

Court File No.: CV-23-00698637-00CL
Court File No.: CV-23-00699067-00CL
Court File No.: CV-23-00698632-00CL

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

BETWEEN

DORR CAPITAL CORPORATION Applicant
- and -

STATEVIEW HOMES (BEA TOWNS) INC. Respondent

.....

MERIDIAN CREDIT UNION LIMITED Applicant
- and -

STATEVIEW HOMES (ELM & CO.) INC. Respondent

.....

DORR CAPITAL CORPORATION Applicant
- and -

HIGHVIEW BUILDING CORP INC. Respondent

.....

**FACTUM OF THE RECEIVER
(Motion re: Termination/Disclaimer of Pre-Sale Purchase Agreements)**

March 13, 2024

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TO: THE SERVICE LIST

PART I. NATURE OF THIS MOTION

1. This is a motion by the Receiver (defined below) seeking the approval of the termination and disclaimer of certain pre-sale purchase agreements in order to facilitate claims by the affected homebuyers for deposit reimbursement from Tarion Warranty Corporation (“**Tarion**”). The Receiver has coordinated with Tarion and understands that Tarion is supportive of this motion.
2. On May 2, 2023, this Court made an Order (the “**May 2nd Receivership Order**”) appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (the “**Receiver**”) of the property, assets and undertakings of Stateview Homes (BEA Towns) Inc. (“**BEA Towns**”) and Highview Building Corp Inc. (“**Highview**”).¹
3. On May 18, 2023, this Court made another Order (the “**May 18th Receivership Order**” and together with the May 2nd Receivership Order, the “**Receivership Orders**”) appointing KSV as Receiver of the property, assets and undertakings of Stateview Homes (Elm & Co) Inc. (“**Elm & Co**” and together with BEA Towns and Highview, the “**Debtor Companies**”).
4. At the same time, this Court made separate orders appointing KSV as receiver and manager of other entities in the Stateview Group of Companies (the “**Stateview Group**”).²

¹ Eighth Report of KSV Restructuring Inc. dated March 13, 2024 (the “Eighth Report”) at section 1.1(c).

² Eighth Report at section 1.

5. Each of the Debtor Companies is a single-purpose real estate development company that owns (or owned) a specific project located in Southern Ontario.³
6. BEA Towns is a single-purpose real estate development company that owns real property municipally known as 189 Summerset Drive, Barrie, Ontario (the “**BEA Towns Real Property**”).⁴
7. Elm & Co is also a single-purpose real estate development company that owns real property municipally known as 12942 York Durham Line, Stouffville, Ontario (the “**Elm & Co Real Property**”).⁵
8. Highview is a single purpose real estate development company that owned the Highview real property, which is comprised of properties municipally known as 89 and 99 Nashville Road, Kleinberg, Ontario (the “**Highview Real Property**”).⁶
9. On June 5, 2023, this Court made an order (the “**Sale Process Order**”) to, among other things: (i) approve a sale process in respect of the property of the Stateview Group companies in receivership, including the Debtor Companies (the “**Sale Process**”), and (ii) authorize the Receiver to conduct the Sale Process.⁷
10. The sale of the Highview Real Property was approved by the Court on September 29, 2023, and the sale closed on October 31, 2023.⁸

³ Eighth Report at section 1.3.

⁴ Eighth Report at section 2.2(a).

⁵ Eighth Report at section 2.2(c).

⁶ Eighth Report at section 2.2(b).

⁷ Eighth Report at section 1.4.

⁸ Eighth Report at section 3.2(1).

11. The Sale Process remains ongoing in respect of the BEA Towns Real Property and the Elm & Co Real Property. The Receiver has been carrying out the Sale Process in accordance with the Sale Process Order, but no acceptable offers have been received as of the date of the Eighth Report.⁹
12. In each of the sales completed to date in respect of the real property at issue in the other Stateview Group receiverships, the Receiver sought and obtained (on an unopposed basis) orders authorizing the termination/disclaimer of all existing pre-sale purchase agreements with prospective homebuyers.
13. The principal purposes of the disclaimer orders have been twofold: (i) to facilitate the sale of the real property given that purchasers have been unwilling to assume the homebuyer agreements as part of their acquisition of the real property; and (ii) to enable homebuyers to make claims to Tarion for the reimbursement of part or all of their deposits.
14. In the context of ongoing efforts to sell the BEA Towns Real Property and the Elm & Co Real Property, the Receiver now comes to Court seeking authority to terminate/disclaim the relevant homebuyer agreements in advance of a sale. This is for the benefit of the homebuyers in question because the homebuyers cannot make claims to Tarion until their agreements have been terminated.
15. In addition, despite the sale of the Highview Real Property by the Receiver, the Receiver seeks authority from the Court to terminate/disclaim homebuyer

⁹ Eighth Report at section 3.1.

agreements which were not terminated/disclaimed along with the sale of the Highview Real Property. The Receiver understands that Tarion may already be permitting claims from the Highview purchasers despite the absence of a formal disclaimer being in place. The Receiver nonetheless seeks this order out of an abundance of caution and for the benefit of the homebuyers in the Highview project.

