Court File No. CV-24-00724076-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

and

BARAKAA DEVELOPER INC., LERRATO INC. and 2145499 ONTARIO INC.

Respondents

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act,* R.S.C. 1985, c. B-3*,* and section 101 of the *Courts of Justice Act,* R.S.O. 1990, c. C.43

AFFIDAVIT OF HITESH JHAVERI

I, Hitesh Jhaveri, of the City of Toronto, in the Regional Municipality of Toronto, AFFIRM:

1. I am the director of the Respondent corporations.

2. I make this affidavit in support of the respondents' request for an adjournment of the motion to expand the Receivership. Where I have received information from third parties, I verily believe that information to be true. By including some information from my lawyers, I am in no way intending to waive solicitor and client privilege.

3. I am advised by Khaled Gheddai, a lawyer with Friedmans, that when he requested Ms. Hamilton's available dates for the week of January 5, 2026, he understood that the appearance was for a scheduling conference.

4. I am advised by Ms. Hamilton that she provided Mr. Gheddai with her availability during the week of January 5, 2026 based on that understanding that it was for a 15-minute scheduling appearance, because she knew that she would be out of the office from December 17, 2025 until January 5, 2026.

5. I am further advised by Ms. Hamilton and believe that the scheduling request was submitted by Mr. Larry, who signed for both parties without first sending it to Friedmans LLP to review.

6. I am advised by Ms. Hamilton that the motion materials were served on December 16th, one day before her scheduled vacation (during which time she was moving homes). She wrote immediately to Mr. Larry to advise him of the same and that the motion would need to be adjourned to provide her with an opportunity to review and prepare responding materials. Attached as **Exhibit "A"** is a copy of Ms. Hamilton's exchange with Mr. Larry following her receipt of the motion materials.

Background to the Receivership

7. In 2024, Sanjive Joshi and Expert Credit Control Solutions Inc. unilaterally registered mortgages against some of the respondents' properties (the

"**Improper Mortgages**"). The Improper Mortgages prevented the respondents from being able to transfer title to completed units on closing.

8. The associated legal expenses of seeking the discharge of the Improper Mortgages as well as having to delay anticipated closings, caused the respondents losses and to default on their loans.

9. Foremost then suggested that the respondents agree to appoint a Receiver who would have the ability, on court approval and vesting order, to transfer properties free and clear on closing.

10. The respondents consented to the Receivership specifically because the scope of the Receivership would be limited only to the real properties (the Secured Properties as set out in paragraph 6 of the Receiver's notice of motion) against which the Improper Mortgages were registered and not the other Barakaa and Lerrato projects.

11. The Improper Mortgages were eventually discharged following the decision of Justice Koehnen released on January 23, 2025. Attached as **Exhibit "B"** is a copy of the Decision.

Insufficient Information as to Amounts Owed

12. From our review of the Receiver's reports to date, we note that most of the Receiver's expenditures arise from the cost of completion of the 214 project on Doric. Specifically, the Receiver:

a. retained an outside party contractor to correct alleged deficiencies despite the respondents offering to use their own forces at no cost to the Receiver;

b. Purchased a transformer which cost approximately $500,000; and

c. Is incurring fees associated with the completion and registration of the condominium declaration.

13. We have been unable to obtain any updates as to the status of the 214 Doric development but note the Receiver anticipates going to market in the next few months. We anticipate that the gross sale proceeds for these units will be approximately $10,000,000.

14. All of the Barakaa and Lerrato properties currently in the scope of the Receivership have already been sold and some funds have been released to Foremost. We do not know, however, how those funds have been applied and whether the Barakaa and Lerrato loans are close to being repaid.

15. There is an ongoing dispute with Foremost with regard to the payout statements we have requested. Foremost has provided a global statement of principal amounts owed under the mortgages without any reference to the Receivership. See attached information statements at **Exhibit "C**".

16. From these statements, we cannot ascertain which loans have been paid down after the receipt of amounts from the Receiver or what the balance is owing.

17. We are concerned that the expenses the Receiver has incurred that are associated with the 214 Doric project are now being applied globally in order to justify expanding the Receivership unfairly against Lerrato and Barakaa projects which were intentionally left out of the scope of the Receivership.

18. Therefore, we have insufficient information as to how the monies received by Foremost from the sales of Barakaa and Lerrato properties to date have been applied against the Barakaa and Lerrato loans. We have not been provided with the current amounts outstanding after the sales of 23 Madison and 377 Porte Road.

19. We would like the opportunity to examine the affiant to obtain the information which would be relevant for the determination of whether it would just and equitable to expand the Receivership over the bank accounts of those companies which are currently developing projects outside the Receivership.

20. If the order is granted without considering the information, I believe it will:

    i) immediately put Lerrato and Barakaa in default with its other secured lenders,

    ii) frustrate refinancing, and

    iii) prevent them from paying for the supply of goods and services to complete the other projects.

21. We would also like the opportunity to provide evidence regarding the HST refunds which the time frame of two days will not allow. For example, the affiant's statement that an amount of $118,496.30 was received by Barakaa is not correct. Attached as **Exhibit "D"** is a copy of Barakaa's HST account dated January 5, 2026, showing the balance in the Barakaa HST account.

22. I swear this affidavit in support of an adjournment request.

AFFIRMED by Hitesh Jhaveri of the City of Richmond Hill, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on January 6, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:
Judy Hamilton
9CBB5AFFBEBE4EE...

Commissioner for Taking Affidavits
(or as may be)

JUDY HAMILTON

Signed by:
Hitesh Jhaveri
1EC0B65C3DFC40B...

Hitesh Jhaveri

E-SERVICE LIST

jeff.larry@paliareroland.com;

This is Exhibit “A” referred to in

the Affidavit of Hitesh Jhaveri,

sworn this 6th day of January, 2026.

DocuSigned by:
Judy Hamilton
9CBB5AFFBEBE4EE...

Commissioner for Taking Affidavits, etc.

Judy Hamilton

Without Prejudice & Confidential

While it was my assumption that the hearing required a scheduling appearance first and that's what we were doing, was scheduling the timetable, and I now understand that I misunderstood, I am away on a well-deserved break until January 5th. I am also moving as well as dealing with a serious illness in the family. As you recall I did ask you to flip the notice of motion the last time we spoke so that I could review it and advise the client. Now you have given it to me while I am away and trying to recover after a very long and difficult year. What is the prejudice of a week or so just so that I get an opportunity to review it with the client when I am back? From my understanding the central issue arises from a HST payment made in September, so it is hardly urgent.

Yours truly,

Judy Hamilton

Judy Hamilton | Barrister & Solicitor

Friedman Law Professional Corporation

150 Ferrand Drive, Suite 800, Toronto, ON M3C 3E5

T: (416) 496-3340 x 136 | F: (416) 497-3809

E: jh@friedmans.ca | www.friedmans.ca

-----Original Message-----

From: Jeff.Larry@paliareroland.com <Jeff.Larry@paliareroland.com>

Sent: Tuesday, December 16, 2025 7:16 PM

To: Judy Hamilton <JH@friedmans.ca>

Cc: emma.wheeler@paliareroland.com; bkofman@ksvadvisory.com; mostling@ksvadvisory.com; edmond.lamek@ca.dlapiper.com; psmiley@byldlaw.com; rdas@byldlaw.com; jjeyaratnam@byldlaw.com; rhanna@fijlaw.com; jessica.ruhl@ajax.ca; legal@richmondhill.ca; chaya@duttalaw.com; jsuttner@airdberlis.com; Dillon.Gohil@Paliareroland.com

Subject: Re: [EXTERNAL] Foremost Mortgage Holding Corporation v Barakaa Developer Inc., Lerrato Inc. and 2145499 Ontario Inc. Court File No. CV-24-00724076-00CL [IMAN-PRIMANAGE.FID420840]

Judy

We were corresponding for weeks about scheduling this motion date when you were in the midst of taking the file over from Chaitons. I never once suggested that the date was just a scheduling attendance and I don't know how you possibly could have had that impression.

You were also copied on the Hearing Request form dated December 1 that scheduled this motion for January 7.

In terms of responding materials, it is hard to imagine what other evidence your clients could put forward or what their defence could possibly be to this application.

We will be proceeding on January 7.

Sent from my iPhone

On Dec 16, 2025, at 6:47 PM, Judy Hamilton <JH@friedmans.ca> wrote:

Please note that I did not agree that this motion be heard on January 7 as my understanding was that January 7th was a scheduling appearance and that was what I confirmed availability for. I did not ever confirm my availability for a hearing on that date.

I am away on vacation from tomorrow until January 5th and will not be able to review the materials and file responding materials on a motion returnable on the 7th.

