

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:



EMERALD CASTLE DEVELOPMENTS INC.

Applicant

and

FAAN MORTGAGE ADMINISTRATORS INC., in its capacity as the
Court-Appointed Trustee of BUILDING & DEVELOPMENT MORTGAGES
CANADA INC. formerly known as CENTRO MORTGAGE INC., and
OLYMPIA TRUST COMPANY

Respondents

APPLICATION UNDER SECTION 37 OF THE *MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT*, 2006, S.O. 2006, C. 29; SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 c. C. 43, and *Rule 14.05(3)(d) of the RULES OF CIVIL PROCEDURE*, R.S.O.1990, Reg. 194, as amended

NOTICE OF APPLICATION

TO THE RESPONDENT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing date to be determined at a 9:30 scheduling appearance before a judge presiding over the Commercial List at ~~393~~ 330a University Avenue, 10th Floor, Toronto, Ontario, M5G 1E6. *IR7a*

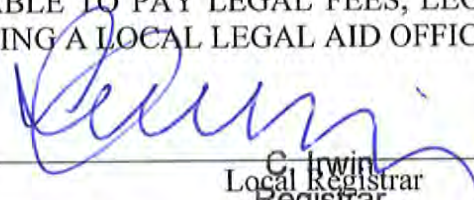
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve

a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date March 2, 2020

Issued by 
C. Irwin
Local Registrar
Registrar

Address of court office: Superior Court of Justice, Commercial List
330 University Avenue, 9th floor
Toronto, Ontario
M5G 1E6 1R7

TO: FANN MORTGAGE ADMINISTRATORS INC.
920- 20 Adelaide Street East
Toronto, ON
M5C 2T6

AND TO: OLYMPIA TRUST COMPANY
2200 125 -9th Ave. SE
Calgary, Alberta
T2G 0PG

APPLICATION

1. THE APPLICANT MAKES APPLICATION FOR:

- a. Leave to bring this application;
- b. An order lifting, vacating and/or releasing all security interests currently being held by the Respondents, FAAN MORTGAGE ADMINISTRATORS INC. (“**FAAN**”), in its capacity as the Trustee of all of the interests of Building & Development Mortgages Canada Inc., (“**BDMC**”) and the Olympia Trust Company (“**Olympia**”) in respect of loans advanced under a Loan Agreement dated August 25, 2014, between Centro Mortgage Inc., In Trust, as Lender, and Emerald Castle Developments Inc. (“**Emerald Castle**”) as Borrower (the “**Loan Agreement**”) upon payment to FAAN of the amount of \$9,124,574;
- c. A declaration that \$9,124,574 represents all of the monetary obligations owed by Emerald Castle to BDMC and Olympia under the Loan Agreement, the Charge and any other security granted to BDMC by Emerald Castle in connection with the Loan;
- d. An order releasing, waiving, extinguishing, expunging and discharging all Emerald Castle’s obligations to BDMC, and to Olympia under the Loan Agreement, including a mortgage/charge registered as Instrument PR2635749 on November 25, 2014 against the property legally described as Pt Lt 13, Con 10 ND Toronto Gore Des Pt 1, Pl 43R14071 Save and Except Pt 1, Pl 43R35377; City of Brampton and

referenced as PIN 14214-0172 (LT) (the “**Property**”), and any agreements or instruments delivered pursuant thereto and all security interests granted in and to the assets of Emerald Castle to secure the Emerald Castle Loan Agreement and related registrations on title, including the Charge (collectively, the “**Security**”);

- e. A declaration that upon payment of \$9,124,574 that BDMC, BDMC’s successors and assigns, BDMC’s individual investors, Olympia Trust, Olympia Trusts’ successors and assigns, and Olympia Trusts’ individual investors shall be deemed to have released Emerald Castle from all obligations and security provided in connection with the Loan, including without limitation the Security;
- f. An order for costs on a substantial indemnity basis;
- g. An order abridging the time for service of the Application Record in this proceeding, if necessary;
- h. Such further and other relief as to this Honourable Court may deem just.

2. THE GROUNDS FOR THE APPLICATION ARE:

- a. Emerald Castle is the developer and owner of a 48-acre site near Brampton, Ontario within the proposed Area 47 Secondary Plan with up to 300 units planned for construction (the “**Project**”);
- b. On August 25, 2014, Emerald Castle, as Borrower, entered into a Loan Agreement with Centro Mortgage Inc., In Trust, (“**Centro**”) as Lender, for a non-revolving

loan in the amount of \$21,246,153.85 (“**the “Loan”**”) for a five year term, with a Borrower’s option to extend for 24 months;

