

AMENDED THIS
MODIFIÉ CE

July 17/19

PURSUANT TO
CONFORMÉMENT À

RULE/LA RÈGLE 20.02

THE ORDER OF
L'ORDONNANCE DU

J. Perrell

DATED / FAIT LE

July 26/17

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

REGISTRAR
SUPERIOR COURT OF JUSTICE

REGISTRAR
COUR SUPÉRIEURE DE JUSTICE

ONTARIO

SUPERIOR COURT OF JUSTICE

IN THE MATTER OF a Proceeding under the *Class Proceedings Act, 1992*,
S.O. 1992, C. 6

BETWEEN:

BRYAN MADRYGA and EILEEN WALLACE

Plaintiffs

- and -

**FORTRESS REAL CAPITAL INC., FORTRESS REAL DEVELOPMENTS INC.,
FORTRESS KEMPENFELT BAY DEVELOPMENTS INC., HARMONY VILLAGE-
LAKE SIMCOE INC., CITY CORE DEVELOPMENTS INC., BUILDING &
DEVELOPMENT MORTGAGES CANADA INC., ILDINA GALATI, DEREK
SORRENTI, SORRENTI LAW PROFESSIONAL CORPORATION, OLYMPIA TRUST
COMPANY, GRANT EDWARDH APPRAISERS AND CONSULTANTS LTD.
and IAN G. MCLEAN**

Defendants

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT(S):

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 lawyer or, where the Plaintiff do 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.

REQUEST TO REDEEM

Whether or not you serve and file a statement of defence, you may request the right to redeem the mortgaged property by serving a request to redeem (Form 64A) on the Plaintiff and filing it in this court office within the time for serving and filing your statement of defence or at any time before being noted in default. If you do so, you will be entitled to seven days' notice of the taking of the account of the amount due to the Plaintiff, and to 60 days from the taking of the account within which to redeem the mortgaged property.

If you hold a lien, charge or encumbrance on the mortgaged property subsequent to the mortgage in question, you may file a request to redeem, which must contain particulars of your claim verified by an affidavit, and you will be entitled to redeem only if your claim is not disputed or, if disputed, is proved on a reference.

REQUEST FOR SALE

If you do not serve and file a statement of defence, you may request a sale of the mortgaged property by serving a request for sale (Form 64F) on the Plaintiff and filing it in this court office within the time for serving and filing your statement of defence, or at any time before being noted in default. If you do so, the Plaintiff will be entitled to obtain a judgment for a sale with a reference and you will be entitled to notice of the reference.

If you hold a lien, charge or encumbrance on the mortgaged property subsequent to the mortgage in question and you do not serve and file a request to redeem, you may file a request for sale which must contain particulars of your claim verified by an affidavit, and must be accompanied by a receipt showing that \$250 has been paid into court as security for the costs of the Plaintiff(s) and of any other party having carriage of the sale.

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.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date Dec 2/16

Issued by A. Miller
Local Registrar

Address of
court office: 393 University Avenue, 10th Floor
Toronto, Ontario
M5G 1E6

- TO: FORTRESS REAL CAPITAL INC./FORTRESS REAL DEVELOPMENTS INC.**
25 Brodie Drive, Unit 8
Richmond Hill, ON L4B 3K7
- AND TO: FORTRESS KEMPENFELT BAY DEVELOPMENTS INC.**
25 Brodie Drive, Unit 8
Richmond Hill, ON L4B 3K7
- AND TO: HARMONY VILLAGE-LAKE SIMCOE INC.**
2250 Bovaird Drive East, Unit 14
Brampton, ON L6R 0W3
- AND TO: CITY CORE DEVELOPMENTS INC.**
2250 Bovaird Drive East, Unit 14
Brampton, ON L6R 0W3
- AND TO: BUILDING & DEVELOPMENT MORTGAGES CANADA INC.**
25 Brodie Drive, Unit 8
Richmond Hill, ON L4B 3K7
- AND TO: ILDINA GALATI**
25 Brodie Drive, Unit 8
Richmond Hill, ON L4B 3K7
- 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: OLYMPIA TRUST COMPANY**
125-9th Avenue SE, Suite 2200
Calgary, AB T2G 0P6
- AND TO: GRANT EDWARDH APPRAISERS AND CONSULTANTS LTD.**
18 King St. East, Suite 301
Toronto, ON M5C 1C4
- AND TO: IAN G. MCLEAN**
18 King St. East, Suite 301
Toronto, ON M5C 1C4

CLAIM

1. The Plaintiffs claim on their own behalf and on behalf of all members of the Class (as defined herein):
 - a) An Order certifying this proceeding as a class proceeding and appointing the Plaintiffs as representative Plaintiffs for the members of the Class and any appropriate subclass thereof;
 - b) The following relief:
 - i) A Declaration that the Defendant Fortress Real Development Inc. ("**Fortress Developments**") held its interest in an agreement dated on or around March 20, 2012 with the Defendant Harmony Village-Lake Simcoe Inc. ("**HVLS**") with respect to a real estate development in Barrie, Ontario (the "**Harmony Simcoe Project**") in trust for the Plaintiffs;
 - ii) A Declaration that the Defendant Fortress Kempenfelt Bay Developments Inc. ("**FKBD**") holds title to the lands underlying the Harmony Simcoe Project in trust for the Plaintiffs;
 - iii) An Order transferring title to the lands underlying the Harmony Simcoe Project to the Plaintiffs;
 - iv) A Declaration that the Defendant Olympia Trust Company ("**Olympia**") henceforth does not act in the capacity as trustees on behalf of the Plaintiffs with respect to the Harmony Simcoe Project;
 - v) Appointment of a trustee or trustees to act on behalf of the Plaintiffs with respect to their investment in the Harmony Simcoe Project;
 - vi) An interim Order that all amounts paid to or held by Fortress Developments or the Defendant Fortress Real Capital Inc. ("**Fortress Capital**") or any of the

Defendants as advances against anticipated profits and commissions be immediately paid into Court pursuant to the provisions of Rule 45 of the *Rules of Civil Procedure*;

- vii) An accounting and equitable tracing of all funds received by the Defendants from the Plaintiffs and paid by the Defendants to HVLS; and
- viii) Disgorgement of all profits earned by the Defendants who are held by the Court to be fiduciaries of the Plaintiffs with respect to the Harmony Simcoe Project;
- c) In the alternative to subparagraph (b) above, rescission of all agreements between the Plaintiffs and the Defendants with respect to their investment in a syndicated mortgage (the “**Syndicated Mortgage**”) registered against the Harmony Simcoe Project lands;
- d) General damages in the amount of \$25,000,000;
- e) Exemplary, punitive and aggravated damages in the amount of \$2,500,000;
- f) Pre and post-judgment interest at the rate of 8% per annum pursuant to the terms of the Syndicated Mortgage (as defined below);
- g) In the alternative to subparagraph (f) above, pre- and post-judgment interest in accordance with the *Court of Justice Act*, R.S.O. 1990, c. C-43 and the amendments thereto;
- h) Costs of this action on a substantial indemnity basis together with the Harmonized Sales Tax thereon; and
- i) Such further and other relief as the nature of this case may require and to this Honourable Court may seem just.

Nature of the Action

2. The class action concerns the Syndicated Mortgage, a mortgage investment made by the Plaintiffs and about 358 other members of the proposed class registered against the lands underlying the Harmony Simcoe Project and marketed and sold by the Defendants Fortress Capital, Fortress Developments (the two Fortress Defendants are collectively referred to as “**Fortress**”), Building & Development Mortgages Canada Inc. (“**BDMC**”), and other mortgage brokerage firms.
3. The Harmony Simcoe Project lands were located at 51, 53, 55 and 75 Bradford Street in Barrie, Ontario. The legal description of the lands is set out at Schedule “A” to this Fresh as Amended Statement of Claim.

The Parties

4. The Plaintiff Bryan Madryga (“**Madryga**”) resides in the City of Markham in the Province of Ontario.
5. The Plaintiff Eileen Wallace (“**Wallace**”) resides in the Township of Amaranth in the Province of Ontario.
6. Fortress Capital and Fortress Developments are corporations incorporated under the laws of Canada and Ontario respectively with offices in the Town of Richmond Hill. The companies are in the business of real estate development.
7. FKBD is a single purpose corporation incorporated under the laws of the Province of Ontario with an office in the Town of Richmond Hill. It was incorporated on June 1, 2016 to own and develop the Harmony Simcoe Project lands.
8. HVLS is a corporation incorporated under the laws of the Province of Ontario in 1996 with an office in the City of Brampton.

9. The Defendant City Core Developments Inc. (“**City Core**”) is a corporation incorporated under the laws of the Province of Ontario with an office in the City of Brampton.
10. BDMC is a corporation incorporated under the laws of the Province of Ontario with an office in the same location as Fortress in the Town of Richmond Hill. It is a related company to Fortress. At the time of the events herein, BDMC was a licensed mortgage brokerage. BDMC previously carried on business under the trade name Centro Mortgage Inc.
11. On February 1st, 2018 the Financial Services Commission of Ontario (“**FSCO**”) made an Order revoking the mortgage brokerage license of BDMC pursuant to section 19 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 (the “*Act*”). BDMC was ordered to pay an administrative penalty of \$400,000 pursuant to section 39 of the *Act*.
12. On April 20, 2018, the Ontario Superior Court of Justice appointed a trustee, FAAN Mortgage Administrators Inc., over all the assets, undertakings and properties of BDMC. In addition, all actions against BDMC were stayed and suspended. Accordingly, this action will not proceed against BDMC without the consent of the BDMC trustee or leave of the Court.
13. The Defendant, Ildina Galati (“**Galati**”), is a resident of the City of Vaughan and was a mortgage broker and the principal broker of BDMC at the relevant times herein. In January or February of 2018 Galati surrendered her mortgage broker license.
14. The Defendant, Derek Sorrenti (“**Sorrenti**”), is a lawyer licensed to practice law in the Province of Ontario with an office in the City of Vaughan.

15. The Defendant, Sorrenti Law Professional Corporation (“**Sorrenti Law**”), is a professional corporation incorporated under the laws of the Province of Ontario with an office in the City of Vaughan. Sorrenti Law operates Sorrenti’s practice of law.
16. Olympia is a trust company incorporated under the laws of the Province of Alberta with its head office in the City of Calgary.
17. The Defendant Grant Edwardh Appraisers and Consultants Ltd. is a company incorporated under the laws of the Province of Ontario with an office in the City of Toronto. It carries on a real estate and consultancy business under the registered business name of MacKenzie Ray Heron & Edwardh (“**MRHE**”).
18. The Defendant, Ian G. McLean (“**McLean**”) is a licensed real estate appraiser and is a shareholder, employee or independent contractor with MRHE.

Mortgage Law in Ontario

19. In Ontario, the mortgage brokerage industry is governed by the provisions of the *Act* and its regulations.
20. The mortgage brokerage industry is regulated by FSCO, a regulatory commission established under the provisions of the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28.
21. Sections 2 to 5 of the *Act* requires that individuals and companies be licensed under the *Act* (as a broker or agent in the case of individuals and as a brokerage in the case of companies) in order to:
 - a) Solicit a person or entity to borrow or lend money on the security of real property;
 - b) Negotiate or arrange a mortgage on behalf of another person or entity;
 - c) Carry on the business of dealing and trading in mortgages;

- d) Solicit a person or entity to buy or sell mortgages;
 - e) Buy or sell mortgages on behalf of another person or entity;
 - f) Lend money on the security of real property; or
 - g) Hold themselves out as lending money on the security of real property.
22. The *Act's* regulations set out high standards of practice for mortgage brokerages, principal brokers, brokers, agents, mortgage administrators and brokerage officers and directors.
23. The *Act* 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.

Background of Fortress and Its Business

24. The following facts apply generally to all Fortress syndicated mortgages and specifically to the facts of this action.
25. Fortress was founded in 2008 by Jawad Rathore (“**Rathore**”) and Vincenzo Petrozza (“**Petrozza**”). Prior to that time Rathore and Petrozza had been active in the securities markets in Ontario.
26. Fortress enters into development agreements with developers/builders whereby Fortress promises to provide real estate financing for the developments in return for a profit participation of 50% in the development project.
27. To finance the projects, Fortress raises capital predominantly from small and unsophisticated investors who invest in syndicated mortgages. These mortgages are registered against the land underlying the planned real estate developments.

