

**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**

**CASE CONFERENCE BRIEF OF KSV RESTRUCTURING INC.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER
(Case Conference April 14, 2026 at 12:00 pm)**

March 31, 2026

BLANEY McMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5

Eric Golden (LSO #38239M)
(416) 593-3927 (Tel)
egolden@blaney.com

Chad Kopach (LSO #48084G)
(416) 593-2985 (Tel)
ckopach@blaney.com

Lawyers for KSV Restructuring Inc.,
in its capacity as Court-appointed Receiver

TO: SERVICE LIST

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Background

1. On October 12, 2023, on application of Genesis Mortgage Investment Corporation (“**Gentai**”), the Ontario Superior Court of Justice (Commercial List) issued a Receivership Order appointing KSV Restructuring Inc. (“**KSV**”) as the receiver and manager, without security, of all of the property, assets and undertaking (the “**Property**”) of the Respondents, 1333 Weber Street Kitchener LP (“**1333 Weber LP**”), and its general partner, 1776411 Ontario Limited (“**177 Ontario**”, and with 1333 Weber LP, the “**Partnership**”, or the “**Respondents**”).
2. The Partnership’s principal asset was the real property located at 1333 Weber Street East, Kitchener (the “**Real Property**”) and the phased four-tower residential condominium project on the Real Property (the “**Project**”). When the Receivership Order was made, the first tower was approximately 60% completed, the foundation for the second tower had been commenced and construction on the remaining two towers had not begun. Hundreds of pre-receivership APS’s had been entered into for residential units in the first three towers, with attendant deposits paid (the first three towers were sold out).
3. CMLS Financial Ltd. (“**CMLS**”) administered a construction loan to the Respondents for \$71,500,000 established in 2021 (the “**CMLS Loan**”), funded by Equitable Bank (“**EQB**”), Concentra Bank (“**Concentra**”),¹ and Gentai, and secured by way of a first mortgage over the Real Property (the “**Mortgage**”). EQB and Concentra funded the first tranche for \$55,500,000, and Gentai funded the second tranche for \$16,000,000, which ranked behind EQB and Concentra. CMLS held title to the Mortgage for Concentra Bank. Computershare Trust Company of Canada held title as custodian for Equitable Bank. Gentai held title to the Mortgage in its own name.

¹ EQB purchased Concentra in or about November, 2022.

4. The CMLS Loan was guaranteed by four guarantors: Werner Leuschner (“**Leuschner**”, the principal of the Respondent, 177 Ontario), Kamal Patel, Jaykam Developers Limited, and 163993 Ontario Ltd. (collectively, the “**Guarantors**”).

5. A transaction (the “**Transaction**”) for the Project, which was a combination cash-credit offer by Gentai and others, was approved by way of an AVO issued October 9, 2024. The Transaction closed on October 29, 2024, paying out EQB (and Concentra) in full. The Receiver has not moved for its discharge yet, as a result of the litigation set out below.

Purpose of Case Conference

6. The purpose of this Case Conference is to address the prosecution and procedural management of four outstanding proceedings issued by four different plaintiffs (two were issued before the Receivership Order was made, and the two others were issued in April and Nov. 2025).

1. **File No. CV-23-00001279-0000 – Dean Lane Contractors Inc. v. 1776411 Ontario Ltd. et al (Tab 1)**. A lien claim issued in Kitchener on Sep. 27, 2023. It is the only one of the four proceedings which names the Respondents as defendants. It also names Computershare and Gentai and a third mortgagee (CORFinancial Corp.), as well as the second mortgagee Westmount Guarantee Services Inc. (the servicer for the deposit sureties);
2. **File No. CV-25-00000716-0000 - Werner Leuschner et al v. CMLS Financial Ltd. et al (Tab 2)**. A Notice of Action issued in Kitchener on behalf of all of the Guarantors on April 28, 2025, and related Statement of Claim dated May 28, 2025. The defendants are CMLS, Computershare, EQB and Gentai;
3. **File No. CV 25-00756158-0000 – Aviva Insurance Company of Canada et al v. the Guarantors (Tab 3)**. A Statement of Claim issued in Toronto on Nov. 25, 2025, by the deposit sureties against the Guarantors, in respect of their guarantee of the deposits paid on the hundreds of residential condominium units sold by the Respondents; and
4. **Court File No. CV-23-00706796-0000 – CORFinancial Corp. v. CMLS Financial Ltd. et al (Tab 4)**. A Statement of Claim issued in Toronto on Sep. 28, 2023, by the third ranking mortgagee (whose mortgage is contested) against Computershare, CMLS and Gentai.

7. Dean-Lane Contractors Inc. served a lift stay notice of motion dated Dec. 6, 2023 (**Tab 5**). CORFinancial served one dated Dec. 5, 2023 (**Tab 6**). They have not been heard.

8. The plaintiffs in three of the claims are holding their claims in abeyance pending the case conference. It is unknown whether the surety claim is being held in abeyance.

9. The four proceedings are all closely related: some or all of the four lenders are named as defendants in three of the proceedings (except for the surety action issued in Toronto), the Guarantors are named as plaintiffs and defendants in two of the proceedings (as plaintiffs against all four lenders in a Kitchener action, and as defendants in the surety action) and CORFinancial is the plaintiff and defendant in two of the proceedings (plaintiff in one pre-receivership action issued in Toronto against three of the lenders, and one of the defendants in the Dean-Lane pre-receivership lien action issued in Toronto, where the Respondents and certain lenders are also defendants). Accordingly, the Receiver is of the view that a determination should be made on 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) the Receiver may apply for its discharge and essentially extricate itself from the litigation.

TAB 1



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c. C.30

B E T W E E N:

DEAN-LANE CONTRACTORS INC.

Plaintiff

and

1776411 ONTARIO LTD. AS GENERAL PARTNER OF
1333 WEBER STREET KITCHENER LP,
WESTMOUNT GUARANTEE SERVICES INC., CMLS FINANCIAL LTD.,
COMPUTERSHARE TRUST COMPANY OF CANADA,
GENESIS MORTGAGE INVESTMENT CORP. and CORFINANCIAL CORP.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

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.~~

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~~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 \$1,500 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 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 September 27, 2023 Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
85 Frederick Street
Kitchener, Ontario N2H 0A7

TO: **1776411 Ontario Ltd. as General Partner for
1333 Weber Street Kitchener LP**
8-258 Edgewater Crescent
Kitchener, Ontario
N2A 4M2

AND TO: **Westmount Guarantee Services Inc.**
600 Cochrane Drive
Suite 205
Markham, ON
L3R 5K3

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

007

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

AND TO: **Genesis Mortgage Investment Corp.**
6345 197 Street
Langley, British Columbia
V2Y 1K8

AND TO: **Corfinancial Corp.**
77 Ingram Drive, Suite 201
North York, Ontario
M6M 2L7

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CLAIM

1. THE PLAINTIFF CLAIMS:

- (a) payment of the sum of \$2,157,415.95, inclusive of HST, with respect to the Lien, as defined herein, against the Defendants, or any of them;
- (b) additional damages in the amount of \$3,006,160.01 for the Loss of Profit Claim, as defined herein, as against the Defendant, 1776411 Ontario Ltd. as General Partner for 1333 Weber Street Kitchener LP;
- (c) additional damages in the amount of \$636,585.50 for the Supplier Equipment Costs, as defined herein;
- (d) damages in the amount of \$1,050,000.00 as against the Defendant, Corfinancial Corp., for breach of the CorFinancial Undertaking, as defined herein;
- (e) damages in the amount of \$2,157,415.95 as against the Defendant, CMLS Financial Ltd., for breach of the May 5th Agreement, as defined herein, and negligent misrepresentation;
- (f) alternatively, damages in the amount of \$2,157,415.95 inclusive of HST, on the basis of *quantum meruit* or unjust enrichment, against the Defendants, or any of them;
- (g) payment of pre-judgment interest against the Defendants, or any of them, on unpaid amounts as they become due under the terms of the Contract, as defined herein, at

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the rate of 2% per annum above the Royal Bank of Canada prime rate for business loans for the first 60 days, and 4% per annum above the Royal Bank of Canada prime rate for business loans after the first 60 days, compounded monthly;

- (h) alternatively, payment of pre-judgment interest against the Defendants, or any of them, on the amounts claimed, in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (i) post-judgment interest against the Defendants, or any of them, in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (j) that in default of payment of the sum of \$2,157,415.95 plus costs, that the estate and interest of the Defendants, or any of them, in the lands and premises to which the Lien hereinafter described attaches, and which are the subject matter of this action, be sold and the proceeds applied toward payment of the Plaintiff's claim as aforesaid plus costs, pursuant to the provisions of the *Construction Act*, R.S.O. 1990, c. C.30 (the "*Act*");
- (k) full priority over the Mortgages, as defined herein, in favour of the Defendants, Westmount Guarantee Services Inc., CMLS Financial Ltd., Computershare Trust Company of Canada, Genesis Mortgage Investment Corp., and Corfinancial Corp., or alternatively, priority over the Mortgages, as defined herein, to the extent that any portion of the said mortgages advanced exceeded the actual value of the lands and premises at the time the first lien arose, or, in the further alternative, priority

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over the said mortgages to the extent of any unadvanced portions, or in the further alternative, priority to the extent of any deficiencies in the holdback required to be maintained pursuant to the provisions of the *Act*;

- (l) for all purposes aforesaid and for all other purposes, that accounts be taken, and directions be given;
- (m) costs of this action against the Defendants, or any of them, including all HST attributable to any award of costs; and
- (n) such further and other relief as this Honourable Court deems just.

