

Court File No. CV-23-00698395-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

ATRIUM MORTGAGE INVESTMENT CORPORATION AND DORR
CAPITAL CORPORATION

Applicant

and

STATEVIEW HOMES (NAO TOWNS II) INC.

Respondent

**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 MOTION RECORD OF THE
MOVING PARTY (CROSS-MOTION)**

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AMENDED**

**AFFIDAVIT OF GEORGIA SCOTT-MCLAREN
(Sworn February 28, 2024)**

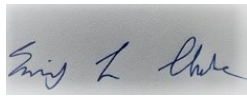
I, Georgia Scott-McLaren, of the Town of Ajax, in the Regional Municipality of Durham,

MAKE OATH AND SAY:

1. I am a legal assistant with the law firm Sotos LLP, lawyers for the moving party to the cross-motion, and as such, have knowledge of the matters deposed hereinafter.
2. Attached hereto as Exhibit "A" is a statement of claim of Tarion Warranty Corporation, issued on February 9, 2024.

3. Attached hereto as Exhibit "B" is an e-mail from Alan Merskey, a lawyer with the law firm Cassels Brock & Blackwell LLP and counsel to the Receiver, dated February 16, 2024.

SWORN by Georgia Scott-McLaren of the Town of Ajax, in the Province of Ontario, before me at the Town of New Market, in the Province of Ontario, on February 28, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

}



GEORGIA SCOTT-MCLAREN

**Emily Lynne Clarke, a Commissioner, etc.
Province of Ontario, for
Sotos LLP, Barristers and Solicitors
Expires October 9, 2024.**

This is **Exhibit “A”** to the Affidavit of Georgia
Scott-McLaren Sworn before me in the City of
Toronto, in the Province of Ontario, on February
28, 2024

A rectangular box containing a handwritten signature in blue ink, which appears to read "Emily L. Clarke".

Commissioner for taking Affidavit
(or as may be)

**Emily Lynne Clarke, a Commissioner, etc.
Province of Ontario, for
Sotos LLP, Barristers and Solicitors
Expires October 9, 2024.**



Court File No.

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

B E T W E E N:

TARION WARRANTY CORPORATION

Plaintiff

and

THE TORONTO-DOMINION BANK, CARLO TAURASI, DINO TAURASI, LUXVIEW FINE HOMES CORPORATION, STATEVIEW CONSTRUCTION LTD., STATEVIEW HOMES (ASHBURN HEIGHTS) INC., STATEVIEW HOMES (BALDWIN HEIGHTS) INC., STATEVIEW HOMES (BEA TOWNS) INC., STATEVIEW HOMES (BONAVENTURE) INC., STATEVIEW HOMES (EDGE TOWNS) INC., STATEVIEW HOMES (ELIA COLLECTION) INC., STATEVIEW HOMES (ELM&CO) INC., STATEVIEW HOMES (HAMPTON HEIGHTS) INC., STATEVIEW HOMES (HIGH CROWN ESTATES) INC., STATEVIEW HOMES (KINGS LANDING PHASE II) INC., STATEVIEW HOMES (KINGS LANDING) INC., STATEVIEW HOMES (MAIN & CO) INC., STATEVIEW HOMES (MINU TOWNS) INC., STATEVIEW HOMES (NAO TOWNS) INC., STATEVIEW HOMES (NAO TOWNS II) INC., STATEVIEW HOMES (ON THE MARK) INC., STATEVIEW HOMES (OOH LALA TOWNS) INC., STATEVIEW HOMES (QUEEN'S COURT) INC., STATEVIEW HOMES (RIALTO TOWNS) INC., STATEVIEW HOMES (TESORO COLLECTION) INC., STATEVIEW HOMES (IVORY OAK ESTATES) INC., TAURA DEVELOPMENTS INC., LIVE INSPIRED ORGANIZATION, HIGHVIEW BUILDING CORP INC., NORTHGATE FINE HOMES INC., TLSFD TAURASI HOLDINGS CORP., and JOHN DOES 1-10
and/or JANE DOES 1-10,

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 February 9, 2024

Issued by _____

Local Registrar

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

- TO: **THE TORONTO-DOMINION BANK**
66 Wellington Street West
Toronto, Ontario
M5J 2W4
- AND TO: **CARLO TAURASI**
48A Puccini Drive
Richmond Hill, Ontario
L4E 2Y6
- AND TO: **DINO TAURASI**
48A Puccini Drive
Richmond Hill, Ontario
L4E 2Y6
- AND TO: **LUXVIEW FINE HOMES CORPORATION**
410 Chrislea Road, Unit 16
Vaughan, Ontario
L4L 8B5
- AND TO: **STATEVIEW CONSTRUCTION LTD.**
410 Chrislea Road, Unit 16
Vaughan, Ontario
L4L 8B5
- AND TO: **STATEVIEW HOMES (ASHBURN HEIGHTS) INC.**
410 Chrislea Road, Unit 16
Vaughan, Ontario
L4L 8B5
- AND TO: **STATEVIEW HOMES (BALDWIN HEIGHTS) INC.**
410 Chrislea Road, Unit 16
Vaughan, Ontario
L4L 8B5
- AND TO: **STATEVIEW HOMES (BEA TOWNS) INC.**
410 Chrislea Road, Unit 16
Vaughan, Ontario
L4L 8B5
- AND TO: **STATEVIEW HOMES (BONAVENTURE) INC.**
410 Chrislea Road, Unit 16
Vaughan, Ontario
L4L 8B5

