



Court File No. CV-21-00673521-00CL

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

THE HONOURABLE MADAM

)

WEDNESDAY, THE 23RD

JUSTICE CONWAY

)

DAY OF NOVEMBER, 2022

)

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

GO-TO DEVELOPMENTS HOLDINGS INC., OSCAR FURTADO, FURTADO HOLDINGS INC., GO-TO DEVELOPMENTS ACQUISITIONS INC., GO-TO GLENDALE AVENUE INC., GO-TO GLENDALE AVENUE LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK LP, GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC., GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP, GO-TO NIAGARA FALLS CHIPPAWA INC., GO-TO NIAGARA FALLS CHIPPAWA LP, GO-TO NIAGARA FALLS EAGLE VALLEY INC., GO-TO NIAGARA FALLS EAGLE VALLEY LP, GO-TO SPADINA ADELAIDE SQUARE INC., GO-TO SPADINA ADELAIDE SQUARE LP, GO-TO STONEY CREEK ELFRIDA INC., GO-TO STONEY CREEK ELFRIDA LP, GO-TO ST. CATHARINES BEARD INC., GO-TO ST. CATHARINES BEARD LP, GO-TO VAUGHAN ISLINGTON AVENUE INC., GO-TO VAUGHAN ISLINGTON AVENUE LP, AURORA ROAD LIMITED PARTNERSHIP and 2506039 ONTARIO LIMITED

Respondents

**APPLICATION UNDER
SECTIONS 126 AND 129 OF THE *SECURITIES ACT*, R.S.O. 1990, c. S. 5, as amended**

**ORDER
(Glendale Tarion Holdback Agreement)**

THIS MOTION, made by KSV Restructuring Inc. (“KSV”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the real property listed on Schedule “A” hereto (the “**Real Property**”) and all the other assets, undertakings and properties (together with the Real Property, the “**Property**”) of each of the parties listed on

Schedule “B” hereto (the “**Receivership Respondents**”), for an order, in substance, approving the execution and implementation of the agreement amongst the Receiver, Tarion Warranty Corporation (“**Tarion**”) and Trisura Guarantee Insurance Company (“**Trisura**”) dated November 4, 2022 (the “**Glendale Tarion Holdback Agreement**”), a copy of which is attached to the Sixth Report of the Receiver dated November 14, 2022 (the “**Sixth Report**”), and approving certain ancillary relief in connection therewith, was heard this day via judicial video-conference.

ON READING the Sixth Report, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person named on the Service List, as appears from the affidavit of service of Susy Moniz sworn November 14, 2022, filed,

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

2. **THIS COURT ORDERS** that for the purposes of this Order, the following terms shall have the following meanings:

- (a) “**Business Day**” means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (b) “**Claimant**” means a Person asserting a Tarion Claim;
- (c) “**Court**” means the Ontario Superior Court of Justice (Commercial List);
- (d) “**Encumbrances**” has the meaning ascribed thereto in paragraph 6 of this Order;
- (e) “**Glendale Project**” means all phases and parts of the residential condominium development previously known as “*Shipview*” and previously located at 75 Oliver Lane, in St. Catharines, Ontario;
- (f) “**Go-To Glendale**” means Go-To Glendale Avenue Inc. and Go-To Glendale Avenue LP;
- (g) “**Judicial Bodies**” has the meaning ascribed thereto in paragraph 15 of this Order;

- (h) **“ONHWPA”** means the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O. 31, as amended, and the regulations promulgated thereunder;
- (i) **“Order”** means this Order;
- (j) **“Outside Date”** means June 2, 2024;
- (k) **“Person”** means any individual firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity;
- (l) **“Tarion Bond”** means the Tarion Warranty Corporation Bond bearing bond no. TDS0990485 issued by Trisura in favour of Tarion;
- (m) **“Tarion Cash Collateral”** has the meaning ascribed thereto in the Glendale Tarion Holdback Agreement;
- (n) **“Tarion Cash Collateral Balance”** has the meaning ascribed thereto in paragraph 6 of this Order;
- (o) **“Tarion Cash Collateral Charge”** has the meaning ascribed thereto in paragraph 10 of this Order;
- (p) **“Tarion Cash Collateral Claims”** means accepted Tarion Claims, administration fees, legal fees, interest and other fees and costs paid or incurred by Tarion in connection with such Tarion Claims and the administration of the Tarion Cash Collateral Procedure;
- (q) **“Tarion Cash Collateral Procedure”** means the procedures outlined in this Order, including, without limitation, in connection with the payment, holding, administration and release of the Tarion Cash Collateral; and
- (r) **“Tarion Claims”** means any right or claim of any Person against Tarion under the ONHWPA in respect of the Glendale Project;

- (s) “**Tarion Glendale Claim**” has the meaning ascribed thereto in the Glendale Tarion Holdback Agreement; and
- (t) “**Trisura Glendale Holding Claim**” has the meaning ascribed thereto in the Glendale Tarion Holdback Agreement.

