

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

THE HONOURABLE

)

THURSDAY, THE 27TH

)

JUSTICE BLACK

)

DAY OF FEBRUARY, 2025

B E T W E E N:

(Court Seal)

MERIDIAN CREDIT UNION

Plaintiff

- and -

STATEVIEW HOMES (ELM&CO) INC.

Defendant

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

**ORDER
(Lifting Stay of Proceedings)**

THIS MOTION made by Tarion Warranty Corporation (“**Tarion**”) for an Order: (i) lifting the stay of proceedings imposed by paragraphs 8, 9 and 10 of the Order (Appointing Receiver) of Justice Penny dated May 18, 2023 (the “**Receivership Order**”) in respect of Stateview Homes (Elm & Co) Inc., (collectively, the “**Stateview Entity**”); and (ii) granting leave to Tarion to issue and serve an action for a deposit claim against the Stateview Entity, as applicable, was heard this day by judicial videoconference in Toronto, Ontario;

ON READING the notice of motion of Tarion dated February 20, 2025 (the “**Notice of Motion**”), filed, and the motion record of Tarion dated February 20, 2025 (the “**Motion Record**”), filed;

ON HEARING the submissions of counsel for Tarion, KSV Restructuring Inc., in its capacity as the receiver of the Stateview Entity (the “**Receiver**”), and those other parties listed on the counsel slip, no one else appearing although duly served as appears from the affidavit of service sworn February 20, 2025, filed,

1. **THIS COURT ORDERS** that the stay of proceedings granted by paragraphs 8, 9 and 10 of the Receivership Order is hereby lifted in respect of the Stateview Entity for the sole purpose of issuing and serving the Statement of Claim (as defined below) and leave is hereby granted to Tarion to issue and serve an action as against the Stateview Entity, as applicable, in the form attached as Schedule “A” hereto (the “**Statement of Claim**”).

2. **THIS COURT ORDERS** that until such time as the Receiver’s discharge is effective, no further steps will be taken as against the Stateview Entity in the ensuing action or otherwise without the consent of the Receiver or further order of this Court obtained on reasonable notice to the Receiver of the Stateview Entity.

3. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record are hereby abridged and service on any person other than those served is hereby dispensed.

4. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Time on the date hereof without the need for entry or filing.

Date of issuance
(to be completed by registrar)



Justice Black

SCHEDULE "A"

Statement of Claim (Deposit Claims)

See attached.

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

B E T W E E N:

(Court Seal)

TARION WARRANTY CORPORATION

Plaintiff

- and -

**STATEVIEW HOMES (NAO TOWNS) INC., STATEVIEW HOMES (NAO TOWNS II) INC.,
HIGHVIEW BUILDING CORP INC., STATEVIEW HOMES (MINU TOWNS) INC.,
STATEVIEW HOMES (HIGH CROWN ESTATES) INC., STATEVIEW HOMES (ON THE
MARK) INC., STATEVIEW HOMES (BEA TOWNS) INC., STATEVIEW HOMES
(ELM&CO) INC., STATEVIEW HOMES (HAMPTON HEIGHTS) INC., TLSFD TAURASI
HOLDINGS CORP., STATEVIEW CONSTRUCTION LTD., STATEVIEW HOMES (EDGE
TOWNS) INC., STATEVIEW HOMES (S COLLECTION) INC., STATEVIEW HOMES
(MAIN & CO.) INC., STATEVIEW HOMES (OOH LALA TOWNS) INC., STATEVIEW
HOMES (KINGS LANDING) INC., STATEVIEW HOMES (RIALTO TOWNS) INC.,
STATEVIEW HOMES (IVORY OAK ESTATES) INC., STATEVIEW HOMES (ELIA
COLLECTION) INC., STATEVIEW HOMES (QUEEN'S COURT) INC., STATEVIEW
HOMES (ASHBURN HEIGHTS) INC., STATEVIEW HOMES (BALDWIN HEIGHTS) INC.,
STATEVIEW HOMES (BONAVENTURE) INC., STATEVIEW HOMES (KINGS LANDING
PHASE II) INC., STATEVIEW HOMES (TESORO COLLECTION) INC., LIVE INSPIRED
ORGANIZATION, LUXVIEW FINE HOMES CORPORATION, NORTHGATE FINE
HOMES INC., TAURA DEVELOPMENTS INC., CARLO TAURASI, DINO TAURASI,
DANIEL CICCONE, MELISSA TAURASI, NELDA TAURASI, STEPHANIE LYNN
CONSOLE and JOHN DOE**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve

it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue
Toronto ON M5G 1R7

TO: StateView Homes (Nao Towns) Inc.

