

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**

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of: (i) the assets, undertakings and properties of 72 James Investments Inc. (the “**Debtor**”) including the real property municipally known as 72-76 James Street North, Hamilton, Ontario (the “**Real Property**”); and (ii) the right, title and interest in the Real Property of the beneficial owners of the Real Property, Clifton Blake Partners LP and Forge & Foster Holdings Inc., for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of

purchase and sale between the Receiver, as vendor, and 1000870452 Ontario Inc. (the “**Purchaser**”), as purchaser, dated April 18, 2024 as amended by an Assignment and Assumption of Agreement dated April 24, 2024 (the “**Sale Agreement**”) and vesting in the Purchaser the Purchased Assets (as defined in the Sale Agreement), was heard this day.

ON READING the Receiver’s Report to the Court 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 Alexciya Blair affirmed April 24, 2024, filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the “**Receiver's Certificate**”), all of the Purchased Assets described in the Sale Agreement, including, without limitation, all of the Debtor’s right, title and interest in and to the real property listed on **Schedule “B”** hereto (the “**Real Property**”), shall vest absolutely in the Purchaser, free and clear of and from any and 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 (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of The Honourable Justice Black made on February 26, 2024; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject Real Property identified in **Schedule "B"** hereto in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule "C"** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if

the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **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 applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order 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 any 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 it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order.

All courts, tribunals, 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 agents in carrying out the terms of this Order.

8. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry and filing.



A handwritten signature in blue ink, appearing to read "Perry J.", is written over a horizontal line. The signature is stylized and cursive.

Schedule “A” (AVO) – Form of Receiver’s Certificate

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

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RECEIVER’S CERTIFICATE

WHEREAS pursuant to an Order of The Honourable Justice Black of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on February 26, 2024, KSV Restructuring Inc. was appointed as receiver and manager (in such capacity, the “**Receiver**”), without security, of: (i) the assets, undertakings and properties of 72 James Investments Inc. (the “**Debtor**”) including the real property municipally known as 72-76 James Street North, Hamilton, Ontario (the “**Real Property**”); and (ii) the right, title and interest in the Real Property of the beneficial owners of the Real Property, Clifton Blake Partners LP and Forge & Foster Holdings Inc.;

AND WHEREAS pursuant to an Order of the Court dated May 2, 2024, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and 1000870452 Ontario Inc. (the “**Purchaser**”), as purchaser, dated April 18, 2024 as amended by an Assignment and

Assumption of Agreement dated April 23, 2024 (the “**Sale Agreement**”), and provided for the vesting in the Purchaser of the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

AND WHEREAS unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

NOW THEREFORE THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV RESTRUCTURING INC., solely in its capacity as the Court-appointed receiver and manager of the Debtor, and not in its personal capacity or in any other capacity

Per:

Name: Bobby Kofman

Title: President

Schedule “B” (AVO) – Real Property

Legal Description: Part Lot 56, Nathaniel Hughson Survey (Unregistered); East Side of James Street between Rebecca Street and Gore Street as in CD394562; City of Hamilton, and being all of PIN 17165-0018 (LT) in LRO #62

Schedule “C” (AVO) – Instruments to Be Deleted from Title

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
WE1576052	January 18, 2022	Charge	\$5,675,000	72 James Investments Inc.	Forgestone Mortgage Fund GP Inc. Forgestone Mortgage Fund LP
WE1576053	January 18, 2022	No Assn Rent Gen		72 James Investments Inc.	Forgestone Mortgage Fund GP Inc. Forgestone Mortgage Fund LP
WE1724902	February 27, 2024	APL Court Order		Ontario Superior Court of Justice – Commercial List	KSV Restructuring Inc.

Schedule “D” (AVO) – Permitted Encumbrances

General Encumbrances

1. Leases.
2. Registered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, including (without limitation) subdivision agreements, development agreements and engineering, grading or landscaping agreements.
3. Registered easements for the supply of utilities or telephone services to the Property and for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services and all licences, easements, rights-of-way, rights in the nature of easements and agreements with respect thereto not registered on title to the properties, including without limitation, agreements, easements, licences, rights-of-way and interests in the nature of easements for sidewalks, public ways, sewers, drains, utilities, gas, steam and water mains or electric light and power, or telephone telegraphic conduits, poles, wires and cables.
4. Any registered easements or rights of way in favour of any Governmental Authority, any private or public utility, any railway company or any adjoining owner.
5. Any other easements and servitudes (collectively, the “**Easements**”), including those registered on title, provided that:
 - (a) the Easements do not materially and adversely impair the use of the Property for the purpose for which it is presently held or used; or
 - (b) the Receiver has made satisfactory arrangements prior to Closing for relocation so that the Easements will not materially and adversely impair the use of the Property for the purpose for which it is presently held or used.
7. Minor encroachments by the Property over neighbouring lands which do not materially and adversely impair the use of the Property.
8. Title defects or irregularities which are of a minor nature and either individually or in aggregate do not and will not materially impair the value, use or marketability of the Property.
9. Any zoning by-law violations.
10. Any rights of expropriation, access or user or any other similar rights conferred or reserved by or in any statutes of Canada or the Province of Ontario.

11. The reservations, limitations, provisos, conditions, restrictions and exceptions (including, without limitation, royalties, reservation of mines, mineral rights, access to navigable waters and similar rights) expressed in the letters patent or grant from the Crown, as varied by statute, of the lands of which the properties form a part and any statutory limitations, exceptions, reservations and qualifications.
12. With respect to instruments registered via Teraview Electronic Registration System (“TER System”), any error or omission in the receipt, transmission or recording of such instrument, or of any of the particulars contained in such instruments, subsequent to creation and electronic delivery of same to Teranet Land Information Services Inc. via the TER System.
13. Zoning, land use and building restrictions, bylaws, regulations and ordinances of federal, provincial, municipal or other Governmental Entity or regulatory authorities, including, without limitation, municipal by-laws and regulations and airport zoning regulations.

Applicable to Ontario Land Titles Absolute Properties

1. Those additional matters constituting statutory exceptions or reservations pursuant to the Land Titles Act (Ontario) (save and except subsection 44 (1) paragraph 11 (Planning Act)).

Specific Encumbrances

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To

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

APPROVAL AND VESTING ORDER

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1

Jeffrey Larry (LSO #44608D)
Tel: 416.646.4330
jeff.larry@paliareroland.com

Daniel Rosenbluth (LSO #71044U)
Tel: 416.646.6307
daniel.rosenbluth@paliareroland.com

Lawyers for the Receiver

