

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

B E T W E E N:

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

**RESPONDING FACTUM OF MELISSA TAURASI AND NELDA TAURASI
(OTM SALE PROCESS)**

July 18, 2023

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TO: **SERVICE LIST**

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PART I - OVERVIEW

1. Melissa and Nelda Taurasi, creditors of On the Mark, object to the sale process and stalking horse agreement put forth by the Receiver on this motion. The proposed sale process improperly excludes only Melissa and Nelda from the option to purchase their units for a \$100,000 increase in the purchase price.

2. No basis has been provided for excluding only Melissa and Nelda, and there is none. Melissa and Nelda, like the remaining 30 unitholders, entered into valid agreements of purchase and sale and paid deposits. The proposed sale process and stalking horse agreement seek to treat Melissa and Nelda differently than the other creditors of the same class and are not in the best interest of the creditors.

3. The proposed sale process and stalking horse agreement lack fairness, transparency, integrity, and commercial efficacy, and should be rejected.

PART II - BACKGROUND FACTS

4. Pursuant to several orders in May 2023, this Court appointed KSV as the Receiver for a group of related companies under the “StateView” name.¹

5. The principals of the StateView companies are Carlo and Dino Taurasi. Melissa and Nelda are Carlo and Dino’s spouses.² However, Melissa and Nelda were never directors or officers of the StateView companies, nor did they ever have control over the companies.

¹ Second Report of the Receiver dated July 12, 2023 (“**Second Report**”), 1.0, Motion Record of the Receiver (“**MR**”), [p. 32](#).

² Second Report, 2.1.4., **MR**, [p. 34](#).

6. On the Mark is one of the StateView companies. It is a single-purpose real estate development company that owns the townhouse project at issue (the “**Project**”).³
7. According to the Receiver, the Project consists of 70 residential units. 38 of them have completed and closed, while the sales of the remaining 32 residential units have not closed.⁴
8. Melissa and Nelda each purchased one of the 32 units, Lots 55 and 34, at \$1,080,990 each. They each paid a \$150,000 purchase deposit. Melissa and Nelda were the sole purchasers.⁵ The Receiver knows that Melissa and Nelda are the sole purchasers.⁶
9. On July 12, 2023, the Receiver delivered its second report and brought the motion to approve the sales process and Stalking Horse Agreement it negotiated with 2077060 Ontario Inc. (the “**Purchaser**”). The Purchaser is the Medi Group, one of the trade creditors for the Project, which also represents several other of the Project’s large trade creditors.⁷
10. Under the proposed Stalking Horse Agreement, the Purchaser will purchase the Project. At the same time, pursuant to section 5.3 and Schedule “F” of the Stalking Horse Agreement, the Purchaser will offer to each of the purchasers of the remaining units, except Melissa and Nelda, an option to complete the existing agreements of purchase and sale for an additional \$100,000 and some non-substantive changes to the purchase agreement (the “**Purchase Option**”).⁸
11. Melissa and Nelda are expressly excluded from the Purchase Option in the Agreement.

³ Second Report, 2.2, MR, [p. 34](#).

⁴ *Ibid.*

⁵ Affidavit of Daniel Kim sworn July 18, 2023 (“**Kim Affidavit**”), Exhibits A and B, Responding Motion Record of Melissa Taurasi and Nelda Taurasi (“**RMR**”), pp 22-120.

⁶ Kim Affidavit at paras 4 and 5, and Exhibits C and D, RMR, pp 20 and 122-223.

⁷ Second Report, 4.0.6-10, MR, [p. 37](#).

⁸ Second Report, 4.0.9, 5.0 and Appendix “B”, MR, [pp. 37, 39](#) and [78-131](#).

12. None of the Receiver's report, motion record or factum, nor the Stalking Horse Agreement, provides any reason for excluding Melissa and Nelda from the Purchase Option.

PART III - LEGAL ARGUMENTS

13. This Court should reject the sales process and the Stalking Horse Agreement.

14. The proposed sale process is not in the best interest of the creditors at this time, as it is based on a Stalking Horse Agreement that improperly excludes creditors for no economic basis, and treats creditors of the same class differently. These deficiencies fatally undermine the fairness, transparent, integrity and the commercial efficacy of the proposed process.

