-23	1.5	draft pre-receivership report
Edmund Yau	29-Sep-23	2.8	update pre-receivership report
Edmund Yau	2-Oct-23	4.8	draft pre-filing reports, review materials
Edmund Yau	4-Oct-23	1.8	draft pre-filing report, review motion materials
Edmund Yau	5-Oct-23	1.9	review motion materials and various correspondence re: receivership
Edmund Yau	6-Oct-23	2.3	court hearing
Edmund Yau	19-Oct-23	0.5	review court endorsement and other correspondence
Edmund Yau	20-Oct-23	0.8	email correspondence; prep workplan, email team re: setting up bank accounts
Edmund Yau	26-Oct-23	0.8	Prepare waterfall
Edmund Yau	27-Oct-23	4.6	call with counsel re: sale of propoerty, call with debtor counsel re: books and records, review sale documents, review payout statement and update waterfall; 245 notices, DRAFT FIRST REPORT
Edmund Yau	30-Oct-23	1.1	review first report of the receiver, review title
Edmund Yau	31-Oct-23	1.3	insurance matters, and review factum and 1st report of the Receiver
Edmund Yau	6-Nov-23	0.5	Review appeals material correspondence
Edmund Yau	15-Nov-23	2.6	deal close matters, and holdbacks
Edmund Yau	17-Nov-23	0.3	R&D -recording of proceeds
Edmund Yau Total		**33.6**	
Jeffrey Kerbel	18-Sep-23	0.2	review court materials, emails and calls with counsel
Jeffrey Kerbel	19-Sep-23	0.8	meeting with romspen and counsel
Jeffrey Kerbel	20-Sep-23	0.2	review emails, sale process, deal with agent and counsel
Jeffrey Kerbel	21-Sep-23	0.5	review materials from agent and counsel
Jeffrey Kerbel	22-Sep-23	0.3	review materials and court report
Jeffrey Kerbel	26-Sep-23	0.5	review emails from counsel, court report, calls with counsel, review APS and other docs
Jeffrey Kerbel	12-Oct-23	0.6	review all emails on motion, application materials, factums, responding materials, court report, numerous emails
Jeffrey Kerbel	20-Oct-23	0.5	review endorsement, review emails re mortgages, to do list
Jeffrey Kerbel	24-Oct-23	0.4	review emails and correspondence re AVO and sale process issues, deal with debtor's counsel
Jeffrey Kerbel	25-Oct-23	1.0	review sale issues, HST cert, AVO issues, purchase agreement, review aide memoire, review numerous emails, deal with counsel re same
Jeffrey Kerbel	26-Oct-23	2.2	attend court, deal with sale process documents, deal with counsel re same, review court orders, AVO issues, general file control
Jeffrey Kerbel	27-Oct-23	2.9	review APA, assumption agreement, assignment agreement, call with Maya re debtor and receivership issues, 245 report, numerous emails, calls with counsel on sale process, review appeal materials, waterfall, mortgage statements and issues, general file control
Jeffrey Kerbel	30-Oct-23	2.4	review court of appeal materials, calls and emails with counsel, calls with purchaser and counsel, review case law, court report
Jeffrey Kerbel	31-Oct-23	3.5	review motion record, court report, numerous emails and correspondence re court of appeal and calls with counsel re same
Jeffrey Kerbel	1-Nov-23	2.2	meeting with counsel, review emails, agreements, correspondence, sale issues, review court materials

Person	Date	Hours	Description
Jeffrey Kerbel	2-Nov-23	1.3	calls and emails with counsel, review mortgage issues and statements, assumption agreement, insurance issues, assignment agreement, general file control
Jeffrey Kerbel	3-Nov-23	1.2	deal with sale process, assignment agreement, assumption agreement, closing issues, review motion materials for court of appeal
Jeffrey Kerbel	6-Nov-23	1.5	review court of appeal materials, assumption agreement, deal with counsel
Jeffrey Kerbel	7-Nov-23	2.4	review all court materials for court of appeal, posting on website, closing issues, stmt of adjustments, review taxes, wire of deposit information, deal with counsel on all matters, review numerous emails and general file control
Jeffrey Kerbel	8-Nov-23	1.3	review court materials, post to website, stmt of adjustments and review other closing documents, deal with counsel
Jeffrey Kerbel	9-Nov-23	0.5	review court materials, closing docs
Jeffrey Kerbel	10-Nov-23	3.0	prepare for court, review materials and emails, calls with counsel, attend court of appeal hearing
Jeffrey Kerbel	13-Nov-23	1.5	sale process, review agreements and closing documents, loan payouts, numerous emails, deal with counsel
Jeffrey Kerbel	14-Nov-23	3.2	deal with numerous closing documents and issues, emails and calls with counsel re same
Jeffrey Kerbel	15-Nov-23	5.9	closing matters, numerous emails re closing, mortgage statements and payouts, banking issues, tell calls and emails with counsel
Jeffrey Kerbel	16-Nov-23	2.2	post closing issues, banking, funding, distributions, deal with counsel re same, R&D
Jeffrey Kerbel	17-Nov-23	0.8	post closing issues, deal with counsel, banking, R&D, review emails and correspondence
Jeffrey Kerbel Total		43.0	
Marites Carandang	14-Nov-23	0.5	Prepare cheque requisition. Process, post submit OSB fees.
Marites Carandang Total		0.5	
Robert Ferguson	27-Oct-23	0.7	Set up hotline, website and shared email. Post documents to website.
Robert Ferguson	31-Oct-23	0.8	Update email, post documents to website and mail out additional 245-246 notice.
Robert Ferguson	3-Nov-23	0.6	Post documents to website.
Robert Ferguson	13-Nov-23	0.7	Update website and respond to emails.
Robert Ferguson Total		2.8	
Grand Total		**88.8**	

Ernst & Young Inc.
Toronto, ON

Invoice

Tung Kee Investment Canada Ltd
286 Parkview Ave
North York, ON M2N 3Z4
Canada

Invoice No.: CA12C500010026
Please include this number with payment

Invoice Date:	December 11, 2023
Due Date:	Upon receipt
Client No.:	0013483589
Engagement No.:	E-67674771

Please see last page of the invoice for payment instructions.

Fees for professional services rendered for the period November 18 to December 8, 2023.

		Net	Tax	Rate	Tax Amount	CAD Total
Fee		24,222.50	HST	13 %	3,148.93	27,371.43
		24,222.50			**3,148.93**	**27,371.43**
Invoice summary		**24,222.50**				
Tax:	13% HST				3,148.93	
Total:		**24,222.50**			**3,148.93**	**27,371.43**

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Terms: Payment due upon receipt. Interest is charged at the rate of 12 % per annum on balances unpaid after 30 days from date of invoice. Any disbursements not charged to your account on the date of this invoice will be billed later.
GST/HST: R123425522 **QST:** 1006354498

Ernst & Young Inc.
Receiver & Manager re:
Tung Kee Investment Canada Ltd.
SUMMARY OF HOURS, FEES AND DISBURSEMENTS
FOR THE PERIOD November 18 to December 8, 2023

EY Personnel	Title	Hours	Rate ($)	Total Fees
Jeffrey Kerbel	Senior Vice-President	20.7	700	14,490.00
Edmund Yau	Senior Vice-President	10.6	575	6,095.00
Cam Bear	Paraprofessional	5	375	1,875.00
Donna Hatfull	Paraprofessional	0.3	375	112.50
Marites Carandang	Paraprofessional	3.7	375	1,387.50
Robert Ferguson	Paraprofessional	0.7	375	262.50
Subtotal		41		24,222.50
HST 13%				3,148.93
Total				**$ 27,371.43**

For the Period November 18, 2023 - December 8, 2023

Person	Date	Hours	Description
Cam Bear	20-Nov-23	1.2	Write up deposits. Finalize entry to reflect total sale proceeds and adjustment for property taxes. Record with payments to Amber and Romspen.
Cam Bear	20-Nov-23	0.4	Review legal billings, draft wire and circulate for approval
Cam Bear	21-Nov-23	0.5	Fax wire to bank, follow up, record. Draft wire for Receiver fees, email for approval
Cam Bear	22-Nov-23	0.2	Fax wire to bank and record
Cam Bear	27-Nov-23	0.5	Print off invoice, discuss HST with Edmund, fax CRA
Cam Bear	28-Nov-23	0.5	Write up req, isssue payment to Aon, record. Call Royal LePage to confirm payment instructions
Cam Bear	29-Nov-23	1.2	Calls, email with Royal LePage with obtain missing wire information, draft wire and email for approval. Review Edmunds email regarding payment to Amber, draft wire, amend with new amount, email for approval, fax to bank.
Cam Bear	30-Nov-23	0.5	Fax wires to bank, record, email confirmations. Update R & D and email to Jeff and Edmund
Cam Bear Total		5.0	
Donna Hatfull	4-Dec-23	0.2	post documents
Donna Hatfull	5-Dec-23	0.1	post document
Donna Hatfull Total		0.3	
Edmund Yau	27-Nov-23	0.5	prepare waterfall analysis
Edmund Yau	29-Nov-23	4.8	prepare calculations and final distribution to Amber, draft Second report
Edmund Yau	30-Nov-23	5.3	draft Second Report
Edmund Yau Total		10.6	
Jeffrey Kerbel	20-Nov-23	2.2	deal with counsel, post closing issues, legal opinions on mortgagees, R&D, creditor issues, review emails from Maya
Jeffrey Kerbel	21-Nov-23	0.9	review R&D, post closing issues, deal with counsel, disbursements
Jeffrey Kerbel	22-Nov-23	0.2	review R&D, emails, post-closing issues
Jeffrey Kerbel	23-Nov-23	2.0	review numerous emails, calls with counsel , lien issues and review opinion, review draft order, review R&D
Jeffrey Kerbel	24-Nov-23	1.2	review correspondence from mortgagees, draft order, call with counsel, review lien claim opinion
Jeffrey Kerbel	27-Nov-23	1.2	emails and call with counsel, review waterfall and mortgage information including payout statements, review draft order, deal with real estate agent re commission
Jeffrey Kerbel	28-Nov-23	0.7	review court orders, R&D, holdbacks, call with counsel, general file control
Jeffrey Kerbel	29-Nov-23	2.2	review emails, calls with counsel, court report, distribution issues and review amber payout, banking, review R&D
Jeffrey Kerbel	30-Nov-23	1.8	review orders and correspondence re payouts, mortgagees, numerous emails re same, deal with counsel, court report
Jeffrey Kerbel	1-Dec-23	2.5	deal with counsel, court report, banking and R&D review
Jeffrey Kerbel	4-Dec-23	2.7	review emails, court report, review motion records and orders, review emails, distribution analysis, banking, R&D
Jeffrey Kerbel	5-Dec-23	1.7	deal with order, post to website, distributions to mortgagees, emails and calls with counsel and mortgagees
Jeffrey Kerbel	6-Dec-23	1.0	meeting with maya and borrower, HST issues, banking, R&D, review correspondence / emails
Jeffrey Kerbel	7-Dec-23	0.2	review HST issues
Jeffrey Kerbel	8-Dec-23	0.2	review emails and correspondence
Jeffrey Kerbel Total		20.7	
Marites Carandang	5-Dec-23	3.0	Prepare cheque requisitions, print off back-ups, draft and email wire transfers for signature. Discuss same with Jeff. Email confirmations.
Marites Carandang	6-Dec-23	0.7	Post wire transfers
Marites Carandang Total		3.7	
Robert Ferguson	24-Nov-23	0.4	Respond to calls and emails. Post document to website.
Robert Ferguson	1-Dec-23	0.3	Respond to calls and emails. Post document to website.
Robert Ferguson Total		0.7	
Grand Total		**41.0**	