3. **THIS COURT ORDERS** that all references to the word “including” shall mean “including without limitation”, and all references to the singular herein include the plural, the plural include the singular and any gender includes all genders.

4. **THIS COURT ORDERS AND DECLARES**, *nunc pro tunc*, that the execution of the Glendale Tarion Holdback Agreement by the Receiver is hereby authorized and approved (with such minor amendments at the Receiver may deem necessary), and the implementation of the Glendale Tarion Holdback Agreement is authorized and approved, including, without limitation: (i) the delivery of the Tarion Cash Collateral from the Receiver to Tarion; (ii) the cancellation of the Tarion Bond; (iii) the permanent reduction of the Tarion Glendale Claim to \$56,500.00 (unsecured, with the same priority as other unsecured claims); and (iv) the payment from the Receiver to Trisura of \$31,456.00 and the corresponding permanent withdrawal of the Trisura Glendale Holding Claim. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to give effect to the terms of the Glendale Holdback Agreement.

5. **THIS COURT ORDERS** that upon the receipt by Tarion of the Tarion Cash Collateral, the Tarion Bond is void and cancelled, and neither Tarion nor Trisura shall have any further obligations or liability whatsoever in respect of the Tarion Bond, Go-To Glendale or the Glendale Project (in the case of Tarion, subject only to any Tarion Claims that are to be dealt with pursuant to paragraph 6 of this Order).

6. **THIS COURT ORDERS** that:

- (a) Tarion shall be entitled to utilize the Tarion Cash Collateral and process payments therefrom on account of accepted Tarion Claims and Tarion Cash Collateral Claims free and clear of and from any and all security interests (whether contractual, statutory or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens executions, rights of distraint, levies,

charges or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed, and whether secured, unsecured or otherwise (collectively, “**Encumbrances**”), and without further authorization from any Person or this Court;

(b) the balance of the Tarion Cash Collateral (the “**Tarion Cash Collateral Balance**”), if any, shall be paid by Tarion to the Receiver, within ten Business Days following the latest of:

- (i) the Outside Date;
- (ii) the completion of the review by Tarion of all Tarion Claims, if any, filed prior to the Outside Date;
- (iii) in the event that Tarion revises or rejects any Tarion Claim, the resolution of such Tarion Claim in accordance with the procedures provided for in the ONHWPAA and/or any applicable litigation or dispute resolution processes; and
- (iv) the processing and payment by Tarion of any Tarion Claims and Tarion Cash Collateral Claims from the Tarion Cash Collateral,

provided, however, that if no Tarion Claim is filed prior to the Outside Date, Tarion shall pay the Tarion Cash Collateral Balance to the Receiver by no later than ten Business Days after the Outside Date; and

(c) Tarion shall have no further obligations or liability whatsoever in respect of the Tarion Cash Collateral Balance following Tarion’s payment of the Tarion Cash Collateral Balance to the Receiver.

7. **THIS COURT ORDERS** that none of Trisura, Tarion and the Receiver shall incur any liability or obligation as a result of the carrying out any of the provisions of this Order or the Glendale Tarion Holdback Agreement, other than in respect of any gross negligence or wilful misconduct on their respective parts, and that no proceeding or process in any court or tribunal shall be commenced or continued against any of Trisura, Tarion or the Receiver in connection with

the carrying out of the provisions of this Order except with the written consent of Trisura, Tarion and the Receiver, as applicable, or with leave of this Court on seven Business Days' notice to all parties. This Order is without prejudice to any other limitation of liability or protection afforded to Trisura, Tarion or the Receiver by order of this Court or otherwise.

8. **THIS COURT ORDERS** that, subject to paragraphs 10 - 12, in connection with the payment or receipt of any funds described herein, the Person receiving such funds shall do so free and clear of and from any and all Encumbrances.

9. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings; and
- (b) any assignment in bankruptcy made in respect of the Receivership Respondents, or any of them, or their property;

the terms and implementation of the Glendale Tarion Holdback Agreement and the Tarion Cash Collateral Procedure shall be binding on any trustee in bankruptcy or subsequent receiver of the Receivership Respondents or any of them or their property and shall not be void or voidable by creditors, nor shall they constitute or be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, or other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. **THIS COURT ORDERS** that Tarion shall be entitled to the benefit of, and is hereby granted, a fixed and specific charge and security interest (the "**Tarion Cash Collateral Charge**") in the Tarion Cash Collateral.