Yours truly,

Judy Hamilton

<image004.png>

<image005.jpg>

Judy Hamilton | Barrister & Solicitor

Friedman Law Professional Corporation

150 Ferrand Drive, Suite 800, Toronto, ON M3C 3E5

T: (416) 496-3340 x 136 | F: (416) 497-3809

E: jh@friedmans.ca<mailto:jh@friedmans.ca> |
https://can01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.friedmans.ca%2F&data=05%7C02%7Cjh%40friedmans.ca%7C7974ee464930447350b008de3d01718c%7Cc28c4213870e44c18284cf373fb99fa5%7C0%7C0%7C639015273592979955%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=D7tFLlBaX%2FJblRDSKae1zmdwTe%2F9vK3zb41Hb4x8p00%3D&reserved=0<https://can01.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.friedmans.ca_%26d%3DDwMFAg%26c%3DeuGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM%26r%3DChKH0LJom404KGM5XvhyNs2mpaZfRzLTeW1E0RTZ7jg%26m%3DKgCN7RrwrgsJ6uHhg6pyk7NKowpzAhFPNc3xKcaAEfn1hlKxBP-3_JqfgapUpw8N%26s%3DzaqZNDkpBdXzqG3NSvGPOc7BkOymuflrJKEs3rrRA2c%26e%3D&data=05%7C02%7Cjh%40friedmans.ca%7C7974ee464930447350b008de3d01718c%7Cc28c4213870e44c18284cf373fb99fa5%7C0%7C0%7C639015273593011506%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=fjrdauALGV2IDjWWWUzu6URYPNAVqON7J%2Bd2EQKln40%3D&reserved=0>

From: emma.wheeler@paliareroland.com <emma.wheeler@paliareroland.com>

Sent: Tuesday, December 16, 2025 3:57 PM

To: Judy Hamilton <JH@friedmans.ca>; bkofman@ksvadvisory.com; mostling@ksvadvisory.com; edmond.lamek@ca.dlapiper.com; psmiley@byldlaw.com; rdas@byldlaw.com; jjeyaratnam@byldlaw.com; rhanna@fijlaw.com; jessica.ruhl@ajax.ca; legal@richmondhill.ca; chaya@duttalaw.com; jsuttner@airdberlis.com

Cc: Jeff.Larry@paliareroland.com; Dillon.Gohil@Paliareroland.com

Subject: Foremost Mortgage Holding Corporation v Barakaa Developer Inc., Lerrato Inc. and 2145499 Ontario Inc. Court File No. CV-24-00724076-00CL [IMAN-PRIMANAGE.FID420840]

To the Service List:

Attached is the Motion Record of the Applicant's for the motion returnable on January 7, 2025, which is served on you pursuant to the Rules of Civil Procedure.

The document can be accessed at this link:
https://can01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.imanageshare-ca.com%2Fpd%2F5ulhn582yhe&data=05%7C02%7Cjh%40friedmans.ca%7C7974ee464930447350b008de3d01718c%7Cc28c4213870e44c18284cf373fb99fa5%7C0%7C0%7C639015273593032366%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=oWY4W5SHiDtsKMSM6A9cN5%2BkevZ%2FGAAnlc3fA0n4fKg%3D&reserved=0<https://can01.safelinks.protection.outlook.com/?url=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttps-3A__www.imanageshare-

2Dca.com_pd_5ulhn582yhe%26d%3DDwMFAg%26c%3DeuGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM%26r%3DChKH0LJom404KGM5XvhyNs2mpaZfRzLTeW1E0RTZ7jg%26m%3DKgCN7RrwrgsJ6uHhg6pyk7NKowpzAhFPNc3xKcaAEfn1hlKxBP-3_JqfgapUpw8N%26s%3DlUDDKgNHxqsw0WDqfZ2G4o7OR7bC49RoiVUv2aDmxn8%26e%3D&data=05%7C02%7Cjh%40friedmans.ca%7C7974ee464930447350b008de3d01718c%7Cc28c4213870e44c18284cf373fb99fa5%7C0%7C0%7C639015273593052412%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C0%7C%7C%7C&sdata=HUg7GjgEosFvMLIRZs6I2reckYvkY7ZQceOzvvaMwso%3D&reserved=0>

Thank you,

<image006.png>

Emma Wheeler (She/Her)

Legal Assistant to Shawna Leclair and Dillon Gohil

P: 416.646.7435

Email: emma.wheeler@paliareroland.com<mailto:emma.wheeler@paliareroland.com>

155 Wellington St. West, 35th Floor

Toronto, ON M5V 3H1

This is Exhibit “B” referred to in

the Affidavit of Hitesh Jhaveri,

sworn this 6th day of January, 2026.

DocuSigned by:
Judy Hamilton
9CBB5AFFBEBE4EE...

Commissioner for Taking Affidavits, etc.

Judy Hamilton

CITATION: **Joshi et al. v. Osmi Homes Inc. et al. 2025 ONSC 1942**

COURT FILE NO.: CV-23-00710241
DATE: 20250327

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
SANJIVE JOSHI and XPERT CREDIT CONTROL SOLUTIONS INC.	*Peter Smiley, Jesse Watts, John Jeyaratnam* for the plaintiffs
Plaintiffs	
– and –	
OSMI HOMES INC., HITESH RAJENDRA JHAVERI, LERRATO INC., OSMI9 LTD, BARAKAA DEVELOPER INC., INUKA DEVELOPER INC., 2145499 ONTARIO INC. and NIKETA JHAVERI	Harvey Chaiton, Stephen Schwartz, Darren Marr for the defendants
Defendants	
	Monica Unger Peters, Megan Van Kessel for the Responding Parties, Bay 20 Inc. and Akkina Developers Inc.
	Q. Ryan Hanna for the respondent BIP Management Corporation
	HEARD: January 23, 2025

KOEHNEN J.

REASONS FOR JUDGMENT

Contents

OVERVIEW

[1] This action and motion arise out of the breakdown of the relationship between the plaintiffs and the defendants. The plaintiffs say they extended six loans to the defendants while the relationship was positive. The alleged loans are supported by six promissory notes (the “Promissory Notes” or “Notes”) which refer to security by way of mortgage. No mortgages were registered when the loans were said to be advanced. After the relationship broke down, the plaintiffs unilaterally registered nine mortgages against properties the defendants owned.

[2] On this motion, the defendants move to strike out the mortgages and seek a declaration to the effect that nothing is owing on the six Promissory Notes. If the mortgages are struck out, the plaintiffs seek to register equitable mortgages and/or certificates of pending litigation on the properties. In addition, the plaintiffs seek leave to register certificates of pending litigation against 11 additional properties.

[3] For the reasons set out in greater detail below, I declare the Promissory Notes to be void and strike out the mortgages. The *Bills of Exchange Act*[1] voids promissory notes which are materially altered by their holder without the consent of the debtor. These provisions have also been extended to documents collateral to the note at issue. The mortgages the plaintiffs registered materially altered the terms of the Notes thereby rendering them void. In addition, various mortgages should also be set aside because they: (i) purport to bind a matrimonial home without the consent of the spouse; (ii) were registered on multiple properties when the Notes refer to security on a single property; (iii) were registered on properties acquired after the Notes were purportedly issued when the Notes contain no reference to after acquired property; (iv) are registered against properties owned by parties who did not sign the Notes; and (v) encumber properties in the amount of $45 million when the maximum principal amount owing on the Notes, including interest, is approximately $5 million.

[1] *Bills of Exchange Act*, RSC 1985, c B-4

[4] I decline to grant equitable mortgages in the plaintiffs' favour. The Notes are being voided and the mortgages set aside because of the plaintiffs' inequitable behaviour, not because of a legal slip. Replacing those mortgages with "equitable" mortgages would be counter to principles of equity. I also decline to grant certificates of pending litigation to replace the discharged mortgages for the same reason. In addition, the plaintiffs have not met the test to obtain certificates of pending litigation.

[5] Finally, the plaintiffs seek equitable mortgages or certificates of pending litigation against 11 additional properties. I decline to grant that relief because four of the properties are owned by corporations that did not sign any of the Promissory Notes and in respect which arm's-length parties own 50% of the shares; one of the properties is owned by two individuals only one of whom signed a promissory note; and three of the properties are owned by non-signatories to the Notes. The remaining 3 properties are owned by signatories of the Notes. Given that the Notes have been set aside there is no longer any basis to encumber those properties.

I. Background Information

[6] The plaintiff, Sanjive Joshi is a mortgage broker and lender who has been carrying on business in that capacity since 2008 through the plaintiff company, Xpert Credit of which he is the sole shareholder officer and director.

[7] The defendants Hitesh and Niketa Jhaveri are spouses who build luxury custom homes and develop real estate projects through the corporate defendants of which

they are each 50% shareholders. Given their common surname, I will refer to each by their first names.

[8] Joshi and the Jhaveris met in July 2019 when Joshi signed an agreement of purchase and sale for a custom home built by the defendant Osmi Homes Inc. at 137 Twyn Rivers Drive, Pickering.

[9] After signing the Twyn Rivers agreement, a close personal relationship developed between Joshi, his wife Lakhanpal and the Jhaveris. Over time they developed a deep personal trust and treated each other like family. Over time, Hitesh and Joshi also entered into a series of business transactions, including what Joshi says were six loans evidenced by six Promissory Notes in the face amount of $2.6 million as follows:

Date	Name	Amount
June 11, 2020	Promissory Note No. 1	$400,000
July 31, 2020	Promissory Note No. 2	$400,000
August 3, 2020	Promissory Note No 3	$300,000
August 4, 2021	Promissory Note No. 4	$400,000
September 13, 2021	Promissory Note No. 5	$1,000,000

June 8, 2023	Promissory Note No. 6	$100,000

[10] Joshi says the Notes entitled him to mortgages as security. No mortgages were registered when the Notes were signed or when Joshi says he advanced monies on them.