A. Relevant factors

15. When considering a sales solicitation process, including the use of a stalking horse bid, the Court should assess the following factors:

- (a) the fairness, transparency and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and,
- (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.⁹

16. The above factors are to be considered in light of the *Soundair* principles, which guide not only the approval of a transaction following a sales process, but also whether to approve the sales process itself. They are:

⁹ [*CCM Master Qualified Fund v blutip Power Technologies*](#), 2012 ONSC 1750 at para 6.

- (a) whether the party made a sufficient effort to obtain the best price and to not act improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which the party obtained offers; and
- (d) whether the working out of the process was unfair.¹⁰

B. Sale Process and Stalking Horse Agreement ought to be denied

17. The Receiver's proposed sale process is not in the best interest of the creditors. The process is based on the Stalking Horse Agreement, which improperly excludes certain creditors for no economic reason basis and treats creditors of the same class differently.

i. No economic basis to exclude Melissa and Nelda

18. The exclusion of Melissa and Nelda from the Purchase Option, and the lack of economic reasons for the exclusion, undermine the fairness, transparency, integrity, and commercial efficacy of the proposed process. Neither the Receiver nor the Purchaser has provided any basis to exclude only Melissa and Nelda from the Purchase Option.

19. Melissa and Nelda are creditors of On the Mark just like the other unitholders. The proposed process fails to take into account the interests of all parties, specifically all creditors.

¹⁰ [*DCL Corporation \(Re\)*](#), 2023 ONSC 3686 at para 19; [*Royal Bank of Canada v Soundair Corp*](#) (1991), 4 OR (3d) 1 at para 16 (CA)

ii. The proposed sale process treats creditors of the same class differently

20. Excluding Melissa and Nelda from the Purchase Option contravenes the principle that creditors in the same class must be treated equally.¹¹

21. Melissa and Nelda are in the same class of creditors as the remaining unitholders, who were all included in the Stalking Horse Agreement. Melissa and Nelda have paid deposits just like the remaining unitholders and are entitled to equal treatment with the other creditors.

iii. The proposed sale process sends a negative signal to the market

22. Specifically excluding only Melissa and Nelda from the sale process suggests to the market that the Project has been impacted in some way by the alleged and unproven conduct involving the StateView companies. Approving the proposed process could scare off other potential bidders and worsen the chances of obtaining the best possible price for the asset.

PART IV - ORDER REQUESTED

23. Melissa and Nelda respectfully request this Court to dismiss the Receiver's motion to approve the proposed sale process and the Stalking Horse Agreement.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of July, 2023.



Xin Lu (Crystal)

¹¹ [*Romspen Investment Corporation v Courtice Auto Wreckers Limited*](#), 2017 ONCA 301 at para 68, leave to appeal refused, [*Rosen Goldberg Inc, in its capacity as Court-appointed Receiver of Courtice Auto Wreckers Limited, et al v International Union of Operating Engineers, Local 793*](#), 2018 CanLII 11140 (Can)

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SCHEDULE “A”
LIST OF AUTHORITIES

1. *CCM Master Qualified Fund v blutip Power Technologies*, [2012 ONSC 1750](#)
2. *DCL Corporation (Re)*, [2023 ONSC 3686](#)
3. *Royal Bank of Canada v Soundair Corp* (1991), [4 OR \(3d\) 1](#)
4. *Romspen Investment Corporation v Courtice Auto Wreckers Limited*, [2017 ONCA 301](#)
5. *Rosen Goldberg Inc, in its capacity as Court-appointed Receiver of Courtice Auto Wreckers Limited, et al v International Union of Operating Engineers, Local 793*, [2018 CanLII 11140 \(Can\)](#)

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY-LAWS

N/A

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.

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

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

PROCEEDING COMMENCED AT TORONTO

**RESPONDING FACTUM OF MELISSA TAURASI AND
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