Ernst & Young Inc.
Toronto, ON

Invoice

Tung Kee Investment Canada Ltd
286 Parkview Ave
North York, ON M2N 3Z4
Canada

Invoice No.: CA12C500010149
Please include this number with payment

Invoice Date:	January 15, 2024
Due Date:	Upon receipt
Client No.:	0013483589
Engagement No.:	E-67674771

Please see last page of the invoice for payment instructions.

Fees for professional services rendered for the period December 9, 2023 to January 12, 2024.

		Net	Tax	Rate	Tax Amount	**CAD** Total
Fee		2,482.50	HST	13 %	322.73	2,805.23
		2,482.50			**322.73**	**2,805.23**
Invoice summary		**2,482.50**				
Tax:	13% HST				322.73	
Total:		**2,482.50**			**322.73**	**2,805.23**

A member of Ernst & Young Global

Terms: Payment due upon receipt. Interest is charged at the rate of 12 % per annum on balances unpaid after 30 days from date of invoice. Any disbursements not charged to your account on the date of this invoice will be billed later.
GST/HST: R123425522 **QST:** 1006354498

Ernst & Young Inc.
Receiver & Manager re:
Tung Kee Investment Canada Ltd.
SUMMARY OF HOURS, FEES AND DISBURSEMENTS
FOR THE PERIOD December 9, 2023 to January 12, 2024

EY Personnel	Title	Hours	Rate ($)	Total Fees
Jeffrey Kerbel	Senior Vice-President	2.1	700	1,470.00
Cam Bear	Paraprofessional	2.3	375	862.50
Marites Carandang	Paraprofessional	0.2	375	75.00
Robert Ferguson	Paraprofessional	0.2	375	75.00
Subtotal		4.8		2,482.50
HST 13%				322.73
Total				**$ 2,805.23**

For the Period December 9, 2023 to January 12, 2024

Person	Date	Hours	Description
Cam Bear	11-Dec-23	0.2	Draft wire, email for approval
Cam Bear	12-Dec-23	0.6	Fax wire to bank, write up req and record payment. Draft wire to Blaneys
Cam Bear	12-Dec-23	0.5	Calls with CRA re: HST account.
Cam Bear	15-Dec-23	0.6	Emails with CRA regarding RT2 account set up.
Cam Bear	8-Jan-24	0.4	Email CRA for pre receivership T2 information. Download and email R&D to Jeff
Cam Bear Total		2.3	
Jeffrey Kerbel	2-Jan-24	0.3	review emails and corresp from alectra, call with debtor, emails with counsel
Jeffrey Kerbel	3-Jan-24	0.2	review issues with alectra
Jeffrey Kerbel	4-Jan-24	0.2	emails with Yvonne, alectra issues, AVO emails with counsel
Jeffrey Kerbel	8-Jan-24	0.4	deal with maya, Yvonne, R&D, counsel, HST, court order correspondence
Jeffrey Kerbel	9-Jan-24	0.4	reply to Yvonne, review R&D, tel calls with counsel, review information re alectra
Jeffrey Kerbel	11-Jan-24	0.2	emails with Yvonne, alectra, R&D
Jeffrey Kerbel	12-Jan-24	0.4	review motion materials
Jeffrey Kerbel Total		2.1	
Marites Carandang	14-Dec-23	0.2	November 2023 bank rec.
Marites Carandang Total		0.2	
Robert Ferguson	8-Jan-24	0.2	Draft email and follow up with Alectra
Robert Ferguson Total		0.2	
Grand Total		**4.8**	

Ernst & Young Inc.
Toronto, ON

Invoice

Tung Kee Investment Canada Ltd
286 Parkview Ave
North York, ON M2N 3Z4
Canada

Invoice No.: CA12C500010353
Please include this number with payment

Invoice Date:	March 08, 2024
Due Date:	Upon receipt
Client No.:	0013483589
Engagement No.:	E-67674771

Please see last page of the invoice for payment instructions.

Fees for professional services rendered for the period January 13 2024 to February 29, 2024.

		Net	Tax	Rate	Tax Amount	CAD Total
Fee		6,940.00	HST	13 %	902.20	7,842.20
		6,940.00			**902.20**	**7,842.20**
Invoice summary		**6,940.00**				
Tax:	13% HST				902.20	
Total:		**6,940.00**			**902.20**	**7,842.20**

A member of Ernst & Young Global

Terms: Payment due upon receipt. Interest is charged at the rate of 12 % per annum on balances unpaid after 30 days from date of invoice. Any disbursements not charged to your account on the date of this invoice will be billed later.
GST/HST: R123425522 **QST:** 1006354498

Ernst & Young Inc.
Receiver & Manager re:
Tung Kee Investment Canada Ltd.
SUMMARY OF HOURS, FEES AND DISBURSEMENTS
FOR THE PERIOD January 13 2024 to February 29, 2024

EY Personnel	Title	Hours	Rate ($)	Total Fees
Jeffrey Kerbel	Senior Vice-President	6.1	700	4,270.00
Edmund Yau	Senior Vice-President	2.1	575	1,207.50
Cam Bear	Paraprofessional	3.3	375	1,237.50
Marites Carandang	Paraprofessional	0.6	375	225.00
Subtotal		12.1		6,940.00
HST 13%				902.20
Total				**$ 7,842.20**

For the Period January 13, 2024 - February 29, 2024

Person	Date	Hours	Description
Cam Bear	16-Jan-24	0.5	Draft wire, email for approval, record wires
Cam Bear	29-Jan-24	1.3	Locate non-personalized HST returns online, complete returns, scan and email to CRA for processing.
Cam Bear	31-Jan-24	0.5	Write up req, print off invoice, draft wire and email for approval, pdf wire, fax to bank, follow up email, record
Cam Bear	12-Feb-24	0.3	Update R&D and email to Jeff
Cam Bear	29-Feb-24	0.7	Filing of receipts and disbursements
Cam Bear Total		3.3	
Edmund Yau	9-Jan-24	0.3	Alectra outstanding amount follow up
Edmund Yau	10-Jan-24	1.8	review 3rd report
Edmund Yau Total		2.1	
Jeffrey Kerbel	15-Jan-24	0.2	emails with Yvonne, alectra, review correspondence, R&D
Jeffrey Kerbel	19-Jan-24	0.3	deal with alectra
Jeffrey Kerbel	22-Jan-24	0.2	deal with alectra and counsel
Jeffrey Kerbel	24-Jan-24	0.8	deal with alectra, calls and emails re same, deal with counsel, claim by Tung Kee and calls with counsel re same
Jeffrey Kerbel	25-Jan-24	0.3	deal with alectra, HST, R&D, counsel, review claim filed by Tung Kee
Jeffrey Kerbel	26-Jan-24	0.5	deal with alectra, HST, Yvonne
Jeffrey Kerbel	29-Jan-24	0.2	deal with alectra issues, debtor
Jeffrey Kerbel	30-Jan-24	0.3	banking, R&D, alectra, HST issues
Jeffrey Kerbel	31-Jan-24	0.2	alectra, blaneys, banking, HST
Jeffrey Kerbel	7-Feb-24	0.5	deal with claim, counsel, alectra
Jeffrey Kerbel	8-Feb-24	0.2	HST, alectra
Jeffrey Kerbel	12-Feb-24	0.5	deal with alectra, deal with maya, review motion record
Jeffrey Kerbel	13-Feb-24	0.2	alectra, counsel
Jeffrey Kerbel	15-Feb-24	0.4	deal with alectra, debtor, counsel
Jeffrey Kerbel	20-Feb-24	0.3	deal with alectra and counsel
Jeffrey Kerbel	21-Feb-24	0.2	deal with alectra
Jeffrey Kerbel	22-Feb-24	0.2	alectra
Jeffrey Kerbel	23-Feb-24	0.2	deal with counsel
Jeffrey Kerbel	29-Feb-24	0.4	emails with counsel, HST, R&D, alectra
Jeffrey Kerbel Total		6.1	
Marites Carandang	17-Jan-24	0.2	Download statement. Prepare December 2023 bank rec.
Marites Carandang	23-Jan-24	0.1	Post Dec 2023 bank adjustments.
Marites Carandang	15-Feb-24	0.2	Jan 2024 bank rec.
Marites Carandang	22-Feb-24	0.1	Post bank adjustments for Jan 2024
Marites Carandang Total		0.6	
Grand Total		**12.1**	

Ernst & Young Inc.
Toronto, ON

Invoice

Tung Kee Investment Canada Ltd
286 Parkview Ave
North York, ON M2N 3Z4
Canada

Invoice No.: CA12C500010484
Please include this number with payment

Invoice Date:	April 09, 2024
Due Date:	Upon receipt
Client No.:	0013483589
Engagement No.:	E-67674771

Please see last page of the invoice for payment instructions.

Fees for professional services rendered for the period March 1, 2024 to March 31, 2024.

