

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AIDE MEMOIRE

Date: December 11, 2023.

BERNARD B. GASEE, Barrister and Solicitor
90 Eglinton Avenue East, Suite 980
Toronto, Ontario, M4P 2Y3

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Lawyer for the creditor CorFinancial Corp.

TO: **The Service List**

1. The creditors CorFinancial Corp. (“**CorFinancial**”) and Dean-Lane Contracting Inc. (“**Dean-Lane**”), seek to schedule two motions relating to the stay of proceedings provided for in paragraph 9 of the Appointment Order of Justice Cavanaugh dated October 12, 2023 (the “**Stay of Proceedings**”). Attached as schedule “A” is a true copy of the Appointment Order.
2. The first motion, brought by CorFinancial, is for a declaration that the Stay of Proceedings does not operate with respect to an action that CorFinancial issued in the Superior Court of Justice in Toronto bearing Court File No. CV-23-00706796-0000 (the “**CorFinancial Action**”). Alternatively, CorFinancial seeks an order lifting the Stay of Proceedings with respect to the said action. Attached as Schedule “B” is a true copy of CorFinancial’s Notice of Motion. Attached as Schedule “C” is a copy of the statement of claim in the CorFinancial Action.
3. The second motion, brought by Dean-Lane, is for an order lifting the Stay of Proceedings with respect to the claims set out at paragraphs 1 (d), 14 to 17, and 19 to 20 of the statement of claim which Dean-Lane issued in the Superior Court of Justice in Kitchener bearing Court File No. CV-23-00001279-0000 (the “**Dean-Lane Action**”). Attached as Schedule “D” is a true copy of Dean-Lane’s notice of motion.
4. CorFinancial’s position is that its action is not stayed by the Stay of Proceedings. The action is a breach of contract and unjust enrichment claim between creditors. The defendants to the action are the first mortgagees and CMLS Financial Ltd., their servicer at the time. The Receiver and the Debtors are not parties to the proceeding, and the relief does not affect the Debtors’ property or the Receiver’s administration of the Debtors’ estate.

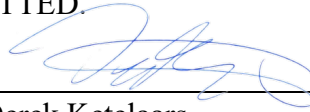
5. The Receiver however takes the position that the CorFinancial Action and the Dean-Lane action are both stayed. CorFinancial and Dean-Lane therefore wish to bring these motions to address the stay of proceedings.
6. CorFinancial originally attempted to schedule its motion at a case conference returnable November 17, 2023. That case conference was adjourned on consent to allow the parties more time to discuss the motion.
7. CorFinancial then attempted to schedule this motion at a case conference on December 7, 2023. At that case conference, Kimmel J. chose to not schedule the motion on the basis that the parties were discussing a possible resolution of the motions. Her Honour adjourned the issue of scheduling these motions to the December 12, 2023, hearing to give the parties more time to discuss settlement. Attached as Schedule “E” is a copy of the endorsement from Kimmel J. from the December 7, 2023, case conference.
8. The parties have not resolved the motion and CorFinancial does not believe that there is a reasonable prospect of settling the motion at this time. CorFinancial therefore submits that the motion should be scheduled, and proposes the following timetable:

CorFinancial and Dean-Lane to deliver motion records by:	December 29, 2023
Responding Materials to be delivered by:	February 9, 2024
Cross-examinations, if any, to be conducted by:	February 23, 2024
Facta to be delivered by:	Per the <i>Rules</i>
Both proposed Motions to be heard:	Together during the week of March 18, 2024.

9. CorFinancial originally requested that the motions be scheduled for two hours, but after hearing comments from counsel for the Receiver at the December 7, 2023 case conference, now agrees that the motions should be scheduled for a half day.

10. CorFinancial states that there is no reason to delay the scheduling of its motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



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Lawyers for the creditor CorFinancial Corp.

SCHEDULE "A"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THURSDAY, THE 12th
)
JUSTICE CAVANAGH) DAY OF OCTOBER, 2023
)

GENESIS MORTGAGE INVESTMENT CORP.

Applicant

- and -

1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP

Respondents

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by the Genesis Mortgage Investment Corp. (the "**Applicant**") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacities, the "**Receiver**") without security, of (i) the real property legally described in Schedule "A" hereto (the "**Real Property**"), (ii) all of the right, title and interest of 1776411 Ontario Ltd. ("**177**") and 1333 Weber Street Kitchener LP (the "**Partnership**", and collectively with 177, the "**Debtor**") in the personal property arising from, pertaining to, located on, or used in the operation or maintenance of the Real Property, and all proceeds therefrom, and (iii) all of the Debtor's rights and interests in, to, under, and in respect of all material agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder (collectively with (i) and (ii), the "**Property**") was heard this day via Zoom videoconference.

ON READING the affidavit of Michael Yeung sworn October 2, 2023 and the Exhibits thereto and on hearing the submissions of counsel for Applicant, KSV, and such other parties listed on the Participant Information Form, no one else appearing although duly served as appears from the affidavit of service of Milan Singh-Cheema sworn October 6th, 2023 and on reading the consent of KSV to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of the Property.

