Court File No. CV-18-00608086-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

APPLICATION UNDER
Sections 126 and 129 of the *Securities Act*, R.S.O. 1990, C.S.5, as amended

FIRST REPORT TO THE COURT OF GRANT THORNTON LIMITED IN ITS CAPACITY AS RECEIVER OF THE RESPONDENT

November 18, 2018

GrantThornton

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PURPOSE OF THE REPORT

1. This Report (the "**First Report**") is filed by Grant Thornton Limited ("**GTL**") in its capacity as the receiver (the "**Receiver**") of the Respondent, Money Gate Mortgage Investment Corporation ("**Money Gate**" or "**MGMIC**"). GTL was appointed Receiver on an application of the Ontario Securities Commission ("**OSC**") pursuant to the terms of the Order of Mr. Justice Hainey dated November 6, 2018 (the "**Appointment Order**"). Copies of the Appointment Order and the endorsement of Justice Hainey are collectively attached hereto and marked as **Appendix "A"**.

2. The purpose of this Report is to provide the Court with information to support the Receiver's request for:

   (a) an interim order freezing monies held in the Bank Accounts (as defined below) pending a determination as to whether such monies constitute property of MGMIC;

   (b) a *Norwich* order requiring the Toronto-Dominion Bank and TD Canada Trust (collectively, the "**Bank**") to provide to the Receiver the Bank Account statements and any other documents, cheques or records requested by the Receiver pertaining to the Bank Accounts for the period from and after November 28, 2017;

   (c) an order requiring the Parties (as defined below) to produce information and documentation pertaining to their receipt and use of the Diverted Funds (as defined below).

RESTRICTIONS AND TERMS OF REFERENCE

3. In preparing this Report, the Receiver has relied upon the affidavit of Louisa Fiorini, a Senior Investigator in the Enforcement Branch of the OSC, sworn November 2, 2018 (the "**Fiorini Affidavit**") filed in support of the receivership application, a copy of which, without exhibits, is attached hereto and marked as **Appendix "B"**.

4. The Receiver's work does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles ("**GAAP**") or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Receiver expresses no opinion or other form of assurance pursuant to GAAP or IFRS with respect to such information.

5. This Report has been prepared for the use of this Court in support of the Receiver's *ex parte* motion returnable November 19, 2018. This Report should not be relied on for any other purpose.

6. All references to dollars are in Canadian currency unless otherwise noted.

APPOINTMENT OF RECEIVER

7. As noted above, the OSC brought an application for the appointment of GTL as Receiver pursuant to section 129 of the *Securities Act* (Ontario) (the "***Securities Act***"). On November 6, 2018, GTL was appointed as Receiver of all of the assets, undertakings and properties of MGMIC acquired for, or used in relation to a business carried on by MGMIC, including all proceeds thereof and all real property charges in favour of MGMIC (the "**Real Property Charges**") (the "**Property**") pursuant to the terms of the Appointment Order.

8. Pursuant to paragraph 3 of the Appointment Order, the Court authorized and empowered the Receiver to:

   (a) 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

   (b) initiate, prosecute and continue the prosecution of any and all proceedings with respect to MGMIC or the Property.

MONEY GATE[1]

9. MGMIC was a mortgage investment corporation that loaned money to borrowers, with the loans secured by residential and commercial mortgages. Morteza (Ben) Katebian ("**Ben**") and his son Payam Katebian are the principals of MGMIC (the "**Principals**").

10. Between August 2014 and April 2017, MGMIC raised approximately $11.0 million from approximately 155 investors through the sale of its preferred shares.

11. On April 27, 2017, the Enforcement Branch of the OSC (the "**Enforcement Branch**") obtained a temporary cease trade order against MGMIC, which is still in effect. The temporary cease trade order indicates that the Principals may have perpetrated a fraud on Money Gate's investors.

12. On October 30, 2017, the Principals, through counsel, advised the Enforcement Branch of their intention to wind up Money Gate.

13. On November 16, 2017, Money Gate held a shareholder meeting, where it informed shareholders that it intended to wind down its operations. This intention was communicated to investors via e-mail on November 27, 2017.

14. On December 19, 2017, the Enforcement Branch commenced a proceeding against MGMIC and the Principals, amongst others, by way of a statement of allegations, alleging that they defrauded and misled investors through misrepresentations contained in various

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[1] The information contained in the remaining sections of the Report is derived from the Fiorini Affidavit and the exhibits appended thereto.

documents produced by them, and engaged in unregistered trading and illegal distributions contrary to the *Securities Act*.

