

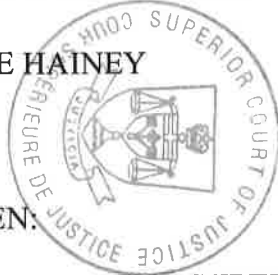
**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)

THURSDAY, THE 23RD

JUSTICE HAINES)

DAY OF MAY, 2019



BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

**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**

OMNIBUS ORDER

THIS MOTION, made by FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee (in such capacity, the “Trustee”) pursuant to an Order of this Court made on April 20, 2018 (“Appointment Order”) of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. pursuant to 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, for an Order, *inter alia*, (i)

approving the Trustee Transaction Process (as defined herein), (ii) directing the Trustee to make a further distribution of Realized Property in respect of the Victoria Medical SML Loans to applicable Investors, (iii) approving the execution of the Direction to Pay in respect of the Bayview Project by the Trustee, (iv) compelling the production of certain documents, records and information from Derek Sorrenti and Sorrenti Law Professional Corporation, (v) compelling the production of certain documents, records and information from Halo Townhomes Inc. (the “**Treehouse Borrower**”) and Symgine (Lake East) Inc. (the “**Lake & East Borrower**”) and (vi) approving the Fourth Report, the Fifth Report, the Sixth Report and the Seventh Report (as defined herein) (collectively, the “**Trustee’s Reports**”), the Trustee’s activities as set out in the Trustee’s Reports and the fees and disbursements of the Trustee and its legal counsel for the period from October 1, 2018, to March 31, 2019, was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the Seventh Report of the Trustee dated May 10, 2019 (the “**Seventh Report**”), the affidavit of Naveed Manzoor sworn May 10, 2019 and attached as Appendix “15” to the Seventh Report (the “**Manzoor Affidavit**”) and the affidavit of Michael De Lellis sworn May 10, 2019 and attached as Appendix “16” to the Seventh Report (the “**De Lellis Affidavit**”) and, collectively with the Manzoor Affidavit, the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of Justine Erickson sworn May 10, 2019, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Seventh Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms used in this Order but not defined herein shall have the meanings given to them in the Seventh Report.

TRUSTEE TRANSACTION PROCESS

3. **THIS COURT ORDERS** that the Trustee Transaction Process attached as Schedule “A” hereto, be and is hereby approved and the Trustee is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement and carry out the Trustee Transaction Process.

VICTORIA MEDICAL REALIZED PROPERTY

4. **THIS COURT HEREBY AUTHORIZES AND DIRECTS** the Trustee to distribute:

(a) \$372,650 to the Original Victoria Medical Investors on a *pro rata* basis, and

(b) \$301,086 to the Hybrid Victoria Medical Investors on a *pro rata* basis,

from the amounts held by the Trustee as Realized Property in respect of the Victoria Medical SML Loans.

DIRECTION TO PAY

5. **THIS COURT ORDERS** that the Trustee be and is hereby authorized to execute the Direction to Pay upon receipt of its fees and expenses incurred in connection with matters relating to the Sorrenti Affidavit, the Direction to Pay and obtaining this Order, in an amount not to exceed \$25,000.

PRODUCTION OF DOCUMENTS, RECORDS & INFORMATION

6. **THIS COURT ORDERS** that, in accordance with paragraphs 4, 5, 6 and 7 of the Appointment Order, Derek Sorrenti and the Sorrenti Law Professional Corporation, and each of their respective successors, assigns, agents, trustees, executors, guardians and heirs (collectively, the “**Sorrenti Parties**”), shall (a) preserve any and all documents, records and information of any kind related to the Transferred Projects that are or ought to be in such person’s possession or control (whether in paper, electronic or other form), (b) take all reasonable steps to regain possession or control of any such documents, records or information that was but is no longer in such person’s possession or control, including by providing the Trustee with the names and last known contact information of any person who may have such documents, records or information

in his, her or its possession or control, (c) forthwith provide any and all such documents, records and information to the Trustee or its legal counsel, and (d) otherwise comply with the Appointment Order.

