

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

SUPPLEMENTARY FACTUM OF THE APPLICANT
(Application Returnable October 29, 2020)

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*Representative counsel for Investors
who participate in mortgages
administered by BDMC*

1. The Applicant, Emerald Castle Developments Inc. (“**Emerald**” or the “**Borrower**”), provides this supplementary factum in response to the responding factums of the Respondent, FAAN Mortgage Administrators Inc. (“**FAAN**” or the “**Trustee**”), and of Representative Counsel for the investors.

No Involvement by Emerald in any Dealings with Centro’s Investors

2. In response to this application, Representative Counsel for the investors delivered an affidavit from only 1 of the 453 investors¹ who advanced monies to Centro/BDMC in respect of the Loan. That investor is Dr. Michael Pizzuto (“**Pizzuto**”). Emerald had no communication with, or knowledge of, Pizzuto.

3. No evidence whatsoever has been presented as to what was disclosed or not disclosed to any of the other 452 investors concerning their individual investment transactions with Centro/BDMC, or what they understood or did not understand.

4. FAAN and the investors’ Representative Counsel did not seek to examine any representatives of any mortgage brokers or Fortress to substantiate any of their allegations.

5. As to Pizzuto, he states in his affidavit that he made his investment decision based on certain discussions and meetings he had with a certain mortgage brokerage firm, FFM Capital Inc. (“**FFM**”), and its representatives, Messrs. Mazzoli and Kochhar. Pizzuto acknowledges, however, that he had previously invested in another real estate venture through Mr. Mazzoli.²

6. Pizzuto states in his affidavit that the FFM representatives told him things about the investment opportunity that were not accurate, or they omitted to tell him things they should have disclosed. He also stated that the FFM representatives provided him with some information documents about the investment opportunity prepared by Fortress that were not entirely accurate.

¹ Seventeenth Report of the Trustee, para. 29, Application Record, Vol. III, Tab 7, p. 17

² Affidavit of Michael Pizzuto sworn March 16, 2020 (“Pizzuto Affidavit”), para. 3, Application Record, Vol. II, Tab 6, p. 155

7. Finally, Pizzuto states that, at his request, FFM arranged for him to attend an “exclusive by invitation only” Fortress event at the TIFF Lightbox where he heard Fortress executives speak and where he met with principals of Fortress who corroborated “the information” FFM had provided to him about the Project. He does not specify what information he is referring to.³

8. Pizzuto’s allegations of misrepresentation were directed solely against FFM and (in small part) Fortress. In fact, nowhere in his 18-page affidavit does Pizzuto suggest that he ever met or communicated with Emerald. He certainly never did.

9. It is also clear that the alleged misrepresentations/omissions by FFM or Fortress occurred after the Loan Agreement was already entered into between Emerald and Centro/BDMC. Pizzuto entered into his investment transaction with Centro/BDMC on November 25, 2014 – some 3 months after the Loan Agreement was entered into, and the day after the first advance of the Loan was made.⁴

10. The evidence is also uncontradicted that:

- (a) There were no investors throughout the almost one year that the Loan Agreement was heavily negotiated between Emerald and Centro/BDMC (through their separate senior commercial legal counsel), or at the time the Loan Agreement was entered into. Centro/BDMC/Fortress/Olympia Trust only began raising their funds sometime after the Loan Agreement was entered into;⁵
- (b) Emerald had no knowledge of, or involvement with, how or from whom Centro/BDMC/Fortress/Olympia Trust were raising their funds for the Loan;⁶

³ Pizzuto Affidavit, para. 12, Application Record, Vol. II, Tab 6, p. 160

⁴ Supplementary Affidavit of Desi Auciello sworn May 13, 2020 (“Supp. Auciello Affidavit”), para. 34, Application Record, Vol. II, Tab 3, p. 13

⁵ Supp. Auciello Affidavit, paras. 5, 14, 17 & 35, Application Record, Vol. II, Tab 3, pp. 9-11 & 13

⁶ Supp. Auciello Affidavit, paras. 12 & 29, Application Record, Vol. II, Tab 3, pp. 10 & 12