28. The two companies, Fortress Developments and Fortress Capital, are used interchangeably in the various transactions although it appears Fortress Developments is primarily responsible for the business transactions with developers/builders and Fortress Capital is primarily responsible for the raising of investment capital.
29. Both Fortress companies share office space, management and staff and capital is pooled by the two companies.
30. The investments are formally sold to investors by BDMC as Fortress is not licensed under the *Act*. Investors often never meet with BDMC or any of its agents prior to making their investment decision.
31. Fortress has developed a network of mortgage brokers and agents to sell its mortgage investments. Fortress has an agreement with three mortgage brokerage firms, FMP Mortgage Investments Inc., FFM Capital Inc. and FDS Broker Services Inc., to market the mortgage investments widely to other mortgage brokers and agents who, in turn, solicit interest in the Fortress investments.
32. Fortress develops professional sales and marketing packages that are circulated widely to its network of mortgage brokers and agents. The packages are also circulated directly to members of the public.
33. Potential interested investors are invited to seminars organized by Fortress, BDMC and the other mortgage brokers/agents.
34. In the marketing materials and at the seminars, the real estate projects are presented as large scale developments with blue-chip, established and reputable builders with decades of experience.

35. The syndicated mortgages are marketed as safe and secure investments that provide monthly interest payments at an 8% annual rate. Also, investors are told they will have the opportunity to earn additional profits when the real estate project is complete.
36. The investments are marketed as registered plan-eligible and safe and secure for retirement and savings investment. Registered plans include Registered Retirement Savings Plans (“RRSP”), Registered Education Savings Plans (“RESP”) and Tax Free Savings Accounts (“TFSA”).
37. The amounts raised by Fortress in the syndicated mortgages are formally lent to the developers through a loan agreement executed by a trustee such as Sorrenti and/or Olympia acting on behalf of investors. In this action, Sorrenti was originally the trustee on behalf of investors but was replaced by BDMC at some point. It is unclear if Olympia held the role of trustee as well.
38. During the life of the syndicated mortgages, they are administered on behalf of investors by BDMC or Sorrenti. In this case, Sorrenti was the administrator originally but was replaced by BDMC in 2016.

Olympia Doing Business in Ontario

39. FSCO is responsible for the licensing of trust companies pursuant to the provisions of the *Loan and Trust Corporations Act*, R.S.O. 1990, c. L-25 (the “LTCA”).
40. Olympia is licensed as a trust company under the laws of the Province of Alberta.
41. In 2011 and again in 2013, Olympia sought a license from FSCO to operate as a trust company in the Province of Ontario so as to offer registered plans to investors in the province who wished to invest in syndicated mortgages.

42. In seeking a license, FSCO had the assistance of Fortress' counsel, Norton Rose Fulbright Canada LLP ("**Norton Rose**"). This law firm also provided Olympia with a tax opinion that the Syndicated Mortgage was in compliance with the rules set out by the Canada Revenue Agency ("**CRA**") with respect to the investment of funds held in registered plans into syndicated mortgages.

43. Olympia's purpose in seeking to do business in Ontario was to partner or joint venture with Fortress to facilitate registered plan investments in Fortress syndicated mortgages. This was in both parties' mutual interest:

- a) For Fortress, its syndicated mortgage business in Ontario was only viable if money could be raised from holders of registered plans. No other trust companies or financial institutions licensed to do business in Ontario would permit registered plan clients to invest in Fortress syndicated mortgages through their plans.
- b) 80-85% of the money invested in Fortress syndicated mortgages is raised through holders of registered plans. If the holders of those plans could not invest in Fortress syndicated mortgages, the pool of available non-registered plan investment funds would not have been large enough to support Fortress' syndicated mortgage business.
- c) For these reasons, it was essential for Fortress that Olympia do business in Ontario to invest money on behalf of registered plan holders in Fortress syndicated mortgages.
- d) For Olympia, it allowed it to grow its customer base and earn substantial fees from Ontario residents who opened registered plan accounts.

44. FSCO refused to license Olympia in Ontario holding that sections 31 and 213 of the *LTCA* only permitted federally-incorporated trust companies to be licensed to do business in Ontario. Olympia refused to obtain a federal charter.
45. Notwithstanding FSCO's refusal to provide it with a license and its knowledge that it could not legally carry on business in Ontario, after being turned down for a license in Ontario, Olympia proceeded to do business in Ontario and opened registered plan accounts for all Fortress syndicated mortgage investors who wished to invest through their registered plans.
46. Fortress was fully aware that FSCO had turned down Olympia's application to do business in Ontario and that Olympia had moved forward with its Ontario business. Other Defendants (discussed below) were also aware of these facts.
47. FSCO required that Olympia cease doing business in Ontario in August 2017.

Lack of Disclosure of Significant Information

48. Fortress' agreements with developers/builders call for advance payments to Fortress of "anticipated profits" at the time financing is raised. This results in a substantial portion of an investor's money (approximately 35%) being retained by Fortress years before any profits are actually earned.
49. The funds retained by Fortress are also used to pay broker and agent commissions and to pay for independent legal advice ("ILA") allegedly provided to investors.
50. Upon an investment being made, the various mortgage brokers and agents (including referring brokers, agents and others) share a commission of 15%. This is significantly higher than traditional commissions paid in the mortgage industry.

51. Investors in the syndicated mortgages sign documentation acknowledging they have received ILA with respect to their investment. Investors are advised by Fortress that Fortress can provide a lawyer to give “free” ILA. If the investor wishes to use their own lawyer, the investor is told they are responsible for the lawyer’s fees.
52. Most if not all investors accept this offer of “free” ILA so as to save the cost of paying for the ILA. In this case, the ILA is usually provided by Sorrenti and others employed by Sorrenti Law who are paid by Fortress (and the borrowing developer) for this service.
53. The investor does not meet with the lawyer providing independent legal advice. The advice is provided on the telephone with the mortgage agent who was involved in obtaining the mortgage investment present for the call.
54. This ILA is neither independent nor is it legal advice. It is not provided in accordance with the Rules of Professional Conduct as established by the then Law Society of Upper Canada.
55. If the investor decides to proceed with the investment, Sorrenti acts as their lawyer in closing the transaction.
56. Fortress also retains another 16% of investor funds to pay investors their “interest” over the first two years of the loan. This means investors are paying themselves their own “interest” from the capital they invested. This is contrary to the provisions of the *Act* and regulations which state that interest on mortgages is to be paid by the borrower.¹
57. The result is that the developer receives less than 50% of the funds raised from investors for use in the development of the project itself.

¹ Section 23 of Regulation 189/08

58. FSCO requires that investors receive an appraisal of the investment property based on its “as is” value. Appraisals are to be prepared in accordance with the standards established by the Appraisal Institute of Canada.
59. Investors are rarely provided with an appraisal but, if one is provided, it provides an inflated number based on value calculated on a hypothetical future value as if the project was completed. This is not a current appraisal under the standards established by the Appraisal Institute of Canada. Such an appraisal was provided to investors in this action.
60. Investors are usually provided with an opinion of value that is not prepared by a licensed appraiser and which sets out a value based on the project being complete. This is also not a current or “as is” value. The opinion of value is represented as an appraisal in FSCO-mandated disclosure documents given to investors. In this action, an opinion of value was also prepared.
61. The inflated property value prepared for Fortress is used to determine the loan to value ratio (“LTV”) for the property. All encumbrances against the property are divided by the value of the property. The higher the value of the property, the lower the LTV ratio.
62. A low LTV ratio is important because CRA requires that a mortgage may only be held by a registered plan if the LTV ratio is less than 100%. Had Fortress used the true value of the development properties rather than inflated values, none of the syndicated mortgages would have been registered plan eligible.
63. None of the facts set out at paragraphs 48-62 herein are disclosed to investors. Nor were investors in registered plans advised that Olympia was not licensed to do business in Ontario.
64. The Plaintiffs plead that if these facts had been disclosed to investors, none would have invested in the syndicated mortgages.

Purchase of the Harmony Simcoe Project Lands

65. The Harmony Simcoe Project was proposed as a high-rise residential and retirement condominium development project in Barrie, Ontario on 6.8 acres of net developable land.
66. Transfers of title to HVLS of the seven parcels of land underlying the development were registered in Land Registry Office #51 in Barrie on May 25, 2012. The total purchase price was listed as \$6,750,000.
67. Three years earlier in 2008, the land underlying the Harmony Simcoe Project was purchased for \$6,550,000. The owners sold the property to HVLS in 2012 earning \$200,000 in profits over their four years of ownership.
68. HVLS provided no equity for the purchase. All financing was provided by way of mortgages. At the time of the registration of the transfer of the Harmony Simcoe Project lands, the following encumbrances were registered:
 - a) A mortgage to a number of individuals/companies (the “**First Mortgage**”) in the amount of \$4,750,000 (Instruments SC983676 and SC983677); and
 - b) The Syndicated Mortgage with an initial principal of \$4,177,000 (Instrument SC983678).
69. The total of these mortgages was \$8,927,000. Of this amount, the First Mortgage of \$4,750,000 ranked higher in priority to the Syndicated Mortgage.

Zoning

70. The zoning for the Harmony Simcoe Project lands had been set by the City of Barrie in 2009. In order to build the project, HVLS needed zoning approval to significantly increase the buildable area of the development.

71. This was not disclosed to investors when they were considering an investment in the Syndicated Mortgage. Nor were investors told that Fortress and HVLS had no intention to proceed with the development of the Harmony Village Project if the City of Barrie did not approve the requested zoning change.

HVLS's Agreements with Fortress, Sorrenti and Olympia

72. On or around March 20, 2012, HVLS agreed to borrow the amount of \$12,621,000 (the "**Development Loan**") from Fortress Developments (the "**Fortress Agreement**"). At a subsequent date unknown to the Plaintiffs, the Fortress Agreement was amended to change the initial amount of the Development Loan to \$7,621,000 and the maximum amount of the Development Loan to \$23,210,000.

73. Key provisions of the Fortress Agreement were:

- a) The Development Loan was divided into a secured portion and an unsecured portion. The secured portion was to be secured by a mortgage registered against the Harmony Simcoe Project property (the Syndicated Mortgage);
- b) Fortress Developments assigned its interest in the secured portion of the Development Loan to Sorrenti in Trust and/or Olympia in Trust. (A separate loan agreement, the syndicated mortgage loan agreement ("**SMLA**"), between Olympia or Sorrenti and HVLS was executed on March 20, 2012 and June 15, 2012 and is discussed below);
- c) Fortress Developments was entitled to 50% of the profit of the Harmony Simcoe Project as its consideration for entering into the Fortress Agreement (less certain adjusting amounts);
- d) HVLS paid Fortress Developments an initial project set-up fee;

- e) HVLS agreed to pay an amount to a charity chosen jointly by HVLS and Fortress Developments with both companies to share the tax receipt equally. In fact, it was the investors who truly paid the donation although they received neither credit nor the tax receipt for so doing;
- f) The term of the Development Loan was approximately four years to April 26, 2016 with an option for HVLS to extend the term for a further six months to October 26, 2016;
- g) The Fortress Agreement allowed Fortress Developments to retain 35% of all amounts raised from investors as an advance against anticipated profits and for commissions and legal fees; and
- h) In addition to the 35% of investors' money withheld by Fortress Developments, a further 16% (approximately) of the amounts raised was to be set aside to pay investors for two years of their 8% interest per year. In other words, investors were to be paid "interest" from the capital they invested in the project.

74. The result of the Fortress Agreement was that HVLS would only receive less than 50% of the amounts raised from investors in the actual development of the Harmony Simcoe Project.

75. By agreement dated March 20, 2012, HVLS entered into the SMLA with Olympia in Trust or Sorrenti in Trust with respect to the secured portion of the Development Loan.

Key terms of the agreement were:

- a) The amount of the loan was to be \$12,621,000. A virtually identical version of the SMLA dated June 15, 2012 was subsequently signed that changed the loan

amount by referring to an initial amount of \$7,621,000 and increases over time to \$23,210,000 (Article 5.01);

- b) The term of the Development Loan was approximately four years to April 26, 2016 with an option for HVLS to extend the term for a further six months to October 26, 2016 (Article 4.02);
- c) Interest rate was 8% per annum, payable quarterly (Article 4.02);
- d) A mortgage, the Syndicated Mortgage, would be registered against the Harmony Simcoe Project property as security for the Development Loan. (Article 5.01). This was, in fact, done. The Syndicated Mortgage was originally registered in the amount of \$4,177,000. Sorrenti held the mortgage as trustee for investors;
- e) Subsequent advances were to 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 Harmony Simcoe Project (Article 5.01);
- f) HVLS confirmed that it had not withheld from investors or the general public any information which adversely affected or would be reasonably seen as adversely affecting the Harmony Simcoe Project lands or HVLS’ ability to perform its obligations under the SMLA (Article 6.01(h));
- g) The Syndicated Mortgage was second in priority to the First Mortgage but could be subordinated to construction financing not to exceed \$140 million (Articles 5.01 and 6.02(c));
- h) The Development Loan was to provide for HVLS’ “land acquisition costs and initial soft costs, and the costs incidental thereto” (Article 6.02(h)); and
- i) City Core guaranteed the obligations of HVLS under the SMLA (Schedule C).

