



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00724076-00CL

DATE: December 1, 2025

NO. ON LIST: 5

**TITLE OF PROCEEDING: FOREMOST MORTGAGE HOLDING CORPORATION v. BARAKAA
DEVELOPER INC. et al
BEFORE: JUSTICE CAVANAGH**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Edmond Lamek	Counsel for KSV as Receiver	edmond.lamek@dlapiper.com
Ben Luder		bluder@ksvadvisory.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Khaled Ghedai	Counsel for the Respondents, Barakaa Developer Inc. Lerrato Inc. and 2145499 Ontario Inc.	kg@friedmans.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Monty Dhaliwal	Counsel for the Purchasers (Non-Parties) Mohammed Al-Sharafi and Fatima Alawi	mdhaliwal@pallettvalo.com

ENDORSEMENT OF JUSTICE CAVANAGH:

[1] KSV Restructuring Inc. ("KSV"), in its capacity as the Court- appointed receiver and manager (in such capacity, the "Receiver"), without security, of certain real properties of Barakaa Developer Inc. and Lerrato Inc ., and the property, assets and undertakings of 2145499 Ontario Inc ., brings this motion for:

- a. three approval and vesting orders approving the sale transactions (the "Transactions") contemplated by two agreements of purchase and sale and one amending agreement (collectively the "Sale Agreements") between the Receiver, as vendor, and Muhammed Jenhazeb Agha (the "369 Porte Purchaser"), as purchaser, Rohitkumar M. Patel and Arvindaben R. Patel, as purchasers (the "377 Porte Purchasers"), and Mohammed Alsharafi and Fatima Jreddi (the "23 Madison Purchasers", and collectively the "Purchasers"), and vesting in the applicable Purchasers, the lands and buildings known municipally as 369 and 377 Porte Road, Ajax and 23 Madison Avenue, Richmond Hill, (the "Properties") and the chattels listed in the Sale Agreements (collectively, the "Purchased Assets"); and
- b. an order authorizing the Receiver to make one or more distributions from the proceeds of the sale of the Purchased Assets to Foremost Mortgage Holding Corporation ("Foremost"), approving the Receiver's activities set out in the Receiver's Fifth Report to Court dated November 24, 2025 (the "Fifth Report") and sealing the Confidential Appendix to the Fifth Report pending closing, or further Court order.

[2] KSV was appointed as Receiver pursuant to an order of the Ontario Superior Court of Justice made on October 21, 2024 (the "Receivership Order") of two real properties (the "Barakaa Properties") owned by Barakaa Developer Inc. ("Barakaa"), six real properties (the "Lerrato Properties") owned by Lerrato Inc. ("Lerrato"), and the property, assets and undertaking owned by 2145499 Ontario Inc. ("214", and together with the Barakaa Properties and the Lerrato Properties, (the "Receivership Assets"). The Properties are three of the five Lerrato Properties.

[3] The application to appoint KSV as Receiver was made by Foremost, which has mortgages on each of the Receivership Assets, registered prior to all other mortgages registered on title to the Receivership Assets. The principal purpose of the receivership application was to empower the Receiver sell the Receivership Assets free and clear of encumbrances, by way of approval and vesting orders.

[4] Foremost has been funding these proceedings pursuant to the Receiver's Borrowing Charge (as defined in the Receivership Order). As of the date of this motion (following application of certain proceeds of the prior sales of one Barakaa property and three Lerrato properties) the Receiver's outstanding borrowings from Foremost total \$1,428,839.

[5] Foremost holds a first ranking mortgage (the "Foremost Porte Mortgage") registered on title to the Porte Properties in the original principal amount of \$3,155,000. In addition to the Foremost Porte Mortgage, the Porte Properties (other than Porte Part 6) are subject to a mortgage in favour of BIP Management Corporation ("BIP") in the initial principal amount of \$700,000, contractually postponed to the Foremost Mortgage. As of the date of this motion, the Lerrato indebtedness secured by the Foremost Porte Mortgage is approximately \$1.28 million, before interest, fees and other costs, which remains subordinate to the outstanding amounts secured by the Receiver's Borrowing Charge.

