



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00724076-00CL

DATE: February 3, 2025

NO. ON LIST: 2

TITLE OF PROCEEDING: FOREMOST MORTGAGE HOLDING
CORPORATION v. BARAKAA DEVELOPER INC. et al
BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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For Defendant, Respondent, Responding Party:

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ENDORSEMENT OF JUSTICE KIMMEL :

- [1] KSV Restructuring Inc. ("KSV") was appointed as court-appointed receiver and manager (the "Receiver") of certain real properties of Barakaa Developer Inc. ("Barakaa") and Lerrato Inc. ("Lerrato") and the property, assets and undertakings of 2145499 Ontario Inc. ("2145499" and together with Barakaa and Lerrato, the "Debtors") by order of this court dated October 21, 2024 (the "Receivership Order").
- [2] The Receiver seeks an order increasing the Receiver's borrowing authority and Receiver's Borrowings Charge, as defined in paragraph 20 of the Receivership Order from \$250,000 to \$1,200,000 and declaring that the advance made by Foremost Mortgage Holding Corporation ("Foremost") to the Receiver on December 13, 2024 to assist in the funding of the within proceedings constitutes an advance secured by the Receiver's Borrowing Charge.
- [3] The Receiver's First Report dated January 20, 2025 (the "Receiver's First Report") explains that the Receivership Assets are complicated by a number of factors which is making realization difficult and time-consuming. The Receiver's inability to complete the pending sales of some of the residential properties that comprise some of the Receivership Assets has resulted in an unexpected lack of liquidity for the Receiver.
- [4] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Receiver's First Report.
- [5] The Receiver's First Report also details past and some anticipated expenses, which are expected to consume most if not all of the Advances that have been made by Foremost to date. On November 12, 2024, Foremost funded \$30,000 to cover receivership costs that required immediate funding. On December 13, 2024, Foremost funded an additional \$801,000 (the "Second Advance") to prevent further delays advancing the work to be performed by Elexicon, including \$433,000 for an electrical transformer, and the balance for other critical expenditures, such as utility and consulting costs associated with the Doric condominium development.
- [6] The Receiver provided an oral update to the statement of receipts and disbursements as at January 19, 2025 appended to the Receiver's First Report. The Receiver confirms that of the total \$831,000 that has been advanced to date by Foremost, \$555,000 is still available but approximately \$452,000 is earmarked for expenses anticipated in the immediate short term (including the Elexicon electrical transformer). That would leave, out of the total Advances to date, only approximately \$100,000 to address other ongoing expenses associated with the different development projects of each of the Debtors.
- [7] The Receiver advised that it is a long way from completing the various development projects and selling the residential properties (each project is at different stages and has

different requirements). The Receiver anticipates that further additional funding will be required before any liquidity is generated from sales. That is the justification for seeking approval now for a Borrowings Charge of \$1.2 million. Even this amount is not expected to cover all anticipated expenses in the receivership but will avoid the Receiver having to come back for approval for a further increase to the Borrowings Charge in the immediate short term.

- [8] The service list was served with this motion and the Receiver's First Report, which also provides a general update of what has been happening in the Receivership and explains why things have been taking longer than originally expected. No one appeared to object to the order sought by the Receiver today, or raised any concerns in advance or at that hearing.
- [9] Counsel for the respondents asked to put on record in this endorsement that they are reserving their rights with respect to the allocation of the fees of the Receiver and its counsel over the various properties that are the subject of this Receivership. They acknowledge that this is not an issue that the court is being asked to determine at this time. The Receiver acknowledges that it will have to come back for final approval of all fees, disbursements and allocations.
- [10] On the basis of the Receiver's First Report and oral updates, I am satisfied that the request for an increase in the Receiver's borrowing authority and the Borrowings Charge is appropriate and that the Second Advance from Foremost should be retroactively included and secured by that charge. I have signed the proposed form of Order today.



KIMMEL J.