76. The terms of the Syndicated Mortgage registered on title included a “standstill/forbearance” provision that was not set out in the SMLA and was never disclosed to the Plaintiffs and other investors (the “**Standstill**”).

77. The Standstill provided that investors in the Syndicated Mortgage would not be able to take steps to act upon their security in the event of default of HVLS if construction financing for the Harmony Simcoe Project was in place unless the construction lender consented to such action. If consent was not provided, investors would have to wait until the construction financing had been repaid in full by HVLS.

Appraisal

78. HVLS retained MRHE to provide an appraisal with respect to the Harmony Village Project lands (the “**Appraisal**”). The Act and the Regulations passed thereunder require that appraisals, if prepared, value property on an “as is” or current value basis.

79. McLean and MRHE knew that the Appraisal would be used by HVLS (and Fortress and others) to raise money from investors for a Syndicated Mortgage on the Harmony Simcoe property. McLean and MRHE knew that Fortress was a syndicator of mortgages and knew the use that would be made by Fortress of the Appraisal.

80. Sorrenti was authorized by McLean and MRHE to make use of the Appraisal. The only reason to authorize Sorrenti to use the Appraisal was in his then or future capacity as trustee for the Syndicated Mortgage investors. McLean and MRHE knew that Sorrenti would use the appraisal with respect to his then or future obligations or disclosure to investors.

81. McLean and MRHE consented to 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 McLean and MRHE.
82. McLean and MRHE knew that representations to prospective investors were being made that an Appraisal had been carried out on the Harmony Simcoe property which could be relied upon as the property's "as is" value. McLean and MRHE also knew that the Appraisal value was being used in documentation provided to investors including documentation required under the provisions of the *Act*.
83. McLean 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").
84. The CUSPAP standards effective in 2012 with respect to appraisals 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).
85. Notwithstanding this obligation, McLean and MRHE prepared the Appraisal representing that it was a current value for the Harmony Simcoe property but based its conclusions on future events that had not transpired. This was not in conformity with the standards established by the Appraisal Institute of Canada.
86. The Appraisal is dated April 12, 2012. It puts the value of the Harmony Simcoe Project lands at \$13.9 million more than double the \$6,750,000 amount the property was purchased for by HVLS one month later.

Opinion of Market Value

87. The firm of Legacy Global Mercantile Partners Ltd. was retained to provide an Opinion of Market Value with respect to the Harmony Simcoe Project lands (the “**Opinion**”).
88. The Opinion is contained in a letter dated February 1, 2013. The Opinion arrived at a market value for the lands underlying the Harmony Simcoe Project at \$20 million. This was an increase in value of 44% or \$6.1 million from the \$13.9 million value set out in the Appraisal only ten months earlier.
89. While the Opinion purported to arrive at a current value for the Harmony Simcoe property, its analysis was based upon the construction of the Harmony Simcoe project – a future event.

Fortress Raises Capital from the Plaintiffs and Other Investors

90. In or about June of 2012 Fortress began its marketing efforts for the Harmony Simcoe Project.
91. Fortress marketed the Harmony Simcoe Project widely to its network of referring mortgage brokers and agents as well as to members of the public. It held seminars for interested investors and obtained commitments for investments in the Syndicated Mortgage.
92. Among the features marketed by Fortress were:
- a) The appraised value of the property of \$13.9 million (and later \$20 million when the Opinion was obtained).
 - b) LTV ratio of 89%.
 - c) Quarterly interest payments of 8%.

d) The term of the Syndicated Mortgage was three years to April 26, 2016 with the possibility of a six month extension of its terms to October 26, 2016.

e) Sorrenti was a bare trustee for the Syndicated Mortgage.

Madryga Invests in the Syndicated Mortgage

93. Madryga is 49 years of age with a date of birth of September 30, 1969. He has a university degree in engineering and has pursued a variety of entrepreneurial careers since that time.

94. In 2010 Madryga started doing some real estate investing. In the spring of 2012, he met Graham McWaters (“**McWaters**”), a registered mortgage agent.

95. McWaters introduced Madryga to syndicated mortgages. In May 2012 McWaters invited Madryga to a Fortress seminar. Rathore spoke at the seminar.

96. Madryga was impressed with the Fortress presentation and with McWaters’ representations about the company and syndicated mortgages. He liked that the mortgages paid high interest but were secure and suitable for retirement investing.

97. McWaters’ background gave him credibility in Madryga’s eyes as was the fact that McWaters said he had invested in two Fortress projects himself and that no one had ever lost money on a Fortress investment.

98. McWaters provided Madryga with Fortress marketing material. In the following weeks, the two discussed various Fortress investment opportunities including the Harmony Simcoe Project. Madryga received investment material related to the project.

99. Madryga was told the project with its retirement focus was in high demand because of the aging baby boomer population. It had all necessary zoning approvals and construction

was ready to begin. Madryga was also favourably impressed by the involvement of City Core.

100. McWaters recommended to Madryga that he set up an RRSP account with Olympia as the vehicle through which he could invest in Fortress syndicated mortgages. Madryga did so.

101. In reliance upon the oral and written representations made to him and the ILA later purportedly provided to him, Madryga decided to proceed with the investment. He would not have proceeded had he been advised of the Misrepresentations (as defined below).

102. By letter dated June 15, 2012 BDMC wrote Madryga and enclosed certain documents for execution for the investment in the Harmony Simcoe Project.

103. A meeting was scheduled for Madryga to execute the documents on June 25, 2012. In attendance were Madryga, McWaters and an individual required to commission/notarize certain documents including Madryga's identity.

104. During the meeting, Madryga had a telephone call with Sorrenti (or a lawyer in his office or under his direction) during which Madryga was purportedly provided with ILA. The conversation lasted approximately 30 minutes.

105. During the call, Sorrenti briefly described the documents to be signed and the structure of the investment. Madryga asked Sorrenti if the structure of the Harmony Simcoe Project was similar to other Fortress projects and Sorrenti confirmed this.

106. Sorrenti did not review any of the significant risks of the investment with Madryga. None of the Misrepresentations (defined below) or any of the significant risks associated with the investment were discussed although the lawyer knew or ought to have known of these risks.

107. Sorrenti also did not advise Madryga “advice” he was providing Madryga was not true ILA because Fortress was paying Sorrenti’s fees for the advice.
108. At the conclusion of the call, Madryga advised McWaters and the notary that he was prepared to sign the investment documents. The documents were signed and Madryga’s payment for his \$25,000 investment from his Olympia RRSP was transferred.
109. At or prior to the time he invested, Madryga completed a document entitled Client Suitability Form. It contained details of Madryga’s financial position and his desired investment risk profile.
110. While Madryga indicated in his profile that he was prepared to accept some degree of risk, overall his profile indicated an investment in the Syndicated Mortgage was not suitable for him.
111. All of these instructions were ignored in selling Madryga an investment in the Harmony Simcoe development, a high risk investment. Although BDMC had no involvement with the sale of the investment to Madryga, as the selling brokerage it was legally responsible for the sale and it too ignored the document’s contents.
112. Sorrenti, as the mortgage administrator when the investment was made, also had an obligation to advise Madryga the Syndicated Mortgage was not a suitable investment for him and ignored his obligations.
113. Fortress, BDMC and Sorrenti knew an investment in the Syndicated Mortgage was inconsistent with Madryga’s risk profile and that their actions in selling the investment to him were contrary to their obligations under the *Act*.²

² Sections 43 and 45 of the *Act*, Sections 4, 12, 18, 24, 25, 26 and 27 of Regulation 188/08, Section 10.1 of Regulation 189/08

114. Madryga pleads that an investment in the Syndicated Mortgage was not suitable for any investor, registered plan or not, regardless of the investor's risk profile.

Wallace Invests in the Syndicated Mortgage

115. Wallace is 60 years of age. She has a college degree in business marketing. She has worked as a law clerk in the past and is currently a process server.

116. Prior to the time of her investment in the Syndicated Mortgage, Wallace had little or no experience investing in securities or real estate other than the investment in her family home.

117. In 2010 Wallace decided to start making investments in order to prepare for retirement. In this regard, she began to deal with an investment firm, Diamond Tree, in the City of Barrie. She took out a line of credit on her home to finance her investments.

118. Diamond Tree introduced Wallace to syndicated mortgages and, in 2012, to the Harmony Simcoe Project. She was provided with Fortress marketing and investment material for the project that had been provided to Diamond Tree by BDMC.

119. Wallace liked the idea of investing in mortgages because of the fact the investment is secure and is registered against land. She also liked the high rate of interest that was to be paid. This was emphasized in the Fortress marketing material.

120. In reliance upon the Fortress material and the representations it contained, Wallace decided to proceed with a \$50,000 investment in the Syndicated Mortgage. She would not have proceeded had she been advised of the Misrepresentations (as defined below).

121. An appointment was made for her for April 12, 2012 to visit BDMC's offices in Mississauga to sign the investment documents. While there she met with Lorraine

Ritchie, who notarized the investment documents. She also met with Sorrenti who provided her with ILA.

122. Wallace did not receive or sign the FSCO Disclosure (defined and discussed below). This document was required to be provided to her under the *Act*. Nor was she given the *Act's* required 48 hour "cooling period" after receiving the Disclosure and before signing investment documents.

123. Wallace signed documents related to her investment but does not recall what they were. She did sign the 9D (defined and discussed below) which is in Wallace's possession. She does not have copies of any other document. All are in Sorrenti's possession.

124. Wallace never completed a Client Suitability Form for BDMC containing the details of her financial position and her desired investment risk profile. This was contrary to BDMC's obligations as the selling mortgage brokerage.

125. Had she been asked to complete this form, Wallace would have indicated she wished to have a lower level of investment risk consistent with someone investing for retirement. Wallace's investment and risk profile were ignored in selling Wallace an investment in the Harmony Simcoe Project, a high risk investment.

Subsequent Events

126. Between May 25, 2012 and June 3, 2015 the amount of the Syndicated Mortgage gradually increased from \$4,177,000 to \$19,830,000.

127. From 2013 HVLS unsuccessfully sought zoning approval from the City of Barrie for the Harmony Simcoe Project. No approval was ever obtained.

128. No sales campaign was ever commenced by HVLS for the sale of condominium units in the development. Construction never started.
129. The last interest payment made to investors in the Syndicated Mortgage was for the quarter ending June 30, 2015. The failure to pay interest subsequently constituted an event of default under the SMLA.
130. The Development Loan and Syndicated Mortgage were due for repayment on April 26, 2016 or October 26, 2016 if extended under the Fortress Agreement and SMLA. No repayment of principal and overdue interest was made at either time.
131. At no time after these events of default has Sorrenti or Olympia demanded repayment of the amounts due to investors.
132. At no time after these events has Sorrenti or Olympia contacted the Plaintiffs or other investors to seek instructions as to what steps, if any, to take to protect investors' interests with respect to their investment in the Harmony Simcoe Project.
133. In the spring of 2016 Fortress, BDMC and HVLS announced that the Harmony Simcoe project would not be proceeding. Little further information was provided.
134. On or about April 19, 2016 the holders of the First Mortgage issued and served a Notice of Power of Sale with respect to the Harmony Simcoe Project lands.
135. Subsequent to the issue of Notice of Power of Sale, one or more appraisals were carried out on the Harmony Simcoe Project lands by the holder of the First Mortgage to determine their value. The appraised value was about \$8 million, significantly less than the \$13.9 million value set out in the Appraisal and the \$20 million value in the Opinion.
136. Investors were not advised of the issue of the Notice of Power of Sale or of the \$8 million appraised value of the Harmony Simcoe Project lands.

137. On or about August 24, 2016 BDMC assumed the duties of Sorrenti as a trustee on behalf of investors in the Syndicated Mortgage. The Plaintiffs were not consulted nor did they consent to this change. The Plaintiffs have never been advised of the change.

