



SUPERIOR COURT OF JUSTICE

**COUNSEL SLIP**

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

DATE: July 19, 2023

REGISTRAR: Julietta Costa-Singh

NO. ON LIST: 1

TITLE OF PROCEEDING: KINGSETT MORTGAGE CORPORATION AND DORR CAPITAL CORPORATION v. STATEVIEW HOMES (MINU TOWNS) INC., STATEVIEW HOMES (NAO TOWNS) INC., STATEVIEW HOMES (ON THE MARK) INC., AND STATEVIEW HOMES (HIGH CROWN ESTATES) INC. et al

BEFORE JUSTICE: STEELE

**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
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<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Contact Info</b>
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**ENDORSEMENT OF JUSTICE STEELE:**

1. The Receiver's motion was heard via Zoom on July 19, 2023. The Receiver seeks the Court's approval of a Stalking Horse agreement and a sale process for On the Mark. The Receiver has already been authorized to conduct sales processes for the other properties in the Stateview Group pursuant to Orders issued on June 5, 2023.
2. The Receiver's application is made with the support of the senior secured creditor, KingSett Mortgage Corporation.
3. On the Mark is a real estate development company that owns a project, which is about 90% complete. The OTM project consists of 70 residential units, 38 of which are completed and closed. The transactions in respect of the other 32 units have not yet closed (the "Homebuyers").
4. The Receiver has negotiated a stalking horse purchase agreement and proposed a sales process. The stalking horse purchaser is the Medi Group, one of the trade creditors for the On the Mark project, which also represents several other of the project's large trade creditors.

5. The stalking horse purchase agreement contains a unique term that was negotiated with the support of the senior secured creditor, KingSett Mortgage Corporation. Specifically, the stalking horse purchase agreement contemplates that the stalking horse purchaser will offer to each of the Homebuyers (other than the Taurasis or their relatives that are the Homebuyers for two units) to complete the existing agreements of purchase and sale provided that the Homebuyer agrees to (i) increase the purchase price by \$100,000, and (ii) certain other non-substantive amendments to the agreement (collectively, the “SH Amendments”).
6. The stalking horse relief requested was opposed by Melissa and Nelda Taurasi because the stalking horse purchase agreement excludes them from the group of Homebuyers entitled to close their purchase subject to the SH Amendments. Melissa and Nelda are the spouses of the principals of the StateView companies. Melissa and Nelda point to the principle enunciated in *Romspen Investment Corporation v. Courtice Auto Wreckers Limited*, 2017 ONCA 301, at para. 68, that creditors of the same class “are to be treated equally in relation to the distribution of the remaining assets of the estate.” They argue that they are creditors of the same class and are, therefore, entitled to be treated equally.
7. However, as noted by the Receiver, the Court is not being asked at this time to approve the transactions contemplated in the stalking horse purchase agreement or any vesting of the assets. In addition, as noted by the Receiver, there are no determinations being made at this time with respect to any creditors’ entitlements to any proceeds.
8. The stalking horse purchase agreement is the product of discussions and negotiations among the stalking horse purchaser, the Receiver, KingSett, and their respective advisors. This is the starting point or, effectively, the opening bid in the process. There will be a bidding process pursuant to which other parties may submit bids. Ultimately, whether the stalking horse bidder or another bidder is the successful party, they will have to return to court to seek approval of the sale. It is at that time that Melissa and Nelda may, if appropriate, object to the approval.
9. I agree with the Receiver that Melissa and Nelda’s objections are premature. Further, to the extent that these objections are to be raised at the time the sale approval is sought, they should be addressed on a full record.

#### *Approval of the Stalking Horse Purchase Agreement*

10. The Court has jurisdiction to, *nunc pro tunc*, authorize the Receiver to enter into the stalking horse agreement: s. 243(1)(c) of the *Bankruptcy and Insolvency Act*.
11. It is well accepted by this Court that a stalking horse transaction is a useful tool to support the sale process, and, at the same time, provide certainty to stakeholders: *PCAS Patient Care Automation Services Inc.*, 2012 ONSC 2840, at paras. 17-20, citing *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, 2012 ONSC 1750, at paras. 6-8, 17, *Danier Leather Inc (Re)*, 2016 ONSC 1044, at para. 20.
12. I am satisfied that the stalking horse purchase agreement should be approved, and the Receiver authorized, *nunc pro tunc*, to enter into this agreement. As discussed further below, this agreement is to be used as a stalking horse bid in connection with the proposed sale process. The Court is not being asked to approve the transactions contemplated in the stalking horse purchase agreement at this time.

