CITATION: MCO Management Inc v. Stateview Homes (Bea Towns) Inc., 2025 ONSC 7123
COURT FILE NO.: CV-24-728194
DATE: 20251219

2025 ONSC 7123 (CanLII)

ONTARIO SUPERIOR COURT OF JUSTICE

RE: MCO MANAGEMENT INC.

Applicants

-and-

STATEVIEW HOMES (BEA TOWNS) INC.

Respondents

BEFORE: FL Myers J

COUNSEL: *Gregory Govedaris*, for the Plaintiffs

Aya Schechner, for The Toronto-Dominion Bank

Erin Pleet and Viktor Nikolov, for Tarion Warranty Corporation

Emily Young, FOR Dino Taurasi

HEARD: December 18, 2025

ENDORSEMENT

There are Three Actions about the Same Acts

[1] The plaintiffs are investors who say they lent $37.5 million in the aggregate to affiliates of the Stateview Homes. The loans were secured by mortgages. The borrowers are insolvent. Receivership proceedings have liquidated all but one of the mortgaged properties with no realization for the plaintiffs. There is one property where one or more plaintiffs have a first mortgage and some realization may be available on that property.

[2] The plaintiff mortgagees allege that prior to Stateview failing, employees of Stateview engaged in a cheque-kiting scheme thorough TD and Royal Bank. As a result, they stole $37.5 million and left Stateview insolvent.

[3] As a result of the cheque-kiting scheme, TD sued and settled a lawsuit with Stateview. Stateview agreed to judgment issuing against it for $37.5 million. As part of the settlement TD was paid over $3 million in cash and was provided with additional mortgage security.

[4] In this action the mortgagee plaintiffs sue TD and Royal Bank for their losses for negligence, willful blindness, or deliberately participating in the cheque-kiting scheme over a sustained period of time. They also seek recovery of the settlement proceeds paid to TD as an improvident settlement by Stateview while it was insolvent or on the eve of bankruptcy.

[5] With Stateview failing, Tarion Warranty Corporation has been called upon to pay warranty claims of people who paid deposits to one or more of the Stateview entitles for home purchases but whose deposits are now lost. There may have been other warranty claims as well made by home buyers that Tarion cannot now likely recoup from the insolvent developers.

[6] Tarion has commenced a separate action bearing Court File No. CV-24-00714494-00CL, Tarion claims that it has suffered losses arising from the same cheque-kiting scheme and the same allegedly improvident settlement. In fact, the claims concerning those issues are nearly identical to the claims asserted by the plaintiff mortgagees in this action. Counsel for Tarion accuses counsel for the plaintiff mortgagees in this action of having cut and paste from Tarion's statement of claim.

[7] There is also a third action about the same subject matter. It is brought in the Civil list in Toronto under Court File No. CV-24-00717870-0000.

[8] In the third action, Carlo Taurasi and Dino Taurasi seek recovery from TD and Daniel Ciccone in respect of the same cheque-kiting scheme and allegedly improvident settlement. The Taurasi brothers and Mr. Ciccone were the three senior members of Stateview who are alleged to have perpetrated the cheque-kiting scheme. They are defendants in each of the actions commenced by the plaintiff mortgagees and Tarion.

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[9] In their action, the Taurasi bothers blame TD and Mr. Ciccone and seek contribution and indemnity from them.

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[10] I have been delegated the authority by the Commercial List Team Lead for this motion to transfer the Taurasi action to the Commercial List if appropriate. Counsel for Dino Taurasi appeared today and took no position. The other parties agreed that the action should be added to the Commercial List as there will be some overlap with the other two actions no matter the outcome below.

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[11] Accordingly, I transfer to the Commercial List the action commenced by the Taurasi brothers on the Civil List in Toronto under Court File No. CV-24-00717870-0000. Counsel for the plaintiffs are reminded that they must take out an order to effect the transfer.

