

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

MERIDIAN CREDIT UNION LIMITED

Applicant

- and -

STATEVIEW HOMES (ELM&CO) INC.

Respondent

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 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**

**FACTUM OF THE APPLICANT
(Re: Receivership Application Returnable May 18, 2023)**

May 8, 2023

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SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

PART I – INTRODUCTION

1. This application contemplates a dark day for yet another home builder and many of its stakeholders. The clouds on the horizon are reflected in numerous defaults, related liquidation proceedings, serious allegations of fraud and national media coverage. To weather the storm, Meridian Credit Union Limited ("**Meridian**") brings this application for the appointment of KSV Restructuring Inc. ("**KSV**") as receiver (herein, the "**Receiver**") over all of the property, assets and undertaking of the respondent Stateview Homes (Elm&Co) Inc. ("**Stateview Homes (Elm)**" or the "**Debtor**") (the "**Property**") including all proceeds thereof and the real property known municipally as 12942 York Durham Line, Stouffville, Ontario (the

"**Stouffville Property**") under section 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**")¹ and section 101 of the *Courts of Justice Act* (the "**CJA**").²

2. All capitalized terms used but not defined in this factum shall have the meanings given to them in the Affidavit of Amber Waheed sworn May 5, 2023 (the "**Waheed Affidavit**") for this application. Also, the facts set out in this factum are based on the Waheed Affidavit.³

3. In December 2022, Meridian loaned approximately \$17.8 million to the Debtor (the "**Loan**") pursuant to a credit agreement (the "**Credit Agreement**") dated December 5, 2022. Meridian holds security over substantially all of the Debtor's assets to secure the Debtor's indebtedness including a first mortgage on the Debtor's Stouffville Property.⁴

4. The Loan is outstanding. As at April 18, 2023, the amount due under the Credit Agreement was approximately \$17.9 million and the amount is now due and payable in full (the "**Debt**"). The Debtor has defaulted under the terms of the Credit Agreement and Security by, among other things, failing to pay all outstanding amounts when due, granting or allowing other charges or mortgages, without the consent of Meridian, to be registered on the Stouffville Property (i.e., the Bergo Mortgage and/or TD Mortgage), being a defendant or respondent in legal proceedings that are detrimental to the affairs of the Debtor (i.e., the TD Actions) and material adverse changes generally taking place regarding the Debtor (i.e., the appointment of an Information Officer pursuant to the

¹ R.S.C., 1985, c.B-3.

² R.S.O. 1990, c. C. 43

³ Waheed Affidavit at para. 2.

⁴ Waheed Affidavit at paras. 7-14.

Settlement Agreement Order; the Notice of Insurance Cancellation; and the notice of default from the second mortgagee) (collectively, the "**Defaults**").⁵ Meridian is also concerned about the other receivership proceedings regarding other Stateview entities (i.e., the Dorr Receiverships), and the media attention generated at the national level about these Stateview entities, the TD Actions and the Dorr Receiverships.

5. Meridian is contractually entitled to the appointment of the Receiver. On April 19, 2023, Meridian delivered its Demands including a demand letter to the Debtor to demand payment of all amounts outstanding under the Credit Agreement and a Notice of Intention to Enforce Security pursuant to section 244 of the BIA ("**244 Notice**").⁶

6. As the Debtor's first mortgagee on the Stouffville Property, in addition to the subsequent mortgagees including Dorr, 797, Bergo and TD, Meridian has an economic interest in the Debtor or Stouffville Property. The Loan is outstanding in the approximate amount of \$17.9 million and there are several Defaults. Some of these Defaults are particularly concerning including the allegations of extensive fraud or cheque kiting made in the TD Actions, resulting in TD suffering alleged losses in excess of \$37 million.⁷ Another concern is the notice of cancellation of insurance on the Stouffville Property. A court-appointed receiver is required to take control of the Debtor's property, including the Stouffville Property, and to preserve and realize the value of the Debtor's assets for all of the Debtor's stakeholders.

⁵ Waheed Affidavit at paras. 25-30.