THE PARTIES

2. The Plaintiff, Dean-Lane Contractors Inc. (“Dean-Lane”), is a corporation incorporated pursuant to the laws of the Province of Ontario and carries on business as a mechanical contractor.

3. The Defendant, 1776411 Ontario Ltd. as General Partner of 1333 Weber Street Kitchener LP (“Owner”), is, and at all material times was, the registered owner of the lands and premises known as Eleva8 Condos, located at 1333 Weber Street East, Kitchener, Ontario, which are the lands and premises to which the Lien hereinafter described attach (the “Subject Lands”).

4. The Defendants, Westmount Guarantee Services Inc. (“Westmount”), CMLS Financial Ltd. (“CMLS”), Computershare Trust Company of Canada (“Computershare”), Genesis Mortgage Investment Corp. (“Genesis”) and Corfinancial Corp. (“Corfinancial”), (collectively, the

“Mortgagees”) are the holders of the Mortgages, as defined herein, registered on title to the Subject Lands.

THE CONTRACTS

5. Dean-Lane and the Owner entered into the following contracts:

- (a) on January 18, 2021, CCDC 17-2010 Stipulated Price Contract for the supply of mechanical contracting services and materials for the construction of Tower A at the Subject Lands for a contract price of \$6,064,710.00, inclusive of HST (“Contract A”);
- (b) on June 14, 2022, CCDC 17-2010 Stipulated Price Contract for the supply of mechanical contracting services and materials for the construction of Tower B at the Subject Lands for a contract price of \$7,679,240.44, inclusive of HST (“Contract B”); and
- (c) on June 14, 2022, CCDC 17-2010 Stipulated Price Contract for the supply of mechanical contracting services and materials for the construction of Tower C at the Subject Lands for a contract price of \$7,354,497.65, inclusive of HST (“Contract C”),

6. Contract A, Contract B, and Contract C are hereinafter collectively referred to as the “Contracts”.

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7. Pursuant to the Contracts, Gillam Urban Constructors Inc (“Gillam”) acted as the Construction Manager and ABA Architect Inc. (“ABA”) acted as the Consultant.
8. It was an express or implied term of the Contracts that:
 - (a) Dean-Lane would submit applications for payment monthly as the Work progressed, dated the 25th day of each month or an alternative day of the month agreed in writing by Dean-Lane and the Owner (the “Submission Date”);
 - (b) the Owner would make payments to Dean-Lane on or before 20 calendar days after the Submission Date, or the last day of the monthly payment period for which the application for payment is made, whichever is later; and
 - (c) interest would accrue on unpaid amounts from the date they became due until payment, at the rate of 2% per annum above the prime rate for the first 60 days and at the rate of 4% per annum above the prime rate, thereafter, as quoted by the Royal Bank of Canada for prime business loans as it may change from time to time, compounded monthly.
9. In additions to the work required under the Contracts, the Owner and/or Gillam directed Dean-Lane to perform extra work and issued change orders for the extra work in respect of each of the Contracts (the “Extras”).
10. Dean-Lane made applications for payment for the Work and the Extras in accordance with the terms of the Contracts.

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11. Throughout the course of performing the Work, the Owner continuously defaulted on its payment obligations under the Contracts. Dean-Lane raised concerns to the Owner, the Mortgagees and/or Gillam, or any of them, of the Owner's financial ability to pay for the Work and the Extras performed under the Contracts.

12. Further, in accordance with the Contracts, Dean-Lane procured and ordered equipment from material suppliers that were ready to be delivered to the Project. However, despite repeated follow ups to the Owner and Gillam, or either of them, to arrange for delivery of same, Dean-Lane did not receive a response and the equipment suppliers are looking for payment of the procured equipment for Contract A and Contract B (the "Equipment"). The total liability of Dean-Lane to the equipment suppliers for the Equipment is \$636,585.50, inclusive of HST (the "Supplier Equipment Costs").

13. Further to the preceding paragraph, the Owner, CMLS and Corfinancial, or any of them, provided assurances that Dean-Lane would be paid, for which Dean-Lane relied upon to continue to perform the Work and the Extras under the Contracts, including procuring the Equipment from the suppliers for the Contracts.

THE UNDERTAKINGS

14. In light of the Owner defaulting on payments owing to Dean-Lane in respect of work performed under Contract A and Contract B, on or about May 5, 2023, at the request of the Owner, CMLS and Corfinancial, Dean-Lane entered into an agreement with the Owner and CMLS whereby,

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- (a) Dean-Lane agreed to provide an Undertaking agreeing to continue to provide, services and/or materials to the Owner in respect of Contract A and Contract 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 Owner, CMLS and Corfinancial represented that the Owner was working with the Mortgagees to complete a refinancing of the Project; and
- (c) the Owner and CMLS agreed that Dean-Lane shall be paid from the next construction advance for the Project, which was to occur at the end of May 2023

(the “May 5th Agreement”).

15. 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 Owner was 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 Owner the Deferred Amount to Dean-Lane if Dean-Lane was not paid by the Owner by May 26, 2023, at Dean-Lane’s option, exercisable in writing on or after the payment date; and

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(d) Corfinancial would pay to Dean-Lane, on behalf of the Owner, an accommodation fee of \$50,000.00 (the “Developer Accommodation Fee”).

16. Dean-Lane states that it 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.

17. In light of the representations and assurances made by the Owner, CMLS and Corfinancial, Dean-Lane complied with the Dean-Lane Undertaking and continued to supply services and materials in accordance with Contract A and Contract B for the Project but states that the Owner, CMLS and Corfinancial breached the terms of the May 5th Agreement and the CorFinancial Undertaking and failed to pay the Deferred Amount within the time frame agreed to in the Dean-Lane Undertaking and the CorFinancial Undertaking.

18. Despite repeated requests and demands to the Owner, CMLS and Corfinancial, Dean-Lane did not receive payment of the Deferred Amount and did not receive any further payments for services and materials supplied. The total amount owing to Dean-Lane is \$2,157,415.95, exclusive of Loss of Profit and the Developer Accommodation Fee.

19. Further to the preceding paragraph, 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.

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20. Despite the Default Notice, payment was not made by Corfinancial to Dean-Lane under the terms of the CorFinancial Undertaking. As such, Dean-Lane is entitled to payment of the Deferred Amount and the Developer Accommodation Amount from Corfinancial.

NEGLIGENT MISREPRESENTATION

21. In light of representations made by the Owner, CMLS and Corfinancial, or any of them, Dean-Lane agreed to continue to perform the Work under the Contracts at the Subject Lands.

22. Dean-Lane states that at all material times, it relied upon the representations made by the Owner, CMLS and Corfinancial, or any of them, to continue to perform the Work and the Extras and that it would be paid but, despite said representations, payment has not been made to Dean-Lane.

23. Dean-Lane's reliance on the Mortgagees' representations was detrimental and resulted in substantial damages to Dean-Lane, including damages to Dean-Lane's relationship with suppliers from whom equipment was ordered but could not be supplied due to the delays on the Project and the failure of the Owner to confirm it had the financing to pay for same. In light of the foregoing, the conduct of the Owner, CMLS and Corfinancial has increased costs and damages to Dean-Lane, the full particulars of which will be provided in advance of trial.

THE INDEBTEDNESS

24. Dean-Lane states that the Owner has failed to pay the amounts certified by ABA and which are properly due and owing to Dean-Lane under the Contracts.

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25. As of the date hereof, Dean-Lane is owed the total sum of \$2,157,415.95, inclusive of HST (the “Indebtedness”) for the Work performed at the Subject Lands, but not including the Loss of Profit Claim, as defined herein, in accordance with the Contracts, broken down as follows:

Invoice Date	Invoice No.	Description	Amount Owning, incl. HST
May 25, 2023	J004906	Tower A Progress Billing No. 24	\$82,179.70
May 25, 2023	J004900	Tower A Progress Billing No. 6	\$48,205.80
June 23, 2023	J004990	Tower A Progress Billing No. 25	\$457,438.46
June 23, 2023	J004991	Tower A Progress Billing No. 7	\$20,340.00
		Tower A Previous Holdback -1	\$466,356.31
		Tower A Previous Holdback -2	\$40,441.57
		Tower B Holdback	\$42,454.10
		Previous Balance	\$1,000,000.00
INDEBTEDNESS			\$2,157,415.94

26. Particulars of the Work and Extras supplied by Dean-Lane to the Owner and for which payment has not been received, are contained in the payment applications which were sent or delivered to the Owner on or about their respective dates.

