



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-23-00698576-00CL DATE: 14 September 2023

NO. ON LIST: 3

TITLE OF PROCEEDING: KINGSETT MORTGAGE CORPORATION AND DORR CAPITAL CORPORATION v. STATEVIEW HOMES (MINU TOWNS) INC.
et al

BEFORE JUSTICE: MR JUSTICE CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
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Gerard C. Borean	Counsel for 2515792 Ontario Inc. and Auriva Stone Design Inc.	gborean@parenteborean.com
Andrew Wood	Counsel for Sunbelt Rentals of Canada Inc.	awood@dllaw.ca

ENDORSEMENT OF JUSTICE CAVANAGH:

KSV Restructuring Inc., in its capacity as receiver and manager (the “Receiver”) of the property, assets and undertaking owned by the Stateview Receivership Companies (as defined in the motion materials), including their real property move for (i) an approval and vesting order approving the sale transaction in respect to certain of the property of Stateview Homes (On the Mark) Inc. contemplated by an asset purchase agreement between the Receiver and 2077060 Ontario Inc.; and (ii) a Distribution Order authorizing the Receiver to make certain payments and distributions and maintain certain reserves from the proceeds of the transaction, approving reports of the Receiver and its statement of receipts and disbursements and the Receiver’s activities described therein, and approving the fees and disbursements of the Receiver and its counsel.

The Receiver’s motion is not opposed.

I have reviewed the motion materials and I am satisfied that the requested orders should be made.

With respect to the requested Approval and Vesting Order, I am satisfied that the criteria set out in *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 are satisfied. The Receiver has acted in a fair and reasonable manner and has appropriately conducted the sale process in accordance with its terms. The Receiver broadly canvassed the market and undertook significant efforts to obtain the highest and best offer for the On the Mark Project. There is no reason to believe that any better price or result could have been obtained for the benefit of all stakeholders. The transaction reflects the highest and best offer received and provides the best recovery available for the stakeholders of On the Mark in the circumstances.

I am satisfied that, in the circumstances, it is appropriate to direct the Receiver to disclaim certain pre-sale purchase agreements. Authorizing the Receiver to do so will facilitate the completion of the transaction. Each of the homebuyers who may be affected has been served with notice of this motion. No one appeared to oppose. See Endorsement of Conway J. dated August 18, 2023 in *Firm Capital Fund Inc. v. Stateview Homes (Hampton Heights) Inc. et al.* in CV-23-00700356-00CL in which a similar order was made.

The Receiver is seeking authorization and direction to make the proposed payments and distributions and to establish and maintain the proposed reserves from the proceeds from the transaction. The proposed reserves are necessary to ensure the Receiver will, among other things, have sufficient liquidity to fund the remainder of

the receivership proceedings, pay certain priority amounts (if applicable) and fund the administration of the proposed bankruptcy of On the Mark. I am satisfied that the reserves are fair and reasonable and reflect an estimate of the maximum amounts that may be owed or become owing in priority to the security interest held by KingSett. Based on the proceeds from the transaction, KingSett will incur a shortfall on its loans to On the Mark and, accordingly, the proposed distribution will be significantly less than the KingSett indebtedness.

I am satisfied that the activities of the Receiver described in the Second Report and the Third Report were necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Receivership Order and were in the best interest of the On the Mark's stakeholders generally. I approve the Receiver's receipts and disbursements for the period from the commencement of these receivership proceedings to September 5, 2023. I approve the professional fees and disbursements incurred by the Receiver and its legal counsel through August 31, 2023 as described in the fee affidavits attached to the Third Report. I am satisfied that the proposed allocation methodology for allocation of the fees and costs incurred by the Receiver and its counsel in connection with these receivership proceedings is fair and equitable and does not prefer any stakeholder to the detriment of others.

Orders to issue in forms of orders signed by me today.

In addition, KingSett moves for an order, among other things, (a) authorizing and directing the Receiver to assign Stateview Homes (On the Mark) Inc. ("On the Mark") into bankruptcy; (b) authorizing and directing KSV Restructuring Inc. to act as trustee in bankruptcy of On the Mark; and (c) authorizing and empowering the Receiver to fund the costs of administering the bankruptcy estate of On the Mark, including the fees and disbursements of the Trustee and its counsel, from the Property (as defined in the Receivership Order) of On the Mark.

The net proceeds to be paid to KingSett from the transaction described above will be insufficient to repay KingSett in full in respect of the On the Mark indebtedness. The shortfall is expected to be between \$2.5 million and \$3.5 million. On the Mark is indebted to the Canada Revenue Agency in the amount of approximately \$4 million in respect of unremitted HST on the sales of the first 38 homes sold by On the Mark. If the HST were to be paid by the Receiver, this would materially further impair KingSett's recovery. The court has the power to authorize the court-appointed receiver and manager to file an assignment in bankruptcy. A bankruptcy order may be sought with the express purpose of affecting priorities. I am satisfied that by seeking to alter certain priorities by invoking the BIA priority scheme, KingSett is acting for an appropriate and legitimate purpose. See *American General Life Insurance Company et al. v. Victoria Avenue North Holdings Inc.*, 2023 ONSC 3322, at para. 17. The Receiver is supportive of the relief being sought in the requested order.

Order to issue in form of Order signed by me today.

At the request of the parties and to facilitate filing of documents for another motion, I add the following endorsement.

On August 1, 2023, the Court scheduled a priority motion to be heard on November 2, 2023 in CV-23-00698576-00CL. That motion relates to and will be heard in the following matters as well: CV-23-00698637-00CL, CV-23-00698632-00CL, CV-23-00698395-00CL & CV-23-00699067-00CL. To avoid unnecessary duplication, the parties are directed to file their motion materials with the Commercial List office one time under the CV-23-00698576-00CL file number. This direction is for procedural filing purposes and does not constitute a consolidation of the proceedings or receivership estates.

Counsel have also provided me with an example form of the style of cause that includes all of the Court File numbers and all of the party names in each of the five matters (reproduced below as Schedule "A"). The Court directs the parties to file their materials under that style of cause.

To ensure that the court record reflects this direction regarding the filing procedure for this motion, the moving party is directed to file this endorsement in each of the five matters (CV-23-00698637-00CL, CV-23-00698632-00CL, CV-23-00698395-00CL & CV-23-00699067-00CL).

Schedule "A"

Court File No. CV-23-00698395-00CL
CV-23-00698632-00CL
CV-23-00698637-00CL
CV-23-00698576-00CL
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

Applicants

- 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.**

Respondents

DORR CAPITAL CORPORATION

Applicant

- and -

HIGHVIEW BUILDING CORP INC.

Respondent

DORR CAPITAL CORPORATION

Applicant

- and -

STATEVIEW HOMES (BEA TOWNS) INC.

Respondent

**ATRIUM MORTGAGE INVESTMENT CORPORATION AND DORR CAPITAL
CORPORATION**

Applicants

- and -

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

Respondents

MERIDIAN CREDIT UNION

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**

**MOTION RECORD OF THE MOVING PARTY, TARION WARRANTY
CORPORATION**

(Motion for Declaratory Relief)
(Returnable November 2, 2023)