AND TO: StateView Homes (Nao Towns II) Inc.

AND TO: Highview Building Corp Inc.

AND TO: StateView Homes (Minu Towns) Inc.

AND TO: StateView Homes (High Crown Estates) Inc.

AND TO: StateView Homes (On The Mark) Inc.

AND TO: StateView Homes (Bea Towns) Inc.

AND TO: StateView Homes (Elm&Co) Inc.

AND TO: StateView Homes (Hampton Heights) Inc.

AND TO: TLSFD Taurasi Holdings Corp.

AND TO: StateView Construction Ltd.

AND TO: StateView Homes (Edge Towns) Inc.

AND TO: StateView Homes (S Collection) Inc.

AND TO: StateView Homes (Main & Co.) Inc.

AND TO: StateView Homes (Ooh LaLa Towns) Inc.

AND TO: StateView Homes (Kings Landing) Inc.

AND TO: StateView Homes (Rialto Towns) Inc.

AND TO: StateView Homes (Ivory Oak Estates) Inc.

AND TO: StateView Homes (Elia Collection) Inc.

AND TO: StateView Homes (Queen's Court) Inc.

AND TO: StateView Homes (Ashburn Heights) Inc.

AND TO: StateView Homes (Baldwin Heights) Inc.

AND TO: StateView Homes (Bonaventure) Inc.

AND TO: StateView Homes (Kings Landing Phase II) Inc.

AND TO: StateView Homes (Tesoro Collection) Inc.

AND TO: Live Inspired Organization

AND TO: Luxview Fine Homes Corporation

AND TO: Northgate Fine Homes Inc.

AND TO: Taura Developments Inc.

AND TO: Carlo Taurasi

AND TO: Dino Taurasi

AND TO: Daniel Ciccone

AND TO: Melissa Taurasi

AND TO: Nelda Taurasi

AND TO: Stephanie Lynn Console

AND TO: John Doe

CLAIM

1. Tarion Warranty Corporation (“**Tarion**”) claims the following relief against the Defendants:

- (a) damages or compensation in an amount to be determined before trial and currently estimated at \$88,110,800, consisting of:
 - (i) \$74,400,000 paid or to be paid by Tarion to hundreds of purchasers of new homes (the “**Purchasers**”) who lost the deposits (the “**Deposits**”) they paid to the vendors of the homes (the “**StateView Vendors,**” as listed below);
 - (ii) from the StateView Vendors, \$12,610,800, (including HST) reflecting the prescribed administration fee of 15% of amounts paid to Purchasers, as provided for in the VB Agreements and the ONHWP Act (each as defined below); and
 - (iii) from the StateView Vendors, \$1,100,000 in chargeable conciliation fees associated with Purchaser compensation claims made to Tarion.
- (b) a declaration that some or all of the Deposit Proceeds (as defined below) are trust funds under an Addendum Trust (as defined below) and/or are subject to a constructive trust;
- (c) an order directing payment of the trust funds to Tarion;
- (d) an order tracing the Deposit Proceeds;
- (e) an order for an accounting of the Deposit Proceeds;

- (f) in the case of the StateView Vendors, prejudgment and post judgment interest at the prescribed rate of 18% per annum as provided for in the VB Agreements, and the *ONHWP Act*;
- (g) in the case of the other Defendants (and, in the case of the StateView Vendors, in the alternative):
 - (i) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (ii) post judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (h) Tarion's legal costs on a full indemnity basis, including applicable taxes and administration fee; and
- (i) such further and other relief as the Court may deem just.

Overview of the Claim

2. The StateView Vendors entered into agreements of purchase and sale (the "**Purchase Agreements**") with the Purchasers for hundreds of homes in Ontario, and took Deposits from the Purchasers. The StateView Vendors never transferred title to the homes to the Purchasers. They failed to return the Deposits.

