

Court File No. CV-23-00698576-00CL
CV-23-00698395-00CL
CV-23-00698632-00CL
CV-23-00698637-00CL
CV-23-00699067-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

KINGSETT MORTGAGE CORPORATION and DORR CAPITAL
CORPORATION

Applicant

and

STATEVIEW HOMES (MINU TOWNS) INC., STATEVIEW HOMES (NAO
TOWNS) INC., STATEVIEW HOMES (ON THE MARK) INC., TLSFD
TAURASI HOLDINGS CORP. and STATEVIEW HOMES (HIGH CROWN
ESTATES) INC.

Respondent

ATRIUM MORTGAGE INVESTMENT CORPORATION and DORR CAPITAL
CORPORATION

Applicant

and

STATEVIEW HOMES (NAO TOWNS II) INC., DINO TAURASI and CARLO TAURASI

Respondent

DORR CAPITAL CORPORATION

Applicant

and

HIGHVIEW BUILDINGS CORP INC.

Respondent

DORR CAPITAL CORPORATION

Applicant

and

STATEVIEW HOMES (BEA TOWNS) INC.

Respondent

MERIDIAN CREDIT UNION LIMITED

Applicant

and

STATEVIEW HOMES (ELM & CO) INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C 1985, C. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS
AMENDED**

MOTION RECORD OF DHARMI MEHTA

May 8, 2024

SOTOS LLP

180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

David Sterns (LSO # 36274J)

dsterns@sotos.ca

Denna Pourmonazah Jalili (LSO # 84976N)

djalili@sotos.ca

Tel: 416-977-0007

Fax: 416-977-0717

Lawyers for Dharmi Mehta

TO: **THE SERVICE LIST**

INDEX

Tab	Description	Page No.
1	Affidavit of David Sterns, sworn May 7, 2024	6 - 111
2	First Report of the Receiver, dated May 30, 2023	112 - 165
3	Notice of Motion of Tarion Warranty Corporation, dated September 1, 2023	166 - 177
4	Factum of Dharmi Mehta, dated February 15, 2024	178 - 209
5	Reply Factum of Dharmi Mehta, dated March 4, 2024	210 - 234
6	Aide Memoire of the Receiver, dated April 1, 2024	235 - 243

TAB 1

Court File No. CV-23-00698576-00CL
CV-23-00698395-00CL
CV-23-00698632-00CL
CV-23-00698637-00CL
CV-23-00699067-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

KINGSETT MORTGAGE CORPORATION and DORR CAPITAL
CORPORATION

Applicant

and

STATEVIEW HOMES (MINU TOWNS) INC., STATEVIEW HOMES (NAO
TOWNS) INC., STATEVIEW HOMES (ON THE MARK) INC., TLSFD
TAURASI HOLDINGS CORP. and STATEVIEW HOMES (HIGH CROWN
ESTATES) INC.

Respondent

ATRIUM MORTGAGE INVESTMENT CORPORATION and DORR CAPITAL
CORPORATION

Applicant

and

STATEVIEW HOMES (NAO TOWNS II) INC., DINO TAURASI and CARLO TAURASI

Respondent

DORR CAPITAL CORPORATION

Applicant

and

HIGHVIEW BUILDINGS CORP INC.

Respondent

DORR CAPITAL CORPORATION

Applicant

and

STATEVIEW HOMES (BEA TOWNS) INC.

Respondent

MERIDIAN CREDIT UNION LIMITED

Applicant

and

STATEVIEW HOMES (ELM & CO) INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C 1985, C. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS
AMENDED**

**AFFIDAVIT OF DAVID STERNS
(Sworn May 7, 2024)**

SOTOS LLP

180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

David Sterns (LSO # 36274J)

dsterns@sotos.ca

Denna Pourmonazah Jalili (LSO # 84976N)

djalili@sotos.ca

Tel: 416-977-0007

Fax: 416-977-0717

Lawyers for Dharmi Mehta, the Proposed
Representative Plaintiff for the Class Action

TO: THE SERVICE LIST

AFFIDAVIT OF DAVID STERNS

(Sworn May 7, 2024)

I, David Sterns, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a lawyer at Sotos LLP, counsel to Dharmi Mehta, one of the pre-construction purchasers of residential units from Highview Building Corp. (“**Highview**”) and the proposed representative plaintiff for a class action commenced on behalf of all pre-construction purchasers of homes (the “**Homebuyers**”) from the Stateview corporations currently in receivership (the “**Debtors**”). As such, I have direct knowledge of the matters contained in this affidavit. Where I rely on the information or belief of others, I state the source and verily believe same to be true.

The Receivership Proceedings

2. Pursuant to receivership orders dated May 2, 2023 and May 18, 2023 (the “**Receivership Orders**”), the Debtors were ordered into receivership upon the application of certain of their secured creditors. KSV Restructuring Inc. (the “**Receiver**”) was appointed receiver over each of the Debtors.

3. The Receiver appointed two law firms to represent it in the receivership proceedings; Cassels Brock & Blackwell LLP (“**Cassels**”) and Paliare Roland Rosenberg Rothstein LLP (“**Paliare Roland**”).

4. Cassels acts for the Receiver in respect of Stateview Homes (Minu Towns) Inc. (“**Minu Towns**”), Stateview Homes (High Crown Estates) Inc. (“**High Crown**”) and Stateview Homes

(NAO Towns I) Inc. Paliare Roland acts for the Receiver in respect of Highview, Stateview Homes (NAO Towns II) Inc. (“**Nao II**”), Stateview Homes (Elm&Co) Inc. (“**Elm**”) and Stateview Homes (Bea Towns) Inc. (“**Bea**”).

5. According to the First Report of the Receiver dated May 30, 2024 (the “**First Report**”), the Debtors were single-purpose real estate development companies that sold pre-construction “freehold” homes to the Homebuyers (the “**Projects**”).¹ Further, the First Report states that the Homebuyers paid over \$77 million in deposits (the “**Deposit Funds**”) to the Debtors, all of which, in the Receiver’s view, were unsecured claims.²

6. The First Report erroneously reported to the Court that none of the Deposit Funds were paid to Highview. On October 31, 2023, Jeff Larry, a lawyer with Paliare Roland, confirmed via email that the Receiver’s First Report to the Court was incorrect and in fact \$470,000 in deposits were paid to Highview, including \$150,000 paid by Ms. Mehta. Attached hereto as Exhibit “**A**” is a copy of Mr. Larry’s email.

The Class Action

7. On September 28, 2023, we commenced a class action on behalf of the Homebuyers against the Debtors and certain related individual defendants by way of statement of claim issued September 28, 2023 (the “**Statement of Claim**”).

8. A copy of the Statement of Claim is attached hereto as Exhibit “**B**”.

9. The Statement of Claim makes several trust-based priority claims on behalf of the Homebuyers, including, and importantly, a claim for statutory trust pursuant to pursuant to section

¹ See sections 2.3 and 4.3 of the First Report.

² *Ibid.*

81 of the *Condominium Act, 1998*, S.O. 1998, c. 19 (the “**Condominium Act**”) (the “**Condo Act Claims**”).³

10. Briefly, the Statement of Claim alleges that, contrary to the Receiver’s First Report, the Projects were not organized as “freehold” homes; rather, they were organized as common elements condominiums (“CECs”).⁴ Under a CEC model, individuals hold freehold titles to specific land parcels which are linked to an undivided common interest in the CEC. This ownership structure combines individual land ownership with share interests in the common elements.⁵ The Statement of Claim further states that deposits paid towards the common elements of a CEC were required to be held in trust by the Debtors under the *Condominium Act*.⁶

11. The Statement of Claim also claims that certain contractual provisions in the purchase agreements allocating only \$2 to the common elements for each Project were void, voidable, null or otherwise unenforceable for being contrary to the essence of the *Condominium Act* as consumer protection legislation.⁷

12. On September 29, 2023, we served the Receiver with the Statement of Claim. Attached hereto as Exhibit “C” is an email from Denna Jalili, a lawyer with Sotos LLP, serving the Statement of Claim to the Receiver and their counsel. The Receiver confirms that it was served the Statement of Claim on September 29, 2023, in its Sixth Report, dated November 8, 2023 (the “**Sixth Report**”).

13. Thus, the Receiver has been on notice of the Condo Act Claims asserted on behalf of the Homebuyers, and the legal justification for same since September 29, 2023.

³ Paragraph 1(b)(i) of the Statement of Claim.

⁴ Paragraph 20 of the Statement of Claim.

⁵ *Ibid.*

⁶ Paragraph 52 of the Statement of Claim.

⁷ Paragraphs 53-58 of the Statement of Claim.

The Tarion Motion

14. Tarion Warranty Corporation (“**Tarion**”) is a private, not-for-profit corporation designated by the province to administer the *Ontario New Homes Warranties Plan Act*, R.S.O. 1990, c. O.31 and the regulations thereto (collectively, the “**Warranties Act**”). Under the *Warranties Act*, Tarion was, and remains, potentially liable to provide deposit insurance to each Homebuyer of up to 10% of the purchase price of the pre-construction home, up to a maximum of \$100,000.⁸

15. As a result, Tarion brought a motion asserting various trust claims on behalf of the Homebuyers in the receivership proceedings, on the expectation that it will eventually subrogate the claims of the Homebuyers to some extent (the “**Tarion Motion**”).⁹ The Tarion Motion was returnable before the Honourable Justice Steele on November 2, 2023. Importantly, Tarion **did not** make any claims for statutory trust pursuant to the *Condominium Act*. Its trust claims were predicated on other legal grounds, namely the *Warranties Act*, express trusts and constructive trusts.

Subsequent Conversations with the Receiver between Service of the Statement of Claim and the Tarion Motion

16. On October 2, 2023, Alan Merskey, a lawyer with Cassels, responded to Mr. Jalili’s email serving the Statement of Claim, stating, among other things, that the Receiver would not agree to any lifting of the stay, in part, because “any interests your clients may have with respect to the receivership companies are fully addressed by the Tarion motion, and, in any event, more

⁸ Notice of Motion of Tarion, dated September 1, 2023 at paragraph A.(d).

⁹ *Ibid* at paragraphs D.(j) and D.(k).

appropriately addressed within the confines of the receivership proceedings”. Attached hereto as Exhibit “D” is a copy of Mr. Merskey’s email.

17. On October 19, 2023, I responded to Mr. Merskey’s email in a letter of the same date. In my letter, I reject Mr. Merskey’s characterization that the priority claims asserted in the Statement of Claim, namely the Condo Act Claims, were addressed by the Tarion Motion:

We believe there are several strong arguments in favour of lifting the Stay to allow the Class Action to move forward, and we will make a motion for same. The Class Action not only seeks relief from the Stateview Group, but against the directors and officers of same, as well as each of their spouses. The allegations against the individual defendants necessitate the involvement of the Stateview Group to be fairly adjudicated by the Court. **Further, we disagree with your assertion that our claims are fully addressed by the arguments made in the Tarion motion, scheduled for oral argument on November 2, 2023.**

18. Attached hereto as Exhibit “E” is a copy of my letter to Mr. Merskey.

The Highview Holdback

19. During this time, we also engaged with the Receiver to clarify the disconnect between the Receiver’s position that \$0 were paid in deposits to Highview, and the evidence of our client that she had paid \$150,000 in deposits to Highview.

20. Mr. Larry asked for copies of the cheques substantiating that Ms. Mehta had paid deposits to Highview. After some back and forth between Mr. Jalili and Mr. Larry concerning the exact documentation the Receiver required to confirm Ms. Mehta’s claim against Highview, Mr. Larry confirmed on October 31, 2023 that Highview received \$470,000 in deposits from 4 individuals, and that \$170,000 of that amount would not be insured by Tarion.¹⁰

¹⁰ See Exhibit “A” – email from Jeff Larry to Sotos LLP, dated October 31, 2023.

21. In this email, Mr. Larry further advised that the sale of the Highview Project had closed, and that the Receiver intended to distribute the funds to the first-ranked secured creditor. Mr. Larry then asked that we confirm our position in respect of this distribution, promptly:

Please confirm that on behalf of the class action claimants, you are also content to take no position with respect to this distribution on the understanding that your position will be without prejudice to any position you may wish to take in respect to any other distributions in the other Stateview receiverships.

I look forward to hearing from you promptly

22. The following day, I responded to Mr. Larry rejecting his proposal and advising that should the Receiver pay out in full to the secured creditor, “it would be under express reservation of our rights to claim that amount from the receiver if our trust claim is successful”. I suggested that, given the Condo Act Claims depended on the valuation of the common elements for each of the Projects, the Receiver would obtain an expert report on the approximate value of the common elements and hold back that proportionate amount from distribution. Attached hereto as Exhibit “F” is a copy of my email.

23. On November 1, 2023, Mr. Larry responded to my email, stating that our proposal was not acceptable and that he would get back to us with a full response to “Highview and the other receiverships shortly”. In the meantime, Mr. Larry advises that the Receiver “... is holding, and will continue to hold, \$170,000 of deposits related to Highview pending an agreement between you and the Receiver or further Order of the Court.” Attached hereto as Exhibit “G” is a copy of Mr. Larry’s email.

Motion Returnable before the Honourable Justice Osborne on November 16, 2023

24. We did not hear back from the Receiver regarding its “full response to Highview and the other receiverships” leading up to the Receiver’s motion returnable before the Honourable Justice

Osborne on November 16, 2023. In this motion, the Receiver sought court approval of the sale of, *inter alia*, the Minu Towns Project and High Crown Project, and certain planned distributions to creditors, after the resolution of the Tarion Motion and the Condo Act Claims.

25. The Receiver's evidence for this motion is confined to the Sixth Report, dated November 8, 2023 (the "**Sixth Report**"). In the Sixth Report, the Receiver informed the Court of the existence of the Tarion Motion and the Condo Act Claims (the latter described in the Sixth Report as the "Class Action Claims"). The Receiver expressly advised the Court that the Condo Act Claims are trust claims that are smaller and separate from the Tarion Motion, and, depending on the outcome of the Tarion Motion, it may be necessary to seek a determination of the additional smaller trust claims from the Court in the receivership proceedings on a further motion before the Court:

6. However, the Receiver notes that the relief proposed to be sought in the Proposed Class Action includes the imposition of the same trusts and/or charges in respect of Homebuyer Deposits as sought in the Tarion Priority Motion, **plus one additional smaller trust claim that was not sought in the Tarion Priority Motion**. Depending on the outcome of the Tarion Priority Motion, it may also be necessary to seek a determination of the additional smaller trust claim raised in the Proposed Class Action from the Court in the receivership proceedings on a further motion before the Court.¹¹

26. In addition, the Receiver advised the Court that should the Condo Act Claims not be resolved after the Tarion Motion, then it "**will reserve appropriate amounts from the net purchase proceeds.**" The Receiver also stated its intention to return to the Court for further direction if, after the outcome of the Tarion Motion, there was question concerning to whom the sale proceeds should be distributed:

¹¹ Section 4.6 of the Sixth Report

8.3.3 Tarion/Proposed Class Action Claims

2. The Receiver anticipates returning to Court for further direction in the event that the Project Transactions are unable to close as a result of the outcome of the Tarion Priority Motion or if further direction is required with respect to direction of the proceeds of the Project Transactions.

3. In addition, if applicable, in the event that the Project Transactions and the smaller additional priority issues raised in the Proposed Class Action remain unresolved, the Receiver will reserve appropriate amounts from the net purchase proceeds, on agreement of the affected creditors or on further order of the Court.¹²

27. Tarion's priority claims were made on behalf of the proposed class, the Homebuyers, and made in respect of all \$77 million paid in deposits to the Debtors. Whereas the Condo Act Claims only asserts a trust claim on a subset of the same \$77 million, measured by the valuation of the common elements for each Project. As a result, if Tarion was to succeed at the Tarion Motion, the Condo Act Claims would be rendered moot. However, if Tarion was unsuccessful, the Condo Act Claims would need to be adjudicated, as this issue was not argued before Justice Steele in the Tarion Motion.

28. Given that the Receiver apprised Justice Osborne of the Condo Act Claims, and in particular, that they are distinct from the trust claims asserted in the Tarion Motion and may require an additional motion for them to be resolved, there was no need for us to contest the relief sought by the Receiver from Justice Osborne. We were content with what the Receiver reported to the Court in the Sixth Report.

Subsequent Discussions with the Receiver

29. On December 20, 2023, Mr. Jalili wrote to Mr. Merskey and Mr. Larry to "arrange for a call to discuss next steps in moving our case forward in the context of the receivership

¹² Section 8.3.3 of the Sixth Report.

proceedings”. Mr. Jalili stated that he expects the agenda for the call to include discussion pertaining to “how the proceeds from the sales of the various projects have been disbursed, and in particular, whether there [had] been any amounts held back to satisfy our potential claims”. Attached hereto as Exhibit “**H**” is a copy of Mr. Jalili’s email.

30. We did not hear back from the Receiver’s counsel.

31. On January 2, 2024, we received a copy of Justice Steele’s decision dismissing the Tarion Motion (the “**Tarion Decision**”).

32. On January 5, 2024, I wrote to Mr. Merskey and Mr. Larry following up on Mr. Jalili’s email. The parties ultimately scheduled a call to discuss the agenda items proposed in Mr. Jalili’s email for January 19, 2024.

The Call on January 19, 2024

33. The purpose of this call was laid out in Mr. Jalili’s email – to work with the Receiver on next steps in bringing our case forward. I had already reviewed the Tarion Decision when I followed up on Mr. Jalili’s email to Mr. Merskey and Mr. Larry. In my view, the reasons were not dispositive of the Condo Act Claims, given that the issue of statutory trust under the *Condominium Act* was not before Her Honour. We fully intended to advance the Condo Act Claims within the receivership proceedings, and never wavered in this commitment.

34. The call on January 19 proceeded by Zoom. On the call were myself, Mr. Jalili, Mr. Larry, Mr. Merskey and Daniel Rosenbluth, a lawyer with Paliare Roland. I have checked my calendar appointment for that day and confirm that no one from the Receiver was on the call. It was my understanding, as with all discussions with opposing counsel, that the call was without prejudice.

However, in light of the fact that the Receiver in its report to the court on this motion purported to provide details of the call, I consider any such privilege to have been waived.

35. I was in British Columbia on holiday at the time of the call. I expected the call to be cooperative since it was clear in our mind that the Condo Act Claims were not resolved by the Taron Decision and that we would need to either litigate the issue or resolve it on consent. It was clear from the positions taken by Mr. Larry and Mr. Merskey on the call that the Receiver had no intention of trying to find a resolution with us. Instead, they maintained that Justice Steele's decision was decisive and had dealt with the Condo Act Claims despite the fact that the issue of statutory trust under the *Condominium Act* was not before Her Honour (as the Receiver acknowledged in the Sixth Report). At no time during the call did counsel for the Receiver state, or otherwise intimate, that they intended to distribute the sale proceeds imminently and unilaterally without agreement or further Order of the Court.

36. I was surprised by their position. I told them that I disagreed. It was clear to me that the call was going nowhere. In fact, they told us that even if we were able to establish that the Condo Act Claims were subject to trust, they would force the Homeowners to pay for any valuation of the common elements necessary to prove the valuation of those claims. In other words, no money would be expended by the receivership to value the Condo Act Claims.

37. The call was more contentious than I was expecting. There is no possible way that either Mr. Larry, Mr. Merskey nor Mr. Rosenbluth could have come away from the call thinking that they had convinced us that Justice Steele's decision was dispositive of the Condo Act Claims, or that we intended to abandon the Condo Act Claims.

Events After the January 19th Call

38. Shortly after the call, Mr. Jalili sent an email to Mr. Merskey and Mr. Larry elaborating on the issue of the termination notices. Attached hereto as Exhibit “I” is a copy of Mr. Jalili’s email, dated January 19, 2024.

39. We did not hear back from the Receiver until Tuesday, January 23, 2024, when Mr. Merskey emailed us stating that the Receiver intended to distribute the proceeds of sale “without regard to your clients’ claims”. Attached hereto as Exhibit “J” is a copy of Mr. Merskey’s email.

40. Mr. Merskey’s email did not include details regarding when the sale transaction would close, when the distributions were expected to be made, or a date by which he expected us to respond to further assert the Condo Act Claims. This is in contrast to Mr. Larry’s October 31, 2023 email wherein he advised that the Highview sale transaction had closed (meaning that the Receiver had the sale proceeds to distribute) and requested that we confirm our position “promptly” in response to the Receiver’s stated intention to distribute those proceeds.

41. At 11:09 am on Monday, January 29, 2024, Mr. Jalili sent a with prejudice letter from me to Mr. Merskey and Mr. Larry refuting the Receiver’s position that the Tarion Decision disposed of the Condo Act Claims, and reiterating our request that the Receiver holdback from distribution funds to satisfy same. The letter further states: “If the Receiver ignores the statutory trust that we allege, then it does so with knowledge that it may be liable for any amounts our client may establish as having priority over the claims of the secured creditors”. A copy of Mr. Jalili’s email enclosing the letter is attached hereto Exhibit “K”. A copy of the letter is attached hereto as Exhibit “L”.

42. Given that Mr. Merksey did not provide us with any then-upcoming deadlines regarding the distributions, we did not know that the sales for Minu Towns and High Crown were scheduled

to close on Friday, January 26, 2024. We only learned that the sale had closed when Alec Hoy, a lawyer with Cassels, served us later on January 29, 2024, at 5:57 pm. Attached hereto as Exhibit “M” is a copy of Mr. Hoy’s email serving us with notice that the sales had closed for Minu Towns and High Crown.

43. Mr. Merskey never responded to our letter. Rather, the following day, on January 30, 2024, Mr. Larry advised that the Receiver intended to bring a motion seeking, *inter alia*, approval of the distribution of sale proceeds to the secured creditors for Nao II. The very next day, on January 31, 2024, we informed Mr. Larry that we would bring a cross-motion asserting the Condo Act Claims. Attached hereto as Exhibit “N” is the email exchange between Mr. Larry and I.

44. The Nao II motion and our cross-motion were returnable before the Honourable Justice Black on February 15, 2024. In our notice of cross-motion, we sought to assert the Condo Act Claims in respect of all the Projects, not just Nao II. Attached hereto as Exhibit “O” is a copy of the notice of cross-motion, dated February 9, 2024. This notice of cross-motion was served on the parties identified in the Nao II service list available on the Receiver’s website. Attached hereto as Exhibit “P” is an email from Mr. Jalili serving the notice of motion to the Nao II service list.

45. At our request, Justice Black adjourned the hearing of the Nao II motion and our cross-motion to March 5, 2024. In the meantime, he ordered that the Receiver hold back \$1,523,400, or roughly 20% of the Deposit Funds paid to Nao II, pending the resolution of the Condo Act Claims (the “**Original Holdback**”).

46. Following the hearing, Mr. Jalili emailed Mr. Merskey and Mr. Larry to confirm the status of the sale proceeds for each of the Projects, and whether the Receiver had maintained any holdbacks, as the Receiver had still yet to respond to our January 29th letter. On February 16, 2024

Mr. Merskey responded that the Receiver continued to maintain the \$170,000 Highview Holdback and that Elm and Bea had not yet been sold. Mr. Merskey goes on to advise, for the first time, that the Receiver had fully distributed the sale proceeds for Minu Towns and High Crown. I was shocked to learn that the Receiver did not maintain any holdbacks from the distribution of sale proceeds for Minu Towns or High Crown. Attached hereto as Exhibit "Q" is the email exchange between Mr. Jalili and Mr. Merskey.

47. On the eve of the new hearing date for the motions, it came to our attention that we did not serve all potentially interested parties with our cross-motion materials, as we relied solely on the service list for Nao II. As a result, Justice Black ordered that the hearing again be adjourned. In the meantime, Justice Black reduced the Original Holdback from \$1,523,400 to \$37,195.65, representing the minimum uninsured amount of Deposit Funds paid to Nao II.

48. Based off the information we have available, Minu Towns represents, by far, the largest portion of minimum uninsured deposits; at least \$4.5 million of the Deposit Funds paid to Minu Towns will not be insured by Tarion.¹³ High Crown has at least \$233,000 in uninsured deposits.¹⁴

SWORN by David Sterns of the City of Toronto in the Province of Ontario, before me at the City of Toronto in the Province of Ontario on May 7, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits

Denna Pourmonazah Jalili
LSO # 84976N

}


(Signature of deponent)

¹³ According to the First Report, 147 Homebuyers paid \$19,208,000 to Minu Towns. If all 147 Homebuyers received the \$100,000 maximum deposit protection from Tarion, that would leave a shortfall of at least \$4,508,000 (\$19,208,000 - (147*\$100,000) = \$4,508,000).

¹⁴ \$4,933,000 - (47*\$100,000) = \$233,000 (these numbers also taken from the First Report).

This is Exhibit “A” referred to in the Affidavit of David Sterns sworn by David Sterns at the City of Toronto, in the Province of Ontario, before me on May 7, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'Denna', with a long, sweeping horizontal stroke extending to the right.

Commissioner for Taking Affidavits (or as may be)

DENNA POURMONAZAH JALILI

From: Jeff.Larry@paliaroland.com
To: [Denna Pourmonazah Jalili](#); [David Sterns](#)
Cc: Daniel.Rosenbluth@paliaroland.com; bkofman@ksvadvisory.com; jwong@ksvadvisory.com; amerskey@cassels.com
Subject: Highview Distribution
Date: October 31, 2023 10:14:24 PM

Without Prejudice

David

Thank you for the call today.

I am writing to address the distribution issue we discussed on the call relating to Highview Building Corp. We will write to you separately about a proposal to deal with the rest of the receivership companies.

As advised, after conducting further inquiry about the Highview deposits, the Receiver's current information is that there are a total of 4 purchasers who did not have their deposits returned totaling \$470,000. The Receiver understands that \$170,000 of this \$470,000 may not be insured by Tarion.

The Highview transaction closed today and the Receiver intends to distribute funds to the first secured mortgagee without holding back any amounts on account of the deposits.

I confirmed to you that Tarion is not taking any position with respect to the Receiver's intention to make a distribution without any holdback for the deposits.

Please confirm that on behalf of the class action claimants, you are also content to take no position with respect to this distribution on the understanding that your position will be without prejudice to any position you may wish to take in respect to any other distributions in the other Stateview receiverships.

I look forward to hearing from you promptly.

Jeffrey Larry, LL.B, MBA
Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1
t: 416.646.4330
f: 416.646.4301
c: 416.553.2789
e: jeff.larry@paliaroland.com

The information contained in this e-mail message may be privileged, confidential and protected from disclosure. If you are not the intended recipient, any use, disclosure, dissemination, distribution or copying of any portion of this message or any

This is Exhibit “B” referred to in the Affidavit of David Sterns sworn by David Sterns at the City of Toronto, in the Province of Ontario, before me on May 7, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

DENNA POURMONAZAH JALILI



Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

(Court Seal)

DHARMI MEHTA

Plaintiff

and

STATEVIEW HOMES (BEA TOWNS) INC., STATEVIEW HOMES (MINU
TOWNS) INC., STATEVIEW HOMES (NAO TOWNS) INC., STATEVIEW
HOMES (NAO TOWNS II) INC., STATEVIEW HOMES (ELM&CO) INC.,
HIGHVIEW BUILDING CORP INC., STATEVIEW HOMES (ON THE
MARK) INC., DANIEL CICCONE, CARLO TAURASI, DINO TAURASI,
MELISSA TAURASI, NELDA TAURASI, STEPHANIE LYNN CONSOLE,
JANE DOE, JOHN DOE, ABC INC. and XYZ INC.

Defendants

STATEMENT OF CLAIM

Proceeding under the *Class Proceedings Act, 1992*

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for
you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*,
serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the
Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this
Statement of Claim is served on you, if you are served in Ontario.

-2-

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 8th Floor
Toronto ON M5G 1R7

TO: Stateview Homes (BEA Towns) Inc.

AND TO: Stateview Homes (Minu Towns) Inc.

AND TO: Stateview Homes (Nao Towns) Inc.

AND TO: Stateview Homes (Nao Towns II) Inc.

AND TO: Stateview Homes (Elm&Co) Inc.

AND TO: Highview Building Corp Inc.

AND TO: Stateview Homes (On the Mark) Inc.

AND TO: Daniel Ciccone

AND TO: Carlo Taurasi

-3-

AND TO: Dino Taurasi

AND TO: Melissa Taurasi

AND TO: Nelda Taurasi

AND TO: Stephanie Lynn Console

AND TO: Jane Doe

AND TO: John Doe

AND TO: ABC Inc.

AND TO: XYZ Inc.

-4-

CLAIM

1. The Plaintiff, Dharmi Mehta (the “**Plaintiff**”), claims on behalf of herself and all members of the Proposed Class (defined below):

- (a) an order certifying this action as a class proceeding and appointing the Plaintiff as representative plaintiff of the Proposed Class;
- (b) a declaration that members of the Proposed Class are the beneficial owners of the Deposit Funds (defined below) and products derived from them under:
 - (i) a statutory trust pursuant to s. 78(1)(3) and/or s. 81 of the *Condominium Act, 1998*, S.O. 1998, c. 19 (the “**Condominium Act**”); and/or
 - (ii) a resulting trust and/or constructive trust in accordance with the Condominium Act, common law and principles of equity;
- (c) a court-ordered charge and/or equitable lien on the property of the Defendants;
 - (i) as against the corporate Defendants, a declaration that the charge and/or equitable lien in respect of the trust funds rank:
 - (1) immediately behind the Receiver’s Charge, the Receiver’s Borrowings Charge (each, as defined in the Receivership Orders) and the charges set out in 14.06(7), 81.4(4) and 81.6(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**Super-priority Charges**”), and ahead of the claims of all other creditors;

-5-

- (2) in the alternative, immediately behind each of the Super-priority Charges and the secured claims of registered mortgagees and ahead of the claims of all other creditors; and
 - (3) in the further alternative, in other priority to the claims of ordinary unsecured creditors;
- (d) a certificate of pending litigation (“CPL”) registered on the real property of the individual Defendants located at 48 Puccini Drive, Richmond Hill, Ontario, Canada L4E 2Y6 and 48a Puccini Drive, Richmond Hill, Ontario, Canada L4E 2Y6, with the following legal description: Part L5 25 PL M807, Part 2, 65R-37960;
- (e) a declaration that the corporate Defendants, or any of them, owed fiduciary duties to the Proposed Class in respect of the Deposit Funds;
- (f) a declaration that the corporate Defendants, or any of them, breached their fiduciary duties to the Proposed Class;
- (g) a declaration that all or some of the individual defendants, Carlo Taurasi, Dino Taurasi, Daniel Ciccone, Melissa Taurasi, Nelda Taurasi, Stephanie Lynn Console and persons unknown, knowingly assisted the corporate Defendants in breaching their fiduciary duties to the Proposed Class;
- (h) a declaration that all or some of the individual defendants, Carlo Taurasi, Dino Taurasi, Daniel Ciccone, Melissa Taurasi, Nelda Taurasi, Stephanie Lynn Console

-6-

and persons unknown, knowingly received property obtained through breaches of trust obligations to the Proposed Class;

- (i) a tracing remedy in respect of the Deposit Funds, and any products derived from same, for the benefit of the Proposed Class;
- (j) as against the corporate Defendants, \$229,500,000 in damages for breach of contract;
- (k) a declaration that members of the Proposed Class are “complainants” under s. 245 of the *Business Corporations Act*, R.S.O. 1990, C. B. 16 (the “**OBCA**”);
- (l) a declaration that the Proposed Class was oppressed by the corporate Defendants under the OBCA;
- (m) a declaration that the directors and officers of the corporate Defendants, Carlo Taurasi, Dino Taurasi and Daniel Ciccone, are personally liable for the oppressive conduct of the corporate Defendants;
- (n) compensation pursuant s. 248(3)(j) of the OBCA in the amount of \$77,322,000;
- (o) in the alternative, damages for negligence, fraudulent and/or negligent misrepresentation, unjust enrichment, knowing assistance in breach of fiduciary duty and/or knowing receipt of trust property for \$77,322,000;
- (p) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

-7-

- (q) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (r) the costs of this proceeding, plus all applicable taxes; and
- (s) such further and other relief as this Honourable Court may deem just.

I. PARTIES

2. The Plaintiff is an individual ordinarily resident in Toronto, Ontario. On January 15, 2021, the Plaintiff, as purchaser, entered into an Agreement of Purchase and Sale with the Defendant, Highview Building Corp Inc. (“**Highview**”), as vendor, for the sale of a pre-construction residential unit located at 99 Nashville Road, Kleinberg, Ontario.

3. The Defendant, Highview, is a corporation incorporated pursuant to the laws of Ontario. Highview is a single-purpose real estate development company that owns the real property located at 88 Nashville Road and 99 Nashville Road, Kleinberg, Ontario. On May 2, 2023, KSV Advisory Inc. (the “**Receiver**”) was appointed court-ordered receiver over all of the assets, undertakings and properties of Highview, pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”).

4. The Defendant, Stateview Homes (BEA Towns) Inc. (“**Bea Towns**”), is a corporation incorporated pursuant to the laws of Ontario. Bea Towns is a single-purpose real estate development company that owns the real property located at 189 Summerset Drive, Barrie,

-8-

Ontario. On May 2, 2023, the Receiver was appointed court-ordered receiver over all of the assets, undertakings and properties of Bea Towns, pursuant to s. 243(1) of the BIA and s. 101 of the CJA.

5. The Defendant, Stateview Homes (Minu Towns) Inc. (“**Minu Towns**”), is a corporation incorporated pursuant to the laws of Ontario. Minu Towns is a single-purpose real estate development company that owns the real property located at 9940 Ninth Line, Markham, Ontario. On May 2, 2023, the Receiver was appointed court-ordered receiver over all of the assets, undertakings and properties of Minu Towns, pursuant to s. 243(1) of the BIA and s. 101 of the CJA.

6. The Defendant, Stateview Homes (Nao Towns) Inc. (“**Nao Towns**”), is a corporation incorporated pursuant to the laws of Ontario. Nao Towns is a single-purpose real estate development company that owns the real property located 5112, 5122, 5248 14th Avenue, Markham, Ontario. On May 2, 2023, the Receiver was appointed court-ordered receiver over all of the assets, undertakings and properties of Nao Towns, pursuant to s. 243(1) of the BIA and s. 101 of the CJA.

7. The Defendant, Stateview Homes (Nao Towns II) Inc. (“**Nao Towns II**”), is a corporation incorporated pursuant to the laws of Ontario. Nao Towns II is a single-purpose real estate development company that owns the real property located 7810, 7822, 7834, 7846 McCowan Road, Markham, Ontario. On May 2, 2023, the Receiver was appointed court-ordered receiver over all of the assets, undertakings and properties of Nao Towns II, pursuant to s. 243(1) of the BIA and s. 101 of the CJA.

-9-

8. The Defendant, Stateview Homes (High Crown Estates) Inc. (“**High Crown**”), is a corporation incorporated pursuant to the laws of Ontario. High Crown is a single-purpose real estate development company that owns the real property located at 13151 – 13161 Keele Street, King City, Ontario. On May 2, 2023, the Receiver was appointed court-ordered receiver over all of the assets, undertakings and properties of High Crown, pursuant to s. 243(1) of the BIA and s. 101 of the CJA.

9. The Defendant, Stateview Homes (On the Mark) Inc. (“**On the Mark**”), is a corporation incorporated pursuant to the laws of Ontario. On the Mark is a single-purpose real estate development company that owns the real property located at 16th Avenue and Woodbine Avenue, Markham, Ontario. On May 2, 2023, the Receiver was appointed court-ordered receiver over all of the assets, undertakings and properties of On the Mark pursuant to s. 243(1) of the BIA and s. 101 of the CJA. On September 14, 2023, On the Mark was assigned into bankruptcy under the BIA, with the Receiver appointed its trustee.

10. The Defendant, Stateview Homes (Elm&Co) Inc. (“**Elm**”), is a corporation incorporated pursuant to the laws of Ontario. Elm is a single-purpose real estate development company that owns the real property located at 12942 York Durham Line, Stouffville, Ontario. On May 18, 2023, the Receiver was appointed court-ordered receiver over all of the assets, undertakings and properties of Elm, pursuant to s. 243(1) of the BIA and s. 101 of the CJA.

11. The Defendant, Carlo Taurasi (“**Carlo**”), is a director, officer and principal of Highview, Bea Towns, Minu Towns, Nao Towns, Nao Towns II, High Crown, On the Mark and Elm (collectively, hereinafter, the “**Stateview Defendants**”).

-10-

12. The Defendant, Dino Taurasi (“**Dino**”), is a director, officer and principal of the Stateview Defendants.

13. The Defendant, Daniel Ciccone (“**Daniel**”), is a director, officer and principal of the Stateview Defendants.

14. The Defendant, Melissa Taurasi (“**Melissa**”) is an individual that ordinarily resides in Ontario. Melissa is the spouse of Carlo.

15. The Defendant, Nelda Taurasi (“**Nelda**”) is an individual that ordinarily resides in Ontario. Nelda is the spouse of Dino.

16. The Defendant, Stephanie Lynn Console (“**Stephanie**”) is an individual that ordinarily resides in Ontario. At the material times, Stephanie was the spouse of Daniel.

17. ABC Inc., XYZ Inc., John Doe and Jane Doe are pseudonyms for corporations and individuals unknown that knowingly received proceeds from the Deposit Funds (defined below) and/or knowingly assisted the Stateview Defendants in breaching their fiduciary duties to the Proposed Class.

18. The Plaintiff seeks to represent the following class (the “**Proposed Class**”):

All persons who entered into Agreements of Purchase and Sale (the “**Purchase Agreements**”) with one or more of the Stateview Defendants for pre-construction residential units and/or an undivided share in the common elements of a common elements condominium corporation and paid deposits to one of more of the Stateview Defendants in

-11-

furtherance of their Purchase Agreements. There are approximately 765 members of the Proposed Class.

