



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

(Court Seal)

DHARMI MEHTA

Plaintiff

and

STATEVIEW HOMES (BEA TOWNS) INC., STATEVIEW HOMES (MINU
TOWNS) INC., STATEVIEW HOMES (NAO TOWNS) INC., STATEVIEW
HOMES (NAO TOWNS II) INC., STATEVIEW HOMES (ELM&CO) INC.,
HIGHVIEW BUILDING CORP INC., STATEVIEW HOMES (ON THE
MARK) INC., DANIEL CICCONE, CARLO TAURASI, DINO TAURASI,
MELISSA TAURASI, NELDA TAURASI, STEPHANIE LYNN CONSOLE,
JANE DOE, JOHN DOE, ABC INC. and XYZ INC.

Defendants

STATEMENT OF CLAIM

Proceeding under the *Class Proceedings Act, 1992*

TO THE DEFENDANT

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.

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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, 8th Floor
Toronto ON M5G 1R7

- TO: Stateview Homes (BEA Towns) Inc.
- AND TO: Stateview Homes (Minu Towns) Inc.
- AND TO: Stateview Homes (Nao Towns) Inc.
- AND TO: Stateview Homes (Nao Towns II) Inc.
- AND TO: Stateview Homes (Elm&Co) Inc.
- AND TO: Highview Building Corp Inc.
- AND TO: Stateview Homes (On the Mark) Inc.
- AND TO: Daniel Ciccone
- AND TO: Carlo Taurasi

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AND TO: Dino Taurasi

AND TO: Melissa Taurasi

AND TO: Nelda Taurasi

AND TO: Stephanie Lynn Console

AND TO: Jane Doe

AND TO: John Doe

AND TO: ABC Inc.

AND TO: XYZ Inc.

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CLAIM

1. The Plaintiff, Dharmi Mehta (the “**Plaintiff**”), claims on behalf of herself and all members of the Proposed Class (defined below):

- (a) an order certifying this action as a class proceeding and appointing the Plaintiff as representative plaintiff of the Proposed Class;
- (b) a declaration that members of the Proposed Class are the beneficial owners of the Deposit Funds (defined below) and products derived from them under:
 - (i) a statutory trust pursuant to s. 78(1)(3) and/or s. 81 of the *Condominium Act, 1998*, S.O. 1998, c. 19 (the “**Condominium Act**”); and/or
 - (ii) a resulting trust and/or constructive trust in accordance with the Condominium Act, common law and principles of equity;
- (c) a court-ordered charge and/or equitable lien on the property of the Defendants;
 - (i) as against the corporate Defendants, a declaration that the charge and/or equitable lien in respect of the trust funds rank:
 - (1) immediately behind the Receiver’s Charge, the Receiver’s Borrowings Charge (each, as defined in the Receivership Orders) and the charges set out in 14.06(7), 81.4(4) and 81.6(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**Super-priority Charges**”), and ahead of the claims of all other creditors;

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- (2) in the alternative, immediately behind each of the Super-priority Charges and the secured claims of registered mortgagees and ahead of the claims of all other creditors; and
- (3) in the further alternative, in other priority to the claims of ordinary unsecured creditors;
- (d) a certificate of pending litigation (“CPL”) registered on the real property of the individual Defendants located at 48 Puccini Drive, Richmond Hill, Ontario, Canada L4E 2Y6 and 48a Puccini Drive, Richmond Hill, Ontario, Canada L4E 2Y6, with the following legal description: Part L5 25 PL M807, Part 2, 65R-37960;
- (e) a declaration that the corporate Defendants, or any of them, owed fiduciary duties to the Proposed Class in respect of the Deposit Funds;
- (f) a declaration that the corporate Defendants, or any of them, breached their fiduciary duties to the Proposed Class;
- (g) a declaration that all or some of the individual defendants, Carlo Taurasi, Dino Taurasi, Daniel Ciccone, Melissa Taurasi, Nelda Taurasi, Stephanie Lynn Console and persons unknown, knowingly assisted the corporate Defendants in breaching their fiduciary duties to the Proposed Class;
- (h) a declaration that all or some of the individual defendants, Carlo Taurasi, Dino Taurasi, Daniel Ciccone, Melissa Taurasi, Nelda Taurasi, Stephanie Lynn Console

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and persons unknown, knowingly received property obtained through breaches of trust obligations to the Proposed Class;

- (i) a tracing remedy in respect of the Deposit Funds, and any products derived from same, for the benefit of the Proposed Class;
- (j) as against the corporate Defendants, \$229,500,000 in damages for breach of contract;
- (k) a declaration that members of the Proposed Class are “complainants” under s. 245 of the *Business Corporations Act*, R.S.O. 1990, C. B. 16 (the “**OBCA**”);
- (l) a declaration that the Proposed Class was oppressed by the corporate Defendants under the OBCA;
- (m) a declaration that the directors and officers of the corporate Defendants, Carlo Taurasi, Dino Taurasi and Daniel Ciccone, are personally liable for the oppressive conduct of the corporate Defendants;
- (n) compensation pursuant s. 248(3)(j) of the OBCA in the amount of \$77,322,000;
- (o) in the alternative, damages for negligence, fraudulent and/or negligent misrepresentation, unjust enrichment, knowing assistance in breach of fiduciary duty and/or knowing receipt of trust property for \$77,322,000;
- (p) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

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- (q) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (r) the costs of this proceeding, plus all applicable taxes; and
- (s) such further and other relief as this Honourable Court may deem just.