		Net	Tax	Rate	Tax Amount	**CAD** Total
Fee		10,415.00	HST	13 %	1,353.95	11,768.95
		10,415.00			**1,353.95**	**11,768.95**
Invoice summary		**10,415.00**				
Tax:	13% HST				1,353.95	
Total:		**10,415.00**			**1,353.95**	**11,768.95**

A member of Ernst & Young Global

Terms: Payment due upon receipt. Interest is charged at the rate of 12 % per annum on balances unpaid after 30 days from date of invoice. Any disbursements not charged to your account on the date of this invoice will be billed later.
GST/HST: R123425522 **QST:** 1006354498

Ernst & Young Inc.
Receiver & Manager re:
Tung Kee Investment Canada Ltd.
SUMMARY OF HOURS, FEES AND DISBURSEMENTS
FOR THE PERIOD March 1 2024 to March 31, 2024

EY Personnel	Title	Hours	Rate ($)	Total Fees
Jeffrey Kerbel	Senior Vice-President	8	700	5,600.00
Edmund Yau	Senior Vice-President	5.7	575	3,277.50
Cam Bear	Paraprofessional	3.8	375	1,425.00
Marites Carandang	Paraprofessional	0.3	375	112.50
Subtotal		17.8		10,415.00
HST 13%				1,353.95
Total				**$ 11,768.95**

For the Period March 1, 2024 - March 31, 2024

Person	Date	Hours	Description
Cam Bear	5-Mar-24	0.2	Follow up with CRA on filed HST returns
Cam Bear	7-Mar-24	0.6	Complete January HST return, scan and email to CRA. Update filing schedule
Cam Bear	11-Mar-24	0.4	Write up req, issue payment, record
Cam Bear	14-Mar-24	1.2	Complete Alectra vendor form, produce VOID cheque, scan and email to Jeff for approval.
Cam Bear	25-Mar-24	0.6	Attend bank to make deposit
Cam Bear	26-Mar-24	0.8	Write up deposit and record HST refund. Update R&D and email to Jeff.
Cam Bear Total		3.8	
Edmund Yau	25-Mar-24	3.1	draft 3rd report of the Receiver
Edmund Yau	26-Mar-24	2.3	draft 3rd report of the Receiver
Edmund Yau	27-Mar-24	0.3	update 3rd Report
Edmund Yau Total		5.7	
Jeffrey Kerbel	4-Mar-24	0.4	deal with alectra, counsel, R&D, HST
Jeffrey Kerbel	5-Mar-24	0.3	deal with alectra
Jeffrey Kerbel	6-Mar-24	0.3	deal with emails from alectra
Jeffrey Kerbel	7-Mar-24	0.3	deal with HST
Jeffrey Kerbel	8-Mar-24	0.2	HST, alectra
Jeffrey Kerbel	11-Mar-24	0.3	deal with alectra
Jeffrey Kerbel	14-Mar-24	0.9	deal with alectra, emails and calls re same
Jeffrey Kerbel	15-Mar-24	0.5	deal with alectra
Jeffrey Kerbel	18-Mar-24	0.2	alectra, deal with counsel
Jeffrey Kerbel	19-Mar-24	0.3	deal with alectra, yvonne and HST
Jeffrey Kerbel	20-Mar-24	0.7	deal with tung kee and alectra
Jeffrey Kerbel	21-Mar-24	0.3	alectra
Jeffrey Kerbel	22-Mar-24	0.2	receipt of alectra funds, emails re same
Jeffrey Kerbel	25-Mar-24	0.4	deal with yvonne, alectra, counsel, HST
Jeffrey Kerbel	26-Mar-24	0.2	review alectra, R&D, HST refund, emails
Jeffrey Kerbel	27-Mar-24	2.2	court report, deal with counsel
Jeffrey Kerbel	28-Mar-24	0.3	court report
Jeffrey Kerbel Total		8.0	
Marites Carandang	15-Mar-24	0.2	February 2024 bank rec
Marites Carandang	21-Mar-24	0.1	Post Feb 2024 bank adjustments
Marites Carandang Total		0.3	
Grand Total		**17.8**	

Appendix “M”

Court File No. CV-23-00703161-00CL

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

B E T W E E N :

ROMSPEN INVESTMENT CORPORATION

Applicant

-and-

TUNG KEE INVESTMENT CANADA LTD., and
TUNG KEE INVESTMENT LIMITED PARTNERSHIP

Respondents

AFFIDAVIT OF CHAD KOPACH

I, CHAD KOPACH, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a partner with the law firm of Blaney McMurtry LLP ("**Blaneys**"), independent counsel for the Receiver, Ernst & Young Inc. ("**EYI**", or the "**Receiver**"). As such, I have knowledge of the matters hereinafter deposed to except where stated to be on information and belief, and where so stated I verily believe it to be true.

2. By Order of Justice Osborne dated October 26, 2023 (the "**Appointment Order**"), EYI was appointed Receiver without security, of all the assets, undertakings, and properties of the Respondents, Tung Kee Investment Canada Ltd. and Tung Kee Investment Limited Partnership

(collectively, the "**Respondents**"), acquired for, or used in relation to, a business carried on by the Respondents.

3. Blaneys has provided services and incurred disbursements in relation to the receivership for the period from August 25, 2023, to and including April 29, 2024, as described in the Legal Costs Summary attached hereto and marked as **Exhibit "A"**, and the detailed accounts rendered by Blaneys dated September 30, 2023, October 31, 2023, December 12, 2023, December 31, 2023, January 30, 2024 and April 30, 2024 which are attached hereto and marked as **Exhibits "B", "C", "D", "E", "F",** and **"G"** respectively (the "**Blaneys Accounts**").

4. Notwithstanding the production of the Blaneys Accounts, Blaneys and the Receiver are in no way waiving privilege or confidentiality with respect to the accounts or the activities described therein.

5. Based on my review of the Blaneys Accounts and my personal knowledge of this matter, the Blaneys Accounts represent a fair and accurate description of the services provided and the amounts charged by Blaneys.

6. A total of approximately 372.50 hours were expended by Steven Jeffery, Eric Golden, Chad Kopach, Kym Stasiuk, Matthew Tapia, Robert Hawkins and Blaneys' law clerks and students during the period noted above in performing legal services relating to the Receivership proceeding herein.

7. I verily believe that the hourly billing rates, outlined in detail in the Blaneys Accounts, are in the range of normal average hourly rates charged by legal counsel for services rendered in relation to engagements similar to Blaneys' engagement with respect to the Receivership.

8. I swear this Affidavit in support of a motion for, among other things, approval of Blaneys' fees and disbursements, and for no improper purpose.

SWORN by Chad Kopach at the City of Toronto, in the Province of Ontario, before me on May 16, 2024.	))))))))	
A Commissioner for Taking Affidavits, etc. **Kelly Vickers (P13560)**		**CHAD KOPACH**

This is Exhibit “A” referred to in the Affidavit of Chad Kopach sworn May 16, 2024.

K.Vickers

Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

LEGAL COSTS SUMMARY

LAWYER	YEAR OF CALL	HOURLY RATE
Steven Jeffery	1984	$800.00
Eric Golden	1996	$700.00
Chad Kopach	2003	$575.00
Kym Stasiuk	2008	$525.00
Matthew Tapia	2019	$375.00
Robert Hawkins	2021	$325.00

SUMMARY OF ACCOUNTS

No.	Date of Account	Fees	Disbursements	H.S.T.	Total
1.	September 30, 2023	$8,300.00	$0.00	$1,079.00	$9,379.00
2.	October 31, 2023	$67,932.50	$827.85	$8,884.74	$77,645.09
3.	December 12, 2023	$111,934.50	$620.23	$14,588.05	$127,142.78
4.	December 31, 2023	$19,047.50	$339.00	$2,476.18	$21,862.68
5.	January 30, 2024	$7,220.00	$0.00	$938.60	$8,158.60
6.	April 30, 2024	$13,250.00	$0.00	$1,722.50	$14,972.50
TOTAL					**$259,160.65**
Average Hourly Rate - (before H.S.T.)		Total fees (before H.S.T.): $227,684.50 ÷ Total hours: 372.5 = $611.23			

This is Exhibit "B" referred to in the Affidavit of Chad Kopach sworn May 16, 2024.

K.Vickers

Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

Blaney McMurtry LLP
Blaney McMurtry LLP | Lawyers
2 Queen Street East | Suite 1500
Toronto, Ontario M5C 3G5
(T) 416-593-1221
(W) Blaney.com

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
Ernst & Young Inc.
Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto, ON M5K 1J7

Date
September 30, 2023

Invoice No.
777746

File No.
097574-0005

Attention: Stuart Clinton

RE: Tung Kee Investments

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended September 30, 2023 as more particularly described below.

Date	**Lawyer**	**Time**	**Description**
August 25, 2023	EG	0.30	Email from DW with Aide Memoire for hearing Monday; review same and discussion with EY re status and next steps;
August 30, 2023	EG	0.10	Review Osborne J. Endorsement;
September 19, 2023	EG	1.50	Call with EY, broker, DW and Romspen re background and status;
September 20, 2023	EG	1.20	Emails with broker re report questions; emails with DW re same; call from Lisa Corne re same; email and call with Mary re same; communications with EY re same;
September 21, 2023	EG	0.50	Multiple emails throughout day between and with Royal Lepage, DW, Romspen and EY re info/docs for pre filing report;
September 22, 2023	EG	2.50	Emails b/w EY and broker re commission; review appraisal; emails b/w broker and DW re sales process details; emails b/w EY and DW re pre-report issues and questions ; emails b/w RL, EY and Romspen re potential additional M&S, extension of APA conditional period from Sep 30 to Oct 2, posting of conditional sale on MLS; review SOW APS docs; review Times APA and original affidavit of Wes Roitman; emails with EY re pre receivership report and

Date	Lawyer	Time	Description
			next steps;
September 26, 2023	SJ	0.10	Telephone call and email from E. Golden;
September 26, 2023	EG	3.20	Review factum and MR of SOW; emails with Romspen, DW and EY re same and pre-receivership report; communications with S. Jeffery re Sow APA and Times APA; call with EY re same;
September 27, 2023	SJ	1.00	Review emails from E. Golden;
September 27, 2023	EG	0.80	Review Steve Jeffery email re APA: emails with and with same re same; email with Lisa re status; emails to same re same; emails with EY re same;
September 28, 2023	EG	0.50	Email from Lisa re next steps; email to same re same; emails from and to Romspen; communications with EY re same;

OUR FEE HEREIN:	$8,300.00
FEE HST:	$1,079.00

Lawyer	Title	Hours	Rate	Amount
Steven Jeffery	Partner	1.10	$800.00	$880.00
Eric Golden	Partner	10.60	$700.00	$7,420.00

TOTAL FEES AND DISBURSEMENTS:	$8,300.00
TOTAL HST:	$1,079.00
TOTAL AMOUNT DUE:	$9,379.00

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

Fees may include charges for services provided by Lawco Limited.
Details are available upon request.