3. Tarion is the non-profit corporation charged with administering Ontario's new home warranty program under the *Ontario New Home Warranties Plan Act* (the "**ONHWP Act**"). The *ONHWP Act* is consumer protection legislation designed to protect purchasers and owners of new homes.

4. The *ONHWP Act* provides deposit protection. Under Section 14 of the *ONHWP Act*, a purchaser of a new home is entitled to compensation from Tarion for their lost deposit, if the purchaser has a cause of action against the vendor resulting from the fact that title to the home has not been transferred to the person because the vendor has gone into bankruptcy, or the vendor has fundamentally breached the contract.

5. The Purchasers made compensation claims to Tarion for their lost Deposits. Tarion has compensated the Purchasers (or will do so) pursuant to its statutory consumer protection mandate. Tarion seeks to collect these funds, both directly and through Tarion's rights of subrogation under the *ONHWP Act*, from: (i) the StateView Vendors, (ii) the directors, officers and shareholders of the StateView Vendors (the "**StateView Principals**," as listed below), and (iii) parties who received the Deposits (or Deposit Proceeds) that ought to have been refunded to the Purchasers (the "**Deposit Recipients**," as listed below).

The Defendants

6. The StateView Vendors: The StateView Vendors consist of the following companies, all of which are incorporated pursuant to the laws of Ontario:

- (a) StateView Homes (Nao Towns) Inc.
- (b) StateView Homes (Nao Towns II) Inc.
- (c) Highview Building Corp Inc.
- (d) StateView Homes (Minu Towns) Inc.
- (e) StateView Homes (High Crown Estates) Inc.

- (f) StateView Homes (On The Mark) Inc.
- (g) StateView Homes (Bea Towns) Inc.
- (h) StateView Homes (Elm&Co) Inc.
- (i) StateView Homes (Hampton Heights) Inc.
- (j) StateView Construction Ltd.
- (k) StateView Homes (Edge Towns) Inc.
- (l) StateView Homes (Main & Co.) Inc.
- (m) StateView Homes (Kings Landing) Inc.
- (n) StateView Homes (Elia Collection) Inc.
- (o) StateView Homes (Queen's Court) Inc.

7. With three possible exceptions, all StateView Vendors executed a Vendor Agreement, a Builder Agreement and/or a Vendor and Builder Agreement (each a “**VB Agreement**”) with Tarion in Tarion’s standard form. Any StateView Vendor that did not execute a VB Agreement breached its obligation under the *ONHWP Act* and its regulations to execute a VB Agreement.

8. The StateView Principals: The StateView Principals consist of the following individuals, all resident in Ontario, who were the officers, directors and shareholders of the StateView Vendors at the relevant times:

- (a) Carlo Taurasi (“**Carlo**”),
- (b) Dino Taurasi (“**Dino**”), and

(c) Daniel Ciccone (“**Daniel**”).

9. The Deposit Recipients: The Deposits that the StateView Vendors wrongfully failed to refund to the Purchasers, and monies derived from the original deposits (collectively the “**Deposit Proceeds**”), were transferred to and received by one or more of the following:

(a) The spouses of the StateView Principals (the “**StateView Spouses**”):

- (i) Melissa Taurasi (“**Melissa**”), an individual residing in Ontario and Carlo’s spouse.
- (ii) Nelda Taurasi (“**Nelda**”), an individual residing in Ontario and Dino’s spouse.
- (iii) Stephanie Lynn Console (“**Stephanie**”), an individual residing in Ontario and Daniel’s spouse.

