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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 129 OF THE SECURITIES ACT R.S.O. 1990, c. S.5, AS AMENDED

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

\- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

THIRD REPORT TO THE COURT OF GRANT THORNTON LIMITED IN ITS CAPACITY AS RECEIVER OF THE RESPONDENTS

October 18, 2019

Grant Thornton

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TABLE OF CONTENTS

APPENDICES

Appendix A	Fiorini Affidavit (without exhibits)
Appendix B	Second Report of the Receiver dated May 9, 2019 (without appendices)
Appendix C	254 Articles of Incorporation
Appendix D	MGMIC Commitment Letter
Appendix E	MGMIC Mortgage
Appendix F	Receipt re Transfer of Funds to Mentis Law
Appendix G	Excerpts of cross-examination of Payam Katebian
Appendix H	MGMIC Bank Account Statements
Appendix I	254 Bank Account Statements
Appendix J	239 Bank Account Statements
Appendix K	Correspondence from Brian Shiller dated January 7, 2019
Appendix L	Order and Endorsement dated January 23, 2019
Appendix M	A13MG Corporations Profile Report and Business Name Report
Appendix N	Statement of Claim issued January 28, 2019
Appendix O	Ricci Affidavit (without exhibits)
Appendix P	Share Purchase Agreement
Appendix Q	Resolution
Appendix R	Share Certificate
Appendix S	Curah Corporation Profile Report
Appendix T	E-mail dated May 23, 2017 and enclosed e-mail train

Appendix U	FSCO Warning dated April 5, 2019
Appendix V	1 Plus 12 Corporation Profile Report
Appendix W	E-mails dated June 1, 2017
Appendix X	E-mail dated September 7, 2017

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MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

Application under Section 129 of the *Securities Act,* R.S.O. 1990, C.S.5, as amended

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

October 18, 2019

INTRODUCTION

1. This Report is filed by Grant Thornton Limited ("**GTL**") in its capacity as the Court-appointed receiver (the "**Receiver**") over the property, assets and undertakings of Money Gate Mortgage Investment Corporation ("**MGMIC**"). GTL was appointed Receiver on November 6, 2018 pursuant to an order of the Honourable Mr. Justice Hainey, as amended (collectively, the "**Appointment Order**"), which was obtained on an application of the Ontario Securities Commission ("**OSC**") pursuant to section 129 of the *Securities*

Act (Ontario). The circumstances which gave rise to the Receiver's appointment were set out in detail in the Affidavit of Louisa Fiorini sworn November 2, 2018 (the "**Fiorini Affidavit**"). A copy of the Fiorini Affidavit, without exhibits, is attached hereto **as Appendix "A"**.

2. MGMIC carried on business as a mortgage investment corporation that lent money to borrowers, which loans were secured by mortgages, and/or acquired mortgages registered against commercial and residential properties.

3. Between August 2014 and April 2017, MGMIC raised approximately $11 million from approximately 155 investors through the sale of preferred shares of MGMIC. Those investments were pooled and loaned to borrowers on a secured basis or were used to acquire an interest in existing mortgages. The mortgage portfolio of MGMIC as at the date of the Appointment Order consisted of seven mortgages registered against properties located in the province of Ontario.[1]

4. Another related company, Money Gate Corporation ("**MGC**") operated as a mortgage administrator for MGMIC, servicing the MGMIC mortgages and received a fee in exchange for its services.

5. Morteza Katebian, also known as Ben Katebian ("**Ben**") and Payam Katebian ("**Payam**", and together with Ben, the "**Principals**") were each a director, officer and directing mind of MGMIC and MGC.

6. Copies of all materials filed in this receivership proceeding are available on the Receiver's case website at: www.GrantThornton.ca/MoneyGate.

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[1] A number of these mortgages have been discharged either through a power of sale proceeding or by registration of a vesting order by a receiver appointed to sell these properties. As previously report to the Court, GTL in its capacity as the Receiver of MGMIC continues to assert a security interest in the proceeds from the sale of those properties.

7. On May 9, 2019, the Receiver filed its second report with the Court (the "**Second Report**") in support of the Receiver's motion for, among other things, a Court order compelling certain financial institutions to provide account statements to the Receiver. A copy of the Second Report, without appendices, is attached hereto as **Appendix "B"**.

8. Paragraphs 53 through 60 of the Second Report detail matters related to the Dovercourt Property (as defined below) and the MGMIC Mortgage (as defined below). As set out therein, the Receiver was investigating claims to the Dovercourt Funds (as defined below) and intended to bring a motion for advice and direction with respect to the distribution of the Dovercourt Funds.

