

Court File No. CV-23-00698576-00CL  
CV-23-00698395-00CL  
CV-23-00698632-00CL  
CV-23-00699067-00CL

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

B E T W E E N:

KINGSETT MORTGAGE CORPORATION and DORR CAPITAL CORPORATION  
Applicant

and

STATEVIEW HOMES (MINU TOWNS) INC., STATEVIEW HOMES (NAO TOWNS)  
INC., STATEVIEW HOMES (ON THE MARK) INC., TLSFD TAURASI HOLDINGS  
CORP. and STATEVIEW HOMES (HIGH CROWN ESTATES) INC.  
Respondent

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ATRIUM MORTGAGE INVESTMENT CORPORATION and DORR CAPITAL CORPORATION  
Applicant

and

STATEVIEW HOMES (NAO TOWNS II) INC., DINO TAURASI and CARLO TAURASI  
Respondent

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DORR CAPITAL CORPORATION  
Applicant

and

HIGHVIEW BUILDINGS CORP INC.  
Respondent

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-2-

MERIDIAN CREDIT UNION LIMITED

Applicant

and

STATEVIEW HOMES (ELM & CO) INC.

Respondent

**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**

**AIDE MEMOIRE OF THE PROPOSED REPRESENTATIVE PLAINTIFF / MOVING  
PARTY  
(Case Conference Appointment – April 2, 2024)**

**SOTOS LLP**

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Lawyers for the Moving Party

**TO: THE SERVICE LIST**

1. This is the parties' second attempt to schedule the hearing for the adjudication of the homebuyers' statutory trust claims under the *Condominium Act* (the "**Main Motion**"), after the original hearing was adjourned to ensure all potentially interested parties were duly served.

2. Unfortunately, the Receiver once again seeks to delay the adjudication of the homebuyers' statutory trust claims under the *Condominium Act*, by requesting that two further motions be scheduled in advance of the Main Motion. There is no merit to either of the motions the Receiver seeks to schedule in advance of the Main Motion. Accordingly, the Proposed Representative Plaintiff and Moving Party (the "**Moving Party**") asks that Your Honour schedule the hearing for the Main Motion for April 26, 2024 or as soon as possible thereafter.

### **Recent History of These Proceedings**

3. A case conference was scheduled for March 14, 2024 (the "**First Case Conference**"), for the purpose of setting a new timetable and hearing date for the Main Motion. Prior to the First Case Conference, the Moving Party canvassed dates with the Court for Your Honour's availability to hear the half-day motion, and asked for the availability of counsel to the Receiver and secured creditors. Counsel for opposing parties confirmed their availability for April 26, 2024.

4. On March 12, 2024, the Moving Party subsequently suggested a proposed timetable to opposing counsel for the delivery of materials. Counsel for the Moving Party did not hear back from opposing counsel until the eve of the First Case Conference, on March 13, 2024 via e-mail from counsel to the Receiver, Daniel Rosenbluth.

5. In his e-mail, Mr. Rosenbluth stated that the Receiver was reconsidering its opposition to the valuation relief claimed by the Moving Party, but required additional time to determine whether it would be in a position to so, and if so, on what terms. Specifically, Mr. Rosenbluth stated that extra time was needed to determine “whether that evidence will be available and the timeline for producing it”. At the end, Mr. Rosenbluth briefly mentioned the issue of security for costs.

6. Relying on what they thought was the Receiver’s good-faith reason for adjourning the First Case Conference, counsel for the Moving Party agreed to the adjournment, expecting that the time will be spent by the Receiver to canvass potential experts and/or discuss terms for the valuations. On March 27, 2024, the Receiver advised that it would be seeking to schedule a security for motion and a second motion it frames as “preliminary” to the Main Motion. The Receiver also advised that it had not taken steps towards determining its ability to value the common elements.

### **Issues and Analysis**

7. The Moving Party’s view is that the Receiver’s about-face on its promise to earnestly consider its position on the valuation issue is not only a breach of the fiduciary duty it owes the Homebuyers (i.e., by further delaying the right of the homebuyers to have their claims in the Projects decided by the Court), it contradicts the express representations the Receiver made to her, and to Your Honour, as to the purpose of this most recent adjournment.

8. Security for Costs Issue: In any event, the Receiver’s concerns regarding the Moving Party’s ability to pay any adverse costs of the motion are meritless. As is customary in most class actions, class counsel provides an indemnity to representative plaintiffs for any adverse costs that may be awarded against them. This case is no different – Sotos LLP has, as a term of its retainer with the Moving Party, provided an indemnity for any adverse costs she may ordered to pay.

9. Preliminary Motion Issue: The Receiver seeks, for a second time, to bifurcate these proceedings, this time, on the basis that two of the Projects (Minu Towns and High Crown) have no assets as a result of the Receiver's faulty decision to completely distribute the sale proceeds. The Moving Party strongly disagrees with the merits of bifurcating the Main Motion for the following reasons:

- (a) It is dubious that this is in fact a preliminary question – if there is no valid trust claim that primes the secured creditors' interests in Minu Towns or High Crown, then the question as to whether any recovery in those Projects is viable is rendered moot. Therefore, it is more efficient for the Court to first adjudicate the merits of the trust claim under the *Condominium Act*. If the Receiver wants to raise the issue of the language of the Distribution Orders for Minu Towns and High Crown as a defence to the homebuyers' claims in the Main Motion, it is free to do so.
- (b) It is unclear how the Receiver is able to finance the participation of Minu Towns and High Crown's participation in its proposed preliminary motion but is at the same time unable to finance their participation in the Main Motion. Whatever financing the Receiver is able to conjure to fund the participation of Minu Towns and High Crown in its proposed preliminary motion can also be used to fund its participation in the Main Motion.
- (c) The Third, the Receiver cannot rely on its own error in prematurely distributing the sale proceeds of Minu Towns and High Crown as a basis for evading the adjudication of trust claims in those Projects. The Receiver was repeatedly advised of the Homebuyers' intentions to pursue trust claims in the Projects, and represented to Justice Osborne that a second motion after the Tarion motion may be required to adjudicate those trust claims. At paragraph 25 of His Honour's endorsement, Justice Osborne explicitly states the Receiver may need to holdback amounts to potentially satisfy the Condo Act Claims. The Receiver has only itself to blame for its erroneous reliance on Justice Steele's decision as a complete answer to the Condo Act Claims. Its error no way shields it from responding to trust claims it knew had yet to be decided by the Court or settled with the Moving Party.

10. Finally, there is urgency to the adjudication of these claims. There is an ongoing class action against the directors and officers of the Stateview companies and their spouses, for, *inter alia*, knowing receipt and knowing assistance. A case conference scheduled for June 27, 2024, before Justice Morgan to decide the next steps of the class action. Any findings of trust (or lack thereof) by this Court will play a critical role in those proceedings.

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***ONTARIO***  
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PROCEEDING COMMENCED AT TORONTO

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**AIDE MEMOIRE OF THE MOVING PARTY**

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