

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

BETWEEN:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

**MAPLEVIEW DEVELOPMENTS LTD., PACE MAPLEVIEW LTD and 2552741
ONTARIO INC.**

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**

AFFIDAVIT OF ERICA ROCHETTE

I, Erica Rochette, of the City of Brampton, in the Regional Municipality of Peel,

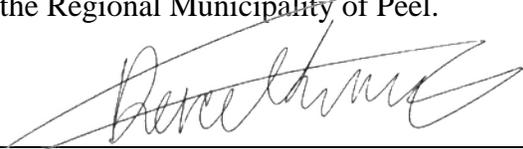
MAKE OATH AND SAY:

1. I am a law clerk with the law firm of Speigel Nichols Fox LLP ("**SNF**"), the lawyers for the construction lien claimant, Capelas Homes Ltd. ("**Capelas**").
2. In that capacity, I have worked with Ian Latimer ("**Latimer**"), a lawyer with SNF.
3. Unless otherwise stated, this affidavit is based on my review of the file and information received from Latimer. I believe that the information from these sources is accurate.
4. On April 3, 2024, Capelas registered a claim for lien in the amount of \$1,978,305.85.
5. On May 27, 2024, Capelas commenced an action to enforce the lien. In the action, Capelas has alleged that its lien has full priority over the full priority over the mortgages that have been registered by Kingsett Mortgage Corporation and Marshallzehr Group Inc.
6. On July 31, 2024, Latimer sent an email to Roger Gillott ("**Gillott**"), a partner with the law firm Osler, Hoskin & Harcourt LLP, the lawyers for the receiver, KSV Restructuring Inc., to ask for a copy of Osler's opinion and a summary of the advances that were made

under the mortgages and any documentation existing in connection with those advances.

7. Attached hereto and marked as Exhibit "A", is a true copy of this email.
8. On August 1, 2024, Gillott wrote to Latimer to reply to Latimer's email.
9. Attached hereto and marked as Exhibit "B" is a true copy of Gillott's letter dated August 1, 2024.
10. Attached hereto and marked as Exhibit "C" an email exchange between the lawyers for the lien claimants and Gillott.

SWORN BEFORE ME, after confirming the identity of the deponent, on the 1st day of August, 2024. This oath was administered in accordance with Ontario Regulation 431/20 and administered by videoconference while I was situated in the City of Toronto, and the deponent was situated in the City of Brampton, in the Regional Municipality of Peel.



Commissioner for taking affidavits
Dora Konomi



ERICA ROCHETTE

Erica Rochette

From: Ian Latimer
Sent: Wednesday, July 31, 2024 11:51 AM
To: Gillott, Roger
Cc: Rosenblat, Dave; Erica Rochette
Subject: RE: In the Matter of Mapleview Developments Ltd. et al - Court File No.: CV-24-00716511-00CL

INTERNAL SOURCE

Roger,

We just had a telephone call with David and we discussed how the motion affected our client, Capelas Homes who has a construction lien and an action to enforce the lien. In the action, Capelas Homes has alleged that its lien has full priority over the mortgages.

The Priority Payable Calculation for our client is \$607,450.31. Can you please let us know how that amount was determined.

At this stage we do not have any information or documentation to determine whether there is any basis for our client to claim priority over the mortgages for an amount that exceeds the deficiency in the 10% holdback that should have been retained by the owner.

We note that the Receiver has an opinion from Osler that the mortgages have priority over the lien claimants with respect to all Advances, but lose priority to the lien claimants with respect to any Holdback Deficiency (see 7.1.6 of the Second Report).

We were wondering whether you could share the Osler opinion with us. Please advise.

Can you please also provide us with a summary of the advances that were made under the mortgage and any documentation that exists in connection with those advances. The summary should list the date and amount of each advance under the mortgages.

Finally, can you please advise whether you will be sharing any claims that are made by the other lien claimants for an Additional Asserted Priority .

We look forward to hearing from you..

Ian K. Latimer



Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 224
Fax: 905.366.9707
1 Robert Speck Parkway
Suite 200
Mississauga, ON L4Z 3M3
<http://ontlaw.com/bio/ian-keith-latimer/>

This is Exhibit "A" referred to in the Affidavit of Erica Rochette sworn before me this 1st day of August, 2024

Erica Rochette

A Commissioner for Taking Affidavits, or as may be

NOTICE

The information in this e-mail is confidential and is legally privileged. If you have received this e-mail in error or are not the intended recipient, please immediately notify the sender by return e-mail and delete this message from your computer. Any use, distribution or copying of this e-mail other than by the intended recipient is strictly prohibited.

