



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ENDORSEMENT

**COURT FILE
NO.:**

CV-23-00703161-00CL

DATE: 18-OCT-2024

NO. ON LIST: 1

**TITLE OF
PROCEEDING:**

ROMPSEN v. TUNG KEE INVESTMENT CANADA LTD. et al.

BEFORE: OSBORNE, J.

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Eric Golden	Lawyer for the Receiver, ERNST & YOUNG	egolden@blaney.com
Jeffrey Kerbel	ERNST & YOUNG, Receiver	jeffrey.d.kerbel@parthenon.ey.com

For Defendant, Respondent, Responding Party:

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

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Neil Searles	DX STRAGIES INC., Unsecured Creditor	nsearles@zubco.com

Justin Papazian	MORRIS GROUP, Unsecured Creditor	jpapazian@phmlaw.com
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ENDORSEMENT OF JUSTICE OSBORNE:

1. The Court-appointed Receiver seeks an order:
 - a. approving the activities and proposed activities described in the Supplementary Third Report dated May 29, 2024 and the Fourth Report dated October 15, 2024, respectively;
 - b. authorizing the Receiver to make a distribution in the total amount of \$860,000 from the Sale Proceeds of the Real Property at 3143 19th Ave., Markham, ON to the creditors identified in the Notice of Motion who filed Proofs of Claim in the Claims Process and which were accepted by the Receiver;
 - c. authorizing the Receiver to distribute from the Sale Proceeds, the amount of \$137,171.65 to lawyers for the Respondents in respect of fees;
 - d. giving directions pursuant to paragraph 33 of the Claims Process Order in respect of the Proof of Claim of Morris Group Financial Inc.;
 - e. authorizing the Receiver to pay to counsel for the Respondents in trust from the Sale Proceeds, the amount of \$384,020 to be held pending agreement between the Respondents and Morris or further order of the Court;
 - f. if the Morris Proof of Claim is to be determined outside the Claims Process, authorizing the Receiver to make a distribution from the Sale Proceeds on account of the Respondents to their lawyers in trust in the amount of \$500,000 to be released when and as the principal of the Respondents, Man Tung Yung, shall irrevocably direct those lawyers;
 - g. if the Morris Proof of Claim is to be determined within the Claims Process, authorizing the Receiver to make an immediate distribution from the sale Proceeds to counsel for the Respondents in trust in the amount of \$400,000 to be released as Man Tung Yung shall irrevocably direct to those lawyers;
 - h. regardless of how the Morris Proof of Claim is to be determined, and if the Discharge Order is issued, authorizing the Receiver to make the distributions as set out in the Notice of Motion in quantum and timing as the Receiver may determine from remaining Sale Proceeds, and any remaining surplus subject to the Fee Accrual to be released by counsel to the Respondents when and as Man Tung Yung may irrevocably direct;
 - i. approving and accepting the Receiver's Interim Statement of Receipts and Disbursements from October 19, 2023 to October 10, 2024;
 - j. approving the fees and disbursements of the Receiver and its counsel, the former from April 1, 2024 to September 30, 2024 and the latter from April 30 to October 14, 2024; and
 - k. if the Morris Proof of Claim is to be determined outside the Claims Process, discharging the Receiver upon the filing of the Receiver's Discharge Certificate, and releasing the Receiver; and if the Discharge Order is issued, approving the Fee Accrual for the Receiver and its counsel pending discharge.

