

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) TUESDAY, THE 28th DAY
)
MADAM JUSTICE KIMMEL) OF NOVEMBER, 2023

B E T W E E N:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

**BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

Respondents

DISCHARGE ORDER

THIS MOTION, made by msi Spergel Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc. (the "**Debtors**"), was heard this day by Zoom video conference.

ON READING the third report of the Receiver dated November 17, 2023 (the "**Third Report**"), the affidavit of the Trevor Pringle sworn November 13, 2023 (the "**Pringle Affidavit**"), the affidavit of Christine Mason sworn November 16, 2023 (the "**Mason Affidavit**"), and on hearing the submissions of counsel for the Receiver and such other counsel as were present, and on reading the affidavit of service of Mariela Adriana Gasparini sworn November 17, 2023, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms not defined herein, shall have the meanings ascribed thereto in the Third Report.
3. **THIS COURT ORDERS** that the Third Report and the activities of the Receiver as set-out in the Third Report 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 such approval.
4. **THIS COURT ORDERS** that the Receiver's Statement of Receipts and Disbursements as at November 13, 2023, be and is hereby approved.
5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period from July 1, 2023 to November 10, 2023, including the estimated fees and disbursements of the Receiver up to its date of discharge, as described in the Pringle Affidavit, be and are hereby approved.
6. **THIS COURT ORDERS** that the fees and disbursements of Borden Ladner Gervais LLP ("**BLG**"), legal counsel to the Receiver, for the period from July 1, 2023 to November 15, 2023, including the estimated fees and disbursements of BLG for services to be provided to the Receiver, up to the date of discharge of the Receiver, as described in the Mason Affidavit, be and are hereby approved.
7. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to pay any of its fees and disbursements, including any fees and disbursements of the Receiver and BLG, which exceed the estimates set-out in the Pringle Affidavit and the Mason Affidavit, with either: (i) the consent of Fengate Redevelopment Fund GP Inc., as general partner of and on behalf of LPF Conversion Fund ("**Fengate**"), or (ii) pursuant to a further Order of the Court.

8. **THIS COURT ORDERS** that BLG be and is hereby authorized and directed to pay to the Receiver the amount of \$2,000,000, plus any interest earned thereon (the “**Retained Deposit**”) currently held by BLG in trust for the Receiver on account of the forfeiture of the Deposit (as defined in the Agreement of Purchase and Sale dated as of June 2, 2023 (the “**Sale Agreement**”) between the Receiver, as vendor and Sunny Communities (Bayview Creek) Inc., as purchaser (the “**Purchaser**”) and appended to the Second Report of the Receiver dated July 14, 2023) in connection with the incomplete closing of the Transaction (as defined in the Sale Agreement) in respect of the Property.

9. **THIS COURT ORDERS** that paragraphs 4, 5, 6, 7 and 8 of the Order of Mr. Justice Penny dated August 1, 2023 (the “**Administration and Interim Distribution Order**”) be and are hereby set aside in their entirety.

10. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to make a distribution, from the proceeds of the Retained Deposit, to Rory McGovern PC, In Trust, for the benefit of Cardinal Advisory Limited (“**Cardinal**”) in the amount of \$200,000 (the “**DIP Lender Distribution**”), in full and final satisfaction of all amounts secured by the DIP lender’s charge (the “**DIP Lender’s Charge**”) established and created pursuant to the Order of Mr. Justice Cavanagh dated November 27, 2020.

11. **THIS COURT ORDERS** that upon completion of the DIP Lender Distribution, the DIP Lender’s Charge, be and is hereby fully and finally terminated, discharged and extinguished.

12. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to make a distribution, from the proceeds of the Retained Deposit, to The Corporation of the City of Richmond Hill (“**Richmond Hill**”) in the amount of \$546,083.57, plus any other amounts accrued thereon, as agreed to by the Receiver, for the outstanding realty taxes.

13. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to make a distribution, from the proceeds of the Retained Deposit, to Fengate in the amount of \$50,000, plus accrued interest, on account of the repayment in full of the amounts owing to Fengate pursuant to Receiver Certificate No. 1 dated March 28, 2022 (the “**Receiver Certificate No. 1 Repayment**”).

14. **THIS COURT ORDERS** that the Receiver's borrowings charge (the "**Receiver's Borrowing Charge**"), as defined in and created by the Order of Justice Cavanagh dated March 2, 2022 (the "**Appointment Order**"), be and is hereby fully and finally terminated, discharged and extinguished, upon the completion of the Receiver Certificate No. 1 Repayment.

15. **THIS COURT ORDERS AND DECLARES** that the reimbursement and funding agreement between the Receiver and Fengate dated November 16, 2023 in the form attached as Appendix 10 to the Third Report (the "**Reimbursement and Funding Agreement**") be and is hereby approved.

16. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to make a distribution from the proceeds of the Retained Deposit, should there be any surplus funds (the "**Surplus Funds**") remaining from the Retained Deposit, to Fengate, immediately prior to the completion of the Foreclosure (as hereinafter defined), in an amount up to the outstanding balance of the secured debt owed to Fengate by the Debtors, from any Surplus Funds that may be remaining from the Retained Deposit (the "**Fengate Distribution**").

17. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to consent to a lifting of the stay of proceedings imposed pursuant to the Appointment Order, to permit Fengate to serve a Statement of Claim in connection with a foreclosure action in respect of the Property (the "**Foreclosure**") and pursue the Foreclosure in respect of, among other things, the subsequent ranking registered encumbrances set out in Schedule "B" hereto.

18. **THIS COURT ORDERS** that the Receiver is authorized to accept service of the Statement of Claim in respect of the Foreclosure and that it is not required to serve a Statement of Defence, Notice of Intent to Defend, or any other objection to the Foreclosure action.

19. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to immediately terminate and disclaim the Listing Agreement dated July 28, 2022 with Colliers Macaulay Nicolls Inc.

20. **THIS COURT ORDERS** that Confidential Appendices "A", "B" and "C" to the Third Report are hereby sealed until the filing of Discharge Certificate (as defined below).

21. **THIS COURT ORDERS** that, notwithstanding the timing of the Foreclosure, the Receiver's charge (the "**Receiver's Charge**"), as defined in and created by the Appointment Order, be and is hereby fully and finally terminated, discharged and extinguished, upon the Receiver filing a discharge certificate with the Court, substantially in the form attached hereto as Schedule "A" (the "**Discharge Certificate**").

22. **THIS COURT ORDERS** that upon the Receiver's filing of the Discharge Certificate, in the form attached as Schedule "A", with the Court certifying that it has completed the Remaining Duties, as defined and described in the Third Report, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtors, provided however that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Spergel in its capacity as Receiver.

23. **THIS COURT ORDERS AND DECLARES** that Spergel is hereby released and discharged from any and all liability that Spergel now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Spergel while acting in its capacity as Receiver herein, excluding its gross negligence or willful misconduct. Without limiting the generality of the foregoing, Spergel 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 within receivership proceedings, excluding liability for gross negligence or willful misconduct.

SCHEDULE "A": FORM OF RECEIVER'S DISCHARGE CERTIFICATE

Court File No: CV-21-0066512800CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

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Applicant

- and -

**BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

Respondents

RECEIVER'S DISCHARGE CERTIFICATE

- A. Pursuant to an Order of Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 2, 2022, msi Spergel Inc. was appointed receiver (the "**Receiver**") of all the assets, undertakings and property of Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc. (the "**Debtors**") pursuant to section 243 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. Pursuant to an Order of the Court dated November 28, 2023 (the "**Discharge Order**") the Court ordered, *inter alia*, that the Receiver be discharged, effective upon the filing by the Receiver of a certificate certifying the matters set out herein.
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order.

THE RECEIVER HEREBY CERTIFIES the following:

1. The Receiver is satisfied, in its discretion, that it has completed its remaining duties, as set out in the Receiver's Third Report to the Court dated November 17, 2023.
2. This Certificate was delivered by the Receiver at _____ (*time*) on _____ (*date*).

msi Spergel Inc., in its capacity as court-appointed receiver of assets, undertakings and property of Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc.

Per: _____

Name:

Title:

SCHEDULE "B"

Details of subsequent-ranking registered interests on the property known municipally as 10747 Bayview Avenue, Richmond Hill, Ontario and legally described as PT LT 25, CON 2, (MKM), PTS 1 & 2, PL 65R31680. S/T EASEMENT OVER PART 2, 65R13270 AS IN R510790; PIN: 03186-4757 (LT) to be foreclosed:

1. Instrument No. YR2473037 being a Notice of Assignment of Rents - General registered on May 18, 2016 made between CIM Invests Development Inc. and Duca Financial Services Credit Union Ltd., as transferred by Notice of Assignment of Rents - General registered on May 15, 2023 as Instrument No. YR3551182 in favour of Fengate Redevelopment Fund GP Inc., as general partner for and on behalf of LPF Conversion Fund.
2. Instrument No. YR2937903 being a Notice registered on March 12, 2019 relating to Charge/Mortgage YR2473036.
3. Instrument No. YR2972267 being a Notice of Assignment of Rents - General registered on June 17, 2019 made between CIM Bayview Creek Inc. and Bryton Capital Corp GP Ltd., as transferred by Notice of Assignment of Rents - General registered on May 15, 2023 as Instrument No. YR3551184 in favour of Fengate Redevelopment Fund GP Inc., as general partner for and on behalf of LPF Conversion Fund.
4. Instrument No. YR3124735 being a Notice registered on July 31, 2020 relating to Charge/Mortgage YR2972266.

5. Instrument No. YR3137585 being a Charge/Mortgage registered on September 4, 2020, made between CIM Bayview Creek Inc. and GR (CAN) Investment Co. Ltd. and Monest Financial Inc.

6. Instrument No. YR3142721 being an Application (General) – Pending Litigation registered on September 18, 2020 in favour of Tracy Hui and Jojo Hui.

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PROCEEDING COMMENCED AT TORONTO

RECEIVER'S DISCHARGE CERTIFICATE

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PROCEEDING COMMENCED AT TORONTO

DISCHARGE ORDER

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