

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

B E T W E E N :

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

– and –

2521311 ONTARIO INC. o.a. TOWNS OF THORNBURY.

Respondent

AIDE MEMOIRE OF THE RESPONDENT
(9:30 scheduling hearing - Dec. 15, 2023)

1. The Respondent submits that this matter should be scheduled for hearing in the ordinary course, and that the hearing is going to take at least two hours, rather than the 45 minutes projected by the Applicant. Further, there is no legal urgency to this matter having regard to the facts.

2. The Applicant relies on its Application Record served two days ago for facts in its Aide Memoire. Given the timing of the service of those materials, it may be problematic to rely on that evidence when the Respondent has not had any meaningful chance to respond. That said, the following points can be drawn from the Applicant's own materials:

- a) the concerns that the Applicant were aware of in June of 2022 and following (re: water penetration, liens, stop work orders) were all known to the Applicant when it entered into the most recent loan extension agreement with the Respondent on March 30, 2023 to set a new maturity date of October 1, 2023;¹
- b) of the "several" liens registered against the property, the two liens registered in April of

¹ Affidavit of Paul Rayment sworn Dec. 12, 2023 (the "Rayment Affidavit"), paras. 27 and 30-36.

2023 have been deleted, with only one new lien having been registered on December 6, 2023;²

- c) notwithstanding that the Applicant's loan was on an active construction project and that the Applicant believed that there are serious and (in its view, urgent) issues to address, the Applicant took possession of the premises in question as mortgagee on November 30, 2023;³ and
 - d) for something that is now described by the Applicant as urgent, its materials were served almost two weeks later on Dec. 12, 2023.
3. The Respondent's materials will (when served) address the following further issues:
- a) the stop work and other orders from the municipality have been addressed (or were being addressed before the Applicant locked the Respondent out) to the satisfaction of the local building officials; and
 - b) notwithstanding the titular maturity of the Applicant's mortgage on Oct. 1, 2023 and the service of its demand letter on Nov. 6, 2023, the Applicant was actively engaged in discussions with the Respondent about a further extension of the loan and further advances right up until the Applicant seems to have changed its mind and locked the Respondent out on November 30, 2023.
4. The Respondent should be given proper time to respond to evidence that is incorrect or selective. The Respondent also fairly needs time to seek alternate lenders now that the Applicant has decided (two months after maturity of its mortgage) that it will not deal with the Respondent further.
5. There is no urgency to this matter, because the Applicant has taken the remarkable step of going

² Rayment Affidavit paras, 38-40 and 60.

³ See notice attached at **Tab A**. The Rayment Affidavit says this took place on Dec. 3 at para. 65.

into possession as mortgagee. Lenders typically do not do this because of the liability and responsibility this puts on them for ensuring the safety of the site and undertaking any protective work that may be necessary. No explanation is offered for why this unusual step was taken.

6. Having done so, however, the Applicant is effectively seeking an urgent hearing for the appointment of a receiver to save it from the obligations and liabilities that it has already acquired by virtue of going into possession.

7. This matter should be scheduled for a hearing of at least two hours no sooner than the week of Jan. 22, 2024 in order to allow for the preparation of the Respondent's materials and the conduct of cross-examinations if necessary.

All of which is respectfully submitted.

RECONSTRUCT LLP
200 Bay Street, Suite 2305
Toronto, ON M5J 2J3

R. Brendan Bissell
LSO No. 40354V
bbissell@reconllp.com
Tel: 416.613.0066

Lawyers for the Respondent

Tab A

NOTICE TO OCCUPANTS AND MORTGAGORS

From: Foremost Mortgage Holding Corporation and Foremost Financial Corporation

To: 2521311 Ontario Inc. and Nick Sampogna

Take notice that you are in default under the covenant to pay the mortgage in respect to your property located at: Lot #10 Louisa Street, Thornbury, Ontario

Take notice that as a result of the breach of covenant, the mortgagee has taken quiet possession of the property.

The mortgagee hereby gives you notice that you are not permitted to enter onto the property without the consent of the mortgagee and if you do so you may be charged with trespass.

If you have any personal property in the property, you may contact the mortgagee at

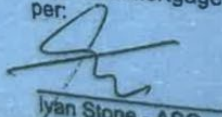
address: 26 Lesmill Road, Suite 1A, Toronto, Ontario M3B 2T5

tel: 416 488 5300 ext 240 (Max Miller)

to arrange for the removal of same.

Dated at Toronto, this 30 day of November, 2023

Foremost Mortgage Holding Corporation and Foremost Financial Corporation
per:



Ivan Stone - ASO
I have authority to bind the corporation

- and -

FOREMOST MORTGAGE HOLDING CORPORATION
Applicant

2521311 ONTARIO INC. o.a. TOWNS OF THORNBURY
Respondent

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

Proceeding commenced at BRAMPTON

AIDE MEMOIRE OF THE RESPONDENT
(9:30 scheduling hearing - Dec. 15, 2023)

RECONSTRUCT LLP
200 Bay Street, Suite 2305
Toronto, ON M5J 2J3

R. Brendan Bissell
LSO No. 40354V
bbissell@reconllp.com
Tel: 416.613.0066

Lawyers for the Respondent