



**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**ENDORSEMENT**

**COURT FILE  
NO.:**

**CV-23-00706813-00CL**

**DATE: September 25, 2024**

**NO. ON LIST: 2**

**TITLE OF  
PROCEEDING:**

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

**BEFORE  
JUSTICE: OSBORNE**

**PARTICIPANT INFORMATION**

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

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Contact Info</b>
Sean Zweig	Counsel for Applicant Genesis Mortgage	<a href="mailto:zweids@bennettjones.com">zweids@bennettjones.com</a>

**For the Defendant, Respondent, Responding Party:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Contact Info</b>
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**For Other, Self-Represented:**

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

[1] The Receiver moves for an order:

- a. approving an asset purchase agreement in respect of the property at 1333 Weber Street East, Kitchener, Ontario that the Receiver has entered into with Genesis Mortgage Investment Corp., Elm Acquisitions Corp., and Dorr Capital Corporation, as Purchasers;
- b. sealing the summary of offers received in the Sale Process, attached as Confidential Appendix “1” to the Second Report of the Receiver until the earlier of 30 days following closing of the Transaction or further order of the Court;
- c. vesting all right, title and interest of the Debtors in the Property in the Purchasers;
- d. authorizing and directing the Receiver to terminate and disclaim the existing pre-construction agreements of purchase and sale related to Tower B of the four-phase residential condominium project on the Property;
- e. authorizing and directing the Receiver, following the closing of the Transaction and also following the results of the Purchasers’ post-closing sales plan for Tower A of the Project, up to 120 days from the date of the order, to terminate and disclaim the pre-construction unit agreements of purchase and sale related to Tower A that are not being assumed by the Purchasers;
- f. if necessary, authorizing and directing the Receiver to terminate and disclaim the listing agreement for the Project between Rego Realty Inc. and 177 Ontario, dated March 22, 2019;
- g. declaring null and void and discharging and deleting from title to the Property two liens, one of Classic Tile Contractors Limited in the amount of \$591,923; and the second of 2866791 Ontario Corp., operating as HGL Electrical in the amount of \$3,123,088;
- h. approving the activities described in the Receiver’s Second Report;
- i. upon completion of the Transaction, making certain distributions to the construction Lien Claimants as set out in the Notice of Motion and extinguishing the Priority Claims made pursuant to section 78 of the *Construction Act* thereafter;
- j. approving distributions to the first mortgagees up to the balance owing to them;
- k. authorizing and directing the Receiver to pay to the Purchasers following the closing of the Transaction any funds that the Receiver may receive from the Canada Revenue Agency in respect of input tax credits relating to any component of the Purchase Price;
- l. amending the order of Cavanagh, J. dated October 12, 2023 to increase the maximum borrowing amount for the Receiver to \$2,500,000;
- m. approving and accepting the Receiver’s Interim Statement of Receipts and Disbursements for the period October 12, 2023 to September 11, 2024; and

- n. approving the fees and disbursements of the Receiver and its counsel from October 12, 2023 to August 31, 2024.

- [2] Defined terms in this Endorsement have the meaning given to them in the Notice of Motion, unless otherwise stated.
- [3] The Project is not complete. Tower A is partially complete, and Towers B and C are at the foundation stage. There are approximately 500 purchasers who have entered into agreements of purchase and sale in respect of condominium units in all three Towers.
- [4] The Applicant in this proceeding is the junior secured creditor among three First Mortgagees who together hold the first mortgage. Over \$67 million is owing under the first mortgage of which approximate \$23 million is owed to the Applicant.
- [5] Westmount Guarantee Services Inc. provides access deposit insurance protection above the primary deposit insurance protection of \$20,000 per deposit offered by Tarion Warranty Corporation. Westmount is the second mortgagee on the Property, which is owed approximately \$17 million for deposits that have been released for construction.
- [6] The Purchase Price under the Purchaser Group APA would pay out in full the First Mortgage as well as all priority payables, including a priority lien holdback amount of approximately \$2.9 million, municipal property taxes of approximate \$227,000 and broker commission on the proposed Transaction. It is not expected that proceeds would be sufficient to pay out all mortgages.
- [7] The Transaction contemplates the Purchaser Group assuming agreements of purchase and sale with purchasers of condominium units for Tower C and has proposed a plan in respect of the agreements for Tower A.
- [8] It is anticipated that Tarion and Westmount will seek, as part of the Receiver's motion, a Deposit Return Protocol regarding refunds of deposits paid by purchasers of condominium units. They are working on that now.
- [9] Mr. Ketelaars advises that two claimants with outstanding claims that were stayed by the receivership order intend to assert those claims, and in addition, claim a priority in entitlement to net proceeds arising from the Transaction, ranking ahead of other claimants, including but not limited to the First Mortgagees. He submitted that the distribution motion can and should be heard after the sale approval motion.
- [10] In my view, the two must be heard together. The agreement of purchase and sale is scheduled to close on October 30. Genesis is both one of the First Mortgagees and also part of the Purchaser Group. The agreement of purchase and sale is akin, in some respects, to a credit bid in that part of the proposed purchase price, if the Transaction is approved, will extinguish the existing Genesis 1<sup>st</sup> Mortgage (i.e., no cash will actually flow but a proportion of the purchase price from Genesis will be satisfied by the extinguishment of its existing mortgage debt).
- [11] Accordingly, the Receiver's motion for sale approval and authorization to make distributions and other relief as set out in the Notice of Motion and summarized above, together with the motions of claimants seeking a priority distribution will all be heard on **October 8, 2024 commencing at 11 AM and continuing as necessary for two hours via Zoom**. It is appropriate that this matter be heard via Zoom to maximize accessibility for a number of affected purchasers who reside outside the Toronto area, in respect of this Kitchener Property. All counsel have confirmed their availability for that date.

- [12] The Receiver will serve its materials, including an explanatory cover letter to assist purchasers, some of whom are not (yet) represented, by the end of day, September 27. The claimants will serve their materials no later than the end of day on Monday, September 30.

A handwritten signature in black ink, appearing to read "Osborne, J.", written in a cursive style.

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OSBORNE, J.

**DATE: 25 SEPTEMBER, 2024**