I. PARTIES

2. The Plaintiff is an individual ordinarily resident in Toronto, Ontario. On January 15, 2021, the Plaintiff, as purchaser, entered into an Agreement of Purchase and Sale with the Defendant, Highview Building Corp Inc. (“**Highview**”), as vendor, for the sale of a pre-construction residential unit located at 99 Nashville Road, Kleinberg, Ontario.

3. The Defendant, Highview, is a corporation incorporated pursuant to the laws of Ontario. Highview is a single-purpose real estate development company that owns the real property located at 88 Nashville Road and 99 Nashville Road, Kleinberg, Ontario. On May 2, 2023, KSV Advisory Inc. (the “**Receiver**”) was appointed court-ordered receiver over all of the assets, undertakings and properties of Highview, pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”).

4. The Defendant, Stateview Homes (BEA Towns) Inc. (“**Bea Towns**”), is a corporation incorporated pursuant to the laws of Ontario. Bea Towns is a single-purpose real estate development company that owns the real property located at 189 Summerset Drive, Barrie,

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Ontario. On May 2, 2023, the Receiver was appointed court-ordered receiver over all of the assets, undertakings and properties of Bea Towns, pursuant to s. 243(1) of the BIA and s. 101 of the CJA.

5. The Defendant, Stateview Homes (Minu Towns) Inc. (“**Minu Towns**”), is a corporation incorporated pursuant to the laws of Ontario. Minu Towns is a single-purpose real estate development company that owns the real property located at 9940 Ninth Line, Markham, Ontario. On May 2, 2023, the Receiver was appointed court-ordered receiver over all of the assets, undertakings and properties of Minu Towns, pursuant to s. 243(1) of the BIA and s. 101 of the CJA.

6. The Defendant, Stateview Homes (Nao Towns) Inc. (“**Nao Towns**”), is a corporation incorporated pursuant to the laws of Ontario. Nao Towns is a single-purpose real estate development company that owns the real property located 5112, 5122, 5248 14th Avenue, Markham, Ontario. On May 2, 2023, the Receiver was appointed court-ordered receiver over all of the assets, undertakings and properties of Nao Towns, pursuant to s. 243(1) of the BIA and s. 101 of the CJA.

7. The Defendant, Stateview Homes (Nao Towns II) Inc. (“**Nao Towns II**”), is a corporation incorporated pursuant to the laws of Ontario. Nao Towns II is a single-purpose real estate development company that owns the real property located 7810, 7822, 7834, 7846 McCowan Road, Markham, Ontario. On May 2, 2023, the Receiver was appointed court-ordered receiver over all of the assets, undertakings and properties of Nao Towns II, pursuant to s. 243(1) of the BIA and s. 101 of the CJA.

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8. The Defendant, Stateview Homes (High Crown Estates) Inc. (“**High Crown**”), is a corporation incorporated pursuant to the laws of Ontario. High Crown is a single-purpose real estate development company that owns the real property located at 13151 – 13161 Keele Street, King City, Ontario. On May 2, 2023, the Receiver was appointed court-ordered receiver over all of the assets, undertakings and properties of High Crown, pursuant to s. 243(1) of the BIA and s. 101 of the CJA.

9. The Defendant, Stateview Homes (On the Mark) Inc. (“**On the Mark**”), is a corporation incorporated pursuant to the laws of Ontario. On the Mark is a single-purpose real estate development company that owns the real property located at 16th Avenue and Woodbine Avenue, Markham, Ontario. On May 2, 2023, the Receiver was appointed court-ordered receiver over all of the assets, undertakings and properties of On the Mark pursuant to s. 243(1) of the BIA and s. 101 of the CJA. On September 14, 2023, On the Mark was assigned into bankruptcy under the BIA, with the Receiver appointed its trustee.

10. The Defendant, Stateview Homes (Elm&Co) Inc. (“**Elm**”), is a corporation incorporated pursuant to the laws of Ontario. Elm is a single-purpose real estate development company that owns the real property located at 12942 York Durham Line, Stouffville, Ontario. On May 18, 2023, the Receiver was appointed court-ordered receiver over all of the assets, undertakings and properties of Elm, pursuant to s. 243(1) of the BIA and s. 101 of the CJA.

11. The Defendant, Carlo Taurasi (“**Carlo**”), is a director, officer and principal of Highview, Bea Towns, Minu Towns, Nao Towns, Nao Towns II, High Crown, On the Mark and Elm (collectively, hereinafter, the “**Stateview Defendants**”).

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12. The Defendant, Dino Taurasi (“**Dino**”), is a director, officer and principal of the Stateview Defendants.

13. The Defendant, Daniel Ciccone (“**Daniel**”), is a director, officer and principal of the Stateview Defendants.

14. The Defendant, Melissa Taurasi (“**Melissa**”) is an individual that ordinarily resides in Ontario. Melissa is the spouse of Carlo.

