

**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**

FRESH AS AMENDED NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In person
- By telephone conference
- By video conference

at the following location: 330 University Ave., Toronto ON M5G 1R7 on a date to be fixed by the Registrar.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: _____ Issued by: _____
Local registrar

Address of court office: 330 University Ave.,
Toronto ON M5G 1R7

TO: **BARAKAA DEVELOPER INC.**
9 Ridgevale Drive
Markham, Ontario
L6B 1A8

AND TO: **LERRATO INC.**
9 Ridgevale Drive
Markham, Ontario
L6B 1A8

AND TO: **214599 ONTARIO INC.**
9 Ridgevale Drive
Markham, Ontario
L6B 1A8

APPLICATION

The Applicant, Foremost Mortgage Holding Corporation (the “**Lender**”), makes an application for:

- a) an order appointing KSV Restructuring Inc. (the “**Receiver**”) as receiver and manager of:
 - a. the Madison Properties (as defined below) and the proceeds thereof;
 - b. the Porte Properties (as defined below) and the proceeds thereof; and
 - c. the Porte Cash Collateral (as defined below); and
 - d. 2145499 Ontario Inc. (“**214**”); and
- b) such further and other relief which this Honourable Court deems appropriate and just.

THE GROUNDS FOR THE APPLICATION ARE:

A. The Parties

1. The Lender is an Ontario corporation in the business of providing mortgage financing and other loans.
2. The respondents, Barakaa Developer Inc. (“**Barakaa**”), Lerrato Inc. (“**Lerrato**”), and 214, (collectively, the “**Borrowers**”), are real estate development corporations. The Borrowers are controlled by Hitesh Jhaveri and Niketa Wadia (together, the “**Principals**”).

B. The Secured Properties

1. The Madison Properties

3. Barakaa owns the real properties municipally known as 23 Madison Avenue, Richmond Hill, Ontario ("**23 Madison**") and 25 Madison Avenue, Richmond Hill, Ontario ("**25 Madison**" and, together with 23 Madison, the "**Madison Properties**") and having the legal descriptions set out in **Appendix "A"** hereto.
4. The Madison Properties are the site of two fully constructed residential freehold townhomes (the "**Madison Dwellings**").
5. On October 29, 2023, Barakaa entered into an agreement of purchase and sale (the "**23 Madison Transaction**") with two individuals (the "**23 Madison Homebuyers**") in respect of 23 Madison.
6. Barakaa also entered into an agreement of purchase and sale in respect of 25 Madison but the prospective purchaser advised Barakaa that, given the delays (which have extended beyond the closing date for the transaction), the purchaser no longer wishes to close.

2. The Porte Properties

7. Lerrato owns the real properties municipally known as 369, 371, 373, 375 and 377 Porte Road, Ajax, Ontario and having the legal descriptions set out in **Appendix "B"** hereto (the "**Porte Properties**").
8. The Porte Properties are comprised of six parcels of land, five of which are the site of five fully constructed residential freehold townhomes (the "**Porte Dwellings**" and, together with the Madison Dwellings, the "**Dwellings**").

9. Pursuant to a development agreement between Lerrato and the Town of Ajax dated August 21, 2018 (the “**Porte Development Agreement**”) and registered on title to the remaining sixth parcel of land (PIN 26454-0558, the “**Sixth Parcel**”), the parties agreed to convey the Sixth Parcel to the Town of Ajax for use in constructing municipal waterworks.
10. The Porte Development Agreement also required Lerrato to post a performance guarantee to secure Lerrato’s performance of the Porte Development Agreement. Pursuant to this security requirement, Lerrato paid the Town of Ajax \$184,973 (the “**Porte Cash Collateral**”) which is now being held by the Town of Ajax.
11. In May 2024, Lerrato entered into five agreements of purchase and sale (the “**Porte Transactions**”) with a number of individuals (the “**Porte Homebuyers**”) in respect of the five Porte Dwellings.
12. In October 2024, Foremost discovered that \$206,648 of unpaid property taxes was owing in respect of the Porte Properties.

3. 214 and the Doric Property

13. 214 owns the real property municipally known as Units A-J, Ruback Lane, Ajax, Ontario and also known as 10 Doric Street Ajax, Ontario and having the legal description set out in **Appendix “C”** hereto (the “**Doric Property**” and, together with the two Madison Properties and the Porte Properties, the “**Secured Properties**”).

14. The Doric Property is the site of ten fully constructed residential freehold townhomes (the “**Doric Dwellings**” and, together with the Madison and Lerrato Dwellings, the “**Dwellings**”).
15. The construction of the Doric Dwellings is substantially completed, but the Doric Dwellings are not yet connected to the electricity grid and have not been severed into individual units.
16. 214 entered agreements of purchase and sale in respect of two of the units (the “**Contracted Doric Dwellings**”) comprising the Doric Property on December 17 and 19, 2021. The transactions in respect of the Contracted Doric Dwellings (the “**Doric Transactions**” and, together with the 23 Madison Transaction and the Porte Transactions, the “**Transactions**”) have not closed (and cannot close unless and until the electricity is connected and the units are severed).