[11] The purchase of the Twyn Rivers property was originally scheduled to close in October 2019. Closing was extended on numerous occasions. The parties differ on the reason for the extensions.

[12] The relationship between the parties broke down in August 2023. Joshi says the breakdown occurred when Hitesh refused to close on the Twyn Rivers purchase even though Joshi and his family had been living there for some time.[2] Hitesh says the breakdown occurred when Joshi secretly registered 9 mortgages in August 2023 against 10 properties that the Jhaveris owned either directly or through their corporations.

II. Challenges to the Promissory Notes and Mortgages

[2] The Twyn Rivers property is not the subject of today's motion but is the subject of a separate action that I am case managing. I refer to it here only by way of background information to explain, at least in part, the reason for the breakdown of the relationship.

[13] The defendants raise the following challenges to the Promissory Notes and the mortgages:

A. The Notes were part of a Cash for cheques scheme in which no net monies were advanced.

B. Two Notes were not signed by Hitesh and are forgeries.

C. The Promissory Notes are void under the *Bills of Exchange Act*.[3]

D. One mortgage was registered against a matrimonial home without a spouse's consent.

E. Each note refers to a single mortgage, not multiple mortgages.

F. The Notes do not refer to after-acquired property yet some of the mortgages were registered on such properties.

G. Some of the mortgages were registered on properties owned by non-signatories to the Promissory Notes.

H. Enforcement of the Notes is barred by the Limitations Act.

A. The Cash for Cheques Explanation

[14] The defendants submit that Notes 1-5 do not reflect genuine loans but are the product of what the defendants have referred to as a cash for cheques scheme devised by Joshi.

[15] Pursuant to this scheme, Hitesh and Niketa say they gave cash to Joshi in Canada[4] and India.[5] In exchange, Xpert Credit issued cheques in equivalent amounts to

[3] Bills of Exchange Act, RSC 1985, c B-4
[4] In relation to the transfers related to Notes 1-4.
[5] In relation to the transfer related to Note 5.

one of the defendant companies. The net result is that nothing is owing to either party.

[16] The defendants say they participated in this scheme as a favour to Joshi who needed cash for his businesses. According to the defendants, the Promissory Notes were nevertheless signed at Joshi's request to satisfy CRA should they audit his business. The defendants say that to further the appearance of loans, Joshi asked Hitesh to give him several post-dated cheques of $6,000 and $4,500 to represent payment of interest on these "loans" which funds Joshi, then returned in cash.

[17] The defendants have set out a list of factors that give these allegations a potential ring of truth. By way of example they observe that:

(i) Neither party retained a lawyer in connection with the Promissory Notes or the mortgages despite Joshi allegedly advancing $2.6 million. The absence of counsel makes more sense if these were cash for cheque exchanges.

(ii) Notwithstanding that Joshi has professed himself to be an experienced secured lender and mortgage broker, Joshi admits he did not undertake typical due diligence for what were supposed to be construction loans. Such due diligence would ordinarily include: obtaining details about the specific use of the loan proceeds; obtaining financial documentation concerning the construction projects; conducting title searches on the

properties; contacting any of the existing mortgagees on the properties to obtain mortgage statements; and conducting appraisals on the properties.

(iii) Joshi did not register any mortgages or issue any demand letters until the Notes had been in default for over three years and the relationship had broken down over the Twyn Rivers purchase.

[18] The challenge with this narrative is that the defendants admitted the loans in their statement of defence and in fact defended this motion with a round of affidavits in which they admitted the loans and the Promissory Notes but defended on the basis that the Notes were intended to be unsecured and non-interest bearing (or only interest-bearing for a limited term).

[19] It was only on December 20, 2024, over a year after filing their Defence, and only a month before this motion was argued that the Defendants changed their story and advanced the cash for loans narrative.

[20] Apart from the questions this raises about withdrawing admissions; it also raises significant issues of credibility which I cannot determine on a paper record. While I do not foreclose the defendants' ability to pursue that narrative at a later stage if required, I am not prepared to hold an oral hearing under the additional powers available under Rule 20.[6]

[6] It was *not* entirely clear whether the defendants were moving under Rule 20 for partial summary judgement or Rule 21 for the determination of an issue before trial. I therefore refer to the supplementary powers available under Rule 20 as a matter of caution. Neither side raised any objections to the potential issue of partial summary judgment. To the extent that the defendants' motion can be viewed as a partial summary judgement motion, I am

[21] This motion was originally scheduled as an urgent motion to be argued on January 29, 2024. After the parties exchanged motion records, in which the defendants acknowledged the Notes and the loans, the motion was adjourned to November 25, 2025. After the defendants changed lawyers and I became involved as case management judge, I advanced the motion to January 23, 2025, because of the serious business consequences that that a delay in arguing the motion would cause. Permitting a fundamental change in the defendants' theory only a month before the hearing and assessing that new approach with a *viva voce* hearing in short order, all to accommodate the defendants' change of theory, is an unnecessary use of party and judicial resources. At some point, the court is entitled to expect a party to lock in its approach to a motion. While the party may still be free to change its approach, it does not follow that it should be able to commandeer judicial resources on a dime to do so.

B. Allegedly Forged Notes

[22] Hitesh denies signing Promissory Notes 4 and 5 but appears to admit that there were exchanges of money pursuant to the Cash for cheques scheme as set out in Notes 4 and 5.

satisfied that it is appropriate to proceed in that way. Addressing these issues at an early stage will save both time and money for the parties. It is unlikely to result in inconsistent findings given that the question of the amounts owing on the Notes and the validity of the mortgages will be finally determined by these reasons.

[23] Both sides have filed reports from handwriting experts to support their positions. Those reports were not referred to in the factums or in oral argument other than to point out the existence of the two reports. As a result, no one explained precisely what or how the experts concluded what they did. In those circumstances, I decline to address that issue on this motion. To the extent the authenticity of the signatures on those two Notes remains an issue after this motion, it will be addressed at trial.

C. The Notes and the *Bills of Exchange Act*

[24] As set out in greater detail below, I have concluded that the Promissory Notes have become void under the *Bills of Exchange Act*[7] (the "*Act*") by virtue of Joshi's conduct. Joshi has, in effect, changed material terms of the Promissory Notes without the consent of the signatory which voids the Notes under the *Act.*

[25] Sections 144 and 145 of the *Act* provide:

> 144(1) Subject to subsection (2), where a bill or an acceptance is materially altered without the assent of all parties liable on the bill, the bill is voided, except as against a party who has himself made, authorized or assented to the alteration and subsequent endorsers.
>
> (2) Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, the holder may avail himself of the bill as if it had not

[7] *Bills of Exchange Act*, RSC 1985, c B-4

> been altered and may enforce payment of it according to its original tenor.
>
> 145 In particular, any alteration
>
> (a) of the date,
>
> (b) of the sum payable,
>
> (c) of the time of payment,
>
> (d) of the place of payment,
>
> (e) by the addition of a place of payment without the acceptor's assent where a bill has been accepted generally,
>
> is a material alteration.[8]

[26] The *Act* recognizes that notes can be altered with the consent of the parties. If, however, the holder of the note makes a material change without the consent of a party, the *Act* makes the note void as against any party who did not consent to the material alteration.[9]

[27] While s. 145 of the *Act* provides five examples of alterations that are material for the purposes of s. 144, that list is not exhaustive.[10] An alteration is material if it "alters the operation of the [transaction] and the liabilities of the parties, whether the change be prejudicial or beneficial."[11]

---

[8] *Bills of Exchange Act* RSC 1985, c B-4, ss. 144-145.
[9] *James v Chedli*, 2021 ONCA 593 at para 41; *Bank of Montreal v Riley* (1988), 90 AR 230 at para 8; *101034761 Saskatchewan Ltd v Mossing*, 2022 SKQB 193 at para 156,
[10] *Clement v. Renaud*, (1956), 1 DLR (2d) 695
[11] *Bellamy v Porter* (1913), 28 OLR 572

[28] The mortgages are referred to in and were registered pursuant to the Promissory Notes. The mortgages were, however, inconsistent with the Promissory Notes in that they changed the following terms of the Notes:

a. The total face amount of the Notes was $2.6 million. The face amount of each mortgage was $5 million.

b. The Promissory Notes provided for interest at 18%. The mortgages provide for interest at 18.99%.

c. The Promissory Notes were term Notes with fixed maturity dates. The Mortgages were registered as demand obligations.

d. Some mortgages were registered against some properties the registered owners of which were not signatories to the Promissory Notes, thereby purporting to make non-signatories to the Notes liable for them.

e. The mortgages were registered against properties that were acquired after the Notes were signed although the Notes and do not refer to the right to mortgage after acquired property thereby having the Notes extend security to property beyond that intended by the Notes.

f. The total face amount of the Promissory Notes was $2.6 million. The total amount of mortgages registered was $45 million. The mortgages do not indicate that they reflect a cross collateralized debt of only $5 million (let alone $2.6 million).

