

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

C&K MORTGAGE SERVICE INC.

and 975393 ONTARIO INC.

APPLICANTS

- and -

AXESS PICKERING LTD.

RESPONDENT

**SUPPLEMENT TO THE SECOND REPORT TO COURT
OF ALVAREZ & MARSAL CANADA INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER
OF AXESS PICKERING LTD.**

JANUARY 19, 2022

TABLE OF CONTENTS

1.0	INTRODUCTION	2
2.0	CORRESPONDENCE WITH LEGAL COUNSEL TO SAGEWISE.....	2
3.0	CONCLUSIONS AND RECOMMENDATIONS	4

INDEX TO APPENDICES

Appendix A

January 17, 2022 Email from Counsel to Sagewise to LOLG

Appendix B

January 17, 2022 Response from LOLG to Counsel to Sagewise

1.0 INTRODUCTION

- 1.1 This report (the “**Supplemental Second Report**”) is filed by Alvarez & Marsal Canada Inc. (“**A&M**”) in its capacity as Court-appointed receiver and manager (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Axess Pickering Ltd (“**Axess**”).
- 1.2 Pursuant to an order of the Ontario Superior Court of Justice (the “**Court**”) made on October 12, 2021 upon application by C&K Mortgage Service Inc. and 975393 Ontario Inc. (the “**Applicants**”), A&M was appointed Receiver of Axess.
- 1.3 The purpose of this Supplemental Second Report is to provide this Court and relevant stakeholders in the Receivership Proceedings with additional information detailing correspondence between the Receiver and legal counsel to Sagewise in respect of the proposed Interim Distribution sought in connection with the Receiver’s Sale Approval, Vesting and Interim Distribution Motion, returnable on January 20, 2022 (the “**Sale Approval Motion**”).
- 1.4 This Supplemental Report should be read in conjunction with the Second Report and all terms not otherwise defined are as defined in the Second Report.

2.0 CORRESPONDENCE WITH LEGAL COUNSEL TO SAGEWISE

Background

- 2.1 As described in the Second Report:
- (a) Sagewise holds a second-ranking mortgage on the Property;

- (b) Pine Ridge is of the position that the Pine Ridge Interest ranks in priority to both the Second Mortgage and Third Mortgage;
- (c) The Receiver has not confirmed or determined the value and priority of any claim by Pine Ridge or Mr. Oldman in connection with the Condominium Sales Agreement;
and
- (d) In connection with the Sale Approval Motion, the Receiver only seeks the Court's approval to make an interim distribution or distributions upon closing of the Transaction to repay the Receiver's Borrowings plus interest and other chargeable amounts, and the amounts owing to the Applicants under the First Mortgage including interest, fees and other associated chargeable amounts.

Correspondence with legal counsel to Sagewise

- 2.2 On January 17, 2022, upon receipt of the motion record of the Receiver for the Sale Approval Motion, legal counsel to Sagewise wrote to LOLG indicating that it opposes any Interim Distribution unless Sagewise is also included in the Interim Distribution, as the First Mortgage and Second Mortgage are identical in priority to Pine Ridge. A copy of correspondence received from counsel to Sagewise is attached as **Appendix "A"**.
- 2.3 On January 17, 2022, LOLG responded to counsel to Sagewise confirming that:
 - (a) The Receiver spoke to counsel to Pine Ridge and its position has not changed;

- (b) It is not reasonable to oppose a distribution to the Applicants, who all parties (including Sagewise) agree rank in priority to all other creditors (other than the Receiver's Charge);
- (c) The closing of the Transaction is not expected for 15 business days following issuance of the Vesting Order, and no proceeds from the Transaction will be distributed prior to closing; and
- (d) The Receiver and Pine Ridge are committed to addressing this issue on a mutually agreeable timetable at a future motion before the Court.

A copy of this correspondence is attached as **Appendix "B"**.

3.0 CONCLUSIONS AND RECOMMENDATIONS

- 3.1 Based on the foregoing, the Receiver respectfully requests that Court make an order granting the relief sought in the Sale Approval Motion as set out in the Notice of Motion.

All of which is respectfully submitted this 19th day of January 2022.

**Alvarez & Marsal Canada Inc., in its capacity as Receiver of
Axess Pickering Ltd., and not in its personal capacity**



Per: Stephen Ferguson
Senior Vice-President

From: Michael Amurjuev <amurjuevlaw@gmail.com>

Sent: January-17-22 12:25 PM

To: Andrew Winton <awinton@lolg.ca>

Subject: Fwd: C&K Mortgage Services Inc. et al v. Axess Pickering Ltd. - CV-21-00669408-00CL [LOLG-DMS.FID119959]

Dear Mr. Winton,

My client opposes the position set out in this motion to have interim distribution apply to the first mortgagee only. To note, the first and second mortgages were registered on the same day (March 1, 2021) - one month before the registration of the Notice by Pine Ridge. There is absolutely no reason the first mortgagee should be paid out, but not the second mortgagee. The Notice registered by Pine Ridge is obviously subordinate to the 2nd mortgage held by Sagewise, in the exact same manner as the first mortgage.