- (c) Emerald had no knowledge of any of the communications, representations or dealings Centro/BDMC, Olympia Trust, their mortgage brokers (including FFM), or Fortress had with any of their investors;⁷
- (d) Emerald has never met or communicated with any of Centro/BDMC/Fortress or Olympia Trust's investors. Further, Emerald had no information with respect to who their investors were;⁸
- (e) Emerald was never involved with, or informed of, any agreements that Centro/BDMC, Olympia Trust and/or Fortress had in place with their investors.⁹
- (f) Emerald had no communications at any time with Olympia Trust which was the trustee and administrator for the RRSP investors;¹⁰
- (g) Emerald never saw any of the promotional or marketing materials provided to any investors, including Pizzuto;¹¹
- (h) Emerald had no involvement in how Centro/BDMC/Fortress dealt with its fees, commissions to its brokers or the return to its investors.¹²

11. In essence, FAAN and Representative Counsel are advancing the position that, because a certain rogue mortgage broker, FFM, and possibly Fortress did not properly explain the investment opportunity to a certain investor, Pizzuto, then the End of Term Event and Waterfall provisions in the Loan Agreement, that had been heavily negotiated and entered into months earlier between arm's length commercial parties, should not be enforceable. That is simply absurd.

⁷ Supp. Auciello Affidavit, para. 7, Application Record, Vol. II, Tab 3, p. 9

⁸ Supp. Auciello Affidavit, paras. 4 & 28, Application Record, Vol. II, Tab 3, pp. 9 & 12

⁹ Supp. Auciello Affidavit, para. 30, Application Record, Vol. II, Tab 3, p. 13

¹⁰ Supp. Auciello Affidavit, para. 9, Application Record, Vol. II, Tab 3, p. 10

¹¹ Supp. Auciello Affidavit, paras. 30-31, Application Record, Vol. II, Tab 3, p. 13; Transcript of cross-examination of Desi Auciello held July 8, 2020, qq. 403-04, 444-45 & 452-71, Application Record, Vol. III, Tab 12, pp. 324, 327-29

¹² Supp. Auciello Affidavit, para. 29, Application Record, Vol. II, Tab 3, p. 12

12. FAAN's reliance on the Court of Appeal decision in *MacQuarie Equipment Finance Ltd. v. 2326695 Ontario Ltd. (Durham Drug Store)*,¹³ is misplaced. Given its highly distinguishable facts, it has no real application to the present case. In *MacQuarie*, a pharmacy had entered into separate contracts with two parties – with both contracts dealing with the lease of the very same telemedicine equipment to the pharmacy. Yet, the contracts contained inconsistent termination provisions - one contract provided the pharmacy with the right to terminate the lease if the supplier defaulted, whereas the finance contract provided that the pharmacy could not terminate the lease for any reason including the supplier's default. When the pharmacy learned that the supplier had acted fraudulently in not obtaining the required regulatory approvals regarding the equipment, the pharmacy tried to terminate both contracts. However, the finance company, in reliance on the "no cancellation" provision in its lease, sued the pharmacy for breach of contract, and successfully brought a summary judgment motion against the pharmacy. The pharmacy appealed, and the Court of Appeal allowed the pharmacy's appeal.

13. The Court of Appeal held that, "*in the highly unusual circumstances of this case*", the pharmacy had the right to terminate the Plaintiff's contract upon the default of the supplier.¹⁴ The Court of Appeal noted that the pharmacy was never provided a copy of the contract it had signed with the Plaintiff finance company, it had signed the contract in a hurried manner over a period of a few minutes, without being advised that it was a different contract than was previously sent to it, and with no opportunity to negotiate the terms and without the benefit of legal advice. The Court of Appeal also noted that the lease was contained in two tightly-packed pages, with extremely small font that made it very difficult to read.¹⁵ In the end, the Court of Appeal relied on certain cases involving standard form pre-printed documents that were difficult to read and held that the Plaintiff should have brought the "no cancellation" clause to the pharmacy's attention.

¹³ 2020 ONCA 139 (CanLII).

¹⁴ *Id.*, at paras. 3 and 37

¹⁵ *Id.*, at para. 38

14. FAAN's attempt to equate the pharmacy defendant in the *MacQuarie* case with the investors is without any merit or logic. Unlike the pharmacy, each investor did not enter into two contracts with two different parties. Each investor only entered into one investment transaction with Centro/BDMC or Olympia Trust.

