

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

**FACTUM OF NON-PARTY STAKEHOLDERS (PURCHASERS OF 377
PORTE ROAD)**

October 3, 2025

ROHOMAN & MOHAMMED LLP

Barristers and Solicitors

885 Progress Avenue

Unit LPH5

Toronto, Ontario

M1H 3G3

ALLAN RASHEED MOHAMMED

LSUC #59008K

Ph. (416) 878-6168

Fax. (647) 288-2100

allan@rohomanmohammed.com

Lawyers for the Non-Party Stakeholders

(Purchasers of 377 Porte Road)

TABLE OF CONTENTS

Page	
2	PART I – OVERVIEW STATEMENT
2	PART II – THE FACTS
5	PART III – ISSUES AND LAW
9	PART IV – RELEIF REQUESTED

PART I – OVERVIEW STATEMENT

1. The Receiver's motion is seeking to disclaim and terminate Mr. Patel and Ms. Patel's Agreements to purchase the following Property:

PIN: 26454-0557

Legal Description: PT LT 6 CON 1, PT 5 40R30173 PICKERING; S/T
EASEMENT AS IN PI31742; TOWN OF AJAX

Municipal Address: 377 Porte Road
Ajax, ON
L1S 0B9

Referred to herein as "the Property"

2. The Receiver's motion is also seeking an order granting the Receiver vacant possession of 377 Porte Road and, ostensibly, a writ of possession in favour of the receiver if vacant possession is not turned over to the receiver within thirty (30) days.

PART II – THE FACTS

3. Mr. Patel and Ms. Patel ("the Patels") were acquaintances of Hitesh Jhaveri ("Mr. Jhaveri") since approximately 2017 and are unrelated.

Affidavit of Rohitkumar Patel sworn September 8, 2025 at paragraph 7.

4. The Patels learned that Mr. Jhaveri is a builder/developer and agreed to purchase a property on

Porte Road in or around April 2019.

Affidavit of Rohitkumar Patel sworn September 8, 2025 at paragraph 8.

5. The Patels agreed to purchase the Property on the basis of various materials presented by Mr. Jhaveri, including plans for the development, floor plans of the Property, photographs of the site and finishes.

Affidavit of Rohitkumar Patel sworn September 8, 2025 at paragraph 9.

6. An Agreement of Purchase and Sale was not executed at the time that the Patels agreed to purchase the Property.
7. The Patels began making deposit payments to Mr. Jhaveri and his corporations in April 2019 and continued to September 17, 2024.

Affidavit of Rohitkumar Patel sworn September 8, 2025 at paragraph 10.

8. As of September 17, 2024, the Patels had made approximately \$679,949.00 to Mr. Jhaveri and his corporations.

Affidavit of Rohitkumar Patel sworn September 8, 2025 at Exhibit B.

9. Here is a summary of the deposits paid, organized by recipient:

- | | |
|--------------------|--------------|
| a. Hitesh Jhaveri: | \$62,000.00 |
| b. Leratto Inc.: | \$441,000.00 |

c. 2145499 Ontario Inc.:	\$20,000.00
d. Osmi Homes	\$146,000.00
e. OM Sai Marble	\$10,000.00
f. Contractor (re installation):	\$949.00
Total:	\$679,949.00

Affidavit of Rohitkumar Patel sworn September 8, 2025 at Exhibit B.

10. A full accounting of all amounts paid by the Patels, organized by date, and including bank statements and cheque images, where applicable, is attached as exhibits to Mr. Patel's affidavit and was provided to the Receiver on March 25, 2025.

Affidavit of Rohitkumar Patel sworn September 8, 2025 at Exhibit B.

11. The Patels continued to make deposit payments between 2019 and 2024 as construction on the Property was progressing, which the Patels witnessed personally.
12. At all relevant times, the amounts paid by the Patels to Mr. Jhaveri and his corporations were solely paid to purchase the Property and were never paid for any other purpose.
13. On or about May 14, 2024, the Patels were asked by Mr. Jhaveri to sign an Agreement of Purchase and Sale for the Property, which set out a First Tentative Closing Date of May 14, 2024 and a Second Tentative Closing Date of June 12, 2024 ("Galaxy Towns APS").

Affidavit of Rohitkumar Patel sworn September 8, 2025 at paragraph 29.

14. On or about August 7, 2024, Mr. Jhaveri asked that the Patels sign another Agreement of Purchase and Sale ("Form 100 APS"), which was back-dated to August 12, 2022.

Affidavit of Rohitkumar Patel sworn September 8, 2025 at paragraphs 33 to 37.

15. The Patels understood that the closing date for their purchase of the Property would be sometime in 2024 and were granted possession of the Property in the spring of 2024. They held a housewarming party at the Property on or about June 1, 2024.

Affidavit of Rohitkumar Patel sworn September 8, 2025 at paragraph 43.

16. The Patels have, since being contacted by the Receiver, have consistently indicated that they are ready, willing and able to purchase the Property on the terms that were originally agreed upon.
17. The Patels requested from the Receiver, on several occasions, the Statement of Adjustments so that the Patels can obtain mortgage financing in order to complete the transaction.

PART III – ISSUES AND LAW

A. Should the Receiver be permitted to disclaim the Patel's agreement to purchase the Property and extinguish any claim thereto?