C. The Loans

1. The Barakaa Loan

17. On or around June 24, 2022, the Lender completed a mortgage loan transaction (the “**Barakaa Loan**”) with Barakaa in accordance with a Letter of Commitment dated April 27, 2022 (the “**Barakaa Commitment Letter**”) issued by Foremost Financial Corporation, an affiliate of the Lender. The Commitment Letter was subsequently assigned to the Lender.
18. The Barakaa Loan contemplated a facility in the amount of \$4,133,000, all of which was ultimately advanced to Barakaa.

19. Under the Barakaa Commitment Letter, the annual interest rate for the Barakaa Loan was the greater of 7.50% and HSBC Bank Canada Prime + 4.30%.
20. The Barakaa Commitment Letter contemplated monthly interest-only payments and a repayment of the Loan on maturity, being October 1, 2023.
21. On September 28, 2023, Foremost Financial Corporation and Barakaa agreed to an amendment of the Barakaa Commitment Letter extending its term to April 1, 2024. Barakaa failed to pay the Barakaa Loan when it became due (or since). Barakaa partially repaid the Barakaa Loan following the maturity, as discussed in paragraph 33 below.

2. The Leratto Loan

22. On or around July 5, 2022, the Lender completed a mortgage loan transaction (the "**Leratto Loan**") with Leratto in accordance with a Letter of Commitment dated June 10, 2022 (the "**Leratto Commitment Letter**") issued by Foremost Financial Corporation. The Leratto Commitment Letter was subsequently assigned to the Lender.
23. The Leratto Loan contemplated a facility in the amount of \$3,155,000, all of which was ultimately advanced to Leratto.
24. Under the Leratto Commitment Letter, the annual interest rate for the Leratto Loan was the greater of 8.00% and HSBC Bank Canada Prime + 4.30%.

25. The Lerrato Commitment Letter contemplated monthly interest-only payments and a repayment of the Loan on maturity, being September 1, 2023. Leratto failed to pay the Leratto Loan when became due (or since).

D. The 214 Loan

26. On February 16, 2022, the Lender completed a mortgage loan transaction (the “**214 Loan**” and, together with the Leratto Loan and Barakaa Loan, the “**Loans**”) with 214 in accordance with a Letter of Commitment dated December 10, 2021 (the “**214 Commitment Letter**”) issued by Foremost Financial Corporation. The 214 Commitment Letter was subsequently assigned to the Lender.
27. The 214 Loan contemplated a facility in the amount of \$6,185,000, all of which was ultimately advanced to 214.
28. Under the 214 Commitment Letter, the annual interest rate for the 214 Loan was the greater of 7.25% and HSBC Bank Canada Prime + 4.80%.
29. The 214 Commitment Letter contemplated monthly interest-only payments and a repayment of the Loan on maturity, being May 1, 2023.
30. The 214 Loan was renewed on or around April 27, 2023 and the maturity date was extended to December 1, 2023. 214 failed to pay the 214 Loan when it became due (or since).

E. Security for the Loans

31. The Loans were secured by mortgages registered on title to the Secured Properties as follows:

- (a) June 24, 2022, for the Madison Properties;
- (b) July 5, 2022, for the Porte Properties; and
- (c) January 24, 2022, for the Doric Property

(collectively, the “**Foremost Mortgages**”).

- 32. With the exception of the mortgage in respect of the Doric Property, the Foremost Mortgages are subsequent to previously registered charges on title to the Secured Properties also in favour of the Lender, which prior charges secured past advances made by the Lender to the Borrowers.
- 33. The Lender’s mortgage on the Madison Properties was also registered on title to property municipally known as 19 Madison Avenue, Richmond Hill, Ontario. However, in or around January 2024, the Lender discharged that registration in connection with the closing of a sale transaction with a homebuyer, which resulted in payment to the Lender in respect of the Barakaa Loan in the amount of \$1,421,190.64.
- 34. The Foremost Mortgages incorporate standard charge terms 201035 by reference (the “**Charge Terms**”). The Charge Terms expressly provide that the Lender has the right to appoint a receiver in the event of a default by the Borrowers.
- 35. In addition to the Mortgages, the Borrowers granted to the Lender, among other things, General Security Agreements over the Borrowers’ personal property (the “**GSAs**”).