15. None of the investors was a party or signatory to the Loan Agreement. As indicated, there were no investors at the time the Loan Agreement was entered into between Emerald and Centro/BDMC. Emerald was not in privity with any of Centro/BDMC's or Olympia Trust's investors, and Emerald did not owe them any duty of care. Emerald does not owe any monies to any investors; it only owes the Lender, Centro/BDMC, in accordance with the Loan Agreement, and in particular, the Waterfall and End of Term Event provisions contained therein.

16. Also, unlike the pharmacy in the *MacQuarie* case, Pizzuto - being the only investor (out of over 450 investors) who provided any information or evidence in this matter: (i) did not make his investment in a hurried manner; (ii) he received legal advice from a lawyer over the telephone¹⁶ and had ample opportunity to obtain further or better legal advice from another lawyer had he wanted to; and (iii) he received copies of all agreements and documents he signed with Centro/BDMC which were not in small print or difficult to read.

17. Again, unlike the pharmacy in *MacQuarie*, Pizzuto also received a copy of the signed Loan Agreement between Emerald and Centro/BDMC before he decided to invest, which Loan Agreement contained the Waterfall and End of Term Event provisions.

18. Further, the Loan Agreement,¹⁷ as well as other documents Pizzuto received or signed,¹⁸ indicated that the Loan proceeds of \$21,246,153 would be applied as follows:

- \$12 million to repay 50% of the agreed-upon Borrower's Equity;
- \$1 million towards the Borrower's Project costs prior to construction financing; and

¹⁶ Pizzuto Affidavit, paras. 23 & 30, Application Record, Vol. II, Tab 6, pp. 163 & 165

¹⁷ Sec. 3(a) of Loan Agreement, Exhibit "B" to Auciello Affidavit, Application Record, Vol. I, Tab 2B, p. 36

¹⁸ See, for e.g., p. 1 of Project Fact Sheet, under heading "Use of Funds"; and Sched. C to Investor/Lender Disclosure Statement for Brokered Transactions, Exhibits "C" & "I" to Pizzuto Affidavit, Application Record, Vol. II, Tabs 6C & 6I, pp. 233 & 307

- The balance (so approximately \$8.2 million) to pay all of the Development Consultant's (Fortress') fees/costs.

19. Other documents Pizzuto received or signed also referred to, and summarized, the Waterfall provision in section 7.2 of the Loan Agreement.¹⁹

20. Accordingly, Pizzuto cannot complain that he was surprised that the Loan proceeds were used to fund the aforesaid items, or that any repayment is pursuant to a Waterfall.

21. As indicated above, and as spelled out in the Loan Agreement, Emerald only received around \$13 million of the approximately \$21.2 million in Loan proceeds. The rest was presumably paid by Centro to Fortress on account of its fee. Emerald has no information as to what Fortress did with those monies.

22. It is also noteworthy that the documents Pizzuto received or signed warned him that:²⁰

- *“Investments in syndicated mortgages are speculative and involve a high degree of risk”*
- *“The development of a project may not be completed within the anticipated time frame, or at all, which in turn could delay payment to participants or put repayment at risk”*
- The initial mortgage in favour of Centro would be a second mortgage for \$10 million, and Centro would postpone its mortgage in favour of construction financing or other priority financing up to \$200 million worth;
- *“Centro has given no warranty or representation with respect to the Investment”*

23. Pizzuto also complains that the mortgage broker, FFM, did not provide him with a copy of the Development Consultant Agreement (the “**DCA**”) entered into between Emerald and Fortress. Even if that is the case, Pizzuto signed an Acknowledgement

¹⁹ See, for e.g., pp. 3-4 of Project Fact Sheet, under heading “Waterfall”; s. 15 of Investment Authority – Form 9D; and Sched D to Investor/Lender Disclosure Statement for Brokered Transactions, Exhibits “C”, “F” & “I” to Pizzuto Affidavit, Application Record, Vol. II, Tabs 6C, 6F & 6I, pp. 235-36, 259 & 308-09

²⁰ Exhibits “C”, “F” & “L” of Pizzuto Affidavit, Application Record, Vol. II, Tabs 6C, 6F & 6L, pp. 236, 238, 259-60 & 325

document that made repeated references to the DCA.²¹ He also received the Loan Agreement, which made at least 8 references to the DCA.²² Pizzuto therefore could have simply requested a copy of the DCA had he wanted to.