(b) The following companies (the “**StateView Affiliates**”):

- (i) StateView Homes (Nao Towns II) Inc.
- (ii) TLSFD Taurasi Holdings Corp.
- (iii) StateView Homes (S Collection) Inc.
- (iv) StateView Homes (Ooh LaLa Towns) Inc.
- (v) StateView Homes (Rialto Towns) Inc.
- (vi) StateView Homes (Ivory Oak Estates) Inc.
- (vii) Luxview Fine Homes Corporation

- (viii) StateView Homes (Ashburn Heights)
 - (ix) StateView Homes (Baldwin Heights)
 - (x) StateView Homes (Bonaventure)
 - (xi) StateView Homes (Kings Landing Phase II)
 - (xii) StateView Homes (Tesoro Collection)
 - (xiii) Taura Developments Inc.
 - (xiv) Live Inspired Organization
 - (xv) Northgate Fine Homes Inc.
- (c) The StateView Vendors
- (d) The StateView Principals
- (e) John Doe, consisting of one or more persons, corporations or other entities whose identity is not yet known to Tarion, and who received Deposit Proceeds directly or indirectly from a StateView Vendor (excluding, for greater certainty, those defendants in Court File No. CV-24-00714494-00CL¹ in the Ontario Superior Court of Justice at Toronto who are not named defendants in this action).

¹ Court File No. CV-24-00714494-00CL is an action brought by Tarion which also seeks to recover damages relating to the Deposit Proceeds. If judgments are granted in both that action and this action, Tarion would not collect on the judgments in a manner that would result in double recovery.

Tarion's claims

A. Direct Claim against the StateView Vendors for breach of statutory obligations

10. At all material times, each StateView Vendor owed statutory obligations to Tarion under the General regulation under the *ONHWP Act*, O Reg 627/20 ("**Regulation 627**").

11. Regulation 627 requires each StateView Vendor to:
 - (a) indemnify Tarion fully for all losses and costs (including legal costs) that Tarion suffers by reason of the vendor's failure to perform obligations imposed under the *ONHWP Act* and under any agreement made with Tarion: Regulation 627, s 13(2);
 - (b) pay an administration fee (the "**Administration Fee**") to Tarion equal to 15% of any amount paid out of the statutory guarantee fund in payment of claims made in respect of the vendor: Regulation 627, s 14; and
 - (c) pay to Tarion interest at the rate of 18% per annum on all amounts that the vendor owes to Tarion: Regulation 627, s 15(1).

12. Each StateView Vendor breached its statutory obligations to Tarion by failing to:
 - (a) indemnify Tarion for amounts Tarion has paid to purchasers out of the statutory guarantee fund to compensate for Deposits improperly withheld by the StateView Vendors;
 - (b) pay Tarion the Administration Fee;
 - (c) pay Tarion 18% interest per year; and

(d) uphold its obligations under its agreements with Tarion, as set out below.

B. Subrogated claim against the StateView Vendors for breach of the Purchase Agreements

13. Beginning in or about 2021, the StateView Vendors entered into pre-construction Purchase Agreements with the Purchasers, to sell freehold homes in multiple real estate developments across the greater Toronto and surrounding areas in Ontario.
14. The StateView Vendors collected a Deposit from each Purchaser.
15. Each of the StateView Vendors has fundamentally breached each Purchase Agreement it entered into by, among other things, failing to construct and deliver a completed home to the Purchaser, failing to hold the Deposit in trust as required under the Tarion Addendum that formed part of each Purchase Agreement (as explained below), and failing to refund monies paid by the Purchaser to the StateView Vendor (including the Deposit) under the Purchase Agreements.
16. Some of the StateView Vendors have gone into bankruptcy.
17. Each Purchaser has a cause of action against their respective StateView Vendor resulting from the fact that title to the home was not transferred to the Purchaser.
18. As a result, subject to meeting applicable eligibility requirements under the *ONHWP Act* and its Regulations, each Purchaser is entitled, under Section 14 of the *ONHWP Act*, to compensation from Tarion for their lost Deposit.

19. Section 6 of Regulation 892 under the *ONHWP Act* (“**Regulation 892**”) provides that the maximum compensation amount payable by Tarion in respect of each home is \$100,000.

20. Tarion has paid eligible Purchasers up to this statutory maximum in accordance with its statutory duty.

21. To date, Tarion has received, assessed, and paid the claims of 937 Purchasers out of the guarantee fund under the *ONHWP Act*. Tarion anticipates that amount to increase. The total estimated Tarion payout on Deposit claims is \$74,400,000.

22. Section 13 of Regulation 892 provides that Tarion is subrogated to all rights of recovery of a person to whom payment in respect of a claim has been made out of the guarantee fund under the *ONHWP Act*. Tarion may maintain an action in its own name or in the name of the person, against any other person against whom the action lies in respect of such rights of recovery.