[29] Each of those changes is, in my view, material. None of these changes were approved by Hitesh or the corporations on behalf of which he signed the Notes.

[30] The plaintiffs argue that the that Notes should not be voided because there was no alteration to them. At best, say the plaintiffs, the mortgages did not accurately reflect the terms of the Notes. In my view, this argument does not assist them. The Notes refer to mortgage security. That mortgage security must be consistent with the Note and is, in effect, incorporated by reference into the Note. Moreover, the Court of Appeal for Ontario has held that notes can be voided not only by changes to the notes themselves but by changes to their terms which are effected by way of collateral documents.

[31] In *James v. Chedli*,[12] two spouses, Denis and Ana Chedli, borrowed under a promissory note. As security for the note, Ana Chedli granted a collateral mortgage against the matrimonial home of which she was the sole registered owner. Her husband consented.

[32] After the notes fell into arrears, the lender sent a letter to the Chedlis, which made changes to the note by reducing the principal amount of the loan, changing the timing of the interest payments, and changing the note form a term note to a demand note.[13]

[12] *James v. Chedli*, 2021 ONCA 593
[13] *James v. Chedli*, 2021 ONCA 593, at paras. 5 and 42

[33] After Mr. Chedli died, the lender commenced an action against Mr. Chedli's estate and against Ana Chedli under the note.[14] The Court of Appeal found that Mr. Chedli had agreed to the changes to the note as set out in the lender's letter, but that Ana Chedli had not. As a result, the note was enforceable against the estate of the deceased husband but was not enforceable against Ana Chedli. It followed that the mortgage against the matrimonial home was therefore also unenforceable and was discharged. In doing so the Court stated:

> [41] These sections make it clear that a note can be altered with the assent of all parties, and the alteration will be binding as between them. However, by making a material alteration without the assent of all the parties to the note, the note becomes void against any party who did not assent to the material alteration: Ian F.G. Baxter, *The Law of Banking, 4th ed*. (Scarborough: Thomson Canada Limited, 1992), at p. 31. The only issue in this case was whether either Dennis or Anna Chedli had assented to the alteration of the notes. It was accepted that a note could be materially altered by an agreement or a letter. Baxter states, in the context of discussing s. 144 of the *Bills of Exchange Act*, that "[o]n principle a written agreement can be varied by consent, and even by a later oral agreement": Baxter, at p. 31, fn. 189.[1] He references *Goss v. Nugent* (1833), 5 B & Ad. 58, 110 E.R. 713 (Eng. K.B.).
>
> [42] In this case, the first note was materially altered by the appellant in his letter of November 20, 2006 to the Chedlis. He reduced the principal amount of the note from $531,000 to $500,000, and the timing of the interest payments on the new principal amount. The appellant acknowledged in his testimony that Anna Chedli never gave her assent to this or any subsequent changes to the first note. Therefore, in accordance with s. 144(1) of the Bills of Exchange Act, the first note is void as against Anna Chedli and unenforceable against her. Since the collateral mortgage was given only by Anna Chedli as the sole person

[14] *James v. Chedli*, 2021 ONCA 593, at. Para 20.

> on title to the couple's home residence, the mortgage is also unenforceable, and any potential limitation period consequences that may have arisen from the application of the Real Property Limitations Act do not arise.

[34] If the letter in *James v. Chedli* can amount to a change to the promissory note, the mortgages in the case at bar provide an even more compelling case that they amount to a change to the Promissory Notes. The letter in *Chedli* had no detrimental effect on the borrowers. It was not presented to any third party and was not publicly registered. Indeed, in some respects, the note provided a benefit to the borrowers in that it reduced the principal amount owing on the loan. The mortgages in the case at bar, however, have had a serious detrimental effect on the defendants. The defendants are developers who depend on financing their properties in order to develop them. The existence of a total of $45 million of debt on various properties to secure a debt with a face amount of $2.6 million, seriously limits their ability to borrow. The plaintiffs explain that each mortgage's face amount of $5 million reflected the approximate amount owing on the Notes at the time of registration when interest is taken into account. Even then, however, the total debt owing would be approximately $5 million, not $45 million. Registered debt of $45 million is far more prejudicial to the defendants than debt $5 million. The mortgages also present a serious impediment to selling any of the properties which is also part of the normal course business of the defendants.

[35] The policy reason underlying sections 144 and 145 of the *Act* was summarized in *Bank of Montreal v. Riley*,[15] a case cited in the plaintiff's factum, as being "a perhaps stern and sometimes costly rule, firmly to discourage a practice hazardous to commercial dealings."[16] In so holding, the court in *Riley* quoted from *Petro Canada Exploration Inc. v. Tormac Transport Ltd*.,[17] which in turn articulated the policy more fully as follows:

> The basis of the rule is stated by Jessel M.R. in *Suffell v. Bank of England* (1882), 9Q.B.D. 555 (C. A.), cited by our Court of Appeal in *Johnson v. Trobak* (supra, p. 690):
>
> > "The policy of the law has been already stated, namely, that a man shall not take the chance of committing a fraud, and when that fraud is detected recover on the instrument as it was originally made."
>
> It is clear that the "fraud" referred to need not be a dishonest act, but may be any unauthorized alteration by which the document might be misrepresented and which, if unexplained, might have prejudiced its maker. The policy of the law is, by a perhaps stern and sometimes costly rule, firmly to discourage a practice hazardous to commercial dealings.[18]

[36] The policy is therefore motivated by concerns that material changes which, if unexplained, can misrepresent the actual agreement and might prejudice the debtor. It is meant to "discourage a practice hazardous to commercial dealings."

---

[15] *Bank of Montreal v. Riley*, 1988 CanLII 3875
[16] *Bank of Montreal v. Riley*, 1988 CanLII 3875 at para. 9.
[17] *Petro Canada Exploration Inc. v. Tormac Transport Ltd*, 1983 CanLII 465 (BC SC), [1983] 4 W.W.R. 205 (B.C.S.C.),
[18] *Petro Canada Exploration Inc. v. Tormac Transport Ltd,* 1983 CanLII 465 (BC SC), [1983] 4 W.W.R. 205 (B.C.S.C.) at para. 23.

[37] Those policy considerations arise here. Registering debt of $45 million when the actual debt is at best $5 million is likely to prejudice a debtor if unexplained. Mortgage registrations can explain such discrepancies by making clear that the $5 million debt is cross collateralized against other security. In addition, apart from the factors referred to in paragraph 29 above that change the terms of the Notes, Joshi engaged in other practices "hazardous to commercial dealings" when registering the mortgage including the following:

a. Joshi registered the mortgages even though none of the purported mortgagors signed acknowledgments and directions to permit the registration of the mortgages.

b. Joshi knowingly registered a mortgage on Hitesh's and Niketa's matrimonial home without obtaining Niketa's consent.

c. The mortgages refer to standard charge terms that were never given to the purported mortgagors and to which they had never agreed.

d. When registering the Mortgages, Joshi made the following false declarations:

> "A person or persons with authority to bind the corporation has/have consented to the **registration of this document.**"
>
> "The Chargor(s) acknowledges the receipt of the charge and the standard charge terms."
>
> "I have the authority to sign and register the document on behalf of the Chargor(s).

e. Joshi knew or ought to have know that he was not authorized to register the Mortgages through Xpert Law Inc.'s TeraView account, without the assistance of a lawyer. Joshi admitted that he had never registered any other mortgages through Xpert Law aside from the 10 at issue on this motion, even though he had been acting as a mortgage broker for 15 years when he registered the mortgages.

[38] That all constitutes conduct that warrants deterrence to ensure, in the words of *Suffell v. Bank of England* that a "man shall not take the chance of committing a fraud, and when that fraud is detected recover on the instrument as it was originally made."

[39] Some may think the application of the rule harsh. Indeed, Joshi justified the informality in his dealings by explaining that Niketa "had plucked at my heartstrings" in persuading him to enter into a religious Hindu kinship relationship known as the Raksha Bandhan. He further explained that once this ritual is performed his community views the man and woman as family and that he and Niketa introduced themselves as brother and sister and that he referred to Hitesh as his brother-in-law to members of their community.

[40] I am not persuaded by this explanation. In McKenzie-Barnswell v. Xpert Credit,[19] Justice Carole J. Brown described a similar relationship that Joshi had entered into

[19] *McKenzie-Barnswell v. Xpert Credit*, 2021 ONSC 4007

with another woman whom he had known for 15 years who consider him as a brother and his children refer to him as uncle. Despite that relationship, in that case, Joshi registered mortgages immediately on advancing funds and immediately and forced his loan when it went into default.

[41] It is also worth bearing in mind that Joshi drafted both the Promissory Notes and the mortgages. The first Promissory Note is dated June 11, 2020, by which point, Joshi had 12 years experience as a mortgage broker and could be assumed to be familiar with the law of promissory notes and mortgages. Indeed, on cross-examination he described himself as having "deep knowledge of real estate transactions and mortgage brokering and all the paperwork that goes with it." In addition, Joshi's wife is a real estate lawyer with her own law firm. He therefore had far easier access to legal expertise than most.

