

AMENDED THIS Oct 7 2021 PURSUANT TO  
MODIFIÉ CE CONFORMÉMENT À

RULE/LA RÈGLE 26.02 ( \_\_\_\_\_ )

THE ORDER OF Justice Perrell  
L'ORDONNANCE DU  
DATED / FAIT LE July 15<sup>th</sup>, 2021

Court File No. CV-16-565287-00CP

REGISTRAR .....  
SUPERIOR COURT OF JUSTICE      GREFFIER .....  
SUPERIEURE DE JUSTICE      **ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N :

THE ESTATE of BRYAN MADRYGA, BY HIS ESTATE  
ADMINISTRATOR REBECCA SHAW

Plaintiff

-and-

FORTRESS REAL CAPITAL INC., FORTRESS REAL DEVELOPMENTS INC., FORTRESS  
KEMPENFELT BAY DEVELOPMENTS INC., HARMONY VILLAGE-LAKE SIMCOE  
INC., CITY CORE DEVELOPMENTS INC., BUILDING & DEVELOPMENT MORTGAGES  
CANADA INC., ESTATE OF ILDINA GALATI by its Trustee in Bankruptcy CROWE  
SOBERMAN INC., DEREK SORRENTI, SORRENTI LAW PROFESSIONAL  
CORPORATION, GRANT EDWARDH APPRAISERS AND CONSULTANTS LTD.  
and IAN G. MCLEAN

Defendants

Proceeding under the *Class Proceeding Act, 1992*

**SECOND FRESH AS AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.  
The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for  
you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*,  
serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the  
Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this  
Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of  
America, the period for serving and filing your Statement of Defence is forty days. If you are  
served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of  
Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to  
ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date December 2, 2016 Issued by "A. Miller"  
Local Registrar

Address of Superior Court of Justice  
court office: 330 University Avenue, 9th Floor  
Toronto, ON M5G 1R7

TO: **FORTRESS REAL CAPITAL INC./FORTRESS REAL DEVELOPMENTS INC.**  
25 Brodie Drive, Unit 8  
Richmond Hill, ON L4B 3K7

AND TO: **FORTRESS KEMPENFELT BAY DEVELOPMENTS INC.**  
25 Brodie Drive, Unit 8  
Richmond Hill, ON L4B 3K7

AND TO: **HARMONY VILLAGE-LAKE SIMCOE INC.**  
2250 Bovaird Drive East, Unit 14  
Brampton, ON L6R 0W3

AND TO: **CITY CORE DEVELOPMENTS INC.**  
2250 Bovaird Drive East, Unit 14  
Brampton, ON L6R 0W3

AND TO: **BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**  
25 Brodie Drive, Unit 8  
Richmond Hill, ON L4B 3K7

AND TO: **ESTATE OF ILDINA GALATI BY ITS TRUSTEE IN BANKRUPTCY, CROWE SOBERMAN INC. c/o CROWE SOBERMAN INC., LICENSED INSOLVENCY TRUSTEE**  
2 St. Clair Ave. E., Suite 1100  
Toronto, ON M4T 2T5

AND TO: **DEREK SORRENTI**  
Sorrenti Law Professional Corporation  
310-3300 Highway 7

Vaughan, ON L4K 4M3

AND TO: **SORRENTI LAW PROFESSIONAL CORPORATION**  
310-3300 Highway 7  
Vaughan, ON L4K 4M3

AND TO: **GRANT EDWARDH APPRAISERS AND CONSULTANTS LTD.**  
18 King St. East, Suite 301  
Toronto, ON M5C 1C4