II. FACTS

a. The Stateview Defendants

19. The Stateview Defendants are a collection of single-purpose real estate development companies in the business of constructing residential units (the “**Projects**”). At all material times, Carlo, Dino and Daniel were directors, officers and principals of each of the Stateview Defendants, and were directly involved in each of their day-to-day activities. In particular, Carlo, Dino and Daniel participated in the negotiation of the Purchase Agreements and every aspect of the Projects.

20. The Projects were organized as common element condominiums (“**CEC**” or “**CECs**”). Under a CEC model, individuals hold freehold titles to specific land parcels which are linked to an undivided common interest in the CEC. This ownership structure combines the individual land ownership with shared interest in the common elements.

21. Beginning no later than January 15, 2021, the Stateview Defendants started entering into pre-construction Purchase Agreements with the Proposed Class. The Purchase Agreements are standardized, or substantially similar, across all the Projects.

22. Pursuant to the Purchase Agreements, the Stateview Defendants were contractually required to incorporate a corporation under the Condominium Act that would serve as the Common Elements Condominium Corporation (“**CEC Corporation**”). The Stateview Defendants were

-12-

further obligated to hold in trust any monies they collected from the Proposed Class on behalf of the yet-to-be incorporated CEC Corporations.

23. As part of the Purchase Agreements, the Proposed Class paid deposits to the Stateview Defendants (the “**Deposit Funds**”). According to the First Report of the Receiver, dated May 30, 2023 (the “**First Report**”), the Proposed Class paid deposits to the Stateview Defendants, totalling at least \$77,322,000. These amounts are broken down as follows:

Project	(unaudited)	
	# of Homebuyers	Deposits (\$000s)
Minu	147	19,208
Nao Phase I	96	7,680
High Crown	47	4,933
On the Mark ^s	32	4,218
Nao Phase II	76	7,617
Highview	4	None
BEA	218	17,440
Elm	145	16,076
Total	765	77,172

24. None of the Deposits Funds were held in trust by the Stateview Defendants. As of the date of this pleading, none of the Deposit Funds have been paid back to members of the Proposed Class.

25. The Receiver erroneously states that Highview received zero dollars in deposits. The Plaintiff personally paid a \$150,000 deposit to Highview through three separate cheques dated January 14, 2021, March 30, 2021, and May 30, 2021, in accordance with the Purchase Agreement. Highview’s books should specify that it received at least \$150,000 in deposits from the Proposed Class.

-13-

b. Financial Troubles, the Cheque-Kiting Fraud and Subsequent Insolvency of the Stateview Defendants

26. Shortly after the execution of the Purchase Agreements and receipt of the Deposit Funds, the Stateview Defendants began experiencing serious financial difficulties and liquidity shortages. These financial woes emerged before construction of many of the Projects had commenced, notwithstanding that the Stateview Defendants were in receipt of at least \$77,322,000 in deposits and \$349,945,000 in various types of credit.

27. Due to the early onset of these financial challenges, the Stateview Defendants pursued illicit strategies to secure extra liquidity. One such strategy involved granting unauthorized mortgages on their real property. The Stateview Defendants proceeded with these unauthorized mortgages despite knowing that same would be in breach of their contractual obligations to existing creditors. Examples include, but are not limited to:

- (a) On December 16, 2022, Elm granted an unauthorized \$20,850,000 mortgage to Bergo Investment Limited, MCO Management Inc., and Tony Karamitsos;
- (b) On December 16, 2022, Bea Towns granted an unauthorized \$20,850,000 mortgage to Bergo Investment Limited, MCO Management Inc., and Tony Karamitsos;
- (c) On December 22, 2022, Highview granted an unauthorized \$5,300,000 mortgage to MCO Management Inc; and
- (d) On April 18, 2023, Highview granted an unauthorized \$1,945,000 mortgage to 2515792 Ontario Inc.

-14-

28. In addition, between April 2022 and March 2023, the Defendants in this action were involved in a cheque-kiting scheme that defrauded The Toronto-Dominion Bank (“**TD**”) of over \$37 million.

29. On March 24, 2023, TD commenced an action against the Stateview Defendants, Carlo, Dino, Melissa, Nelda and certain related individuals and affiliated companies (collectively, the “**TD Defendants**”) to recover the \$37 million it was defrauded of as a result of the cheque-kiting scheme.

30. None of the TD Defendants filed a defence to the allegations. Rather, on March 31, 2023, some of the TD Defendants entered into a settlement agreement with TD (the “**Settlement Agreement**”). Daniel, Melissa and Nelda were not part of the Settlement Agreement.

31. As part of the Settlement Agreement, the settling defendants, which included the Stateview Defendants, Carlo and Dino, admitted their joint and several liability to TD arising from the cheque-kiting scheme. However, they contend that Daniel was responsible for the scheme.

32. The Settlement Agreement contemplated the full repayment of the \$37 million over a 3-month period, including a \$3.150 million “administration fee” upon the issuance of a court order implementing the agreement. As security, TD was granted, and subsequently registered, mortgages over the real property owned by some of the Stateview Defendants, including Bea Towns, Nao Towns II, Highview and Elm.

33. On April 4, 2023, the Court issued an order that, *inter alia*, approved the implementation of the Settlement Agreement.

-15-

34. Due to their significant pre-existing financial challenges and liquidity constraints, which had been temporarily concealed by the illicit activities described above, TD's action and subsequent settlement of same practically guaranteed the inability of the Stateview Defendants to fulfill their then-looming payment obligations to existing creditors.

35. In April 2023, the Stateview Defendants failed to make scheduled payments to their creditors.

c. The Receivership Proceedings

36. In April and May 2023, following the missed payments, the discovery of the unauthorized mortgages and the involvement of the Stateview Defendants in the cheque-kiting fraud, certain senior secured creditors applied to appoint a receiver over the Stateview Defendants. The Court granted these requests on May 2, 2023, and May 18, 2023 (the “**Receivership Proceedings**”).

37. Construction for most of the Projects had not yet begun by the time the Receivership Proceedings were commenced. As of May 30, 2023, the respective statuses of the Projects were as follows:

Project	Address	Status
Minu Towns	9940 Ninth Line, Markham	Raw land
Nao Towns	5112, 5122, 5248 14th Avenue, Markham	Raw land
Nao Towns II	7810, 7822, 7834, 7846, McCowan Road, Markham	Raw land
Nashville (Highview)	89, 99 Nashville Road, Kleinberg,	Raw land
BEA Towns	189 Summerset Drive, Barrie	Raw land
Elm	12942 York Durham Line, Stouffville	Raw land
High Crown	13151 – 13161 Keele Street, King City	Under construction, approximately 30% complete
On the Mark	16 th Avenue and Woodbine Avenue, Markham	Under construction, approximately 90% complete

-16-

38. According to the First Report, representatives of the Stateview Defendants have advised that all of the Deposit Funds, \$77,322,000 in total, have been depleted.

39. The Deposit Funds have been depleted notwithstanding that six of the eight Projects were not developed whatsoever, and a seventh Project, that of High Crown, was only 30% complete by the time of the Receivership Proceedings.

40. As of May 30, 2023, the Receiver has not conducted a tracing exercise in respect of the Deposit Funds.

41. The Receiver intends to divest the assets of the Stateview Defendants in accordance with various court-approved sale processes. It is anticipated that, with the sole exception of On the Mark, the Purchase Agreements will be disclaimed and the proceeds from these sales will be insufficient to fully reimburse the Proposed Class of their deposits, given their status as unsecured creditors within the Receivership Proceedings.

42. In the specific case of On the Mark, the Project was 90% complete by the time of the Receiver's appointment, with 38 out of 70 units closed in accordance with the Purchase Agreements. Out of the remaining 32 units, 30 of the homebuyers will have the option to close their Purchase Agreements by agreeing to pay an additional \$100,000 towards the purchase price alongside other "non-substantive" changes (as described by the Receiver). If these 30 homebuyers do not agree to the changes, their respective Purchase Agreements will be disclaimed, resulting in forfeiture of their deposits.

43. Melissa and Nelda are the two On the Mark Homebuyers who were not given the option to close their Purchase Agreement with On the Mark. On July 18, 2023, Melissa and Nelda filed a

-17-

motion record opposing their exclusion from the option of closing their Purchase Agreements on the same terms as the other On the Mark homebuyers. Melissa and Nelda subsequently dropped their opposition to the transaction.

44. On September 14, 2023, the Court approved the sale of On the Mark's assets to 2077060 Ontario Inc. and the resulting disclamation of its Purchase Agreements with Melissa and Nelda. In addition, On the Mark was assigned into bankruptcy, with the Receiver appointed its trustee.

45. The Receivership Proceedings have uncovered instances of the Stateview Defendants illicitly and improperly redirecting funds from their designated purposes. This includes, but is not limited to, Minu Towns, Nao Towns, On the Mark, and High Crown diverting, for an unknown purpose, funds that were earmarked by their lenders for the payment of development charges to the City of Markham and Township of King.

d. The Plaintiff's Dealings with Highview

46. On January 15, 2021, the Plaintiff entered into a Purchase Agreement with Highview for a pre-construction unit located at 99 Nashville Road. The purchase price was \$1,548,990, with a \$150,000 deposit to be made in three installments of \$50,000, all of which were duly paid by the Plaintiff. The move-in date was scheduled for June 22, 2023.

47. The Purchase Agreement is replete with descriptions of the unit as a condominium and references to the Condominium Act, including, without limitation:

- (a) On page 1 of the Purchase Agreement, it specifies, “[t]he Offer shall be irrevocable by the Purchaser until one minute before midnight on the tenth date after its date,

-18-

after which time if not accepted, this offer will be null and void and deposit returned to the Purchaser, without interest or deduction, except as required under the Condominium Act, S.O. 1998, C19, the regulations thereunder and any amendments thereto (the “Act”);

- (b) On page 11, the definition of “Act” reads “...*the Condominium Act, S.O. 1998, C. 19, the regulations thereunder and any amendments thereto*”;
- (c) On page 12, it is stated that the offer contained therein is “*conditional upon the Vendor obtaining...registration of a related common elements corporation under the Act*”;
- (d) On page 29, the Schedule “CEC” contains several references to the “Condominium”, “Condominium Documents”, “Condominium Corporation” and “Creating Documents” (i.e., the declaration and description);
- (e) On page 29, the Schedule “CEC” stipulates the manner in which the Plaintiff is expected to make payments to the CEC for her share of the common elements expenses;
- (f) On page 29, the Schedule “CEC” specifies that “*interest on unpaid portion of the purchase price to be established pursuant to the occupancy provisions of the Act for a standard condominium*”;
- (g) On page 31, the Schedule “R” contains several references to the “Condominium Corporation” and/or “York Region Common Elements Corporation No. ____”; and

-19-

- (h) On page 32, the disclosures listed therein align with the disclosure requirements set out under the Condominium Act, including the Disclosure Statement, proposed Declaration for the condominium, Sections 73 and 74 of the Condominium Act, and a site plan delineating the common elements.

48. All the Purchase Agreements contain the same or substantially similar references to condominiums and the Condominium Act.

49. Highview never fulfilled its contractual obligation to incorporate a CEC Corporation.

50. Hidden at page 28 of the Purchase Agreement is a singular provision stipulating that a mere \$2 out of the \$1,548,990 purchase price was to be paid towards the common interest of the condominium, with none of the deposit monies allocated for this purpose. All the Purchase Agreements contain language that is the same or substantially similar to this clause.

e. The Deposit Funds were Subject to a Statutory Trust and/or Resulting Trust

51. The Condominium Act is consumer protection legislation intended to be interpreted generously in favour of purchasers of interests in condominiums. These purchasers are often negotiating from a significant informational and power disadvantage vis-à-vis condominium vendors, making them susceptible to exploitation. As such, the fundamental purpose of the Condominium Act is to safeguard purchasers and to establish a fair balance of rights between them and vendors. The imminent financial losses facing the Proposed Class offers a compelling illustration of this jeopardy.

-20-

52. Section 81 of the Condominium Act stipulates that deposits paid towards the purchase price for condominium units are to be held in trust, including that which is paid towards pre-construction units. Deposits are expected to accumulate interest while held in trust by a trustee of a “prescribed class” under the Condominium Act. Money held in trust under the Condominium Act can only be released upon the purchaser receiving registrable title or a developer posting full security for the amounts to be withdrawn from trust.

53. In the specific case of CECs, the Condominium Act stipulates that deposits paid towards the common interest in the CEC are to be held in trust under s. 81, whereas the amounts paid towards the freehold aspect are not statutorily required to be held in trust.

54. As described above, the Purchase Agreement furtively stipulates that a mere \$2 of the \$1,548,990 purchase price is allocated to the common interest in the CEC, and that no portion of the deposit is designated for same (the “**Impugned Clause**”).

55. There is no commercial justification to support the valuation of the common interest in the CEC as worth only 0.0000013% of the overall unit price.

56. The Impugned Clause, strategically inserted by the Stateview Defendants, Carlo, Dino and/or Daniel, lacks any credible commercial justification and was specifically intended to defeat the protections conferred by the Condominium Act, including the requirement that the Deposit Funds be held in trust.

57. The Impugned Clause is void, voidable, null or otherwise unenforceable in law for breaching public policy and being contrary to the essence of the Condominium Act as consumer protection legislation.

-21-

58. The Deposit Funds are deemed to have been paid towards the common interest in the CECs and held in trust provision by operation of s. 81 of the Condominium Act.

59. The Stateview Defendants were under a corresponding statutory obligation to ensure the Deposits Funds were held in trust by a trustee of a prescribed class under the Condominium Act, leaving the Proposed Class as the beneficial owners of the Deposit Funds.

60. In addition, and/or in the alternative, s.78(1)(3) of the Condominium Act imputes an implied covenant into all purchase agreements that monies collected by a declarant (in this case, the Stateview Defendants) from purchasers (the Proposed Class) on behalf of the corporation (the CEC Corporation) are held in trust.

61. The Plaintiff's deposit, and the Deposit Funds generally, were collected by the Stateview Defendants on behalf of CEC Corporations that were yet to be incorporated at the time of the Purchase Agreements.

62. The Stateview Defendants never incorporated the CEC Corporations, except for On The Mark (registered as York Region Common Elements Condominium Corporation No. 1497), causing the statutory trust over the Deposit Funds prescribed by s.78(1)(3) to fail. As such, the Stateview Defendants are deemed to have held the Deposit Funds for the benefit of the Proposed Class by way of a resulting trust.

-22-

III. LIABILITY OF THE DEFENDANTS

a. Stateview Defendants

i. Breach of statutory trust and/or resulting trust

63. The Stateview Defendants breached their statutory trust and/or resulting trust obligations by:

- (a) failing to ensure a trustee of a “prescribed class” under the Condominium Act held the Deposit Funds;
- (b) failing to meet the standard of care in the management of the Deposit Funds, including not ensuring interest was accrued;
- (c) failing to maintain accurate and up-to-date bookkeeping in respect of the Deposit Funds;
- (d) using the Deposit Funds to:
 - (i) finance real estate development activities in connection with the Projects; and/or
 - (ii) make improper or illegitimate purchases unrelated to the Projects; and/or
- (e) such further acts or omissions, the particulars of which are within the sole knowledge and control of the Defendants.

ii. Breach of fiduciary duty

-23-

64. The Stateview Defendants were trustees of the Deposit Funds held under a statutory and/or resulting trust for the benefit of the Proposed Class.

65. The Stateview Defendants were in a special relationship with the Proposed Class and/or otherwise owed a fiduciary duty to them, namely that of trustee-beneficiary.

66. In addition, as developers of the Projects, the Stateview Defendants were in a fiduciary relationship with the Proposed Class in respect of the Projects, independent of the duties imposed by their role as trustees of a statutory trust and/or resulting trust. The bases for this secondary source of fiduciary duty includes, but is not limited to, the following:

- (a) the Stateview Defendants exercised a significant degree of power and control over the Proposed Class by virtue of being in complete control over the development of the Projects, the Deposit Funds, and the title of land to be conveyed to the Proposed Class upon the closing of the Purchase Agreements;
- (b) the power and discretion of the Stateview Defendants directly impacted the legal rights and practical rights of the Proposed Class, namely their interests in the units;
and
- (c) the Proposed Class was vulnerable to the discretion and power of the Stateview Defendants with no knowledge, influence or control over the status of the Projects or Deposit Funds.

-24-

67. The Stateview Defendants breached their fiduciary duties by acting dishonestly, in bad faith and/or otherwise failing to prioritize the interests of the Proposed Class, including, without limitation:

- (a) failing to adhere to the statutory trust requirements imposed by the Condominium Act;
- (b) making unauthorized transactions with the Deposit Funds, such as:
 - (i) using amounts earmarked for a specific Project to finance the activities of other Projects; and
 - (ii) improper and illegitimate purchases unrelated to the Projects;
- (c) actively concealing and/or failing to disclose the details of these unauthorized transactions to the Proposed Class;
- (d) failing to ensure the unauthorized transactions were in the best interest of the Proposed Class;
- (e) engaging in self-dealing;
- (f) failing to address conflicts of interests;
- (g) failing to maintain adequate insurance for the Projects;
- (h) overleveraging the Projects and using the Deposit Funds to secure excessive loans that could not be repaid through the ordinary course of business;

-25-

- (i) failing to disclose material information to the Proposed Class, including the financial challenges that threatened the viability of the Projects;
- (j) prioritizing the interests of other stakeholders in the Projects, including their own;
- (k) participating in the cheque-kiting fraud against TD; and
- (l) such further acts or omissions, the particulars of which are within the sole knowledge and control of the Defendants.

iii. Fraudulent and/or Negligent Misrepresentation

68. The Stateview Defendants were in a special relationship with the Proposed Class based upon their superior relative experience and expertise in real estate development and/or positions as trustees and fiduciaries.

69. The Stateview Defendants, intentionally or negligently made several material misrepresentations, which the Proposed Class relied upon to their detriment when entering into the Purchase Agreements and thereafter. Examples include:

- (a) that the CEC Corporations would be incorporated within a reasonable period of time after execution of the Purchase Agreements;
- (b) that construction would begin for the Projects within a reasonable period of time after execution of the Purchase Agreements;
- (c) that the units would be ready for occupancy based upon the contracted occupation date;

-26-

- (d) the Proposed Class would be protected by the Condominium Act, including that the Deposit Funds would be held in trust; and
- (e) in the alternative to paragraph 69(d), that the Deposit Funds would go towards the individual Project class members were buying into, rather than be used to cover the costs for other Projects and/or misappropriated for purposes wholly unrelated to the Projects.

iv. Oppression

70. Under the Condominium Act and the Purchase Agreements, the Stateview Defendants were obligated to refund the Deposit Funds should the contracts be terminated or otherwise fail to close.

71. Pursuant to the Purchase Agreement, failure of the Stateview Defendants to incorporate a CEC Corporation results in the termination of the contract and return of the homebuyer deposits.

72. The Purchase Agreements have been terminated, or will soon be terminated as a result of the Receivership Proceedings. It is not expected that the Deposit Funds will be repaid in full to the Proposed Class by the conclusion of the Receivership Proceedings.

73. The Proposed Class has a claim against the Stateview Defendants for, at a minimum, the return of their Deposit Funds. As creditors of the Stateview Defendants, the Proposed Class has standing to claim oppression under s. 245 of the OBCA.

74. The reasonable expectations of the Proposed Class include, but are not limited to, the following:

-27-

- (a) the Stateview Defendants would adhere to their legal obligations under the Condominium Act;
- (b) the Stateview Defendants would honour the understandings and expectations they created and encouraged in relation to the Deposit Funds
- (c) the Stateview Defendants would manage the development of the Projects in accordance with general commercial practice;
- (d) the Stateview Defendants would not deplete its reservoir of funds and other exigible assets for insufficient consideration;
- (e) the directors and officers of the Stateview Defendants would manage the affairs of the corporations in accordance with their legal obligations, namely, to act honestly and in good faith in the best interests of the corporation and to exercise the diligence expected of a reasonably prudent person; and
- (f) the Stateview Defendants would not be used as a vehicle for fraud.

75. The conduct of the Stateview Defendants leading up to the Receivership Proceedings was oppressive, unfairly prejudicial and/or unfairly disregarded the reasonable expectations of the Proposed Class. Such conduct includes, without limitation:

- (a) misappropriating the Deposit Funds, and funds extended by various lenders, for unauthorized transactions unrelated to the purposes for which they were granted, causing the failure of the Projects and subsequent insolvencies;

-28-

- (b) Carlo, Dino and Daniel failing to discharge their directorial responsibilities by prioritizing their own personal interests above that of the Stateview Defendants, causing the Stateview Defendants to become insolvent;
- (c) Carlo, Dino and Daniel failing to exercise the diligence of a reasonably prudent person in their management of the Projects, causing the failure of same;
- (d) the Stateview Defendants failing to adhere to their statutory responsibilities under the Condominium Act;
- (e) failing to adhere to their contractual obligations to their creditors by secretly granting unauthorized charges to the properties owned by the Stateview Defendants; and
- (f) participating in the illegal and criminal cheque-kiting fraud against TD.

76. The misconduct described in the foregoing paragraph constitutes a marked departure from general commercial practice and could not have been foreseen by the Proposed Class.

v. Negligence

77. The Stateview Defendants owed a duty of care to the Proposed Class. The Stateview Defendants breached the standard of care through the mismanagement of the Projects and custodianship of the Deposit Funds, resulting in their insolvencies and the expected loss of the Deposit Funds.

vi. Breach of Contract

-29-

78. The Purchase Agreements were for residential units that were expected to be developed and ready for occupation in accordance with the various move-in dates stipulated in the agreements.

79. The Purchase Agreements have been fundamentally breached by the Stateview Defendants as a result of the Receivership Proceedings, which were brought about as a direct consequence of their own misconduct.

80. Many of the Purchase Agreements are expected to be disclaimed by whoever ultimately purchases the properties of the Stateview Defendants and/or revised such that members of the Proposed Class will have to pay a premium to ensure their agreements are not disclaimed.

81. The Proposed Class is entitled to expectation damages that compensates individual class members for the rise in the value of the units had they been constructed and conveyed to the Proposed Class in accordance with the Purchase Agreements.

82. The aggregate amount of the increase in value for all of the units sold by the Stateview Defendants to members of the Proposed Class is currently estimated to be \$229,500,000.

b. Carlo, Dino and Daniel

i. Knowing assistance, knowing receipt and unjust enrichment

83. At all material times, Carlo, Dino and Daniel were the directors and officers of the Stateview Defendants. Carlo, Dino and Daniel had direct knowledge of the fiduciary duties owed by the Stateview Defendants to the Proposed Class.

-30-

84. Carlo, Dino and Daniel, or any of them assisted in the Stateview Defendants' dishonest and/or fraudulent breach of their fiduciary duties by authorizing or otherwise causing the Stateview Defendants to carry out the conduct described in paragraph 67.

85. In addition, the Stateview Defendants advanced some or all of the Deposit Funds to the personal accounts of Carlo, Dino and Daniel, which they used for their own personal benefit. Carlo, Dino and Daniel had actual knowledge or constructive knowledge that such funds originated from a fraudulent misappropriation of trust property.

86. Carlo, Dino and Daniel were unjustly enriched by the fraudulent misappropriation of the Deposit Funds described in the foregoing paragraph. This resulted in a corresponding deprivation the Proposed Class. There is no juristic reason for their enrichment.

ii. Oppression

87. The oppressive conduct of the Stateview Defendants described in paragraph 75 is attributable to the action or inaction of Carlo, Dino and Daniel. Carlo, Dino and Daniel, or any of them, caused or permitted the Stateview Defendants to carry out conduct that was oppressive, unfairly prejudicial, or unfairly disregarded the reasonable expectations of the Proposed Class.

88. Carlo, Dino and Daniel, or any of them, acted in bad faith and received personal benefits from the oppressive conduct of the Stateview Defendants.

iii. Negligence

89. Carlo, Dino and Daniel directly oversaw the day-to-day activities of each of the Stateview Defendants, up to and including the collapse of the Projects and subsequent insolvencies.

-31-

90. Carlo, Dino and Daniel were intimately involved with each aspect of the Projects and managed them in a manner that fell significantly below the expected standard of care and/or industry practice. Examples of such negligence include:

- (a) failing to ensure the Deposit Funds were held by a trustee of a “prescribed class” under the Condominium Act;
- (b) failing to incorporate the CEC Corporations in accordance with the Condominium Act and Purchase Agreements;
- (c) failing to maintain requisite insurance policies for the Projects;
- (d) overleveraging the Projects with debts they could not sustain; and
- (e) mismanaging and misusing the funds held by the Stateview Defendants.

91. The mismanagement of the Projects was so severe that, despite the Stateview Defendants having received millions of dollars from both the Proposed Class and various creditors, construction for six of the eight Projects had not yet started by the time of the Receivership Proceedings. Moreover, a seventh Project was only 30% complete.

92. The Stateview Defendants became insolvent as a direct consequence of the negligence of Carlo, Dino and Daniel in managing the Projects, resulting in the expected loss of the Deposit Funds.

93. In addition, in the specific case of Carlo and Dino, they assert that Daniel was the one responsible for the cheque-kiting fraud committed against TD. In other words, Carlo and Dino

-32-

claim that they had no knowledge of the fact that the sole other director of the Stateview Defendants was using corporate accounts to perpetrate a \$37 million fraud spanning nearly a year.

94. Carlo and Dino are liable for negligence on this basis alone, as the cheque-kiting fraud caused or materially contributed to the insolvencies of the Stateview Defendants and expected loss of the Deposit Funds. Carlo and Dino had a duty to be aware of the business and finances of the companies and to prevent illicit activity by their fellow director. However, they failed to conduct an enquiry into the illicit and negligent conduct.

c. Melissa, Nelda and Stephanie

i. Knowing assistance, knowing receipt and unjust enrichment

95. At all material times, Melissa, Nelda and Stephanie were the spouses of Carlo, Dino, and Daniel, respectively, the directors and officers of the Stateview Defendants. As a result of this relationship, Melissa, Nelda and Stephanie had direct knowledge of the fiduciary duties owed by the Stateview Defendants to the Proposed Class.

96. Melissa, Nelda and Stephanie, or any of them, played an important role in facilitating the Stateview Defendants' dishonest and/or fraudulent violation of their fiduciary duties. Melissa, Nelda and Stephanie, or any of them, conspired with their spouses to strategically induce the Stateview Defendants to breach their fiduciary duties in the manner described in paragraph 67. This involvement encompassed permitting the Stateview Defendants to utilize their personal accounts and accounts linked to companies under their control to divert funds, including the Deposit Funds, away from the Stateview Defendants' accounts.

-33-

97. Melissa, Nelda and Stephanie, or any of them had actual knowledge or constructive knowledge that such advances came from a fraudulent misappropriation of trust property. Despite possessing actual or constructive knowledge of the source of the funds, Melissa, Nelda and Stephanie, or any of them, failed to conduct an inquiry into the origins of same.

98. Melissa, Nelda and Stephanie were unjustly enriched by the fraudulent misappropriation of the Deposit Funds. This resulted in a corresponding deprivation the Proposed Class. There is no juristic reason for their enrichment.

IV. CHARGING ORDER/EQUITABLE LIEN, CONSTRUCTIVE TRUST, CERTIFICATE OF PENDING LITIGATION AND TRACING REMEDY

99. The Proposed Class is entitled to a charge and/or equitable lien over all of the property of the Stateview Defendants to be ranked in accordance with the priorities listed in paragraph 1(c), as security for the Deposit Funds that were to be held in trust and/or a remedy for breach of trust, breach of fiduciary duty and/or oppression. In addition, or in the alternative, the Proposed Class is entitled to a constructive trust over the property of the Stateview Defendants as a remedy for breach of trust, breach of fiduciary duty and/or oppression.

100. The Proposed Class is entitled to a charge and/or equitable lien over all of the property of the individual and unknown Defendants as security for the Deposit Funds that were to be held in trust and/or a remedy as a remedy for knowing assistance, knowing receipt, unjust enrichment and/or oppression. In addition, or in the alternative, the Proposed Class is entitled to a constructive trust over the property of the individual and unknown Defendants as a remedy for knowing assistance, knowing receipt, unjust enrichment and/or oppression.

-34-

101. The charge and/or equitable lien over the property of the individual Defendants applies to the real property located at 48 Puccini Drive, Richmond Hill, Ontario, Canada L4E 2Y6 and 48a Puccini Drive, Richmond Hill, Ontario, Canada L4E 2Y6, with the following legal description: Part L5 25 PL M807, Part 2, 65R-37960. By operation of the claim for a charge and/or equitable lien, the Proposed Class has an interest in this real property, entitling it to a CPL until the claim is resolved.

102. Further, the Proposed Class is entitled to a tracing remedy in respect of the Deposit Funds, including into any derivative products obtained from them.

(Date of issue)

SOTOS LLP

180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

David Sterns (LSO # 36274J)

dsterns@sotos.ca

Denna Pourmonazah Jalili (LSO # 84976N)

djalili@sotos.ca

Tel: 416-977-0007

Fax: 416-977-0717

Lawyers for the Plaintiff

DHARMI MEHTA
Plaintiff

-and-

STATEVIEW HOMES (BEA TOWNS) INC. et al.
Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

SOTOS LLP

180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

David Sterns (LSO # 36274J)
dsterns@sotos.ca

Denna Pourmonazah Jalili (LSO # 84976N)
djalili@sotos.ca

Tel: 416-977-0007

Lawyers for the Plaintiff

This is Exhibit “C” referred to in the Affidavit of David Sterns sworn by David Sterns at the City of Toronto, in the Province of Ontario, before me on May 7, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

DENNA POURMONAZAH JALILI

From: [Denna Pourmonazah Jalili](#)
To: [ngoldstein@ksvadvisory.com](#); [Bobby Kofman](#); [mtallat@ksvadvisory.com](#); [jwong@ksvadvisory.com](#)
Cc: [rjacobs@cassels.com](#); [jbellissimo@cassels.com](#); [ahoy@cassels.com](#); [David Sterns](#)
Bcc: [29217_Dharmi Mehta_RE_Dharmi Mehta v StateView Homes_Class Action_Correspondence](#)
Subject: Stateview Group - Class Action
Date: September 29, 2023 11:55:21 AM
Attachments: [Statement of Claim - Mehta v Stateview Group et al - 28Sept2023.pdf](#)

Good afternoon,

Please be advised that Sotos LLP has been retained to pursue a class action on behalf of purchasers of residential units sold by various Stateview corporations. Please see attached a copy of the Statement of Claim issued on September 28, 2023.

We understand that there is currently a stay of proceedings in place in respect of the Stateview Defendants named in our Statement of Claim. Please advise as to whether the Receiver is amenable to consent to lifting the stay of proceedings by no later than 5:00pm on Wednesday October 4, 2023.

Kind regards,

Denna

This is Exhibit “D” referred to in the Affidavit of David Sterns sworn by David Sterns at the City of Toronto, in the Province of Ontario, before me on May 7, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

DENNA POURMONAZAH JALILI

From: [David Sterns](#)
To: [Jeff.Larry@paliarerland.com](#); [Denna Pourmonazah Jalili](#)
Cc: [Daniel.Rosenbluth@paliarerland.com](#); [bkofman@ksvadvisory.com](#); [Jwong@ksvadvisory.com](#); [amerskey@cassels.com](#)
Subject: Re: Highview Distribution
Date: November 1, 2023 9:59:25 AM
Attachments: [sotosclassactionslogofoforemailsignature_b73b3d85-952c-45b1-b1e2-452169cf4bc2.png](#)

Without prejudice

Jeff, we cannot agree to your proposal as currently worded. Firstly, as you know, Stateview had no records of our client who had paid \$150,000 as a deposit. You tell us now that there are a total of four purchasers based on your investigations after learning of our client's deposit, but we do not know if that number is accurate or not.

Secondly, if the receiver were to pay the money out in full to the secured creditors, it would be under express reservation of our rights to claim that amount from the receiver if our trust claim is successful.

Another possible way to resolve this is for the receiver to obtain an expert report on the approximate value of the common elements as compared to the freehold units and to hold back that proportionate amount from any distribution.

Lastly, can you please advise us if there is any side agreement with Tarion regarding the payment to the secured creditors in the face of their trust claim? If so, we would like to see a copy of that.



David Sterns*

Partner

Office: 416.977.5229

Cell: 647.242.6911

180 Dundas Street West, Suite 1200

Toronto, Ontario M5G 1Z8

www.sotosclassactions.com

**Practising through a professional corporation*

This email is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of or taking of any action in reliance upon this email by anyone other than the intended recipient is prohibited. If you received this in error, please contact dsterns@sotos.ca and delete the material from any electronic device. Please note: if your email contains important instructions, please ensure that we acknowledge receipt of those instructions.

From: Jeff.Larry@paliarerland.com <Jeff.Larry@paliarerland.com>

Sent: Tuesday, October 31, 2023 10:14 PM

To: Denna Pourmonazah Jalili <djalili@sotos.ca>; David Sterns <dsterns@sotos.ca>

Cc: Daniel.Rosenbluth@paliarerland.com <Daniel.Rosenbluth@paliarerland.com>;
bkofman@ksvadvisory.com <bkofman@ksvadvisory.com>; Jwong@ksvadvisory.com
<Jwong@ksvadvisory.com>; amerskey@cassels.com <amerskey@cassels.com>

Subject: Highview Distribution

Without Prejudice

David

Thank you for the call today.

I am writing to address the distribution issue we discussed on the call relating to Highview Building Corp. We will write to you separately about a proposal to deal with the rest of the receivership companies.

As advised, after conducting further inquiry about the Highview deposits, the Receiver's current information is that there are a total of 4 purchasers who did not have their deposits returned totaling \$470,000. The Receiver understands that \$170,000 of this \$470,000 may not be insured by Tarion.

The Highview transaction closed today and the Receiver intends to distribute funds to the first secured mortgagee without holding back any amounts on account of the deposits.

I confirmed to you that Tarion is not taking any position with respect to the Receiver's intention to make a distribution without any holdback for the deposits.

Please confirm that on behalf of the class action claimants, you are also content to take no position with respect to this distribution on the understanding that your position will be without prejudice to any position you may wish to take in respect to any other distributions in the other Stateview receiverships.

I look forward to hearing from you promptly.

Jeffrey Larry, LL.B, MBA

Paliare Roland Rosenberg Rothstein LLP

155 Wellington Street West, 35th Floor

Toronto, ON M5V 3H1

t: 416.646.4330

f: 416.646.4301

c: 416.553.2789

e: jeff.larry@paliareroland.com

The information contained in this e-mail message may be privileged, confidential and protected from disclosure. If you are not the intended recipient, any use, disclosure, dissemination, distribution or copying of any portion of this message or any attachment is strictly prohibited.

This is Exhibit “E” referred to in the Affidavit of David Sterns sworn by David Sterns at the City of Toronto, in the Province of Ontario, before me on May 7, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

DENNA POURMONAZAH JALILI



October 19, 2023

VIA EMAIL to amerskey@cassels.com

Alan Merskey
Cassels Brock & Blackwell LLP
Bay Adelaide Centre – North Tower
40 Temperance St.
Suite 3200
Toronto, ON M5H 0B4

Dear Mr. Merskey:

Re: Mehta v Stateview Group et al.
Court File No.: CV-23-00706866-00CP

As you know, we are counsel for a proposed class action commenced on behalf of purchasers of pre-construction residential units from the Stateview Group (the “**Class Action**”). We are in receipt of your e-mail dated October 2nd, 2023, advising that your client will not consent to lifting the stay of proceedings (the “**Stay**”) to allow the Class Action to proceed. We disagree with your client’s position and recommend that it reconsider its blanket opposition to lifting the Stay.

We believe there are several strong arguments in favour of lifting the Stay to allow the Class Action to move forward, and we will make a motion for same. The Class Action not only seeks relief from the Stateview Group, but against the directors and officers of same, as well as each of their spouses. The allegations against the individual defendants necessitate the involvement of the Stateview Group to be fairly adjudicated by the Court. Further, we disagree with your assertion that our claims are fully addressed by the arguments made in the Tarion motion, scheduled for oral argument on November 2, 2023.

We will appear at the hearing for the Tarion motion to request a hearing date for our motion to lift the Stay. In advance of the hearing, it would be in everyone’s interest to discuss terms upon which both parties would consent to lifting the Stay. We are happy to schedule a time to discuss this in further detail at any point before the Tarion motion.

On a related note, we request that you disclose and produce for inspection any insurance policies which an insurer may be liable to (a) satisfy all or part of the claims of the creditors of the insolvent companies (b) indemnify or reimburse the insolvent companies for money paid in satisfaction of the claims of any class of creditors.

Our client, Ms. Mehta, is an unsecured creditor in the receivership proceedings. Insurance policies held by the insolvent companies provide a potential source of recovery for her claims as an unsecured creditor or as a future judgment creditor. As a representative plaintiff in a putative class

180 Dundas Street West, Suite 1200
Toronto, Ontario M5G 1Z8
www.sotosclassactions.com

David Sterns

Phone: 416.977.5229

Email: dsterns@sotos.ca

Assistant: Georgia Scott-McLaren

Phone: 416.977.5333 ext. 310

Email: gscott-mclaren@sotos.ca

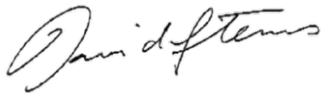
File No: 29217

action, she is also entitled to production of the insurance policies before discovery: see *Sharma v. Timminco Ltd.*, [2010] O.J. No. 469 (S.C.J.).

Please advise within 10 days whether your client will disclose and produce the insurance policies requested above.