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform or disclaim any contracts of the Debtor or in respect of the Property;
- (d) to engage construction managers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to undertake any construction at the Property necessary to bring the Property into compliance with applicable laws and building codes;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (h) to settle, extend or compromise any indebtedness owing to the Debtor;
- (i) to deal with any lien claims, trust claims, and trust funds that have been or may be registered (as the case may be) or which arise in respect of the Property, including any part or parts thereof, and, with approval of this court, to make any required distribution(s) to any contractor or subcontractor of the Debtor or to or on behalf of any beneficiaries of such

trust funds pursuant to section 85 of the *Construction Act*, R.S.O. 1990, c. C.30;

- (j) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, including, without limitation, in respect of construction permits and any requirements related thereto, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (l) to undertake environmental or worker's health and safety assessments of the Property and the operations of the Debtor thereon;
- (m) to market any or all of the Property, including, without limitation, condominium units, including advertising and soliciting offers in respect of any and all such the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (n) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor and to meet with and discuss with such governmental authorities and execute any such agreements required in connection with or as a result of such permits, licenses, approvals or permissions (but solely in its capacity as Receiver and not in its personal or corporate capacity);
- (s) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor; (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; (iii) all construction managers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants and service providers, and all other persons acting on their instructions or behalf; and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.
5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or

provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, including, without limitation, licenses and permits, are hereby stayed

and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

12. THIS COURT ORDERS that in the event that an account for the supply of goods and/or services is transferred from the Debtor to the Receiver, or is otherwise established in the Receiver's name, no Person, including but not limited to a utility service provider, shall

assess or otherwise require the Receiver to post a security deposit as a condition to the transfer/establishment of the account.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative

destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

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.
19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.
20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

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 \$500,000 (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.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<https://ksvadvisory.com/experience/case/1776411ontario>'.
26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by

forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

CRITICAL PAYMENTS

27. THIS COURT ORDERS that the Receiver may, with the written consent of Applicant, make payments owing by the Debtor to suppliers, contractors, subcontractors and other creditors in respect of amounts owing prior to the date of this Order. Such payments are in aggregate not to exceed \$250,000.

DEPOSITS

28. THIS COURT ORDERS that notwithstanding anything else contained herein, the "Property" as defined in the preamble of this Order shall not include any current or future funds related to deposits held in trust by McCarter Grespan Lawyers with respect to the purchase of a residential unit located on any of the Real Property.

GENERAL

29. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

31. 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.

32. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
 33. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
 34. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
 35. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Toronto Time on the date of this Order and are enforceable without the need for entry and filing.
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SCHEDULE "A"

PIN: 22590-0550 (LT) *Estate/Qualifier:* Fee Simple LT Absolute Plus

Description: LOTS 29, 30, 31, 32, 33, 34, 45, 46, 47, 48, 49, 50 AND 91 AND PART LOTS 12, 13, 14, 15, 16, 17, 43, 44, 86, 87, 89 AND 90, PLAN 322, AND LOT 127 STREETS AND LANES, (BEING A LANE, PLAN 322, CLOSED BY BY-LAW AS IN 175368) AND PART LOT 126 STREETS AND LANES, (BEING PART OF HERMAN AVENUE, PLAN 322, CLOSED BY BY-LAW AS IN 175368) AND PART LOT 141 STREETS AND LANES, (BEING PART OF HERMAN AVENUE, PLAN 322, CLOSED BY BY-LAW AS IN 210008) AND PART LOT 173 STREETS AND LANES, (BEING PART OF WEBER STREET, PLAN 322 (RENAMED SUNNYSIDE AVENUE) CLOSED BY BY-LAW AS IN 270276), ALL BEING PARTS 1, 2 AND 3, PLAN 58R-21405; SUBJECT TO AN EASEMENT AS IN 687124; SUBJECT TO AN EASEMENT IN GROSS OVER PART 3, PLAN 58R-21405 AS IN WR1306081; SUBJECT TO AN EASEMENT IN GROSS OVER PART 2, PLAN 58R-21405 AS IN WR1324371; SUBJECT TO AN EASEMENT AS IN WR1326075; CITY OF KITCHENER

Address: 1333 WEBER STREET EAST KITCHENER

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver and manager (the "**Receiver**") of the Property (as defined in the Order (as defined below)) of 1776411 Ontario Inc. and 1333 Weber Street Kitchener LP appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 12th day of October, 2023 (the "**Order**") made in an application having Court file number CV-23-00706813-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$[●], being part of the total principal sum of \$500,000 which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the

Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

KSV Restructuring Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

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,
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**GENESIS MORTGAGE INVESTMENT
CORP.**

and

1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP

Applicant

Respondents

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

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

Proceedings commenced in Toronto

**ORDER
(October 12, 2023)**

BENNETT JONES LLP
One First Canadian Place, Suite 3400
P.O. Box 130
Toronto, ON M5X 1A4

Sean Zweig (LSO# 57307I)
Tel: (416) 777-6254
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Thomas Gray (LSO#: 82473H)
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Milan Singh-Cheema (LSO# 88258Q)
Tel: (416) 777-5521
Email: singhcheemam@bennettjones.com

Lawyers for the Applicant

SCHEDULE "B"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

NOTICE OF MOTION

CorFinancial Corp. (“CorFinancial”) will make a motion to the Court on a date to be fixed at a case conference returnable December 7, 2023, at 9:45 a.m. or as soon after that time as the motion can be heard.

