

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)

MONDAY, THE 2ND

JUSTICE HAINEY)

DAY OF DECEMBER, 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

DECEMBER 2019 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 QEWN Administration Settlement (as defined in the Trustee's thirteenth report dated November 22, 2019 (the "**Thirteenth Report**")); (ii) approving the Trustee's eighth report dated May 17, 2019, ninth report dated July 30, 2019, tenth report dated September 4, 2019, eleventh report dated October 31, 2019, twelfth report dated October 31, 2019 and Thirteenth Report (collectively, the "**Trustee's Reports**"), as well as the Trustee's activities described therein, and the Trustee's fees and disbursements, including the fees and disbursements of its counsel, for the period from April 1, 2019 to September 30, 2019; and (iii) sealing certain confidential exhibits to the Fee Affidavits (as defined below), was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the Thirteenth Report, the affidavit of Naveed Manzoor sworn November 22, 2019 and attached as Appendix "9" to the Thirteenth Report (the "**Manzoor Affidavit**") and the affidavit of Michael De Lellis sworn November 22, 2019 and attached as Appendix "10" to the Thirteenth Report (the "**De Lellis Affidavit**" and, together 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 November 22, 2019, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Thirteenth 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 Thirteenth Report.

QEWN ADMINISTRATION SETTLEMENT

3. **THIS COURT ORDERS** that the QEWN Administration Settlement be and is hereby approved and shall be effective upon the delivery of a Trustee's certificate to counsel for the QEWN Investors substantially in the form attached as Schedule "A" hereto (the "**Trustee's**

Certificate”) confirming that the conditions precedent set out therein have been satisfied in the Trustee’s sole discretion.

4. **THIS COURT ORDERS** that, upon the delivery of the Trustee’s Certificate to counsel for the QEWN Investors, the Trustee, BDMC, Olympia Trust Company, Representative Counsel and each of their respective affiliates, employees, officers, directors, partners, representatives, counsel and agents, and each of their respective successors and assigns (collectively, “**Releasees**”) shall be hereby released, discharged and acquitted from any and all actual or potential claims, demands, rights, complaints, liabilities, damages, losses, actions, applications, suits, and causes of action, whether in law, equity, or contract, whether known or unknown, liquidated or unliquidated, contingent or otherwise, howsoever arising of every nature and kind whatsoever, that any of the QEWN Investors or anyone acting of their behalf, at any time had or has, or that they or their respective successors or assigns hereafter have or may have against the Releasees directly or indirectly arising out of or in any way related to the QEWN Project, these proceedings, the QEWN Administration Settlement or any transactions hereunder or related thereto.

5. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee’s Certificate, as soon as practicable after delivery thereof.

TRUSTEE’S REPORTS, ACTIVITIES, FEES AND DISBURSEMENTS

6. **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.

7. **THIS COURT ORDERS** that the fees and disbursements of the Trustee and its counsel, as set out in the Thirteenth 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 April 1, 2019 to September 30, 2019 are approved: fees of \$947,426 (plus applicable taxes of \$123,165 for an aggregate amount of \$1,070,591), and
- (b) the following fees and disbursements of Osler, Hoskin & Harcourt LLP, counsel to the Trustee, for the period from April 1, 2019 to September 30, 2019 are approved:

fees of \$1,895,036.43 and disbursements of \$15,420.50 (plus applicable taxes of \$248,104.19 for an aggregate amount of \$2,158,561.12).

SEALING

8. **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.

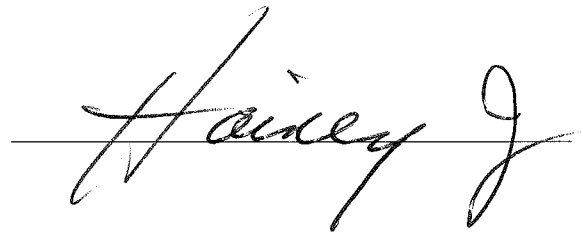
GENERAL

9. **THIS COURT ORDERS** that, without limiting the releases contained in paragraph 4 of the Order, the Trustee and its affiliates, partners, employees, counsel 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 QEWN Project and the QEWN Administration Settlement, 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.

