

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

BETWEEN

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

-and-

STATEVIEW HOMES (HAMPTON HEIGHTS) INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C.43, AS AMENDED**

**PRE-FILING REPORT OF RSM CANADA LIMITED,
IN ITS CAPACITY AS PROPOSED RECEIVER OF THE RESPONDENT**

JUNE 2, 2023



Table of Contents

- I. INTRODUCTION 1
- II. BACKGROUND 3
- III. THE PROJECT 4
- IV. THE PROPOSED SALE PROCESS..... 7
- V. CONCLUSION..... 11

I. INTRODUCTION

1. Firm Capital Mortgage Fund Inc. (“**Firm**” or the “**Applicant**”) is making an application to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for:
 - an Order (the “**Receivership Order**”) appointing RSM Canada Limited (“**RSM**”) as the receiver (the “**Receiver**”), without security, of all of the assets, undertakings and properties (collectively, the “**Property**”) of Stateview Homes (Hampton Heights) Inc. (the “**Debtor**”); and
 - an Order (the “**Sale Process Approval Order**”) approving the commencement of a sale process (the “**Sale Process**”) to be conducted by the Receiver in respect of the Property.
2. RSM has consented to act as Receiver of the Debtor, if appointed by this Court.
3. RSM is filing this report (the “**Pre-filing Report**”) in its capacity as proposed Receiver (the “**Proposed Receiver**”).
4. The affidavit of Jonathan Mair sworn on June 1, 2023 (the “**Affidavit**”) and filed in support of the Applicant’s application details, *inter alia*, the Applicant’s background, including the reasons for the commencement of these proceedings.
5. The principal purpose of these proceedings is to market and sell the Property of the Debtor; in particular, the lands and premises municipally known as 39 Auburn Court, Barrie, Ontario and 2, 4, 6, and 8 Teck Road, Barrie, Ontario, as more specifically described in Schedule “A” to this Pre-Filing Report (the “**Real Property**”).

6. Pursuant to the draft Receivership Order and the Sale Process Approval Order that are sought by the Applicant, the powers of the Receiver would include, among other things, the following:

- to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property; and
- to market the Property for sale pursuant to the Sale Process appended to the Sale Process Approval Order.

Purpose of Report

7. The purpose of this Pre-filing Report to the Court is to provide information to the Court on the proposed Sale Process.

Terms of Reference

8. In preparing this report and making the comments herein, the Proposed Receiver has relied upon information provided by the Applicant (the “**Information**”). Certain of the information contained in this Pre-filing Report may refer to, or is based on, the Information. Since the Information has been provided by other parties, the Proposed Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Proposed Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the CPA Canada Handbook and, accordingly, the Proposed Receiver expresses no opinion or other form of assurance in respect of the Information.

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9. Capitalized terms not defined in this Pre-filing Report are as defined in the Affidavit.
 10. Unless otherwise stated, all dollar amounts contained in the Pre-filing Report are expressed in Canadian dollars.

II. BACKGROUND

11. The Pre-filing Report should be read in conjunction with the Affidavit. Certain of the information provided in the Affidavit has not been included herein, in order to avoid unnecessary duplication.
12. The Debtor was incorporated pursuant to the laws of the Province of Ontario on May 10, 2021, and its current registered office address is at 410 Chrislea Road, Suite 16, Woodbridge, Ontario, L4L 8B5.
13. Pursuant to a Mortgage Loan Commitment dated November 11, 2022 as amended by Amendment to the Mortgage Loan Commitment #1 dated December 7, 2022 (collectively, the “**Commitment Letter**”), Firm made available to the Debtor a \$11,400,000 mortgage site servicing and construction loan (the “**Loan**”). The Loan has been partially advanced to the Debtor.
14. As at May 5, 2023, the Debtor was indebted to Firm under the Loan in the amount of \$6,434,805.80 (which includes principal, accrued interest, costs and other amounts payable in accordance with the terms of the Loan), together with accruing interest thereon and all costs and fees, including legal fees and disbursements, incurred by the Lender until the indebtedness is paid in full.
15. The Debtor is in default on its obligations to Firm with respect to the Loan.
16. By letter dated April 17, 2023, Fogler Rubinoff LLP (“**Fogler**”), real estate counsel to the Lender, notified the Debtor of the default under the First Mortgage and

demanded, on behalf of the Lender, repayment of the entirety of the indebtedness of the Debtor to the Lender on or before May 3, 2023 (the “**Notice of Breach**”).

