

**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**

**NOTICE OF MOTION
(ON THE MARK APPROVAL AND VESTING ORDER AND DISTRIBUTION ORDER)
(RETURNABLE SEPTEMBER 14, 2023)**

KSV Restructuring Inc. ("**KSV**"), in its capacity as receiver and manager (the "**Receiver**") of the property, assets and undertaking owned by the Stateview Receivership Companies (as defined below), including their real property (the "**On the Mark Real Property**"), will make a motion to the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on September 14, 2023 at 10:00 a.m. or as soon after that time as the motion may be heard by judicial videoconference via Zoom at Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard by videoconference. The videoconference details will be circulated when available from the Court.

THE MOTION IS FOR:

1. An approval and vesting order (“**AVO**”) substantially in the form attached at Tab 3 of the Motion Record, *inter alia*:

- (a) approving the sale transaction (the “**Transaction**”) in respect of certain of the property of Stateview Homes (On the Mark) Inc. (“**On the Mark**”) contemplated by an asset purchase agreement between the Receiver and 2077060 Ontario Inc. (the “**Purchaser**”) (as amended, the “**APA**”);
- (b) following the Receiver’s delivery of the Receiver’s certificate substantially in the form attached as Schedule “A” to the proposed AVO, transferring and vesting all of On the Mark’s right, title and interest in and to the Purchased Assets (as defined in the APA) in the Purchaser, free and clear of all liens, charges, security interests and encumbrances other than permitted encumbrances;
- (c) authorizing and directing the Receiver, prior to the closing of the Transaction (“**Closing**”), to terminate and disclaim the Homebuyer agreements held by the Taurasi Spouses (each as defined below); and
- (d) authorizing and directing the Receiver, on or as soon as practicable following the Optional Purchase Date (as defined below), to terminate and disclaim the Homebuyer agreements in respect of Homebuyers that do not execute an amended Optional Purchase Agreement (as defined below) by the Optional Purchase Date.

2. An order (the “**Distribution Order**”) substantially in the form attached at Tab 4 of the Motion Record, *inter alia*:

- (a) authorizing the Receiver to make certain payments and distributions and maintain certain reserves from the proceeds from the Transaction (the “**OTM Purchase Proceeds**”);
 - (b) approving the Second Report of the Receiver dated July 12, 2023 (the “**Second Report**”) and the Third Report of the Receiver dated September 7, 2023 (the “**Third 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 Third Report and the Affidavit of Noah Goldstein sworn September 7, 2023 and the Affidavit of Ryan Jacobs sworn September 7, 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) as set out in the Third Report (the “**Allocation Methodology**”).
3. Such further and other relief as counsel may advise and this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background

4. Pursuant to an order of the Court granted on May 2, 2023 (the “**Receivership Order**”), KSV was appointed Receiver of the property, assets and undertaking, including the real property, owned by Stateview Homes (Nao Towns) Inc., Stateview Homes (Minu Towns) Inc., TLSFD Taurasi Holdings Corp. (“**Taurasi Holdings**”), Stateview Homes (High Crown Estates) Inc. and On the Mark (collectively, the “**Stateview Receivership Companies**”).

5. Pursuant to three 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 (the “**Stateview Group**”).

6. On the Mark is a single-purpose real estate development company that owns a freehold townhouse project located at 16th Avenue and Woodbine Avenue, Markham (the “**On the Mark Project**”). Construction of the On the Mark Project is estimated to be approximately 90% complete.

7. The On the Mark Project consists of 70 residential units, 38 of which are completed and closed prior to the commencement of these receivership proceedings. The purchasers of the remaining 32 residential units (the “**Homebuyers**”) were scheduled to close by the end of June 2023 but have not yet closed on their homes.

8. The principals of the Stateview Group are Carlo and Dino Taurasi. Their spouses, Melissa Taurasi and Nelda Taurasi (the “**Taurasi Spouses**”) hold Homebuyer agreements in respect of two units in the On the Mark Project.

9. On June 5, 2023, pursuant to a series of orders issued by the Court, the Receiver was authorized to conduct a sale process for the properties of each of the entities in the Stateview Group subject to the receivership orders, with the exception of On the Mark.