23. Pursuant to this right of subrogation, Tarion claims against the StateView Vendors, in respect of each Purchaser’s contractual claim against their StateView Vendor under their Purchase Agreement, for the StateView Vendor’s breach of the Purchase Agreement.

24. Tarion claims damages for breach of each Purchase Agreement, in the amount paid by Tarion to each Purchaser in respect of their Deposit, plus Tarion’s legal costs, as provided for in Section 13 of Regulation 892.

C. Subrogated claim against StateView Vendors for Breach of the Addendum Trust

25. Some or all of the Purchase Agreements were made conditional upon one or both of: (i) receipt by the StateView Vendor of confirmation that sales of homes in the real estate development exceeded a specified threshold by a specified date; and (ii) receipt by the StateView Vendor of confirmation that financing for the real estate development on terms satisfactory to the StateView Vendor was arranged by a specified date (collectively, the “**Trust Conditions**”).
26. The Purchase Agreements incorporate an addendum (the “**Addendum**”) prescribed under the *ONHWP Act*.
27. The Addendum requires that, where a Purchase Agreement is subject to one or both of the Trust Conditions, all monies paid by the Purchaser to the StateView Vendor, including Deposits, shall be held in trust by the StateView Vendor’s lawyer pursuant to a deposit trust agreement in Tarion’s standard form, until the Trust Conditions are satisfied or waived.
28. The Addendum provides that, failing compliance with the requirement to hold the Deposits in trust as set out above, the Deposits are deemed to be held in trust by the StateView Vendor for the Purchaser on the same terms as are set out in Tarion’s standard form deposit trust agreement.
29. In the case of some or all of the Purchase Agreements, the Trust Conditions were neither satisfied nor waived. The StateView Vendors failed to comply with the requirement to have their lawyer hold the Deposits in trust under a Tarion deposit trust agreement.
30. As a result, the affected Deposit Proceeds are deemed to be held in trust by the StateView Vendors for the Purchasers, on the terms set out in Tarion’s standard form trust agreement.

31. The StateView Vendors breached their trust obligations under the Addendum in respect of the Deposits, by transferring the Deposit Proceeds to the Deposit Recipients.

32. Pursuant to its right of subrogation under Section 13 of Regulation 892, Tarion claims damages or compensation from the StateView Vendors for breach of trust, in the amount of the Deposit compensation paid by Tarion to the affected Purchasers, plus Tarion's legal costs on a full indemnity basis.

D. Subrogated claim against Deposit Recipients for declaration of trust, tracing order, and order for payment

33. The Deposit Recipients received Deposit Proceeds that are subject to the Addendum Trust, either directly or indirectly from the StateView Vendors.

34. The Deposit Recipients knew or should have known, when they received the Deposit Proceeds, that the Deposits are subject to the Addendum Trust.

35. In the case of the StateView Principals and the StateView Spouses, they knew or should have known the Deposit Proceeds are subject to the Addendum Trust because, among other things, the StateView Principals were at all relevant times the officers, directors and directing minds of the StateView Vendors.

36. In the case of the StateView Affiliates, they knew or should have known that the Deposit Proceeds are subject to the Addendum Trust because, among other things, the officers, directors and directing minds of the StateView Affiliates are the StateView Principals.

37. In the case of John Doe, Tarion will provide particulars of the person(s)' knowledge or constructive knowledge of the trust once the identity of the person(s) is determined.

38. The affected Deposit Proceeds remain subject to the Addendum Trust in the hands of the Deposit Recipients, for the benefit of the Purchasers to whose rights Tarion is subrogated.

39. In the alternative, Tarion is entitled to a declaration that the Deposit Proceeds, or a substitute for the Deposit Proceeds, are subject to a constructive trust, for the benefit of the Purchasers to whose rights Tarion is subrogated, in the hands of the Deposit Recipients.

40. Pursuant to its right of subrogation under Section 13 of Regulation 892, Tarion requests a declaration of trust, a tracing order, and an order requiring the Deposit Recipients to pay the Deposit Proceeds, or a substitute for the Deposit Proceeds, to Tarion, plus Tarion's legal costs on a full indemnity basis.