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

OSLER

This is Exhibit "B" referred to in the Affidavit of Erica Rochette sworn before me this 1st day of August, 2024


A Commissioner for Taking Affidavits, or as may be

August 1, 2024

Roger Gillott
Direct Dial: 416.862.6818
RGillott@osler.com
Our Matter Number: 1254587

Toronto

Montréal

Calgary

Ottawa

Vancouver

New York

Via Email: ian@ontlaw.com

Ian K. Latimer
Speigel Nichols Fox LLP
1 Robert Speck Parkway, Suite 200
Mississauga, Ontario L4Z 3M3 Canada

Dear Mr. Latimer:

Re: Capelas Homes Ltd. – In the Matter of Mapleview Developments Ltd. et al - Court File No.: CV-24-00716511-00CL

We write in response to your email dated July 31, 2024. We understand that Capelas Homes Ltd. (“**Capelas Homes**”) is seeking full priority payment of its lien in the amount of \$1,978,305.85. However, as you have stated in your July 31st email, you do not have any information or documentation to determine whether there is any basis for Capelas Homes to claim priority over the mortgages for an amount that exceeds the deficiency in the 10% holdback.

A. Calculation of Capelas Homes’ Priority Holdback

The Receiver served Capelas Homes with its Second Report on Friday July 26, 2024 (the “**Report**”). The Report explains that the maximum priority claim enjoyed by lien claimants is equal to the amount of any deficiency in the 10% holdback that was to be retained by the insolvent owner, pursuant to sections 78(5) and 78(6) of the *Construction Act*. For clarity, lien claimants are not entitled to priority for the full value of all of their outstanding invoices. Please refer to section 7.1 - Holdback Reserve & Distributions for Priority Payables of the Report for additional information.

Furthermore, it is settled law that in the case of a contractor with a direct contract with the owner (as was the case for Capelas Homes), the priority claim for holdback under section 78 is limited to 10% of invoices where the holdback has not already been paid to the lien claimant. In *Dufferin Concrete Products v. Waterbrooke Development Ltd.*, 1992 CarswellOnt 881 (Ont. Ct. (Gen. Div.)), which has been upheld in multiple subsequent cases, the court held that where the lien claimant has a direct contract with the owner, the holdback obligation is 10% of the unpaid contract, rather than 10% of the entire contract, and that “the legislation could have only intended this doubling effect when injured third

parties are involved.”¹ Capelas Homes’ priority is therefore limited to a maximum of 10% of invoices in which holdback has not already been paid.

After reviewing Capelas Homes’ documentation and the Company’s books and records, it is our view that 10% of Capelas Homes’ invoices in which holdback has not already been paid is a maximum of \$607,450.31 based on information that has been provided to the Receiver. Therefore, we are of the view that Capelas Homes’ priority holdback could not be any higher than \$607,450.31.

B. Lien Claimants’ Priority over Mortgagees

As stated in section 7.1 of the Report, pursuant to s. 78(5) of the *Construction Act*, both mortgages lose priority to the lien claimants with respect to any deficiency in the 10% holdback that was to be retained by the Owner (the “**Holdback Deficiency**”). For clarity, this means the Holdback Deficiency for the lien claimants, including Capelas Homes, in this insolvency proceeding will be paid out prior to the mortgagees.

C. Advances under the Mortgages

As stated in section 7.1.4. of the Report, the Receiver has confirmed that all advances were made under the Kingsett and MarshallZehr mortgages (the “**Advances**”) prior to the date the first construction lien was registered on title, and in section 7.1.5, the Receiver has confirmed that no evidence has been provided that any written notices of lien were received. Therefore, the Advances were not made at a time when a Claim for Lien was registered on title or a notice of lien received. For clarity, this means that pursuant to section 78(5) and 78(6) of the *Construction Act*, the mortgagees will have priority over the lien claimants for the Advances, other than the maximum of the 10% Holdback Deficiency. As such, it is our view that Capelas Homes cannot claim priority over the mortgages for an amount that exceeds the maximum priority claim of the deficiency in the 10% holdback.

D. Next Steps

We would appreciate you advising us as soon as practicable as to whether Capelas Homes agrees with our view of the maximum potential priority payable for holdback, and if not, the basis of your disagreement.

As stated in the Report, the motion seeking approval of the Approval and Vesting Order (as defined in the Report) will take place on August 2, 2024 at 11:00 am. The proposed Approval and Vesting Order provides that persons claiming an “Additional Asserted

¹ *Dufferin Concrete Products v. Waterbrooke Development Ltd.*, 1992 CarswellOnt 881, para 13 – cited in *Celebrity Flooring Systems Ltd. v. One Shaftesbury Community Association*, 2006 CanLII 33474 (ON SC) and *Pegah Construction Ltd. v. Panterra Mansions Joint Venture Corp.*, 2014 ONSC 3966.

Priority Payable” shall provide supporting evidence with respect to same by no later than August 9, 2024, failing which such persons shall be barred from claiming an Additional Asserted Priority Payable.

