

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

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORP.

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**

**CASE CONFERENCE BRIEF OF
GENESIS MORTGAGE INVESTMENT CORP.
(CASE CONFERENCE RETURNABLE ON APRIL 14, 2026)**

April 10, 2026

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TO: SERVICE LIST

1. This brief is filed on behalf of Genesis Mortgage Investment Corp. ("**Gentai**"). Gentai supports the Receiver's position that the Dean-Lane action, the CorFinancial action and the Guarantor action (collectively, the "**Related Actions**") should be transferred to the Commercial List and case managed together, for the reasons set out below.¹

2. Gentai also files this brief to address a dispute that has arisen with Werner Leuschener, Kamal Patel, Jaykam Developers Limited, and 163993 Ontario Ltd., in their capacity as guarantors (the "**Guarantors**") under a pre-filing construction loan (the "**Loan**") provided by a lending syndicate comprising Gentai, CMLS and Computershare (on behalf of Equitable Bank/Concentra Bank) to the Respondents, concerning this Court's Approval and Vesting Order dated October 8, 2024 (the "**AVO**") and, more specifically, entitlement to enrolment fees currently held by Tarion Warranty Corporation ("**Tarion**") pursuant to the terms of the AVO. The enrolment fees are Purchased Assets under the Purchase Agreement, which vested absolutely in the Purchaser under the Purchase Agreement pursuant to the AVO.² Gentai asks that a one-hour motion be scheduled at which an Order will be sought directing Tarion to pay such fees to the Purchaser in accordance with the terms of the Purchase Agreement and the AVO.

The Related Actions Should Be Transferred to and Case Managed by the Commercial List

3. The Related Actions all arise from the single real estate development project – the "Elevate Condos" multi-tower condominium project at 1333 Weber Street East in Kitchener – which is the

¹ Gentai takes no position with respect to the Surety action as it is not a party to that proceeding.

² The Purchase Agreement was entered into between the Receiver, as Vendor, and a purchaser group comprised of Gentai, Elm Acquisition Corp., and Dorr Capital Corporation collectively in trust for a corporation to be incorporated, as Purchaser (ultimately, 1333W Lands Ltd. ("**1333W**"). Pursuant to an assignment agreement dated October 7, 2024, the Purchaser Group's interest in the Purchase Agreement was assigned to, and assumed by, GFD 1333W Limited ("**GFD**"). That assignment agreement designated 1333W as nominee and bare trustee to hold the Property (as defined in the Purchase Agreement) for GFD.

subject of these receivership proceedings. Each of the Related Actions centre on the construction, financing, default, forbearance, and ultimate receivership of this project.

4. Each of the claims directly involve the Loan, as well as the related Forbearance Agreement. The allegations across the Related Actions are intimately interconnected. There is also significant overlap in the parties across all the Related Actions.

5. Joint case management of the Related Actions would avoid unnecessary duplication, reduce litigation costs for all parties, mitigate the risk of inconsistent findings, and allow the Court to develop a comprehensive understanding of the full factual matrix. 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. 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 intimate connection to the receivership proceedings, their complexity and the nature of the underlying transactions, and the significant amounts at issue, the Related Actions would be appropriately transferred to and case managed by the Commercial List.

The Dispute with the Guarantors over Tarion Enrolment Fees

6. A dispute has arisen between the Purchaser under the Purchase Agreement, on the one hand, and the Guarantors, on the other, regarding entitlement to Tarion enrolment fees currently held by Tarion (the "**Tarion Fee**"). Pursuant to the Purchase Agreement and the AVO, all right, title, and interest in and to the Purchased Assets (as defined in the Purchase Agreement) vested absolutely in the Purchaser. The Purchased Assets expressly include, among other things, the

benefit of all prepaid expenses and deposits with any Person or Governmental Authority as well as all Levies (each as defined in the Purchase Agreement). The Tarion Fee – comprising enrolment fees previously remitted to Tarion in respect of Tower B (Phase II) of the Elevate project, which is being repurposed and will no longer be developed as a condominium – falls squarely within this definition and accordingly, pursuant to the AVO, is the sole property of the Purchaser.

7. The Purchaser has conferred with both Tarion and the Guarantors to effect a refund of the Tarion Fee to the Purchaser. The Guarantors, however, have asserted their own entitlement to the Tarion Fee and have, to date, refused to consent to its release to the Purchaser. Tarion, for its part, has taken the position that it will not release the Tarion Fee absent either a court order or an agreement of the parties. In the absence of any such agreement, a court order is necessary. Gentai accordingly seeks to schedule a one-hour motion at which an Order directing Tarion to pay the Tarion Fee to the Purchaser will be sought.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10 day of April 2026.



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