- AND TO: **STATEVIEW HOMES (EDGE TOWNS) INC.**
410 Chrislea Road, Unit 16
Vaughan, Ontario
L4L 8B5
- AND TO: **STATEVIEW HOMES (ELIA COLLECTION) INC.**
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L4L 8B5
- AND TO: **STATEVIEW HOMES (ELM&CO) INC.**
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- AND TO: **STATEVIEW HOMES (HAMPTON HEIGHTS) INC.**
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- AND TO: **STATEVIEW HOMES (HIGH CROWN ESTATES) INC.**
410 Chrislea Road, Unit 16
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- AND TO: **STATEVIEW HOMES (KINGS LANDING PHASE II) INC.**
410 Chrislea Road, Unit 16
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L4L 8B5
- AND TO: **STATEVIEW HOMES (KINGS LANDING) INC.**
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Vaughan, Ontario
L4L 8B5
- AND TO: **STATEVIEW HOMES (MAIN & CO) INC.**
410 Chrislea Road, Unit 16
Vaughan, Ontario
L4L 8B5
- AND TO: **STATEVIEW HOMES (MINU TOWNS) INC.**
410 Chrislea Road, Unit 16
Vaughan, Ontario
L4L 8B5

- AND TO: **STATEVIEW HOMES (NAO TOWNS) INC.**
410 Chrislea Road, Unit 16
Vaughan, Ontario
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- AND TO: **STATEVIEW HOMES (NAO TOWNS II) INC.**
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- AND TO: **STATEVIEW HOMES (ON THE MARK) INC.**
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Vaughan, Ontario
L4L 8B5
- AND TO: **STATEVIEW HOMES (OOH LALA TOWNS) INC.**
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- AND TO: **STATEVIEW HOMES (QUEEN'S COURT) INC.**
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- AND TO: **STATEVIEW HOMES (IVORY OAK ESTATES) INC.**
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Vaughan, Ontario
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- AND TO: **TAURA DEVELOPMENTS INC.**
410 Chrislea Road, Unit 16
Vaughan, Ontario
L4L 8B5

AND TO: **LIVE INSPIRED ORGANIZATION**
410 Chrislea Road, Unit 16
Vaughan, Ontario
L4L 8B5

AND TO: **HIGHVIEW BUILDING CORP INC.**
410 Chrislea Road, Unit 16
Vaughan, Ontario
L4L 8B5

AND TO: **NORTHGATE FINE HOMES INC.**
410 Chrislea Road, Unit 16
Vaughan, Ontario
L4L 8B5

AND TO: **TLSFD TAURASI HOLDINGS CORP.**
161 Duncan Road
Richmond Hill, Ontario
L4C 6J5

AND TO: **JOHN DOES 1-10**

AND TO: **JANE DOES 1-10**

CLAIM

1. The Plaintiff claims:

- (a) a declaration that the Improvident Settlement Agreement (as defined in paragraph 19) was an unjust preference under s. 4 of the *Assignments and Preferences Act*, R.S.O. 1990, c. A.33;
- (b) a declaration that the Impugned Consent Order (as defined in paragraph 20) is a nullity pursuant to s. 3 of the *Assignments and Preferences Act*, R.S.O. 1990, c. A.33;
- (c) in the alternative to the relief sought in paragraphs 1(a) and 1(b), a declaration that the Improvident Settlement Agreement constitutes an unlawful conveyance under s. 2 of the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29;
- (d) an Order setting aside the Improvident Settlement Agreement, including a declaration that all security granted thereunder is null and void;
- (e) an Order lifting the stay of proceedings over certain StateView Defendants (as defined in paragraph 8);
- (f) a constructive trust and tracing remedy over all funds received by The Toronto-Dominion Bank (“TD”) pursuant to the Improvident Settlement Agreement, including but not limited to the Improvident Settlement Payment (as defined in paragraph 26);

- (g) damages as against TD, John Does and/or Jane Does, including for negligence, in an amount to be determined prior to trial;
- (h) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (i) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (j) the costs of this proceeding, plus all applicable taxes; and
- (k) such further and other relief as this Court may deem just.