I would be pleased to discuss any issue raised in this letter at your convenience.

Yours truly,
SOTOS LLP

A handwritten signature in black ink, appearing to read 'David Sterns'.

David Sterns
DS/geMc

- c. Jeffrey Larry, Paliare Roland Rosenberg Rothstein LLP
Denna Jalili, Sotos LLP

This is Exhibit “F” referred to in the Affidavit of David Sterns sworn by David Sterns at the City of Toronto, in the Province of Ontario, before me on May 7, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

DENNA POURMONAZAH JALILI

From: [David Sterns](#)
To: Jeff.Larry@paliarerland.com; [Denna Pourmonazah Jalili](#)
Cc: Daniel.Rosenbluth@paliarerland.com; bkofman@ksvadvisory.com; Jwong@ksvadvisory.com; amerskey@cassels.com
Subject: Re: Highview Distribution
Date: November 1, 2023 9:59:25 AM
Attachments: [sotosclassactionslogofoforemailsignature_b73b3d85-952c-45b1-b1e2-452169cf4bc2.png](#)

Without prejudice

Jeff, we cannot agree to your proposal as currently worded. Firstly, as you know, Stateview had no records of our client who had paid \$150,000 as a deposit. You tell us now that there are a total of four purchasers based on your investigations after learning of our client's deposit, but we do not know if that number is accurate or not.

Secondly, if the receiver were to pay the money out in full to the secured creditors, it would be under express reservation of our rights to claim that amount from the receiver if our trust claim is successful.

Another possible way to resolve this is for the receiver to obtain an expert report on the approximate value of the common elements as compared to the freehold units and to hold back that proportionate amount from any distribution.

Lastly, can you please advise us if there is any side agreement with Tarion regarding the payment to the secured creditors in the face of their trust claim? If so, we would like to see a copy of that.



David Sterns*

Partner

Office: 416.977.5229

Cell: 647.242.6911

180 Dundas Street West, Suite 1200

Toronto, Ontario M5G 1Z8

www.sotosclassactions.com

**Practising through a professional corporation*

This email is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of or taking of any action in reliance upon this email by anyone other than the intended recipient is prohibited. If you received this in error, please contact dsterns@sotos.ca and delete the material from any electronic device. Please note: if your email contains important instructions, please ensure that we acknowledge receipt of those instructions.

From: Jeff.Larry@paliarerland.com <Jeff.Larry@paliarerland.com>

Sent: Tuesday, October 31, 2023 10:14 PM

To: Denna Pourmonazah Jalili <djalili@sotos.ca>; David Sterns <dsterns@sotos.ca>

Cc: Daniel.Rosenbluth@paliarerland.com <Daniel.Rosenbluth@paliarerland.com>;
bkofman@ksvadvisory.com <bkofman@ksvadvisory.com>; Jwong@ksvadvisory.com
<Jwong@ksvadvisory.com>; amerskey@cassels.com <amerskey@cassels.com>

Subject: Highview Distribution

Without Prejudice

David

Thank you for the call today.

I am writing to address the distribution issue we discussed on the call relating to Highview Building Corp. We will write to you separately about a proposal to deal with the rest of the receivership companies.

As advised, after conducting further inquiry about the Highview deposits, the Receiver's current information is that there are a total of 4 purchasers who did not have their deposits returned totaling \$470,000. The Receiver understands that \$170,000 of this \$470,000 may not be insured by Tarion.

The Highview transaction closed today and the Receiver intends to distribute funds to the first secured mortgagee without holding back any amounts on account of the deposits.

I confirmed to you that Tarion is not taking any position with respect to the Receiver's intention to make a distribution without any holdback for the deposits.

Please confirm that on behalf of the class action claimants, you are also content to take no position with respect to this distribution on the understanding that your position will be without prejudice to any position you may wish to take in respect to any other distributions in the other Stateview receiverships.

I look forward to hearing from you promptly.

Jeffrey Larry, LL.B, MBA

Paliare Roland Rosenberg Rothstein LLP

155 Wellington Street West, 35th Floor

Toronto, ON M5V 3H1

t: 416.646.4330

f: 416.646.4301

c: 416.553.2789

e: jeff.larry@paliareroland.com

The information contained in this e-mail message may be privileged, confidential and protected from disclosure. If you are not the intended recipient, any use, disclosure, dissemination, distribution or copying of any portion of this message or any attachment is strictly prohibited.

This is Exhibit “G” referred to in the Affidavit of David Sterns sworn by David Sterns at the City of Toronto, in the Province of Ontario, before me on May 7, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

DENNA POURMONAZAH JALILI

From: Jeff.Larry@paliarerland.com
To: [David Sterns](#); [Denna Pourmonazah Jalili](#)
Cc: Daniel.Rosenbluth@paliarerland.com; bkofman@ksvadvisory.com; jwong@ksvadvisory.com; amerskey@cassels.com; jbello@bellissimo.com; ngoldstein@ksvadvisory.com
Subject: RE: Highview Distribution
Date: November 1, 2023 2:46:04 PM
Attachments: [image001.png](#)

David:

The terms below are not acceptable. I will get back to you with a full response on Highview and the other receiverships shortly.

In the meantime, and as discussed, I confirm that the Receiver is holding, and will continue to hold, \$170,00 of deposits related to Highview pending an agreement between you and the Receiver or further Order of the court. I further confirm that the holding of these funds is without prejudice to any position that you, the Receiver or any stakeholder may wish to take about the release of these funds in the Highview receivership or any of the other Stateview receivership proceedings.

Best,

From: David Sterns <dsterns@sotos.ca>
Sent: Wednesday, November 1, 2023 9:59 AM
To: Jeff Larry <Jeff.Larry@paliarerland.com>; Denna Pourmonazah Jalili <djalili@sotos.ca>
Cc: Dan Rosenbluth <Daniel.Rosenbluth@paliarerland.com>; bkofman@ksvadvisory.com; jwong@ksvadvisory.com; amerskey@cassels.com
Subject: Re: Highview Distribution

Without prejudice

Jeff, we cannot agree to your proposal as currently worded. Firstly, as you know, Stateview had no records of our client who had paid \$150,000 as a deposit. You tell us now that there are a total of four purchasers based on your investigations after learning of our client's deposit, but we do not know if that number is accurate or not.

Secondly, if the receiver were to pay the money out in full to the secured creditors, it would be under express reservation of our rights to claim that amount from the receiver if our trust claim is successful.

Another possible way to resolve this is for the receiver to obtain an expert report on the approximate value of the common elements as compared to the freehold units and to hold back that proportionate amount from any distribution.

Lastly, can you please advise us if there is any side agreement with Tarion regarding the payment to the secured creditors in the face of their trust claim? If so, we would like to see a copy of that.



David Sterns*

Partner

Office: 416.977.5229

Cell: 647.242.6911

180 Dundas Street West, Suite 1200

Toronto, Ontario M5G 1Z8

www.sotosclassactions.com

**Practising through a professional corporation*

This email is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of or taking of any action in reliance upon this email by anyone other than the intended recipient is prohibited. If you received this in error, please contact dsterns@sotos.ca and delete the material from any electronic device. Please note: if your email contains important instructions, please ensure that we acknowledge receipt of those instructions.

From: Jeff.Larry@paliarerland.com <Jeff.Larry@paliarerland.com>

Sent: Tuesday, October 31, 2023 10:14 PM

To: Denna Pourmonazah Jalili <djalili@sotos.ca>; David Sterns <dsterns@sotos.ca>

Cc: Daniel.Rosenbluth@paliarerland.com <Daniel.Rosenbluth@paliarerland.com>; bkofman@ksvadvisory.com <bkofman@ksvadvisory.com>; Jwong@ksvadvisory.com <Jwong@ksvadvisory.com>; amerskey@cassels.com <amerskey@cassels.com>

Subject: Highview Distribution

Without Prejudice

David

Thank you for the call today.

I am writing to address the distribution issue we discussed on the call relating to Highview Building Corp. We will write to you separately about a proposal to deal with the rest of the receivership companies.

As advised, after conducting further inquiry about the Highview deposits, the Receiver's current information is that there are a total of 4 purchasers who did not have their deposits returned totaling \$470,000. The Receiver understands that \$170,000 of this \$470,000 may not be insured by Tarion.

The Highview transaction closed today and the Receiver intends to distribute funds to the first secured mortgagee without holding back any amounts on account of the deposits.

I confirmed to you that Tarion is not taking any position with respect to the Receiver's intention to make a distribution without any holdback for the deposits.

Please confirm that on behalf of the class action claimants, you are also content to take no position with respect to this distribution on the understanding that your position will be without prejudice to any position you may wish to take in respect to any other distributions in the other Stateview receiverships.

I look forward to hearing from you promptly.

Jeffrey Larry, LL.B, MBA

Paliare Roland Rosenberg Rothstein LLP

155 Wellington Street West, 35th Floor

Toronto, ON M5V 3H1

t: 416.646.4330

f: 416.646.4301

c: 416.553.2789

e: jeff.larry@paliareroland.com

The information contained in this e-mail message may be privileged, confidential and protected from disclosure. If you are not the intended recipient, any use, disclosure, dissemination, distribution or copying of any portion of this message or any attachment is strictly prohibited.

This is Exhibit “H” referred to in the Affidavit of David Sterns sworn by David Sterns at the City of Toronto, in the Province of Ontario, before me on May 7, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

DENNA POURMONAZAH JALILI

From: [Denna Pourmonazah Jalili](#)
To: [Merskey, Alan](#); [Jeffrey Larry - Paliare Roland Rosenberg Rothstein LLP \(jeff.larry@paliareroland.com\)](#)
Cc: [David Sterns](#); [Pankhuri Malik](#); [Georgia Scott-McLaren](#)
Bcc: [29217 Dharmi Mehta RE Dharmi Mehta v StateView Homes Class Action Correspondence](#)
Subject: Stateview Group - Call to Discuss Next Steps
Date: December 20, 2023 2:06:31 PM

Hi Alan and Jeff,

I hope you are both doing well.

It has been a while since we have spoken. We would like to arrange for a call to discuss next steps in moving our case forward in the context of the receivership proceedings. Please provide dates and times that work best for you during the first week of January, and we will circulate a Zoom invite.

As of now, I expect the agenda for our call to include: (1) what, if any, information the Receiver has in regards to how the Deposits were spent; (2) how the proceeds from the sales of the various projects have been disbursed, and in particular, whether there has been any amounts held back to satisfy our potential claims; (3) the Stay; and (4) whether you have been able to identify the existence of any applicable insurance policies.

Happy holidays.

Kind regards,

Denna

This is Exhibit “I” referred to in the Affidavit of David Sterns sworn by David Sterns at the City of Toronto, in the Province of Ontario, before me on May 7, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

DENNA POURMONAZAH JALILI

From: [Denna Pourmonazah Jalili](#)
To: [Merskey, Alan](#); [Jeffrey Larry - Paliare Roland Rosenberg Rothstein LLP \(jeff.larry@paliareroland.com\)](#)
Cc: [David Sterns](#)
Bcc: [29217_Dharmi Mehta_RE_Dharmi Mehta v StateView Homes_Class Action_Correspondence](#)
Subject: Termination Notices
Date: January 19, 2024 1:12:11 PM
Attachments: [stateview---notice-to-home-buyers-of-high-crown-nao-and-minu-dated-november-9-2023.pdf](#)
[image001.png](#)

Hi Alan and Jeff,

Just to follow up on our conversation regarding the need for termination notices before home buyers can file a claim for reimbursement of Tarion, please see below an excerpt from the Notice to Home Buyers of High Crown, Nao and Minu dated November 9, 2023 (attached), stating:

It is expected that on or shortly prior to the Closing Date, the Receiver will issue a disclaimer and termination notice (the "**Termination Notice**") to each Home Buyer in respect of their Pre-Sale Purchase Agreement.

Please confirm whether the Receiver has issued such termination notices for the Projects that have been sold and corresponding agreements of purchase and sale disclaimed, and if not, when it expects to do so. Again, our understanding is that home buyers will need to provide this termination notice to Tarion before they can file a claim for reimbursement.

Kind regards,

Denna

This is Exhibit “J” referred to in the Affidavit of David Sterns sworn by David Sterns at the City of Toronto, in the Province of Ontario, before me on May 7, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

DENNA POURMONAZAH JALILI

From: [Merskey, Alan](#)
To: [David Sterns](#); [Denna Pourmonazah Jalili](#)
Cc: [Bobby Kofman](#); [Noah Goldstein](#); [Jeffrey Larry - Paliare Roland Rosenberg Rothstein LLP \(jeff.larry@paliareroland.com\)](#); [Bellissimo, Joseph](#)
Subject: Stateview et al ats Mehata [IWOV-LEGAL.FID4316334]
Date: January 23, 2024 9:37:14 AM
Attachments: [image001.png](#)

David, Denna,

I am writing further to our call of January 19, 2024.

While a number of positions were expressed, it would not be useful to belabour them further here. I confirm as follows:

1. It is the Receiver's view that in light of Justice Steele's decision of December 22, there is no scenario in which your clients can achieve priority over the secured creditors, and therefore have any entitlement to the current and future proceeds of the estate. As a result, and as advised on the call, the Receiver intends to proceed with the distribution of proceeds of realization as they arise, including those now existing, and without regard to your clients' claims;
2. You have asked the Receiver to provide copies of any insurance that might affect your intended class proceeding. As noted, the Receiver does not have possession of that information. The Receiver is prepared to seek that information from the Stateview principals, as long as we have your consent to disclose the source of the inquiry; and
3. Denna has under separate cover inquired as to the status of certain notices that might assist homeowners in submitting their warranty claims to Tarion. We are making inquiries on that question and will respond in due course.

Best regards

Cassels | **ALAN MERSKEY** (he/him/his)
Partner
t: +1 416 860 2948
e: amerskey@cassels.com

Cassels Brock & Blackwell LLP | cassels.com
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, Ontario M5H 0B4 Canada

This message, including any attachments, is privileged and may contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. Communication by email is not a secure medium and, as part of the transmission process, this message may be copied to servers operated by third parties while in transit. Unless you advise us to the contrary, by accepting communications that may contain your personal information from us via email, you are deemed to provide your consent to our transmission of the contents of this message in this manner. If you are not the intended recipient or have received this message in error, please notify us immediately by reply email

and permanently delete the original transmission from us, including any attachments, without making a copy.

This is Exhibit “K” referred to in the Affidavit of David Sterns sworn by David Sterns at the City of Toronto, in the Province of Ontario, before me on May 7, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

DENNA POURMONAZAH JALILI

From: [Denna Pourmonazah Jalili](#)
To: [Merskey, Alan](#)
Cc: [Jeffrey Larry - Paliare Roland Rosenberg Rothstein LLP \(jeff.larry@paliareroland.com\)](#); [David Sterns](#); [Pankhuri Malik](#); [Georgia Scott-McLaren](#)
Bcc: [29217 Dharmi Mehta RE Dharmi Mehta v StateView Homes Class Action Correspondence](#)
Subject: Letter to A. Merskey, dated January 29, 2024
Date: January 29, 2024 11:09:17 AM
Attachments: [Letter to A. Merskey dated January 29 2024\(5140821.1\).pdf](#)

Hi Alan,

Please see attached a letter of today's date for your attention.

Kind regards,

Denna

This is Exhibit “L” referred to in the Affidavit of David Sterns sworn by David Sterns at the City of Toronto, in the Province of Ontario, before me on May 7, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

DENNA POURMONAZAH JALILI

David Sterns

Phone: 416.977.5229

Email: dsterns@sotos.ca

File No: 29217

January 29, 2024

WITH PREJUDICE

VIA EMAIL to amerskey@cassels.com

Alan Merskey
Cassels, Brock & Blackwell LLP
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St., Toronto ON M5H 0B4

Dear Mr. Merskey:

Re: Stateview et al. ats Mehta (Court File No. CV-23-00706866-00CP)

We are writing in response to your e-mail dated January 23, 2024, where you confirmed a number of steps the Receiver expects to take in respect of the ongoing Receivership Proceedings and above-captioned matter (the “**Class Action**”). Our responses to each issue set out in your e-mail is below.

1) Distribution of funds without holdbacks / regard to the Class Action

You state that the Receiver interprets Justice Steele’s decision in respect of the Tarion motion as foreclosing the possibility of our client being successful in making any trust claims under the *Condominium Act* that rank ahead of the priority of the secured creditors. Accordingly, the Receiver will distribute the sale proceeds without holding back any amounts.

As you are aware, the issue of a statutory trust under the *Condominium Act* was not put before Justice Steele in the Tarion motion. Her Honour’s decision was based on an express trust created by contract and subordinated by contract. It did not deal with a statutory trust and we are not aware of any case law that would extend the ruling to a statutory trust. The Receiver’s view is therefore based on conjecture. The Receiver could have asked for a determination from Justice Steele on this point but chose not to do so.

Further, in the Receiver’s materials for a motion seeking various approvals before Justice Osborne on November 14, 2023, the Receiver disclosed the existence of our client’s *Condominium Act* trust claims to the Court and stated that there may need to be a separate motion to resolve same.

Our view is that the Receiver’s reliance on Justice Steele’s decision is incorrect. We will ask that the issue be determined in the Class Action. We therefore ask that the Receiver hold back from distribution an amount sufficient to discharge the *Condominium Act* trust claim in full. If the Receiver ignores the statutory trust that we allege, then it does so with knowledge that it may be liable for any amounts our client may establish as having priority over the claims of the secured creditors.

Moreover, the Receiver has a duty to value the claims made against it, including our client's trust-based claims under the *Condominium Act*. Such value will be equal to the percentage value of the common elements for each of the Projects as compared to the total value of the deposits collected. The Receiver is uniquely positioned to conduct this valuation given its informational advantage vis-à-vis our client, its obligations to all creditors including the homebuyers, and its refusal thus far to produce any records that may assist our client in carrying out such a valuation.

Please confirm whether the Receiver will value our trust-based claim.

2) Insurance Policies

Counsel for Carlo Taurasi and Dino Taurasi have separately confirmed that there are no insurance policies that would satisfy judgement for the Class Action or reimburse the directors and officers of the Stateview companies for any amounts they pay in satisfaction of same. Unless the Receiver has any reason to suspect the contrary, we do not require the Receiver's assistance on this issue at this time.

3) Financial Records in the Possession of the Receiver

Please confirm the following:

- a) The Stateview entities for which the Receiver does and does not have financial records in its possession;
- b) The format of any financial records the Receiver has in its possession;
- c) Whether the Receiver can confirm it will continue to preserve these records once the Receivership Proceedings conclude; and
- d) Who the Receiver believes has possession of the financial records of the non-receivership Stateview entities.

Kindly provide us with your response by no later than **February 7, 2024**.

Yours truly,
SOTOS LLP

A handwritten signature in black ink, appearing to read 'David Sterns'.

David Sterns
DS/

c. Jeffrey Larry, Paliare Roland Rosenberg Rothstein LLP, jeff.larry@paliareroland.com

This is Exhibit “M” referred to in the Affidavit of David Sterns sworn by David Sterns at the City of Toronto, in the Province of Ontario, before me on May 7, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

DENNA POURMONAZAH JALILI

From: [Hoy, Alec](#)
To: [zweigs@bennettjones.com](#); [nelmsa@bennettjones.com](#); [Noah Goldstein](#); [bkofman@ksvadvisory.com](#); [mtallat@ksvadvisory.com](#); [jwong@ksvadvisory.com](#); [Jacobs, Ryan](#); [Bellissimo, Joseph](#); [Merskey, Alan](#); [AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca](#); [leslie.crawford@ontario.ca](#); [insolvency.unit@ontario.ca](#); [pat.confalone@cra-arc.gc.ca](#); [kross@markham.ca](#); [customerservice@markham.ca](#); [ghall@mccarthy.ca](#); [aship@mccarthy.ca](#); [adobkin@mccarthy.ca](#); [stanvir@mccarthy.ca](#); [jennifer.stam@nortonrosefulbright.com](#); [james.renihan@nortonrosefulbright.com](#); [carlo@stateviewhomes.com](#); [dino@stateviewhomes.com](#); [egolden@blaney.com](#); [ckopach@blaney.com](#); [aparley@litigate.com](#); [Fabrizio.Filippazzo@york.ca](#); [iaversa@airdberlis.com](#); [mlici@airdberlis.com](#); [mlerner@litigate.com](#); [aslavens@torys.com](#); [MToshakovski@markham.ca](#); [Bola.Ogunmefun@york.ca](#); [cstorto@markham.ca](#); [jaspal@sanghaconstructionlaw.com](#); [bola.ogunmefun@york.ca](#); [laurac@chaitons.com](#); [george@chaitons.com](#); [dtouesnard@waterousholden.com](#); [mruberto@pallettvalo.com](#); [mgreco@pallettvalo.com](#); [jlong@kmlaw.ca](#); [naveed@faanadvisors.com](#); [naomi@faanadvisors.com](#); [cpresenza@parenteborean.com](#); [gborean@parenteborean.com](#); [davidcapulli@capullilaw.com](#); [barry@greenberglaw.ca](#); [ikatchin@foglers.com](#); [ebisceglia@lawtoronto.com](#); [sturajlich@lawtoronto.com](#); [Sidney@stealthmonitoring.com](#); [jwyly@stealthmonitoring.com](#); [adam@michaelcohenbarrister.ca](#); [michael@rousseauamazzuca.com](#); [francois@ctlaw.com](#); [frank@frankfeldmanlaw.com](#); [dresnick@kmlaw.ca](#); [jharnum@kmlaw.ca](#); [dpresta@bianchipresta.com](#); [rhammond@hammondlesias.com](#); [peter@emecorp.ca](#); [awood@dlaw.ca](#); [jeremy@kadishlaw.com](#); [rmoubarak@sutherlaw.com](#); [jeff.larry@paliaroland.com](#); [daniel.rosenbluth@paliaroland.com](#); [mkaplan@foglers.com](#); [mwasserman@osler.com](#); [drosenblat@osler.com](#); [David Sterns](#); [Denna Pourmonazah Jalili](#); [vdare@foglers.com](#); [jmaclellan@blg.com](#); [ryehia@blg.com](#); [kelly.smithwayland@justice.gc.ca](#); [sthom@torkinmanes.com](#); [dmann@torkinmanes.com](#); [sastolfo@weirfoulds.com](#); [jlong@kmlaw.ca](#); [chaworth@rhlawoffices.com](#); [rsantarsieri@isncanada.ca](#); [Ratna.Muralitharan@sky-acoustics.com](#); [info@aspirals.ca](#); [info@j2products.com](#); [rochus@j2products.com](#); [info@cityviewhomes.ca](#); [evan@cityviewhomes.ca](#); [info@costamarble.com](#); [Dominic Boucher](#); [Miguel Angers](#); [adam@michaelcohenbarrister.ca](#); [mruberto@pallettvalo.com](#); [jaspal@sanghaconstructionlaw.com](#); [EBisceglia@lawtoronto.com](#); [awood@dlaw.ca](#); [John Sestito](#); [peter@emecorp.ca](#); [Daniel Resnick](#)
Subject: RE: In the Matter of the Receivership of Stateview Homes (Minu Towns) Inc., et al [Court File No. CV-23-00698576-00CL] - Motion Returnable on November 16, 2023 at 12:00 pm ET
Date: January 29, 2024 5:58:43 PM
Attachments: [image001.png](#)
[Receiver's Certificate \(NAO Towns\) - Receiver - KSV Restructuring Inc - 26-JAN-24.pdf](#)
[Receiver's Certificate \(High Crown\) - Receiver - KSV Restructuring Inc - 26-JAN-24.pdf](#)
[Receiver's Certificate \(Minu Towns\) - Receiver - KSV Restructuring Inc - 26-JAN-24.pdf](#)

Service List:

We are counsel to KSV Restructuring Inc., in its capacity as Court-appointed receiver and manager of Stateview Homes (Minu Towns) Inc., Stateview Homes (Nao Towns) Inc., Stateview Homes (High Crown Estates) Inc. et al (the “**Receiver**”).

Further to the Receiver’s motion heard on November 16, 2023 at 12:00 p.m. (ET) before the Honourable Justice Peter Osborne, please be advised that the transactions in respect of each of Stateview Homes (Minu Towns) Inc., Stateview Homes (High Crown Estates) Inc. and Stateview Homes (Nao Towns) Inc. closed on Friday January 26, 2024.

Please find attached: (i) Receiver’s Certificate (Minu Towns); (ii) Receiver’s Certificate (Nao Towns); and (iii) Receiver’s Certificate (High Crown Estates), which are hereby served upon you pursuant to the E-Service Protocol of the Commercial List and the Rules of Civil Procedure.

Regards,

Cassels | **ALEC HOY**
Associate
t: +1 416 860 2976
e: ahoy@cassels.com

Cassels Brock & Blackwell LLP | cassels.com
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.

From: Hoy, Alec

Sent: Friday, November 17, 2023 12:02 PM

To: zweigs@bennettjones.com; nelmsa@bennettjones.com; Noah Goldstein <ngoldstein@ksvadvisory.com>; bkofman@ksvadvisory.com; mtallat@ksvadvisory.com; jwong@ksvadvisory.com; Jacobs, Ryan <rjacobs@cassels.com>; Bellissimo, Joseph <jbellissimo@cassels.com>; Merskey, Alan <amerskey@cassels.com>; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; leslie.crawford@ontario.ca; insolvency.unit@ontario.ca; pat.confalone@cra-arc.gc.ca; kross@markham.ca; customerservice@markham.ca; ghall@mccarthy.ca; aship@mccarthy.ca; adobkin@mccarthy.ca; stanvir@mccarthy.ca; jennifer.stam@nortonrosefulbright.com; james.renihan@nortonrosefulbright.com; carlo@stateviewhomes.com; dino@stateviewhomes.com; egolden@blaney.com; ckopach@blaney.com; aparley@litigate.com; Fabrizio.Filippazzo@york.ca; iaversa@airdberlis.com; mlici@airdberlis.com; mlerner@litigate.com; aslavens@torys.com; MToshakovski@markham.ca; Bola.Ogunmefun@york.ca; cstorto@markham.ca; jaspal@sanghaconstructionlaw.com; bola.ogunmefun@york.ca; laurac@chaitons.com; george@chaitons.com; dtouesnard@waterousholden.com; mruberto@pallettvalo.com; mgreco@pallettvalo.com; jlong@kmlaw.ca; naveed@faanadvisors.com; naomi@faanadvisors.com; cpresenza@parenteborean.com; gborean@parenteborean.com; davidcapulli@capullilaw.com; barry@greenbergglaw.ca; ikatchin@foglers.com; ebisceglia@lawtoronto.com; sturajlich@lawtoronto.com; Sidney@stealthmonitoring.com; jwyly@stealthmonitoring.com; adam@michaelcohenbarrister.ca; michael@rousseaumazzuca.com; francois@ctlaw.com; frank@frankfeldmanlaw.com; dresnick@kmlaw.ca; jharnum@kmlaw.ca; dpresta@bianchipresta.com; rhammond@hammondflesias.com; peter@emecorp.ca; awood@dllaw.ca; jeremy@kadishlaw.com; rmoubarak@sutherlaw.com; jeff.larry@paliareroland.com; daniel.rosenbluth@paliareroland.com; mkaplan@foglers.com; mwasserman@osler.com; drosenblat@osler.com; dsterns@sotos.ca; djalili@sotos.ca; vdare@foglers.com; jmaclellan@blg.com; ryehia@blg.com; kelly.smithwayland@justice.gc.ca; sthom@torkinmanes.com; dmann@torkinmanes.com; sastolfo@weirfoulds.com; jlong@kmlaw.ca; chaworth@rhlawoffices.com; rsantarsieri@isncanada.ca; Ratna.Muralitharan@sky-acoustics.com; info@aspirals.ca; info@j2products.com; rochus@j2products.com; info@cityviewhomes.ca; evan@cityviewhomes.ca; info@costamarble.com; Dominic Boucher <dboucher@isncanada.ca>; Miguel Angers <mangers@isncanada.ca>; adam@michaelcohenbarrister.ca; mruberto@pallettvalo.com; jaspal@sanghaconstructionlaw.com; EBisceglia@lawtoronto.com; awood@dllaw.ca; John Sestito <jsestito@bianchipresta.com>; peter@emecorp.ca; Daniel Resnick <dresnick@kmlaw.ca>

Subject: RE: In the Matter of the Receivership of Stateview Homes (Minu Towns) Inc., et al [Court File No. CV-23-00698576-00CL] - Motion Returnable on November 16, 2023 at 12:00 pm ET

Service List:

We are counsel to KSV Restructuring Inc., in its capacity as Court-appointed receiver and manager of Stateview Homes (Minu Towns) Inc., Stateview Homes (Nao Towns) Inc., Stateview Homes (High Crown Estates) Inc., TLSFD Taurasi Holdings Corp. et al (the “**Receiver**”).

Further to the Receiver's motion heard on November 16, 2023 at 12:00 p.m. (ET) before the Honourable Justice Peter Osborne, attached are the following issued orders and endorsement:

1. Approval and Vesting Order (Minu Towns);
2. Approval and Vesting Order (Nao Towns);
3. Approval and Vesting Order (High Crown Estates);
4. Approval and Vesting Order (Taurasi Holdings);
5. Ancillary Matters and Distribution Order; and
6. Endorsement of Osborne, J. dated November 16, 2023.

Thank you,

Cassels

ALEC HOY

Associate

t: +1 416 860 2976

e: ahoy@cassels.com

Cassels Brock & Blackwell LLP | cassels.com

Suite 3200, Bay Adelaide Centre – North Tower

40 Temperance St.

Toronto, Ontario M5H 0B4 Canada

From: Hoy, Alec

Sent: Thursday, November 16, 2023 10:57 AM

To: zweigs@bennettjones.com; nelmsa@bennettjones.com; Noah Goldstein <ngoldstein@ksvadvisory.com>; bkofman@ksvadvisory.com; mtallat@ksvadvisory.com; jwong@ksvadvisory.com; Jacobs, Ryan <rjacobs@cassels.com>; Bellissimo, Joseph <jbellissimo@cassels.com>; Merskey, Alan <amerskey@cassels.com>; Hoy, Alec <ahoy@cassels.com>; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; leslie.crawford@ontario.ca; insolvency.unit@ontario.ca; pat.confalone@cra-arc.gc.ca; kross@markham.ca; customerservice@markham.ca; ghall@mccarthy.ca; aship@mccarthy.ca; adobkin@mccarthy.ca; stanvir@mccarthy.ca; jennifer.stam@nortonrosefulbright.com; james.renihan@nortonrosefulbright.com; carlo@stateviewhomes.com; dino@stateviewhomes.com; egolden@blaney.com; ckopach@blaney.com; aparley@litigate.com; Fabrizio.Filippazzo@york.ca; iaversa@airdberlis.com; mlici@airdberlis.com; mlerner@litigate.com; aslavens@torys.com; MToshakovski@markham.ca; Bola.Ogunmefun@york.ca; cstorto@markham.ca; jaspal@sanghaconstructionlaw.com; bola.ogunmefun@york.ca; laurac@chaitons.com; george@chaitons.com; dtouesnard@waterousholden.com; mruberto@pallettvalo.com; mgreco@pallettvalo.com; jlong@kmlaw.ca; naveed@faanadvisors.com; naomi@faanadvisors.com; cpresenza@parenteborean.com; gborean@parenteborean.com; davidcapulli@capullilaw.com; barry@greenbergglaw.ca; ikatchin@foglers.com; ebisceglia@lawtoronto.com; sturajlich@lawtoronto.com; Sidney@stealthmonitoring.com; jwly@stealthmonitoring.com; adam@michaelcohenbarrister.ca; michael@rousseauumazzuca.com; francois@ctlaw.com; frank@frankfeldmanlaw.com; dresnick@kmlaw.ca; jharnum@kmlaw.ca; dpresta@bianchipresta.com; rhammond@hammondflesias.com; peter@emecorp.ca; awood@dllaw.ca; jeremy@kadishlaw.com; rmoubarak@sutherlaw.com; jeff.larry@paliareroland.com; daniel.rosenbluth@paliareroland.com; mkaplan@foglers.com;

mwasserman@osler.com; drosenblat@osler.com; dsterns@sotos.ca; djalili@sotos.ca;
vdare@foglers.com; imacellan@blg.com; ryehia@blg.com; kelly.smithwayland@justice.gc.ca;
sthom@torkinmanes.com; dmann@torkinmanes.com; sastolfo@weirfoulds.com

Subject: In the Matter of the Receivership of Stateview Homes (Minu Towns) Inc., et al [Court File No. CV-23-00698576-00CL] - Motion Returnable on November 16, 2023 at 12:00 pm ET

Service List:

We are counsel to KSV Restructuring Inc., in its capacity as Court-appointed receiver and manager of Stateview Homes (Minu Towns) Inc., Stateview Homes (Nao Towns) Inc., Stateview Homes (High Crown Estates) Inc., TLSFD Taurasi Holdings Corp. et al (the “**Receiver**”).

In connection with the Receiver’s motion returnable **November 16, 2023 at 12:00 p.m. (ET) by videoconference**, please find attached amended and updated versions of the following orders:

1. Approval and Vesting Order (Minu Towns);
2. Approval and Vesting Order (Nao Towns);
3. Approval and Vesting Order (High Crown Estates);
4. Approval and Vesting Order (Taurasi Holdings); and
5. Ancillary Matters and Distribution Order.

Also attached are blacklines for each order, as against the versions included in the Motion Record of the Receiver dated November 8, 2023, indicating the changes that have been made in the attached.

Thank you,

Cassels | **ALEC HOY**
Associate
t: +1 416 860 2976
e: ahoy@cassels.com

Cassels Brock & Blackwell LLP | cassels.com
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, Ontario M5H 0B4 Canada

This message, including any attachments, is privileged and may contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. Communication by email is not a secure medium and, as part of the transmission process, this message may be copied to servers operated by third parties while in transit. Unless you advise us to the contrary, by accepting communications that may contain your personal information from us via email, you are deemed to provide your consent to our transmission of the contents of this message in this manner. If you are not the intended recipient or have received this message in error, please notify us immediately by reply email and permanently delete the original transmission from us, including any attachments, without making a copy.

This is Exhibit “N” referred to in the Affidavit of David Sterns sworn by David Sterns at the City of Toronto, in the Province of Ontario, before me on May 7, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

DENNA POURMONAZAH JALILI

From: [David Sterns](#)
To: Jeff.Larry@paliareroland.com
Cc: Daniel.Rosenbluth@paliareroland.com; [Denna Pourmonazah Jalili](#); [Merskey, Alan](#)
Subject: Re: Stateview Homes (NAO Towns II) Inc.
Date: January 31, 2024 11:29:58 AM
Attachments: [sotosclassactionsloqoforemailsignature_b73b3d85-952c-45b1-b1e2-452169cf4bc2.png](#)

Jeff, we are going to cross move. Give me a call to discuss a briefing schedule.



David Sterns

Partner

Office: 416.977.5229

Cell: 647.242.6911

180 Dundas Street West, Suite 1200

Toronto, Ontario M5G 1Z8

www.sotosclassactions.com

**Practising through a professional corporation*

This email is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of or taking of any action in reliance upon this email by anyone other than the intended recipient is prohibited. If you received this in error, please contact dsterns@sotos.ca and delete the material from any electronic device. Please note: if your email contains important instructions, please ensure that we acknowledge receipt of those instructions.

From: Jeff.Larry@paliareroland.com <Jeff.Larry@paliareroland.com>

Sent: Tuesday, January 30, 2024 6:23:21 PM

To: David Sterns <dsterns@sotos.ca>

Cc: bkofman@ksvadisvory.com <bkofman@ksvadisvory.com>;

Daniel.Rosenbluth@paliareroland.com <Daniel.Rosenbluth@paliareroland.com>; [Denna Pourmonazah Jalili](mailto:Denna.Pourmonazah.Jalili@sotos.ca) <djalili@sotos.ca>

Subject: Stateview Homes (NAO Towns II) Inc.

David:

I am emailing to advise that the Receiver will be bringing a motion on NAO2 on February 15, 2024 for, among other things, approval of: (i) a sale transaction and vesting order; and (ii) an interim distribution to the secured creditor (without any holdback for the class action claims).

We anticipate delivering materials to the service list (including you) by early next week.

Should you have any questions in the interim, let me know.

Best,

Jeffrey Larry, LL.B, MBA

Paliare Roland Rosenberg Rothstein LLP

155 Wellington Street West, 35th Floor

Toronto, ON M5V 3H1

t: 416.646.4330

f: 416.646.4301
c: 416.553.2789
e: jeff.larry@paliareroiland.com

The information contained in this e-mail message may be privileged, confidential and protected from disclosure. If you are not the intended recipient, any use, disclosure, dissemination, distribution or copying of any portion of this message or any attachment is strictly prohibited.

This is Exhibit “O” referred to in the Affidavit of David Sterns sworn by David Sterns at the City of Toronto, in the Province of Ontario, before me on May 7, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

DENNA POURMONAZAH JALILI

Court File No. CV-23-00698395-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

ATRIUM MORTGAGE INVESTMENT CORPORATION AND DORR
CAPITAL CORPORATION

Applicant

and

STATEVIEW HOMES (NAO TOWNS II) INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C 1985, C. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS
AMENDED**

NOTICE OF CROSS-MOTION

Dharmi Mehta ("**Dharmi**") will make a cross-motion to a Judge presiding over the Commercial List on Thursday, February 15, 2024 at 10:00 a.m., or as soon after that time as the cross-motion can be heard.

PROPOSED METHOD OF HEARING: The cross-motion is to be heard via remote videoconference.

