

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

EMERALD CASTLE DEVELOPMENTS INC.

- and -

Applicant

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

Responses to Written Interrogatories for the Trustee

1. **QUESTION:** With regard to paragraph 9 of the Seventeenth Report of the Trustee (“the **17th Report**”), please advise of the reasons, along with all facts and evidence the Trustee is relying on in support thereof, as to why the Trustee disagrees with Emerald Castle’s position in this application as set out in paragraph 8 of the 17th Report?
 - (a) **RESPONSE:** The evidence and facts on which the Trustee relies are contained in the record, including the affidavit of Desi C. Auciello sworn February 26, 2020; the affidavit of Dr. Michael Pizzuto sworn March 16, 2020; the 17th Report of the Trustee dated March 27, 2020; the reply affidavit of Desi C. Auciello sworn May 13, 2020; and any evidence to be elucidated through the cross-examinations of Dr. Pizzuto and Mr. Auciello scheduled for June 30, 2020 and July 8, 2020, respectively. As described in paragraph 42 of the 17th Report, the Trustee will submit a factum to the Court setting out its legal arguments after the cross-examinations of the affiants have been conducted and the evidentiary record is complete.
2. **QUESTION:** With regard to paragraph 9 of the 17th Report, please advise of the basis of your understanding, along with full particulars thereof, as to why Representative Counsel disagrees with Emerald Castle’s position in this application as set out in paragraph 8 of the 17th Report?

- (a) **RESPONSE:** Prior to the delivery of the 17th Report, Representative Counsel advised the Trustee that he disagreed with Emerald Castle's position in this application and that an investor intended to swear an affidavit in response to the application setting out the particular evidence grounding that disagreement. Representative Counsel subsequently filed the affidavit of Dr. Pizzuto sworn on March 16, 2020. The Trustee understands that Emerald Castle will be cross-examining Dr. Pizzuto on his affidavit.
3. **QUESTION:** Assuming for this question alone that the Waterfall and End of Term Event provisions at sections 7.2 and 14 of the Loan Agreement govern and are enforceable, does the Trustee take any issue with any of the amounts set out in the waterfall calculation contained at Tab K to the application record, at pages 190 and 191? If so, please provide full particulars regarding the same.
- (a) **RESPONSE:** The Trustee does not have sufficient information to answer this question at this time. The Trustee anticipates being in a position to answer this question within 10 days after the cross-examination of Mr. Auciello and will provide its answer at that time. At this time, the Trustee does not take issue with the Project cash balance (0.1.31.2020) used in the waterfall calculation contained at Tab K to the affidavit of Mr. Auciello sworn on February 26, 2020.
4. **QUESTION:** With reference to paragraph 34 of the 17th Report:
- (a) Do you have any information to dispute that the Trustee has been in possession of both the general ledger of Emerald Castle and the Fortress side letter since May of 2019?
- (i) **RESPONSE:** In May 2019, the Trustee received a copy of the general ledger of Emerald Castle for the period from the date of the loan agreement (August 25, 2014) to May 2019 as well as the Fortress Side Letter.
- (b) Has Emerald Castle ever refused to provide any documentation requested by the Trustee? If yes, please provide the full particulars regarding the same.
- (i) **RESPONSE:** To the best of the Trustee's recollection, Emerald Castle has not refused to provide any documentation requested by the Trustee.
- (c) Has the Trustee ever advised Emerald Castle that it was unable to verify that all of the proceeds of the Loan advanced were not accounted for or that the proceeds had not been applied in accordance with the Loan Agreement and Fortress side letter?
- (i) **RESPONSE:** The Trustee has not advised Emerald Castle that it was unable to verify that all of the proceeds of the Loan advanced were accounted for, other than in the 17th Report, paragraph 34, in which the Trustee advised that the Fortress Side Letter payments have not been verified by it. The Trustee has not advised whether the proceeds of the Loan were or were not applied in accordance with the Loan Agreement and Fortress Side Letter.

5. **QUESTION:** Was the information contained in the Trustee's Motion Record dated October 31, 2019 in respect of the Castlemore Settlement Approval Order accurate as at October 31, 2019? If not, please provide full particulars.
 - (a) **RESPONSE:** The information contained in the 12th Report of the Trustee dated October 31, 2019, which was included in the Trustee's Motion Record, was accurate as at that date. In light of the Castlemore Settlement Agreement and the various considerations taken into account by the Trustee in completing its assessment of the Castlemore Settlement Agreement, the Trustee did not incorporate an analysis based on whether or not the End of Term Event Clause was enforceable in the 12th Report.

6. **QUESTION:** Since October 31, 2019, has the Trustee learned that any of the information contained in its motion record referred to in the preceding question is inaccurate or incorrect? If so, please provide full particulars.
 - (a) **RESPONSE:** As discussed at paragraphs 19 and 20 of the 17th Report and in the Thirteenth Report of the Trustee dated November 22, 2019 (attached as Appendix 5 to the 17th Report), after the date of the 12th Report certain events occurred leading to the adjournment of the Trustee's motion in respect of the Castlemore Settlement Agreement and the Castlemore Settlement Agreement expiring in accordance with its terms.

7. **QUESTION:** When did the Trustee receive the BDMC records referred to in paragraph 29 of the 17th Report?
 - (a) **RESPONSE:** The Trustee took possession and control of the available BDMC records referred to in paragraph 29 of the 17th Report after it was appointed as Trustee on April 20, 2018.

8. **QUESTION:** When did the Trustee receive the BDMC records referred to in paragraph 31 of the 17th Report?
 - (a) **RESPONSE:** The Trustee received the BDMC records referred to in paragraph 31 of the 17th Report in May 2019.

9. **QUESTION:** When did the Trustee receive the BDMC records referred to in paragraph 32 of the 17th Report?
 - (a) **RESPONSE:** The Trustee received the BDMC records referred to in paragraph 32 of the 17th Report in May 2019.

10. **QUESTION:** When did the Trustee receive the Emerald Castle records referred to in paragraph 36 of the 17th Report?
 - (a) **RESPONSE:** The Trustee received the Emerald Castle records referred to in paragraph 36 of the 17th Report in May 2019.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of June 2020.

Faan Mortgage Administrators Inc.

**FAAN MORTGAGE ADMINISTRATORS INC.,
SOLELY IN ITS CAPACITY AS
COURT-APPOINTED TRUSTEE OF
BUILDING & DEVELOPMENT MORTGAGES CANADA INC.,
AND NOT IN ITS PERSONAL OR ANY OTHER CAPACITY**

**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. ET AL. AND OLYMPIA TRUST COMPANY**
Respondents

Court File No:
CV-20-00637238-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO**

RESPONSES TO QUESTIONS FOR THE TRUSTEE

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Appointed Trustee of Building & Development Mortgages Canada
Inc. formerly known as Centro Mortgage Inc.