



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-698576-00CL
CV-23-698632-00CL
CV-23-698395-00CL
CV-23-699067-00CL
CV-23-698637-00CL

DATE: April 2, 2024

NO. ON LIST: 5-9

TITLE OF PROCEEDING: KINGSETT MORTGAGE CORPORATION AND
DORR CAPITAL CORPORATION
v.
STATEVIEW HOMES et al

BEFORE JUSTICE: W.D. BLACK J.

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

| Name of Person Appearing | Name of Party | Contact Info |
|------------------------------|----------------------------------------|--------------------------------------|
| David Sterns Denna Jalili | The Proposed Class | dsterns@sotos.ca djalili@sotos.ca |
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| Chad Kopach | Dorr Capital in the Highview | ckopach@blaney.com |
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For Defendant, Respondent, Responding Party, Defence:

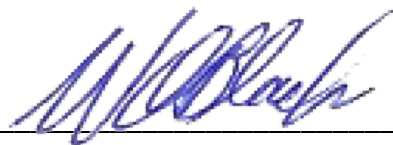
For Other, Self-Represented:

| Name of Person Appearing | Name of Party | Contact Info |
|------------------------------|------------------------------|-------------------------------------------------------------------|
| Dan Rosenbluth Jeff Larry | KSV Restructuring (Receiver) | daniel.rosenbluth@paliarerland.com jeff.larry@paliarerland.com |
| Alan Merskey | The Receiver | amerskey@cassels.com |

ENDORSEMENT OF JUSTICE BLACK:

- [1] The parties were before me for another case conference in this matter, in which I have recently presided over a motion and most recently a case conference on March 14, 2024.
- [2] The Proposed Class seeks (and sought on March 14) to schedule its motion for an adjudication of the homebuyers' purported statutory trust claims under the *Condominium Act* (the "Full Motion").
- [3] The original hearing of the Full Motion was adjourned to ensure that all potentially interested parties were duly served and on notice.
- [4] At the March 14 case conference, at which the Proposed Class had intended to schedule a hearing date for the Full Motion, counsel for the Receiver (in two of the projects at issue), sought an adjournment, to which all parties ultimately agreed, to allow the Receiver to consider its position relative to the valuation sought by the Proposed Class as part of the relief in the Full Motion. Counsel for the Receiver also mentioned the possibility of a motion for security for costs.
- [5] At the case conference today, counsel for the Receiver advised that the Receiver does intend to bring a motion for security for costs, and a second motion (the "Threshold Motion"), for a threshold determination as to whether the Proposed Class should be permitted to pursue its motion against those estates in which funds have already been distributed, pursuant to a Distribution Order (in each case), containing provisions (the "Free and Clear Provisions"), providing that the distribution is "free and clear" of various interests including deemed trusts (whether contractual, statutory or otherwise).
- [6] During the discussion at the case conference, the possibility was raised that the need for a security for costs motion might be obviated if counsel for the Proposed Class were to give an undertaking to pay to the responding parties any costs that may be awarded by the Court against the proposed representative plaintiff (consistent with an indemnity routinely given by counsel in the class action setting).
- [7] At the conclusion of the case conference, it was agreed that, with respect to that issue, counsel for the Proposed Class would consider his position regarding the suggested undertaking, and would advise the parties and the court of his conclusion within the next couple of days.
- [8] Counsel in fact wrote to the court the next day, April 3, 2024, and advised that, "solely to avoid the cost and delay inherent in a security for costs motion", the law firm (Sotos LLP) "undertakes to pay directly to the responding parties any costs that are awarded by the court against [the representative plaintiff] following the outcome of her motion currently before the court, after the determination of any appeal therefrom".
- [9] That leaves the question of the Threshold Motion, and whether or not it should proceed separately from and in advance of the Full Motion.
- [10] The Receiver argues that a determination of the effect of the completion of distribution of funds in the context of the Free and Clear Provisions, by way of the Threshold Motion, will address an important and free-standing issue, which, if the Receiver is successful, will obviate the need for the Receiver potentially to tender valuation evidence and other evidence on behalf of estates in which there are no longer any funds (two of the four estates at issue).
- [11] The Receiver also argues that the Full Motion represents a collateral attack on the Receivership.

- [12] The Proposed Class characterizes the Threshold Motion as a further attempt by the Receiver to “bifurcate” the proceedings. It argues that it is more efficient for the court to first adjudicate the merits of the Proposed Class’ trust claim under the *Condominium Act* – i.e., to decide the Full Motion – before considering whether the Free and Clear Provisions constitute a valid defence to the putative trust claims in the Full Motion.
- [13] It argues that the Receiver distributed funds prematurely, and in the face of an explicit query from Osborne J., earlier on in these proceedings, as to whether the Receiver might need to hold back amounts to deal with the claims now embodied in the Full Motion.
- [14] Finally, the Proposed Class asserts that there is urgency to hear the Full Motion, inasmuch as there is a case conference scheduled before Morgan J. on June 27, 2024, to determine next steps in the class action.
- [15] I am hard-pressed to see urgency to determine the trust claims simply on the basis that there is a case conference scheduled in the class action in late June.
- [16] Moreover, I expect that the almost three months between now and then should be sufficient for a determination of the Threshold Motion and the Full Motion.
- [17] I also see benefit in the Threshold Motion being adjudicated on its own, before the hearing of the Full Motion.
- [18] The outcome of the Threshold Motion will clarify and potentially streamline the issues to be addressed at the Full Motion. It will likely determine the number of parties (at least in terms of estates) properly the subject of the Full Motion, and, inasmuch as the court will necessarily determine the effect of the Free and Clear Provisions, it will narrow and inform the argument at the Full Motion on that important issue as well.
- [19] I am also persuaded that the potential savings of time and resources to the Receiver and two or more of the estates at issue, justifies addressing the Threshold Motion as an initial matter.
- [20] As such, I direct the parties to discuss and agree on a timetable and return date for the Threshold Motion, between now and May 24. The parties may also provisionally schedule the return date for the Full Motion between May 24 and the end of June.



W.D. BLACK J.

DATE: April 9, 2024