THE PARTIES

Tarion Warranty Corporation

2. The Plaintiff, Tarion Warranty Corporation (“**Tarion**”), is a private, not-for-profit consumer protection organization established in 1976. Tarion is tasked with administering Ontario’s new home warranty program, to protect the rights of new home purchasers and regulate new home builders and vendors.

3. The Ontario government, through the Ministry of Government and Consumer Services, has empowered Tarion to administer and enforce the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31, and related regulations (together, the “*Warranties Act*”).

4. Under this statutory scheme, Tarion’s objects include:

- (a) the administration of the Ontario New Home Warranties Plan, which sets out the warranty protection to which new home purchasers are entitled in Ontario;
- (b) the establishment and administration of a Guarantee Fund providing for the payment of compensation under the *Warranties Act*, whether by the establishment of a fund for the purpose or by contract with licensed insurers;
- (c) assisting in the conciliation of disputes between vendors and owners; and
- (d) engaging in undertakings for the purpose of improving communications between vendors and owners.

5. In addition to registering builders and vendors, Tarion's regulatory mandate also includes, among other things, safeguarding the Guarantee Fund established under the *Warranties Act* that funds payments by Tarion in respect of claims made by new home purchasers.

The Toronto-Dominion Bank, John Does and/or Jane Does, and the StateView Defendants

6. The Defendant, TD, is a Schedule I bank incorporated under the *Bank Act*, S.C. 1991, c. 46, as amended (the "***Bank Act***"), headquartered in Toronto, Ontario.

7. John Does and/or Jane Does (the "**Does**") were, at all material times, employees of TD. The identity(ies) of the Does are not known to the Plaintiff and are within the exclusive knowledge of the Defendants.

8. The "**StateView Defendants**" are individuals and organizations associated with a construction and development business based in York Region that operates under the name

“**StateView Homes**”. The StateView Defendants consist of the following individuals and corporations:

- (a) Carlo Taurasi (“**Carlo**”) holds himself out as the CEO and President of StateView Homes and is a director and officer of most of the corporate StateView Defendants, as listed below;
- (b) Dino Taurasi (“**Dino**”) holds himself out as president of StateView Homes. He is Carlo’s brother. He is a director and officer of most of the corporate StateView Defendants, as listed below;
- (c) Luxview Fine Homes Corporation is a division of StateView Homes. Daniel Ciccone (“**Daniel**”), who holds himself out as StateView Home’s CFO, and Carlo are its officers and directors;
- (d) StateView Construction Ltd. is a corporation associated with StateView Homes, Carlo, Dino, and Daniel are its officers and directors;
- (e) StateView Homes (Ashburn Heights) Inc. is a corporation associated with StateView Homes. Daniel and Carlo are its officers and directors;
- (f) StateView Homes (Baldwin Heights) Inc. is a corporation associated with StateView Homes. Daniel and Carlo are its officers and directors;
- (g) StateView Homes (BEA Towns) Inc. is a corporation associated with StateView Homes. Daniel and Carlo are its officers and directors;

- (h) StateView Homes (Bonaventure) Inc. is a corporation associated with StateView Homes. Daniel and Carlo are its officers and directors;
- (i) StateView Homes (Edge Towns) Inc. is a corporation associated with StateView Homes. Daniel is a director and Carlo is an officer;
- (j) StateView Homes (Elia Collection) Inc. is a corporation associated with StateView Homes. Daniel and Carlo are its officers and directors;
- (k) StateView Homes (Elm&Co) Inc. is a corporation associated with StateView Homes. Daniel and Carlo are its officers and directors;
- (l) StateView Homes (Hampton Heights) Inc. is a corporation associated with StateView Homes. Daniel and Carlo are its officers and directors;
- (m) StateView Homes (High Crown Estates) Inc. is a corporation associated with StateView Homes. Carlo is a director, and Daniel and Carlo are its officers;
- (n) StateView Homes (Kings Landing Phase II) Inc. is a corporation associated with StateView Homes. Carlo is a director, and Daniel and Carlo are its officers;
- (o) StateView Homes (Kings Landing) Inc. is a corporation associated with StateView Homes. Carlo is a director, and Daniel and Carlo are its officers;
- (p) StateView Homes (Main & Co) Inc. is a corporation associated with StateView Homes. Daniel and Carlo are its officers and directors;
- (q) StateView Homes (Minu Towns) Inc. is a corporation associated with StateView Homes. Daniel and Carlo are its officers and directors;

