



Court File No. CV-23-00706813-00CL

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

THE HONOURABLE

)

TUESDAY, THE 8<sup>th</sup>

JUSTICE KIMMEL

)

DAY OF OCTOBER, 2024

)

BETWEEN:

**GENESIS MORTGAGE INVESTMENT CORPORATION**

Applicant

-and-

**1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP**

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**

**DISTRIBUTION AND ANCILLARY RELIEF ORDER**

**THIS MOTION** by KSV Restructuring Inc. (the “**Receiver**”) in its capacity as receiver and manager of 1776411 Ontario Ltd. (“**177 Ontario**”) and 1333 Weber Street Kitchener LP (collectively with 177 Ontario, the “**Debtors**”) for an Order, among other things, (i) approving the activities described in the Receiver’s second report dated September 27, 2024 (the “**Second Report**”), (ii) amending the appointment order of Justice Cavanagh dated October 12, 2023 (the “**Receivership Order**”) by increasing to \$2,500,000 the amount the Receiver is authorized to

borrow, (iii) authorizing and directing the Receiver to make certain payments and distributions from the completion of the sale (the “**Transaction**”) of the real property (the “**Real Property**”) described in the agreement of purchase and sale (as amended) set out in Appendix “H” of the Second Report, (iv) declaring null and void the construction liens of Classic Tile Contractors Limited (“**Classic Tile**”) and 2866791 Ontario Corp o/a HGL Electrical (“**HGL Electrical**”), (v) authorizing and directing the Receiver to terminate and disclaim the listing agreement between Rego Realty Inc. (“**Rego Realty**”) and 177 Ontario, dated March 22, 2019 (the “**Rego Listing Agreement**”), (vi) approving the fees and disbursements of the Receiver, as set out in the affidavit of Mitch Vininsky sworn September 20, 2024, and of the Receiver’s counsel, Blaney McMurtry LLP (“**Blaneys**”), as set out in the Affidavit of Chad Kopach sworn September 18, 2024, and (vii) approving and accepting the Receiver’s Interim Statement of Receipts and Disbursements for the period from October 12, 2023, to September 12, 2024, was heard this day via Zoom videoconference.

**ON READING** the Second Report, and the appendices thereto, the Supplement to the Second Report of the Receiver dated October 4, 2024, and the appendices thereto, and upon hearing submissions of counsel for the Receiver, the Applicant, Westmount Guarantee Services Inc., CMLS Financial Ltd., and such other parties on the counsel slip, no one appearing for any other person, although properly served as appears from the affidavit of Chad Kopach sworn September 30, 2024, filed,

## **REPORT APPROVAL**

1. **THIS COURT ORDERS** that the Second Report, and the actions of the Receiver described therein, be and are hereby approved; provided, however, that only the Receiver, in its

personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

### **BORROWING INCREASE**

2. **THIS COURT ORDERS** that paragraph 21 of the Appointment Order, as amended by paragraph 7 of the Order of Justice Cavanagh dated December 12, 2023, be and same is hereby further amended to increase the amount the Receiver is authorized to borrow to \$2,500,000.

### **DISTRIBUTIONS**

3. **THIS COURT ORDERS** that the Receiver shall make the following distributions from the proceeds of sale from the Transaction, in full satisfaction of the lien claimants' priority claims for holdback, including their priority claims pursuant to section 78 of the *Construction Act*, inclusive of HST (the "**Priority Lien Claims**"):

(a) \$508,913.14 to Gillam Urban Constructors Inc. ("**Gillam**"), payable as follows:

- i. \$28,417.63 to Matthews Equipment Limited o/a Herc Rentals ("**Matthews Equipment**") in respect of the construction contract between Matthews Equipment and Gillam; and,
- ii. \$480,495.51 to Gillam;

(b) \$43,231.50 to ABA Architects Inc. ("**ABA Architects**");

(c) \$245,111.48 to Aluminum Window Designs Ltd. ("**Aluminum Window**");

(d) \$60,787.01 to Conestoga Roofing & Sheet Metal Ltd. ("**Conestoga Roofing**");

(e) \$549,251.98 to Dean Lane Contractors Inc. ("**Dean Lane**");

(f) \$165,642.13 to Gold Star Drywall Services Inc. (“**Gold Star Drywall**”);

(g) \$48,960.02 to Greentech Sealants Inc. (“**Greentech Sealants**”);

(h) \$34,495.53 to O’Connor Electric Ltd. (“**O’Connor Electric**”);

(i) \$75,595.93 to Oxford Builders Supplies Inc. (“**Oxford**”);

(j) \$103,811.87 to Pearson Metal Inc. (“**Pearson Metal**”);

(k) \$936,001.85 to Stubbe’s Precast Inc. (“**Stubbe’s Precast**”); and,

(l) \$63,919.39 to Troy Life & Fire Safety Ltd. (“**Troy Life**”).