Regards,

A handwritten signature in black ink that reads "Roger J. Gillott". The signature is written in a cursive style with a large initial 'R' and a long horizontal stroke at the end.

Roger Gillott
Partner

RG:es

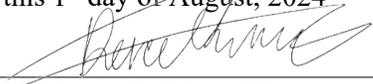
- c. D. Rosenblat, counsel to KSV
E. Smith, counsel to KSV

Erica Rochette

From: Gillott, Roger <RGillott@osler.com>
Sent: Thursday, August 01, 2024 4:51 PM
To: Andrew Wood; Eric Gionet
Cc: sthom@torikinmanes.com; jlong@kmlaw.ca; Wasserman, Marc; Rosenblat, Dave; Disenhouse, Josh; Smith, Emma; Dick, Marleigh; Jumaa, Carolin; Noah Goldstein; Murtaza Tallat; Nicole Maragna; Domenic Presta; mtamblyn@torikinmanes.com; April Hollebek; Wilson, Sara-Ann; Mackinnon Blair, Fraser; Lossner, Lisa; Ian Latimer; kmovat@foglers.com; jaspal@sanghaconstructionlaw.com; smorris@smartsolutionslaw.ca; hossein@niroomandlaw.com; Erica Rochette; Vito Scalisi; rhoffman@grllp.com; Jonathan Piccin
Subject: RE: In the Matter of Mapleview Developments Ltd. et al - Court File No.: CV-24-00716511-00CL

EXTERNAL SOURCE - Exercise caution.

This is Exhibit "C" referred to in the Affidavit of Erica Rochette sworn before me this 1st day of August, 2024.


A Commissioner for Taking Affidavits, or as may be

Hello Andrew,

Thank you for your email. We are well-aware of the *Bianco* case. It addresses the situation where a mortgagee advances funds without registering a mortgage on title, and then later registers a mortgage (in the *Bianco* case, 3-6 years later). That was not the case here. In this case, Kingsett registered two mortgages on the same day they first advanced funds on the Project: October 17, 2019, as follows:

- 1) Charge in the amount of \$87,000,000.00 registered as Instrument No. SC1631924 on October 17, 2019.
- 2) Charge in the amount of \$19,000,000.00 registered as Instrument No. SC1631928 on October 17, 2019.

These mortgages are clearly visible on the abstract of title that includes “deleted instruments”; the current Kingsett mortgage refinanced these mortgages.

The Kingsett advances were made between October 17, 2019 and February 17, 2022. Accordingly, no advances were made prior to the registration of the mortgage.

Roger

OSLER

Roger Gillott

Partner

416.862.6818 | RGillott@osler.com

Osler, Hoskin & Harcourt LLP | osler.com



From: Andrew Wood <aewood@gfwlaw.ca>

Sent: Thursday, August 01, 2024 2:39 PM

To: Eric Gionet <egionet@gfwwlaw.ca>; Gillott, Roger <RGillott@osler.com>
Cc: sthom@torkinmanes.com; jlong@kmlaw.ca; Wasserman, Marc <MWasserman@osler.com>; Rosenblat, Dave <drosenblat@osler.com>; Disenhouse, Josh <JDisenhouse@osler.com>; Smith, Emma <emsmith@osler.com>; Dick, Marleigh <mdick@osler.com>; Jumaa, Carolin <cjumaa@osler.com>; Noah Goldstein <ngoldstein@ksvadvicory.com>; Murtaza Tallat <mtallat@ksvadvicory.com>; Nicole Maragna <nmaragna@bianchipresta.com>; Domenic Presta <dpresta@bianchipresta.com>; mtamblyn@torkinmanes.com; April Hollebek <ahollebek@gfwwlaw.ca>; Wilson, Sara-Ann <sara.wilson@dentons.com>; Mackinnon Blair, Fraser <fraser.mackinnon.blair@dentons.com>; Lossner, Lisa <llossner@foglery.com>; ian@ontlaw.com; kmovat@foglery.com; jaspal@sanghaconstructionlaw.com; smorris@smartsolutionslaw.ca; hossein@niroomandlaw.com; Erica Rochette <ericar@ontlaw.com>; Vito Scalisi <vito@scalisilaw.ca>; rhoffman@grllp.com; Jonathan Piccin <jpiccin@piccinbottos.com>
Subject: Re: In the Matter of Mapleview Developments Ltd. et al - Court File No.: CV-24-00716511-00CL

Good afternoon Roger,

Thank you for the note- to elaborate on Eric's e-mail below, it appears that most of the funds advance by KingsSett were made **prior** to the registration of its mortgage on December 8, 2022. As such, they are not "advances made in respect of the mortgage" and lose priority to the lien claims. The case that Eric is referring to is [Bianco v. Deem Management Services Limited, 2021 ONCA 859 \(CanLII\)](#).

There are submissions being prepared for tomorrow's attendance but based on the below and the case-cited above, the full \$19,704,333.28 should be reserved.

