

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

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**

**FACTUM
(Deposit Return Protocol Approval)**

January 15, 2025

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TO: THE SERVICE LIST

PART I - OVERVIEW

1. On March 21, 2024, the Ontario Superior Court of Justice (the “**Court**”) appointed KSV Restructuring Inc. as the receiver and manager (in such capacity, the “**Receiver**”) of certain property, assets, and undertakings of Maplevue Developments Ltd. (“**Maplevue**”), Pace Maplevue Ltd., and 2552741 Ontario Inc. (collectively, the “**Debtors**”), including the real estate townhome development known as “Urban North Townhomes” located at the municipal address 700-780 Maplevue Drive East, Barrie, Ontario (the “**Project**”).¹

2. Aviva Insurance Company of Canada (“**Aviva**”), through its administrative agent, Westmount Guarantee Services Inc., has issued certain Tarion Warranty Corporation Bonds in favour of Tarion Warranty Corporation (“**Tarion**”) and insured certain excess deposits received by Maplevue, each in connection with the Project.²

3. On this motion, Aviva seeks an order (the “**DRP Order**”), among other things, approving a Deposit Return Protocol (the “**DRP**”). The approval of the DRP is an essential step in these receivership proceedings (the “**Proceedings**”) and will ensure an orderly and efficient return of deposits paid by the Unit Purchasers in connection with certain pre-sale condominium unit purchase agreements (the “**Units APSs**”) which were terminated pursuant to the Sale Approval Order (as defined below) made in these Proceedings.

¹ Affidavit of Darren O’Sullivan sworn January 13, 2025 (“**O’Sullivan Affidavit**”), Motion Record (“**MR**”), Tab 2, para. 5.

² O’Sullivan Affidavit, MR, Tab 2, para. 1; Third Report of the Receiver dated January 13, 2025 (the “**Third Report**”), section 2.0, para. 5.

4. Aviva respectfully submits that the DRP Order is necessary and appropriate in the circumstances and ought to be granted by this Court. Tarion and the Receiver support the granting of an Order approving of the DRP.³

PART II - SUMMARY OF FACTS

5. The facts relevant to this motion are more fully set out in the O’Sullivan Affidavit and the Third Report of the Receiver.

Background

6. On May 30, 2024, the Court approved a sale process and stalking horse bid (the “**Bid**”) in respect of the Project in these Proceedings. The Bid was ultimately deemed the successful bid in the sale process.⁴

7. On August 16, 2024, the Court made an order (the “**Sale Approval Order**”) approving a sale transaction (the “**Transaction**”) as contemplated in the Bid and vesting in the purchaser the Debtors’ right, title, interest in and to the Project and other purchased assets, free and clear of all encumbrances.⁵

The DRP

8. Pursuant to the Sale Approval Order, upon the closing of the Transaction, the Receiver was entitled to terminate the Units APSs. The Transaction closed on or around August

³ Third Report, section 4.0, para. 1.

⁴ O’Sullivan Affidavit, MR, Tab 2, para. 6.

⁵ O’Sullivan Affidavit, MR, Tab 2, para. 7 and Exhibit “A” (Sale Approval Order).

23, 2024.⁶ The Units APSs were terminated and disclaimed by the Receiver pursuant to the Sale Approval Order.⁷

9. When the Transaction was approved by the Court, the purchasers party to the Units APSs with respect to townhomes in Phase 1 and Phase 4A and 4B, classified as “stacked townhomes” by Maplevue (the “**Unit Purchasers**”), were advised that the deposits paid pursuant to their Units APSs were insured, and that the Unit Purchasers would be able to recover the full amount of their deposits in due course.⁸

10. Since that time, Tarion and Aviva, in consultation with the Receiver, have negotiated and agreed upon the DRP to facilitate the return of deposits to the Unit Purchasers.⁹

11. Key provisions of the DRP include, among other things:

- (a) a streamlined, organized process for the Unit Purchasers which will result in the return of deposits;
- (b) a payment from Aviva to Tarion in the amount of \$6,420,000 in full satisfaction of the Tarion bonds issued for Phases 4A and 4B of the Project, which amount will be administered by Tarion pursuant to the DRP;
- (c) the transfer of all deposits and accrued interest in the deposit trust accounts by Devry Smith Frank LLP (the escrow agent for the Project) to Aviva or its authorized

⁶ Third Report, section 2.0, para. 7.

⁷ O’Sullivan Affidavit, MR, Tab 2, para. 8; Third Report, section 3.0, para. 1.

⁸ O’Sullivan Affidavit, MR, Tab 2, para. 9; Third Report, section 3.0, para. 2.

⁹ O’Sullivan Affidavit, MR, Tab 2, para. 10 and Exhibit “B” (Deposit Return Protocol); Third Report, section 3.0, para. 3.

agent, which amount will be administered by Aviva or its authorized agent pursuant to the DRP;

- (d) mutual monthly reporting obligations of Aviva and Tarion regarding status of deposits, including confirmations of deposit releases and reductions in applicable bonds; and
- (e) an exchange of appropriate releases and statutory declarations in connection with the Unit APSs and the return of deposits.

12. Aviva, Tarion, and the Receiver intend to carry out the terms of the DRP immediately following its approval by the Court. Notice of this motion has been provided to the Unit Purchasers and to the Service List in these Proceedings, including all known, potential secured creditors of the Debtors.