138. On November 7, 2016 Galati and BDMC wrote to the Plaintiffs and other investors to provide an update regarding the Harmony Simcoe Project. In the letter, Galati and BDMC set out the following:

- a) The Harmony Simcoe Project was not “able to secure necessary approvals”;
- b) A new company, Fortress Harmony Village (2016) Inc. (“**FortressHV**”), a company controlled by Fortress, “is proceeding to purchase the property” with a closing expected in mid-November;
- c) FortressHV would now develop the Harmony Simcoe Project “generally in line with the current approved densities”;
- d) Development applications would be submitted in 2017 with sales to start in 2017 and construction in phases thereafter;
- e) FortressHV would take title subject to the Syndicated Mortgage with all principal and interest owing to be capitalized and an extended term put in place; and
- f) Investors were asked to sign legal documentation enclosed with the letter to secure their interest in net cash flow from the project. No other options were provided to or discussed with investors.

139. Counsel for the Plaintiffs wrote to Galati and BDMC on behalf of investors on November 14th. In the letter, counsel advised that the Development Loan and Syndicated Mortgage were in default (a fact not disclosed in the Galati/BDMC letter). Counsel wrote that as trustees Sorrenti and Olympia had an obligation to take reasonable steps on behalf of all investors to enforce investors’ security and had failed to do so. At this time

counsel for the Plaintiffs was not aware that BDMC had assumed the duties of Sorrenti as a trustee for investors in the Syndicated Mortgage.

140. The letter put Sorrenti and Olympia and the other Defendants on notice that effectively immediately Sorrenti and Olympia no longer had the authority to act on behalf of investors with respect to the Syndicated Mortgage. Counsel advised that their clients did not agree to any transfer of title of the Harmony Simcoe Project lands to FortressHV nor to capitalization of principal and past interest due.

141. No reply was received to the letter.

142. On November 28th, 2016, Wallace received a letter discussing the Harmony Simcoe Project. The letter stated:

- a) FortressHV would be assuming the mortgage debt of HVLS. The letter did not disclose that the Syndicated Mortgage would be subordinate to a mortgage of \$7 million instead of the previous First Mortgage of \$4.75 million;
- b) The Administrator of the Syndicated Mortgage would now become BDMC in place of Sorrenti;
- c) BDMC would replace Sorrenti as the trustee of the Syndicated Mortgage. In fact, this had already taken place months earlier without disclosure to investors;
- d) Investors would be presumed to agree with decisions if consulted by BDMC and Olympia in the future and investors did not object within 10 business days;
- e) Only a majority vote of investors in the Syndicated Mortgage would be required for BDMC and Olympia to proceed with investment decisions;
- f) BDMC and Olympia would have authority to postpone or “pause” future interest payments owing to investors to construction financing which would rank ahead of the Syndicated Mortgage;

- g) The Syndicated Mortgage could be postponed to “any non-financial charge”;
- h) Investors would be prevented from taking civil action against BDMC and Olympia with respect to “any losses suffered due to negligence” of HVLS; and
- i) If an investor did not execute the documents the investor’s position in the Syndicated Mortgage would not be transferred to FortressHV “meaning that [the investor would] have to work directly” with HVLS and City Core “to recover [their] original investment and any outstanding interest that may be owed.....”.

143. The November 28th letter failed to disclose important information to investors as they considered whether to sign the FortressHV documentation:

- a) That the Syndicated Mortgage was and continued to be in default and that investors were in a position at least since 2015 to start power of sale proceedings or take other legal action in order to enforce their security;
- b) What steps, if any, had been taken by the trustees of the Syndicated Mortgage, Sorrenti, Olympia and BDMC, to deal with the default;
- c) What steps, if any, had been taken by the trustees to collect the amounts due from City Core, the project guarantor;
- d) That the trustees had entered into the Standstill which precluded investors from acting on their security in the event of default;
- e) How much money was provided to Fortress by HVLS as an advance against profits to be earned in the project and whether demand had been made of Fortress for the return of that money since no profits had been earned;
- f) No accounting was provided to investors of the money that was raised in the Syndicated Mortgage and how much, if any, was remaining. Since construction

had not started, investors might reasonably have expected that several million dollars would be available for distribution to them;

- g) If investors signed the FortressHV documentation, what the continuing obligations and liability of HVLS and City Core would be;
- h) Whether the trustees would continue to act on behalf of investors in the Syndicated Mortgage if the investors did not sign the FortressHV documentation;
- i) What current appraisals of the lands were obtained to ensure FortressHV purchased the lands at full market value;
- j) Why BDMC was recommending this approach as opposed to advising investors to simply act upon their security with respect to the Harmony Simcoe Project lands; and
- k) That the holders of the First Mortgage had issued a power of sale with respect to the Harmony Simcoe Project lands months earlier and were days away from transferring the lands to FortressHV.

144. On November 30, 2016 title to the Harmony Simcoe Project lands was transferred by power of sale by the holders of the First Mortgage to FortressHV (which changed its company name to FKBD). A review of the transfer document discloses:

- a) Transfer price was \$22,837,988.56;
- b) \$5,677,025.56 was paid in cash by FKBD with the holders of the First Mortgage taking back the balance, \$17,160,963, as a mortgage (the “**VTB Mortgage**”); and
- c) The Syndicated Mortgage was deleted from title.

145. On the same day, November 30th, FKBD gave a mortgage to Vector Financial Services Inc. (“**Vector**”) in the amount of \$7 million. The mortgage term was through January 10, 2019. This mortgage amount exceeded the \$5,677,025.56 in cash given by

FKBD when transferring the Harmony Simcoe Project lands meaning FKBD did not put any equity into its purchase of the lands.

146. The excess amount raised by FKBD, about \$1.3 million, was put into an interest reserve by FKBD to pay the high rate of interest due to Vector under the mortgage. This money was improperly retained by FKBD and should have been distributed to investors in the Syndicated Mortgage.

147. The next day, December 1st, the holders of the First Mortgage transferred the VTB Mortgage to BDMC and Olympia for \$2. The transfer lists all investors in the Syndicated Mortgage in a schedule that lists 360 investors in the Syndicated Mortgage with a total amount invested of \$17,165,713.

148. After the First Mortgagees issued their power of sale in April of 2016, they planned to list the Harmony Simcoe Project lands for sale at approximately its appraised value, \$8 million. They were contacted by one or more of the Defendants and were advised FortressHV (now FKBD) wished to purchase the property.

149. The Defendants asked the First Mortgagees to list the property for sale for approximately \$22 million. This price was selected by the Defendants because it suggested the Harmony Simcoe Project property had a high enough value to pay off both the First Mortgage and the Syndicated Mortgage.

150. The First Mortgagees agreed to the request and the Harmony Simcoe Project lands were listed for sale with Forest Hill Realty. As the lands were only worth \$8 million, there were no offers on the property.

151. The Harmony Simcoe property was then sold under power of sale for the illusory price of \$22,837,988.56 when the true sale price was only \$5,677,025.56, the amount paid in cash which was the amount of the First Mortgage (plus interest and other costs).

152. The sole purpose in listing the Harmony Simcoe Project lands for the inflated price and for purchasing the lands for a similarly inflated price was to deceive Syndicated Mortgage investors into believing the property was worth more than the inflated amounts set out in the Appraisal and the Opinion and to hide from investors the fact the Syndicated Mortgage had no value.
153. BDMC circulated a “Memo” to investors dated December 6, 2016 that disclosed the purchase of the Harmony Simcoe Project lands by FKBD on November 30, 2016 via power of sale. This was the first time investors had been advised that a power of sale had been issued on the Harmony Simcoe Project.
154. The Memo stated that the transactions “[preserved investors’] mortgage and security under the new purchaser and borrower”. In fact, this was not true for all the reasons set out in this Fresh as Amended Statement of Claim.
155. No other details of the transactions were disclosed to investors.
156. From December 2016 to May 2018 there has been mortgage activity on the Harmony Simcoe property without the consent of any investors. The investors have not been informed of this activity. The Syndicated Mortgage has been postponed on several occasions to subsequent mortgages.
157. There has been no development of the Harmony Simcoe Project lands. FKBD changed the name of the project to the Kemp.
158. The lands are now listed for sale.

Legal Claims

159. The Plaintiffs plead this action is appropriate for certification under the *Class Proceedings Act, 1992*, S.O. 1992, C. 6 in that:

- a) This Fresh as Amended Statement of Claim discloses one or more causes of action;
- b) There is an identifiable class of two or more persons that would be represented by the Plaintiffs;
- c) The Fresh as Amended Statement of Claim raises common issues;
- d) A class proceeding is the preferable procedure for the resolution of the common issues; and
- e) The Plaintiffs would fairly and adequately represent the interests of the class, will present a plan for the proceeding that will set out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding and the Plaintiffs do not have, on the common issues for the class, a conflict of interest with other class members.

160. The marketing and sales of investments in the Syndicated Mortgage and the ILA given to investors were identical for all investors in that:

- a) Sales materials for the Harmony Simcoe project were widely distributed and available to all potential investors;
- b) The documents investors were required to execute were identical;
- c) The representations made to investors with respect to how much they would earn were identical;
- d) The Misrepresentations (defined below) were made to all investors;
- e) The ILA was prepackaged and had been planned in advance by Fortress, Sorrenti and Sorrenti Law and was identical for all investors.

Pleadings Common to All or Most of the Defendants

161. The Plaintiffs' claims against some or all of the Defendants are particularized below and are based on:

- a) Fraudulent and negligent misrepresentation;
- b) Negligence;
- c) Breach of fiduciary duty;
- d) Conspiracy to injure; and
- e) Breach of Contract.

162. Fraudulent and negligent misrepresentation, negligence and conspiracy to injure require that the Defendant owe the Plaintiff a duty of care. The Plaintiffs plead that the relationship with those Defendants against whom these torts are claimed was sufficiently proximate and the foreseeability of harm if a tort was committed was sufficiently great that those Defendants owed them a duty of care. There were no policy reasons to negate a duty of care.

163. With respect to the requirements of proof for a claim of fraudulent and negligent misrepresentation, the Plaintiffs plead as follows:

- a) The Misrepresentations (set out below) constitute the misrepresentations made to the Plaintiffs;
- b) The Misrepresentations were made in the Harmony Simcoe Project marketing and other materials distributed to and reviewed by the Plaintiffs including the agreements signed by the Plaintiffs when investing in the Syndicated Mortgage. The Misrepresentations were also set out in general Fortress marketing materials including information available on the Fortress website. Last, the

Misrepresentations were conveyed to the Plaintiffs orally by agents or brokers acting on behalf of Fortress, BDMC, Sorrenti (or another lawyer in Sorrenti's office) during the "ILA" and during Sorrenti's and Sorrenti Law's representation of the Plaintiffs;

- c) The Misrepresentations to Madryga were made between the spring of 2012 to June 2012 at the time he reviewed the Harmony Simcoe Project materials and when he had discussions with McWaters and Sorrenti;
- d) The Misrepresentations to Wallace were made between January to April 2012 when Wallace made her investment;
- e) The Misrepresentations either constituted information that was untrue or it contained information that the Defendants should have but failed to disclose to the Plaintiffs. These Defendants knew or ought to have known the Misrepresentations were untrue and contained information that should have been disclosed; and
- f) The Defendants acted fraudulently in the manner in which they dealt with the Misrepresentations which induced the Plaintiffs to invest in the Syndicated Mortgage. Alternatively, the Defendants acted negligently in the manner in which they dealt with the Misrepresentations and the Misrepresentations were reasonably relied upon by the Plaintiffs in investing in the Syndicated Mortgage.

164. To the extent the Plaintiffs rely upon breaches of statutory duty in this Fresh as Amended Statement of Claim, the Plaintiffs plead that while these breaches may not support a private cause of action, the Plaintiffs rely upon them in support of the particular Defendants' failure to meet their common law obligations to them.

165. The Plaintiffs plead that those Defendants against whom a breach of fiduciary duty is claimed were in a relationship with them of trust and confidence that required these Defendants to act honestly, in good faith, and strictly in the Plaintiffs' best interests. These Defendants had the ability to exercise some discretion or power to affect the Plaintiffs' interests making the Plaintiffs vulnerable to these Defendants' actions.

166. The Plaintiffs plead the actions of the Defendants have caused them to suffer damages. In the case of those against whom claims of breach of fiduciary duty are made, the Plaintiffs plead those Defendants should disgorge any profits earned as a result of their actions.

Fortress Capital and Fortress Developments

167. Fortress's actions amounted to fraudulent and negligent misrepresentation, negligence, breach of fiduciary duty, conspiracy to injure and breach of contract, all as particularized below in this Fresh as Amended Statement of Claim.

