

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) WEDNESDAY, THE 30th
)
JUSTICE OSBORNE) DAY OF NOVEMBER, 2022

B E T W E E N:

BARRETT KUDLOW CAPITAL MANAGEMENT INC.

Applicant

- and -

SMS PROPERTY TRUST INC.

Respondent

**APPLICATION UNDER SUBSECTION 47 (1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED**

DISCHARGE ORDER

THIS MOTION, made by Barrett Kudlow Capital Management Inc. (“**BKCM**” or the “**Applicant**”), for an order:

1. Approving the activities of the Court-appointed interim receiver (the “**Interim Receiver**”), Grant Thornton Limited (“**GTL**”) without security, of all assets, undertakings, and properties of SMS Property Trust Inc. (the “**Debtor**” or “**SMS**”) as set out in the report of the Interim Receiver dated November 28, 2022 (the “**First Report**”);

2. Approving the fees and disbursements of the Interim Receiver;
3. Discharging GTL as Interim Receiver without security, of all assets, undertakings, and properties of the Debtor; and
4. Releasing GTL from any and all liability, as set out in paragraph 5 of this Order.

was heard this day by Zoom conference at 330 University Avenue, Toronto, Ontario.

ON READING the First Report, the affidavit of the Interim Receiver as to fees (the “**Fee Affidavit**”), the Affidavit of Charles Barrett affirmed November 24, 2022, and the exhibits thereto, and the affidavit of Charles Barrett affirmed October 28, 2022, and exhibits thereto (collectively, the “**Barrett Affidavits**”), and on hearing submissions from the Interim Receiver, and on hearing submissions of counsel for the Applicant, and such other counsel as were present, no one appearing for any other stakeholder although duly served as appears from the affidavit of service of Ariyana Botejue sworn November 28, 2022, filed, and on reading the consent of GLT to act as Monitor:

SERVICE

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

APPROVAL OF ACTIVITIES

2. **THIS COURT ORDERS** that the activities of the Interim Receiver, as set out in the First Report, are hereby approved.

3. **THIS COURT ORDERS** that the fees and disbursements of the Interim Receiver and its counsel, as set out in the First Report and the Fee Affidavits, are hereby approved.

4. **THIS COURT ORDERS** that, after payment of the fees and disbursements herein approved, the Interim Receiver shall transfer the remaining funds in its hands to itself in its capacity as Monitor.

DISCHARGE

5. **THIS COURT ORDERS** that upon transfer of the amounts set out in paragraph 4 hereof the Interim Receiver shall be discharged as Interim Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Interim Receiver shall remain Interim Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Interim 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 GTL in its capacity as Interim Receiver.

6. **THIS COURT ORDERS AND DECLARES** that GTL is hereby released and discharged from any and all liability that GTL now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of GTL while acting in its capacity as Interim Receiver herein, save and except for any gross negligence or wilful misconduct on the Interim Receiver's part.

Without limiting the generality of the foregoing, GTL 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, save and except for any gross negligence or wilful misconduct on the Interim Receiver's part. Only the Interim 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 the approval of the Receiver's reports detailed in paragraphs 2 and 3 herein.

BARRETT KUDLOW CAPITAL MANAGEMENT INC.

Applicant

and

SMS PROPERTY TRUST INC.

Respondent

Email Address of Recipients: See Service List

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COMMERCIAL LIST
Proceeding commenced at Toronto

DISCHARGE ORDER

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