17. By letter dated April 21, 2023, Fogler delivered a Notice of Intention to Enforce Security to the Debtor pursuant to section 244(1) of the BIA (the “**BIA Notice**”). The 10-day statutory period for the repayment of the indebtedness under the BIA Notice has passed.
18. On May 1, 2023, 1890292 Ontario Inc. (“**189**”), a subcontractor on the Project, registered a lien claim against the Real Property in the amount of \$530,735.58 (the “**189 Lien**”). The 189 Lien constitutes a further event of default pursuant to the terms of the First Mortgage.
19. By letter dated May 5, 2023, Fogler delivered a Notice of Sale under Mortgage to the Debtor and the Corporate Guarantors, the Second Mortgagee and 189 as parties with an interest in the Real Property (the “**Notice of Sale**”). The Notice of Sale specified that if the sums specified therein are not paid by June 10, 2023, the Lender would sell the Real Property.
20. By letters dated May 15, 2023 (the “**Collateral Notices**”), Fogler advised The Corporation of the City of Barrie and Alectra Utilities Corporation that any release of the cash collateral posted by the Debtor with such entities is to be remitted to the Lender, and not the Debtor.

III. THE PROJECT

21. The Real Property consists of a residential single-family development project in Barrie, Ontario (the “**Project**”). The Project consists of 18 single detached houses,

ranging from 1,962 square feet to 2,498 square feet. Each of the 18 homes has been pre-sold to individual purchasers (collectively, the “**Individual Purchasers**”).

22. The Proposed Receiver, once appointed, or its counsel will provide copies of the Orders granted in these proceedings to the Individual Purchasers following their granting by the Court.
23. The current state of the Project is at an early stage of development. The land has been cleared, services are generally complete, concrete foundations have been set and the framing of the homes has commenced. The houses, in their current state, are exposed to the elements and require substantial work to enclose them and protect them from the elements. Framing of the houses has not been completed.
24. Construction at the Project site completely ceased in early May 2023 and several subcontractors have registered construction liens against the Project, all as more fully described herein.

Risks to the Project

25. Construction at the residential project has ceased amid the uncertainty caused by a \$37-million kiting scheme involving the Debtor and affiliated persons, the various defaults and the numerous liens registered against the Real Property. The Debtor has ceased attending to the operations of the Project and does not appear to have the ability to see the Project to completion.
26. The Project appears to be in a semi-finished state and at high risk of potential calamities that could jeopardize its completion and/or significantly erode value. Certain of these issues and concerns are documented in the Risk Observation

Summary prepared by Northbridge Insurance in respect of the Real Property based on a May 10, 2023 assessment date (the “**Risk Summary**”). A copy of the Risk Summary is attached as Exhibit “N” to the Affidavit.

27. The Project houses include wood framing, which is currently exposed to the elements given the homes’ semi-finished state. As the framing is not completed, all of the intended supports and trusses are not in place, creating various immediate risks. There also exists a real and significant risk of a fire erupting and spreading at the Project site. The absence of active subcontractors and other personnel at the Project significantly amplifies such risks.
28. The absence of personnel at the site also exposes the Project to potential mischief and theft, which could delay and hinder the Project’s completion and cause further losses to creditors.
29. The Risk Summary sets out that:
 - all water supply to the Project has been shut off, with the result that the fire hydrants at the Project site are inoperable. The resultant risk to the Project site if a fire were to break out is clear and evident;
 - there is insufficient distribution of fire extinguishers at the Project, which the insurer recommends discussing with subcontractors at the Project. Given that the subcontractors have ceased working at the Project site, this recommendation is unable to be effected at this time; and
 - there is a potential risk of collapse as a result of the semi-finished state of the Project homes. The insurer recommends that an engineer visit the Project and ensure that the homes are braced to prevent collapse due to

structural integrity issues or high winds. The insurer's recommendation is unable to be effected at this time due to the Project's halted stated.