27. Despite repeated demands for payment, the Owner has failed, refused, or neglected to pay Dean-Lane the Indebtedness, being the sum of \$2,157,415.95, inclusive of HST, for the Work and Extras, which is properly due and owing to Dean-Lane.

REPUDIATION OF THE CONTRACTS AND LOSS OF PROFIT

28. Dean-Lane states that the Owner breached the terms of the Contracts by failing to pay the amounts due and owing to Dean-Lane, delaying the supply of the Equipment and delaying the schedule for completion of the Work under the Contracts. Further, the Owner’s inability to have sufficient financing to pay for the Work resulted in delays to the Project and increased costs and

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damages to Dean- Lane. The Owner has breached the terms of the Contracts and by its very conduct repudiated the Contracts (the “Repudiation of the Contracts”).

29. Dean-Lane states in light of the Owner’s failure to have the financing to pay for the services and materials supplied by Dean-Lane and to be supplied under the Contracts, the Project encountered numerous delays, which were beyond its control (the “Delays”).

30. Despite the Delays, in order to mitigate the Delays and on the direction and authorization of the Owner and/or Gillam, Dean-Lane ordered the Equipment to secure pricing and avoid material escalation costs. Dean-Lane requested authorization from the Owner and Gillam to deliver the Equipment to the Project by end of August 2023 to mitigate damages, including material escalation costs and storage costs that the suppliers would be claiming. Despite Dean-Lane’s notices, the Owner and Gillam failed to respond, and Dean-Lane is liable for the Supplier Equipment Costs. Dean-Lane states that the Owner is liable for the Supplier Equipment Costs and Dean-Lane is entitled to damages against the Owner to recover those costs.

31. In addition to the Supplier Equipment Costs, in light of the Delays and the Repudiation of the Contracts, Dean-Lane had to substantially reduce its work forces and has suffered damages. Since Dean-Lane was not afforded an opportunity to complete the Work and Extras under the Contracts, and has incurred additional costs, Dean-Lane is entitled to recover damages for loss of profit in the amount of \$3,006,160.01 inclusive of HST (the “Loss of Profit Claim”), which represents 15% of the value of the balance of the Works and Extras under the Contracts that Dean Lane was not paid for and/or was not provided an opportunity to complete.

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32. Therefore, Dean-Lane is claiming damages in the amount of the Loss of Profit Claim against the Owner.

THE LIEN

33. By reason of performing the Work, Dean-Lane is entitled to a lien upon the interest of the Defendants, or any of them, in the Subject Lands.

34. On July 7, 2023, Dean-Lane caused to be registered a Construction Lien against title to the Subject Lands in the amount of \$2,157,415.95, inclusive of HST, in the Land Registry Office for the Land Titles Division of the City of Waterloo (No. 58) at Kitchener, as Instrument No. WR1518912 (the “Lien”). Attached hereto as Schedule “A” is a true copy of the Lien.

35. The Subject Lands were at all material times occupied by the Owner and are the lands for which Dean-Lane performed the Work at the request of, on behalf of, with the consent and for the direct benefit of the Owner, and accordingly, the Owner is, and at all material times was, an owner within the meaning of section 1(1) of the *Act*.

THE MORTGAGES

36. The following mortgages are registered on title to the Subject Lands:

Name of Mortgagee	Instrument Number	Registration Date	Principal Amount
Westmount	WR1299640	November 24, 2020	\$20,000,000.00
CMLS, Computershare and Genesis	WR1367209	August 17, 2021	\$82,000,000.00
Corfinancial	WR1507448	May 8, 2023	\$3,500,000.00

(collectively, the “Mortgages”).

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37. Dean-Lane states that the Mortgages were given and taken with the intention to secure the financing of the improvements herein and Dean-Lane claims that it has full priority over the Mortgages.

38. Alternatively, Dean-Lane states that the Lien has priority over the Mortgages to the extent of any deficiency in the holdbacks required to be retained pursuant to the provisions of the *Act*.

39. In the further alternative, Dean-Lane states that the Lien has priority over the Mortgages to the extent that any portion of the monies advanced under the Mortgages exceeds the actual value of the Subject Lands at the time when the first lien arose.

40. In the further alternative, Dean-Lane states that the Lien has priority over the Mortgages to the extent of any unadvanced portion thereof.

41. Dean-Lane states that the knowledge of all advances made pursuant to the Mortgages is within the knowledge of the Defendants.

UNJUST ENRICHMENT/QUANTUM MERUIT

42. In the alternative, Dean-Lane states that by reason of performing the Work and the Extras, the Defendants, or any of them, have received the benefit of same and have been unjustly enriched in the amount of \$2,157,415.95 at the expense and to the detriment of Dean-Lane. Dean-Lane pleads and relies upon the doctrine of unjust enrichment.

43. In the further alternative, Dean-Lane states that it is entitled to damages in the amount of \$2,157,415.95 as against the Owner on the basis of *quantum meruit*.

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OUT OF PROVINCE SERVICE

44. CMLS and Genesis conduct business in British Columbia.

45. In serving CMLS and Genesis with this Statement of Claim in British Columbia, Dean-Lane relies on Rule 17.02 subparagraphs (a), (e), (f), and (p), specifically relying on the following facts:

- (a) the Subject Lands are in Ontario;
- (b) the Mortgages are registered on the Subject Lands which is in Ontario;
- (c) the Contract was made in Ontario; and
- (d) CMLS and Genesis carry on business in Ontario.

Date: September 27, 2023

PALLET VALO LLP
Lawyers
77 City Centre Drive, West Tower
Suite 300
Mississauga, Ontario
L5B 1M5

MARIA RUBERTO (LSO # 51148D)
mruberto@pallettvalo.com
Direct Dial/Fax: 289-805-3441

Lawyers for the Plaintiff

SCHEDULE "A"

LRO # 58 Construction Lien

Received as WR1518912 on 2023 07 07 at 15:23

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

Properties

PIN 22500 - 0550 LT
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 270278), 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 WR1328075; CITY OF KITCHENER
Address KITCHENER

Consideration

Consideration \$2,157,415.95

Claimant(s)

Name DEAN-LANE CONTRACTORS INC.
Address for Service c/o Pallett Valo LLP
Lawyers
Attention: Maria Ruberto
77 City Centre Drive
West Tower, Suite 300
Mississauga, Ontario L5B 1M5
Direct: 289-805-3441
Email: mruberto@pallettvalo.com

I, SCOTT MACDONALD, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner 776411 Ontario Ltd. as general partner of 1333 Weber Street Kitchener LP, 8-258 Edgewater Crescent, Kitchener, ON N2A 4M2. Name and address of person to whom lien claimant supplied services or materials 1776411 Ontario Ltd. as general partner of 1333 Weber Street Kitchener LP, 8-258 Edgewater Crescent, Kitchener, ON N2A 4M2. Time within which services or materials were supplied from 2021/02/24 to 2023/08/30 Short description of services or materials that have been supplied Supply and install all plumbing and HVAC and installation of heat pumps for the suites. Contract price or subcontract price \$6,124,832.78, inclusive of HST. Amount claimed as owing in respect of services or materials that have been supplied \$2,157,415.95, inclusive of HST.

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Signed By

Maria Ruberto 77 City Centre Drive, West Tower, acting for Signed 2023 07 07
Suite 300 Applicant(s)
Mississauga
L5B 1M5

Tel 905-273-3300

Fax 905-273-6920

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

PALLETT VALO LLP 77 City Centre Drive, West Tower, 2023 07 07
Suite 300
Mississauga
L5B 1M5

023

-19-

Tel 905-273-3300
Fax 905-273-8920

<i>Fees/Taxes/Payment</i>	
<i>Statutory Registration Fee</i>	\$89.00

LRO # 58 Construction Lien
The applicant(s) hereby applies to the Land Registrar.

Received as WR1518912 on 2023 07 07 at 15:23
yyyy mm dd Page 2 of 2

<i>Fees/Taxes/Payment</i>	
<i>Total Paid</i>	\$89.00

<i>File Number</i>	
<i>Claimant Client File Number :</i>	89382

DEAN-LANE CONTRACTORS INC.