AND TO: **IAN G. MCLEAN**  
18 King St. East, Suite 301  
Toronto, ON M5C 1C4

**CLAIM**

1. The Plaintiff, Rebecca Shaw, Estate Administrator for the Estate of Bryan Madryga (“Estate”) (“Shaw”), claims on behalf of the Estate and on behalf of the proposed Class:
  - (a) an order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the “CPA”), certifying this action as a class proceeding and appointing Shaw as the Representative Plaintiff;
  - (b) a declaration that Fortress Real Capital Inc. (“Fortress Capital”) held its interest in an agreement with Harmony Village-Lake Simcoe Inc. dated April 18, 2012, relating to a real estate development located at 51, 53, 55 and 75 Bradford Street, Barrie, Ontario (the “Harmony Simcoe Project”, or “The Kemp Project”), in trust for the benefit of the Estate and the Class, and that any proceeds it received or receives from the proceeds of sale of The Kemp Project are impressed with a constructive trust in favour of the Estate and the Class;
  - (c) if necessary, a declaration that all the remaining proceeds of sale of The Kemp Project held by FAAN Mortgage Administrators Inc. belong to the Class, and should be distributed to them *pari-passu* based upon the quantum of each Class member’s investment in the syndicated mortgage loan or the Collateral Charges registered against the subject lands;
  - (d) a declaration that Fortress Capital, Fortress Real Developments Inc. (“Fortress Developments”), Building and Development Mortgages Canada Inc. (“BDMC”), Ildina Galati, Derek Sorrenti, and Sorrenti Law Professional Corporation breached their respective fiduciary duties owed to Bryan Madryga (“Madryga”) and the Class (together, the “Investors”);

- (e) an accounting and equitable tracing of all funds received by the Defendants, Fortress Capital, Fortress Developments, Fortress Kempenfelt Bay Developments Inc., Harmony Village-Lake Simcoe Inc., BDMC, Derek Sorrenti, and Sorrenti Law Professional Corporation from the Investors;
- (f) an order compelling disgorgement of all profits earned by those Defendants who are found by the Court to be fiduciaries of the Investors;
- (g) in the alternative to subparagraph (b) above, rescission of all agreements between the Investors and the Defendants with respect to their investments in a syndicated mortgage loan (the "SML") that Harmony Village-Lake Simcoe Inc. granted to the Investors or Collateral Charges registered against title to the subject lands;
- (h) a declaration that the Estate and the Class are creditors of Harmony Village-Lake Simcoe Inc. and City Core Developments Inc., and as such are complainants under s. 245 of the *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "*OBCA*");
- (i) a declaration that Harmony Village-Lake Simcoe Inc. and City Core Developments Inc. have acted in a matter that is oppressive, unfairly prejudicial to, and that unfairly disregarded the interests of the Investors contrary to the provisions of section 248 of the *OBCA*, entitling the Investors to damages from these defendants equivalent to the total investment losses that they have suffered;
- (j) damages, including aggravated damages, in the amount of \$25,000,000, or as otherwise fixed by the court;
- (k) exemplary and punitive damages in the amount of \$2,500,000;
- (l) an order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues;

- (m) costs of this action on a substantial indemnity basis, plus the costs of any notice given to the Class, and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to section 26(9) of the *CPA* on a full indemnity basis;
- (n) pre-judgment and post-judgment interest at the rate of 8% interest per year, pursuant to the terms of the SML and pursuant to the terms of the Collateral Charge granted by Fortress Kempenfelt Bay Developments Inc. that replaced the SML;
- (o) in the alternative to subparagraph (n), pre-judgment and post-judgment interest pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1980, c. 43, or such other rate as this Honourable Court deems just; and,
- (p) such further and other relief as this Honourable Court deems just.

## DEFINITIONS

2. In this claim, the following definitions are used:

- (a) **“BDMC”** means Building & Development Mortgages Canada Inc., which was at all material times, a licensed mortgage brokerage firm;
- (b) **“Class”, “Class Members”** and **“Investors”** means all persons in Canada who invested in a syndicated mortgage in respect of the Harmony Simcoe/The Kemp Project, registered against title to lands located at 51, 53, 55 and 75 Bradford Street, Barrie, Ontario as Instrument SC983678;
- (c) **“CUSPAP”** means the Canadian Uniform Standards of Professional Appraisal Practice which are the professional standards that appraisers must meet in performing a real property valuation as established by the Appraisal Institute of Canada (“AACI”);
- (d) **“FAAN”** means FAAN Mortgage Administrators Inc.;
- (e) **“Fortress Brokers”** means FFM Capital Inc., FMP Mortgage Investments Inc., and FDS Broker Services Inc.

