



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

**BETWEEN:**

**FOREMOST MORTGAGE HOLDING CORPORATION**

Applicant

- and -

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

Respondent

**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**

**NOTICE OF APPLICATION**

TO THE RESPONDENT:

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: **2521311 ONTARIO INC. o.a. TOWNS OF THORNbury**  
201 Joicey Boulevard, Unit 3  
Toronto, ON M5M 2V4

AND TO: **BERKLEY INSURANCE COMPANY**  
145 King St W #1000  
Toronto, ON M5H 1J8

AND TO: **JOSE CRUZ**  
359 Stephanie Boulevard  
Woodbridge, ON L4L 1A6

AND TO: **GAVIN H. LEITCH**  
Scheifele, Erskine & Renken LLP  
39 Nelson St. W., P.O. Box 3395  
Meaford, ON N4L 1A5  
[gleitch@georgianbaylawyers.com](mailto:gleitch@georgianbaylawyers.com)

Lawyers for certain Pre-Sale Purchasers

AND TO: **NICKLAUS SAMPOGNA a.k.a. NICOLANGELO SAMPOGNA**  
201 Joicey Boulevard, Unit 3  
Toronto, ON M5M 2V4

## APPLICATION

The Applicant makes an application for an order:

- a) if necessary, abridging the time for and validating the manner of service of the Notice of Application and Application Record in respect of this application and dispensing with further service thereof;
- b) appointing KSV Restructuring Inc. as receiver and manager (the “**Receiver**”) of the Borrower (as defined below) and approving the Receiver’s proposed sale process in respect of the Property (as defined below);
- c) awarding costs of this application on a full indemnity basis; and
- d) awarding such further and other relief which this Honourable Court deems appropriate and just.

### THE GROUNDS FOR THE APPLICATION ARE:

#### **A. *The parties***

1. The applicant Foremost Mortgage Holding Corporation (the “**Lender**”) is an Ontario corporation in the business of providing mortgage financing and other loans.
2. The respondent 2521311 Ontario Inc. o.a. Towns of Thornbury (the “**Borrower**”) is an Ontario corporation in the business of real estate development.
3. Nicklaus Sampogna a.k.a Nicolangelo Sampogna (the “**Guarantor**”) is an individual resident in Ontario and is an officer, director, and shareholder of the Borrower.

**B. The Property**

4. The Borrower owns the property located at Lot #10 Louisa Street, Thornbury, Ontario, having the legal description PT PARKLT 10SW/S Louisa St PL Thornbury PT 1 Plan 16R11036; The Blue Mountains (the “**Property**”).
5. The Property is the site of a residential townhome development known as Towns of Thornbury (the “**Project**”). The Project is currently under construction.
6. A number of residential units in the Project have been pre-sold to third-party purchasers and the Borrower has collected deposits in respect of those pre-sales.

**C. The Loan**

7. On or around September 17, 2020, the Lender completed a mortgage loan transaction (the “**Loan**”) with the Borrower in accordance with a Letter of Commitment dated July 13, 2020 issued by Foremost Financial Corporation (an affiliate of the Lender) on behalf of the Lender (the “**Commitment Letter**”).
8. The Loan initially contemplated a facility in the amount of \$8,205,000, all of which was advanced.
9. The interest rate on the Loan per annum is the greater of 8.75% or HSBC Bank Canada’s prime rate + 4.75%.
10. The Commitment Letter contemplated monthly interest-only payments and a repayment of the Loan on maturity, being 18 months from the date of the initial advance. The term of the Loan was subsequently extended, as detailed below.
11. The Borrower’s obligations under the Loan are guaranteed by the Guarantor.

12. The Commitment Letter was amended on September 15, 2021 to increase the amount of the Loan and to amend certain other terms.