- c. Emerald Castle granted security to Centro pursuant to s.8 of the Loan Agreement, (the “**Security**”) including a mortgage and general security agreement;
- d. A Charge was registered as Instrument PR2635749 on November 25, 2014 (the “**Charge**”)
- e. Section 14 of the Loan Agreement states that the in the event that the Loan is not repaid before the Maturity Date of the Loan, the Security will be released by the Secured Party upon payment to the Secured Party of an amount equal to the appraised value of the portions of the Project not under construction (“**Vacant Lands**”) at the Maturity Date of the Loan;
- f. Section 7.2 of the Loan Agreement is a Waterfall provision which governs the distribution priorities for available cash flow;
- g. The first tranche of the Loan was advanced on November 24, 2014;
- h. The Lender made subsequent advances and registered notices on title to the Property with respect to the subsequent advances;
- i. Subsequent to its registration, the Charge was transferred on 18 occasions and is currently registered to BDMC and the Olympia Trust Company;

- j. On February 3, 2016, Centro changed its name to Building & Development Mortgages Canada Inc. (“**BDMC**”);
- k. On April 20, 2018, pursuant to an order of the Ontario Superior Court of Justice (Commercial List), FAAN was appointed as trustee over all of the assets, undertakings and properties of BDMC under s. 37 of the Mortgage Brokerages, Lenders and Administrators Act, 2006, as amended and section 101 of the Courts of Justice Act, as amended;
- l. Since April 20, 2018, FAAN has been the trustee of the Loan on behalf of BDMC;
- m. The Loan matured on November 24, 2019;
- n. All of the lands in the Project remained Vacant Land as of the Maturity Date;
- o. Pursuant to s.14(i)(A) of the Loan Agreement, each party was required to obtain an appraisal of the Vacant Lands using an accredited AACI appraiser within 60 days of the Maturity Date to determine the repayment amount required to obtain a discharge of the Security (“**End of Term Event**”);
- p. Settlement discussions took place following the Maturity Date and FAAN proposed that the End of Term Event be delayed on consent;
- q. On December 6, 2019, Emerald Castle provided notice to FAAN of its intention to proceed with the End of Term Event;

- r. On January 7, 2020, Emerald Castle obtained an appraisal from CBRE, which appraised the value of the Vacant Lands at \$ [REDACTED];
- s. The CBRE appraisal confirmed the site area to be 48.80 acres gross, with 37.95 acres of net developable lands;
- t. The CBRE appraisal confirmed that approximately 22% of the site area is undevelopable due to natural heritage systems shown on the survey;
- u. On January 9, 2020, Emerald Castle provided the CBRE appraisal to FAAN together with a Waterfall calculation of \$9,124,574 due to FAAN on behalf of BDMC/Olympia pursuant to the End of Term and Waterfall provisions of the Loan Agreement;
- v. Emerald Castle remains ready, willing and able to pay \$9,124,574 under the Loan Agreement in exchange for release and discharge of the Security under s. 8 of the Loan Agreement;
- w. FAAN initially refused to obtain its own appraisal or accept the amounts payable pursuant to the Waterfall provision in exchange for release of the Security;
- x. On February 4, 2020, more than 60 days from the End of Term Event, FAAN provided an appraisal conducted by Jones Lang LaSalle Real Estate Services, Inc. (the “**JLL Appraisal**”) in the amount of \$ [REDACTED], without attorning or agreeing to the process set out in Section 14 of the Loan Agreement;

- y. The JLL Appraisal contains a fundamental calculation error with respect to usable, or developable, acres;
- z. FAAN will not agree to grant a discharge of the Security upon payment of the amount provided for in the process set out in Section 14 of the Loan Agreement;
- aa. FAAN has provided no justification for its refusal to comply with the terms of the Loan Agreement;
- bb. Emerald Castle is not in default of any of its obligations under the Loan Agreement;
- cc. This application is authorized by Rule 14.05(3)(d) of the Rules of Civil Procedure which permits an application of rights that depend upon the interpretation of a contract; and
- dd. It is a clear and reasonable interpretation of the Loan documents that upon payment of \$9,124,574 the loan should be discharged along with the Security.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF
THE APPLICATION:**

- 1. The affidavit of Desi Auciello, to be sworn;
- 2. Such further and other documents as counsel may advise and this honourable court may admit.

March 2, 2020

**FRIEDMAN LAW
PROFESSIONAL CORPORATION**
150 Ferrand Drive, Suite 800
Toronto, Ontario M3C 3E5

William Friedman –LSO #18420U
Judy Hamilton – LSO #39475S

Tel: 416-496-3340
Fax: 416-497-3809

Lawyers for the Applicant

**EMERALD CASTLE DEVELOPMENTS
INC.**
Applicant

and

**FAAN MORTGAGE ADMINISTRATORS INC. ET
AL.**
Respondents

Court File No.:

CV-20-0063738-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

NOTICE OF APPLICATION

**FRIEDMAN LAW PROFESSIONAL
CORPORATION**

150 Ferrand Drive, Suite 800
Toronto, Ontario M3C 3E5

William Friedman – LSO #18420U
Judy Hamilton – LSO #39475S

Tel: 416-496-3340
Fax: 416-497-3809

Lawyer for the Applicant