- (f) **“Fortress Defendants”** or **“Fortress”** means, jointly, Fortress Real Capital Inc. (“Fortress Capital”) and Fortress Real Developments Inc. (“Fortress Developments”);
- (g) **“FKBD”** means Fortress Kempenfelt Bay Developments Inc., a single-purpose corporation incorporated under the laws of the Province of Ontario with an office in the Town of Richmond Hill, incorporated on June 1, 2016 to acquire and develop The Kemp lands;
- (h) **“FSCO”** means the Financial Services Commission of Ontario, which regulated the financial services industry, including regulation and licensing of mortgage brokers, agents, brokerages and mortgage administrators with respect to dealing and trading in mortgages in Ontario, and which was replaced by FSRA in June 2019;
- (i) **“FSRA”** means the Financial Services Regulatory Authority of Ontario, a regulatory commission established under the *Financial Services Regulatory Authority of Ontario Act, 2016*, S.O. 2016, c. 37, Sched. 8 (the *“FSRA Act”*), replacing the Financial Services Commission of Ontario in June 2019;
- (j) **“Harmony Simcoe”** or **“The Kemp”** or **“the subject lands”** refers to the real estate development project located at 51, 53, 55, and 75 Bradford Street in Barrie, Ontario;
- (k) **“HVLS”** means Harmony Village-Lake Simcoe Inc., a corporation incorporated under the laws of the Province of Ontario in 1996 with an office in the City of Brampton;
- (l) **“MBLAA”** means the *Mortgage Brokerages Lenders and Administrators Act, 2006*, S.O. 2006, c. 29;
- (m) **“SML”** means the syndicated mortgage loan (a mortgage that secures a debt obligation in respect of which two or more persons are lenders) granted by Madryga and the Class to Harmony Village-Lake Simcoe Inc.;
- (n) **“Sorrenti Defendants”** means Derek Sorrenti and Sorrenti Law Professional Corporation; and,
- (o) **“Valuator Defendants”** means Grant Edwardh Appraisers and Consultants Ltd. and Ian G. McLean.

## NATURE OF THE ACTION

3. This action concerns a syndicated mortgage loan made by Madryga and the proposed Class that was registered against the lands underlying the Harmony Simcoe/The Kemp Project. Investments in the SML were marketed and sold to the Class by Fortress, BDMC, and other mortgage brokerage firms or referring parties acting as subagents to BDMC and for which BDMC is liable in law.

4. The Harmony Simcoe Project lands are a 6.8 acre property located at 51, 53, 55 and 75 Bradford Street in Barrie, Ontario. The development was planned as a mixed-use residential condominium and commercial development. The legal description of the lands is set out at Schedule "A" to this Second Fresh as Amended Statement of Claim.

5. The SML went into default, along with the mortgage registered in priority to it, and the lands were sold under power of sale by the first-registered mortgagee to a Fortress-related entity, FKBD. There were no proceeds from the sale to repay the Investors the amounts owing under the SML. Instead, Fortress, FKBD, BDMC, HVLS and City Core conspired together to defeat the Investors' ability to claim against HVLS and City Core on the SML and the guarantee.

6. This conspiracy and the effect it would have on the Investors' ability to enforce their security was not disclosed to the Investors. Instead, Fortress, BDMC, HVLS and City Core Development Inc. conspired together and told the Investors the SML was still in good standing and secure after the purchase of the lands by FKBD, notwithstanding that the SML was extinguished and replaced with new Collateral Charges that were effectively unsecured. The extinguishment of the SML also extinguished the Investors' rights to pursue their losses against HVLS, and against City Core on its guarantee.