10. On July 19, 2023, pursuant to an order issued by the Court, the Receiver was authorized to conduct a sale process (the “**OTM Sale Process**”) for the property and assets of On the Mark (the “**On the Mark Property**”) and, *nunc pro tunc*, enter into the APA to be used as a ‘stalking horse bid’ in connection with the OTM Sale Process (collectively, the “**OTM Sale Process Order**”).

OTM Sale Process

11. The Receiver carried out the OTM Sale Process in accordance with the OTM Sale Process Order. As further described in the Third Report, the Receiver’s activities undertaken in connection with the OTM Sale Process included:

- (a) distributing to potential interested parties an interest solicitation letter detailing the acquisition opportunity (the “**Teaser**”) and a form of non-disclosure agreement (the “**NDA**”);
- (b) providing interested parties with access to a virtual data room (the “**VDR**”), which included diligence information regarding the On the Mark Project and a form of asset purchase agreement (substantially in the form of the stalking horse bid) for

prospective purchasers to use in submitting an offer against the stalking horse bid;

- (c) facilitating due diligence requests submitted by prospective purchasers throughout the OTM Sale Process, including facilitating site tours; and
- (d) corresponding with the Purchaser and its counsel regarding the APA and the Transaction, including engaging in extensive negotiations.

12. The bid deadline for interested parties to submit a bid in the OTM Sale Process was August 9, 2023 (the “**Bid Deadline**”).

13. A summary of the OTM Sale Process results are as follows:

- (a) 52 parties were provided with the Teaser and NDA;
- (b) seven parties executed the NDA and were provided access to the VDR to conduct additional due diligence; and
- (c) no Qualified Bids (as defined in the OTM Sale Process Order) were received by the Bid Deadline (other than the bid set out in the APA).

14. The APA was therefore deemed to be the winning bid in the OTM Sale Process (the “**Successful Bid**”).

APA and the Transaction

15. The material terms of the APA are set out in the Third Report.

16. The requested AVO approves the APA and vests the Purchased Assets (as defined in the APA) in the Purchaser, free and clear of any claims and encumbrances (other than as set out in the APA) upon closing of the Transaction.

17. The market was widely canvassed. The process undertaken by the Receiver to market the On the Mark Project was commercially reasonable and conducted in accordance with the terms of the OTM Sale Process.

18. The APA represents the best and only qualified offer received for the On the Mark Project. In that regard, the Transaction provides for the greatest recovery available for the benefit of On the Mark's stakeholders in the circumstances.

19. KingSett Mortgage Corporation ("**KingSett**") and a number of large trade creditors of On the Mark are the major financial stakeholders of the On the Mark Project (aside from the Homebuyers) and are supportive of the Transaction.

Authority to Terminate and Disclaim Certain Optional Purchase Agreements

20. The Receiver is seeking an order granting the Receiver authority to terminate and disclaim (i) the two Homebuyer agreements of the Taurasi Spouses and (ii) the Homebuyer agreements of those Homebuyers listed on Schedule "F" of the APA (the "**Optional Purchase Agreements**") that do not execute an amended Optional Purchase Agreement between the date of Closing and the date that is three weeks thereafter (the "**Optional Purchase Date**") in accordance with the APA (collectively, the "**Excluded Homebuyer Agreements**").

21. The APA represents the best and only qualified offer received for the On the Mark Project and contemplates that the Excluded Homebuyer Agreements will not be assumed by the Purchaser.

22. The APA preserves value for those Homebuyers that execute the amended Optional Purchase Agreements by allowing them to benefit from the appreciation of their units since the Optional Purchase Agreements were initially entered into and only requires that the Excluded Homebuyer Agreements be terminated and disclaimed.

23. The Taurasi Spouses have agreed not to oppose the approval of the Transaction notwithstanding the relief being sought in respect of their Homebuyer agreements.

24. The termination and disclaimer of only the Excluded Homebuyer Agreements is supported by KingSett, On the Mark's principal secured creditor, notwithstanding that it will suffer a shortfall under the Transaction.

25. If the motion is granted by the Court, the Receiver also intends to work with Tarion Warranty Corporation to assist with the deposit claim process for any Homebuyers whose Homebuyer agreements are terminated.

Approval of the Receivership Fees and Costs

26. The fees and disbursements of the Receiver and its counsel are reasonable and were properly incurred in discharging the Receiver's duties.