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

- In writing under subrule 37.12.1(1) because it is: without notice.
- In writing as an opposed motion under subrule 37.12.1(4);
- In person;
- By telephone conference;
- By video conference.

at the following location:

Superior Court of Justice – Commercial List

330 University Avenue, 9th Floor, Toronto M5G 1R7

Zoom coordinates to be provided by the Court prior to the motion date.

THE MOTION IS FOR:

1. A Declaration that the action commenced by CorFinancial at the Superior Court of Justice in Toronto bearing Court File No. CV-23-00706796-0000 (the “**Action**”) is not stayed or suspended by the Appointment Order of Justice Cavanaugh dated October 12, 2023 (the “**Appointment Order**”);
2. In the alternative, an order granting CorFinancial leave to continue its Action;
3. If opposed, CorFinancial’s costs of this motion on a partial indemnity basis jointly and severally against each party opposing; and
4. Such further and other relief as this Honourable Court deems just and the circumstances require.

THE GROUNDS FOR THE MOTION ARE:

1. CorFinancial is a secured creditor of 1776411 Ontario Inc. (“**177**”) and 1333 Weber Street Kitchener LP (the “**LP**”) (177 and the LP collectively hereinafter the “**Debtors**”);
2. On September 28, 2023, CorFinancial issued the Action against CMLS Financial Ltd. (“**CMLS**”), Computershare Trust Company of Canada (“**Computershare**”), and Genesis Mortgage Investment Corp. (“**Gentai**”) (CMLS, Computershare, and Gentai collectively hereinafter the “**Defendants**”);
3. CorFinancial seeks the following relief against the Defendants in the Action:
 - a. General damages in the amount of \$1,000,000.00 for breach of contract and unjust enrichment;

- b. Special damages in the amount of \$100,000.00.
4. The damages claim arises out of an accommodation agreement (the “**Accommodation Agreement**”) between CorFinancial and the Defendants that relates to an underlying forbearance agreement (the “**Forbearance Agreement**”) between the Defendants and the Debtors;
5. CorFinancial makes the following allegations in the action against the Defendants:
 - a. Under the terms of the underlying Forbearance Agreement, the Defendants agreed to advance approximately \$18,000,000.00 to various creditors of the Debtors;
 - b. When it came time advance funds however, CorFinancial alleges that the Defendants, as a result of their own error, did not have sufficient funds to pay all the creditors that they agreed to pay;
 - c. Rather than delaying the advance or allowing the Defendants to breach the Forbearance Agreement, CorFinancial obtained the Accommodation Agreement from Dean-Lane Contracting Inc. (“**Dean-Lane**”), one of the creditors due to receive a payment under the Forbearance Agreement;
 - d. The Defendants had originally agreed to pay Dean-Lane \$2,173,426.30 under the Forbearance Agreement. However, under the terms of the Accommodation Agreement, Dean-Lane agreed that the Defendants could pay it \$1,173,426.30 on closing and defer payment of the remaining \$1,000,000 (the “**Deferred Amount**”) to a later date;
 - e. The Accommodation Agreement allowed the Defendants to close the Forbearance Agreement on time and with the funds available to them;

- f. As additional security for the Accommodation Agreement, CorFinancial undertook to pay the Deferred Amount to Dean-Lane in the event the Defendants did not pay it;
 - g. The Defendants have failed or otherwise refused to pay the Deferred Amount to Dean-Lane, and Dean-Lane has since demanded that CorFinancial pay it \$1,000,000.00 under its undertaking;
 - h. The Defendants therefore breached the Accommodation Agreement with CorFinancial causing it to suffer damages;
 - i. The Defendants have been unjustly to the detriment of CorFinancial, as they received the benefit of the Accommodation Agreement which allowed them to perform their obligations under the Forbearance Agreement;
6. On October 12, 2023, the Appointment Order was signed appointing KSV Advisory Services Inc. (the “**Receiver**”) as the receiver and manager over the Debtors.
7. Paragraph 9 of the Appointment Order provides for a stay and suspension of proceedings against the Debtors and the Receiver, and with respect to “the Property” as defined in the order.
8. Property is defined in the Appointment Order as including the following:
- a. the real property municipality known as 1333 Weber Street, Kitchener, Ontario;
 - b. all of the right, title and interest of the Debtors in the personal property arising from, pertaining to, located on, or used in the operation or maintenance of the Real Property, and all proceeds therefrom, and
 - c. all of the Debtor's rights and interests in, to, under, and in respect of all material agreements, leases, documents, permits, approvals, licenses and instruments in

respect of the Real Property and all monies or proceeds payable thereunder.