[42] As a result of the foregoing, I find that the Promissory Notes are voided by virtue of section 144 of the *Act* and that the mortgages that the plaintiffs have registered on the various properties are therefore also void and must be discharged.

D. Matrimonial Home Issue

[43] One of the properties against which Joshi registered a mortgage is 9 Ridgevale Drive in Markham, Ontario. The mortgage on this property is purportedly registered pursuant to each of the Promissory Notes with language to the effect that:

> **THE UNDERSIGNED BORROWERS FURTHER ACKNOWLEDGE AND AGREE THAT** this borrowing of [amount of note is specified] is collaterally secured by 2nd/3rd Mortgage charge or a Lien on the borrower's residential property at 9 Ridgevale Dr., Markham, ON L6B 1A8.

[44] The property at 9 Ridgevale Drive is registered in the names of Hitesh and Niketa as joint tenants.

[45] A transfer of title or a registration of a mortgage on a property held as a joint tenancy requires both joint tenants to agree to the transfer or charge. Niketa did not sign any of the Promissory Notes or any of the mortgage documents. As a result, the Joshi mortgage over the Ridgevale property is invalid.[20]

[46] In addition, Joshi knew that Hitesh and Niketa were married and knew that they lived together at the Ridgevale property. He therefore knew that the Ridgevale property was their matrimonial home.

[47] Section 21(1)(a) of the *Family Law Act*[21] prohibits the encumbrance of a matrimonial home without both spouses joining in or "consenting" to the transaction.

[48] Section 21(2) of the *Family Law Act* provides that a transaction that contravenes section 21(1) may be set aside, unless the person holding the encumbrance

[20] *Shute v Premier Trust Co* (1993), 50 RFL (3d) 441 at para at para 39.
[21] *Family Law Act*, RSO 1990, c F.3

acquired it for value, in good faith, and without notice that, at the time of acquiring it, the property was a matrimonial home.[22]

[49] The plaintiffs object to the application of these provisions because they say there is no application under the *Family Law Act*. That puts form over substance. The plaintiffs have not advanced any reason for which the court would not set aside the mortgage on the basis that it purports to encumber a matrimonial home without the consent of Niketa. I can think of no ground on which the plaintiffs could resist such an application given that they are the mortgagees, they knew that the property was a matrimonial home, and they knew that Niketa had not signed the Promissory Note or the mortgage.

D. Reference to a Singular Property

[50] As already noted, Joshi has registered 9 mortgages against 10 properties, each for the collective amount owing on all of the Promissory Notes. My reading of the Notes does not permit him to do so. Assuming the Notes were not voided, each Note would, on my reading, entitle Joshi to register a single mortgage limited to the amount owing on the Note in question. I turn now to examine the language of the Notes in this regard.

[51] Notes 1, 2, and 3 provide:

[22] *McCaskie v McCaskie* (2002), 113 ACWS (3d) 710 at para 31

> "this borrowing of [...] is collaterally secured by 2nd/3rd Mortgage charge or a Lien on the borrowers residential property at 9 Ridgevale Drive, Markham, ON L6B JA8."
>
> "The undersigned borrowers authorize Lender to register a 2nd/3rd Mortgage Charge or Lien on my above residential property **or any other property** in its favour…" (emphasis added)

[52] The authorization is to "register a 2nd/3rd Mortgage", it is not to register mortgages. The single mortgage can be registered against either 9 Ridgevale Drive "**or** any other property", but not both.

[53] Notes No. 4 and 6 each contain slightly different wording but evidence a similar intention. Note 4 provides:

> "this borrowing of […] is collaterally secured by 2nd/3rd Mortgage charge or a Lien on the borrowers residential property at 9 Ridgevale Drive, Markham, ON L6B 1A8 **or any properties** own (*sic)* by us or by companies or our (*sic*) any of the corporations."
>
> "Borrowers authorize lender to register a 2nd/3rd mortgage or 4th mortgage charge or a Lien on my above residential property **or any other property** in its favour..." (emphasis added).

[54] Note 6 provides:

> "this borrowing of [...] is collaterally secured by 2nd/3rd Mortgage charge or a Lien on the borrowers residential property at 9 Ridgevale Drive, Markham, ON L6B JA8 **or any other properties** own (*sic*) by us or by our companies."
>
> "Borrowers authorize Lender to register a 2nd/3rd Mortgage Charge or Lien on my above residential property **or any other property** that we or our companies owns …

[55] In both Notes 4 and 6 the operative language again authorizes “a 2nd/3rd Mortgage”, not mortgages; and authorizes registration against either 9 Ridgevale Drive “**or** any other property”.

[56] Note No. 5 has different wording in that it refers to properties in the plural in both paragraphs that refer to the mortgage. It provides:

> "this borrowing of […] is collaterally secured by 2nd/3rd mortgage charge or a lien on the borrowers residential property at 9 Ridgevale Drive, Markham, ON L6B 1A8 **or any properties own** (*sic*) by us or by companies or our (*sic)* any of the corporations."
>
> "borrowers authorize lender to register a 2nd/3rd mortgage or 4th mortgage charge or a lien on my above residential property **or any other properties own** (*sic*) **by borrowers of** (*sic*) **their companies** in its favour …" (emphasis added)

[57] To the extent that Notes 4, 5 and 6 are seen to be ambiguous because they refer to “properties” at certain points, the principle of *contra proferentem* applies to resolve any such ambiguity in the borrowers’ favour because Joshi drafted the Notes. That said, these Notes are not, in my view, ambiguous. The first quoted subparagraph in all Notes refers to the borrowing being secured by *a mortgage* and that such singular mortgage can be registered against 9 Ridgevale Dr. *or* any other properties owned by companies the signatory owns. The reference to “properties” in the plural does not mean that multiple mortgages can be registered but, rather that a single mortgage can be registered on a single property which can be chosen from a defined pool. If it were intended to be otherwise, the Notes would provide that the lender can register a mortgage against 9 Ridgevale *and* any other properties the borrower’s companies own.

E. After Acquired Properties

[58] The plaintiffs registered mortgages against, among other properties, 1717 Brock Street South, 133 Franks Way, 82 Bagot Street, 1 Ferguson Avenue.

[59] As a general rule, any security a debtor offers refers only to property that a debtor owns at the time security was promised, unless the security agreement or loan provides that it captures after acquired property.[23]

[60] Promissory Notes #1-3 predate the purchase of 133 Franks Way, 82 Bagot Street and 1 Ferguson Avenue. Promissory Notes #1-5 predate the purchase of 1717 Brock Street South The mortgages on those properties are therefore additionally invalid insofar as they purport to secure after-acquired property.

F. Corporate Personality

[61] Although each of the six Promissory Notes is signed by Hitesh, he signed them on behalf of different corporate signatories. A corporation is not liable on a promissory signed by its principal unless the corporation itself is referred to as being liable in the note.[24]

[62] Three of the properties against which the plaintiffs have registered mortgages, 1 Ferguson Avenue, 1717 Brock Street South and 10 Doric Street are owned by

[23] *Grillo v. Spadafora*, 2024 ONSC 1712 at paras. 12, 60-62.
[24] *2169460 Ontario Limited et al v Dass et al*, 2019 ONSC 6599 at paras 40-41.

companies that are not referred to in the Promissory Notes.[25] As a result, those mortgages are invalid and must be discharged.

G. Limitations Issue

[63] The defendants submit that the plaintiffs' claims are time-barred because each of the Notes had a maturity date and because this action was not commenced within two years of the maturity date. I am not prepared to make a finding in that regard on this motion.

[64] On May 14, 2022, Hitesh forwarded an email to Joshi enclosing an accounting prepared and sent by an employee of Osmi. The accounting sets out the principal amounts outstanding and shows total principal advances from the Plaintiffs in the amount of $6 million, with corresponding cash payment setoffs of $343,776 - for a total "net received" of $5,356,224.00.

[65] This action was commenced November 24, 2023 – less than two years after Hitesh sent the accounting to Joshi.

[66] The defendants raise a number of issues about the accounting including what it means and whether it amounts to a sufficiently clear acknowledgement of a debt to forestall the limitation period.

---

[25] Inuka Developer Inc., 2145499 Ontario Inc. and Osmi9 Ltd.

[67] In my view, those issues raise genuine issues for trial that should be determined on a full record and with the benefit of *viva voce* evidence. It is not an issue I am prepared to address through the use of supplementary fact-finding powers under Rule 20.

III. Claim For Equitable Mortgages

[68] If the existing mortgages are found to be invalid, the plaintiffs move for equitable mortgages on the same properties. In addition, the plaintiffs move for equitable mortgages on the properties listed in Appendix A to these reasons. An equitable mortgage is, like its name suggests, an equitable remedy which "creates a charge on a property where there has been a failure to transfer a legal estate in the property to an intended mortgagee."[26]

[69] I decline to grant equitable mortgages with respect to those properties on which the plaintiffs have already registered mortgages. Those mortgages have been voided by the plaintiffs' conduct and the operation of the *Bills of Exchange Act.* Given that the *Act* has voided the plaintiffs' Promissory Notes, there is no longer any interest in respect of which to grant an equitable mortgage. It would be the

[26] *Mohammed v Makhlouta*, 2020 ONSC 7494 at para 18, and *Shute v Permier Trust Co*, *supra* note 61 at para at para 46 and 48.

opposite of equity to now override the provisions of the *Act* by imposing equitable mortgages to replace those that have been voided by the *Act* itself.