24. In the Trustee's First Report, FAAN made the following general comments about the 44 Centro/BDMC syndicated mortgage loan projects over which it was appointed as Trustee:²³

"...significant portions of the sums advanced by Investors through BDMC were used to pay 'development consultant fees'. The development consultant fees were in an amount that generally appears to be equal to approximately 35% of the principal amount advanced under the applicable BDMC syndicated mortgage loan. A portion of this fee (approximately 50%) would be paid to the Investors' brokers..."

"...Moreover, many Investors agreed to terms that permit repayment 'waterfalls' that, at least in some instances, appear to permit owners of the real estate (including the borrowers and owners of the borrowers) to recover some of the amounts they invested in the developments in priority to the amounts loaned by the Investors." (Emphasis added)

25. The Respondents are not claiming any relief in this proceeding. They simply maintain that it would be unfair to enforce the Waterfall and End of Term Event provisions in the Loan Agreement as same would result in the Loan being discharged upon payment of \$9.1 million. Firstly, it is not unfair as the commercial parties to the Loan Agreement specifically negotiated and agreed that any repayment of the Loan was to be in accordance with a Waterfall and they further agreed to a mechanism to terminate the Loan at the end of its term through appraisal(s) or listing and sale of the Property, with the revenue flowing through the Waterfall.

²¹ Exhibit "K" to Pizzuto Affidavit, Application Record, Vol. II, Tab 6K, p. 318

²² See, ss. 1(i), (bb) & (hh), 3(a), 7.2, 8(a), 11 & 13(w) of the Loan Agreement, Application Record, Vol. I, Tab 2B, pp. 34-36, 38-40, 43 & 50

²³ Trustee's First Report dated June 19, 2018, paras. 15 & 17, Application Record, Vol. III, Tab 7-App.3, pp. 62-63

26. It should also be noted that, even if we hypothetically ignore the Waterfall and the Property was sold today at its appraised value of \$■■■■ million, pursuant to the registered mortgages, after payment of the first mortgage in favour of Cameron Stephens totaling roughly \$11 million, there would only be \$■■■■ million leftover to be split between Centro's mortgage and the Emerald *Pari Passu* Mortgage. Therefore, a payout to Centro/BDMC of at most \$■■■■ million. The investors are left in the same position whether the Property is sold or whether there is a deemed sale pursuant to the appraised value under the End of Term Event provision.

27. This was one of the reasons why FAAN and the investors' Representative Counsel had recommended the parties' settlement of \$10.45 million to the investors and the Court. In particular, in its Twelfth Report dated October 31, 2019, FAAN stated that:²⁴

"The Trustee engaged an independent real estate appraiser to provide an "as is" appraisal of the Castlemore Project...Based on the "as is" value for the Property set out in the appraisal, after repayment of the priority indebtedness, the Trustee estimates that the Castlemore Individual Lenders will receive a higher recovery from the Castlemore Offer than the recovery achieved through the End of Term Event Clause".

28. In any event, the Court of Appeal for Ontario has repeatedly made clear that courts will not rewrite contracts to reflect changed circumstances or more equitable results to accord with a court's after-the-fact assessment of what is just and equitable, and that this is especially so when dealing with commercial agreements negotiated at arms length by sophisticated parties.²⁵

29. If any mortgage brokers, Fortress or any lawyers did not adequately explain the investments, or the Waterfall and End of Term Event provisions in the Loan Agreement, to their investors or clients, then any such investors can bring an action against them for

²⁴ Section 33(a) of the Twelfth Report, Application Record, Vol. III, Tab 7-App.4, p. 106

²⁵ [Adamson v. Steed, 2008 ONCA 375 \(CanLII\), at para. 4; J.S.M. Corporation \(Ontario\) Ltd. v. The Brick Furniture Warehouse Ltd., 2008 ONCA 183 \(CanLII\), at para. 60](#)

negligent advice, misrepresentation or any other breaches. As indicated, the only information we have about any of this is from one investor, Pizzuto.