9. The Receiver takes the position that the Action is stayed by operation of the Appointment Order;
10. The Action is a claim for breach of contract and unjust enrichment between creditors. It is not a claim against the Debtor or the Receiver, and it does not relate to the Debtors' Property as defined in the Appointment Order;
11. The Debtors and the Receiver are not parties to the Action, and CorFinancial has not sought any relief against them in the Action;
12. The Receiver's administration of the Debtors' estate will not be impacted or prejudiced by the outcome of the Action, nor will the Action be impacted by the Receiver's administration of the Debtors' estate;
13. All evidence relevant to the issues raised by CorFinancial in the Action is within the knowledge, possession, and control of the Defendants and CorFinancial;
14. In light of the foregoing, the Action is not stayed or suspended by operation of the Appointment Order.
15. This Honourable Court does not have jurisdiction to stay or suspend the Action in these circumstances and specifically, the *Bankruptcy and Insolvency Act* and the *Courts of Justice Act* do not give this Honourable Court the power to stay or suspend the Action.
16. In the alternative, if this Honourable Court rules that the Action is stayed, which is denied, CorFinancial states the stay of proceedings should no longer operate with respect to the Action as:
 - a. CorFinancial would be materially prejudiced if the stay continued to operate, and

- b. It would be equitable in the circumstances to order that the stay no longer operates, especially given the circumstances.

17. Sections 69.4 and 243 of the *Bankruptcy and Insolvency Act*;

18. Section 101 of the *Courts of Justice Act*;

19. Rules 1.04, 11 and 37 of the *Rules of Civil Procedure*;

20. Rules 3, 11 and 13 of the *Bankruptcy and Insolvency General Rules*;

21. Such further and other grounds as counsel may submit and this Honourable Court permits.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing:

1. The Affidavit of Eric Inspektor, with exhibits, to be sworn.
2. Such further and other evidence as counsel may submit and this Honourable Court permits.

Date: December 5, 2023.

BERNARD B. GASEE, Barrister and Solicitor
90 Eglinton Avenue East, Suite 980
Toronto, Ontario, M4P 2Y3

Derek Ketelaars (67154R)
;
Tel: 416-363-3351

Lawyers for the Applicant

TO: The Service List

Genesis Mortgage Investment Corporation
Applicant

-and- 1776411 Ontario Ltd. et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDINGS COMMENCED AT
TORONTO

NOTICE OF MOTION

BERNARD GASEE

Barristers and solicitors

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Toronto, Ontario, M4P 2Y3

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Tel: 416-363-3351

Fax: 416-363-0252

Email: dketelaars@gcylaw.com

Lawyers for the creditor CorFinancial Corp.

SCHEDULE "C"



**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CORFINANCIAL CORP.

Plaintiff

and

**CMLS FINANCIAL LTD., COMPUTERSHARE TRUST COMPANY OF CANADA, and
GENESIS MORTGAGE INVESTMENT CORP.**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

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.

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.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,250.00 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by

the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400.00 for costs and have the costs assessed by the Court.

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 330 University Avenue
court office: Toronto, Ontario, M5G 1R7

TO: CMLS Financial Ltd.
700 West Georgia Street, Suite 2700
Vancouver, British Columbia
V7Y 1B8

Attn: Andrea Cali
T: 647-729-8436
F: 416-646-1009
E: andrea.cali@cmls.ca

AND TO: Computershare Trust Company of Canada
100 University Avenue, 11th Floor,
Toronto, ON, M5J 2Y1

AND TO: Genesis Mortgage Investment Corp.
885 West Georgia Street
19th Floor
Vancouver, British Columbia, V6C 3H4

CLAIM

1. The Plaintiff CorFinancial Corp. (the “**Plaintiff**” or “**COR**”) claims against the Defendants CMLS Financial Ltd. (“**CMLS**”), Computershare Trust Company of Canada (“**Computershare**”), and Genesis Mortgage Investment Corp. (“**Gentai**”) jointly and severally for the following:
 - a. General damages in the amount of \$1,000,000.00;
 - b. Special and aggravated damages in the amount of \$100,000.00;
 - c. Pre-judgement and postjudgment interest pursuant to the *Courts of Justice Act* RSO 1990, c C.43, as amended;
 - d. the Plaintiff’s costs of this action on a substantial indemnity basis plus H.S.T.; and
 - e. such further and other relief as this Honourable Court deems just and the circumstances require.

Background

2. The Plaintiff COR is a corporation duly incorporated pursuant to the laws of the province of Ontario. At all material times, it carried on business as a provider of financial and restructuring consulting services to businesses located in Ontario.
3. The defendant CMLS is a corporation duly incorporated pursuant to the laws of British Columbia. At all material times, it carried on business as, *inter alia*, a mortgage lender, mortgage administrator and servicer, and a provider of mortgage syndication services in the province of Ontario.

4. At all material times, CMLS was a mortgagee under the Mortgage (as defined below) and held its interest in the Mortgage in trust for Concentra Bank, a Schedule I bank incorporated under the *Bank Act (Canada)*.
5. Furthermore, at all material times CMLS was retained jointly by the Defendants to act as their mortgage administrator and agent with respect to the Mortgage. CLMS especially acted in this capacity at all times when dealing with the Plaintiff.
6. The defendant Computershare is a trust company duly incorporated under the *Trust and Loan Companies Act (Canada)*. At all material times, it carried on business as, *inter alia*, a provider of mortgage servicing and related trust services in the province of Ontario.
7. At all material times, Computershare was a mortgagee under the Mortgage and held its interest in the Mortgage in trust for Equitable Bank, a Schedule I bank incorporated under the *Bank Act (Canada)*.
8. The defendant Gentai is a corporation duly incorporated pursuant to the laws of the province of British Columbia. At all material times, Gentai carried on business as, *inter alia*, an asset management and private lending company in the province of Ontario and was a mortgagee under the Mortgage.

