



ONTARIO SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

COUNSEL SLIP / ENDORSEMENT

COURT FILE NO.: CV-23-00698576-00CL

DATE: Thursday, November 16, 2023

NO. ON LIST: 4

TITLE OF PROCEEDING: KINGSETT MORTGAGE CORP v. STATEVIEW HOMES et al  
BEFORE: JUSTICE PETER J. OSBORNE

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Joseph Bellissimo	Receiver	<a href="mailto:jbellissimo@cassels.com">jbellissimo@cassels.com</a>
Alan Merskey	Receiver	<a href="mailto:amerskey@cassels.com">amerskey@cassels.com</a>

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
Sean Zweig	Applicants	<a href="mailto:zweigs@bennettjones.com">zweigs@bennettjones.com</a>
Chad Kopach	Dorr Capital Corporation	<a href="mailto:ckopach@blaney.com">ckopach@blaney.com</a>
Stewart Thom	Reliance Home Comfort	<a href="mailto:sthom@torkinmanes.com">sthom@torkinmanes.com</a>
Adam M. Slavens	Tarion Warranty Corp	<a href="mailto:aslavens@torys.com">aslavens@torys.com</a>
David Capulli	Ragno Electric Ltd.	<a href="mailto:davidcappulli@capullilaw.com">davidcappulli@capullilaw.com</a>
Kelly Smith Wayland	CRA	<a href="mailto:Kelly.Smithwayland@justice.gc.ca">Kelly.Smithwayland@justice.gc.ca</a>
Murtaza Yailaqi	Rahim Ajani, Karim Teja, Almas Kara, Naz Arain, Shameer Arain, Atam Chug, Janaki Nagulan, Eric Asagba, Darshni D'Souza, Minaz Lakhani, & Mohammed Siddiqui	<a href="mailto:taz@rdlegal.ca">taz@rdlegal.ca</a>

**For Other Parties:**

Name of Person Appearing	Name of Party	Contact Info
Matthew Valitutti – Observer	Jonny Calle and Susanna Calle	<a href="mailto:matthew@valituttillaw.com">matthew@valituttillaw.com</a>
Alyssa Wiebe - Observer	Pasquale Bono as agent for Carpenters Union	<a href="mailto:alyssa@rousseau-mazzuca.com">alyssa@rousseau-mazzuca.com</a>
Charles Haworth – Observer	GEI Consultants & Nao Towns	<a href="mailto:chaworth@rhlawoffices.com">chaworth@rhlawoffices.com</a>

## **ENDORSEMENT OF JUSTICE OSBORNE:**

1. The Receiver of the Statesview Receivership Companies seeks today the following relief:
  - a. An approval and vesting order (“TLSFD AVO”) substantially in the form attached at Tab 3 of the Motion Record, *inter alia*:
    - (a) approving the sale transaction (the “TLSFD Transaction”) in respect of certain of the property of TLSFD Taurasi Holdings Corp. (“Taurasi Holdings”) contemplated by an agreement of purchase and sale between the Receiver and KingSett Real Estate Growth LP No. 8, by its general partner KingSett Real Estate Growth GP No. 8 Inc., (“KingSett REG LP”) dated October 18, 2023 (the “TLSFD APS”);
    - (b) following the Receiver’s delivery of the Receiver’s certificate substantially in the form attached as Schedule “A” to the proposed TLSFD AVO, transferring and vesting all of Taurasi Holdings’ right, title and interest in and to the Purchased Assets (as defined in the TLSFD APS) (the “TLSFD Purchased Assets”) in KingSett REG LP, free and clear of all liens, charges, security interests and encumbrances other than permitted encumbrances; and
    - (c) sealing Confidential Appendices “1” and “5” to the Sixth Report of the Receiver dated November 8, 2023 (the “Sixth Report”) until further order of the Court.
  - b. An approval and vesting order (“Minu AVO”) substantially in the form attached at Tab 4 of the Motion Record, *inter alia*:
    - (a) approving the sale transaction (the “Minu Transaction”) in respect of certain of the property of Stateview Homes (Minu Towns) Inc. (“Minu”) contemplated by an amended and restated agreement of purchase and sale between the Receiver and Delton Acquisitions Inc. (“Delton”) dated October 19, 2023 (the “Minu APS”);
    - (b) following the Receiver’s delivery of the Receiver’s certificate substantially in the form attached as Schedule “A” to the proposed Minu AVO, transferring and vesting all of Minu’s right, title and interest in and to the Purchased Assets (as defined in the Minu APS) (the “Minu Purchased Assets”) in Delton, free and clear of all liens, charges, security interests and encumbrances other than permitted encumbrances;
    - (c) authorizing and directing the Receiver to terminate and disclaim the Pre-Sale Purchase Agreements (as defined in the Sixth Report) with respect to the Minu Property; and
    - (d) sealing Confidential Appendix “4” to the Sixth Report until the earlier of the closing of the Minu Transaction or further order of the Court.
  - c. An approval and vesting order (“Nao AVO”) substantially in the form attached at Tab 5 of the Motion Record, *inter alia*:
    - (a) approving the sale transaction (the “Nao Transaction”) in respect of certain of the property of Stateview Homes (Nao Towns) Inc. (“Nao”) contemplated by an amended and restated agreement of purchase and sale between the Receiver and Delton dated October 19, 2023 (the “Nao APS”);

