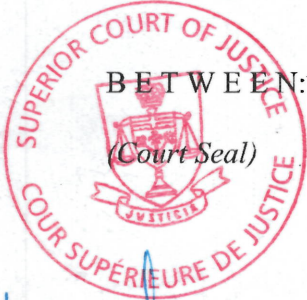


**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE P. PERELL)

THURSDAY, THE 19TH
DAY OF JANUARY, 2023

BETWEEN:
(Court Seal)



SANDRA MEDLAND

Plaintiff

-and-

FORTRESS REAL CAPITAL INC., FORTRESS REAL DEVELOPMENTS INC., ADI DEVELOPMENTS (LINK) INC., ADI DEVELOPMENT GROUP INC., BUILDING & DEVELOPMENT MORTGAGES CANADA INC., ESTATE OF ILDINA GALATI by its Trustee in Bankruptcy CROWE SOBERMAN INC., FFM CAPITAL INC., ROSALIA SPADAFORA, SAUL PERLOV, DEREK SORRENTI, and SORRENTI LAW PROFESSIONAL CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

(Certification and Settlement Approval - Sutton/The Link)

THIS MOTION, made by the Plaintiff for an order certifying this action as a class proceeding for settlement purposes only as against the Defendants FFM Capital Inc. ("FFM"), Rosalia Spadafora ("Spadafora") and Saul Perlov ("Perlov") (collectively, the "Settling Defendants"), and approving the settlement agreement between the Plaintiff and the Settling Defendants, approving the form and content of the notice of certification and hearing for settlement

Entered Jan 27/23

approval, and approving the notice of settlement approval and counsel fee approval (the "Notices"), and the method of dissemination of the Notices, and dismissing this action as against the Settling Defendants with prejudice and without costs, was heard this day by judicial videoconference at the court house, Osgoode Hall, 130 Queen Street West, Toronto, ON M5H 2N5.

ON READING the materials filed, including the settlement agreement dated November 23, 2022 attached to this Order as **Appendix A** (the "Settlement Agreement"), and on hearing the submissions of the Plaintiff and the Settling Defendants;

AND ON BEING ADVISED that the Plaintiff and the Settling Defendants consent to this Order and that the Non-Settling Defendants, other than Adi Developments (Link) Inc. and Adi Development Group Inc. (against whom this action has been stayed), take no position;

AND ON HEARING the submissions of Counsel;

1. **THIS COURT ORDERS** that, for the purposes of this Order, the definitions in the Settlement Agreement apply to, and are incorporated into this Order.
2. **THIS COURT ORDERS** that, in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this action is certified as a class proceeding as against the Settling Defendants for settlement purposes only.
4. **THIS COURT ORDERS** that the Settlement Class is defined as:

All persons in Canada who invested in a syndicated mortgage in respect of the Sutton/The Link Project, registered against title to lands located at 5210, 5218, 5226, 5236 Dundas Street and 2500 Burloak Drive in Burlington, Ontario as Instruments HR1062915, HR1163232, or HR1174204.

5. **THIS COURT ORDERS** that Sandra Medland is appointed as the representative plaintiff.

6. **THIS COURT ORDERS** that MSTW Professional Corporation and Waddell Phillips Professional Corporation are appointed as Class Counsel.

7. **THIS COURT DECLARES** that the following claims are asserted as against the Settling Defendants on behalf of the Settlement Class:

- (a) breach of contract;
- (b) breach of fiduciary duty;
- (c) negligence;
- (d) negligent misrepresentation;
- (e) fraudulent misrepresentation; and
- (f) conspiracy.

8. **THIS COURT DECLARES** that the relief sought by the Settlement Class as against the Settling Defendants is declarations, general damages, punitive damages, interest, and costs.

9. **THIS COURT ORDERS** that the following issues are common to the claims asserted as against the Settling Defendants on behalf of the Settlement Class:

- (a) Did FFM breach its contracts with the Class members? If so, how?

