



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

**COURT FILE NO.:**

**HEARING DATE: April 14, 2026**

**4. CV-23-00706813-00CL**

**5. CV-25-00756158-0000**

**6. CV-23-00706796-0000**

**7. CV- 21-00001279-0000**

**8. CV-25-00000716-0000**

**NO. ON LIST: 4,5,6,7,8**

**TITLE OF PROCEEDING:**

**4. GENESIS MORTGAGE INVESTMENT CORPORATION v. 1776411 ONTARIO LTD. et al**

**5. AVIVA INSURANCE COMPANY OF CANADA v. LEUSCHNER et al**

**6. CORFINANCIAL CORP. V. CMLS FINANCIAL LTD. ET AL**

**7. DEAN LANE CONTRACTORS INC V 1776411 ONT LTD**

**8. WERNER LEUSCHNER V CMLS FINANCIAL LTD**

**BEFORE: JUSTICE KIMMEL**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
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**For Defendant, Respondent, Responding Party:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Contact Info</b>
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**ENDORSEMENT OF JUSTICE KIMMEL:**

- [1] The Receiver of Genesis Mortgage Investment Corporation ("Gentai") scheduled this case conference to seek directions from the court about the prosecution and procedural management of four outstanding proceedings that relate to the Project that is under receivership. There are two such actions in Kitchener and two on the general civil list in Toronto issued by four different plaintiffs (two were issued before the Receivership Order was made, and the two others were issued in April and November of 2025).
- [2] The Project under receivership was in Kitchener. It was recently sold under a credit bid to affiliates of some of the secured lenders, in a transaction that closed after the Receiver obtained an approval and vesting order of this court ("AVI").
- [3] The parties to these four actions appeared at this case conference and filed briefs in advance. The four actions are:
- (a) Court File No. CV-23-00001279-0000 - Dean Lane Contractors Inc. v. 1776411 Ontario Ltd. et al, commenced as a lien action in Kitchener. The lien claims have been paid out and this action is now limited to claims against one of the secured lenders, CORFinancial (the "Lien Claimant's Action").
  - (b) Court File No. CV-23-00706796-0000 - CORFinancial Corp. v. CMLS Financial Ltd. et al., an action commenced on the general civil list in Toronto against Computershare, CMLS and Gentai, in respect of claims that overlap with the claims asserted in the Lien Claimant's Action against CORFinancial (the "CORFinancial Action").

(c) Court File No. CV-25-00000716-0000 - Werner Leuschner et al v. CMLS Financial Ltd. et al, a claim commenced in Kitchener by the guarantors against the secured lenders (the “Guarantors’ Action”).

(d) Court File No. CV 25-00756158-0000 - Aviva Insurance Company of Canada et al v. the Guarantors, in respect of their guarantees of the deposit amounts paid by the surety (Aviva) on the hundreds of residential condominium units sold by the respondents (the “Surety Action”).

[4] The case conference covered a lot of ground over almost 90 minutes.

[5] The Receiver asked for the court’s guidance and directions about whether: a) there should be a timetable in place for each of the four proceedings; b) all four proceedings should be transferred to, and case managed by a single judge on, the Commercial List; and c) when and whether the Receiver may apply for its discharge to extricate itself from the litigation.

[6] The applicant (one of the secured creditors, supported by the other secured creditors) maintains that each action is, at its core, a dispute arising from the collapse of the same construction project and the same financing arrangements that gave rise to these receivership proceedings. Each of the claims directly involve the Loan, mortgage, and the related Forbearance Agreement. There is some overlap in the parties across all the Related Actions. The secured lenders are named parties in all of the actions except the Surety Action.

[7] The secured lenders agree that moving forward in a coordinated manner rather than in isolation across different venues would serve the interests of justice and provide for an efficient use of judicial resources. Given their connection to the receivership proceedings, their complexity, the nature of the underlying transactions, and the significant amounts at issue, the secured lenders request that all four of these other actions be transferred to, and be case managed on, the Commercial List.

[8] The Receiver supports this position, but its main objective is to have some certainty around the plan for how these proceedings will move forward once the receivership is terminated, as it intends to seek a discharge order in the foreseeable future.

[9] The Lien Claimant takes no position on whether its action should move to the Commercial List or continue in Kitchener, it just does not want its action to be delayed or complicated by the other proceedings, since the issues have been narrowed. CORFinancial is in favour of its action being transferred to the Commercial List as long as the Lien Claimant’s Action also is transferred (one is derivative of the other).