The Mortgage and Forbearance Agreement

9. This claim arises out of a forbearance agreement (the “**Forbearance Agreement**”) executed between CMLS, as mortgage administrator on behalf of the mortgagees; 1333 Weber Street Kitchener Limited Partnership and its general partner 1776411 Ontario Ltd as the mortgagor (collectively hereinafter the “**Borrower**”); and Werner Leuschner, Kamal Patel, Jaykam

Developers Limited, and 1639993 Ontario Ltd. as the guarantors of the Mortgage (collectively hereinafter the “**Guarantors**”).

10. On or about August 17, 2021, the Borrowers, as Chargors, and the Defendants, as Chargees, registered a first mortgage (the “**Mortgage**”) as instrument no WR1367209 in the Land Titles Division of Kitchener (No. 58) against the property municipally known as 1333 Weber Street, Kitchener, ON (the “**Property**”).
11. The Mortgage secured all amounts due under construction loan facility (the “**Facility**”) which the Defendants made available to the Borrowers. The purpose of the Facility was to finance the Borrower’s development and construction of a four-tower condominium complex (the “**Development**”) on the Property.
12. Financing was to be advanced to the Borrowers through draws requested by the Borrower from time to time, and on certain terms and conditions set out in the Mortgage.
13. From about August 17, 2021, until about November 2022, the Defendants advanced funds to the Borrowers under the Mortgage from time to time, and at the Borrower’s request.
14. In about November 2022, the Borrowers defaulted under the terms of the Mortgage and as a result, the Defendants refused to advance any further funds under the Facility.
15. The cessation of further advances caused the Borrower to default in its payments due to the construction trades (hereinafter the “**Trades**”) who had supplied labour and materials to the Development. As a result, the Trades stopped working and proceeded to register and enforce construction liens against the Property.

The Forbearance Agreement

16. In about December 2022, the Borrower retained the Plaintiff to provide it with financial consulting services with respect to the Development and the Borrower's default under the Mortgage.
17. From about December 2022, until about May 2023, the Borrower and the Plaintiff negotiated terms of a forbearance agreement with CMLS. The purpose of the agreement was, among other things: i) to set out terms on which the Defendants would defer further enforcement of the Mortgage, and ii) to advance additional funds under the Facility on certain terms and conditions in order to pay all amounts owing to the Trades so that they would continue working on the Development.
18. During those negotiations, the Plaintiff used its relationships with the Trades to convince them to delay further enforcement of their lien claims to give the parties sufficient time to negotiate, sign, and close the Forbearance Agreement.
19. On or about May 8, 2023, the Borrowers, Guarantors, and CMLS on behalf of itself and the other Defendants, executed the forbearance agreement (the "**Forbearance Agreement**"). The material terms of the agreement included, *inter alia*, the following:
 - a. The Defendants agreed to forbear from any further enforcement of the Mortgage on certain terms and conditions.
 - b. On closing of the forbearance, the Defendants agreed to advance a one-time payment under the Mortgage (the "**Forbearance Payment**"). These funds would be used to

pay, among other things, all outstanding amounts owing to the Trades for their labour and materials supplied to the Development.

- c. The Borrower agreed to obtain from each Trade: i) a statutory declaration confirming the outstanding balance owing to them, and ii) a release in the Defendants' standard form whereby they released any lien claims on receiving payment of the balance owing to them.

Forbearance Miscalculation and The Dean-Lane Accommodation

20. On or about May 5, 2023, after the terms of the Forbearance Agreement were settled but before the agreement was signed, CMLS advised the Plaintiff that the Defendants had made a calculation error when calculating the amount of the Forbearance Payment. The net effect of this error was that the Forbearance Payment was \$714,979.27 less than the total obligations which the Defendants agreed to pay under the Forbearance Agreement (hereinafter referred to as the “**Shortfall**”).
21. Notwithstanding the fact that the Shortfall was caused by the Defendants' own error, CMLS advised the Plaintiff that the Forbearance Agreement could not close, and that the Forbearance Payment would not be advanced, until the mistake was corrected and CMLS obtained additional funds from the Defendants to cover the Shortfall.
22. CMLS further advised the Plaintiff that it would take approximately two weeks to reconcile their records and correct the mistake.
23. In an effort to avoid any further delays in paying the Trades, the Plaintiff proposed, and CMLS on behalf of itself and the other Defendants agreed, to a separate side agreement with

the Plaintiff to remedy the Shortfall (the “**Shortfall Agreement**”). The terms of that agreement included, *inter alia*, the following:

- a. The Plaintiff would obtain an agreement from one of the Trades, Dean-Lane Contracting Inc. (hereinafter “**Dean-Lane**”), where Dean-Lane would allow CMLS to defer paying \$1,000,000.00 (the “**Deferred Amount**”) of the \$2,173,426.30 which it agreed to pay to Dean-Lane as part of the Forbearance Payment for its outstanding invoices;
- b. On receiving this concession from Dean-Lane, CMLS would proceed to close the Forbearance Agreement and pay Dean-Lane \$1,173,426.30 as part of the Forbearance Payment, being the portion of Dean-Lane’s outstanding invoices which were not being deferred;
- c. CMLS further agreed to pay Dean-Lane the Deferred Amount after the Forbearance Agreement closed, and at or around the same time that they paid the first draw under the Facility post-closing;
- d. In consideration of Dean-Lane allowing CMLS to defer payment of the Deferred Amount, the Plaintiff agreed to give Dean-Lane a written undertaking to pay them an accommodation fee \$50,000.00, and, at Dean-Lane’s sole option, to pay them the Deferred Amount and take an assignment of their remaining unpaid invoices should CMLS fail to pay them the Deferred Amount on or before May 28, 2023.