Should the Three Actions be Heard Together?

[12] The plaintiff mortgagees seek an order for the three actions to be procedurally joined to save money, avoid delay, and to avoid the risk of inconsistent verdicts.

[13] Rule 6.01 of the *Rules of Civil Procedure*, RRO 1990 Reg 194, provides, in part:

> **Where Order May Be Made**
> 6.01 (1) Where two or more proceedings are pending in the court and it appears to the court that,
>
> (a) they have a question of law or fact in common;
>
> (b) the relief claimed in them arises out of the same transaction or occurrence or series of transactions or occurrences; or
>
> (c) for any other reason an order ought to be made under this rule,
>
> the court may order that,
>
> (d) the proceedings be consolidated, or heard at the same time or one immediately after the other; or
>
> (e) any of the proceedings be,

(i) stayed until after the determination of any other of them, or

(ii) asserted by way of counterclaim in any other of them.

(2) In the order, the court may give such directions as are just to avoid unnecessary costs or delay and, for that purpose, the court may dispense with service of a notice of listing for trial and abridge the time for placing an action on the trial list.

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[14] The actions are not identical. The plaintiffs are different. The mortgagee plaintiffs have sued Royal Bank. Tarion has not. The mortgagee plaintiffs have sued the Stateview companies and management for oppression and under personal guarantees. Tarion has not. The damages suffered by the plaintiff mortgagees are their losses on their investments due to the alleged wrongful removal of assets from Stateview. Tarion is bringing a subrogated claim for home buyers for amounts Tarion paid to them for insured losses suffered at the hands of Stateview that were not compensated due to Stateview's impoverishment.

[15] But the bulk of both actions is about proving who is liable concerning the cheque-kiting scheme and the allegedly improvident settlement.

[16] The difference in plaintiffs is irrelevant to the common issues as none of them were involved when Stateview and its officers were moving funds through the bank(s). Each plaintiff represents a different group of creditors who claim to have been prejudiced by the stripping of funds from the borrowers by the cheque-kiting scheme and the allegedly improvident settlement agreement proceeds.

[17] The two main corporate borrowers have been through receiverships. One Taurasi brother is bankrupt. The other is applying to go bankrupt. Practically speaking, the bank(s) are the only source of recovery, if any, for the plaintiffs.

[18] It is obvious that there are questions of law and fact in common in all three actions and that the relief claimed in them arises out of the same transaction or occurrence or series of transactions or occurrences. *Prima facie*, the actions should be combined in some manner to avoid the risk of inconsistent verdicts and to promote efficiency for the parties and for the court.

Opposition to Joining the Claims for Discovery

[19] Tarion opposes joinder of the claims now, before discovery, so as not to lose control of its lawsuit and to avoid becoming caught up in issues that may arise in the mortgagees' lawsuit. It also asserts that to prove its damages, it will have to establish that it paid out deposits or other insured amounts to home buyers. It will be required to disclose buyers' documents, such as their agreements of purchase and sale. It says that this is private information that should not be shared. It relies on the deemed undertaking of confidentiality under Rule 30.1 of the *Rules* and submits that the mortgagee plaintiffs cannot meet the high bar under Rule 30.1 (8) to be entitled to see documents in a claim in which they are not parties.

[20] TD's position is more curious. It says it prefers delivering three separate affidavits of documents and having its representative examined for discovery three separate times concerning the identical incidents. It also submits that it has a privacy interest in its productions in each separate action and it too relies on the deemed undertaking of confidentiality under Rule 30.1 to preclude plaintiffs in one action from seeing the documents produced by TD in the other actions.

[21] Both TD and Tarion concede that a combined trial of some sort will likely be required to avoid the risk of conflicting decisions. But they submit it is premature to decide what that should look like until after discovery.