15. The Defendant, Nelda Taurasi (“**Nelda**”) is an individual that ordinarily resides in Ontario. Nelda is the spouse of Dino.

16. The Defendant, Stephanie Lynn Console (“**Stephanie**”) is an individual that ordinarily resides in Ontario. At the material times, Stephanie was the spouse of Daniel.

17. ABC Inc., XYZ Inc., John Doe and Jane Doe are pseudonyms for corporations and individuals unknown that knowingly received proceeds from the Deposit Funds (defined below) and/or knowingly assisted the Stateview Defendants in breaching their fiduciary duties to the Proposed Class.

18. The Plaintiff seeks to represent the following class (the “**Proposed Class**”):

All persons who entered into Agreements of Purchase and Sale (the “**Purchase Agreements**”) with one or more of the Stateview Defendants for pre-construction residential units and/or an undivided share in the common elements of a common elements condominium corporation and paid deposits to one of more of the Stateview Defendants in

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furtherance of their Purchase Agreements. There are approximately 765 members of the Proposed Class.

II. FACTS

a. The Stateview Defendants

19. The Stateview Defendants are a collection of single-purpose real estate development companies in the business of constructing residential units (the “**Projects**”). At all material times, Carlo, Dino and Daniel were directors, officers and principals of each of the Stateview Defendants, and were directly involved in each of their day-to-day activities. In particular, Carlo, Dino and Daniel participated in the negotiation of the Purchase Agreements and every aspect of the Projects.

20. The Projects were organized as common element condominiums (“**CEC**” or “**CECs**”). Under a CEC model, individuals hold freehold titles to specific land parcels which are linked to an undivided common interest in the CEC. This ownership structure combines the individual land ownership with shared interest in the common elements.

21. Beginning no later than January 15, 2021, the Stateview Defendants started entering into pre-construction Purchase Agreements with the Proposed Class. The Purchase Agreements are standardized, or substantially similar, across all the Projects.

22. Pursuant to the Purchase Agreements, the Stateview Defendants were contractually required to incorporate a corporation under the Condominium Act that would serve as the Common Elements Condominium Corporation (“**CEC Corporation**”). The Stateview Defendants were

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further obligated to hold in trust any monies they collected from the Proposed Class on behalf of the yet-to-be incorporated CEC Corporations.

23. As part of the Purchase Agreements, the Proposed Class paid deposits to the Stateview Defendants (the “**Deposit Funds**”). According to the First Report of the Receiver, dated May 30, 2023 (the “**First Report**”), the Proposed Class paid deposits to the Stateview Defendants, totalling at least \$77,322,000. These amounts are broken down as follows:

Project	(unaudited)	
	# of Homebuyers	Deposits (\$000s)
Minu	147	19,208
Nao Phase I	96	7,680
High Crown	47	4,933
On the Mark ⁵	32	4,218
Nao Phase II	76	7,617
Highview	4	None
BEA	218	17,440
Elm	145	16,076
Total	765	77,172

24. None of the Deposits Funds were held in trust by the Stateview Defendants. As of the date of this pleading, none of the Deposit Funds have been paid back to members of the Proposed Class.

25. The Receiver erroneously states that Highview received zero dollars in deposits. The Plaintiff personally paid a \$150,000 deposit to Highview through three separate cheques dated January 14, 2021, March 30, 2021, and May 30, 2021, in accordance with the Purchase Agreement. Highview’s books should specify that it received at least \$150,000 in deposits from the Proposed Class.

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b. Financial Troubles, the Cheque-Kiting Fraud and Subsequent Insolvency of the Stateview Defendants

26. Shortly after the execution of the Purchase Agreements and receipt of the Deposit Funds, the Stateview Defendants began experiencing serious financial difficulties and liquidity shortages. These financial woes emerged before construction of many of the Projects had commenced, notwithstanding that the Stateview Defendants were in receipt of at least \$77,322,000 in deposits and \$349,945,000 in various types of credit.

27. Due to the early onset of these financial challenges, the Stateview Defendants pursued illicit strategies to secure extra liquidity. One such strategy involved granting unauthorized mortgages on their real property. The Stateview Defendants proceeded with these unauthorized mortgages despite knowing that same would be in breach of their contractual obligations to existing creditors. Examples include, but are not limited to:

- (a) On December 16, 2022, Elm granted an unauthorized \$20,850,000 mortgage to Bergo Investment Limited, MCO Management Inc., and Tony Karamitsos;
- (b) On December 16, 2022, Bea Towns granted an unauthorized \$20,850,000 mortgage to Bergo Investment Limited, MCO Management Inc., and Tony Karamitsos;
- (c) On December 22, 2022, Highview granted an unauthorized \$5,300,000 mortgage to MCO Management Inc; and
- (d) On April 18, 2023, Highview granted an unauthorized \$1,945,000 mortgage to 2515792 Ontario Inc.

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28. In addition, between April 2022 and March 2023, the Defendants in this action were involved in a cheque-kiting scheme that defrauded The Toronto-Dominion Bank (“**TD**”) of over \$37 million.