Plaintiff

-and- 1776411 ONTARIO LTD. AS GENERAL PARTNER OF 1333
WEBER STREET KITCHENER LP, et al.
Defendants

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c. C.30

PROCEEDING COMMENCED AT
KITCHENER

STATEMENT OF CLAIM

PALLET VALO LLP

Lawyers
77 City Centre Drive, West Tower
Suite 300
Mississauga, Ontario
L5B 1M5

MARIA RUBERTO (LSO # 51148D)
mruberto@pallettvalo.com
Direct Dial/Fax: 289-805-3441

Lawyers for the Plaintiff

TAB 2



026

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**AVIVA INSURANCE COMPANY OF CANADA and
LIBERTY MUTUAL INSURANCE COMPANY**

Plaintiffs

– and –

**WERNER LEUSCHNER, KAMAL PATEL, 1639993 ONTARIO LTD. and
JAYKAM DEVELOPERS LIMITED**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

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 \$1,000.00 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 of costs is excessive, you may pay the plaintiff's claim and \$400 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: November 24, 2025

Issued by: _____

Local Registrar

Address of Court office:
330 University Ave.
Toronto, Ontario M5G 1R7

TO: **WERNER LEUSCHNER**
258 Edgewater Crescent, Unit 8
Kitchener, Ontario N2A 4M2

AND TO: **KAMAL PATEL**
142 Fergus Avenue
Kitchener, Ontario N2A 2H2

AND TO: **1639993 ONTARIO LTD.**
258 Edgewater Crescent, Unit 8
Kitchen, Ontario N2A 4M2

AND TO: **JAYKAM DEVELOPERS LIMITED**
29 Idle Ridge Court
Kitchen, Ontario N2A 3W3

CLAIM

1. The Plaintiffs, Aviva Insurance Company of Canada (“**Aviva**”) and Liberty Mutual Insurance Company (“**Liberty**”) and, collectively with Aviva, the “**Surety**”), claim against the Defendants, jointly and severally, as follows:

- (a) Payment of the sum of \$12,561,718.20, plus further sums, the particulars of which will be provided prior to trial;
- (b) Indemnification in the amount of not less than \$7,491,718.19, plus further sums, the particulars of which will be provided prior to trial, pursuant to the provisions of the Indemnity Agreement (defined below) in respect of the payments which have been made and the expenses which have been incurred to date as a result of the issuance of the Bonds (also defined below);
- (c) Security, collateral and exoneration in the amount of \$5,070,000.00, plus such further amounts relating to present and future losses, charges, damages, expenses, costs, claims, demands, liabilities, premiums, and administration fees that may be incurred by the Surety as a result of the issuance of the Bonds, the particulars of which will be provided prior to trial;
- (d) A declaration that the Surety is entitled to indemnification and exoneration from the Defendants in respect of all present and future losses, charges, damages, expenses, costs, claims, demands, liabilities, premiums, and administration fees that may be incurred by the Surety as a result of the issuance of the Bonds;
- (e) Pre-judgment and post-judgment interest on all amounts owing to the Surety at an annual rate of 18% per year in accordance with the Indemnity Agreement, or alternatively, in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;
- (f) Costs of this action on a substantial indemnity basis, including applicable taxes thereon, in accordance with the provisions of the Indemnity Agreement; and
- (g) Such further and other relief as this Honourable Court may deem just.

THE PARTIES

2. The Plaintiffs are corporations incorporated pursuant to the laws of Canada which are licensed to carry on business as a surety in the Province of Ontario and elsewhere.

3. The Defendants, Werner Leuschner ("**Leuschner**") and Kamal Patel ("**Patel**"), are individuals who executed the Indemnity Agreement in favour of the Surety and who reside in the Province of Ontario.

4. The Defendant, 1639993 Ontario Ltd. ("**1639993**"), is a corporation incorporated pursuant to the laws of the Province of Ontario and executed the Indemnity Agreement in favour of the Surety.

5. The Defendant, Jaykam Developers Limited ("**Jaykam**"), is a corporation incorporated pursuant to the laws of the Province of Ontario and executed the Indemnity Agreement in favour of the Surety.

6. 1776411 Ontario Ltd. ("**1776411**") is a corporation incorporated under the laws of the Province Ontario.

7. On October 12, 2023, an Order (the "**Receivership Order**") was made appointing KSV Restructuring Inc. (the "**Receiver**") as receiver and manager of all the assets, undertakings and properties of 1776411 (the "**Receivership Proceedings**").

8. The Defendants, Werner Leuschner and Kamal Patel were, at all material times, officers, directors, employees, agents and/or persons with effective control over 1776411 or its relevant activities.

THE INDEMNITY AGREEMENT

9. On or about July 29, 2021, the Defendants, Leuschner, Patel, 1639993 and Jaykam (collectively, the "**Indemnitors**"), executed an Indemnity Agreement (the "Indemnity Agreement"), in favour of the Surety, in which the Indemnitors jointly and severally agreed, among other things, to indemnify the Surety for any and all losses, charges, damages expenses, costs, claims, demands and liabilities that the Surety may suffer by reason of:

- (a) having issued one or several Bonds and/or Policies;
- (b) any claims being made;
- (c) the Surety undertaking its obligations under the Bond and/or the Policies;
- (d) any default by the Indemnitors under the Indemnity Agreement; or
- (e) in enforcing any of the covenants of the Indemnity Agreement.

10. The Surety states that the Indemnity Agreement provides that the liability of the Indemnitors shall extend to and include, without limitation, the obligation of the Indemnitors to reimburse to the Surety all sums which the Surety may be called upon to pay:

- (a) as a result of a judgment, arbitration award or settlement;
- (b) as damages of any nature, including punitive and exemplary damages, as the case may be;
- (c) in respect of any claim, liability or loss;
- (d) as expenditure, costs or fees that it may incur, including the cost of internal or external adjusters, lawyers and consultants;
- (e) in satisfaction of judicial and extra-judicial fees and disbursements of the Surety's counsel on a substantial indemnity scale and legal fees of claimants' counsel; and
- (f) as administration costs related to claims under Bonds and/or Policies and under the Indemnity Agreement.

11. The Indemnity Agreement provides that the Indemnitors acknowledge that the Surety has the right, in its sole and entire discretion, to decide whether to pay, settle or contest any claim under a bond, without any obligation to consult or advise the Indemnitors in advance of so doing.

12. The Indemnity Agreement further provides that the Indemnitors acknowledge their obligation to indemnify the Surety upon presentation by the Surety of a release, a copy of a cheque or any other proof of payment, which will be deemed to be complete proof of the amount paid and

of the Surety's right to make such payment as a result of the issue of a Bond and/or Policies and, consequently, the Surety's right to demand reimbursement from the Indemnitors under the terms of the Indemnity Agreement.

13. The Surety states that the Indemnity Agreement also provides that in order to permit the Surety to meet its obligations under a bond, the Indemnitors undertake to advance to the Surety, upon demand, funds or satisfactory guarantees sufficient to allow the Surety to perform any or all of its obligations under the Bonds and/or Policies, even before any payment has been made by the Surety to a third party. This obligation is referred to herein as "exoneration".

THE BONDS & POLICIES

14. In or around May 2020, 1776411 purchased a property located at 1333 Weber Street in the City of Kitchener (the "**Property**") with the intention of developing a multi-phase condominium project known as "Elevate Condos at 1333 Weber Street" (the "**Project**") thereon.

15. The Surety states that, at the request of the Indemnitors and in reliance upon the provisions of the Indemnity Agreement and in consideration thereof, the Surety executed and delivered the following Tarion Warranty Corporation Bonds and Master Deposit Insurance Policies in accordance with the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c O.31, as amended, and the *Condominium Act*, 1998, S.O. 1998, c. 19, as amended (collectively, "the **Bonds**"):

Project	Bond No.	Policy No.
Phase 1 of Elevate Condos at 1333 Weber Street ("Tower A")	201020002	202310059
Phase 2 of Elevate Condos at 1333 Weber Street ("Tower B")	201020055	232310003
Phase 2 of Elevate Condos at 1333 Weber Street ("Tower C")	221020006	N/A

THE PROJECT IS SOLD

16. Pursuant to an agreement of purchase and sale with the Receiver dated March 4, 2024 (the "**Sale Agreement**") Genesis Mortgage Investment Corporation, Elm Acquisitions Corp. and Dorr

Capital Corporation (collectively, the “**Purchasers**”) agreed to purchase the Project. On October 7, 2024, the Purchasers’ interest in the Sale Agreement was assigned to GFD 1333W Limited Partnership and vested in 1333W Lands Ltd. (collectively, the “**New Owner**”).

17. On October 8, 2024, the Court granted an approval and vesting order (the “**AVO**”) in the Receivership Proceedings, which, among other things, approved the transaction contemplated in the Sale Agreement (the “**Transaction**”) and authorized the Receiver on or following closing of the Transaction to terminate and disclaim all of the existing agreements of purchase and sale for units Tower B of the Project. The AVO further authorized the Receiver, following the closing of the Transaction, with notice to be provided by the New Owner to the Receiver within 120 days of the closing of the Transaction to terminate and disclaim the existing agreements of purchase and sale for units in Tower A of the Project that are not assumed by the New Owner. The 120 day deadline for terminating and disclaiming agreements of purchase and sale for units in Tower A of the Project was subsequently extended. The existing agreements of purchase and sale for units in Tower C were assumed by the New Owner.

18. The Receiver terminated and disclaimed all of the agreements of purchase and sale in respect of units in Tower B of the Project immediately following the closing of the Transaction. The Surety therefore received and was required to pay the Tower B unit purchasers’ claims for the return of the deposits that they paid under those agreements of purchase and sale, together with interest thereon in accordance with the provisions of the *Condominium Act*, 1998, S.O. 1998, c. 19, as amended, resulting in significant losses.

