

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

BETWEEN:

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

**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**

**AFFIDAVIT OF DANIEL POLLACK
(Sworn October 2, 2023)**

I, **DANIEL POLLACK**, of the City of Toronto, in the Province of Ontario, **MAKE
OATH AND SAY:**

1. I am a Senior Director, Special Loans and Portfolio Management, of KingSett Mortgage Corporation ("**KingSett**"). I have responsibility for matters pertaining to the borrowings of Stateview Homes (Minu Towns) Inc. ("**Minu**"), Stateview Homes (Nao Towns) Inc. ("**Nao**"), Stateview Homes (On the Mark) Inc. ("**On the Mark**") and TLSFD Taurasi Holdings Corp. ("**Taurasi Holdings**") and together with Minu, Nao, and On the Mark, the "**KingSett Debtors**" and each a "**KingSett Debtor**") from KingSett. Additionally, I have responsibility for matters pertaining to the second lien borrowings of Stateview Homes (High Crown Estates) Inc. ("**High**

Crown" and together with the KingSett Debtors, the "**Debtors**" and each a "**Debtor**"), a loan for which KingSett has all the beneficial economic interest and is serviced by Dorr Capital Corporation. As such, I have personal knowledge of the matters to which I depose in this affidavit, unless otherwise indicated. Where I have relied on other sources for information, I have so stated and I believe them to be true.

2. I swear this affidavit in opposition to a motion brought by Tarion Warranty Corporation ("**Tarion**") for:

- (a) a declaration that the New Home Purchasers (as defined below), and in the alternative, Tarion, are the beneficial owners of all deposit monies received by the Stateview Group (as defined below):
 - (i) under a statutory, express, implied, and/or constructive trust by operation of the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31, including the regulations promulgated thereunder, the Builder-Vendor Agreements, the Purchase Agreements and/or the Addendum; and
 - (ii) under an implied and/or constructive trust by operation of the common law and the principles of equity;
- (b) as security for the amounts referred to in paragraph (a), the New Home Purchasers and/or Tarion, as applicable, are entitled to a court-ordered charge on all of the Stateview Debtor Companies' assets, property and undertaking, and in the alternative, an equitable lien on all of the Stateview Group's assets, property and undertaking;
- (c) a declaration that the charge and/or the equitable lien referred to in paragraph (b) ranks:
 - (i) immediately behind the Receiver's Charge, the Receiver's Borrowings Charge (each, as defined in the Receivership Orders) and the charges as set

out in subsections 14.06(7), 81.4(4) and 81.6(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**Super-priority Charges**"), and ahead of the claims of all other creditors;

- (ii) in the alternative, immediately behind each of the Super-priority Charges and the secured claims of registered mortgagees, and ahead of the claims of all other creditors; and
- (iii) in the further alternative, in some other priority to the claims of ordinary unsecured creditors.

3. Terms used but not otherwise defined herein have the meanings ascribed to them in the affidavit of Kevin Brodie sworn August 31, 2023 (the "**Brodie Affidavit**").

I. BACKGROUND

4. On May 2, 2023, pursuant to an order of the Court (the "**Receivership Order**"), KSV was appointed receiver (in such capacity, the "**Receiver**") of the property, assets and undertaking, including the real property, owned by the Debtors.

5. Pursuant to three (3) additional orders granted by the Court on May 2, 2023 and an order granted by the Court on May 18, 2023, KSV was also appointed Receiver of certain other companies within the Stateview Homes group of companies (together with the Debtors, the "**Stateview Group**").

6. Additional background information regarding these proceedings and the reasons for the appointment of the Receiver are detailed in my affidavit sworn April 26, 2023 in support of the Receivership Order (the "**April Affidavit**"). A copy of my April Affidavit (without exhibits) is attached to the Brodie Affidavit as Exhibit "H".

