MAY 16 2022

AMENDED THIS ____ PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À
☐ RULE/LA RÈGLE 26 02 (A)
☐ THE ORDER OF
L'ORDONNANCE DU
DATED / FAIT LE

H. Marotta
REGISTRAR
SUPERIOR COURT OF JUSTICE

Court File No.: CV-16-560268-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE

BETWEEN:

ARLENE MCDOWELL

Plaintiff

- and -

FORTRESS REAL CAPITAL INC., FORTRESS REAL DEVELOPMENTS INC., EMPIRE PACE (1088 PROGRESS) LTD., BUILDING & DEVELOPMENT MORTGAGES CANADA INC., ESTATE OF ILDINA GALATI by its Trustee in Bankruptcy CROWE SOBERMAN INC., DEREK SORRENTI, SORRENTI LAW PROFESSIONAL CORPORATION and MICHAEL CANE

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

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

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

AND TO: EMPIRE PACE (1088 PROGRESS) LTD.
125 Villarboit Crescent
Vaughan, ON L4K 4K2

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: MICHAEL CANE
401 Bay Street, Suite 2704
Toronto, ON M5H 2Y4

CLAIM

1. The Plaintiff, Arlene McDowell ("McDowell"), claims on her own behalf and on behalf of the proposed Class (as defined below):

(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 McDowell as the Representative Plaintiff;

(b) a declaration that Fortress Real Developments Inc. ("Fortress Developments") holds in trust for the benefit of the Class, its interest in an agreement (the "Fortress Agreement") dated on or before August 13, 2012, with Empire Pace (1088 Progress) Ltd. ("Empire Pace") and any amendments thereto or further agreement between the same parties with respect to a mixed-use real estate development project (the "Progress Project", also known as the "The Ten88 Project"), built on land located at 1088 Progress Avenue in Toronto, Ontario, and that Fortress Developments' interest in the proceeds of sale of the Progress Project, or, in the alternative, that any payments made to Fortress Developments by Empire Pace, are impressed with a constructive trust in favour of the Class;

(c) a declaration that the terms of the charges registered against title to the Progress Project, as Instrument No. AT3101004, including all subsequent changes to AT3101004 registered on title, are void and unenforceable insofar as they are inconsistent with the syndicated mortgage loan agreement(s) registered against title to the subject lands ("the SML") made between Empire Pace and Derek Sorrenti ("Sorrenti"), in trust for the Class;

(d) a declaration that Fortress Real Capital Inc. ("Fortress Capital"), Fortress Developments, Building and Development Mortgages Canada Inc. ("BDMC"), Ildina Galati ("Galati"), Sorrenti, and Sorrenti Law Professional Corporation ("Sorrenti Law") breached their respective fiduciary duties owed to the Class;

(e) an order compelling disgorgement of all profits earned by those Defendants who are found by the Court to be fiduciaries of the Class with respect to the Progress Project;

(f) an accounting and equitable tracing of all funds received by Fortress Capital, Fortress Developments, Empire Pace, BDMC, Sorrenti, and Sorrenti Law from the Class;

(g) in the alternative to subparagraph (b) above, rescission of all agreements between the Class and the Defendants with respect to their investments in the SML;

(h) general damages in the amount of $25,000,000 or as otherwise assessed by the court;

(i) exemplary and punitive damages in the amount of $2,500,000;

(j) pre-judgment and post-judgment interest at the rate of 8% per annum pursuant to the terms of the SML Agreement (as defined below);

(k) in the alternative to subparagraph (j), pre-judgment and post-judgment interest in accordance with ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1980, c. 43;

(l) costs of this action on a substantial indemnity basis together with the Harmonized Sales Tax thereon;

(m) an order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

(n) the costs of providing notice of certification, notice of resolution of the common issues trial, any other notices required to be provided to the Class, and the costs of administering the plan of distribution of the recovery in this action; and

(o) 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"** and **"Class Members"** means all persons in Canada who invested in a syndicated mortgage in respect of the Progress Project/Ten88 Project, registered against title to lands located at 1088 Progress Avenue in Toronto, Ontario as Instrument AT3101004;

(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;

(d) **"Empire Pace (1088 Progress) Ltd."** is an Ontario corporation that was incorporated to own and develop the Ten88 Project and lands;

(e) **"FAAN"** means FAAN Mortgage Administrators Inc.;

(f) **"Fortress Defendants"** or **"Fortress"** means, jointly, Fortress Capital and Fortress Developments;

(g) **"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;

(h) **"FSRA"** means the Financial Services Regulatory Authority of Ontario, a regulatory commission established under the *Financial Services Regulatory Act of Ontario, 2016*, S.O. 2016, c. 37, Sched. 8, and which replaced FSCO in June 2019;

(i) **"Progress Project" or "Ten88 Project"** means the mixed-use development at 1088 Progress Avenue in Toronto, Ontario;

(j) **"*MBLAA*"** means the *Mortgage Brokerages Lenders and Administrators Act, 2006*, S.O. 2006, c. 29;

(k) **"SML"** means the syndicated mortgage loans (a mortgage that secures a debt obligation in respect of which two or more persons are lenders) granted by the Class

to Empire Pace (1088 Progress) Ltd. and registered on title to the subject lands as instruments no. AT3101004 or AT3127137; and,

(l) **"Sorrenti Defendants"** means Sorrenti and Sorrenti Law.

NATURE OF THE ACTION

3. This action concerns a syndicated mortgage loan made by the proposed Class Members to Empire Pace, the owner and developer of the Progress Project lands, that was registered against the lands underlying the Progress 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 Progress Project lands are located at 1088 Progress Avenue, Toronto, Ontario. The Project was supposed to include two phases: Phase 1, comprising 104 townhouse units in three 4-story buildings on the southern portion of the lands, which were constructed and sold in or around 2017; and Phase 2, marketed to the Class as consisting of 310 apartment condominium units in two 18-story condominium towers, with ground floor commercial uses.

5. Empire Pace completed the planning for Phase 2, including any zoning amendments required. Despite marketing the Progress Project as a two-phase project, Phase 2 was only in the "pre-construction phase" until it was sold under court supervised sale by FAAN on or about March 11, 2022.

6. The legal description of the lands is set out at Schedule "A" to this Second Fresh as Amended Statement of Claim.

THE PARTIES

7. Arlene McDowell is a retiree who lives in the City of Toronto, in the Province of Ontario. McDowell invested in the SML in October 2012.

8. McDowell brings this action on behalf of a proposed Class defined as:

> *All persons in Canada who invested in a syndicated mortgage in respect of the Progress/Ten88 Project, registered against title to lands located at 1088 Progress Avenue in Toronto, Ontario as Instrument AT3101004 or AT3127137.*

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

10. 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.

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

12. BDMC (formerly carrying on business as Centro Mortgage Inc. until in or about January 2016), is an Ontario corporation with 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.

13. BDMC was the main mortgage broker Fortress used to raise initial financing from the investing public through syndicated mortgage loans. The loan proceeds were meant to cover the "soft costs" of real estate developments in the early stages of development. In many Fortress projects, BDMC also held the syndicated mortgage loans as a trustee for the syndicated investors, and acted as the mortgage administrator, or both.

14. Until sometime in 2013, BDMC acted as the mortgage broker for both Fortress and the investors in Fortress syndicated mortgage loans. Thereafter, BDMC was not the broker of record for the investors, but it continued to act in a conflict of interest and performed 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 of the properties securing the syndicated mortgage loans, which were 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, its duties to the borrower, and its own financial interests.

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

16. On April 20, 2018, the Ontario Superior Court of Justice appointed 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 all of the assets in the possession of or under the control of BDMC involving 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.

17. Galati resided in Vaughan, Ontario and was at all material times 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.

18. 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.

19. As the mortgage broker and mortgage administrator for the SML, BDMC owed the Class 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*.

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

21. Empire Pace is an Ontario corporation with its head office in Vaughan, Ontario. Empire Pace was incorporated on July 12, 2012 to develop the Progress Project, and is liable for all amounts payable thereunder, including all costs incurred by the investors in enforcing the SML debt.

22. Sorrenti is a lawyer licensed to practice law in Ontario. He practices through his 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 McDowell's and the Class' investments in the SML. The Sorrenti Defendants are vicariously liable for the acts or omissions of their employees.

23. The Sorrenti Defendants provided ostensibly "independent" legal advice ("ILA") to the Class about their proposed investments in the SML. The legal advice was not independent, and the Sorrenti Defendants breached the duty of care and fiduciary duty they owed to the Class by providing negligent advice.

24. Sorrenti also acted as bare trustee to hold the Class' interests in the SML. Sorrenti as trustee was replaced by FAAN by court order dated September 30, 2019. Sorrenti breached the duty of care and fiduciary duty he owed to the Class by his negligence in fulfilling his role as their trustee.

25. Sorrenti Law was retained by the Class to register a charge on title to the Progress Project lands, to secure the SML debt. Sorrenti Law breached its contract and breached its fiduciary duty owed to the Class by registering charge terms that were materially different than the terms of the SML Agreement, and which caused the Class to lose their priority and other rights as a secured lender, thereby causing damages to them.

26. Sorrenti Law also acted as the SML's mortgage administrator for the Class until he was replaced by FAAN by court order dated September 30, 2019. Sorrenti Law was able to administer mortgages as part of a law practice, and without a license, pursuant to an exemption in s. 5(6) of the *MBLAA*, and ss. 3 – 5 of O. Reg. 407/07 thereunder.

27. As the mortgage administrator for the SML, Sorrenti Law owed to the Class, and breached:

(a) a duty of care to act as a reasonably prudent mortgage administrator to protect their interests under the SML;

(b) fiduciary duties; and,

(c) statutory duties imposed by the *MBLAA*.

28. On September 30, 2019, on the application of the Law Society of Ontario, FAAN was appointed as trustee of all of the assets, undertakings and properties of the Sorrenti Defendants relating to their professional business of trusteeship and administration of syndicated mortgage loans in Fortress projects, including all of the assets in the possession or under the control of the Sorrenti Defendants relating to their syndicated mortgage loan administration business, including with respect to the Progress Project. FAAN is now the trustee and mortgage administrator for the Class.

29. Michael Cane ("Cane") is a licensed real estate appraiser and operates a sole proprietorship, Michael Cane Consultants. Cane is a member of the Appraisal Institute of Canada, a self-regulated body that has established professional standards for appraisers known as the Canadian Uniform Standards of Professional Appraisal Practice ("CUSPAP").

30. Cane prepared and signed a Current Appraisal Report dated July 24, 2012 (the "Appraisal") for Fortress Real Capital that purported to express an opinion on the current market value of the freehold interest in the subject property effective as of July 5, 2012. However, the Appraisal did not express the current market value of the as yet undeveloped lands (a site value opinion). It expressed market value using the "Development Approach", which calculates the value of the

project based upon the anticipated net income generated from the building after the work is complete.

31. Cane was negligent in preparing the Appraisal, and it was not prepared in compliance with CUSPAP.

32. The CUSPAP standards for appraisals effective in 2012 state that appraisers must identify in their report whether the appraisal is current, retrospective, prospective, or an update to a previous appraisal (Section 6.2.5). Notwithstanding this obligation, Cane prepared the Appraisal representing that it was a current value for the Progress property but based his conclusions on future events that had not transpired – in other words it was a prospective valuation, not a current valuation. This was not in conformity with CUSPAP.

33. At all material times, Cane knew that the primary purpose of the Appraisal was for it to be used by Fortress to secure lenders for a syndicated mortgage loan to be advanced to the developer through Fortress' services. It was for this reason that the Appraisal was held out to be a current market value Appraisal, when it was, in fact, a report on the future value based upon assumptions that the subject property would be built out as a two-phased condominium project.

34. At all material times, Cane knew that the purpose of the Appraisal was for Fortress and BDMC to disclose to the investors in the SML what the as is" value of the subject property was as required by FSCO, and that it was intended that the investors would rely upon his Appraisal as reflecting the current market value of the subject property when deciding whether to invest in the syndicated mortgage loan. Cane knew that the Appraisal would be used to establish that the syndicated mortgage loan was for less than 100% of the current value of the subject property, so that the syndicated mortgage loan would seem to be eligible to be held in a registered account.

35. The result was that the current market value expressed in the Appraisal vastly exceeded the true current value of the subject lands. Fortress needed the appraised value of the lands expressed in the Appraisal to exceed the true current value of the subject lands in order to induce investors to participate in the syndicated mortgage loan that Fortress had committed to secure for Empire Pace. The inflated Appraisal gave the appearance that the subject lands were worth significantly more than their true current market value.

36. Cane knew that his Appraisal would be misleading to the investors, and that it was intended to mislead the investors. Cane knew that the mortgage brokers who would be assisting Fortress and Empire Pace in securing syndicated mortgage loan investors were required by FSCO to produce to the investors a copy of any existing appraisal of the property completed within the prior 12-month period, with the intent that the lender could rely upon the appraisal in making their investment decision. Cane knew that the mortgage brokers would continue to disclose to the investors the "current market value" of the subject lands as found in the Appraisal until the syndicated mortgage loan was fully funded, and not just for a 12 month period after it was delivered. Hence, Cane knew that the Appraisal would be produced to the Class, or at a minimum the current market value that Cane found for the subject lands would he disclosed to the Class, and that the Class would rely upon that current market value in making their investment decisions.

MORTGAGE LAW IN ONTARIO

37. In Ontario, the mortgage brokerage industry is governed by the provisions of the *MBLAA* and its regulations. The *MBLAA* and its regulations set out standards of practice for mortgage brokerages, principal brokers, brokers, agents, mortgage administrators and brokerage officers and directors.

38. At the relevant times, the mortgage brokerage industry was regulated by FSCO and then FSRA, under the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, and the *FSRA Act*, respectively.

39. A license is required for anyone who:

(a) solicits a person or entity to borrow or lend money on the security of real property;

(b) negotiates or arranges a mortgage on behalf of another person or entity;

(c) carries on the business of dealing and trading in mortgages;

(d) solicits a person or entity to buy or sell mortgages;

(e) buy or sells mortgages on behalf of another person or entity;

(f) lends money on the security of real property; or

(g) holds themselves out as lending money on the security of real property.

40. The *MBLAA* codifies much of the previous common law with respect to the duties of mortgage brokerages, principal brokers, brokers, agents, mortgage administrators and brokerage officers and directors. Its regulations set out high standards of practice for mortgage brokerages, principal brokers, brokers, agents, mortgage administrators and brokerage officers and directors.

41. At all times, Fortress was acting as an unlicensed mortgage broker, and in breach of the statutory duties established under the *MBLAA*. At all times, BDMC and the Sorrenti Defendants knew or ought to have known that Fortress was acting as an unlicensed mortgage broker, but they turned a blind eye to the misconduct because they wished to enrich themselves through their roles in supporting Fortress' syndicated mortgage business.