[6] Foremost holds a first ranking mortgage in the original principal amount of \$4,133,000 registered on title to 23 Madison (the "Foremost Madison Mortgage" and together with the Foremost Porte Mortgage, the "Foremost Mortgages"). In addition to the Foremost Madison Mortgage, 23 Madison subject to a mortgage in favour of BIP in the initial principal amount of \$1,500,000, and a mortgage in favour of 1417199 Ontario Limited ("141

Ontario") in the initial principal amount of \$750,000, which is postponed to BIP, and ranks after the Foremost Madison Mortgage. As of the date of this motion, Barakaa's indebtedness secured by the Foremost Madison Mortgage is approximately \$1.4 million, before interest, fees and costs which continue to accrue, which remains subordinate to the outstanding amounts secured by the Receiver's Borrowing Charge.

[7] The Receiver's counsel, DLA, has provided the Receiver with its opinion that, subject customary assumptions and qualifications, the Foremost Mortgages are valid and enforceable, and no party on the Service List has, to the Receiver's knowledge, disputed or questioned the priority of the Foremost Mortgages or amounts owed to Foremost secured thereby.

[8] Since the date of the Receiver's appointment, each of the Purchasers have been in occupancy of their respective residences pending closing. In the months following its appointment, the Receiver attempted to negotiate consensual transactions with each of the Purchasers on economic terms acceptable to Foremost as first mortgagee.

[9] In order to maximize the realizable value of each of 369 Porte, 377 Porte and 23 Madison for the benefit of stakeholders, and obtain vacant possession in order to be able to return the residences to saleable condition, and re-expose them to the market for sale, the Receiver brought motions returnable October 7, 2025 (369 and 377 Porte) and October 10, 2025 (23 Madison) and obtained orders of Justice Steele and Justice Myers (the "Disclaimer Orders") authorizing the disclaimer of the three existing agreements of purchase and sale and ordering vacant possession of the Properties following delivery of vacancy notices by the Receiver.

[10] Subsequent to the making of the Disclaimer Orders and delivery of disclaimer notices by the Receiver, the Receiver was successful in negotiating alternative transactions (the "Transactions") and sale agreements (the "Sale Agreements") with each of the 23 Madison Purchasers, the 377 Porte Purchasers and the 369 Porte Purchaser for which approval is sought herein. Each of the proposed Transaction terms were reviewed with Foremost, who has consented to each of the Transactions.

[11] In *Royal Bank v. Soundair Corp.* (1991) 4 O.R. (3d) 1 (C.A.), the Court of Appeal for Ontario set out factors the Court shall consider when assessing whether to approve a transaction entered into by a receiver for the sale of a debtor's assets: (i) whether the receiver has made sufficient effort to get the best price and has not acted improvidently; (ii) the interests of all parties; (iii) the efficacy and integrity of the process by which offers are obtained; and (iv) whether there has been unfairness in the working out of the process.

[12] I am satisfied that the *Soundair* factors are satisfied. The Receiver considered and balanced the costs and benefits of obtaining vacant possession of the Properties from the Purchasers, in order to refurbish and remarket the Properties through real estate agents in the current market, as compared to a negotiated result with the Purchasers, resulting in sale prices consistent the Receiver's appraisals. I am satisfied that the negotiation process with the Purchasers and their respective counsel was conducted in an even handed manner by the Receiver, as Court officer, and DLA as its counsel, and no party was prejudiced or treated unfairly by the Receiver during the conduct of the negotiation process.

[13] The Receiver recommends that it be authorized to make distributions to Foremost up to the amounts secured by the Foremost Porte Mortgage and the Foremost Madison Mortgage from the relevant sale proceeds following closing of the Transactions, subject to retaining a holdback in respect of the professional fees and costs of these proceedings secured by the Receiver's Charge and amounts owing in respect of the Receiver's Borrowing Charge. I accept the Receiver's recommendation.

[14] Counsel for the Respondents appeared at the hearing. His clients do not oppose the requested order, but they reserve all of their rights in respect of the distribution, which may be advanced on a future distribution motion in relation to the proceeds of sale of other properties in this receivership.

[15] The Receiver recommends that Confidential Appendix "1" to the Fifth Report be sealed until the later of a further order of the Court or closing of the Transactions. The only sealed information relates to the appraised values of the Remaining Residential Properties. The requested sealing order should be granted. This is consistent with the decision in *Sherman Estate v. Donovan*, 2021 SCC 25.

[16] Orders to issue in forms of Orders signed by me today.

A handwritten signature in blue ink, appearing to read "Amber".