

**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**

**REPLY FACTUM OF THE RECEIVER
(OTM SALE PROCESS)**

July 19, 2023

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Receiverships)

TO: SERVICE LIST

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**REPLY FACTUM OF THE RECEIVER
(OTM Sale Process)**

PART I - OVERVIEW

1. This Reply Factum of the Receiver (the “**Reply Factum**”) is filed in reply to the Responding Factum of Melissa Taurasi and Nelda Taurasi dated July 18, 2023 (the “**Responding Factum**”) and to supplement the Factum of the Receiver dated July 14, 2023 in support of the Receiver’s motion to this Court for an order, *inter alia*: (i) authorizing and empowering the Receiver, *nunc pro tunc*, to enter into the Stalking Horse Purchase Agreement; (ii) approving the Expense Reimbursement; and (iii) approving the OTM Sale Process.¹

¹ Terms used but not defined in this Reply Factum shall have the meaning given to them in the Receiver’s Factum dated July 14, 2023 (the “**Factum**”).

PART II – BACKGROUND²

2. On June 30, 2023, the Receiver and the Stalking Horse Purchaser entered into the Stalking Horse Purchase Agreement to be used as a stalking horse bid in the proposed OTM Sale Process. The Stalking Horse Purchase Agreement provides, among other things, that the Stalking Horse Purchaser will offer to each of the Homebuyers (other than the principals of Stateview Homes, Carlo and Dino Taurasi, and their related parties) the right to complete their existing unit agreements of purchase and sale in exchange for the Homebuyer agreeing to an increase in their purchase price of \$100,000 and other non-substantive changes to their purchase agreement.³

3. On July 12, 2023, the Receiver served a copy of the Motion Record upon: (i) the service list in these receivership proceedings, (ii) all parties that have registered liens against the On the Mark Real Property, and (iii) all parties that the Receiver is aware of that have unclosed purchase agreements for units in the On the Mark Project and their counsel where applicable.

4. On July 18, 2023, counsel to Melissa Taurasi and Nelda Taurasi (together, the “**Related Parties**”) served the Responding Factum, opposing the Receiver’s motion. The Related Parties purport to hold Homebuyer agreements in respect of two units in the On the Mark development.

5. The Related Parties oppose the proposed OTM Sale Process and the Stalking Horse Purchase Agreement on the basis that the Stalking Horse Purchase Agreement treats the Related Parties’ unit purchase agreements differently than other purchasers’ agreements and that, as a result, in the opinion of the Related Parties, the Stalking Horse Purchase Agreement and proposed sale process lack fairness, transparency and commercial efficacy.

² The background for this motion and these receivership proceedings is set out in greater detail in the Motion Record of the Receiver dated July 12, 2023 (the “**Motion Record**”) and the Factum.

³ Second Report to Court of the Receiver dated July 12, 2023 at 4.0.9 [*Second Report*].

PART III – POSITION OF THE RECEIVER

6. The Receiver notes that the Related Parties' objection to the Receiver's motion is based entirely on the treatment of their unit purchase agreements under the Stalking Horse Purchase Agreement. The Related Parties raise no independent issues or objections to the proposed Sale Process itself or any other provisions of the Stalking Horse Purchase Agreement. It is therefore in substance an attack on that specific contractual provision in the Stalking Horse Purchase Agreement.

A. THE RELATED PARTIES' OBJECTIONS ARE PREMATURE

7. This Court is not being asked at this stage to approve the Stalking Horse Purchase Agreement or the transactions contemplated by the Stalking Horse Purchase Agreement. Rather, on this motion, the Court is only being asked to approve the OTM Sale Process and authorize the Receiver to enter into the Stalking Horse Purchase Agreement *solely* for use as a "stalking horse" bid in connection therewith.

8. It is only if and when the Stalking Horse Purchase Agreement is determined to be the Successful Bid in the Sale Process that the Receiver will seek approval of the transactions contemplated thereby.

9. Any objection to the transactions contemplated by the Stalking Horse Purchase Agreement is therefore premature and is appropriately dealt with at the sale approval stage, if applicable. The Related Parties will be entitled to raise any concerns they may have at that time.

B. AUTHORITY TO DISCLAIM OR VEST OUT OF THE PRE-SALE PURCHASE AGREEMENTS

10. Although not an issue before the Court at this time, it is noteworthy, however, that there is ample precedent and authority for the disclaimer or vesting out of pre-sale home purchase agreements in receivership proceedings involving residential housing developments.⁴

11. In determining whether it is appropriate to permit a receiver to disclaim a pre-sale purchase agreement, the Courts consider:

- (a) whether there are competing creditor interests that have a higher priority than the pre-sale purchaser;
- (b) whether it can be demonstrated that a disclaimer and remarketing of the unit would enhance the value and recovery available to stakeholders; and
- (c) there is no equitable interest that justifies displacing the standard order of priority.⁵

12. If and when the Stalking Horse Purchase Agreement becomes the Successful Bid in the Sale Process and approval of such transaction is sought, the Court will assess the appropriateness of the treatment of the Related Parties' purported purchase agreement based on that case law.