THE MOTION IS FOR:

- (a) A declaration that the deposits paid by homebuyers to the Stateview companies corresponding to the percentage value of the parcel of tied land (the “**Common Interest**”) for each of the projects is subject to a statutory trust in favour of the purchasers (the “**Trust Portion**”) pursuant to sections 81 and 138(4)(a) of the *Condominium Act, 1998*, S.O. 1998, C. 19 (the “**Condominium Act**”);
- (b) An order requiring the receiver and manager, KSV Restructuring Inc. (the “**Receiver**”) to hold back payment of the Trust Portion, currently estimated to be 20% of the total deposits paid by the homebuyers, pending the valuation of the Trust Portion by the Receiver, from the sale proceeds;
- (c) An order directing the Receiver to value the Trust Portion for each of the projects and report to the court on the total amount of the Trust Portion for all projects, pursuant to section 248 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, as amended (the “**BIA**”);
- (d) An order requiring the Receiver to trace the deposit monies and report to the court on the percentage of those monies that were used to directly or indirectly purchase, design, construct or improve the real property sold, or expected to be sold, within these receivership proceedings, pursuant to section 248 of the *BIA*;
- (e) An order directing the Receiver to provide counsel to a related class action, bearing court file no. CV-23-00706866-00CP (the “**Class Action**”), or their experts, with access to the books and records of the Stateview companies;

- (f) Costs of this motion on a substantial indemnity basis; and
- (g) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE CROSS-MOTION ARE

- (a) Dharmi is the proposed representative plaintiff for the Class Action, having paid a \$150,000 deposit towards a pre-construction unit from Highview Building Corp Inc.;
- (b) Jennifer Sitt (“**Jennifer**”) is one of the 76 purchasers of units Stateview Homes (Nao Phase II) Inc. and is a member of the proposed class action commenced by Dharmi;
- (c) Jennifer, like each of the 766 homebuyers currently known to the Receiver, paid a deposit towards pre-construction units sold by the Stateview companies, which were organized as common elements condominiums;
- (d) Jennifer paid a \$116,950 deposit towards her specific unit;
- (e) At least \$77,287,000 in deposits were paid to the Stateview companies generally, with \$7,617, 000 of that amount paid to Stateview Homes (Nao Towns II) Inc.;
- (f) It is currently estimated, pending a formal valuation by the Receiver, that 20% of those deposits were earmarked for the Common Elements of each project, or \$15,457,400 generally and \$1,523,400 for Stateview Homes (Nao Towns II) Inc. specifically;

- (g) Pursuant to sections 81 and 138(4)(a) of the *Condominium Act*, deposits that are paid towards the common element portion of a common element condominium are required to be held in trust by the vendor of the units;
- (h) Each of the agreements of purchase and sale explicitly provides that the *Condominium Act* applies to the transaction;
- (i) On September 28, 2023, a class action was commenced on behalf of homebuyers who paid deposits to the Stateview companies, seeking, *inter alia*, the declaratory and trust-based relief sought in this cross-motion (the “**Condo Act Claims**”);
- (j) The Receiver had notice of the relief sought in the Class Action and previously advised the Court, in its materials on a motion returnable on November 14, 2023 before the Honourable Justice Peter Osborne, that it may need to hold back a certain amount of sale proceeds to satisfy the Condo Act Claims;
- (k) On January 23, 2024, the Receiver advised that it intends to distribute all of the sale proceeds to secured creditors without regard to the Condo Act Claims;
- (l) On January 30, 2024, the Receiver advised of its intention to seek approval from this Honourable Court to distribute the proceeds obtained from the sale of real property owned by Stateview Homes (Nao Towns II) Inc.;
- (m) The Receiver owes a duty to the court and to the creditor class to provide a complete and accurate account of all the claims, including and specifically trust claims, made

against the Stateview companies, pursuant to its obligation under sections 246 and 247 of the BIA;

- (n) The Condo Act Claims are *bona fide* claims for a statutory trust under the *Condominium Act*, and as such, the Receiver has a legal duty to value same;
- (o) Trust monies that were held, or supposed to be held, by the Stateview companies are not property of the estate and therefore cannot be form part of the payout to the secured creditors;
- (p) To ensure that no trust monies are improperly disbursed to secured creditors, the Receiver must trace them;
- (q) Sections 246, 247 and 248 of the *BIA*;
- (r) Sections 1, 81 and 138(4)(a) of the *Condominium Act*; and
- (s) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the cross-motion:

- (a) The Statement of Claim in relation to the Class Action, issued on September 28, 2023;
- (b) The Affidavit of Jennifer Sitt; and

- (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

February 9, 2024

SOTOS LLP

180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

David Sterns (LSO # 36274J)

dsterns@sotos.ca

Denna Pourmonazah Jalili (LSO # 84976N)

djalili@sotos.ca

Tel: 416-977-0007

Fax: 416-977-0717

Lawyers for Dharmi Mehta

TO: THE SERVICE LIST

Court File No. CV-23-00698395-00CL

ATRIUM MORTGAGE INVESTMENT CORP et al and
Applicant

STATEVIEW HOMES (NAO TOWNS II) INC.
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

NOTICE OF CROSS-MOTION

SOTOS LLP

180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

David Sterns (LSO # 36274J)
dsterns@sotos.ca
Denna Pourmonazah Jalili (LSO # 84976N)
djalili@sotos.ca

Tel: 416-977-0007

Lawyers for Dharmi Mehta

This is Exhibit “P” referred to in the Affidavit of David Sterns sworn by David Sterns at the City of Toronto, in the Province of Ontario, before me on May 7, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

DENNA POURMONAZAH JALILI

From: [Denna Pourmonazah Jalili](#)
To: [Jeffrey Larry - Paliare Roland Rosenberg Rothstein LLP \(jeff.larry@paliareroland.com\)](#); [Jennifer Stam \(she/her\); james.renihan@nortonrosefulbright.com](#); [george@chaitons.com](#); [laurac@chaitons.com](#); [mkaplan@foglers.com](#); [ghall@mccarthy.ca](#); [adobkin@mccarthy.ca](#); [aparley@litigate.com](#); [tivanov@blg.com](#); [Jaipargas, Roger; aslavens@torys.com](#); [naveed@faanadvisors.com](#); [naomi@faanadvisors.com](#); [ndimitropoulos@beardwinter.com](#); [muradov@sympatico.ca](#); [Daniel.Rosenbluth@paliareroland.com](#)
Cc: [David Sterns](#)
Bcc: [29217 Dharmi Mehta RE Dharmi Mehta v StateView Homes Class Action Correspondence](#)
Subject: Stateview Homes (Nao Towns II) Inc. - Notice of Cross-Motion, dated February 9, 2024
Date: February 9, 2024 2:34:00 PM
Attachments: [Notice of Cross-Motion, dated February 9, 2024\(5146015.1\).pdf](#)

Good afternoon,

Please see attached our client's Notice of Cross-Motion, which is hereby served upon you in accordance with the *Rules of Civil Procedure*.

We will deliver the balance of our materials early next week.

Kind regards,

Denna

This is Exhibit “Q” referred to in the Affidavit of David Sterns sworn by David Sterns at the City of Toronto, in the Province of Ontario, before me on May 7, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

DENNA POURMONAZAH JALILI

From: [Merskey, Alan](#)
To: [Denna Pourmonazah Jalili](#); Jeff.Larry@paliarerland.com; [David Sterns](#)
Cc: Daniel.Rosenbluth@paliarerland.com; bkofman@ksvadvisory.com; Jwong@ksvadvisory.com; [Bellissimo, Joseph](#); ngoldstein@ksvadvisory.com
Subject: RE: Highview Distribution
Date: February 16, 2024 3:44:53 PM
Attachments: [image004.png](#)
[image001.png](#)

Denna,

The Receiver confirms that it continues to hold the \$170k on Highview and that there have been no sale transactions on Bea or Elm.

The Receiver does not maintain any holdbacks for the class action from the sale of the other residential development projects.

As set out in para 8.3.3 of the Sixth Report, “if applicable, in the event that the Project Transactions and the smaller additional priority issues raised in the Proposed Class Action remains unresolved, the Receiver will reserve appropriate amounts from the net purchase proceeds, on agreement of the affected creditors or on further order of the Court”.

A similar notation was made by Justice Osborne in his endorsement of November 16, 2023, authorizing the future distributions “depending on the result in the Tarion Priority Motion, certain reserves or holdbacks may also be required to address certain additional priority claims asserted in the Proposed Class Action”.

Given that Tarion was entirely unsuccessful on its motion, no additional holdbacks were required or anticipated, as the Receiver notified you in my email of January 23, 2024. In accordance with that communication, the Receiver proceeded with the previously authorized distributions (prior to receipt of your letter of January 29, 2024) and does not hold any funds on account of these claims.

Best regards

Cassels | **ALAN MERSKEY** *(he/him/his)*
Partner
t: +1 416 860 2948
e: amerskey@cassels.com

Cassels Brock & Blackwell LLP | cassels.com
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, Ontario M5H 0B4 Canada

From: Denna Pourmonazah Jalili <djalili@sotos.ca>
Sent: Friday, February 16, 2024 1:58 PM
To: Jeff.Larry@paliarerland.com; [David Sterns <dsterns@sotos.ca>](mailto:dsterns@sotos.ca); Merskey, Alan <amerskey@cassels.com>
Cc: Daniel.Rosenbluth@paliarerland.com; bkofman@ksvadvisory.com; Jwong@ksvadvisory.com;

Bellissimo, Joseph <jbellissimo@cassels.com>; ngoldstein@ksvadvisory.com

Subject: Re: Highview Distribution

CAUTION: External Email

Hi Jeff and Alan,

May I please hear back from you on the below as soon as possible?

Thank you,

Denna

SOTOS

Denna Pourmonazah Jalili

Associate

Office: 416.572.7306

Cell: 647.937.8894

180 Dundas St. W., Suite 1200

Toronto, ON M5G 1Z8

sotosllp.com

This email is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of or taking of any action in reliance upon this email by anyone other than the intended recipient is prohibited. If you received this in error, please contact djalili@sotos.ca and delete the material from any electronic device. Please note: if your email contains important instructions, please ensure that we acknowledge receipt of those instructions.

From: Denna Pourmonazah Jalili

Sent: Thursday, February 15, 2024 12:18:16 PM

To: Jeff.Larry@paliarerland.com <Jeff.Larry@paliarerland.com>; David Sterns <dsterns@sotos.ca>; Merskey, Alan <amerskey@cassels.com>

Cc: Daniel.Rosenbluth@paliarerland.com <Daniel.Rosenbluth@paliarerland.com>; bkofman@ksvadvisory.com <bkofman@ksvadvisory.com>; Jwong@ksvadvisory.com <Jwong@ksvadvisory.com>; jbellissimo@cassels.com <jbellissimo@cassels.com>; ngoldstein@ksvadvisory.com <ngoldstein@ksvadvisory.com>

Subject: RE: Highview Distribution

Hi Jeff and Allan,

I am writing in respect of Jeff's email below, and in light of Justice Black's expected endorsement regarding the hold back of sale proceeds to satisfy our client's potential claims for statutory trust.

In October, Jeff committed on behalf of the Receiver to hold back \$170,000 from the proceeds of the Highview sale and that he would get back to us regarding "the other receiverships".

Can you please confirm whether there have been hold backs for Highview and each of the other projects, and if so, in what amount?

Kind regards,

Denna

From: Jeff.Larry@paliarerland.com <Jeff.Larry@paliarerland.com>
Sent: Wednesday, November 1, 2023 2:46 PM
To: David Sterns <dsterns@sotos.ca>; Denna Pourmonazah Jalili <djalili@sotos.ca>
Cc: Daniel.Rosenbluth@paliarerland.com; bkofman@ksvadvisory.com; Jwong@ksvadvisory.com; amerskey@cassels.com; jbellissimo@cassels.com; ngoldstein@ksvadvisory.com
Subject: RE: Highview Distribution

David:

The terms below are not acceptable. I will get back to you with a full response on Highview and the other receiverships shortly.

In the meantime, and as discussed, I confirm that the Receiver is holding, and will continue to hold, \$170,00 of deposits related to Highview pending an agreement between you and the Receiver or further Order of the court. I further confirm that the holding of these funds is without prejudice to any position that you, the Receiver or any stakeholder may wish to take about the release of these funds in the Highview receivership or any of the other Stateview receivership proceedings.

Best,

From: David Sterns <dsterns@sotos.ca>
Sent: Wednesday, November 1, 2023 9:59 AM
To: Jeff Larry <Jeff.Larry@paliarerland.com>; Denna Pourmonazah Jalili <djalili@sotos.ca>
Cc: Dan Rosenbluth <Daniel.Rosenbluth@paliarerland.com>; bkofman@ksvadvisory.com; Jwong@ksvadvisory.com; amerskey@cassels.com
Subject: Re: Highview Distribution

Without prejudice

Jeff, we cannot agree to your proposal as currently worded. Firstly, as you know, Stateview had no records of our client who had paid \$150,000 as a deposit. You tell us now that there are a total of four purchasers based on your investigations after learning of our client's deposit, but we do not know if that number is accurate or not.

Secondly, if the receiver were to pay the money out in full to the secured creditors, it would be under express reservation of our rights to claim that amount from the receiver if our trust claim is successful.

Another possible way to resolve this is for the receiver to obtain an expert report on the approximate value of the common elements as compared to the freehold units and to hold back that proportionate amount from any distribution.

Lastly, can you please advise us if there is any side agreement with Tarion regarding the payment to the secured creditors in the face of their trust claim? If so, we would like to see a copy of that.



David Sterns*

Partner

Office: 416.977.5229

Cell: 647.242.6911

180 Dundas Street West, Suite 1200
Toronto, Ontario M5G 1Z8

www.sotosclassactions.com

**Practising through a professional corporation*

This email is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, transmission, dissemination or other use of or taking of any action in reliance upon this email by anyone other than the intended recipient is prohibited. If you received this in error, please contact dsterns@sotos.ca and delete the material from any electronic device. Please note: if your email contains important instructions, please ensure that we acknowledge receipt of those instructions.

From: Jeff.Larry@paliareroland.com <Jeff.Larry@paliareroland.com>

Sent: Tuesday, October 31, 2023 10:14 PM

To: Denna Pourmonazah Jalili <djalili@sotos.ca>; David Sterns <dsterns@sotos.ca>

Cc: Daniel.Rosenbluth@paliareroland.com <Daniel.Rosenbluth@paliareroland.com>; bkofman@ksvadvisory.com <bkofman@ksvadvisory.com>; Jwong@ksvadvisory.com <Jwong@ksvadvisory.com>; amerskey@cassels.com <amerskey@cassels.com>

Subject: Highview Distribution

Without Prejudice

David

Thank you for the call today.

I am writing to address the distribution issue we discussed on the call relating to Highview Building Corp. We will write to you separately about a proposal to deal with the rest of the receivership companies.

As advised, after conducting further inquiry about the Highview deposits, the Receiver's current information is that there are a total of 4 purchasers who did not have their deposits returned totaling \$470,000. The Receiver understands that \$170,000 of this \$470,000 may not be insured by Tarion.

The Highview transaction closed today and the Receiver intends to distribute funds to the first secured mortgagee without holding back any amounts on account of the deposits.

I confirmed to you that Tarion is not taking any position with respect to the Receiver's intention to

make a distribution without any holdback for the deposits.

Please confirm that on behalf of the class action claimants, you are also content to take no position with respect to this distribution on the understanding that your position will be without prejudice to any position you may wish to take in respect to any other distributions in the other Stateview receiverships.

I look forward to hearing from you promptly.

Jeffrey Larry, LL.B, MBA

Paliare Roland Rosenberg Rothstein LLP

155 Wellington Street West, 35th Floor

Toronto, ON M5V 3H1

t: 416.646.4330

f: 416.646.4301

c: 416.553.2789

e: jeff.larry@paliareroland.com

The information contained in this e-mail message may be privileged, confidential and protected from disclosure. If you are not the intended recipient, any use, disclosure, dissemination, distribution or copying of any portion of this message or any attachment is strictly prohibited.

This message, including any attachments, is privileged and may contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. Communication by email is not a secure medium and, as part of the transmission process, this message may be copied to servers operated by third parties while in transit. Unless you advise us to the contrary, by accepting communications that may contain your personal information from us via email, you are deemed to provide your consent to our transmission of the contents of this message in this manner. If you are not the intended recipient or have received this message in error, please notify us immediately by reply email and permanently delete the original transmission from us, including any attachments, without making a copy.

Court File No. CV-23-00698576-00CL, CV-23-00698395-00CL, CV-23-00698632-00CL, CV-23-00698637-00CL and CV-23-00699067-00CL

IN THE MATTER OF THE RECEIVERSHIP OF STATEVIEW HOMES (MINU TOWNS) INC., STATEVIEW HOMES (NAO TOWNS) INC., STATEVIEW HOMES (NAO TOWNS II) INC., STATEVIEW HOMES (ON THE MARK) INC., TLSFD TAURASI HOLDINGS CORP., STATEVIEW HOMES (HIGH CROWN ESTATES) INC., HIGHVIEW BUILDING CORP INC., STATEVIEW HOMES (BEA TOWNS) INC., AND STATEVIEW HOMES (ELM&CO) INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT

SOTOS LLP

180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

David Sterns (LSO # 36274J)

dsterns@sotos.ca

Denna Pourmonazah Jalili (LSO # 84976N)

djalili@sotos.ca

Tel: 416-977-0007

Lawyers for Dharmi Mehta, the Proposed Representative
Plaintiff for the Class Action

TAB 2



**First Report to Court of
KSV Restructuring Inc.
as Receiver and Manager of
Stateview Homes (Minu Towns) Inc.,
Stateview Homes (Nao Towns) Inc.,
Stateview Homes (Nao Towns II) Inc.,
Stateview Homes (On the Mark) Inc.,
TLSFD Taurasi Holdings Corp.,
Stateview Homes (High Crown Estates) Inc.,
Highview Building Corp Inc.,
Stateview Homes (BEA Towns) Inc., and
Stateview Homes (Elm&Co) Inc.**

May 30, 2023

Contents	Page
1.0 Introduction.....	2
1.1 Purposes of this Report.....	3
1.2 Restrictions	4
2.0 Background	4
2.1 The Stateview Group	4
2.2 Toronto-Dominion Bank	5
2.3 The Receivership Companies	6
2.3.1 Industrial Properties	7
3.0 Creditors.....	7
4.0 Receiver's Preliminary Findings.....	8
4.1 Overview.....	8
4.2 Cash	8
4.2.1 Elm Cash	9
4.2.2 On the Mark HST Proceeds	10
4.3 Homebuyers.....	10
5.0 Sale Process	12
5.1 Realtor Selection Process	12
5.2 Sale Process.....	13
5.3 Listing Agreements	17
5.4 Sale Process Recommendation	17
6.0 On the Mark.....	18
7.0 Securing Data and Information	18
8.0 Receiver's Activities.....	19
9.0 Conclusion.....	20

Appendices

Appendix	Tab
TD Order dated April 4, 2023	A
Letter to BDO dated May 12, 2023.....	B
Norton Rose email dated May 17, 2023.....	C
Tarion Notice to Homebuyers.....	D
RFP Materials.....	E
Summary of Realtor Commissions.....	F



COURT FILE NUMBERS: CV-23-00698395-00CL
CV-23-00698632-00CL
CV-23-00698637-00CL
CV-23-00698576-00CL
CV-23-00699067-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

KINGSETT MORTGAGE CORPORATION AND DORR CAPITAL CORPORATION

APPLICANT

- AND -

**STATEVIEW HOMES (MINU TOWNS) INC., STATEVIEW HOMES (NAO TOWNS)
INC., STATEVIEW HOMES (ON THE MARK) INC., TLSFD TAURASI HOLDINGS
CORP. AND STATEVIEW HOMES (HIGH CROWN ESTATES) INC.**

RESPONDENTS

DORR CAPITAL CORPORATION

APPLICANT

- AND -

STATEVIEW HOMES (BEA TOWNS) INC. AND HIGHVIEW BUILDING CORP INC.

RESPONDENTS

**ATRIUM MORTGAGE INVESTMENT CORPORATION AND DORR
CAPITAL CORPORATION**

APPLICANT

- AND -

**STATEVIEW HOMES (NAO TOWNS II) INC., DINO TAURASI AND
CARLO TAURASI**

RESPONDENTS

MERIDIAN CREDIT UNION

APPLICANT

- AND -

STATEVIEW HOMES (ELM&CO) INC.

RESPONDENTS

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED**

**FIRST REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER**

MAY 29, 2023

1.0 Introduction

1. The Ontario Superior Court of Justice (the “Court”) issued separate receivership orders on May 2, 2023 (the “May 2nd Receivership Orders”) appointing KSV Restructuring Inc. (“KSV”) as the receiver and manager (the “Receiver¹”) of the property, assets and undertaking owned by the following entities in the Stateview Group of Companies (the “Stateview Group”), including their real property:
 - a) Stateview Homes (Nao Towns II) Inc. (“Nao Phase II”), pursuant to an action commenced by Atrium Mortgage Corporation (“Atrium”);
 - b) Stateview Homes (BEA Towns) Inc. (“BEA”), pursuant to an application commenced by Dorr Capital Corporation (“Dorr”);
 - c) Highview Building Corp Inc. (“Highview”), pursuant to an application commenced by Dorr; and
 - d) Stateview Homes (Nao Towns) Inc. (“Nao Phase I”), Stateview Homes (Minu Towns) Inc. (“Minu”), Stateview Homes (High Crown Estates) Inc. (“High Crown”), Stateview Homes (On the Mark) Inc. (“On the Mark”) and TLSFD Taurasi Holdings Corp. (“Taurasi Holdings”), pursuant to an application commenced by Kingsett Mortgage Corporation (“Kingsett”) and Dorr.

¹ Includes KSV’s role as receiver and manager of Elm, as defined below.

2. The Court issued an order (the “May 18th Receivership Order” and together with the May 2nd Receivership Orders, the “Receivership Orders”) appointing KSV as Receiver of the property, assets and undertaking of Stateview Homes (Elm&Co) Inc. (“Elm”), including its real property, pursuant to an application by Meridian Credit Union Limited (“Meridian” and together with Atrium, Dorr, and Kingsett, the “Mortgagees”).
3. Herein the entities subject to the Receivership Orders are collectively referred to as the “Receivership Companies”; the property owned by each of the Receivership Companies is referred to as the “Property”; the real property owned by each of the Receivership Companies is referred to as a “Real Property”; and collectively, all of the real properties are referred to as the “Real Properties”.
4. Copies of the Receivership Orders are available on the Receiver’s case website by clicking on the hyperlinks below.
 - a) [NAO Phase II receivership order](#)
 - b) [BEA receivership order](#)
 - c) [Highview receivership order](#)
 - d) [Nao Phase I, Minu, High Crown, On the Mark and Taurasi Holdings receivership order](#)
 - e) [Elm receivership order](#)
5. As more fully detailed below, a principal focus of the receivership proceedings at this time is to conduct a sale process (the “Sale Process”) for all of the Real Properties, except for the On the Mark Real Property, which is currently at an advanced stage of development, as more fully discussed below.
6. This report (the “Report”) is filed by KSV in its capacity as Receiver.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about these proceedings;
 - b) provide the Court with the Receiver’s material findings since its appointment;
 - c) advise the Court of the status of purchase agreements that were entered into between homebuyers (the “Homebuyers”) and the Receivership Companies prior to these receivership proceedings;
 - d) detail the proposed Sale Process;
 - e) discuss the status of the On the Mark project;
 - f) discuss the steps that the Receiver has taken to preserve and obtain data and information related to the Receivership Companies;

- g) summarize the Receiver's activities since the start of these receivership proceedings; and
- h) recommend that this Court issue orders:
 - i. approving the Sale Process; and
 - ii. approving this Report and the Receiver's activities as set out in this Report.

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon: (i) discussions with the Stateview Group's management ("Management"); (ii) the Receivership Companies' unaudited financial information; (iii) information provided by the Mortgagees; (iv) discussions with various stakeholders in these proceedings (including their legal representatives); (v) the Information Officer (as defined below); (vi) the Stateview Group's external legal counsel, Norton Rose Fulbright Canada LLP ("Norton Rose") and (vi) the application materials (collectively, the "Information").
2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information should perform its own diligence and the Receiver accepts no responsibility for any reliance placed on the Information in this Report by any party.
3. Additional background information regarding the Receivership Companies and the reasons for the appointment of the Receiver are provided in the respective application materials of the Mortgagees. Copies of the Court materials filed to-date in these proceedings are available on the [Receiver's website](#) (the "Website"). The Website also includes information for Homebuyers who purchased homes from the Receivership Companies.

2.0 Background

2.1 The Stateview Group

1. The Stateview Group is a real estate developer with its head office in Vaughan, Ontario. The Stateview Group primarily develops low-rise residential projects in Southern Ontario.
2. Several Stateview Group companies are not subject to receivership proceedings (the "Non-Receivership Companies"), including Stateview Construction Ltd. ("SV Ltd.") which provides administrative and management services to companies in the Stateview Group. The Receiver understands that all Stateview Group employees are employed by SV Ltd.

3. The principals of the Stateview Group are Carlo Taurasi, the Chief Executive Officer and Dino Taurasi, the President (together, the “Taurasis”).

2.2 Toronto-Dominion Bank

1. The Stateview Group previously had bank accounts (the “TD Accounts”) at Toronto Dominion Bank (“TD Bank”). On March 23, 2023, TD Bank commenced an action against various Stateview Group companies and other parties, including, *inter alia*, the Receivership Companies and the Taurasis (collectively, the “Defendants”) to attempt to recover an approximate \$37 million loss resulting from a “cheque kiting” scheme that took place between April 2022 to March 2023. The Taurasis allege that the Stateview Group’s former Chief Financial Officer, Daniel Ciccone, was responsible for the scheme.
2. Certain of the Defendants, including all of the Receivership Companies and the Taurasis (together, the “Settlement Parties”) entered into a Settlement Agreement with TD Bank dated March 31, 2023 (the “TD Settlement Agreement”), pursuant to which, *inter alia*, they acknowledged their joint and several liability to TD Bank arising out of the kiting scheme. It is the Receiver’s understanding that none of the Mortgagees were privy to or aware of the TD Settlement Agreement until after it was completed. In connection with the Settlement Agreement, TD Bank was granted (and subsequently registered) mortgages on certain Real Property owned by Taurasi Holdings, BEA, Nao Phase II, Highview and Elm to secure the amounts owing to TD Bank under the Settlement Agreement (collectively, the “TD Mortgages”). The Receiver has not yet made any independent inquiries into the circumstances giving rise to the granting and registration of the TD Mortgages.
3. On April 4, 2023, the Court issued an order (the “TD Order”) approving the implementation of the TD Settlement Agreement and appointing BDO Canada Limited as the information officer (the “Information Officer”) in respect of the Stateview Group. A copy of the TD Order is attached as Appendix “A”.
4. The TD Settlement Agreement requires that the Settlement Parties pay approximately \$37 million in instalments over an approximately three-month period, including a \$3.150 million payment upon the making of the TD Order, inclusive of an “administration fee”.
5. On May 15, 2023, the Receiver was advised by the Information Officer that the \$3.150 million payment was made to TD Bank. On May 16, 2023, Norton Rose advised the Receiver in an email that Melissa Taurasi, Carlo Taurasi’s wife, funded \$2.2 million and Dino Taurasi funded the balance.
6. Pursuant to the TD Order, the Information Officer’s mandate is to:
 - a) gain an understanding of the Stateview Group’s governance policies with regards to treasury functions and other functional areas as required;
 - b) review the historical source and application of funds received and disbursed by the Stateview Group and the deposit of funds into the bank accounts of the Stateview Group;

- c) monitor on an ongoing basis, the source and application of funds received and disbursed by the Stateview Group, and the deposit of funds into the bank accounts of the Stateview Group;
- d) monitor the activities of the Stateview Group to ensure that appropriate cash management is being undertaken at all times;
- e) review the books and records and computer files, records, software and other systems of the Stateview Group as necessary; and
- f) report to TD Bank and the Stateview Group from time to time on the financial circumstances of the Stateview Group, including without limitation, with respect to their assets, liabilities, cash flows, intercompany transfers and payments to related parties or shareholders.

2.3 The Receivership Companies

1. Each of the Receivership Companies is a single-purpose real estate development company that owns a specific project (each a "Project", and collectively the "Projects"), except for Taurasi Holdings which owns four industrial properties. The Real Properties are located in Southern Ontario.
2. The Project names, municipal addresses and status of the Projects is provided in the table below.

Project	Address	Status
Minu Towns	9940 Ninth Line, Markham	Raw land
Nao Towns	5112, 5122, 5248 14th Avenue, Markham	Raw land
Nao Towns II	7810, 7822, 7834, 7846, McCowan Road, Markham	Raw land
Nashville (Highview)	89, 99 Nashville Road, Kleinberg,	Raw land
BEA Towns	189 Summerset Drive, Barrie	Raw land
Elm	12942 York Durham Line, Stouffville	Raw land
High Crown	13151 – 13161 Keele Street, King City	Under construction, approximately 30% complete
On the Mark	16 th Avenue and Woodbine Avenue, Markham	Under construction, approximately 90% complete

2.3.1 Industrial Properties

1. Taurasi Holdings owns four industrial properties totaling 116,065 square feet of leasable area which is currently 100% occupied (the "Industrial Properties"). The Industrial Properties are located at the following municipal addresses in Vaughan, Ontario:
 - 301 Bradwick Drive;
 - 596 Oster Lane;
 - 448 North Rivermede Road; and
 - 6-8 Bradwick Drive.
2. The Industrial Properties are managed by Argo Property Management Ltd. ("Argo"), a third-party property management company.
3. The Receiver has advised each of the tenants of the Industrial Properties (the "Tenants") of the receivership and has directed them to pay rent directly to the Receiver during these proceedings. The Industrial Properties generate approximately \$130,000 in monthly rent, including HST.

3.0 Creditors

1. The table below provides a summary of the amounts of the mortgages registered on title to each of the Real Properties as of the dates of the Receivership Orders.

<i>(Unaudited; \$000s)</i>	
Real Property²	Amount Owing
Minu	67,632
Nao Phase I	38,905
High Crown	28,515
On the Mark	18,471
Taurasi Holding	30,388
NAO Phase II	45,299
Highview	16,438
BEA	58,972
Elm	45,325
Total	349,945

² The table excludes the TD Bank mortgage. Interest and costs continue to accrue on each mortgage. All amounts are subject to confirmation.

- As more fully detailed in each of the Mortgagees' materials seeking the appointment of the Receiver, certain of the mortgages in the table are cross-collateralized, such that the shortfall on certain Real Properties can be satisfied in full or in part from the surplus on certain other Real Properties. This will be fully detailed in a future Receiver's report, as required.
2. In addition to the above, several parties who provided services to the Projects have registered construction liens on certain of the Real Properties, including construction trades and real estate consultants. The Receiver is continuing to review and assess the various construction liens, including seeking further information from lienholders, where necessary.
 3. Certain of the Receivership Entities also are in arrears in respect of municipal taxes, as well as amounts owing to Canada Revenue Agency ("CRA"). In regard to the amounts owing to CRA, the Receiver received a letter from CRA dated May 16, 2023 indicating that Taurasi Holdings owes CRA \$250,271.75 in respect of unpaid harmonized sales tax ("HST"), approximately \$130,624.22 of which CRA asserts is a trust claim.

4.0 Receiver's Preliminary Findings

4.1 Overview

1. The following section provides a high-level summary of certain of the Receiver's preliminary findings. The findings in this section are subject to change based on the Receiver's further investigations. The Receiver continues to review and consider the issues summarized in this section, as well as other issues, including but not limited to payments from Receivership Companies to non-arm's length parties, including Non-Receivership Companies and related individuals. In due course, the Receiver will consider whether any relief should be sought in respect of these transactions, in consultation with affected parties.

4.2 Cash

1. The Stateview Group, including the Receivership Companies, presently have bank accounts at Bank of Montreal ("BMO"), which accounts were opened following the TD Settlement Agreement. The Receiver also understands that certain of the Non-Receivership Companies have one or more accounts at Royal Bank of Canada.

2. Immediately after the May 2nd Receivership Orders were granted, the Receiver communicated with the Information Officer and with the Stateview Group's representatives to determine the cash balances in each Receivership Companies' bank accounts, including Elm, as the Receiver was aware that Meridian intended to forthwith bring an application for the appointment of KSV as receiver of that entity. Concurrently, the Receiver advised BMO that the Receivership Companies' bank accounts should be restricted to deposit only. KSV had no authority over the Elm account at the time, so it was unable to place any restrictions on the Elm account. The Receiver, however, advised the Stateview Group that it was its view that any monies in Elm's account should only be used for Elm's purposes given the pending receivership application (to which the Stateview Group consented).
3. The Information Officer advised the Receiver that, as of May 1, 2023, the Receivership Companies' accounts had the following balances³:

(Unaudited; \$000)	Cash Balance
Minu	14
Nao Phase I	75
High Crown	21
On the Mark	55
Taurasi Holdings	151
Highview	Nil
BEA	Nil
Elm	779
Total	1,095

4.2.1 Elm Cash

1. On May 8, 2023, the Receiver learned that the Stateview Group had used funds in the Elm account to pay costs unrelated to Elm.
2. On May 9, 2023, the Receiver's counsel, Paliare Roland Rosenberg Rothstein LLP ("Paliare")⁴, wrote to Norton Rose to obtain details regarding the use of Elm funds since May 1, 2023. The letter stated, "we trust that Stateview Elm's cash not be further dissipated in advance of the hearing of the receivership application and that any remaining monies should be, at the very least, segregated until the return of the receivership application".
3. On May 10, 2023, Norton Rose responded to Paliare's letter to confirm that Elm would not disburse any further funds in advance of the receivership application for Elm. Norton

³ The Receiver has been advised that Highview does not have a bank account and that NAO I and NAO II share a bank account.

⁴ Paliare is acting as counsel to the Receiver on the NAO Phase II, BEA, Highview and Elm receiverships. Cassels is counsel to the Receiver on the NAO Phase I, Minu, On the Mark, High Crown and Taurasi Holdings receiverships.

Rose further advised that Elm's then current bank account balance was approximately \$450,000.

4. On May 12, 2023, Cassels Brock & Blackwell LLP ("Cassels") wrote to the Information Officer asking that the Information Officer "promptly deliver to KSV a full accounting and reconciliation of all disbursements from accounts of any of the Stateview companies subject to the Stateview Receiverships to any related persons or companies" A copy of this letter is attached as Appendix "B".
5. On May 17, 2023, Norton Rose advised that Elm's bank balance was then approximately \$307,000. A copy of the email from Norton Rose is attached as Appendix "C".
6. On May 18, 2023, following KSV's appointment as Receiver of Elm, BMO advised the Receiver that the balance in Elm's bank account was approximately \$303,000.
7. Since May 18, 2023, the Receiver has been provided with support for certain disbursements in the Elm bank account for the period after May 8, 2023. Certain disbursements relate to professional fees, as well as related-party payments that do not appear to relate to the Elm project. The Receiver continues to review this issue.

4.2.2 On the Mark HST Proceeds

1. 38 of the 70 home sales for the On the Mark project were completed prior to the May 2nd Receivership Orders. On the Mark collected approximately \$4 million of HST on these sales.
2. On April 12, 2023, Kingsett issued its Notice of Intention to Enforce Security to On the Mark (the "OTM Notice").
3. On May 9, 2023, the Information Officer provided the Receiver with a schedule reflecting the use of the closing proceeds, including amounts that are subject to a CRA trust claim. The schedule shows that between April 11 and April 24, 2023, the Stateview Group used the monies to pay, among other things:
 - approximately \$2.23 million for payables owing by certain of the Receivership Companies, including On the Mark, Minu and High Crown;
 - approximately \$266,000 for payables owing by certain Non-Receivership Companies;
 - approximately \$452,000 for SV Ltd. payroll; and
 - approximately \$440,000 for professional fees.

4.3 Homebuyers

1. Prior to these receivership proceedings, each of the Receivership Companies, other than Taurasi Holdings, sold freehold homes to Homebuyers, each of whom paid deposits.

2. As freehold homes, the Receivership Companies were not required to keep the deposits in trust. The Receiver has been advised by the Stateview Group's representatives that all deposits have been spent; however, the use of those funds has not yet been determined and the Receiver has not, as of the date of this Report, commenced a tracing exercise.
3. As reflected in the table below, the Homebuyer deposits total approximately \$77.2 million.

Project	(unaudited)	
	# of Homebuyers	Deposits (\$000s)
Minu	147	19,208
Nao Phase I	96	7,680
High Crown	47	4,933
On the Mark ⁵	32	4,218
Nao Phase II	76	7,617
Highview	4	None
BEA	218	17,440
Elm	145	16,076
Total	765	77,172

4. Since being appointed, the Receiver has corresponded with several Homebuyers regarding their deposits and the status of their purchase agreements. As a result of concerns raised by Homebuyers, and to communicate a consistent message to Homebuyers, the Receiver posted a notice to Homebuyers on its [Website](#) on May 5, 2023. The notice advises of the status of the deposits and discusses deposit protection provided by Tarion Warranty Corporation ("Tarion"), an organization that, among other things, provides deposit insurance to homebuyers and administers Ontario's new home warranty program.
5. The Receiver has also corresponded with Tarion's legal counsel, Torys LLP, to provide it with information concerning these proceedings and the status of the deposits, following which Tarion posted a notice on its website. Tarion's notice is attached as Appendix "D".
6. The Receiver intends to keep Homebuyers and Tarion advised of issues related to the developments in which they purchased their homes, as well as the status of their deposits.

⁵ Excludes deposits paid by Homebuyers for the On the Mark Project who have closed their sales.