16. The Receiver has coordinated with Tarion prior to bringing this motion and understands that Tarion is supportive of the relief sought.

PART II. SUMMARY OF FACTS

A. *The Sale Process*

17. Pursuant to the Sale Process Order, the Receiver retained realtors to list for sale the real property owned by the Stateview Group companies in receivership.
18. Colliers International (“**Colliers**”) was retained to list the BEA Towns Real Property and the Highview Real Property. Cushman & Wakefield (“**Cushman**”) was retained to list the Elm & Co Real Property.¹⁰
19. Colliers launched the sale process for the BEA Real Property on June 20, 2023, and Cushman launched the sale process for the Elm & Co Real Property on June 12, 2023. Notwithstanding extensive efforts to sell both properties, each currently remains unsold.¹¹

¹⁰ Eighth Report at section 3.1.1.

¹¹ Eighth Report at section 3.1.2.

B. Pre-Sale Purchasers and Tarion Deposit Coverage

20. Each of the Debtor Companies entered into agreements of purchase and sale (the “**Pre-Sale Purchase Agreements**”) with several purchasers (the “**Pre-Sale Purchasers**”) of residential units on their respective projects.¹²
21. Tarion provides home buyer deposit coverage of 10% of the purchase price of a freehold unit up to a maximum of \$100,000 provided that the purchase price is greater than \$600,000.
22. Typically, pre-sale purchasers are only able to file deposit refund claims with Tarion in defined circumstances which, generally, require the completion of a transaction where the purchaser of the real property declines to assume the Pre-Sale Purchase Agreements.¹³
23. In this case, given the uncertainty regarding the timing to complete a sale of the BEA Towns Real Property and the Elm & Co Real Property, the Receiver has negotiated with Tarion the terms of a statutory declaration (the “**Statutory Declaration**”) that will: (i) facilitate the termination of the Pre-Sale Purchase Agreements; and (ii) enable the Pre-Sale Purchasers to file a claim with Tarion notwithstanding that the applicable real properties have not yet been sold.¹⁴

¹² Eighth Report at section 1.0.6.

¹³ Eighth Report at section 3.4.1.

¹⁴ Eighth Report at section 3.4.3.

24. The Statutory Declaration requires the Receiver to terminate the BEA Towns and Elm & Co Pre-Sale Purchase Agreements.¹⁵
25. As such, the Receiver brings this motion in order to obtain the relief that will permit the BEA Towns and Elm & Co Pre-Sale Purchasers to move forward with their Tarion claims.
26. With respect to Highview, the relevant Pre-Sale Purchase Agreements were not terminated at the time of the sale, nor were they assumed by the purchaser.¹⁶ It was the Receiver's understanding at the time that there were no extant purchase agreements, having been advised by the Stateview Group that there had already been mutual termination agreements executed in respect of each purchase agreement in connection with the prior development on the site, known as the "Enclave".¹⁷
27. However, since that time, certain Pre-Sale Purchasers have advised the Receiver that they did not receive a return of their deposits, nor did they receive additional compensation as contemplated in the Termination Agreements.¹⁸
28. The Receiver understands that, notwithstanding that there has not been a formal termination/disclaimer of the Highview Pre-Sale Purchase Agreements, Tarion is already accepting claims for deposit refunds by Highview Pre-Sale Purchasers.

¹⁵ Eighth Report at section 3.4.3.

¹⁶ Eighth Report at section 3.2.

¹⁷ Eighth Report at section 3.2.

¹⁸ Eighth Report at section 3.2.

29. Nevertheless, out of an abundance of caution, the Receiver is seeking authorization to terminate the Highview Pre-Sale Purchase Agreements to ensure the Pre-Sale Purchasers are not prejudiced by the absence of a formal disclaimer.