42. FSCO requires that investors receive a copy of an appraisal of the investment property based on its "as is" value, if one has been prepared within the preceding 12 months. Appraisals are to be prepared in accordance with the CUSPAP standards established by the Appraisal Institute of Canada. This requirement was known to Cane, BDMC, Fortress, Galati and the Sorrenti Defendants, but they ignored this requirement, and proceeded to provide advice to the Class based on as-built valuations which resulted in the Class being duped into believing their investments were fully secured on the subject lands.

FORTRESS' BUSINESS MODEL

43. The Fortress Defendants and BDMC followed the same business model for each of the developments in which they raised capital for developers and builders through the vehicle of syndicated mortgages sold to individual retail investors, including with respect to the Progress Project.

44. The Fortress Defendants acted as one corporate enterprise. Fortress Developments was primarily the entity that entered into development consulting agreements with third party developers/builders, while Fortress Capital was primarily responsible for raising investment capital through syndicated mortgages. The syndicated mortgage would be used to fulfill Fortress Development's obligations under the development consulting agreement. Both companies acted in concert, shared office space, shared management and staff, and pooled their financial resources.

45. Fortress followed a business model whereby it would enter into development consulting agreements with developers/builders whereby Fortress promised to provide real estate financing for the "soft costs" of the developments in return for 50% of the profits to be generated by the development. In some cases, the developer/builder would be a single purpose entity incorporated

wholly or partially by the Fortress Principals, in which case, the single purpose entity would be the borrower in respect of the syndicated mortgage loan.

46. Syndicated mortgage loans aggregate small investors' loans, which are held in the name of a trustee. The trustee then lends the aggregate amount of the syndicated mortgage loan capital to the developer through a loan agreement executed by the trustee acting on behalf of investors, and the loan is secured by way of a mortgage registered on title to the project lands, often listing the names of all the investors as a schedule.

47. Prior to the popularization of syndicated mortgage financing in Ontario by Fortress and other companies, the financing for the soft costs of a development was usually obtained through "mezzanine" financing, which is typically only available to a developer at higher interest rates than that charged on mortgages for the acquisition of the development lands or for construction costs, both of which are registered in priority to mezzanine financing. Because of its subordinate position, mezzanine financing is risky and the interest rates are commonly as high as 30%, reflective of the degree of risk involved in the investment. The SML was equally risky.

48. Fortress' development agreements with developers/builders called for advance payments to Fortress of "anticipated profits" at the time the financing was raised. This resulted in a substantial portion of the investors' money (approximately 35%) being retained by Fortress years before any profits were actually earned, if at all. It diverted the loan money away from the developer or builder. Fortress used the funds that it retained to pay mortgage broker and agents' commissions at rates substantially higher than the industry standard, as well as to pay the Sorrenti Defendants for the allegedly "independent" legal advice that they provided to investors (discussed further below). The rest it kept as its own profits. The fact that Fortress held back approximately

35% of the investors' funds to pay these Fortress-related fees and commissions was not disclosed, including to the Class, and was intentionally withheld from the Class by Fortress and BDMC.

49. BDMC or Sorrenti Law, as the mortgage administrators, also retained another 16% of investors' capital in an "interest reserve", which was used by the mortgage administrator to pay investors the interest payable under the syndicated mortgage loans over the first two years of the mortgage's term. Effectively, this was a return of capital, as the interest paid to the investors was actually part of the capital they invested. The result was that the Class members who invested outside of a registered plan paid taxes on ostensible income that was actually a return of capital.

50. Additionally, if the "interest reserve" was depleted, then the interest was paid to the syndicated mortgage loan investors from the investment funds of subsequent investors, effectively operating like a "Ponzi" scheme. The payment of interest from investors' own money is contrary to s. 23 of the *MBLAA* Regulation 189/08, which states that a mortgage administrator shall not make a payment to a lender or investor in connection with the administration of a mortgage unless the payment is made from the funds paid under the mortgage by a borrower.

51. Fortress, BDMC, Galati and the Sorrenti Defendants knew, or ought to have known that the structure of holding back part of the capital of the syndicated mortgage investment to pay future interest obligations on behalf of the borrower was a breach of s. 23 of the *MBLAA* Regulation 189/08, and that this information ought to have been disclosed to the Class before they entered into the SML, but no such disclosure was made to the Class.

52. The result was that the developer or builder received less than 50% of the funds raised from investors for use in the development of the project itself. This fact was not disclosed to the Class,

was intentionally withheld from the Class by Fortress and BDMC, and was negligently withheld by the Sorrenti Defendants.

53. Fortress raised the capital to finance the developments predominantly from small and unsophisticated investors. Approximately 80 – 85% of the investors in Fortress syndicated mortgage loans held their investments in registered accounts. The fact that the syndicated mortgage loans were allegedly eligible to be held in a registered account was a key representation and selling feature of the Fortress syndicated mortgage loans, including the SML.

54. The Fortress syndicated mortgage loans were administered on behalf of the investors by either BDMC or by Sorrenti Law. In this case, Sorrenti Law was the administrator, until replaced by FAAN by court order.

55. While Fortress actively marketed the syndicated mortgage loans to potential investors, including the Class, Fortress could not sell the syndicated mortgage loans to investors directly because the Fortress Defendants were not licensed mortgage brokers. Instead, Fortress arranged for BDMC to be their front, to sell the syndicated mortgage loans to investors.

56. BDMC both solicited investors and sold the syndicated mortgage investments to investors. It acted as the agent for both the investor and for Fortress or the developer. By acting for both the investors and the lender on the sale of the syndicated mortgage loans, BDMC acted in an undisclosed conflict of interest.

57. In 2013, Fortress entered into agreements with FMP Mortgage Investments Inc., FFM Capital Inc. and FDS Broker Services Inc. (the "Fortress Brokers") to have these mortgage brokers market the mortgage investments widely to members of the public, as well as to other mortgage

brokers and agents who, in turn, would act as their agents to solicit investments in the Fortress syndicated mortgage loans from members of the public.

58. Despite the interposition of the Fortress Brokers as the selling brokers, BDMC continued to perform duties that were the responsibility of a selling mortgage brokerage and continued to provide mortgage brokerage services to the syndicated mortgage loan investors, including to those members of the Class who invested in the SML after the Fortress Brokers commenced carrying on business. BDMC continued to act in an undisclosed conflict of interest.

59. Although Fortress was not a direct party to the sale of the syndicated mortgage loans to investors, it was actively involved in marketing the syndicated mortgage loans. Fortress developed professional sales and marketing packages in respect of the developments in which it was involved, which were disseminated widely to its network of mortgage brokers and agents. The marketing packages were also circulated directly to members of the public, and Fortress held in-person sales events or "seminars" to promote investments in its syndicated mortgage loans.

60. Fortress prepared the marketing packages and held the marketing seminars to solicit and induce investors such as the Class to invest in the development projects through the syndicated mortgage loans. The marketing materials represented the real estate projects as large-scale developments with blue-chip, established, and reputable builders with decades of experience. The sales pitch did not disclose that even the established builders typically used a single purpose corporation for each development to avoid liability if the development failed.

61. Particularly, and consistent with its marketing representations for all of the developments that it was financing, Fortress represented to McDowell and to the Class that the syndicated mortgage loans, including the subject SML:

(a) were fully secured against the development property;

(b) were a safe investment, providing a high (8%) rate of return, and the potential to obtain an even higher investment return through "profit participation" upon completion of the project "while still maintaining solid security and collateral on [the] principal investment";

(c) were safe, low-risk, and secure investments, including that Fortress chooses projects that have minimal zoning risk and strong sales objectives to protect investors from protracted development delays;

(d) were eligible to be held in registered accounts, which requires that the loan to value ratio be less than 100%;

(e) would pay interest at the rate of 8% per year, distributed quarterly, which would be income to the investor (and not a return of capital);

(f) were for a short term of a few years, and at the end of the term, the principal would be repaid in full;

(g) that in the unlikely event of default of the syndicated mortgage, the trustee would be able to take immediate steps to act upon the investors' security and would take such steps.

(h) appraisals of the property are provided by Appraisal Institute of Canada designated members to provide "hard, reliable valuations" which are used to assess the "loan to value" ratio of the syndicated mortgage loan.

(Together, the "Core Misrepresentations".)

62. Fortress, BDMC, and Galati all knew that the Core Misrepresentations were made to potential investors, including the Class, to induce them to enter into the syndicated mortgage loans,

including the SML. These Defendants knew, or ought reasonably to have known that the representations were false, or were reckless in respect of determining the veracity of the representations. These Defendants knew, or ought reasonably to have known, that the Class relied upon the Core Misrepresentations in making their decisions to invest in the syndicated mortgage loans, including the SML.

63. Fortress and BDMC intended that the investors, including the Class, would rely upon the Core Misrepresentations when making their decisions to invest in the Fortress syndicated mortgage loans. The Class did rely upon the Core Misrepresentations set out in the marketing materials and provided to them at Fortress seminars and by representatives of Fortress, BDMC and the Fortress Brokers when the Class decided to invest in the SML.

64. Fortress arranged for a trust company, Olympia Trust Company ("Olympia"), to act as the trustee to facilitate investors' Fortress syndicated mortgage loan investments to be held in registered accounts. To the knowledge of Fortress, BDMC, Galati, and the Sorrenti Defendants, Olympia was never licensed to act as a trust company in Ontario, but Olympia proceeded to carry on business in Ontario acting as trustee for the investments held in registered plans. No other trust companies or financial institutions licensed to do business in Ontario would permit registered account clients to invest in Fortress syndicated mortgages through their registered accounts. These facts were not disclosed to the Class. In August 2017, FSCO required that Olympia cease doing business in Ontario, long after investors had made their SML investments.

65. Fortress and BMDC knew that they needed evidence that the syndicated mortgage loans would qualify to be held in registered accounts, which meant proof that the loan to land value ratio was less than 100%, otherwise the scheme would fail. However, these Defendants did not obtain

appraisals for the developments based on the actual "as is" value of the properties. Instead, they obtained either appraisals or "opinions of value" based upon a hypothetical future value calculated as if the project was completed. The appraisal and opinion of value prepared in respect of the Progress Project were not compliant with CUSPAP (the "Misrepresentation of Value").

66. As part of Fortress' marketing scheme, it conspired with BDMC and the Fortress Brokers to, and did, misrepresent to the investors, including the Class, that the valuations on the properties were compliant with FSCO's requirements, including that the current "as-is" value of the developments were sufficiently high so that the syndicated mortgage loans were eligible to be held in registered accounts, and therefore that the loan to value ratio was less than 100%.

67. Fortress, BDMC and Galati made the Core Misrepresentations and Misrepresentation of Value to induce the investors to invest in the Fortress syndicated mortgage loans. These Defendants knew that the investors would rely upon these misrepresentations in making their decisions to invest in the Fortress syndicated mortgage loans. The Class did, in fact, rely upon the Core Misrepresentations and Misrepresentation of Value of the Progress Project made by these Defendants in deciding to invest in the SML, including the decision to hold the investments in registered accounts.

68. Had Fortress, BDMC and Galati disclosed the true value of the development properties rather than grossly inflated values, none of the syndicated mortgage loans would have been registered plan-eligible according to regulations set out by the Canada Revenue Agency, the Fortress syndicated mortgage lending scheme would have failed, and the Class would not have invested in the SML.

69. Fortress also intentionally omitted material information about the development projects it was financing from both the marketing materials and in the disclosure materials that it produced for the mortgage brokers to provide to the investors in the Fortress syndicated mortgage loans, including the terms of its agreement with the developers or builders whereby Fortress kept approximately 35% of the investment funds. These misrepresentations and omissions were essential in order to determine the risk involved in investing in the syndicated mortgage loans, and to knowing the true nature of the syndicated mortgage loan investments. The omissions were made intentionally to induce the Class to invest in the SML and are part of the Core Misrepresentations.

70. In September 2020, FRSA found that Fortress had been dealing in syndicated mortgages without a brokerage license and had violated s. 2(2) of the *MBLAA* twelve times. FSRA imposed a $250,000 penalty against Fortress for its violations of the *MBLAA*.

THE PROGRESS PROJECT

71. On August 14, 2012, Empire Pace purchased the parcel of land underlying the Progress Project for $8.8 million. Empire Pace paid $2.8 million in cash for the lands, and the remaining $6 million was registered on title as a vendor take back mortgage (the "VTB Mortgage").

72. The next day, the SML Agreement was registered on title to the Progress Project lands in the face amount of $7,476,000, naming Sorrenti as the mortgagee in trust for the Class.

73. Empire Pace paid $8.8 million for the Progress Project lands, approximately five weeks after it received the Cane Appraisal. The "as-is" market value of the subject lands, therefore, at the time Class made their investments, and as of July 5, 2012 (the effective date of the Appraisal) was $8.8 million. The purchase price of the lands was never disclosed to the Class, even though the

broker, BDMC, was obliged to disclose this agreement of purchase and sale for the 12-month period following the closing, if the agreement was available to it, (which it was).

74. The SML registered on title to the lands underlying the Progress Project was held by a Class of 364 investors (the "Investors). The total value of the SML is the face amount of $17,327,000. The SML matured on February 14, 2016, and remained in default up until the date of its discharge following the sale of the balance of the Progress Project lands on or about March 11, 2022.

75. Fortress, Sorrenti, BDMC and Empire Pace marketed and represented the Progress Project since mid-2012 as a two-phase project to solicit investments in the project. The valuations of the property that Empire Pace and Fortress obtained also considered the two phases of the Project in reaching their non-compliant market value appraisals.

76. Phase 1 of the Progress Project has been built and is comprised of 105 stacked townhomes, which have been sold and closed.

77. Empire Pace never developed Phase 2 or obtained any zoning or planning approvals from the City of Toronto related to Phase 2, to the detriment of the Class. Therefore, Phase 2 of the Progress Project has been in the pre-construction phase, despite the extensive SML investments and construction financing Empire Pace has obtained for the two-phase project since 2012. These facts were never disclosed to the Class.

78. Empire Pace listed the Progress Project lands for sale in spring 2021. The lands were sold on March 11, 2022 for $14 million. FAAN was paid approximately $6.5 million of the closing

amount on account of the SML. After distribution of this amount to the Investors, they have still suffered a substantial loss on their investment.

The Fortress Agreement

79. On or before August 13, 2012, two days before Empire Pace purchased the Progress property, Empire Pace signed a loan agreement where it agreed to borrow an amount not to exceed $20 million from Fortress Developments, with part of the loan secured and part unsecured (the "Fortress Agreement").

80. Fortress assigned its interest in the secured portion of the loan to Olympia in trust and to Sorrenti in trust. This loan was for pre-construction (mezzanine-like) financing but anticipated that Fortress would be paid a 50% profit participation interest in the Project, a portion of which would be paid up front. Fortress would obtain the capital for the development loan through selling interests in a syndicated mortgage to be registered on title to the Progress Project.