7. The Receiver also understands that the Stateview Group planned to develop another project called On the Mark 2. As of the date of the May 2nd Receivership Orders, the Stateview Group, through an entity known as Stateview Homes Ltd. (“SHL”), had negotiated an option to purchase the On the Mark 2 lands, which agreement is subject to an ongoing dispute between the Stateview Group and the vendor. It is the Receiver’s understanding that, notwithstanding that SHL has not completed its acquisition of this real property, it sold homes and took deposits from purchasers on this project. These deposits were not held in trust and, consistent with all other deposits paid to the Stateview Group, appear to have been spent.

5.0 Sale Process

1. The recommended Sale Process is for all Real Properties, together with all other property, assets and undertaking of the Receivership Companies related to the Real Properties, other than On the Mark. Information regarding the status of, and next steps for, the On the Mark project is provided in Section 6 below.

5.1 Realtor Selection Process

1. Based on discussions with the Mortgagees (which differ by Project), the Receiver invited two national real estate brokerages to submit proposals to market for sale the Real Properties owned by Minu, Nao Phase I, High Crown and Taurasi Holdings and four national real estate brokerages to submit proposals to market for sale the Real Properties owned by Nao Phase II, Highview, BEA and Elm (collectively, the “RFP”).
2. The RFP process provided the Receiver’s criteria for selecting the successful realtor or realtors. The Receiver requested that proposals be submitted by 5pm on May 17, 2023. A copy of the RFP materials is provided as Appendix “E”.
3. All realtors submitted proposals by the RFP deadline (the “Realtor Proposals”) and presented their proposals to the Receiver and the Mortgagees at meetings on May 19 and 23, 2023.
4. In consultation with the Mortgagees, the Receiver selected: (i) Cushman & Wakefield ULC to sell the NAO Phase II and Elm Projects; (ii) Colliers International to sell the BEA and Highview Projects; (iii) Jones Lang LaSalle Real Estate Services, Inc. to sell the Industrial Properties and the High Crown Project; and (iv) CBRE Limited to sell the NAO Phase I and Minu Projects. These decisions were based on, among other things, each realtors’ knowledge of the specific Projects, their familiarity with the applicable market, their proposed marketing processes, their commission structures, the experience of their teams and feedback from the Mortgagees.

5.2 Sale Process

1. The recommended Sale Process is set out in the table below. The timelines are based on KSV's extensive experience selling real estate in court-supervised proceedings, as well as guidance from the realtors. The timelines assume that the Court approves the Sale Process on the return of this motion and that the Sale Process launches on June 7, 2023. To the extent that the Sale Process is delayed, the deadlines may be correspondingly adjusted.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Underwriting</i>		
Prepare marketing materials	<ul style="list-style-type: none"> ➤ Realtors and the Receiver to: <ul style="list-style-type: none"> ○ prepare a teaser and confidential information memorandum ("CIM") for each Project; ○ populate virtual data rooms for each Project; and ○ prepare a confidentiality agreement ("CA"). 	As soon as possible, but no later than June 21, 2023
Prospect Identification	<ul style="list-style-type: none"> ➤ For each Real Property, realtors to: <ul style="list-style-type: none"> ○ develop master prospect lists; ○ prioritize prospects; ○ have pre-marketing discussions with targeted prospects; ○ engage in discussions with planners, consultants and municipalities; and ○ consult with the Receiver regarding the above. 	
Consulting Reports	<ul style="list-style-type: none"> ➤ The Receiver is arranging for updated and/or new consulting reports to facilitate due diligence by interested parties. These will be made available in the data rooms. 	
<i>Phase 2 – Marketing and Diligence</i>		
Stage 1	<ul style="list-style-type: none"> ➤ Mass market introduction, including: <ul style="list-style-type: none"> ○ sending offering summary and marketing materials, including marketing brochure to each realtors' client base, including specifically targeted prospects; ○ publishing the acquisition opportunity in such journals, publications and online as the realtor and the Receiver believe appropriate to maximize interest in this opportunity; ○ posting "for sale" signs on each Real Property, to the extent applicable; ○ engaging in direct canvassing of most likely prospects and tailoring the pitch to each of these candidates based on the brokers knowledge of these parties; 	Estimated to be 4 to 5 weeks from launch.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
	<ul style="list-style-type: none"> o posting the acquisition opportunity on MLS for each Project on an unpriced basis, if requested by the Receiver; and o meeting with prospective bidders to explain the potential of each site. <ul style="list-style-type: none"> ➤ Receiver and its legal counsel to prepare a Vendor's form of Purchase and Sale Agreement (the "PSA") which will be made available to prospective purchasers in each virtual data room. ➤ Realtors to provide additional information to qualified prospects which execute the CA, including access to data rooms and a copy of the CIM. ➤ Realtors and Receiver to facilitate diligence by interested parties. 	
Stage 2 – Bid Deadline	<ul style="list-style-type: none"> ➤ Prospective purchasers to submit offers in the form of the PSA, with any changes to the PSA blacklined. 	Estimated bid date is between July 19 and July 26, 2023, based on, <i>inter alia</i> , the date on which the Sale Process launches, market feedback and consultation with the realtors.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 3 – Offer Review and Negotiations</i>		
Short-listing of Offers and Selection of Successful Bids	<ul style="list-style-type: none"> ➤ Realtors to collect, summarize and provide to the Receiver commentary on initial bids received to the Receiver. Receiver will consult with Mortgagees on the offers received. ➤ Short listing of bidders. ➤ Further bidding - bidders may be asked to improve their offers. The Receiver may invite parties to participate in as many rounds of bidding as is required to maximize the consideration and minimize closing risk. The Receiver may also seek to clarify terms of the offers submitted and to negotiate such terms. ➤ The Receiver will be at liberty to consult with Mortgagees regarding the offers received, subject to any confidentiality requirements that the Receiver believes appropriate. ➤ The Receiver will select the successful bidder(s), having regards to, among other things: <ul style="list-style-type: none"> o total consideration (cash and assumed liabilities); o form of consideration, including the value of any carried interest; o third-party approvals required, if any; o conditions, if any, and time required to satisfy or waive same; and o such other factors affecting the speed and certainty of closing and the value of the offers as the Receiver considers relevant. 	Two weeks from offer bid deadline
Selected bidders to perform final due diligence	<ul style="list-style-type: none"> ➤ Bidders to address their conditions. ➤ Back up bidders will be kept “warm” in order to have options in case selected bidder does not close. 	30 to 60 days from selection of successful bidders
Sale Approval Motion(s) and Closing(s)	<ul style="list-style-type: none"> ➤ Upon execution of definitive transaction documents, the Receiver will seek Court approval of the successful offer(s), on not less than 7 calendar days’ notice to the service list and registered secured creditors. 	15 to 30 days from the date that the selected bidder confirms all conditions have been satisfied or waived
Closings	<ul style="list-style-type: none"> ➤ Following Court approval 	ASAP

2. Additional terms of the Sale Process include:

- a) the NAO Phase I and NAO Phase II properties will have the same bid deadline so that interested parties can submit an offer for both. Interested parties will be required to provide a value for each Real Property given the stakeholders on each Real Property is different;
- b) bidders will have the opportunity to submit offers on an *en bloc* basis, provided that they provide separate values for each Real Property. (It is possible that the bid dates for all Real Properties may not align. In the event that an *en bloc* buyer emerges, which the Receiver considers unlikely, the Receiver will work with the bidder to structure its offer accordingly);
- c) the Real Properties will be marketed and sold on an “as-is, where-is” basis, with standard representations and warranties for a receivership transaction;
- d) to the extent permitted by law, all of the right, title and interest of the Receivership Companies in the Real Properties will be sold free and clear of all pledges, liens, security interests, encumbrances and claims, pursuant to approval and vesting orders to be sought by the Receiver;
- e) to the extent permitted by law, interested parties will not be required to assume the Homebuyer purchase agreements;
- f) the Receiver will have the right to reject any and all offers, including the highest and best offers;
- g) any Mortgagee will have the right to credit bid the debt owing to it in respect of a Real Property at the conclusion of the Sale Process if the offers are not sufficient to repay its mortgages on such Real Property in full;
- h) if, in the Receiver’s sole discretion, it will assist to maximize recoveries, the Receiver will have the right to: (i) waive strict compliance with the terms of the Sale Process, including the right to amend any of the deadlines in the table above by up to four weeks without an order of the Court; and (ii) modify and adopt such other procedures that will better promote the sale of the Real Properties or increase recoveries for stakeholders;
- i) any material modifications to, or the termination of, the Sale Process for any or all of the Real Properties shall require Court approval, subject however, to the right to extend bid deadlines as set out in paragraph (h) above; and
- j) any transaction or transactions entered into by the Receiver shall be subject to Court approval.

5.3 Listing Agreements

1. The listing agreements are presently being drafted and are expected to be finalized by the return of this motion; however, the commission structure for each Real Property is provided in Appendix “F”. The listing agreements are expected to be in the standard form for a receivership transaction. If there is anything unusual with any of the listing agreements, the Receiver will advise the Court on the return of this motion.
2. Each of the realtors will spend considerable time and effort preparing for and marketing each of the Real Properties. If the Stateview Group completes a refinancing of some or all of its mortgages (which the Stateview Group has advised it is working on), each realtor should be entitled to a work fee for its time and effort. Accordingly, each of the listing agreements includes a work fee of \$100,000 (plus HST and actual disbursements), for each Real Property where the mortgages are refinanced and \$150,000 in the event a Real Property is acquired by a mortgagee through a credit bid.⁶ The work fees are significantly less than the commissions to which the brokers would be entitled if they sold the Real Properties.
3. The Receiver is not aware of the status of the Stateview Group’s refinancing efforts. The Receiver believes that the Sale Process should be commenced immediately, which is supported by all Mortgagees.

5.4 Sale Process Recommendation

1. The Receiver recommends that the Court issue an order approving the Sale Process for the following reasons:
 - a) the Sale Process is reasonable and appropriate at this time based on the issues identified above, including: (i) the early development stage of the Projects; (ii) the illiquidity of the Projects; (iii) feedback from Mortgagees; and (iv) the lack of any other viable option, including an unconditional refinancing sufficient to repay in full all mortgagees;
 - b) the Sale Process is a fair, open and transparent process developed with input from the selected realtors, and is intended to canvass the market broadly on an efficient basis to obtain the highest and best price;
 - c) the Sale Process is flexible and provides the Receiver with the timelines, procedures and flexibility that it believes are necessary to maximize value;
 - d) the Sale Process includes procedures commonly used to sell real estate development projects, including by KSV in other court-supervised real property sale processes;

⁶ Each broker is engaged on two sites. If the two sites were both credit bid, the fee to the respective broker’s fee would be \$300,000. One work fee would be paid for all Industrial Properties in the event of a refinancing or credit bid in respect of Taurasi Holdings.

- e) each of the selected realtors is a leading national brokerage, with the experience and expertise to market the Real Properties, including knowledge of the markets in which the Real Properties are located and a marketing plan tailored to each Real Property; and
- f) there will be no delay commencing the Sale Process as each of the realtors is preparing its marketing materials, working on their prospect lists and, with the Receiver, updating data rooms.

6.0 On the Mark

1. As noted above, 38 of 70 home sales on this Project have been completed. The remaining 32 homes were scheduled to close by the end of June 2023.
2. Construction at the On the Mark Project has been halted due to the commencement of the receivership proceedings, which will result in closing delays. As of the commencement date of the receivership, Kingsett advised the Receiver that it was not aware of any significant payables, other than holdbacks, related to this Project, and that the cost to finish the Project was estimated to be approximately \$3 million based on the information that had been provided to Kingsett by the Stateview Group. Since that time, the Receiver has learned that there is approximately \$12 million of payables owing on the Project, including the unremitted HST of approximately \$4 million discussed above. The cost to complete this Project is also expected to be several million dollars more than originally estimated.
3. On May 10, 2023, the Receiver sent a notice to all On the Mark Homebuyers that have not yet closed on their homes, advising that the Receiver is reviewing the status of the On the Mark Project, including the completion of the units and the agreements of purchase and sale, and that it would provide Homebuyers on this Project with further updates in due course.
4. The Receiver has engaged a former president of a major Toronto developer to assist it to consider the feasibility of completing this Project based on its recent findings.
5. The Receiver is hopeful to be able to make a recommendation regarding this Project in the next few weeks. The Receiver will post a Homebuyer notice once a determination has been made.

7.0 Securing Data and Information

1. Since its appointment, the Receiver has been working to secure data and information related to the Receivership Companies. The Receiver believes that securing this data and information promptly is particularly important in this case given that the Stateview Group has already acknowledged certain malfeasance.
2. The Receiver understands that relevant data and information relating to the Receivership Companies resides, at least, on Stateview Group's servers. The Receiver wishes to image these servers immediately.

3. In addition to the servers, the Receiver wishes to image the Taurasis' personal phones in case any data resides on those devices that is not otherwise stored on the Stateview Group's servers. The Taurasis have advised, and will confirm to the Receiver in writing, that they have no other personal devices, including computer, tablets and the like.
4. The Receiver has retained Kroll Consulting Canada Co. ("Kroll") to carry out the imaging of the servers and personal devices.
5. On May 16, 2023, Stateview Group's counsel advised the Receiver that it was agreeable to backing up the Stateview Group's electronic records but that it could not agree to produce such records until a protocol was developed given that the records included information relating to Non-Receivership Companies and there were privilege issues to address.
6. The Receiver subsequently reached an understanding with Stateview Group and the Taurasis for:
 - a) preservation of data and information on the Stateview Group servers and the Taurasis personal cell phones; and
 - b) delivery to the Receiver of electronic books and records (including banking records) for each of the Receivership Companies as well as any other documentation or information relating to the Receivership Companies that the Receiver may request from time to time.

8.0 Receiver's Activities

1. In addition to the activities described above, the Receiver's activities since the May 2nd Receivership Orders have included:
 - a) corresponding extensively with Cassels and/or Paliare regarding these proceedings;
 - b) corresponding extensively with the Mortgagees regarding, among other things, the status of the Real Properties, the proposed realization plan with respect to each of the Real Properties and the Sale Process;
 - c) corresponding with Kingsett regarding the status of construction on the On the Mark and the High Crown Projects and addressing issues related to the trades, liens, costs-to-complete construction, and funding of construction costs;
 - d) corresponding with representatives of the Receivership Companies, including Management, to obtain information concerning the Projects and the business of the Receivership Companies;
 - e) corresponding with the Information Officer to, *inter alia*, obtain information regarding all aspects of the Receivership Companies business and operations, including bank account activity;
 - f) attending periodically at the Receivership Companies' head office;

- g) corresponding with the Receivership Companies' insurance broker to confirm coverage and corresponding with Cassels regarding same;
- h) retaining a contractor to address ad hoc matters at the On the Mark and High Crown Projects, including to assist in repairs and maintenance activities and to perform water testing;
- i) familiarizing itself with each of the Projects, including corresponding with certain of the Receivership Companies' consultants;
- j) reviewing information provided by the Mortgages regarding each of the Real Properties, including appraisals, development applications, environmental reports and other consulting reports;
- k) reviewing liens registered against certain of the Real Properties and dealing with Paliare or Cassels (as applicable) regarding same;
- l) dealing with issues related to copying the Receivership Companies' servers and other electronic records;
- m) preparing and sending to creditors and to the Official Receiver the statutory notices required pursuant to subsection 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*; and
- n) preparing this Report.

9.0 Conclusion

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(1) (h) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
STATEVIEW HOMES (MINU TOWNS) INC.,
STATEVIEW HOMES (NAO TOWNS) INC., STATEVIEW HOMES (ON THE MARK) INC.,
TLSFD TAURASI HOLDINGS CORP., STATEVIEW HOMES (HIGH CROWN ESTATES) INC.,
STATEVIEW HOMES (BEA TOWNS) INC., HIGHVIEW BUILDING CORP INC.,
STATEVIEW HOMES (NAO TOWNS II) INC. AND STATEVIEW HOMES (ELM&CO) INC.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “A”

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

JUSTICE **KOEHNEN**

)
)
)
)

WEDNESDAY, THE

4TH DAY OF APRIL, 2023

B E T W E E N :

THE TORONTO-DOMINION BANK

Plaintiff

- and -

LUXVIEW FINE HOMES CORPORATION, STATEVIEW CONSTRUCTION LTD., STATEVIEW HOMES (ASHBURN HEIGHTS) INC., STATEVIEW HOMES (BALDWIN HEIGHTS) INC., STATEVIEW HOMES (BEA TOWNS) INC., STATEVIEW HOMES (BONAVENTURE) INC., STATEVIEW HOMES (EDGE TOWNS) INC., STATEVIEW HOMES (ELIA COLLECTION) INC., STATEVIEW HOMES (ELM&CO) INC., STATEVIEW HOMES (HAMPTON HEIGHTS) INC., STATEVIEW HOMES (HIGH CROWN ESTATES) INC., STATEVIEW HOMES (KINGS LANDING PHASE II) INC., STATEVIEW HOMES (KINGS LANDING) INC., STATEVIEW HOMES (MAIN & CO) INC., STATEVIEW HOMES (MINU TOWNS) INC., STATEVIEW HOMES (NAO TOWNS) INC., STATEVIEW HOMES (ON THE MARK) INC., STATEVIEW HOMES (OOH LALA TOWNS) INC., STATEVIEW HOMES (QUEEN'S COURT) INC., STATEVIEW HOMES (RIALTO TOWNS) INC., STATEVIEW HOMES (TESORO COLLECTION) INC, TAURA DEVELOPMENTS INC., LIVE INSPIRED ORGANIZATION, HIGHVIEW BUILDING CORP INC., NORTHGATE FINE HOMES INC., TLSFD TAURASI HOLDINGS CORP. CARLO TAURASI, DINO TAURASI, DANIEL CICCONE, ANTHONY TAURASI, EMILIO TAURASI, DENNIE TAURASI, MELISSA TAURASI, NELDA TAURASI, ABC INC., XYZ INC, AND ROYAL BANK OF CANADA

Defendants

**ORDER
(implementing the Settlement Agreement dated March 31, 2023)**

THIS MOTION, made by TD (defined in section 1 of this Order) for an order providing relief in order to implement the Settlement Agreement (defined in section 1 of this Order), was heard this day at 330 University Avenue, Toronto, Ontario.

ON CONSENT of TD and the State View Settling Defendants, and upon being advised that none of the other defendants oppose the relief granted in this order.

AND ON HEARING the submissions of the lawyers for TD and the lawyers for the State View Settling Defendants:

1. **THIS COURT ORDERS** that, for purposes of this Order:

- (a) **“Added Defendants”** means StateView Homes (Nao Towns II) Inc. and StateView Homes (Ivory Oak Estates) Inc.;
- (b) **“Information Officer”** has the meaning ascribed in para. 3 of this order;
- (c) **“Settlement Agreement”** means the settlement agreement dated March 31, 2023 between the State View Settling Defendants and TD;
- (d) **“State View Companies”** means all of the State View Settling Defendants except Carlo Taurasi and Dino Taurasi;
- (e) **“State View Settling Defendants”** means all of the Defendants in this action (including the Added Defendants) with the exception of Daniel Ciccone, Anthony Taurasi, Emilio Taurasi, Dennie Taurasi, Melissa Taurasi, Nelda Taurasi, ABC Inc., XYZ Inc., and Royal Bank of Canada; and
- (f) **“TD”** means The Toronto-Dominion Bank.

2. **THIS COURT ORDERS** that the Added Defendants are added as defendants to this action.

3. **THIS COURT ORDERS** that the State View Settling Defendants are authorized and directed to make the payments to TD provided for in section 2 of the Settlement Agreement. Such payments shall be made from the lawyers for the State View Settling Defendants (RAR Litigation Lawyers in trust) to the lawyers for TD (McCarthy Tétrault LLP in trust).

4. **THIS COURT ORDERS** that BDO Canada Limited (“**BDO**”) is appointed as an officer of the Court to act as Information Officer in respect of the State View Companies, and that:

- (a) The State View Settling Defendants shall forthwith provide to the Information Officer with unrestricted access to all of the books, records and other financial information relating to the State View Companies.
- (b) The Information Officer shall gain an understanding of the State View Companies’ corporate structure, organization chart including directors and related parties and cash flow management/treasury functions.
- (c) The Information Officer shall gain an understanding of the State View Companies’ governance policies with regards to treasury functions (who can initiate wires, sign cheques) and other functional areas as required (confirmation of restricted access to certain individuals).
- (d) If and to the extent requested by TD or the State View Companies, the Information Officer shall monitor the business of the State View Companies and the transactions entered into by it, including, without limitation:

- (i) review, the historical, the source and application of funds received and disbursed by the State View Companies, and the deposit of funds into the bank accounts of the State View Companies;
 - (ii) monitor, on an ongoing basis, the source and application of funds received and disbursed by the State View Companies, and the deposit of funds into the bank accounts of the State View Companies;
 - (iii) monitor the activities of the State View Companies to ensure that appropriate cash management is being undertaken at all times; and
 - (iv) review the books and records and computer files, records, software and other systems as necessary.
- (e) The Information Officer shall report to TD and the State View Companies from time to time on the financial circumstances of the State View Companies including, without limitation, with respect to their assets, liabilities, cash flows, intercompany transfers, and payments to related parties or shareholders.
- (f) The Information Officer shall not take possession of any of the assets of the State View Companies, or manage any of the businesses or affairs of the State View Companies. The Information Officer shall not, by fulfilling its obligations under this order, be deemed to have taken possession, occupation, management or control of any of the assets of the State View Companies.
- (g) The Information Office is at liberty to bring a motion to seek directions from the Court as required.

5. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to BDO herein, BDO shall incur no liability as a result of its appointment or the carrying out of 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 to BDO as an officer of the Court.

6. **THIS COURT ORDERS** that the State View Settling Defendants shall pay the fees and expenses of the Information Officer.

7. **THIS COURT ORDERS** that, notwithstanding subsection 437(2) of the *Bank Act*, S.C. 1991, c. 46, Royal Bank of Canada may lift the restraint on deposit accounts belonging to the State View Settling Defendants, which were implemented pursuant to subsection 437(2) of the *Bank Act*, S.C. 1991, c. 46, by the commencement of this action. As the inclusion of this provision is a compromise sought by TD Bank and the State View Settling Defendants, Royal Bank of Canada shall not be responsible for monitoring the State View Settling Defendants' deposit accounts, nor any transactions by them made possible by the lifting of any restraint. This provision is without prejudice to the ability of TD Bank to bring a motion seeking to restrain deposit accounts belonging to the State View Settling Defendants, including under subsection 437(2) of the *Bank Act*, S.C. 1991, c. 46, if there is a Default (as that term is defined in the Settlement Agreement) by the State View Settling Defendants under the Settlement Agreement.

8. **THIS COURT ORDERS** that TD is at liberty to bring a motion to the Court for further relief, directions, assistance, clarifications and further orders, including orders in relation to any breach of this order.

DAJ

Appendix “B”



May 12, 2023

Via E-Mail

BDO Canada Limited
20 Wellington Street East,
Suite 500
Toronto, ON M5E 1C5

amerskey@cassels.com

tel: +1 416 860 2948

fax: +1 416 360 8877

file # 057984-00009

Attention: Clark Lonergan
Partner/Senior Vice President,
Business Restructuring &
Turnaround Services

Dear Mr. Lonergan:

Re: Receivership of Stateview Homes (Minu Towns) Inc., Stateview Homes (Nao Towns) Inc., Stateview Homes (On the Mark) Inc., TLSFD Taurasi Holdings Corp. and Stateview Homes (High Crown Estates) Inc. (the “Stateview On the Mark et al. Receivership”)

And Re: Receivership of Highview Building Corp Inc., Stateview Homes (Bea Towns) Inc. and Stateview Homes (Nao Towns II) Inc. (the “Stateview Highview et al Receiverships” and together with the Stateview On the Mark et al Receivership, the “Stateview Receiverships”)

We are the lawyers for KSV Restructuring Inc. (“**KSV**”) in its capacity as receiver and manager in the Stateview On the Mark et al Receivership. Mr. Larry, copied, is counsel to KSV in its capacity as receiver and manager in the Stateview Highview et al Receiverships. We are writing this letter on our own behalf and on behalf of Mr. Larry.

We understand that BDO Canada Ltd (“**BDO**”) was appointed information officer (“**Information Officer**”) over a number of Stateview Homes entities, with a mandate to, among other things:

- a) review the historical, the source and application of funds received and disbursed by the Stateview companies and the deposit of funds into the bank accounts of the Stateview companies;
- b) monitor on an ongoing basis, the source and application of funds received and disbursed by the Stateview companies, and the deposit of funds into the bank accounts of the Stateview companies;

- c) monitor the activities of the Stateview companies to ensure that appropriate cash management was being undertaken;
- d) review the books and records and computer files, records, software and other systems of the Stateview companies as necessary; and
- e) report from time to time on the financial circumstances of the Stateview companies, including with respect to their assets, liabilities, cash flows, intercompany transfers and payments to related parties or shareholders.

Pursuant to the orders of Justice Steele dated May 2, 2023 commencing the Stateview Receiverships (collectively, the “**Receivership Orders**”), KSV is entitled to, among other things:

- 1. investigate intercompany payments or transaction that appear to be out of the ordinary court of business;
- 2. compel the delivery by any person having knowledge of any information or documents related to the debtor entities in connection with such investigations; and
- 3. access any property of the debtors (including books and records) in the possession of the Information Officer and the cooperation of the Information Officer with respect thereto.

KSV understands that funds have been transferred from at least some of the bank accounts of the Stateview Receiverships entities following the appointment of the Information Officer, as well as from the account of Stateview Homes (Elm & Co) Inc., for which a receivership application is scheduled to be heard on May 18, 2023. We are therefore writing to request that the Information Officer promptly deliver to KSV a full accounting and reconciliation of all disbursements from accounts of any of the Stateview companies subject to the Stateview Receiverships to any related persons or companies including, without limitation, Stateview Homes Limited or any of the other Stateview entities, along with the use of such transferred funds by the recipient entity, for the period from the appointment of BDO as Information Officer to the date of the Receivership Orders.

Please also confirm whether any of the Stateview entities have made any payments to TD Bank since the appointment of BDO as Information Officer.

Finally, kindly confirm as soon as possible if the Information Officer has undertaken a full backup of all electronic records of the Stateview entities, including without limitation Stateview Homes Limited. If that has not yet been completed, we hereby request that the Information Officer immediately undertake and complete such back up to ensure that all information and

records are property preserved. If you require any assistance with doing so, KSV is available to assist.

We look forward to your prompt response.

Yours truly,

Cassels Brock & Blackwell LLP



Alan Merskey
Partner

cc Bobby Kofman/Noah Goldstein
Jeff Larry
Ryan Jacobs/Joseph Bellissimo

AM/:ph

Appendix “C”

Murtaza Tallat

Subject: RE: [EXT] KSV Restructuring Inc. re Stateview on the Mark Receivership and Stateview Highview et al Receiverships [IWOV-LEGAL.057984-00009] [NRFC-EDMRS.FID13837538]

From: James Renihan (he/him) <james.renihan@nortonrosefulbright.com>

Sent: Wednesday, May 17, 2023 9:42 PM

To: Bobby Kofman <bkofman@ksvadvisory.com>; Jennifer Stam <jennifer.stam@nortonrosefulbright.com>; Lonergan, Clark <clonergan@bdo.ca>; Hoogenband, Patricia <phoogenband@cassels.com>

Cc: Bellissimo, Joseph <jbellissimo@cassels.com>; Jacobs, Ryan <rjacobs@cassels.com>; Merskey, Alan <amerskey@cassels.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Jeff.Larry@paliarerland.com; Kennedy, Robert <robert.kennedy@dentons.com>; Dino <dino@stateviewhomes.com>; Carlo <carlo@stateviewhomes.com>; Andrew Parley <aparley@litigate.com>; Matthew Lerner <mlerner@litigate.com>

Subject: RE: [EXT] KSV Restructuring Inc. re Stateview on the Mark Receivership and Stateview Highview et al Receiverships [IWOV-LEGAL.057984-00009] [NRFC-EDMRS.FID13837538]

Bobby,

A screenshot of the current balance is attached. If you have trouble opening it, try your phone- I could not open it on my computer. You will see it is approximately \$307k, which is less than the \$450k reported last week. We have inquired into the difference and understand that it is likely due to cheques that had been issued prior to May 10 but for which the funds had not yet cleared. In other words, there were no new expenditures or cheques after our letter of May 10. We are informed that the cheques that resulted in the difference include a cheque of \$70k to our firm, a \$30k cheque to a homeowner for the Elm & Co project that had double paid a deposit, and amounts for payroll, utilities and trades. Obviously you can dig into the details once the receivership is in place.

Regards,
James

James Renihan

Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
222 Bay Street, Suite 3000, P.O. Box 53, Toronto ON M5K 1E7 Canada
T: +1 416.216.1944 | F: +1 416.216.3930
james.renihan@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: Bobby Kofman <bkofman@ksvadvisory.com>

Sent: May 17, 2023 2:43 PM

To: Jennifer Stam <jennifer.stam@nortonrosefulbright.com>; Lonergan, Clark <clonergan@bdo.ca>; Hoogenband, Patricia <phoogenband@cassels.com>

Cc: Bellissimo, Joseph <jbellissimo@cassels.com>; Jacobs, Ryan <rjacobs@cassels.com>; Merskey, Alan <amerskey@cassels.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Jeff.Larry@paliarerland.com; Kennedy, Robert <robert.kennedy@dentons.com>; Dino <dino@stateviewhomes.com>; Carlo <carlo@stateviewhomes.com>; James Renihan (he/him) <james.renihan@nortonrosefulbright.com>; Andrew Parley <aparley@litigate.com>; Matthew Lerner <mlerner@litigate.com>

Subject: Re: [EXT] RE: KSV Restructuring Inc. re Stateview on the Mark Receivership and Stateview Highview et al Receiverships [IWOV-LEGAL.057984-00009]

Jenny,

Please let me know the status of the items below. I have not yet received the bank balance for Elm. With the receivership application for Elm tomorrow, we'd also like its bank account details today.

Thanks.

Bobby Kofman
President and Managing Director
KSV Advisory Inc.
(o) 416.932.6228
(c) 647.282.6228
bkofman@ksvadvisory.com

From: Bobby Kofman <bkofman@ksvadvisory.com>

Sent: Tuesday, May 16, 2023 10:18 PM

To: Jennifer Stam <jennifer.stam@nortonrosefulbright.com>; Lonergan, Clark <clonergan@bdo.ca>;
Hoogenband, Patricia <phoogenband@cassels.com>

Cc: Bellissimo, Joseph <jbellissimo@cassels.com>; Jacobs, Ryan <rjacobs@cassels.com>; Merskey, Alan
<amerskey@cassels.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Jeff.Larry@paliareroland.com
<Jeff.Larry@paliareroland.com>; Kennedy, Robert <robert.kennedy@dentons.com>; Dino
<dino@stateviewhomes.com>; Carlo <carlo@stateviewhomes.com>; James Renihan (he/him)
<james.renihan@nortonrosefulbright.com>; Andrew Parley <aparley@litigate.com>; Matthew Lerner
<mlerner@litigate.com>

Subject: Re: [EXT] RE: KSV Restructuring Inc. re Stateview on the Mark Receivership and Stateview Highview et al Receiverships [IWOV-LEGAL.057984-00009]

Jenny,

Thanks.

A few things:

- As per your email, we'd appreciate receiving the balance tomorrow morning, particularly with Elm's receivership application returnable Thursday morning.
- There is some urgency to get access to the records related to the receivership companies, including electronic records, and I don't think anyone disputes our right to those. Some of those may be required for the next steps in these proceedings, including a realization process. So it's not accurate that we may not need access to receivership company records right away. We are prepared to enter into a protocol regarding non-receivership company documents and privileged documents.
- Thanks for the information on the payment. We may have additional comments down the road on this topic.

Best,

Bobby Kofman
President and Managing Director
KSV Advisory Inc.

(o) 416.932.6228
(c) 647.282.6228
bkofman@ksvadvisory.com

Appendix “D”



Home

Important Information for purchasers and owners of StateView Homes

Tarion is closely monitoring the situation involving several licensed builders within the StateView Homes group. We understand that purchasers of StateView's pre-construction homes are concerned about recent media reports.

Tarion will update this notice once new relevant information is received.

Purchasers of StateView's Pre-Construction Homes

While several of the builders within the StateView group are in receivership, at this time the appointment of the receiver has not resulted in the termination or fundamental breach of purchase agreements. It remains to be seen in the coming weeks or months whether StateView will be able to proceed with its pre-construction projects, and if it will be able to perform its obligations under the purchase agreements.

If StateView is not able to proceed with its pre-construction projects, and in the future your purchase agreement is terminated or fundamentally breached by StateView, and your deposits are not refunded by StateView through the receivership process, then you will be able to submit a Deposit Protection claim to Tarion. You can learn more about the [deposit protection offered by Tarion here](#).

We encourage you to speak with your real estate lawyer if you have questions about the StateView situation and receivership process. Information about the receivership is [available on the receiver's website](#).

Owners of Homes Completed by Stateview



Tarion will continue to process warranty claim forms, schedule and conduct conciliation inspections, and (if applicable) backstop StateView's warranties.



Sign up for our newsletter

Subscribe



Contact Us

Mon-Fri 8 am-5 pm (EDT)

1-877-9-TARION(1-877-982-7466)

[About Tarion](#)

[Join our team!](#)

[Contact Form](#)

Visit Us

5160 Yonge Street, 7th Floor

Toronto, ON M2N 6L9



visit: newhomeombuds.ca

Homeowners

Basic Information

[Homeowners' Homepage](#)

[The New Home Warranty](#)

[Homeowners' Resources Hub](#)

Pre-Possession

[Coverage & claims](#)

[The Pre-Delivery Inspection](#)

Post-Possession

[Coverage & coverage limits](#)

[The claims process](#)

Condo Corporations

Basic Information

[Condo Corporation Homepage](#)

[Information about common elements](#)

[Condo Corporation Resources Hub](#)

Warranty Information

[Common elements coverage](#)

[Common elements claims process](#)

[The performance audit](#)



Basic Information

[Builders' Homepage](#)

[Licensing & Application process](#)

[Building & Selling](#)

[Builders' Resources Hub](#)

Pre-Possession

[Coverage Homes & Condo Units](#)

[Coverage Common Elements](#)

[Pre-Delivery Inspection](#)

Post-Possession

[Coverage after you close](#)

[Claims process](#)

[Accessibility](#) [Contact](#) [Privacy](#) [Social Media Policy](#) [Terms of Use](#)

@ Copyright 2022-2023 Tarion

Appendix “E”



Murtaza Tallat

ksv restructuring inc.

220 Bay Street, Suite 1300, Box 20

Toronto, Ontario, M5H 2W4

T +1 416 932 6031

F +1 416 932 6266

mtallat@ksvadvisory.com

ksvadvisory.com

May 3, 2023

DELIVERED BY E-MAIL

CBRE Limited
Land Services Group
2005 Sheppard Avenue East
Suite 800
Toronto, ON M2J 5B4

Attention: Mike Czestochowski

Dear Mr. Czestochowski:

Re: Stateview Group of Companies listed on Appendix "A" (the "Companies")

Pursuant to an order made by the Ontario Superior Court of Justice (Commercial List) dated May 2, 2023 (the "Receivership Order"), KSV Restructuring Inc. was appointed the receiver and manager (the "Receiver") of the Companies' real property (the "Real Properties") and all the other property, assets and undertaking of the Companies (together with the Real Properties, the "Property").

A copy of the Receivership Order and other materials filed in the receivership proceeding is available on the Receiver's case website at <https://www.ksvadvisory.com/experience/case/stateview-homes> (the "Website").

The Companies are developers of residential real estate projects (the "Projects"). Information concerning the Property, the Projects and these proceedings can be found on the Website.

The Receiver is inviting you to submit a proposal to market the Real Properties listed on Appendix "B". **Proposals must be submitted to the Receiver by 5:00 p.m. (Toronto time) on May 17, 2023.** Details of the process and the content to be included in your proposal are attached as Appendix "C". A confidentiality agreement is attached as Appendix "D".

Pursuant to the Receivership Order, no formal marketing or sale process (a "Sale Process") can be commenced in respect of the Real Properties prior to May 29, 2023. **Accordingly, you are strictly prohibited from soliciting any interest in the Real Properties, or discussing this opportunity with any parties, before an order is issued by the Court approving a Sale Process, unless otherwise agreed by the Receiver in advance.**

Should you have any questions with respect to the above, please contact the undersigned at (416) 932-6031 or mtallat@ksvadvisory.com.

Yours very truly,

KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
THE STATEVIEW GROUP OF COMPANIES LISTED ON APPENDIX "A" HERETO

Per: Murtaza Tallat

Appendix “A”

List of Companies

- Stateview Homes (Minu Towns) Inc.
- Stateview Homes (Nao Towns) Inc.
- Stateview Homes (Nao Towns II) Inc.
- Stateview Homes (On The Mark) Inc.
- TLSFD Taurasi Holdings Corp.
- Stateview Homes (High Crown Estates) Inc.
- Highview Building Corp Inc.
- Stateview Homes (BEA Towns) Inc.