- (r) StateView Homes (Nao Towns) Inc. is a corporation associated with StateView Homes. Daniel and Carlo are its officers and directors;
- (s) StateView Homes (Nao Towns II) Inc. is a corporation associated with StateView Homes. Daniel and Carlo are its officers and directors;
- (t) StateView Homes (On the Mark) Inc. is a corporation associated with StateView Homes. Daniel and Carlo are its officers and directors;
- (u) StateView Homes (Ooh Lala Towns) Inc. is a corporation associated with StateView Homes. Carlo is a director, and Daniel, Dino, and Carlo are its officers;
- (v) StateView Homes (Queen's Court) Inc. is a corporation associated with StateView Homes. Daniel and Carlo are its officers and directors;
- (w) StateView Homes (Rialto Towns) Inc. is a corporation associated with StateView Homes. Carlo is a director, and Daniel, Dino, and Carlo are its officers;
- (x) StateView Homes (Tesoro Collection) Inc. is a corporation associated with StateView Homes. Daniel and Carlo are its officers and directors;
- (y) StateView Homes (Ivory Oak Estates) Inc. is a corporation associated with StateView Homes. Carlo is its officer and director.
- (z) Taura Developments Inc. is a division of StateView Homes. Dino and Carlo are directors, and Dino, Carlo, and Daniel are its officers;

- (aa) Live Inspired Organization is a not-for-profit organization, incorporated under the *Not-for-Profit Corporations Act, 2010*, S.O. 2010, c. 15. It is associated with StateView Homes. Carlo is one of its directors and officers;
 - (bb) Highview Building Corp Inc. is a corporation associated with StateView Homes. Dino, Daniel, and Carlo are its directors and officers;
 - (cc) Northgate Fine Homes Inc. is a corporation associated with StateView Homes. Daniel and Carlo are its directors and officers; and
 - (dd) TLSFD Taurasi Holdings Corp. is a corporation associated with StateView Homes. Dino and Carlo are among its officers and directors.
9. StateView’s new homebuilding projects fall within Tarion’s mandate, including Tarion’s obligations, in certain circumstances, to provide deposit protection of up to \$100,000 per purchaser in the event a contract to purchase a new home is cancelled.

Non-Party Court-Appointed Receiver of Certain StateView Defendants

10. KSV Restructuring Inc. (“**KSV**” or the “**Receiver**”) is the Court-ordered Receiver and Manager of StateView Homes (Minu Towns) Inc., StateView Homes (Nao Towns) Inc., StateView Homes (Nao Towns II) Inc., StateView Homes (On the Mark) Inc., TLSFD Taurasi Holdings Corp., StateView Homes (High Crown Estates) Inc., Highview Building Corp. Inc., StateView Homes (BEA Towns) Inc., and StateView Homes (Elm&Co) Inc.

TD'S VERSION OF THE STATEVIEW FRAUD

11. According to court records filed by TD, on March 14, 2023, TD first discovered that accounts held by StateView Homes with TD had accumulated an unauthorized overdraft in excess of \$37 million.

12. On March 24, 2023, TD commenced an action concerning the StateView Fraud at Court File No. CV-23-00696833-0000 (“**TD’s First Claim**”). TD alleges that between April 2022 and March 2023, the StateView Defendants engaged in a major cheque kiting scheme using TD bank accounts (the “**StateView Fraud**”).

13. As pled by TD, the StateView Fraud followed a consistent pattern:

- (a) one of the StateView Defendants deposited a cheque (each, a “**Fraudulent Cheque**”) for a large sum from a non-TD bank account into a TD bank account. TD would conditionally credit the StateView Defendant’s account with the amount of that cheque, pending final settlement through the Automated Clearing Settlement System;
- (b) immediately upon deposit, the StateView Defendant used the conditional credit from TD to disburse the funds, either through cheque, wire transfer, or inter-account transfer;
- (c) a “stop payment” was issued on the Fraudulent Cheque, prior to TD obtaining final settlement through the Automated Clearing Settlement System; and

- (d) to avoid an overdraft in the TD account, the StateView Defendant would enter into another sham transaction, either through the deposit of another Fraudulent Cheque or through a transfer using a conditional credit provided by TD in another of its TD accounts (which was itself effected through a Fraudulent Cheque).

14. TD pled that between April 2022 and March 2023, the TD bank accounts associated with the StateView Defendants accumulated over \$37 million in overdrafts, and that the overdrafts were used by the StateView Defendants to fund their business and to pay themselves through conditional credits provided by TD.

TD'S CLAIMS AGAINST THE STATEVIEW DEFENDANTS

15. TD's First Claim sought a constructive trust and tracing remedy over the funds withdrawn or spent in overdraft as a result of the StateView Fraud, or alternatively damages of \$37,028,055.73, and injunctive relief.

16. Having determined that the StateView Defendants held accounts with Royal Bank of Canada ("**RBC**"), TD also sought payment-freeze and production relief pursuant to the *Bank Act* as against RBC.

17. After issuing the First Claim, on March 29, 2023, TD commenced an action against Duca Financial Services Cr. Un. Ltd. ("**Duca**") and Bank of Nova Scotia ("**BNS**"), at Court File No. CV-23-00697007-0000 ("**TD's Second Claim**" and, together with TD's First Claim, "**TD's Claims**").

