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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, THE 18th
	)	
JUSTICE OSBORNE	)	DAY OF OCTOBER, 2024

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

DISTRIBUTION AND DISCHARGE ORDER

THIS MOTION, made by Ernst & Young Inc. ("**EY**") in its capacity as court-appointed receiver and manager (in such capacity, the "**Receiver**") of all the assets undertakings and properties of the Respondents, for an Order, among other things, (i) approving the activities described in the Receiver's supplementary third report dated May 29, 2024 (the "**Supplementary Third Report**") and fourth report dated October 15, 2024 (the "**Fourth Report**"), (ii) authorizing the Receiver to make a distribution in the total amount of $860,000 from the remaining proceeds from the sale (the "**Sale Proceeds**") of the property known municipally as 3143 19th Avenue, Markham, Ontario (the "**Real Property**") to the creditors (the "**Creditors**") with accepted proofs of claim pursuant to the claims process (the "**Claims Process**") established by the Order of Justice Kimmel dated June 4, 2024 (the "**Claims Process Order**"), (iii) for directions pursuant to paragraph 33 of the Claims Process Order in respect of the proof of claim of Morris Group Financial, Inc. ("**Morris**") dated July 18, 2024 (the "**Morris Proof of Claim**"), including whether the Morris Proof of Claim should be determined within the Claim Process, or in litigation outside of the Claims Process following the Receiver's discharge, (iv) authorizing the Receiver to advance to Chaitons LLP ("**Chaitons**"), in trust, from the Sale Proceeds the amount of $384,020.00, to be held in trust by Chaitons pending agreement between the Respondents and Morris, or until further Order of the Court, (v) authorizing the Receiver to make a distribution from the Sale Proceeds on account of the Respondents to Chaitons, in trust, in the amount of $500,000, to be released by Chaitons when and as the principal of the Respondents, Man Tung Yung, also known as Tony Man Tung Yung ("**Tony Yung**"), shall irrevocably direct Chaitons, (vi) authorizing the Receiver to distribute from the Sale Proceeds to Chaitons the amount of $137,171.65 in respect of fees for professional services rendered on account of the Respondents following the Receiver's appointment herein (vii) authorizing the Receiver to make, in quantum and timing at the discretion of the Receiver, subsequent distributions on account of the Respondents to Chaitons, in trust, from the Sale Proceeds, and from any remaining surplus proceeds from any additional funds the Receiver has received or may receive in respect of the receivership administration (subject to the Fee Accrual as defined below), to be released by Chaitons when and as Tony Yung shall irrevocably direct Chaitons (viii) discharging EY from the powers, duties and obligations attendant to its appointment as Receiver upon the Receiver filing a certificate with the Court to follow as soon as practicable upon completion of the Remaining Duties (as defined below), (ix) approving the fees and disbursements of the Receiver as set out in the affidavit of Jeffrey Kerbel sworn October 15, 2024, and of the Receiver's counsel, Blaney McMurtry LLP ("**Blaneys**") as set out in the Affidavit of Chad Kopach sworn October 15, 2024, and (x) approving and accepting the Receiver's Interim Statement of Receipts and Disbursements for the period from October 19, 2023, to October 10, 2024, was heard this day at 330 University Avenue, Toronto, Ontario, via judicial videoconference.

ON READING the Supplementary Third Report and the Fourth Report, on hearing the submissions of counsel for the Receiver, counsel for the Respondents, counsel for Morris, and counsel for DX Strategies Inc., and on being advised that the Respondents and Morris consent to the Morris Proof of Claim being determined outside of the Claims Process, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Eric Golden sworn October 17, 2024, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion returnable October 18, 2024, and the related motion material filed in support of that Notice of Motion (collectively, the "**Motion Record**"), is hereby abridged, and that service of the Motion Record is hereby validated, and that further service thereof is hereby dispensed with.

REPORT APPROVALS

2. **THIS COURT ORDERS** that the Supplementary Third Report and the Fourth Report, and the actions of the Receiver described therein, be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

CLAIMS PROCESS DISTRIBUTIONS

3. **THIS COURT ORDERS** that the Receiver is authorized make the following distributions from the Sale Proceeds (the "**Claims Process Distributions**"), in full satisfaction of the claims made by these Creditors pursuant to the Claims Process Order:

(a) $32,000.00 to Metro Union Inc;

(b) $750,000.00 to DX Strategies Inc;

(c) $70,000.00 to Teplitsky LLP; and,

(d) $8,000.00 to CBRE Limited.

MORRIS LITIGATION AND MORRIS PROOF OF CLAIM RESERVE

4. **THIS COURT ORDERS** that the determination of the Morris Proof of Claim shall be determined outside of the Claims Process and without any participation from the Receiver or its counsel. Within 30 days of the date of this Order, or at such other time as the Court may direct, Morris and Tony Yung shall attend before a Judge of the Commercial List at a case conference to address how, where and when the Morris Claim shall be litigated.

5. **THIS COURT ORDERS** that the Receiver is authorized to pay to Chaitons, in trust, from the Sale Proceeds the amount of $384,020.00 (the "**Morris Reserve Distribution**") as a reserve in respect of the Morris Proof of Claim, to be held in trust pending agreement between the Respondents and Morris, or until further Order of the Court.

CHAITONS' FEE DISTRIBUTION

6. **THIS COURT ORDERS** that the Receiver shall distribute from the Sale Proceeds the amount of $137,171.65 to Chaitons (the "**Chaitons' Fee Distribution**") in respect of fees for professional services rendered by Chaitons on account of the Respondents following the Receiver's appointment on October 19, 2023.