Appendix “B”

Real Properties

Project	Address	PIN
Minu Towns	Donald Cousens Parkway, Markham	PIN 03061-5685 (LT)
Minu Towns	Donald Cousens Parkway, Markham	PIN 03061-5686 (LT)
Nao Towns	5112, 5122, 5248 14th Avenue, Markham	PIN 02962-0856 (LT)
Nao Towns II	7810, 7822, 7834, 7846, McCowan Road, Markham	PIN 02962-0270 (LT)
Nao Towns II	7810, 7822, 7834, 7846, McCowan Road, Markham	PIN 02962-0271 (LT)
Nao Towns II	7810, 7822, 7834, 7846, McCowan Road, Markham	PIN 02962-0272 (LT)
Nao Towns II	7810, 7822, 7834, 7846, McCowan Road, Markham	PIN 02962-0273 (LT)
Nashville	89, 99 Nashville Road, Kleinberg, Ontario	PIN 03323-0578 (LT)
Nashville	89, 99 Nashville Road, Kleinberg, Ontario	PIN 03323-0579 (LT)
Nashville	89, 99 Nashville Road, Kleinberg, Ontario	PIN 03323-0580 (LT)
BEA Towns	189 Summerset Drive, Barrie	PIN 58763-1764 (LT)
High Crown	13151 - 13161 Keele Street, King City	PIN 03372-1040 (LT)

**Request for Proposals for
REAL ESTATE BROKER SERVICES**

Re: Stateview Group of Companies listed on Appendix "A" (the "Companies")

Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on May 2, 2023, KSV Restructuring Inc. was appointed the receiver and manager (the "Receiver") of the Companies' real property (each a "Real Property" and one or more Real Property, the "Real Properties"), and all the other property, assets and undertaking relating to the Real Properties.

A. Background

- The Receiver is inviting you to provide real estate broker services to assist the Receiver in conducting a sale process for the Real Properties (the "Sale Process").
- Proposals must be submitted by email to Murtaza Tallat, Director (mtallat@ksvadvisory.com), by 5:00 p.m. (Toronto time) on May 17, 2023.
- Copies of Court materials relating to these proceedings are available on the Receiver's website at: <https://www.ksvadvisory.com/experience/case/stateview-homes>.
- Information related to the Real Properties will be provided in data rooms that have been established for these proceedings (the "Data Rooms"). Realtors can obtain access to the Data Rooms once they sign the confidentiality agreement provided in Appendix "D".
- The terms of the Sale Process are subject to Court approval.
- One or more brokers may be selected to carry out the Sale Process.

B. Realtor's Role

- Working with the Receiver, the Realtor's role will include, among other things:
 - developing a marketing process, including timelines for the Sale Process;
 - establishing an estimated value for the Real Properties;
 - preparing marketing materials;
 - advertising the Real Properties at the agent's expense;
 - obtaining and negotiating confidentiality agreements from interested parties;
 - showing the Real Properties to interested parties and working with the Receiver to maintain data rooms to facilitate the Sale Process;
 - qualifying interested parties from a financial perspective, to the extent necessary;
 - assisting interested parties with their diligence;
 - assisting to assess offers submitted and with the negotiation strategy;

- providing Sale Process updates to the Receiver on a weekly basis (or such other frequency as agreed with the Selected Broker), detailing the parties contacted, feedback received, the parties performing due diligence at any point in time and the quality of each of the potential bidders, to the extent possible;
- providing a report to the Receiver at the conclusion of the Sale Process for each Real Property summarizing the Sale Process carried out for that Real Property, including the rationale for selecting the best offer in the sale process for that Real Property; and
- assisting to close one or more transactions.

C. Proposal Content

- The Proposal must contain the following:
 - Work Plan: proposals shall include a detailed work plan.
 - Value Estimate: proposals shall provide an estimate of the value of each Real Property, together with supporting assumptions, including a discussion of the highest and best use for each Real Property.
 - Firm Background and Staff Experience: proposals shall provide background information concerning their firm, including the experience of their staff who will be working on this assignment (including résumés for the lead agents).
 - Liability Insurance Certificate: a copy of your liability insurance certificate is to be included.
 - Compensation Structure: proposals shall detail the proposed compensation structure for each Real Property, including if the Real Properties are sold individually or *en bloc*.
 - Conflict of Interest Statement: all proposals shall certify the disclosure of any professional or personal financial interests that could be a possible conflict of interest. In addition, any arrangements to derive additional compensation shall also be disclosed and certified.

D. Proposal Considerations

- The factors on which each Proposal will be considered include the following:
 - the marketing plan;
 - experience selling similar real estate (including the location of the Real Properties);
 - experience acting in Court-supervised situations;
 - compensation structure; and
 - other factors, in the Receiver's sole discretion.

Note: please limit the proposal to no more than 25 pages, if possible.

* * *

For more information or questions, please contact Murtaza Tallat at the email address noted above.

CONFIDENTIALITY AGREEMENT

KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

Email: mtallat@ksvadvisory.com
Attention: Murtaza Tallat

To Whom It May Concern:

Re: Stateview Group of Companies (the "Companies")

WHEREAS this agreement (the "Confidentiality Agreement") is being executed between the Receiver and the Broker (terms as defined below), as entered into as of the date on the last page hereto, for the purpose of providing real estate brokerage services concerning one or more of the Companies' real properties listed on Appendix "B" (the "Real Properties") together with any and all other related property, assets undertaking of the Companies (collectively with the Real Properties, the "Property").

AND WHEREAS We/I as undersigned (hereinafter referred to as the "Broker") requests that KSV Restructuring Inc., in its capacity as receiver and manager (the "Receiver") of the Property appointed pursuant to an order of the Ontario Superior Court of Justice made on May 2, 2023, provide the Broker with certain confidential information relating to the Real Property.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) and in consideration of the Receiver agreeing to provide the Broker with certain or all of the Information (as defined below), the Broker hereby undertakes and agrees as follows:

- a) To treat and maintain confidentially, such information and any other information that the Receiver or any of its advisors furnish to the Broker, whether furnished before or after the date of this Agreement, whether furnished orally or in writing or otherwise recorded or gathered, and regardless of whether specifically identified as "confidential", including any documents or copies (paper, electronic or otherwise) and communications thereof contained (collectively, the "Information").
- b) Not to use any of the Information for any purpose other than for the exclusive purpose of evaluating the possibility of submitting a listing proposal for the Real Properties. The Broker agrees that the Information will not be used in any way detrimental to the Companies, the Property, and/or the Receiver in the performance of its appointment concerning the Property, and that such Information will be kept confidential by the Broker, its directors, officers, employees and representatives (collectively, the "Representatives") and these Representatives shall be informed by the Broker of the confidential nature of such information and shall be directed to treat such information confidentially.
- c) To be held responsible for any breaches of this Confidentiality Agreement by its Representatives, and to advise the Representatives of the confidential nature of the Information, and to provide to those Representatives to which or to whom the Information is provided a copy of this Confidentiality Agreement, and if such Representative is not otherwise bound by restrictions on disclosure and use similar to the obligations hereunder, to have such Representatives agree to be bound by this Confidentiality Agreement.
- d) To transmit, where required, the Information only to those Representatives who need to know the Information for the purposes described herein, who shall be informed by the Broker of the confidential nature of the Information and who agree to be bound by the provisions of this Confidentiality Agreement. On request, the Broker shall promptly notify the Receiver of the identity of each Representative to whom any Information has been delivered or disclosed.

- e) To not supply or disclose any data, communications or documents included in the Information or any Information included therein or any Information hereinafter obtained in the course hereof or with respect hereto to any corporation, company, partnership or individual or any combination of one or more of the foregoing (any of which are hereby defined as a "Person") other than the Broker and its Representatives, unless the prior written consent of the Receiver has been obtained, in advance.
- f) The Broker and its Representatives will not, without the prior written consent of the Receiver, disclose to any Person that this solicitation for proposal is taking place nor disclose of any of the terms, conditions or other facts with respect to any such possible transaction, including the status thereof.
- g) That any time, at the request of the Receiver, the Broker agrees to promptly return or destroy, without any right of compensation or indemnity, all Information without retaining any copies thereof or any notes relating thereto or reproductions or any part thereof in its possession without regards to the form or format. The Broker will certify as to the return or destruction of all Information and related notes and copies of such information and that no Person has a copy of the Information.
- h) That in the event the Broker is required or requested by legal process to disclose any of the Information, the Broker will provide the Receiver with prompt written notice of such requirement or request so that the Receiver may take such actions as it considers appropriate.
- i) That the Broker agrees that the Receiver makes no representations or warranties as to the accuracy or completeness of the Information. The Broker further agrees that neither the Receiver, nor any other author of, or Person providing, Information, shall have any liability to the Broker or any of its Representatives arising from the use of the Information by the Broker or its Representatives.
- j) The Broker represents and warrants that it shall be responsible for any costs associated with its review of the Information. Any consultants, real estate agents/brokers, and/or advisors retained by the Broker shall be required to execute, and to be bound by, this Confidentiality Agreement. The Broker shall retain a copy of such executed Confidentiality Agreement and will provide it to the Receiver immediately following its request.
- k) The Broker and its Representatives acknowledge that the Receiver is acting strictly in its capacity as Receiver and that it shall have no liability for any action, omission, statement, misstatement, representation, or warranty made within the Information. The Broker and its Representatives further acknowledge that the Receiver shall have no liability for any action, omission, statement, misstatement, representation, or warranty made by itself or its employees to the Broker and its Representatives, absent fraud or willful misconduct.
- l) The Broker shall indemnify the Receiver, any of its employees, and its counsel against any loss, cost, damage, expense, legal fees or liability suffered or incurred by any of them as a result of or in connection with any breach by the Broker or any of its Representatives to whom the Broker discloses Information of any term or provision of this Confidentiality Agreement.
- m) The Broker acknowledges and agrees that the execution and delivery of this Confidentiality Agreement and the delivery of the Information does not give rise to any legal obligation of the Receiver, whether in contract, in negligence or other tort, or by way of fiduciary duty or otherwise. Without limiting the generality of the foregoing, the Broker acknowledges and agrees that the Receiver is not and will not be under any obligation, express or implied, to provide or to continue to provide Information, to entertain any offers or proposals for the purchase or any sale, or to complete a sale or other transaction with the Broker, unless and until a legally binding agreement is delivered and executed which expressly provides for such obligations. Furthermore, the Broker acknowledges and agrees that the Receiver has not and will not give any representations or warranties, either express or implied, concerning the accuracy or completeness of, or otherwise relating in any way to, the Information, and that the Receiver shall not have any liability whatsoever to the Broker or any Representatives for any transaction entered into, or not entered into, or any other act, omission or decision made or taken, relying upon or in any way affected by, the Information.

- n) The Broker agrees that monetary damages would not be a sufficient remedy for any breach of this Agreement by it or its employee or agents and that any court having jurisdiction may enter a preliminary and/or permanent restraining order, injunction or order for specific performance in the event of an actual or threatened breach of any of the provisions of this Agreement, in addition to any other remedy available to the Receiver or the Companies. In addition to all remedies available to the Receiver, it is agreed that the Receiver shall be entitled to equitable relief if necessary, including an injunction or specific performance in relation to a breach of this Confidentiality Agreement by the Broker and/or its Representatives.
- o) The Broker hereby agrees to observe all the requirements of any applicable privacy legislation including, without limitation, the *Personal Information Protection and Electronic Documents Act* (Canada) with respect to personal information which may be contained in the Information.
- p) The Broker acknowledges and agrees that it has had an opportunity to obtain independent legal advice as to the terms and conditions of this Confidentiality Agreement and has either received same or expressly waived its right to do so.
- q) This Confidentiality Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns. This Confidentiality Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Each party hereto irrevocably submits to the exclusive jurisdiction of the Ontario Superior Court of Justice (Commercial List) sitting in Toronto, Ontario, with respect to any matter arising hereunder or related hereto.
- r) This Confidentiality Agreement shall enure to the benefit of the Receiver and Mortgagee Representatives and their successors and assigns. Any party may deliver an executed copy of this Confidentiality Agreement by facsimile or email. This Confidentiality Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.
- s) This Confidentiality Agreement shall have a term of two (2) years from the date written below.

DATED at _____ this _____ day of _____, 2023

("Broker")

Corporate Name (Please Print)

By (Authorized Signing Officer's Signature)

(Officer's Name and Title)

(Broker's
Address)

(Telephone Number)

(Email Address)

Appendix “F”

	Cushman	
	Nao Phase II	Elm
Cushman fee	0.80%	0.80%
All in, with co-op broker	1.30%	1.30%

	Colliers	
	Nashville	BEA
Colliers fee	1.85%	0.85%
All in, with co-op broker	2.85%	1.35%

	CBRE	
	Nao Phase I	Minu
	Proceeds	Commission
CBRE fee	\$0 - \$9M	3%
*based on the aggregate	\$9M - \$19M	1.5%
selling price	\$19M-\$50M	0.95%
	+\$50M	0.65%

	JLL	
	High Crown	Industrial
JLL fee	1.10%	1.25%

Co-op broker fee	0.50%	0.50%	All in, with co-op broker	1.60%	1.75%
------------------	-------	-------	---------------------------	-------	-------

*CBRE's commission is structured based on aggregate proceeds on both sites. Accordingly, for illustrative purposes only, if the projects were sold for \$100 million, the commission would be \$1,039,500 (calculated as 3% on first \$9 million, 1.5% on next ten million, 0.95% on next \$31 million and 0.65% on last \$50 million).

**The realtors will receive a work fee of \$100,000 per real property in the event of a refinancing or \$150,000 per real property in the event the real property is acquired by a mortgagee through a credit bid. One work fee would be paid for all industrial properties in the event of a refinancing or credit bid.

TAB 3

Court File No. CV-23-00698395-00CL
 CV-23-00698632-00CL
 CV-23-00698637-00CL
 CV-23-00698576-00CL
 CV-23-00699067-00CL

**ONTARIO
 SUPERIOR COURT OF JUSTICE
 (COMMERCIAL LIST)**

B E T W E E N:

KINGSETT MORTGAGE CORPORATION AND DORR CAPITAL CORPORATION

Applicants

- and -

**STATEVIEW HOMES (MINU TOWNS) INC., STATEVIEW HOMES (NAO TOWNS)
 INC., STATEVIEW HOMES (ON THE MARK) INC., TLSFD TAURASI HOLDINGS
 CORP. AND STATEVIEW HOMES (HIGH CROWN ESTATES) INC.**

Respondents

DORR CAPITAL CORPORATION

Applicant

- and -

HIGHVIEW BUILDING CORP INC.

Respondent

DORR CAPITAL CORPORATION

Applicant

- and -

STATEVIEW HOMES (BEA TOWNS) INC.

Respondent

**ATRIUM MORTGAGE INVESTMENT CORPORATION AND DORR
CAPITAL CORPORATION**

Applicants

- and -

**STATEVIEW HOMES (NAO TOWNS II) INC., DINO TAURASI AND
CARLO TAURASI**

Respondents

MERIDIAN CREDIT UNION

Applicant

- and -

STATEVIEW HOMES (ELM&CO) INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS
AMENDED**

NOTICE OF MOTION
(Motion for Declaratory Relief)

Tarion Warranty Corporation (“**Tarion**”) will make a motion to a Judge of the Ontario Superior Court of Justice (Commercial List) on November 2, 2023 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

[] In writing under subrule 37.12.1(1)

[] In writing as an opposed motion under subrule 37.12.1(4);

- [X] In person;
- [] By telephone conference;
- [] By video conference.

at the following location

330 University Avenue, Toronto, Ontario

(Courthouse address for in person hearing or telephone conference or video conference details, such as a dial-in number, access code, video link, etc. if applicable)

THE MOTION IS FOR:

- (a) a declaration that the New Home Purchasers,¹ and in the alternative, Tarion, are the beneficial owners of all deposit monies received by the Stateview Debtor Companies:
- (i) under a statutory, express, implied, and/or constructive trust by operation of the Warranties Act and its regulations, the Builder-Vendor Agreements, the Purchase Agreements and/or the Addendum; and
- (ii) under an implied and/or constructive trust by operation of the common law and the principles of equity;
- (b) as security for the amounts referred to in paragraph (a), the New Home Purchasers and/or Tarion, as applicable, are entitled to a court-ordered charge on all of the Stateview Debtor Companies' assets, property and undertaking, and in the

¹ Capitalized terms in this section have the meanings given to them below.

alternative, an equitable lien on all of the Stateview Debtor Companies' assets, property and undertaking;

(c) a declaration that the charge and/or the equitable lien referred to in paragraph (b) ranks:

(i) immediately behind the Receiver's Charge, the Receiver's Borrowings Charge (each, as defined in the Receivership Orders) and the charges as set out in subsections 14.06(7), 81.4(4) and 81.6(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**Super-priority Charges**"), and ahead of the claims of all other creditors;

(ii) in the alternative, immediately behind each of the Super-priority Charges and the secured claims of registered mortgagees (the "**Mortgages**"), and ahead of the claims of all other creditors; and

(iii) in the further alternative, in some other priority to the claims of ordinary unsecured creditors;

(d) the costs of this motion, plus all applicable taxes; and

(e) such further and other relief as to this Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

A. Tarion Warranty Corporation

(a) Tarion is a private, not-for-profit corporation established in 1976 to protect the rights of new home purchasers and owners in Ontario and is designated by the

Province to administer the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31, including the regulations promulgated thereunder (collectively, the “**Warranties Act**”);

- (b) The Warranties Act sets out the warranties and other protections to which new home purchasers and owners are entitled in Ontario, as well as the framework for Tarion’s administration of the program;
- (c) Among those warranties and protections are protections for the deposits paid by home purchasers to home vendors in connection with their purchase of new freehold homes;
- (d) Where such a purchaser is entitled to a refund of his or her deposit and is unable to obtain recourse from the home vendor within the prescribed time periods, the Warranties Act provides a framework whereby the purchaser may assert a claim against Tarion in an amount up to \$100,000 in respect of that deposit (though the amount of the total deposit may be greater);
- (e) If those deposit claims are determined to be valid, then, under the Warranties Act, Tarion will pay out on those claims from the guarantee fund that Tarion maintains for this and similar purposes under the Warranties Act;
- (f) Tarion, in turn, can assert a claim for reimbursement against the vendor or other parties regarding such deposit claims (including out-of-pocket amounts and applicable administration fees and other amounts that may be payable);

B. The Stateview Debtor Companies

- (g) The respondents to these receivership proceedings are Stateview Homes (Minu Towns) Inc., Stateview Homes (Nao Towns) Inc., Stateview Homes (Nao Towns II) Inc., Stateview Homes (On the Mark) Inc., TLSFD Taurasi Holdings Corp., Stateview Homes (High Crown Estates) Inc., Highview Building Corp Inc., Stateview Homes (BEA Towns) Inc. and Stateview Homes (Elm&Co) Inc. (collectively, the “**Stateview Debtor Companies**”);
- (h) The Stateview Debtor Companies were real estate developers subject to the Warranties Act, with multiple freehold home development projects underway, engaging in activities that are required to be conducted by vendors and builders in a manner that complies with the Warranties Act;
- (i) The Stateview Debtor Companies and Tarion were parties to various builder and vendor agreements, as provided for under the Warranties Act (the “**Builder-Vendor Agreements**”);
- (j) On May 2, 2023, and May 18, 2023, this Court issued receivership orders (the “**Receivership Orders**”) appointing KSV Restructuring Inc. as the receiver and manager (the “**Receiver**”) of the property, assets and undertaking of the Stateview Debtor Companies (such proceedings, collectively, the “**Receivership Proceedings**”);
- (k) On June 5, 2023, this Court approved a sale process for the Stateview Debtor Companies and their assets in the Receivership Proceedings (the “**Sale Process**”);

C. The Stateview Debtor Companies Misappropriated Deposits

- (a) The Stateview Debtor Companies, in connection with their freehold home development projects, entered into various agreements of purchase and sale with home purchasers in connection with those projects and activities (the “**Purchase Agreements**”);
- (b) As set out in the first report of the Receiver dated May 30, 2023 (the “**First Report**”), 765 of those home purchasers (the “**New Home Purchasers**”) made deposit payments totaling \$77,172,000 to the Stateview Debtor Companies (the “**Deposits**”) under Purchase Agreements, all in connection with freehold homes;
- (c) According to the First Report, the Deposits were taken by the Stateview Debtor Companies prior to the Receivership Proceedings as follows:

Project	Number of Purchasers	Deposits (‘000s)
Minu Towns	147	\$19,208
Nao Towns	96	7,680
Nao Towns II	76	7,617
Nashville (Highview)	4	Nil
BEA Towns	218	17,440
Elm	145	16,076
High Crown	47	4,933
On the Mark	32	4,218
	765	\$77,172

- (d) According to the First Report, the Deposits were not placed in an express and/or segregated escrow or trust account by the vendor or were no longer being held in an express and/or segregated escrow or trust account as at the commencement of the Receivership Proceedings;

- (e) It does not appear that the Stateview Debtor Companies executed any deposit trust agreements in connection with the real estate developments that are the subject of the Receivership Proceedings;
- (f) The Stateview Debtor Companies were required by the Warranties Act to include the statutory addendum (the “**Addendum**”) in all agreements of purchase and sale for new freehold homes—a standard Province-wide form of document that sets out certain rights and obligations of both purchasers and vendors with respect to such deposits, among other things. The Stateview Debtor companies included the Addendum in some or all of the Purchase Agreements with the New Home Purchasers;
- (g) The Stateview Debtor Companies used the Deposits: (a) to fund the real estate development activities of the Stateview Debtor Companies; and/or (b) improperly and/or fraudulently for illegitimate purposes not related to the funding of real estate development activities of the Stateview Debtor Companies;

D. The Deposit Claims

- (h) There are insufficient funds available in the Stateview Debtor Companies’ estates to refund in full all Deposits to New Home Purchasers;
- (i) To the extent that the Stateview Debtor Companies fail to refund the Deposits to the New Home Purchasers, the New Home Purchasers are creditors of the Stateview Debtor Companies for such amounts;

- (j) If the claims of the New Home Purchasers are not satisfied out of the Stateview Debtor Companies' estates, Tarion will have a statutory obligation to reimburse the valid claims of the New Home Purchasers to a maximum liability of \$100,000 for each freehold home;
- (k) The Warranties Act provides that Tarion, in turn, is subrogated to all rights of recovery of, and can maintain a legal action in the name of (or in its own name), all New Home Purchasers to whom Tarion makes a payment on account of their claims;
- (l) By operation of the common law and the principles of equity, and in the alternative, by operation of the Warranties Act and its regulations, the Builder-Vendor Agreements, the Purchase Agreements and/or the Addendum, all monies received by Stateview Debtor Companies from a New Home Purchaser are held in trust for the New Home Purchaser, and in the alternative, for Tarion, by way of statutory, express, implied, and/or constructive trust;
- (m) As security for those amounts, the New Home Purchasers and/or Tarion, as applicable, are entitled to a court-ordered charge on all of the Stateview Debtor Companies' assets, property and undertaking, and in the alternative, an equitable lien on all of the Stateview Debtor Companies' assets, property and undertaking;
- (n) That charge and/or equitable lien ranks:
 - (i) immediately behind the Super-priority Charges, and ahead of the claims of all other creditors;

- (ii) in the alternative, immediately behind each of the Super-priority Charges and the Mortgages, and ahead of the claims of all other creditors; and
- (iii) in the further alternative, in some other priority to the claims of ordinary unsecured creditors;
- (o) *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31 and the regulations promulgated thereunder;
- (p) Sections 11, 96, and 97 of the *Courts of Justice Act*, R.S.O. 1990, c. C.4;
- (q) Rule 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
- (r) the inherent and equitable jurisdiction of this Court; and
- (s) such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Affidavit of Kevin Brodie, sworn August 31, 2023, and the exhibits attached thereto;
- (b) such further and other materials as counsel may advise and this Court may permit.

September 1, 2023

Torys LLP

79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, ON M5K 1N2

David Outerbridge (LSO #: 42724V)

Tel: 416.865.7825

Email: douterbridge@torys.com

Adam M. Slavens (LSO#: 54433J)

Tel: 416.865.7333

Email: aslavens@torys.com

Jonathan Silver (LSO#: 70137Q)

Tel: 416.865.8198

Email: jsilver@torys.com

Mike Noel (LSO#: 80130F)

Tel: 416.865.7378

Email: mnoel@torys.com

Lawyers for Tarion Warranty Corporation

TO: The Attached Service List

TAB 4

Court File No. CV-23-00698395-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

ATRIUM MORTGAGE INVESTMENT CORPORATION AND DORR
CAPITAL CORPORATION

Applicant

and

STATEVIEW HOMES (NAO TOWNS II) INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C 1985, C. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS
AMENDED**

FACTUM OF THE MOVING PARTY (CROSS-MOTION)

SOTOS LLP

180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

David Sterns (LSO # 36274J)
dsterns@sotos.ca
Denna Pourmonazah Jalili (LSO # 84976N)
djalili@sotos.ca

Tel: 416-977-0007
Fax: 416-977-0717

Lawyers for the Moving Party (Cross-Motion)

TO: THE SERVICE LIST

MOVING PARTY' (CROSS-MOTION) FACTUM

I. OVERVIEW

1. The moving party to this cross-motion, Dharmi Mehta (the “**Moving Party**”), brings this motion on behalf of all purchasers of pre-construction homes (the “**Homebuyers**”) from the Stateview corporations subject to these receivership proceedings (the “**Debtors**”). The Homebuyers are currently at risk of losing over \$77,000,000 (the “**Deposit Funds**”) paid collectively in deposits to the Debtors. The Moving Party is one of the Homebuyers, having paid a \$150,000 deposit towards the purchase of a pre-construction home from one of the Debtors.

2. The purpose of this cross-motion is to obtain an order compelling KSV Restructuring Inc. (the “**Receiver**”) in its capacity as receiver and manager of the debtor, Stateview Homes (Nao Towns II) Inc. (“**Nao Towns II**”), to (i) conduct a tracing exercise in respect of certain funds that were required to be held in trust pursuant to the *Condominium Act, 1998*, S.O. 1998, C. 19 (the “**Condominium Act**”); (ii) value certain statutory trust claims made by the Homebuyers; and (iii) hold back from distribution to the secured creditors an amount equivalent to 20% of the deposits paid to each of the Stateview companies in receivership, including Nao Towns II, pending the completion of the aforementioned tracing exercise and valuation.

3. The Debtors previously carried on business as real estate developers that sold pre-construction townhomes (the “**Projects**”) organized as common elements condominiums (“**CEC**”). Under a CEC model, homeowners hold freehold titles to specific land parcels which are linked to an undivided common interest (the “**Common Interest**”) in the CEC. Pursuant to s. 81

and s. 138(4)(a) of the *Condominium Act*, deposits paid towards the Common Interest are statutorily required to be held in trust, whereas the amounts paid towards the freehold aspects are not so required.

4. Since the outset of these receivership proceedings, the Receiver has erroneously reported to this Honourable Court that the Projects were purely “freehold homes” and, as such, the Stateview corporations were “not required to keep them in trust”.¹ As a result, and by its own admission, the Receiver has not attempted to conduct a tracing exercise in respect of any of the deposits paid to the Debtors.

5. What’s more, the Receiver failed to conduct a tracing exercise, despite being advised by the management of the Debtors that the deposits were used to “fund the general operations of the Receivership companies and the development of the Projects”.²

6. The Receiver now makes a motion for, *inter alia*, court approval to distribute the proceeds from the sale of the real property owned by Nao Towns II to certain secured creditors. The Receiver seeks to distribute the entirety of these sale proceeds to the secured creditors, subject only to a minimal holdback to cover certain professional costs it has incurred in respect of the Nao Towns II receivership.³

7. The Receiver seeks to distribute these funds to the secured creditors notwithstanding that, by its own admission, it has been aware of the Homebuyers’ claims for a statutory trust pursuant

¹ First Report of the Receiver dated May 30, 2023 (the “**First Report**”), page 11, paragraph 2 – Motion Record of the Moving Party (Cross-Motion)(“**MRMP**”), Tab 3.

² Fifth Report of the Receiver dated October 2, 2023 (the “**Fifth Report**”), page 5, paragraph 6 – MRMP, Tab 4.

³ Receiver’s Notice of Motion dated February 8, 2024 at paragraph 21- Motion Record of the Receiver, Tab 1.

to s. 81 and s. 138(4)(a) of the *Condominium Act* (the “**Condo Act Claims**”) since at least September 29, 2023 and that those claims have yet to be directly adjudicated.

8. The Ontario Court of Appeal has ruled that purchasers who have paid deposits subject to the statutory trust provisions of the *Condominium Act* have an “absolute equitable interest” in those monies and are, in circumstances where the deposits were improperly commingled and/or spent, entitled to a tracing exercise, including and specifically, in the insolvency context.⁴

9. Accordingly, the Homebuyers have the right to know of the fate of their statutorily protected deposit funds, and whether those monies can be traced into the properties held by the Debtors, and, consequently, the proceeds of sale deriving from same. The Moving Party brings this cross-motion to assert the rights of the Homebuyers which have been improperly disregarded by the Receiver.

II. SUMMARY OF FACTS

A. Background and Legal Structure of the Projects

10. The Debtors were a collection of single-purpose real estate development companies in the business of constructing residential units (i.e., the Projects).

11. The Projects were organized as CECs. Under a CEC model, homeowners hold freehold titles to specific land parcels which are linked to an undivided common interest in the CEC. This ownership structure combines the individual land ownership with shared interest in the common elements.

⁴ [*Ward-Price v Mariners Haven Inc*](#) (2001), [57 OR \(3d\) 410](#) at paras 21, 32.

12. Beginning no later than January 15, 2021, the Debtors started entering into pre-construction purchase agreements with the Homebuyers. The Purchase Agreements are standardized, or substantially similar, across all the Projects. A sample purchase agreement entered into by Jennifer Sitt, as purchaser, and Nao Towns II, as vendor, for \$1,020,990 (the “**Sitt Agreement**”) is attached as Exhibit “A” to the Affidavit of Jennifer Sitt, sworn on February 14, 2024.⁵

13. As part of the Purchase Agreements, the Homebuyers paid deposits to the Debtors (the “**Deposit Funds**”). Pursuant to the Sitt Agreement, Jennifer paid \$116,950 in deposits.

14. The Receiver and the Moving Party agree that the combination of s. 81 and s. 138(4)(a) of the *Condominium Act* imposes upon a declarant (in this case, the Debtors) a statutory obligation to hold any deposits that are paid towards the Common Interest in trust.⁶

15. S. 81 and section 138(4) of the *Condominium Act* state, respectively:

Money held in trust

81 (1) A declarant shall ensure that a trustee of a prescribed class or the declarant’s solicitor receives and holds in trust all money, together with interest earned on it, as soon as a person makes a payment,

- (a) with respect to reserving a right to enter into an agreement of purchase and sale for the purchase of a proposed unit;
- (b) on account of an agreement of purchase and sale of a proposed unit; or
- (c) on account of a sale of a proposed unit. 1998, c. 19, s. 81 (1).

Exception

(2) Subsection (1) does not apply to money received,

- (a) on account of the purchase of personal property included in the proposed unit that is not to be permanently affixed to the land; or
- (b) as an occupancy fee under subsection 80 (4). 1998, c. 19, s. 81 (2).

Reservation money

(3) If a person has paid money to reserve a right to enter into an agreement of purchase and sale for the purchase of a proposed unit and subsequently enters into such an agreement with the declarant, the declarant shall, on entering into the agreement, credit the money received to the purchase price under the agreement, despite any provision of the agreement. 1998, c. 19, s. 81 (3).

⁵ Exhibit “A” to the Affidavit of Jennifer Sitt, sworn February 14, 2024 (the “**Sitt Affidavit**”) – MRMP, Tab 2.

⁶ Factum of the Receiver dated February 9, 2024, at paragraph 49.

Trustee

(4) Upon receiving money that is required to be held in trust under subsection (1), a trustee of a prescribed class shall hold the money in trust in a separate account in Ontario designated as a trust account at a bank listed in Schedule I or II to the *Bank Act* (Canada), a trust corporation, a loan corporation or a credit union. 1998, c. 19, s. 81 (4); 2002, c. 8, Sched. I, s. 7 (1).

Declarant's solicitor

(5) Upon receiving money that is required to be held in trust under subsection (1), the declarant's solicitor shall hold the money in trust in a trust account in Ontario. 1998, c. 19, s. 81 (5).

Evidence of compliance

(6) Within 10 days of the payment of the money under subsection (1), the declarant shall provide to the person who paid the money written evidence, in the form prescribed by the Minister, of compliance with subsection (1) and one of subsections (4) and (5). 1998, c. 19, s. 81 (6).

Duration of trust

(7) Despite the registration of a declaration and description, the person who holds money in trust under subsection (1) shall hold it in trust until,

- (a) the person holding the money in trust disposes of it to the person entitled to it, where the disposal is done in accordance with this Act and an agreement that the person who paid the money has entered into with respect to the proposed unit; or
- (b) the declarant ensures that security of a prescribed class is provided for the money, except if the money has been received under clause (1) (a) and has not been credited to the purchase price under the agreement. 1998, c. 19, s. 81 (7).

138 (4) Subject to this Part and the regulations, Parts I to IX, XI and XIV apply with necessary modifications to a common elements condominium corporation, except that,

- (a) references to a unit or a proposed unit shall be deemed to be references to a common interest in the corporation or a proposed common interest in the corporation, respectively;
- (b) references to a mortgagee of a unit shall be deemed to be references to a mortgagee of a common interest appurtenant to an owner's parcel of land mentioned in subsection 139 (1); and
- (c) references to a common interest appurtenant to a unit shall be deemed to be references to a common interest appurtenant to an owner's parcel of land mentioned in subsection 139 (1). 1998, c. 19, s. 138 (4); 2015, c. 28, Sched. 1, s. 122 (2).

16. Each of the Purchase Agreements are replete with references to the *Condominium Act*, such as:

- (a) On page 1 of the Sitt Agreement, it specifies, that the agreement is for a "common elements condominium" and refers to the yet-to-be incorporated corporation that would manage the Common Interest as the "Condominium";
- (b) On page 18, the definition of "Act" reads "...the *Condominium Act*, S.O. 1998, C. 19, the regulations thereunder and any amendments thereto";

- (c) On page 18, the definition of “Condominium Corporation” and/or “Condominium” and “condominium” reads “ *the Common Element Condominium Corporation create upon registration by the Vendor of the Creating Documents and the term “Condominium” shall mean the Common Elements Condominium created upon registration of the Creating Documents;*
- (d) On page 23, it states that “in the event the Condominium has not been registered as of the Closing Date, the Purchaser shall take occupancy of the Property in accordance with the terms of this Purchase Agreement....”
- (e) Beginning on page 25, there is an entire section dedicated to “Condominium Matters”; and
- (f) On page 50, the Taron Information advises the purchaser to review the “disclosure statement required by the *Condominium Act*, 1998” with a lawyer.

17. Hidden at pages 42-43 of the Sitt Agreement, is a singular provision stipulating that a mere \$2 out of the \$1,020,990 purchase price was to be paid towards the common interest of the condominium, with none of the deposit monies allocated for this purpose. All the Purchase Agreements contain language that is the same or substantially similar to this clause (the “**Impugned Clause**”).

18. Where the Receiver and Moving Party disagree, is (i) in respect of the amounts of the Deposit Funds that were allocated in law to the Common Interest; and (ii) in any event, whether a trust pursuant to the *Condominium Act* can rank in priority to the secured creditors.

B. The Receiver’s First Report and Inaccurate Description of the Projects

19. In April and May 2023, certain senior secured creditors applied to appoint a receiver over the Debtors. The Court granted these requests on May 2, 2023, and May 18, 2023.

20. According to the First Report of the Receiver, dated May 30, 2023 (the “**First Report**”), the Homebuyers paid deposits to the Debtors, totalling at least \$77,322,000. These amounts are broken down as follows:

Project	(unaudited)	
	# of Homebuyers	Deposits (\$000s)
Minu	147	19,208
Nao Phase I	96	7,680
High Crown	47	4,933
On the Mark ⁵	32	4,218
Nao Phase II	76	7,617
Highview	4	None
BEA	218	17,440
Elm	145	16,076
Total	765	77,172

21. The Receiver has since revised the estimated deposits paid to Highview Building Corp Inc. (“**Highview**”) from \$0 to approximately \$470,000.

22. Despite the Purchase Agreements clearly stating that the pre-construction units were sold under a CEC model⁷, the Receiver reported to this Court that, because the units were “freehold homes”, the deposits paid towards them were not required to be held in trust:

Prior to these receivership proceedings, each of the Receivership Companies, other than Taurasi Holdings, sold freehold homes to Homebuyers, each of whom paid deposits.

As freehold homes, the Receivership Companies were not required to keep the deposits in trust. The Receiver has been advised by the Stateview Group’s representatives that all deposits have been spent; however, the use of those funds has not yet been determined and the **Receiver has not, as of the date of this Report, commenced a tracing exercise.**⁸

⁷ For example, see page 1 of the Sitt Agreement.

⁸ First Report, page 11, paragraph 2.

23. The Receiver did not mention the CECs or the application of the *Condominium Act*, and it did not conduct a tracing exercise in respect of the Deposit Funds. As a result of the Receiver's error, this Court was not made aware of the possibility that some or all of the Deposit Funds could have been subject to a statutory trust under the *Condominium Act*.

24. As seen on the very first page of the Sitt Agreement, the Purchase Agreements clearly state that the transactions are made in respect of a unit in a CEC rather than a pure freehold home.

25. In any event, on September 29, 2023, the Receiver was given formal notice of the Condo Act Claims when it was served with the Statement of Claim for a proposed class action on behalf of the Homebuyers.

C. Subsequent Reports and Positions taken by the Receiver

26. On October 2, 2023, the Receiver finalized its Fifth Report, which, among other things, stated that:

- (a) management of the Debtors advised the Receiver that the "...Deposits were used to fund the general operations of the Receivership Companies and the development of the Projects", and without the Deposit Funds, there was not enough money to cover operating costs and project development costs;⁹

⁹ Fifth Report, page 5, paragraph 6.

