

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

-and-

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

Respondents

FACTUM OF THE RECEIVER
(369, 377 PORTE ROAD and 23 MADISON AVENUE SALES)

Date: November 27, 2025

DLA PIPER (CANADA) LLP
333 Bay Street, Suite 5100
Toronto, ON M5H 2R2

Edmond F.B. Lamek (LSO No. 33338U)
Tel: 416.365.4444
Cell: 416.579.1871
Email: edmond.lamek@dlapiper.com

Lawyers for KSV Restructuring Inc. in its
capacity as Receiver

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PART I – OVERVIEW

1. This factum is filed by KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of certain real properties of Barakaa Developer Inc. and Lerrato Inc., and the property, assets and undertakings of 2145499 Ontario Inc., in support of the Receiver’s motion for: (i) three approval and vesting orders approving the sale transactions (the “**Transactions**”) contemplated by two agreements of purchase and sale and one amending agreement (collectively the “**Sale Agreements**”) between the Receiver, as vendor, and Muhammed Jenhazeb Agha (the “**369 Porte Purchaser**”), as purchaser, Rohitkumar M. Patel and Arvindaben R. Patel, as purchasers (the “**377 Porte Purchasers**”), and Mohammed Alsharafi and Fatima Jeddi (the “**23 Madison Purchasers**”, and collectively the “**Purchasers**”), and vesting in the applicable Purchasers, the lands and buildings known municipally as 369 and 377 Porte Road, Ajax and 23 Madison Avenue, Richmond Hill, (the “**Properties**”) and the chattels listed in the Sale Agreements (collectively, the

“**Purchased Assets**”); and (ii) an order authorizing the Receiver to make one or more distributions from the proceeds of the sale of the Purchased Assets to Foremost Mortgage Holding Corporation (“**Foremost**”), approving the Receiver’s activities set out in the Receiver’s Fifth Report to Court dated November 24, 2025 (the “**Fifth Report**”) and sealing the Confidential Appendix to the Fifth Report pending closing, or further Court order.

PART II - FACTS

2. KSV was appointed as Receiver pursuant to an order of the Ontario Superior Court of Justice (the “**Court**”) made on October 21, 2024 (the “**Receivership Order**”) of two real properties (the “**Barakaa Properties**”) owned by Barakaa Developer Inc. (“**Barakaa**”), six real properties (the “**Lerrato Properties**”) owned by Lerrato Inc. (“**Lerrato**”), and the property, assets and undertaking owned by 2145499 Ontario Inc. (“**214**”, and together with the Barakaa Properties and the Lerrato Properties, (the “**Receivership Assets**”). The Properties are three of the five Lerrato Properties.
3. The application to appoint KSV as Receiver was made by Foremost, which has mortgages on each of the Receivership Assets, registered prior to all other mortgages registered on title to the Receivership Assets. The principal purpose of the receivership application was to empower the Receiver sell the Receivership Assets free and clear of encumbrances, by way of approval and vesting orders due to the registration of the disputed Joshi Mortgage by the Joshi Parties (as defined and more particularly set out in the Third Report).
4. Foremost has been funding these proceedings pursuant to the Receiver’s Borrowing Charge (as defined in the Receivership Order). As of the date of this motion (following application of certain proceeds of the prior sales of one Barakaa property and three Lerrato properties) the Receiver’s outstanding borrowings from Foremost totals \$1,428,839.
5. Foremost holds a first ranking mortgage (the “**Foremost Porte Mortgage**”) registered on title to the Porte Properties in the original principal amount of \$3,155,000. In addition to the Foremost Porte Mortgage, the Porte Properties (other than Porte Part 6) are subject to a mortgage in favour of BIP Management Corporation (“**BIP**”) in the initial principal

amount of \$700,000, contractually postponed to the Foremost Mortgage. As of the date of this motion, the Lerrato indebtedness secured by the Foremost Porte Mortgage is approximately \$1.28 million, before interest, fees and other costs, which remains subordinate to the outstanding amounts secured by the Receiver's Borrowing Charge.

6. Foremost holds a first ranking mortgage in the original principal amount of \$4,133,000 registered on title to 23 Madison (the "**Foremost Madison Mortgage**" and together with the Foremost Porte Mortgage, the "**Foremost Mortgages**"). In addition to the Foremost Madison Mortgage, 23 Madison subject to a mortgage in favour of BIP in the initial principal amount of \$1,500,000, and a mortgage in favour of 1417199 Ontario Limited ("**141 Ontario**") in the initial principal amount of \$750,000, which is postponed to BIP, and ranks after the Foremost Madison Mortgage. As of the date of this motion, Barakaa's indebtedness secured by the Foremost Madison Mortgage is approximately \$1.4 million, before interest, fees and costs which continue to accrue, which remains subordinate to the outstanding amounts secured by the Receiver's Borrowing Charge.
7. The Receiver's counsel, DLA, has provided the Receiver with its opinion that, subject customary assumptions and qualifications, the Foremost Mortgages are valid and enforceable, and no party on the Service List has, to the Receiver's knowledge, disputed or questioned the priority of the Foremost Mortgages or amounts owed to Foremost secured thereby.

