

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

-and-

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

Respondents

NOTICE OF MOTION

KSV RESTRUCTURING INC. (“KSV”), in its capacity as the 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., will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), on **a date to be set by a Judge at a 9:30 scheduling appointment**, or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard orally via Zoom video conference.

THE MOTION IS FOR:

1. an order substantially in the form attached at Tab 3 of the Motion Record (the “**Disclaimer Order**”), among other things:
 - (a) validating and abridging the time for service of this Notice of Motion and the Motion Record and directing that any further service of the Notice of Motion and

Motion Record be dispensed with such that this Motion is properly returnable on the date scheduled for the hearing of this Motion;

- (b) approving and authorising the disclaimer by the Receiver of:
 - i. the Agreement(s) of Purchase and Sale dated August 12, 2022 and May 23, 2024 (together, the “**369 Porte APS**”) between Lerrato Inc. (“**Lerrato**”), as seller, and Muhammed Jehanzeb Agha (the “**369 Porte Purchaser**”), as Purchaser, pursuant to which the 369 Porte Purchaser had agreed to purchase the land and building known municipally as 369 Porte Road, Ajax, Ontario (“**369 Porte**”), and the chattels listed in the 369 Porte APS;
 - ii. the License to Occupy dated January 1, 2024 between Lerrato and the 369 Porte Purchaser in respect of in respect of the occupation of 369 Porte by the 369 Porte Purchaser pending closing of the sale of 369 Porte (the “**369 Porte License**”);
 - iii. the Agreement(s) of Purchase and Sale dated August 12, 2022 and May 14, 2024 (together the “**377 Porte APS**”) between Lerrato, as seller, and Rohitkumar M. Patel and Arvindaben R. Patel (the “**377 Porte Purchasers**”), as Purchasers, pursuant to which the 377 Porte Purchasers had agreed to purchase the land and building known municipally as 377 Porte Road, Ajax, Ontario (“**377 Porte**”), and the chattels listed in the 377 Porte APS;
 - iv. any and all occupancy licenses or agreements between Lerrato and the 377 Purchasers in respect of the occupation of 377 Porte by the 377 Porte Purchasers pending closing of the sale of 377 Porte;
- (c) ordering and declaring that the Receiver is entitled to vacant possession of each of 369 Porte and 377 Porte;
- (d) ordering the 369 Porte Purchaser and the 377 Porte Purchasers and any other occupants of 369 Porte or 377 Porte, to vacate 369 Porte and 377 Porte, as

applicable, by no later than 4:00p.m on the date that is 30 days from the issuance of the Disclaimer Order or the next business day if that day is a weekend or holiday (the “**Vacancy Date**”);

- (e) ordering that if the 369 Porte Purchaser, the 377 Porte Purchasers, or any other occupants of 369 Porte or 377 Porte refuse to vacate the applicable residence by or before 4:00pm on the Vacancy Date, then, at the request of the Receiver, the Ontario Provincial Police and/or the Sherriff of the Counties of Durham, are hereby authorized and directed to accompany and assist the Receiver in taking vacant possession of the applicable residence;
- (f) granting the Receiver leave to issue writs of possession for 369 Porte and/or 377 Porte directed to Sherriff of the Counties of Durham; and
- (g) such other and further relief as counsel may request and this Honourable Court may allow.

THE GROUNDS FOR THE MOTION ARE:

1. On October 21, 2024, upon an application by Foremost, a secured lender to the Debtors, KSV was appointed as Receiver pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) of certain real properties of Barakaa Developer Inc. (“**Barakaa**”) and Lerrato Inc. (“**Lerrato**”), and the property, assets and undertakings of 2145499 Ontario Inc. (“**214 Ontario**”, and together with Barakaa and Lerrato, the “**Debtors**”).
2. The Debtors are real property developers. The Receiver was appointed in respect of:
 - (a) two fully constructed homes in Richmond Hill, Ontario owned by Barakaa, being 25 Madison Avenue (“**25 Madison**”) and 23 Madison Avenue (“**23 Madison**”);

- (b) five fully constructed residential freehold townhouses and one parcel of residual real property (a municipal easement) in Ajax, Ontario owned by Lerrato (the “**Porte Properties**”); and
 - (c) a substantially completed 10-unit townhouse condominium project in Ajax, Ontario owned by 2145499 (the “**Doric Development**”),
- (collectively, the “**Receivership Assets**”).
3. The Receiver has completed sales of 371, 373 and 375 Porte Road (the “**Completed Porte Transactions**”) and 25 Madison. The Receiver attempted for several months to negotiate transactions with the purchase of 23 Madison, the 369 Porte Purchaser and the 377 Porte Purchaser similar to those negotiated with the purchaser/occupants in the Completed Porte Transactions. The Receiver’s negotiations with the 23 Madison Purchaser, the 369 Porte Purchaser and the 377 Porte Purchaser were unsuccessful. The 23 Madison APS is the subject matter of a separate motion.