II. THE RELIEF SOUGHT BY TARIION SHOULD NOT BE GRANTED

7. As is set out in the Brodie Affidavit, 765 purchasers (the "**New Home Purchasers**") made deposit payments totaling \$77,172,000 to certain members of the Stateview Group (the "**Deposits**") pursuant to agreements of purchase and sale entered into with such companies, all in connection with freehold homes.

8. It is a very common and accepted industry practice that developers use purchaser deposits, such as the Deposits, as significantly cheaper form of financing. Any purchaser, including for greater certainty the New Home Purchasers, has a vested interest in seeing freehold homes constructed by developers in a manner that is the most cost efficient from a financing perspective, thereby helping to keep purchase prices lower. In this manner, developers are able to reduce financing costs by utilizing deposit monies on hand instead of taking on additional debt at considerable expense, or raising additional capital through new equity. Developers are able to obtain their required return on investment with lower home purchase prices by reducing financing costs.

9. The relief being sought by Tarion, if granted, would inexorably have a material negative impact on lending within the home construction industry and have a chilling effect on the homebuilding industry. This would all be at a time when the federal and provincial governments have acknowledged and recognized the important public interest in fostering the construction of new housing, in the context of the increased cost of construction materials and labour, generationally-high interest rates, and significant limitations in the supply of existing housing stock for a rapidly growing population in Ontario. To that end, attached hereto at **Exhibit "A"** is a relevant article from a national news publication.

10. To that end, lenders, when advancing funds to be used in connection with the development of freehold housing, would be forced to impose strict prohibitions on the use of any deposits collected, or would in turn reduce overall commitments by a dollar for dollar amount, in the event that Tarion's or the New Home Purchasers' constructive trust claims were found to take priority over lenders' security. As noted, the inability to use deposits as a form of less costly form of financing would mean that developers would need to bridge that financing gap by either taking on additional debt or by seeking new equity investment.

11. The statutory regime lenders navigate when lending into freehold home development projects is materially different than the statutory regime when lending into condo development projects. In connection with the latter, deposit protection insurance is registered on title and entitles deposit protection insurers ("**DPIs**") to a priority of cashflows as provided by their mortgage charge – these registrations are almost invariably subordinate to the senior debt and occasionally subordinate to any mezzanine debt. Moreover, in the context of a condo development, the developer is required by law to segregate any deposits and have them held in trust. When Tarion insures deposits in connection with freehold developments, it is not afforded a mortgage in connection with same. The Tarion relief, if granted, would in effect give Tarion more rights than DPIs and lenders with registered security. Any such result would be in stark contrast to the country's development lending framework and, as is further discussed below, have the effect of destabilizing the freehold homebuilding industry and materially impact how lenders operate in the space.

12. Based on KingSett's significant experience dealing with developers, I believe that most developers would be unwilling to absorb the cost associated with increased debt, or the impact of new equity investment, which inevitably would in turn drive up the ultimate cost of new freehold

homes. It may also result in developers needing to cancel current and prospective projects. The impact of this eventuality is outlined above, in paragraph 9.

13. KingSett has been a significant new home construction lender since 2006, having played an important lending role in the Ontario home construction industry. If the relief sought by Tarion were granted by the Court, KingSett would be obliged to materially amend and restrict its home lending program, as would many other lenders. Any such amendments would have significant effects on the viability of current and future housing development projects.

14. Further, if the relief sought on this motion were granted, all lenders with current loans in the home construction industry would suddenly and unexpectedly find themselves outranked by constructive trust priority claims that could not have been reasonably foreseen or accounted for at the underwriting stage. This would have a significant impact on the majority of lenders loan-to-value on projects under development, which would almost certainly have a chilling and indeed destabilizing effect on the homebuilding industry.

III. CONCLUSION

15. KingSett will already be suffering material shortfalls on its loans to the relevant members of the Stateview Group due to, among other things, mismanagement, improper diversion and misappropriation of KingSett loan monies, the misuse of purchase deposits and fraudulent cheque kitting in excess of \$37 million dollars. The relief being sought by Tarion would further impair KingSett's recovery on its secured loans.