27. In accordance with paragraph 31(c) of the Receivership Order, the Receiver and its counsel have allocated their fees to a specific Stateview Receivership Company when their activities relate to that specific Stateview Receivership Company and its project. A significant portion of the activities performed by the Receiver and its counsel, however, are of a general nature and are not specific to a Stateview Receivership Company or its project. The Allocation Methodology of the Receiver and its counsel has been to allocate such time evenly across the

relevant Stateview Receivership Companies. In the Receiver's view, this is the most practical and reasonable basis to allocate such fees.

Receiver's Reports and Activities

28. The Receiver has acted reasonably and prudently and has properly discharged the Receiver's activities as described in the Second Report and the Third Report, and it is appropriate to approve the Receiver's activities described therein.

Proposed Reserves and Distributions

29. The Receiver is seeking authority and direction to distribute the balance of the OTM Purchase Proceeds, after deduction for the payments, distributions and reserves outlined below, to KingSett as partial payment of the amount owing by On the Mark to KingSett.

30. Based on the OTM Purchase Proceeds, KingSett will incur a shortfall on its loan to On the Mark.

31. Receiver's counsel has provided an opinion, subject to standard assumptions and qualifications, that (i) the general security agreements delivered by On the Mark to KingSett and the mortgages/charges and general assignment of rents and leases registered against title to the On the Mark Real Property (collectively, the "**KingSett Mortgage Loan Security Documents**") create valid security interests or charges, as applicable, against the On the Mark Property to be sold pursuant to the Transaction and (ii) such KingSett Mortgage Loan Security Documents have been properly registered against title to the On the Mark Real Property or perfected by registrations under the *Personal Property Security Act* (Ontario), as applicable.

32. The distributions recommended by the Receiver assume that the Court grants a motion to be brought by KingSett for an order authorizing and directing the Receiver to assign On the Mark into bankruptcy, which would reverse the priority of certain harmonized sales tax claims such that those claims are subordinated to KingSett's security interest in On the Mark.

33. As described in detail in the Third Report, the proposed payments, distributions and reserves to be made from the OTM Purchase Proceeds before the remainder of the proceeds are distributed to KingSett are as follows:

- (a) to pay all amounts incurred through August 31, 2023 that are secured by the Receiver's Charge (as defined in the Receivership Order);
- (b) to repay to the receivership estate of Taurasi Holdings for the amount of \$171,949.83 transferred to the On the Mark receivership estate to fund certain operating costs of On the Mark;
- (c) to reserve the amount of \$75,000 to administer the bankruptcy of On the Mark;
- (d) to reserve the amount of \$50,000 on account of the estimated maximum amount in respect of any other lien claims that could have priority over the security interest of KingSett pursuant to section 78(2) of the *Construction Act*, RSO 1990, c. C 30, to be paid or distributed by the Receiver with the consent of KingSett and the applicable holder of the lien claim or further order of the Court;
- (e) to reserve the amount of \$39,139.50 on account of a maximum amount owing in respect of the asserted priority claim and lien registered by Labourers International Union of North America, Local 183 ("**LIUNA**") against the On the Mark Real Property for unpaid wages and pension contributions LIUNA Claim (as

defined in the Third Report), to be paid or distributed by the Receiver with the consent of LIUNA and KingSett or upon further order of the Court;

- (f) to reserve the amount of \$63,000 on account of the estimated maximum amount owing in respect of realty taxes on the On the Mark Real Property owed for the period prior to closing the Transaction which could have priority over the security interest of KingSett;
- (g) to reserve the amount of \$225,000 on account of estimated additional professional costs of the Receiver and its counsel required to complete the administration of the On the Mark receivership proceedings; and
- (h) to reserve the amount of \$125,000 on account of general operating costs and fees incurred by the Receiver for the On the Mark Project, and other claims which may have priority to the security interest of KingSett.

OTHER GROUNDS

34. Such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (1) The Second Report;
- (2) The Third Report;
- (3) The Fee Affidavits; and
- (4) Such further and other evidence as counsel may advise and this Honourable Court may permit.

September 7, 2023

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Receiverships)

IN THE MATTER OF THE RECEIVERSHIP OF 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.

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PROCEEDING COMMENCED AT TORONTO

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