Thank you,
Andrew

Andrew Wood, *Partner*
awood@gfwwlaw.ca

G | F | W
Gionet Fairley Wood ^{LLP}
Litigation & Advocacy

152 Bayfield Street, Suite 100
Barrie, ON L4M 3B5

Tel: 705-468-1088
Fax: 705-468-1089
Website: gfwwlaw.ca

CONFIDENTIALITY WARNING

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From: Eric Gionet <egionet@gfwlaw.ca>
Sent: Thursday, August 1, 2024 2:26 PM
To: Gillott, Roger <RGillott@osler.com>
Cc: Andrew Wood <awood@gfwlaw.ca>; sthom@torkinmanes.com <sthom@torkinmanes.com>; jlong@kmlaw.ca <jlong@kmlaw.ca>; Wasserman, Marc <MWasserman@osler.com>; Rosenblat, Dave <drosenblat@osler.com>; Disenhouse, Josh <JDisenhouse@osler.com>; Smith, Emma <emsmith@osler.com>; Dick, Marleigh <mdick@osler.com>; Jumaa, Carolin <cjumaa@osler.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Murtaza Tallat <mtallat@ksvadvisory.com>; Nicole Maragna <nmaragna@bianchipresta.com>; Domenic Presta <dpresta@bianchipresta.com>; mtamblyn@torkinmanes.com <mtamblyn@torkinmanes.com>; April Hollebek <ahollebek@gfwlaw.ca>; Wilson, Sara-Ann <sara.wilson@dentons.com>; Mackinnon Blair, Fraser <fraser.mackinnon.blair@dentons.com>; Lossner, Lisa <llossner@foglers.com>; ian@ontlaw.com <ian@ontlaw.com>; kmovat@foglers.com <kmovat@foglers.com>; jaspal@sanghaconstructionlaw.com <jaspal@sanghaconstructionlaw.com>; smorris@smartsolutionslaw.ca <smorris@smartsolutionslaw.ca>; hossein@niroomandlaw.com <hossein@niroomandlaw.com>; Erica Rochette <ericar@ontlaw.com>; Vito Scalisi <vito@scalisilaw.ca>; rhoffman@grllp.com <rhoffman@grllp.com>; Jonathan Piccin <jpiccin@piccinbottos.com>
Subject: Re: In the Matter of Mapleview Developments Ltd. et al - Court File No.: CV-24-00716511-00CL

Advances made prior to mortgage registration lose priority under sub (6) and the Dal Bianco decision!

Sent from Eric Gionet's iPhone

On Aug 1, 2024, at 2:09 PM, Gillott, Roger <RGillott@osler.com> wrote:

Hello all,

Thank you for your emails thus far. Below we have set out our responses to your various inquiries.

A. Timing of Advances

As stated in section 7.1 of the Receiver's Second Report (the "**Report**"), pursuant to s. 78(5) of the *Construction Act*, the Kingsett and Marshall Zehr mortgages lose priority to the lien claimants with respect to any deficiency in the 10% holdback that was to be retained by the Owner (the "**Holdback Deficiency**").

As stated in section 7.1.4. of the Report, the Receiver has confirmed that all advances were made under the Kingsett and applicable MarshallZehr mortgages (the "**Advances**") prior to the date the first construction lien was registered on title, and in section 7.1.5, the Receiver has confirmed that no evidence has been provided that any written notices of lien were received. Therefore, the Advances were not made at a time when a Claim for Lien was registered on title or a notice of lien received. For clarity, and in light of the analysis below, this means that pursuant to section 78(5) and 78(6) of the *Construction Act*, the mortgagees will have priority over the lien claimants for the Advances, other than the maximum of the 10% Holdback Deficiency. As such,

it is our view that the lien claimants cannot claim priority over the mortgages for an amount that exceeds the maximum priority claim of the deficiency in the 10% holdback.

Below is a list of advances and corresponding dates under the mortgages, which are as follows:

1. KingSett Mortgage:

IN0509

- \$29,113,354.00 on October 17, 2019
- \$2,701,888.00 on November 6, 2019
- \$4,023,516.00 on December 18, 2019
- \$909,897.00 on January 29, 2020
- \$2,661,023.00 on July 2, 2020
- \$509,811.00 on July 24, 2020
- \$2,741,975.00 on August 21, 2020
- \$339,325.00 on September 29, 2020
- \$708,343.00 on November 3, 2020
- \$4,129,710.00 on November 30, 2020
- \$2,673,627.00 on February 16, 2021
- \$729,904.00 on May 14, 2021
- \$2,597,807.00 on June 21, 2021
- \$361,567.00 on August 5, 2021
- \$817,460.00 on November 1, 2021
- \$860,913.00 on January 11, 2022
- \$125,880.00 on February 17, 2022