24. The Plaintiff gave this undertaking in reliance on CMLS' representations, agreements, and assurances to the Plaintiff and Dean-Lane that it would pay the Deferred Amount to Dean-Lane after closing of the Forbearance Agreement.
25. On or about May 5, 2023, Dean-Lane agreed to the terms proposed by the Plaintiff and the Plaintiff delivered a written undertaking to Dean-Lane on the terms set out above.
26. With Dean-Lane agreeing to defer payment of the Deferred Amount, CMLS was able to close the Forbearance Agreement on or about May 8, 2023, and pay all amounts which the Defendants were obligated to pay under the agreement, save and except for the Deferred Amount payable to Dean-Lane.
27. However, despite the Plaintiff's repeated demands, CMLS has failed or otherwise refused to pay the Deferred Amount to Dean-Lane as of the date of this claim.
28. By failing to pay the Deferred Amount to Dean-Lane, the Defendants have breached the terms of the Forbearance Agreement and the Shortfall Agreement.
29. In response to the Plaintiff's demands, CMLS advised the Plaintiff that it was not under an obligation to pay the Deferred Amount to Dean-Lane because it was not able to pay the first advance under the Facility.
30. However, the Plaintiff states that this is patently wrong. Rather, the Plaintiff states, and the fact is, that:
 - a. The Defendants' obligation to pay the Deferred Amount is part of their overarching obligation to pay all of the Trades' outstanding invoices under the Forbearance

Agreement as they originally agreed to pay the Deferred Amount as part of the Forbearance Payment on closing;

- b. This obligation is separate and distinct from any obligation which the Defendants have, or may have, to continue funding the Development or to pay further advances under the Facility, and this obligation is not governed by the same terms and conditions which govern the advances of draws under the Facility;
 - c. CMLS acknowledged and admitted in the Forbearance Agreement that Borrower owed Dean-Lane \$2,173,426.30 for materials and labour which Dean-Lane to the Development; and
 - d. The Shortfall Agreement did not relieve the Defendants from their obligation under the Forbearance Agreement to pay Dean-Lane's outstanding invoices, rather it only allowed them to defer paying \$1,000,000.00 of Dean-Lane's invoices (i.e. the Deferred Amount) to a later date.
31. As a result of the foregoing, even if the Defendants were not under an obligation to pay any further advances under the Facility, which is not admitted but rather expressly denied, they are still not relieved from their obligation to pay the Deferred Amount to Dean-Lane, and they are not entitled to rely on this fact as the basis to avoid their obligation to pay the Deferred Amount.
32. As a result of the Defendants' breach, the Plaintiff has incurred a liability to pay Dean-Lane the Deferred Amount, causing it to suffer damages.

33. Furthermore, the Plaintiff states that by failing to pay the Deferred Amount, CMLS has been unjustly enriched to the detriment of the Plaintiff.
34. By giving its undertaking to Dean-Lane, the Plaintiff obtained a deferral for CMLS of its strict contractual obligation set out in the Forbearance Agreement to pay Dean-Lane \$2,173,426.30 on closing of the forbearance, which it was not able to satisfy.
35. This deferral further benefited the Defendants, as it allowed them to close the forbearance when they otherwise would not have been able to do so because of their own calculation error.
36. Furthermore, in giving their undertaking to Dean-Lane, the Plaintiff has incurred a corresponding detriment in the form of a liability to pay Dean-Lane the Deferred Amount.
37. The Plaintiff states that there is no juristic reason for the Defendants to retain the benefits of the Plaintiff's undertaking.
38. The Plaintiff has incurred considerable time and expense as a result of the Defendants' failure to satisfy their obligations under the Forbearance Agreement and the Settlement Agreement. As a result, the Defendants have caused the Plaintiff to suffer special and aggravated damages which the Defendants are liable to pay.
39. The Plaintiff states that at all material times CMLS, as the Defendants' mortgage administrator and servicer, was acting as the Defendants' agent, both in fact and in law. As such, the Plaintiff states, and the fact is, that the Defendants are bound by the actions of CMLS, and particularly, are bound by the terms of the Forbearance Agreement and the Shortfall Agreement.

Relief Sought

40. As a result of the foregoing, the Plaintiff seeks judgment against the Defendants, jointly and severally, for general damages in the amount of \$1,000,000.00 for breach of contract and unjust enrichment.
41. The Plaintiff further seeks judgment against the Defendants jointly and severally for special and aggravated damages in the amount of \$100,000.00.
42. The Plaintiff further seeks prejudgment and postjudgment interest on any amounts awarded pursuant to the *Courts of Justice Act*.
43. The Plaintiff further seeks its costs of this action jointly and severally against the Defendants on a substantial indemnity basis.
44. The Plaintiff proposes that this action be tried in the City of Toronto.

