



Court File No. 24-00002090-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE
JUSTICE K.A. Gorman

)
)
)

FRIDAY, THE 21st
DAY OF MARCH, 2025

DOUGLAS JOSEPH EDWARD HARDY and RANCES JANET HARDY

Plaintiffs

- and -

**ROBERT RANDALL HAWKEN, CHERYL ANN RUTH HAWKEN, and AMSARAL
HOLDINGS INC.**

Defendant

**ORDER
(Appointing Interim Receiver)**

THIS MOTION made by the Affected Parties under the injunction Order of Justice E. ten Cate issued November 25, 2024, seeking an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA"), for an Order appointing BDO Canada Limited (in such capacity, the "Receiver") as an interim receiver, without security, over the proceeds of sale of the real properties municipally known as 10138 Edmonds Boulevard, Grand Bend Ontario; 554 Waterloo Street, London, Ontario; and 558 Waterloo Street, London, Ontario (the "Properties"), and as more particularly described in **Schedule "A"** hereto, on the terms set out below, was heard this day at the London Courthouse, 80 Dundas Street, London, Ontario.

ON READING the Motion Record of the Affected Parties, and upon hearing the submissions of counsel for the parties, including any party claiming an interest in the Properties,

SERVICE

APPOINTMENT OF RECEIVER

1. THIS COURT ORDERS that pursuant to section 101 of the CJA and the consent attached hereto at Schedule "B", BDO Canada Limited is hereby appointed Receiver, without security, of the net proceeds from the sale of the Properties, that shall be remaining as residue after the sale of the Properties by G.M.S Mortgage Investment Corporation (hereinafter referred to as "GMS") under its sale under Mortgage and the payout of all amounts owing to GMS under the GMS Mortgages and, subject specifically to the deductions described in paragraph 2(i) below (the "Net Proceeds"), and the distribution of the Net Proceeds in accordance with a claims process to be established and later approved by this Court as further detailed in paragraphs 4 and 5. The Receiver shall allow GMS to sell the Properties as a Sale under Mortgage and GMS to pay out all amounts owing by Robert Randall Hawken, Cheryl Ann Ruth Hawken and Amsaral Holdings Inc. under the GMS Mortgages and thereafter to remit the residual funds to the Receiver.

RECEIVER'S POWERS

2. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Net Proceeds 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 monitor and report on the sale of the Properties by GMS, but not take possession of same, however shall not impede GMS from selling the Properties under the Sale under Mortgage;
- (b) to take possession of and exercise control over all Net Proceeds subject to the terms set out herein;
- (c) to engage consultants, appraisers, agents, 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;
- (d) to receive and collect all monies and accounts now owed or hereafter owing in relation to the Net Proceeds and to exercise all remedies in collecting such monies;
- (e) to settle, extend or compromise any indebtedness owing in relation to the Net Proceeds;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Net Proceeds, whether in the Receiver's name or in

the name and on behalf of the defendants, for any purpose pursuant to this Order;

- (g) 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 Net Proceeds 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;
- (h) to apply for any vesting order or other orders necessary to convey the Properties to a purchaser or purchasers thereof, free and clear of any liens, mortgages or encumbrances affecting the Properties;
- (i) 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 sale of the Properties, the Net Proceeds and the Receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (j) the Receiver shall take possession of the Net Proceeds, subject to the following deductions following the sale of the Properties by G.M.S. Mortgage Investment Corporation:

- (i) any amounts necessary to payout all indebtedness, expenses and fees incurred by GMS owing under and to discharge the following mortgages on the Properties (collectively, the “**GMS Mortgages**”):
 - (A) A charge registered as Mortgage Instrument ER1233727 in favour of G.M.S. Mortgage Investment Corporation;
 - (B) A charge registered as Mortgage Instrument LA297225 in favour of G.M.S. Mortgage Investment Corporation;
- (ii) closing adjustments including but not limited to property taxes, utilities and pre-paid rent (along with any accumulated interest);
- (iii) transaction costs including but not limited to broker commissions, lawyers' fees and disbursements, HST, any property management and security fees and any extraordinary expenses that may be incurred by GMS in taking possession; and
- (iv) any withholding tax and any amounts that may be owing by any one or all of Robert Randall Hawken, Cheryl Ann Ruth Hawken and Amsaral Holdings Inc. as a super priority for HST or payroll remittances to Excise Canada and/or the Canada Revenue Agency under the Excise Tax Act and the Income Tax Act;
- (k) 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 plaintiffs, defendants, Affected Parties, G.M.S. Mortgage Investment Corporation and without interference from any other Person.