81. Key provisions of the Fortress Agreement were:

(a) the terms of the Fortress Agreement were confidential;

(b) the maximum amount of the secured portion of the syndicated mortgage loan would be $20 million;

(c) Fortress was entitled to 50% of the final profit of the Progress Project as its fee for obtaining the development loan (less certain adjusting amounts);

(d) Fortress retained at least 35% of all amounts raised from the Class;

(e) Fortress would pay the Deferred Lender Fee, sales agents' fees to BDMC and Fortress, the fees disclosed in the Class' Form 9D, and any Shortfall Costs;

(f) Fortress' Project Profits were fixed and non-refundable based upon the amount raised through the SML;

(g) the set-up costs for the SML and a monitoring fee would be paid to Fortress from the SML proceeds;

(h) Empire Pace agreed to pay an amount to a charity chosen jointly by Empire Pace and Fortress Developments with both companies to share the tax receipt equally, but the funds for the charitable payment would actually come from the proceeds of the SML, so it was the Class who truly paid the donation although they received neither credit nor the tax receipt for so doing, and this payment to be made from the SML proceeds was never disclosed to the Class;

(i) interest was to be paid on the SML at 8% per year, and the first two years' interest was to be paid from a holdback of 16% of the SML proceeds; and,

(j) the term of the SML was approximately three years to August 14, 2015, with an option for Empire Pace to extend the term for a further six months to February 14, 2016.

82. The result of the Fortress Agreement was that Empire Pace received less than 50% of the SML proceeds for the actual development of the Progress Project, and Fortress obtained a 50% interest in the Project without investing any of its own capital. These material facts were not disclosed to the Class by any of the Defendants.

83. Fortress began its marketing efforts for the Progress Project in or about August 2012. Fortress and BDMC marketed and sold the SML to the Class in a manner consistent with Fortress' usual business model, set out above. The marketing and sale of the SML was predominantly to unsophisticated retail investors, the vast majority of whom invested through registered plans, such

as their retirement savings plans. The fact that the SML qualified to be held in a registered account was a key selling feature, emphasizing the security of the investment. When the Fortress Brokers were incorporated, they, too, marketed the Progress Project to Class in the same manner.

84. At some point prior to Empire Pace purchasing the subject lands, Fortress Developments retained the Sorrenti Defendants to obtain an appraisal of the lands. At all times, each of Fortress, BDMC, Galati and the Sorrenti Defendants knew that no appraisal had been obtained for the Progress Project that complied with CUSPAP standards. These Defendants all knew that the Cane appraisal was not a current "as-is" appraisal of the subject lands, and that the Cane appraisal would not meet the mortgage brokers' disclosure obligations, nor would it suffice to establish that the SML qualified to be held in a registered account. None of these facts were disclosed to the Investors.

85. Sorrenti then proceeded to obtain a second non-CUSPAP compliant opinion of the value of the Progress lands. On January 16, 2013, Kevin Ferguson and Jeff Cheong of Legacy Global Mercantile Partners Ltd. delivered their opinion of value and estimated the current market value of the Progress project lands was $20 million "as is" (the "Opinion").

86. The Opinion's $20 million market value estimate was based on the assumption that the City of Toronto would approve the site plan for the Progress Project. At the time the Opinion was provided, the Progress Project lands were not zoned for the proposed number of residential units (414) in Phase 1, despite Fortress, Empire Pace and BDMC marketing the project as such. To build the project, Empire Pace had to obtain both an Official Plan and a zoning amendment to increase the maximum residential units from 326 to 414 residential units, which it did not obtain until May 31, 2013. Therefore, the Progress Project lands were only zoned for maximum 326 residential

units, not 414 units, at the time that the Opinion was delivered to Sorrenti. These facts were never disclosed to the Investors.

87. Phase 2 of the Progress project was never mapped out sufficiently to even seek City approval or zoning amendments, if required. This fact was not included in the Opinion or disclosed to McDowell and the Class.

88. In the Final Zoning Amendment & Official Plan Report dated May 31, 2013 (the "Zoning Report"), dated four months after the Opinion was prepared, the City of Toronto approved Empire Pace's proposal for the zoning amendments, which related to Phase 1 of the project only.

89. The Zoning Report confirms that Empire Pace's proposal regarding Phase 2 was only "conceptual" and details had not been included in the zoning application, although both the Appraisal and the Opinion referenced Phase 2 as if its zoning had also been approved.

90. Since Empire Pace purchased the Progress Project lands in August 2012, it has failed to submit a proposal for any potential zoning amendments or other City planning issues related to Phase 2 of the project. Phase 2 never began construction.

91. The Appraisal and the Opinion were used to deceive the Investors that the SML was not a risky investment, and that the SML investments were registered-plan eligible (based on the requisite loan to value ratio of less than 100%). The Appraisal and the Opinion formed the basis of the Misrepresentation of Value for the Progress Project.

92. The Progress Project was more than fully leveraged from the outset.

93. On August 15, 2012, the day after Empire Pace purchased the lands, it discharged the VTB Mortgage of $6 million and registered the SML of $7,476,000 on title. Sorrenti, in trust for the Class, registered transfers of charge on title to the project lands about 47 times between 2012 and 2016, and increasing the value of the SML each time to a maximum amount of its current face value of $17,327,000 as of July 26, 2016.

94. Empire Pace invested only $2.8 million of its own capital in the Progress Project, which is a small fraction of the Progress Project costs (projected or actual) compared to the SML investments Fortress, BDMC and Sorrenti solicited for the project.

95. On September 11, 2012, Empire Pace granted Cameron Stephens Financial Corporation a $7.2 million mortgage (the "First Cameron Stephens Mortgage"). Four minutes after registering the First Cameron Stephens Mortgage on title, Sorrenti postponed the SML to it. The postponement of the SML investments to the First Cameron Stephens Mortgage was never disclosed to McDowell or the Class.

96. In or around October 2012, when marketing the project to the Investors, Fortress, Sorrenti and BDMC disclosed to the Class that the Progress Project was encumbered by a first priority mortgage of $7 million when, in fact, the First Cameron Stephens Mortgage charge was $7.2 million.

97. On July 29, 2014, Empire Pace granted Meridian Credit Union Limited a mortgage of $28 million (the "Meridian Mortgage"), about two years after the SML was entered into. Sorrenti postponed the SML to the Meridian Mortgage on the same day it was registered on title.

98. On February 1, 2018, Sorrenti registered a second mortgage of $7 million in favour of Cameron Stephens (the "Second Cameron Stephens Mortgage"), which included six pages of Additional Provisions setting out the charge terms (Instrument No. AT4795158). Neither the existence of the First nor the Second Cameron Stephens Mortgages' Additional Provisions, appended to the charge, was ever disclosed to McDowell and the Class.

99. On February 2, 2018, the day after registering the charge, Sorrenti postponed the SML to the Second Cameron Stephens Mortgage. The postponement of interest charge was also never disclosed to the Class.

100. The SML was postponed by Sorrenti, by registering postponements of interests on title, numerous times which effectively extinguished the Class' ability to enforce their security.

101. The Class relied heavily upon Fortress' marketing materials, and the advice given to them by BDMC, its sales agents, all of which included the Core Misrepresentations and the Misrepresentation of Value, in making their investment decisions.

102. Fortress arranged for Sorrenti (or members of Sorrenti Law) to provide the Class with ILA, which was paid for by Fortress, on behalf of Empire Pace, from the proceeds of the SML. The advice provided to the Class was the same in each instance. A pre-set speech was delivered (often over the telephone) to the Class, in which the Class members were assured that the SML was a low-risk, safe investment that qualified to be held in a registered account.

103. In providing its purported ILA, the Sorrenti Defendants repeated the Core Misrepresentations and Misrepresentation of Value. The Sorrenti Defendants' advice was not independent, it was misleading and it was negligent. They provided a boilerplate promotion of the

SML investment without providing a reasonable discussion of the risks associated with the SML investment, and without tailoring the advice to the client's individual circumstances, comprehension levels, or risk profile.

104. Each of Fortress, BDMC, and the Sorrenti Defendants falsely represented to the Class that:

(a) the investment was safe, and would be fully secured against the subject lands, which were worth substantially more than the sum of the first mortgage and the total to be advanced under the SML;

(b) the appraised "as is" value of the lands was at least $16.56 million based on the Appraisal from July 2012 and at least $20 million based on the Opinion from January 2013;

(c) the investment would be for a defined term of less than four years;

(d) there would be a "steady" annual fixed distribution of 8% paid quarterly;

(e) there was a potential for additional profit sharing at the end of the term of the SML;

(f) the investment would qualify to be held in a registered account;

(g) the proceeds of the SML would be used to pay "soft costs" associated with the development; and,

(h) in the unlikely event of default of the SML, the trustee would be able to take immediate steps to act upon the Class' security and would take such steps.

105. Fortress, BDMC, and the Sorrenti Defendants made these misrepresentations to induce the Class to enter into the SML. The Class relied upon these misrepresentations when making their investments in the SML, and they relied upon the ILA that they received from the Sorrenti

Defendants to reassure them that investment in the SML was safe, secure, and appropriate based upon their investment objectives.

106. Fortress, BDMC, and the Sorrenti Defendants failed to explain to the Class that part of their own investments, and the investments of future investors in the SML, would be used to pay the interest due to them under the SML – effectively that the structure for payment of the interest under the SML was tantamount to a "Ponzi" scheme.

107. Fortress, BDMC, and the Sorrenti Defendants failed to disclose to the Class what the *real* "as is" value of the subject property was (*i.e.* the then-current value of the land only, without consideration of the future planned development and construction). Nor did they disclose the true nature of the investment the Class were making – which was in fact very risky mezzanine-like financing that would be subordinated to other mortgages to be registered on title to the Progress Project lands far and beyond the aggregate limit of construction financing set out in the SML Agreement.

108. The misrepresentations set out above, at paragraphs 95 - 100 are the "Progress Misrepresentations".

109. Had the true facts about the SML been disclosed to the Class, rather than the Core Misrepresentations, the Misrepresentation of Value and the Progress Misrepresentations, the Class would not have invested in the SML.

110. The ILA provided by the Sorrenti Defendants included the Core Misrepresentations, the Misrepresentation of Value and the Progress Misrepresentations, and failed to disclose many material facts about the SML, including:

(a) the SML was a high-risk investment;

(b) the actual current "as is" market value of the subject lands;

(c) the Appraisal and the Opinion were not current value appraisals, prepared in compliance with CUSPAP standards;

(d) the SML was not fully secured against the subject lands;

(e) the fact that the true loan to value ratio for the SML was well in excess of 100%, *i.e.* the amount of the SML and other debt registered against the subject lands exceeded 100% of the as is value of the land, which meant that the SML was not registered- plan eligible pursuant to s. 204 of the *Income Tax Act* and s. 4900(1) of the *Income Tax Regulations*, C.R.C., c. 945, because it was not "fully secured";

(f) holding the investments in a registered plan could have adverse tax consequences for the Class;

(g) no trust company registered to carry on business in Ontario was prepared to allow its registered account holders to hold the SML in their registered account;

(h) Olympia was not authorized to carry on business in Ontario;

(i) the fact that 16% of the capital advances would be used to pay the first two years of interest under the SML and future Class' capital advances would fund the interest payments thereafter, which was a breach of *MBLAA*;

(j) the fact that approximately 35% of the capital advances would be kept by Fortress as an unearned "profit participation" payment and that the mortgage brokers were paid a commission at a highly inflated rate;

(k) the fact that Fortress was not a registered mortgage broker, but was receiving a substantial fee for facilitating the SML for Empire Pace;

(l) the fact that there was no guarantee of the high rate of return set out in the SML Agreement, or any return at all;

(m) the SML would rank below other mortgages in priority of repayment, the amount of those prior ranking mortgages, and the fact that the Class were agreeing to subordinate their position to prior encumbrances substantially greater than even the inflated values set out in the Appraisal and the Opinion;

(n) Empire Pace had no revenue source from which to pay the interest payments due under the SML;

(o) zoning approvals were not yet in place for the proposed development upon which the Appraisal's and the Opinion's assumptions were based, and therefore neither the Appraisal nor the Opinion was a hard, reliable valuation of even the projected market value of the subject lands;

(p) under the registered charge terms, Empire Pace would have the unilateral authority to further subordinate the priority of the SML when new financing was procured, thereby increasing the risks associated with the investment;

(q) the SML Agreement contained postponement and standstill provisions which would limit the Class' ability to enforce the SML in the event of default, and no advice was provided to the Class as to what the terms of any such postponement and standstill would include, including that the Class' SML investment was subordinate to $110 million of priority construction financing;

(r) the registered charge terms of the SML included a term about "Priority, Standstill, Forbearance and Postponement" that differed substantially from the disclosure about the standstill agreement in the Form 9D and the SML Agreement, and

purported to prevent the Class from acting upon their security in the event of default or when it came due, unless the "Senior Security" lender(s) consented to such action in writing, consent that the Senior lender could "withhold unreasonably";

(s) while the SML would be registered on title to the property, this "security" did not guarantee repayment of the principal, as the value of the Project as-built might not be adequate to pay back the principal after repayment of higher-ranking lenders, and the land value was not adequate to secure the debt at the time that the SML was granted; and,

(t) there was no established retail market for resale of the SML. They, therefore, lacked liquidity.

111. The Sorrenti Defendants also failed to disclose that they were acting in a conflict of interest, because they were also acting for Fortress and BDMC, they were paid by Fortress for the service of providing the ILA, and Sorrenti and Sorrenti Law would be paid from the mortgage proceeds for acting as the bare trustee and mortgage administrator, respectively, for each Investor who entered into the SML. Therefore, the Sorrenti Defendants had a financial interest in ensuring that the Class completed the SML investments.

112. The Sorrenti Defendants also failed to disclose to the Class that they were acting for both the Class as lenders, and Empire Pace as borrower in registering the mortgage, all at the expense of the Class and not Empire Pace, which was negligent and a breach of fiduciary duty, particularly in light of the undisclosed terms of the registered charge, which grossly favoured Empire Pace.

113. As trustee, Sorrenti held title to the mortgages underlying the SML on behalf of the Class. As mortgage administrator, Sorrenti Law was required to act in a fiduciary capacity to administer and enforce the SML. However, in both capacities, the Sorrenti Defendants failed to take any steps to protect the Class' interests, to enforce the terms of the SML in favour of the Class when the SML fell into default, or to advise the Class that they could take such actions on their own. The Sorrenti Defendants abdicated their responsibilities as both trustee and administrator.

114. Sorrenti has admitted that he lacked the capacity to competently act as the SML mortgage administrator. He was, in fact incompetent and negligent in administering the SML mortgage. As mortgage administrator, Sorrenti Law owed a fiduciary duty to act only in the best interests of the Class, which it failed to meet, as it was acting in both the Sorrenti Defendants' self-interest and in the interests of Fortress and Empire Pace at the same time.

