

Court File No. CV-23-00700694-00CL

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

B E T W E E N:

FIERA FP REAL ESTATE FINANCING FUND, L.P.

Applicant

– and –

**CHANCERY (OSHAWA) THE BARTLETT LIMITED PARTNERSHIP
and CHANCERY (OSHAWA) THE BARTLETT GP INC.**

Respondents

*IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION
101 OF THE COURTS OF JUSTICE ACT R.S.O. 1990, c. C.43, AS AMENDED*

FACTUM ON BEHALF OF THE INVESTORS

April 14, 2026

SUSKE CAPITAL INC.
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TO: SERVICE LIST

PART I – OVERVIEW

1. This factum is filed with this Honourable Court on behalf of Chancery (Oshawa) the Bartlett Limited Partnership and Chancery (Oshawa) the Bartlett GP Inc.'s (together, "Chancery") unsecured investors and stakeholders.
2. The receiver, KSV Restructuring Inc. (the "Receiver") seeks, among other things through this motion, an order approving the Supplement to the Fourth Report of the Receiver dated April 6, 2026, directing the Receiver to make a distribution to Fiera FP Real Estate Financing Fund LP ("Fiera") up to the amount of the Fiera Indebtedness (as defined in the Supplement to the Fourth Report), which is approximately \$62.7 million as of March 31, 2026.¹
3. This factum concerns the proper quantification of the Fiera Indebtedness in the context of a court-supervised receivership. Fiera has asserted entitlement to interest at a high-risk development rate throughout the entire lifetime of its loan to Chancery, including after the Bartlett achieved stabilization, after the loan matured, and during a period of oversight by a Court-ordered Receiver.
4. Fiera's position has inflated its secured claim to a size which will materially prejudice the Bartlett's unsecured investors and stakeholders.
5. Chancery respectfully requests that this Honourable Court limit Fiera's entitlement to interest to the contractual rate only up to stabilization and/or maturity of the Fiera loan, and thereafter a reasonable market-based rate or such other rate that this Honourable Court deems appropriate.

¹ [Supplement to the Fourth Report of KSV Restructuring Inc. as Receiver](#) dated April 6, 2026 at 3.0.1.

Part II – FACTS

6. On February 11, 2022 Chancery executed an Amended and Restated Commitment Letter with Fiera which amended and restated the terms of a Commitment Letter dated November 25, 2020, and amendments dated December 8, 2020, December 9, 2020 and January 10, 2022.²
7. The Fiera Loan was a “1st Position Stabilizing Loan”³ in the amount of \$53,250,000. The Fiera Loan was used for the stabilization of a 129-unit apartment building with approximately 11,000 square feet of retail space at 550 Bond Street West, Oshawa, Ontario (the “Bartlett”).⁴
8. The Fiera Loan was later extended by way of a Loan Extension Offer dated December 29, 2022, to March 31, 2023.⁵ The Fiera Loan matured on this date, and was not extended for an additional term by Chancery.
9. On July 20, 2023, KSV Restructuring Inc. (“KSV”) was appointed Receiver over the Bartlett.⁶
10. The Bartlett achieved stabilization in July/August 2023, with an occupancy rate of 97%.⁷ Stabilization is normally achieved at 93% occupancy for retirement homes, and 95% occupancy in apartment buildings.⁸

² Affidavit of Jessica Zhang dated April 14, 2026, at para 6.

³ Ibid at para 7.

⁴ Ibid.

⁵ Ibid, at para 9.

⁶ Ibid, at para 10.

⁷ Ibid, at para 11.

⁸ Ibid.

11. The Bartlett was sold by way of transaction approved by an Order of the Court issued on March 12, 2026, and which closed on April 1, 2026 with an effective date of March 31, 2026 (the “Transaction”).⁹
12. From the time the date that the Fiera Loan matured, being March 31, 2023, to the date of the Transaction, Fiera has charged an average interest rate of 10%.¹⁰ The evidence, being commitment letters and MD&As from several public companies shows that an interest rate of 5% would be more reasonable during this time period as the Bartlett was a stabilized asset.¹¹
13. The Receiver is seeking authorization from the Court to distribute to Fiera, subject to certain reserves, the cash available in the receivership estate, including the net proceeds from the Transaction, in the amount of \$57,298,856 after the payment of fees and disbursements of the Receiver and counsel for the Receiver.¹²
14. The difference between the interest claimed by Fiera, being \$15.8 million, and the interest that would have been earned at a more reasonable interest rate for a stabilized asset, being \$7.9 million, means the difference of leaving \$1.8 million for distribution to unsecured investors and stakeholders.¹³

Part III – ISSUES, LAW & AUTHORITIES

15. The issues on this motion are:
 - a) Does this Court have jurisdiction to determine the extent to which a contractual interest is recoverable in a receivership distribution?