30. The above risks to the Project will only be compounded by time and further exposure of the Project to the elements.
31. In view of the foregoing, Firm is seeking the approval of the Sale Process as part of the initial application, concurrent with the Receiver's appointment. The purpose of the Sale Process is to solicit expedited offers for the Property, on an as-is, where-is basis. The sale of the Property would permit the potential purchaser to continue the Project to completion, which is in the best interest of all stakeholders.

IV. THE PROPOSED SALE PROCESS

32. As part of its application for the Receivership Order, the Applicant is seeking approval for the proposed Sale Process pursuant to which the Receiver will solicit proposals for the sale of the Property.
33. The Sale Process contemplates an expedited one-stage process that involves the submission by interested parties of binding offers by the bid deadline, which will be at 5:00 pm. on the 30th calendar day following Court approval of the Sale Process (the "**Bid Deadline**"), or as soon as practicable thereafter.
34. The Proposed Receiver has developed a Sale Process for which it seeks the Court's approval. A copy of the Sale Process including bidding procedures governing the Sale Process is attached to the Sale Process Approval Order.
35. Capitalized terms used in this section of this Pre-filing Report are as defined in the Sale Process, unless otherwise defined.

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36. The Sale Process contemplates that the Receiver will immediately begin marketing the Property upon its appointment, by reaching out to known potential bidders (including all parties with a registered interest in the Real Property) and to the Receiver's extensive database of approximately 1,000 targeted industry specific parties, including builders who may be interested in acquiring a construction development project.
37. The Proposed Receiver intends to complete certain activities in connection with the Sale Process in advance of the motion date and prior to the launch of the Sale Process. Specifically, the Proposed Receiver will prepare:
- a list of approximately 1,000 parties who may have an interest in submitting an offer for the Property. The parties on this list will be sent by email a teaser letter (the "**Teaser Letter**") on two separate occasions commencing immediately after the Sale Process Approval Order is issued by the Court;
 - a notice of the Sale Process (and such other relevant information which the Receiver considers appropriate) (the "**Notice**") to be published in a national newspaper and any other relevant industry periodical or website as the Receiver considers appropriate, if any;
 - the form of confidentiality agreement ("**CA**") to be provided to parties requesting additional information from the Receiver with respect to the Property has been prepared and is available, which CA is to be signed and returned to the Receiver;
 - a confidential information memorandum ("**CIM**") to be provided to parties that execute a CA; and

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- the form of agreement of purchase and sale (the “**Template APS**”) to be included in the Data Room, and on which offers for the Property are to be submitted.

38. A summary of the proposed bidding procedures is as follows:

- interested parties who execute a CA will receive a copy of the CIM, along with access to the Data Room;
- the deadline to submit offers is 5:00 p.m. (EST) on the 30th day following Court approval of the Sale Process;
- the offer must be submitted using the Template APS, with any changes thereto provided in a marked-up copy of the Template APS;
- the Receiver will review submitted offers. The Receiver may: (i) negotiate with bidders, (ii) request or agree to changes in any offer, or (iii) request from some or all of the bidders that they submit revised offers reflecting improved terms; and
- the Receiver will select a successful bid (the “**Successful Bid**”) and seek the Court’s approval of the Successful Bid as soon as reasonably practical. Pursuant to the Sale Process, the Receiver has discretion in evaluating the Bids received and in determining the Successful Bid.