- (b) the Receiver did not take steps to confirm how the Deposit Funds were used, despite being told by management that the monies necessarily went into the development of the Projects;¹⁰ and
- (c) the then-looming Tarion motion ought to be dismissed.

27. Put differently, the Receiver was advised by management of the Debtors that, the Deposit Funds were necessarily used to develop the Projects, as there was not enough money (i.e., loans) without the Deposit Funds to finance same. In short, the Receiver had direct knowledge of the Deposit Funds being used to develop the Projects, and yet still failed to conduct a tracing exercise.

28. On November 16, 2023, the Receiver made a motion before the Honourable Justice Osborne seeking largely the same relief as it does in this motion in respect of some of the other debtor Stateview corporations. As part of its motion record, the Receiver included its Sixth Report, which, among other things, disclosed to the Court, for the first time, the existence of the Condo Act Claims and of the potential need for a separate motion to decide the issue, depending on the outcome of the Tarion motion:

However, the Receiver notes that the relief proposed to be sought in the Proposed Class Action includes the imposition of the same trusts and/or charges in respect of Homebuyer Deposits as sought in the Tarion Priority Motion, plus one additional smaller trust claim that was not sought in the Tarion Priority Motion. **Depending on the outcome of the Tarion Priority Motion, it may also be necessary to seek a determination of the additional smaller trust claim raised in the Proposed Class Action from the Court in the receivership proceedings on a further motion before the Court.**¹¹

¹⁰ Fifth Report, page 5, paragraph 6.

¹¹ Sixth Report dated November 8, 2023, page 12, paragraph 6 – MRMP, Tab 5.

29. On December 22, 2023, the Honourable Justice Steele released her decision dismissing Tarion's motion. Justice Steele did not decide the Condo Act Claims, nor was the issue argued before Her Honour.

30. On January 23, 2024, counsel for the Receiver stated its view that Justice Steele's reasons for dismissing the Tarion motion would equally apply to dismiss the Condo Act Claims, and, accordingly, that it would distribute the sale proceeds from the various Projects without regard to same.¹²

31. On January 30, 2024, counsel for the Receiver advised of its intention to seek approval from this Court to distribute the proceeds obtained from the sale of real property owned by Nao Towns II.

III. STATEMENT OF ISSUES, LAW & AUTHORITIES

32. The following issues are to be decided on the cross-motion:

(a) Does the Receiver have an obligation to conduct a tracing exercise in respect of the Deposit Funds and/or provide counsel for the Moving Party with the records that would enable them to carry it out?

(i) Yes.

(b) Is the Impugned Clause void for being contrary to public policy as an attempt to contract out of the protections conferred by the *Condominium Act*?

¹² Seventh Report of the Receiver dated February 7, 2024 (the "**Seventh Report**"), page 6, paragraphs 6-7 - MRMP, Tab 6.

(i) Yes.

(c) Does Justice Steele’s decision dismissing Tarion’s motion (the “**Tarion Decision**”) apply to negate the Condo Act Claims from ranking ahead of the secured creditors?

(i) No.

A. The Homebuyers’ Right to Trace the Deposit Funds

1. *General principles*

33. Section 67(1)(a) of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3 (the “**BIA**”) excludes “trust property” held by the bankrupt from distribution to the creditors of its estate. Thus, if the Homebuyers can establish that a valid trust was established in respect of the Deposit Funds for the purposes of the *BIA*, then their interest in those funds (and any property they trace into) rank ahead of the interests of the Debtors’ secured creditors. The Condo Act Claims rely on the statutory trust provisions created by s. 81 and s. 138(4)(a) of the *Condominium Act*, which establishes a trust over deposits paid towards the Common Interest of a CEC.

34. The *BIA* does not define “trust property”. In *British Columbia v Henfrey Samson Belair Ltd.*, [1989] 2 SCR 24 (“**Henfrey**”), the Supreme Court held that provincial statutes which create a statutory trust must meet the common law test for trusts (certainty of intention, object and subject-matter) to be eligible for exclusion from the distribution of the assets of the estate under s.67(1)(a) of the *BIA*.¹³ The reason being that bankruptcy is a matter within the exclusive jurisdiction of the federal government, and therefore provincial statutes cannot legislate in a

¹³ [British Columbia v Henfrey Samson Belair Ltd., \[1989\] 2 SCR 24.](#)

manner that upsets the priority scheme set out by the *BIA*. However, because the *BIA* does not define what “trust property” is, if a statutory trust satisfies the common law test for trusts, then that trust can qualify for exclusion under s.67(1)(a) of the *BIA*.¹⁴

35. It is well-established that provincial statutes can supply the certainty of intention and certainty of object requirements required by common law trusts.¹⁵ In “most cases” within the insolvency context, the question of whether property subject to a provincial statutory is exempt from distribution pursuant to s.67(1)(a) of the *BIA* turns on whether certainty of subject-matter is established.¹⁶

36. As further elaborated below, the Ontario Court of Appeal’s decision in *Ward-Price v Mariners Haven Inc.*, 2001 OJ No 1711 (“*Ward*”) is dispositive of whether the Deposit Funds satisfy the common law trust requirements. *Ward* specifically applies the principles set out in *Henfrey* to the statutory trust provisions of the *Condominium Act*. In doing so, the Court of Appeal outlines the inalienable equitable rights of purchasers who paid deposits subject to the statutory trust provisions of the *Condominium Act*.

2. *Ward grants the Homebuyers an unequivocal right to trace the Deposit Funds*

37. *Ward* concerned an appeal of summary judgement granted by a motion judge dismissing a class action seeking a tracing remedy in respect of statutory interest generated by the vendor/developer on deposits paid towards pre-construction homes. The proposed representative plaintiff argued that, not only were deposits impressed with a statutory trust under the

¹⁴ *Ibid.*

¹⁵ *The Guarantee Company of North America v Royal Bank of Canada*, 2019 ONCA 9 at paras 38, 78.

¹⁶ *Iona Contractors Ltd v Guarantee Company of North America*, 2015 ABCA 240 at para 36.

Condominium Act, the statutorily prescribed interest generated on the deposits were also required to be held in trust. As such, purchasers in that class action were entitled to the equitable relief of tracing from the developers, who had since entered into bankruptcy.

38. The Court of Appeal granted the appeal and awarded a tracing remedy in respect of the interest generated on the deposits. In doing so, the Court of Appeal articulated several principles regarding the statutory trust created by the *Condominium Act*.

39. First, the statutory trust provision in the *Condominium Act* creates a valid statutory trust outside of the *BIA* context. The statutory trust created by the *Condominium Act* gave the purchasers “an absolute equitable interest in the purchase money.... This does not involve any questions of constructive or resulting trusts. The only trust issue is the express statutory trust.”¹⁷ This statutory trust is effective even if the developer commingles the deposits with funds from other sources:

A convenient way to test my interpretation of s. 53(1) (b) is to ask what effect, if any, on the trust imposed on the purchase money would result from the developer's failure to hold the money in a separate trust account. **The answer, in my view, is that it would have no effect. Because the legislation has said that the purchase money is trust money, it is immaterial whether the purchase money is in fact kept separate and apart from the developer's own money.**¹⁸

40. Second, given the absolute equitable right of purchasers in deposits protected by the statutory trust provisions of the *Condominium Act*, tracing is a remedy available to them when such funds have been improperly disbursed by a developer that has entered bankruptcy:

In my view, should the developer, as trustee, breach that trust by making wrongful use of the funds, it makes sense to interpret s. 53(3) both in the context of the entire section and in conformity with the proprietary remedy available to the purchaser. **Given that the beneficiary of a trust has the right to trace assets that have been wrongfully distributed, and given that the tracing includes any interest which the assets may have**

¹⁷ *Ward-Price v Mariners Haven Inc.*, *supra* note 4 at para 21.

¹⁸ *Ibid* at para 31.

earned, it follows that a trust imposed by statute, or a trust deed, on the assets of a trust necessarily constitutes a trust imposed on the interest. This is particularly true in this case, where, by statute, the trustee must account to the beneficiary for the interest. **The legislature is presumed to know the remedy for breach of trust and to have drafted s. 53 in accordance with that remedy.** See F. Bennion, *Statutory Interpretation* (Toronto: Butterworths, 1997) at pp. 827-30. Therefore, s. 53(3) should be interpreted to conform with the proprietary remedy available to the purchaser should the developer breach the trust imposed on the purchase money by s. 53(1).¹⁹

41. Third, a generous and purposive approach to interpreting the rights afforded by the statutory trust provision is reinforced by the nature of the *Condominium Act* as consumer protection legislation.

In interpreting s. 53, the nature and purpose of the *Condominium Act* is also helpful. **It is well recognized that the Act is consumer protection legislation. The trust created by s. 53(1) is for the protection of purchasers.** Subsections (2) and (3) further protect purchasers by ensuring, in the circumstances provided for, that they receive interest on their deposits. As the motion judge recognized at p. 791 O.R., it has been held, including by this court in *Ackland* at p. 105 O.R., that the purpose of s. 53(3) "is to provide an incentive [to the developer] to register the condominium corporation and transfer title to the purchaser of the condominium unit as soon as possible after the purchaser has [taken] occupancy". Applying a purposive approach to the interpretation of s. 53(3) therefore provides further support for my view that s. 53(3) is to be interpreted to give effect to the trust created by s. 53(1).²⁰

42. Fourth, the statutory trust provisions and related equitable claims/relief, including tracing, were specifically intended to protect purchasers from the occasion of developer insolvency:

Moreover, to hold that the statutory trust imposed on the purchase money for the purchaser's protection is terminated on the provision of security under s. 53(1)(b) would render the trust meaningless. The trust is intended to create a broader range of remedies for a purchaser than would be available if only a debtor-creditor relationship existed. It does this by providing the traditional remedies available to a beneficiary when there has been a breach of trust. **Indeed, the trust is also intended to protect the purchaser in the event of the developer's insolvency, which is the situation in this case.**²¹

¹⁹ *Ibid* at para 24.

²⁰ *Ibid* at para 25.

²¹ *Ibid* at para 32.

43. In summary, the Court of Appeal in *Ward* holds that the statutory trust provisions under the *Condominium Act* establish a trust over applicable deposits paid by purchasers. This statutory trust gives purchasers an “absolute equitable interest” over the deposit monies, accompanied with the equitable right to trace, that endures in the event of a developer’s insolvency. As such, the Homebuyers have a right to trace the Deposit Funds.

3. *The Receiver Must Trace the Funds*

44. The Receiver has not put forward any evidence that it has attempted to trace the Deposit Funds. In fact, the Receiver has stated the opposite; that, given its mistaken position that the Projects were organized as pure freehold homes, none of the Deposit Funds were required to be held in trust and therefore no tracing was called for.²²

45. The Receiver has refused to conduct a tracing exercise, despite, by its own admission, being advised by management of the Debtors that at least some of the Deposit Funds went into the “development of the Projects”. Instead of considering whether such monies could be traced into the Projects, the Receiver opted to ignore the Condo Act Claims and steamroll forward with the distribution of the sale proceeds to the secured creditors.

46. The only statement the Receiver has made about a tracing exercise, other than refusing to conduct one, is its bald assertion that “in addition to the Deposits being depleted, the Deposits were commingled with the funds of the Receivership Companies’ secured creditors and are not capable of being identified or traced”.²³

²² First Report, page 11, paragraph 2.

²³ Fifth Report, page 11, paragraph 1(d).

47. As held by the Court of Appeal in *Guarantee Company of North America v Royal Bank of Canada*, 2019 ONCA 9, the fact that deposit monies were commingled does not in and of itself destroy a trust.²⁴ Rather, it is only when the funds are commingled and then converted into other forms of property that renders tracing impossible, does a trust cease to exist:

Commingling of this kind does not deprive trust property of the required element of certainty of subject matter. Commingling of trust money with other money can destroy the element of certainty of subject matter, but only where commingling makes it impossible to identify or trace the trust property.²⁵

....

Second, the statement that once the purported trust funds are commingled with other funds, they cease to be trust funds must be read in the light of the fact that when making it, the court was explicitly following *Henfrey*. In *Henfrey*, as I have explained, McLachlin J. made it clear that it was only when **commingling is accompanied by conversion and tracing becomes impossible that the required element of certainty of subject matter is lost**.²⁶

...

I am fortified in that conclusion by a considerable body of authority in addition to *Henfrey* that stands for the proposition that commingling alone will not destroy the element of certainty of subject matter under the general principles of trust law.²⁷

48. In this case, the Receiver was informed by management of the Debtors that Deposit Funds were used to develop to the Projects.²⁸

49. It is insufficient for the Receiver to evade its duty to trace the Deposit Funds by simply arguing that the statutory trust was destroyed by virtue of the Deposit Funds being commingled.

²⁴ *The Guarantee Company of North America v Royal Bank of Canada*, *supra* note 14 at para 99.

²⁵ *Ibid* at para 87.

²⁶ *Ibid* at para 97.

²⁷ *Ibid* at para 99.

²⁸ Fifth Report, page 5, paragraph 6.

B. The Impugned Clause is Void for being Contrary to Public Policy

50. The Receiver contends that the Impugned Clause renders any possible statutory trust over the Deposit Funds under the *Condominium Act* practically meaningless as the Impugned Clause (i) allocates only \$2 of the purchase price to the Common Interest; and (ii) that none of the Deposit Funds were allocated to the Common Interest.

51. The Impugned Clause is void for being contrary to public policy as it is an attempt to contract out of its statutory trust protections conferred by the *Condominium Act*.

52. As the Supreme Court held in *Ontario Human Rights Commission v Etobicoke*, [1982] 1 SCR 202 contractual provisions that attempt to contract out of public policy statutes are void; parties are not competent to contract themselves out of such enactments.²⁹ On that basis, the Court held that a provision in a collectively bargained agreement that had the effect of contracting out of certain protections conferred by the *Ontario Human Rights Code* was void.

53. More recently, in *Fleming v. Massey*, 2016 ONCA 70, the Ontario Court of Appeal held that a contractual provision that had the effect of contracting out of the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16 Sch (the “*WSIA*”) was void for being contrary to public policy. The Court characterized the WSIA as public policy legislation and held that, absent any evidence of legislative intent permitting parties to contract out of its protections, such contractual provisions

²⁹ [Ontario Human Rights Commission v Etobicoke](#), [1982] 1 SCR 202 at para 31.

will be void.³⁰ The Court found no such legislative intent in the *WSIA*, thereby rendering the offending provision void.³¹

54. The *Condominium Act* has been repeatedly characterized by the jurisprudence as consumer protection legislation intended to advance the public policy objective of creating a more level playing field between purchasers and developers.³²

55. For example, in *Harvey v Talon International Inc.*, 2017 ONCA 267, the Ontario Court of Appeal articulates the following about the *Condominium Act*:

The fact that the Act is consumer protection legislation is well established. In *Ward-Price v. Mariners Havens Inc.* (2001), 2001 CanLII 24088 (ON CA), 57 O.R. (3d) 410, [2001] O.J. No. 1711 (C.A.), at para. 25, Borins J.A. stated that "**it is well recognized that the Act is consumer protection legislation**". More recently, in *Lexington on the Green Inc. v. Toronto Standard Condominium Corp. No. 1930* (2010), 102 O.R. (3d) 737, [2010] O.J. No. 4853, 2010 ONCA 751, at para. 49, O'Connor A.C.J.O. stated that "**[a] significant purpose of the Act is consumer protection**". Rouleau J.A. cited this case in *Toronto Standard Condominium Corp. No. 2095 v. West Harbour City (I) Residences Corp.*, [2014] O.J. No. 4947, 2014 ONCA 724 when he acknowledged [at para. 44] that "**consumer protection is a significant purpose of the *Condominium Act***".³³

The goal of consumer protection laws is to place consumers, who are average citizens engaging in business deals, on par with companies or citizens who regularly engage in business. This court and the Supreme Court have identified guidelines for how consumer protection legislation is to be interpreted. The application judge referred to *Seidel v. Telus Communications Inc.*, [2011] 1 S.C.R. 531, [2011] S.C.J. No. 15, 2011 SCC 15 for the proposition that **consumer protection legislation must be interpreted generously in favour of the consumer**. This proposition [page 201] comes directly from Binnie J., who was considering the British Columbia *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (the "*BCPCA*"). At para. 37, he noted that the statutory purpose of the *BCPCA* was all about consumer protection. As such, its terms should be

³⁰ [Fleming v Massey](#), 2016 ONCA 70 at para 34.

³¹ [Ibid](#) at para 56.

³² [Ward-Price v Mariners Haven Inc.](#), *supra* note 4 at para 25; and [Harvey v Talon International Inc.](#), 2017 ONCA 267 at para 62

³³ [Harvey v Talon International Inc.](#), *supra* note 30 at para 62.

interpreted generously in favour of consumers. Another relevant Supreme Court case is *Celgane Corp. v. Canada (Attorney General)*, [2011] 1 S.C.R. 3, [2011] S.C.J. No. 1, 2011 SCC 1. In that case, the court was considering the Federal Court's interpretation of a price-regulating provision in the *Patent Act*, R.S.C. 1985, c. P-4. Abella J. adopted the majority view of Evans J.A., who had held that because the provision could be interpreted in different ways, the one that best implemented the consumer protection objectives of such price-regulating provisions was the correct interpretation.³⁴

56. Accordingly, the *Condominium Act*, like the *Ontario Human Rights Code* and the *WSIA*, constitutes public policy legislation with protections that cannot be negated via contractual agreement, such as the Impugned Clause.

57. The necessary treatment of the Impugned Clause as void for being contrary to public policy is furthered by the express language of s. 176 of the *Condominium Act*, which states that “The Act applies despite any agreement to the contrary”. Put differently, the protections conferred by the *Condominium Act*, including those conferred by the statutory trust provisions, apply notwithstanding any contractual provisions that attempt to circumvent them, such as the Impugned Clause.

58. The voidance of the Impugned Clause leaves open the question as to what percentage of the Deposit Funds were required to be held in trust by the Debtors. The Moving Party contends that the percentage of the Deposit Funds that were supposed to be held in trust should comport with the percentage value of the Common Interest for each Project. For example, if 25% of the value of a given Project was made up by the Common Interest, then 25% of the Deposit Funds paid towards that Project should be deemed to have been subject to the statutory trust provisions.

³⁴ *Ibid* at para 63.

59. At this time, the Receiver remains in possession of the documents and records needed to value the Common Interest for each of the Projects. Pursuant to s. 248(a) of the *BIA*, this Court has the authority to compel the Receiver to carry out its duties, which in this case, includes an obligation to value the Common Interest.

60. In addition to granting an order to compel the Receiver to value the Common Interest for each Project, the Moving Party asks that this Court to direct the Receiver to hold back from the sale proceeds an amount equal to 20% of the Deposit Funds paid to each Project from being distributed to the secured creditors until the Receiver has completed the valuation.

C. The Tarion Decision does not apply to the Condo Act Claims

61. The Receiver contends that Justice Steele's reasons for dismissing the Tarion motion equally apply to dismiss the Condo Act Claims. Justice Steele made the following findings in her reasons for dismissing Tarion's motion:

- (a) The subordination provisions in the Purchase Agreements precluded the Homebuyers from asserting any claims that rank ahead of the secured creditors.³⁵
- (b) An express trust was established over some of the Deposit Funds, and that such a trust was breached by the Debtors. Nonetheless, the beneficiaries of the express trust were not entitled to a constructive trust over the sale proceeds largely because

³⁵ [*Kingsett Mortgage Corp v Stateview Homes \(Minu Towns\) Inc*, 2023 ONSC 7105](#) at paras 25, 28.

Tarion failed to provide evidence demonstrating a sufficient connection between the Deposit Funds and the Projects.³⁶

(c) The Homebuyers did not suffer unjust enrichment.³⁷

62. The Receiver is incorrect in its view of the applicability of the Tarion Decision to this cross-motion, for several reasons.

63. First, the claims for statutory trust under the *Condominium Act* were not put before Her Honour. In fact, when comparing the purported statutory trust provisions alleged by Tarion to exist under *Ontario New Homes Warranties Plan Act*, R.S.O. 1990, c. O.31 (the “*Warranties Act*”), Justice Steele states that the *Warranties Act* “unlike the applicable statute for condominiums...does not require the recipient of the deposit funds to hold them in trust”.³⁸ The **only** trust that was at issue in the Tarion Decision was an express trust created by the Purchase Agreements in respect of Stateview Homes (Elm&Co) Inc.

64. Second, Justice Steele’s reasons for holding that the subordination provision in the Purchase Agreements, which purports to preclude the Homebuyers from asserting any priority claim over the secured creditors, cannot apply to the Condo Act Claims, as doing so would result in impermissible contracting out of the *Condominium Act*. As described by the Ontario Court of Appeal in *Ward*, a key purpose of the statutory trust provisions in the *Condominium Act* is to protect purchasers from the occasion of developer insolvency.³⁹ While the subordination provision

³⁶ *Ibid* at paras 25, 28, 76.

³⁷ *Ibid* at paras 25, 29, 76.

³⁸ *Ibid* at para 5.

³⁹ *Ward-Price v Mariners Haven Inc*, *supra* note 4 at para 32.

may reasonably apply to an express trust created by contract (as was found by Justice Steele)⁴⁰, it cannot apply to the Condo Act Claims, as that would result in the protections conferred by the *Condominium Act* being negated by way of contract, which is prohibited.

65. Third, the relief sought in this cross-motion is fundamentally different than that sought by Tarion. The Moving Party's main request of this Court is to compel the Receiver to conduct a tracing remedy in respect of the Deposit Funds. In contrast, the crux of the relief sought by Tarion pertained to the imposition of various types of constructive trusts over the sale proceeds for, *inter alia*, breach of express trust and unjust enrichment. Justice Steele denied Tarion's claim for constructive trust as a remedy for breach of trust largely because Tarion did not prove that the trust monies went into the Projects. On the other hand, before making any constructive trust claims over the sale proceeds from the Projects, the Moving Party first seeks to exercise her equitable right to a tracing exercise, which is expected to yield a sufficient nexus between the Deposit Funds and the Projects.

IV. ORDER REQUESTED

66. The Moving Party requests an order directing the Receiver to:

- (a) Hold back from distribution to the secured creditors an amount equivalent to 20% of the deposits paid to each of the Stateview companies in receivership, including Nao Towns II;

⁴⁰ [*Kingsett Mortgage Corp v Stateview Homes \(Minu Towns\) Inc*](#), *supra* note 33 at para 28.

- (b) Conduct a tracing exercise in respect of the Deposit Funds for each of the Projects;
and
- (c) Valuate the Common Interest for each Project.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14 day of February, 2024.



David Sterns

SOTOS LLP

180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

David Sterns (LSO # 36274J)
dsterns@sotos.ca
Denna Pourmonazah Jalili (LSO # 84976N)
djalili@sotos.ca

Tel: 416-977-0007
Fax: 416-977-0717

Lawyers for the Moving Party (Cross-Motion)

SCHEDULE “A”

LIST OF AUTHORITIES

Tab	Title	Pinpoints
1	<i>Ward-Price v Mariners Haven Inc</i> (2001), 57 OR (3d) 410	21, 24-25, 31-32
2	<i>British Columbia v Henfrey Samson Belair Ltd</i>, [1989] 2 SCR 24	
3	<i>The Guarantee Company of North America v Royal Bank of Canada</i>, 2019 ONCA 9	38, 78, 87, 97, 99
4	<i>Iona Contractors Ltd v Guarantee Company of North America</i>, 2015 ABCA 240	36
5	<i>Ontario Human Rights Commission v Etobicoke</i>, [1982] 1 SCR 202	31
6	<i>Fleming v Massey</i>, 2016 ONCA 70	34, 56
7	<i>Harvey v Talon International Inc</i>, 2017 ONCA 267	62-63
8	<i>Kingsett Mortgage Corp v Stateview Homes (Minu Towns) Inc</i>, 2023 ONSC 7105	5, 25, 28-29, 76

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Bankruptcy and Insolvency Act, R.S.C 1985, C. B-3, as amended.

Property of bankrupt

67 (1) The property of a bankrupt divisible among his creditors shall not comprise

- (a) property held by the bankrupt in trust for any other person;
- (b) any property that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides;
- (b.1) goods and services tax credit payments that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b);
- (b.2) prescribed payments relating to the essential needs of an individual that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b); or
- (b.3) without restricting the generality of paragraph (b), property in a *registered retirement savings plan*, a *registered retirement income fund* or a *registered disability savings plan*, as those expressions are defined in the *Income Tax Act*, or in any prescribed plan, other than property contributed to any such plan or fund in the 12 months before the date of bankruptcy,

Receiver’s statement

246 (1) A receiver shall, forthwith after taking possession or control, whichever occurs first, of property of an insolvent person or a bankrupt, prepare a statement containing the prescribed information relating to the receivership, and shall forthwith provide a copy thereof to the Superintendent and

- (a) to the insolvent person or the trustee (in the case of a bankrupt); and
- (b) to any creditor of the insolvent person or the bankrupt who requests a copy at any time up to six months after the end of the receivership.

Marginal note: Receiver’s interim reports

(2) A receiver shall, in accordance with the General Rules, prepare further interim reports relating to the receivership, and shall provide copies thereof to the Superintendent and

- (a) to the insolvent person or the trustee (in the case of a bankrupt); and
- (b) to any creditor of the insolvent person or the bankrupt who requests a copy at any time up to six months after the end of the receivership.

Good faith, etc.

247 A receiver shall

- (a) act honestly and in good faith; and
- (b) deal with the property of the insolvent person or the bankrupt in a commercially reasonable manner.

Powers of court

248 (1) Where the court, on the application of the Superintendent, the insolvent person, the trustee (in the case of a bankrupt), a receiver or a creditor, is satisfied that the secured creditor, the receiver or the insolvent person is failing or has failed to carry out any duty imposed by sections 244 to 247, the court may make an order, on such terms as it considers proper,

(a) directing the secured creditor, receiver or insolvent person, as the case may be, to carry out that duty, or

(b) restraining the secured creditor or receiver, as the case may be, from realizing or otherwise dealing with the property of the insolvent person or bankrupt until that duty has been carried out,

or both

Condominium Act, 1998, S.O. 1998, C. 19

Money held in trust

81 (1) A declarant shall ensure that a trustee of a prescribed class or the declarant's solicitor receives and holds in trust all money, together with interest earned on it, as soon as a person makes a payment,

- (a) with respect to reserving a right to enter into an agreement of purchase and sale for the purchase of a proposed unit;
- (b) on account of an agreement of purchase and sale of a proposed unit; or
- (c) on account of a sale of a proposed unit. 1998, c. 19, s. 81 (1).

Exception

- (2) Subsection (1) does not apply to money received,
- (a) on account of the purchase of personal property included in the proposed unit that is not to be permanently affixed to the land; or
 - (b) as an occupancy fee under subsection 80 (4). 1998, c. 19, s. 81 (2).

Reservation money

(3) If a person has paid money to reserve a right to enter into an agreement of purchase and sale for the purchase of a proposed unit and subsequently enters into such an agreement with the declarant, the declarant shall, on entering into the agreement, credit the money received to the purchase price under the agreement, despite any provision of the agreement. 1998, c. 19, s. 81 (3).

Trustee

(4) Upon receiving money that is required to be held in trust under subsection (1), a trustee of a prescribed class shall hold the money in trust in a separate account in Ontario designated as a trust account at a bank listed in Schedule I or II to the *Bank Act* (Canada), a trust corporation, a loan corporation or a credit union. 1998, c. 19, s. 81 (4); 2002, c. 8, Sched. I, s. 7 (1).

Declarant's solicitor

(5) Upon receiving money that is required to be held in trust under subsection (1), the declarant's solicitor shall hold the money in trust in a trust account in Ontario. 1998, c. 19, s. 81 (5).

Evidence of compliance

(6) Within 10 days of the payment of the money under subsection (1), the declarant shall provide to the person who paid the money written evidence, in the form prescribed by the Minister, of compliance with subsection (1) and one of subsections (4) and (5). 1998, c. 19, s. 81 (6).

Duration of trust

(7) Despite the registration of a declaration and description, the person who holds money in trust under subsection (1) shall hold it in trust until,

- (a) the person holding the money in trust disposes of it to the person entitled to it, where the disposal is done in accordance with this Act and an agreement that the person who paid the money has entered into with respect to the proposed unit; or

- (b) the declarant ensures that security of a prescribed class is provided for the money, except if the money has been received under clause (1) (a) and has not been credited to the purchase price under the agreement. 1998, c. 19, s. 81 (7).

138 (4) Subject to this Part and the regulations, Parts I to IX, XI and XIV apply with necessary modifications to a common elements condominium corporation, except that,

- (a) references to a unit or a proposed unit shall be deemed to be references to a common interest in the corporation or a proposed common interest in the corporation, respectively;
- (b) references to a mortgagee of a unit shall be deemed to be references to a mortgagee of a common interest appurtenant to an owner's parcel of land mentioned in subsection 139 (1); and
- (c) references to a common interest appurtenant to a unit shall be deemed to be references to a common interest appurtenant to an owner's parcel of land mentioned in subsection 139 (1). 1998, c. 19, s. 138 (4); 2015, c. 28, Sched. 1, s. 122 (2).

Act prevails

176 This Act applies despite any agreement to the contrary. 1998, c. 19, s. 176.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

MOVING PARTY'S FACTUM

SOTOS LLP

180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

David Sterns (LSO # 36274J)
dsterns@sotos.ca
Denna Pourmonazah Jalili (LSO # 84976N)
djalili@sotos.ca

Tel: 416-977-0007

Lawyers for the Moving Party (Cross-Motion)

TAB 5

Court File No. CV-23-00698395-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

ATRIUM MORTGAGE INVESTMENT CORPORATION AND DORR
CAPITAL CORPORATION

Applicant

and

STATEVIEW HOMES (NAO TOWNS II) INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C 1985, C. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS
AMENDED**

REPLY FACTUM OF THE MOVING PARTY (CROSS-MOTION)

SOTOS LLP

180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

David Sterns (LSO # 36274J)
dsterns@sotos.ca
Denna Pourmonazah Jalili (LSO # 84976N)
djalili@sotos.ca

Tel: 416-977-0007
Fax: 416-977-0717

Lawyers for the Moving Party (Cross-Motion)

TO: THE SERVICE LIST

MOVING PARTY'S REPLY FACTUM (CROSS-MOTION)

Overview

1. This reply factum addresses three issues introduced by the Receiver in its responding materials and factum (all defined terms herein have the same meaning ascribed to them in the Moving Party's factum dated February 14, 2024):

- (a) the value of the Condo Act Claims are *de minimis*, as they are limited to the uninsured amounts of the Deposit Funds due to Tarion allegedly having already subrogated the claims for the vast majority of same and/or because the Common Elements of the Projects have minimal value;
- (b) the costs of any tracing exercise should not be borne by the estate of the Debtors, but rather paid for out-of-pocket by the Homebuyers; and
- (c) the alleged relevance of the secured creditors having priority under Ontario's *Land Titles Act*, R.S.O., 1990, c. L.5 (the "*LTA*"), in the priority scheme set out by the *BIA*, the governing statute in these proceedings.

2. These arguments are devoid of merit. *Ward* is binding and grants the Homebuyers the absolute right to trace the Deposit Funds.

3. As a preliminary matter, it is important to address the Receiver's mischaracterization of the legal function served by the tracing remedy sought in respect of the Deposit Funds.

4. The Receiver mischaracterizes the purpose of the tracing exercise, by describing same as "purely in aid of the constructive trust they [the Homebuyers] intend to subsequently seek".¹ This is incorrect. The tracing of the Deposit Funds into the Projects establishes an express statutory

¹ Paragraph 42(c) of the Receiver's Reply Factum.

trust² by satisfying the certainty of subject-matter issue. Establishing an express statutory trust dispenses with the need to claim a constructive trust remedy over the sales proceeds. A constructive trust is an *alternative* remedy to tracing available to beneficiaries of a trust. Justice Steele states as much in the Tarion Decision:

Where there has been a breach of an express trust, remedies may include damages or compensation, **or recovery of the property through tracing**. In this case, it was submitted that tracing would not be possible because of the status of the finances of the Stateview entities.³

5. Accordingly, before any constructive trust arguments can be considered, the Receiver must first trace the Deposit Funds. The outcome of this tracing exercise will determine whether a constructive trust remedy is needed over the sale proceeds of the Projects.

I. The Alleged *De Minimis* Value of the Condo Act Claims

6. The Receiver attempts to diminish the true value of the Condo Act Claims by arguing (i) the Common Elements of the NAO II Project are “extremely minor”⁴ and (ii) that the Homebuyers have a *de minimis* economic interest in the NAO II Project, as a result of Tarion allegedly subrogating the vast majority of the Homebuyers’ claims in respect of the Deposit Funds. Both arguments fail.

² *Ward-Price v Mariners Haven Inc* (2001), [57 OR \(3d\) 410](#) at para 21. The Ontario Court of Appeal states that that homebuyers who paid deposits have “...an absolute equitable interest in the purchase money by virtue of the statutory trust imposed by s. 53(1)...**This case does not involve any question of constructive or resulting trusts. The only trust in issue is the express statutory trust created by s. 53(1).**” [emphasis added]

³ *Kingsett Mortgage Corp v Stateview Homes (Minu Towns) Inc*, [2023 ONSC 7105](#) at para 65.

⁴ Subheading above paragraph 12 of the Receiver’s Reply Factum.

1. Relative Value of the Common Elements

7. The Receiver has, by its own admission, not conducted a formal valuation of the Common Elements. Instead, the Receiver relies exclusively on a part of one page from the Purchase Agreements that purport to show the site plan for the entire NAO II Project. The site plan presented by the Receiver is incomplete as it does not include the outdoor lounge areas, private landscaped courtyard, and professionally landscaped parkette and other maintained areas, which contractually form part of the Common Elements. This description of the Common Elements is set out in the very next page following the site plan reproduced by the Receiver in its reply factum.⁵



NAO TOWNS PHASE 2 FEATURES & FINISHES

FEATURES OF AN ENERGY STAR® QUALIFIED NEW HOME

- For economical heating, the home will be insulated in accordance with EnergyStar® guidelines, which exceed the current Ontario Building Code specifications including full height basement insulation, expanding foam insulation to all garage ceilings with finished areas above, and around all windows and doors
- EnergyStar® qualified windows/skylights and glass sliding/French doors to be Low E argon gas filled, rated for "Zone 2" rating (as per plan/elevations/options)
- Maintenance-free structural vinyl thermopane basement windows (as per plan/elevations/options)
- 27' x 6' Exterior wall construction with R-22 + 5 insulation, R-60 in attic. Expanding foam insulation to be R-31 to all garage ceilings with finished areas above
- All bathrooms (with or without windows) have exhaust fan (EnergyStar® qualified) vented to the outside
- Forced air Natural Gas Condensing Furnace, 96% ECM efficiency, with an ECM motor, power vented to the outside
- Heat Recovery Ventilation Unit (H.R.V.) simplified system
- EnergyStar® qualified condensing domestic hot water tank (rental unit)
- All main trunk ducts, including basements for supply and return and panned joints to be taped, for added heating and cooling efficiency
- Centrally located electronic EnergyStar® qualified thermostat on main floor
- LED light bulbs where applicable to help conserve energy
- Extensive caulking for improved energy conservation and draft prevention
- The use of recycled material throughout the building process

PLEASING LANDSCAPING FEATURES

- Front, rear and side yards will be fully sodded creating a truly desirable and prestigious streetscape
- Relaxing outdoor lounge areas and private landscaped courtyard
- Visitor parking available
- Professionally landscaped Parkette and maintained grounds

STUNNING EXTERIOR FEATURES & STRUCTURAL COMPONENTS

Welcome to unexpected curb-appeal. With Modern-style roof lines and a blend of Traditional/Modern building materials reveal in beauty of your arrival.

- Each home exterior is comprised of a combination of all brick, stone, stucco, freeze board and/or precast accents with masonry detailing around windows and doors (as per plan/elevations/options)
- Quality fiberglass self-sealing high-grade asphalt shingles, with a 25-year manufacturer's warranty, accentuating metal roof details (as per plan/elevations/options)
- Durable, maintenance free, pre-finished aluminum soffits, fascia, eaves trough and downspouts, all colour coordinated
- Prominent insulated entry door with door hardware package including grip-knob and deadbolt, featuring glass inserts to front entry door features (as per plan/elevations/options) with complementing granite door sills to both front and rear doors for a custom touch
- Exterior aluminum railings for decorative applications, (where required by code). Actual railing detailing may vary from railings depicted on brochures (As per plan/elevations/options)
- Two exterior hose bibs are provided, one at rear (or side) and one in garage
- Sliding patio doors leading to rear (as per plan/elevations/options)
- Re-finished roll-up metal insulated garage doors with decorative glazing and hardware
- Convenient direct access from garage to home includes an insulated EnergyStar® metal door complete with safety door closure with power bolt deadbolt shown on plans and model types only, and where grade permits only

GOURMET DREAM KITCHEN FEATURES

- Custom quality designed kitchen cabinets with choice of styles from vendor's standard samples (As per plan/options)
- Space for dishwasher including rough-in plumbing and electrical
- Built in pantries and broom closets, breakfast counters / islands and bank of drawers (As per plan/options)
- Luxurious granite kitchen countertops with your choice of colour from vendor's standard samples
- Colour coordinated kick plates to complement cabinets
- Stainless steel finish, under mount sink in kitchen with pull-out faucet.
- 6" Kitchen stove vent to be vented to outside

LUXURIOUS BATHROOM FEATURES

- Custom quality designed master ensuite cabinets with choice of styles from

COMFORT, SAFETY, AND SECURITY

- High quality locks with dead bolts on all exterior swing door(s)
- Hinges and striker plates reinforced with extra-long screws
- Additional screws at patio door to help prevent lifting

HELPFUL ROUGH-INS FOR FUTURE CONNECTIVITY

- Three (3) cable television outlets (RG-6 Standard). Location to be determined by purchaser
- One (1) internet rough-in (CAT-5 Standard). Location to be determined by purchaser
- One (1) telephone outlet. Location to be determined by purchaser
- StateView Homes shall provide a personally scheduled appointment with our qualified Technical Contractor to explain and co-ordinate any additional Security/ Technology requirements requested
- Rough-in Central vacuum system to all finished floors with pipes dropped to garage as determined by StateView Homes
- Alarm Rough-in only
- Monitored security system available through StateView Homes supplier. With purchase of optional two-year security system, the buyer will receive a fully installed security system, which includes contacts on all opening windows and doors for "lookout" and "walkout" basement, one motion detector, one keypad, one siren and control panel with associated hardware. (See your Décor Representative for details)
- Municipal address plaques provided
- Professionally home cleaning service prior to occupancy
- Duct cleaning at time of occupancy

BREATHTAKING INTERIOR LIVING SPACES

Step inside a well-built luxurious setting. Built with exceptional attention to detail. Special touches abound, to make everything feel just right.