115. In failing to protect the interests of the Class once the SML was in default, Sorrenti Law breached its statutory and fiduciary duties as mortgage administrator and breached the duty of care that it owed to the Class. The Class suffered damages as a result thereof.

116. Neither the Sorrenti Defendants nor BDMC advised the Class of their enforcement rights once the SML went into default. They were negligent in failing to do so.

117. The Class had been unable to enforce the default under the SML because the Sorrenti Defendants entered into postponement and subordination agreements with the construction lenders that prevented the Class from taking any steps to enforce their rights until the construction lenders are paid in full or granted their consent to such steps. These postponement and subordination agreements exceeded the authority granted to the Sorrenti Defendants in the SML Agreement, and

as such, the Sorrenti Defendants breached their contracts with the Class, acted in breach of trust and breach of fiduciary duty, and they were negligent.

118. Sorrenti Law was the mortgage administrator of the SML until September 30, 2019, at which time FAAN was appointed as trustee over all of the assets, undertakings and properties of the Sorrenti Defendants relating to their trusteeship and administration of syndicated mortgage loans in projects affiliated with Fortress, including the SML.

The SML Agreement and Undisclosed "Additional Provisions"

119. On August 13, 2012, Empire Pace entered into a syndicated mortgage loan agreement (the "SML Agreement") with Sorrenti, in trust as the first lender, and Olympia, in trust as second lender.

120. The key provisions of the SML Agreement are:

(a) Empire Pace covenanted to "cooperate fully with the Lender (Sorrenti, as grustee) with respect to any proceedings before any court, …which may in any way materially and adversely affect the rights of the Lender hereunder or any rights obtained by it under any of the Loan Documents";

(b) The SML would be registered against the subject property in the amount of up to $20 million. This was, in fact, done and registered in Land Registry Office #66 in Toronto, Ontario on August 15, 2012 as Instrument AT3101004;

(c) The SML proceeds were to pay for Empire Pace's "soft costs to be incurred prior to the construction financing of the [Progress] Project";

(d) The SML could be subordinated to "Permitted Encumbrances", *i.e.* the first-ranking construction financing which was not to exceed $100 million plus a 10% contingency, if required, for a total of $110 million. No other financial encumbrances were permitted in priority to the SML;

(e) The term of the SML was until August 14, 2015, with an option for Empire Pace to extend the term for a further six months to February 14, 2016;

(f) Interest accrued on the SML at 8% per annum, payable quarterly;

(g) The Class could earn, under certain circumstances, a project completion fee equal to 12% of the principal of the Development Loan (subject to adjustments) to be paid not later than 30 days after substantial completion of the Progress Project;

(h) There were certain conditions precedent that had to be satisfied prior to Sorrenti making each advance under the SML to Empire Pace;

(i) Empire Pace provided an indemnity, indemnifying the lender from and against all costs and expenses imposed on the lender arising from the lender being the lender in respect of the Project;

(j) Empire Pace covenanted not to create any encumbrances on the subject lands other than the Permitted Encumbrances, and if it did so, this would be an event of default; and,

(k) Subsections 16(a) to (f) of the SML Agreement dealt with postponement and subordination of the SML. Subsection 16(a) of the SML Agreement stated:

> Each of the First Lender [Sorrenti] and the Second Lender [Olympia] covenants and agrees as follows:

a) to postpone and subordinate the Loan Documents in favour of First-Ranking Construction Loan Security and to enter into such standstill Agreement as the holders thereof may require.

121. Sorrenti registered the SML on title to the Progress Project lands on August 15, 2012.

122. The Undisclosed Provisions registered on title were materially inconsistent with the SML Agreement with respect to postponement, subordination and standstill. Particularly, the Undisclosed Provisions, registered with the charge, stated:

(a) the "Permitted Encumbrances" (which are referred to as "Senior Security" in the SML charge) could "increase from time to time as may be necessary to reflect any necessary adjustments to the project as to scope of the project or anticipated costs (the "Total Adjusted Senior Security");

(b) the SML would be postponed to all of the Total Adjusted Senior Security (*i.e.* not limited to a maximum of $110 million as provided for in the SML Agreement);

(c) the Class could not initiate any steps to challenge the priority status of the Total Adjusted Senior Security; and,

(d) the Lender could not take any collection or enforcement proceedings or seek remedies against Empire Pace, or against the subject lands as a result of any breach or default, unless first approved in writing by all the holders of the Total Adjusted Senior Security (who may withhold their consent to Class' initiating enforcement proceedings "unreasonably").

123. The wording and effect of the standstill provisions in the Undisclosed Provisions are not what was agreed to in the SML Agreement. Effectively, the Undisclosed Provisions allowed Empire Pace to put as much secured debt in advance of the SML Class as it could obtain, the Class

could not object, and had no reasonable means to enforce a default under the SML. They lost many of the fundamental rights included in the SML Agreement.

124. The terms of this charge were not disclosed to the Class prior to its registration on title. Neither BDMC nor the Sorrenti Defendants reviewed the terms of the charge with the Class prior to the Class entering into the SML. The Class did not agree to these terms and Sorrenti had no authority to agree to these terms on behalf of the Class, to the knowledge of Empire Pace. This non-disclosure was a material omission, and renders the charge unenforceable, or, alternatively, BDMC, and the Sorrenti Defendants are liable to the Class for all damages arising from the registration of the charge on terms to which the Class did not agree.

125. The standstill and postponement terms in the Undisclosed Provisions on title are not enforceable against the Class, who did not agree to these terms. The terms basically extinguished the Class' recourse to enforce their security at the time the charge was registered. At that point, no construction financing had yet been sought, nor had any construction lender required subordination of the SML. The standstill and postponement terms in the Undisclosed Provisions were inconsistent with the payment, term and default provisions of the SML Agreement. No investor would lend money to a developer if they *knew* from the outset that they could not enforce or recover their investment later, in the event of default. But, that is the effect of the Undisclosed Provisions that Sorrenti agreed to and registered on title on behalf of the Class, without their input or authority. The standstill and postponement terms in the Undisclosed Provisions were provided without consideration and are therefore not enforceable for this reason, as well.

126. It was an implied term of the SML Agreement that the standstill provisions in the Undisclosed Provisions registered on title would correspond to what was agreed to in the SML Agreement, and that anything more onerous was not reasonable or agreed upon.

127. Accordingly, Sorrenti acted in breach of his fiduciary and contractual duties owed to the Class by agreeing to standstill and other terms in the Additional Provisions registered on title that were materially inconsistent with the SML Agreement and that significantly prejudiced Class' enforcement rights and any remedial action to recover their investments, without the investors' knowledge.

128. Sorrenti also failed to discuss the effect and existence of the SML Agreement standstill provisions and the Undisclosed Provisions when he gave the Class ILA in respect of the SML investments.

129. The Undisclosed Provisions were only discovered by the Class in the context of the motions to the Court under Rule 21 of the *Rules of Civil Procedure* in July 2017, despite that Sorrenti had registered the Undisclosed Provisions on title five and a half years earlier, on August 15, 2012.

130. On September 13, 2012, the mortgagee was changed to Sorrenti and Olympia, jointly (with Olympia holding title as bare trustee for the Class holding their investments in their registered accounts, and Sorrenti holding title as bare trustee for the rest of the Class). Although registered against the subject lands, the SML was unsecured when granted, as the as-is value of the Progress Project was less than the first ranking charges on title.

131. Sorrenti and Olympia agreed to postpone the SML to the First Cameron Stephens Mortgage and the Meridian Mortgage, even though there was no value in the subject lands to support the

charges, and contrary to a letter sent to Sorrenti by McDowell's then counsel in this litigation (see below).

132. There is no indication that Cameron Stephens was advised of the pre-existing SML on title, or its current value and status, prior to executing a first mortgage with Empire Pace in 2012 and a second mortgage loan in 2018.

133. In 2018, when the Second Cameron Stephens Mortgage was registered, the SML was in default –which it had been since 2016. Sorrenti and Olympia never advised the Class that they could start power of sale proceedings, or other legal action, to enforce their security as of 2016.

134. It was deceitful and unreasonable for the SML to be postponed again to new financing when the principal and accrued interest under the SML was already due and owing for almost two years.

135. By permitting the registration of these charges on title that were materially inconsistent with the SML Agreement, Empire Pace failed to act honestly and in good faith in the performance of the SML Agreement, and breached its terms. The Class has been damaged as a result thereof.

136. In registering charges on title to the Progress Project that were materially inconsistent with the SML Agreement, and that substantially prejudiced the rights of the Class, the Sorrenti Defendants breached their contracts with the Class, acted in breach of trust and breach of fiduciary duty, and were negligent.

Construction Begins and Default Occurs

137. The subject lands were never worth the amount of the total charges registered on title, either jointly or severally.

138. Sorrenti Law breached the terms of its mortgage administration agreement, was negligent and acted in breach of fiduciary duty through its failure to administer the mortgage in the best interests of the Class, and by registering a postponement that was not consistent with the instructions of the Class.

139. Construction of Phase 1 of the Progress Project did not begin until sometime after May 31, 2013, once Empire Pace received the City of Toronto's Final Report approving the Project for the requested zoning changes and the developer had entered into certain required Agreements with the City of Toronto.

140. Construction was not nearly complete by the due date of the SML on August 14, 2015. Empire Pace exercised its right to extend the SML for a further six months to February 14, 2016.

141. On February 5, 2016, about a week before the SML Agreement expired, BDMC issued a "Memo" to the Class. The Memo made the following representations to the Class:

(a) the Progress Project was 75% sold and occupancy for the townhomes was expected to begin during the spring or summer of 2017;

(b) the SML Agreement expired and came due on February 10, 2016 (the SML Agreement states the SML is due for repayment on February 14, 2016);

(c) section 16 of the SML Agreement contains ongoing standstill, subordinate and postponement provisions ("the standstill provisions");

(d) Sorrenti and Empire Pace were relying on the standstill provisions to "complete the project quickly" in order to have "sufficient liquidity to repay the principal sums owing to investors";

(e) the SML had just begun accruing interest for the "remainder of the term" (in fact the SML was to mature only 9 days from the date of the Memo, meaning the term had basically almost expired); and,

(f) the original development budget contemplated funding for interest only up to the original maturity of the loan (February 14, 2016 at the latest), and the "decision to move to an [interest] accrual format was a *budgetary exercise* performed in the best interest of the preservation of capital and the timely completion of the project".

142. The SML's term expired on February 14, 2016. Since then, the SML has been in default.

143. Empire Pace's failure to repay the principal and any overdue interest to the Class when the SML mortgage expired was an event of default under the terms of the SML Agreement.

144. BDMC's memo should have alerted the Class to the expiry date of the SML. Instead, BDMC's memo focuses on "interest accrual" following the "original maturity of the loan".

145. The SML Agreement contains nothing about "interest accrual" *after* the term of the SML expired. BDMC's "budgetary exercise" to enter into an interest "accrual phase" was a violation of the SML Agreement, and it was misleading and confusing to Class to discuss interest accrual in this context where default was about to occur.

146. BDMC made these misrepresentations either intentionally or negligently, to dupe the Class into believing that they had no right to enforce the SML, which was about to enter default. Sorrenti did nothing to correct BDMC's misrepresentations. The memo had the intended effect – the Class took no action to enforce their security, to their detriment.

147. On April 4, 2016, BDMC issued another memo which misrepresented, again, that, despite BDMC's earlier reliance on the "standstill, postponement and subordination clauses", the SML was not actually in default because the requisite "interest payment", due on February 10, 2016, was made.

148. The April 2016 memo intentionally or negligently misled the Class to believe that the Progress Project was proceeding as planned, interest had been paid by February 10, 2016 (when in fact the entire face value of the SML, not just "interest", was due on February 14, 2016 for repayment by Empire Pace) and that their investments were not in jeopardy.

149. As with the February 2016 memo, BDMC's April 2016 memo made these misrepresentations to the Class intentionally or negligently, to dupe the Class into believing that they had no right to enforce the SML, which was in default by that time.

150. As the lender and trustee under the SML, Sorrenti was entitled and obligated as of February 14, 2016 to take all actions and exercise all remedies available to the Class as a result of the default. But Sorrenti did nothing, likely because he had already agreed to extinguish all remedies available to the Class by registering the Undisclosed Provisions, which essentially makes it impossible for an Investor to recover his or her SML investment, and which are inconsistent with the original SML Agreement. Alternatively, he did nothing because of his conflict of interest and the fact he preferred the interests of Fortress to those of the Class to whom he owed a duty.

151. Neither in Sorrenti's role as trustee, nor in Sorrenti Law's role as mortgage administrator did the Sorrenti Defendants take any steps to:

(a) advise the Class of their enforcement rights under the SML; or,

(b) enforce the SML following the default.

152. At the time that BDMC issued the memos to investors in early 2016, Empire Pace had already granted the Meridian Mortgage of $28 million for construction financing, and Sorrenti had already postponed the SML to that priority mortgage. This fact was not disclosed to the Class.

153. McDowell attempted to contact Sorrenti on several occasions by telephone and in writing to determine what steps Sorrenti was taking to enforce the SML against Empire Pace. She received no response.

154. On September 13, 2016, McDowell's then-counsel wrote to Galati and BDMC on behalf of the Class noting that the SML was in default. Counsel advised Sorrenti and Olympia that as trustees, they had an obligation to take reasonable steps on behalf of all Class to enforce the Class' security and had failed to do so.

155. Therefore, BDMC, the Sorrenti Defendants, Empire Pace and Fortress were all aware that Sorrenti and Olympia no longer had the authority to act on behalf of Class with respect to the SML. Despite being on notice, Sorrenti and Olympia continued to act without the Class' authority relying on the standstill, postponement and subordination provisions in the SML Agreement or the Undisclosed Provisions.

156. The Sorrenti Defendants never communicated with any of the Class, around the material time when the SML matured, to obtain their instructions with respect to Empire Pace's default under the SML, or even to notify them of the status of the SML, or about the postponements Sorrenti had executed. The Sorrenti Defendants' conduct was grossly negligent.

157. If Sorrenti entered into a postponement agreement pursuant to the terms of the Undisclosed Provisions, which are materially different from what was agreed to in the SML Agreement, he did so without the consent or authority of the Class and in breach of his contractual and fiduciary duties as trustee or mortgage administrator, and he was negligent.

158. Any postponement registered on title to the Progress Project pursuant to the Undisclosed Provisions, and that is more onerous to Class than what was agreed to in the SML Agreement, was registered by Sorrenti Law without the consent or authority of the Class and in breach of Sorrenti Law's contractual and fiduciary duties, and Sorrenti was negligent in registering any such postponement.