E. Subrogated claim against Deposit Recipients for breach of trust

41. In the event that any Deposit Recipient transferred the Deposit Proceeds to a third party, the Deposit Recipient is liable to the affected Purchaser for breach of trust.

42. Pursuant to its right of subrogation under Section 13 of Regulation 892, Tarion claims damages or compensation from each such Deposit Recipient, for the amount of Deposit Proceeds transferred to a third party in breach of trust, plus Tarion's legal costs on a full indemnity basis.

F. Direct claim against StateView Vendors for Breach of the VB Agreements

43. Each of the StateView Vendors was a party to a VB Agreement with Tarion, in Tarion's standard form, or was required to be, under the regulations under the *ONHWP Act*.

44. Under the VB Agreements, each StateView Vendor agreed to, among other things:

- (a) diligently perform the obligations of the StateView Vendor:

- (i) imposed by the *ONHWP Act*, its regulations, the VB Agreement and/or the Builder Bulletins/Registrar Bulletins published by Tarion;
 - (ii) under each Purchase Agreement with a Purchaser;
 - (b) pay to the Purchaser the amount of the financial loss suffered by the Purchaser, in the event of the StateView Vendor's failure to perform obligations owed under a Purchase Agreement with a Purchaser;
 - (c) indemnify and save Tarion harmless from and against all losses, claims, costs, damages and/or liabilities suffered or incurred by Tarion resulting from, or arising out of:
 - (i) any non-performance or inadequate performance of obligations imposed on the StateView Vendor by the *ONHWP Act*, its regulations, the VB Agreement and/or the Builder Bulletins/Registrar Bulletins, or
 - (ii) any non-payment of a financial loss amount owed to a Purchaser;
 - (d) pay to Tarion the Administration Fee; and
 - (e) pay to Tarion interest at the rate of 18% per annum, calculated annually not in advance, on any amounts owed to Tarion by the StateView Vendor by virtue of the *ONHWP Act*, its regulations, the VB Agreement or the Builder Bulletins/Registrar Bulletins.
45. Each StateView Vendor has breached its VB Agreement(s) by:

- (a) failing to diligently perform the obligations of the StateView Vendor under Regulation 627, including, in particular, the obligations to:
 - (i) fully indemnify Tarion for monies paid out by Tarion to the Purchasers for which the StateView Vendor is responsible;
 - (ii) pay the Administration Fee;
 - (iii) pay interest to Tarion at the prescribed rate, on all amounts the StateView Vendor owes to Tarion;
 - (iv) pay Tarion's legal costs;
- (b) failing to perform the obligations of the StateView Vendor under the Purchase Agreements with Purchasers, as outlined above;
- (c) failing to pay to the Purchasers the amount of financial loss suffered by the Purchasers;
- (d) failing to indemnify and save Tarion harmless from and against the losses, claims, costs, damages and liabilities suffered or incurred by Tarion resulting from, or arising out of, the StateView Vendor's breach of its obligations to Tarion and the Purchasers;
- (e) failing to pay to Tarion the Administration Fee; and
- (f) failing to pay to Tarion interest at the rate of 18% per annum, calculated annually not in advance, on amounts owed to Tarion by the StateView Vendor.

46. The StateView Vendors are therefore liable to Tarion in damages for breach of contract, for all amounts that Tarion has paid to the Purchasers out of the guarantee fund, plus the Administration Fee, interest, costs and associated taxes.

47. Tarion has requested payment from the StateView Vendors for these amounts. To date, the StateView Vendors have failed to make payment.

G. Direct and subrogated claims for unjust enrichment

48. Tarion claims against each Defendant for unjust enrichment. The Defendants have been unjustly enriched by the compensation Tarion paid to the Purchasers. In particular:

- (a) ***The StateView Vendors:*** (1) The StateView Vendors have been enriched by withholding the Deposits; (2) each Purchaser has suffered a corresponding deprivation by losing their Deposit, and/or Tarion has suffered a corresponding deprivation by having to compensate the Purchaser out of the guarantee fund in respect of the withheld Deposit; and (3) there is no juristic reason or legal justification for the enrichment and corresponding deprivation.
- (b) ***The Deposit Recipients:*** (1) The Deposit Recipients have been enriched via their receipt of Deposit Proceeds; (2) the Purchaser has suffered a corresponding deprivation by losing their Deposit, and/or Tarion has suffered a corresponding deprivation by having to compensate the Purchaser out of the guarantee fund in respect of the withheld Deposits; and (3) there is no juristic reason or legal justification for the enrichment and corresponding deprivation.