29. On March 24, 2023, TD commenced an action against the Stateview Defendants, Carlo, Dino, Melissa, Nelda and certain related individuals and affiliated companies (collectively, the “**TD Defendants**”) to recover the \$37 million it was defrauded of as a result of the cheque-kiting scheme.

30. None of the TD Defendants filed a defence to the allegations. Rather, on March 31, 2023, some of the TD Defendants entered into a settlement agreement with TD (the “**Settlement Agreement**”). Daniel, Melissa and Nelda were not part of the Settlement Agreement.

31. As part of the Settlement Agreement, the settling defendants, which included the Stateview Defendants, Carlo and Dino, admitted their joint and several liability to TD arising from the cheque-kiting scheme. However, they contend that Daniel was responsible for the scheme.

32. The Settlement Agreement contemplated the full repayment of the \$37 million over a 3-month period, including a \$3.150 million “administration fee” upon the issuance of a court order implementing the agreement. As security, TD was granted, and subsequently registered, mortgages over the real property owned by some of the Stateview Defendants, including Bea Towns, Nao Towns II, Highview and Elm.

33. On April 4, 2023, the Court issued an order that, *inter alia*, approved the implementation of the Settlement Agreement.

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34. Due to their significant pre-existing financial challenges and liquidity constraints, which had been temporarily concealed by the illicit activities described above, TD's action and subsequent settlement of same practically guaranteed the inability of the Stateview Defendants to fulfill their then-looming payment obligations to existing creditors.

35. In April 2023, the Stateview Defendants failed to make scheduled payments to their creditors.

c. The Receivership Proceedings

36. In April and May 2023, following the missed payments, the discovery of the unauthorized mortgages and the involvement of the Stateview Defendants in the cheque-kiting fraud, certain senior secured creditors applied to appoint a receiver over the Stateview Defendants. The Court granted these requests on May 2, 2023, and May 18, 2023 (the “**Receivership Proceedings**”).

37. Construction for most of the Projects had not yet begun by the time the Receivership Proceedings were commenced. As of May 30, 2023, the respective statuses of the Projects were as follows:

Project	Address	Status
Minu Towns	9940 Ninth Line, Markham	Raw land
Nao Towns	5112, 5122, 5248 14th Avenue, Markham	Raw land
Nao Towns II	7810, 7822, 7834, 7846, McCowan Road, Markham	Raw land
Nashville (Highview)	89, 99 Nashville Road, Kleinberg,	Raw land
BEA Towns	189 Summerset Drive, Barrie	Raw land
Elm	12942 York Durham Line, Stouffville	Raw land
High Crown	13151 – 13161 Keele Street, King City	Under construction, approximately 30% complete
On the Mark	16 th Avenue and Woodbine Avenue, Markham	Under construction, approximately 90% complete

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38. According to the First Report, representatives of the Stateview Defendants have advised that all of the Deposit Funds, \$77,322,000 in total, have been depleted.

39. The Deposit Funds have been depleted notwithstanding that six of the eight Projects were not developed whatsoever, and a seventh Project, that of High Crown, was only 30% complete by the time of the Receivership Proceedings.

40. As of May 30, 2023, the Receiver has not conducted a tracing exercise in respect of the Deposit Funds.

41. The Receiver intends to divest the assets of the Stateview Defendants in accordance with various court-approved sale processes. It is anticipated that, with the sole exception of On the Mark, the Purchase Agreements will be disclaimed and the proceeds from these sales will be insufficient to fully reimburse the Proposed Class of their deposits, given their status as unsecured creditors within the Receivership Proceedings.

42. In the specific case of On the Mark, the Project was 90% complete by the time of the Receiver's appointment, with 38 out of 70 units closed in accordance with the Purchase Agreements. Out of the remaining 32 units, 30 of the homebuyers will have the option to close their Purchase Agreements by agreeing to pay an additional \$100,000 towards the purchase price alongside other "non-substantive" changes (as described by the Receiver). If these 30 homebuyers do not agree to the changes, their respective Purchase Agreements will be disclaimed, resulting in forfeiture of their deposits.

43. Melissa and Nelda are the two On the Mark Homebuyers who were not given the option to close their Purchase Agreement with On the Mark. On July 18, 2023, Melissa and Nelda filed a

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motion record opposing their exclusion from the option of closing their Purchase Agreements on the same terms as the other On the Mark homebuyers. Melissa and Nelda subsequently dropped their opposition to the transaction.

44. On September 14, 2023, the Court approved the sale of On the Mark's assets to 2077060 Ontario Inc. and the resulting disclamation of its Purchase Agreements with Melissa and Nelda. In addition, On the Mark was assigned into bankruptcy, with the Receiver appointed its trustee.

45. The Receivership Proceedings have uncovered instances of the Stateview Defendants illicitly and improperly redirecting funds from their designated purposes. This includes, but is not limited to, Minu Towns, Nao Towns, On the Mark, and High Crown diverting, for an unknown purpose, funds that were earmarked by their lenders for the payment of development charges to the City of Markham and Township of King.

d. The Plaintiff's Dealings with Highview

46. On January 15, 2021, the Plaintiff entered into a Purchase Agreement with Highview for a pre-construction unit located at 99 Nashville Road. The purchase price was \$1,548,990, with a \$150,000 deposit to be made in three installments of \$50,000, all of which were duly paid by the Plaintiff. The move-in date was scheduled for June 22, 2023.

