

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

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORPORATION

Applicant

and

1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP

Respondents

**CASE CONFERENCE BRIEF
OF WERNER LEUSCHNER, KAMAL PATEL,
JAYKAM DEVELOPERS LIMITED and 1639993 ONTARIO LTD**

(April 14, 2026 at 12:00 p.m.)

April 13, 2026

SIMPSONWIGLE LAW LLP
Barristers & Solicitors
1006 Skyview Dr., Suite 103
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Lawyers for
Werner Leuschner, Kamal Patel,
Jaykam Developers Limited and
1639993 Ontario Ltd.

TO: BLANEY McMURTRY LLP
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2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5

Eric Golden (LSO #38239M)
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**Lawyers for KSV Restructuring Inc.,
In its capacity as Court-appointed Receiver**

AND TO: SERVICE LIST

Position of Leuschner and Patel Parties

1. This the Case Conference Brief of the Werner Leuschner, Kamal Patel, 1639993 Ontario Ltd. and Jaykam Developers Limited (collectively “**Leuschner and Patel**”).
2. For the purposes of this Case Conference, Leuschner and Patel:
 - a. oppose the action bearing Court File No. CV-25-00000716-0000 – Werner Leuschner et al v CMLS Financial Ltd et al (the “**Leuschner Action**”) being transferred from Kitchener to the Commercial List;
 - b. take no position on:
 - i. the lift stay of the actions bearing Court File No. CV-23-00001279-0000 – Dean Lane Contractors Inc. v 1776411 Ontario Ltd. et al. (the “**Dean-Lane Action**”) and CV-23-00706796-0000 – CORFinancial Corp. v CMLS Financial Ltd. et al. (the “**CORFinancial Action**”), both of which were commenced prior to the receivership;
 - ii. the action bearing Court File No. CV-25-00756158-0000 – Aviva Insurance Company of Canada et al v Werner Leuschner et al (the “**Surety Action**”) being transferred to the Commercial List and case-managed;
 - iii. the receiver’s request for discharge.

The Leuschner Action

3. The Leuschner Action involves a claim for damages arising from misrepresentations made by representative(s) of the lending syndicate in connection with a multi-phase condominium development project in Kitchener, Ontario (the “**Project**”).
4. Upon service of the Statement of Claim in the Leuschner Action, the Receiver took the position that the action was a nullity since the plaintiffs were required to obtain

leave of the Court and/or the receiver. A copy of the receiver's correspondence is attached at **Tab "A"**.

5. Notwithstanding the receivership of Project, the Leuschner Action does not fall within any of the enumerated categories of matters heard by the Commercial List. It is quite simply, a claim for damages. The Project is in Kitchener. The damages were sustained in Kitchener. The plaintiffs are located in Kitchener. The proper jurisdiction for the Leuschner Action is Kitchener.
6. Any request to add the Leuschner Action to be case managed on the Commercial List amounts to forum shopping, which Ontario courts have been increasingly discouraging.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,



Trung Nguyen
Lawyers for Werner Leuschner, Kamal Patel, Jaykam
Developers Limited and 1639993 Ontario Ltd.

TAB A

Trung Nguyen

From: Trung Nguyen
Sent: March 11, 2026 11:51 AM
To: Eric Golden
Cc: Joseph Blinick; Sean Zweig; Gertner, Thomas; renglish@airdberlis.com; Shores, Bevin; Sanjeev Mehta; Chad Kopach; Ben Luder; Mitch Vininsky; Steven Kelly; Vy Rodulfo; Josh Suttner; Calvin Horsten
Subject: RE: Leuschner et al v. CMLS et al (Court File. No. CV-25-00000716-0000) and Elevate Receivership
Sensitivity: Private

Hi Eric,

I am following up on my email below. I would appreciate a response by end of week, failing which we will request a 9:30 to address the issue.

Thank you,

Trung Nguyen

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E: trung@simpsonwigle.com



SimpsonWigle
LAW LLP

From: Trung Nguyen <TrungN@simpsonwigle.com>
Sent: March 2, 2026 3:18 PM
To: Eric Golden <egolden@blaney.com>
Cc: Joseph Blinick <blinickj@bennettjones.com>; Sean Zweig <zweigs@bennettjones.com>; Gertner, Thomas <thomas.gertner@gowlingwlg.com>; renglish@airdberlis.com; Shores, Bevin <Bevin.Shores@gowlingwlg.com>; Sanjeev Mehta <SMehta@blaney.com>; Chad Kopach <ckopach@blaney.com>; Ben Luder <bluder@ksv advisory.com>; Mitch Vininsky <mvininsky@ksv advisory.com>; Steven Kelly <SKelly@blaney.com>; Vy Rodulfo <VyR@simpsonwigle.com>; Josh Suttner <jsuttner@airdberlis.com>; Calvin Horsten <chorsten@airdberlis.com>
Subject: RE: Leuschner et al v. CMLS et al (Court File. No. CV-25-00000716-0000) and Elevate Receivership
Sensitivity: Private

Hi Eric,

Hope all is well. Can you please provide an update on your discussions with lenders' counsel.