36. The GSAs expressly provided that the Lender can appoint a receiver in respect of the Borrowers if the respective Loans are in default.
37. The obligations of the Borrowers to the Lender are guaranteed by the Principals.
38. The obligations of Barakaa are also guaranteed by OSMI Homes Inc. ("**OSMI**"). OSMI is an Ontario corporation controlled by the Principals. OSMI is the parent corporation of the Borrowers.

F. Status of the Secured Properties

1. The Transactions

39. As noted above, the Borrowers have entered into contracts for the sale of 23 Madison, two of the Doric Dwellings and all five of the Porte Dwellings to third parties.
40. Following its appointment, the Receiver will evaluate Transactions to determine whether, inter alia, the net proceeds payable on closing each of the transactions are sufficient to support a recommendation by the Receiver that the Court approve the completion of the transactions in accordance with their terms or, alternatively, whether some or all of the agreements of purchase and sale should be disclaimed and some or all of the properties remarketed for sale.
41. As noted above, Barakaa also entered an agreement of purchase and sale with respect to 25 Madison. The closing date for the transaction has passed and the homebuyers advised Barakaa that they do not wish to close this transaction given the ongoing delay caused by the uncertainty relating to the disputed Joshi Mortgages (discussed and defined below). Barakaa has relisted 25 Madison for

sale. It is presently contemplated that, should the Receiver be appointed in respect of 25 Madison, the Receiver will take control of the listing for 25 Madison.

42. The Madison Project and the Porte Project are fully complete, and save for the mortgage dispute described below, the Transactions are ready to be closed should the Receiver determine that it is advisable to do so following its analysis referenced in paragraph 40 above.

2. Secured Charges and the Disputed Joshi Mortgages

43. The following parties have mortgages registered on title to both of the Madison Properties (in the order of their registration):

Instrument Number	Registration	Secured Party	Amount (\$)
YR2706667		The Lender	1,725,000
YR3443814		The Lender	4,133,000 (Note: this indebtedness was reduced as a result of the payment to the Lender described in paragraph 33).
YR3561972		1417199 Ontario Limited	750,000
YR3596443		BIP Management Corporation (" BIP ")	1,500,000
YR3610007		(Sanjive Joshi, Xpert Credit Control Solutions Inc. and	5,000,000

	Xpert law Inc. (collectively, the “ Joshi Parties ”)	
Total		13,108,000

44. The following parties have mortgages registered on title to the Porte Properties (in the order of their registration):

Instrument Number	Registration	Secured Party	Amount (\$)
DR1850098		The Lender	2,375,000
DR2150311		The Lender	3,155,000
DR2253705		BIP	700,000
DR2272795 (this mortgage is only registered on title to one of the five parcels (this being “ Unit 5 ”) that make up the Porte Dwellings: PIN 26454-0557 (LT)), and the Sixth Parcel;		The Joshi Parties	5,000,000
Total			11,230,000

45. The following parties have mortgages registered on title to the Doric Property (in the order of their registration):

Instrument Number	Registration	Secured Party	Amount (\$)
DR2092949		The Lender	6,185,000

DR2181520	Tripta Dhingra	1,500,000
DR2209605	BIP	2,000,000
DR2227427	BIP and Galidan Inc.	1,000,000
DR2255792	The Joshi Parties	5,000,000
Total		15,685,000

46. The Principals allege that the mortgages referenced above on the Madison Properties, the Porte Properties and the Doric Property, and held by the Joshi Parties (the “**Joshi Mortgages**”) are fraudulent.

47. The Principals and the Joshi Parties are engaged in ongoing litigation concerning the propriety and priority of the Joshi Mortgages, among other things, in an action bearing court file number CV-23-00710241-0000.

3. Default under the Loans

48. All of the Loans are in default. In particular:

(a) All of the Loans have matured and are due and payable immediately; and

(b) The registration of the Joshi Mortgages on certain of the Secured Properties without the consent of the Lender (which was not obtained) represents a further event of default under the terms of the Charge.

49. The Borrowers have failed to pay back the Loans despite the fact that all of the Loans are due and payable by their terms.

50. The outstanding indebtedness on the Barakaa Loan is approximately \$3.05 million.

51. The outstanding indebtedness on the Lerrato Loan is approximately \$3.47 million.
52. The outstanding indebtedness on the 214 Loan is approximately \$6.83 million.
53. In the case of Lerrato, the Lender's counsel has sent a notice of intent to enforce security under section 244 of the *Bankruptcy Insolvency Act* ("**NITES**") on May 17, 2024. In the case of Barakaa and 214, the Lender's counsel sent NITES on June 26, 2024. Barakaa and 214 waived the 10-day notice period under this notice and consented to early enforcement.