Rule 30.1 has no Application to a Motion under Rule 6.01

[22] I questioned TD's counsel on the issue of privacy of documents among the three actions. If the same facts and claims are made (as the mortgagees borrowed Tarion's pleading of the key issues) then oughtn't TD's productions on the common issues be the same in each action? Counsel at first submitted that this would turn on how the various plaintiffs negotiate discovery plans and what they seek. Counsel quickly backed away from that response however, as it seemed to suggest that TD might withhold relevant documents produced to one party if it was cleverer than another in its document requests. Counsel quite fairly agreed that was not the case. The same documents will have to be produced in each action.

[23] TD has no privacy interest then as between or among the three actions as the same bundle of documents will either be disclosed three times separately or just once. No one is getting to see anything from TD to which it is not otherwise entitled.

[24] In any event, I do not accept that Rule 30.1 has any relevancy to the issue before me.

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[25] The deemed undertaking will apply fully to all compelled productions and oral discovery evidence in accordance with its terms. What I am asked to do is to make directions on what the scope of discovery should be.

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[26] The order under Rule 6.01 necessarily precedes any consideration of what information is produced on discovery. First, one needs to know who is participating in discovery and to whom documents and oral evidence is required to be produced. Then those people will be fully bound not to disclose further what is disclosed to them that is covered by the deemed undertaking rule.

[27] Counsel for TD submits that this is a loophole that guts Rule 30.1. I disagree. A defendant has no say in which plaintiffs might team up to sue in one action and all become entitled to receive its documents. The fact that the two groups of plaintiffs have sued separately for the same Facts and legal issues raises a question of efficiency and fairness that is covered by Rule 6.01. This has nothing to do with Rule 30.1.

[28] To be clear, in my view, a party seeking common hearings and common discovery among different actions that have common issues or facts or transactions or occurrences does not need to meet the test under Rule 30.1(8) before an order can be made under Rule 6.01. Counsel found no case precedent to the contrary.

Assessing Convenience, Fairness, and Efficiency under Rule 6.01

[29] A finding that the deemed undertaking is not engaged does not mean that the positions of the defendants and the issue of privacy are irrelevant to the discretion to be exercised by the court in formulating directions "as are just to avoid unnecessary costs or delay" under Rule 6.01 (2).

[30] In *Li v. Bank of Nova Scotia,* 2023 ONSC 4235 (CanLII), Vermette J. outlined the purpose of Rule 6.01.

> [62] The underlying purpose of this rule is to avoid multiplicity of proceedings, to promote expeditious and inexpensive determination of disputes, and to avoid inconsistent judicial findings. The threshold question is to determine whether any of the criteria under Rule 6.01(1) have been met. If so, the court must still consider whether the balance of convenience requires the order. See *Coulls v. Pinto*, 2007 CanLII 46242 at paras. 18-20 (Ont. S.C.J.) and *Abdulrahim v. Air France*, 2010 ONSC 5542 at para. 53.

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[31] In *Li v* Zhou, 2023 ONSC 3651, Charney J. discussed two cases that expanded upon the general principles by adopting lengthy lists of questions raising relevant factors to consider. Charney J. wrote:

> [43] If there is an affirmative answer to one of these questions [i.e. are there common issues or facts etc.], the Court would then consider whether the balance of convenience favours such an order, pursuant to the discretionary factors which include:
>
> > (i) will the order sought create a saving in pre-trial procedures, and in particular, pre-trial conferences; (ii) will there be a real reduction in the number of trial days taken up by the trials being heard at the same time; (iii) what is the potential for a party to be seriously inconvenienced by being required to attend a trial in which that party may have only a marginal interest; (iv) will there be a real saving in experts' time and witness fees; (v) is one of the actions at a more advanced stage than the other, and (vi) will the order result in a delay of the trial of one of the actions, and if so, does any prejudice which a party may suffer as a result of that delay outweigh the potential benefits a combined trial might otherwise have…
> >
> > See: *Heliotrope v. 1324789 Ontario Inc.*, 2020 ONSC 808, at para. 11, quoting *Coulls v. Pinto,* 2007 CanLII 46242 (ON SC) at paras. 18 – 20, aff'd by the Court of Appeal at *Heliotrope Investment Corporation v. 1324789 Ontario Inc.*, 2021 ONCA 589, at paras. 35 – 38.
> >
> > [44] In *1014864 Ontario Ltd. v. 1721789 Ontario Inc.*, 2010 ONSC 3306, at para. 18, Master Dash set out a non-exhaustive list of seventeen factors that the court may consider when determining whether to order two matters be tried together:
> >
> > > (a) the extent to which the issues in each action are interwoven;
> > >
> > > (b) whether the same damages are sought in both actions, in whole or in part;
> > >
> > > (c) whether damages overlap and whether a global assessment of damages is required;