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

11. **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.

12. **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.

A handwritten signature in cursive script, reading "Hainey J.", is written over a horizontal line.

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

DEC 02 2019

PER / PAR: *RW*

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

APPLICATION UNDER SECTION 37 OF THE
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TRUSTEE'S CERTIFICATE
(QEWN Administration Settlement)

RECITALS

A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as the trustee (in such capacity, the "**Trustee**") of the assets, undertakings, and properties of Building & Development Mortgages Canada Inc. ("**BDMC**").

B. Pursuant to an Order of the Court made on December 2, 2019 (the "**December 2019 Omnibus Order**"), the Court, among other things, approved the QEWN Administration Settlement (as defined in the Thirteenth Report of the Trustee dated November 22, 2019 (the "**Thirteenth Report**")) and ordered that it be effective upon the delivery by the Trustee to counsel for the QEWN Investors (as defined in the Thirteenth Report) of a certificate confirming, among other things, that: (a) the Proposed Administrator has provided a letter to the Trustee

acknowledging its acceptance of the administration duties being assumed under the loan and security documents related to the QEWN Project, (b) each QEWN Investor has acknowledged and agreed, after having each received independent legal advice (i) that it is their individual desire to have the Proposed Administrator appointed after being informed of the impact of the QEWN Administration Settlement, which includes no longer having the benefits of Court supervision, Representative Counsel and a licensed mortgage administrator to oversee the administration of their loan and security, and (ii) the Trustee, its counsel and Representative Counsel shall receive a court-ordered release in connection with all matters relating to the QEWN Project as part of the QEWN Administration Settlement, (c) consent of the QEWN Project borrower to the appointment of the Proposed Administrator has been obtained; and (d) an agreement has been reached between the Trustee and the QEWN Investors to compensate the BDMC estate for costs incurred directly with respect to the QEWN Project and an appropriate portion of costs incurred in respect of the general administration of the BDMC estate.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the December 2019 Omnibus Order or the Thirteenth Report, as applicable.

THE TRUSTEE CERTIFIES the following:

- (a) The Trustee has received a letter provided by the Proposed Administrator acknowledging its acceptance of the administration duties being assumed under the loan and security documents related to the QEWN Project, which is in a form acceptable to the Trustee;
- (b) each QEWN Investor has acknowledged and agreed, after having each received independent legal advice:
 - (i) that it is their individual desire to have the Proposed Administrator appointed after being informed of the impact of the QEWN Administration Settlement, which includes no longer having the benefits of Court supervision, Representative Counsel and a licensed mortgage administrator to oversee the administration of their loan and security relating to the QEWN Project, and
 - (ii) that the Trustee, its counsel and Representative Counsel shall receive a Court-ordered release in connection with all matters relating to the QEWN Project as part of the QEWN Administration Settlement;
- (c) consent of the QEWN Project borrower to the appointment of the Proposed Administrator has been obtained; and

- (d) an agreement satisfactory to the Trustee has been reached between the Trustee and the QEWN Investors to compensate the BDMC estate for costs incurred directly with respect to the QEWN Project and an appropriate portion of costs incurred in respect of the general administration of the BDMC estate.

This Certificate was delivered by the Trustee at _____ [TIME] on _____ [DATE].

**FAAN Mortgage Administrators Inc., solely
in its capacity as Court-appointed Trustee of
the assets, undertakings, and properties of
Building & Development Mortgages Canada
Inc., and in no other capacity**

Per: _____

Name:

Title:

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

DECEMBER 2019 OMNIBUS ORDER

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Inc., in its capacity as Court-Appointed Trustee**