19. The Receiver has also terminated and disclaimed twenty-six (26) agreements of purchase and sale in respect of units in Tower A of the Project, with the result that the Surety has received and paid claims for the return of certain of the deposits paid by the unit purchasers under those agreements of purchase and sale. As set out above, under the AVO, the New Owner had the right to notify the Receiver to terminate and disclaim all of the remaining agreements of purchase and sale for units in Tower A of the Project, which would have resulted in the Surety incurring in excess of \$10 million in additional losses. In order to mitigate such losses, the Surety entered into an agreement with the New Owner pursuant to which the New Owner agreed not to terminate and disclaim any additional agreements of purchase and sale for units in Tower A of the Project in

exchange for which the Surety agreed to make a payment in the amount of \$4,780,000 to the New Owner, resulting in substantial loss mitigation (the “**Mitigation Payment**”).

CLAIMS FOR INDEMNIFICATION AND EXONERATION

20. The Surety states that, as a result of the issuance of the Receivership Order, 1776411’s failure to complete the Project, the Receiver terminating and disclaiming numerous agreements of purchase and sale, the Surety having to pay claims under the Bonds, and the agreement to make the Mitigation Payment in order to avoid paying further claims, the Surety has received and paid the numerous claims for the return of deposits under the Bonds, including interest thereon. The amounts paid by the Surety after applying the deposit amounts held in escrow in respect of the agreements of purchase sale total as follows:

Project	Amount Paid
Tower A	\$1,822,198.37
Tower B	\$5,206,519.15
Total:	\$7,028,717.52

21. The Surety has also incurred expenses in the amount of \$463,000.67 as a result of issuing the Bonds.

22. Pursuant to the terms of the Indemnity Agreement, the Surety is entitled to indemnification from the Indemnitors for the amounts paid to date in respect of the claims made under the Bonds (\$7,028,717.52) and the expenses incurred as a result of issuing the same (\$463,000.67) in the total amount of \$7,491,718.19, plus such further losses and expenses that may be incurred by the Surety to the date of judgment.

23. In addition, pursuant to the terms of the Indemnity Agreement, the Surety is entitled to exoneration from the Indemnitors in respect of the further anticipated claims and expenses under the Bonds and the Mitigation Payment, as follows:

(a)	The Mitigation Payment to the New Owner:	\$4,780,000.00
(b)	Legal expenses in respect of Bond claims and recovery:	\$250,000.00
(c)	Adjusting and consulting expenses:	\$40,000.00

24. The Surety specifically reserves the right to make further claims for indemnification and exoneration against the Indemnitors if and when Aviva makes additional payments in respect of any losses, charges, damages expenses, costs, claims, demands and liabilities, or receives any additional claims or demands under the Bonds.

25. The Surety hereby demands from the Indemnitors indemnification and exoneration in order for them to comply with their obligations under the Indemnity Agreement.

26. The Surety therefore requests judgment as against the Indemnitors in accordance with paragraph 1 above.

27. The Surety proposes that the trial of this action take place in the City of Toronto, Ontario.

Date: November 24, 2025

BORDEN LADNER GERVAIS LLP
 Bay Adelaide Centre, East Tower
 22 Adelaide Street West, Suite 3400
 Toronto ON M5H 4E3

Denise Bambrough (LSO#: 33144E)
 Tel: (416) 367-6008
 Email: dbambrough@blg.com

Mark A. Borgo (LSO#: 744750)
 Tel: (416) 367-7887
 Email: mborgbo@blg.com

Lawyers for the Plaintiffs,
 Aviva Insurance Company of Canada and
 Liberty Mutual Insurance Company

Civil and Small Claims Court

035

N/A
N/A ON 99999

Case No.	CV-25-00756158-0000	Judicial Official	
Case Title	AVIVA INSURANCE COMPANY OF CANADA v. LEUSCHNER et al		
Receipt No.	25-CV-00009232	Receipt Date	25-11-2025 02:15 PM (EST)
Payor	AVIVA INSURANCE COMPANY OF CANADA	Transaction Date	25-11-2025 02:18 PM (EST)
Cashier	LM	Received	\$243.00
		Change Due	\$0.00

Payment Methods

Method	Card Type	Reference No.	Void	Amount
Debit (POS)		00000006		\$243.00
				\$243.00

Cost Types

Name	Assessment No.	Case No.	Amount	Balance
Issuing Fee - Statement of Claim	25-CV-0000011140	CV-25-00756158-0000	\$243.00	\$0.00
			\$243.00	\$0.00

Balances

Due From	Case No.	Balance
		\$0.00

Court File No.:

AVIVA INSURANCE COMPANY OF CANADA, et al.

WERNER LEUSCHNER, et al.

- and -

Plaintiffs

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**
PROCEEDINGS COMMENCED AT TORONTO

STATEMENT OF CLAIM

BORDEN LADNER GERVAIS LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto ON M5H 4E3

Denise Bambrough (LSO#: 33144E)
Tel: (416) 367-6008
Email: dbmabrough@blg.com

Mark A. Borgo (LSO#: 744750)
Tel: (416) 367-7887
Email: mborgo@blg.com

Lawyers for the Plaintiffs,
Aviva Insurance Company of Canada and Liberty Mutual
Insurance Company

TAB 3



Court File No.: **038**

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**WERNER LEUSCHNER, KAMAL PATEL,
JAYKAM DEVELOPERS LIMITED
and 1639993 ONTARIO LTD**

Plaintiffs

- and -

**CMLS FINANCIAL LTD., COMPUTERSHARE TRUST COMPANY OF
CANADA, EQUITABLE BANK, EQB INC., GENESIS MORTGAGE
INVESTMENT CORP. and GENTAI CAPITAL CORPORATION**

Defendants

NOTICE OF ACTION

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the statement of claim served with this notice of action.

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 notice of action 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,

039

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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 85 Frederick Street
court office: Kitchener, ON N2H 0A7

TO:	CMLS FINANCIAL LTD. 18 York Street, Suite 1500 Toronto, ON M5J 2T8
AND TO:	COMPUTERSHARE TRUST COMPANY OF CANADA 100 University Avenue, 11th Floor Toronto, Ontario M5J 2Y1
AND TO:	EQUITABLE BANK Equitable Bank Tower 30 St. Clair Avenue West, Suite 700 Toronto, Ontario M4V 3A1
AND TO:	EQB INC. Equitable Bank Tower 30 St. Clair Avenue West, Suite 700 Toronto, Ontario M4V 3A1
AND TO:	GENESIS MORTGAGE INVESTMENT CORP. 200-3600 No. 3 Road Richmond, BC V6X 2C1
AND TO:	GENTAI CAPITAL CORPORATION 200-3600 No. 3 Road Richmond, BC V6X 2C1

CLAIM

040

1. The Plaintiffs' claim is for:
 - (a) damages in the amount of \$110,000,000.00 for breach of contract, inducing breach of contract, breach of duty of good faith, breach of duty of honest performance, honest or negligent misrepresentation, conversion, unjust enrichment, *quantum meruit*, intentional interference with economic relations and conspiracy;
 - (b) damages in the amount of \$110,000,000.00 for fraud, deceit and fraudulent misrepresentation;
 - (c) further, or in the alternative, a declaration and order that the forbearance agreement dated April 27, 2023 (the "**Forbearance Agreement**") and Full and Final Release, Waiver and Indemnity (the "**Release**"), as more particularly described below are (i) unconscionable and that they be set aside or (ii) are invalid and unenforceable;
 - (d) punitive, aggravated, exemplary and/or special damages in the amount of \$500,000.00;
 - (e) pre- and post-judgment interest pursuant to the *Courts of Justice Act*, RSO 1990, c C.43, as amended;
 - (f) costs on a substantial-indemnity basis; and
 - (g) such further and other relief as this Honourable Court may deem just.

The Parties

2. The Plaintiffs are guarantors of certain loan obligations as more particularly described below.
3. The defendant, CMLS Financial Ltd. (“**CMLS**”), is a corporation incorporated pursuant to the laws of the province of British Columbia. CMLS carries on business in the province of Ontario as, *inter alia*, a mortgage lender, administrator, servicer and provider of mortgage syndication services. Since August 17, 2021, CMLS held an interest in the First Mortgage, as more particularly described below, in trust for Concentra Bank, a Schedule I bank incorporated under the *Bank Act* (Canada).
4. The defendant, Computershare Trust Company (“**Computershare**”), is a trust company duly incorporated under the *Trust and Loan Companies Act* (Canada). Computershare carries on business as, *inter alia*, a provider of mortgage servicing and related trust services in the province of Ontario. At all material times, Computershare was a mortgagee under the First Mortgage, more particularly described below, and held its interest in trust for the defendant, Equitable Bank, a Schedule I bank incorporated under the *Bank Act* (Canada), a wholly owned subsidiary of EQB Inc. (Equitable Bank and EQB Inc. are collectively referred to hereinafter as “**Equitable Bank**”; Computershare and Equitable Bank are collectively referred to as the “**Computershare Defendants**”).