⁶ Waheed Affidavit at para. 28-32.

⁷ Waheed Affidavit at paras. 18-27.

7. It is "just and convenient" to appoint a Receiver to preserve and realize the assets of the Debtor including the Stouffville Property; to distribute the net proceeds based on the priority position of any claimants; and for the benefit of the Debtor's stakeholders.

PART II – FACTS

8. Stateview Homes (Elm) is an Ontario company that owns the Stouffville Property. The real estate is currently vacant land. As a home builder in a group of separate Stateview Homes Corporations, the Debtor's plan was to develop the raw land into about 206 low-rise townhouses. To date, this has not happened. Instead, the group of separate Stateview Homes Corporations, including the Debtor, and all or most of the principals of the companies have been recently named as defendants in the TD Actions, which includes serious allegations of cheque kiting. Many of the Stateview Homes Corporations, including the Debtor and some of the principals, subsequently entered into a Settlement Agreement with TD, which was approved by the Court pursuant to the Settlement Agreement Order. The Settlement Agreement Order also appointed BDO as Information Officer in respect of the Stateview Homes Corporations including the Debtor.⁸

9. The Debtor's Debt to Meridian is fully secured under Meridian's Security including a perfected security interest under its GSA in the personal property of the Debtor and its first Mortgage registered on title of the Stouffville Property. Meridian and two subsequent mortgagees, Dorr and 797, as acknowledged by the Debtor, also entered into a subordination and standstill agreement, the SSA, in which they generally agreed, among other things, that

⁸ Waheed Affidavit at paras. 3-20.

Meridian's Security in the Debtor's Property, including the Stouffville Property, would rank in priority to the security interest of Dorr and 797.⁹

10. As noted above, there have been many Defaults under the Credit Agreement and Security.

11. Meridian issued its Demands, including its 244 Notice, on April 19, 2023.

PART III – ISSUES AND THE LAW

12. The issue in this application is whether the Court should appoint KSV as Receiver over the assets, property and undertaking of the Debtor, including the Stouffville Property, pursuant to section 243 of the BIA and section 101 of the CJA.

i. The Technical Requirements for the Appointment of a Receiver are Met

13. Meridian is a secured creditor of the Debtor and is thus entitled to bring an application under section 243 of the BIA.¹⁰

14. The Debtor is in breach of its obligations under the Credit Agreement. As a result of these breaches, the Debtor has defaulted under the Credit Agreement. In accordance with the Credit Agreement, Mortgage and GSA, the occurrence of an Event of Default grants Meridian the right to seek the appointment of a receiver.¹¹

⁹ Waheed Affidavit at para. 15.

¹⁰ BIA, s. 243; Waheed Affidavit at paras. 8-14.

¹¹ Waheed Affidavit at para. 31.

15. As required by subsection 243(1.1) of the BIA, the Demands and 244 Notice were sent to the Debtor (and others) on April 19, 2023.¹²

16. In accordance with subsection 243(4) of the BIA, KSV is qualified to act as Receiver of the Debtor and has consented to act as Receiver.¹³ In addition, given that KSV has been court-appointed receiver in each of the separate Dorr Receiverships, KSV is familiar with the background of the Stateview Homes Corporations and would bring that knowledge and expertise to this receivership. There are also expected efficiencies and cost savings related to the appointment of the same or a single receiver in separate receiverships involving related debtors, instead of appointing different or multiple receivers in the circumstances.

ii. Locality of the Debtor

17. Section 243(5) of the BIA requires that a receivership application be made to the court having jurisdiction in the "locality of the debtor". Section 243 (5) states:

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.¹⁴

18. The term "locality of the debtor" is defined in section 2 of the BIA as follows:

"locality of a debtor" means the principal place

¹² BIA, s. 243(1.1) and 244; Waheed Affidavit at paras. 28-29.

¹³ BIA, s. 243(4); Waheed Affidavit at paras. 35, 36.

¹⁴ BIA, s. 243(5).