18. In TD's Second Claim, TD sought orders pursuant to the *Credit Unions and Caisses Populaires Act, 2020*, S.O. 2020, c. 36, Sched. 7 and the *Bank Act* in relation to the StateView

Fraud. These orders mirror the relief sought as against RBC in TD's First Claim and arose upon TD discovering that the StateView Defendants maintained accounts with Duca and BNS.

THE IMPROVIDENT SETTLEMENT AGREEMENT

19. On March 31, 2023, TD and the StateView Defendants reached a purported settlement agreement to resolve TD's Claims (the "**Improvident Settlement Agreement**").

20. On April 4, 2023, the Court granted a consent Order that, among other things, authorized the StateView Defendants to make payments pursuant to the Improvident Settlement Agreement (the "**Impugned Consent Order**").

21. TD and the StateView Defendants provided no notice to Tarion, or any other creditor, that TD and the StateView Defendants were seeking a consent Order pursuant to the Improvident Settlement Agreement.

22. Pursuant to the Improvident Settlement Agreement, the StateView Defendants acknowledged and agreed that they were jointly and severally liable to TD for \$37,134,091.23 plus interest and TD's legal costs (the "**TD Preferred Debt**").

23. The StateView Defendants consented to repay the TD Preferred Debt under the following payment schedule:

- (a) forthwith upon obtaining a Court Order, the sum of \$3,000,000;
- (b) on or before April 17, 2023, the sum of \$6,150,000;
- (c) on or before May 1, 2023, the sum of \$6,150,000;

- (d) on or before May 31, 2023, the sum of \$6,150,000;
- (e) on or before June 15, 2023, the sum of \$6,150,000;
- (f) on or before June 30, 2023, the sum of \$6,150,000; and
- (g) on or before July 14, 2023, the balance of the TD Preferred Debt.

24. The StateView Defendants consented to provide security for the full value of the TD Preferred Debt in the form of mortgages (either first ranking, second ranking, or third ranking) on the following properties:

- (a) 3 Windrose Valley Collingwood – PIN: 58253-0276 (LT)
- (b) 3-410 Chrislea Road Woodbridge – PIN: 29275-0003 (LT)
- (c) 7-410 Chrislea Road Woodbridge – PIN: 29275-0007 (LT)
- (d) 8-410 Chrislea Road Woodbridge – PIN: 29275-0008 (LT)
- (e) 14-410 Chrislea Road Woodbridge – PIN: 29275-0014 (LT)
- (f) 15-410 Chrislea Road Woodbridge – PIN: 29275-0015 (LT)
- (g) 16-410 Chrislea Road Woodbridge – PIN: 29275-0016 (LT)
- (h) 17-410 Chrislea Road Woodbridge – PIN: 29275-0017 (LT)
- (i) 18-410 Chrislea Road Woodbridge – PIN: 29275-0018 (LT)
- (j) 19-410 Chrislea Road Woodbridge – PIN: 29275-0019 (LT)
- (k) 20-410 Chrislea Road Woodbridge – PIN: 29275-0020 (LT)
- (l) 5 Eden Vale Drive King City – PIN: 03379-0223 (LT)
- (m) 7810 McCowan Road Markham – PIN: 02962-0270 (LT)
- (n) 7822 McCowan Road Markham – PIN: 02962-0271 (LT)
- (o) 7834 McCowan Road Markham – PIN: 02962-0272 (LT)
- (p) 7846 McCowan Road Markham – PIN: 02962-0273 (LT)
- (q) 16 Windrose Valley Collingwood – PIN: 58253-0280 (LT)
- (r) 48 Puccini Richmond Hill – PIN: 03206-3971 (LT)
- (s) 48A Puccini Richmond Hill – PIN: 03206-3971 (LT)
- (t) 80 Fairfield Drive King City – PIN: 03379-0249 (LT)
- (u) 189 Summerset Barrie – PIN: 58763-1764 (LT)
- (v) 3624 Ferretti Court Innisfil – PIN: 58085-0700 (LT)
- (w) 3808 Ferretti Court Innisfil – PIN: 58085-0646 (LT)
- (x) 12942 York Durham Line Whitchurch-Stouffville – PIN: 03707-0188 (LT)
- (y) 301 Bradwick Vaughan – PIN: 03273-0069 (LT)
- (z) 8 Bradwick Vaughan – PIN: 03274-0043 (LT)
- (aa) 6 Bradwick Vaughan – PIN: 03274-0044 (LT)
- (bb) 448 North Rivermede Vaughan – PIN: 03274-0132 (LT)

(cc) 596 Oster Lane Vaughan – PIN: 03275-0052 (LT)

25. The Improvident Settlement Agreement provides that, if any of the StateView Defendants default on the payments or become the subject of any insolvency proceeding, the full amount of the TD Preferred Debt becomes outstanding, and TD is entitled to enforce in respect of its security:

8. If the Settling State View Parties default in any of the payments required by section 2, or fail to perform any other covenant or obligation under this Agreement (including, without limitation, valid and sufficient Security pursuant to section 6), or if any of the Settling State View Parties become the subject of any insolvency proceeding (each, a “**Default**”), the full amount of the Obligation still outstanding as at the date of Default (the “**Accelerated Obligation**”) will become immediately payable by the Settling State View Parties, jointly and severally, and without any grace period for payment. Immediately upon any Default:
 - a. TD Bank will be at liberty to take enforcement steps in respect of the Security;
 - b. TD Bank will be at liberty to obtain a consent judgment in the Action against the Settling State View Parties for the amount of the Accelerated Obligation; and
 - c. TD Bank will be at liberty to seek any other applicable relief or recourse that is permitted by law.

26. It appears that certain StateView Defendants (and/or related persons) paid \$3.15 million to TD pursuant to the Settlement Agreement (the “**Improvident Settlement Payment**”).

27. TD and the StateView Defendants failed to provide Tarion, purchasers, and the other creditors with notice of the fact of the StateView Fraud. What is more, TD and the StateView Defendants failed to provide Tarion and the other creditors with notice of the Improvident Settlement Agreement, the Impugned Consent Order, or the Improvident Settlement Payment.

28. TD and the StateView Defendants knew, or ought to have known, that (i) StateView’s new homebuilding activities fell within Tarion’s warranty mandate; and (ii) StateView’s new home purchasers would suffer damages compensable by Tarion under the *Warranties Act* if StateView

Homes was unable to complete their projects, causing purchasers to seek recourse directly from Tarion.

THE STATEVIEW RECEIVERSHIPS

29. On or about April 26 and 27, 2023, the Canadian Broadcasting Corporation and *The Globe and Mail* published articles about the StateView Fraud.

30. Shortly thereafter, on or about April 28, 2023, *The Globe and Mail* published an article regarding StateView's lenders' demands for repayment of outstanding loans.

31. On May 2, 2023, receivership orders were issued with respect to several of the StateView Defendants:

- (a) at Court File No. CV-23-00698395-00CL, KSV was appointed as Receiver for StateView Homes (Nao Towns II) Inc.;
- (b) at Court File No. CV-23-00698637-00CL, KSV was appointed as Receiver for StateView (BEA Towns) Inc.;
- (c) at Court File No. CV-23-00698632-00CL, KSV was appointed as Receiver for Highview Building Corp Inc.; and
- (d) at Court File No. CV-23-00678576-00CL, KSV was appointed as Receiver for 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.

32. Later, on May 18, 2023, at Court File No. CV-23-00699067-00CL, KSV was appointed as Receiver for StateView Homes (Elm&Co) Inc.

33. The Receiver is mandated to sell StateView's new homebuilding projects to third parties. In that event, it is likely that insufficient funds will be generated from these sales to pay the StateView Defendants' liabilities, including their secured obligations.

34. As a result of StateView Homes' downfall and as set out below, StateView Homes' new home purchasers will be entitled to a refund of their deposits, and Tarion will be required to pay new home purchasers' warranty payments. The total magnitude of such warranty payments relating to StateView is not yet known and will be particularized prior to trial.

THE SETTLEMENT AGREEMENT WAS IMPROVIDENT AND AN UNJUST PREFERENCE

35. At all material times, TD and the StateView Defendants had a close business relationship. Each of the corporate StateView Defendants maintained accounts with TD. At all material times, TD had, or ought to have had, relevant insight into the StateView Defendants' financial circumstances and accounts data. As set out in paragraph 28 above, TD knew that the StateView Defendants were new homebuilders who owe certain obligations to purchasers, and who are subject to the *Warranties Act* and Tarion's deposit protections.

36. At the time that they entered the Improvident Settlement Agreement and consented to the Impugned Consent Order, TD and the StateView Defendants knew, or ought to have known, that the StateView entities were insolvent or on the brink of insolvency.

37. The StateView Defendants executed the Improvident Settlement Agreement with the intent to defeat, delay, hinder and/or prejudice creditors.

38. By entering into the Settlement Agreement, StateView Defendants preferred one creditor – TD – over all others, including purchasers and Tarion.

39. TD knew, or ought to have known, that in executing the Improvident Settlement Agreement, the StateView Defendants were preferring TD's interests to their other creditors, including purchasers and Tarion. TD further knew, or ought to have known, that in executing the Improvident Settlement Agreement, the StateView Defendants intended to defeat and/or prejudice creditors, including purchasers and Tarion.

40. The StateView Defendants' consent to the Impugned Consent Order is void and cannot give rise to a judgment or execution, as it was given by a party or parties who were insolvent and/or on the eve of insolvency, and who had an intent to defeat or prejudice other creditors (wholly or in part) or to give one creditor a preference over other creditors, including purchasers and Tarion.