47. The Purchase Agreement is replete with descriptions of the unit as a condominium and references to the Condominium Act, including, without limitation:

- (a) On page 1 of the Purchase Agreement, it specifies, “[t]he Offer shall be irrevocable by the Purchaser until one minute before midnight on the tenth date after its date,

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after which time if not accepted, this offer will be null and void and deposit returned to the Purchaser, without interest or deduction, except as required under the Condominium Act, S.O. 1998, C19, the regulations thereunder and any amendments thereto (the “Act”);

- (b) On page 11, the definition of “Act” reads “...*the Condominium Act, S.O. 1998, C. 19, the regulations thereunder and any amendments thereto*”;
- (c) On page 12, it is stated that the offer contained therein is “*conditional upon the Vendor obtaining...registration of a related common elements corporation under the Act*”;
- (d) On page 29, the Schedule “CEC” contains several references to the “Condominium”, “Condominium Documents”, “Condominium Corporation” and “Creating Documents” (i.e., the declaration and description);
- (e) On page 29, the Schedule “CEC” stipulates the manner in which the Plaintiff is expected to make payments to the CEC for her share of the common elements expenses;
- (f) On page 29, the Schedule “CEC” specifies that “*interest on unpaid portion of the purchase price to be established pursuant to the occupancy provisions of the Act for a standard condominium*”;
- (g) On page 31, the Schedule “R” contains several references to the “Condominium Corporation” and/or “York Region Common Elements Corporation No. ___”; and

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(h) On page 32, the disclosures listed therein align with the disclosure requirements set out under the Condominium Act, including the Disclosure Statement, proposed Declaration for the condominium, Sections 73 and 74 of the Condominium Act, and a site plan delineating the common elements.

48. All the Purchase Agreements contain the same or substantially similar references to condominiums and the Condominium Act.

49. Highview never fulfilled its contractual obligation to incorporate a CEC Corporation.

50. Hidden at page 28 of the Purchase Agreement is a singular provision stipulating that a mere \$2 out of the \$1,548,990 purchase price was to be paid towards the common interest of the condominium, with none of the deposit monies allocated for this purpose. All the Purchase Agreements contain language that is the same or substantially similar to this clause.

e. The Deposit Funds were Subject to a Statutory Trust and/or Resulting Trust

51. The Condominium Act is consumer protection legislation intended to be interpreted generously in favour of purchasers of interests in condominiums. These purchasers are often negotiating from a significant informational and power disadvantage vis-à-vis condominium vendors, making them susceptible to exploitation. As such, the fundamental purpose of the Condominium Act is to safeguard purchasers and to establish a fair balance of rights between them and vendors. The imminent financial losses facing the Proposed Class offers a compelling illustration of this jeopardy.

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52. Section 81 of the Condominium Act stipulates that deposits paid towards the purchase price for condominium units are to be held in trust, including that which is paid towards pre-construction units. Deposits are expected to accumulate interest while held in trust by a trustee of a “prescribed class” under the Condominium Act. Money held in trust under the Condominium Act can only be released upon the purchaser receiving registrable title or a developer posting full security for the amounts to be withdrawn from trust.

53. In the specific case of CECs, the Condominium Act stipulates that deposits paid towards the common interest in the CEC are to be held in trust under s. 81, whereas the amounts paid towards the freehold aspect are not statutorily required to be held in trust.

54. As described above, the Purchase Agreement furtively stipulates that a mere \$2 of the \$1,548,990 purchase price is allocated to the common interest in the CEC, and that no portion of the deposit is designated for same (the “**Impugned Clause**”).

55. There is no commercial justification to support the valuation of the common interest in the CEC as worth only 0.0000013% of the overall unit price.

56. The Impugned Clause, strategically inserted by the Stateview Defendants, Carlo, Dino and/or Daniel, lacks any credible commercial justification and was specifically intended to defeat the protections conferred by the Condominium Act, including the requirement that the Deposit Funds be held in trust.

57. The Impugned Clause is void, voidable, null or otherwise unenforceable in law for breaching public policy and being contrary to the essence of the Condominium Act as consumer protection legislation.

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58. The Deposit Funds are deemed to have been paid towards the common interest in the CECs and held in trust provision by operation of s. 81 of the Condominium Act.

59. The Stateview Defendants were under a corresponding statutory obligation to ensure the Deposits Funds were held in trust by a trustee of a prescribed class under the Condominium Act, leaving the Proposed Class as the beneficial owners of the Deposit Funds.

60. In addition, and/or in the alternative, s.78(1)(3) of the Condominium Act imputes an implied covenant into all purchase agreements that monies collected by a declarant (in this case, the Stateview Defendants) from purchasers (the Proposed Class) on behalf of the corporation (the CEC Corporation) are held in trust.

