ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00740512-00CL **DATE: November 23, 2025**

NO. ON LIST: 2

TITLE OF PROCEEDING: In the Matter of ONE BLOOR WEST TORONTO GROUP *et al*

BEFORE: JUSTICE OSBORNE

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE OSBORNE:

[1] The Court-appointed Monitor brings this motion for an order:

(a) approving the CSA Plan with respect to the treatment of existing condominium sale agreements entered into by the Companies prior to the Receivership Proceedings and authorizing the Monitor to implement the CSA Plan;

(b) approving the Deposit Return Protocol to facilitate the refund of deposits plus applicable interest thereon paid by Purchasers in respect of Disclaimed CSAs and authorizing the Monitor to implement the Deposit Return Protocol, in conjunction with Aviva, Tarion and the Escrow Agent;

(c) approving the CSA Plan Reconfiguration and authorizing the implementation thereof;

(d) approving the First Report of the Monitor dated July 30, 2025 and the Second Report dated November 3, 2025 and the activities of the Monitor described in both Reports; and

(e) sealing the Confidential Appendices to the Second Report, pending further order of the Court.

[2] The background to and context for this motion are set out in the Reports and in earlier endorsements made in this proceeding. Defined terms in this Endorsement have the meaning given to them in the motion materials and in particular in the Second Report and the supplement thereto dated November 14, 2025, unless otherwise stated.

[3] The Project is an 85 storey condominium, hotel and retail tower at 1 Bloor Street West, Toronto. It remains under construction. The Residential Component includes condominium Units on Levels 17 through 85. The Companies began selling Units in 2017, and had entered into 343 Existing Condominium Sales Agreements (CSAs) by the date on which the Receiver was appointed. 14 of those Existing CSAs were disclaimed or otherwise terminated by the Receiver, leaving 329.

[4] The Project is, and has been for some time, in significant financial difficulty. I have directed the Monitor since its appointment (and, previously, the Receiver) to ensure that, to the greatest extent possible, construction continued so that the Project could be completed, costs minimized and recoveries maximized as rapidly as possible. Continuation of construction has required, obviously, the very significant funding of the Senior Secured Lenders.

[5] As more particularly described below, the relief sought today would essentially permit the reconfiguration of the Project so that, particularly in the Residential Component, there would be fewer, larger Units than originally proposed, and almost all of the existing Condominium Sales Agreements (CSAs) would be disclaimed. In some cases, that is necessary because the Unit to which the CSA relates is no longer proposed to be built and in other cases, that is necessary given the evolving economics of the Project.

[6] I recognize that, if granted, the disclaimer of so many CSAs represents not only a significant inflection point, both in this CCAA proceeding, and in the development of the Project on the ground, but also it represents a very significant occurrence for the large number of counterparties to those CSAs.

[7] The Service List has been served. In particular, all Purchasers of condominium units who are affected by the relief sought, together with Tarion, Tridel, Aviva and the Escrow Agent, are on notice of the relief sought. Specifically, all Condominium Sale Agreement purchasers were served with disclaimer notices on October 24, 2025 and were served with the full motion record thereafter. In short, service was effected to ensure that the time periods significantly exceeded those required by the Rules, in order to give all affected stakeholders, and particularly the CSA counterparties, an adequate opportunity to consider whether and how they wished to respond, and in the interim, to contact the Court-appointed Monitor in respect of any inquiries they may have had. I directed this in large part, given not only the significant number of CSA counterparties, but the fact that most of them are self represented.

[8] The relief sought is supported by the CRO, the Senior Secured Lenders, the other secured creditors (including the Coco Parties, Cerieco and Hana Bank), Tarion (effectively, the regulator here) and Aviva (the insurer who will fund to a very significant extent, the return of the deposits referred to below).

[9] Only one CSA purchaser filed materials objecting to the relief sought. As further described below, two others appeared today to oppose the relief sought. One additional CSA purchaser did not oppose the relief sought, provided that the Deposit Return Protocol (DRP) was approved.