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(d) whether there is expected to be a significant overlap of evidence or of witnesses among the various actions;

(e) whether the parties the same;

(f) whether the lawyers are the same;

(g) whether there is a risk of inconsistent findings or judgment if the actions are not joined;

(h) whether the issues in one action are relatively straight forward compared to the complexity of the other actions;

(i) whether a decision in one action, if kept separate and tried first would likely put an end to the other actions or significantly narrow the issues for the other actions or significantly increase the likelihood of settlement;

(j) the litigation status of each action;

(k) whether there is a jury notice in one or more but not all of the actions;

(l) whether, if the actions are combined, certain interlocutory steps not yet taken in some of the actions, such as examinations for discovery, may be avoided by relying on transcripts from the more advanced action;

(m) the timing of the motion and the possibility of delay;

(n) whether any of the parties will save costs or alternatively have their costs increased if the actions are tried together;

(o) any advantage or prejudice the parties are likely to experience if the actions are kept separate or if they are to be tried together;

(p) whether trial together of all of the actions would result in undue procedural complexities that cannot easily be dealt with by the trial judge;

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(q) whether the motion is brought on consent or over the objection of one or more parties.

[32] The discretion to consider whether and how to combine cases then, involves the quintessential holistic review of all relevant factors and circumstances (and then some).

[33] Reducing three trials to one and three days of discovery of TD to one are clear savings overall. Damages remain distinct. All the actions are just in the pleadings stage. There is a serious risk of inconsistent findings if the matters proceed separately. None of the actions is particularly apt to be a test case ahead of the others.

[34] One must always consider as well the question of prejudice.

[35] None of the factors here favour keeping three separate actions covering in the main identical factual and legal issues. Tarion fears that common discovery will increase cost. I do not see how that is possible. There will be one attendance by TD rather than three. There will be one set of documentary productions. There will be one set of discoveries to arrange and hold. If counsel are worried about scheduling with multiple parties, then there can be one 15-minute case conference to fix dates.

[36] Even if one party brings a motion or one party is particularly difficult, given that all recognize that a common hearing will be necessary to avoid the risk of inconsistent judgments, the quicker action will likely have to wait for the slower one in any event. But that fact will be a powerful argument for a judge at a case conference to limit tactical play and to ensure that any motions or other steps are resolved or scheduled quickly.

[37] I asked Ms. Pleet to list with particularity the prejudice Tarion submits it will suffer if discoveries are joined. She said:

i. There will be no costs savings;

ii. Her client does not want to have common prosecution of its action against TD with the mortgagees. It certainly does not want to share privileged information;

iii. Tarion is losing its "prerogative right" to have separate discovery with TD; and

iv. Tarion is losing its entitlement to rely on the deemed undertaking to keep its purchasers' names and details confidential.

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[38] I do not accept any of those assertions as prejudice that weighs on the efficiency and timing of these proceedings. There is no evidence supporting the conclusion that there will be no cost savings. There certainly will be aggregate savings overall by limiting production and discovery sessions and not repeating TD's discovery three times. On an individualized basis, if the hearings are to be held together in any event, then each counsel will need to read the discoveries in the other actions to prepare for trial. (What if a TD witness said something harmful to the mortgagees in the Tarion discovery? Or what if the TD witness contradicts himself or herself in different discoveries?) That means counsel will have to read the discoveries in the other actions in any event for trial.