Thank you,

Trung Nguyen

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E: trung@simpsonwigle.com



SimpsonWigle
LAW LLP

From: Eric Golden <egolden@blaney.com>
Sent: January 16, 2026 5:13 PM
To: Trung Nguyen <TrungN@simpsonwiggles.com>
Cc: Joseph Blinick <blinickj@bennettjones.com>; Sean Zweig <zweigs@bennettjones.com>; Gertner, Thomas <thomas.gertner@gowlingwlg.com>; renglish@airdberlis.com; Shores, Bevin <Bevin.Shores@gowlingwlg.com>; Sanjeev Mehta <SMehta@blaney.com>; Chad Kopach <ckopach@blaney.com>; Ben Luder <bluder@ksvadvisory.com>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Steven Kelly <SKelly@blaney.com>; Vy Rodulfo <VyR@simpsonwiggles.com>; Josh Suttner <jsuttner@airdberlis.com>; Calvin Horsten <chorsten@airdberlis.com>
Subject: RE: Leuschner et al v. CMLS et al (Court File. No. CV-25-00000716-0000) and Elevate Receivership
Sensitivity: Private

Hi Trung,

Sorry for the delay.

I have a conference call lined up with counsel for the various lender defendants, but it's not until Jan 29, 2026.

It's taking a little time as there are also two other outstanding claims against certain of the Elevate project lenders that were issued post-receivership (but on the Commercial List) and which were referenced in my initial email to you below on Nov, 13, 2025, that I expect your clients are aware of (attached for ease of reference). I've asked the lenders' counsel to also advise how their clients wish to proceed on those two additional matters as it makes sense for the Receiver to be in a position to be able to advise the Court at the same time of status and next steps on all three outstanding post-receivership claims against the lenders (including your clients' claim).

I'll be back to you shortly after Jan 29, 2026, with a detailed response.

In the interim, let me know if you have any questions.

Eric Golden
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From: Trung Nguyen <TrungN@simpsonwiggles.com>
Sent: Monday, January 12, 2026 6:39 PM
To: Eric Golden <egolden@blaney.com>
Cc: Joseph Blinick <blinickj@bennettjones.com>; Sean Zweig <zweigs@bennettjones.com>; Gertner, Thomas <thomas.gertner@gowlingwlg.com>; renglish@airdberlis.com; Shores, Bevin <Bevin.Shores@gowlingwlg.com>; Sanjeev Mehta <SMehta@blaney.com>; Chad Kopach <ckopach@blaney.com>; Ben Luder <bluder@ksvadvisory.com>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Steven Kelly <SKelly@blaney.com>; Vy Rodulfo <VyR@simpsonwiggles.com>
Subject: RE: Leuschner et al v. CMLS et al (Court File. No. CV-25-00000716-0000) and Elevate Receivership
Sensitivity: Private

Hi Eric,

Can you please respond to my email of November 26, 2025. My clients' position is that leave is not required and that the Statements of Defences are now past due. If the parties are unable to agree, then a 9:30 will be necessary to speak to the matter.

Thank you,

Trung Nguyen

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SimpsonWigle
LAW LLP

From: Shores, Bevin <Bevin.Shores@gowlingwlg.com>

Sent: December 2, 2025 2:42 PM

To: Trung Nguyen <TrungN@simpsonwigg.com>; Eric Golden <egolden@blaney.com>

Cc: Joseph Blinick <blinickj@bennettjones.com>; Sean Zweig <zweigs@bennettjones.com>; Gertner, Thomas <thomas.gertner@gowlingwlg.com>; renglish@airdberlis.com; Sanjeev Mehta <SMehta@blaney.com>; Chad Kopach <ckopach@blaney.com>; Ben Luder <bluder@ksvadvisory.com>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Steven Kelly <SKelly@blaney.com>

Subject: RE: Leuschner et al v. CMLS et al (Court File. No. CV-25-00000716-0000) and Elevate Receivership

Sensitivity: Private

No problem, thanks Trung.

Bevin Shores (she/her)

Partner

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My Assistant: Lise Kipfer

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lise.kipfer@gowlingwlg.com



From: Trung Nguyen <TrungN@simpsonwigg.com>

Sent: December 2, 2025 12:45 PM

To: Eric Golden <egolden@blaney.com>

Cc: Joseph Blinick <blinickj@bennettjones.com>; Sean Zweig <zweigs@bennettjones.com>; Gertner, Thomas <thomas.gertner@gowlingwlg.com>; renglish@airdberlis.com; Sanjeev Mehta <SMehta@blaney.com>; Chad Kopach <ckopach@blaney.com>; Ben Luder <bluder@ksvadvisory.com>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Steven Kelly <SKelly@blaney.com>; Shores, Bevin <Bevin.Shores@ca.gowlingwlg.com>

Subject: RE: Leuschner et al v. CMLS et al (Court File. No. CV-25-00000716-0000) and Elevate Receivership

Sensitivity: Private

This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.