39. Bidders will also be advised that, unless otherwise agreed to by the Receiver:

- offers are to be accompanied by a cash deposit by certified cheque or wire transfer of immediately available funds in an amount equal to ten percent (10%) of the offered purchase price, to be held in accordance with the terms of the Sale Process;

- all transactions will be completed on an “as is, where is” basis; and
- offers are not to be conditional on financing or due diligence, and shall include satisfactory proof of the bidder’s financial ability to complete the transaction.

40. The following table sets out the key milestones under the Sale Process:

Milestone	Deadline
Commencement Date	Immediately following the granting of the Sale Process Order
Bid Deadline	5:00 pm ET on the date that is 30 calendar days following the Commencement Date
Hearing of the Sale Approval Motion	As soon as practicable after the Bid Deadline
Closing of the Transaction	Immediately following the granting of the Sale Approval Order

41. The acceptance of any offer by the Receiver and the completion of any sale by the Receiver will be subject to further Court approval on a subsequent motion.

Expedited Marketing Period

42. The Sale Process contemplates a 30-day solicitation period, after which time the Receiver will move to obtain an approval and vesting order in respect of the successful bid, determined in accordance with the Sale Process.

43. The Receiver, if appointed, may have to pay excess insurance coverage and take other steps to ensure the continuity of insurance during the 30-day period, which ensures the viability of a going-concern sale of the Property but also weighs in favour of an expedited process.

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44. The Proposed Receiver understands that the 30-day formal solicitation period is in addition to the time that has elapsed since the date of the Notice of Sale issued by the Lender on May 5, 2023, which put the recipient parties thereto on notice that the Lender would sell the Real Property as of June 10, 2023 if the First Mortgage was not redeemed by such time.
 45. The 30-day formal solicitation period appears supportable in the circumstances due to the issues of concern outlined in the Risk Summary and the deterioration of value that would occur resulting from any delay of the construction of the Project.
 46. In the Proposed Receiver's view, the Sale Process and the expedited marketing timeline is commercially reasonable in the circumstances of this Project and allows for sufficient time for the Property to be exposed to the market in order to maximize the value of the Property.
 47. The Sale Process is supported by the Debtor's senior secured creditor, Firm.

V. CONCLUSION

48. Based on the foregoing, and subject to the Receivership Order being granted, the Proposed Receiver respectfully recommends that the Court make an Order approving the Sale Process and authorizing the Receiver to implement the Sale Process as set out in the draft Sales Process Approval Order requested in the Applicant's Motion Record.

All of which is respectfully submitted to this Court as of this 2nd day of June, 2023.

RSM CANADA LIMITED

In its capacity as Proposed Receiver
of Stateview Homes (Hampton Heights) Inc.
and not in its personal capacity

A handwritten signature in black ink, appearing to read 'B. A. Tannenbaum', with a stylized flourish extending to the right.

Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

Schedule "A"

Description Of Real Property

PIN58763-1780 (LT): PART LOT 3 CON 14 INNISFIL, PART 6 ON 51R42642; CITY OF BARRIE

PIN58763-1783 (LT): PART BLOCK 174 PLAN 51M867 PART 5 ON PLAN 51R42642; CITY OF BARRIE

PIN58763-1788 (LT): BLOCK 1, PLAN 51M1229; SUBJECT TO AN EASEMENT AS IN SC1843162; CITY OF BARRIE

PIN58763-1789 (LT): BLOCK 2, PLAN 51M1229; SUBJECT TO AN EASEMENT AS IN SC1843162; CITY OF BARRIE

PIN58763-1790 (LT): BLOCK 3, PLAN 51M1229; SUBJECT TO AN EASEMENT AS IN SC1843162; CITY OF BARRIE

PIN58763-1791 (LT): BLOCK 4, PLAN 51M1229; SUBJECT TO AN EASEMENT AS IN SC1843162; CITY OF BARRIE