7. Thereafter, FKBD defaulted on the new first mortgage and the Collateral Charges. The subject lands were sold under power of sale. \$2.2 million was payable to the Investors from the sale of The Kemp Project, and the Investors lost the balance of their capital in the amount of approximately \$15,723,838, and the accrued and unpaid interest.

8. Fortress has wrongfully claimed \$572,000 of the power of sale proceeds, which belong to the Investors, resulting in a delay in repayment of \$700,000 by FAAN, and additional expenses being incurred to the detriment of the Investors.

9. The Defendants were negligent and made negligent misrepresentations about the value of the lands, and the nature and risks associated with investment in the SML, which induced the Investors to enter into the SML and the Collateral Charges, thereafter, to the detriment of the Investors.

10. Alternatively, the representations made by Fortress and BDMC were fraudulent in respect of the value of the subject lands, and the nature and risks associated with investment in the SML, and these fraudulent representations induced Madryga and the Class to enter into the SML.

11. Further, the Defendants, other than Sorrenti and the Valuator Defendants, conspired to, and did, cause injury to the Investors.

12. The outstanding principal owing on the SML in respect of the Harmony Simcoe/The Kemp Project is approximately \$15,723,838. Interest is also outstanding and continues to accrue.

13. The Plaintiff therefore claims, on behalf of the Estate and the Class, damages equivalent to the total losses of capital that they have sustained, including interest at the rate of 8% per year.

## THE PARTIES

14. The Plaintiff, Rebecca Shaw, Estate Administrator for the Estate of Bryan Madryga, resides in the town of Whitchurch-Stouffville, Ontario. She was Madryga's wife. Madryga died on February 8, 2021.

15. Madryga and the Class invested in a SML granted by HVLS, which was secured against a development known as the Harmony Village Simcoe Project (later, renamed "The Kemp").

16. Shaw brings this action on behalf of the Estate, and on behalf of a proposed Class defined as:

*All persons in Canada who invested in a syndicated mortgage in respect of the Harmony Village Simcoe Project/The Kemp, registered against title to lands located at 51, 53, 55 and 75 Bradford Street, Barrie, Ontario as Instrument SC983678.*

17. Fortress Developments is an Ontario corporation incorporated on July 9, 2012, with an office in Richmond Hill, Ontario. It carried on the business of real estate development, and as a development consultant including assisting other developers in obtaining financing for their developments. Its officers and directors are Vince Petrozza and Jawad Rathore (the "Fortress Principals").

18. Fortress Capital is a federal corporation incorporated in 2009, carrying on substantially the same business as Fortress Developments, and sharing office space with it. Its sole director is Vince Petrozza.

19. Together, the Fortress Defendants facilitated providing development loans to real estate developers through syndicated mortgages sold to unsophisticated retail investors.

20. FKBD is an Ontario corporation with its head office in Richmond Hill. FKBD was incorporated on June 1, 2016, by the Fortress Principals to acquire the Harmony Simcoe Project lands under power of sale, and to continue the development of the Harmony Simcoe Project.

21. HVLS is an Ontario corporation with its head office in Brampton. HVLS was the corporate vehicle originally used to develop the Harmony Simcoe Project lands, and is an affiliate of City Core Developments Inc. (“City Core”).

22. City Core is an Ontario corporation with an office in Brampton, Ontario, at the same location as HVLS. It was the guarantor of the SML. The officers and directors of City Core are the same as the officers and directors of HVLS.

23. BDMC, (formerly carrying on business as Centro Mortgage Inc. until in or about January 2016), is an Ontario corporation, which at all material times operated from an office at the same location as Fortress in Richmond Hill. At all relevant times, BDMC was a licensed mortgage brokerage and a licensed mortgage administrator.