[10] As I advised at the conclusion of the hearing, the motion was granted with reasons to follow. These are those reasons.

[11] Since its appointment, the Receiver (subsequently appointed, upon the conversion of the receivership proceeding to a proceeding under the *CCAA*, as the Monitor) has conducted a comprehensive process with a view to maximizing the value of the Project and recoveries for stakeholders.

[12] In addition, the terms of the DIP Credit Agreement require the Companies to cause the engaged developer, Tridel, to develop a plan for the treatment of the 329 Existing CSAs. The CSA Plan before the Court today is the culmination of that process.

[13] The CSA Plan contemplates, among other things, the disclaimer by the Companies of all but 15 of the Existing CSAs (314 in total) to enable the resale of condominium Units at increased market prices based on the proposed CSA Plan Reconfiguration, together with an anticipated partnership with a luxury hotel brand.

[14] It further contemplates the potential retention of 15 Existing CSAs subject to certain conditions being met, including that the relevant purchaser enter into a new form of CSA and Aviva agreement to make a payment to the Project in respect of the relevant purchaser's Potentially Retained CSA.

[15] The CSA Plan also provides that each purchaser whose CSA is disclaimed, as well as any purchaser whose Existing CSA was disclaimed prior to the date of the CSA Plan, will be offered an opportunity to enter into a new condominium sale agreement for the purchase of any available Unit at the prevailing list price, which opportunity will be available to such purchasers for a period of 45 days prior to the date on which Units are listed to the general public for sale. This Early Purchase Opportunity ensures that all former purchasers who still wish to purchase a Unit in the Project will be given an opportunity to do so.

[16] The Monitor and CRO are satisfied, on the basis of their own analysis and the professional advice received, including from Tridel, that the Units can achieve higher resale values if the Existing CSAs are disclaimed and the Units are marketed under a luxury hotel brand. The proposed disclaimers are therefore an essential component of the CSA Plan which, together with the CSA Plan Reconfiguration, is projected to generate incremental proceeds in excess of $200 million, thereby substantially increasing the net realizable value generated by the Project after taking into account certain incremental costs associated with the CSA Plan Reconfiguration and the implementation of a luxury hotel branded Unit strategy.

[17] There is urgency to the motion for two principal reasons. First, given the outstanding debt which exceeds $1 billion, the accruing interest costs are very substantial and should be minimized through the completion of construction as quickly as possible. Second, continuation of construction now depends on the CSA Reconfiguration Plan being approved, since construction is now at the point where the configuration of Units will dictate next steps. The Senior Secured Lenders, the sole source of funding to complete the Project, support the CSA Plan.

[18] I also observe that the Senior Secured Lenders are the fulcrum creditor, and effectively, the only creditor (or creditor group) with the direct economic interest in the motion since the projections, in which the Monitor is confident, show that the Senior Secured Lenders will not recover all of their principal, meaning that it is extremely unlikely that there will be any recovery for subsequent ranking secured creditors and unsecured creditors.

[19] Since the commencement of the Receivership Proceedings, two reconfigurations of the Residential Component have been approved by the Court, both having been driven by changing residential condominium market conditions and evolving plans to maximize the value of the Project. I note that neither was opposed by any CSA counterparty. The Reconfiguration Plan proposed today would result in a reduction of a further 65 Units from the most recent reconfiguration to a total of 411.

[20] The CSA Plan Reconfiguration would reduce the number of small investor-type Units and increase the number of larger Units in the Project. One consequence of the CSA Plan Reconfiguration, if approved, is that 93 Units sold pursuant to Existing CSAs will not be built, and therefore those Existing CSAs would have to be disclaimed, together with other Existing CSAs.

[21] Importantly, the Deposits paid by Unit Purchasers are insured. Total deposits paid were approximately $105 million, of which $102 million was released to the Companies to fund construction of the Project. Approximately $3.17 million excluding interest remains in trust.