9. Pursuant to the endorsement of Justice Penny dated October 2, 2019, the Receiver's motion for advice and direction is scheduled for January 30, 2020.

PURPOSE OF THIS THIRD REPORT

10. The purpose of this third report to the Court (the "**Third Report**") is to provide information in connection with the Receiver's motion for advice and direction with respect to the distribution of the Dovercourt Funds.

RESTRICTIONS AND TERMS OF REFERENCE

11. In preparing this Third Report, the Receiver has relied upon unaudited financial information, MGMIC's books and records, certain financial information, discussions with the Principals, their counsel, and discussions with other parties. 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.

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

254 AND THE DOVERCOURT PROPERTY

13. 2546456 Ontario Inc. ("**254**") is a corporation governed by the laws of the Province of Ontario. 254 was incorporated on November 16, 2016. Payam was the incorporator and first director of 254 based on its articles of incorporation, a copy of which is attached hereto and marked as **Appendix "C"**.

14. Payam was the sole officer and director of 254 when it purchased real property municipally known as 558 Dovercourt Road, Toronto (the "**Dovercourt Property**") on April 3, 2017.

15. 254 financed the purchase of the Dovercourt Property by obtaining $1.45 million from B&M Handelman Investments Limited *et al* (collectively, the "**First Mortgagee**"), which was secured by a first mortgage registered on title to the Dovercourt Property.

MGMIC MORTGAGE

16. MGMIC and 254 entered into a commitment letter dated May 25, 2017 (the "**Commitment Letter**") whereby MGMIC agreed to loan $611,000 to 254 to be secured by a second mortgage over the Dovercourt Property. A copy of the Commitment Letter is attached hereto as **Appendix "D"**.

17. The Commitment Letter provides that MGMIC was entitled to a lender fee of 2.00%, which equals $12,200, and that 254 would have to pay MGMIC its legal and appraisal fees with respect to the loan.

18. On June 5, 2017, a charge/mortgage was registered on title to the Dovercourt Property in the principal amount of $611,000 in favour of MGMIC as instrument number AT4588484 (the "**MGMIC Mortgage**"). A copy of the MGMIC Mortgage is attached hereto as **Appendix "E"**.

19. Mentis Law Professional Corporation ("**Mentis Law**") represented 254 in connection with the MGMIC Mortgage. On May 29, 2017, MGMIC transferred $611,000 from its bank

account to the bank account of Mentis Law. A copy of a receipt evidencing the transfer is attached hereto as **Appendix "F"**.

20. As part of this receivership proceeding, the Receiver obtained copies of the bank account statements for MGMIC, 254 and 2399029 Ontario Inc. ("**239**"). The Receiver was advised by Payam that Ben is the sole shareholder of 239. The Receiver also understands that in a different proceeding not involving MGMIC, Arash Missaghi, or parties related to him, are claiming that they are in fact the shareholders or beneficial owners of 239.

21. In a cross examination in a proceeding involving an enforcement of another MGMIC mortgage, Payam gave evidence that for transactions involving Ricci and Sai (each term as defined below), funds to and from MGMIC would flow through 239. Copies of the relevant excerpts from Payam's cross-examination are attached hereto as **Appendix "G"**.

22. The MGMIC statement confirms that on May 29, 2017 $611,000 was transferred out of MGMIC's account. The 254 statement confirms that 254 received $595,741.26 on May 31, 2017. Additionally, based on a review of the 254 statement and the 239 statement, it appears that 254 transferred the sum of $475,000 to 239 by June 27, 2017. Copies of the statements for MGMIC, 254 and 239 are respectively attached hereto as **Appendices "H"**, **"I"** and **"J"**.

23. The Receiver has not completed a forensic review of the bank account statements or the source of funds. However, it is of the view that the $595,741.26 was likely transferred by Mentis Law to 254 from the $611,000 Mentis Law received from MGMIC. The reduced amount is likely on account of the $12,200 lender fee payable to MGMIC, and payment of MGMIC's legal and appraisal fees.

DOVERCOURT RECEIVER AND DOVERCOURT FUNDS

24. On July 4, 2018, MGMIC commenced an application for the appointment of a receiver over the Dovercourt Property. On July 30, 2018, Ira Smith Trustee & Receiver Inc. (the "**Dovercourt Receiver**") was appointed as receiver over the Dovercourt Property pursuant to the Order of the Honourable Mr. Justice Dunphy.