18. It is well-recognized that courts must consider the equitable interests of purchasers and lessees in determining whether to disclaim an agreement to purchase a property.

Firm Capital Mortgage Fund Inc. v. 2012241 Ontario Ltd., 2012 ONSC 4816

19. In the present circumstances, the Patels have possession of the Property, have paid \$679,949 in deposits, \$441,000 of which were paid to Larreto directly.

I. Subordination of the Purchaser's Interest

20. The Receiver takes the position that the Patels' interest is subordinate to that of Foremost by relying on the terms of the Galaxy Towns APS.
21. The Galaxy Towns APS and Form 100 APS were signed on May 14, 2024 and August 7, 2024 respectively, upon the insistence of Mr. Jhaveri.

Affidavit of Rohitkumar Patel sworn September 8, 2025 at paragraph 29 to 33.

22. The Patels were not afforded the opportunity to obtain legal advice prior to signing either agreement and the Agreements were signed after \$609,000 out of \$679, 949 in deposits were already paid by the Patels.
23. As a consequence, the Patels respectfully submit that the Court disregard the subordination clause.

II. Did Foremost have Actual Notice that the Property Was sold to the Patels?

24. In the absence of a subordination clause, the Patels submit that the Court should consider whether Foremost had actual notice of the Patels' interest in the Property as a purchaser.

25. The proposition that actual notice may be a consideration in such cases can be found in *Counsel Holdings Canada Limited v. Chanel Club Limited*, 1999 CanLII 1653 (ON CA), in which the Court of Appeal suggests as follows:

“It is undisputed that Counsel Holdings has first priority under its mortgage except to the extent that it had actual notice of a prior interest.”

***Counsel Holdings Canada Limited v. Chanel Club Limited*, 1999 CanLII
1653 (ON CA)**

26. In *Counsel Holdings*, the Court of Appeal found that a subordination clause did exist, and found in favour of the mortgagee. Notwithstanding this, the court suggested that “actual notice” could be relevant if this court finds that the subordination clause is of no effect.

27. The parcel register for the subject Property suggests that the first mortgage to Foremost was registered on November 26, 2019 and the second mortgage to Foremost was registered on July 5, 2022.

28. There is no evidence that Foremost did not know that the Property was sold to the Patels at the time that the above-referenced mortgages were registered and funds were advanced. It seems

plausible that Foremost was attracted to lend to Lerrato because Lerrato represented to Foremost that the Property was sold and that Lerrato would be receiving additional funds to develop and construct the property.

29. If, in fact, Foremost knew that the Property was sold, Foremost should have requested copies of the purchase agreement to verify that a subordination clause existed. If they did not, the Patels submit that it would be inequitable for Foremost to benefit when they had actual notice of the Patels interest in the property as purchasers.

III. Equitable Considerations

30. The Receiver's factum states that "avoiding disclaimer will be detrimental to all stakeholders".
31. In this regard, the Receiver states that the Patels have not been paying occupancy fees or property taxes. The Patels have no knowledge of ever being asked to pay occupancy fees or property taxes.
32. The Receiver states that the Patels are "insisting on a \$679,949 deposit credit". This is false as the parties have been negotiating terms of completing the transaction in which the Patels will pay a greater amount in order to close.
33. The Receiver has incorrectly and without justification, insisted that the Patels have only paid

\$150,000 in deposits as grounds to pressure them to close on this basis, despite the Patels clear documentation to suggest that they paid \$679,949 in deposits.

34. Notwithstanding this, since the Patels have already paid almost their entire live savings towards purchasing the Property, they are in a vulnerable position and have been willing to pay more than the balance required to close the transaction, per the Receiver's calculations.
35. There has never been an indication that the Patels have been unable or unwilling to complete the transaction.

PART IV – RELIEF REQUESTED

36. It is respectfully requested that this Honourable Court grant the following:
 1. An Order that the Receiver provide the Patels with an opportunity to complete the purchase of the Property upon such terms as this Honourable Court finds just; or, in the alternative;
 2. An Order that the Receiver continue to negotiate with the Patels, for thirty (30) days, failing which the Receiver may bring a subsequent motion seeking further relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



Allan Rasheed Mohammed
Lawyers for the Non-Party Stakeholders
(Purchasers of 377 Porte Road)

SCHEDULE A – LIST OF AUTHORITIES

1. *Firm Capital Mortgage Fund Inc. v. 2012241 Ontario Ltd.*, 2012 ONSC 4816
2. *Counsel Holdings Canada Limited v. Chanel Club Limited*, 1999 CanLII 1653 (ON CA)

FOREMOST MORTGAGE HOLDING CORPORATION *Plaintiff*

CV-24-00724076-00CL

v.

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

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)
Proceedings Commenced at Toronto

**FACTUM OF THE NON-PARTY
STAKEHOLDERS (PURCHASERS
OF 377 PORTE ROAD)**

Rohoman & Mohammed LLP
Barristers and Solicitors
885 Progress Avenue, LPH-5
Toronto, Ontario M1H 3G3
Tel: 416-878-6168
Fax: 647-288-2100
allan@rohomanmohammed.com

Allan Rasheed Mohammed
LSUC#: 59008K
Lawyers for the Non-Party
Stakeholders
(Purchasers of 377 Porte Road)