5. The defendant, Genesis Mortgage Investment Corp. (“**GMIC**”) is a corporation ⁰⁴² duly incorporated pursuant to the laws of the province of British Columbia, carrying on business as, *inter alia*, a non-banking mortgage lender in the province of Ontario. GMIC is managed by the defendant, Gentai Capital Corporation (“**Gentai**”) (GMIC and Gentai are collectively the “**Gentai Defendants**”)

Overview

6. This action arises out of the parties’ involvement in the development of a four-tower condominium project (the “**Project**”) at the real property municipally known as 1333 Weber Street East, Kitchener (the “**Real Property**”).
7. Title to the Real Property is held by 1776411 Ontario Limited (“**177 Ont Ltd**”) (1333 Weber Street Kitchener LP and 177 Ont Ltd are collectively referred to as the “**Partnership**”).
8. The defendants, CMLS, Computershare (on behalf of the Equitable Bank Defendants) and GMIC (on behalf of Gentai) (collectively the “**Lending Syndicate**”) provided certain construction loan credit facilities¹ to the Partnership (collectively the “**Loan Agreements**”), secured by a first mortgage registered on title to the Real Property on August 16, 2021 as Instrument No. WR1367209 (the “**First Mortgage**”).

¹ Pursuant to a mortgage loan commitment dated June 28, 2021, as amended on July 21, 2021, and bearing loan number 50715, CMLS made available a construction financing facility in the principal amount of \$52,800,000.00 and a letter of credit facility in the principal amount of \$2,700,000.00. Pursuant to a second mortgage loan commitment dated June 28, 2021, bearing loan number 50716, as amended on July 21, 2021, and on May 3, 2022, CMLS made available to the Plaintiffs a construction loan financing facility in the principal amount of \$16,000,000.00.

9. CMLS and Computershare are senior secured lenders and Gentai is the junior secured lender under the terms of the First Mortgage. **043**
10. The Plaintiffs guaranteed the Partnership's obligations under the Loan Agreements to the Lending Syndicate.
11. In this action, the Plaintiffs allege, *inter alia*, that the Defendants:
- (a) Breached the terms of the Forbearance Agreement by failing, refusing or neglecting to advance draws for March and April 2023, as the defendants were contractually obligated to do under the terms of the Forbearance Agreement;
 - (b) Induced the plaintiffs to breach the Forbearance Agreement for the purpose of enforcing on the First Mortgage and security granted thereunder, including the appointment of a receiver;
 - (c) Failed, refused and/or neglected to disclose until the eve of the closing date to sign the Forbearance Agreement that CMLS had made a "computational error" which would result in a shortfall of \$714,979.27 in the amounts to be advanced under the Forbearance Agreement;
 - (d) Induced the plaintiffs into executing the Forbearance Agreement and Releases under the false pretence that the Lending Syndicate would advance construction draws for March and April 2023 as a term of the Forbearance Agreement;
 - (e) Acted dishonestly and in bad faith in the performance of their obligations under the Forbearance Agreement;

- 044**
- (f) Made honest, negligent and/or fraudulent representations to the plaintiffs, including *inter alia*, that:
- (i) representations by Andrea Cali on behalf of CMLS, the mortgage administrator, manager and syndicator, from about March to August 2022, that the Lending Syndicate would fund construction financing for Towers 2 and 3 of the Project;
 - (ii) Representations by Andrea Cali from November 2022 to December 2022 that the Lending Syndicate would advance the total amount agreed upon in the Forbearance Agreement, including the Shortfall;
 - (iii) representations by Andrea Cali from December 2022 to January 2023 that the Lending Syndicate would advance March and April 2023 draws in accordance with the terms of the Forbearance Agreement; and
 - (iv) Such further and other representations as shall be particularized in the Statement of Claim.

(collectively the “**Representations**”), which Representations were false; the defendants knew or ought to have known were false; were intended to be relied upon by the plaintiffs; the plaintiffs did in fact rely upon the Representations to their detriment and which caused the plaintiffs losses.

- (g) Conspired to deprive the plaintiffs of the Real Property and Project. The elements of the conspiracy include but are not limited to the following:

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- (i) the defendants agreed as between each other that they would not advance the March and April 2023 draws due under the Forbearance Agreement under the false pretence that they could not “reconcile” the cost overruns on the project;
 - (ii) the defendants knew that withholding the draws would cause the Partnership to default on the terms of the Forbearance Agreement, pursuant to which the Partnership and plaintiffs had consented to the appointment of a receiver upon an event of default under the Forbearance Agreement;
 - (iii) the defendants acts were calculated in furtherance of their agreement to injure the plaintiffs;
 - (iv) the plaintiffs suffered damages as a result of the defendants’ conduct.
- (h) Were unjustly enriched, the plaintiffs suffered a corresponding deprivation, for which no juristic reason exists; and
- (i) Converted the Real Property and personal property of the Partnership and plaintiffs for their own use.
12. Further particulars of the material facts underlying the claims and causes of action pled in this Notice of Action shall be provided in the Statement of Claim.

13. The Plaintiffs propose that the trial of this action be heard in Kitchener, Ontario.

046

SPETTER ZEITZ KLAIMAN PC
Barristers & Solicitors
100 Sheppard Avenue East, Suite 850
Toronto, ON M2N 6N5

TRUNG NGUYEN
LSO No. 49386C
tnguyen@szklaw.ca

T: 416.789.0652

F: 416.789.9015

Lawyers for the Plaintiffs

WERNER LEUSCHNER et al.
14
Plaintiffs

- and -

Court File No./N° du dossier du greffe : CV-25-00000716-0000

COURT FILE NO.

CMLS FINANCIAL LTD. et al.
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
KITCHENER

NOTICE OF ACTION

SPETTER ZEITZ KLAIMAN PC
Barristers & Solicitors
100 Sheppard Avenue East, Suite 850
Toronto, ON M2N 6N5

TRUNG NGUYEN
LSO No. 49386C
trungnguyen@szklaw.ca
T: 416.789.0652
F: 416.789.9015

Lawyers for the Plaintiffs

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

WERNER LEUSCHNER, KAMAL PATEL, JAYKAM DEVELOPERS LIMITED
and 1639993 ONTARIO LTD

Plaintiffs

- and -

CMLS FINANCIAL LTD., COMPUTERSHARE TRUST COMPANY OF CANADA,
EQUITABLE BANK, EQB INC., GENESIS MORTGAGE INVESTMENT CORP. and
GENTAI CAPITAL CORPORATION

Defendants

STATEMENT OF CLAIM

Notice of Action issued on April 28, 2025

1. The plaintiffs, Werner Leuschner (“**Leuschner**”), Kamal Patel (“**Patel**”), Jaykam Developers Limited (“**Jaykam**”) and 1639993 Ontario Ltd. (“**163 Ontario**”) claim against the defendants, CMLS Financial Ltd. (“**CMLS**”), Computershare Trust Company of Canada (“**Computershare**”), Equitable Bank and EQB Inc. (collectively “**Equitable Bank**”), Genesis Mortgage Investment Corp. (“**GMIC**”), and Gentai Capital Corporation (“**Gentai**”):
 - (a) damages in the amount of \$110,000,000.00 for fraud, deceit, fraudulent misrepresentation, negligent misrepresentation, unjust enrichment, intentional interference with economic relations, conspiracy and inducing breach of contract;

- (b) aggravated, punitive, exemplary and/or special damages in the amount of **049**
\$500,000.00
- (c) further, or in the alternative, a Declaration that the forbearance agreement dated April 27, 2023 (the “**Forbearance Agreement**”) and Full and Final Release, Waiver and Indemnity (the “**Release**”), as more particularly described below is unconscionable, invalid, unenforceable and/or that they be set aside;
- (d) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (e) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (f) the costs of this proceeding on a substantial-indemnity scale, plus HST; and
- (g) such further and other relief as to this Honourable Court may seem just.

The Parties

2. The plaintiff, Leuschner, is an individual who resides in Kitchener, Ontario and was at all material times a director and officer of 163 Ontario and the guarantor of certain loan obligations more particularly described below.

3. The plaintiff, 163 Ontario, is a corporation incorporated pursuant to the laws of the **050** Province of Ontario with its registered address located at 258 Edgewater Crescent, Unit 8, Kitchener, Ontario, N2A 4M2. At all material times, 163 Ontario was a borrower and the guarantor of certain loan obligations, described in greater detail below.
4. The plaintiff, Jaykam, is a corporation incorporated pursuant to the laws of Ontario, with its registered head office located at 29 Idle Ridge Court in Kitchener, Ontario. Patel is the sole officer and director of Jaykam.
5. The plaintiff, Patel, is an individual who resides in Kitchener, Ontario and was, at all material times, the sole director and officer of Jaykam and the guarantor of certain loan obligations described below.
6. The defendant CMLS is a company incorporated pursuant to the laws of the Province of British Columbia. CMLS carries on business in the Province of Ontario as, *inter alia*, a mortgage lender, administrator, and the servicer and provider of mortgage syndication services. Since August 17, 2021, CMLS holds an interest in the First Mortgage (as defined below) in trust for Concentra Bank, a Schedule I bank incorporated under the *Bank Act (Canada)*.
7. The defendant Computershare is a trust company duly incorporated under the Trust and Loan Companies Act (Canada). Computershare carries on business as, *inter alia*, a provider of mortgage servicing and related trust services in the Province of Ontario. At all material times, Computershare was a mortgagee under the First Mortgage and held its interest for the defendant, Equitable Bank.