16. In addition to the broad-sweeping consequences to the housing industry that would result from granting the relief sought by Tarion, the immediate consequence in this case would be to

prejudice KingSett and the other mortgagees that are innocent arm's length victims of the Stateview Group.

I swear this affidavit in opposition to Tarion's)
motion, and for no improper purpose.)
SWORN BEFORE ME over)
videoconference on this 2nd day of October)
The affiant was located in the City of)
Toronto, in the Province of Ontario and the)
Commissioner was located in the City of)
Toronto, in the Province of Ontario. This)
affidavit was commissioned remotely as a)
result of COVID-19 and the declaration was)
administered in accordance with Ontario)
Regulation 431/20.)



AIDEN NELMS

A Commissioner for Oaths in and for the
Province of Ontario



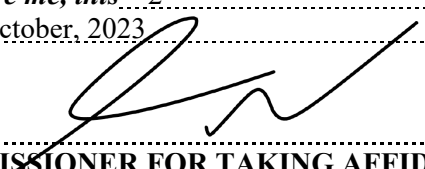
DANIEL POLLACK

This is Exhibit "A" *referred to in the*

affidavit of Daniel Pollack

sworn before me, this 2nd

day of October, 2023



.....
A COMMISSIONER FOR TAKING AFFIDAVITS

[Real Estate](#)

Homebuilding costs in Canada soar 51% as population surges

'The cost of building a home in Canada ... has never been higher'



Bloomberg News
Curtis Heinzl

Published Jun 28, 2023 • Last updated Jun 29, 2023 • 2 minute read



[30 Comments](#)



A gauge of residential construction prices has risen 51 per cent since the first quarter of 2020, Royal Bank of Canada economists said in a report published Wednesday. PHOTO BY KAMARA MOROZUK/BLOOMBERG /Photographer: Kamara Morozuk/Bo

Surging construction costs in Canada are putting new pressure on home prices, worsening a severe affordability crunch, according to the nation's largest lender.

A gauge of residential construction prices has risen 51 per cent since the first quarter of 2020, outpacing the 13 per cent gain for the consumer price index, Royal Bank of Canada economists said in a report published Wednesday.

“The cost of building a home in Canada — or any structure for that matter — has never been higher,” the economists said in the report, citing “dramatic jumps” in concrete and structural steel prices since the start of the pandemic along with soaring lumber prices in 2021 and early 2022.

←

The increase in building costs comes as Canada grapples with high home prices and rents, an immigration-driven population boom, and shortages of workers and raw materials — all of which are adding to homebuying challenges.

The elevated costs have contributed to a decline in new home construction in the past two quarters. That’s a problem because population growth is accelerating.

Labour costs have soared during a period of high job vacancy rates within the building industry, according to RBC economists. Wage growth in construction was 9.4 per cent last year, more than double the pace of other industries, they said.

“Inflation could be tamed by increasing the supply of skilled workers,” the report’s co-author, Rachel Battaglia, said in an interview. She suggested Canada lean on a federal government program designed to attract skilled immigrants to ease the construction industry’s labor shortages.

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

**KINGSETT MORTGAGE CORPORATION
AND DORR CAPITAL CORPORATION**

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.

Applicants

Respondents

Court File No.: CV-23-00698576-00CL

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

Proceedings commenced in Toronto

**AFFIDAVIT OF DANIEL POLLACK
(Sworn October 2, 2023)**

BENNETT JONES LLP

One First Canadian Place, Suite 3400
P.O. Box 130
Toronto, ON M5X 1A4

Richard Swan (LSO# 32076A)

Tel: (416) 777-7479

Email: swanr@bennettjones.com

Sean Zweig (LSO# 57307I)

Tel: (416) 777-6254

Email: zweigs@bennettjones.com

Aiden Nelms (LSO#: 74170S)

Tel: (416) 777-4642

Email: nelmsa@bennettjones.com

Lawyers for KingSett Mortgage Corporation