168. In addition, Fortress acted as a mortgage brokerage in selling an investment in the Syndicated Mortgage to the Plaintiffs although it was not licensed to do so. As such, it owed the Plaintiffs the duties of a mortgage brokerage at common law and under the provisions of the *Act*. The Plaintiffs plead those duties included fiduciary duties.

169. The Plaintiffs plead that since Olympia and Fortress were partners or joint venturers, Fortress is responsible for the actions of Olympia.

Fraudulent and Negligent Misrepresentation

170. Fortress' fraudulent and negligent misrepresentations are made up of misrepresentations by Fortress as well as Fortress' failure to disclose material information to the Plaintiffs (defined as the "**Misrepresentations**"), all as follows:

- a) The misrepresentation that the Syndicated Mortgage was a safe and secure investment when Fortress knew it was a risky investment, unsuited for all investors but particularly for investors with a lower to moderate risk profile. This information was contained in Fortress' marketing materials, was also provided to mortgage and referring agents who Fortress knew would communicate the information to investors;
- b) The intentional failure to disclose the significant risks associated with a syndicated mortgage to the Plaintiffs;
- c) The failure to disclose that Fortress would receive advance payments of anticipated profits equal to 35% of the funds invested in the Syndicated Mortgage;
- d) The failure to disclose that commissions amounting to 15% of the funds raised would be paid to various brokers, agents and referring parties, substantially higher than normal commissions paid for investments of this kind;
- e) The failure to disclose that interest payments to investors would be made from the investors' own capital contrary to the provision of the Act.³ This led investors who held their interest in the Syndicated Mortgage outside registered plans to pay tax on their own capital as interest;
- f) Misrepresentation of the current value of the Harmony Simcoe lands to be \$13.9 million and, later, \$20 million when it's true current or "as is" value was significantly lower (likely the \$6,750,000 paid by HVLS for the lands);
- g) The failure to disclose the Appraisal was not prepared in accordance with the standards set by the Appraisal Institute of Canada as set out in CUSPAP as it did

³ Section 23 of Regulation 189/08

not provide an “as is” or current value of the Harmony Simcoe property as required;

- h) The misrepresentation that the Opinion was, in fact, an appraisal prepared in accordance with the standards set by the Appraisal Institute of Canada;
- i) The misrepresentation that the LTV ratio of the Harmony Simcoe property was 89% thus misrepresenting that the investment was legal for registered plans. In fact, the true LTV ratio based on a value for the Harmony Simcoe lands of \$6,750,000 was 183% which meant it was not eligible under CRA rules for investment by registered plans;
- j) The misrepresentation that the legal advice provided for investors was true ILA when it was prepackaged and paid for by Fortress;
- k) The utilization and promotion of the services of Olympia thus implicitly misrepresenting that Olympia could carry on business in Ontario 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;
- l) The failure to disclose that Fortress and Olympia were partners or joint venturers in order to facilitate registered plan investments in Fortress syndicated mortgages by having Olympia carry on business in Ontario unlawfully;
- m) The misrepresentation that the use of the funds was for “land acquisition costs and initial soft costs, and the costs incidental thereto” without disclosing substantial portions of the funds would be retained as advances to Fortress against anticipated profits, for payment of interest and to provide equity for the purchase of the Harmony Simcoe lands;

- n) The misrepresentation of the value of the Syndicated Mortgage which was increased over time without the consent of prior investors who had invested based on agreement to a lower value for the Syndicated Mortgage;
- o) The misrepresentation that advances under the SMLA were to 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 Harmony Simcoe Project;
- p) The misrepresentation that the Syndicated Mortgage would not be subordinated to any other mortgage other than construction financing;
- q) The misrepresentation in the SMLA that HVLS had not withheld from investors or the general public any information which adversely affected or would be reasonably seen as adversely affecting the Harmony Simcoe Project lands or HVLS’ ability to perform its obligations under the SMLA;
- r) The misrepresentation that zoning approvals had already been obtained for the Harmony Simcoe Project lands;
- s) The failure to disclose that Fortress and HVLS had no intention to proceed with the Harmony Simcoe Project if the significant zoning changes that were to be sought were not approved by the City of Barrie;
- t) The misrepresentation that the Syndicated Mortgage would be repaid when it came due Fortress knew or ought to have known that zoning approval and construction could not be completed by the date the mortgage came due;
- u) The failure to disclose that the Standstill would be inserted into the Syndicated Mortgage preventing investors from acting upon their security in the event of

default or when the Syndicated Mortgage came due unless the construction lender consented to such action or until all construction financing had been repaid;

- v) The misrepresentation that payment of interest to investors might cease at some future point with interest to be accrued;
- w) The misrepresentation that Fortress and HVLS had provided capital to the Harmony Simcoe;
- x) The failure to disclose that Fortress, BDMC and HVLS were related entities and, as such, there might be a conflict of interest in mortgage brokerage advice given to the Plaintiffs with respect to the investment;
- y) The misrepresentations in the November 28, 2016 letter sent to investors set out in paragraphs 142-143 herein; and
- z) The misrepresentations with respect to the selling price of the Harmony Simcoe Project lands and the value of the Syndicated Mortgage as set out in paragraphs 144-155 herein.

Negligence and Breach of Fiduciary Duty

171. The particulars of the Plaintiffs' negligence and breach of fiduciary duty claims against Fortress are that:

- a) It assumed the duties of a mortgage brokerage under the *Act* when it knew it was not licensed by FSCO as a mortgage brokerage;
- b) It introduced the Harmony Simcoe investment to the Plaintiffs 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 Syndicated Mortgage complied with all legal requirements and that proper disclosure of all material risks were made to the Plaintiffs;⁴
- d) It failed to ensure the investments in the Syndicated Mortgage were appropriate investments for each investor based on the investor's background and risk profile;
- e) It marketed and recommended the Syndicated Mortgage as safe and secure investments when it knew they were risky investments not suitable for any investors;
- f) It provided or failed to provide the information set out in the Misrepresentations;
- g) It failed to ensure the Plaintiffs obtained genuine ILA and arranged for ILA for Madryga that was not truly independent as it was prepackaged and paid for by Fortress;
- h) It failed to provide a FSCO Disclosure (defined and discussed below) to Wallace and ensure she received her 48 hour "cooling period" after receiving the Disclosure and before signing investment documents;
- i) It failed to ensure Wallace completed a Client Suitability Form containing the details of her financial position and her desired investment risk profile;
- j) It utilized the services of Olympia 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;
- k) It knew or ought to have known HVLS had not disclosed information which adversely affected or would be reasonably seen as adversely affecting the

⁴ Sections 5(2), 11(7) and (8), 43 and 45 of the *Act*; sections 4, 12, 18, 24, 25, 26, 27 and 40 of Regulation 188/08

Harmony Simcoe Project lands or HVLS' ability to perform its obligations as HVLS was obligated to do under the provisions of the SMLA (Article 6.01(h));

- l) It failed to ensure that the Syndicated Mortgage was not subordinated to any other mortgage other than construction financing;
- m) When the FKBD / Vector mortgage was arranged, it failed to ensure that the excess of mortgage funds over the amount paid to the holder of the First Mortgage was paid out to Syndicated Mortgage investors;
- n) It facilitated the events of November and December 2016 and then the events from December 2016 to May 2018 without the consent or approval of investors.

Conspiracy to Injure

172. The Plaintiffs plead that Fortress conspired with BDMC, Galati, Olympia, HVLS and FKBD to injure by way of unlawful conduct. Particulars of the tort include:

- a) Fortress conspired with BDMC and Galati to provide or to omit providing the information set out in the Misrepresentations so as to induce the Plaintiffs to invest in the Syndicated Mortgage with the knowledge that had they known of the information in the Misrepresentations, they would not have made the investment;
- b) Fortress conspired with Olympia to have Olympia carry on business in Ontario with the knowledge that such business could not be lawfully carried out and with the knowledge that if Olympia did not carry on business in Ontario, no other trust company or financial institution with registered plans would allow investments in the Syndicated Mortgage. Fortress and Olympia knew that an inability to raise registered plan money made the syndicated mortgage business unfeasible as there was not enough non-registered plan money available to support the business;

- c) Fortress' and Olympia's conspiracy therefore allowed Fortress to make its syndicated mortgage business viable when it would not otherwise have been had Olympia not unlawfully done business in Ontario. It also allowed Olympia to earn significant fees from registered plan holders that constituted the bulk of the company's profits between the years 2012 and 2017;
- d) Fortress conspired with Sorrenti and Sorrenti Law to plan in advance the prepackaged "ILA" these Defendants would give to investors which would not disclose or discuss the significant risks associated with the Syndicated Mortgage;
- e) Fortress conspired with FKBD, HVLS, BDMC, Sorrenti and Olympia to facilitate a sale of the Harmony Simcoe Project property by the holder of the First Mortgage that concealed the true value of the property, concealed the true selling price and concealed that the Syndicated Mortgage had no value. These Defendants also failed to ensure investors were paid the excess of the funds received from Vector over the funds due to the holder of the First Mortgage. These Defendants also facilitated the events from December 2016 to May 2018 without the consent or approval of investors;
- f) These conspiracies constituted unlawful acts;
- g) The conduct was directed towards procuring investment in the Syndicated Mortgage by the Plaintiffs and other investors;
- h) These Defendants knew that the Syndicated Mortgages were risky investments and that there was a foreseeable possibility they would not be repaid which was not disclosed to the Plaintiffs. In addition, these Defendants knew their actions in November and December 2016 would cause damage to investors by concealing the amount of their loss in their investments; and

- i) The Syndicated Mortgage is in default and the Plaintiffs have suffered significant damages.

Breach of Contract

173. The Plaintiffs executed an agreement with Fortress Capital, BDMC, Olympia and Sorrenti entitled the Memorandum of Understanding - Lender Acknowledgement and Consent Agreement (the “**Acknowledgement**”). Key representations made by Fortress Capital, BDMC, Olympia and Sorrenti in the document included:

- a) That the Plaintiffs were clients of either Fortress Capital or BDMC and had been introduced to the investment by either Fortress Capital or BDMC;
- b) That the Syndicated Mortgage was registered plan-eligible;
- c) That the Syndicated Mortgage would be subordinated to construction financing;
- d) That prior to advances being made to HVLS, an updated valuation of the Harmony Simcoe lands would be provided to the trustees confirming that the combined value of all registered mortgage security on the lands did not exceed the most recent valuation of the property;
- e) That the current value of the Harmony Simcoe lands was \$13.9 million and later \$20 million;
- f) That the Plaintiffs had received ILA with respect to their investment in the Syndicated Mortgage.

174. The Plaintiffs plead that Fortress’ execution of the Acknowledgement with these statements were contractual misrepresentations in that Fortress knew:

- a) The Plaintiffs could not be clients of Fortress as Fortress had not been licensed as a mortgage brokerage under the *Act* and could not have the Plaintiffs as its client;

- b) That the Syndicated Mortgage could not be RRSP-eligible since it knew that the true LTV ratio of the Harmony Simcoe lands with the Syndicated Mortgage exceeded 100% making it ineligible for registered plan investment;
- c) That advances would be made to HVLS without updated valuations being made;
- d) That the current value of the Harmony Simcoe lands was significantly lower than \$13.9 million or \$20 million; and
- e) That the Plaintiffs had not received ILA.

FKBD

175. FKBD's actions amounted to a fraudulent and negligent misrepresentation, negligence and conspiracy to injure.
176. FKBD knew of the communications that had been made to investors in November and December of 2016 including the representation that FKBD would be acquiring the Harmony Simcoe property and would be assuming HVLS's obligations thereunder.
177. FKBD also knew of the misrepresentations made in communications to shareholders in November and December 2016.
178. The Plaintiffs plead that FKBD had an obligation to correct these misrepresentations but failed to do so. As such, FKBD is legally responsible for those misrepresentations to the Plaintiffs.
179. The negligence alleged by the Plaintiffs is that FKBD knew that the excess of the funds raised in the Vector mortgage over the amount owing to the holders of the First Mortgage should have been paid to investors but FKBD failed to make these payments and instead held the money for future interest payments to Vector.

180. FKBD conspired with Fortress, HVLS, BDMC, Sorrenti and Olympia to facilitate a sale of the Harmony Simcoe Project property by the holder of the First Mortgage that concealed the true value of the property, concealed the true selling price and concealed that the Syndicated Mortgage had no value. These Defendants also failed to ensure investors were paid the excess of the funds received from Vector over the funds due to the holder of the First Mortgage. Full particulars of the tort are set out at subparagraphs 172(e) to (i) herein.