41. The StateView Defendants made the Improvident Settlement Payment with the intent to defeat and/or prejudice creditors, including purchasers and Tarion.

42. By making the Improvident Settlement Payment, the StateView Defendants preferred one creditor – TD – over all others, including purchasers and Tarion.

43. TD knew, or ought to have known, that in accepting the Improvident Settlement Payment, the StateView Defendants were preferring TD's interests to their other creditors, including purchasers and Tarion. TD further knew, or ought to have known, that in making the Improvident Settlement Payment, the StateView Defendants intended to defeat and/or prejudice creditors, including purchasers and Tarion.

TD'S NEGLIGENCE

44. At all material times, TD owed purchasers and Tarion a duty of care. This duty included, among other things, that TD protect purchasers and Tarion from and/or not facilitate fraudulent or unauthorized activities by the StateView Defendants. The duty also included that TD investigate any fraudulent or otherwise unauthorized activities in a diligent and timely manner, and ensure that TD maintained adequate compliance systems to detect and stop fraudulent activity.

45. TD was negligent and breached its standard of care in allowing the StateView Defendants to carry out the StateView Fraud. Among other things, TD allowed the StateView Defendants to:

- (a) accumulate an unauthorized overdraft in excess of \$37 million over an eleven-month period;
- (b) disburse funds pending final settlement of cheques through the Automated Clearing Settlement System; and
- (c) repeatedly issue stop payments on Fraudulent Cheques.

46. TD was negligent and breached its standard of care in allowing each of these activities to continue and by failing to investigate the StateView Fraud, despite having actual and/or constructive knowledge of the StateView Fraud. Specifically, TD failed to investigate StateView Homes' accounts, transactions, and the StateView Defendants' use of TD's services, despite facts that should have alerted TD to the StateView Fraud, including the significant quantum of overdraft, the frequency of the StateView Defendants' reliance on overdraft, and repeated stop payment orders (the "**Red Flags**").

47. The Red Flags pointed directly to an active and ongoing fraud. The Red Flags provided TD with sufficient indicia that StateView Homes' accounts – and TD's own overdraft and clearance services – were being used for improper purposes, including fraud. TD's existing policies, procedures, and compliance systems would and should have detected the Red Flags. Had TD investigated the Red Flags, the StateView Fraud would have been discovered and stopped.

48. Investigation of the Red Flags did not require TD to monitor any of the StateView Defendants' internal operations. The Red Flags were visible on the face of inter-account transactions, and TD's compliance system should have worked to identify these Red Flags. Upon learning of the Red Flags, TD was under a duty of care to investigate and prevent its services from being used for fraudulent purposes.

49. TD has a relationship of proximity with purchasers and Tarion by undertaking to ensure that TD's own services (including overdraft protection and allowing customers to disburse funds pending final settlement of cheques) are not used to facilitate fraudulent activities. Among other things, TD was at all times aware of the StateView Defendants' business as new home builders who collect deposits from purchasers, and the resulting statutory requirement that Tarion provide warranty coverage should StateView Homes fail in certain obligations to its new home purchasers.

50. In failing to investigate these Red Flags, and failing to stop the StateView Fraud, TD's actions fell significantly below the expected standard of care and/or industry practice.

51. The Red Flags were directly connected to the loss suffered by purchasers and Tarion. Purchasers and Tarion have and will continue to suffer damages as a result of TD's negligence. TD's acts or omissions were and are a cause, in fact and in law, of purchasers' and Tarion's damages.

TD IS VICARIOUSLY LIABLE FOR THE DOES

52. TD is vicariously liable for the acts and omissions of its employees, the Does.

53. All allegations of negligence as pleaded in this claim with respect to TD apply, with necessary modifications, to the Does. The Does owed a duty of care to purchasers and Tarion, as described at paragraphs 44 and 49. The Does breached this standard of care, as described at paragraphs 45 to 48 and 50. Purchasers and Tarion have suffered damages as a result of the Does' negligence, as described herein at paragraph 51.

54. The relationship between TD and the Does is sufficiently close to establish a claim for vicarious liability: the Does were, at all material times, employees of TD. The wrongful acts or omissions of the Does are sufficiently connected to their assigned tasks as employees of TD such that their wrongful acts or omissions can (i) be regarded as a materialization of the risks created by TD and (ii) a mode of doing acts authorized by TD.

TARION WARRANTY CLAIMS

55. Pursuant to its statutory mandate, Tarion provides warranty coverage to purchasers of new construction homes, including those sold by StateView Homes. For example, for purchase agreements entered into after January 1, 2018 for new freehold homes exceeding \$600,000, the prescribed warranty deposit protection is 10% of purchase price, to a maximum of \$100,000.