24. BDMC was the main mortgage broker Fortress used to raise initial financing from the investing public through syndicated mortgage loans to cover the “soft costs” of real estate developments in the early stages of development, including the Harmony Simcoe Project. In many Fortress projects, it also held the syndicated mortgage loans as a trustee for the syndicated investors, and acted as the mortgage administrator in respect of the syndicated mortgage loans, including, starting in 2016, with respect to the SML.

25. Until early 2013, BDMC acted as the mortgage broker for both Fortress and for the investors in Fortress syndicated mortgage loans. Thereafter, BDMC was not the broker of record

for the investors, but it continued to perform many functions of the mortgage broker for the investors, including conducting project due diligence reviews and drafting written disclosures for the investors - including the statutorily mandated FSCO disclosure forms - and obtaining valuations or opinions of value for the properties securing the syndicated mortgage loans, which were intended to be disclosed to the investors as part of the disclosure package. In carrying out these functions, BDMC was in a conflict of interest with respect to its duties to investors and its own financial interests.

26. As the mortgage broker and mortgage administrator for the SML, BDMC owed the Investors a duty of care to act as a reasonably prudent mortgage administrator to protect their interests under the SML, as well as fiduciary duties, and statutory duties imposed by the *MBLAA*.

27. On February 1, 2018, FSCO issued an order, on consent, revoking BDMC's mortgage brokerage license pursuant to section 19 of the *MBLAA*. BDMC was ordered to pay an administrative penalty of \$400,000 pursuant to section 39 of the *MBLAA*. The license of Vince Petrozza, who was a broker with BDMC, was revoked.

28. On April 20, 2018, the Ontario Superior Court of Justice appointed FAAN Mortgage Administrators Inc. ("FAAN") as Trustee of all of the assets, undertakings and properties of BDMC, including all of the assets in the possession of or under the control of BDMC, including lenders under any syndicated mortgage, and all real property charges in favour of BDMC, until all assets under all syndicated mortgage loans have been realized and all property has been distributed to those entitled to it.

29. The Investors have been paid \$1,476,162 from the proceeds of the power of sale of the subject property. FAAN continues to be the Trustee of BDMC's assets in respect of the balance of

the proceeds from the sale of The Kemp Project in the amount of \$700,000. These funds belong to the Investors. FAAN agrees.

30. At all material times, Ildina Galati-Ferrante (“Galati”) resided in Vaughan, Ontario and was the sole owner, and a director and officer of BDMC. Galati was a licensed mortgage broker and was the principal mortgage broker of BDMC at all material times. On or about February 1, 2018, as part of BDMC’s settlement with FSCO, Galati surrendered her broker license, and was required to cease all mortgage brokering activities effective February 5, 2018.

31. Galati died on September 26, 2020. On March 17, 2021, the Galati Estate made an assignment into bankruptcy. By order of the Bankruptcy Court dated September 13, 2021, the statutory stay of proceedings as against the Galati Estate in respect of this action was lifted.

32. Derek Sorrenti (“**Sorrenti**”) is a lawyer licensed to practice law in Ontario. He practices through his professional corporation, Sorrenti Law Professional Corporation (“**Sorrenti Law**”), from offices in Vaughan, Ontario. From time to time, the Sorrenti Defendants employed other lawyers, who assisted the Sorrenti Defendants in providing the services set out herein with respect to Madryga’s and the Class’ investments in the SML. The Sorrenti Defendants are vicariously liable for the acts or omissions of their employees.

33. The Sorrenti Defendants provided ostensibly “independent” legal advice (“ILA”) to the Investors about their proposed investments in the SML, then Sorrenti acted as bare trustee to hold the Class’ interests in the SML until 2016. The legal advice was not independent, and the Sorrenti Defendants breached the duty of care and fiduciary duty they owed to the Investors by providing negligent advice. Sorrenti also was negligent in fulfilling his role as the Investors’ trustee.