181. The Plaintiffs plead the transfer of title of the Harmony Simcoe Project lands to FKBD should be set aside.

182. FKBD's actions were oppressive, unfairly prejudicial and unfairly disregarded the interests of the Plaintiffs contrary to the provisions of sections 245 and 248 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B-16 (the "*OBCA*") entitling the Plaintiffs to damages.

HVLS and City Core

183. HVLS' actions amounted to a breach of contract, a negligent misrepresentation and conspiracy to injure.

184. The Plaintiffs plead HVLS is in default of the provisions of the SMLA. Accordingly, all principal owing to Sorrenti and Olympia (in trust for the Plaintiffs and other investors) is now due and owing. All interest accrued before and after default is owing to the Plaintiffs. In addition:

- a) HVLS failed to notify the Plaintiffs of information which adversely affects the Harmony Simcoe Project and HVLS' assets, liabilities, affairs, business, operations or conditions, financial or otherwise, or its ability to perform its

obligations under the SMLA and the Syndicated Mortgage, all contrary to Article 6.01(h) of the SMLA;

- b) HVLS had agreed that Fortress would be paid funds received from investors as advances on profits not yet earned without disclosure or agreement of the Plaintiffs and other investors and did not obtain the repayment of said funds when it became clear that the Harmony Simcoe Project would not earn a profit;
- c) The amounts raised from investors in the Syndicated Mortgage without proper accounting by HVLS for this money and without advising investors what amounts remain available to them now that the Harmony Simcoe Project will not be proceeding with HVLS's involvement;
- d) HVLS has failed to distribute to investors any amounts raised from investors that HVLS continues to hold; and
- e) HVLS has misappropriated funds provided by investors for purposes unrelated to the development of the Harmony Simcoe Project.

185. The Plaintiffs plead HVLS knew of the communications that had been made to investors in November and December of 2016. The Plaintiffs plead that HVLS had an obligation to correct these misrepresentations but failed to do so. As such, HVLS is legally responsible for those misrepresentations to the Plaintiffs.

186. HVLS conspired with Fortress, FKBD, BDMC, Sorrenti and Olympia to facilitate a sale of the Harmony Simcoe Project property by the holder of the First Mortgage that concealed the true value of the property, concealed the true selling price and concealed that the Syndicated Mortgage had no value. These Defendants also failed to ensure investors were paid the excess of the funds received from Vector over the funds due to

the holder of the First Mortgage. Full particulars of the tort are set out at subparagraphs 172(e) to (i) herein.

187. The Plaintiffs plead they are entitled to a judicial sale of the lands underlying the Harmony Simcoe Project pursuant to the provisions of Rule 64 of the *Rules of Civil Procedure* in order to obtain payment of the amounts due to them by HVLS.

188. The Plaintiffs plead that City Core as the guarantor of HVLS' obligations under the SMLA also owes Sorrenti and Olympia (in trust for the Plaintiffs and other investors) all principal and interest outstanding.

189. HVLS's and City Core's actions were oppressive, unfairly prejudicial and unfairly disregarded the interests of the Plaintiffs contrary to the provisions of sections 245 and 248 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B-16 (the "**OBCA**") entitling the Plaintiffs to damages.

BDMC

190. BDMC was the selling brokerage with respect to investments in the Syndicated Mortgages. BDMC also later replaced Sorrenti as the trustee of the SMLA and the mortgage administrator.

191. BDMC's actions amounted to fraudulent and negligent misrepresentation, negligence, breach of fiduciary duty, conspiracy to injure and breach of contract, all as particularized below in this Fresh as Amended Statement of Claim.

Fraudulent and Negligent Misrepresentation

192. The particulars of BDMC's fraudulent and negligent misrepresentations are the Misrepresentations alleged against Fortress. References to Fortress therein should be read as references to BDMC.

193. FSCO requires that a document entitled Investor/Lender Disclosure for Brokered Transactions be provided to prospective investors in syndicated mortgages. One was provided to Madryga but not to Wallace (the “**Disclosure**”) by or on behalf of BDMC. By not providing the Disclosure to Wallace, BDMC breached its obligations under the *Act*. There were many misrepresentations and omissions in the Disclosure as follows:

- a) Failure to advise whether BDMC acted for the lender or borrower or both in the transaction as required;
- b) Failure to disclose its relationship with “each party to the transaction” as required;
- c) Failure to disclose material risks about the transaction that the investor should consider as required;
- d) Failure to disclose actual or potential conflicts of interest that might arise from the transaction as required;
- e) That the ILA that the Disclosure advised the investor to obtain and that BDMC knew the Plaintiffs were to receive was not true ILA;
- f) Failure to disclose that BDMC might receive additional earnings from the Harmony Simcoe as required;
- g) Misrepresentation that BDMC had complied with all requirements of the *Act*;
- h) Misrepresentation that an appraisal based on an “as is” value of the Harmony Simcoe lands had been completed with a value of \$13.9 million and later \$20 million;
- i) Misrepresentation that the LTV ratio was 89%;
- j) Misrepresentation as to the fees being paid to agents and lawyer;

- k) Failure to attach required documents including copies of any existing mortgages, appraisals, agreements of purchase and sale and evidence of HVLS's ability to meet the mortgage payments;
- l) Misrepresentation that BDMC had provided "all other information an investor of ordinary prudence would consider to be material" to their investment decision; and
- m) Failure to include a schedule of funds that had been provided to HVLS and were to be provided in future.

194. With respect to BDMC's duties as the trustee under the SMLA, it was required to satisfy itself with respect to certain conditions precedent before making advances to HVLS and to ensure information was received from the Harmony Simcoe Project's cost consultants before making advances to HVLS. Neither step was taken.

195. The Plaintiffs plead that in assuming Sorrenti's duties as the trustee for the Syndicated Mortgage, BDMC misrepresented that it would take these steps.

196. With respect to BDMC's duties as the mortgage administrator, Regulation 189/08 issued under the *Act* requires that an administrator:

- a) Shall not "give, assist in giving or induce or counsel another person or entity to give or assist in giving any false or deceptive information or document";⁵
- b) Shall respond to all written complaints that he receives with a written response setting out a proposed resolution;⁶
- c) Shall not administer a mortgage if he has reason to doubt it is lawful;⁷

⁵ Section 43 of the *Act*

⁶ Section 8 of Regulation 189/08

⁷ Section 10 of Regulation 189/08

- d) Shall not act or omit to act if he is being used to facilitate “dishonesty, fraud, crime or illegal conduct”;⁸
- e) Shall disclose all conflicts of interest he has with respect to the mortgage;⁹
- f) Shall not pay funds to investors unless the payment is made from funds provided by a borrower. In fact, interest payments were made from the investors’ own capital;¹⁰
- g) Shall establish and implement policies and procedures that are reasonably designed to ensure the administrator acts in compliance with his obligations under the *Act*;¹¹
- h) Shall establish a process for resolving complaints about the mortgage administration practices;¹² and
- i) Shall maintain errors and omissions insurance with extended coverage for fraudulent acts.¹³

197. The Plaintiffs plead BDMC in replacing Sorrenti as administrator for the Syndicated Mortgage, misrepresented to them that it would meet its obligations under the *Act* and its regulations.

198. As such, the Plaintiffs plead that BDMC’s failure to meet its legal obligations under the *Act* amounted to fraudulent and negligent misrepresentations by BDMC.

⁸ Section 10.1 of Regulation 189/08

⁹ Section 20 of Regulation 189/08

¹⁰ Section 23 of Regulation 189/08

¹¹ Section 25 of Regulation 189/08

¹² Section 26 of Regulation 189/08

¹³ Section 27 of Regulation 189/08

Negligence and Breach of Fiduciary Duty

199. The particulars of the Plaintiffs' negligence and breach of fiduciary duty claim against BDMC are that:

- a) It failed to take the steps required of a mortgage brokerage to ensure that the Syndicated Mortgage complied with all legal requirements and that proper disclosure of all material risks was made to the Plaintiffs;¹⁴
- b) It failed to ensure the investments in the Syndicated Mortgage were appropriate investments for the Plaintiffs based on each investor's background and risk profile;
- c) It marketed and recommended the Syndicated Mortgage to investors when it was not an appropriate investment for any investor as it was not safe and secure and, in fact, was a risky investment;
- d) It failed to disclose all material risks of the Syndicated Mortgage;
- e) It provided or failed to provide the information set out in the Misrepresentations;
- f) It failed to meet with the Plaintiffs personally to ensure it met its obligations under the *Act* in selling an investment in the Syndicated Mortgage to them;
- g) It knew that Fortress was selling investments in the Syndicated Mortgage to investors unlawfully since Fortress was not licensed under the *Act* to do so;
- h) It failed to provide investors with documents required by FSCO to be provided as set out in the Disclosure;

¹⁴ Sections 5(2), 11(7) and (8), 43 and 45 of the *Act*; sections 4, 12, 18, 24, 25, 26, 27 and 40 of Regulation 188/08

- i) In the case of Wallace, it failed to provide her with the Disclosure and failed to ensure she completed a Client Suitability Form;
- j) It failed to ensure the Plaintiffs obtained genuine ILA and, in the case of Madryga, arranged for ILA that was not truly independent as it was paid for by Fortress;
- k) It knew the Plaintiffs would be utilizing the services of Olympia when it knew Olympia had been turned down for a license to do business by FSCO but had unlawfully decided to do business in Ontario; and
- l) It knew or ought to have known HVLS had not disclosed information which adversely affected or would be reasonably seen as adversely affecting the Harmony Simcoe Project lands or HVLS' ability to perform its obligations as HVLS was obligated to do under the provisions of the SMLA (Article 6.01(h)).

200. With respect to BDMC's actions as a trustee, BDMC was negligent and breached its fiduciary duties in the following respects:

- a) It was in a conflict of interest as a result of its multiple roles as a trustee for the Syndicated Mortgage in addition to its role as the selling brokerage;
- b) It acted as a co-trustee with Olympia when it knew that Olympia was carrying on business unlawfully in Ontario;
- c) It knew the investment funds were not being used for "land acquisition costs and initial soft costs, and the costs incidental thereto" as represented yet took no steps to prevent such unauthorized use being made of the funds;
- d) It failed to meet its obligations with respect to information to be obtained prior to making subsequent advances to HVLS;

- e) It failed to ensure the Syndicated Mortgage was only subordinated to other mortgages as agreed upon in the investment documentation;
- f) Once the SMLA went into default, it failed to take steps to enforce investors' security as it was obligated to do under the SMLA's terms;
- g) Once the SMLA went into default, it failed to properly inform investors of the default and obtain their instructions as to what steps should be taken to enforce their rights;
- h) It sent out incorrect information in the memos sent to investors in November and December of 2016;
- i) It facilitated the events of November and December 2016 and then the events from December 2016 to May 2018 without the consent or approval of investors; and
- j) It failed to meet its obligations with respect to the interests of the investors when the Harmony Simcoe property was sold under power of sale.

201. With respect to BDMC's duties as the Syndicated Mortgage administrator, the Plaintiffs plead that BDMC failed to meet its statutory obligations as set out in paragraph 196 herein which constituted negligence and a breach of fiduciary duty.

Conspiracy to Injure

202. The Plaintiffs plead that BDMC conspired with Fortress, Sorrenti, Olympia and HVLS to commit the tort of conspiracy to injure by way of unlawful conduct.

203. Particulars of the tort are those set out in subparagraphs 172(a), (f) to (i) herein.

204. The Plaintiffs plead that BDMC also conspired with Fortress, FKBD, HVLS, Sorrenti and Olympia to commit the tort of conspiracy to injure by way of unlawful

conduct with respect to the events of November and December of 2016 and thereafter with the particulars set out in subparagraphs 172(e) to (i) herein.

Breach of Contract

205. The Plaintiffs signed two agreements with BDMC – the Acknowledgement and a Memorandum of Understanding (“**MOU**”).

206. With respect to the Acknowledgement, the Plaintiffs rely upon their allegations set out in paragraphs 173-174 herein except that references to Fortress Capital in those paragraphs should be read as references to BDMC.

207. In the MOU, BDMC set out its duties to the Plaintiffs as including the following:

- Suitability of the lender
- Know Your Client (KYC)
- Documentation Completion
- Merits of the Project
- Risk Disclosure
- Conflict of interest disclosure

208. The Plaintiffs plead that BDMC failed to meet these contractual duties to them and that this breach caused them damages. Had BDMC met its contractual obligations to the Plaintiffs, they never would have invested in the Syndicated Mortgage and would not have suffered any loss.

Galati

209. As the principal broker of Centro, Galati had a statutory duty under the *Act* and its regulations to ensure the company and its brokers and agents complied with the *Act's* provisions.¹⁵ She knew of these obligations but failed to meet them.