Total: \$56,000,000.00

IN0510

- \$11,500,000.00 on October 17, 2019

Total: \$11,500,000.00

IN5021

- \$8,378,339.56 on January 20, 2020
- \$121,660.44 on July 24, 2020

Total: \$8,500,000.00

IN5022

- \$4,500,000.00 on July 30, 2020

Total: \$4,500,000.00

IN5028

- \$8,437,383.00 on July 30, 2020
- \$408,779.00 on August 26, 2020
- \$413,012.00 on September 29, 2020
- \$759,876.00 on November 3, 2020
- \$2,312,299.00 on February 2, 2021
- \$2,047,993.00 on May 14, 2021
- \$264,486.00 on August 5, 2021
- \$1,807,717.00 on January 11, 2022
- \$611,082.00 on February 7, 2022

TOTAL: \$17,062,627.00

IN5030

- \$2,655,414.60 on August 27, 2020

Total: \$2,655,414.60

2. Assumed Mortgages (as defined in the Stalking Horse Purchase Agreement, which includes the applicable Marshall Zehr mortgages):

- \$2,885,000 on March 31, 2020
- \$10,900,000 on July 15th, 2021
- \$12,000,000 on January 25th, 2022
- \$11,400,000 on August 15th, 2022
- \$2,860,000 on October 25th, 2022
- \$4,100,000 on November 1st, 2022
- \$5,000,000 on November 30th, 2022
- \$1,300,000 on December 20th, 2022

B. Calculation of Maximum Priority Payable

The Receiver served the lien claimants with its Second Report on Friday July 26, 2024 (the “**Report**”). The Report provides the view that the maximum priority claim enjoyed by lien claimants is equal to the amount of any deficiency in the 10% holdback that was to be retained by the insolvent owner, pursuant to sections 78(5) and 78(6) of the *Construction Act*. For clarity, lien claimants are not entitled to priority for the full value of all of their outstanding invoices. Please refer to section 7.1 - Holdback Reserve & Distributions for Priority Payables of the Report for additional information.

Furthermore, it is settled law that in the case of a contractor with a direct contract with the owner, the priority claim for holdback under section 78 is limited to 10% of invoices where the holdback has not already been paid to the lien claimant. In *Dufferin Concrete Products v. Waterbrooke Development Ltd.*, 1992 CarswellOnt 881 (Ont. Ct. (Gen. Div.)), which has been upheld in multiple subsequent cases, the court held that where the lien claimant has a direct contract with the owner, the holdback obligation is 10% of the unpaid contract, rather than 10% of the entire contract, and that “the legislation could have only intended this doubling effect when injured third parties are involved.” Therefore, the lien claimants are limited to a maximum of 10% of invoices in which holdback has not already been paid. Please note the amount currently at Appendix G of the Report is not the settled value of each lien claimants’ priority holdback, rather it is the Receiver’s view of the maximum potential priority payable for each lien claimant.

The Schaeffers Claim for Lien confirms that Schaeffers’ work on the Project began prior to the Kingsett and Marshall Zehr mortgages being registered. Therefore, the mortgages were registered after the date the first lien arose on the Project, and section 78(6), and by extension section 78(5), applies. Therefore, the lien claimants may claim priority over the 10% holdback, but the mortgagees have priority for all other advances, unless any advances were made after a lien was registered or notice of lien received (neither of which appears to have occurred in this case). In light of the application of section 78(5), the lien claimants have priority for the 10% holdback regardless of whether the mortgages were “building mortgages”, so enquiry into the purpose for which the mortgages were registered is not necessary.

C. KingSett and MarshallZehr Documents

We will provide the Kingsett and MarshallZehr documents by way of large file transfer later today.

Please let us know if you have any questions.

Regards,
Roger
<image001.gif>

Roger Gillott

Partner
416.862.6818 | RGillott@osler.com
Osler, Hoskin & Harcourt LLP | osler.com
<image002.jpg>

From: Andrew Wood <awood@gfwlaw.ca>
Sent: Thursday, August 01, 2024 9:47 AM
To: Rosenblat, Dave <drosenblat@osler.com>
Cc: Stewart Thom <>; Jeffrey J. Long <jlong@kmlaw.ca>; Wasserman, Marc <MWasserman@osler.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Murtaza Tallat <mtallat@ksvadvisory.com>; Nicole Maragna <nmaragna@bianchipresta.com>; Domenic Presta <dpresta@bianchipresta.com>; Michael Tamblyn <MTamblyn@torkinmanes.com>; April Hollebek <ahollebek@gfwlaw.ca>; Wilson, Sara-Ann <sara.wilson@dentons.com>; Mackinnon Blair, Fraser <fraser.mackinnon.blair@dentons.com>; Eric Gionet <egionet@gfwlaw.ca>; Lossner, Lisa <llossner@foglers.com>; Ian Latimer <ian@ontlaw.com>; kmovat@foglers.com; jaspal@sanghaconstructionlaw.com; smorris@smartsolutionslaw.ca; hossein@niroomandlaw.com; Erica Rochette <ericar@ontlaw.com>; Vito Scalisi <vito@scalisilaw.ca>; rhoffman@grllp.com; Jonathan Piccin <jpccin@piccinbottos.com>
Subject: Re: In the Matter of Mapleview Developments Ltd. et al - Court File No.: CV-24-00716511-00CL
Importance: High

