

From: [David P. Preger](#)
To: [Brahm Rosen](#)
Cc: [Paul A. Muchnik](#)
Subject: FW: EXTERNAL: Re: C & K Mortgages Services Inc. v. Camilla Court Homes Inc. et al - SCJ - Commercial List - CV-20-00643021-CL - Motion Returnable October 6, 2020
Date: October 6, 2020 1:46:36 PM
Attachments: [Camilla order 20201006.pdf](#)
[Mateo order 20201006.pdf](#)
[CK interim order 20201006.pdf](#)

See below and attached. Brahm, I am working on completing the Hwy 7 report now.

David P. Preger Partner

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From: Koehnen, Mr. Justice Markus (SCJ) <Markus.Koehnen@scj-csj.ca>
Sent: Tuesday, October 6, 2020 1:43 PM
To: David Z. Seifer <DSeifer@dickinson-wright.com>; 'Eric Golden' <egolden@blaney.com>; David P. Preger <DPreger@dickinson-wright.com>
Cc: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>
Subject: EXTERNAL: Re: C & K Mortgages Services Inc. v. Camilla Court Homes Inc. et al - SCJ - Commercial List - CV-20-00643021-CL - Motion Returnable October 6, 2020

This email constitutes my endorsement arising out of today's hearing and should be placed into the court file. **I would ask Mr. Seifer to forward this endorsement to other counsel who were on this morning's call.**

Counsel:

David P. Preger and David Z. Seifer for the Court-appointed Receiver, Rosen Goldberg Inc.

David Sazant for Via Trim & Doors Inc.

Joseph D'Alimonte for 2078644 Ontario Inc.

Richard Macklin for Yong Yeow (Jeremy) Tan

Derek Ketelaars for Ultra Roofing 1 Inc.

Eric Golden independent counsel for the Court-appointed Receiver, Rosen Goldberg Inc.

The Receiver seeks an order approving two agreements of purchase and sale and orders that vest the debtor's right title and interest in the underlying properties to the purchasers under the agreements of purchase and sale.

The purchasers of what the parties have referred to as the Camilla property are the original purchasers who had contracted the debtor to build a house on the property. Those purchasers were willing to purchase the property on an as is where is basis and complete construction on their own. The Receiver analysed the project and concluded that there might be marginal benefit to completing the construction and selling it as a finished home but that benefit was insufficient to mitigate the risk of cost overruns, delays and a decline in the real estate market. That strikes me as the exercise of reasonable business judgement with which this court should not interfere. I therefore approve the vesting order sought for the Camilla property.

I am also satisfied that the Receiver's marketing of the Mateo property complies with the Soundair principles. The Receiver retained a broker to list the property, staged the house with furniture, listed the property on MLS, prepared a brochure and a virtual tour and marketed the property on various websites. There were 34 showings and four offers received. The Receiver accepted the highest offer. The closing date is November 5, 2020.

The Mateo property is, however, somewhat different. The original purchaser of that property was Mr. Jeremy Tan. He paid an unsecured deposit of \$400,000 to the debtor builder. The proceeds of sale of the property will be insufficient to pay out the first mortgage, let alone Mr. Tan's unsecured deposit.

The Receiver succeeded in disclaiming the agreement. Mr. Tan has taken steps to challenge the Receiver's disclaimer but has been unsuccessful so far. Mr. Tan has brought a motion to the Court of Appeal for leave to extend the time to file an appeal and for directions about whether leave is required to appeal the disclaimer order. That motion is currently scheduled to be heard on October 8, 2020.

Counsel for the Receiver and counsel for Mr. Tan agree that the closing date for the Matteo agreement of purchase and sale is sufficiently far out into the future that it will not interfere with the motion to the Court of Appeal.

As a result of the foregoing, I am provisionally approving the sale of the Mateo the property but the order approving that sale is subject to such orders as are granted in Court of Appeal for Ontario proceedings in Court File No. M51800, and any proceedings under a Notice of Appeal or Notice of Motion for Leave to Appeal, related thereto.

A further issue arose with respect to the ancillary order that the Receiver seeks today. One provision of the ancillary order is that funds currently held in trust by Garfinkel Biderman be transferred to the Receiver. Those funds are being held in trust as security for certain construction liens. Although the funds are being transferred to the Receiver, the Receiver has agreed to hold them subject to the same trusts and lien rights as applied to them while they were in the Garfinkel Biderman trust account. The Receiver will perform its own analysis about the extent to which those funds can be paid out into whom they should be paid. The construction lien claimants will have a further opportunity to raise any objections to the Receiver's intentions before they are carried out.

Justice Markus Koehnen

Ontario Superior Court of Justice
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From: David Z. Seifer

Sent: Friday, October 2, 2020 10:07 PM

To: David Z. Seifer <DSeifer@dickinson-wright.com>; JUS-G-MAG-CSD-Toronto-SCJ Commercial List

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Subject: C & K Mortgages Services Inc. v. Camilla Court Homes Inc. et al - SCJ - Commercial List - CV-20-00643021-CL - Motion Returnable October 6, 2020

When: Tuesday, October 6, 2020 11:15 AM-11:45 AM.

Where: <https://zoom.us/j/92260988491?pwd=RFixWTdJNFQ2RUplbEVBRFhXOERzUT09>

David Preger is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

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