30. FAAN's reliance on the decision of *TMJ Hygiene Service Corp. v. Aces Capital Inc.*, is also misplaced. In that case, the court rescinded an agreement between the plaintiff buyer and the defendant seller of Raptors and Maple Leafs season tickets as the seller misrepresented the location of the season tickets. In the present case, however, Emerald did not misrepresent anything to any investors. It never dealt with any of Centro/BDMC/Fortress' investors. Emerald only dealt with Centro/BDMC/Fortress and their legal counsel in negotiating the Loan Agreement, before any investors even existed.

FAAN's Contractual Interpretation Arguments are Without Merit

31. FAAN's alternative contractual interpretation arguments are also without merit.

32. At paragraph 50 of its factum, FAAN contends that the End of Term Event provision only precludes the Lender from enforcing the Security and does not result in the discharge of the Security. That is not correct. The End of Term Event not only precludes the lender from exercising its rights under the Security, section 14(i)(B)(I) also expressly provides the Borrower the right to obtain a discharge of the Lender's Security as against the Vacant Lands.

33. Contrary to what is repeatedly alleged in FAAN's factum, nowhere in the End of Term Event provision is there any mention of "*partial payment*". Instead, what is provided for is a payment pursuant to the formula set out therein, using appraised value of the Property less certain specified deductions, which amount is then applied to the Waterfall to determine the amount to be paid to the Lender to obtain a discharge of the Security as against the Vacant Lands.

34. FAAN attempt to equate "partial discharge" with "partial payment" is also without merit. In particular, section 14(B)(II) of the Loan Agreement provides that, upon payment of the amount pursuant to the End of Term Event and Waterfall, "*the Lender shall provide partial discharges of all of its Security in respect of such Vacant Lands and shall no longer form part of the Security held by the Lender for the Loan*". (Emphasis added)

35. The reference to “partial discharge” was obviously intended to include a situation where part of the lands were not considered Vacant Lands at the time of the End of Term Event, such as where construction or servicing was taking place on certain lots. In that case, there would be a partial discharge of the Security “*in respect of such Vacant Lands*” (as quoted above), with the Security remaining in place over the non-Vacant Lands. The said section does not provide for or mention anything about discharging the Security to the extent of any payment. Section 14(E) also confirms that any partial discharge refers to Vacant Lands as opposed to Servicing or House Construction Lands. In any event, you can only partially discharge a mortgage in respect of lands.

36. It must be stressed that what Pizzuto or any other investor may or may not have understood is not relevant as none of them was a party to the Loan Agreement or had any involvement in its negotiation or drafting. What matters instead is what the commercial parties who negotiated the End of Term Event understood, and they are fully *ad idem* as to what was intended by it. In particular, consistent with Emerald’s aforesaid understanding, commercial counsel for Centro/BDMC who negotiated the said provision has properly described the End of Term Event as a “*termination process equivalent to a third party sale*” by which “*100% of the value of the land being sold gets thrown back into the Waterfall*” such that the parties “*are in the same position as if the lands were sold to a third party and the funds came in and then had to go through the Waterfall*”.²⁶

37. Clearly, that is the factual matrix underlying the End of Term Event.

Miscellaneous Allegations

38. As indicated, in his 18-page affidavit, Pizzuto does not even suggest that he had any contact or communication with Emerald. Recognizing this, and in an attempt to “cooper up their evidence” to try to generate at least some connection between Emerald and the investors, where none exists, Pizzuto added in his unsworn response to a written interrogatory that:

²⁶ Exhibit “A” to Supp. Auciello Affidavit, Application Record, Vol. II, Tab 3A, p. 22

- (a) he happened to visit Cachet Development's website and saw a video on the website by Emerald's President, Desi Auciello, "promoting attractive features of the Project and the expertise and dedication of Emerald Castle as a developer";
- (b) when he attended the Fortress event at TIFF Lighthouse (that he talked about in his affidavit but made no mention of Emerald in that regard), he heard someone from Cachet Development give a presentation about the Project. It should be noted that the then-coach of the Toronto Raptors, Dwayne Casey, also spoke at that event, and Pizzuto had to enlist the help from the mortgage broker, FFM, to get him access to the exclusive, for-invitation-only event.

39. In any event, Pizzuto does not specify any information he supposedly heard from the website video or the TIFF Lighthouse event, nor does he even suggest that any such information was inaccurate in any way.