Good morning Dave,

I am following-up on your e-mail to Jeffrey below - can you direct us to (or re-send) the MZ back-up (perhaps it was only sent to Jeffrey)? Additionally, where can we find the back up documents for the Kingsett Mortgage (including details of the advances made)? If you could direct us to or provide us with the back up documents for that mortgage it would be greatly appreciated.

Andrew

Andrew Wood, *Partner*
awood@gfwlaw.ca

<image007.png>

152 Bayfield Street, Suite 100
Barrie, ON L4M 3B5

Tel: 705-468-1088

Fax: 705-468-1089
Website: gfwlaw.ca

CONFIDENTIALITY WARNING

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From: Rosenblat, Dave <drosenblat@osler.com>
Sent: Friday, July 12, 2024 1:30 PM
To: Jeffrey J. Long <jlong@kmlaw.ca>; Stewart Thom <sthom@torkinmanes.com>
Cc: Wasserman, Marc <MWasserman@osler.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Murtaza Tallat <mtallat@ksvadvisory.com>; Nicole Maragna <nmaragna@bianchipresta.com>; Domenic Presta <dpresta@bianchipresta.com>; Michael Tamblyn <MTamblyn@torkinmanes.com>; April Hollebek <ahollebek@gfwlaw.ca>; Sheryl Huff <shuff@gfwlaw.ca>; Wilson, Sara-Ann <sara.wilson@dentons.com>; Mackinnon Blair, Fraser <fraser.mackinnon.blair@dentons.com>; Eric Gionet <egionet@gfwlaw.ca>; Andrew Wood <awood@gfwlaw.ca>; Lossner, Lisa <llossner@foglers.com>
Subject: RE: In the Matter of Mapleview Developments Ltd. et al - Court File No.: CV-24-00716511-00CL

Thanks Jeff.

As noted in our letter, no alternative bids were received by the applicable deadline. We did receive a proposal that fell short of the requirements of the sales process, including with respect to value, deposit and conditions. We advised the party that provided this of the shortfalls in advance of the LOI deadline and did not receive a qualifying LOI (or any other response) thereafter.

We will provide you with the MZ back-up (will be sent separately via our large file share system).

<image001.gif>

Dave Rosenblat
Partner
416.862.5673 | drosenblat@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

From: Jeffrey J. Long <jlong@kmlaw.ca>
Sent: Thursday, July 11, 2024 4:20 PM
To: Rosenblat, Dave <drosenblat@osler.com>; Stewart Thom <sthom@torkinmanes.com>
Cc: Wasserman, Marc <MWasserman@osler.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>;

Murtaza Tallat <mtallat@ksvadvisory.com>; Nicole Maragna <nmaragna@bianchipresta.com>; Domenic Presta <dpresta@bianchipresta.com>; Michael Tamblyn <MTamblyn@torkinmanes.com>; April Hollebek <ahollebek@gfwlaw.ca>; Sheryl Huff <shuff@gfwlaw.ca>; Wilson, Sara-Ann <sara.wilson@dentons.com>; Mackinnon Blair, Fraser <fraser.mackinnon.blair@dentons.com>; Eric Gionet <egionet@gfwlaw.ca>; Andrew Wood <awood@gfwlaw.ca>; Lossner, Lisa <llossner@foglers.com>

Subject: RE: In the Matter of Mapleview Developments Ltd. et al - Court File No.: CV-24-00716511-00CL

Dave,

Can you please advise if KSV/your office received any other Bids to the Stalking Horse Bid. If so, who provided the Bid, how much was that Bid for and when will we see your analysis of same?

Also, where can we find the back up documents behind the registered Mortgages of Marshall Zehrs? As you know, some of the Lien Claimants intend to challenge said Mortgages such that we require all back up documents for same.

Please let us know... thanks.