[70] The plaintiffs would also be precluded from obtaining equitable mortgages by the unclean hands principle. The unclean hands principle is triggered by misconduct that has an "immediate and necessary relation to the equity sued for".[27]

[71] Here, the principle arises in relation to the plaintiffs' conduct with respect to the mortgages that they want to replace with equitable mortgages if necessary. The registration of those mortgages was marked by significant misconduct on the part of the plaintiffs, as set out in paragraphs 28 and 37 above which would disentitle them to equitable relief.

[72] I recognize that "unclean hands" do not automatically disentitle a party to a remedy and that the court retains discretion to grant relief.[28] As already noted, I decline to grant any relief here in circumstances where the equitable relief would only be required because Joshi's conduct in relation to a legal remedy has disentitled him to legal relief.

[73] The plaintiffs also seek equitable mortgages in relation to 11 additional properties set out at Appendix A to these reasons. Three of those 11 properties are owned by people or entities that signed Promissory Notes.[29] I am not prepared to grant

---

[27] *2324702 Ontario v. 1305 Dundas*, 2019 ONSC 1885, at para 20.
[28] *Hrvoic v. Hrvoic*, 2023 ONCA 508 at para. 18.
[29] Properties 8, 9, and 10 on Appendix A.

equitable mortgages with respect to those properties for the same reason that I decline to grant equitable mortgages on the properties on which the plaintiffs registered mortgages which I have found to be invalid.

[74] An additional three properties are owned by corporations which are owned by Hitesh and Niketa that are not signatories to the Notes.[30] As indicated earlier, corporations that are not signatories to the Notes cannot be bound by them. In the absence of an agreement by such corporations to be responsible for a debt, I have been given no basis for equitable relief against them either. One further property is owned by Hitesh and Niketa jointly.[31] Given my findings about the need to have both joint tenants agree to an encumbrance in paragraphs 44-45 above, and given that Niketa was never asked to assume responsibility for any of the debt, I do not see how, without more, I can impose an equitable mortgage on that property.

IV. Claim for Certificates of Pending Litigation

[75] If the plaintiffs do not obtain equitable mortgages, they seek certificates of pending litigation on the 10 properties against which they have registered mortgages and on 11 additional properties listed in Appendix A. Four of the properties on Appendix A are owned by Bay 20 Inc. or Akkina Developers Inc. I will address the claim to those four properties later in these reasons.

[30] Properties 1, 7 and 11 on Appendix A.
[31] Property 2 on Appendix A.

[76] The plaintiffs seek certificates of pending litigation pursuant to s. 2 of the *Fraudulent Conveyances Act,* which provides:

> Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns.

[77] To obtain a certificate of pending litigation under s. 2 of the *Fraudulent Conveyances Act,* the moving party must demonstrate that:

> (i) there is high probability that the claimant will successfully recover judgment in the main action;
>
> (ii) there is evidence demonstrating that the transfer was made with the intent to defeat or delay creditors; and
>
> (iii) the balance of convenience favours issuing a certificate of pending litigation in the circumstances of the particular case.[32]

i. Probability of Recovering Judgment

[78] Given that the Promissory Notes have been voided, there is little probability of the plaintiffs recovering judgment on the Promissory Notes unless my conclusions are overturned on appeal.

[32] *Toronto Dominion Bank v Nejad*, 2023 ONSC 3969, paras. 17-19.

[79] Even had I not voided the Promissory Notes, there was little possibility of the plaintiffs recovering a judgment equal to the $45 million in mortgages they had registered. Under the Promissory Notes they had at best a claim to a principal debt of $2.6 million. With interest that may have risen to approximately $5 million by the time of the motion. Even that, however, would lead to a more tenuous claim for certificates of pending litigation against the properties because the plaintiffs' interest would have been limited to one property per Note, properties owned by signatories to the Notes, properties owned when the Notes were signed and would have excluded the Ridgevale property because it was a matrimonial home the encumbering of which Niketa never consented to.

ii. Evidence of Transfers to Defeat or Delay Creditors

[80] The plaintiffs point to a number of sources of evidence that they say amount to evidence of transfers to defeat or delay creditors.

[81] They note that Hitesh transferred 1 Ferguson Avenue from Osmi Homes to Inuka Inc. and obtained a mortgage of $1.6 million against 1 Ferguson. The parcel register for the Ferguson property discloses no such transfer from Osmi. Rather, it discloses a transfer from Symmban-Ibi Developments Inc. to Inuka. I was not taken to any evidence to suggest that Symmban is a non-arm's-length entity from the defendants. The mortgage referred to was registered the same day that Inuka purchased the property. There is nothing unusual about that. Most purchasers of

real estate do so with the assistance of a mortgage that is registered at the time of purchase. In addition, Inuka was not a signatory to any of the Promissory Notes.

[82] The plaintiffs also allege that the defendants purchased the Ferguson Avenue property using money from one of the Promissory Notes. A certificate of pending litigation on that property would therefore amount to security in relation to a Note that has been voided.

[83] The plaintiffs further assert that Hitesh told them that if they removed their mortgage from 23 Madison Avenue, Hitesh would finance that property to obtain funds to pay off the Home Trust mortgage on the Twyn Rivers Property and allow the Twyn Rivers purchase to close. The Plaintiffs discharged the mortgage from 23 Madison, Hitesh proceeded to obtain a $1.5 million mortgage on that property, but then failed/refused to use those funds to discharge the Home Trust Mortgage.

[84] The defendants say that the proposal the parties discussed was that the plaintiffs would discharge all 10 mortgages in exchange for which the defendants would transfer the Twyn Rivers property to the plaintiffs but that the plaintiffs discharged only the Madison Avenue property. The fact that the defendants placed a mortgage on the Madison Avenue property is not evidence of an intent to defeat

or delay creditors given that the defendants are developers who regularly mortgage their properties to finance their business. Moreover, the real issue in the plaintiffs' explanation is whether the Twyn Rivers property should be transferred to them and, if so, on what terms. That, however, is not the subject of this motion.

[85] As further evidence of an intention to defeat or delay creditors, the plaintiffs assert that Hitesh concealed his assets from the Plaintiffs by failing to disclose that he was an officer, director, and shareholder of several other companies. Upon learning of these companies, the Plaintiffs proceeded to register cautions on the Properties owned by them. Twelve days after the cautions were discharged, the Defendants obtained a $2.3 million mortgage against one or more of those properties.

[86] I do not accept this as evidence of an intention to defeat or delay creditors. The Notes do not require Hitesh to give Joshi details about his involvement in any companies nor did Joshi ever ask for this information. It would have been common for a lender to ask for a statement of assets. Joshi never did so. Nor did Joshi ever seek any undertaking to make after-acquired property the subject of the Promissory Notes or any security under them. This is particularly salient given that Joshi knew that Hitesh was a developer who purchased, sold, and mortgaged properties in order to finance and develop them. Even with that knowledge, Joshi never sought a right of consent before the defendants could place further

encumbrances on their properties. This too would have been a not uncommon provision in a lending agreement.

[87] Moreover, Joshi was aware that, until he registered any mortgages to which the Promissory Notes entitled him, further mortgages could be registered against those properties in priority to his but chose not to register mortgages until up to three years after he says he extended loans.

iii. The Balance of Convenience

[88] In my view, the balance of convenience militates against granting certificates of pending litigation.

[89] The plaintiff seeks certificates of pending litigation on the 10 properties on which they registered mortgages and on an additional 7 properties from Appendix A.[33] The underlying basis for the claims on these additional properties is also the debt reflected in the Notes. As noted earlier, granting certificates of pending litigation because of the indebtedness under the Notes would defeat the point of voiding the Notes and discharging the mortgages.

[90] Finally, the plaintiffs did not direct me to any evidence about the value of the various properties or prior encumbrances on them. I therefore have no way of knowing how many properties would have to be subject to certificates of pending

[33] Appendix A contains a list of 11 properties from which I subtract the 4 properties owned by Bay 20 and Akkina that are addressed later in these reasons.

to protect the plaintiffs if the Notes remained valid. This tips the balance of convenience further in favour of the defendants.

V. Claims Against Bay 20 and Akkina

[91] The plaintiffs also claim equitable mortgages and certificates of pending litigation against four additional properties on Appendix A that are owned by Bay 20 Inc. and Akkina Developers Inc. In addition to declining that relief because the Promissory Notes have been voided, I would decline relief against Bay 20 and Akkina for the further reasons set out below.

[92] Neither Bay 20 nor Akkina are parties to any of the Promissory Notes. Joshi admits that he did not learn that Hitesh was a shareholder of Bay 20 and Akkina until after he commenced litigation in November 2023.

[93] The Plaintiffs' claims for equitable mortgages and certificates of pending litigation against properties owned by Bay 20 and Akkina requires a "reverse" corporate veil piercing, which would hold those corporations responsible for the obligations of Hitesh and/or Niketa.