### *Expense Reimbursement*

13. The stalking horse agreement includes an Expense Reimbursement of up to \$400,000, which the Receiver states is fair and commercially reasonable. The Expense Reimbursement reflects the actual legal, diligence and other costs incurred by the stalking horse purchaser in connection with its purchase agreement and the transaction. The purpose of the Expense Reimbursement is to provide the stalking horse purchaser with a way to recover its costs if it is not selected as the successful bidder.

The Expense Reimbursement represents about 2.8% of the cash consideration under the stalking horse purchase agreement. I agree with the Receiver that the proposed Expense Reimbursement falls within a range of reasonable bid protections and is fair and reasonable.

### *Sales Process*

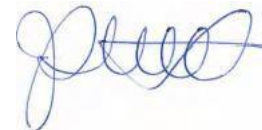
14. Pursuant to s. 243 of the BIA and s. 101 of the *Courts of Justice Act*, the Court has the jurisdiction to approve the sales process.
15. The reasonableness of any proposed sales process is assessed in light of the factors that the Court will later consider when considering the proposed sale: *CCM Master*, at para. 6. The Court of Appeal in *Royal Bank of Canada v. Soundair Corporation*, 1991 CanLII 2727 (Ont. C.A.), at para. 16, set out the criteria to be applied when considering the approval of a sale by a receiver:
  - a. Whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
  - b. Whether the interests of all parties have been considered;
  - c. The efficacy and integrity of the process by which offers are obtained; and
  - d. Whether there has been unfairness in the workout of the process.
16. In *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, 2012 ONSC 1750, at para. 6, the Court confirmed that the *Soundair* criteria also inform the determination of whether the Court should approve a receiver's proposed sale process. Specifically, the Court is to consider:
  - a. The fairness, transparency and integrity of the proposed process;
  - b. The commercial efficacy of the proposed process; and
  - c. Whether the proposed sales process will optimize the chances of securing the best possible price for the assets.
17. The Receiver submits that the factors set out in *Soundair* and *CCM Master* support the approval of the proposed sales process, specifically:
  - Whether the proposed sales process is commercially efficient: It will be conducted by the Receiver. The stalking horse process provides the Receiver with the opportunity to explore whether there is a transaction with greater value than the stalking horse purchase agreement, while also minimizing risk by ensuring that there is a transaction that can be completed if no better one is identified.

- Whether the proposed sale process is fair and transparent: The Receiver states that it is a fair, open and transparent process that contemplates a broad public marketing process. The Receiver will engage with interested parties and provide additional information, including data room access, where appropriate. The sale process sets out certain criteria that must be met to be considered a qualified bid. The entering into of any transaction is subject to Court approval. Melissa and Nelda submit that the sale process is not fair because they are excluded from the group of Homebuyers in the stalking horse bid. As noted above, the Court is not being asked at this time to approve the stalking horse transaction. The stalking horse bid will be used to get the sale process going and, at the same time, ensure that there is a buyer. Other bids may come in with terms that are more favourable than those proposed by the stalking horse purchaser. As noted in para. 22(b) of the Receiver's factum, the bids must provide for treatment of the Homebuyers agreements that is no less favourable than that provided under the stalking horse agreement. The ultimate transaction will be subject to Court approval.
- Whether the proposed sale process optimizes the chances of securing the best price: The Receiver states that the structure of the process, including the use of the stalking horse bid, ensures that the Receiver can adequately market the property and potentially receive a superior bid, while also minimizing risk and providing certainty that a transaction will be done.

18. I am satisfied that the proposed sale process is consistent with the criteria set out in *CCM Master* and ought to be approved.

19. For greater certainty, the Orders made today are without prejudice to Melissa Taurasi and Nelda Taurasi's rights to object to the proposed transaction on the return to Court for the sale approval motion.

20. Order attached.

A handwritten signature in blue ink, appearing to be "J. P. [unclear]", is located at the bottom right of the page.