159. On August 13, 2019, Sorrenti Law sent a "reporting letter" to the Class about a prospective buyer of Phase 2 of the Project lands. The reporting letter sought the Class' instructions with respect to three options for Phase 2 of the property – to sell the project on the open market, to sell to the prospective buyer (who had provided a Letter of Intent to purchase the property), or to allow the property to go into power of sale. None of these events ultimately transpired.

160. However, Sorrenti Law's reporting letter did not address the following key information that the Class required to understand the status of their investment at that time:

(a) the SML was, and continued to be, in default since February 2016, and therefore the Class could start (or could have started years ago) power of sale proceedings or other legal action to enforce their security;

(b) neither Sorrenti nor the trustees would take any steps on behalf of the Class to recover on the defaulted SML;

(c) the subject lands were only worth the value of the lands, not the completed project; and,

(d) the plans, including any required City approval and zoning amendments to construct Phase 2 of the Progress Project, had not been sought or obtained.

FSRA AND RCMP INVESTIGATIONS

161. In or around December 2015, FSCO, which, at the time, had regulatory authority over the mortgage industry, commenced an investigation into Fortress and BDMC arising from concerns about the conduct and administration of syndicated mortgage loans arranged by Fortress with the aid of BDMC and the Sorrenti Defendants.

162. In 2016, FSCO began issuing consumer communications to the investing public stating that it considers syndicated mortgage loan investments to be "high risk" investments that were often marketed to the investing public using techniques that belie the true risks of the mortgages. That was, in fact, the case with respect to the marketing and sale of Fortress' syndicated mortgage loans including with respect to the Progress Project.

163. The regulators' investigation culminated in a settlement Agreement between FSRA and each of BDMC and the Fortress Brokers, executed on January 31, 2018, which, amongst other things resulted in orders that:

(a) revoked the mortgage broker licenses for:

(i) BDMC;

(ii) Vincenzo Petrozza;

(iii) each of the principal brokers of the three Fortress Brokers;

(b) required BDMC to pay administrative penalties of $400,000; and

(c) required each of the Fortress Brokers to pay administrative penalties of $235,000.

164. BDMC agreed that FAAN would assume the mortgage administration for all Fortress-related syndicated mortgages that BDMC had been administering. Additionally, Galati surrendered her license, thereby ceasing all mortgage brokering activities.

165. In or around March 2018, BDMC (through its newly formed alter ego corporation Canadian Development Capital & Mortgage Services Inc., which was run by Galati's mother, Giuliana Galati) engaged in various acts in breach of the FSCO settlement, including acting to frustrate FAAN's ability to carry out its role as administrator of the syndicated mortgages.

166. To prevent further harm to investors that would have been caused by continued breaches and obstruction of FAAN's operations, on April 20, 2018, on the application of the Superintendent of Financial Services, FAAN was appointed as trustee, without security, of all the assets, undertakings and properties of BDMC. Since that date, FAAN has been the mortgage administrator with respect to BDMC-administered Fortress syndicated mortgage loans.

167. On September 9, 2020, FSRA entered into a settlement with Fortress Developments, pursuant to which it imposed administrative penalties against Fortress Developments in the amount of $250,000 for 12 contraventions of s. 2(2) of the *MBLAA*, related to Fortress Developments providing services to borrowers for the purpose of financing property developments when it was not licensed to do so.

168. On April 13, 2018, the RCMP's Integrated Market Enforcement Team obtained a search warrant for Fortress, BDMC and the Fortress Brokers in connection with a fraud investigation into

Fortress's syndicated mortgage businesses. In the search warrant, the investigators asserted their belief that the key aspects of this fraud occurred from 2012 to 2017 and include:

(a) investors were presented with inflated "as is" property values for the lands securing their syndicated mortgage loans, which misrepresented the true risk of the investments and their ineligibility for investment through a registered plan;

(b) the actual loan to property value ratios in respect of the syndicated mortgage loans exceeded 100%;

(c) the syndicated mortgages were promoted as being registered plan eligible, when they were not, and therefore that investors who invested through registered plans could be subject to adverse taxation by the Canada Revenue Agency; and

(d) investment funds were used for purposes other than what was disclosed to investors. A portion of the investors' funds were not directed to the development project and instead were retained by Fortress at the time of placement of the loan.

169. These allegations were true with respect to the Progress Project and the SML. Fortress was engaged in a fraudulent scheme. BDMC and Galati were either complicit in the fraud, or they were reckless, or negligent with respect to their role in the scheme. The Sorrenti Defendants were grossly negligent with respect to their role in the scheme both as mortgage administrator, trustee and in providing independent legal advice to the Class.

170. In sum, the actions of Fortress, BDMC and Galati in facilitating the SML exposed the Class to tremendous risk due to their financing structure, which included high professional fees, advance profit sharing, lack of proper appraisal, and automatic subordination of creditor priority. The real risks of the SML were intentionally not disclosed to Class at the time they invested, to induce them

to invest so that Fortress could take excessive and unearned profits, and so the other Defendants would also profit at the expense of the Class.

171. An investment in the SML was not suitable for any individual, retail investor, either through a registered plan or not, regardless of the investor's risk profile.

MCDOWELL'S INVESTMENT IN THE PROGRESS PROJECT

172. McDowell's investment in the SML is representative of the investments made by all of the Class. The Defendants engaged in the same misconduct with all the Class as they engaged in with McDowell.

173. McDowell's investment in the SML is one of several investments that McDowell made in different Fortress syndicated mortgages. These investments were to provide McDowell with retirement income – she needed her money to support her through her retirement.

174. McDowell is not a sophisticated investor. She chose to invest a large proportion of her savings in the Fortress syndicated mortgage loans because of the misrepresentations that she received and relied upon from Fortress and BDMC, and the subsequent misrepresentations that she received from the Sorrenti Defendants in respect of the Fortress syndicated mortgage loans including the SML - all of which assured her that these were safe investments, fully secured against real property, which would deliver a return of 8% interest per year, and they were for only a few years, so her investment funds would not be tied up for a long period of time. McDowell understood that the syndicated mortgages, including the SML, qualified to be held in a registered accounts including her registered retirement savings plan ("RRSP").

175. In or about April 2012, McDowell met Marcel Greaux ("Greaux"), a registered mortgage agent with Mortgage Alliance Canada. Greaux recommended to McDowell that she set up an RRSP account with Olympia, so that she could hold the SML investment as a RSP investment. McDowell did so.

176. Greaux referred McDowell to Centro Mortgage Inc. (now known as BDMC). Greaux recommended that McDowell make the investment in a Fortress syndicated mortgage, and was the referring mortgage agent to Fortress and BDMC.

177. On August 22, 2012, a month and a half before McDowell made the SML investment, she asked Greaux in an email whether the supposed rise in value of the Progress Project lands expected during the term of the SML was sufficient to support the maximum $20 million SML amount. Greaux and/or BDMC assured McDowell that the value of the project was sufficient to support the value of the SML and she proceeded to invest in the SML.

178. On October 2, 2012, McDowell completed a Know your Client ("KYC") form, which Greaux signed as her "mortgage agent/broker" (even though Greaux is not a licensed mortgage broker). McDowell indicated on the KYC form that her risk tolerance was medium (the second lowest risk tolerance), that her objective in making the SML investment was generating income, that she would rather accept a lower rate of return to reduce her risk, and that she was seeking a liquidity requirement of 1-3 years. Despite McDowell's representations that she was seeking a low-risk investment, Greaux advised McDowell that the investment in the SML was appropriate for her. BDMC did not conduct any KYC review with McDowell, despite acting as her mortgage broker in the transaction.

179. Greaux represented to McDowell that the SML was a secure second mortgage with little or no risk, in keeping with McDowell's risk tolerance and investment objectives. None of Greaux, BDMC, nor Sorrenti reviewed the true risks associated with the SML investment in the Progress Project with McDowell. No one advised McDowell that the SML was a high-risk investment that did not qualify to be held in a registered account, and that the true current value of the land was $8.8 million (what Empire Pace paid for the Progress lands on August 14, 2012, less than two months before McDowell made the SML investment). If this information had been disclosed to McDowell, she would not have invested in the SML.

180. On or around October 5, 2012, McDowell met with Greaux and a notary to sign or complete various documents required to make the investment in the SML, including:

(a) Investor/Lender Disclosure Statement ("Disclosure Statement") for brokered transactions, which included a copy of the Appraisal;

(b) Attestation (proof of identity);

(c) Investment Authority – Form 9D, in favour of Sorrenti;

(d) Mortgage Commitment from Derek Sorrenti, in trust (as bare trustee) on behalf of McDowell as lender/mortgagee to BDMC on behalf of Empire Pace as borrower/mortgagor;

(e) the SML Agreement;

(f) Memorandum of Understanding from McDowell to BDMC that included confirmation of BDMC's duties to her as the mortgage broker, and that Greaux was only making a referral, and was not acting as McDowell's mortgage broker;

(g) Authorization;

(h) Mortgage investment direction and indemnity agreement; and

(i) Solicitor's certificate of disclosure and undertaking regarding arms-length mortgages from Sorrenti.

181. Around the same time, McDowell also received a "Project Fact Sheet", provided jointly by BDMC and Fortress Capital. The Project Fact Sheet included the following representations:

(a) a valuation of the lands had been provided by Michael Cane, AACI, of Michael Cane Consultants;

(b) there was a first mortgage of $6,600,000;

(c) the loan to value ratio was 85% based on the first mortgage and the SML, which was the second mortgage;

(d) the purposes for the monies raised in the SML were to assist with the funding requirements of the development, particularly with respect to pre-construction, and second to create an "interest reserve";

(e) if interest was not paid when due, it would continue to accrue, and would be paid out when the SML matured;

(f) Fortress Capital and licensed parties at BDMC would receive additional remuneration based upon the profitability and successful completion of the development, which would be calculated as a percentage of profits in the Project; and,

(g) the preliminary development *pro formas* indicated that Empire Pace would have sales revenues of $40,404,741 and net profits of over $9 million for Phase 1, and sales revenue of $99,287,885 and net profits of over $23 million for Phase 2.

182. In reliance upon (i) the oral and written representations made to her by Greaux, (ii) written representations by Fortress in its marketing materials (including the Core Misrepresentations, the

Progress Misrepresentations, and the Misrepresentation of Value), and (iii) from the purportedly ILA provided to her by Sorrenti Law, McDowell decided to proceed with an investment in the SML in the principal amount of $25,000, which represented 0.33% of the total SML of $7,476,000 to Empire Pace. The SML was for a three-year term, and the interest rate was fixed at 8% per year, compounding annually. McDowell was to receive quarterly payments of $500 until maturity.

183. Had any of the material omissions set out above been disclosed to McDowell, or had any of the misrepresentations set out above not been made by Fortress and BDMC to McDowell, she would not have invested in the SML. In particular, McDowell would not have made this investment if she had been advised of any of:

(a) the true as-is value of the lands;

(b) that Phase 2 of the Progress Project had not yet been conceptualized by Empire Pace, despite Fortress's marketing the Project as having two phases;

(c) that neither Fortress nor Empire Pace had sought or obtained the requisite zoning amendments and/or City approvals to proceed with Phase 1 or Phase 2 of the project (Phase 2 had not been mapped out in sufficient detail to seek City approval);

(d) that the Appraisal was based on the assumption that the zoning was approved for the whole Project, even though the zoning for Phase 1 had not yet been approved, and Phase 2 had not been thought out yet by the developer;

(e) the fact that the SML would not qualify as an investment in a registered account because its true loan to value ration exceeded 100%;

(f) the terms of Fortress' agreement with Empire Pace; and,

(g) the actual risks associated with the SML investment.

184. On October 5, 2012, McDowell became a party to the SML Agreement, dated August 13, 2012, between Sorrenti, in trust, as First Lender, Olympia, in trust, as Second Lender, and Empire Pace, as borrower. The terms of the SML Agreement are set out above.

185. Article 12(e) and (f) of the SML Agreement provides that each advance of the SML was conditional upon the Lender's receipt of a certificate from Empire Pace that there had been no Event of Default, and that it was in compliance with all the terms of the Agreement, and an appraisal or valuation indicating completed Project value of not less than $20 million. None of these conditions were ever fulfilled, as the Appraisal was neither an appraisal nor a valuation. Therefore, Sorrenti, as trustee, ought never to have advanced the loan funds to Empire Pace.

186. Empire Pace never provided Sorrenti with financial statements in respect of the Progress Project, although required to do so under the SML Agreement, and Sorrenti failed to require Empire Pace to fulfil any of its reporting obligations under the SML Agreement.

187. These were all breaches of trust and breaches of fiduciary duty by Sorrenti, as trustee, and Sorrenti Law as mortgage administrator.

188. In the alternative, if the Sorrenti Defendants were provided with this disclosure, they failed to provide this information to the Class when they gave them ILA, or thereafter, to fairly and honestly fulfil Sorrenti's role as trustee and Sorrenti Law's role as mortgage administrator.

189. Sorrenti also failed to perform his duties as mortgage administrator and trustee honestly and in good faith in registering standstill, postponement and subordination provisions that were inconsistent with the SML Agreement, and in failing to exercise the degree of care and skill that a

prudent lending institution would exercise for its own account in administering the SML. Sorrenti has admitted that he lacked the capacity to properly administer the SML.

190. Sorrenti, as trustee and mortgage administrator, did not ensure that all the preconditions for advancement of funds were met before advancing any of the SML loan proceeds to Empire Pace, in breach of his fiduciary and contractual obligations, including the duty of honest performance of contract owed to the Class.

191. Sorrenti acted in breach of contract, breach of fiduciary duty, and breach of trust in executing the Undisclosed Provisions which are materially different, and more onerous than, the standstill provisions in the original SML Agreement, on behalf of the Class.

192. Ildina Galati of BDMC and Marcel Greaux, referring mortgage agent, prepared an Investor/Lender Disclosure Statement for Brokered Transactions (the "Disclosure Statement") in respect of McDowell's investment, which was provided to McDowell before she completed her investment in the SML. McDowell relied upon the representations in the Disclosure Statement in making the investment in the SML.

193. The Disclosure Statement falsely represented to McDowell that the only fees and costs to be paid by Empire Pace with respect to the loan were: (i) a legal fee of $2,500 to Derek Sorrenti, (ii) a broker fee of $750 to Centro (BDMC), and (iii) a "referral fee" of $1,250 to Centro BDMC (Alta-McWaters). The Disclosure Statement did not disclose the 35% in fees that Empire Pace had committed to pay to Fortress with respect to this financing. This omission was a material omission about which all of BDMC, Galati and the Sorrenti Defendants were aware, and which they intentionally or negligently failed to disclose to McDowell.

194. The Disclosure Statements delivered to each of the Class Members was in the same form, and also made the same material omissions, of which BDMC, Galati, and the Sorrenti Defendants were aware, and intentionally or negligently failed to disclose to the Class.

195. McDowell signed the Disclosure Statement on September 22, 2012, in compliance with the instructions from BDMC that the statement had to be signed and dated at least two days before the rest of the SML documentation and before McDowell made her investment in the SML.