[22] The Companies obtained a back-stop surety bond from Aviva in favour of Tarion (the Tarion Bond) as well as third-party excess deposit insurance from Aviva, which security was required to be obtained before any deposits could be released to fund construction.

[23] Aviva agreed that if the Companies failed to repay the deposits paid by Unit Purchasers, it would refund the deposits plus applicable interest to Unit Purchasers. If Aviva made such payments, it was entitled to claim recovery of the amounts paid out from the Companies, and it was granted a registered second-ranking charge against the Project to secure that potential obligation.

[24] As a result of this structure, and those arrangements, the Monitor and CRO expect that Unit Purchasers whose Existing CSAs are disclaimed pursuant to the CSA Plan will be paid the full amount of their deposit

plus applicable interest by Aviva in accordance with the terms of the Tarion Bond and the Excess Deposit Insurance, all pursuant to the proposed Deposit Return Protocol (DRP).

[25] The disclaimers of the Disclaimed CSAs are to become effective on November 23, 2025. Those Purchasers have paid deposits which deposits (together with applicable interest) are expected to be fully protected by the Tarion Bond and the Excess Deposit Insurance issued by Aviva. For that reason, both of those parties have been integrally involved in the development of the DRP and agree with and support its approval.

[26] The DRP is intended to facilitate the return of deposits, together with applicable interest, as soon as possible (likely over the next few months). Aviva will be responsible for funding the return of deposits plus interest and administering the process, with the assistance of its authorized agent, MNP.

[27] Section 32 of the *CCAA* permits a debtor company to disclaim an agreement, with approval of the Monitor, and on notice to the other parties to the agreement and the Monitor. This Court has previously approved the disclaimer and termination of pre-construction sale agreements in other insolvency cases: see, for example: *Constantine Enterprises Inc. v Mizrahi (128 Hazelton) Inc. et al*, ("*Constantine*"), 2025 ONSC 2073 at para 127, aff'd 2025 ONCA 710; and *KingSett Mortgage Corporation et al v Vandyk-Uptowns Limited et al*, 2024 ONSC 6205 at para 32.

[28] The test for approving the disclaimer of a condominium sale agreement is now well established, and was recently affirmed by the Court of Appeal for Ontario in *Constantine*:

(a) consideration of the respective legal priorities of the competing interests;

(b) whether the disclaimer would enhance the value of the assets, and if so, what a failure to disclaim amount to a preference in favour of a particular party; and

(c) whether, if a preference would arise, the party seeking to avoid the disclaimer has establish that the equities support such a preference.

[29] I am satisfied that the test is met here.

[30] The Senior Secured Lenders have a validly perfected security interest over the entirety of the Project, which is a first ranking interest, subject only to the priority charges granted or continued in this *CCAA* Proceeding. The total amount owing to the Senior Secured Lenders exceeds $2.0 billion and, as noted above, even after accounting for the improved recoveries expected to be generated by the CSA Plan (if approved), the expectation remains that those parties will not recover their indebtedness in full.

[31] The Companies are entitled to disclaim the CSAs. The disclaimers are an essential component of the CSA Plan and satisfy the above-noted test because (among other things) they will maximize the value of the Project for the benefit of the Senior Secured Lenders, consistent with their legal priority.

[32] The CSA Plan is the culmination of almost two years of analysis by the Receiver and, more recently, by the Monitor, the CRO and by the developer, Tridel, all based on input from leading market professionals. All are unanimous that the CSA Plan, which requires the disclaimer of the majority of the Existing CSAs, will very materially enhance the value of the Project. Indeed, the evidence is to the effect that the disclaimers are likely to generate incremental proceeds of more than $200 million.

[33] I am also satisfied that a failure to disclaim the CSAs would result in a preference in favour of Unit Purchasers and Aviva which is not appropriate. Almost all of the Existing CSAs provide for sales at prices

below both current and projected market values. Accordingly, disclaimers would permit the resale of Units at higher prices. It follows that a failure to disclaim would amount to a preference in favour of Unit Purchasers, effectively reducing the value of the Project to the detriment of the Senior Secured Lenders.