210. Galati knew of BDMC's breach of its duty of care (fraudulent and negligent misrepresentation and negligence), breach of contract and breach of fiduciary duty to the Plaintiffs, all as set out in paragraphs 190-208 of this Fresh as Amended Statement of Claim.

211. Galati knew BDMC's actions would cause harm to the Plaintiffs. As principal broker, she did nothing to prevent those breaches from happening contrary to her statutory obligations.¹⁶ As principal broker, she did nothing to develop policies for BDMC that would prevent those breaches from happening contrary to her statutory obligations.¹⁷

212. Galati was, therefore, negligent and in breach of her fiduciary duties as a result of these actions.

213. Galati also conspired with Fortress and BDMC to injure the Plaintiffs. Particulars of the conspiracy are set out at subparagraphs 172 (a), (f) to (i) of this Fresh as Amended Statement of Claim.

¹⁵ Subsections 7(6) and (7) of the *Act*; Regulation 410/07, section 2

¹⁶ Section 2 of Regulation 410/07

¹⁷ Section 3 of Regulation 410/07

Sorrenti and Sorrenti Law

214. Sorrenti (or a lawyer in his office) provided ILA to the Plaintiffs, acted on the Plaintiffs' behalf in closing the investment transaction, was the original trustee and administrator for the Plaintiffs for the SMLA.
215. Sorrenti will be referred to as the lawyer who provided ILA below even if such advice was provided by a lawyer in his office.
216. Sorrenti provided ILA to the Plaintiffs, acted on the Plaintiffs' behalf in closing the investment transaction, was the trustee for the Plaintiffs for the SMLA and was also the administrator of the Syndicated Mortgage on behalf of investors.
217. The ILA was anything but independent legal advice. In reality, Sorrenti was acting on behalf of Fortress with respect to the Syndicated Mortgage. The Plaintiffs plead that Fortress and Sorrenti (and Sorrenti Law) planned in advance exactly what advice would be given to investors which would not disclose the significant risks associated with the Syndicated Mortgage. The advice was prepackaged and was identical for all investors.
218. Sorrenti's and Sorrenti Law's (with respect to the ILA and acting with respect to the transaction) actions amounted to negligent misrepresentation, negligence, breach of fiduciary duty and breach of contract, all as particularized below in this Fresh as Amended Statement of Claim.
219. In addition, Sorrenti and Sorrenti Law conspired with Fortress to injure the Plaintiffs in planning in advance the prepackaged and deficient ILA that would be given to investors and with respect to the events of November and December of 2016 and thereafter.

Negligent Misrepresentation

220. With respect to the ILA, Sorrenti and Sorrenti Law's obligations were to provide advice with respect to the legal risks associated with an investment in the Syndicated Mortgage. With respect to acting on the Plaintiffs' behalf in closing the transaction on their behalf, their duties were to act as a prudent lawyer would in providing advice, taking instructions and finalizing the documentation for the transaction.

221. The Plaintiffs plead that Sorrenti and Sorrenti Law knew or ought to have known of the Misrepresentations but failed to alert the Plaintiffs to the Misrepresentations as part of the ILA being provided. They similarly failed to alert them to these issues in acting on their behalf in closing the investment transaction.

222. As such, this failure amounted to negligent misrepresentations by Sorrenti and Sorrenti Law with respect to the ILA and their representation of them in closing the transaction.

223. With respect to Sorrenti's actions as a trustee, the Plaintiffs plead that under the provisions of section 12 of the SMLA, he was required to satisfy himself with respect to certain conditions precedent before making advances to HVLS. Second, under the provisions of the Acknowledgement, Sorrenti was obligated to obtain up to date valuations prior to making advances to HVLS.

224. Sorrenti knew or ought to have known the information conveyed to investors in November and December 2016 was untrue but failed to alert investors to the true facts.

225. The Plaintiffs plead these three failures amounted to negligent misrepresentations by Sorrenti with respect to his duties as a trustee.

226. With respect to Sorrenti's duties as the Syndicated Mortgage administrator, the Plaintiffs rely upon the allegations set out against BDMC in paragraph 196 herein except that references to BDMC should be read as references to Sorrenti.

227. The Plaintiffs plead Sorrenti by agreeing to act as administrator for the Syndicated Mortgage, represented to them that he would meet his obligations under the *Act* and its regulations.

228. As such, the Plaintiffs plead that Sorrenti's failure to meet his legal obligations under the *Act* were negligent misrepresentations in his conduct as an administrator.

Negligence and Breach of Fiduciary Duty

229. The Plaintiffs plead that Sorrenti and Sorrenti Law knew or ought to have known that the Misrepresentations materially increased the risks to the Plaintiffs of an investment in the Syndicated Mortgage but failed to alert the Plaintiffs to the Misrepresentations as part of the ILA being provided. In particular, Sorrenti and Sorrenti Law failed to alert the Plaintiffs to the fact that the ILA was not truly independent because it was being paid for by Fortress.

230. Sorrenti and Sorrenti Law similarly failed to alert the Plaintiffs to these issues in acting on her behalf in closing the investment transaction.

231. Further, Sorrenti and Sorrenti Law failed to alert the Plaintiffs to the unreasonable provisions set out in the undated Mortgage Investment Direction and Indemnity Agreement (the "**Indemnity**") they executed with Olympia that they knew or ought to have known required them to:

- a) Seek ILA as well as tax and other professional advice before deciding to invest in the Syndicated Mortgage. The Plaintiffs thought they were obtaining ILA from Sorrenti and Sorrenti Law but this was not, in fact, the case;
- b) Acknowledge that it was the Plaintiffs' "sole and entire responsibility" to verify, *inter alia*, the Syndicated Mortgage was a "qualified investment" under the *Income Tax Act* (the "ITA");
- c) Acknowledge that the Plaintiffs did not rely upon Olympia in deciding to invest in the Syndicated Mortgage or to advise them whether the Syndicated Mortgage was a suitable investment for their registered plans; and
- d) Acknowledge that the Plaintiffs were responsible for the collection of all mortgage arrears and to institute legal proceedings in the event the Syndicated Mortgage went into default notwithstanding that as minority investors in the Syndicated Mortgage, they might not be able to compel that steps be taken to enforce their legal rights.

232. Sorrenti also failed to advise the Plaintiffs he was in a conflict of interest as a result of his multiple roles as the lawyer acting on their behalf with respect to the investment, the trustee and administrator for the Syndicated Mortgage as well as the lawyer providing ILA. Sorrenti and Sorrenti Law were also in a conflict of interest because they were truly acting on Fortress' behalf, not the investor's, in providing ILA.

233. As such, Sorrenti and Sorrenti Law were negligent and breached fiduciary duties in their provision of ILA and in acting on the Plaintiffs' behalf in closing the transaction. Had their obligations been met, the Plaintiffs pleads they never would have made an investment in the Syndicated Mortgage.

234. With respect to Sorrenti's actions as a trustee, Sorrenti was negligent and breached his fiduciary duties in the following respects:

- a) He was in a conflict of interest as a result of its multiple roles as a trustee for the Syndicated Mortgage in addition to his other roles;
- b) He entered into the Standstill when it was not in the investors' interests to do so;
- c) He acted as a co-trustee with Olympia when he knew that Olympia was carrying on business unlawfully in Ontario;
- d) He knew or ought to have known the investment funds were not being used for "land acquisition costs and initial soft costs, and the costs incidental thereto" as represented yet took no steps to prevent such unauthorized use being made of the funds;
- e) He failed to meet its obligations with respect to information to be obtained prior to making subsequent advances to HVLS;
- f) He failed to ensure the Syndicated Mortgage was only subordinated to other mortgages as agreed upon in the investment documentation;
- g) Once the SMLA went into default, he failed to take steps to enforce investors' security as he was obligated to do under the SMLA's terms;
- h) Once the SMLA went into default, he failed to properly inform investors of the default and obtain their instructions as to what steps should be taken to enforce their rights;
- i) He took no steps to ensure the memos with incorrect information sent to investors in November and December of 2016 were not sent and, once sent, took no steps to correct this information;
- j) He facilitated the events of November and December 2016 and then the events from December 2016 to May 2018 without the consent or approval of investors; and

k) He failed to meet its obligations with respect to the interests of the investors when the Harmony Simcoe property was sold under power of sale.

235. With respect to Sorrenti's duties as the Syndicated Mortgage administrator, The Plaintiffs plead that Sorrenti failed to meet his statutory obligations as set out in paragraph 196 herein. This constituted both negligence and breach of fiduciary duty.

Conspiracy to Injure

236. The Plaintiffs plead that Sorrenti and Sorrenti Law conspired with Fortress to plan in advance the prepackaged "ILA" Sorrenti and Sorrenti Law would give to investors which would not disclose or discuss the significant risks associated with the Syndicated Mortgage. Particulars of the conspiracy are set out in subparagraphs 172(d), (f) to (i).

237. The Plaintiffs plead that Sorrenti also conspired with Fortress, FKBD, HVLS, BDMC and Olympia to commit the tort of conspiracy to injure by way of unlawful conduct with respect to the events of November and December 2016 and thereafter with the particulars set out in subparagraphs 172(e) to (i) herein.

Breach of Contract

238. Sorrenti's relationship to the Plaintiffs was contractual with respect to the ILA, closing the transaction on her behalf and his duties as a trustee. Sorrenti Law's relationship to the Plaintiffs with respect to the ILA and acting on the transaction was also contractual.

239. The Plaintiffs executed a document entitled Investment Authority – Form 9D (the "9D") with Sorrenti and Sorrenti Law regarding their retainer to close the investment transaction on their behalf. Sorrenti and Sorrenti Law made the following representations in the 9D:

- a) That an “appraisal” of current value had been carried out on the Harmony Simcoe property that set its value at \$13.9 million;
- b) That the LTV ratio for the Ten88 property was 89%; and
- c) That the Syndicated Mortgage would be repaid on April 26, 2016 or October 26, 2016 if extended. There was no reference to the Standstill that Sorrenti had executed.

240. These representations in the 9D were untrue which Sorrenti and Sorrenti Law knew or ought to have known. As such, Sorrenti and Sorrenti Law are in breach of contract.

241. Sorrenti was a party to the Acknowledgement. In that document, Sorrenti made the representations set out at paragraphs 173-174 herein. These representations were untrue which Sorrenti knew or ought to have known. As such, Sorrenti is in breach of contract.

242. The Plaintiffs plead that had Sorrenti not breached his obligations under the 9D and Acknowledgement, she would not have invested in the Syndicated Mortgage.

243. The Plaintiffs and Sorrenti executed a document entitled Declaration of Bare Trust (the “**Bare Trust**”) dated September 18, 2012. Key terms of the agreement were:

- a) That Sorrenti held the Plaintiffs’ interest in the Syndicated Mortgage as a bare trustee for them;
- b) That Sorrenti would deal with the Syndicated Mortgage “as directed by [the Plaintiffs]”; and
- c) That Sorrenti would accept “alterations, revocations and amendments to [his] powers” as the Plaintiffs might determine at any time.

244. The Plaintiffs plead Sorrenti breached the terms of the Bare Trust as follows:

- a) With respect to the Standstill, he knew or ought to have known he should obtain instructions from investors before executing the document;
- b) Once the SMLA went into default, he failed to properly inform investors of the default and obtain their instructions as to what steps should be taken to enforce their rights; and
- c) He participated in the events of November and December 2016 and thereafter with the knowledge that such participation was not in the interests of investors and was *ultra vires* his powers as a bare trustee.

245. The Plaintiffs plead that had Sorrenti not breached his obligations under the Bare Trust, they would have taken more effective steps sooner to secure their rights as an investor in the Syndicated Mortgage. Those steps would have improved on the recovery they will otherwise obtain in this action.

246. The ILA was anything but independent legal advice. In reality, Sorrenti was acting on behalf of Fortress with respect to the Syndicated Mortgage. The Plaintiffs plead that Fortress and Sorrenti (and Sorrenti Law) planned in advance exactly what advice would be given to investors which would not disclose the significant risks associated with the Syndicated Mortgage. The advice was prepackaged and was identical for all investors.

247. Sorrenti's and Sorrenti Law's (with respect to the ILA and acting with respect to the transaction) actions amounted to negligent misrepresentation, negligence, breach of fiduciary duty and breach of contract, all as particularized below in this Fresh as Amended Statement of Claim.

Olympia

248. The Plaintiffs invested in the Syndicated Mortgage through registered plans they held with Olympia. Olympia was a co-trustee with Sorrenti in the SMLA.