2. The Receiver relies upon the Fourth Report and the Appendices thereto, which include the fee affidavits of Messrs. Kerbel (Receiver) and its counsel (Kopach). Defined terms in this endorsement have the meaning given to them in the motion materials unless otherwise stated.
3. The Service List was served. The relief sought today is unopposed.
4. For the reasons below, I am satisfied that the relief should be granted.
5. Counsel advised at the outset of the hearing of the motion that the Receiver and counsel for Morris had agreed that the Morris Proof of Claim should be litigated outside the receivership.
6. The Real Property was the only asset of significance of the Respondents. I approved the sale transaction for that Real Property with the closing date of November 15, 2023. There were five mortgages and one lien claim registered on title. All secured creditors holding mortgages were repaid in full or pursuant to negotiated settlements with the Respondents, and as of May 24, 2024, there remained a surplus of approximately \$2 million available to be distributed to the Respondents subject to the professional fees of the Receiver and its counsel and completion of the Claims Process, including distributions.
7. That Claims Process was then conducted in accordance with the Claims Process Order. 13 Proofs of Claim from eight creditors in the aggregate amount of approximately \$10.6 million were received. All of those claims were resolved (and the particulars are set out in the motion materials) save and except for the Morris Proof of Claim four \$384,020.
8. Accordingly, this is one of those relatively rare receivership proceedings where all secured creditors have been paid in full, and all claims have been resolved or otherwise addressed (i.e., there is a proposed reserve to be held in trust to satisfy the Morris Proof of Claim in full), leaving available for distribution to the respondents of approximately \$2 million.
9. As a housekeeping matter, the proposed distribution for the benefit of DX Strategies Inc. can be paid by the Receiver to counsel for that party in trust. Mr. Tay was present in Court for DX and confirms, as does counsel for DX, that he has authority to bind the company and that the company has directed that the distribution be paid to counsel in trust.
10. That leaves the Morris claim.
11. Morris is an American company incorporated in New York.
12. The motion materials state that if necessary, the Receiver is in a position to make a determination on the Morris Proof of Claim based on the material it has received to date from the parties. Pursuant to the claims process order of Kimmel J, the unsuccessful party has a right to dispute the Receiver's determination, in which case the Receiver would determine whether to refer the dispute to a Claims Officer or to the Court. If the dispute went to a Claims Officer, there are appeal rights to the Court.
13. The parties submit that as a result, it appears to them to be more cost-efficient to adjudicate the matter outside the Claims Process, and between themselves on the Commercial List, and that in the interim, the Receiver pay to the Respondents' counsel in trust the Morris Proof of Claim Reserve to be held pending an agreement between the parties or further order of the Court. Accordingly, they have agreed on language of the revised draft order and submit that the Receiver should be discharged and the parties can litigate that matter as between themselves.
14. I would have been inclined to decline to endorse that approach and direct the parties to comply with the claims process order already made (on consent) to maximize the efficient use of court resources, such that

the matter would come to Court for determination, if it came at all, as an appeal on a fixed record rather than a hearing de novo. Having heard the submissions of counsel, however, I am persuaded to grant the order as requested for a few principal reasons.

15. First, there is a surplus, meaning that the funds at risk are those of the Respondents, and not of other creditors or stakeholders. Second, the Respondents advised that an additional entity, Element, has evidence necessary for the determination of the issues as between the Respondents and Morris as set out in the Fourth Report, and they should likely be a part of that process. Third, the Respondents intend to assert additional claims against Morris relevant to the Morris Proof of Claim and efficiency dictates that all of those matters should be addressed together.
16. As indicated, I am accordingly prepared to grant the order. Whether that remaining dispute should proceed as anything other than an ordinary course claim and possible counterclaim in this Court is for another day, and in agreeing with the joint request of the parties that the Morris claim issues be dealt with outside the receivership, I am not making any direction whatsoever with respect to any summary process for the determination of those issues, if required in the future.
17. Subject to these issues, the administration of the Estate by the Receiver is substantially complete subject to some cleanup and housekeeping matters.
18. I am satisfied that the Interim Statement of Receipts and Disbursements is fair and accurate, and it is approved. It reflects actual receipts over disbursements of \$2,065,974.29 as of October 10, 2024.
19. I am also satisfied that the fees and disbursements, including the Accrual, of the Receiver and its Counsel are appropriate and they are approved.
20. For all of these reasons, the motion is granted.
21. Order to go in the form signed by me today.

Oliver, J.