- Soaring ten (10') ceilings on the Second floor with nine (9') on the Main and Third floor (all heights are approximate and subjected to site plan approval conditions, bulkheads and low headroom areas due to mechanical systems and ceiling dropped down areas as required). All heights are measured to the top of the floor joist and can be adjusted at the discretion of StateView Homes. Purchaser accepts the same
- Sunken or raised foyer, mud room, laundry room, garage entrance landing (where permitted or dictated by grade) (as per plan/options) Purchaser accepts the same
- Easy maintenance free smooth ceilings in kitchen, powder rooms, all bathrooms
- Spray textured ceilings with 4" smooth boarder throughout balance of home. Walk-in closets to be stippled only - no border
- White paint on all walls and white semi-gloss paint on doors and trim
- Elegant oak stairs (veneer risers and stringers), Oak square 1 5/16" railings to finished areas with warm natural finished oak handrails (as per plan/options). Where available, access to staircase to the basement level through a doorway, such stairs and handrails to be unfinished spruce painted in a colour selected by StateView Homes
- 4" baseboards throughout with doorstop to tile or oak flooring areas. 2 3/4" casing on all doors windows and flat archways throughout finished areas
- Quality finished interior knobs on all interior doors with complementing hinges
- 6"8" tri-panel smooth doors, Pocket doors, and French doors (as per plan/options)
- Decorated columns and complementing low wall detail (as per plan/options)
- An niched, stepped walls, vaulted and / or cathedral ceilings, double height and Palladian windows, curved walls, media centers and art ledges, and waffle ceilings (as per plan/options)
- Thoughtful storage considerations with well-appointed linen, pantries and mud room closets, spacious walk-in closets with shelving installed (as per plan/options)

CUSTOMER FRIENDLY UPGRADE PROGRAM

- We are pleased to provide quotations prior to construction for extras or custom finishes for interior features. Purchasers have the opportunity to make upgraded interior selections when they attend to choose their colours and materials (when schedules permit)

COMFORT SMART HOME AUTOMATION

- One (1) smart central Automation Hub with touchscreen located at the front entrance of the home
- One (1) smart door lock on the inside garage door leading to house (grade/options permitting)
- One (1) smart lighting control
- One (1) smart thermostat control
- One (1) smart water leak sensor
- One (1) pre-construction homeowner system design consultation
- One (1) customer system training session
- StateView Homes shall provide a personally scheduled appointment with our

⁵Appendix "D" of the Receiver's Seventh Report, dated February 7, 2024 (the "Seventh Report") at page 10 - Tab 2 of the Receiver's Motion Record, dated February 8, 2024 (the "Receiver's Motion Record").

8. Moreover, the Receiver's reproduction of the site plan in its reply factum cuts out the park,⁶ which is clearly labelled in the sample purchase agreement it included in its motion record. The complete site plan is excerpted below:⁷



9. Further, estimations based purely off the surface level graphics of the site do not factor in that sub-surface elements can form part of the common elements in townhome projects, such as the drainage system.⁸

⁶ Paragraph 13 of the Receiver's Reply Factum.

⁷ Appendix "D" of the Seventh Report, at page 9.

⁸ [Metropolitan Toronto Condominium Corp No 1371 \(Re\)](#), [2006] OLATD No 430 at paras 45-47. In this decision, an expert report describing the drainage system of a townhouse project as part of the common elements was submitted to the Ontario License Appeals Tribunal. The License Appeals Tribunal dismissed the issue on procedural grounds.

10. As can be seen from the drawings, the Common Elements are a substantial part of the entire package in the development; not “extremely minor.”⁹

11. The Receiver’s partial reproduction of the site plan in its reply factum is insufficient to displace the need for an independent valuation of the Common Elements. The Moving Party further submits that the Receiver’s transparent attempt to understate the Common Elements — and pre-determination of the outcome — disqualifies it from conducting an impartial valuation thereof.

12. Regardless of what valuation is ultimately accepted by this Court, the Common Elements are worth far more than the \$2 valuation ascribed to them by the Impugned Clause.

2. Tarion’s Alleged Subrogation of the Condo Act Claims and the Homebuyers’ Alleged Corresponding *De Minimis* Economic Interest in the Projects

13. The Receiver’s argument that the Homebuyers only have a *de minimis* economic interest in the Projects as Tarion has subrogated the vast majority of the Deposit Funds fails for several reasons.

- (a) First, both the case law and the applicable statutes are clear that Tarion can only subrogate claims once it has made payment to claimants, which Tarion has not done in the case of the Homebuyers.¹⁰
- (b) Second, Tarion has only committed to subrogating the freehold aspects of the Projects (making it liable for up to \$100,000 per Homebuyer), and has not stated any intention to subrogate claims in respect of the Common Elements.¹¹

⁹ Subheading above paragraph 12 of the Receiver’s Reply Factum.

¹⁰ Exhibit “A” to the Affidavit of Georgia Scott-McLaren, sworn February 28, 2024 (the “**McLaren Affidavit**”), at paragraphs 57-58, 60 – Tab 1 of the Moving Party’s Reply Motion Record (“**Moving Party’s Reply Record**”).

¹¹ Appendix “D” of the Seventh Report, at page 47; and [*Kingsett Mortgage Corp v Stateview Homes \(Minu Towns\) Inc*](#), *supra* note 3 at para 17, where Justice Steele states “Tarion’s view is that clarity is required regarding certain trust and other issues to confirm the protections applicable **when purchasers make deposits in respect of freehold homes**”.

- (c) Third, there is urgency in obtaining the orders requested, as the Receiver has already unduly distributed the sale proceeds for several over the Projects,¹² without any holdbacks, despite being on notice of the Condo Act Claims since at least September 29, 2023. There is a very real risk that if the Condo Act Claims are left undecided, the Receiver will continue to make distributions to the secured creditors, complicating the recovery of the Homebuyers should the Condo Act Claims ultimately be successful. Further, the uninsured amounts in aggregate across all of the Projects far exceed any possible “de minimis” standard.¹³

A. Tarion cannot subrogate without first making payment to the Homebuyers

14. Tarion’s rights of subrogation are prescribed by section 13 of [O. Reg 892: Administration of the Plan](#) (the “**Regulation**”):

13. (1) The Corporation shall be subrogated to all rights of recovery of a person **to whom payment in respect of a claim has been made out of the guarantee fund under the Act** and may maintain an action in its own name or the name of the person against any other person against whom the action lies in respect of such rights of recovery. R.R.O. 1990, Reg. 892, s. 13 (1).

(2) The Corporation is entitled under its rights of recovery to conduct legal proceedings, including an action for damages, the quantum of which shall be limited to the amount paid out of the guarantee fund by the Corporation to the person whose rights are subrogated to the Corporation, including any legal costs, plus all costs incurred by the Corporation in the subrogated action. R.R.O. 1990, Reg. 892, s. 13 (2)

15. Further, section 23(1)(m) of the *Warranties Act*, explicitly limits Tarion’s ability to make by-laws with respect to subrogation to circumstances where it has made payment to a claimant:

By-laws

23 (1) The Corporation may make by-laws,

(m) subrogating the Corporation or a named insurer to any right of recovery of a person **in respect of a claim paid out of the insurance under the Plan** and costs and providing the terms and conditions under which an action to enforce such rights may be begun, conducted and settled;

¹² Exhibit “B” to the McLaren Affidavit.

¹³ By way of example, the uninsured amount of Deposit Funds paid to Stateview Homes (Minu Towns) Inc. is at least **\$4,508,000**. According to the First Report, 147 Homebuyers paid \$19,208,000 to Minu Towns. If all 147 Homebuyers received the \$100,000 maximum deposit protection from Tarion, that would leave a shortfall of at least \$4,508,000 (\$19,208,000 – (147*\$100,000) = \$4,508,000).

16. The statutory limitation of Tarion's ability to subrogate to cases where it has made payment is reinforced by the case law. For example, the Ontario Court of Appeal in *Ontario New Home Warranty Program v Young & Wright Architects*, 2002 CanLII 45054 (ON CA) describes the pre-conditions that must be met before Tarion was able to subrogate a claim and have standing on appeal:

Although we do not necessarily agree with all of the motions court judge's reasons for her answer to question 2, we arrive at the same conclusion for the following reasons. For the purposes of this appeal, to bring itself within s. 13(1) of the Regulation, the Corporation must show that **(1) a payment has been made (2) to the person to whose rights the Corporation claims to be subrogated (3) in respect of a claim made out of the guarantee fund.**¹⁴ [emphasis added]

17. Similarly, the Superior Court more recently described payment as a pre-condition that must be met before Tarion can subrogate a claim:

Where a purchaser of a home has a claim against a builder or vendor for breach of warranty, Tarion may pay the purchaser's damages, pursuant to the Regulation titled "Administration of the Plan," R.R.O. 1990, Regulation 892 (the Regulation). **If Tarion makes such a payment, it is entitled to recover the amount of the payment from the builder/vendor by way of a subrogated claim.**¹⁵ [emphasis added]

18. The issue of Tarion's standing was not before Justice Steele and the Homebuyers were not parties to the motion; therefore, no reliance can be put on Her Honour's reasons on the issue of subrogation.

19. Finally, the fact that Tarion has made no, or very little, payments to the Homebuyers is set out in Tarion's Statement of Claim, issued on February 9, 2024, in an action it commenced against The Toronto-Dominion Bank, the Stateview companies and their principals. In the claim, Tarion

¹⁴ [*Ontario New Home Warranty Program v Young & Wright Architects* \(2002\), 116 ACWS \(3d\) 602](#) at para 3.

¹⁵ [*Tarion Warranty Corp v 1518162 Ontario Inc.*, 2015 OREG para 59, 2015 ONSC 6532](#) at para 9.

states that as of February 9, 2024, it has only received \$1,800,000 in claims applications from the Homebuyers, and the extent of its losses is currently unknown:

The Warranties Act provides that Tarion is subrogated to all rights of recovery of, and can maintain a legal action in the name of (or in its own name), all new home purchasers to whom Tarion makes a payment on account of their claims.

Tarion is now receiving deposit protection claims from the original StateView Homes purchasers for this warranty coverage. To date, these warranty calls are estimated to amount to \$1.8 million, which quantum is expected to materially increase in the coming weeks and months.

The full quantum of Tarion's damages including damages by way of subrogation will be determined prior to trial.¹⁶

20. As such, if Tarion has only received \$1,800,000 deposit protection claims out of the over \$77,000,000 in Deposit Funds, this Court can take judicial notice that Tarion has paid out, at most, an inconsequential amount to the Homebuyers.

B. Tarion has not indicated that it will make payments in respect of Deposit Funds allocated to the Common Elements

21. In any event, even if Tarion did *undertake* to subrogate claims in respect of the Deposit Funds at the time of the Tarion motion, it only did so for the freehold aspect of the Projects and not for the Common Elements / Condo Act Claims.

22. Under Section 6(1)(c) and 6(1)(d) of the *Regulation*, respectively, Tarion insures up to \$100,000 for deposits paid to freehold homes, and \$20,000 for deposits paid to condominium units.

23. To-date, Tarion has only represented that it will pay for the Deposit Funds allocated to the freehold aspect of the Projects, defining its maximum liability of being up to \$100,000.¹⁷ It is

¹⁶ Exhibit "B" to the McLaren Affidavit, at paragraphs 57-58, 60.

¹⁷ Appendix "D" of the Seventh Report, at page 47; and [*Kingsett Mortgage Corp v Stateview Homes \(Minu Towns\) Inc*](#), *supra* note 3 at para 17, where Justice Steele states "Tarion's view is that clarity is required regarding certain trust and other issues to confirm the protections applicable **when purchasers make deposits in respect of freehold homes**".

unclear whether Tarion will ultimately pay for the Common Elements that are the subject of the Condo Act Claims; however, what is clear is that Tarion has not represented that it will do so. As a result, even if the conditions for subrogation under the *Warranties Act* and the *Regulation* are stretched to permit Tarion to subrogate before making payment, there is no basis to suggest that Tarion has, or expects to, refund and subrogate the Common Elements / Condo Act Claims that are the subject of this motion.

C. Urgency and cross-application of the sought-after relief

24. The Receiver's argument that the Homebuyers of the NAO II Project have a *de minimis* economic interest of \$37,165.95 ignores the fact that the declarations and orders sought by the Moving Party in this cross-motion are in respect of all of the Debtors that are currently under the Receiver's management. Together, the aggregate amount of uninsured Deposit Funds across all of the Projects is estimated to be several millions; for example, the uninsured Deposit Funds paid to Stateview Homes (Minu Towns) Inc. ("**Minu Towns**") alone, amount to, at a minimum, \$4,058,000.¹⁸ Therefore, the aggregate entitlement of the Homebuyers far exceeds even the most strained definition of "*de minimis*".

25. Moreover, the Receiver has confirmed that between January 23, 2024 and January 30, 2024, it distributed all of the sale proceeds for several of the Projects, including Minu Towns, Stateview Homes (High Crown) Inc. ("**High Crown**"), and Stateview Homes (NAO Towns) Inc. ("**NAO Towns**").¹⁹ The Receiver made these distributions despite being on notice of the Condo Act Claims since at least September 29, 2023, and in the face of multiple requests by counsel for

¹⁸ See footnote 13 for the supporting calculations.

¹⁹ Exhibit "**B**" to the McLaren Affidavit.

the Moving Party to holdback amounts to ensure that the Homebuyers could recover if the Condo Act Claims are successful.

26. The Receiver disregarded the Moving Party's requests on the erroneous basis that Justice Steele's reasons for dismissing Tarion's motion equally apply to the Condo Act Claims. As a result, if the Moving Party is successful on this motion, the Receiver's premature distributions of the sale proceeds for these other Projects have likely added significant complication and delay in the recovery of the Homebuyer's trust property in respect of Minu Towns, High Crown and NAO Towns. It is therefore imperative that the Condo Act Claims be decided as soon as possible, in order to restrain the Receiver from making any more improper distributions and causing more Homebuyers to suffer added delay and complication in recovering their trust property.

II. Costs of the Administration of the Debtors' Estate are to be Borne by the Debtors' Estate

27. The Receiver argues that the relatively *de minimis* amount of the Homebuyers' interest in the NAO II Projects shifts the responsibility on them, as trust beneficiaries, to fund the costs of any tracing exercise it is ordered to conduct.²⁰ Given that the Receiver entirely relies upon the alleged *de minimis* interest of the Homebuyers, which has been dispelled above, this Court can readily dismiss this argument for the same reasons.

28. In addition, the Receiver's demand that the Homebuyers pay for its professional fees to carry out a core function of administering the Debtors' estate fails for the following three reasons.

²⁰ Paragraph 21 of the Receiver's Reply Factum.

29. First, the originating orders which appointed the Receiver over the Debtors explicitly provide that the Receiver is permitted to fund the activities of the receivership by securing the property of the Debtors with a super-priority borrowing charge:

18. **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 Property**, 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 first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver's Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.²¹

30. It is trite law that property that is held in trust by a debtor does not constitute property of the debtor's estate. As such, there is nothing in the receivership orders which authorizes the Receiver to fund its duties by charging trust property held by the Debtors' estate.

31. Second, the primary responsibility of the Receiver is to provide this Court with an accurate accounting of the affairs of the Debtors, including the amounts owing to each creditor (including trust creditors), a list of all of the property in possession or under control of the Receiver, the book value of each, and the receiver's plan of action for the receivership. These salient duties of the

²¹ Appendix “A” of the Seventh Report at paragraphs 18 and 21.

Receiver are set out by section 246(1) of the *BIA* and section 125 of the *Bankruptcy and Insolvency*

General Rules (CRC, c. 368) (the “***BIA Rules***”):

Receiver’s statement

246 (1) A receiver shall, forthwith after taking possession or control, whichever occurs first, of property of an insolvent person or a bankrupt, prepare a statement containing the prescribed information relating to the receivership, and shall forthwith provide a copy thereof to the Superintendent and

(a) to the insolvent person or the trustee (in the case of a bankrupt); and

(b) to any creditor of the insolvent person or the bankrupt who requests a copy at any time up to six months after the end of the receivership.

125 The statement required by subsection 246(1) of the Act to be prepared by a receiver after taking possession or control of property of an insolvent person or a bankrupt must contain the following information:

(a) the name of each creditor of the insolvent person or bankrupt, the amount owing to each creditor and the total amount owing to the creditors;

(b) a list of the property in the possession or under the control of the receiver, and the book value of each item; and

(c) the receiver’s intended plan of action during the receivership, to the extent that such a plan has been established.

32. In carrying out its statutory obligations, court-appointed officers owe a fiduciary duty to all stakeholders of the debtors estate. As stated by the Ontario Court of Appeal:

The motion judge concluded that a receiver appointed by the court under s. 47 of the *BIA* is effectively the representative of the Bank alone. In my opinion, his conclusion on this issue is in error. A s. 47 *BIA* receiver owes a duty to all of the creditors of the debtor.[15] For example, a s. 47 *BIA* receiver was described by Cumming J. in *Ravelston Corp.*, 2007 CanLII 2663 (ON SC), [2007] O.J. No. 414 (S.C.J.), aff’d (2007), 2007 ONCA 135 (CanLII), 85 O.R. (3d) 175 (C.A.), as an officer of the court, who owes a duty not only to the court, but also to all persons interested in the debtor’s assets, property and undertakings. These duties must be carried out honestly and in good faith. **The receiver’s role, like that of a trustee in bankruptcy, is “that of a fiduciary to all interested stakeholders.”** He concluded at para. 67:

A court-appointed receiver under the *BIA* or [*Courts of Justice Act*], as with a trustee in bankruptcy under the *BIA*, has a duty to impartially represent the interests of all creditors, the obligation to act even-handedly, and the need to avoid any real or perceived conflict

between the receiver's interest in administering the estate and the receiver's duty. [Citations omitted.]²²[emphasis added]

33. The Receiver is bound by both the originating receivership orders, the applicable statutes, and the fiduciaries duty it owes to all interested stakeholders to carry out its functions impartially and fairly.

34. As set out above, a core responsibility of the Receiver is to organize, and report to this Court, the affairs of the Debtors, including the existence and valuation of any trust properties they held. The *BIA* expressly provides receivers appointed thereunder with a remedy to recoup on the costs expended in carrying out their statutory obligations in the form of a super-priority charge on all of the Debtors' property. In consenting to the receivership appointment, the Receiver undertook to discharge its duties impartially and within the bounds authorized by statute and the receivership orders. The Receiver has not submitted any authorities in support of its argument that these particular circumstances justify it from being exempt in fulfilling its statutory duties or that it is entitled to financing outside of that which is prescribed by the receivership orders and *BIA*.

35. Third, there are unique public policy considerations negating the Receiver's arguments that the Homebuyers must pay for its costs in tracing the Deposit Funds. Specifically, in *Ward*, the Court of Appeal held that the statutory trust provisions under the *Condominium Act* were expressly legislated "to protect the purchaser in the event of the developer's insolvency".²³ This public policy objective would be defeated if, in pursuing the recovery of their trust property, purchasers were required to pay for the professional fees of a receiver they had no part in appointing.

²² [*1231640 Ontario Inc \(Re\)*, 2007 ONCA 810](#) at para 45.

²³ [*Ward-Price v Mariners Haven Inc*](#), *supra* note 2 at para 32.

36. Further to this point, during the February 15, 2024 hearing, counsel for the secured creditor, Mr. Benchetrit asked a question to the effect of “why should the secured creditor have to pay for the return of trust properties that properly belong to the Homebuyers?”

37. Respectfully, this is not the right question to ask; rather, the more appropriate question is: why are the secured creditors entitled to collect on the trust property of the Homebuyers? The answer is that the secured creditors are not entitled to recover from property held in trust by the Debtors, and it is the Receiver’s responsibility to ensure that such an outcome is avoided.

III. The Receiver’s Arguments About Priorities Under the *LTA* are Irrelevant

38. At paragraphs 28 – 31 of its reply factum, the Receiver states, implausibly, that even if the Deposit Funds could be traced into the Projects, “the trust claimants would still not have priority over the registered mortgagee. It is fundamental to Ontario’s land titles system that the registered interest of a bona fide mortgagee without notice trumps any prior unregistered interest in the property”.²⁴ The Receiver then cites two cases in support of its contention that in “virtually identical contests between the *Condominium Act* purchasers and a registered mortgagee”, the registered mortgagee was successful in claiming priority over purchasers under the *Condominium Act*.²⁵

39. These cases and the Receiver’s arguments regarding priorities prescribed by the *LTA*, a provincial statute, are irrelevant and entirely distinguishable from the present circumstances.

²⁴ Paragraph 28 of the Receiver’s Reply Factum.

²⁵ Paragraphs 28 – 29 of the Receiver’s Reply Factum.

40. The *BIA*, not the *LTA*, is the governing statute of these proceedings. Accordingly, the priority scheme set out by the *BIA* is determinative, and under section 67(1)(a) the *BIA*, trust property ranks ahead of the interests of the secured creditors. It is immaterial that the *LTA* might set out a different priority scheme that contradicts the *BIA*.

41. This basic principle is articulated in the decision of the Alberta Court of Queen's Bench cited at paragraph 30 of the Receiver's Reply Factum:

Contrary to the Purchasers' assertion, I do not find that the *Iona Contractors* decision helpful. The Purchasers argue that *Iona Contractors* establishes that a provincially created statutory trust takes priority over all creditors who have protected their claimed interest in land by registering their interests on title to the land. In my view, the factual differences between *Iona Contractors* and this case render that decision of no assistance to the Purchasers on this application. First, *Iona Contractors* does not address the land registry regime set up by the *Land Titles Act*, nor does it discuss the priority of an unregistered statutory trust over registered interests in land. Second, the decision was concerned with whether the provincial *Builder's Lien Act* was in operational conflict with the federal *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 for the purpose of determining whether the money held in a provincial statutory trust was to be included or excluded in the bankrupt's estate pursuant to paragraph 67(1)(a) of the *Bankruptcy and Insolvency Act*. **This present application does not involve bankruptcy nor does it involve the interpretation of the *Bankruptcy and Insolvency Act*.**

[51] Similarly, the *Japan Canada Oil Sands Ltd v Stoney Mountain Steel Corp*, 2001 CanLII 59630 (AB KB), 290 AR 251, [2001] AJ 533 and *Ward-Price v Mariners Haven Inc*, 2001 CanLII 24088 (ON CA), 57 OR (3d) 410, 2001 OJ No 1711, decisions relied on by the Purchasers are distinguishable on the facts and issues and are of no assistance in determining the issue in this application.²⁶ [emphasis added]

42. Finally, the Receiver's reliance on the Ontario Court of Appeal's brief reasons in *Counsel Holdings Canada Limited v Chanel Club Limited*, 1999 CanLII 1653 (Ont. CA) ("*Counsel Holdings*") is also misplaced. While it is true that the Court upheld the lower court's ruling in favour of a first-ranked mortgagee over purchasers under the *Condominium Act*, the Court explicitly stated that the deposits at issue were not impressed with a statutory trust:

²⁶ [1864684 Alberta Ltd v 1693737 Alberta Inc](#), 2016 ABQB 371 at paras 50-51.

The ground of appeal with respect to the deposits being subject to a trust claim, an argument that the trial judge held to be without merit, has been abandoned.²⁷

43. Thus, the contest was not between trust claimants and a secured creditor, but rather a secured creditor and unsecured creditors. Accordingly, the circumstances in *Counsel Holdings* could not be further from “identical” than that of these proceedings.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of March, 2024.



David Sterns/Denna Pourmonazah Jalili

SOTOS LLP

180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

David Sterns (LSO # 36274J)
dsterns@sotos.ca
Denna Pourmonazah Jalili (LSO # 84976N)
djalili@sotos.ca

Tel: 416-977-0007
Fax: 416-977-0717

Lawyers for the Moving Party (Cross-Motion)

²⁷ [*Counsel Holdings Canada Limited v Chanel Club Limited* \(1999\), 43 OR \(3d\) 319](#). The lower court held that the statutory trust protections over the deposits ended when the developer provided the prescribed security. See: [*Counsel Holdings Canada Ltd v Chanel Club Ltd* \(1997\), 33 OR \(3d\) 285](#)

SCHEDULE “A”

LIST OF AUTHORITIES

Tab	Title	Pinpoints
1	<u><i>Ward-Price v Mariners Haven Inc</i> (2001), 57 OR (3d) 410</u>	21, 32
2	<u><i>Kingsett Mortgage Corp v Stateview Homes (Minu Towns) Inc</i>, 2023 ONSC 7105</u>	17, 65
3	<u><i>Metropolitan Toronto Condominium Corp No 1371 (Re)</i>, [2006] OLATD No 430</u>	45-47
4	<u><i>Ontario New Home Warranty Program v Young & Wright Architects</i> (2002), 116 ACWS (3d) 602</u>	3
5	<u><i>Tarion Warranty Corp v 1518162 Ontario Inc</i>, 2015 OREG para 59, 2015 ONSC 6532</u>	9
6	<u><i>1231640 Ontario Inc (Re)</i>, 2007 ONCA 810</u>	45
7	<u><i>1864684 Alberta Ltd v 1693737 Alberta Inc</i>, 2016 ABQB 371</u>	50-51
8	<u><i>Counsel Holdings Canada Limited v Chanel Club Limited</i> (1999), 43 OR (3d) 319</u>	
9	<u><i>Counsel Holdings Canada Ltd v Chanel Club Ltd</i> (1997), 33 OR (3d) 285</u>	

SCHEDULE “B”

TEXTS OF STATUTES, REGULATIONS AND BY LAWS

[Ontario New Home Warranties Plan Act, R.S.O. 1990, c. O.31](#)

By-laws

23 (1) The Corporation may make by-laws,

(m) subrogating the Corporation or a named insurer to any right of recovery of a person in respect of a claim paid out of the insurance under the Plan and costs and providing the terms and conditions under which an action to enforce such rights may be begun, conducted and settled;

R.R.O. 1990, Reg. 892: ADMINISTRATION OF THE PLAN

13. (1) The Corporation shall be subrogated to all rights of recovery of a person to whom payment in respect of a claim has been made out of the guarantee fund under the Act and may maintain an action in its own name or the name of the person against any other person against whom the action lies in respect of such rights of recovery. R.R.O. 1990, Reg. 892, s. 13 (1).

(2) The Corporation is entitled under its rights of recovery to conduct legal proceedings, including an action for damages, the quantum of which shall be limited to the amount paid out of the guarantee fund by the Corporation to the person whose rights are subrogated to the Corporation, including any legal costs, plus all costs incurred by the Corporation in the subrogated action. R.R.O. 1990, Reg. 892, s. 13 (2)

(3) Any amount recovered by the Corporation shall be applied,

- (a) first, to payment of costs actually incurred by the Corporation in any action or any related action and in levying execution;
- (b) second, to reimbursement of the Corporation for the amount of compensation paid by the Corporation to the person out of the guarantee fund; and
- (c) third, the balance, if any, to payment of the person whose rights are subrogated. R.R.O. 1990, Reg. 892, s. 13 (3).

(4) Any settlement or release does not bar the rights of the Corporation unless the Corporation has concurred therewith in writing. R.R.O. 1990, Reg. 892, s. 13 (4).

(5) Any person who has been paid money out of the guarantee fund by the Corporation shall forthwith notify the Corporation of any action that such person has brought against any person who caused or contributed to the damages that resulted in the said payment by the Corporation out of the guarantee fund. R.R.O. 1990, Reg. 892, s. 13 (5).

BANKRUPTCY AND INSOLVENCY ACT (R.S.C. 1985, c. B-3)

Receiver's statement

246 (1) A receiver shall, forthwith after taking possession or control, whichever occurs first, of property of an insolvent person or a bankrupt, prepare a statement containing the prescribed information relating to the receivership, and shall forthwith provide a copy thereof to the Superintendent and

(a) to the insolvent person or the trustee (in the case of a bankrupt); and

(b) to any creditor of the insolvent person or the bankrupt who requests a copy at any time up to six months after the end of the receivership.

Bankruptcy and Insolvency General Rules (CRC, c. 368)

125 The statement required by subsection 246(1) of the Act to be prepared by a receiver after taking possession or control of property of an insolvent person or a bankrupt must contain the following information:

- (a)** the name of each creditor of the insolvent person or bankrupt, the amount owing to each creditor and the total amount owing to the creditors;
- (b)** a list of the property in the possession or under the control of the receiver, and the book value of each item; and
- (c)** the receiver's intended plan of action during the receivership, to the extent that such a plan has been established.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

MOVING PARTY'S REPLY FACTUM

SOTOS LLP

180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

David Sterns (LSO # 36274J)
dsterns@sotos.ca

Denna Pourmonazah Jalili (LSO # 84976N)
djalili@sotos.ca

Tel: 416-977-0007

Lawyers for the Moving Party (Cross-Motion)

TAB 6

Court File No. CV-23-00698576-00CL
CV-23-00698395-00CL
CV-23-00698632-00CL
CV-23-00698637-00CL
CV-23-00699067-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN

KINGSETT MORTGAGE CORPORATION AND DORR CAPITAL CORPORATION

Applicants

- and -

**STATEVIEW HOMES (MINU TOWNS) INC., STATEVIEW HOMES (NAO TOWNS) INC.,
STATEVIEW HOMES (ON THE MARK) INC., TLSFD TAURASI HOLDINGS CORP. AND
STATEVIEW HOMES (HIGH CROWN ESTATES) INC.**

Respondents

**ATRIUM MORTGAGE INVESTMENT CORPORATION AND DORR CAPITAL
CORPORATION**

Applicants

- and -

STATEVIEW HOMES (NAO TOWNS II) INC., DINO TAURASI AND CARLO TAURASI

Respondents

DORR CAPITAL CORPORATION

Applicant

- and -

HIGHVIEW BUILDINGS CORP INC.

Respondent

DORR CAPITAL CORPORATION

Applicant

- and -

STATEVIEW HOMES (BEA TOWNS) INC.

Respondent

MERIDIAN CREDIT UNION LIMITED

Applicant

- and -

STATEVIEW HOMES (ELM & CO) INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**AIDE MEMOIRE OF THE RECEIVER
(CASE CONFERENCE – APRIL 2, 2024)**

April 1, 2024

CASSELS BROCK & BLACKWELL LLP
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, ON M5H 0B4

Ryan Jacobs LSO#: 59510J
Tel: 416.860.2948
rjacobs@cassels.com

Alan Merskey LSO#: 41377I
Tel: 416.860.2948
amerskey@cassels.com

Joseph Bellissimo LSO#: 46555R
Tel: 416.860.6572
jbellissimo@cassels.com

Alec Hoy LSO#: 85489K
Tel: 416.860.2976
ahoy@cassels.com

Lawyers for the Receiver (NAO Phase 1, Minu,
On the Mark, High Crown and Taurasi Holdings
Receiverships)

PALIARE ROLAND LLP
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1

Jeff Larry LSO#: 44608D
Tel: 416.646.4330
jeff.larry@paliareroland.com

Daniel Rosenbluth LSO#: 71044U
Tel: 416.646.6307
daniel.rosenbluth@paliareroland.com

Lawyers for the Receiver (NAO Phase 2, BEA,
Highview and Elm Receiverships)

1. The purpose of this case conference is to schedule a workable and appropriate manner of litigating the various claims asserted by Ms. Mehta, as proposed representative plaintiff of an uncertified class action (the “Proposed Class”), as against the various receivership estates.

1. Background: significant practical issues created by the expanded scope of the Proposed Class’s motion

2. The Receiver now understands that the Proposed Class intends to assert trust claims against the Stateview entities known as Minu Towns, Elm&Co., NAO II, High Crown, and Highview. The Proposed Class also intends to seek orders requiring the Receiver of each entity to conduct tracing and valuation exercises in aid of the Proposed Class’s eventual trust claims.

3. The Proposed Class’s intended claims raise significant practical concerns given that of those five estates, two (Minu and High Crown) have already completed the sale of their real property and distributed all of the sale proceeds pursuant to court orders (the “**Distribution Orders**”), each of which contain provisions substantially in the following form (the “**Free and Clear Provision**”):

THIS COURT ORDERS that notwithstanding anything else contained in this Order, each of the payments and distributions provided for in this Order shall be made free and clear of all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Steele dated May 2, 2023; and (ii) all charges security interests, liens, trusts, or claims evidenced by registrations pursuant to the Personal Property Security Act (Ontario) or any other personal property or real property registry system.

4. The situation is similar in the Highview proceeding, where all funds have been distributed pursuant to the standard Distribution Order save for a \$170,000 holdback – an amount roughly equal to the Proposed Class’s maximum possible recovery net of Tarion reimbursement.

5. A similar issue arises in NAO II, one of the two remaining estates. In that case, Justice Black recently ruled that the Proposed Class’s maximum possible recovery is approximately \$37,000, and His Honour authorized the distribution of all funds in excess of that amount. The distribution is on hold pending the Proposed Class’s appeal of this ruling.

6. The Receiver has serious concerns about the cost and impracticality of the Proposed Class’s intended motion. The Proposed Class is effectively seeking to litigate against a number of insolvent receivership estates that have already distributed funds pursuant to the Free and Clear Provisions which insulate those distributions from further challenge; these claims are clearly a collateral attack on the Distribution Orders

7. Ultimately, the Receiver believes that there is no basis for the relief the Proposed Class is seeking, for the reasons it has briefed previously in connection with the March 5, 2024 return of the motion. Nevertheless, given that the Proposed Class is litigating against insolvent estates (including estates which have already distributed all of its proceeds), the Receiver wishes to address the issue of costs before the motions can proceed.

2. Proposed solution

8. For these reasons, the Receiver intends to bring a motion for security for costs and respectfully submits that this motion should be timetabled and heard before any other step in the proceeding.

9. After the security for costs motion is dealt with, the next issue that should be addressed is whether the Proposed Class is permitted to pursue its motion as against any estates where funds have already been distributed.

10. In other words, this Court should determine whether the Free and Clear Provisions in the existing Distribution Orders are a complete bar to any relief from the class in respect of those receivership entities.

11. In the Receiver's view, it is necessary and appropriate to address this question prior to the return of the Proposed Class's broader motion given the reality that any receivership estates where funds have already been distributed have no practical ability to fund any participation in the class's proposed motion.

12. Once the outcome of the security for costs motion is known, the Receiver will consider whether it intends to proceed voluntarily with tendering valuation evidence or whether it will be opposing the balance of the Proposed Class's motion. The balance of the motion can be scheduled and timetabled at that time.

13. Finally, the receiver notes that there is no urgency to the Proposed Class's motion (and, therefore, time to first address the Receiver's intended motions) given that for three

estates (Highview, Minu and High Crown), the sale of the properties has already occurred and for the other two (Elm & Co. and BEA), there is no prospect of a sale in the near term.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 1st DAY OF APRIL, 2024



Jeffrey Larry
Alan Merskey
Paliare Roland Rosenberg Rothstein LLP
Cassels Brock & Blackwell LLP
Lawyers for the Receiver and Manager,
KSV Restructuring Inc.

ATRIUM MORTGAGE INVESTMENT CORP et al.
Applicant

STATEVIEW HOMES (NAO TOWNS II) INC. et al.

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

AIDE MEMOIRE OF THE RECEIVER

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

155 Wellington Street West
35th Floor
Toronto, ON M5V 3H1
Tel: 416.646.4300
Fax: 416.646.4301

Jeffrey Larry (LSO# 44608D)

Tel: 416.646.4330
jeff.larry@paliareroland.com

Daniel Rosenbluth (LSO #71044U)

Tel: 416.646.6307
daniel.rosenbluth@paliareroland.com

Lawyers for the Receiver

Court File No. CV-23-00698576-00CL, CV-23-00698395-00CL, CV-23-00698632-00CL, CV-23-00698637-00CL and CV-23-00699067-00CL

IN THE MATTER OF THE RECEIVERSHIP OF STATEVIEW HOMES (MINU TOWNS) INC., STATEVIEW HOMES (NAO TOWNS) INC., STATEVIEW HOMES (NAO TOWNS II) INC., STATEVIEW HOMES (ON THE MARK) INC., TLSFD TAURASI HOLDINGS CORP., STATEVIEW HOMES (HIGH CROWN ESTATES) INC., HIGHVIEW BUILDING CORP INC., STATEVIEW HOMES (BEA TOWNS) INC., AND STATEVIEW HOMES (ELM&CO) INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD

SOTOS LLP

180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

David Sterns (LSO # 36274J)
dsterns@sotos.ca
Denna Pourmonazah Jalili (LSO # 84976N)
djalili@sotos.ca

Tel: 416-977-0007

Lawyers for Dharmi Mehta