DATE: September 27, 2023.

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M4P 2Y3

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Lawyers for the Plaintiff

CorFinancial Corp.
Plaintiffs

— and —

CMLS Financial Ltd. et al.
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
(Proceedings commenced in Toronto)

STATEMENT OF CLAIM

BERNARD B. GASEE
Barrister & Solicitor
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Suite 980
Toronto, Ontario
M4P 2Y3

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Lawyers for the Plaintiff

SCHEDULE "D"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

NOTICE OF MOTION

Dean-Lane Contractors Inc. (“Dean-Lane”), will make a motion to the Court on a date to be fixed at a case conference returnable December 7, 2023, at 9:45 a.m. or as soon after that time as the motion can be heard.

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

in writing under subrule 37.12.1(1) because it is ;

in writing as an opposed motion under subrule 37.12.1(4);

In person;

By telephone conference;

By video conference.

At the following location:

Superior Court of Justice- Commercial List
330 University Avenue, 9th Floor, Toronto, Ontario M5G 1R7
Zoom coordinates to be provided by the Court prior to the motion date.

THE MOTION IS FOR:

1. A declaration that the action commenced by Dean-Lane at the Superior Court of Justice in Toronto bearing Court File No. CV-23-00001279-0000 (the “**Action**”) in Kitchener, is not stayed or suspended as against the Defendant, CorFinancial Corp. (“**CorFinancial**”), with respect to the claims made against CorFinancial with respect to breach of the CorFinancial Undertaking, as defined herein, as detailed at paragraphs 1 (d), 14 to 17, and 19 to 20 of the Action, by the Appointment Order of Justice Cavanaugh dated October 12, 2023 (the “**Appointment Order**”);
2. In the alternative, an order lifting the stay of the Action and granting Dean-Lane leave to continue the Action against CorFinancial;
3. If opposed, Dean-Lane’s costs of this motion on a partial indemnity basis jointly and severally against each party opposing; and
4. Such further and other relief as this Honourable Court deems just and the circumstances require.

THE GROUNDS FOR THE MOTION ARE:

1. Dean-Lane is a lien claimant and creditor of 1776411 Ontario Inc. (“**177 Ont**”) and 1333 Weber Street Kitchener LP (“**Weber**”) (collectively, the “**Respondents**”);
2. On September 27, 2023, Dean-Lane commenced the Action against the Respondents, Westmount Guarantee Services Inc. (“**Westmount**”), CMLS Financial Ltd. (“**CMLS**”), Computershare Trust Company of Canada (“**Computershare**”), Genesis Mortgage Investment Corp. (“**Genesis**”) and CorFinancial;
3. Dean Lane seeks the following against CorFinancial in the Action:
 - (a) damages in the amount of \$1,050,000.00 for breach of the CorFinancial Undertaking, as defined herein;
 - (b) payment of pre-judgment interest on the sum of \$1,050,000.00, in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended
 - (c) costs of the Action, including all HST attributable to any award of costs; and
 - (d) such further and other relief as this Honourable Court deems just.
4. Dean Lane entered into contracts with the Respondents to supply mechanical contracting services and materials for the construction of Towers A, B and C at the lands and premises located at 1333 Weber Street East, Kitchener, Ontario, of which the Respondents are the owners (the “**Project**”);

5. In light of the Respondents defaulting on payments owing to Dean-Lane under the contracts, on or about May 5, 2023, at the request of the Respondents, CMLS and CorFinancial, Dean-Lane entered into an agreement with the Respondents and CMLS whereby:

- (a) Dean-Lane agreed to provide an Undertaking agreeing to continue to provide, services and/or materials to the Respondents in respect of the contracts for Tower A and Tower B upon receipt of payments for amounts due and owing at the time, less \$1,000,000.00 and not to lien the Project (the “**Dean-Lane Undertaking**”);
- (b) the Respondents, CMLS and CorFinancial represented that the Respondents were working with CMLS, CorFinancial, Westmount, Computershare and Genesis (collectively, the “**Mortgagees**”) to complete a refinancing of the Project; and
- (c) the Respondents and CMLS agreed that Dean-Lane would be paid from the next construction advance for the Project, which was to occur at the end of May 2023 (the “**May 5th Agreement**”).

6. Further to the May 5th Agreement and as part of Dean-Lane agreeing to provide the Dean-Lane Undertaking, CorFinancial provided Dean-Lane with an Undertaking (the “**CorFinancial Undertaking**”) which provided in part as follows:

- (a) representing that the Respondents were working with the Mortgagees to complete a refinancing of the Project;

- (b) Dean-Lane agreed to defer the sum of \$1,000,000.00 (the “**Deferred Amount**”) from the payment due to Dean-Lane, to be paid from the next construction advance;
- (c) CorFinancial agreed to pay, on behalf of the Respondents, the Deferred Amount to Dean-Lane if Dean-Lane was not paid by the Respondents by May 26, 2023, at Dean-Lane’s option, exercisable in writing on or after the payment date; and
- (d) CorFinancial would pay to Dean-Lane, on behalf of the Respondents, an accommodation fee of \$50,000.00 (the “**Developer Accommodation Fee**”).

