

**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  
(25 MADISON SALE)**

Date: March 21, 2025

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Lawyers for KSV Restructuring Inc. in its  
capacity as Receiver

Court File No. CV-18-603624-00CL

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

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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 an order: (i) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver, as vendor, and Zeng Jie Wang, as purchaser (the “**Purchaser**”), dated February 12, 2025 (the “**Sale Agreement**”), and vesting in the Purchaser the land and building known municipally as 25 Madison Avenue, Richmond Hill, Ontario (“**25 Madison**”) and the chattels listed in the Sale Agreement (collectively, the “**Purchased Assets**”), and (ii) 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**”).

## 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**"). 25 Madison is one of the two Barakaa 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 is to 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 Second Report).
4. Foremost has been funding these proceedings pursuant to the Receiver's Borrowing Charge (as defined in the Receivership Order). Total advances by Foremost under the Receiver's Borrowing Charge as of the date of this motion total \$831,000. As of the date of the Receivership Order, the Barakaa indebtedness owing to Foremost secured by the first mortgage over the Barakaa Properties (the "**Barakaa FM Mortgage**") was approximately \$2,753,000, before interest and costs, which have continued to accrue since the date of the Receivership Order (the "**Barakaa FM Debt**") .
5. The Receivers counsel, DLA has provided the Receiver with its opinion that, subject customary assumptions and qualifications, the Barakaa FM Mortgage is valid and enforceable and no party on the Service List has, to the Receiver's knowledge, disputed or questioned the priority of the Barakaa FM Mortgage or amount of the Barakaa FM Debt.

### PART III - ISSUES

6. The two issues before the Court are: (i) whether the Court should approve the Sale Agreement and the Transaction; and (ii) whether the Court should authorize the Receiver make distributions to Foremost up to the amount of the Barakaa FM Debt, subject to holding back amounts the Receiver considers sufficient to fund the ongoing professional fees and other costs of these proceedings.

### PART IV – LAW AND ARGUMENT

#### **Approval of the Transaction and the Sale Agreement**

7. The law is very well established in terms of the factors to be considered by the Court when assessing whether or not 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*.<sup>1</sup>, 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.
8. The *Soundair* factors are considered in the Second Report of the Receiver dated March 13, 2025 (the “**Second Report**”).

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<sup>1</sup>*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**

9. 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 all of the circumstances.
10. 25 Madison is a detached residential property in Richmond Hill, Ontario, substantially completed by Barakaa in 2024. It did not, and does not qualify for coverage under the Tarion Warranty Plan.
11. Barakaa engaged Naznin Daruwalla of Remax Crossroads Realty Inc. (the "**Listing Agent**") in July of 2024 to list 25 Madison for sale and the Receiver continued that listing after interviewing the Listing Agent and consulting with Foremost. Accordingly, 25 Madison had been exposed to the market for in excess of six month before the Sale Agreement was entered into. The Listing Agent used conventional methods to market 25 Madison for sale, including, renting furniture to stage the home, listing it on the Multiple Listing Service, conducting open houses, creating a virtual tour, taking professional photos, using social media, sending email blasts, and placing a for-sale sign on the property.
12. Following the Receiver's appointment, the Listing Agent advised that it was her view that 25 Madison was over-priced at \$2,699,999 and accordingly, the listing price was reduced to \$2,589,000 on November 7, 2024. Following a period of slow activity, and based on feedback from buyers, the listing price was subsequently further reduced to \$2,448,000. Since the final price reduction, four buyers (other than the Purchaser) entered into conditional purchase agreements, each of which were terminated by the buyer in accordance with their terms, principally on the basis they were not comfortable buying a home on receivership terms (i.e. without representations and warranties), subject to a Court approval condition, and without enrolment in the Tarion Warranty Plan.
13. The Receiver did not consider an initial offer made by the Purchaser's which was submitted in January, 2025, as the Receiver was considering a superior offer at that time, however, that buyer terminated its offer. On February 12, 2025, the Purchaser submitted a second,

higher offer, (being \$2,401,000) which the Receiver accepted. The APS was signed on February 13, 2025. The Transaction is unconditional except for Court approval. The Transaction has a closing date of March 31, 2025.

***Considering the Interests of the Parties***

14. 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.
15. 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 Barakaa FM Debt, Foremost is the only creditor with a direct economic interest in the sale of 25 Madison.
16. The Receiver has periodically corresponded with the representative of the second Barakaa Properties mortgagee, BIP Management Corporation ("BIP") concerning these receivership proceedings, including in respect of the sale process for 25 Madison. BIP is not projected to receive any distributions from the sale of 25 Madison, nor is the third mortgagee, 1417199 Ontario Limited, or the Joshi Parties.

**The Efficacy and Integrity of the Process**

17. 25 Madison is a traditional suburban residential property and accordingly was listed for sale by Barakaa and subsequently by the Receiver using traditional residential home sale methods undertaken by a reputable real estate broker, well known in the Richmond Hill region. 25 Madison was exposed to the market for over six months, had many showings and had a number of offers made on it following listing price corrections recommended by the Listing Agent.

**Unfairness in the Working out of the Process**

18. The Receiver worked with the Listing Agent to ensure that prospective buyers were made aware of the receivership sale terms and conditions for 25 Madison and the lack of Tarion Warranty Program, including the Purchaser. Buyers requested and were provided with

reasonable residential real estate conditional periods in order to determine whether they were comfortable, or not, in purchasing 25 Madison on receivership terms and without Taron Warranty Program coverage, and several were not.

19. The sale process was conducted in an even handed manner by the Receiver and the Listing Agent, and no party was prejudiced or treated unfairly by the Receiver during the conduct of the sale process.

**Distributions to Foremost in respect of the Barakaa FM Debt**

20. The Receiver recommends that it be authorized to make distributions to Foremost up to the amount of the Barakaa FM Debt from the sale proceeds following closing of the Transaction, subject to retaining a holdback in respect of the professional fees and costs of these proceedings secured by the Receiver's Charge and the Receiver's Borrowing Charge. Based on the outstanding amount of the Barakaa FM Debt and the anticipated net proceeds of the Transaction, there will still be a material portion of the Barakaa FM Debt owing to Foremost after such distributions are made.

**PART V - CONCLUSION**

21. For the reasons set forth herein, the Receiver respectfully requests that this Court grant the Receiver's motion for approval of the Sale Agreement and Transaction and the vesting in the Purchaser all of the Debtor's right, title and interest in and to the Purchased Assets, and approving a distribution to Foremost from the Transaction proceeds up to the amount of the Barakaa FM Debt.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of March 2025.



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**DLA Piper (Canada) LLP**  
Lawyers for the Receiver