15. On October 30, 2018, the Enforcement Branch of the OSC brought a motion to amend the statement of allegations to make new allegations against Money Gate and the Principals, including with respect to the diversion of corporate funds.

DIVERSION OF FUNDS

16. On or about November 6, 2017, Money Gate executed an assignment agreement whereby it agreed to take an assignment from World Finance Corporation ("**WFC**") of a 30.1% interest in a third mortgage (the "**Birchmount Mortgage**") registered in favour of WFC against real property municipally known as 4 Birchmount Road, Toronto (the "**Birchmount Property**"), if certain conditions were met.

17. WFC is believed to be controlled by Arash Missaghi ("**Missaghi**"), who faces criminal charges for mortgage fraud. Missaghi appears to be involved with a number of properties on which Money Gate held or holds mortgages.

18. On December 1, 2017, the transfer of the 30.1% interest in the Birchmount Mortgage by WFC to MGMIC was registered on title to the Birchmount Property.

19. In connection with the assignment, Money Gate advanced $1.6 million to WFC, of which $1.2 million (the "**Diverted Funds**") was advanced by way of three separate advances of $400,000 each made between November 28, 2017 and December 6, 2017.

20. The transfers were completed at a time when Money Gate and the Principals had already advised the Enforcement Branch and Money Gate's investors that they would be winding

up the business and operations of Money Gate and were subject to a temporary cease trade order.

21. On November 30, 2017, Payam, on behalf of MGMIC, executed an authorization, pursuant to which MGMIC instructed its solicitor to complete the transaction notwithstanding that, among other things:

(a) Money Gate had not obtained statements from the first and second mortgagees of the Birchmount Property to ascertain what was owing under the mortgages; and

(b) no formal appraisal of the Birchmount Property was obtained and the requirement for the appraisal was waived by Money Gate.

A copy of the authorization is attached hereto and marked as **Appendix "C"**.

22. The Enforcement Branch prepared a table that summarized the transfers that track the flow of the Diverted Funds from Money Gate. A copy of the table is attached hereto and marked as **Appendix "D"**.

23. As set out in the table, the ultimate recipients of the Diverted Funds were as follows:

(a) Ben - $1.115 million;

(b) 2399029 Ontario Inc. ("**239 Inc.**") a company owned and controlled by Ben - $38,982.50;

(c) CBC Inc. - $709.98;

(d) WFC's solicitor - $2,353.84; and

(e) Money Gate's solicitor - $42,953.68.

24. All Diverted Funds received by Ben were received from 239 Inc. between December 5 and 8, 2017. The funds were wire transferred from a bank account in 239 Inc.'s name bearing account number 1085-54-***32 and maintained at a TD Canada Trust branch located at 220 Commerce Valley Drive West, Unit 100, Markham (the "**239 Bank Account**") to a bank account in Ben's name bearing account number 1085-63-***25 and held at the same branch (together with the 239 Bank Account, the "**Bank Accounts**").

25. Approximately four (4) months after the $1.6 million was advanced by Money Gate, a receiver was appointed over the Birchmount Property by the second mortgagee. The receiver has sold the property pursuant to Court order. The purchase price for the Birchmount Property was less than the amount claimed under the first and second mortgages.

26. The entitlement to the proceeds of sale from the Birchmount Property is being disputed, as is the validity of the first mortgage. Money Gate has not, and may not, recover any of the $1.6 million advanced to WFC to obtain an interest in the Birchmount Mortgage.

RECEIVER'S REQUEST

27. It appears to the Receiver that, as a result of the circumstances detailed above, $1.2 million of the $1.6 million advanced by Money Gate to WFC to purchase the 30.1% interest in the Birchmount Mortgage was diverted to Ben and 239 Inc. (collectively, the "**Parties**").

28. As a result, so that the Receiver may fulfill its duties under the Appointment Order to recover and preserve the Property, the Receiver respectfully requests that the Court grant an Order set out in paragraph 2 above.

All of which is respectfully submitted,

GRANT THORNTON LIMITED,
In its capacity as RECEIVER
of MONEY GATE MORTGAGE
INVESTMENT CORPORATION
and not in its personal or
corporate capacity

Per:

Jonathan Krieger, CPA, CA, CIRP, LIT
Senior Vice President