We accept payment by cheque, Wire, VISA, Mastercard and AMEX.
To pay by Visa, Mastercard or Amex please Click here to pay
To pay by Wire: TD Canada Trust, Bank No. 004, Transit No. 10252,
General Account No. 0680-5215022 Swift Code: TDOMCATTTOR
Please ensure our invoice number, account number and/or file number is quoted on all forms of payment.
Contact email clientservices@blaney.com

This is Exhibit "C" referred to in the Affidavit of Chad Kopach sworn May 16, 2024.

K.Vickers

Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

Blaney McMurtry LLP
Blaney McMurtry LLP | Lawyers
2 Queen Street East | Suite 1500
Toronto, Ontario M5C 3G5
T 416-593-1221
W Blaney.com

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
Ernst & Young Inc.
Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto, ON M5K 1J7

Date
October 31, 2023

Invoice No.
779566

File No.
097574-0005

Attention: Stuart Clinton

RE: Tung Kee Investments

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended October 31, 2023 as more particularly described below.

Date	Lawyer	Time	Description
October 2, 2023	EG	6.30	Review moving and reply affidavit; review and revise EY report; email with DW re caselaw for pre-pac and deposit; emails to and from EY re report questions; emails to and from EY re further drafts of report following revisions by Blaneys and EY; communications with DW re payouts; email to DW re S. Jeffery analysis of Sow APS;
October 3, 2023	EG	1.70	Call with Lisa re Times amendment and reduction in purchase price; review amendment; communications with Chad and EY throughout day and revisions to report; emails to and from DW re details/questions for same and positions of other mortgagees; emails with Romspen re payout statement; communications with DW re status of deposit;
October 3, 2023	CK	2.90	Review responding Roitman affidavit; review undredacted amendment to Times APS; review and revise draft pre-receivership report, including reference to taint on market given disclosure in responding record;
October 4, 2023	EG	6.50	Review and revise pre filing report; communications with EY and Chad re same and further revisions of draft throughout day;

Date	Lawyer	Time	Description
			emails from DW re Amber payout; emails from same re payouts for third, fourth and fifth mortgagees; emails from EY re summary of mortgagee payouts and interest burns; email from DW confirming second deposit made; arrange to finalize motion record with report and service of same; emails b/w counsel re hearing; email to counsel re EY intention to shortly deliver a pre filing report; call from counsel for mortgagor re same; instructions to Kopach re email to Service List with pre-receivership report; email from and call from counsel for Amber and DW re Amber position; call with DW and Romspen re EY report;
October 4, 2023	CK	6.60	Further revisions to and finalize report; compile same and service on SL; receipt and review of SL and additional party served (Klaiman); correspondence from MP regarding proposed purchaser's ability to close; receipt of responding record from 281 Ontario;
October 4, 2023	DK	0.40	Attend to subsearch of titles; obtain and review property parcel registers and property maps, confirming location and ownership;
October 4, 2023	JK	0.40	Conducted Corporate and PPSA searches against Tung Kee Investment Canada Ltd. and on Tung Kee Investment Limited Partnership;
October 5, 2023	EG	3.20	Email from Tung Kee counsel re EY de diligence on purchasers; email to same re same; review Romspen factum; emails from Times counsel re its position; emails from Sow purchaser re same; review Sow purchaser factum and affidavit; review emails with EY re receivership issues/details/; review mortgagor motion record and related new Cushman appraisal; email from Amber counsel with proposed AVO wording to support Romspen position; emails with DW re final calcs on interest burn calculations and payouts; emails between counsel for Times and counsel for 281 re ability of their counsel to make submissions tomorrow on hearing; communications with EY re steps if EY appointed tommorrow; email to Osborne J.

Date	Lawyer	Time	Description
			with confidential appendices; email from and to same re whether any self-reps and whether reporter required.
October 6, 2023	EG	4.80	Email from lien holder with factum, Motion Record and book of authorities; email to counsel for Tung Kee re re mortgage accounting questions (para 22 Tung Kee affidavit); emails from and to same re same; emails to and from counsel for Amber re its AVO wording proposal; call with same re same; email to same re revised AVO: emails from and to same re same; call from Preger re 281 positions; attend hearing; call from Romspen re same;
October 6, 2023	CK	5.80	Review affidavits filed in respect of pending application; review facta of Romspen and debtor, and of fifth mortgagee; review responding material from lien claimant's counsel; review appraisals from debtor; correspondence with lien claimant's counsel regarding filing of material on caselines; prepare for and attend on receivership application;
October 6, 2023	DK	0.20	Attend to Land Registry records and obtain copy of registered construction lien and related certificate of action;
October 6, 2023	JK	0.20	Verified corporate name and conducted PPSA search on 1018493 Ontario Inc.;
October 10, 2023	EG	0.10	Email to and from Preger and Roger re AVO and AO wording;
October 19, 2023	EG	0.80	Review reasons; emails b/w BLG and DW re AVO wording; call with DW re same;
October 20, 2023	SJ	0.50	Emails from E. Golden, D. Seifer and R. Jaipargas; email from S. Lo with Amber security documents; instructions to K. Stasiuk regarding security opinion; emails from J. Fried;
October 20, 2023	EG	3.20	Emails b/w Roger and DW re AVO wording; emails to and from same re same; emails to Steve Jeffery re security opinion; emails from

Date	Lawyer	Time	Description
			and to BLG with Amber mortgage docs; emails with S. Jeffery re same; emails to and from 3rd/4th and 5th mortgaees re security docs and payouts; communications with S. Jeffery re same and security opinion;
October 20, 2023	KS	1.70	Reviewing various email correspondence from S. Jeffery and E. Golden regarding litigation and title documents; instructing clerk to prepare title summary; instructing R. Hawkins regarding same;
October 20, 2023	RHawk	1.10	Meeting with K. Stasiuk re preparation of security opinion; review of existing security and court documents for receivership process;
October 22, 2023	EG	0.30	Series of emails from third/fourth mortgagee re security review; email to and from J. Fried re same;
October 23, 2023	KS	0.50	Reviewing title and litigation documents; instructing clerk to revise title summary;
October 23, 2023	RHawk	2.30	Review of court materials and existing security in favour of second mortgagee; prepared Schedule A list of security; ordered, reviewed and summarized corporate searches against second mortgage loan parties;
October 24, 2023	EG	0.20	Further documents from 3rd/4th mortgagee re security opinion; communications with S. Jeffery re same;
October 24, 2023	JK	1.20	Conducted Corporate, Bankruptcy, Bank Act, PPSA and Execution searches against 2407720 Ontario Inc. and on 2407721 Ontario Inc.; conducted Bankruptcy, Bank Act and Execution searches agaisnt Tung Kee Investment Canada Ltd., Tung Kee Investment Limited Partnership and on Man Tung Tony Yung;
October 25, 2023	SJ	2.30	Emails from E. Golden; review emails from A. Daneshvar and D. Seifer; reviewing and revising vesting order; email to E. Golden and C. Kopach; telephone call with C. Kopach; conference telephone call with E. Golden and C. Kopach; conference telephone call with D.

Date	Lawyer	Time	Description
			Preger, D. Seifer, E. Golden and C. Kopach; email to D. Preger and D. Seifer; email from A. Daneshvar regarding HST certificate and indemnity and email to E. Golden and C. Kopach;
October 25, 2023	EG	1.80	Call with S. Jeffery, Chad Kopach and DW re AVO and Receiver assumption of APS; emails b/w counsel re Order regarding termination of Sow APS; emails with EY, purchaser counsel, mortgagee counsel, S. Jeffery re AVO and APS; email from 3rd/4th mortgagee re payouts; communications with Kopach re status update to Court; review DW Aide Memoire; communications with Kym re Amber mortgage; review Amber affidavit re AVO; email from Sow re counsel re concerns with 3rd/4th mortgage;
October 25, 2023	CK	3.10	Correspondence regarding Amber payout statement; receipt and review preliminary opinion regarding renewal fee and late renewal fee; revisions to draft AVO; attend on call with counsel to Romspen regarding same; memorandum to Osborne J. regarding status of discussions among stakeholders and purpose of October 26 case conference;
October 25, 2023	KS	3.50	Reviewing various loan and court documents; email correspondence with R. Hawkins and clerk regarding same; email correspondence with E. Golden regarding Amber security; drafting security opinion;
October 25, 2023	RHawk	2.10	Prepared summary of corporate search results; prepared schedules to security opinion for second mortgage;
October 25, 2023	JK	0.10	Conducted PPSA search against Man Yung;
October 26, 2023	SJ	2.60	Emails from and to D. Montgomery; emails from D. Seifer and E. Golden; email to E. Golden; prepare draft assumption and amending agreement and emails from and to J. Kerbel; email to A. Daneshvar;
October 26, 2023	EG	2.10	Email to Osborne J re case conference status; call with S. Jeffery re AVO; attend case

Date	Lawyer	Time	Description
			conference; email to mortgagees re same and EY security opinion; calls with Maya re same; calls with EY re same; emails with Foglers re 3rd/4th mortgage; revise email to lien holder counsel re documents required; communications with EY and S. Jeffery re assumption agreement wording;
October 26, 2023	CK	1.20	Correspondence regarding outcome of hearing before Osborne J.; review revised AVO; correspondence regarding request for backup documents for security review;
October 26, 2023	KS	1.20	Telephone correspondence with E. Golden regarding Amber loan documents; drafting security opinion;
October 26, 2023	RHawk	0.20	Reviewed and revised corporate search summary;
October 26, 2023	JK	0.20	Verified corporate names and conducted PPSA searches against Tung Kee Investment Canada Ltd. and on Tung Kee Investment Limited Partnership;
October 27, 2023	SJ	1.40	Email from J. Kerbel with comments on assumption agreement; conference telephone call with J. Kerbel, E. Golden and E. Lau; prepare draft assignment agreement for Romspen to sign; revise assumption agreement; emails to and from J. Kerbel; email to D. Preger with assignment;
October 27, 2023	EG	3.60	Email from 281 Ontario lawyer with Notice of Appeal; emails to and from BLG re Amber mortgages and AVO; emails with Maya re respondents' position on same, other mortgages and potential appeal; emails with Foglers re security opinion; review precedents re motion for directions for attempted appeal of Appointment Order and AVO; email to SL re Motion for Directions; calls with EY re same; conference call with Steve Jeffery and Jeff Kerbel with wording of APA and assumption agreement; arrange to have Appointment Order registered on title; email to Poliak with most recent payouts from various mortgagees;

