



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

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

DATE: October 7, 2025

NO. ON LIST: 3

**Foremost Mortgage Holding Corporation V. Barakaa
Developer Inc. et. al**

BEFORE: JUSTICE STEELE

PARTICIPANT INFORMATION

For Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Edmond Lamek	Receiver for KSV Restructuring	Edmond.lamek@dlapiper.com

For Respondent, Responding Parties:

Name of Person Appearing	Name of Party	Contact Info
Jeff Larry	Foremost Mortgage Holding Corporation	jeff.larry@paliareroland.com
Allan Mohammed	Non-Party stakeholders re: 377 Porte Road	allan@rohomanmohammed.com
Intizar Ali	For Purchaser Muhammad Jahanzeb Agha of 369 Porte Road	intizar@barristerslinks.com
Harvey Chaiton	Barakaa Developer Inc, Lerrato Inc., 2145499 Ont. Inc.	harvey@chaitons.com

ENDORSEMENT OF JUSTICE STEELE:

- [1] KSV Restructuring Inc., in its capacity as Receiver of certain real property of Barakaa and Lerrato, and the property of 214 Ontario seeks an order, among other things, authorizing the Receiver to terminate and disclaim certain agreements of purchase and sale, and declaring that the Receiver is entitled to vacant possession of 369 Porte and 377 Porte.
- [2] Defined terms used in this endorsement that are not defined herein have the meaning set out in the Receiver's factum.
- [3] The motion is supported by Foremost Mortgage Holding Corporation, a secured lender to Lerrato, with a first-in-time mortgage registered on title to 369 Porte and 377 Porte.
- [4] Motion materials were served on September 5, 2025.
- [5] With respect to 377 Porte, materials opposing the motion had been filed in advance. However, the court was advised at the outset that the Receiver and the 377 Porte Purchasers have come to an agreement in principle for a transaction in respect of 377 Porte. The proposed amended order provides the 377 Porte Purchasers the opportunity to finalize their financing. If they are unable to do so, the Receiver would proceed to deliver the vacancy notice.
- [6] With respect to 369 Porte, no materials were filed in advance of the motion. The 369 Porte Purchaser attended with newly retained counsel. Counsel asked that the 369 Porte Purchaser be given 60 days to obtain financing. He indicated that the 369 Porte Purchaser had not yet obtained financing.
- [7] Counsel for the Receiver advised the Court, and provided evidence, that the Receiver has been communicating with the 369 Porte Purchaser and his prior counsel for some time. It has been almost a year during which time the 369 Porte Purchaser has been living rent free. During this time the property taxes have been paid by Foremost.
- [8] Foremost's security, which has been registered against 369 Porte, has priority over the 369 Porte Purchaser. The 369 Porte Purchaser has been unable to close the transaction in respect of the property, despite the Receiver's desire to do so. The Receiver is of the view that no additional time should be provided to the 369 Porte Purchaser because he has had sufficient time and notice. The Receiver wants to take steps now to have the 369 Porte APS disclaimed, fixed up, re-exposed to the market as soon as possible.
- [9] After hearing submissions from the parties regarding 369 Porte, I determined that the order sought would be made. However, the 369 Porte Purchaser will be given 45 days from the Disclaimer Order to provide vacant possession of the property to the Receiver (instead of 30 days as requested by the Receiver). The Receiver noted that if the 369 Porte Purchaser can secure firm financing within that time, the 369 Porte Purchaser could approach the Receiver for its consideration.
- [10] 214 Ontario, Lerrato and Barakaa are real estate development companies.

- [11] The Receiver was appointed on or about October 21, 2024 of certain real properties of the Debtors, including two fully constructed homes in Richmond Hill, Ontario, five fully constructed residential freehold townhouses in Ajax (the Porte Properties), and a substantially completed 10 unit townhouse condominium project in Ajax.
- [12] The Receiver has completed the sale of certain of the real properties but has thus far been unable to reach acceptable terms to complete the sale of three properties, two of which were the subject of the Receiver's motion.
- [13] Since the Receiver was appointed, the 369 Porte Purchaser has occupied 369 Porte further to the 369 Porte License. 369 Porte is subject to the Second 369 Porte APS.
- [14] Since the Receiver was appointed, the 377 Porte Purchasers have occupied 377 Porte. 377 Porte is subject to the Second 377 Porte APS.
- [15] The Receiver seeks authorization of the court to terminate and disclaim the 369 Porte APS and the 369 Porte License. The Receiver further seeks vacant possession of 369 Porte.
- [16] As I noted in *Cameron Stephens Mortgage Capital Ltd. v. 2011836 Ontario Corp. et al*, 2024 ONSC 3507, at para. 17, the Court has jurisdiction to authorize a receiver a receiver to disclaim agreements of purchase and sale in the context of real property developments. Fitzpatrick J., of the British Columbia Supreme Court, in *Forjay Management Ltd. v. 0981478 BC Ltd.*, 2018 BCSC 527, 11 B.C.L.R. (6th) 395, at paras. 41-44, set out the following considerations for the court in determining whether to authorize a receiver to disclaim pre-sale purchase agreements:
- a. The respective legal priority positions as between the competing interests;
 - b. Whether a disclaimer would enhance the value of the assets, and, if so, whether a failure to disclaim would amount to a preference in favour of one party; and
 - c. If a preference would arise, whether the party seeking to avoid a disclaimer has established that the equities support that result.
- [17] I agree with the submissions of the Receiver that the above factors support the authorization of the Receiver to disclaim the 369 Porte APS:
- a. The 369 Porte APS contains an express acknowledgment that the 369 Porte Purchaser subordinates and postpones their APS to any mortgage or construction financing of the Debtors and any advances thereunder.

The Purchaser hereby acknowledges the full priority of any mortgage or construction financing arranged by the Vendor and/or secured by the Real Property over his interest as Purchaser for the full amount of the said mortgage or construction financing, notwithstanding any law or statute to the contrary and agrees to execute all acknowledgements or postponements required to give full effect thereto.

Further, the 369 Porte Purchaser agreed to forbear on registering the 369 Porte APS on title to the property.

- b. As discussed above, the Receiver has provided the 369 Porte Purchaser many months to arrange financing to close the purchase of 369 Porte, but it appears that he will not be able to do so.
- c. 369 Porte is a fully constructed residential freehold townhome, subject to an APS that has not closed. The 369 Purchaser has paid deposits and currently occupies the residence. He has occupied 369 Porte since the date of the Receiver's appointment but has not paid occupancy fees or property taxes. As noted by the Receiver, the disclaimer will have a negative impact on the 369 Porte Purchaser. However, this does not justify overriding the secured lender's legal priority. This is particularly so because the Receiver has been prepared to complete a sale transaction based on the existing financial terms. This has been communicated to the 369 Purchaser, who has been unable to secure financing.

[18] The Receiver notes that the harm that would be caused to the Debtors' priority stakeholders and the estate as a whole of refusing its request outweighs that which would be caused to the 369 Porte Purchaser by the disclaimer (given the option that had been provided by the Receiver for the 369 Porte Purchaser to close the transaction). I agree with the Receiver that equity does not support refusal of the Receiver's request to disclaim the 369 Porte APS and the 369 Porte License in the circumstances.

[19] As noted above, the Receiver had sought vacant possession by the 369 Porte Purchaser within 30 days of the Disclaimer Order. However, I determined that 45 days was more appropriate to provide sufficient time for the 369 Porte Purchaser to make alternative living arrangements.

[20] Order attached.

A handwritten signature in blue ink, appearing to be 'J. H. H.', is located in the lower right quadrant of the page.