[94] Although rare, courts have allowed "Reverse" corporate veil piercing where the shareholder has fraudulently used the corporation to shield assets from creditors

and avoid the shareholder's personal obligations.[34] Courts will disregard the corporate veil where a corporation is being used as an alter ego of a shareholder, is completely dominated and controlled by the impugned shareholder(s) or is being used as a shield for fraudulent or improper conduct.[35]

[95] As set out in greater detail below, there is no evidence that Bay 20 or Akkina are alter egos of Hitesh and/or Niketa, that either corporation is completely dominated and controlled by Hitesh and/or Niketa or that either corporation is being used for fraudulent or improper conduct.

[96] Hitesh is a 50% shareholder and a director of Bay 20. The remaining 50% of Bay 20's shares are owned by Ahmed Khan who is also a director of Bay 20.

[97] Bay 20 owns two properties listed on Appendix A: 214 David Street in Chelmsford, and 38 Pearl Street in Sudbury. Khan negotiated and executed the agreement of purchase and sale for 214 David St. in November 2017 in trust for a company to be incorporated. Khan later approached Hitesh and invited him to invest in the property with him. Bay 20 was then incorporated for the purpose of purchasing 214 David St.

---

[34] *Stevens v. Hutchens*, 2024 ONCA 717, at para 13; *Wildman v. Wildman* (2006), 2006 CanLII 33540 (ON CA), at paras. 23-25 and 43-46; *Borden Ladner Gervais v. Sinclair et al.*, 2013 ONSC 7640, at paras. 17-20.
[35] *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1996), 1996 CanLII 7979 (ON SC), 28 O.R. (3d) 423 (Gen. Div.), aff'd [1997] O.J. No. 3754 (C.A.) at pp. 433-434; *FNF Enterprises Inc. v Wag and Train Inc*. 2023 ONCA 92 at para 18.

[98] The agreement of purchase and sale for 38 Pearl Street was signed by both Khan and Hitesh on behalf of Bay 20.

[99] Bay 20 purchased 38 Pearl St. in July 2022.

[100] Since Bay 20 acquired the properties, the shareholders have contributed to mortgage expenses and other property-related costs in proportion to their shareholdings. Hitesh and Khan have made decisions about Bay 20 and its properties jointly.

[101] Khan has invested hundreds of thousands of dollars into Bay 20 and its properties since Bay 20 was incorporated. Khan has completed the majority of the property management tasks for 214 David St. and 38 Pearl St. since Bay 20 acquired them. Khan personally guaranteed the mortgages registered against both properties.

[102] Hitesh did not have the authority to grant a security interest over any property owned by Bay 20 without Khan's knowledge and consent. Khan did not know of the Promissory Notes until August or September 2023.

[103] Assuming the Promissory Notes could bind Bay 20 by virtue of the language in some of the Notes that purports to bind companies owned by Hitesh even though the company is not mentioned in the Notes, in my view, a company in which Hitesh holds a 25% interest does not fall into the category of companies "owned by" Hitesh or into the category of "our companies" referred to in in the Promissory Notes.

[104] Akkina follows a similar pattern.

[105] Since Akkina was incorporated, Niketa and Hitesh have each owned 25% of its shares with the remaining 50% owned by Navichandra Patel. All three shareholders are directors.

[106] Akkina is the registered owner of 2825 York Durham Line, Pickering and 151 Cedar Crest Beach Road, Clarington. Patel identified both properties as potential investments and presented them to Hitesh and Niketa as a joint investment.

[107] 2825 York is a 5-acre parcel of vacant farmland. The plan is to seek municipal approval to build five single detached homes on the property. Akkina was incorporated to purchase 2025 York. 151 Cedar St is a rental property.

[108] Decisions about Akkina's properties are made jointly.

[109] Patel has invested hundreds of thousands of dollars of his personal retirement savings into Akkina and its properties since incorporation. Patel has also personally guaranteed the mortgages registered against the York and Cedar properties.

[110] Patel has never met nor spoken to Joshi. Patel did not know of the Notes until the Plaintiffs brought a motion to add Akkina as a defendant to this action in June 2024.

[111] There is no evidence that Bay 20 or Akkina have engaged in fraudulent or improper conduct which has given rise to the liabilities that the Plaintiffs seek to enforce. Bay 20 and Akkina purchased their respective properties as part of legitimate business ventures. I have not been directed to any evidence which suggests that

the properties were purchased or improved using monies obtained from the Plaintiffs.

[112] Despite whatever arrangements may have been made about joint decision-making within Bay 20 or Akina, the plaintiffs submit that both corporations are bound by the indoor management rule. The plaintiffs say that as 50% shareholders and directors of Bay 20, and Akkina, there can be no doubt that Hitesh and Niketa had actual authority to bind the corporations. The plaintiffs argue further that if Hitesh lacked the actual authority to bind the corporations, he nevertheless had apparent authority to do so by virtue of s. 19 of the *OBCA* which provides*:*

> A corporation or a guarantor of an obligation of a corporation may not assert again a person dealing with the corporation or with any person who has acquired rights from the corporation ...

There then follow a number of things that the corporation cannot deny based on its publicly filed documents one of which is that:

> (d) a person held out by a corporation as a director, an officer or an agent of the corporation has not been duly appointed or does not have authority to exercise the powers and perform the duties that are customary in the business of the corporation or usual for such director, officer or agent;

[113] The plaintiffs then say that the effect of the rule is to hold that:

> Where an outsider dealing with a corporation satisfies himself that the transaction is valid on its face to bind the corporation, he need not inquire as to whether all of the

> preconditions to validity that the corporation's internal law might call for have in fact been satisfied.[36]

[114] The plaintiff's use this rule to support the proposition that they reasonably believed that Bay 20 and Akkina would be bound by the Promissory Notes and the mortgage obligations contained in them.

[115] I do not accept that submission. In addition to the fact that, as set out earlier in these reasons, the Promissory Note cannot bind a party that is not a signatory, Joshi was not aware of Bay 20 or Akkina when he took the Promissory Notes and had no basis for believing that Hitesh was acting as an officer or director of those corporations when executing the Notes. The indoor management rule presupposes that the party relying on it believes it is dealing with a specific corporation and that the person with whom it is dealing has the power to bind the corporation. Joshi had no basis for believing that he was dealing with Bay 20 or Akkina, as a result of which the rule has no application.

[116] The plaintiffs further suggest that at least Bay 20 has been engaging in improvident transactions which suggest wrongdoing because it listed both 214 David St. and 38 Pearl St. for sale last year for $1.00. Bay 20 has explained that the listing price was designed to generate interest in the properties and determine what price could

---

[36] *Business Organizations, Practice, Theory and Emerging Challenges*, Robert Yalden et al. Chapter 5: Corporate Contractual Liability, section (iii) Post-Incorporation Contracts, paragraph (B) Compliance with Internal Procedures, at page 381.

be generated for them. Both properties were later taken off the market because Bay 20 failed to receive an acceptable offer.

[117] The plaintiffs also extend their allegations of wrongdoing to the proposed Defendant, BIP Management Corporation ("BIP"). BIP has provided financing to the defendants, Bay 20 and Akkina for several of their projects. BIP has an interest in the motion because the plaintiffs seek mortgages or certificates of pending litigation against a number of properties in respect of which BIP has provided financing and has registered mortgages. More particularly, the plaintiffs allege that Bay 20 and Akkina have fraudulently conveyed their interests in their properties to BIP with the intention of defeating, hindering, or delaying creditors. I do not accept that as evidence of a fraudulent conveyance. Being a mortgagee does not, without more, mean being the beneficiary of a fraudulent conveyance.

[118] On cross-examination, Joshi admitted that he has no evidence that funds advanced under the Notes were used for the benefit of the Bay 20 or Akkina properties. Indeed, Bay 20 purchased the David Street property 1 ½ years before Joshi met Hitesh and 2 ½ years before the plaintiffs advanced any of the alleged loans. Joshi's only basis for believing BIP was involved in wrongdoing is that it was lending funds to some of Hitesh's investments and that Hitesh is "friends with them." When asked what evidence he had to suggest that BIP was anything more than arm's-length lender, Joshi answered that: they are very good friends, BIP had registered mortgages, it was a cozy relationship. Joshi agreed however that a friendship between a mortgagor and mortgagee does not mean that the

relationship is illegitimate. When Joshi was asked what evidence he had of the conspiracy he alleges between BIP and the defendants, his counsel answered that there was no such evidence, but that BIP had not yet defended and the plaintiffs expected to elicit further evidence on discovery. As a result of the foregoing, on the record before me, the relationship between the BIP and the defendants is that of an arm's-length lender in respect of which I draw no adverse inference.

Conclusion and Costs

[119] For the reasons set out above, I declare the six Promissory Notes to be void under the *Bills of Exchange Act*, order the mortgages registered on the 10 properties pursuant to those Promissory Notes to be vacated,[37] and dismiss the claims for an equitable mortgage or certificates of pending litigation on any of the properties in respect of which the plaintiffs have requested such relief.

[120] Any party seeking costs arising out of these reasons will have three weeks to deliver written submissions. The responding party will have two weeks to deliver its answer with a further one week for reply.

_____

Koehnen J.

[37] In case of any doubt, the 10 properties are listed at paragraph 40 of the defendants' factum on this motion.