Date	Lawyer	Time	Description
October 27, 2023	KS	0.10	Email correspondence with R. Hawkins regarding draft security opinion;
October 27, 2023	RHawk	2.30	Reviewed 3rd mortgage security docs; prepared Schedule A, B and C for 3rd mortgage security opinion; ordered, reviewed and summarized additional corporate searches;
October 27, 2023	DK	0.90	Receipt of instructions to prepare application to register court order; review court order and property parcel registers; draft electronic application and acknowledgment and direction authorizing same for execution by Receiver; forward same for review and execution; receipt of signed authorization; finalize application and attend to electronic registration; obtain copy of registered instrument and forward same to client;
October 27, 2023	JK	0.40	Conducted Bankruptcy, PPSA and Executions searches and obtained the Writ details against Philip Kund To Wong;
October 30, 2023	SJ	1.20	Telephone call with E. Golden; emails from and to E. Lau regarding s. 245 report; attending conference telephone call with K. Rosenberg, D. Preger, E. Golden, A. Daneshvar et al;
October 30, 2023	EG	3.20	Calls with ONCA re motion for directions; email to SL re same and mortgages histories; call from Maya re status and next steps; email to Romspen re payout; emails from and to lien claimant counsel re motion for directions; email from purchaser counsel re same; emails from and to counsel for 5th mortgagee to EY and to SL re issues with 3rd/4th mortgage, and 5th mortgagee docs/info for security opinion; email to same and K. Stasiuk re same; call with Romspen and Times Group counsel re appeals ; email to Maya and Mark Klaiman re motion return date; email from and to and call from Maya re same; review and revise NOM for directions; instructions to Kopach re same;
October 30, 2023	CK	10.50	Receipt of notice of appeal from 218 Ontario

Date	Lawyer	Time	Description
			(unsuccessful bidder) and from debtors; commence draft and revisions to notice of motion; receipt of draft report from EY and revisions to same;
October 30, 2023	KS	1.60	Various email correspondence with R. Hawkins regarding security opinion; revising same;
October 30, 2023	RHawk	3.00	Reviewed security documents for third and fourth mortgages; prepared Schedules A, B and C for 3rd and 4th mortgages; meeting with K. Stasiuk re security opinion; revised 2nd mortgage opinion schedules; reviewed and revised second mortgage opinion;
October 31, 2023	EG	6.20	Further review and revisions to notice of motion; communications with Chad and EY re same; review and revise EY first Report re motion for directions; communications with Chad and EY re same; call from Poliak re scheduling; emails to and from SL re motion date; arrange for service and filing of appeal motion record;
October 31, 2023	CK	6.80	Finalize notice of motion; revise and finalize Receiver's First Report; correspondence to service list with documents and with timetable/schedule for delivery of facta; attend on call with EY and with JK regarding revisions to report;
October 31, 2023	RHawk	1.00	Reviewed 3rd mortgage security documents; prepared deficiencies list;

OUR FEE HEREIN:	$67,932.50
FEE HST:	$8,831.23

Lawyer	Title	Hours	Rate	Amount
Steven Jeffery	Partner	8.00	$800.00	$6,400.00
Eric Golden	Partner	44.00	$700.00	$30,800.00
Chad Kopach	Partner	36.90	$575.00	$21,217.50
Kym Stasiuk	Partner	8.60	$525.00	$4,515.00
Rob Hawkins	Associate	12.00	$325.00	$3,900.00
Dawn Kearns	Clerk	1.50	$275.00	$412.50
John Kroupis	Clerk	2.50	$275.00	$687.50

Disbursements	Amount	
Filing Fees* - Non-Taxable	$112.00	
Registration Fees* - Non-Taxable	$69.00	
Search - Corporate* - Non-Taxable	$191.50	
Computer Searches - R.E. (Teraview) * -	$43.70	
Cyberbahn Agent Service Fee	$240.10	
Search - Corporate	$30.00	
Registration Fees	$11.50	
Computer Searches - R.E. (Teraview)	$130.05	
TOTAL DISBURSEMENTS:		$827.85
*HST is not charged		
DISBURSEMENT HST:		$53.51
TOTAL FEES AND DISBURSEMENTS:		$68,760.35
TOTAL HST:		$8,884.74
TOTAL AMOUNT DUE:		$77,645.09

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

Fees may include charges for services provided by Lawco Limited.
Details are available upon request.

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General Account No. 0680-5215022 Swift Code: TDOMCATTTOR
Please ensure our invoice number, account number and/or file number is quoted on all forms of payment.
Contact email clientservices@blaney.com

This is Exhibit "D" referred to in the Affidavit of Chad Kopach sworn May 16, 2024.

K.Vickers

Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
Ernst & Young Inc.
Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto, ON M5K 1J7

Date
December 12, 2023

Invoice No.
782380

File No.
097574-0005

Attention: Stuart Clinton

RE: Tung Kee Investments

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended November 30, 2023 as more particularly described below.

Date	Lawyer	Time	Description
November 1, 2023	SJ	0.70	Emails from and to E. Golden, A. Daneshvar and others; conference telephone call with A. Daneshvar, D. Di Georgio, et al;
November 1, 2023	EG	3.40	Emails from and to counsel re closing extension call; calls with ONCA re file nos from appeals and next steps; review final record; instructions to Kopach and review and revise email to SL and to OCA re service and filing: emails with SL re scheduling; call with Blaneys, Owens Wright, DW, EY and Paliare re closing;
November 1, 2023	CK	4.20	Compile Notice of Motion; prepare same for service on SL and for filing; correspondence to SL and to court regarding filing; commence review of caselaw for anticipated responding factum;
November 1, 2023	RHawk	0.40	Correspondence with K. Stasiuk re security opinions; revised Schedule A to security opinions;
November 2, 2023	SJ	0.20	Emails from S. Lo, E. Golden and K. Stasiuk; email from J. Kerbel; email to A. Daneshvar;
November 2, 2023	SJ	1.10	Review and revise security opinion for Amber security; emails from and to K. Stasiuk; email

Date	Lawyer	Time	Description
			from S. Lo with commitment amendments;
November 2, 2023	EG	1.60	Email to mortgagees and lien claimant re outstanding documents/information for security opinion; communications with Steve Jeffery/Kym re same; emails with BLG re same and supporting docs for Amber mortgage; briefly review same; communications with Poliak re her clients' appeal; review s.245 report; review EY waterfall and communications with Kopach re same; communications with EY re third/fourth mortgages; communications with EY and Blaneys re status of EY assumption agreement for APA;
November 2, 2023	KS	1.00	Revising draft Amber security opinion; email correspondence with S. Jeffery regarding same; email correspondence with E. Golden and R. Hawkins regarding matter status;
November 2, 2023	RHawk	2.00	Revised draft Schedule A for 1st, 3rd and 4th mortgages; prepared draft security opinions for same;
November 3, 2023	SJ	0.30	Emails from and to J. Kerbel; emails to and from D. Preger regarding assignment;
November 3, 2023	EG	1.60	Emails bw EY, Blaneys and DW re assignment of APA to EY; review 281 motion record and additional evidence; email from ONCA refusing to schedule motion for directions; instructions to Kopach re same and email to Court re same
November 3, 2023	CK	1.10	Correspondence from court admin staff regarding refusal to file material for November 9 date; correspondence to same regarding urgency to motion, and need to hear motion during week of November 6;
November 6, 2023	SJ	0.60	Email from M. Fallone with comments on assumption and amendment, HST certificate and requisition letter - review and email to J. Kerbel; review revised security opinion regarding Amber security and emails from and to K. Stasiuk;
November 6, 2023	EG	2.80	Emails with ONCAre motion hearing date;

Date	Lawyer	Time	Description
			review Romspen factum and related law; email from BLG with updated mortgage statement and with mortgage history; emails to Chaitons re same; emails to parties re compendium; review SJ and EY comments on assumption agreement; review mortgagor cross-motion appeal record; review mortgagor factum;
November 6, 2023	CK	3.10	Receipt and review of Romspen factum; receipt and review of Respondents' factum; commence draft of factum from Receiver;
November 6, 2023	KS	2.50	Revising security opinion; email correspondence with S. Jeffery regarding same; email correspondence with E. Golden regarding same; instructing R. Hawkins regarding security opinions;
November 6, 2023	RHawk	1.90	Prepared security opinion and schedules for 5th mortgage; reviewed and revised 1st, 3rd and 4th mortgage opinions and schedules; meeting with K. Stasiuk re same;
November 7, 2023	SJ	0.80	Emails from and to J. Kerbel regarding assumption agreement; email to E. Golden; emails to and from M. Tapia and H. Chan regarding HST certificate and statement of adjustments; email from D. Preger regarding deposits; emails from and to M. Fallone; emails from and to A. Daneshvar;
November 7, 2023	EG	6.50	Emails from and to court and stakeholders re motion date; emails with stakeholders on appeal re hearing (timing and submissions); instructions to Kopach re factum and brief; review and revise factum; emails with Chaitons, DW and Stikemans re UBS PPSA registration; communications with purchaser counsel re status closing and additional 281 Ontario evidence; communications with Romspen re payout; communications with EY and S. Jeffery re assumption agreement and APS:
November 7, 2023	CK	8.50	Receipt of additional affidavits and factum from 281 Ontario; continue review of caselaw and draft of responding factum; correspondence from court regarding postponed hearing of