369 Porte

4. Since the date of the Receiver’s appointment, the 369 Porte Purchaser has been in occupancy of 369 Porte pursuant to the 369 Porte License. 369 Porte is subject to an Agreement of Purchase and Sale for a purchase price of \$1.3 million plus certain prescribed additional amounts, which reflects that it was signed by the 369 Porte Purchaser on May 24, 2023, and reflects that it was executed on behalf of Lerrato on May 23, 2024 (the “**Second 369 Porte APS**”). The Second 369 Porte APS reflects a \$10,000 deposit. The Second 369 Porte APS appears to supersede and replace an Agreement of Purchase and Sale dated August 12, 2022 for a purchase price of \$1.3million reflecting two deposits in the amounts of \$50,000 each (the “**First 369 Porte APS**” and together with the Second 369 Porte APS, the “**369 Porte APSs**”).
5. Based on the Receiver’s discussions with Hitesh Jhaveri, the 369 Porte Purchaser made 17 separate deposit payments to Lerrato, totalling in aggregate \$150,000, none of which has been held in trust by Lerrato or Mr. Jhaveri. The Receiver is prepared to close with the

369 Purchaser based on the financial terms of the Second 369 Porte APS and a \$150,000 deposit credit, as amended to reflect the “as is where is” nature of a receivership approval and vesting order transaction.

6. Notwithstanding that the 369 Porte Purchaser has had several months since the Receiver’s appointment to arrange financing to complete the purchase of 369 Porte, the 369 Porte Purchaser has failed to meaningfully engage in discussions with the Receiver concerning his purchase of 369 Porte. Given the lack of engagement, including through the 369 Porte Purchaser’s lawyer’s law clerk, the 369 Porte Purchaser appears financially incapable of closing a transaction with the Receiver on the terms of the Second 369 Porte APS or at all.
7. To maximize the realizable value of 369 Porte for the benefit of stakeholders, the Receiver needs to obtain vacant possession of 369 Porte from the 369 Porte Purchaser, return the residence to saleable condition, and re-expose it to the market as soon as possible.

377 Porte

8. Since the date of the Receiver’s appointment, the 377 Porte Purchaser has been in occupancy of 377 Porte. 377 Porte is subject to an Agreement of Purchase and Sale dated May 14, 2024 for a purchase price of \$1.3 million plus certain prescribed additional amounts, which reflects a \$75,000 deposit amount (the “**377 Porte APS**”). The 377 Porte APS appears to supersede and replace an Agreement of Purchase and Sale dated August 12, 2022 for a purchase price of \$1.3 million, which reflected two deposits in the amounts of \$50,000 each.
9. Hitesh Jhaveri on behalf of Lerrato has advised the Receiver that Lerrato has received three purchase price deposits totalling \$150,000 from the 377 Purchasers, none of which has been held in trust by Lerrato or Mr. Jhaveri. The Receiver is prepared to close with the 377 Purchasers based financial terms of the 377 Porte APS and a \$150,000 deposit credit, as amended to reflect the “as is where is” nature of a receivership approval and vesting order transaction.

10. When contacted by the Receiver's counsel, the 377 Purchaser, through their counsel, have taken the position that they are entitled to purchase price deposit credits totalling \$679,949, as a result of 38 separate payments made to Lerrato (19), Mr. Jhaveri (5), Osmi Homes (10), 214 Ontario (2), and OM Sai Marble Inc. between April 30, 2019 and September 17, 2024. Mr. Jhaveri has advised the Receiver that only \$150,000 of the payments received by Lerrato are purchase price deposits for 369 Porte, others are on account of 377 Purchaser requested upgrades to the 369 Port construction, and other amounts were repaid.
11. Given the 5-year payment history starting well before the August 2022 APS, the large number of payment transactions, and the varied Jhaveri-related payment recipients, and certain disclosed communications between them, it appears that the relationship between the 377 Purchasers and Hitesh/Niketa Jhaveri is not a traditional arm's length vendor and purchaser relationship. The 369 Porte Purchasers have refused to close a transaction with the Receiver based on \$150,000 of deposits, and through their counsel have continue to demand a purchase price deposit credit of \$679,949 against a \$1,300,000 purchase price, which is unacceptable to the Receiver and the 377 Porte mortgagee stakeholders.
12. To maximize the realizable value of 377 Porte for the benefit of stakeholders, the Receiver needs to obtain vacant possession of 337 Porte from the 377 Porte Purchasers, return the residence to saleable condition and re-expose it to the market as soon as possible.
13. such further and other grounds as set out in the First Report; and
14. Rules 1.04, 1.05, 2.01, 2.03, 16.04 and 37 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended.

AND FURTHER TAKE NOTICE that the following materials will be filed in support of this motion, namely:

- (a) the Receiver's Fourth Report; and
- (b) such further and other material as counsel may advise and this Honourable Court may allow.

August 15, 2025

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