13. That will also involve an assessment of the "equities", which may raise a number of considerations, including:

⁴ *Forjay Management Ltd v 0981478 BC Ltd*, [2018 BCSC 527](#) at paras [131-132](#) [*Forjay*]; *C & K Mortgage Services Inc v Camilla Court Homes Inc.*, [2020 ONSC 5071](#) at paras [44-47](#) [*C & K Mortgage*]; *Peoples Trust Company v Censorio Group (Hastings & Carleton) Holdings Ltd*, [2020 BCSC 1013](#) at para [57](#) [*Peoples Trust*]; *Institutional Mortgage Capital Canada Inc v 0876242 BC Ltd*, [2022 BCSC 1520](#) at para [65](#) [*Institutional Mortgage Capital Canada*]; *Firm Capital Mortgage Fund Inc v 2012241 Ontario Ltd*, [2012 ONSC 4816](#) at para [31-38](#) [*Firm Capital Mortgage Fund*].

⁵ *Forjay* at paras [44](#), [90](#), [92](#) & [131-132](#); *C & K Mortgage* at paras [44-47](#); *Peoples Trust* at paras [26](#), [35-39](#), [44](#), [53-57](#), [62-64](#); *Institutional Mortgage Capital Canada* at paras [31-42](#).

- (a) the related-party nature of the Related Parties, including Melissa Taurasi's role as Chief Operating Officer of Stateview;
- (b) the overall circumstances and financial irregularities surrounding Stateview, including as preliminarily discussed in the Receiver's First Report to the Court dated May 30, 2023⁶;
- (c) the nature and terms of the Related Parties' agreements compared to third party purchase agreements; and
- (d) whether the Related Parties actually paid deposits like other third party purchasers and, if so, the source of the funds to pay such deposits.

14. That assessment is appropriately done upon a complete record before the Court when the issue is properly before the Court. As noted above, the Related Parties will of course be entitled to make any submissions to the Court in that regard at that time.

C. THE RELATED PARTIES HAVE INCORRECTLY CHARACTERIZED THEIR INTERESTS AND POSITION

15. Finally, while also an issue to be addressed at any sale approval stage, it should be noted that the Related Parties have incorrectly characterized their treatment under the Stalking Horse Purchase Agreement as 'unequal treatment of creditors of the same class'.

16. The assumption or non-assumption of Homebuyer purchase agreements is a contractual term of the Stalking Horse Purchase Agreement – namely, which contracts of On the Mark the

⁶ KSV Restructuring Inc. First Report dated May 30, 2023: [https://www.ksvadvisory.com/docs/default-source/insolvency-case-documents/stateview-homes/receivership-proceedings/kingsett-mortgage-corporation-and-dorr-capital-corporation-vs.-stateview-homes-\(minu-towns\)-inc.-et-al/reports/first-report-to-court-of-the-receiver-dated-may-30-2023.pdf?sfvrsn=92508450_1](https://www.ksvadvisory.com/docs/default-source/insolvency-case-documents/stateview-homes/receivership-proceedings/kingsett-mortgage-corporation-and-dorr-capital-corporation-vs.-stateview-homes-(minu-towns)-inc.-et-al/reports/first-report-to-court-of-the-receiver-dated-may-30-2023.pdf?sfvrsn=92508450_1)

Stalking Horse Purchaser (if selected as the Successful Bid) will and will not assume as part of the transaction – and is not an issue of the treatment of “creditors” of On the Mark.

17. The position of the Related Parties incorrectly conflates two distinct interests and positions of the Related Parties: their interests as an assumed or unassumed contract counterparty and their interests *qua* creditor of On the Mark. Any principle of equal or equivalent treatment of creditors only applies (if at all) to the Related Parties' interests *qua* creditor. It has no bearing on what a purchaser may choose to assume or not assume in its purchase agreement.

18. To suggest otherwise would be contrary to almost every purchase transaction that occurs in receivership/insolvency proceedings and would effectively mean that every purchaser would need to assume all or none of every class or type of contract to which the debtor is party.

PART IV - ORDER REQUESTED

19. For the reasons stated herein and its Factum, the Receiver respectfully requests that the Court grant the relief sought in the OTM Sale Process Approval Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of July, 2023.



Cassels Brock & Blackwell LLP
Lawyers for the Receiver (NAO Phase 1,
Minu, On the Mark, High Crown and
Taurasi Holdings Receiverships)

SCHEDULE "A"

LIST OF AUTHORITIES

1. *C & K Mortgage Services Inc v Camilla Court Homes Inc.*, [2020 ONSC 5071](#)
2. *Firm Capital Mortgage Fund Inc v 2012241 Ontario Ltd*, [2012 ONSC 4816](#)
3. *Forjay Management Ltd v 0981478 BC Ltd*, [2018 BCSC 527](#)
4. *Institutional Mortgage Capital Canada Inc v 0876242 BC Ltd*, [2022 BCSC 1520](#)
5. *Peoples Trust Company v Censorio Group (Hastings & Carleton) Holdings Ltd*, [2020 BCSC 1013](#)

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PROCEEDING COMMENCED AT
TORONTO

**REPLY FACTUM
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