Date	Lawyer	Time	Description
			motion for directions, to be heard Nov 10;
November 7, 2023	MTAP	0.80	Reviewed Agreement of Purchase and Sale, draft Assumption and Amendment of Agreement of Purchase and Sale and provided comments to S. Jeffery regarding revisions to the draft HST Certificate and Indemnity;
November 7, 2023	RHawk	0.30	Revised draft security opinions;
November 7, 2023	HC	0.40	Drafting Statement of Adjustments.
November 8, 2023	EG	5.80	Review 281 factum; further revisions throughout day to EY factum, and reviewing relevant evidence for incorporation; communications with EY and Kopach re same and compendium review and revise compendium compilation, and emails from Klaiman and Poliak re same;
November 8, 2023	CK	9.70	Further revisions to and finalize factum; circulate to receiver for comments; instructions to clerk to finalize and attend to service on SL; correspondence to court regarding filing of factum; compile joint document brief and correspondence to counsel for stakeholders attending on motion regarding same; finalize document brief and pleadings brief, and service of same; correspondence to court regarding filing document brief and pleadings brief; instructions to clerk regarding confidential document brief; correspondence from court regarding rejection of joint document and pleadings briefs for filing;
November 9, 2023	SJ	1.00	Emails from and to J. Kerbel and E. Golden; revise assumption agreement;
November 9, 2023	EG	4.20	Emails from and to ONCA re compendium and confidential appendices; communications with Chad and assistant re same; communications with S. Jeffery and EY re finalizing assumption agreement and APA; emails with counsel on appeal re order and nature of submissions; communications with purchaser counsel re status; prepare for motion;
November 9, 2023	CK	5.40	Correspondence exchanged with court

Date	Lawyer	Time	Description
			regarding filing of confidential appendices and brief of joint documents; instructions to clerk regarding same; correspondence to parties regarding scheduled hearing time, and breakdown of time for submissions; attend at court of appeal regarding delivery of briefs, including for Justice Trotter only; correspondence to SL regarding attendance via Zoom;
November 10, 2023	SJ	0.60	Email from J. Kerbel and email to Owens Wright regarding assumption agreement; emails from and to and telephone call from E. Golden; email to M. Fallone with court decision regarding appeal from AVO;
November 10, 2023	EG	5.80	Finish preparing for and attend hearing; emails and calls with stakeholders following hearing; review decision from ONCA; further emails and call with stakeholders re same; communications with S. Jeffery re closing and emails b/w same and Times counsel re same;
November 10, 2023	CK	5.40	Preparation for motion before CofA; review caselaw regarding single judge motion for directions; instructions to student regarding article by Brown JA; review additional case from Romspen; receipt and review of reasons for decision, and reporting to Receiver regarding same;
November 10, 2023	KS	6.20	Reviewing and revising security opinions; instructing clerk regarding title matters; instructing R. Hawkins to revise schedules to opinions; email correspondence with S. Jeffery regarding draft opinions;
November 10, 2023	RHawk	0.70	Reviewed and revised draft security opinions;
November 10, 2023	NdAma	0.40	Research - looked for article written by Justice Brown re: leave to appeal in BIA;
November 11, 2023	EG	0.20	Email from BLG with updated Amber payout; email from Romspen with update payment;
November 13, 2023	SJ	3.00	Emails from and to E. Golden, D. Kearns and K. Stasiuk; review security opinions for 1st, 3rd, 4th and 5th mortgages and email

Date	Lawyer	Time	Description
			comments to K. Stasiuk; emails to and from M. Fallone, E. Golden and J. Kerbel regarding assumption agreement; email to J. Kerbel with execution copy of assumption agreement;
November 13, 2023	EG	3.30	Email to Maya re updated Romspen and Amber payouts, and providing Amber mortgage history; communications with DW re Romspen payout questions and further email to Maya re same; communications with clerk re muni tax arrears and accounting; call from same re same; review and revise next draft of Amber opinion; communications with DW re requisitions for closing; communications with Kym re closing issues; review next draft of assumption agreement and communications with S. Jeffery and EY re terms/conditions requested by purchaser that can and cannot be agreed to;
November 13, 2023	KS	6.50	Various email correspondence with E. Golden regarding security opinion and closing; email correspondence with S. Jeffery regarding same; drafting list of closing documents; instructing clerk and R. Hawkins to prepare same; emailing purchaser counsel regarding closing documents; various email correspondence with S. Jeffery regarding security opinions; revising same; email correspondence with E. Golden regarding same;
November 13, 2023	RHawk	1.70	Reviewed and revised draft security opinions; prepared draft closing documents; correspondence with Borrower's counsel re same and outstanding items;
November 13, 2023	DK	0.50	Receipt of instructions to obtain municipal tax certificates; review legal descriptions of property parcels and municipal address; obtain MPAC reports confirming assessment roll numbers relating to parcels;
November 14, 2023	SJ	0.90	Emails from and to M. Fallone, J. Kerbel, K. Stasiuk and E. Golden; telephone call from J. Kerbel; review revised security opinions regarding Romspen and Amber; instructions to

Date	Lawyer	Time	Description
			K. Stasiuk regarding closing;
November 14, 2023	EG	4.20	Emails to and from Maya/BLG re Amber mortgage; call with Maya re same; review Romspen opinion and communications with Kym re same; communications with and between S. Jeffery, Kym, EY and purchaser counsel re closing issues and documents; communications with Kym re statement of funds and holdbacks on closing re mortgagor claims; communications with Chaitons, BLG and DW re same, and issues to be dealt with on motion for directions; email to Maya, DW and BLG with Amber and Romspen security opinions; email from counsel for Sow re issues with third and fourth mortgages;
November 14, 2023	CK	5.30	Receipt and review of draft security opinions; review submissions from DX regarding quantum/timeliness/lienability, and regarding priority claim; instructions to clerk to obtain claim for lien and certificate; correspondence to lawyer for DX regarding documents missing from claim package; review transition provisions of Construction Act given pre-July 2018 work done pursuant to a contract in respect of improvement; memorandum regarding timeliness and other issues with claim;
November 14, 2023	KS	5.50	Various email correspondence with E. Golden regarding closing and closing documents; revising security opinions; email correspondence with E. Golden regarding same; various email correspondence with purchaser counsel regarding closing and closing documents; revising closing documents; email correspondence with client regarding execution of same; telephone correspondence with client regarding same; email and telephone correspondence with client regarding funds direction; email correspondence with R. Hawkins regarding security opinions; email correspondence with E. Golden regarding same;
November 14, 2023	RHawk	2.10	Correspondence with Borrower's counsel re

Date	Lawyer	Time	Description
			closing documents and deliverables; reviewed and revised same; reviewed and revised security opinions; compiled and executed security opinions for closing;
November 15, 2023	SJ	1.50	Emails from and to E. Golden, K. Stasiuk, J. Kerbel, M. Fallone, A. Daneshvar and others regarding closing today and payment of mortgagees; telephone call with E. Golden regarding revising AVO to add registration of receivership order as instrument to be deleted;
November 15, 2023	EG	6.50	Emails from and to BLG re Amber position; email from Bota re positions in 3rd and 4th mortgages, and lien claim; ; email from DW with updated Romspen payout; call with Preger re closing; emails with Maya re Amber and Romspen payouts and issues; emails to and between stakeholders re closing, holdbacks, payouts and next steps; communications with Kym, Steve Jeffery and EY re same; emails with purchaser counsel and DW re amended AVO to discharge AO from title; communications with Kym and Steve re same; call with Maya;
November 15, 2023	CK	2.60	Receipt of signed certificate; instructions to clerk regarding same, and regarding filing with court; revisions to certificate; correspondence regarding issue with AVO, and need for undertaking to discharge Receivership Order; correspondence regarding holdback issue, and consent from counsel to debtors, Romspen and Amber;
November 15, 2023	KS	6.80	Attending to various closing matters; various email correspondence with purchaser counsel and client regarding same; instructing R. Hawkins and clerk regarding closing matters; telephone correspondence with E. Golden regarding holdback funds; various email correspondence with client regarding same; various email and telephone correspondence with purchaser counsel and client regarding closing undertaking; revising security opinions;
November 15, 2023	RHawk	1.30	Attendance to various closing tasks including

Date	Lawyer	Time	Description
			review and compilation of executed documents and preparation of statement of funds; review of list of documents and closing agenda; correspondence with purchaser counsel and client re closing and funds holdback, and undertaking re deletion of court order from title;
November 16, 2023	SJ	0.60	Emails from and to K. Stasiuk - review commission agreement and opinion regarding 4th mortgage;
November 16, 2023	EG	2.80	Review 3rd and 4th mortgage draft security opinions; communications with Kym re same; communications with and between Kym, EY, Maya, Preger, Bota and BLG re payouts and holdbacks; call with Maya re same; emails from Fried with updated mortgage histories and additional documents, and re settlement discussions b/w 4th and 5th mortgagees; emails to Maya with material delivered by 3rd, 4th and 5th mortgagees;
November 16, 2023	CK	0.70	Correspondence to court regarding receiver's certificate; service of same on counsel to Romspen and purchaser; correspondence regarding holdback issue;
November 16, 2023	KS	5.90	Various email correspondence with client regarding holdback funds; instructing clerk regarding same; attending to transfer of funds; attending to various post-closing matters; revising security opinions; various email correspondence with S. Jeffery regarding same; email correspondence with E. Golden regarding same; email correspondence with counsel regarding outstanding loan documents;
November 16, 2023	RHawk	0.80	Prepared closing report book index;
November 17, 2023	SJ	0.40	Emails from and to E. Golden and K. Stasiuk regarding security opinions for 4th and 5th mortgages;
November 17, 2023	EG	1.20	Call from Amber counsel re status; call with Maya re mortgagor positions; communications with Kym re finalizing 3rd and 4th mortgage opinions, and fifth mortgage opinion;

