

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE HONOURABLE**

)

**MONDAY, THE 24<sup>TH</sup>**

**JUSTICE STEELE**

)

**DAY OF JUNE, 2024**

)

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES  
REGULATORY AUTHORITY OF ONTARIO**

Applicant

- and -

**FIRST SWISS MORTGAGE CORP.**

Respondent

**APPLICATION UNDER SECTION 37 OF THE *MORTGAGE BROKERAGES, LENDERS  
AND ADMINISTRATORS ACT, 2006, S.O. 2006, c. 29, AS AMENDED, AND SECTION  
101 OF THE *COURTS OF JUSTICE ACT, R.S.O. 1990, c.C.43, AS AMENDED****

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver (the “**Receiver**”) of the assets, undertakings, and properties of First Swiss Mortgage Corp. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor for an order: (i) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and Zayoun Group Inc. (the “**Purchaser**”) dated May 22, 2024 and appended to the Third Report of the Receiver dated June 14, 2024 (the “**Third Report**”), which Sale Agreement was entered into in connection with a power of sale initiated by the Receiver, as mortgagee, against 2412379 Ontario Inc., as mortgagor (the “**Property Owner**”), pursuant to the *Mortgages Act*, R.S.O. 1990, c. M. 40; and (ii) vesting in the Purchaser the Property Owner’s right, title and interest in and to the property

described in the Sale Agreement (the “**Property**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Third Report and on hearing the submissions of counsel for the Receiver and such other counsel as are listed on counsel slip, no one else appearing for any other person on the service list, although properly served as appears from the affidavit of Thomas Gray, 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, *nunc pro tunc*. 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 Property 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 Property Owner’s right, title and interest in and to the Property described in the Sale Agreement and listed at Schedule “B” hereto 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 Steele dated March 17, 2023 (as amended and restated May 19, 2023); (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 Property are hereby expunged and discharged as against the Property.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of the Land Registry Office of Russell (No. 50) of an Application for

Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Property in fee simple, and is hereby directed to delete and expunge from title to the Property all of the Claims listed on 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 Property shall stand in the place and stead of the Property, 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 Property with the same priority as they had with respect to the Property immediately prior to the sale, as if the Property 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 Property 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 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.

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**Schedule “A” – Form of Receiver’s Certificate**

Court File No. CV-23-00696362-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE HONOURABLE**

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**MONDAY, THE 24<sup>TH</sup>**

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**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES  
REGULATORY AUTHORITY OF ONTARIO**

Applicant

- and -

**FIRST SWISS MORTGAGE CORP.**

Respondent

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Steele of the Ontario Superior Court of Justice (the “**Court**”) dated March 17, 2023 (as amended and restated on May 19, 2023), KSV Restructuring Inc. was appointed as the receiver (the “**Receiver**”) of the undertakings, property and assets of First Swiss Mortgage Corp. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor.

B. Pursuant to an Order of the Court dated June 24, 2024 (the “**Vesting Order**”), the Court approved the agreement of purchase and sale made as of May 22, 2024 (the “**Sale Agreement**”) between the Receiver and Zayoun Group Inc. (the “**Purchaser**”), which Sale Agreement was entered in connection with a power of sale initiated by the Receiver, as mortgagee, against 2412379 Ontario Inc., as mortgagor (the “**Property Owner**”), pursuant to the *Mortgages Act*,

R.S.O. 1990, c. M. 40 and provided for the vesting in the Purchaser of the Property Owner's right, title and interest in and to the Property, which vesting is to be effective with respect to the Property 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 Property; (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.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Vesting Order.

**THE RECEIVER CERTIFIES** the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Property 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; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**KSV Restructuring Inc., in its capacity as  
Receiver of the undertakings, assets and  
properties of First Swiss Mortgage Corp. and  
not in its personal capacity**

Per: \_\_\_\_\_  
Name:  
Title:

**Schedule "B"**  
**Property**

**Firstly Land:**

Legal Description	Municipal Address
PIN 69056-0028 (LT): PT LT 18 CON 1 OS CLARENCE AS IN RR166835; CLARENCE-ROCKLAND	8457 County Road 17, Rockland

**Secondly Land:**

Legal Description	Municipal Address
PIN 69056-0062 (LT): PT LT 18 CON 1 OS CLARENCE PT 1, 50R8635; S/T RR176067; CLARENCE-ROCKLAND	8457 County Road 17, Rockland

**Thirdly Land:**

Legal Description	Municipal Address
PIN 69056-0031 (LT): PT LT 18 CON 1 OS CLARENCE AS IN RR38118; CLARENCE-ROCKLAND	280 Landry Street, Rockland

**Fourthly Land:**

Legal Description	Municipal Address
PIN 69056-0033 (LT): PT LT 18 CON 1 OS CLARENCE PT 6, 50R8635; SUBJECT TO AN EASEMENT OVER PART 1, PLAN 50R8720 AS IN RR176067; CLARENCE-ROCKLAND	280 Landry Street, Rockland

**Schedule “C”**  
**Claims to be deleted and expunged from title to the Property**

**Firstly, Secondly, Thirdly and Fourthly Land:**

1. Instrument No. RC95338 registered April 9, 2014, being a Transfer;
2. Instrument No. RC95339 registered April 9, 2014, being a Charge in favour of First Swiss Mortgage Corp. in the amount of \$673,960 (the “**Charge**”);

Registrations relating to the Charge are as follows:

- a. Instrument No. RC95340 registered April 9, 2014, being a Notice of Assignment Rents – General;
  - b. Instrument No. RC172117 registered March 10, 2023, being a Caution-Charge;
  - c. Instrument No. RC172210 registered March 16, 2023, being a Caution-Charge; and
  - d. Instrument No. RC172353 registered March 23, 2023, being a Caution-Charge.
3. Instrument No. RC96733 registered June 26, 2014, being a Notice;
  4. Instrument No. RC105977 registered September 3, 2015, being a Construction Lien (the “**Lien**”);

Registration relating to the Lien is as follows:

- a. Instrument No. RC107127 registered October 27, 2015, being a Certificate.
5. Instrument No. RC171552 registered February 6, 2023, being a Certificate; and
  6. Instrument No. RC172359 registered March 23, 2023, being a Caution-Land.

**Secondly Land:**

7. Instrument No. RLT106563 registered December 20, 2002, being an Application to Change Name – Instrument.

**Thirdly & Fourthly Land:**

8. Instrument No. RC75359 registered August 31, 2011, being a Transfer.

**Schedule "D"**

**Permitted Encumbrances, Easements and Restrictive Covenants related to the Property**

**Firstly, Secondly, Thirdly and Fourthly Land:**

1. Instrument No. BS19915 registered July 3, 1969, being an Order; and

**Secondly & Fourthly Land:**

2. Instrument No. RR176067 registered November 30, 2001, being a Transfer Easement.

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO** and **FIRST SWISS MORTGAGE CORP.**

Applicant

Respondent

Court File No.: CV-23-00696362-00CL

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

Proceedings commenced in Toronto

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**APPROVAL AND VESTING ORDER**

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**BENNETT JONES LLP**

One First Canadian Place, Suite 3400  
P.O. Box 130  
Toronto, ON M5X 1A4

**Sean Zweig** (LSO#: 57307I)

Tel: (416) 777-6254

Email: [zwiogs@bennettjones.com](mailto:zwiogs@bennettjones.com)

**Thomas Gray** (LSO#: 82473H)

Tel: (416) 777-7924

Email: [grayt@bennettjones.com](mailto:grayt@bennettjones.com)

Lawyers for the Receiver