

Court File No. CV-23-00698576-00CL
CV-23-00698395-00CL
CV-23-00698632-00CL
CV-23-00698637-00CL
CV-23-00699067-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

KINGSETT MORTGAGE CORPORATION and DORR CAPITAL
CORPORATION

Applicant

and

STATEVIEW HOMES (MINU TOWNS) INC., STATEVIEW HOMES (NAO
TOWNS) INC., STATEVIEW HOMES (ON THE MARK) INC., TLSFD
TAURASI HOLDINGS CORP. and STATEVIEW HOMES (HIGH CROWN
ESTATES) INC.

Respondent

ATRIUM MORTGAGE INVESTMENT CORPORATION and DORR CAPITAL
CORPORATION

Applicant

and

STATEVIEW HOMES (NAO TOWNS II) INC., DINO TAURASI and CARLO TAURASI

Respondent

DORR CAPITAL CORPORATION

Applicant

and

HIGHVIEW BUILDINGS CORP INC.

Respondent

DORR CAPITAL CORPORATION

Applicant

and

STATEVIEW HOMES (BEA TOWNS) INC.

Respondent

MERIDIAN CREDIT UNION LIMITED

Applicant

and

STATEVIEW HOMES (ELM & CO) 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**

SUPPLEMENTARY MOTION RECORD OF THE MOVING PARTY

August 30, 2024

SOTOS LLP

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Toronto ON M5G 1Z8

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Lawyers for the Moving Party
Dharmi Mehta

TO: **THE SERVICE LIST**

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A.	Endorsement of Justice Morgan dated June 28, 2024

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FRESH AS AMENDED NOTICE OF MOTION

Dharmi Mehta (“**Dharmi**”) will make a motion to a Judge presiding over the Commercial List, on Tuesday, September 24, 2024, at 10:00 a.m (originally returnable on February 15, 2024, and adjourned by the Honourable Justice W. Black).

PROPOSED METHOD OF HEARING: The motion is to be heard in-person at the courthouse located at 330 University Avenue, Toronto.

THE MOTION IS FOR:

- (a) An order appointing Sotos LLP as representative counsel for the Homebuyers (defined below) for the limited purpose of advancing the Condo Act Claims (defined below);
- (b) A declaration that, pursuant to sections 81 and 138(4)(a) of the *Condominium Act, 1998*, S.O. 1998, C. 19 (the “*Condominium Act*”), there is a statutory trust in favour of homebuyers who paid deposits to the Stateview companies (the “**Homebuyers**”), the size of which for each project is the total amount that Homebuyers deposited for that project times the fraction of (1) the value of the undivided common interest (the “**Common Interest**”) in that project over (2) the full value of that project;
- (c) An order directing the Receiver to value the Common Interest for each of the projects and report to the court on the total amount of the Common Interest for all projects, pursuant to section 248 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, as amended (the “**BIA**”);
- (d) An order requiring the Receiver to trace the deposit monies and report to the court on the percentage of those monies that were used to directly or indirectly purchase, design, construct, or improve the real property sold, or expected to be sold, within these receivership proceedings, pursuant to section 248 of the *BIA*;

- (e) Costs of this motion; and
- (f) Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) Pursuant to sections 81 and 138(4)(a) of the *Condominium Act*, deposits that are paid towards the common element portion of a common element condominium are required to be held in trust by the vendor of the units (the “**Condo Act Claims**”);
- (b) Each of the agreements of purchase and sale explicitly provides that the *Condominium Act* applies to the transaction;
- (c) On September 28, 2023, a class action was commenced on behalf of homebuyers who paid deposits to the Stateview companies, seeking, *inter alia*, the declaratory and trust-based relief sought in this motion;
- (d) Dharmi is the proposed representative plaintiff for that class action;
- (e) On June 28, 2024, Dharmi consented to the discontinuance of the class action as against the individual defendants on the understanding that the Receiver would not oppose an order appointing Sotos LLP as representative counsel within the receivership proceedings;
- (f) Counsel for the Receiver advised the judge presiding over the class action that they “expect to consent to the appointment of counsel for the plaintiff [Dharmi] as representative counsel of the proposed class in the receivership proceedings.”