- (b) following the Receiver's delivery of the Receiver's certificate substantially in the form attached as Schedule "A" to the proposed Nao AVO, transferring and vesting all of Nao's right, title and interest in and to the Purchased Assets (as defined in the Nao APS) (the "Nao Purchased Assets") in Delton, free and clear of all liens, charges, security interests and encumbrances other than permitted encumbrances;
  - (c) authorizing and directing the Receiver to terminate and disclaim the Pre-Sale Purchase Agreements (as defined in the Sixth Report) with respect to the Nao Property; and
  - (d) sealing Confidential Appendices "3" and "7" to the Sixth Report until the earlier of the closing of the Nao Transaction or further order of the Court.
- d. An approval and vesting order ("High Crown AVO") substantially in the form attached at Tab 6 of the Motion Record, *inter alia*:
- (a) approving the sale transaction (the "High Crown Transaction") in respect of certain of the property of Stateview Homes (High Crown Estates) Inc. ("High Crown") contemplated by an amended and restated agreement of purchase and sale between the Receiver and Delton dated October 19, 2023 (the "High Crown APS");
  - (b) following the Receiver's delivery of the Receiver's certificate substantially in the form attached as Schedule "A" to the proposed High Crown AVO, transferring and vesting all of High Crown's right, title and interest in and to the Purchased Assets (as defined in the High Crown APS) (the "High Crown Purchased Assets") in Delton, free and clear of all liens, charges, security interests and encumbrances other than permitted encumbrances;
  - (c) authorizing and directing the Receiver to terminate and disclaim the Pre-Sale Purchase Agreements (as defined in the Sixth Report) with respect to the High Crown Property; and
  - (d) sealing Confidential Appendices "2" and "6" to the Sixth Report until the earlier of the closing of the High Crown Transaction or further order of the Court.
- e. An order (the "Ancillary Matters and Distribution Order") substantially in the form attached at Tab 7 of the Motion Record, *inter alia*:
- (a) authorizing the Receiver to make certain payments and distributions and maintain certain holdbacks and reserves from the net proceeds from the: (i) TLSFD Transaction (the "TLSFD Purchase Proceeds"); (ii) Minu Transaction (the "Minu Purchase Proceeds"); (iii) Nao Transaction (the "Nao Purchase Proceeds"); and (iv) High Crown Transaction (the "High Crown Purchase Proceeds" and collectively, the "Purchase Proceeds");
  - (b) approving the Sixth Report and the Receiver's statement of receipts and disbursements and the Receiver's activities described therein; and
  - (c) approving the fees and disbursements of the Receiver and its counsel, as detailed in the Sixth Report and the Affidavit of Noah Goldstein sworn November 8, 2023 and the Affidavit of Ryan Jacobs sworn November 8, 2023 (together, the "Fee

Affidavits”) and approving the allocation of such fees and costs in connection with this proceeding among the Stateview Receivership Companies (as defined below) in accordance with the Fee Affidavits and the allocation methodology (the “Allocation Methodology”) approved in the Distribution Order of this Court dated September 14, 2023 (the “OTM Distribution Order”).

2. Defined terms in this Endorsement have the meaning given to them in the motion materials unless otherwise stated.
3. The Receiver relies upon the First Report, the Sixth Report dated November 8, 2023, and the Fee Affidavits.
4. The motion materials have been served on the Service List. The relief sought today is unopposed, and is strongly supported by the senior most directly affected stakeholders, Kingsett and Dorr.
5. The Receiver was appointed on May 2, 2023, its mandate was later expanded, and it was authorized pursuant to a series of orders that in the aggregate constitute the Sales Process Order of June 5, 2023 to conduct a sale process for the property of, among others, Taurasi Holdings and the Companies.
6. In the course of conducting the sales process, the Receiver was retained to assist with the Industrial Properties and the High Crown Project, and CBRE Limited to list for sale the Nao and Minu Projects.
7. A comprehensive summary of the Sale Process is set out in the Sixth Report and I have not repeated all here.
8. The Industrial Properties were marketed as a portfolio although prospective purchasers were advised that the Receiver would consider a bid for any combination of one or more of the Industrial Properties. One of those, the Oster Property, is not subject to the request for approval at this time and is still under consideration by the Receiver.
9. The TLSFD Transaction was determined to be the value maximizing transaction for the Bradwick and Rivermede Properties. I am satisfied that notwithstanding that KingSett REG LP is an affiliate of KingSett, appropriate safeguards were put in place as described in the Sixth Report to ensure that the two entities, which operate independently and with an internal confidentiality wall, enjoyed no advantage whatsoever given the process imposed by the Receiver.
10. With respect to the Minu, Nao and Hi Crown Projects, the Sale Process Results are also fully set out in the Sixth Report. The bid offered by Delton for each of the three Projects was determined by the Receiver to be the value maximizing transaction.
11. I am satisfied that the sale process was carried out in accordance with the Sales Process Order. Virtual data rooms were established and the material contained therein was comprehensive. It included financial information, contracts, permits, designs and other diligence information as well as a form of draft asset purchase agreement for review and consideration by process to purchasers.
12. I am satisfied that in each case, the market was widely canvassed, and that in addition to the process being in accord with the Sales Process Order, the process was commercially reasonable, appropriate and tailored to the particular circumstances of this matter.
13. In short, I am satisfied that the *Soundair Principles* have been satisfied here.
14. The approval and vesting orders are appropriate, reasonable, and effect that which is required to complete the transactions. I also observe that the draft orders are consistent with the model orders of the Commercial List. While not determinative of the issue, that provides additional support for the relief being sought.