7. Dean-Lane did not receive payment by May 26, 2023 and as such provided notice to CorFinancial in accordance with the CorFinancial Undertaking for payment, and CorFinancial has failed to pay in accordance with the CorFinancial Undertaking;

8. On or about June 11, 2023, notice of default of the CorFinancial Undertaking was provided to CorFinancial (the “**Default Notice**”), wherein Dean-Lane demanded immediate payment to be made in accordance with the CorFinancial Undertaking and, notwithstanding, by no later than July 14, 2023;

9. Despite the Default Notice, payment was not made by CorFinancial to Dean-Lane under the terms of the CorFinancial Undertaking;

10. Dean-Lane is entitled to payment of the Deferred Amount and the Developer Accommodation Amount from CorFinancial;

11. On October 12, 2023, the Appointment Order was signed appointing KSV Advisory Services Inc. (the “**Receiver**”) as the receiver and manager over the Respondents.

12. Paragraph 9 of the Appointment Order provides for a stay and suspension of proceedings against the Respondents and the Receiver, and with respect to “the Property” as defined in the Appointment Order, which includes the following:

- (a) the Project;
- (b) all of the right, title and interest of the Respondent in the personal property arising from, pertaining to, located on, or used in the operation or maintenance of the Project, and all proceeds therefrom; and
- (c) all of the Respondents’ rights and interests in, to, under, and in respect of all material agreements, leases, documents, permits, approvals, licenses and instruments in and all monies or proceeds payable thereunder;

13. The Receiver takes the position that the Action in its entirety is stayed by operation of the Appointment Order;

14. The Action includes the claim against CorFinancial for breach of the CorFinancial Undertaking and does not relate to the Respondents’ Property as defined in the Appointment Order;

15. The Receiver's administration of the Respondents' estate will not be impacted or prejudiced by the outcome of the Action against CorFinancial, nor will the Action against CorFinancial be impacted by the Receiver's administration of the Respondents' estate;

16. All evidence relevant to the issues raised by Dean-Lane in the Action relating to the CorFinancial Undertaking is within the knowledge, possession, and control of CorFinancial;

17. In light of the foregoing, the Action against CorFinancial is not stayed or suspended by operation of the Appointment Order;

18. In the alternative, if this Honourable Court rules that the Action against CorFinancial is stayed, Dean-Lane states the stay of proceedings should no longer operate with respect to the claim made against CorFinancial for breach of the CorFinancial Undertaking, as detailed in paragraphs 1(d), 1(h), 1(i), 1(m), 1(n), 14 to 17, and 19 to 20, as:

- (a) Dean-Lane would be materially prejudiced if the stay of the Action continued to operate against CorFinancial; and
- (b) it would be equitable in the circumstances to order that the stay no longer operates, especially given the circumstances;

19. Sections 69.4 and 243 of the *Bankruptcy and Insolvency Act*;

20. Section 101 of the *Courts of Justice Act*;

21. Rules 1.04, 11 and 37 of the *Rules of Civil Procedure*;

22. Rules 3, 11 and 13 of the Bankruptcy and Insolvency General Rules;
23. Such further and other grounds as counsel may submit and this Honourable Court permits.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing:

1. The Affidavit of Scott MacDonald , with exhibits, to be sworn; and
2. Such further and other evidence as counsel may submit and this Honourable Court may permit.

Date: December 6, 2023

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TO: The Service List

GENESIS MORTGAGE INVESTMENT CORPORATION
Applicant

-and-

1776411 ONTARIO LTD., et al.
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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SCHEDULE "E"



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00706813-00CL DATE: 7 December 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: **Genesis Mortgage Investment Corporation v. 1776411 Ontario LTD., et al**

BEFORE JUSTICE: **KIMMEL**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

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

Name of Person Appearing	Name of Party	Contact Info
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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Sanjeev Mitra	Counsel for the Senior Secured Creditors	smitra@airdberlis.com
Derek Ketelaars	Counsel for CorFinancial Corp.	dketelaars@gcylaw.com

ENDORSEMENT OF JUSTICE KIMMEL:

1. There is a hearing scheduled next week on December 12, 2023 to address what is expected to be an unopposed matter.
2. Two of the stakeholders wish to schedule motions so that they can advance claims against the debtor unencumbered by the stay of proceedings. Those motions are expected to be opposed and, based on the submissions this morning, if they are proceeding it would be prudent to book a half day for them.
3. Recent discussions among the parties might obviate the need for this contested motion. To allow the parties time to work that out, and in the meantime not tie up court time that may be needed for other matters, I have declined to schedule this contested half-day motion today.
4. If the issues have not been resolved, the parties shall work out a timetable for that contested motion and ask the judge hearing the unopposed matter on December 12, 2023 to schedule this opposed matter. As of today, it would likely be booked during or after the week of February 12, 2024.
5. Counsel for the moving parties on these contested motions shall ensure that a copy of this endorsement has been uploaded into CaseLines for the unopposed hearing next week and shall alert the judge in the CaseLines material filed that he/she will be asked to schedule it based upon their (by then to be agreed) timetable.

A handwritten signature in cursive script that reads "Kimmel J." with a horizontal line underneath the name.

KIMMEL J.

Genesis Mortgage Investment Corporation
Applicant

-and- 1776411 Ontario Ltd. et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDINGS COMMENCED AT
TORONTO

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