Jeffrey

<image008.png> **Jeffrey J. Long ***

Partner

T: +1 416-595-2125 | F: +1 416-204-2892 | E: jlong@kmlaw.ca

Koskie Minsky LLP, 20 Queen Street West, Suite 900, Toronto, ON. M5H 3R3

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** Practising through a professional corporation*

<image009.png> <image010.png>

From: Rosenblat, Dave <drosenblat@osler.com>

Sent: Wednesday, July 10, 2024 10:07 PM

To: Stewart Thom <sthom@torkinmanes.com>

Cc: Wasserman, Marc <MWasserman@osler.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Murtaza Tallat <mtallat@ksvadvisory.com>; Nicole Maragna <nmaragna@bianchipresta.com>; Domenic Presta <dpresta@bianchipresta.com>; Michael Tamblyn <MTamblyn@torkinmanes.com>; April Hollebek <ahollebek@gfwlaw.ca>; Sheryl Huff <shuff@gfwlaw.ca>; Wilson, Sara-Ann

<sara.wilson@dentons.com>; Mackinnon Blair, Fraser <fraser.mackinnon.blair@dentons.com>; Eric Gionet <egionet@gfwlaw.ca>; Andrew Wood <awood@gfwlaw.ca>; Jeffrey J. Long <jlong@kmlaw.ca>; Lossner, Lisa <llossner@foglers.com>

Subject: RE: In the Matter of Mapview Developments Ltd. et al - Court File No.: CV-24-00716511-00CL

Please see attached correspondence.

<image001.gif>

Dave Rosenblat

Partner

416.862.5673 | drosenblat@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

From: Stewart Thom <sthom@torkinmanes.com>

Sent: Tuesday, July 09, 2024 7:28 AM

To: Rosenblat, Dave <drosenblat@osler.com>

Cc: Wasserman, Marc <MWasserman@osler.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Murtaza Tallat <mtallat@ksvadvisory.com>; Nicole Maragna <nmaragna@bianchipresta.com>; Domenic Presta <dpresta@bianchipresta.com>; Michael Tamblyn <MTamblyn@torkinmanes.com>; April Hollebek <ahollebek@gfwlaw.ca>; Sheryl Huff <shuff@gfwlaw.ca>; Wilson, Sara-Ann <sara.wilson@dentons.com>; Mackinnon Blair, Fraser <fraser.mackinnon.blair@dentons.com>; Eric Gionet <egionet@gfwlaw.ca>; Andrew Wood <awood@gfwlaw.ca>; Jeffrey J. Long <jlong@kmlaw.ca>; Lossner, Lisa <llossner@foglers.com>

Subject: RE: In the Matter of Mapview Developments Ltd. et al - Court File No.: CV-24-00716511-00CL

Dave,

Thanks for this communication. There have been recent discussions amongst the lien claimants identified in the initial application materials. There were some questions as to the status of the lien/trust claim process as, while the Receiver's First Report dated May 31, 2024 had indicated that "The Receiver is continuing to review and assess the Construction Liens", none of the lien claimants referenced in the materials or on the call had received any communications to this effect, as of a week or two ago. In my client's case, until last night that continued to be true.

The lien claimants participating on the group call (these being counsel for Foremont Drywall, Sunbelt Rental, Rivervalley Masonry, Home Lumber Inc., Newmar Window, Quality Rugs by its receiver, Alpha Stairs and Railings, North Gate Farms and Con-Drain) were each of the view that it would be preferable if the process for the assessing the quantum and priority of their claims be commenced as early in the process as possible. Many of the claims are substantial, and the impact of having the amounts which may constitute priority claims in the receivership payable from the proceeds of any sale in priority to any claims by the mortgagees tied up in this proceeding for longer than absolutely necessary is something which they collectively hope can be avoided.

Can you please advise as to the Receiver's intentions in this regard? In particular, many of the lien claimants remarked that it appears to frequently be the case in proceedings such as these a reserve will be established for lien claimants in respect of amounts claimed in priority to the claims of the senior secured creditor/mortgagee, with the actual process for determining the quantum and priority of the claims of lien claimants being parked, to be addressed later on in the proceeding. Not infrequently, much later on. At the same time, it is often the case that following completion of the sale process and sale of the lien property, making interim distributions from sale proceeds to the senior secured creditor/mortgagee is prioritized over the advancement of the process for assessing and determining the quantum and priority of claims from parties who are asserting priority over the claims of the secured creditor/mortgagee, such as the lien claimants. While there may be some reasons for this frequently being the case, it does not appear to the lien claimants to be the case that the deferring formal commencement of the lien process is necessary feature, nor do the lien claimants see any reason why the commencement of that process, for distribution purposes, cannot be addressed earlier on in the proceeding. Ideally, I think I speak for all of the forementioned lien claimants when I say that our preference would be that this process be addressed be commenced as soon as possible, with a view to making distribution on account valid claims as early as practicable.

Having said all that, any lien claim process would ideally be conducted in an orderly fashion and would afford the lien claimant parties ample time to prepare the information required by the receiver. After a long period of silence, the closeness in time of the request for the below information/documentation and the almost immediately-following deadline for response are something of a surprise. So while the lien claimants are eager to see the process for assessing their claims commenced, I'm not sure that this exactly what they had in mind.