61. The Plaintiff's deposit, and the Deposit Funds generally, were collected by the Stateview Defendants on behalf of CEC Corporations that were yet to be incorporated at the time of the Purchase Agreements.

62. The Stateview Defendants never incorporated the CEC Corporations, except for On The Mark (registered as York Region Common Elements Condominium Corporation No. 1497), causing the statutory trust over the Deposit Funds prescribed by s.78(1)(3) to fail. As such, the Stateview Defendants are deemed to have held the Deposit Funds for the benefit of the Proposed Class by way of a resulting trust.

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III. LIABILITY OF THE DEFENDANTS

a. Stateview Defendants

i. Breach of statutory trust and/or resulting trust

63. The Stateview Defendants breached their statutory trust and/or resulting trust obligations by:

- (a) failing to ensure a trustee of a “prescribed class” under the Condominium Act held the Deposit Funds;
- (b) failing to meet the standard of care in the management of the Deposit Funds, including not ensuring interest was accrued;
- (c) failing to maintain accurate and up-to-date bookkeeping in respect of the Deposit Funds;
- (d) using the Deposit Funds to:
 - (i) finance real estate development activities in connection with the Projects; and/or
 - (ii) make improper or illegitimate purchases unrelated to the Projects; and/or
- (e) such further acts or omissions, the particulars of which are within the sole knowledge and control of the Defendants.

ii. Breach of fiduciary duty

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64. The Stateview Defendants were trustees of the Deposit Funds held under a statutory and/or resulting trust for the benefit of the Proposed Class.

65. The Stateview Defendants were in a special relationship with the Proposed Class and/or otherwise owed a fiduciary duty to them, namely that of trustee-beneficiary.

66. In addition, as developers of the Projects, the Stateview Defendants were in a fiduciary relationship with the Proposed Class in respect of the Projects, independent of the duties imposed by their role as trustees of a statutory trust and/or resulting trust. The bases for this secondary source of fiduciary duty includes, but is not limited to, the following:

- (a) the Stateview Defendants exercised a significant degree of power and control over the Proposed Class by virtue of being in complete control over the development of the Projects, the Deposit Funds, and the title of land to be conveyed to the Proposed Class upon the closing of the Purchase Agreements;
- (b) the power and discretion of the Stateview Defendants directly impacted the legal rights and practical rights of the Proposed Class, namely their interests in the units;
and
- (c) the Proposed Class was vulnerable to the discretion and power of the Stateview Defendants with no knowledge, influence or control over the status of the Projects or Deposit Funds.

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67. The Stateview Defendants breached their fiduciary duties by acting dishonestly, in bad faith and/or otherwise failing to prioritize the interests of the Proposed Class, including, without limitation:

- (a) failing to adhere to the statutory trust requirements imposed by the Condominium Act;
- (b) making unauthorized transactions with the Deposit Funds, such as:
 - (i) using amounts earmarked for a specific Project to finance the activities of other Projects; and
 - (ii) improper and illegitimate purchases unrelated to the Projects;
- (c) actively concealing and/or failing to disclose the details of these unauthorized transactions to the Proposed Class;
- (d) failing to ensure the unauthorized transactions were in the best interest of the Proposed Class;
- (e) engaging in self-dealing;
- (f) failing to address conflicts of interests;
- (g) failing to maintain adequate insurance for the Projects;
- (h) overleveraging the Projects and using the Deposit Funds to secure excessive loans that could not be repaid through the ordinary course of business;

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- (i) failing to disclose material information to the Proposed Class, including the financial challenges that threatened the viability of the Projects;
- (j) prioritizing the interests of other stakeholders in the Projects, including their own;
- (k) participating in the cheque-kiting fraud against TD; and
- (l) such further acts or omissions, the particulars of which are within the sole knowledge and control of the Defendants.

iii. Fraudulent and/or Negligent Misrepresentation

68. The Stateview Defendants were in a special relationship with the Proposed Class based upon their superior relative experience and expertise in real estate development and/or positions as trustees and fiduciaries.

69. The Stateview Defendants, intentionally or negligently made several material misrepresentations, which the Proposed Class relied upon to their detriment when entering into the Purchase Agreements and thereafter. Examples include:

- (a) that the CEC Corporations would be incorporated within a reasonable period of time after execution of the Purchase Agreements;
- (b) that construction would begin for the Projects within a reasonable period of time after execution of the Purchase Agreements;
- (c) that the units would be ready for occupancy based upon the contracted occupation date;

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- (d) the Proposed Class would be protected by the Condominium Act, including that the Deposit Funds would be held in trust; and
- (e) in the alternative to paragraph 69(d), that the Deposit Funds would go towards the individual Project class members were buying into, rather than be used to cover the costs for other Projects and/or misappropriated for purposes wholly unrelated to the Projects.

iv. Oppression

70. Under the Condominium Act and the Purchase Agreements, the Stateview Defendants were obligated to refund the Deposit Funds should the contracts be terminated or otherwise fail to close.

71. Pursuant to the Purchase Agreement, failure of the Stateview Defendants to incorporate a CEC Corporation results in the termination of the contract and return of the homebuyer deposits.