15. I am also satisfied that the Pre-Sale Purchase Agreements relating to Minu, Nao and High Crown should be terminated as requested by the Receiver.

16. The authority to direct a receiver to disclaim a pre-sale purchase agreement in the context of a receivership and as part of a sales process within that receivership for real property developments is well-established: *Forjay Management Ltd. v 0981478 BC Ltd.*, 2018 BCSC 527 (“*Forjay*”) at paras 131-132; *Peoples Trust Company v Censorio Group (Hastings & Carleton) Holdings Ltd.*, 2020 BCSC 1013 at para 57; *Firm Capital Mortgage Fund Inc. v 2012241 Ontario Ltd.*, 2012 ONSC 4816 at paras 31- 38; *BCIMC Construction Fund Corp. v Chandler Home Street Ventures Ltd.*, 2008 BCSC 897 at paras 54-58; *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*, R.S.C. 1985, c B-3, s 243(1)(c).

17. The factors to be considered by the court in determining whether to authorize a receiver to disclaim pre-sale purchase agreements were clearly set out by Justice Fitzpatrick in *Forjay*, and I am satisfied that those factors are all satisfied here.

18. I observe that the Pre-Sale Purchase Agreements here contain express acknowledgements that they confer a personal right only and not an interest in the applicable Real Property and a provision to the effect that each Purchaser subordinates and postpones their Agreement to any mortgages, as applicable and any advances under such mortgages. None of those Agreements are registered on title to the applicable Real Property.

19. Given that the transactions approved today represent the value-maximizing transactions for each respective Project, and no offer was submitted in the Sale Process for any of Minu, Nao or High Crown that provided for the assumption of the applicable Pre-Sale Purchase Agreements, the termination and disclaimer of those agreements, which is a condition of the transactions approved today, is necessary to maximize the value and benefits for the stakeholders of the Statesview Receivership Companies. I further observe that none of the bids received in the Sale Process contemplated an assumption of the Pre-Sale Purchase Agreements.

20. I observe that it is the intention of the Receiver to provide notice to each of the Pre-Sale Purchasers by email or courier, as applicable, and post notice on the website of the Receiver.

21. Further, the Receiver intends to work with Tarion Warranty Corporation to assist with the deposit claims process for the Pre-Sale Purchasers in respect of the termination and disclaimer of their agreements. Mr. Yailaqi, who appears today for some of those Purchasers, agrees with this and with the fact that the rights of those Purchasers will be affected by the Tarion Priority Motion now under reserve by Steele, J.

22. The Receiver also seeks a sealing order in respect of the offer summaries and unredacted agreements collectively comprising Confidential Appendices 1 – 7 to the Sixth Report. The sealing relief is of limited duration and/or subject to further order of the court. It protects the integrity of the sales process and the value of the assets in the event that further steps are required, or the approved transactions do not close, all of which is accretive to the benefit to the stakeholders. In short, I am satisfied that the test as articulated by the Supreme Court of Canada in *Sierra Club* and refined in *Sherman Estate* has been met here.

23. I am also satisfied that the fees and disbursements of the Receiver and its counsel are reasonable, appropriate, and reflect work done that was consistent with the scope of the mandate of the Receiver as appointed. The fees and disbursements were properly incurred in the discharge of the duties of the Receiver. They have been allocated to specific Statesview Receivership Companies when the activities relate to that specific entity and its corresponding project. Where the activities were of a general nature, the Allocation Methodology has been employed. I agree with the submission of the Receiver that this is the most practical and reasonable basis upon which to allocate fees.

24. The Receiver has acted reasonably and prudently, and the activities described in the Sixth Report are approved.

25. The proposed reserves, holdback payments and distributions are set out in detail in the Sixth Report. Depending on the result in the Tarion Priority Motion, certain reserves or holdbacks may also be required to address certain additional priority claims asserted in the Proposed Class Action as described in the Sixth Report.
26. In addition, and in response to submissions made today by counsel for Reliance Home Comfort, the Receiver will ensure that the holdbacks and reserves are sufficient to address the contingencies associated with that claim.
27. Finally, the Receiver's request for authorization and direction to make the distributions proposed, subject in some cases to the determination on the Tarion Priority Motion, is appropriate and is approved.
28. For all of these reasons, the orders sought today are appropriate and are granted. I have signed the orders and they have immediate effect without the necessity of issuing and entering.

O'Shea, J.