My client does not consent to any interim distribution unless they are also paid out. The 1st and 2nd mortgagees' position is identical in priority over Pine Ridge.

We need to have counsel for Pine Ridge consent to paying out the 2nd mortgage as well, and this should be included in the Receiver's motion materials. There is no basis to have interim distribution any other way.

Can you kindly confirm receipt of this email.

I am available to speak about this throughout the day today at 416-357-0864.

Best,
Michael

----- Forwarded message -----

From: **Cristina Garisto** <cgaristo@lolg.ca>

Date: Fri, Jan 14, 2022 at 3:26 PM

Subject: C&K Mortgage Services Inc. et al v. Axess Pickering Ltd. - CV-21-00669408-00CL [LOLG-DMS.FID119959]

To: dpreger@dickinsonwright.com <dpreger@dickinsonwright.com>, dseifer@dickinsonwright.com <dseifer@dickinsonwright.com>, sferguson@alvarezandmarsal.com <sferguson@alvarezandmarsal.com>, nfennema@alvarezandmarsal.com <nfennema@alvarezandmarsal.com>, Andrew Winton <awinton@lolg.ca>, Patrick Wodhams <pwodhams@lolg.ca>, danhughes@libertyhamlets.ca <danhughes@libertyhamlets.ca>, blairrgagnon@libertyhamlets.ca <blairrgagnon@libertyhamlets.ca>, grantanthony@rogers.com <grantanthony@rogers.com>, amurjuevlaw@gmail.com <amurjuevlaw@gmail.com>, me@chinlaiyelaw.com <me@chinlaiyelaw.com>, batista.gina@yahoo.com <batista.gina@yahoo.com>, gphoenix@loonix.com <gphoenix@loonix.com>, richard@rnvinvestments.com <richard@rnvinvestments.com>, matthew@mrhlawyer.com <matthew@mrhlawyer.com>, ekutner@mindengross.com <ekutner@mindengross.com>

Cc: Andrew Winton <awinton@lolg.ca>, Patrick Wodhams <pwodhams@lolg.ca>

To the Service List:

Please see the attached Motion Record of the Receiver for the Sale Approval Motion returnable January 20, 2022, pursuant to the Rules of Civil Procedure.

Thank you,

Cristina Garisto

Legal Assistant to Andrew Winton
and Vlad Calina
Direct 416 598 5759
cgaristo@lolg.ca

Lax O'Sullivan Lisus Gottlieb LLP

Suite 2750, 145 King St W
Toronto ON M5H 1J8 Canada
T 416 598 1744 F 416 598 3730
www.lolg.ca



This e-mail message is confidential, may be privileged and is intended for the exclusive use of the addressee. Any other person is strictly prohibited from disclosing, distributing or reproducing it. If the addressee cannot be reached or is unknown to you, please inform us immediately by telephone at 416 598 1744 at our expense and delete this e-mail message and destroy all copies. Thank you.

--

Yours Truly,

Michael Amurjuev J.D., B.A.
Amurjuev Law PC
Barrister and Solicitor
18 King Street East, Suite #1400
Toronto, ON M5H 1A1
P: (416)-357-0864

From: Andrew Winton

Sent: January-17-22 5:43 PM

To: 'Michael Amurjuev' <amurjuevlaw@gmail.com>

Subject: RE: C&K Mortgage Services Inc. et al v. Axess Pickering Ltd. - CV-21-00669408-00CL [LOLG-DMS.FID119959]

Michael,

Thanks for your email below and for our subsequent telephone conversation. As discussed, we reached out to counsel for Pine Ridge. They informed us that Pine Ridge has not changed its position, but it is still reviewing documentation and will consider Sagewise's comments as part of that review. But for now, it continues to oppose a distribution to Sagewise.

In the circumstances, the Receiver intends to proceed as set out in its report and factum. We do not think it is reasonable for Sagewise to oppose an interim distribution to the applicants, who all parties agree rank ahead of all other creditors of Axess (other than the Receiver's charge).

As I mentioned during our call, the closing of the sale transaction is anticipated to take place 15-20 days after the approval order is granted. This means that no sale proceeds will be received for distribution before approximately February 10.

Pine Ridge and the Receiver are committed to addressing this issue on a mutually agreeable timetable at a future motion before the Court, and will ask the Court on Thursday to set a motion date. Other than the distributed funds, all other proceeds will be held in trust by the Receiver, so there is no prejudice to Sagewise if it has to wait a few weeks longer than expected to get a distribution, assuming its position wins out.

If Sagewise continues to oppose any of the relief sought at the motion on Thursday, you should deliver a factum by Wednesday setting out the basis for that opposition so that Justice Kimmel is aware of the position and the basis for it prior to the hearing.

Regards,

Andrew

Andrew Winton

Lax O'Sullivan Lissus Gottlieb LLP

D: 416 644 5342 | M: 647 286 9001

www.lolg.ca