PART III. STATEMENT OF ISSUES, LAW & AUTHORITIES

30. The issues on this motion are:
- (a) whether this Court should approve the Eighth Report and the activities therein; and
 - (b) whether this Court should authorize the Receiver to terminate/disclaim the Pre-Sale Purchase Agreements.

A. *The Court should approve the Eighth Report and the Receiver's activities described therein*

31. The activities of the Receiver described in the Eighth Report (which, generally, are limited to addressing the issues summarized above) were all undertaken in good faith pursuant to the Receiver's duties and powers set out in the Receivership Order and Sale Process Order and were, in each case, in the best interest of the Debtor Companies' stakeholders generally, including the Pre-Sale Purchasers.
32. The Receiver therefore respectfully submits that the Eighth Report and the activities described therein should be approved.

B. This Court should authorize the Receiver to terminate and disclaim the Pre-Sale Purchase Agreements

33. The Court's jurisdiction to direct a receiver to disclaim pre-sale purchase agreements in the context of receivership sales of real property developments is well established.¹⁹ Disclaimers are a valuable tool by which a receiver can maximize the value of the assets of the estate for the benefit of the stakeholders.²⁰
34. The considerations for determining whether a Court should authorize a receiver to disclaim pre-sale purchase agreements were set out by Justice Fitzpatrick of the Supreme Court of British Columbia in *Forjay Management*:
- (a) the respective legal priority positions as between the competing interests;
 - (b) whether a disclaimer would enhance the value of the assets, and, if so, whether a failure to disclaim would amount to a preference in favour of one party; and
 - (c) if a preference would arise, whether the party seeking to avoid a disclaimer has established that the equities support that result.²¹
35. On August 18, 2023 and on September 14, 2023, this Court authorized the Receiver to disclaim pre-sale purchase agreements relating to Stateview Homes (Hampton Heights) Inc. and On the Mark, respectively, each of which is an entity within the Stateview Group.²² On February 15, 2024, this Court authorized the

¹⁹ *Forjay Management Ltd v 0981478 BC Ltd*, [2018 BCSC 527](#) at [paras 131-132](#) [*Forjay Management*]; *Peoples Trust Company v Censorio Group (Hastings & Carleton) Holdings Ltd*, [2020 BCSC 1013](#) at [para 57](#) [*Peoples Trust*]; *Firm Capital Mortgage Fund Inc v 2012241 Ontario Ltd*, [2012 ONSC 4816](#) at [paras 31-38](#) [*Firm Capital Mortgage Fund*]; *bcIMC Construction Fund Corp. v Chandler Home Street Ventures Ltd*, [2008 BCSC 897](#) at [paras 54-58](#) [*bcIMC Construction*]; *bcIMC Construction Fund Corporation et al v The Clover on Yonge Inc. et al*, (September 15, 2020), ONSC (Commercial List) Court File No. CV-20-00637301-00CL ([Approval and Vesting Order](#)) at para 8; see also, *Bankruptcy and Insolvency Act*, [RSC 1985, c B-3](#), s [243\(1\)\(c\)](#).

²⁰ *Forjay Management* at [para 36](#); *Peoples Trust* at [para 25](#).

²¹ *Forjay Management* at [paras 41-44](#).

²² *Firm Capital Mortgage Fund Inc v Stateview Homes (Hampton Heights) Inc et al*, (August 18, 2023), ONSC (Commercial List) Court File No. CV-23-00700356-00CL ([Ancillary Relief Order](#)) at para 7; *KingSett*

Receiver to disclaim pre-sale purchase agreements relating to Stateview Homes (NAO II) Inc., another entity within the Stateview Group.²³

36. As such, the relief sought on this motion is consistent with the terms on which the related Stateview receiverships have been administered pursuant to the Court's ongoing supervision and approval.
37. The circumstances and factors in those other Stateview receivership proceedings are analogous to this motion, namely: (i) the entities were single-purpose real estate development companies that operated an incomplete project; (ii) the entities had entered into pre-sale purchase agreements with purchasers for freehold homes that had not closed; (iii) the disclaimer was necessary to facilitate a value-maximizing transaction; and (iv) no potential transaction or offer existed that provided for the assumption of the entity's obligations under the pre-sale purchase agreements.²⁴
38. Significantly, the Pre-Sale Purchasers themselves stand to benefit from a disclaimer. As set out in the Eighth Report, termination of the Pre-Sale Purchase Agreements is necessary to enable the Pre-Sale Purchasers to make claims to

Mortgage Corporation and Dorr Capital Corporation v 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, (September 14, 2023), ONSC (Commercial List), Court File No. CV-23-00698576-00CL ([Sale Approval Order](#)) at para 9.