H. Subrogated claim against Deposit Recipients for fraudulent conveyance

49. Each StateView Vendor conveyed Deposit Proceeds, directly or indirectly, to one or more Deposit Recipients.

50. At the time of each conveyance, each StateView Vendor effected the conveyance with the intent to hinder, delay or defraud the Purchasers of their just and lawful actions, suits, debts, accounts, or damages.

51. The Deposit Recipients, at the time of the conveyances, had notice or knowledge of the StateView Vendor's intent as described above.

52. As a result, the conveyances are void as against the Purchasers, pursuant to Section 2 of the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F29.

53. Pursuant to its right of subrogation under Section 13 of Regulation 892, Tarion claims damages or compensation from the Deposit Recipients for the fraudulently conveyed amounts, plus Tarion's legal costs.

I. Subrogated claim against Deposit Recipients for fraudulent preference

54. In addition, or in the alternative, the conveyances are void as against the Purchasers, pursuant to Section 4 of the *Assignments and Preferences Act*, R.S.O. 1990, C. A.33.

55. The Deposit Proceeds were transferred out of the possession of each StateView Vendor when the StateView Vendor was insolvent or unable to pay its debts in full, or when the StateView Vendor knew that it was on the eve of insolvency, with the intent to hinder, delay, or

prejudice the Purchasers, and/or to prefer the interests of other creditors over those of the Purchasers.

56. Pursuant to its right of subrogation under Section 13 of Regulation 892, Tarion claims damages or compensation from the Deposit Recipients for the fraudulently preferred amounts, plus Tarion's legal costs.

J. Subrogated claim against the StateView Principals for oppression

57. As creditors of the StateView Vendors, the Purchasers have standing to make a claim under section 248 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16,.

58. A director of a corporation cannot take assets of the corporation in priority to, and to the prejudice of, unpaid creditors. Nor can the director convey those assets to a third party.

59. The StateView Principals, as directors, officers and shareholders of the StateView Vendors, took the assets of the StateView Vendors for themselves, and/or conveyed the assets of the StateView Vendors to third parties. This was in priority to, and to the prejudice of, the Purchasers as unpaid creditors.

60. The Purchasers, as creditors of the StateView Vendors, may pursue an oppression claim personally against the StateView Principals, for a remedy to rectify such prejudicial conduct.

61. The conduct of the StateView Principals and the StateView Vendors was oppressive and unfairly prejudicial, and unfairly disregarded the interests of the Purchasers. The conduct includes, without limitation:

- (a) misappropriating the Deposit Proceeds for unauthorized transactions unrelated to the purposes for which they were paid to the StateView Vendors;
- (b) mismanaging the Deposit Proceeds, causing the StateView Vendors to become insolvent; and
- (c) failing to adhere to their statutory and contractual obligations concerning the Deposits.

62. Pursuant to its right of subrogation under Section 13 of Regulation 892, Tarion claims compensation from the StateView Principals under the oppression remedy, plus Tarion's legal costs.

Relevant Statutes

63. Tarion pleads and relies upon the *ONHWP Act* and its regulations, the *Business Corporations Act*, R.S.O. 1990, c. B.16, the *Assignments and Preferences Act*, R.S.O. 1990, c. A.33, the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29, and the *Courts of Justice Act*, R.S.O. 1990, c. C.43, all as amended.

64. Tarion proposes that this action be tried at the City of Toronto.

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TARION WARRANTY CORPORATION v. STATEVIEW HOMES (NAO TOWNS) INC. et al.
Plaintiff Defendants

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

Proceeding commenced at TORONTO

STATEMENT OF CLAIM

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Tarion Warranty Corporation

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

MERIDIAN CREDIT UNION
Applicant

STATEVIEW HOMES (ELM&CO) INC.
Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER
(Lifting Stay of Proceedings)

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