249. Olympia's actions amounted to negligent and fraudulent misrepresentation, negligence, breach of fiduciary duty, conspiracy to injure and breach of contract, all as particularized below in this Fresh as Amended Statement of Claim.

250. The Plaintiff pleads that since Olympia and Fortress were partners or joint venturers, Olympia is responsible for the actions of Fortress in law.

251. The Plaintiffs signed the Indemnity when they opened their account with Olympia. Key provisions of the agreement are set out in paragraph 231 herein.

Fraudulent and Negligent Misrepresentation

252. Olympia made one fraudulent and negligent misrepresentation by implication – that it could legally operate its trust business in Ontario - notwithstanding that FSCO had advised Olympia that according to the provisions of sections 31 and 213 of the *LTCA*, Olympia could not do business in Ontario.

253. In the face of this prohibition and its knowledge of its terms, Olympia nevertheless carried on business in Ontario until 2017.

254. The Plaintiffs plead that but for Olympia's actions, they would not have suffered any damages as no other financial institution in Ontario other than Olympia was willing to allow registered plan investments in Fortress syndicated mortgages.

255. Therefore, if the Plaintiffs had not been able to invest through their registered plans in the Syndicated Mortgage through Olympia, they would not have been able to invest at all.

256. The Plaintiffs further plead that the Fortress syndicated mortgage business was only viable if investors in registered plans could invest. There was insufficient investment capital outside of registered plans to make Fortress' business viable.

257. Therefore, if holders of registered plans could not have invested in Fortress syndicated mortgages, there would not have been a Fortress syndicated mortgage business to receive investments outside of registered plans.

Negligence and Breach of Fiduciary Duty

258. The particulars of the Plaintiffs' negligence and breach of fiduciary duty claim against Olympia are that:

- a) It knew or ought to have known that it could not legally operate its trust business in Ontario; and
- b) It should not have permitted the Plaintiffs to invest in the Syndicated Mortgage if it had acted in accordance with its obligations to the Plaintiffs under the provisions of section 27 of the *Trustee Act*, R.S.O. 1990, c. T-23. The investment was not suitable for the following reasons which Olympia knew or ought to have known:
 - i) The Syndicated Mortgage was a risky investment not suitable for a registered plan and, in particular, not suitable for the Plaintiffs. Olympia did no due diligence as required on the investment and relied upon an opinion from Norton Rose which it knew or ought to have known did not accurately state that the Syndicated Mortgage was registered plan eligible under the provisions of the *ITA*;

- ii) Olympia did not review the Plaintiffs' risk profile to determine if an investment in the Syndicated Mortgage was appropriate for them;
 - iii) The ILA that the Plaintiffs was to or had received referenced in the Indemnity was not true ILA that would alert them to the risks involved with the Syndicated Mortgage and the risks associated with their execution of the Indemnity;
 - iv) The Appraisal was not a proper appraisal and the "as is" value of the Harmony Simcoe lands was not \$13.9 million or \$20 million;
 - v) The LTV ratio for the Harmony Simcoe lands was not 89% as represented. The Syndicated Mortgage was not an eligible investment for a registered plan;
- c) It never met with residents of Ontario who were opening registered plans to ensure they understood the risks associated with syndicated mortgages in general and the Syndicated Mortgage in particular and the obligations of the investor under the terms of the Indemnity;
- d) It failed to instruct its agents who were opening registered plans with Ontario residents about their obligations to understand the risk profile of the investor, explain the risks of syndicated mortgages in general and the Syndicated Mortgage in particular and the obligations of the investor under the terms of the Indemnity; and
- e) It failed to meet its obligations with respect to information required before subsequent advances were made to HVLS under the Syndicated Mortgage.

259. The Plaintiffs plead that the provisions of the Indemnity do not shield Olympia from its liability for these allegations of negligence and breach of fiduciary duty including its obligations under the provisions of the *Trustee Act*.

260. In the alternative, the Plaintiffs plead that the provisions of the Indemnity should not be enforced as it would be unconscionable to do so in the circumstances.

Conspiracy to Injure

261. The Plaintiffs plead that Olympia conspired with Fortress to carry on business in Ontario with the knowledge that such business could not be lawfully carried out and with the knowledge that if Olympia did not carry on business in Ontario, no other trust company or financial institution with registered plans would allow investments in the Syndicated Mortgage. Full particulars of the conspiracy are set out subparagraphs 172(b)(c) and (f) to (i) herein.

262. The Plaintiffs plead that Olympia also conspired with Fortress, FKBD, HVLS, BDMC and Sorrenti to commit the tort of conspiracy to injure by way of unlawful conduct with respect to the events of November and December 2016 and thereafter with the particulars set out in subparagraphs 172(e) to (i) herein.

Breach of Contract

263. Olympia owed the Plaintiffs contractual obligations with respect to its actions as the holder of their registered plans and its actions as the co-trustee of the SMLA. The Plaintiffs plead Olympia breached its obligations as follows:

- a) It knew or ought to have known that it could not legally operate its trust business in Ontario; and

b) In permitting the Plaintiffs to invest in the Syndicated Mortgage, it acted contrary to its obligations to the Plaintiffs under the provisions of section 27 of the *Trustee Act*, R.S.O. 1990, c. T-23. The investment was not suitable for the reasons set out in paragraph 258 herein.

264. Olympia was a party to the Acknowledgement. The Plaintiffs plead and rely upon their allegations set out in paragraphs 173-174 herein except that references to Fortress Capital in those paragraphs should be read as references to Olympia.

MRHE and McLean

265. MRHE and McLean owed a duty of care to the Plaintiffs as investors in the Syndicated Mortgage.

266. These Defendants knew that the Appraisal would be used by HVLS, Fortress, BDMC and others to raise money from investors for the Syndicated Mortgage. They expressly consented to such use and waived any language in the Appraisal limiting its use.

267. In the Appraisal, these Defendants made the following negligent misrepresentations:

- a) That the Harmony Simcoe property's current or "as is" value was \$13.9 million;
- b) That the Appraisal was not providing a current or "as is" value for the Harmony Simcoe property in accordance with the standards of the Appraisal Institute of Canada;

268. In the preparation of the Appraisal, these Defendants were negligent as follows:

- a) They knew or ought to have known that the Harmony Simcoe property's current or "as is" value was not \$13.9 million yet set that out as the value for the property;
- b) They knew or ought to have known the Appraisal was not providing a current or "as is" value for the Ten88 property;
- c) They knew or ought to have known an Appraisal to be used in the context of a syndicated mortgage had to set out a current or "as is" value;
- d) They knew or ought to have known the Appraisal was a prospective opinion of value and that it was misleading to refer to it as a current opinion of value;
- e) They knew or ought to have known the Appraisal did not conform to the standards set out for real estate appraisals for syndicated mortgages by the Appraisal Institute of Canada;
- f) They knew or ought to have known the Appraisal did not comply with the CUSPAP standards and, in particular, sections 3.1.1, 3.1.2, 3.1.3, 4.1.1, 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.2.5, 5.2.1, 5.3.1, 6.2.5, 6.2.7, 7.6.1, 7.6.3, 7.8.1, 7.9.1, 7.11.2, 12.31 and 12.32 of CUSPAP; and
- g) They knew or ought to have known the Plaintiffs would rely upon the value set out in the Appraisal.

269. The Plaintiffs received a copy of the Appraisal prior to investing in the Syndicated Mortgage. They relied upon the Appraisal, and in particular, the value it arrived at for the Harmony Simcoe property, in making their investment. Such reliance was reasonably foreseeable as set out in paragraphs 79-82 herein.

270. Had MRHE and McLean set out the true current value for the Harmony Simcoe property in the Appraisal, the Plaintiffs would not have invested in the Syndicated Mortgage as the value would not have exceeded the encumbrances against the property.

Representative Plaintiffs and the Class

271. The Plaintiffs plead that but for the actions of the Defendants, they would never have made their investment in the Syndicated Mortgage.

272. The Plaintiffs plead and rely 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) *Partnership Act*, R.S.O. 1990, c P-5;
- e) *Business Corporations Act*, R.S.O. 1990, c. B-16;
- f) *Trustee Act*, R.S.O. 1990, c. T-23; and
- g) *Negligence Act*, R.S.O. 1990, c. N-1.

273. As investors in the Syndicated Mortgage, the Plaintiffs are representative of all other investors in the project.

274. The Plaintiffs bring this action on their own behalf and on behalf of all persons in Canada (the “**Class**”) who were investors in the Syndicated Mortgage.

275. The Plaintiffs plead this action involves:

- a) A breach of contract, tort and breach of fiduciary duty committed in the Province of Ontario; and
- b) Damages arising in Ontario as a result of said actions.

Place of Trial

276. The Plaintiffs propose that this action be tried at Toronto, Ontario.

DATE: March 28, 2019

LEVINE SHERKIN BOUSSIDAN PC

Barristers

23 Lesmill Road, Suite 300

Toronto, Ontario M3B 3P6

Kevin Sherkin (LSO# 27099B)

Mitchell Wine (LSO# 23941V)

Tel: 416-224-2400

Fax: 416-224-2408

Email:Kevin@LSBLaw.com/Mitch@LSBLaw.com

Lawyers for the Plaintiffs

SCHEDULE "A" – LEGAL DESCRIPTION OF THE PROPERTY

Municipal Address: 51,53, 55 & 75 Bradford Street with frontages on Checkley Street and having ingress and egress from Lakeshore Drive, Barrie, Ontario Canada

Legal Description and PINS:

LT 120 & PT LTS 119 & 121 E/S BRADFORD ST ROBERT ROSS UNREGISTERED PL ABSTRACTED AS NO REGISTERED PL OF EDGAR BLK BARRIE; TP BOB ST ROBERT ROSS UNREGISTERED PL ABSTRACTED AS NO REGISTERED PL OF EDGAR BLK BARRIE; PT E PT LT 24 CON 5 VESPRA PT 2 51R14824; BARRIE, being PIN 58795-0030 (LT);

PT LTS 117-119 E/S BRADFORD ST & PT BOB ST ROBERT ROSS UNREGISTERED PL ABSTRACTED AS NO REGISTERED PL OF EDGAR BLK BARRIE; PT E PT LT 24 CON 5 VESPRA PT 1 51R36217; BARRIE, being PIN 58795-0031 (LT);

PT E PT LT 24 CON 5 VESPRA; PT BROKEN LT 25 CON 5 VESPRA PT 3 51R28257; BARRIE, being PIN 58795-0276 (LT);

LT 90 W/S HIGH ST PL 115 BARRIE, PT LT 65 E/S HIGH ST PL 115 BARRIE, PT HIGH ST PL 115 BARRIE, PT E PT LT 24 CON 5 VESPRA, PT BROKEN LT 25 CON 5 VESPRA PT 4 51R28257 EXCEPT PTS 1 & 2 51R32954 AND EXCEPT PTS 2 & 5 51R33255; BARRIE, being PIN 58795-0555 (LT);

PT ELLEN ST PL 22, PT 3 PL 51R33255 (CLOSED BY BY-LAW SC450705); BARRIE, being PIN 58795-0565 (LT);

PT E PT LT 24 CON 5 INNISFIL & LTS 115, 116 & PT LT 117 ON ROBERT ROSS UNREGISTERED PLAN, VESPRA BEING PT 3 PL 51R36217, T/W EASEMENT OVER PT 2 PL 51R36217 AS IN RO196786; BARRIE, being PIN 58795-0597 (LT);

PT E PT LT 24 CON 5 & PT BROKEN LT 25 CON 5 INNISFIL & PT LT 117 & 118 ROBERT ROSS UNREGISTERED PLAN VESPRA BEING PTS 2, 4, & 6 PL 51R36217, ST EASEMENT OVER PT 2 PL 51R36217 AS IN R0196786, S/T EASEMENT OVER PT 5 PL 51R36217 AS IN RO1297070; BARRIE, being PIN 58795-0598 (LT).

BRYAN MADRYGA and ELLEEN WALLACE
Plaintiffs

-and-
FORTRESS REAL CAPITAL INC. ET AL.
Defendants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

FRESH AS AMENDED STATEMENT OF CLAIM

LEVINE, SHERKIN, BOUSSIDAN PC
Barristers
23 Lesmill Road, Suite 300
Toronto, Ontario
M3B 3P6

Kevin Sherkin (LSO# 27099B)
Mitchell Wine (LSO# 23941V)

Tel: 416-224-2400
Fax: 416-224-2408
Email: Kevin@LSBLaw.com/Mitch@LSBLaw.com

LAWYERS FOR THE PLAINTIFFS