196. Galati and BDMC were required to include in the Disclosure Statement all material risks about the transaction, all actual or potential conflicts of interest that might arise in the transaction, and all the fees that it would be receiving. The Disclosure Statement did none of these things, and was materially misleading.

197. The Disclosure Statement represented to McDowell that an appraisal had been done for the property, and that the appraised "as is" value was $16.56 million for the vacant land. The "appraisal" was said to be dated July 5, 2012, and that the "appraiser" was Michael Cane of Michael Cane Consultants.

198. Neither the Appraisal nor the Opinion were CUSPAP compliant and the Opinion was not prepared by an appraiser qualified with the Appraisal Institute of Canada. Therefore, neither is a true "as is" appraisal. Both were effectively uninformed estimates of the value of the developed project based on various assumptions and contingencies which had not occurred.

199. The Disclosure Statement advised that this investment represented 0.33% of the total SML, the face value of the SML was $7.476 million, and that there were 135 other members of the Class at that time. The SML was to pay interest of 8% per year, and would mature on August 10, 2015,

but could be extended to February 10, 2016 (the SML Agreement states that the loan would mature on August 14, 2015 and expire on February 14, 2016).

200. The Disclosure Statement also confirmed that the SML was a second mortgage and that the first mortgage was for a face amount of $7 million with $6.6 million owing. The loan to value ratio on the Disclosure Statement was therefore calculated to be 85%.

201. No fees payable from the loan proceeds, or separately payable, were disclosed in the Disclosure Statement.

202. McDowell was provided with and signed an Investment Authority – Form 9D, directed to Sorrenti Law (the "Form 9D"). McDowell relied upon the representations about the SML contained in the Form 9D in making the decision to invest in the SML.

203. The Form 9D represented that the principal amount of the SML was $7,476,000, which was a second ranking mortgage, behind a first mortgage in the amount of $7 million, with $6.6 million owing on the first mortgage. The SML could be postponed to construction financing and a development agreement with the City of Toronto. McDowell's investment was reported to be 0.33% of the total SML loan. The SML term was an interest- only loan for 3 years, coming due on August 10, 2015, with an option for Empire Pace to extend the term for 6 months to February 10, 2016. In fact, the SML Agreement states the loan expired August 14, 2015 or February 14, 2016 if extended, hence the disclosure in the Form 9D did not even correspond correctly with the SML Agreement.

204. Pursuant to the SML Agreement, interest was payable at the rate of 8% per year, and would be paid quarterly. McDowell was never told that the interest payments that she received would be

made from an "interest reserve" funded by 16% of the capital of her loan. Rather, the Form 9D expressly stated at paragraph 19 that interest would not be disbursed to the lender until it was received from the Borrower.

205. The Form 9D also represented that the value of the subject property was $16,560,000 based upon the Appraisal, and that, therefore, the property was encumbered to 85% of its value by the first mortgage and the SML. This was materially false since the Appraisal was based on an estimate of value of the Progress Project on an as-built basis. The subject lands were actually encumbered well beyond their as-is value.

206. The Form 9D contained many of the Progress Misrepresentations. In addition to the representations set out above, it stated:

(a) McDowell's investment of $25,000 represented 0.33% of the total loan to the borrower;

(b) there was no bonus or holdback or other special terms, and no collection or administration fee would be payable by the borrower;

(c) interest payments could not be disbursed by the trustee until the funds were received by the trustee from the Borrower;

(d) the SML would be required to postpone and standstill to prior construction financing charges to a maximum of $110 million, and would be permitted on the basis of cost consultant reports prepared for Empire Pace, and that the trustee might be requested to execute other documents for the purpose of facilitating the development of the Progress Project, and confirmed that she provided the trustee with consent to execute such required documents;

(e) save and except as outlined in the Form 9D, there would be no other postponements or encumbrances that affect the position or security under the SML; and

(f) the only fees and commissions to be paid by the borrower were:

(i) legal fees of $5,000 plus disbursements and HST (for initial registration);

(ii) $2,500 plus disbursements and HST per tranche (paid by Empire Pace);

(iii) mortgage broker fee of 3% payable to BDMC; and,

(iv) referral fee of $1,250.00 payable to "Centro Mortgage Inc. (Alta-McWaters)".

207. On September 18, 2012, McDowell also entered into a "Memorandum of Understanding" with BDMC. This memorandum confirmed that Greaux, as the referring agent, was not the mortgage broker for the transaction. It set out BDMC's duties, which included:

- Suitability of lender
- Know Your Client (KYC)
- Document Completion
- Merits of the Project
- Risk Disclosure
- Conflict of Interest disclosure.

208. The Memorandum of Understanding confirmed that BDMC, as the licensed mortgage broker, owed duties to McDowell, including the duty to ensure that the SML was a suitable investment for her based upon her knowledge, risk tolerance and investment objectives, to investigate the merits of the development project and disclose all relevant information and risks

about the project to McDowell, and to disclose any conflicts of interest to McDowell. BDMC did none of these things.

209. BDMC breached its contractual and fiduciary duties with McDowell by failing to meet any of these duties when selling the SML to her.

210. On September 18, 2012, Sorrenti and McDowell executed a Declaration of Bare Trust whereby Sorrenti agreed to hold her interest in the SML in trust as bare trustee. Under the Declaration, Sorrenti agreed to deal with the SML as directed by McDowell, the beneficiary.

211. The Bare Trust Agreement did not grant Sorrenti the power to act on his own without direction from McDowell, yet he proceeded to do so, regardless, in breach of contract, breach of trust and in breach of his fiduciary duties. Sorrenti woefully breached the terms of the Bare Trust Agreement in registering the Undisclosed Provisions as a charge on title, without ever advising McDowell of their existence or seeking her instructions or direction. Further, Sorrenti breached the Bare Trust Agreement in registering provisions on title that are materially different from, and more prejudicial than, the terms of the initial SML Agreement.

212. Sorrenti, Empire Pace and McDowell also executed a Confirmation of Lender's Interest agreement. In this agreement, Sorrenti acknowledged holding the Class' interests in the SML in trust. He covenanted to provide McDowell with notice of any material default by Empire Pace, and "to enforce the [SML] on behalf of [McDowell] … as would a prudent lender, having regard to the quantum of the Loan and the nature of the development against which the Loan security is registered". Sorrenti also breached this agreement, woefully.

213. McDowell initially asked Greaux for ILA related to the SML. Greaux advised her that in the course of making the SML investment, McDowell would receive ILA.

214. On October 5, 2012, during the same meeting that McDowell signed the documents with Greaux and a notary present to make the investment, McDowell had a telephone call with Derek Sorrenti (or a Sorrenti Law lawyer acting under Sorrenti's direction) during which McDowell was provided with allegedly ILA about the SML. The call lasted approximately 20 minutes, during which McDowell was given a *pro forma* review of the documentation to be signed, but was not provided with any ILA about the investment.

215. When giving McDowell purportedly "independent" legal advice, Sorrenti did not ask McDowell about her personal circumstances, her risk tolerance or investment objectives, and he gave no advice to her about whether the SML was an appropriate investment in her circumstances.

216. Further, Sorrenti did not advise McDowell that there was no appraisal of the subject lands that complied with CUSPAP, that the Appraisal was not reliable or accurate (or compliant with CUSPAP), or that the Appraisal was not based on the current as-is value of the subject lands.

217. None of the significant risks associated with investing in the SML were reviewed with McDowell. None of the Core Misrepresentations, Misrepresentation of Value, or the Progress Misrepresentations were identified as misrepresentations. None of the Sorrenti Defendants' multiple and conflicting roles, nor Olympia's inability to do business in Ontario, were explained to McDowell.

218. McDowell received no explanation from Sorrenti, when he first gave her ILA or thereafter, about how the SML might be enforced if it went into default, or how the standstill and

postponement provisions in the SML Agreement would affect any remedial action available to her in the event of default.

219. Similarly, Sorrenti concealed from McDowell when he first gave her "ILA", and thereafter, that he had in fact registered the more onerous Undisclosed Provisions charge that include standstill, postponement and subordination terms related to the SML, that are more stringent than the terms of the SML Agreement, on the same day he registered the SML on title.

220. After Sorrenti's purported "ILA" to McDowell on October 5, 2012, McDowell signed the loan documents as she was directed, and $25,000 was transferred from her Olympia RRSP to Sorrenti himself, in trust.

221. McDowell was never advised by any of BDMC, Greaux, or Sorrenti Law that there was no valuation of the Progress Project that had been prepared in accordance with CUSPAP. She was led to believe that the Appraisal was a legitimate and compliant appraisal, and that it correctly provided a current as-is valuation of the subject property at $16.56 million. BDMC, Galati, Sorrenti and Cane were all negligent in failing to identify to McDowell that the Progress Project was not, then, worth close to $16 million, since Empire Pace had paid only $8.2 million for the lands less than two months earlier.

222. Ultimately, as the mortgage administrator, Sorrenti Law, also had an obligation to advise McDowell of the real risks associated with the SML, including the actual value and loan to equity ratio of the subject property. Sorrenti ignored his legal obligations under the *Rules of Professional Conduct* to disclose conflicts of interest, including that he was paid by Fortress to provide ILA to McDowell about the Fortress investment.

223. Fortress, BDMC and the Sorrenti Defendants knew or ought to have known that the proposed SML investment was inconsistent with McDowell's risk profile, and that selling the investment to her was contrary to Fortress and BDMC's obligations under ss. 43 and 45 of the *MBLAA* and ss. 4, 12, 18, 24, 25, 26 and 27 of Regulation 188/08 and s. 10.1 of Regulation 189/08. Fortress and BDMC, nonetheless, sold her the SML. All these Defendants failed to provide proper advice to McDowell, in breach of their duties owed to her. In the result, McDowell has suffered a loss in the value of her investment, including the loss of interest at the rate of 8% per year.

224. McDowell received the February 5, 2016 and April 4, 2016 memos from Galati at BDMC. In the February 2016 Memo, BDMC advised the Class that the "interest continued to accrue on the loans". The February 2016 Memo represented to the Class that the ongoing standstill, subordination, and postponement arrangements were being triggered to "allow for the project to be completed in a timely manner", and to "create liquidity to repay investors their principal amount".

225. McDowell relied upon her mortgage broker, BDMC, to accurately report on the terms and status of the SML, and therefore believed that she had no recourse or actions available to her but to await the build-out of the Progress Project.

226. None of the representations in the February and April 2016 memos were true. These misrepresentations were made by BMDC to dupe the Class into believing that they had no right to enforce the SML once they were in default. BDMC's memos had the intended effect, to the detriment of the Class.

227. BDMC's two memos were misleading and contained serious misrepresentations about the true state of the SML investments.

228. Sorrenti did not disclose that the standstill, postponement and subordination agreement in the SML Agreement were inconsistent and/or different from the Undisclosed Provisions that he registered on title along with the SML, and that the Class could challenge the enforceability of the entire charge on that basis.

229. The memos also failed to disclose that the Class could, and had the right to, take enforcement action based upon the terms of the SML Agreement. BDMC was negligent in delivering these memos to the Class, and the Class relied upon the misrepresentations contained in the memos, to their detriment.

230. Empire Pace's promise that the SML would be repaid in full from the proceeds of the Progress Project did not come to fruition. The SML was not paid. The SML remained in default until it was discharged by court order. The Class has not been repaid all of their principal or the accrued interest on their investments.

231. Interest continued to accrue at 8% per year until the SML was discharged on the judicially approved sale of the lands on or about March 11, 2022. The Class are entitled to be paid interest at the rate of 8% per year until their investments are fully repaid by the Defendants.

232. There were insufficient proceeds from the sale of the remaining Progress lands to pay the full amount owed to the Class. Accordingly the Class members have been damaged.

THE CAUSES OF ACTION

233. The Plaintiff's claims asserted against some or all of the Defendants are:

(a) Fraudulent misrepresentation/deceit;

(b) Negligent misrepresentation;

(c) Negligence;

(d) Breach of fiduciary duty; and

(e) Breach of contract.

A. FRAUDULENT MISREPRESENTATION/DECEIT

234. Fortress and BDMC made fraudulent misrepresentations to the Class.

235. By soliciting investments in the SML, and acting as mortgage brokers for the Class in respect of their SML investments, Fortress and BDMC were in a direct and proximate relationship with the Class, and owed them the duty of care of a reasonably competent mortgage broker, which these Defendants breached by making fraudulent misrepresentations about the SML investment.

236. These Defendants knowingly made the Core Misrepresentations, the Progress Misrepresentations, and Misrepresentation of Value to the Class as set out herein, upon which they knew the Class would rely, and which included:

(a) misrepresenting that the SML was a safe and secure investment, fully secured on the Progress lands, and omitting to disclose the material risks associated with the investment;

(b) misrepresenting the SML qualified as an investment that could be held in registered accounts and that the loan-to-value calculation of the Progress Project property was under 100%;

(c) misrepresenting that the current "as is" value of the subject lands was as set out in the Appraisal and/or the Opinion, and intentionally concealing that neither estimate was prepared in compliance with CUSPAP, and neither estimate was a

true current value appraisal and, in the case of the Opinion, was not an appraisal at all;

(d) omitting to tell the Class that Empire Pace would receive less than 50% of the funds raised in the SML and that Fortress would retain approximately 35% of the funds, including to pay for an unearned profit participation;

(e) failing to disclose that 16% of the funds paid by the Class would be used to fund an "interest reserve" and would be used to pay the first two years of interest payments due under the SML, and that the funds of future investors in the SML would be used to pay the interest thereafter, and therefore the payment of interest under the SML was actually a return of capital, not profits, and was structured effectively as a Ponzi scheme, and in breach of section 23 of Regulation 189/08 of the *MBLAA*;

(f) failing to disclose excessive brokerage commissions would be paid to various brokers, agents and referring parties, which was substantially higher than typical commissions in the mortgage industry, and much greater than the brokerage fees disclosed to the Class;

(g) misrepresenting to the Class that they would receive ILA from the Sorrenti Defendants, when, in fact, Fortress retained the Sorrenti Defendants, and paid for this legal advice on behalf of the borrower, and the Sorrenti Defendants were in a position of conflict, given that they would earn income as the trustee and mortgage administrator;

(h) misrepresenting that advances under the SML would be based upon the "achievement and completion of certain development and construction

milestones" based on reports from the cost consultant retained to work on the Progress Project, when in fact the funds were immediately disbursed by Sorrenti Law;

(i) omitting to disclose to the Class that Olympia was not authorized to carry on business in Ontario as trustee for the Fortress registered plan SML investments, and that no trust companies or financial institutions licensed to do business in Ontario would permit registered plan clients to invest in Fortress syndicated mortgages through registered accounts that they administered;

(j) misrepresenting that the SML would be repaid when it came due, when these Defendants knew that construction could not be completed by the date the SML came due, and still selling the SML to Class members after these facts were known; and,

(k) omitting to disclose that the registered charge would include the Undisclosed Provisions with a standstill agreement purporting to prevent the Class from acting upon their security in the event of default or when they came due, unless the senior lenders consented to such action in writing, which they could withhold "unreasonably".