- (g) The Receiver owes a duty to the court and to the creditor class to provide a complete and accurate account of all the claims, including and specifically trust claims, made against the Stateview companies, pursuant to sections 246 and 247 of the BIA;
- (h) The Condo Act Claims are *bona fide* claims for a statutory trust under the *Condominium Act*, and as such, the Receiver has a legal duty to value same;
- (i) Trust monies that were held, or supposed to be held, by the Stateview companies are not property of the estate and therefore cannot form part of the distributions to the secured creditors;
- (j) To ensure that no trust monies are improperly disbursed to secured creditors, the Receiver must trace them;
- (k) Sections 246, 247 and 248 of the *BIA*;
- (l) Sections 1, 81 and 138(4)(a) of the *Condominium Act*; and
- (m) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the cross-motion:

- (a) The Motion Record dated February 14, 2024;
- (b) The Affidavit of Patricia Son sworn August 30, 2024; and

- (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

August 30, 2024

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ONTARIO
SUPERIOR COURT OF JUSTICE
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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

PROCEEDING COMMENCED AT TORONTO

FRESH AS AMENDED NOTICE OF MOTION

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**AFFIDAVIT OF PATRICIA SON
(SWORN AUGUST 30, 2024)**


I, Patricia Son, of the City of Toronto, in the Province of Ontario, MAKE OATH AND
SAY:

1. I am a law clerk with the law firm of Sotos LLP, lawyers for the Plaintiff/Moving Party, Dharmi Mehta, and, as such, have knowledge of the matters contained in this Affidavit.

2. Attached as **Exhibit "A"** to this Affidavit is the Endorsement of Justice Morgan dated June 28, 2024 discontinuing the action bearing court file number CV-23-00706866-00CP.

SWORN by Patricia Son at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on August 30, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.





Commissioner for Taking Affidavits (or as may be)

Commissioner for Taking Affidavits
(or as may be)
Karen Maxine Larocque, a Commissioner, etc.,
Province of Ontario, for
Sotos LLP, Barristers and Solicitors.
Expires November 30, 2026.



PATRICIA SON

This is Exhibit "A" referred to in the Affidavit of Patricia Son of the City of Toronto, in the Province of Ontario sworn before me at the City of Toronto, in the Province of Ontario, on August 30, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.


Commissioner for Taking Affidavits (or as may be)

Commissioner for Taking Affidavits (or as may be)

Karen Maxine Larocque, a Commissioner, etc.,
Province of Ontario, for
Sotos LLP, Barristers and Solicitors.
Expires November 30, 2026.

June 28, 2024

Motion in Writing

At a case conference yesterday morning, counsel appeared and advised me they would be bringing a motion to dismiss or discontinue as against all individual Defendants.

The Defendants, Carlo Taurasi, Dino Taurasi and Daniel Ciccone each consent to a without costs discontinuance of this action against them.

The Defendants, Melissa Taurasi, Nelda Taurasi and Stephanie Console each consent to a without costs dismissal of this action against them.

On September 28, 2023, the Plaintiff commenced the underlying class action on behalf of over 700 purchasers of pre-construction homes from the corporate defendants.

The proposed class members paid over \$77 million in deposits to the Stateview Companies. Subsequent to the commencement of this action, Tarion Warranty Corporation has begun making payments to the proposed class indemnifying them for some of their lost deposits. In addition, the Plaintiff has asserted a priority claim in the receivership proceedings based on the statutory trust provisions of the *Condominium Act, 1998*. That motion has been scheduled to be heard on September 24, 2024.

The action against the Stateview Companies is presently under a stay of proceedings pursuant to the receivership orders. Counsel for the court-appointed receiver over the Stateview Companies and counsel for the Plaintiff expect to consent to the appointment of counsel for the Plaintiff as representative counsel of the proposed class in the receivership proceedings. These developments mean that recovery of the deposits will be most efficiently advanced through the Priority motion and applying for reimbursement from Tarion.

I see no prejudice to the proposed class or to the Defendants resulting from the discontinuance and dismissal of this action.

Order to go as submitted by counsel.


E.M. Morgan J.

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IN THE MATTER OF the Class Proceedings Act, 1992
PROCEEDING COMMENCED AT TORONTO

MOTION RECORD

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