7. **THIS COURT ORDERS** that Derek Sorrenti and the Sorrenti Law Professional Corporation shall provide the Trustee with a detailed list of all documents, records and information of any kind related to the Transferred Projects and with a plan and proposed schedule for the delivery of such documents, records and information to the Trustee as soon as reasonably practicable, and in any event within 30 days of the date of this Order, and the Trustee shall have the right to approve or negotiate the proposed timetable and, following the Trustee's approval thereof, the Sorrenti Parties shall deliver such documents, records and information to the Trustee no later than the date set out in the approved schedule or such later date as the Trustee may agree in writing.

8. **THIS COURT ORDERS** that the Treehouse Borrower and the Lake & East Borrower, and each of their respective successors, assigns, agents, trustees, executors, guardians and heirs (each collectively, the "**Treehouse Borrower Parties**" and the "**Lake & East Borrower Parties**", respectively), shall (a) comply with their respective reporting obligations contained in the Amending and Extension Agreement (including Sections 2.6 and 2.7 thereof), and in the Symgine Reporting Agreement (including Article 2 thereof), as applicable, and (b) otherwise comply with the Appointment Order, including paragraphs 4, 5, 6 and 7 thereof.

9. **THIS COURT ORDERS** that the Treehouse Borrower Parties and the Lake & East Borrower Parties shall provide the Trustee with all documents, records and information necessary to satisfy the reporting obligations required by the Amending and Extension Agreement and the Symgine Reporting Agreement, as applicable, and the Treehouse Borrower and the Lake & East Borrower shall provide the Trustee with a plan and proposed schedule for the delivery of such documents, records and information to the Trustee as soon as reasonably practicable, and in any event within 15 days of the date of this Order, and the Trustee shall have the right to approve or negotiate the proposed timetable and, following the Trustee's approval thereof, the Treehouse Borrower Parties and the Lake & East Borrower Parties shall each deliver such documents, records and information to the Trustee no later than the date set out in the approved schedule or such later

date as the Trustee may agree in writing.

TRUSTEE'S REPORTS, ACTIVITIES, FEES AND DISBURSEMENTS

10. **THIS COURT ORDERS** that each of the Trustee's Reports and all the actions, conduct and activities of the Trustee as set out in each of the Trustee's Reports, be and are hereby approved.

11. **THIS COURT ORDERS** that the fees and disbursements of the Trustee and its counsel, as set out in the Seventh Report and the Fee Affidavits, be and are hereby approved, as follows:

(a) the following fees and disbursements of the Trustee for the period from October 1, 2018 to March 31, 2019 are approved: fees of \$866,270.35 (plus applicable taxes of \$112,615.15 for an aggregate amount of \$978,885.50), and

(b) the following fees and disbursements of Osler, Hoskin & Harcourt LLP, counsel to the Trustee, for the period from October 1, 2018 to March 31, 2019 are approved: fees of \$1,540,161.50 and disbursements of \$20,019.68 (plus applicable taxes of \$202,571.06 for an aggregate amount of \$1,762,752.24).

SEALING

12. **THIS COURT ORDERS** that Exhibit "D" of the Manzoor Affidavit and Exhibit "D" of the De Lellis Affidavit shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

GENERAL

13. **THIS COURT ORDERS** that the Trustee and its affiliates, partners, employees and agents shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing any of their duties in carrying out the provisions of this Order, including in connection with the Trustee Transaction

Process, the Trustee's execution of the Direction to Pay and the distribution of any funds in respect of the Bayview Project, except to the extent that such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Trustee, as determined by this Court.

14. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories of Canada.