[39] Lessening the number of transcripts saves everyone time and money and reduces the risk of inconsistency of evidence.

[40] I do not accept that there is any intrusion of the mortgagees into Tarion's case or that the mortgagees' counsel will have any say in Tarion's counsel's activities. Counsel who are unwilling to communicate and cooperate never need to speak if they do not want to do so. They can go to discovery. Tarion may want to go first so that it is finished before counsel to the mortgagees even starts. It may make sense for counsel to cooperate, such as agreeing on a common approach to discovery and trial or a common expert for trial. But no one is requiring them to do so.

[41] There is no "right" or "prerogative" to have separate discoveries. Rule 6.01 is available where parties disagree.

[42] Finally, as to privacy, I already found that the deemed undertaking is a red herring. But I can understand why Tarion does not want its insured's private details disclosed more broadly than necessary. This is not really about Tarion's privacy as much as it is to protect the insured peoples' privacy when Tarion sues on their behalf. It is also about protecting Tarion from criticism and complaints by the insured people.

[43] The specifics of Tarion's payments to insured people are only relevant to its damages. Each set of plaintiffs has to prove its independent damages at trial.

[44] I could bifurcate the affidavits of documents as between liability and damages. Or Tarion could redact from its documents information that could tend to identify an insured. But both of those processes will cause extra costs and may also lead to issues where perhaps some documents are relevant to both liability and damages, if any.

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[45] Instead, I suggested to counsel for Tarion, that in making its production to the mortgagee plaintiffs, it could identify the documents in its schedule "A" that contain private details of its insured customers. Mr. Govedaris agrees that those documents will not be disclosed to him without further agreement of counsel or an order. Mr. Govedaris was clear that his clients' interest is in documents concerning the common issues arising from the cheque-kiting scheme and the allegedly improvident settlement between TD and Stateview.

[46] In my view, this process fairly balances the questions of efficiency, privacy and costs.

[47] Order to go for the hearing of the three actions together or one after the other as the trial judge may decide. The three actions wills continue as separate actions. They are not consolidated. But all further steps in the actions will be in common. That is, there will be one set of productions to all parties in all three actions. There will be one set of oral examinations for all three actions. Motions and case conferences will be on notice to all parties in all three actions. There will be a common pretrial conference.

[48] In producing the documents disclosed in its affidavit of documents, Tarion need not provide counsel for the mortgagee plaintiffs any document that it specifically indicates contains private biographical information concerning an insured person. The mortgagees will only be entitled to production of such documents on agreement among counsel or a further order of the court.

[49] There is a costs issue remaining between Tarion and the mortgagee plaintiffs. Mr. Govedaris may deliver costs submission and any offers to settle on which he relies for costs purposes by January 15, 2026. Ms. Pleet may deliver her costs submission and any offers to settle on which she relies for costs purposes by January 29, 2026. Submissions shall be no longer than 750 words on pages that are double-spaced, with normal margins, and written in no less than 12-point font. No more tiny footnotes are welcomed.

[50] Civil justice requires a process that is affordable and efficiently delivered. *Hryniak v Mauldin*, 2014 SCC 7. Efficiency includes the parties and the court. These cases do not need three case conferences for scheduling. They do not need three trials. They do not need three sets of refusals motions for the same questions asked of TD at three different examinations into the same facts.

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[51] Counsel may have undisclosed tactical reasons for not wanted to be too close to the other cases. But that cannot overcome the clear efficiencies for the parties and for the court of joining the proceedings. Rule 6.01 is designed to bring about such efficiencies.

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FL Myers J

Date: , December 19, 2025

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