

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Hillmount Capital Inc.
Plaintiff(s)
AND
Pigale
Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
See attached App. 'A'		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows): _____

The Receiver, Zeyman Partners Inc., brings this motion for an order approving its activities as set out in the Fourth Report dated March 19, 2021 and the First Supplement to the Fourth Report dated July 29, 2021; approving the fees and disbursements of the Receiver and its counsel; authorizing the Receiver to distribute \$5,994.00, the remaining proceeds available for the estate of the Respondent, to Elle Mortgage Corporation ("Elle"), the first ranking creditor; and discharging the Receiver.

September 9, 2021
Date

[Signature]
Judge's Signature

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Judges Endorsment Continued

The motion first came before me on August 10, 2021 at which time both Mr. Pigale and Ms Au, who indicated she had an interest in both the Elle mortgage and the fourth mortgage, requested an adjournment to retain counsel. Given the reason for their request, I granted an adjournment to ~~they~~, prescriptive to them both and directed that any material must be filed by August 31, 2021. Neither has filed any material. Mr. Pigale has retained counsel (Mr. McNamara) who has advised Mr. Pigale neither supports or opposes the motion.

Ms Au has not retained counsel. Ms Au indicated she had spoken to counsel but could not afford the retainer. Later she asked for an adjournment for 30 days to retain counsel. I denied her request. This matter has been outstanding for some time. In my view, she has had more than enough time to retain counsel. Based on her submissions, an adjournment will not likely enable the matter to proceed.

Ms. Au opposes the motion and specifically the payment of the \$5,994.00 to Elle and approval of the

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fees and disbursements of the Receiver and its counsel. She has filed no material. Nor is her standing clear. She is not listed as a creditor of the respondents. She says she has an interest in the Elle mortgage and the Fourth Mortgage but neither are opposing the motion, although served.

Based on the material filed and submissions of counsel for the Receiver, I am satisfied the relief requested should be granted, for the following reasons:

In my view, the Receiver's fees and those of its counsel are fair and reasonable in accordance with the guidelines set out in Banks of Nova Scotia v. Diemer, 2014 ONCA 851 at para. 33-45. While the fees for both are quite high given the nature of the receivership, having regard to the issues concerning the property together with the actions of the respondents, they are understandable. The property was in worse condition than expected and subject to outstanding work orders. In addition to persistent efforts by the respondents to re-finance, the Receiver also had to deal with the respondents' litigious

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efforts to challenge its authority and oppose the sale Approval and Listing Order, not only in this court but in the Court of Appeal, as well. In every instance, the Receiver was successful. The fees and disbursements were incurred by the Receiver and its counsel at standard rates and charges. They are supported by fee affidavits filed. They cover the period from June 19/20, the date of appointment to July 29/21. Fees incurred subsequently, are not being sought.

While the time spent was significant, it was justified. The Receiver's actions in dealing with the property resulted in a sale for an amount in excess of the appraised value. It completed its mandate, with no assistance and in fact active opposition from the respondents.

An earlier order of this court authorized the distribution of the net proceeds of the sale to Elle, the assignee of the first mortgage. The \$5,994.00 is the remaining amount from the sale which should be distributed to Elle to conclude the

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receivership. I also approve the activities of the Receiver as set out in Fourth Report and the Supplement to the Fourth Report. It follows, that the Receiver should be discharged. In that regard, I also agree that, in light of the contentious nature of this receivership that the Receiver should be released from any and all liability in respect of its acts as Receiver herein, subject to gross negligence or wilful misconduct.

Order signed by me.

[A large diagonal line is drawn across the remaining lines of the text area.]

[Handwritten initials]

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

HILLMOUNT CAPITAL INC.

Applicant

and

CELINE BRITTANY PIZALE and RICHARD STANLEY PIZALE

Respondents

APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3,
and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

COUNSEL SLIP

September 9, 2021

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