Can you please advise as to the following:

1. At what point in the proceeding is the Receiver currently contemplating the commencement of a formal lien claim process?
2. While I appreciate the Receiver's outreach to lien claimants for the requested documentation, and while I am sure that all lien claimants will do their level best to provide you with the requested information/documents as soon as possible, I do have a concern about the inclusion of a seeming deadline of July 12 (as in "*in any event by no later than...*") to do so. I query whether it is appropriate to impose a three-day turnaround for submitting the requested information to the receiver, particularly given the size of some of these claims. Counsel may have limited availability in the next three days to complete the requested task. Also, given the time of year it is entirely possible that either counsel or key personnel at the lien claimants could be on holidays or otherwise unavailable – it is approaching mid-July and booking holidays at this time is not uncommon. As such:

1. Can you advise why the July 12, 2024, deadline for submission of the below has been selected and whether it is arbitrary or tied to any event of significance which could impact the rights of the affected parties?

1. Can you advise what the implications will be for any party who is unable to compile the information you have requested within the timeframe imposed or what, if they find themselves in that circumstance, the receiver would have them do?

1. Can you advise as to whether there is any immediate use to which this information is intended to be put by the receiver, or if this request is connected with any relief which is intended to be sought imminently?

1. Given the hurried timeframe for delivery, it is entirely possible that even using best efforts to provide the receiver with accurate information by the stipulated deadline, that claims may need subsequent amendment and/or supporting documentation. I would think that if the request is tied to the establishment of appropriate reserves and seeking authorization to distribute “surplus” funds to the secured creditor/mortgagee, or if the response to the Receiver’s request could otherwise irretrievably impact lien claimants’ rights in this proceeding, the lien claimants should be afforded more the three days to consult with counsel and prepare the response to your specific inquiry. The response time issue may be an issue for some of the lien claimants and may not be for others, but it does not seem to me that it should be an issue *at all* or that the need for such a quick turnaround is driven by circumstances beyond anyone’s control.

I am copying the other lien claimants counsel on this so that hopefully we can have one conversation with all the affected parties, and not ten separate ones.

Thanks,

Stewart Thom

Torkin Manes LLP

Direct: [416-777-5197](tel:416-777-5197)

[<image011.png>](#)

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From: Rosenblat, Dave <drosenblat@osler.com>
Sent: Monday, July 8, 2024 10:36 PM
To: Rosenblat, Dave <drosenblat@osler.com>
Cc: Wasserman, Marc <MWasserman@osler.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Murtaza Tallat <mtallat@ksvadvisory.com>
Subject: In the Matter of Mapleview Developments Ltd. et al - Court File No.: CV-24-00716511-00CL

This is an external email.

Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated March 21, 2024 (the “Appointment Order”), among other things, KSV Restructuring Inc. was appointed as receiver and manager of certain assets, undertakings and property (collectively, the “Property”) of Mapleview Developments Ltd., Pace Mapleview Ltd. and 2552741 Ontario Inc. (collectively, the “Company”) (in such capacity, the “Receiver”).

Pursuant to an order of the Court dated May 30, 2024 (the “Sale Process Order”), the Receiver was authorized to: (i) carry out a sale process (the “Sale Process”) for the Property; and (ii) enter into the Asset Purchase Agreement with Dunsire Homes Inc. dated May 9, 2024 (the “Stalking Horse Purchase Agreement”), which would serve as a “stalking horse bid”. The Stalking Horse Purchase Agreement provides for the payment of “Priority Payables”, as defined therein.

Your client has been identified as a construction lien claimant with respect to the Company’s project at 700-780 Mapleview Drive East, Barrie, Ontario (the “Project”). As counsel to the Receiver, we are assessing certain claims against the Company, including construction lien claims and potential “Priority Payables”.

Please forward to us at your earliest convenience, and in any event by July 12, 2024, the following documents:

1. An accounting of the state of accounts as between your company and the Company on the Project, including:

1. A listing of all invoices rendered on the Project, and the date of each invoice;

 1. An indication of which invoices have been paid, and any that remain unpaid;

 1. Copies of such invoices.
-
2. Any other document(s) or information you wish to bring to our attention.

We may have further information requests, particularly after receipt of the above materials.

Copies of the Appointment Order, the Sale Process Order, the Sale Process and the Stalking Horse Purchase Agreement are available on the Receiver's website, accessible here: [Mapleview Developments Ltd., Pace Mapleview Ltd. and 2552741 Ontario Inc. \(ksvadvisory.com\)](#).

We are available to discuss at your convenience if helpful.

<image001.gif>

Dave Rosenblat
Partner
416.862.5673 | drosenblat@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

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KINGSETT MORTGAGE CORPORATION

-and- MAPLEVIEW DEVELOPMENTS LTD et al

No. CV-24-00716511-00CL

Applicant

Respondents

Ontario
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT
TORONTO

AFFIDAVIT

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Barristers & Solicitors
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Lawyers for the lien claimant,
Capelas Homes Ltd.