[10] The guarantors want to proceed with their Guarantors’ Action in Kitchener. Aviva wants to proceed with its Surety Action on the regular civil list in Toronto.

[11] After considering the written briefs and oral submissions of counsel for the parties in these various proceedings, the court directed that three of the four other actions be transferred and be informally case managed by a judge sitting on the Commercial List in Toronto. This direction does not apply to the Surety Action, which is sufficiently distinct that it may continue on the regular civil list in Toronto. I have signed three orders today all dated April 14, 2026, transferring the Lien Claimant’s Action, the CORFinancial Action and the Guarantors’ Action to the Commercial List.

[12] This is not a consolidation motion and no order or direction consolidating or for hearing together has been made. There is sufficient overlap between the remaining three actions, all relating to the Project that is in receivership, and the loan, guarantees, mortgage, forbearance agreement, and the events preceding the appointment of the Receiver and potentially affected by the fallout of the receivership, that it makes sense for the three other actions to be on the Commercial List, where the receivership proceeding currently is and where any future contested bankruptcy application will likely end up, so that they can be informally case managed together under the supervision, oversight and direction of an experienced Commercial List judge.

Directions can be provided regarding procedural steps and sequencing to streamline these proceedings, which will be in the interests of all parties. The parties may schedule a case conference in all of the related proceedings in due course to seek further procedural directions. It likely will make sense for this to occur after or at the same time as the Tarion Motion (discussed below).

- [13] In the course of this case conference, various questions were raised regarding the application of the existing stay of proceedings to any of these ongoing actions, and also regarding the possibility that there might be an application brought for a bankruptcy order (that would impose a stay) in conjunction with, or after, the discharge of the Receiver. The scope of the stay imposed under the order appointing the Receiver is essentially moot at this point given the Receiver's stated intention to seek a discharge order. The secured lenders agreed to confirm within 30 days whether or not they intend to bring a bankruptcy application in respect of any of the respondents or to seek a bankruptcy order in connection with the discharge of the Receiver. If there is a question about the scope of any stay that arises in connection with any future bankruptcy order, that can be addressed at a later time, if necessary.
- [14] There was also some discussion at the case conference about whether the guarantees have been released by virtue of the AVO and satisfaction of indebtedness arising from the sale proceeds (e.g., whether they have any remaining shortfalls or obligations to be satisfied that are subject to the guarantees). The secured lenders have also agreed to provide their respective positions within 30 days regarding whether they have any claims that remain subject to the guarantees. This could have implications for the continuing Guarantors' Action.
- [15] In addition to the directions sought by the Receiver in connection with the other actions (above), in this receivership proceeding, the Receiver:
- (a) Seeks to schedule a motion to have the court determine competing claims to entitlement to enrolment fees currently held by Tarion Warranty Corporation ("Tarion") pursuant to the terms of the AVO (the "Tarion Motion"). Tarion requires a court order before releasing these funds, although it is not expected to take a position on this motion.
  - (b) Seeks to schedule a motion for the Receiver's discharge and various ancillary relief (the "Discharge Motion").
- [16] The Tarion Motion has been scheduled for a half-day in-person hearing on June 2, 2026, commencing at 10:00 a.m. The parties participating in this motion (expected to be the Guarantors and the purchaser under the AVO, with the Receiver's support) shall agree upon a time table for all pre-hearing steps for this motion that will ensure that all materials (including a reply factum for the moving party if appropriate under the Commercial List Practice Direction) shall have been served, filed and uploaded into the appropriate hearing bundle in Case Center by no later than May 29, 2026 at 4:30 p.m. As noted earlier, it is not anticipated that Tarion will take a position on this motion. Its counsel was not in attendance at this case conference. They shall be advised of the motion date. If the date is problematic for Tarion and it wishes to appear, participating counsel may attend a further scheduling conference so that a new date can be booked.
- [17] The Receiver will consider whether it makes sense, and if there is sufficient time, to bring its motion for discharge on June 2, 2026 or at a later time. It shall only bring the motion on that date if it is in a position to serve it sufficiently in advance of June 2 that all stakeholders will have a chance to respond, if so advised.
- [18] This endorsement and the directions contained in it shall have the immediate effect of a court order.

A rectangular box containing a handwritten signature in black ink that reads "Kimmel J.".

Date: Apr 15, 2026

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Jessica Kimmel