AMENDED THIS Jan 25/2022 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À
☐ RULE/LA RÈGLE 26.02 (_____)
☒ THE ORDER OF Justice P. Perell J.
L'ORDONNANCE DU
DATED / FAIT LE Jan 19 2022.

REGISTRAR
SUPERIOR COURT OF JUSTICE
GREFFIER
COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-16-561293-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

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 Proceeding Act, 1992*

SECOND 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's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

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

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

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

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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 September 28, 2016 Issued by "A. Fajardo"
Local Registrar

Address of court office: Superior Court of Justice
393 University Avenue, 10th Floor
Toronto, ON M5G 1E6

TO: Fortress Real Capital Inc.
25 Brodie Drive, Unit 8
Richmond Hill, ON L4B 3K7

AND TO: Fortress Real Developments Inc.
25 Brodie Drive, Unit 8
Richmond Hill, ON L4B 3K7

AND TO: Adi Developments (Link) Inc.
4190 South Service Road, Suite 200
Burlington, ON L7L 4X5

AND TO: Adi Development Group Inc.
1100 Burloak Drive, Suite 700
Burlington, ON L7L 6B2

AND TO: Building & Development Mortgages Canada Inc.
25 Brodie Drive, Unit 8
Richmond Hill, ON L4B 3K7

AND TO: Estate of Ildina Galati by its Trustee in Bankruptcy, Crowe Soberman Inc.
c/o Crowe Soberman Inc., Licensed Insolvency Trustee
2 St. Clair Ave. E., Suite 1100
Toronto, ON M4T 2T5

AND TO: FFM Capital Inc.
4-81 Zenway Blvd.
Woodbridge, ON L4H 0S5

AND TO: Rosalia Spadafora
4-81 Zenway Blvd.
Woodbridge, ON L4H 0S5

AND TO: Saul Perlov
4-81 Zenway Blvd.
Woodbridge, ON L4H 0S5

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

CLAIM

1. The plaintiff, Sandra Medland ("Medland"), claims on her own behalf and on behalf of the proposed Class (as defined below):

(a) an order pursuant to the *Class Proceedings Act, 1992,* S.O. 1992, c. 6 (the "*CPA*"), certifying this action as a class proceeding, and appointing Medland as the Representative Plaintiff;

(b) a declaration that Fortress Real Developments Inc. ("Fortress Developments") holds in trust for the benefit of Medland and the Class its interest in an agreement (the "Fortress Agreement") dated on or before September 4, 2012 with Adi Developments (Link) Inc. (formerly Adi Developments Sutton Inc.) ("Adi ") and any amendments thereto or further agreements between the same parties with respect to a mixed use real estate development project (the "Sutton Project", also known as "The Link Project"), built on land located at 5210, 5218, 5226, 5236 Dundas Street and 2500 Burloak Drive in Burlington, Ontario, and that Fortress Developments' interest in the proceeds of sale of the Sutton Project, or, in the alternative, that any payments made to Fortress Developments by Adi, are impressed with a constructive trust in favour of Medland and the Class;

(c) a declaration that the terms of the charges registered against title to the Sutton Project, as Instrument Nos. HR1062915, HR1163239, and HR1174204 are void and unenforceable insofar as they are inconsistent with the syndicated mortgage loan agreement(s) made between Adi, Adi Development Group Inc. ("Adi Guarantor") and Derek Sorrenti ("Sorrenti"), in Trust for the Class;

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

(e) an order compelling disgorgement of all profits earned by those defendants who are found by the Court to be fiduciaries of Medland and the Class (together, the "Investors") with respect to the Sutton Project;

(f) An accounting and equitable tracing of all funds received by Fortress Capital, Fortress Developments, Adi, BDMC, FFM, Sorrenti, and Sorrenti Law from Medland and the Class;

(g) in the alternative to subparagraph (b) above, rescission of all agreements between the Investors and the Defendants with respect to their investments in syndicated mortgages registered against title to the subject lands ("the SMLs");

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

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

(j) pre-judgment and post-judgment interest at the rate of 8% per annum pursuant to the terms of the SMLs;

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

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

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

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

(o) Such further and other relief as this Honourable Court deems just.

