



SUPERIOR COURT OF JUSTICE

**COUNSEL/ENDORSEMENT SLIP**

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

DATE: Monday, March. 24, 2025

NO. ON LIST: 2 @10:30am

TITLE OF PROCEEDING: FOREMOST MORTGAGE HOLDING CORP. v BARAKAA DEVELOPER INC. ET AL  
BEFORE: JUSTICE J. STEELE

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
GOHIL, Dillon	FOREMOST MORTGAGE HOLDING CORP.	dillon.gohil@paliareroland.com
LARRY, Jeff	FOREMOST MORTGAGE HOLDING CORP.	jeff.larry@paliareroland.com

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
AFROZ, Danish	BARAKAA DEVELOPER INC. ET AL	dafroz@chaitons.com

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info
LAMEK, Edmond	Receiver KSV Restructuring	edmond.lamek@dlapiper.com
OSTLER, Meg	Receiver KSV Restructuring	mostling@ksvadvisory.com
KOFMAN, Bobby	Receiver KSV Restructuring	bkofman@ksvadvisory.com
JEYARATNAM, John	Observer	

<b>DHINGRA, Hans</b>	<b>Third Mortgagee 2145499 Ontario Inc.</b>	<b>dhingrahans@gmail.com</b>
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**ENDORSEMENT OF JUSTICE STEELE:**

- [1] The Receiver brings a motion seeking approval of a sale transaction and vesting in the Purchaser the land and building known municipally as 25 Madison Avenue, Richmond Hill, Ontario and authorizing the Receiver to make an interim distribution to Foremost Mortgage Holding Corporation.
- [2] Capitalized terms used herein that are not defined have the meaning set out in the Receiver's factum.
- [3] No one filed any material in opposition to the relief sought.
- [4] Hans Dhingra, a principal of the third mortgagee, made oral submissions. Mr. Dhingra stated that the receivership was due to the Joshi Mortgages. The debtors and Mr. Jhaveri dispute the registration of the Joshi Mortgage on title to the Madison Properties (25 Madison and another property on Madison), among other things. There was a hearing regarding this dispute in late January before Koehnen J., which is under reserve. Mr. Dhingra's position is that if they are successful in having the mortgages removed, the position of the debtor would be significantly different and there may not be a need for a receiver. He stated that selling the property in receivership will result in less net proceeds than a sale outside receivership.
- [5] The Receiver indicated that the Joshi Mortgage is only one of the reasons that the receivership proceeding was started, but there are others. The Receiver indicated that even if Mr. Dhingra's position succeeds regarding the Joshi Mortgages, it would not change the need for a receiver to close the majority of the transactions.
- [6] There are approx. 19 properties to be sold. The one at issue today is the first. Mr. Dhingra has not filed evidence. Further, the potential issues raised are speculative at this time. The Receiver was court appointed and has a mandate that it seeks to carry out.
- [7] For the reasons set out below, the order is granted.

**Background**

- [8] On or about October 21, 2024, KSV was appointed as Receiver of two real properties owned by Barakaa Developer Inc., six real properties owned by Lerrato Inc., and the property, assets and undertakings owned by 2145499 Ontario Inc.
- [9] The property located at 25 Madison is one of the two properties owned by Barakka.

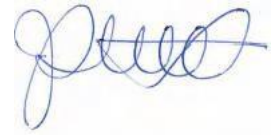
- [10] The application to appoint KSV was made by Foremost, which has mortgages on each of the Receivership Assets, registered prior to all other mortgages on title to these assets.
- [11] Foremost has been funding these proceedings further to the Receiver's Borrowing Charge. Thus far, Foremost has advanced \$831,000.
- [12] The Receiver's counsel has provided the Receiver its opinion that the Barakaa FM Mortgage is valid and enforceable. No party on the Service List has disputed or questioned the priority of the Barakaa FM Mortgage. There are second and third mortgages on 25 Madison.
- [13] In October 2023, the Joshi Mortgage in the amount of \$5,000,000 was registered on title to the Madison Properties (25 Madison Avenue and the other property on Madison), the registration of which is disputed by the Debtors and by Mr. Jhaveri.
- [14] The APS in respect of the 25 Madison Avenue property was signed on February 13, 2025. The Transaction is unconditional except for Court approval.

### **Analysis**

- [15] When considering whether to approve a proposed sale, the court considers the well-known factors set out in *Royal Bank v. Soundair Corp.* (1991) 4 O.R. (3d) 1 (C.A.):
- a. Whether the receiver has made sufficient effort to get the best price and has not acted improvidently;
  - b. The interests of all parties;
  - c. The efficacy and integrity of the process by which offers are obtained; and
  - d. Whether there has been unfairness in the working out of the process.
- [16] For the reasons set out at paras. 9 to 19 of the Receiver's factum, I am satisfied that the *Soundair* factors have been satisfied. The property is a residential home. It does not qualify for coverage under the Tarion Warranty Plan. The home is being sold "as is where is." The property was listed for more than six months by a real estate broker (that the Receiver states is well known in the Richmond Hill region) before the Sale Agreement was entered into. The Receiver notes that conventional methods were used to market the property, including listing it on MLS, conducting virtual tours, taking professional photos, using social media, etc. The market has been tested. The Receiver's view is that it is unlikely that continuing to market 25 Madison will result in a superior transaction. Foremost, the senior secured creditor, supports the Transaction. As noted by the Receiver, based on the outstanding Barakaa FM Debt, Foremost is the only creditor with a direct economic interest in the sale of 25 Madison. The Receiver further notes that the sale process was conducted in an even-handed manner by the Receiver and the Listing Agent.
- [17] The Receiver recommends that it be authorized to make distributions to Foremost up to the amount of the Barakaa FM Debt from the sale proceeds after the Transaction closes, subject to retaining a holdback for professional fees and costs of these proceedings secured by the Receiver's Charge and the Receiver's

Borrowing Charge. The Receiver notes that based on the amount of debt outstanding under the Barakaa FM Debt, and the net proceeds anticipated from the Transaction, a material portion of the Barakaa FM Debt will still be owed to Foremost after the interim distribution. Accordingly, and given that Foremost has priority, it is appropriate to approve the interim distribution.

[18] Order attached.

A handwritten signature in blue ink, appearing to be "J. L. [unclear]", is located in the upper right quadrant of the page. The signature is fluid and cursive, with a horizontal line extending from the end.