72. The Purchase Agreements have been terminated, or will soon be terminated as a result of the Receivership Proceedings. It is not expected that the Deposit Funds will be repaid in full to the Proposed Class by the conclusion of the Receivership Proceedings.

73. The Proposed Class has a claim against the Stateview Defendants for, at a minimum, the return of their Deposit Funds. As creditors of the Stateview Defendants, the Proposed Class has standing to claim oppression under s. 245 of the OBCA.

74. The reasonable expectations of the Proposed Class include, but are not limited to, the following:

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- (a) the Stateview Defendants would adhere to their legal obligations under the Condominium Act;
- (b) the Stateview Defendants would honour the understandings and expectations they created and encouraged in relation to the Deposit Funds
- (c) the Stateview Defendants would manage the development of the Projects in accordance with general commercial practice;
- (d) the Stateview Defendants would not deplete its reservoir of funds and other exigible assets for insufficient consideration;
- (e) the directors and officers of the Stateview Defendants would manage the affairs of the corporations in accordance with their legal obligations, namely, to act honestly and in good faith in the best interests of the corporation and to exercise the diligence expected of a reasonably prudent person; and
- (f) the Stateview Defendants would not be used as a vehicle for fraud.

75. The conduct of the Stateview Defendants leading up to the Receivership Proceedings was oppressive, unfairly prejudicial and/or unfairly disregarded the reasonable expectations of the Proposed Class. Such conduct includes, without limitation:

- (a) misappropriating the Deposit Funds, and funds extended by various lenders, for unauthorized transactions unrelated to the purposes for which they were granted, causing the failure of the Projects and subsequent insolvencies;

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- (b) Carlo, Dino and Daniel failing to discharge their directorial responsibilities by prioritizing their own personal interests above that of the Stateview Defendants, causing the Stateview Defendants to become insolvent;
- (c) Carlo, Dino and Daniel failing to exercise the diligence of a reasonably prudent person in their management of the Projects, causing the failure of same;
- (d) the Stateview Defendants failing to adhere to their statutory responsibilities under the Condominium Act;
- (e) failing to adhere to their contractual obligations to their creditors by secretly granting unauthorized charges to the properties owned by the Stateview Defendants; and
- (f) participating in the illegal and criminal cheque-kiting fraud against TD.

76. The misconduct described in the foregoing paragraph constitutes a marked departure from general commercial practice and could not have been foreseen by the Proposed Class.

v. Negligence

77. The Stateview Defendants owed a duty of care to the Proposed Class. The Stateview Defendants breached the standard of care through the mismanagement of the Projects and custodianship of the Deposit Funds, resulting in their insolvencies and the expected loss of the Deposit Funds.

vi. Breach of Contract

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78. The Purchase Agreements were for residential units that were expected to be developed and ready for occupation in accordance with the various move-in dates stipulated in the agreements.

79. The Purchase Agreements have been fundamentally breached by the Stateview Defendants as a result of the Receivership Proceedings, which were brought about as a direct consequence of their own misconduct.

80. Many of the Purchase Agreements are expected to be disclaimed by whoever ultimately purchases the properties of the Stateview Defendants and/or revised such that members of the Proposed Class will have to pay a premium to ensure their agreements are not disclaimed.

81. The Proposed Class is entitled to expectation damages that compensates individual class members for the rise in the value of the units had they been constructed and conveyed to the Proposed Class in accordance with the Purchase Agreements.

82. The aggregate amount of the increase in value for all of the units sold by the Stateview Defendants to members of the Proposed Class is currently estimated to be \$229,500,000.

b. Carlo, Dino and Daniel

i. Knowing assistance, knowing receipt and unjust enrichment

83. At all material times, Carlo, Dino and Daniel were the directors and officers of the Stateview Defendants. Carlo, Dino and Daniel had direct knowledge of the fiduciary duties owed by the Stateview Defendants to the Proposed Class.

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84. Carlo, Dino and Daniel, or any of them assisted in the Stateview Defendants' dishonest and/or fraudulent breach of their fiduciary duties by authorizing or otherwise causing the Stateview Defendants to carry out the conduct described in paragraph 67.

85. In addition, the Stateview Defendants advanced some or all of the Deposit Funds to the personal accounts of Carlo, Dino and Daniel, which they used for their own personal benefit. Carlo, Dino and Daniel had actual knowledge or constructive knowledge that such funds originated from a fraudulent misappropriation of trust property.

86. Carlo, Dino and Daniel were unjustly enriched by the fraudulent misappropriation of the Deposit Funds described in the foregoing paragraph. This resulted in a corresponding deprivation the Proposed Class. There is no juristic reason for their enrichment.

ii. Oppression

87. The oppressive conduct of the Stateview Defendants described in paragraph 75 is attributable to the action or inaction of Carlo, Dino and Daniel. Carlo, Dino and Daniel, or any of them, caused or permitted the Stateview Defendants to carry out conduct that was oppressive, unfairly prejudicial, or unfairly disregarded the reasonable expectations of the Proposed Class.