**D. Security for the Loan**

13. The Loan was secured by a first mortgage (the "**Mortgage**") registered on September 18, 2020 against the Property as Instrument No. GY192228 (the "**Charge**") in favour of the Lender.
14. The Charge incorporated by reference Standard Charge Terms 201035 (the "**Standard Charge Terms**"). The Standard Charge Terms expressly provide (at section 36) that the Lender has the right to appoint a receiver in the event of a default.
15. There is a second mortgage registered on the Property in favour of Berkley Insurance Company and a third mortgage in favour of Jose Cruz.
16. Other security granted by the Borrower to the Lender includes the guarantee described above and a General Security Agreement by which the Borrower granted security to the Lender over its personal property (the "**GSA**").
17. The Lender registered a financing statement in respect of the GSA under the *Personal Property Security Act* (Ontario) on or around September 18, 2020.
18. Like the Standard Charge Terms, the GSA expressly provides that the Lender can appoint a receiver if the Loan is in default.

**E. Renewals of the maturity date**

19. The Loan was initially set to mature on April 1, 2022. At that time, the Borrower was unable to repay the amounts owing under the Loan. As such, the Lender, Borrower, and Guarantor entered into a renewal agreement dated April 21, 2022 (the “**First Renewal Agreement**”) by which, among other things, the Lender agreed to extend the maturity date of the Loan to April 1, 2023.
20. The Borrower was again unable to repay the Loan by the extended maturity date of April 1, 2023.
21. The Lender, Borrower, and Guarantor entered into another renewal agreement on or around March 30, 2023 (the “**Second Renewal Agreement**”) by which, among other things, the Lender agreed to extend the maturity date of the Loan to October 1, 2023.

**F. Default under the Second Renewal Agreement**

22. The Borrower failed to repay the Loan by October 1, 2023 or since.
23. This failure constitutes an event of default under, among other things, the Second Renewal Agreement, the Commitment Letter, the Mortgage, and the GSA.
24. As a result, on November 6, 2023 the Lender delivered a demand letter demanding payment of the Loan and a Notice of Intention to Enforce Security under section 244 of the *Bankruptcy and Insolvency Act*.
25. The Borrower failed to repay all amounts in a timely manner upon receiving the Lender’s demand. This failure constituted a further event of default.

26. As a result of the foregoing, all amounts owing to the Lender (the “**Indebtedness**”) are now due and owing pursuant to the Loan, the Commitment Letter, and the Second Renewal Agreement.

27. Notwithstanding demands to date, the Indebtedness has not been repaid and the events of default have not been cured.

**G. Need for a receiver and sale process**

28. The Borrower has failed to take commercially reasonable steps to complete construction of the Project and the Lender has lost confidence in the Borrower’s ability to successfully do so.

29. The Project’s construction has halted and a number of tradespeople had recently registered lien claims in respect of unpaid services. The Project suffers from various construction deficiencies and is in urgent need of winterization measures.

30. The Lender engaged a security company to patrol the Property on or around December 3, 2023.

31. A receiver is urgently required in order to complete the winterization and other measures necessary to stabilize the site.

32. The Lender is entitled under the terms of the Standard Charge Terms and the GSA to appoint a Receiver in the event the Loan is in default.

33. The appointment of a Receiver and the approval of a sale process in respect of the Property is necessary, just and convenient.

34. KSV Restructuring Inc. has consented to its appointment as Receiver, if so appointed.
35. Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.
36. Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.
37. Rules 14.05, 16.08, 41, and 3.02 of the *Rules of Civil Procedure*; and
38. 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 Ivan Stone, to be affirmed, and the exhibits thereto;
- (b) The pre-appointment report of the proposed receiver, KSV Restructuring Inc.;
- (c) The consent of KSV Restructuring Inc.; and
- (d) Such further and other evidence as counsel may advise and this Honourable Court may permit.



December 7, 2023

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Lawyers for the Applicant

**FOREMOST MORTGAGE HOLDING  
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-and- 2521311 ONTARIO INC. o.a. TOWNS OF THORNBURY  
Respondent

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**NOTICE OF APPLICATION**

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