PART III - ISSUES, LAW & ARGUMENT

13. The sole issue to be determined on this motion is whether this Court should grant the DRP Order approving the DRP and granting certain ancillary relief.

The DRP Should be Approved

14. Protocols to return deposits paid by counterparties to terminated pre-sale purchase agreements are common in real estate insolvencies and are frequently approved by the Court.¹⁰

¹⁰ See, for example, [Discharge and Ancillary Relief Order of Justice Cavanagh](#) dated December 19, 2023 at para. 5 in *1473124 Ontario Limited v. LDI Lakeside Developments Inc.*, Court File No. CV-23-00694059-00CL; [Deposit Return Procedure Order of Justice McEwen](#) dated April 7, 2021 in *BCIMC Construction Fund Corporation et al. v. 33 Yorkville Residences Inc. et al.*, Court File No. CV-20-00637297-00CL; [Deposit Return Procedure Order of Justice Hailey](#) dated February 18, 2021 in *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge et al.*, Court File No. CV-20-00637301-00CL; and [Deposit Return Protocol Approval Order by Justice Penny](#) dated October 16, 2024 in *MCAP Financial Corporation v. Vandyk-Backyard Kings Mill Limited and Vandyk-Backyard Humberside Limited*, Court File No. CV-23-00710267-00CL.

Such approval allows individual purchasers to obtain their deposits in a fair and sensible fashion, and provides guidance and certainty to all parties involved.

15. The Court’s jurisdiction to approve the DRP comes from: (a) its inherent jurisdiction; (b) section 101(2) of the *Courts of Justice Act* (Ontario), which states that an order under this section may include “such terms as are considered just”; and (c) section 243(1)(c) of the *Bankruptcy and Insolvency Act* (Canada) which states that a court may authorize “any other action that the court considers advisable.” The expansive wording of section 243(1)(c) gives judges the “broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that arise” in the context of a Court-ordered receivership.¹¹ This broad jurisdiction permits the Court to do not only what “justice dictates” but also what “practicality demands”.¹²

16. In the present case, practicality demands the approval of the DRP because:

- (a) it is needed to create an orderly and efficient deposit return process;
- (b) it will minimize delay and uncertainty among the parties involved;
- (c) it will ensure that Unit Purchasers see the return of their deposits as quickly as possible; and
- (d) it will allow the Receiver, an officer of the Court, to participate in the DRP to the extent which the parties require.

¹¹ *Peace River Hydro Partners v Petrowest Corp.*, [2022 SCC 41](#) at [para 148](#), citing *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, [2021 ABCA 226](#) at [para 20](#).

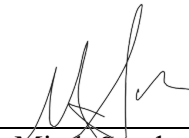
¹² *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) at [para 57](#); *Canada (Minister of Indian Affairs and Northern Development) v Curragh Inc.*, [1994 CanLII 7468](#) (ONSC) at [para 16](#).

17. The terms of the DRP are reasonable and appropriate and are substantially the same as those found in other deposit return protocols used in similar situations.¹³

PART IV - RELIEF SOUGHT

18. For the reasons set out above, Aviva respectfully requests that this Court grant the proposed DRP Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of January, 2025.



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¹³ Third Report, section 3.0, para. 5. See also, for example, [Deposit Return Protocol Approval Order by Justice Penny](#) dated October 16, 2024 & the related Deposit Return Protocol, attached as Appendix “B” to the [Second Report of the Receiver](#) in *MCAP Financial Corporation v. Vandyk-Backyard Kings Mill Limited and Vandyk-Backyard Humberside Limited*, Court File No. CV-23-00710267-00CL.

SCHEDULE “A”

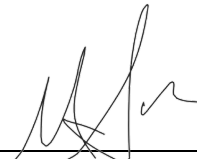
LIST OF AUTHORITIES

1. [Discharge and Ancillary Relief Order of Justice Cavanagh](#) dated December 19, 2023 at para. 5 in *1473124 Ontario Limited v. LDI Lakeside Developments Inc.*, Court File No. CV-23-00694059-00CL
2. [Deposit Return Procedure Order of Justice McEwen](#) dated April 7, 2021 in *BCIMC Construction Fund Corporation et al. v. 33 Yorkville Residences Inc. et al.*, Court File No. CV-20-00637297-00CL
3. [Deposit Return Procedure Order of Justice Hainey](#) dated February 18, 2021 in *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge et al.*, Court File No. CV-20-00637301-00CL
4. *Peace River Hydro Partners v Petrowest Corp.*, [2022 SCC 41](#)
5. *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, [2021 ABCA 226](#)
6. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#)
7. *Canada (Minister of Indian Affairs and Northern Development) v Curragh Inc.*, [1994 CanLII 7468](#) (ONSC)
8. [Deposit Return Protocol Approval Order by Justice Penny](#) dated October 16, 2024 & [Second Report of the Receiver, Appendix “B”](#) in *MCAP Financial Corporation v. Vandyk-Backyard Kings Mill Limited and Vandyk-Backyard Humberside Limited*, Court File No. CV-23-00710267-00CL.

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date January 15, 2025



Signature

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

[Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3](#)

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

[Courts of Justice Act, R.S.O. 1990, c. C.43](#)

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

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

KINGSETT MORTGAGE CORPORATION

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

Applicant

Respondents

Court File No. CV-24-00716511-00CL

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

Proceeding commenced at Toronto

**FACTUM
(Deposit Return Protocol Approval)**

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