88. Carlo, Dino and Daniel, or any of them, acted in bad faith and received personal benefits from the oppressive conduct of the Stateview Defendants.

iii. Negligence

89. Carlo, Dino and Daniel directly oversaw the day-to-day activities of each of the Stateview Defendants, up to and including the collapse of the Projects and subsequent insolvencies.

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90. Carlo, Dino and Daniel were intimately involved with each aspect of the Projects and managed them in a manner that fell significantly below the expected standard of care and/or industry practice. Examples of such negligence include:

- (a) failing to ensure the Deposit Funds were held by a trustee of a “prescribed class” under the Condominium Act;
- (b) failing to incorporate the CEC Corporations in accordance with the Condominium Act and Purchase Agreements;
- (c) failing to maintain requisite insurance policies for the Projects;
- (d) overleveraging the Projects with debts they could not sustain; and
- (e) mismanaging and misusing the funds held by the Stateview Defendants.

91. The mismanagement of the Projects was so severe that, despite the Stateview Defendants having received millions of dollars from both the Proposed Class and various creditors, construction for six of the eight Projects had not yet started by the time of the Receivership Proceedings. Moreover, a seventh Project was only 30% complete.

92. The Stateview Defendants became insolvent as a direct consequence of the negligence of Carlo, Dino and Daniel in managing the Projects, resulting in the expected loss of the Deposit Funds.

93. In addition, in the specific case of Carlo and Dino, they assert that Daniel was the one responsible for the cheque-kiting fraud committed against TD. In other words, Carlo and Dino

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claim that they had no knowledge of the fact that the sole other director of the Stateview Defendants was using corporate accounts to perpetrate a \$37 million fraud spanning nearly a year.

94. Carlo and Dino are liable for negligence on this basis alone, as the cheque-kiting fraud caused or materially contributed to the insolvencies of the Stateview Defendants and expected loss of the Deposit Funds. Carlo and Dino had a duty to be aware of the business and finances of the companies and to prevent illicit activity by their fellow director. However, they failed to conduct an enquiry into the illicit and negligent conduct.

c. Melissa, Nelda and Stephanie

i. Knowing assistance, knowing receipt and unjust enrichment

95. At all material times, Melissa, Nelda and Stephanie were the spouses of Carlo, Dino, and Daniel, respectively, the directors and officers of the Stateview Defendants. As a result of this relationship, Melissa, Nelda and Stephanie had direct knowledge of the fiduciary duties owed by the Stateview Defendants to the Proposed Class.

96. Melissa, Nelda and Stephanie, or any of them, played an important role in facilitating the Stateview Defendants' dishonest and/or fraudulent violation of their fiduciary duties. Melissa, Nelda and Stephanie, or any of them, conspired with their spouses to strategically induce the Stateview Defendants to breach their fiduciary duties in the manner described in paragraph 67. This involvement encompassed permitting the Stateview Defendants to utilize their personal accounts and accounts linked to companies under their control to divert funds, including the Deposit Funds, away from the Stateview Defendants' accounts.

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97. Melissa, Nelda and Stephanie, or any of them had actual knowledge or constructive knowledge that such advances came from a fraudulent misappropriation of trust property. Despite possessing actual or constructive knowledge of the source of the funds, Melissa, Nelda and Stephanie, or any of them, failed to conduct an inquiry into the origins of same.

98. Melissa, Nelda and Stephanie were unjustly enriched by the fraudulent misappropriation of the Deposit Funds. This resulted in a corresponding deprivation the Proposed Class. There is no juristic reason for their enrichment.

IV. CHARGING ORDER/EQUITABLE LIEN, CONSTRUCTIVE TRUST, CERTIFICATE OF PENDING LITIGATION AND TRACING REMEDY

99. The Proposed Class is entitled to a charge and/or equitable lien over all of the property of the Stateview Defendants to be ranked in accordance with the priorities listed in paragraph 1(c), as security for the Deposit Funds that were to be held in trust and/or a remedy for breach of trust, breach of fiduciary duty and/or oppression. In addition, or in the alternative, the Proposed Class is entitled to a constructive trust over the property of the Stateview Defendants as a remedy for breach of trust, breach of fiduciary duty and/or oppression.

100. The Proposed Class is entitled to a charge and/or equitable lien over all of the property of the individual and unknown Defendants as security for the Deposit Funds that were to be held in trust and/or a remedy as a remedy for knowing assistance, knowing receipt, unjust enrichment and/or oppression. In addition, or in the alternative, the Proposed Class is entitled to a constructive trust over the property of the individual and unknown Defendants as a remedy for knowing assistance, knowing receipt, unjust enrichment and/or oppression.

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101. The charge and/or equitable lien over the property of the individual Defendants applies to the real property located at 48 Puccini Drive, Richmond Hill, Ontario, Canada L4E 2Y6 and 48a Puccini Drive, Richmond Hill, Ontario, Canada L4E 2Y6, with the following legal description: Part L5 25 PL M807, Part 2, 65R-37960. By operation of the claim for a charge and/or equitable lien, the Proposed Class has an interest in this real property, entitling it to a CPL until the claim is resolved.

102. Further, the Proposed Class is entitled to a tracing remedy in respect of the Deposit Funds, including into any derivative products obtained from them.

(Date of issue)

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-and-

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Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

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