

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

THE HONOURABLE

)

THURSDAY, THE 2ND

JUSTICE PENNY

)

DAY OF MAY, 2024

)

B E T W E E N :

FORGESTONE MORTGAGE FUND LP

Applicant

- AND -

**72 JAMES INVESTMENTS INC., FORGE & FOSTER HOLDINGS INC. and CLIFTON
BLAKE PARTNERS LP**

Respondents

**APPLICATION UNDER Section 243 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**

ANCILLARY RELIEF AND DISCHARGE ORDER

THIS MOTION, made by KSV Restructuring Inc. (“**KSV**”) in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of (i) all of the assets, undertakings and properties of 72 James Investments Inc. the (“**Debtor**”), acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “**Property**”), and, (ii) over the right, title and interest in the Real Property (as defined below) of Forge & Foster Holdings Inc. and Clifton Blake Partners LP (together, the “**Beneficial Owners**”) including all proceeds thereof, for an order, among other things: (i) approving the Second Report

of the Receiver dated April 24 , 2024 (the “**Second Report**”) and the Receiver’s conduct and activities described therein; (ii) approving the fees and disbursements of the Receiver, as set out in the affidavit of Robert Kofman and of the Receiver’s counsel, Paliare Roland Rosenberg Rothstein LLP (“Paliare Roland”), as set out in the Affidavit of Beatrice Loschiavo; (iii) authorizing and directing the Receiver to make certain payments and distributions and establish, hold and maintain certain reserves as recommended and described in the Second Report, and (iv) discharging the Receiver was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Second Report and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Beatrice Loschiavo affirmed April 19, 2024, filed,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Agreement of Purchase and Sale between the Receiver and 1000870452 Ontario Inc. dated April 18, 2024, attached at Appendix “E” to the Second Report (the “**APS**”), as amended by an Assignment and Assumption of Agreement dated April 24, 2024.

APPROVAL OF RECEIVER'S REPORTS, FEES AND COSTS

3. **THIS COURT ORDERS** that the Second Report, and the activities of the Receiver described therein are hereby approved provided that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.
4. **THIS COURT ORDERS that** Confidential Appendices 1, 2 and 3 to the Second Report be and are hereby sealed until the closing of the sale of the Purchased Assets (as defined in the Second Report).
5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver from the commencement of the receivership to and including April 19, 2024, as set out in the Affidavit of Robert Kofman attached at Appendix "A" to the Second Report, be and are hereby approved.
6. **THIS COURT ORDERS** that the fees and disbursements of Paliare Roland from the commencement of the receivership proceeding to and including April 19, 2024, as set out in the Affidavit of Beatrice Loschiavo attached at Appendix "B" to the Second Report, be and are hereby approved.

INITIAL DISTRIBUTION

7. **THIS COURT ORDERS** that the Receiver is authorized and directed to distribute the proceeds of the APS to Forgestone Mortgage Fund LP (the "**Lender**"), up to the amount of indebtedness owing by the Debtor to the Lender, as partial or full payment of the balance owing by the Debtor to the Lender.

RECEIVER'S DISCHARGE

8. **THIS COURT ORDERS** that upon the Receiver filing with this Court of a certificate substantially in the form appended hereto as Schedule "A" certifying that the Receiver has completed all outstanding receivership matters in connection with its appointment as Receiver in this proceeding, the Receiver shall be discharged as Receiver, provided however that notwithstanding its discharge as Receiver herein, KSV shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all authorizations, approvals, protections and stays of proceedings in favour of KSV in its capacity as Receiver including in respect of any ancillary matters or incidental duties related to the receivership which may arise following its discharge, as contemplated by paragraph 10 below.

9. **THIS COURT FURTHER ORDERS AND DECLARES** that KSV is hereby forever released and discharged from any liability that KSV now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KSV while acting in its capacity as Receiver including for certainty, in carrying out any outstanding receivership matters, save and except for any gross negligence or willful misconduct on the Receiver's part. Without limiting the generality of the foregoing, KSV is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the receivership, save and except for any gross negligence or willful misconduct on the Receiver's part.

10. **THIS COURT FURTHER ORDERS AND DECLARES** that notwithstanding its discharge herein, KSV may perform such incidental duties as may be required by it as

Receiver to complete its obligations pursuant to its appointment as Receiver, and KSV shall be forever released and discharged from any and all liability related to such incidental duties, save and except for any gross negligence or willful misconduct on the Receiver's part.

GENERAL

11. **THIS COURT ORDERS** that notwithstanding anything else contained in this Order, each of the payments and distributions provided for in this Order shall be made free and clear of all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Black dated February 26, 2024; and (ii) all charges security interests, liens, trusts, or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property or real property registry system.
12. **THIS COURT ORDERS** that the Receiver or any other person facilitating payments and distributions pursuant to this Order shall be entitled to deduct and withhold from any such payment or distribution such amounts as may be required to be deducted or withheld under any applicable law and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other

person entitled thereto, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order.

13. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such application; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

any payment or distributions made pursuant to this Order are final and irreversible and shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

14. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal and regulatory or administrative bodies, having jurisdiction in Canada or in any other

foreign jurisdiction, to give effect to this Order and to assist the Receiver and its respective agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its respective agents in carrying out the terms of this Order.

16. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.



A handwritten signature in blue ink, appearing to read "Perry J.", is written above a horizontal line.

Schedule "A"

Court File No. CV-24-00714866-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

FORGESTONE MORTGAGE FUND LP

Applicant

- AND -

**72 JAMES INVESTMENTS INC., FORGE & FOSTER HOLDINGS INC. and CLIFTON
BLAKE PARTNERS LP**

Respondents

**APPLICATION UNDER Section 243 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**

RECEIVER'S DISCHARGE CERTIFICATE

A. By Order of the Ontario Superior Court of Justice (Commercial List) dated February 26, 2024 (the "**Receivership Order**"), KSV Restructuring Inc. was appointed as receiver and manager (in such capacity, the "**Receiver**"), without security, of (i) all of the assets, undertakings and properties of 72 James Investments Inc. (the "**Debtor**"), acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**"), and, (ii) over the right, title and interest in the Real Property (as defined in the Receivership Order) of Forge & Foster Holdings Inc. and Clifton Blake Partners LP (together, the "**Beneficial Owners**") including all proceeds thereof.

B. Pursuant to an Order of the Court dated May 2, 2024 (the "**Ancillary Relief and Discharge Order**"), the Court provided for the discharge of the Receiver upon the Receiver filing this certificate with the Court certifying that the Receiver has to its knowledge completed all outstanding receivership matters in connection with its appointment as Receiver in this proceeding (the "**Outstanding Matters**").

THE RECEIVER CERTIFIES it has to its knowledge completed the Outstanding Matters.

**KSV Restructuring Inc., in its capacity as
receiver and manager of the Debtor and not
in its personal capacity**

Per: _____

Name: Robert Kofman

Title: Managing Director

FORGESTONE MORTGAGE FUND LP

-and-

72 JAMES INVESTMENTS INC. et al.

Applicant

Respondents

Court File No. CV-24-00714866-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ANCILLARY RELIEF AND DISCHARGE ORDER

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