11. **THIS COURT ORDERS** that the Tarion Cash Collateral Charge shall rank in priority to all Encumbrances against the Tarion Cash Collateral from time to time.

12. **THIS COURT ORDERS** that the filing, registration, recording or perfection of the Tarion Cash Collateral Charge shall not be required and that the Tarion Cash Collateral Charge shall be valid and enforceable for all purposes including, without limitation as against any Encumbrances

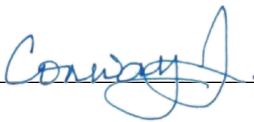
filed, registered recorded or perfected subsequent to the Tarion Cash Collateral Charge coming into existence notwithstanding any failure to file, register, record or perfect the Tarion Cash Collateral Charge. The Tarion Cash Collateral Charge may be enforced by Tarion upon the terms and conditions as may be agreed to between the Receiver and Tarion.

13. **THIS COURT ORDERS** that each of Trisura, Tarion and the Receiver may from time to time apply to this Court for advice and directions in respect of the terms of this Order and in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any other Canadian and foreign court, tribunal, regulatory or administrative body ("**Judicial Bodies**") to give effect to this Order and to assist the Receiver and its respective agents in carrying out the terms of this Order. All Judicial Bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its respective agents in carrying out the terms of this Order.

16. **THIS COURT ORDERS** that this Order is effective as of today's date and is enforceable without the need for entry or filing.



SCHEDULE "A"
REAL PROPERTY

1. 527 Glendale Avenue
St. Catharines, ON
PIN: 46415-0949
2. 185 Major MacKenzie Drive East
Richmond Hill, ON
PIN: 03139-0047
3. 197 Major MacKenzie Drive East
Richmond Hill, ON
PIN: 03139-0049
4. 209 Major MacKenzie Drive East
Richmond Hill, ON
PIN: 03139-0051
5. 191 Major MacKenzie Drive East
Richmond Hill, ON
PIN: 03139-0048
6. 203 Major MacKenzie Drive East
Richmond Hill, ON
PIN: 03139-0050
7. 215 Major MacKenzie Drive East
Richmond Hill, ON
PIN: 03139-0052
8. 4210 Lyons Creek Road
Niagara Falls, ON
PIN: 64258-0110
9. 4248 Lyons Creek Road
Niagara Falls, ON
PIN: 64258-0713
10. 2334 St. Paul Avenue
Niagara Falls, ON
PIN: 64269-0559
11. 355 Adelaide Street West
Toronto, ON
PIN: 21412-0150

12. 46 Charlotte Street
Toronto, ON
PIN: 21412-0151

13. Highland Road
Hamilton, ON
PIN: 17376-0025

14. Upper Centennial Parkway
Hamilton, ON
PIN: 17376-0111

15. 19 Beard Place
St. Catharines, ON
PIN: 46265-0022

16. 7386 Islington Avenue
Vaughan, ON
PIN: 03222-0909

17. 4951 Aurora Road
Stouffville, ON
PIN: 03691-0193

**SCHEDULE “B”
RECEIVERSHIP RESPONDENTS**

1. GO-TO DEVELOPMENTS HOLDINGS INC.
2. FURTADO HOLDINGS INC.
3. GO-TO DEVELOPMENTS ACQUISITIONS INC.
4. GO-TO GLENDALE AVENUE INC.
5. GO-TO GLENDALE AVENUE LP
6. GO-TO MAJOR MACKENZIE SOUTH BLOCK INC.
7. GO-TO MAJOR MACKENZIE SOUTH BLOCK LP
8. GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC.
9. GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP
10. GO-TO NIAGARA FALLS CHIPPAWA INC.
11. GO-TO NIAGARA FALLS CHIPPAWA LP
12. GO-TO NIAGARA FALLS EAGLE VALLEY INC.
13. GO-TO NIAGARA FALLS EAGLE VALLEY LP
14. GO-TO SPADINA ADELAIDE SQUARE INC.
15. GO-TO SPADINA ADELAIDE SQUARE LP
16. GO-TO STONEY CREEK ELFRIDA INC.
17. GO-TO STONEY CREEK ELFRIDA LP
18. GO-TO ST. CATHARINES BEARD INC.
19. GO-TO ST. CATHARINES BEARD LP
20. GO-TO VAUGHAN ISLINGTON AVENUE INC.
21. GO-TO VAUGHAN ISLINGTON AVENUE LP
22. AURORA ROAD LIMITED PARTNERSHIP
23. 2506039 ONTARIO LIMITED

- and -

Applicant

Respondents

Court File No. CV-21-00673521-00CL

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

Proceedings commenced at Toronto

**ORDER
(Glendale Tarion Holdback Agreement)**

AIRD & BERLIS LLP

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