APPENDIX A

#	Municipal Address	Is the Property Listed as Security in the Promissory Note	Owner	Is the Owner a Borrower under the Promissory Notes	Date Acquired by Owner	Were the Promissory Notes Executed After the Property was Acquired?
1	66 Bramhall Circle, Brampton	No	Osmi Inc.	No	December 15, 2022	#1-5 – Before #6 – After
2	49 Wayland Avenue, Toronto	No	Hitesh and Niketa	Only Hitesh. Niketa is not.	January 28, 2022	#1-5 – Before #6 – After
3	2825 York Durham Line, Pickering	No	Akinna Developments Inc.	No (and Akinna is 50% owned by a 3rd party)	November 30, 2021	#1-5 – Before #6 – After
4	151 Cedar Crest Road, Clarington	No	Akinna Developments Inc.	No (and Akinna is 50% owned by a 3rd party)	March 15, 2024	Before
5	214 David Street, Chelmsford	No	Bay 20 Inc.	No (and Bay 20 is 50% owned by a 3rd party)	January 31, 2018	After
6	38 Pearl Street, Sudbury	No	Bay 20 Inc.	No (and Bay 20 is 50% owned by a 3rd party)	July 15, 2022	#1-5 – Before #6 – After
7	45 Harwood Avenue, Ajax	No	Zahur Developers Inc.	No	April 6, 2022	#1-5 – Before #6 – After
8	158 Hillcrest Drive, Whitby	No	Barakaa Developer Inc.	Yes, but only under Promissory Note #5	June 9, 2017	After
9	160 Hillcrest Drive, Whitby	No	Barakaa Developer Inc.	Yes, but only under	June 9, 2017	After

				Promissory Note #5		
10	245 Spillsbury Drive, Peterborough	No	Lerrato Inc.	Yes, but only under Promissory Notes #1, 2, 6.	October 3, 2011	After
11	225 Collins Street, Collingwood	No	Osmi Inc.	No	April 29, 2022	#1-5 – Before #6 – After[38]

[38] Comparison of Plaintiff's Amended Notice of Motion as Against the Promissory Notes.

CITATION: CITATION: Joshi et al. v. Osmi Homes Inc. et al. 2025 ONSC 1942
COURT FILE NO.: CV-23-00710241
DATE: 20250327

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

SANJIVE JOSHI and XPERT CREDIT CONTROL SOLUTIONS INC.

Plaintiffs

– and –

OSMI HOMES INC., HITESH RAJENDRA JHAVERI, LERRATO INC., OSMI9 LTD, BARAKAA DEVELOPER INC., INUKA DEVELOPER INC., 2145499 ONTARIO INC. and NIKETA JHAVERI

Defendants

REASONS FOR JUDGMENT

Koehnen J.

Released: March 27, 2025

This is Exhibit “C” referred to in

the Affidavit of Hitesh Jhaveri,

sworn this 6th day of January, 2026.

DocuSigned by:
Judy Hamilton
9CBB5AFFBEBE4EE...

Commissioner for Taking Affidavits, etc.

Judy Hamilton

FOREMOST
FINANCIAL

September 10, 2025

Hitesh Jhaveri and Niketa Jhaveri
9 Ridgevale Dr.,
Markham, ON L6B 0L9

RE: Information Statement: 214 Loan - First Mortgage on Units A-J, 1 Ruback Lane, Ajax (10 Doric Street) Ajax, Ontario

The amount due as at September 11, 2025 is calculated as follows:
Interest being The Greater of 7.25% or RBC Bank Prime plus 4.80%

Principal balance	$6,185,000.00	
Taxes outstanding paid added to Principal	$119,566.47	$6,304,566.47
Interest due from September 1, 2025 to September 11, 2025		$22,898.73
Total Interest owing to August 31, 2025		$1,488,475.80
Receivership Certificates ("RC"), RC interest, Legal Expenses*		$1,084,826.14
TOTAL DUE TO : FOREMOST FINANCIAL CORPORATION IN TRUST		$8,900,767.14

Additional charges not added on this statement.
Per diem after 1:00pm ET on September 11, 2025 is $2,081.76

If you have any questions, please do not hesitate to contact the undersigned.

Yours truly
FOREMOST FINANCIAL CORPORATION

Verified by:_____

Floredith Lamigo
Mortgage Administrator
Telephone (416) 488-5300, Ext. 234
e&oe

Pauline Cygelfarb, VP
Mortage Administration
(416) 488-5300 Ext. 400

*Prorated on Principal balance

FOREMOST
FINANCIAL

September 10, 2025

Hitesh Jhaveri and Niketa Jhaveri
9 Ridgevale Dr.,
Markham, ON L6B 0L9

RE: Information Statement: Leratto Loan - First Mortgage on 367 Porte Road , Ajax Ontario

The amount due as at September 11, 2025 is calculated as follows:

Interest being @ The Greater of 8.00% or RBC Bank Prime plus 4.30%

Principal	$3,155,000.00
Principal Added to pay tax arrears	$89,100.01
Principal Paydown - August 1, 2025	-$1,871,466.00
Interest due from September 1, 2025 to September 11, 2025	$5,718.74
Total Interest owing up to August 31, 2025	$678,805.15
Receivership Certificates ("RC"), RC interest, Legal Expenses^	236,189.02
TOTAL DUE TO : FOREMOST FINANCIAL CORPORATION IN TRUST	**$2,293,346.92**

PLUS amounts to be determined

Additional charges NOT included in this statement.

Per diem after 1:00pm ET on September 11, 2025 is $519.89

If you have any questions, please do not hesitate to contact the undersigned.

Yours truly
FOREMOST FINANCIAL CORPORATION

Verified by:_____

Ashley Walker
Associate, Mortgage Administration
Telephone (416) 488-5300, Ext. 308
e&oe

Pauline Cygelfarb, Broker
VP-Mortgage Administration
Ext. 400

*Prorated on Principal balance

FOREMOST
FINANCIAL

September 11, 2025

Hitesh Jhaveri and Niketa Jhaveri
9 Ridgevale Dr.,
Markham, ON L6B 0L9

RE: Information Statement: Barakaa Loan - First Mortgage on 23 Madison Avenue, Richmond Hill, Ontario

The amount due as at September 11, 2025 is calculated as follows:
Interest being The Greater of 7.50% or RBC Prime plus 4.30%

Principal	$2,753,000.00	
Taxes outstanding paid added to Principal	$9,875.78	
Principal paydown from funds received on April 4, 2025	-$1,738,288.00	$1,024,587.78
Interest due from September 1, 2025 to September 11, 2025		$4,408.60
Total Interest owing from December 1, 2023 to August 31, 2025		$556,876.75
Receivership Certificates ("RC"), RC interest, Legal Expenses*		$176,300.60
TOTAL DUE TO : FOREMOST FINANCIAL CORPORATION IN TRUST		**$1,762,173.73**

Additional Charges Not Added on this statement.

Per diem after 1:00pm ET on September 11, 2025 is $400.78

If you have any questions, please do not hesitate to contact the undersigned.

Yours truly
FOREMOST FINANCIAL CORPORATION

Floredith Lamigo
Mortgage Administrator
Telephone (416) 488-5300, Ext. 234
e&oe

Verified by:_____
Pauline Cygelfarb, Broker
VP - Business Administration
Ext. 400

*Prorated on Principal balance

This is Exhibit “D” referred to in

the Affidavit of Hitesh Jhaveri,

sworn this 6th day of January, 2026.

DocuSigned by:
Judy Hamilton
9CBB5AFFBEBE4EE...

Commissioner for Taking Affidavits, etc.

Judy Hamilton

GST/HST - RT0001

View and pay account balance

As of January 5, 2026

Note: Credits may be held on this account because of unfiled return(s).

Balance and services

Current balance: $0.00

View account transactions View interest

Payment on filing and Interim balance

Current interim balance: $118,496.30 CR

Period-end balances

Select the link to view account transactions

Period-end	Interim balance	CR/DR	Balance	CR/DR
September 30, 2025	$118,496.30	CR	$0.00	
June 30, 2025	$0.00		$0.00	
March 31, 2025	$0.00		$0.00	
December 31, 2024	$0.00		$0.00	
October 21, 2024	$0.00		$0.00	
TOTAL	$118,496.30	CR	$0.00	

Items per page: 5 1 to 5 of 34

Export to CSV

Quick links

Request remittance vouchers

Screen ID: A-B-RT-VB-01

Version: 2025-12-18 3:30:27 p.m. (25.11.5-RELEASE)

FOREMOST MORTGAGE HOLDING CORPORATION
Applicant

-and-

BARAKAA DEVELOPER INC. ET AL.
Respondents

Court File No. CV-24-00724076-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF HITESH JHAVERI

FRIEDMANS LLP
Barristers and Solicitors
150 Ferrand Drive, Suite 800
Toronto, ON M3C 3E5

Judy Hamilton (LSO No. 39475S)
Tel: (416) 649-4462
Email: jh@friedmans.ca

Khaled Gheddai (LSO No. 73840B)
Tel: (416) 496-6267
Email: kg@friedmans.ca

Fax: (416) 497-3809

Lawyers for the Respondents