Date	Lawyer	Time	Description
			communications with EY re payouts;
November 17, 2023	CK	0.80	Attend on call regarding status of sale following appeal; correspondence regarding finalization of security opinions on third and fourth mortgages;
November 17, 2023	KS	3.80	Email correspondence with R. Hawkins regarding report book; email correspondence with E. Golden regarding security opinions; revising same; telephone correspondence with counsel regarding fourth mortgage; email correspondence with E. Golden and S. Jeffery regarding same; revising security opinion; email correspondence with S. Jeffery and E. Golden regarding same;
November 17, 2023	RHawk	0.40	Reviewed and revised loan report book index;
November 20, 2023	SJ	0.50	Review revised security opinion for 4th mortgage and provide comments;
November 20, 2023	EG	2.60	Email from J. Fried re commission agreement; email to Maya re same; communications with Kym re 4th mortgage opinion; review final drafts of opinions on 3rd and fourth mortgage; email to Maya re status; communications with Kym re opinion in 5th mortgage; communications with Kopach re lien opinion; email to stakeholders re opinions on 3rd and 4th mortgages, and potential settlement/next steps; emails from and to and between Preger, BLG and Maya re potential settlement; email to same re same;
November 20, 2023	KS	1.10	Email correspondence with E. Golden regarding security opinions; revising same; email correspondence with S. Jeffery regarding same; revising same; email correspondence with E. Golden regarding same;
November 21, 2023	EG	0.50	Communications with Kopach re DX lien issues
November 21, 2023	CK	2.80	Further review of material from DX in support of lien claim and mortgage priority; revisions to draft analysis, with implications of preservation

Date	Lawyer	Time	Description
			and perfection errors; correspondence regarding partial settlement between mortgagees and respondents;
November 21, 2023	RHawk	0.10	Correspondence with S. Li and K. Stasiuk re security opinion;
November 22, 2023	KS	0.10	Email correspondence with E. Golden regarding security opinion;
November 23, 2023	EG	2.50	Communications with Kym re fifth opinion; review draft DX lien opinion; email to SL re settlement and next steps; emails to and from CL re Chambers; emails with DW, Maya, Bota re same, and potential settlement between stakeholders and next steps; communications with EY re final accounting; review final draft of security opinion on fifth mortgage;
November 23, 2023	CK	4.80	Further revisions to draft analysis regarding DX lien; attend on call with lawyer for DX regarding preliminary findings, and likely status of DX claim as unsecured; correspondence to same regarding SOW discharge statement; correspondence to Receiver (JK) regarding analysis;
November 23, 2023	KS	0.30	Telephone correspondence with E. Golden regarding security opinion; instructing clerk to finalize same; email correspondence with E. Golden regarding same;
November 24, 2023	EG	1.20	Review updated DX opinion and revise same; email to counsel for DX and mortgagees re same;
November 24, 2023	EG	0.10	Emails from and to counsel for purchaser of partial interest in 5th mortgage (Miller Thomson) re status;
November 24, 2023	CK	2.10	Attend on call with Receiver (JK) regarding draft lien analysis; revisions to incorporate fifth mortgagee position on elements of lien claim; correspondence exchanged with counsel for Tung Kee and for fifth mortgagee regarding chambers attendance; correspondence exchanged with lawyer for DX regarding analysis;

Date	Lawyer	Time	Description
November 24, 2023	RHawk	0.10	Correspondence with K. Stasiuk and corporate clerk re security opinion;
November 25, 2023	EG	0.30	Call with Maya re status and next steps;
November 26, 2023	EG	0.50	Review and revised proposed Romspen distribution order; email to Preger and Maya re same;
November 27, 2023	EG	2.20	Emails from and to EY re updated R&D, waterfall, accounting and real estate commission; emails b/w EY and broker re same; emails from, between and to counsel for stakeholders re mortgage questions; call with Chad re same; call with Maya re same; call with EY re same;
November 29, 2023	EG	2.40	Call from Maya re status; email from and to same and BLG re Amber settlement; emails with and bw/ stakeholders and EY re same, timetable, accounting and MT debt; review and revise draft order re Romspen payout and email to stakeholders re same; communications with same re content of second report; review Chaitons Aide Memoire for Nov 30 Chambers;
November 30, 2023	EG	1.20	Review aide memoire of Sow; emails with Sow, MT and Maya re today's attendance and next steps; attend Chambers; call from Preger re same; review Endorsements and issued orders; communications with EY re updated R&D, accounting and payouts; emails with MT re next steps;

OUR FEE HEREIN: $111,934.50
FEE HST: $14,551.49

Lawyer	Title	Hours	Rate	Amount
Steven Jeffery	Partner	12.20	$800.00	$9,760.00
Eric Golden	Partner	63.40	$700.00	$44,380.00
Chad Kopach	Partner	56.50	$575.00	$32,487.50
Kym Stasiuk	Partner	39.70	$525.00	$20,842.50
Matthew Tapia	Associate	0.80	$375.00	$300.00
Rob Hawkins	Associate	11.80	$325.00	$3,835.00
Dawn Kearns	Clerk	0.50	$275.00	$137.50
Hiuy Chan	Clerk	0.40	$295.00	$118.00

Lawyer	Title	Hours	Rate	Amount
Nadav Amar	Student	0.40	$185.00	$74.00

Disbursements	Amount
Filing Fees* - Non-Taxable	$339.00
Courier	$17.87
Bank Charges - Wires	$24.00
Photocopying	$196.00
Government Inquiries	$16.00
Binding and Tab Charges	$15.36
Computer Searches - R.E. (Teraview)	$12.00

TOTAL DISBURSEMENTS:	$620.23
*HST is not charged	
DISBURSEMENT HST:	$36.56
TOTAL FEES AND DISBURSEMENTS:	$112,554.73
TOTAL HST:	$14,588.05
TOTAL AMOUNT DUE:	$127,142.78

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

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Contact email clientservices@blaney.com

This is Exhibit "E" referred to in the Affidavit of Chad Kopach sworn May 16, 2024.

K.Vickers

Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

Blaney McMurtry LLP | Lawyers
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HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
Ernst & Young Inc.
Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto, ON M5K 1J7

Date
December 31, 2023

Invoice No.
784349

File No.
097574-0005

Attention: Stuart Clinton

RE: Tung Kee Investments

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended December 31, 2023 as more particularly described below.

Date	Lawyer	Time	Description
December 1, 2023	EG	0.80	Emails b/w stakeholders with draft distribution order for 3rd and 5th mortgage; review and revise same and email to stakeholders re same;
December 3, 2023	EG	6.20	Review and revise second report; emails with EY and Kopach re same; emails with S. Jeffery and Kym re 5th mortgage opinion questions; further revisions to draft distribution order after latest comments from stakeholders; revisions to report re lien section; emails between and with stakeholders re interim distribution order;
December 3, 2023	CK	6.50	Review and revise draft report, including provision regarding lien analysis; commence draft of notice of motion regarding interim distribution;
December 4, 2023	EG	4.50	Emails from and b/w stakeholders re finalizing interim distribution order; emails with EY re same; review and finalize Notice of Motion; review and finalize EY report; communications with Kopach re NOM, Report and motion record for tomorrow's attendance; emails with counsel for purchaser re amendment required by it to AVO; email to Service List re Motion Record for tomorrow and next steps; email to

Date	Lawyer	Time	Description
			Conway J. re motion tomorrow;
December 4, 2023	CK	5.30	Revisions to draft notice of motion; review, revise and finalize draft report; correspondence with counsel regarding draft order and revisions to amount to be paid to fifth-ranking mortgagee; instructions to clerk regarding compilation of appendices regarding lien analysis; revise draft notice of motion and report regarding revised amounts to be paid to SOW;
December 4, 2023	KS	0.30	Email correspondence with E. Golden regarding security opinion; reviewing title documents and opinion; email correspondence with E. Golden regarding same;
December 5, 2023	EG	1.80	Revise interim distribution order to include short service term; emails to and from counsel re same; email to Justice Conway re same; emails with fifth mortgagee counsel and Chaitons re Endorsement requested to preserve assessment of Miller Thomson costs; attend Chambers; review Endorsement and Order; communications with EY re payouts to third and fifth mortgagee, and MT: emails from same confirming same;
December 5, 2023	SLi	1.80	Preparing final report;
December 11, 2023	RHawk	0.70	Reviewed and revised post-closing report book;
December 14, 2023	EG	0.30	Email from Bota re Alectra deposits; instructions to Chad re response; communications with same and EY re next steps;
December 14, 2023	CK	1.20	Correspondence from counsel fifth mortgagee regarding Alectra deposits, and request to secure return of same; review documents regarding same; draft response to counsel with documents required to seek return of deposits, and requesting update on efforts made pre-receivership, and Alectra response;
December 15, 2023	KS	0.50	Reviewing closing report; email correspondence with E. Golden regarding

Date	Lawyer	Time	Description
			same;
December 18, 2023	RHawk	0.20	Attendance to post-closing reporting obligations;
December 24, 2023	EG	0.10	Email to Poliak re status of settlement negotiations between stakeholders;
December 27, 2023	EG	0.10	Email from Poliak re status of settlement negotiations; email to CL re Chambers date;
December 28, 2023	EG	1.20	Email to and from CL re Chambers date; review undertaking given to purchaser and AVO re amendments required; emails to and form purchaser counsel re same and form of amended order;

OUR FEE HEREIN:	$19,047.50
FEE HST:	$2,476.18

Lawyer	Title	Hours	Rate	Amount
Eric Golden	Partner	15.00	$700.00	$10,500.00
Chad Kopach	Partner	13.00	$575.00	$7,475.00
Kym Stasiuk	Partner	0.80	$525.00	$420.00
Rob Hawkins	Associate	0.90	$325.00	$292.50
Sherry Li	Law Clerk	1.80	$200.00	$360.00

Disbursements	Amount
Filing Fees* - Non-Taxable	$339.00

TOTAL DISBURSEMENTS:	$339.00
*HST is not charged	
DISBURSEMENT HST:	$0.00
TOTAL FEES AND DISBURSEMENTS:	$19,386.50
TOTAL HST:	$2,476.18
TOTAL AMOUNT DUE:	$21,862.68

BLANEY McMURRTY LLP

Eric Golden
E. & O.E

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General Account No. 0680-5215022 Swift Code: TDOMCATTTOR
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Contact email clientservices@blaney.com

This is Exhibit "F" referred to in the Affidavit of Chad Kopach sworn May 16, 2024.

K.Vickers

Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
Ernst & Young Inc.
Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto, ON M5K 1J7

Date
January 30, 2024

Invoice No.
785602

File No.
097574-0005

Attention: Stuart Clinton

RE: Tung Kee Investments

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended January 30, 2024 as more particularly described below.