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated.¹⁵

19. The Debtor has carried on business during the year immediately preceding the commencement of this application in Ontario. The registered office of the Debtor is in Woodbridge, Ontario and the Stouffville Property is located in the GTA.¹⁶

20. Accordingly, the Debtor's locality is Ontario, and this application is properly brought before this Court.¹⁷

iii. The Test for Appointing a Receiver under the BIA and CJA

21. Section 101 of the CJA permits the appointment of a receiver where it is "just and convenient".¹⁸

22. In addition, subsection 243(1) of the BIA provides that on application by a secured creditor, a court may appoint a receiver to, *inter alia*, take possession over the assets of an insolvent person and exercise any control that the court considers advisable over that

¹⁵ BIA, s. 2.

¹⁶ Waheed Affidavit at paras. 3 and 4.

¹⁷ Waheed Affidavit at paras. 3-5.

¹⁸ CJA, s.101.

property and over the insolvent person's business; again where it is "just or convenient" to do so.¹⁹

23. In determining whether it is "just or convenient" to appoint a receiver under either the BIA or CJA, Ontario courts have applied the decision of Blair J. (as he then was) in *Bank of Nova Scotia v. Freure Village on Clair Creek*. In *Freure Village*, Blair J. set out that, in deciding whether the appointment of a receiver is just or convenient, the court "must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto," which includes the rights of the secured creditor under its security.²⁰

24. Where the enumerated rights of the secured creditor under the credit agreement include the right to seek the appointment of a receiver, the burden on the applicant seeking the relief is relaxed. As stated by Morawetz J. (as he then was) in *Elleway*:

...while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.²¹

25. Where a creditor is entitled under its agreement with the debtor to seek the appointment of a receiver, a court will consider in its discretion whether, on an

¹⁹ BIA, s.243(1)

²⁰ *Bank of Nova Scotia v. Freure Village of Clair Creek*, 1996 CanLII 8258 (ON SC) ["*Freure Village*"] at para. 11, Applicant's Book of Authorities, Tab 1; *Elleway Acquisitions Limited v. The Cruise Professionals Limited*, 2013 ONSC 6866 (CanLII) ["*Elleway*"] at para. 26, Applicant's Book of Authorities, Tab 2.

²¹ *Elleway* at para. 27, Applicant's Book of Authorities, Tab 2; *RMB Australia Holdings Limited v. Seafield Resources Ltd.*, 2014 ONSC 5205 (CanLII) ["*RMB*"] at para. 28 Applicant's Book of Authorities, Tab 3.

examination of the surrounding circumstances, it is in the interests of all concerned to have the receiver appointed by the court.²²

26. Courts will also consider whether a court-appointed receiver (as opposed to a privately-appointed receiver) will allow the receiver to carry out its duties more efficiently. Other factors the court will consider when examining the surrounding circumstances include:

- (a) The potential costs of the receiver;
- (b) The relationship between the debtor and the creditors;
- (c) The likelihood of preserving and maximizing the return on the subject property;
- (d) The best way of facilitating the work and duties of the receiver;
- (e) The apprehended or actual waste of the debtor's assets;
- (f) The conduct of the parties; and
- (g) Whether irreparable harm might be caused if no order were made (although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed).²³

iv. It is Just and Convenient to Appoint a Receiver over the Debtor

²² *Freure Village* at para. 12, Applicant's Book of Authorities, Tab 1; *RMB* at para. 28, Applicant's Book of Authorities, Tab 3.

²³ *Freure Village* at para. 13, Applicant's Book of Authorities, Tab 1; *Elleway* at para. 28, Applicant's Book of Authorities, Tab 2; *Enterprise Cape Breton Corporation v. Crown Jewel Resort Ranch, Inc.*, 2014 NSSC 128 (CanLII) at para.26, Applicant's Book of Authorities, Tab 4.

