



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-23-00698395-00CL

DATE: Thurs. Feb. 15th, 2024

REGISTRAR: Debbie DaCosta

NO. ON LIST: 1@10am

TITLE OF PROCEEDING: **ATRIUM MORTGAGE INVESTMENT
CORPORATION ET. AL. v STATEVIEW HOMES (NAO TOWNS
II) INC. ET. AL.**

BEFORE Justice: **Black**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

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For Other, Self-Represented:

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Tony Ciccone	Purchaser NAO II	tciccone@rogers.com

ENDORSEMENT OF JUSTICE:

- [1] This matter was scheduled before me for consideration and approval of the Receiver’s Seventh Report, for an Approval and Vesting Order relative to an agreement of purchase and sale between the Receiver, as vendor, and 1000707996 Ontario Inc. as purchaser (the “Agreement”), and for various related relief, including a sealing Order with respect to confidential appendices to the Receiver’s Seventh Report, and approval of the Receiver’s fees and that of its counsel.
- [2] Late in the afternoon of the day before the motion was heard, I received materials from counsel on behalf of a putative class of homebuyers (the “Class”) in a class action against the directors and officers of the Stateview corporations.
- [3] The materials consisted of the Class’ cross-motion record, and a factum in support of that motion. In simple terms, the Class claims a trust-based priority over certain funds advanced by homebuyers by way of deposits.
- [4] In its materials in support of the relief sought before me today, the Receiver had referred to and described the Class and its position, and had advised that, in the Receiver’s view, the claims asserted by the Class are materially identical to claims asserted by Tarion Warranty Corporation (“Tarion”), which claims were dismissed by Steele J. on December 22, 2023 (the “Tarion Decision”). As a result, the Receiver in its factum described the purported trust claims by the Class as “meritless”, and that therefore there is “no basis to delay the proposed distributions on account of the trust claims asserted in the Proposed Class Action.”
- [5] In fairness, the Receiver in its factum does not fully engage with all of the arguments set out in the factum on behalf of the Class, including for example arguments about trusts arising under the *Condominium Act*, and about the appropriate treatment of deposits relative to common areas.
- [6] That is presumably because the Receiver, like the Court, did not receive the Class’ materials until the afternoon before the motion.
- [7] In the result, the arguments advanced by the Class go beyond, and more in depth, than what the Receiver anticipated (or could have anticipated) in its factum.
- [8] In the circumstances, in my view, a fuller record or at least fulsome arguments on both sides is required, and so we discussed a way of dealing with the Class’ cross-motion on an expedited basis.
- [9] There was some passing debate about whether or not the issues raised in the Class’ factum, and in particular the question of whether or not its positions on the issues are foreclosed by the Tarion Decision, is properly described as a “threshold issue”. In my view the nomenclature is not significant, and I confirm that there is no intent to formally bifurcate. The idea is to address the Class’ positions, and the result will have an impact on next steps in the receivership.

- [10] In terms of the schedule, we have agreed on a date for the return of the (cross)motion for half a day on March 5, 2024. The hearing will be in person.
- [11] In the meantime, the Receiver's counsel will advise by Tuesday February 20, 2024, whether or not the Receiver will file any responding materials (to the Class' cross-motion) and, if so, will deliver any such materials by Friday, February 23, 2024. If the Class wishes to file reply materials, it is to do so by February 28, 2024. The Receiver will file its factum by March 1, 2024. If there are any procedural concerns arising, I may be reached via my judicial assistant (lorie.waltenbury@ontario.ca) or, since Ms. Waltenbury will be away in the near term, via Roxanne.johnson@ontario.ca). If there are any such concerns, we can convene a conference (via Zoom) early in a day.
- [12] I am also granting the approval and vesting Order sought by the Receiver relative to the agreement of purchase and sale referred to above, the sealing Order, and the Ancillary Orders, with the proviso that, to account for the value of the claim that the putative class asserts should be held back from the proceeds of sale pursuant to the Agreement, an additional hold-back of \$1,523,000.00 should be included.
- [13] Subject to that additional hold-back there is no opposition to the relief sought by the Receiver, and no basis not to grant that Relief.
- [14] Accordingly, subject to the minor revisions discussed (and now incorporated by the Receiver within the Orders), Orders are to issue as sought by the Receiver.



W.D. Black J.