SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: **CV-22-00689565-00CL** **DATE:** **1 November 2022**

NO. ON LIST: **5**

TITLE OF PROCEEDING: **Barrett Kudlow vs SMS Property**

BEFORE JUSTICE: **CONWAY J.**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE CONWAY:

The Applicant, Barrett Kudlow Capital Management Inc., brings this Application to appoint Grant Thornton Limited as the Receiver over the assets and property of SMS Property Trust Inc.

The Application was originally brought before this court on a confidential basis. I directed that the Application be issued with the style of cause and a court number assigned before I would consider granting any relief. The Applicant has now done so.

The Applicant sought the appointment of a Receiver under s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("**BIA**"). However, since the 10 day notice period under the BIA had not expired, I advised counsel that I was not prepared to appoint a Receiver under s. 243(1). The Applicant revised its materials and returned to court several hours later to seek the appointment of an Interim Receiver under s. 47(1) of the BIA.

The Application for an Interim Receiver is brought on an *ex parte* basis. I am prepared to grant the order *ex parte* given the evidence before me of serious concerns about the financial condition (and alleged irregularities) of SMS' operations. Among other things, SMS operates the McKellar Place Seniors Living in Thunder Bay, Ontario, with over 100 seniors living at the property. According to Mr. Barrett's affidavit, there are arrears of utilities and realty taxes for the property and insufficient funds to cover operating expenses (including food for the residents). Even more concerning, there appear to be unaccounted for withdrawals of over $400,000 from the SMS operations account. The Applicant's counsel sent a letter to SMS on October 18, 2022 requesting an explanation for these withdrawals. No satisfactory response has been provided.

Rent is due on November 1, 2022. The Applicant wishes to protect these funds and ensure that they are used properly for the expenses of the property and the services to the residents.

The appointment of an Interim Receiver is warranted under the circumstances. I am granting this order and have reviewed it carefully with counsel to ensure that it is not overreaching. The borrowing limit is reduced to $150,000; the powers of the Interim Receiver are appropriately restricted, and there is a comeback clause that permits any interested person to return to court on five days' notice. According to s. 47(1) of the BIA, the order will expire in 30 days at the latest.

All materials for today's hearing are to be uploaded to CaseLines forthwith.

I will hear any return of this matter, if I am available. If I am not available, it may be heard by any judge of the Commercial List.

Order to go as signed by me and attached to this endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.

Conway J.