40. Representative Counsel's factum complains that \$1.38 million has been paid to one of Emerald's owners for project development work. Yet, this is specifically provided for in the Loan Agreement. In particular, section 3(c) confirms that a Project Management Fee of \$5.95 million, payable at the rate of \$20,000 plus HST per month until registration of the plan of subdivision shall be paid to the project manager designated by the Borrower.²⁷ The project manager is Cachet Developments (Emerald Castle) Inc. Aside from this being spelled out in the Loan Agreement, the payment of a project management fee is standard in any real estate development. The Project has been the subject of major planning issues and appeals, which are ongoing. FAAN has confirmed the same in its report and after consulting its own planning expert,²⁸ has not raised any complaint as to the steps taken towards obtaining the necessary planning approvals.

41. The "Fortress side letter" is another red herring. It set out how a portion of the Loan, in the amount of \$810,000, was to be allocated. On May 23, 2019, FAAN requested a copy of the side letter as part of the process of reconciling the advances from Centro/BDMC under the Loan. It had already received Emerald's entire general ledger.

²⁷ Exhibit "B" to Auciello Affidavit, Application Record, Vol. I, Tab 2B, p. 37

²⁸ Trustee's Twelfth Report, paras. 20 & 33(c), Application Record, Vol. III, Tab 7-App.4, pp. 103 & 106

Emerald provided FAAN with a copy of the side letter on the very same day. At no time has FAAN advised that all of the proceeds of the Loan were not accounted for, or that the proceeds had been applied improperly.²⁹ Further, FAAN acknowledges having received the side letter and all its records relating to the Loan by May 2019 at the very latest,³⁰ which was 5 months before bringing its motion to approve the parties' settlement.

42. With respect to paragraph 25 of the Representative Counsel's factum where reference is made to the different estimated numbers of units, the appraised value of the Property is based on the net developable acres and not the number of units that may be built.³¹

43. Finally, in paragraphs 15-16 of Representative Counsel's factum, they refer to Pizzuto's affidavit in which he claimed the mortgage broker, FFM, represented to him that there would be a loan to value ratio of 57% and that the Loan instalments would be advanced so long as development or construction milestones were achieved. However, as indicated, Emerald had no knowledge of, or involvement in, any representations made to any investors. Further, the Loan Agreement, which Pizzuto acknowledges having received, provides for how or when the Loan proceeds were to be advanced - section 3(b) simply provides that the Lender was required to fund the Loan within 11 months of the execution of the Loan Agreement.³² There is no mention of any milestones. Finally, any alleged representation to Pizzuto of a 57% loan to value ratio has to be considered in light of Pizzuto's written acknowledgement that Centro would postpone its mortgage in favour of construction financing or other priority financing up to \$200 million worth.³³

²⁹ Supp. Auciello Affidavit, paras. 53-55, Application Record, Vol. II, Tab 3, p. 16

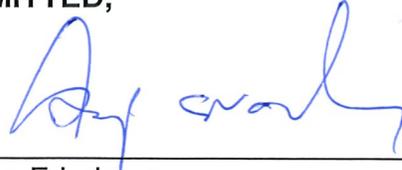
³⁰ Responses to Written Interrogatories for the Trustee dated June 8, 2020, qq. 4 & 7-10, Application Record, Vol. III, Tab 8, pp. 223-24

³¹ Exhibit "G" to Auciello Affidavit, Application Record, Vol. I, Tab 2G, pp. 155-62

³² Exhibit "B" to Auciello Affidavit, Application Record, Vol. I, Tab 2B, p. 37

³³ Exhibit "F" to Pizzuto Affidavit, Application Record, Vol. II, Tab 6F, p. 260

**ALL OF WHICH IS RESPECTFULLY
SUBMITTED,**

A handwritten signature in blue ink, appearing to read "W. Friedman", written over a horizontal line.

William Friedman,
Judy Hamilton,
Stephen C. Nadler,
of counsel for the Applicant

SCHEDULE "A"

1. [Adamson v. Steed, 2008 ONCA 375 \(CanLII\)](#)
2. [J.S.M. Corporation \(Ontario\) Ltd. v. The Brick Furniture Warehouse Ltd., 2008 ONCA 183 \(CanLII\)](#)

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

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Proceeding commenced at Toronto

**SUPPLEMENTARY FACTUM
OF THE APPLICANT**

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