



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-23-00710990-00CL

DATE: NOVEMBER 28, 2024

NO. ON LIST: 3

TITLE OF PROCEEDING: **FOREMOST MORTGAGE HOLDING CORPORATION v. 2521311 ONTARIO INC.
O.A. TOWNS OF THORNBURY**

BEFORE: **JUSTICE W.D. BLACK**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Jeff Larry	Foremost Mortgage Holding Corporation	jeff.larry@paliareroland.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Adam Slavens	2521311 Ontario Inc. o/a Towns of Thornbury	aslavens@torys.com
	Cooper Equipment Rentals Limited	

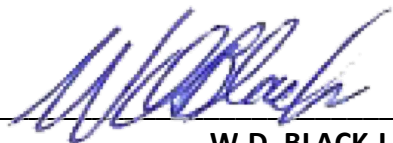
For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Edmond Lamek	KSV Restructuring Inc. (Receiver)	Edmond.lamek@dlapiper.com
James MacLellan	Berkley Insurance	jmaclellan@blg.com

ENDORSEMENT OF JUSTICE W.D. BLACK:

- [1] KSV Restructuring Inc. (“KSV”), in its capacity as the Court-appointed receiver (the “Receiver”) of the assets, undertakings and properties (collectively the “Property”) of 2521311 Ontario Inc. o.a. Towns of Thornbury (the “Company”) brings this motion seeking (among other related items):
- (a) The termination of these receivership proceedings and the Receiver’s discharge; and
 - (b) The authority to terminate and disclaim, on behalf of the Company, all agreements of purchase and sale (the “APs”) entered into between the Company and the purchasers (the “Home Buyers”) of townhome units to be constructed on the Real Property (as defined in the materials) as part of the Towns of Thornbury development.
- [2] The Receiver also seeks approval of its fees and disbursements and those of its counsel.
- [3] Justice Cavanagh appointed the Receiver as interim receiver of the Property on December 19, 2023, and then on February 5, 2024, appointed the Receiver as Receiver and approved the Receiver’s proposed sale process for the Property.
- [4] The Receiver conducted the sale process and on August 15, 2024, Conway J. granted an approval and vesting order (the “AVO”) with respect to an agreement of purchase and sale between the Receiver and Louisa Street GP Inc., on behalf of Louisa Street Limited Partnership, an assignee of Foremost Mortgage Holding Corporation (“Foremost”). The transaction approved under the AVO closed on August 23, 2024.
- [5] I note that in addition to the AVO, Conway J. also granted an ancillary relief order on August 15, 2024, approving a holdback fund in the amount of \$66,713.24 to be held by the Receiver pending resolution by agreement of further court order of certain lien claims registered against title to the Real Property.
- [6] The Company is a real estate development company that was developing a 23-unit townhome project known as the Towns of Thornbury. The project was plagued by construction delays, cost overruns and other difficulties such that as of the date of the Receiver’s appointment the project remained unfinished.
- [7] The Company pre-sold 21 townhomes and received deposits from the Home Buyers totaling approximately \$1.64 million. The Receiver understands that all but approximately \$53,000 of the deposits were spent by the Company prior to the commencement of these proceedings.
- [8] The deposits were insured by Berkley Insurance Company (“Berkley”).
- [9] In addition Tarion Warranty Corporation (“Tarion”) provides deposit protection coverage for the deposits (the extent of which depends in part on whether Home Buyers executed APs before or after January 1, 2018.)
- [10] The Receiver understands that the Home Buyers may be covered by Berkley for amounts in excess of the portion of their deposits covered by Tarion.
- [11] However, Tarion’s policy is that deposit return claims will not be processed until a Home Buyer’s APs has been terminated.
- [12] As noted, the Receiver seeks the authority to disclaim and terminate the APs.

- [13] Absent the termination and disclaimer of the APSs, the Home Buyers will be unable to make claims under Tarion's deposit protection program and potentially the deposit insurance coverage provided by Berkley.
- [14] As such, authorizing the Receiver to terminate and disclaim the APSs will facilitate the Home Buyers in making claims for the repayment of deposits, which is ultimately to the benefit of the Home Buyers and does not prejudice the interests of any other stakeholders.
- [15] I am satisfied that the court has the jurisdiction to make this order, and that it will maximize the benefit to the Home Buyers.
- [16] Consistent with that notion, many of the Home Buyers were in attendance before me today and, having been well-informed by the Receiver, Tarion and Berkley, all supported this relief, and their questions were limited to understanding additional details as to how to submit their claims.
- [17] Accordingly I am prepared to grant this aspect of the order sought.
- [18] I am also prepared to approve the activities of the Receiver, and the fees and disbursements of the Receiver and its counsel. The evidence confirms that both have worked diligently and that the fees sought are reasonable.
- [19] Finally, I am prepared to discharge RSV as Receiver upon the filing of a discharge certificate, the form of which is attached to the order, certifying that all outstanding matters in the receivership proceeding have been completed and to release KSV from liability as set out in paragraph 7 of the order.
- [20] The signed order is attached to this endorsement.



W.D. BLACK J.

DATE: NOVEMBER 28, 2024