DEFINITIONS

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

(a) **"Adi"** means Adi Developments (Link) Inc. (the amalgamation of Adi Developments (Link) Inc. and Adi Developments Sutton Inc.), which is an Ontario corporation that is the developer of the mixed-use development at 5210, 5218, 5226, 5236 Dundas Street and 2500 Burloak Drive in Burlington, Ontario;

(b) **"Adi Guarantor"** means Adi Development Group Inc. which is an Ontario corporation and an affiliate of Adi, and which provided a guarantee of Adi's obligations under the SML;

(c) **"BDMC"** means Building & Development Mortgages Canada Inc., which was, at all material times, a licensed mortgage brokerage firm;

(d) "**Class**" and "**Class Members**" and "**Investors**" means all persons in Canada who invested in either or both syndicated mortgages 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 Instrument HR1062915, HR1163239 or Instrument No. HR1174204;

(e) **"CUSPAP"** means the Canadian Uniform Standards of Professional Appraisal Practice which are the professional standards that appraisers must meet in performing a real property valuation as established by the Appraisal Institute of Canada ("AACI");

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

(g) **"FFM"** means FFM Capital Inc., which was a licensed mortgage brokerage firm, that commenced carrying on business in 2013, using the trade name Fortress Financial Management, and which made an assignment into bankruptcy on December 4, 2018;

(h) **"Fortress Brokers"** means, jointly, FFM Capital Inc., FMP Mortgage Investments Inc., and FDS Broker Services Inc.;

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

(j) **"FSCO"** means the Financial Services Commission of Ontario which regulated the financial services industry, including regulation and licensing of mortgage brokers, agents, brokerages and mortgage administrators with respect to dealing and trading in mortgages in Ontario, and which was replaced by FSRA in June 2019;

(k) **"FSRA"** means the Financial Services Regulatory Authority of Ontario, a regulatory commission established under the *Financial Services Regulatory Act of Ontario*, 2006 replacing the Financial Services Commission of Ontario in June 2019;

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

(m) **"SMLs"** means the syndicated mortgage loans (a mortgage that secures a debt obligation in respect of which two or more persons are lenders) granted by Medland and the Class to Adi and registered on title to the subject lands as instruments no. HR1062915 and HR1163239 (the "First SML") or Instrument No. HR1174204 (the "Second SML");

(n) **"Sorrenti Defendants"** means Sorrenti and Sorrenti Law; and,

(o) **"Sutton Project" or "The Link Project"** means the mixed used development at 5210, 5218, 5226, 5236 Dundas Street and 2500 Burloak Drive in Burlington, Ontario.

NATURE OF THE ACTION

3. This action concerns syndicated mortgage loans made by Medland and the proposed Class Members that were registered against the lands underlying the Sutton/The Link Project. Investments in the SMLs were marketed and sold to the Class by Fortress, BDMC, FFM, the other Fortress Brokers, and other mortgage brokerage firms or referring parties acting as subagents to BDMC or the Fortress Brokers and for which BDMC are liable in law.

4. The Sutton Project lands are located at 5210, 5218, 5226, and 5236 Dundas Street and 2500 Burloak Drive in Burlington, Ontario. The development was planned as a mixed-use development

comprised of first two, then four low-rise residential condominium towers and commercial space. The legal description of the lands is set out at Schedule "A" to this Second Fresh as Amended Statement of Claim.

THE PARTIES

5. Sandra Medland is a retiree, who lives in the town of Acton, in the Province of Ontario. Medland invested in the First SML jointly with her husband, Leonard Medland ("Leonard"), in 2014. She invested a second time on her own behalf in 2015 in respect of the Second SML.

6. Leonard died in December 2014. As such, Medland is now the sole owner of both SMLs.

7. Medland brings this action on behalf of herself and a proposed Class defined as:

> *All persons in Canada who invested in either of the syndicated mortgages 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 Instrument HR1062915, HR1163239, or Instrument No. HR1174204.*

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

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

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

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

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

13. Until some time in 2013, BDMC acted as the mortgage broker for both Fortress and for the investors in Fortress syndicated mortgage loans. Thereafter, BDMC was typically not the broker of record for the investors, but it continued to perform many functions of the mortgage broker for the investors, including conducting project due diligence reviews and drafting written disclosures for the investors - including the statutorily mandated FSCO disclosure forms - and obtaining valuations or opinions of value for the properties securing the syndicated mortgage loans, which were intended to be disclosed to the investors as part of the disclosure package. In carrying out these functions, BDMC was in a conflict of interest with respect to its duties to investors, its duties to the borrower, and its own financial interests.