237. In making their decision to invest in the SML, each member of the Class relied on the fraudulent misrepresentations by Fortress and BDMC to their detriment. The Class members have suffered the loss of their capital and interest at the rate of 8% interest per year because of these Defendants' fraudulent misrepresentations.

B. NEGLIGENT MISREPRESENTATION

238. In making their decision to invest in the SML, McDowell and the Class members each relied to their detriment on the negligent misrepresentations made by Fortress, BDMC, Galati, the Sorrenti Defendants and Cane. They have suffered the loss of their capital and interest at the rate of 8% interest per year, as a result thereof.

a. The Mortgage Brokers

239. By soliciting investments in the SML, making representations upon which they knew the Investors would reasonably rely, and acting as mortgage brokers for the Investors in respect of their SML investments, Fortress, BDMC and Galati were in a direct and proximate relationship with McDowell and the Class, and owed them the duty of care of a reasonably competent mortgage broker, which these Defendants breached by making the Core Misrepresentations, the Progress Misrepresentations and the Misrepresentation of Value negligently.

240. In the alternative to paragraphs 234-237 above, if the representations set out in those paragraphs were not made to the Class by Fortress, BDMC and Galati fraudulently, then they were made negligently by all of Fortress, BDMC and Galati.

241. These Defendants knew, or ought reasonably to have known that these misrepresentations were untrue when they were made. These Defendants knew, or ought reasonably to have known, that the Investors would rely upon the misrepresentations in making their decisions to invest in the SML, and the Class did so rely, to their detriment.

242. BDMC also made negligent misrepresentations to the Investors in its Memos to investors in February and April 2016, in which it represented that the SML was not in default, interest was

"accruing" for the benefit of Investors (even though the SML Agreement does not permit interest to accrue after the loan term expires, therefore this was untrue), and the SML would enter a standstill and postponement to "create the liquidity to return the principal to investors". None of BDMC's representations were true, but the Investors relied upon them, to their detriment, by being induced into not taking any action to enforce their SML, which was in default.

b. Sorrenti Defendants

243. The Sorrenti Defendants were in a direct and proximate relationship with the Investors in respect of each of the four separate roles that they held with respect to the Progress Project, *i.e.* (i) as solicitor providing legal advice; (ii) as lawyer representing the Investors in completing and registering their investment in the SML; (iii) as trustee holding title to the SML on behalf of the Class, and subject to the terms of the Memorandum of Understanding; and (iv) as mortgage administrator. The Sorrenti Defendants were negligent in performing their duties in each such role.

244. The Sorrenti Defendants made the Core Misrepresentations, the Progress Misrepresentations and the Misrepresentation of Value to the Class negligently at the time they provided the ILA.

245. The Sorrenti Defendants knew, or ought reasonably to have known that these misrepresentations were untrue when they were made. These Defendants knew, or ought reasonably to have known that the Class would rely upon the misrepresentations in making their decision to invest in the SML, and the Class did so rely, to their detriment.

c. Empire Pace

246. Fortress, BDMC and Galati acted as the agents for Empire Pace in making the misrepresentations to McDowell and the Class about the SML investments in the Progress Project. Empire Pace is liable for the injuries caused to the Investors as a result of the misrepresentations of their agents.

247. Empire Pace knew, or ought reasonably to have known, that these misrepresentations were untrue when they were made by their agents. These Defendants knew, or ought reasonably to have known that the Investors would rely upon the misrepresentations in making their decision to invest in the SML, and the Investors did so rely, to their detriment.

248. Insofar as any of the SML proceeds were received by Empire Pace and were not used to pay for the development of the Progress Project, they are impressed with a constructive trust in favour of the class and should be repaid to the Class.

C. NEGLIGENCE

249. Each of the Defendants was in a proximate relationship with McDowell and the Class giving rise to a duty of care.

250. Fortress, BDMC and Galati owed McDowell and the Class a duty of care based on the special relationships between them, as set out above in the sections addressing fraudulent and negligent misrepresentation.

251. The Sorrenti Defendants were in a direct and proximate relationship with McDowell and the Class in respect of each of the four separate roles that they held with respect to the Progress Project, *i.e.* (i) as solicitor providing legal advice; (ii) as lawyer representing the Investors in completing and registering their investment in the SML; (iii) as trustee holding title to the SML

on behalf of the Investors, and subject to the terms of the Memorandum of Understanding; and (iv) as mortgage administrator. The Sorrenti Defendants were negligent in performing their duties in each such role, and as a result of their negligence, McDowell and the Class were injured.

252. Cane was in a proximate relationship with the Investors because he knew and consented to, or acquiesced in, the Appraisal being provided to the Investors as part of the disclosure package regarding the SML, and as proof of the then-current as is value of the Progress Project lands. Cane also knew and consented to, or acquiesced in, the valuation of the Progress Project lands from the Appraisal being reported to the Investors as the current, as is, value of the lands based upon CUSPAP standards, as part of BDMC's disclosure package regarding the SML. Cane knew the Investors would rely upon the Appraisal and the report of the current value of the Progress Project lands in the Disclosure Statement in making the decision to invest in the SML.

253. Each of the Defendants was in a proximate relationship with McDowell and the Class such that they knew, or ought reasonably to have known that their acts or omissions in respect of their roles in the SML investments could cause injury to or damage to the McDowell and the Class if they failed to take reasonable care. Their negligence did cause harm to McDowell and the Class, and was the proximate cause, or contributed to the investment losses that McDowell and the Class have suffered.

254. The particulars of the Defendants' negligence is set out above, and includes the following.

a. Negligence of all Defendants

255. The Defendants failed to disclose the actual as-is value of the Progress Project lands to McDowell and the Class at the time that they invested in the SML and failed to disclose the true risks involved in the investment.

256. The Defendants knew, or ought to have known, that the actual as-is value of the subject lands rendered the SML ineligible for investment in registered plans, and they did not disclose this material fact to the Investors.

b. Negligence of Fortress, BDMC and Galati

257. These Defendants failed to ensure that the SML complied with all legal requirements and that proper disclosure of all material risks was made to the Investors.

258. These Defendants created and disseminated the promotional materials which were inaccurate, false, deceptive, misleading, and failed to contain material information, and which were designed to convince McDowell and the Class Members of the safety and high return of the SML investments, which these Defendants knew or ought to have known were untrue, the particulars of which are set out above.

259. These Defendants failed to provide McDowell and the Class with truthful, clear and transparent information about the material facts, risks and fees payable related to the SML.

260. These Defendants marketed the SML to the Investors in a manner that was inaccurate, false, deceptive, misleading, and failed to contain material information, and which was designed to convince the Class Members of the safety and high return of the SML investments, which these Defendants knew or ought to have known was untrue.

261. These Defendants marketed the SML to the Investors as safe and secure investments, when they knew the SML was a risky investment. These Defendants knew and did not disclose that because there was no or insufficient security for the SML, it was not suitable for any retail investors.

262. Fortress undertook the duties of a mortgage brokerage under the *MBLAA* when this Defendant knew it was not licensed as a mortgage brokerage, and BDMC and Galati allowed Fortress to fulfill mortgage broker functions, including selling investments in the SML that ought to have been performed by them.

263. Fortress introduced the Progress Project investment to Investors when only licensed mortgage brokerages may make such introductions and BDMC allowed Fortress to do so.

264. These Defendants failed to ensure the investments in the SML were appropriate investments for each Investor based on the Investor's sophistication, investment objectives, and risk profile, and in fact, they failed to fulfill any of the KYC functions required of a mortgage broker before placing the Investors into the SML.

265. These Defendants withheld from the Investors that approximately 35% of the principal amount advanced under the SML was used to pay for "development consultant fees", all of which were paid to Fortress and not to actual consultants with respect to the development of the Progress Project.

266. These Defendants withheld the fact that the development consultant fee would be paid to brokers, BDMC (in its capacity as borrower's broker) and Fortress.

267. These Defendants failed to fulfill the obligations of a mortgage brokerage to ensure that the SML complied with all legal requirements and that complete and accurate disclosure of all material risks was made to the Investors. This included failing to provide Investors with all the accurate and true information and documents required by FSCO to be produced, and as enumerated in the Disclosure Statement.

268. These Defendants failed to ensure that McDowell and the Class obtained genuine ILA, and instead they arranged ILA for the Investors that was designed to promote the SML as a safe investment, and to encourage the Investors to invest in the SML. These Defendants withheld and/or concealed the potential and actual conflicts of interest amongst the entities involved in the SMLs, specifically the relationships between Fortress, BDMC, and the Sorrenti Defendants.

269. These Defendants withheld from the Investors that the ILA from the Sorrenti Defendants was paid for by Fortress, and that Sorrenti Law would be paid fees to act as the mortgage administrator – and therefore the ILA was not truly independent.

270. These Defendants failed to disclose to the Investors that Olympia was not authorized to carry on business in Ontario as trustee for the Fortress registered plan SML investments, and that no trust companies or financial institutions licensed to do business in Ontario would permit registered plan clients to invest in Fortress syndicated mortgages through registered accounts that they administered.

271. These Defendants knew or ought to have known that Empire Pace had not disclosed information which adversely affected or would reasonably be seen as adversely affecting the Progress Project lands, or Empire Pace's ability to perform its obligations, as Empire Pace was obligated to do under the provisions of the SML Agreement (Article 14(n)).

272. These Defendants failed to disclose to and seek instructions from the Investors in respect of the Undisclosed Provisions registered on title with the SML Agreement, especially because the Undisclosed Provisions are more prejudicial to the Investors' ability to enforce their investments as compared to the terms of the original SML Agreement.

273. These Defendants marketed and recommended the SML to the Investors when it was not an appropriate investment for any investor, as it was neither safe nor secure and, in fact, was a fraudulent scam.

274. These Defendants failed to explain, or inaccurately explained, section 16(f) of the SML Agreement, which permits Sorrenti and Empire Pace to postpone and subordinate the Investors' investments to "mezzanine financing" to cover any shortfalls in the loan amount, and to generally, "enter into such standstill agreements as the holders thereof may require". The effects of this provision on the Investors' investments, and their ability to take remedial action in the event of default, was never explained to McDowell and the Class. These Defendants failed to explain this provision to the Investors for their own benefit. If this provision had been sufficiently explained to Investors, no Investor would have invested in the SML – because they would understand that the SML provides no way for the Investor to enforce his or her security upon default.

275. These Defendants failed to provide the Investors with truthful, clear and transparent information about the material facts, risks and fees payable related to SML.

276. These Defendants failed to recommend products and/or services that were suitable for the Investors based on their specific circumstances.

277. These Defendants withheld and/or concealed the potential and actual conflicts of interest amongst the entities involved in the SML, specifically the relationships between Fortress, BDMC, and the Sorrenti Defendants.

278. Generally, these Defendants failed to provide competent mortgage broker services to the Investors.

c. Negligence of Michael Cane

279. Cane knew that Fortress was a syndicator of mortgages, and it provided the Appraisal to Fortress, and consented to Fortress providing the Appraisal to BDMC and Sorrenti, knowing that, once in their possession, BDMC would be obliged to and would produce it to the Investors pursuant to the *MBLAA*, and Sorrenti would be obliged to and would disclose its conclusions to the Investors in providing both the mortgage broker services and in providing ILA to the Investors.

280. Cane acquiesced in, or consented to, the Appraisal being used by Empire Pace and by Fortress, BDMC and any other mortgage brokers selling the SML to raise money from Investors through a syndicated mortgage loan.

281. Cane knew that if he delivered an Appraisal that was based upon the true as-is market value of the subject lands, then Empire Pace, Fortress and BDMC would be unable to secure syndicated mortgage financing for the Progress Project. Cane negligently prepared the Appraisal for Empire Pace and Fortress showing an inflated current value for the subject lands so that Empire Pace Fortress and BDMC would be able to secure investors in the SML. But for the Appraisal, there would have been no SML, and the Investors would have suffered no loss.

282. Cane acquiesced in or consented to the Appraisal being provided to the Investors by BDMC, the Fortress Brokers and/or the Sorrenti Defendants, knowing that the opinion of current market value stated therein would be relied upon by the Investors.

283. Cane knew that the Sorrenti Defendants would use the Appraisal in providing ILA to the Investors, and that both BDMC and the Sorrenti Defendants would produce the Appraisal to the Investors as part of meeting the disclosure obligations of mortgage brokers under the *MBLAA* and as set by FSCO. Cane acquiesced in or consented to the Appraisal being used for this purpose.

284. Cane's undertaking specifically contemplated that the Appraisal:

(a) would be used by Fortress and BDMC to induce investments in the SML;

(b) would be used by BDMC to set out the quantum of the "as is" appraised value of the subject lands in its disclosure statement, as well as to confirm that the SML qualified as a registered account investment;

(c) would be used by the Sorrenti Defendants in providing ILA to the Investors; and

(d) would be relied upon by the Investors for these purposes.

285. Cane consented to each such use of the Appraisal. Any limiting language in the Appraisal with respect to the use that could be made of the Appraisal was waived by Cane either expressly or implicitly.

286. Cane was, therefore, in a proximate relationship with the Investors and owed them the duty of care of a reasonably competent real property valuator to provide an opinion on the current value of the Progress Project lands that was CUSPAP compliant, and that accurately reflected the current, as is, value of the subject lands.

287. Cane knew that the Investors would reasonably rely upon the Appraisal and the representation of current value from the Appraisal which was included in BDMC's disclosure package in making their decisions to invest in the SML. It was reasonably foreseeable that the Investors would suffer injury by relying on these representations, because the Appraisal was not prepared to CUSPAP standards, was negligently prepared, and provided an opinion that purported to be the current value, but was in fact a report on future value, and which was therefore grossly inflated from the actual as-is value of the subject lands.

254. The Investors did rely upon the Appraisal and the representation of current value from the Appraisal in BDMC's disclosure package in making their decisions to invest in the SML. But for the stated current value of the subject lands in the Appraisal, the Investors would not have entered into the SML. The losses that they have suffered of their capital and interest at the rate of 8% per year were direct and foreseeable, and Cane is liable therefor.

d. Negligence of the Sorrenti Defendants

288. The Sorrenti Defendants were in a direct and proximate relationship with the Class in respect of each of the four separate roles that they held with respect to the Progress Project, *i.e.* (i) as solicitor providing legal advice; (ii) as lawyer representing the Investors in completing their investment in the SML; (iii) as trustee holding title to the SML on behalf of the Investors, and subject to the terms of the Memorandum of Understanding (Sorrenti, only); and (iv) as mortgage administrator (Sorrenti Law).