G. Need for a Receiver

54. The Lender is entitled to the appointment of a receiver over the Madison Properties, the Porte Properties, Porte Cash Collateral, and 214 as a result of the Borrowers' defaults under the Loans.
55. A receiver is urgently required to assist the Lender in realizing upon its security in the Secured Properties including by finalizing the sale and conveyance of the Porte Properties and 23 Madison to the existing homebuyers or, alternatively, to new purchasers following a re-marketing of one or more of those Secured Properties.
56. In addition, in respect of 214:
 - (a) a Receiver is required to ready the Doric Property for sale and determine the best course of action with regards to the Sold Doric Units;
 - (b) on September 18, 2023, the second mortgagee on the Doric Property issued a Notice of Intention to Enforce Security. The Applicant, as the first mortgagee on the Doric Property, should be permitted to direct the

enforcement process against 214 including the manner by which the Doric Property will be sold.

57. The registration of the subsequent mortgages on title to certain of the Secured Properties is impeding the ability of the Borrowers to complete sales of the Dwellings and thereby pay off the Loans.
58. In particular, as a result of the registration of subsequent mortgage on title to the Secured Properties:
 - (a) The value of the 23 Madison Transaction is insufficient to discharge the mortgages of BIP and the Joshi Parties registered on title to 23 Madison;
 - (b) The market value of 25 Madison (which Barakaa relisted and the Receiver will market for sale) is likely insufficient to discharge the mortgages of BIP and the Joshi Parties registered on title to 25 Madison; and
 - (c) The value of the Unit 5 Porte Transactions is insufficient to discharge the mortgage of the Joshi Parties registered on title.
 - (d) The value of the Sold Doric Dwellings is insufficient to discharge the mortgages of BIP, Tripta Dhingra, and the Joshi Parties registered on title.
59. Accordingly, so long as the above noted mortgages remain registered on title to the Madison Properties, Unit 5, and the Doric Property, it will not be possible for the Borrowers to transfer title to these properties free and clear of encumbrances, even with the Lender's support and cooperation.

60. The Borrowers' inability to close the Transactions is causing prejudice to the Lender, whose first-ranking security is not in dispute.
61. The Receiver will be able to convey title to the Secured Properties free and clear of the above noted encumbrances pursuant to approval and vesting orders. This will permit the Receiver market 25 Madison for sale and determine and implement a recommended course of action to maximize recoveries with respect to 23 Madison, the Porte Properties, the Doric Property, and the Sold Doric Dwellings.
62. The Receiver has consented to its appointment as receiver and manager, if so appointed.
63. Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.
64. Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.
65. Rules 14.05, 16.08, 41, and 3.02 of the *Rules of Civil Procedure*; and
66. Such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this Application:

- (a) The affidavit of Andrew Stern, to be affirmed;
- (b) The consent of the Receiver; and
- (c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

October 10, 2024

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Lawyers for the Applicant

APPENDIX "A"

PIN 03206-4245

Lot 741 and Part Lots 740 and 742, Plan 133, part 2, Plan 65R38228; Town of Richmond Hill

PIN 03206-4246

Lot 743 and Part Lot 742, Plan 133, Part 1, Plan 65R38228; Town of Richmond Hill

APPENDIX "B"

PIN 26454-0553

PT LT 6 CON 1, PT 1 40R30173, PICKERING; S/T EASEMENT AS IN P131742;
TOWN OF AJAX

PIN 26454-0554

PT LT 6 CON 1, PT 2 40R30173, PICKERING; S/T EASEMENT AS IN P131742;
TOWN OF AJAX

PIN 26454-0555

PT LT 6 CON 1 PT 3 40R30173, PICKERING; S/T EASEMENT AS IN P13742; TOWN
OF AJAX

PIN 26454-0556

PT LT 6 CON 1 PT 4 40R30173, PICKERING; S/T EASEMENT AS IN P13742; TOWN
OF AJAX

PIN 26454-0557

PT LT 6 CON 1 PT 5 40R30173, PICKERING; S/T EASEMENT AS IN P13742; TOWN
OF AJAX

PIN 26454-0558

PT LT 6 CON 1 PT 6 40R30173, PICKERING; S/T EASEMENT AS IN P13742; TOWN
OF AJAX

APPENDIX "C"

PIN 26452-0789

PART LOTS 108, 109, 110 AND 111 PLAN 377, PARTS 1 AND 2 PLAN 40R30571;
SUBJECT TO AN EASEMENT OVER PART LOT 108 PLAN 377 PART 2 PLAN
40R30571 IN FAVOUR OF THE CORPORATION OF THE TOWN OF AJAX AS IN
DR309514; SUBJECT TO AN EASEMENT IN FAVOUR OF ENBRIDGE GAS INC. AS
IN DR2203728; TOWN OF AJAX

FOREMOST MORTGAGE HOLDING
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-and- BARAKAA DEVELOPER INC. et al.
Respondent

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FRESH AS AMENDED NOTICE OF APPLICATION

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