27. In addition to Meridian's contractual rights, the appointment of the Receiver over the assets, property and undertaking of the Debtor, including the Stouffville Property, is just and convenient for the following reasons, among other things:

- (a) There are efficiencies and cost-savings appointing the same or a single receiver, KSV, in the Dorr Receiverships and this receivership, instead of different or multiple receivers;
- (b) The draft Order sought in this receivership is similar to the Orders granted in the Dorr Receiverships;
- (c) The TD Actions;
- (d) The unauthorized (or failure on the Debtor's part to obtain Meridian's prior consent to the) Bergo Mortgage and/or TD Mortgage registered against title of the Stouffville Property;
- (e) The court-appointment of BDO as Information Officer over many of the Stateview Homes Corporations including the Debtor;
- (f) The Notice of Cancellation of Insurance regarding the Stouffville Property;
- (g) Certain of the Debtor's assets - particularly the Stouffville Property - have economic value;
- (h) The notice of default from Dorr, as second mortgagee of the Stouffville Property, regarding the Debtor's failure to pay the Dorr loan or interest on the Dorr loan;
- (i) A court-appointed receiver is required to take control of the Debtor's property and particularly the Stouffville Property, to

realize the value of the Debtor's assets for all of the Debtor's stakeholders;

(j) Other mortgagees and/or secured creditors of the Debtor, in addition to Meridian, including Dorr, 797, Bergo and TD, have an economic interest in the Debtor or Stouffville Property. The collective principal amount of the indebtedness secured by these five mortgages, based on the land titles search of the Stouffville Property, is in excess of \$80 million; and

(k) The amount of the Debt, of approximately \$17.9 million owed by the Debtor to Meridian, is significant, and due and owing at present.²⁴

28. The Credit Agreement and the Security provide that Meridian is entitled to appoint a receiver in the event of default under the Credit Agreement and Security. Such an appointment is necessary to realize on the Debtor's assets - most importantly on the Stouffville Property - in a fair and reasonable manner that balances the interests of all of the Debtor's stakeholders in a transparent and court-supervised process.²⁵

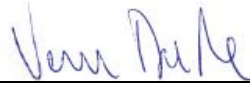
PART IV – ORDER REQUESTED

29. Meridian respectfully requests an Order substantially in the form of the draft Receivership Order included in the Application Record.

²⁴ Waheed Affidavit at paras. 27, 29, 14.

²⁵ Waheed Affidavit at paras. 31-34.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of May, 2023.



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Lawyers for the Applicant,
Meridian Credit Union Limited

SCHEDULE "A"

SCHEDULE "A"
LIST OF AUTHORITIES

1. [*Bank of Nova Scotia v. Freure Village of Clair Creek*](#), 1996 CanLII 8258 (ON SC)
2. [*Elleway Acquisitions Limited v. The Cruise Professionals Limited*](#), 2013 ONSC 6866 (CanLII)
3. [*RMB Australia Holdings Limited v. Seafield Resources Ltd.*](#), 2014 ONSC 5205 (CanLII)
4. [*Enterprise Cape Breton Corporation v. Crown Jewel Resort Ranch, Inc.*](#), 2014 NSSC 128 (CanLII)

SCHEDULE "B"

SCHEDULE "B"
RELEVANT STATUTES

Bankruptcy and Insolvency Act
R.S.C. 1983, c. B-3

Definitions

2. "locality of a debtor" means the principal place

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated;

Court may appoint receiver

243. (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

(a) the insolvent person consents to an earlier enforcement under subsection 244(2);
or

(b) the court considers it appropriate to appoint a receiver before then.

Definition of "receiver"

(2) Subject to subsections (3) and (4), in this Part, "receiver" means a person who

(a) is appointed under subsection (1); or

(b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a "security agreement"), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of "receiver" — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition "receiver" in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of "disbursements"

(7) In subsection (6), "disbursements" does not include payments made in the operation of a business of the insolvent person or bankrupt.

Advance Notice

244. (1) A secured creditor who intends to enforce a security on all or substantially all of

(a) the inventory,

(b) the accounts receivable, or

(c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Courts of Justice Act

R.S.O. 1990, c. C-43

Injunctions and receivers

101.(1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

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-and- STATEVIEW HOMES (ELM&CO) INC.
Respondent

Court File No. CV-23-00699067-00CL

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PROCEEDING COMMENCED AT
TORONTO

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