Disclaimer of Prior APSSs and Additional Deposit disputes

8. Since the date of the Receiver's appointment, each of the Purchasers have been in occupancy of their respective residences pursuant to arrangements made by each with Hitesh Jhaveri, pending closing. In the months following its appointment, the Receiver attempted to negotiate consensual transactions with each of the Purchasers on economic terms acceptable to Foremost as first mortgagee.
9. The 369 Porte Purchaser failed to meaningfully engage in discussions with the Receiver concerning the purchase of 369 Porte, and by late summer 2025, the 369 Porte Purchaser

appeared to the Receiver to be financially incapable of closing a transaction with the Receiver to purchase 369 Porte at all.

10. As a result of disputes with the 377 Purchasers and the 23 Madison Purchasers regarding the quantum of the deposit credits to which they asserted they were legally entitled to, the Receiver was unable to reach acceptable transaction economic terms with either the 377 Purchasers or the 25 Madison Purchasers by late summer of 2025. Because most or all of the claimed deposit amounts were not held in trust pending closing, had the asserted deposit been credited, each transaction would have resulted in net proceeds payable on closing materially lower than could be obtained by the Receiver by way of taking possession of and marketing the 377 Porte and 23 Madison properties to the public through a real estate broker, based on the Receiver's appraisals¹.
11. In order to maximize the realizable value of each of 369 Porte, 377 Porte and 23 Madison for the benefit of stakeholders, and obtain vacant possession in order to be able to return the residences to saleable condition, and re-expose them to the market for sale, the Receiver brought motions returnable October 7, 2025 (369 and 377 Porte) and October 10, 2025 (23 Madison) and obtained orders of Justice Steele and Justice Myers (the "**Disclaimer Orders**") authorizing the disclaimer of the three existing agreements of purchase and sale and ordering vacant possession of the Properties following delivery of vacancy notices by the Receiver.
12. Subsequent to the making of the Disclaimer Orders and delivery of disclaimer notices by the Receiver, the Receiver was successful in negotiating alternative transactions (the "**Transactions**") and sale agreements (the "**Sale Agreements**") with each of the 23 Madison Purchasers, the 377 Porte Purchasers and the 369 Porte Purchaser for which approval is sought herein. Each of the proposed Transaction terms were reviewed with Foremost, who has consented to each of the Transactions.

¹ Confidential Appendix 1 to the Fifth Report, filed.

PART III - ISSUES

13. The three issues before the Court are: (i) whether the Court should approve the Sale Agreements and the Transactions; (ii) whether the Court should authorize the Receiver make distributions to Foremost up to the amounts secured by the Foremost Porte Mortgage and the Foremost Madison Mortgage, subject to holding back amounts the Receiver considers sufficient to fund the ongoing professional fees and other costs of these proceedings; (iii) whether the Court should approve the Receiver's activities set out in the Fourth Report, and (iv) whether the Court should order the sealing of Confidential Appendix 1 to the Fifth Report pending closing of the Transactions or further order of the Court.

PART IV – LAW AND ARGUMENT

Approval of the Transactions and the Sale Agreements

14. The law is well established in terms of the factors to be considered by the Court when assessing whether to approve a transaction entered into by a receiver for the sale of a debtor's assets. As set out in the Ontario Court of Appeal's decision in *Soundair*.², the Court shall consider:
- (i) whether the receiver has made sufficient effort to get the best price and has not acted improvidently;
 - (ii) the interests of all parties;
 - (iii) the efficacy and integrity of the process by which offers are obtained; and
 - (iv) whether there has been unfairness in the working out of the process.
15. The *Soundair* factors are considered in the Second Report of the Receiver dated May 30, 2025 (the “**Third Report**”).

²*Royal Bank v. Soundair Corp.* (1991) 4 O.R. (3d) 1 (C.A.), 1991 CanLII 2727 (ON C.A.)

The Receiver's Efforts to Secure the Best Price

16. In the instant case, as in all sale processes conducted by court-appointed receivers, the Receiver's primary consideration was securing an offer that provided for the highest possible price for the subject property having regard to the circumstances.
17. Since before the Receiver's appointment, each of the Properties has been occupied by the applicable Purchaser(s), pursuant to occupancy arrangements pending closing of the proposed purchase transactions. Given the non-engagement of the 369 Porte Purchaser and the deposit disputes with the 377 Porte Purchasers and 23 Madison Purchasers, the Receiver sought and obtained the Disclaimer Order in order to proceed to take the steps necessary to take vacant possession of the three Properties, refurbish them to a marketable state, and ultimately put them on the market with real estate brokers.
18. Following the making of the Disclaimer Orders, the Receiver re-engaged in negotiations with each of the three Purchasers, and in consultation with Foremost was able to reach revised Transaction terms with each Purchaser which were then reduced to writing in the Sale Agreements. Each of the Sale Agreements reflect standard receivership terms (i.e., "as is where is") and conditions, including the approval and versing orders sought on this motion.
19. The purchase prices for each of the Transactions are consistent with the value ranges set out in the appraisals recently obtained by the Receiver, which are summarized in Confidential Appendix 1 to the Fifth Report, particularly when taking into account the costs of preparing the Properties to be remarketed and the time and costs of remarketing the Properties in the current residential retail market, after the costs and delay obtaining vacant possession of the Properties from the Purchasers by Court orders. Foremost consents to proposed Transactions being completed in accordance with the Sale Agreements.