[34] I am also satisfied that specific performance of the Existing CSAs would not be an appropriate remedy in these circumstances. The Companies have not affirmed the Existing CSAs. The Units purchased under the Disclaimed CSAs either do not yet exist or remain under construction, and in some cases, will never be built as a result of the proposed CSA Plan Reconfiguration. Very substantial further funding from the Senior Secured Lenders will be required before the Project is fully developed and Units are ready for occupancy. Units purchased under the Disclaimed CSAs are such that substitute units are readily available in the Toronto Market, including in the Project itself should a Unit Purchaser wish to exercise the Early Purchase Opportunity.

[35] Aviva supports the relief sought. While not a party to any Disclaimed CSA, it is naturally affected because of its agreement to ensure the repayment of deposits. It is unlikely that Aviva will recover amounts in excess of the applicable amounts remaining in the Deposit Trust Account, since the Aviva mortgage ranks behind the security held by the Senior Secured Lenders, which is itself not expected to be repaid in full.

[36] Finally, I am satisfied that the disclaimers are not inequitable. To the extent the value of a Unit purchased under a Disclaimed CSA has increased in value relative to the stated purchase price, the Purchaser may have a claim for damages against the Companies. Such a claim would however be unsecured, and the Monitor does not anticipate that sufficient funds will be available for distribution to unsecured creditors. Still, Canadian courts have held that this hardship does not justify a departure from existing legal priorities, and I am satisfied that this is so in the particular circumstances of this case for the reasons set out above and below (including the contractual subordination of CSA rights to any prior mortgages, as each Purchaser contractually acknowledged).

[37] Purchasers have been kept up to date of key developments in these proceedings. They have been advised since 2023 that the fair market values of Existing CSAs would be reviewed to determine what steps would be taken with respect to those agreements. As of the statutory deadline for objections to the proposed disclaimers in respect of any of the 314 Disclaimed CSAs, only one formal objection was received by the Monitor. (Although late, the objection was fully considered and is one of the objections referred to above).

[38] I am satisfied that the DRP should be approved. It is appropriate in the circumstances, and provides a fair, transparent and efficient mechanism for refunding deposits to Purchasers while minimizing the administrative burden, and therefore the administrative costs for all stakeholders.

[39] I have heard and considered carefully the objections of the Purchasers who have appeared today.

[40] I do note that, as fully set out in the materials, the overwhelming majority of CSA Purchasers have not opposed and do not oppose today the relief sought. Most inquiries to the Monitor have been from Purchasers inquiring as to how quickly they could recover their deposit, rather than to express an intention to challenge the proposed disclaimers.

[41] At the motion, CSA Purchasers in respect of a small number of units either opposed the relief sought or sought an adjournment of the motion:

i. the Purchasers of Unit 3004 and 2205 each objected to the disclaimer of their CSA and requested that they be added to the list of 15 CSAs which may be maintained;

ii. the Purchaser of Units 1909, 2101, and 2401 objected to the disclaimer given the time between service of the materials and the motion;

iii. the Purchaser of Units 2607, 3007, 3207, 3208, 3907, 4308 and 4808 requested a two-week adjournment to possibly retain counsel to oppose the disclaimer of the CSA for each of those seven Units; and

iv. the Purchaser of Units 4007, 4207 and 4407 objected to the disclaimer of the CSAs for those units only if the DRP was not approved at the same time.

[42] As I advised those Purchasers and their counsel present at the hearing of the motion, I am extremely sympathetic to their plight. They entered into CSAs and paid deposits in some cases years ago. They have planned their lives and those of family members around the anticipation of purchasing and possibly living in the Unit or Units in respect of which they entered into CSAs. They have continued to do so, notwithstanding the very significant delays in the Project.

[43] The regrettable but inevitable reality is, however, that the Project is insolvent and requires hundreds of millions of dollars in additional funding to be completed at all, and the only source of funding comes from the Senior Secured Lenders. The Purchasers have been on notice since 2023 that the configuration of Units in the Project, and therefore there CSAs, were under review and may be disclaimed.