25. On December 21, 2018, the Dovercourt Receiver served a motion record originally returnable January 10, 2019 for, among other things, approval of a sale of the Dovercourt Property and distribution of the net sale proceeds to the First Mortgagee and MGMIC.

26. On January 7, 2019, prior to the return of the sale approval motion, Brian Shiller ("**Shiller**"), as counsel to A13MG and Ricci (each term as defined below) advised in writing that A13MG was advancing a claim to the net proceeds from the sale of the Dovercourt Property in priority to MGMIC. A copy of Shiller's correspondence is attached hereto as **Appendix "K"**.

27. On January 23, 2019, the Court approved the sale of the Dovercourt Property and a distribution to the First Mortgagee up to the full amount owing under their mortgage. The Court also ordered that the balance of the net sale proceeds was to be paid to the Receiver to be held in trust pending a distribution motion to be brought in this proceeding. Copies of the order and endorsement dated January 23, 2019 are collectively attached hereto as **Appendix "L"**.

28. On February 6, 2019, the Receiver received $391,027 (the "**Dovercourt Funds**") from the Dovercourt Receiver, which represented the first distribution from the proceeds available from the sale of the Dovercourt Property after payment of the fees and disbursements of the Dovercourt Receiver and the amounts owing under the first mortgage. The Receiver

anticipates the receipt of a second distribution following the conclusion of the administration by the Dovercourt Receiver, which the Receiver expects will be nominal.

29. Based on the Receiver's review of MGMIC's books and records, the Receiver provided a payout statement to the Dovercourt Receiver dated December 12, 2018, claiming $768,161.45. As a result, even if the Court finds that the MGMIC Mortgage is valid and enforceable and that MGMIC is entitled to the Dovercourt Funds, MGMIC will still suffer a substantial shortfall on its loan to 254.

CLAIMS TO THE DOVERCOURT FUNDS

30. In addition to the claim of MGMIC to the Dovercourt Funds, the Receiver has heard from two additional parties that claim entitlement to the Dovercourt Funds: 2496050 Ontario Corp. doing business as A13MG ("**A13MG**") and Hazelton Homes Inc. ("**Hazelton Homes**").

<u>A13MG</u>

31. A13MG is a corporation governed by the laws of the Province of Ontario that was incorporated on December 14, 2015. The sole director of the company is Jonathane M. Ricci ("**Ricci**"). Based on a Business Name Report, A13MG carried on business as a provider of management consulting services. Copies of the Corporation Profile Report and Business Name Report for A13MG are collectively attached hereto as **Appendix "M"**.

32. As has previously been disclosed to the Court, Ricci is a lawyer and previously represented the Principals, MGMIC and other related parties.

33. A13MG has alleged that it is the owner of 50% of the shares of 254, with Payam owing the other 50% of the shares. The Dovercourt Receiver previously reported to the Court that, based on its review of 254's books and records, Payam was the sole shareholder of 254.

34. On January 28, 2019, A13MG commenced a claim in Toronto against 254, Payam, GTL and Rouzbeh Behrouz[2] seeking, among other things, a declaration that the MGMIC Mortgage is/was invalid and an order that any funds received by MGMIC with respect to the Dovercourt Property be returned to 254. A copy of the claim is attached hereto as **Appendix "N"**.

35. As set out in the claim, as well as an affidavit sworn by Ricci on February 5, 2019 (the "**Ricci Affidavit**"), A13MG claims that:

(a) on May 16, 2017, A13MG purchased 50% of the shares from Payam for $375,000 pursuant to a share purchase agreement (the "**Share Purchase Agreement**");

(b) on May 15, 2017, prior to the execution of the Share Purchase Agreement, Payam, in his capacity as the sole shareholder of 254, executed a shareholder resolution (the "**Resolution**"), amending the articles of incorporation of 254 to restrict its ability to, among other things, borrow money and encumber the Dovercourt Property without the consent of all shareholders; and

(c) 254 borrowed funds from MGMIC and granted the MGMIC Mortgage without the consent of A13MG.

Copies of the Ricci Affidavit (without exhibits), the Share Purchase Agreement, and the Resolution are respectively attached hereto as **Appendices "O"**, **"P"**, and **"Q"**. Additionally, attached as **Appendix "R"** is a copy of a share certificate issued by 254 in favour of A13MG.

36. A13MG provided a wire activity report dated May 24, 2017 that shows that $375,000 was transferred from a A13MG bank account to an account in the name of 239.

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[2] Rouzbeh Behrouz is currently the sole office and director of 254 based on the information contained in the records of the Ministry of Government and Consumer Services.