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Trustee 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 Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

16. **THIS COURT ORDERS** that the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAY 23 2019

PER / PAR: 
Stacey Hutchison
Registrar Superior Court of Justice

SCHEDULE "A"

Trustee Transaction Process

This Trustee Transaction Process has been developed by FAAN Mortgage Administrators Inc., in its capacity as Court-appointed Trustee ("Trustee") of Building & Development Mortgages Canada Inc. ("BDMC") to summarize the process and key materials that will be required by the Trustee in order to approve any sale, financing, refinancing, payout or other restructuring offer affecting any real estate development project (a "Project") where: (i) BDMC holds a mortgage on title to the relevant property comprising the Project; (ii) such BDMC mortgage would not be repaid in full as part of the proposed transaction; and (iii) Fortress, its principals or any other related entity of Fortress (such entity, a "Fortress Party") is anticipated to, directly or indirectly, receive or otherwise control, consideration of any kind (including without limitation fees, proceeds or new security) in connection with such proposed transaction (each, a "Proposed Transaction").

The Trustee will review any Proposed Transaction presented by any stakeholder on any Project. The Trustee will seek detailed information regarding, without limitation, the sale or financing process conducted, the number of proposals received, the status of project development, the project budget and estimated remaining cost to complete, the proposed distribution of proceeds and consideration, the reason for the Proposed Transaction and the viability of any alternative solutions. The Trustee shall be entitled to also seek any information that it deems appropriate from third parties in order to develop a comprehensive analysis regarding the impact of the Proposed Transaction on the relevant BDMC investors. The borrowers, the relevant Fortress Party or any other parties to the Proposed Transaction, shall be required to provide documentation reasonably requested by the Trustee in connection with its review of the Proposed Transaction on a timely basis, including an explanation as to why any subordinate interest (equity or otherwise) is receiving compensation in a situation where the BDMC investors are not being paid in full.

If the Trustee determines, following its review of the Proposed Transaction, that it is appropriate for BDMC investors to consider the Proposed Transaction, the Trustee will seek investor consent or feedback in a manner determined by the Trustee in its sole discretion, including requiring investors to have a minimum of 10 days to respond to a request for consent or feedback.

Following receipt and consideration of investor feedback, the Trustee shall determine, in its sole discretion, whether it believes that the Proposed Transaction is in the best interests of the relevant investors on the Project and should be pursued.

If the Trustee chooses to proceed with a Proposed Transaction that involves: (i) fees of any kind that exceed 5% of the purchase price, the amount of new or replacement financing, or the settlement amount, as the case may be (such amount, the "Transaction Price") being paid, directly or indirectly, to a Fortress Party, or (ii) any new security being granted, directly or indirectly, to a Fortress Party, the Trustee shall seek Court approval of such Proposed Transaction prior to entering into such Proposed Transaction on behalf of BDMC. Prior to any motion for approval of a Proposed Transaction:

- i. the Trustee shall prepare a report to the Court describing its recommendation and any remaining concerns the Trustee or the investors may have with respect to the Proposed Transaction; and
- ii. the relevant Fortress Party shall be required to file appropriate evidence with the Court justifying the consideration being proposed to be provided to the Fortress Party in connection with the Proposed Transaction.

If Court approval is obtained, the Trustee will proceed with the Proposed Transaction on behalf of the BDMC investors.

If the Trustee chooses to proceed with a Proposed Transaction that does not involve fees exceeding 5% of the Transaction Price being paid to a Fortress Party nor security being granted to a Fortress Party, the Trustee shall be entitled, but not required, to seek Court approval prior to entering into the Proposed Transaction on behalf of BDMC.

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

Court File No. CV-18-596204-00CL

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

Proceeding commenced at Toronto

OMNIBUS ORDER

OSLER, HOSKIN & HARCOURT LLP

1 First Canadian Place, P.O. Box 50

Toronto, ON M5X 1B8

Phone: 416-362-2111

Fax: 416-862-6666

Michael De Lellis (LSO# 48038U)

Jeremy Dacks (LSO# 41851R)

**Lawyers for FAAN Mortgage Administrators
Inc., in its capacity as Court-Appointed Trustee**