56. StateView Homes' new home purchasers may make deposit protection claims to Tarion where their purchase agreements are ultimately terminated as part of the Court-ordered sale process in the receiverships or by transactions completed thereunder, and deposits are not refunded by StateView Homes through the receivership process.

57. The *Warranties Act* provides that Tarion is subrogated to all rights of recovery of, and can maintain a legal action in the name of (or in its own name), all new home purchasers to whom Tarion makes a payment on account of their claims.

58. Tarion is now receiving deposit protection claims from the original StateView Homes purchasers for this warranty coverage. To date, these warranty calls are estimated to amount to \$1.8 million, which quantum is expected to materially increase in the coming weeks and months.

59. The Improvident Settlement Agreement, the Impugned Consent Order, and the Improvident Settlement Payment were prejudicial to, and to the detriment of, purchasers and Tarion. Purchasers and Tarion have suffered damages, and will continue to suffer damages, as a result of this preferential treatment.

60. The full quantum of Tarion's damages including damages claimed by way of subrogation will be determined prior to trial.

RELEVANT STATUTES AND JURISDICTION

61. Tarion pleads and relies upon:

- (a) *Assignments and Preferences Act*, R.S.O. 1990, c. A.33;
- (b) *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29;
- (c) *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3;
- (d) *Bank Act*, S.C. 1991, c. 46;
- (e) *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31;

- (f) *Negligence Act*, R.S.O. 1990, c. N.1; and
- (g) *Courts of Justice Act*, R.S.O. 1990, c. C.43.

62. The Plaintiff proposes that this action be tried in Toronto.

(Date of issue)

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Lawyers for the Plaintiff

RCP-E 14A (June 9, 2014)

Court File No.

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

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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Lawyers for the Plaintiff

RCP-F 4C (September 1, 2020)

This is **Exhibit “B”** to the Affidavit of Georgia
Scott-McLaren Sworn before me in the City of
Toronto, in the Province of Ontario, on February
28, 2024

A rectangular box containing a handwritten signature in blue ink. The signature appears to read "Emily L. Clarke".

Commissioner for taking Affidavit
(or as may be)

**Emily Lynne Clarke, a Commissioner, etc.
Province of Ontario, for
Sotos LLP, Barristers and Solicitors
Expires October 9, 2024.**

From: [Merskey, Alan](#)
To: [Denna Pourmonazah Jalili](#); Jeff.Larry@paliareroland.com; [David Sterns](#)
Cc: Daniel.Rosenbluth@paliareroland.com; bkofman@ksvadvisory.com; Jwong@ksvadvisory.com; [Bellissimo, Joseph](#); ngoldstein@ksvadvisory.com
Subject: RE: Highview Distribution
Date: February 16, 2024 3:44:53 PM
Attachments: [image004.png](#)
[image001.png](#)

Denna,

The Receiver confirms that it continues to hold the \$170k on Highview and that there have been no sale transactions on Bea or Elm.

The Receiver does not maintain any holdbacks for the class action from the sale of the other residential development projects.

As set out in para 8.3.3 of the Sixth Report, “if applicable, in the event that the Project Transactions and the smaller additional priority issues raised in the Proposed Class Action remains unresolved, the Receiver will reserve appropriate amounts from the net purchase proceeds, on agreement of the affected creditors or on further order of the Court”.

A similar notation was made by Justice Osborne in his endorsement of November 16, 2023, authorizing the future distributions “depending on the result in the Tarion Priority Motion, certain reserves or holdbacks may also be required to address certain additional priority claims asserted in the Proposed Class Action”.

Given that Tarion was entirely unsuccessful on its motion, no additional holdbacks were required or anticipated, as the Receiver notified you in my email of January 23, 2024. In accordance with that communication, the Receiver proceeded with the previously authorized distributions (prior to receipt of your letter of January 29, 2024) and does not hold any funds on account of these claims.

Best regards

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From: Denna Pourmonazah Jalili <djalili@sotos.ca>
Sent: Friday, February 16, 2024 1:58 PM
To: Jeff.Larry@paliareroland.com; [David Sterns <dsterns@sotos.ca>](mailto:David.Sterns@sotos.ca); Merskey, Alan <amerskey@cassels.com>
Cc: Daniel.Rosenbluth@paliareroland.com; bkofman@ksvadvisory.com; Jwong@ksvadvisory.com;

ATRIUM MORTGAGE INVESTMENT CORP et al and
Applicant

033

STATEVIEW HOMES (NAO TOWNS II) INC.
Respondent

Court File No. CV-23-00698395-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF GEORGIA SCOTT-MCLAREN
SWORN FEBRUARY 28, 2024

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Lawyers for the Moving Party (Cross-Motion)

ATRIUM MORTGAGE INVESTMENT CORP et al
Applicant

-and-

STATEVIEW HOMES (NAO TOWNS II) INC.
Defendants

Court File No. CV-23-00698395-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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REPLY MOTION RECORD OF THE MOVING PARTY

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