289. The Sorrenti Defendants owed the Investors a duty of care to act as a reasonably prudent real estate solicitor in providing them with ILA and in acting on their behalf in completing their investment in the SML.

290. Sorrenti owed the Investors a duty of care to act as a reasonably prudent trustee in fulfilling his role as the SML trustee, including compliance with the contractual provisions with respect to that role.

291. Sorrenti Law owed the Class a duty of care to act as a reasonably prudent mortgage administrator in performing that role with respect to the SML.

292. The Sorrenti Defendants were negligent in performing their duties in each such role, as particularized above in this Claim, and below with respect to breach of fiduciary duties. The breaches of fiduciary duty were also acts of negligence by the Sorrenti Defendants.

D. BREACH OF FIDUCIARY DUTY

293. McDowell and the Class were in a fiduciary relationship of trust and confidence with the Sorrenti Defendants and BDMC. These Defendants had the ability to exercise discretion or power to affect the interests of the Investors, making them vulnerable to these Defendants' actions. As such, these Defendants were required to act honestly, in good faith, and strictly in the best interests of the McDowell and the Class.

294. The Sorrenti Defendants and BDMC owed fiduciary duties to McDowell and the Class to:

(a) act honestly, in good faith and in their best interests;

(b) exercise the care, skill, diligence and judgment that a prudent investor would exercise in investing their funds (BDMC);

(c) exercise the care, skill, diligence and judgment of a reasonable solicitor in providing ILA (the Sorrenti Defendants);

(d) exercise the care, skill, diligence and judgment of a reasonable trustee (Sorrenti);

(e) consider all relevant criteria about the Progress Project before recommending an investment in the SML;

(f) determine the true current value of the Progress Project property, and advise the Investors accordingly;

(g) ensure that documentation provided to them sufficiently established the current value of the Progress Project property;

(h) disseminate accurate and truthful information about the Progress Project; and,

(i) warn Class Members, before creating and administering the trust, that the SML was high risk, unsecured, and a grossly improvident bargain.

295. The Sorrenti Defendants and BDMC all breached the fiduciary duties that they each owed to the McDowell and the Class, as particularized above with respect to the allegations of negligent misrepresentation and negligence. These Defendants acted in their own self-interest, to the detriment of the investors in the SML. They failed to disclose and misrepresented material facts about the SML and omitted to disclose other material facts. Their negligence, negligent misrepresentations and breach of contract were breaches of their fiduciary duties owed to the Investors.

296. With respect to Sorrenti's role as a trustee on behalf of SML investors, Sorrenti breached his fiduciary duties in the following respects:

(a) He acted as a co-trustee with Olympia when he knew that Olympia was carrying on business unlawfully in Ontario;

(b) He knew the investment funds were not being used for "land acquisition costs and initial soft costs, and the costs incidental thereto" as represented, yet he took no steps to prevent such unauthorized use being made of the funds, and allowed the SML funds to be disbursed to the borrower, when the conditions to do so were not met;

(c) He failed to obtain the necessary information and ensure that the conditions precedent were met prior to making advances to Empire Pace;

(d) He registered the undisclosed Additional Provisions on title without disclosing these provisions to the Class Members, or seeking their instructions before registering them on title;

(e) He registered the Undisclosed Provisions on title even though he knew that those provisions were more stringent than the terms of the actual SML Agreement in respect of the Investors' ability to enforce their investments;

(f) He failed to ensure the SML was only subordinated to other mortgages as agreed upon in the SML Agreement;

(g) He used a portion of Class Members' own funds, which he held in the Interest Reserve Account to pay the interest owing on the SML, rather than requiring Empire Pace to fund the Interest Reserve Account from its own resources;

(h) He failed to disclose to the Class that the interest payments were actually a return of capital and not interest;

(i) Once the SML went into default, he failed to take steps to enforce the Class' security as he was obligated to do under the SML Agreement's terms; and,

(j) Once the SML went into default, he failed to properly inform the Investors of the default and obtain their instructions as to what steps should be taken to enforce their rights, and instead represented to them that they had no recourse.

297. Insofar as Fortress was acting as an unlicensed mortgage broker, it, too, owed McDowell and the Class all the duties of a mortgage broker at common law and under the *MBLAA.*

298. Fortress breached its fiduciary duties, as particularized above, including:

(a) It assumed the duties of a mortgage brokerage under the *MBLAA* when it knew it was not licensed by FSCO as a mortgage brokerage;

(b) It introduced the Progress Project investment to the Class when only a licensed mortgage brokerage was entitled to make such introductions;

(c) It failed to take the steps required of a mortgage brokerage to ensure that the SML complied with all legal requirements and that proper disclosure of all material risks were made to the Investors;

(d) It failed to ensure the investments in the SML was an appropriate investment for each Investor based on the investor's background and risk profile, and based upon client suitability forms accurately completed following a KYC interview with each investor;

(e) It marketed and recommended the SML as safe and secure investments when it knew they were risky investments not suitable for any investors;

(f) It made the misrepresentations particularized above in marketing and selling the SML investments to the Investors;

(g) It failed to ensure the Investors obtained genuine ILA, and instead arranged for ILA that was not truly independent as it was prepackaged and paid for by Fortress, and did not warn the Investors of the risks associated with investment in the SML or the true nature of the Progress Project;

(h) It utilized the services of Olympia to hold the SML investments in the Investors' registered accounts, when it knew Olympia had been turned down for a license to carry on business by FSCO but had unlawfully decided to carry on business in Ontario as the trustee of Fortress syndicated mortgage loans;

(i) It did not disclose to the Investors that no trust company authorized to carry on business in Ontario was prepared to hold Fortress syndicated mortgage loans in registered accounts; and,

(j) It knew that Empire Pace had not disclosed information which adversely affected or would be reasonably seen as adversely affecting the Progress Project lands or Empire Pace's ability to perform its obligations as Empire Pace was obligated to do under the provisions of the SML Agreement, Article 6.01(h), but nevertheless continued to solicit Investors in the SML and induce them to enter into the SML while Empire Pace was in default under the Agreement.

299. McDowell and the Class were entirely reliant on the skill and expertise of Fortress, BDMC, and the Sorrenti Defendants. The Class Members were in a wholly vulnerable position relative to these Defendants.

300. Fortress, BDMC, and the Sorrenti Defendants breached their fiduciary duties owed to McDowell and the Class, resulting in the Class sustaining the loss of their entire investments.

E. BREACH OF CONTRACT

a. Empire Pace

301. McDowell and the Class entered into the SML with Empire Pace. Empire Pace defaulted on the SML, and thereby breached its contract with the Investors.

302. For the duration of the SML, Empire Pace failed to notify McDowell or the Class about any information adversely affecting the Progress Project and Empire Pace's assets, liabilities, affairs, business, operations or conditions, financial or otherwise, or its ability to perform its obligations under the SML. It did not disclose that it paid funds from the SML to Fortress for

"anticipated profits", when no profits had been earned by the Project, thereby diverting the funds from their intended use for the Project's development. These failures to disclose were all in breach of Article 14 (n) and (p) of the SML Agreement.

303. Empire Pace's failure to disclose these facts to the SML investors, and its intentional misrepresentations were in breach of Empire Pace's duty to perform the SML honestly and in good faith.

304. Empire Pace's misrepresentations and omissions were a breach of contract that prevented the Investors from being able to take timely action to enforce their mortgage security, which enriched these Defendants at the expense of the Investors.

305. Empire Pace paid Fortress "advances on profits" before any profits had been earned in respect of the Progress Project, in breach of the purposes for which the SML funds were advanced by the Investors, which was bad faith performance of the SML Agreement, and caused damage to the Investors as the funds advanced were not used for their intended purpose.

306. The Class claims a constructive trust over all the "advances on profits" paid by Empire Pace to Fortress and is entitled to repayment of the same from Fortess or Empire Pace.

307. Empire Pace acted in bad faith by registering the Undisclosed and Additional Provisions on title without disclosing its existence, thereby impairing the Investors' security and right to priority repayment and recovery of their investments. Empire Pace had a positive duty to the Investors in performing their obligations under the SML Agreement to correct the misrepresentations of the other Defendants, and they failed to do so, in breach of their duty of good faith and honest performance of the contract.

308. Accordingly, all principal and all interest accrued before and after default of the SML, and all costs incurred by the Investors in enforcing their rights under the SML Agreement is now due and owing to the investors by Empire Pace.

b. BDMC and Galati

309. McDowell and the Class signed a Memorandum of Understanding ("MOU") with BDMC and retained BDMC as their mortgage broker. In the MOU, the mortgage brokers set out their duties owed to the Class as including the following:

(a) Suitability of the lender;

(b) Know Your Client (KYC);

(c) Documentation Completion;

(d) Merits of the Project;

(e) Risk Disclosure; and,

(f) Conflict of interest disclosure.

310. These Defendants failed to meet their contractual obligations owed to McDowell and the Class under the MOUs, and as their mortgage brokers. As set out above in detail, they:

(a) failed to make any effort to meet their KYC obligations with respect to any of the Investors;

(b) failed to disclose the risks associated with the SML investments;

(c) failed to ensure that an investment in the SML was an appropriate investment for each of the Class Members based upon their investment objectives, sophistication, and risk tolerance;

(d) failed to ensure that the valuation of the Progress property was a current value appraisal prepared in compliance with CUSPAP; and,

(e) failed to provide the Class with a current value appraisal prepared in compliance with CUSPAP.

311. As the principal broker of BDMC, Galati had a statutory duty under the *MBLAA* and its regulations to ensure that BDMC and its brokers and agents complied with the *Act*'s provisions. She knew of these obligations but failed to meet them.

312. Galati knew BDMC's breach of contract would cause harm to McDowell and the Class. As principal broker, they did nothing to prevent those breaches from happening contrary to their statutory obligations under the *MBLAA*. As principal broker, they did nothing to develop policies for BDMC that would prevent those breaches from happening contrary to their statutory obligations.

313. Had BDMC met their contractual obligations to McDowell and the Class, the Class never would never have invested in the SML and would not have suffered any loss.

314. Because of these Defendants' breaches of their contractual obligations to the Investors, the Investors have suffered the loss of their capital and interest at the rate of 8% interest per year. These Defendants are therefore liable to the Investors for the whole of their investment losses.

c. The Sorrenti Defendants

315. McDowell and the Class retained the Sorrenti Defendants to provide them with competent ILA, and to act on their behalf on the closing of their SML investment transactions.

316. As set out above, the Sorrenti Defendants breached these retainers by failing to provide McDowell and the Class with ILA, because they were acting in a position of conflict.

317. The Sorrenti Defendants also breached these retainers by providing negligent ILA to the Plaintiffs and the Class, as particularized above. The advice was prepackaged and was identical for all investors.

318. Had the Sorrenti Defendants met their contractual obligations to the Investors, the Investors never would have invested in the SML, and would not have suffered any loss.

319. As a result of the Sorrenti Defendants breaches of their contractual obligations to the Investors, the Investors have suffered the loss of their capital and interest at the rate of 8% interest per year. The Sorrenti Defendants are therefore liable to the Plaintiffs and the Class for the whole of their investment losses.

320. McDowell and the Class also retained Sorrenti to act as trustee with respect to the SML and retained Sorrenti Law to act as their mortgage administrator.

321. Sorrenti, as trustee, and as mortgage administrator, breached his contract with the Investors.

322. Pursuant to section 12 of the SML Agreement, Sorrenti was required to satisfy himself with respect to certain conditions precedent before making advances to Empire Pace, which he failed to do. The conditions were not met, and the funds ought never to have been advanced to Empire Pace.

323. Additionally, under the terms of the Acknowledgement, Sorrenti, as trustee, was obligated to obtain up to date valuations prior to making advances to Empire Pace. Sorrenti knew that the Appraisal was not a current value valuation, and no true current value opinion was ever received. Since the conditions for advancing funds to Empire Pace were never met, the funds ought never to have been advanced to Empire Pace and were advanced in breach of Sorrenti's contract with the investors.

324. Sorrenti further breached his contract with the Investors by registering the Undisclosed Provisions on title to the project lands that were materially different from the terms of the SML Agreement. He compounded the breach by then registering the postponement of the SML to the First and Second Cameron Stephens Mortgages, without seeking instructions from the Class, even though he knew that postponing the SML to the Cameron Stephens mortgages would prevent the investors from recovering their investments.

325. Sorrenti failed to fulfill his duties as trustee and as mortgage administrator honestly and in good faith.

326. But for Sorrenti's breaches of contract in performing his role as trustee and mortgage administrator, none of McDowell's or the Class's investment funds would have been advanced to Empire Pace, and they would have suffered no loss, and the Investors would not have been without any remedial or enforcements rights in respect of their investments in the SML, which was never disclosed in the original SML Agreement. Because of Sorrenti's breaches of contract in performing his role as trustee and mortgage administrator, McDowell and the Class lost their capital and interest at the rate of 8% interest per year. Sorrenti is liable for the losses arising from his breaches

of contract, including the lost opportunity of the Class to invest their funds in an alternative and appropriate investment.

327. Sorrenti Law also breached its contract with McDowell the Class by performing its duties as mortgage administrator negligently, including by failing to properly advise the Class when Empire Pace failed to meet its contractual obligations and went into default under terms of the SML, and by failing to take any steps to enforce the SML and the guarantee once the SML was in default.

328. Sorrenti Law failed to fulfill its duties as mortgage administrator honestly and in good faith.

329. Had Sorrenti Law fulfilled its duties honestly and in good faith, and properly advised McDowell and the Class about their rights when the SML went into default, or taken action on behalf of McDowell and the Class to enforce the SML when they went into default, then the Investors would have recovered the full amount of their capital investment and all accrued interest from Empire Pace, and would have suffered no loss. Sorrenti Law is therefore liable to McDowell and the Class for the whole of their investment losses arising from this breach of contract.

RELEVANT LEGISLATION

330. The Plaintiff pleads and relies upon the provisions of the following Acts and the Regulations passed thereunder:

(a) *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006, c. 29;

(b) *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

(c) *Loan and Trust Corporations Act*, R.S.O. 1990, c. L-25;

(d) *Trustee Act*, R.S.O. 1990, c. T-23; and

(e) *Negligence Act*, R.S.O. 1990, c. N-1.

PLACE OF TRIAL

331. The Plaintiff proposes that this action be tried at Toronto, Ontario.

December 2, 2016

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SCHEDULE "A"

LEGAL DESCRIPTION OF PROPERTY

PIN NO.:
06177-0580 (LT)

LEGAL DESCRIPTION:

BLOCK 2, PLAN 66M2300, SCARBOROUGH, CITY OF TORONTO

MUNICIPAL ADDRESS:

1088 Progress Avenue
Toronto

ARLENE MCDOWELL -and- FORTRESS REAL CAPITAL INC. et al. Court File No.: CV-16-560268-00CP
Plaintiff Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

SECOND FRESH AS AMENDED STATEMENT OF CLAIM

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