Adding Bevin Shores to the email chain. Bevin, my apologies for the oversight.

Thanks,

Trung Nguyen

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E: trung@simpsonwagle.com



SimpsonWigle
LAW LLP

From: Trung Nguyen <TrungN@simpsonwagle.com>

Sent: November 26, 2025 6:55 PM

To: Eric Golden <egolden@blaney.com>

Cc: Joseph Blinick <blinickj@bennettjones.com>; Sean Zweig <zweigs@bennettjones.com>; Gertner, Thomas <thomas.gertner@gowlingwlg.com>; 'renglish@airdberlis.com' <renglish@airdberlis.com>; Sanjeev Mehta <SMehta@blaney.com>; Chad Kopach <ckopach@blaney.com>; Ben Luder <bluder@ksvadvisory.com>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Steven Kelly <SKelly@blaney.com>

Subject: RE: Leuschner et al v. CMLS et al (Court File. No. CV-25-00000716-0000) and Elevate Receivership

Sensitivity: Private

Hi Eric,

Please find attached the AOSs for each of the defendant parties.

Thank you for sending the Appointment Order. We note the following:

- Pursuant to paragraph 8 of the Appointment Order, leave is required for the “commencement or continuation of proceedings against the Debtor or Property”. The current proceeding is neither. It is an action for damages against the lenders.
- Pursuant to paragraph 9, “all rights and remedies against the Debtor, the Receiver or affecting the Property...are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court...” Again, in our view, the current action is not “against the Debtor, the Receiver or affecting the Property” and therefore falls outside of the scope of the stay.

We have reviewed the Receiver’s recommendation in connection with the stay of the lien claimant’s (Dean-Lane) and third mortgagee’s (CORFinancial) actions, as set out in section 5.3 of the Receiver’s First Report, attached. While we understand the basis for the stay of the lien action, respectfully, we do not agree that an action for damages is stayed by the terms of the Appointment Order.

It would be helpful if you could clarify if there is any other basis upon which the Receiver relies in support of its position that leave or consent of the Receiver is required. Once we have a better understanding of the Receiver’s position, we can coordinate a chambers appointment to address the issue or schedule a motion, if necessary.

I look forward to working with you and counsel for the respective parties on this matter.

Trung Nguyen

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SimpsonWigle
LAW LLP

From: Eric Golden <egolden@blaney.com>

Sent: November 13, 2025 10:50 AM

To: Trung Nguyen <TrungN@simpsonwiggles.com>

Cc: Joseph Blinick <blinickj@bennettjones.com>; Sean Zweig <zweigs@bennettjones.com>; Gertner, Thomas <thomas.gertner@gowlingwlg.com>; 'renglish@airdberlis.com' <renglish@airdberlis.com>; Sanjeev Mehta <SMehta@blaney.com>; Chad Kopach <ckopach@blaney.com>; Ben Luder <bluder@ksvadvisory.com>; Mitch Vininsky <mvininsky@ksvadvisory.com>; Steven Kelly <SKelly@blaney.com>

Subject: Leuschner et al v. CMLS et al (Court File. No. CV-25-00000716-0000) and Elevate Receivership

Sensitivity: Private

You don't often get email from egolden@blaney.com. [Learn why this is important](#)

Hello Trung,

How are you?

As you know, we are counsel to the Receiver in the Elevate Receivership. I have attached for ease of reference a copy of the Appointment Order.

You act for the plaintiff guarantors in the attached proceeding (the “**Guarantors’ Action**”) which was issued in Kitchener on April 28, 2025, without first seeking leave of the Court. Your clients also did not seek nor did they obtain the Receiver’s consent for its issuance. Please advise which of the defendants were served with the Guarantors’ Action and please provide the affidavits of service (I understand that service of the Guarantors’ Action was only recently carried out notwithstanding that the Guarantors’ Action was issued over 6 months ago, and I do not have full details on who was served and when).

You are also likely aware that with respect to previous claims issued during the Elevate Receivership (by a third mortgagee and by a lien claimant) against the same defendants as in the Guarantors’ Action, the defendants took the position that leave was first required to issue the proceeding, and since it was not obtained the action was a nullity. Those actions remain stayed.

Regardless of whether or not you agree with the leave/stay position, we are proceeding on the basis that no steps prejudicial to any of the defendants in the Guarantors’ Action, including but not limited to noting any of them in default, will be taken by the plaintiffs prior to a Chambers attendance in the Elevate Receivership being scheduled and heard, so that next steps can be determined by the Court.

Once you have provided the affidavits of service, we will proceed to assist the parties in co-ordinating the Chambers attendance.

I am around today if you want to discuss the above.

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Eric Golden

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

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1639993 Ontario Ltd.**