8. The defendant, Equitable Bank is a Schedule I Bank incorporated under the *Bank Act* ⁰⁵¹ (Canada), a wholly owned subsidiary of EQB Inc.
9. The defendant GMIC is a corporation duly incorporated pursuant to the laws of the Province of British Columbia, carrying on business as, *inter alia*, a non-banking mortgage lender in the Province of Ontario. GMIC is managed by the defendant, Gentai.

The Elevate Project

10. On or about July 26, 2018, the Plaintiffs began the development of a four-tower condominium project named 'Elevate' (the "**Project**") at the address municipally known as 1333 Weber Street East, Kitchener, Ontario (the "**Real Property**").
11. The Real Property was previously owned Pamata Hospitality Inc. ("**Pamata**"), of which Patel was a 51% shareholder and 49% was owned by Ashvin Patel. Prior to the Project, Pamata operated a Howard Johnson hotel at the Real Property.
12. The project was developed by 1333 Weber Street Kitchener LP ("**1333 Weber LP**" or the "**Partnership**"), a limited partnership established under the Ontario *Limited Partnerships Act*. The Partnership's registered principal place of business is 258 Edgewater Crescent, Unit 8, in Kitchener, Ontario.
13. The general partner of the Partnership was 1776411 Ontario Ltd. ("**177 Ontario**"), incorporated pursuant to the laws of Ontario, with its registered head office located 258 Edgewater Crescent, Unit 8, in Kitchener, Ontario. Leuschner is the sole officer and director of 177 Ontario. 177 Ontario is the General Partner on behalf of 1333 Weber Street Kitchener LP.

14. There are four limited partners in the Partnership:
 - a) 177 Ontario and 163 Ontario, separately, are unit-holders (both are 100 per cent controlled and owned by Leuschner);
 - b) Jaykam is the third unit-holder; and
 - c) Pamata.
15. Legal title to the Real Property was held by 177 Ontario.
16. The Project was 177 Ontario's sole asset.

The Loan Facilities and Security

17. CMLS, Computershare (on behalf of Equitable Bank), and GMIC (on behalf of Gentai) (collectively, the "**Lending Syndicate**") provided certain construction loan credit facilities to the Partnership (the "**Loan Agreements**") which were to be secured on title to the Real Property, to be described in greater detail below.
18. On June 28, 2021, CMLS agreed to finance the Project pursuant to two commitment letters, as amended (the "**Commitment Letters**"):
 - a) a construction financing facility in the principal amount of \$52,800,000.00 and a letter of credit facility in the principal amount of \$2,700,000.00 (the "**Senior Commitment**"); and
 - b) a construction financing facility in the principal amount of \$13,000,000.00 (the "**Junior Commitment**").

19. The Commitment Letters provided for construction loan facilities in the maximum principal amount of \$71,500,000.00 (the “**Loans**”). Equitable Bank, Concentra Bank, and Gentai provided funding for the Loans. CMLS is the administrator of the Loans on behalf of Equitable Bank, Concentra Bank, and Gentai.
20. To secure 177 Ontario’s obligations under the Commitment Letters, 177 Ontario granted the following security:
- a) On or about August 17, 2021, 177 Ontario granted a mortgage/charge in the amount of \$82,000,000 registered the mortgage/charge as instrument no. WR1367209 on title to the Real Property in the Land Titles Division of Kitchener (No. 59) (the “**Construction Mortgage**”);
 - b) a General Assignment of Rents over the Real Property, registered on title on August 17, 2021 as instrument no. WR1367209 in the Land Titles Division of Kitchener (No. 59) (the “**GAR**”);
 - c) a General Security Agreement in favour of the Mortgagees granted by 177 Ontario dated August 13, 2021 (the “**GSA**”), in first ranking position over the assets and undertaking of 177 Ontario, subject only to a registration by Westmount Guarantee Service Inc. (“**Westmount**”) and any priorities agreement between and the CMLS and the other parties in the Lending Syndicate; and
 - d) an unlimited guarantee in favour of the Defendants dated August 13, 2021, which guaranteed the debts and liabilities of 177 Ontario.

The Defaults and Forbearance Agreement

21. Starting in May 2022, the Plaintiffs began encountering issues which resulted in defaults under the terms of the Commitment Letters (the “**Defaults**”).
22. As a result of the Defaults, CMLS made demand for repayment of the Loans.
23. On April 27, 2023, 177 Ontario, the Plaintiffs, and the CMLS entered into a forbearance agreement (the “**Forbearance Agreement**”), pursuant to which:
 - a) CMLS agreed not to enforce its rights and remedies against 177 Ontario and the Plaintiffs until the earlier of March 1, 2024 or the occurrence of default under the Loans, the Commitment Letters, or the related security;
 - b) CMLS agreed to advance an increase of no more than \$5,000,000.00 in funding towards the Loans, with principal amount of the Senior Commitment being increased by \$2,000,000.00 and the Junior Commitment being increased by \$3,000,000.00, to be allocated to various to various entities, such as trades who had placed liens on title to the Real Property, and to be provided to 177 Ontario by monthly draws requested by 177 Ontario (the “**Forbearance Payment**”); and
 - c) 177 Ontario consented to the appointment of a receiver upon default of the Forbearance agreement.

Breach of the Forbearance Agreement

24. On or about May 5, 2023, after the terms of the Forbearance Agreement were settled and signed but before CMLS advanced the first draw under the Forbearance Agreement, CMLS advised the Plaintiffs that:
- a) the Lending Syndicate had made a calculation error when calculating the amount of the Forbearance Payment. The effect of this error was that the amount to be advanced under the Forbearance Payment was \$714,979.27 less than previously agreed to (the “**Shortfall**”); and
 - b) the Lending Syndicate was running out of funds and would not be able to make the advances it had promised to make under the terms of the Forbearance Agreement.
25. Notwithstanding that the Shortfall was caused by the Lending Syndicate’s own error, CMLS advised the Plaintiffs that the Forbearance Payment would not be advanced until the mistake was corrected and CMLS obtained additional funds from the other parties of the Lending Syndicate, excluding Equitable Bank, to cover the Shortfall.
26. To avoid further delays in paying the trades (the “**Trades**”) who were constructing the Project, the Plaintiffs proposed, and CMLS agreed, on behalf of the Lending Syndicate, to a separate side agreement with CorFinancial Corp. (“**CorFinancial**”) to remedy the Shortfall (the “**Shortfall Agreement**”) whereby:

- a) CorFinancial would obtain an agreement from one of the Trades, Dean-Lane Contracting Inc. (hereinafter “**Dean-Lane**”), pursuant to which 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;
 - 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, CORFinancial 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.
27. On or about May 5, 2023, Dean-Lane agreed to the terms proposed by CorFinancial and CorFinancial delivered a written undertaking to Dean-Lane on the terms set out above.
28. 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.

29. However, despite the Plaintiffs repeated demands, CMLS failed or otherwise refused to pay the Shortfall or Deferred Amount to Dean-Lane.
30. It was an express or implied term of the Forbearance Agreement that the Defendants would provide the draws to further the Plaintiff's construction of the Project.
31. By failing to pay the Shortfall, the Deferred Amounts to Dean-Lane, and the March draw pursuant to the terms of the Forbearance Agreement, the Lending Syndicate breached the terms of the Forbearance Agreement and the Shortfall Agreement, acted in bad faith and dishonestly.
32. The Defendants intentionally refused to advance payment of the Shortfall, the Deferred Amounts to Dean-Lane and the March Draw, knowing that it would directly result in the default of the Forbearance Agreement, and provide the grounds for the appointment of a receiver over the Real Property of 177 Ontario.

Fraudulent Misrepresentations

33. The Defendants made the following representations to the Plaintiffs:
- a) representations by Andrea Cali on behalf of CMLS, the mortgage administrator, manager and syndicator, from about March to August 2022, that the Lending Syndicate would fund construction financing for Towers 2 and 3 of the Project;

- 058
- b) Representations by Andrea Cali from November 2022 to December 2022 that the Lending Syndicate would advance the total amount agreed upon in the Forbearance Agreement, including the Shortfall;
 - c) representations by Andrea Cali from December 2022 to January 2023 that the Lending Syndicate would advance March and April 2023 draws in accordance with the terms of the Forbearance Agreement;
 - d) representations by James Kim on behalf of GMIC and Gentai that Gentai would fund the advances required under the terms of the Forbearance Agreement; and
 - e) such further representations the particulars of which shall be furnished prior to trial.

