

CITATION: The Superintendent of Financial Services v. Building & Development Mortgages
Canada, 2025 ONSC 627

COURT FILE NO.: CV-18-00596204-00CL

DATE: 20250114

SUPERIOR COURT OF JUSTICE – ONTARIO – COMMERCIAL LIST

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

RE: The Superintendent of Financial Services, Applicant

AND:

Building & Development Mortgages Canada Inc., Respondent

BEFORE: Peter J. Osborne, J.

COUNSEL: *Michael De Lellis, Jeremy Dacks and Blair McRadu*, Lawyers for FAAN Mortgage
Administrators Inc., in its capacity as Court-appointed Trustee of Building &
Development Mortgages Canada Inc.

George Benchetrit, Court-appointed Representative Counsel for Investors

Naveed Manzoor and Lana Bezner, Trustee

HEARD: January 14, 2025

ENDORSEMENT

[1] This is a motion by FAAN Mortgage Administrators Inc. in its capacity as Court-appointed Trustee of the assets of Building & Development Mortgages Canada Inc. (“BDMC”) for an order:

- a. approving the 30th and 31st Reports of the Trustee and the activities of the Trustee set out therein;
- b. approving the fees and disbursements of the Trustee and its counsel for the period from October 16, 2022 to November 30, 2024 as set out in the Reports and the fee affidavits appended thereto;
- c. sealing certain exhibits to the Fee Affidavits; and
- d. authorizing and directing the Trustee to distribute the Fortress Holdback and the Future Fortress Amounts to the applicable Investors (and for greater certainty, not to Fortress Real Developments Inc., Jawad Rathore and or Vince Petrozza).

[2] The Trustee relies upon the 31st Report, together with Appendices thereto. The Service List, and in particular those parties referred to in paragraph 1(d) above, have been served.

[3] The relief sought today is unopposed.

[4] Defined terms in this Endorsement have the meaning given to them in the motion materials unless otherwise stated.

[5] This matter and related matters were previously case managed by Justice Hainey and thereafter by Justice McEwen, who directed that I take over as case management judge upon his retirement.

[6] In the main, the role of the Trustee is to protect the interests of the investors who invested in syndicated mortgage loans made by BDMC in respect of certain real estate development projects secured by mortgages. The background for and context of the motion today is fully set out in the Reports, and particularly the 29th, 30th and 31st Reports.

[7] Today, the Trustee has recovered, in the aggregate, approximately \$179 million in Realized Property for the benefit of the Investors, including approximately \$3.4 million since the date of the 29th Report.

[8] Approximately \$560 million was invested in syndicated mortgage loans administered by BDMC by over 11,000 individual Investors. Those were spread across 45 separate real estate projects. While those recoveries are significant, the Investors will, obviously, continue to suffer a very material shortfall in their recoveries.

[9] As set out in the 31st Report, given the significant amounts already paid to Fortress and/or its principals from advances of the Investors and the considerable losses experienced by the Investors in respect of the BDMC loans, the Trustee, in consultation with Representative Counsel, is of the view that a distribution to Fortress and/or its principals would be inequitable and inappropriate, and that the Fortress Holdback and any other future distributions payable to Fortress and/or its principals should be distributed on a *pro rata* basis to the Investors in the respective projects.

[10] I agree. In my view, and for the reasons set out in the 31st Report, such a result is entirely appropriate in the circumstances. I also observe that the relief is, as noted above, unopposed in particular by Fortress and/or any of its principals.

[11] I am also satisfied that the Reports and the activities of the Trustee and its counsel as reflected therein should be approved. They are consistent with the mandate given to the Trustee in the original appointment order, and have been accretive to the steps necessary to be completed to realize those recoveries.

[12] Similarly, I am satisfied that the fees of the Trustee and its counsel as set out in the Fee Affidavits are reasonable, appropriate and should be approved. They correlate to the activities described in the Reports and approved above, represent market rates and I am satisfied are reasonable in the circumstances, and were necessarily incurred to complete the activities also approved.

[13] Finally, I am satisfied that the Confidential Exhibits should be sealed as requested. The factors set out by the Supreme Court of Canada for granting a sealing order pursuant to section 137(2) of the *Courts of Justice Act* in *Sierra Club* and refined in *Sherman Estate* have been satisfied here.

[14] The order is necessary to prevent a serious risk to an important interest which includes a commercial interest and there are no reasonable alternative measures to prevent the risk. I am satisfied that the salutary effects of the order outweigh its deleterious effects. The material proposed to be sealed contains confidential, commercially sensitive and importantly, privileged information regarding the projects and BDMC generally, as well as activities and the position of the Trustee with respect to ongoing litigation matters. If made public, it would be materially prejudicial to the Trustee and BDMC and would have a material adverse effect on the recoveries that may ultimately be available to Investors in these proceedings.

[15] For all of these reasons, I have signed the draft omnibus order today. It has immediate effect without the necessity of issuing and entering.

Osborne J.