- (b) Did FFM owe a fiduciary duty to the Class members, and if so, in what respect? If yes, did FFM breach its fiduciary duty owed to the Class members, and if so, how?
- (c) Did FFM, Spadafora and/or Perlov owe a duty of care to the Class members with respect to the claims asserted against them in negligence or negligent misrepresentation?
- (d) If FFM, Spadafora and/or Perlov owed a duty of care to the Class members with respect to the claims in negligence or negligent misrepresentation, what was the applicable standard of care for these Settling Parties?
- (e) If FFM, Spadafora and/or Perlov owed a duty of care to the Class members with respect to the claim in negligence or negligent misrepresentation, did FFM, Spadafora and/or Perlov breach the applicable standard of care? If so, how?
- (f) Did FFM make fraudulent misrepresentations to the Class members, and, if so, is FFM liable to the Class with respect thereto?
- (g) Did FFM conspire with any one or more of Fortress Real Capital Inc., Fortress Real Developments Inc., Jawad Rathore, Vincenzo Petrozza, Building & Development Mortgages Canada Inc., or others, with the intent to cause harm to the Class members? If so, did the conspiracy cause harm to the Class members?
- (h) Can the Class members' damages be assessed, in whole or in part, in the aggregate, and if so, what is the quantum of their aggregate damages?

10. **THIS COURT DECLARES** that a class proceeding is the preferable procedure for the resolution of the common issues as against the Settling Defendants.

11. **THIS COURT ORDERS** that FAAN Mortgage Administrators Inc. is appointed as the Claims Administrator to deliver the Notices and to disseminate the Settlement Funds to the Settlement Class Members in accordance with the Distribution Plan, which is approved.

12. **THIS COURT ORDERS** that the Plaintiff shall give notice of the certification of this action as against the Settling Defendants and the opt-out process, and notice of the approval of the Settlement Agreement to the Settlement Class Members in substantially the form set out in **Appendix B** hereto and in the manner set out in the Notice Protocol attached as **Schedule B** to the Settlement Agreement.

13. **THIS COURT ORDERS** that no information regarding this action other than the Notices may be disseminated to the Settlement Class by any Defendant during the opt-out period, unless approved by Class Counsel and, failing the approval of Class Counsel, then as approved by the Court, except the Defendants may communicate with the Settlement Class Members about either:

- (a) any current proceedings relating to the Sutton project in the FAAN Trusteeship proceeding (Court File No. CV-19-628258-00CL); or,
- (b) the mortgage enforcement action between FAAN in its capacity as Court-Appointed Trustee of Derek Sorrenti and Sorrenti Professional Law Corporation under S. 49.47 of the *Law Society Act* RSO 1990 c. L.8 and S. 101 of the *Courts of Justice Act*, RSO 1990, c. C.43 v. Adi Developments (Link) Inc. et al. (Court File No. CV-21-00672230-00CL).

14. **THIS COURT ORDERS** that Settlement Class Members may opt out of this class proceeding by following the opt-out process set out in the Notices, by no later than 5 pm E.T. on Friday, March 10, 2023 (the "Opt-Out Deadline").

15. **THIS COURT ORDERS** that any person who opts out of this action in accordance with the provisions for doing so in the Notices and paragraph 14 of this Order shall be excluded from the Settlement Class and excluded from the action.

16. **THIS COURT ORDERS** that, within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Defendants and the Court a report containing the name of each person who has validly and timely opted out of the proceeding.

17. **THIS COURT ORDERS** that the dismissal of this action as against the Settling Defendants shall not relieve the Settling Defendants from their obligations under the Settlement Agreement.

18. **THIS COURT ORDERS** that no person may bring any action or take any proceeding against the Settling Defendants, FAAN Mortgage Administrators Inc. in its capacity as notice administrator under this Order, counsel for the Settling Defendants or Class Counsel or any of their respective past and current officers, directors, employees, parents, subsidiaries, agents, partners, associates, representatives, predecessors, successors, beneficiaries or assigns for any alleged fault or liability in any way relating to the administration of this Order or the administration of the Settlement Agreement, except with leave of this Court.

19. **THIS COURT ORDERS** that this Order, including but not limited to the certification of this action as against the Settling Defendants for settlement purposes only, the definition of the Settlement Class, and the certified Common Issues, and any reasons given by the Court in connection with this Order, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with this action or any related litigation or proceeding and, without restricting the generality of the foregoing, may not be relied on by any person to establish the

criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the action, as against the Non-Settling Defendants.

20. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon the Settling Defendants in accordance with the terms hereof, and upon each member of the Settlement Class who does not validly opt out of this action, including those persons who are minors or mentally incapable, and that the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194 are dispensed with in respect of the action.

21. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.

22. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 27.1 of the *Class Proceedings Act, 1992*, SO 1992, c 6, and shall be implemented and enforced in accordance with its terms.

23. **THIS COURT ORDERS** that, on the date on which any appeal of this Order is finally disposed of, or the time to bring any appeal of this Order, if any, has expired (the "Effective Date") each Settlement Class Member and any of their past and current successors, heirs, executors, administrators, trustees, or assigns ("Releasers") releases and shall be conclusively deemed to have forever and absolutely released the Settling Defendants and their respective past and current officers, directors, employees (including individuals or personal corporations retained by FFM under personal service contracts), parents, subsidiaries, agents, partners, associates, representatives, predecessors, successors, insurers, beneficiaries and assigns ("Releasees") from any and all claims, demands, actions, suits, or causes of action that have been brought or which could have been brought against the Settling Defendants in this action, whether known or

unknown, asserted or unasserted, under or pursuant to any statute, regulation, common law or equity, and inclusive of all claims for damages, punitive damages, loss, disgorgement of profit, restitution, interest, taxes, costs, disbursements, legal fees, and expenses arising out of or relating in any way to the facts and matters that are the subject of this action (the "Released Claims").

24. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any proceeding, cause of action, claim or demand of any nature whatsoever against any Releasee, or against any other person who may claim contribution or indemnity or other claims over relief from any Releasee, arising out of, in respect of or relating in any way to any Released Claim, and all such claims are hereby forever barred, prohibited and enjoined.

25. **THIS COURT ORDERS** that the use of the terms "Releasors" and "Released Claims" in this Order does not constitute a release of claims by those members of the Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

26. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to or arising from the Released Claims, which were or could have been brought in this action or any other actions, or otherwise by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee or by any other person or party, including Olympia Trust Company ("Olympia"), against a Releasee, or by a Releasee against any Non-Settling Defendant or any named or unnamed co-conspirator that is not a Releasee or any other person or

39. **THIS COURT ORDERS** that the Plaintiffs shall provide to the Non-Settling Defendants a copy of all documents produced to the Plaintiffs by the Settling Defendants in accordance with the Plaintiffs' production obligations.

40. **THIS COURT ORDERS** that Spadafora and Perlov, on their own behalf, and Kochhar on behalf of FFM, will attend before an official examiner in Toronto, Ontario to be examined under oath by Class Counsel and the Non-Settling Defendants on a date to be agreed upon between the parties, but which shall take place no later than 150 days after this Order, and the Settling Parties have delivered their documents to the Plaintiffs and those documents have been in turn provided to the Non-Settling Defendants, whichever is later, unless the parties to this action, including Spadafora, Perlov and Kochhar, agree otherwise. Spadafora and Perlov will attend to answer questions regarding their personal knowledge about, and involvement in the matters in issue in this action.

41. **THIS COURT ORDERS** that the Plaintiffs and Non-Settling Defendants will be entitled to read into the record at trial the Settling Defendants' discovery evidence as though the Settling Defendants remained parties to this action.

42. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order shall be declared null and void and of no force or effect without the need for any further order of this Court but with notice to the Class.

43. **THIS COURT ORDERS** that, upon the Effective Date, this action is hereby dismissed as against all Settling Defendants, without costs and with prejudice.

44. **THIS COURT ORDERS** that there shall be no costs of this motion.

A handwritten signature in black ink, appearing to read 'Perell P', written above a horizontal line.

The Honourable Justice P. Perell

SANDRA MEDLAND
Plaintiff

-and- FORTRESS REAL CAPITAL INC. et al.
Defendants

Court File No.: CV-16-561293-00CI

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

ORDER

**(FFM Certification and Settlement Approval - Suttou/
The Link)**

MSTW PROFESSIONAL CORPORATION

36 Toronto Street, Suite 1120
Toronto, ON M5C 2C5

Mitchell Wine (LSO No.: 23941V)

mwine@mstwlaw.com

Tel: 416.477.5524

WADDELL PHILLIPS PROFESSIONAL CORPORATION

36 Toronto Street, Suite 1120
Toronto, ON M5C 2C5

Margaret L. Waddell (LSO No.: 29860U)

marg@waddellphillips.ca

Patti Shedden (LSO No.: 46210W)

patti@waddellphillips.ca

Tina Q. Yang (LSO No.: 60010N)

tina@waddellphillips.ca

Tel: 647.261.4486

Lawyers for the Plaintiff