DISTRIBUTIONS ON ACCOUNT OF THE RESPONDENTS

7. **THIS COURT ORDERS** that the Receiver is authorized to distribute from the Sale Proceeds on account of the Respondents the amount of $500,000.00 to Chaitons, in trust (the "**Initial Respondents' Distribution**"), to be released by Chaitons when and as Tony Yung shall irrevocably direct Chaitons.

8. **THIS COURT ORDERS** that, following the Claims Process Distributions, the Morris Reserve Distribution, the Chaitons' Fee Distribution, and the Initial Respondents' Distribution, and subject to the Fee Accrual set out below, the Receiver is authorized to make subsequent distributions on account of the Respondents from the residual Sales Proceeds, and from any remaining surplus proceeds from any additional funds the Receiver has received or may receive in respect of the receivership administration, taking into account the costs to complete the

Receivership, payable to Chaitons, in trust (the "**Further Respondents' Distribution**"), to be released by Chaitons when and as Tony Yung shall irrevocably direct Chaitons.

GENERAL DISTRIBUTION PROVISIONS

9. **THIS COURT ORDERS** that that the Receiver is hereby authorized to take all reasonably necessary steps and actions to effect the Claims Process Distributions, the Morris Reserve Distribution, the Chaitons' Fee Distribution, the Initial Respondents' Distribution and the Further Respondents' Distribution (collectively, the "**Distributions**") in accordance with this Order, and shall not incur any liability as a result of making the Distributions.

10. **THIS COURT ORDERS** that notwithstanding anything else contained in this Order, each of the payments and Distributions provided for in this Order shall be made 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 including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of The Honourable Justice Osborne made on October 19, 2023 (the "**Appointment Order**"), and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* or any other personal property registry system or real property registry system.

11. **THIS COURT ORDERS** that the Receiver or any other person facilitating payments and Distributions pursuant to this Order shall be entitled to deduct and withhold from any such payments or Distributions such amounts as may be required to be deducted or withheld under

any applicable law and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person entitled thereto, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order.

APPROVAL OF PROFESSIONAL FEES AND COSTS, AND FEE ACCRUAL

12. **THIS COURT ORDERS** that the fees and disbursements of the Receiver from April 1, 2024, to September 30, 2024, as set out in the Affidavit of Jeffrey Kerbel sworn October 15, 2024, and attached as Appendix "G" to the Fourth Report, be and are hereby approved.

13. **THIS COURT ORDERS** that the fees and disbursements of Blaneys from April 1, 2024 to October 14, 2024, as set out in the Affidavit of Chad Kopach sworn October 15, 2024, and attached as Appendix "H" to the Fourth Report, be and are hereby approved.

14. **THIS COURT ORDERS** that the Receiver is authorized to maintain a reserve of $50,000.00, plus HST (the "**Fee Accrual**"), in respect of fees and disbursements to complete the administration of the Receivership proceeding. The Receiver is authorized to draw upon the Fee Accrual based on actual time and disbursements incurred. Any surplus remaining from the Fee Accrual following the Receiver's discharge shall be distributed on account of the Respondents, to Chaitons, in trust, along with an accounting.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

15. **THIS COURT ORDERS** that that the Receiver's Interim Statement of Receipts and Disbursements for the period from October 19, 2023, to October 10, 2024, as set out in Appendix "F" to the Fourth Report, be and is hereby accepted and approved.

DISCHARGE OF THE RECEIVER

16. **THIS COURT ORDERS** that upon the Receiver filing with this Court a certificate substantially in the form appended as Schedule "A" hereto certifying that the Receiver has completed the following remaining duties as of the date of the Fourth Report (the "**Remaining Duties**"):

(a) effecting the Distributions in accordance with this Order;

(b) completing and filing the final HST returns;

(c) finalizing and closing all estate banking responsibilities; and

(d) completing and submitting final reports pursuant to s.246 of the BIA,

the Receiver shall be discharged as Receiver of the Property (as defined in the Appointment Order), provided however that notwithstanding its discharge as Receiver herein, EY shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all authorizations, approvals, protections and stays of proceedings in favour of EY in its capacity as Receiver.

17. **THIS COURT FURTHER ORDERS** that EY is hereby forever released and discharged from any liability that EY now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of EY while acting in its capacity as Receiver including for certainty, in

carrying out the Remaining Duties, save and except for any gross negligence or willful misconduct on the Receiver's part. Without limiting the generality of the foregoing, EY is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the receivership, save and except for any gross negligence or willful misconduct on the Receiver's part.

18. **THIS COURT FURTHER ORDERS** that notwithstanding its discharge herein, EY may perform such incidental duties as may be required by it as Receiver to complete its obligations pursuant to its appointment as Receiver including, for certainty, carrying out the Remaining Duties, and EY shall be forever released and discharged from any and all liability related to such incidental duties, save and except for any gross negligence or willful misconduct on the Receiver's part.

Osborne, J.

Digitally signed by Osborne J.
Date: 2024.10.18 16:31:05 -04'00'

SCHEDULE "A"

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 DICHARGE CERTIFICATE

A. By Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated October 19, 2023 (the "**Receivership Order**"), Ernst & Young Inc. was appointed receiver and manager (the "**Receiver**") without security, of all of the assets, undertakings and properties of Tung Kee Investment Canada Ltd. and Tung Kee Investment Limited Partnership (collectively, "**Tung Kee**") acquired for, or used in relation to a business carried on by Tung Kee, including all proceeds thereof (the "**Property**").

B. Pursuant to an Order of the Court dated October 18, 2024 (the "**Discharge Order**"), the Court provided for the discharge of the Receiver upon certification that the Receiver has completed the Remaining Duties, as defined in and approved by the Discharge Order.

THE RECEIVER CERTIFIES it has completed the Remaining Duties.

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:

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

DISTRIBUTION AND DISCHARGE ORDER

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