[44] It is important to note that each CSA gives the Purchaser the contractual right, subject to certain conditions, to enter into an agreement of purchase and sale at a later date in respect of the specified Unit. Each Purchaser has no legal or equitable title or right to title to a Unit, but rather bargained for and received only the contractual right to enter into a subsequent agreement, and each Purchaser specifically acknowledged such in its CSA.

[45] In addition, each CSA and the rights granted thereunder are specifically and expressly subordinated and postponed to the rights of the Senior Secured Lenders (indeed to any mortgages arranged by the Vendor and any advances thereunder). As noted above, the Senior Secured Lenders will not be repaid in full and remain the fulcrum creditor.

[46] Each Purchaser under a Disclaimed CSA is expected to recover their deposit in full, together with applicable interest. While I fully recognize that this is not the same as having a completed Unit, the Deposit Return Protocol, agreed to by Tarion and Aviva (who is contributing by way of insurance proceeds approximately $102 million for deposit returns), provides for the recovery by these Purchasers of their deposit in full. None of the Senior Secured Lenders or the other secured lenders ranking behind them are likely to recover their investments in full. Accordingly, and while the solution proposed today is not perfect, I am satisfied that it represents the best outcome for CSA Purchasers and one that is fair and equitable in the challenging circumstances.

[47] For all of these reasons, I am satisfied that the CSA Plan, the Deposit Return Protocol and the CSA Plan Reconfiguration should be approved. Jurisdiction for the CSA Plan Reconfiguration and the Deposit Return Protocol flows from section 11 of the *CCAA* and I am satisfied that such is appropriate here.

[48] The Deposit Return Protocol facilitates the return to Purchasers of their Deposits, a key feature of the integrated relief sought on this motion. The DRP is fair, reasonable and appropriate in the circumstances. The support from Tarion and Aviva are key elements.

[49] I am also satisfied the activities of the Monitor as described in the First and Second Reports, together with those reports, should be approved: see *Target Canada*. The activities have been carried out in good faith and in accordance with the original mandate given to the Monitor upon its appointment.

[50] Finally, I am satisfied that the Confidential Appendices to the Second Report should be sealed on a temporary basis pending further order of the Court. The material sought to be sealed comprise market reports, analysis and other similar materials that provide the basis for the economic analysis that underlies the proposed CSA Plan and CSA Plan Reconfiguration.

[51] In short, they set out the Monitor's best estimate of market prices for the Units in respect of which CSAs are sought to be disclaimed. Public disclosure of that information now would clearly and materially distort and negatively affect the sales process for those Units. Moreover, unlike in most cases where there is a risk that a subsequent sales process may be possible or even probable, it is a certainty here. All of the Units need to be resold.

[52] Sealing orders are permitted under section 137(2) of the *Courts of Justice Act*. I am satisfied that the test set out by the Supreme Court of Canada in *Sierra Club* and refined in *Sherman Estate* has been met here. I am conscious of the fact that the sealing order is in effect only until further order of the Court, and moreover that the *CCAA* Initial Order contains the usual "comeback clause" permitting any party to seek such relief as may be necessary on notice.

[53] I am further satisfied that the term of such a sealing order, with effect until further order, is appropriate here and that it is impractical to attempt to provide an automatic "sunset" or expiry date, since there are hundreds of Units to be sold, and there is no way of knowing, at least today, the date by which any individual Units, or all of the Units in the aggregate, will be sold.

[54] For these reasons, the sealing order is granted. Counsel for the Monitor are directed to file with the Commercial List office a hard copy of the sealed materials in an envelope marked: "Confidential and sealed by Court order" in order that the record is complete.

[55] For all of these reasons, the motion is granted. Order to go in the form signed by me which has immediate effect without the necessity of issuing and entering.

Date: Nov 23, 2025

Peter J. Osborne