²³ *Atrium Mortgage Investment Corporation and Dorr Capital Corporation v. Stateview Homes (Nao Towns II) Inc., Dino Taurasi, and Carlo Taurasi*, ONSC (Commercial List) Court File No. CV-23-00698395-00CL ([Ancillary Relief Order](#)) at para. 7.

²⁴ *Firm Capital Mortgage Fund Inc v Stateview Homes (Hampton Heights) Inc et al*, (August 18, 2023), ONSC (Commercial List) Court File No. CV-23-00700356-00CL ([Endorsement](#)) at para 6; *KingSett Mortgage Corporation and Dorr Capital Corporation v 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*, (September 14, 2023), ONSC (Commercial List), Court File No. CV-23-00698576-00CL ([Endorsement](#)).

Tarion for deposit refunds. Several Pre-Sale Purchasers have already corresponded with the Receiver and expressed a strong desire to move forward with the Tarion claim process.²⁵

39. The Statutory Declaration was settled between the Receiver and Tarion to achieve precisely this result in respect of the BEA Towns and Elm & Co Pre-Sale Purchase Agreements. Granting the relief sought in this motion would thus enable the Receiver to fulfill its obligations under the Statutory Declaration and terminate the Pre-Sale Purchase Agreements.
40. As set out in the Eighth Report, Tarion has been informed of the Receiver's intention to do so and has expressed its willingness to reimburse the deposits of the Pre-Sale Purchasers.²⁶
41. The Receiver is not aware of any stakeholders who stand to be negatively impacted by the relief sought, or who have indicated any opposition to the motion.

PART IV. ORDER REQUESTED

42. For the reasons stated herein, the Receiver respectfully requests that the Court grant the three orders contained in the Receiver's motion record.

²⁵ Eighth Report at section 3.4.2.

²⁶ Eighth Report at section 3.4.3.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 13TH DAY OF MARCH, 2024

A handwritten signature in blue ink, appearing to be "JLR", is positioned above a horizontal line.

Jeffrey Larry / Daniel Rosenbluth
Paliare Roland Rosenberg Rothstein LLP
Lawyers for the Receiver and Manager,
KSV Restructuring Inc.

LIST OF AUTHORITIES

1. *Forjay Management Ltd v 0981478 BC Ltd*, [2018 BCSC 527](#)
2. *Peoples Trust Company v Censorio Group (Hastings & Carleton) Holdings Ltd*, [2020 BCSC 1013](#)
3. *Firm Capital Mortgage Fund Inc v 2012241 Ontario Ltd*, [2012 ONSC 4816](#)
4. *bcIMC Construction Fund Corp. v Chandler Home Street Ventures Ltd*, [2008 BCSC 897](#)
5. *bcIMC Construction Fund Corporation et al v The Clover on Yonge Inc. et al*, (September 15, 2020), ONSC (Commercial List) Court File No. CV-20-00637301-00CL ([Approval and Vesting Order](#))
6. *Firm Capital Mortgage Fund Inc v Stateview Homes (Hampton Heights) Inc et al*, (August 18, 2023), ONSC (Commercial List) Court File No. CV23-00700356-00CL ([Ancillary Relief Order](#))
7. *KingSett Mortgage Corporation and Dorr Capital Corporation v 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*, (September 14, 2023), ONSC (Commercial List), Court File No. CV-23-00698576-00CL ([Sale Approval Order](#))
8. *Atrium Mortgage Investment Corporation and Dorr Capital Corporation v. Stateview Homes (Nao Towns II) Inc., Dino Taurasi, and Carlo Taurasi*, (February 15, 2023), ONSC (Commercial List) Court File No. CV-23-00698395-00CL ([Ancillary Relief Order](#))
9. *Firm Capital Mortgage Fund Inc v Stateview Homes (Hampton Heights) Inc et al*, (August 18, 2023), ONSC (Commercial List) Court File No. CV23-00700356-00CL ([Endorsement](#))
10. *KingSett Mortgage Corporation and Dorr Capital Corporation v 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*, (September 14, 2023), ONSC (Commercial List), Court File No. CV-23-00698576-00CL ([Endorsement](#))

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Bankruptcy and Insolvency Act, R.S.C. 1985, c C-36

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.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

...

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.

DORR CAPITAL CORPORATION
Applicant

-and-

STATEVIEW HOMES (BEA TOWNS) INC.
Defendant

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