4. **THIS COURT ORDERS AND DECLARES** that, following payment of the amounts set out in paragraph 3 above (the “**Lien Priority Distributions**”), the Priority Lien Claims of each of the lien claimants shall be extinguished, and the lien claim of Matthews Equipment shall be deemed to be fully satisfied.

5. **THIS COURT ORDERS** that following payment of the Lien Priority Distributions and the priority payables set out in paragraph 48 of the Second Report, including but not limited to the holdbacks as the Receiver considers appropriate to fund the receivership, including its fees and the fees of its counsel, the Receiver is hereby authorized and directed to make one or more distributions to the first mortgagees over the Real Property, Genesis Mortgage Investment Corp. (“**GMIC**”), CMLS Financial Ltd. (“**CMLS**”) and Computershare Trust Company of Canada (“**Computershare**”, and together with GMIC and CMLS, the “**First Mortgagees**”), up to the balance owing to them under their first mortgage (the “**First Mortgagee Distribution**”).

6. **THIS COURT ORDERS** that the Receiver is hereby authorized to take all reasonably necessary steps and actions to effect the Lien Priority Distributions and the First Mortgagee Distribution (collectively, the “**Distributions**”) in accordance with this Order, and shall not incur any liability as a result of making the Distributions.

7. **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 and from any and 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 Cavanagh made on October 12, 2023, and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* or any other personal property registry system or real property registry system.

8. **THIS COURT ORDERS** that the Receiver or any other person facilitating payments and Distributions pursuant to this Order shall be entitled to deduct and withhold from any such payments or Distributions such amounts as may be required to be deducted or withheld under any applicable law and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person entitled thereto, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order.

## **INVALID LIENS**

9. **THIS COURT ORDERS AND DECLARES** that the lien of Classic Tile, as evidenced by the Claim for Lien in the amount of \$591,923 registered over title to the Real Property on July 21, 2023, as instrument no. WR1521825 (the “**Classic Tile Claim for Lien**”), and by the Certificate of Action registered on September 29, 2023, as instrument no. WR1536918 (the “**Classic Tile Certificate of Action**”), is null and void.

10. **THIS COURT ORDERS AND DECLARES** that the lien of HGL Electrical, as evidenced by the Claim for Lien in the amount of \$3,123,088 registered over title to the Real Property on August 9, 2023, as instrument no. WR1525921 (the “**HGL Electrical Claim for Lien**”), is null and void.

## **TERMINATION AND DISCLAIMER OF REGO LISTING AGREEMENT**

11. **THIS COURT ORDERS** that the Receiver is hereby authorized, on or prior to closing of the Transaction, to terminate and disclaim the Rego Listing Agreement, and any rights or claims thereunder or relating thereto are not continuing obligations effective against the Real Property or binding on the Purchaser.

## **APPROVAL OF PROFESSIONAL FEES AND COSTS**

12. **THIS COURT ORDERS** that the fees and disbursements of the Receiver from the commencement of the Receivership to and including August 31, 2024, as set out in the Affidavit of Mitch Vininsky sworn September 20, 2024 and attached as Appendix “P” to the Second Report, be and are hereby approved.

13. **THIS COURT ORDERS** that the fees and disbursements for Blaneys from the commencement of the Receivership to and including August 31, 2024, as set out in the Affidavit of Chad Kopach sworn September 18, 2024, and attached as Appendix “Q” to the Second Report, be and are hereby approved.

#### **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

14. **THIS COURT ORDERS** that the Receiver’s Interim Statement of Receipts and Disbursements for the period from October 12, 2023, to September 12, 2024, as set out in Appendix “O” to the Second Report, be and is hereby accepted and approved.

#### **GENERAL**

15. **THIS COURT ORDERS** that, notwithstanding:


- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* in respect of any of the Respondents and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any of the Respondents;

any payments or Distributions made pursuant to this Order are final and irreversible and shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Respondents and shall not be void or voidable by creditors of any of the Respondents, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

16. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

17. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

18. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry and filing.

 Digitally signed  
by Jessica  
Kimmel  
Date: 2024.10.09  
15:16:31 -04'00'

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Applicant

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Respondents

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

Proceeding commenced at Toronto

**DISTRIBUTION AND ANCILLARY RELIEF ORDER**

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in its capacity as Court-appointed Receiver