⁹ [Supplement to the Fourth Report of KSV Restructuring Inc. as Receiver](#) at 2.0.2.

¹⁰ Affidavit of Jessica Zhang at para 8.

¹¹ Ibid, at para 14 a. – f.

¹² [Factum of the Receiver \(Distribution & Discharge Order\)](#) at para 5.

¹³ Affidavit of Jessica Zhang dated April 14, 2026, at para 13

- b) Can the Court disallow or limit interest that is not reflective of actual risk?
- c) Should Fiera's entitlement to post-stabilization and post-maturity interest at a pre-stabilization development rate be reduced in order to account for the rights and interests of all parties, particularly unsecured investors and stakeholders.
16. In a receivership, the Court has jurisdiction to determine what amounts are properly recoverable by a lender in a receivership process. In *Royal Bank of Canada v Soundair Corp.*, the Court of Appeal held that the Court must be satisfied that a receiver has acted properly, and that it should consider the interest of all parties, and that it should be satisfied that the process is fair and reasonable in the circumstances.¹⁴ The Court supervises the receivership process to ensure fairness and integrity of the process.¹⁵
17. Courts in Ontario have rejected attempts to recover interest that exceeds what has actually accrued. In *First National Financial GP Corporation v Golden Dragon Ho*, the Court of Appeal held that a mortgagee is not entitled to recover interest that had not accrued as of the date of repayment.¹⁶ While this case addressed accelerated interest, an argument can be made that pre-stabilization interest rates were not justified after the Bartlett reached stabilization as the risk profile materially changed and the continued application of such a premium resulted in an interest that is not properly attributable to the risk actually borne by Fiera.
18. In *Krayzel Corp v. Equitable Trust Co.* the Supreme Court of Canada noted that Section 8(1) of the *Interest Act*¹⁷ is meant to prevent charges that operate as penalties to borrowers

¹⁴ *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#), p.8-9

¹⁵ *Ibid.*

¹⁶ *First National Financial GP Corporation v Golden Dragon Ho 10 Inc.*, [2022 ONCA 621](#), at para 58

¹⁷ *Interest Act* R.S.C., 1985, c. I-15, section 8(1)

in default.¹⁸ An argument can be made that charging pre-stabilization interest rates on a stabilized asset after a loan had already matured operated as a penalty because neither Chancery nor the Receiver were in a position to refinance the Fiera Loan.

Part IV – ORDER REQUESTED

19. For the reasons stated herein, Chancery respectfully requests an Order:

- a) Declaring that Fiera is not entitled to charge interest at the pre-stabilization rate following stabilization and maturity of the Fiera Loan;
- b) Fixing the applicable post-stabilization interest rate at 5% or a reasonable market rate as the Court deems fit;
- c) Directing distribution of the Transaction proceeds accordingly; and
- d) Such further relief as this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of April, 2026.

Pamela Heard

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¹⁸ *Krayzel Corp v. Equitable Trust Co.* [2016 SCC 18 \(CanLII\)](#) at para 24.

Schedule “A”

LIST OF AUTHORITIES

First National Financial GP Corporation v Golden Dragon Ho, [2022 ONCA 621 \(CanLII\)](#)

Krayzel Corp v. Equitable Trust Co, [2016 SCC 18 \(CanLII\)](#)

Royal Bank of Canada v. Soundair Corp., [1991 CanLII 2727](#)

Schedule “B”

TEXTS OF STATUTES, REGULATIONS & BY-LAWS

Interest Act, R.S.C., 1985, c. I-15

No fine, etc., allowed on payments in arrears

8 (1) No fine, penalty or rate of interest shall be stipulated for, taken, reserved or exacted on any arrears of principal or interest secured by mortgage on real property or hypothec on immovables that has the effect of increasing the charge on the arrears beyond the rate of interest payable on principal money not in arrears.

FIERA FP REAL ESTATE FINANCING FUND, L.P.

Applicant

-and-

**CHANCERY (OSHAWA) THE BARTLETT LIMITE
PARTNERSHIP**

Respondents

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PROCEEDING COMMENCED AT
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