Considering the Interests of the Parties

20. One of the primary reasons for the commencement of these receivership proceedings by Foremost was the inability of the Debtors to convey clean title to purchasers of the Receivership Assets in light of the Joshi Mortgages. Following the Receiver's

appointment, and now that the Joshi Mortgages have been discharged, the issue(s) of material subsequent purchase price deposits having been paid by purchasers to Jhaveri entities without the consent or knowledge of the relevant mortgagees or application to their mortgages has become the central issue in these proceedings in respect of the sale of the Lerrato Properties and the remaining Barakaa Property.

21. The Receiver has been in communication with Foremost throughout the receivership proceedings, including with respect to the Receiver's Borrowing Charge amount and advances by Foremost thereunder. Based on the outstanding amounts owing under the Receiver's Borrowing Charge and Foremost Mortgages, Foremost is the only creditor with a direct economic interest in the sale of the three Properties.
22. The Receiver has periodically corresponded with the representative of the BIP concerning these receivership proceedings, including in respect of the sale process for the Properties. BIP is not projected to receive any distributions from the sale of the Properties given the amount owing on secured by the Foremost Porte Mortgage and amount of the Receiver's Borrowing Charge.

The Efficacy and Integrity of the Process

23. The Receiver considered and balanced the costs and benefits of obtaining vacant possession of the Properties from the Purchasers, in order to refurbish and remarket the Properties through real estate agents in the current market, as compared to a negotiated result with the Purchasers, resulting in sale prices consistent with the Receiver's appraisals.

Unfairness in the Working out of the Process

24. In addition to the interest of Foremost and BIP, the Receiver considered the interests of the Purchasers, some of whom the Receiver understands have sold their previous residences in reliance on the occupancy arrangements for the Properties, and, in the case of the 377 Porte Purchasers and 23 Madison Purchasers, the unfortunate (but self-imposed) position the payments of non-market additional deposits have put them in. In the Receiver's view, the negotiated results reflected in the Sale Agreements, consented to by Foremost, reflect an

appropriate balance between maximizing sale proceeds and not unduly prejudicing the Purchasers who have been residing in the Properties for in excess of a year.

25. The negotiation process with the Purchasers and their respective counsel was conducted in an even handed manner by the Receiver, as Court officer, and DLA as its counsel, and no party was prejudiced or treated unfairly by the Receiver during the conduct of the negotiation process.

Distributions to Foremost in respect of the Foremost Mortgage indebtedness

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

Approval of the Receiver's Activities

27. The Receiver requests that the Court approve its activities as set out in the Fifth Report. It is the common practice of this Court and its Court appointed officers to have the officer's activities approved from time to time during the proceeding. No parties have, as of the date of this Factum, indicated any adverse comment on the Receiver's activities described in the Fifth Report, and the form of requested approval order contains the now standard language reflecting that only the Receiver, in its personal capacity and only with respect to its personal liability may rely on such requested approval.

Sealing

28. The Receiver recommends that Confidential Appendix "1" to the Fifth Report be sealed until the later of a further order of the Court or closing of the Transactions. The only sealed information relates to the appraised values of the Remaining Residential Properties.
29. The Receiver believes making the appraised values publicly available prior to closing the Transactions may negatively impact any future sale process for the Properties if the Transactions are not approved by the Court or if one or more of them do not close.

30. Accordingly, the Receiver believes the proposed sealing of the Confidential Appendix is appropriate in the circumstances and consistent with the decision in *Sherman Estate v. Donovan*, 2021 SCC 25.

PART V - CONCLUSION

31. For the reasons set forth herein, the Receiver respectfully requests that this Court grant the Receiver's motion for approval of the Sale Agreements and Transactions and the vesting in the Purchasers all of the relevant Debtor's right, title and interest in and to the Purchased Assets, approving a distribution to Foremost from the Transactions proceeds up to the amount secured by the Foremost Mortgages net of holdbacks for the Receiver's Charge and Receiver's Borrowing Charge, sealing Confidential Appendix 1 to the Fifth Report, and approving the Receiver's activities set out in the Fifth Report.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of November, 2025.



DLA Piper (Canada) LLP
Lawyers for the Receiver