Date	Lawyer	Time	Description
January 1, 2024	EG	0.10	Communications with Kopach re Electra status;
January 2, 2024	EG	1.60	Review AVO and undertaking to amend; communications with S. Jeffery and Dickinson Wright re same; revise AVO;
January 4, 2024	EG	0.90	Emails to and from purchaser counsel and Romspen counsel re revised AVO and details required; complete revised AVO;
January 8, 2024	EG	1.70	Communications with EY re inquiries from fifth mortgagee regarding Alectra, GST refund, and SRD; update from Maya re status of negotiations with 3rd/4th/5th mortgagees; emails to and from purchaser counsel re approval of revised AVO; email to Court canceling Chambers attendance to amend AVO; email to Osborne J. re request to amend AVO;
January 9, 2024	EG	0.20	Emails from EY re Alectra; call with EY re same;
January 10, 2024	EG	0.10	Email between mortgagor and EY re status and next steps;
January 11, 2024	EG	0.30	Email from borrower to Receiver re steps

Date	Lawyer	Time	Description
			mortgagor is taking, request for receiver to pay Chaitons accounts and status of remaining priority dispute; email from Osborne J, with amended AVO; email to purchaser re same;
January 12, 2024	CK	0.90	Receipt and preliminary review of responding record from 214 Ontario, Pa and Tung (Foglers) responding to positions taken by debtor (Chaitons);
January 15, 2024	EG	0.30	Call from Maya re status of priority disputes between Tung Kee and mortgagees;
January 19, 2024	EG	0.20	Emails with and call with Maya re Tung Kee potential statement of claim and request for receiver leave to issue;
January 23, 2024	EG	0.10	Emails from and to Maya Poliak re status of Tung Kee claim against other mortgagees;
January 24, 2024	EG	0.80	Email from Maya with draft claim and request for leave to issue; briefly review draft claim; communications with EY re same and leave; email to Maya re same;
January 24, 2024	CK	0.80	Attend on call with JK regarding Alectra deposits, and upcoming call with Alectra counsel; receipt and review statement and summary, including source of funds; receipt of follow-up correspondence from JK to Alectra with request for additional documentation; correspondence regarding draft SoC and request from MP for leave to lift stay to issue claim;
January 25, 2024	EG	0.20	Emails from Maya with confirmation of issuance and issued claim; briefly review same;
January 25, 2024	CK	0.40	Correspondence from JK regarding outcome of Alectra discussion, and request for follow up to lawyer for third and fifth mortgages; correspondence to counsel to arrange discussion on Alectra deposit, and payment out of same;
January 26, 2024	EG	0.20	Call from Maya re issued claim and next steps by her client;

Date
January 30, 2024

Invoice No.
785602

File No.
097574-0005

Date	Lawyer	Time	Description
January 26, 2024	CK	2.30	Attend on call with BM (lawyer for fifth) regarding inquiries to Alectra for return of deposit, and copies of documentation regarding same; attend on call with JF (lawyer for third) regarding his firm's inquiries to Alectra regarding return of deposit, and regarding status of pending hearing regarding debtor challenge to security; receipt and review of issued statement of claim from MP (lawyer for debtors);

OUR FEE HEREIN:	$7,220.00
FEE HST:	$938.60

Lawyer	Title	Hours	Rate	Amount
Eric Golden	Partner	6.70	$700.00	$4,690.00
Chad Kopach	Partner	4.40	$575.00	$2,530.00

TOTAL FEES AND DISBURSEMENTS:	$7,220.00
TOTAL HST:	$938.60
TOTAL AMOUNT DUE:	$8,158.60

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

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General Account No. 0680-5215022 Swift Code: TDOMCATTTOR
Please ensure our invoice number, account number and/or file number is quoted on all forms of payment.
Contact email clientservices@blaney.com

This is Exhibit "G" referred to in the Affidavit of Chad Kopach sworn May 16, 2024.

K.Vickers

Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

Blaney McMurtry LLP

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HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
Ernst & Young Inc.
100 Adelaide Street West
Toronto, ON M5H 0B3

Date
April 30, 2024

Invoice No.
794211

File No.
097574-0005

Attention: Stuart Clinton

RE: Tung Kee Investments

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended April 30, 2024 as more particularly described below.

Date	Lawyer	Time	Description
January 31, 2024	EG	0.10	Email from and to M. Poliak re Chambers date;
February 1, 2024	EG	0.80	Email from and to Maya re Chambers attendance next week; emails b/w Maya and Foglers re positions of Tung Kee and 3rd/4th mortgagees on priority dispute
February 2, 2024	EG	0.10	Email from Maya to stakeholders with Tung Kee claim and proposed Chambers; email to same re same;
February 6, 2024	EG	0.20	Review Chaitons Aide Memoire for next Chamber attendance;
February 7, 2024	EG	1.40	Review emails b/w counsel re their positions on hearing status (adjournment vs proceeding); call with Maya re same; attend in court re case conference; review Kimmel J. Endorsement;
February 7, 2024	EG	0.20	Email from Morris Group re PPSA interest and claim; email from EY to Morris re same;
February 12, 2024	EG	1.60	Emails from Morris Group to Tung Kee, EY and Blaneys re Morris Group agreement with Tung Kee, and claim to priority re fees; review Morris Group agreement; email to Morris Group re same and status of matter; email to

Date	Lawyer	Time	Description
			EY re same; email to Miller Thomson re status; instructions to clerk re SL; emails b/w EY and Alectra re request for docs and info; review emails from Bota re same; email to EY re same;
February 13, 2024	EG	0.10	Call with Jeff re Alectra;
February 14, 2024	EG	0.30	Email from Chaitons with moving material for April 18 hearing; briefly review same;
February 14, 2024	EG	0.10	Email from Chaitons with Tung Kee Motion Record;
February 16, 2024	EG	0.10	Communications with EY re Alectra status;
February 17, 2024	EG	0.10	Emails with R. MacDonald re status and next steps;
February 20, 2024	EG	1.00	Meet with Chad re Alectra issues; instructions to same re same; review and revise email to same re docs, info and payments required; communications with Chad re Poliak response;
February 20, 2024	CK	2.20	Receipt and review of Alectra documentation and correspondence; review timing of deposit and application of deposit funds to pay costs; draft demand to Alectra's GC regarding delivery up of balance of Deposit Funds posted with Alectra; attend on call with counsel to debtors regarding mortgagee claim to Deposit Funds;
February 21, 2024	CK	0.50	Attend on call with GC at Alectra regarding specifics of costs and backup for deposit payments and application of same against costs; request from Alectra for written withdrawal of claim against funds from Foglers;
February 22, 2024	EG	0.80	Communications with Kopach re outstanding EY issues relating to all stakeholders; review and revise email to stakeholders re same; further communications with same and further revisions to next drafts;
February 22, 2024	CK	1.20	Correspondence to counsel for Alectra and to Folgers regarding release of $160k (balance of Alectra Deposit Funds), and regarding backup documents from Alectra regarding purported

Date	Lawyer	Time	Description
			costs incurred; receipt of correspondence from Foglers regarding release of funds;
February 28, 2024	EG	0.20	Email from Chaitons to Foglers re responding material and exams; emails b/w same re same;
March 2, 2024	EG	0.10	Email from Chaitons to Foglers re responding material and exams;
March 4, 2024	EG	0.10	Email from Chaiton to Foglers re material and exams;
March 6, 2024	EG	0.20	Emails from Alectra to Foglers re confirmation of clients re release of surplus funds; communications with Kopach re same and Alectra refund;
March 11, 2024	EG	0.10	Emails b/w Foglers and Alectra re confirmation of Foglers clients and release of funds to EY;
March 11, 2024	EG	0.10	Communications b/w Alectra, Foglers and EY re Alectra payment to EY;
March 11, 2024	CK	0.60	Correspondence exchanged with Alectra regarding method of payment of balance of deposit; correspondence exchanged with JF regarding same, and need for authorization email to Alectra confirming withdrawal of claims on behalf of both purported claimants;
March 13, 2024	EG	0.10	Emails from EY to Alectra re status of release of funds;
March 23, 2024	EG	1.00	Review Kimmel J Feb 7th Endorsement; email to Chaitons and Foglers re status and next steps; email to EY and Chad re same and next report and Alectra status;
March 25, 2024	EG	0.20	Emails b/w Chaitons and Foglers re material, crosses and timetable; email from Chaitons re same; email to Foglers re same; email to EY re next report;
March 25, 2024	CK	0.50	Review correspondence regarding confirmation of receipt of Alectra funds, and next steps given upcoming hearing to address priority dispute between subsequent mortgagee and owner;

Date	Lawyer	Time	Description
March 27, 2024	EG	0.10	Instructions to Chad re Alectra; review and revise email to Alectra;
March 27, 2024	CK	1.80	Confirm status of return of deposit from Alectra; review correspondence with debtor representative; follow up with Alectra GC regarding request for agreement between debtor and Alectra, and request for backup for approx. $500k charge against deposit paid to Alectra;
April 4, 2024	EG	0.30	Emails b/w Chaitons and Foglers and Bota re status and Chambers; instructions to Kopach re Alectra; email from Court re Chambers on April 8;
April 5, 2024	EG	0.20	Review Chaitons Aide-Memoire;
April 8, 2024	EG	1.10	Review costs outlines from Chaitons; attend case conference; review Endorsement; communications to EY re same;
April 15, 2024	EG	0.10	Emails from and to repair counsel for DX re its new retainer and latest Endorsement;
April 24, 2024	EG	0.20	Email from and to Maya re Papazian; call with same re same and Alectra;
April 29, 2024	CK	1.20	Review file regarding status of information production; draft, revise and finalize letter to internal counsel to Alectra regarding production of information and documentation to back up charges;

OUR FEE HEREIN:	$13,250.00
FEE HST:	$1,722.50

Lawyer	Title	Hours	Rate	Amount
Eric Golden	Partner	11.00	$750.00	$8,250.00
Chad Kopach	Partner	8.00	$625.00	$5,000.00

TOTAL FEES AND DISBURSEMENTS:	$13,250.00
TOTAL HST:	$1,722.50

Date
April 30, 2024

Invoice No.
794211

File No.
097574-0005

TOTAL AMOUNT DUE:	$14,972.50

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

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Court File No. CV-23-00703161-00CL

ROMSPEN INVESTMENT CORPORATION
Applicant

and

TUNG KEE INVESTMENT CANADA LTD. et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF CHAD KOPACH

BLANEY McMURTRY LLP
Barristers & Solicitors
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Lawyers for the Court-appointed Receiver,
Ernst & Young Inc.