37. A13MG has also provided an Acknowledgement and Direction re Funds dated May 18, 2017 from Curah Capital Corporation ("**Curah**") to A13MG, directing it to use its funds held by A13MG for the $375,000 share purchase price.

38. In the Ricci Affidavit, Ricci claimed that Curah is a former client of his. Curah is a corporation incorporated under the laws of the Province of Ontario. Its directors are Glenn Estrabillo ("**Glenn**") and Dominik Kawa ("**Dominik**"). A Corporation Profile Report for Curah is attached hereto as **Appendix "S"**.

39. Counsel to Payam has informed the Receiver's counsel in writing that Payam acknowledges that 50% of 254's shares were sold to A13MG and that the $375,000 was received by Payam. Payam has alleged, through his counsel, that he does not recall signing the Resolution. However, the Receiver has been provided a copy of an e-mail dated May 23, 2017 (the "**E-Mail**") from Payam to Ricci, Ben, Glenn, Sai Mohammad ("**Sai**") and James Destephanis ("**James**") that attached a copy of the Resolution. A copy of the E-mail is attached hereto as **Appendix "T"**.

40. Based on the documentation provided, it appears to the Receiver that A13MG is the 50% shareholder of 254, and the Resolution amending 254's articles of incorporation was signed by Payam.

41. The issue that remains to be determined is whether A13MG had knowledge of and consented to the granting of the MGMIC Mortgage by 254 to MGMIC.

42. The E-Mail attached as **Appendix "R"** contains a trail of e-mails sent from May 1 and 23, 2017. The individuals that were party to the exchanges were the Principals, Ricci, James, Glenn, and Sai.

43. The Receiver understands that Ricci, James, Glenn, Sai, and Dominik, along with Arash Missaghi, are affiliated with 1 Plus 12 Corporation ("**1 Plus 12**"), an international

investment training company. On April 5, 2019, the Financial Services Commission of Ontario ("**FSCO**") set out a warning to consumers that 1 Plus 12 was not a licensed mortgage broker and that the individuals were not licensed to conduct mortgage business in Ontario. The warning also notes that the Peel Regional Police were investigating the matter. A copy of the FSCO warning is attached hereto as **Appendix "U"**. A copy of a Corporation Profile Report for 1 Plus 12 Corporation is attached hereto as **Appendix "V"**.

44. Based on a review of the e-mails, it appears that 1 Plus 12 / Curah funded A13MG's share purchase and potentially may be the direct or beneficial owner of A13MG.

45. In an email dated May 19, 2017, James proposed that after the investment of $375,000, 254 would apply for a second mortgage, and a portion of the financing would be used to repay 1 Plus 12 its $375,000 investment in 254. In a subsequent e-mail, Ricci asked Payam to confirm that this was acceptable, and on that same day Payam confirmed this by reply e-mail.

46. In a subsequent e-mail dated May 23, 2017, Ricci asked Payam to provide details on the second mortgage, and who would be representing the lender on the mortgage. Payam replied that Fred Yack from Yack and Associates would be representing the lender.

47. In e-mails dated June 1, 2017, which were provided to the Receiver by Payam's counsel, James raised the issue of getting the second mortgage and Payam informed the parties that "I'll get working on the 2nd". Copies of the e-mails are collectively attached hereto as **Appendix "W"**.

48. Payam's counsel also provided an e-mail dated September 7, 2017 from Ricci to the parties that included an email and text messages about the possibility of 254 granting a third mortgage over the Dovercourt Property. A copy of the email is attached hereto as **Appendix "X"**.

49. Based on its review of the above-noted emails, it appears to the Receiver that Ricci and A13MG were aware of and supported 254 borrowing funds and granting a second mortgage over the Dovercourt Property.

Hazelton Homes

50. The Receiver's counsel has been informed by James Zibarras that he represents Hazelton Homes, and that it intends to make a claim to the Dovercourt Funds. Notwithstanding multiple requests for information regarding the claim, Mr. Zibarras has not provided any description of the claim, nor any documentation, to date. Mr. Zibarras has confirmed that Hazelton Homes will be filing materials in connection with the Receiver's motion for advice and direction.

51. As a result, the Receiver is not in a position at this time to comment on any claim Hazelton Homes may be asserting to the Dovercourt Funds.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of October 2019.

GRANT THORNTON LIMITED,
solely in its capacity as the Court-appointed receiver and manager of Money Gate Mortgage Investment Corporation and not in its personal or corporate capacity

Per: ____________________________
Jonathan Krieger, CPA, CA, CIRP, LIT
Senior Vice-President