(collectively the “**Misrepresentations**”).

- 34. The Defendants knew or ought to have known that the Misrepresentations were false and that the Plaintiffs would rely upon the Misrepresentations.
- 35. The Plaintiffs did in fact rely upon the Misrepresentations to their detriment, which has caused the Plaintiffs’ losses and damages as described herein.
- 36. The Defendants are liable to the Plaintiffs on the basis of fraudulent, negligent or honest misrepresentation.

Conspiracy

37. As detailed above, beginning at a time known to the Plaintiffs, the Defendants conspired to deprive the Plaintiffs of the March and April 2023 construction draws. The elements of the conspiracy include but are not limited to the following:

- a) the Defendants agreed as between each other that they would not advance the March and April 2023 draws due under the Forbearance Agreement under the false pretence that they could not “reconcile” the cost overruns on the project; and
- b) the Defendants intentionally withheld the March and April 2023 draws to cause the Partnership to default on the terms of the Forbearance Agreement, pursuant to which the Partnership and Plaintiffs had consented to the appointment of a receiver upon an event of default under the Forbearance Agreement.

38. The Defendants’ acts were calculated to trigger the appointment of the receiver, were made in bad faith, and dishonestly. The object of the conspiracy was to force the Defendants to default on the terms of the Forbearance Agreement, thereby providing grounds for the Defendants to appoint a receiver, engage in a sales process, which ultimately pave the pathy for the Receiver’s sale of the Project to the defendant, GMIC, along with Elm Acquisitions Corp. and Dorr Capital Corporation (collectively the “**Proposed Purchasers**”).

Conversion

39. The Defendants wrongfully converted the Plaintiffs' Real Property and personal property through unlawful, fraudulent means, which has caused the Plaintiffs' damages. The Defendants acted with the intention of denying the Plaintiffs' right to their property and in such a manner that is inconsistent with the Plaintiffs' right of possession.
40. The Defendants' attempted to conceal the fraud, including by providing the Plaintiffs with false confirmations regarding the costs of the Project.

Unjust Enrichment

41. As a result of the fraud described herein, the Defendants have been unjustly enriched by at least \$110,000,000.00, which amount the Plaintiffs have been deprived of. There is no juristic reason for the Defendants' enrichment.
42. The Defendants have retained and benefited from these losses suffered by the Plaintiffs by fraudulently misrepresenting to the Plaintiffs that they would receive the construction draws in accordance of the Forbearance Agreement and then depriving the Plaintiffs of the draws, thereby causing an "Event of Default" under the terms of the Forbearance Agreement.

Damages

43. To date, the Plaintiffs are aware that the Defendants have misappropriated \$110,000,000.00 worth of real and personal property.

44. The Plaintiffs continue to investigate their accounts, transactions, and other related financial matters and will amend the Statement of Claim if and when further fraudulent conduct is discovered.

45. The Plaintiffs have made efforts to mitigate their damages by attempting to resolve the matter directly with the Defendants.

46. The Defendants are jointly and severally liable for the Plaintiffs' damages.

Aggravated, Punitive and/or Exemplary Damages

47. An award of the aggravated and punitive damage is justified in this case having regard to the Defendants' high-handed, egregious, and reprehensible conduct. Their actions demonstrate a wanton, wilful, and reckless disregard for the Plaintiffs' legal rights. The Defendant's conduct is independently actionable and worthy of denunciation. An award of aggravated and punitive damages to deter others from similar conduct.

48. The Plaintiffs rely on the following statutes and regulations:

- *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and
- *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

49. The Plaintiffs request that this action be tried in Kitchener, Ontario.

DATE: May 28, 2025

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SPETTER ZEITZ KLAIMAN PC
Barristers & Solicitors
100 Sheppard Avenue East, Suite 850
Toronto, Ontario M2N 6N5

TRUNG NGUYEN
LSO No.: 49386C
Tel: 416-613-8601
Email: tnguyen@szklaw.ca

WILLIAM ONYEAJU
LSO No.: 81919E
Tel: 416-477-4771
Email: wonyeaju@szklaw.ca

Lawyers for the Plaintiff

WERNER LEUSCHNER et al.
3
Plaintiffs

-and-

CMLS FINANCIAL LTD et al.
Defendants

Court File No. CV-25-00000716-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

SPETTER ZEITZ KLAIMAN PC
Barristers & Solicitors
100 Sheppard Avenue East, Suite 850
Toronto, Ontario
M2N 6N5

TRUNG NGUYEN
LSO No.: 49386C
Tel: 416-613-8601
Email: tnguyen@szklaw.ca

Lawyers for the Plaintiff

Court File No.: CV-25-00000716-0000
064

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

**WERNER LEUSCHNER, KAMAL PATEL, JAYKAM DEVELOPERS LIMITED
and 1639993 ONTARIO LTD**

Plaintiffs

- and -

**CMLS FINANCIAL LTD., COMPUTERSHARE TRUST COMPANY OF CANADA,
EQUITABLE BANK, EQB INC., GENESIS MORTGAGE INVESTMENT CORP. and
GENTAI CAPITAL CORPORATION**

Defendants

NOTICE OF CHANGE OF LAWYER

The Plaintiffs, Werner Leuschner, Kamal Patel, Jaykam Developers Limited and 1639993 Ontario Ltd., formerly represented by Trung Nguyen and William Onyeaju of Spetter Zeitz Klaiman PC has appointed Trung Nguyen of SimpsonWigle Law LLP as lawyer of record.

September 23, 2025

SIMPSONWIGLE LAW LLP
Barristers & Solicitors
1006 Skyview Dr., Suite 103
Burlington ON L7P 0V1

Trung Nguyen
LSO No. 49386C

T: 905.639.1052 ext. 235
E: trung@simpsonwigle.com

Lawyers for the Plaintiffs

#4396281.2

TO:

SPETTER ZEITZ KALIMAN PC
100 Sheppard Avenue E., Suite 850
Toronto, ON M2N 6N5

065

Trung Nguyen
LSO No. 49386C
tnguyen@szklaw.ca

William Onyeaju
LSO No. 81919E
wonyeaju@szklaw.ca

Former lawyers for the Plaintiffs

WERNER LEUSCHNER, et al.
Plaintiffs

and

CMLS FINANCIAL LTD., et al.
Defendants

Court File No./N° du dossier du greffe : CV-25-00000716-0000

Court File No. CV-25-00000716-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Kitchener

NOTICE OF CHANGE OF LAWYER

SIMPSONWIGLE LAW LLP
Barristers & Solicitors
1006 Skyview Dr., Suite 103
Burlington ON L7P 0V1

Trung Nguyen
LSO No. 49386C

T: 905.639.1052 ext. 235
E: trung@simpsonwigle.com

Lawyers for the Plaintiffs

OCT 24 2025

#4396281.2

TAB 4



**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

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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

070

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.

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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

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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

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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

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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.

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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

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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.

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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.

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

Derek Ketelaars (67154R)
T: (416) 363-8104
F: (416) 363-0252
E: dketelaars@gcylaw.com

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
90 Eglinton Avenue East
Suite 980
Toronto, Ontario
M4P 2Y3

Derek Ketelaars (67154R)
T: 416-363-3351
F: 416-363-0252
E: dketelaars@gcylaw.com
Lawyers for the Plaintiff

TAB 5

**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

PALLET VALO LLP

Lawyers

77 City Centre Drive, West Tower

Suite 300

Mississauga, Ontario L5B 1M5

MARIA RUBERTO (LSO #51148D)

Direct Dial/Fax: 289-805-3441

Email: mruberto@pallettvalo.com

Lawyers for Dean-Lane Contractors Inc.

TO: The Service List

GENESIS MORTGAGE INVESTMENT CORPORATION
Applicant

-and-

1776411 ONTARIO LTD., et al.
Respondents

090

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

PALLETT VALO LLP

Lawyers
77 City Centre Drive, West Tower
Suite 300
Mississauga, Ontario L5B 1M5

MARIA RUBERTO (LSO #51148D)
Direct Dial: 289-805-3441
Email: mruberto@pallettvalo.com

Lawyers for Dean-Lane Contractors Inc.

TAB 6

**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

90 Eglinton Avenue East, Suite 980

Toronto, Ontario, M4P 2Y3

Derek Ketelaars (67154R)

Tel: 416-363-3351

Fax: 416-363-0252

Email: dketelaars@gcylaw.com

Lawyers for the creditor CorFinancial Corp.

GENESIS MORTGAGE INVESTMENT CORPORATION
Applicant

and

1776411 ONTARIO LTD. et al.
Respondents

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

Proceeding commenced at Toronto

**CASE CONFERENCE BRIEF OF KSV
RESTRUCTURING INC., IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER**

BLANEY McMURTRY LLP

Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

Eric Golden (LSO #38239M)
(416) 593-3927 (Tel)
egolden@blaney.com

Chad Kopach (LSO #48084G)
(416) 593-2985 (Tel)
ckopach@blaney.com

Lawyers for KSV Restructuring Inc.
in its capacity as Court-appointed Receiver