ESTABLISHING A CLAIMS PROCESS

3. THIS COURT ORDERS that the Receiver shall develop a claims process to establish the entitlement of any party claiming an interest in the Properties and/or Net Proceeds (the "Claims Process"). The Receiver shall obtain the Court's approval of the proposed Claims Process on a motion to this Court, on seven days notice to any party claiming an interest in the Properties and/or Net Proceeds.

4. THIS COURT ORDERS that the Receiver shall not make any distribution of the Net Proceeds until an approved Claims Process has been completed and a proposed distribution has been approved by this Court, on seven days notice to any party claiming an interest in the Properties and/or Net Proceeds.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. THIS COURT ORDERS that (i) the defendants, (ii) all of their current and former employees, agents, accountants, legal counsel, and all other persons acting on its 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") and G.M.S. Mortgage Investment Corporation shall co-operate with the Receiver, including, but not limited to, updates upon request of the sale of the Properties and payment of the Net Proceeds.

6. THIS COURT ORDERS that all Persons shall, upon request by the Receiver, disclose the existence of and/or deliver any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Properties, 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 6 or in paragraph 7 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.

7. 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, upon request by the Receiver, 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

8. 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 EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies in relation to the Net Proceeds and the Receiver, 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 to carry on any business in relation to the Properties is not lawfully entitled to carry on, (ii) exempt the Receiver 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, or (iv) prevent the registration of a claim for lien.

RECEIVER TO HOLD FUNDS

10. 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 Net Proceeds, shall be deposited into a new account 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.

LIMITATION ON THE RECEIVER'S LIABILITY

11. 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. 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

12. 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 Properties, as security for such fees and

disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a second charge on the Properties in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person. Notwithstanding the foregoing, the Receiver's Charge shall be subordinate to the GMS Mortgages.

13. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to this Court.

14. 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.

SERVICE AND NOTICE

15. 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 <https://www.albertgelman.com/corporate-solutions/other-engagements/>.

16. 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 of creditors in relation to the Properties, Net Proceeds or other interested parties at their respective addresses as last shown on the records in relation to the Properties 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

17. 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.

18. 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.

19. 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.

20. 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.

21. THIS COURT ORDERS that costs of this motion shall be dealt with by further order of the Court.

22. THIS COURT ORDERS that the relief sought in paragraphs c, d, e, f, g and h of the Notice of Motion is adjourned to no fixed date to be brought on 7 days notice.

Cara L Middleton

Digitally signed by Cara L
Middleton
Date: 2025.03.21 17:23:27 -04'00'

Pursuant to the Endorsement of Justice K. A. Gorman
dated the 21st day of March, 2025

SCHEDULE “A”

554 Waterloo Street, London ON (PIN: 08270-0089 (LT) / PT LT 1 Plan 168(E) & PT LT 8 Plan 173(E), PTS 2, 3 & 4 33R6715; S/T & T/W 716483 LONDON);

558 Waterloo Street, London ON (PIN: 08270-0088 (LT) / PT LT 1 PLAN 168(E) & PT LT 8 PLAN 173(E) AS IN 815907; T/W 815907 LONDON); and

10138 Edmonds Blvd., Grand Bend ON (PIN: 43448-0165 (LT); LT 24 PL 478; Lambton Shores);

SCHEDULE "B"

Court File No. 24-00002090-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE)
JUSTICE)
) DAY OF MARCH, 2025

DOUGLAS JOSEPH EDWARD HARDY and RANCES JANET HARDY

Plaintiffs

- and -

ROBERT RANDALL HAWKEN, CHERYL ANN RUTH HAWKEN, and AMSARAL HOLDINGS INC.

Defendant

CONSENT

THE UNDERSIGNED, BDO Canada Limited, hereby consents to the appointment as an interim receiver, under the terms of an Order which will be sought from this Honourable Court in this matter.

Dated this ____ day of March, 2025

BDO Canada Limited

Per: _____

As proposed Receiver and not in any other corporate or personal capacity