14. On February 1, 2018, FSCO issued an order, on consent, revoking BDMC's mortgage brokerage license pursuant to section 19 of the *MBLAA*. BDMC was ordered to pay an

administrative penalty of $400,000 pursuant to section 39 of the *MBLAA*. The license of Vince Petrozza, who was a broker with BDMC, was revoked.

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

16. Galati resided in Vaughan, Ontario and was at all materials times the sole owner, and a director and officer of BDMC. Galati was a licensed mortgage broker and was the principal mortgage broker of BDMC at all material times. On or about February 1, 2018, as part of BDMC's settlement with FSCO, Galati surrendered her broker license, and was required to cease all mortgage brokering activities effective February 5, 2018.

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

18. FFM was a corporation incorporated under the laws of the Province of Ontario with an office in the City of Vaughan. The company carried on business under the trade name Fortress Financial Management. FFM was a mortgage brokerage licensed and governed by the provisions of the *MBLAA*, from July 10, 2013 until December 4, 2018 when it made an assignment in bankruptcy. By order of the Bankruptcy Court dated March 15, 2021, the statutory stay of proceedings as against FFM in respect of this action was lifted.

19. On February 1, 2018, FSCO issued an Order that FFM pay an administrative penalty under section 39 of the *MBLAA* of $235,000.

20. Rosalia Spadafora ("**Spadafora**") was the principal broker of FFM from January 28, 2014 until her license was revoked by FSCO under section 19 of the *MBLAA* on February 1, 2018.

21. Saul Perlov ("**Perlov**") was the principal broker of FFM from at least July 25, 2013 until October 31, 2013.

22. This action is brought against Perlov and Spadafora only with respect to the Class' claims relating to these defendants' negligence while acting as the principal brokers of FFM during the time periods set out in paragraphs 20 and 21, above.

23. As the mortgage broker for the SMLs, BDMC, FFM and the principal brokers owed the Investors a duty of care to act as a reasonably prudent mortgage broker to protect the Investors' interests under the SMLs, as well as fiduciary duties, and statutory duties imposed by the *MBLAA*.

24. Adi is a corporation incorporated under the laws of the Province of Ontario with an office in the City of Burlington. The company is the amalgamation of two previous limited corporations, Adi Developments (Link) Inc. and Adi Developments Sutton Inc. Adi is the developer of the Sutton/The Link Project, and liable for all amounts payable thereunder, including all costs incurred by the Investors in enforcing the SMLs debt.

25. Adi Guarantor is a corporation incorporated under the laws of the Province of Ontario with an office in the City of Burlington. Adi and Adi Guarantor are related companies. Adi Guarantor guaranteed Adi's obligations to the Investors under the SMLs, and is liable for all amounts payable thereunder.

26. Sorrenti is a lawyer licensed to practice law in Ontario. He practices through his professional corporation, Sorrenti Law, from offices in Vaughan, Ontario. From time to time, the Sorrenti Defendants employed other lawyers, who assisted the Sorrenti Defendants in providing the services set out herein with respect to Medland's and the Class' investments in the SMLs. The Sorrenti Defendants are vicariously liable for the acts or omissions of their employees.

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

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

29. Sorrenti Law was retained by the Investors to register a charge on title to the Sutton Project lands, to secure the SML debt. Sorrenti Law breached its contract and breached its fiduciary duty owed to the Investors by registering charge terms that were materially different from the terms of the SML Agreements, and which caused the Investors to lose their priority as a secured lender insofar as the registered charge permitted construction financing to be registered in priority to the SML in excess of $49.5 million, thereby damaging the Investors.

30. Sorrenti Law also acted as the SMLs' mortgage administrator for the Investors until he was replaced by FAAN by court order dated September 30, 2019. Sorrenti Law was able to administer

mortgages as part of a law practice, and without a licence, pursuant to an exemption in s. 5 (6) *MBLAA*, and ss. 3 – 5 of O. Reg. 407/07 thereunder.

31. As the mortgage administrator for the SMLs, Sorrenti Law owed to the Investors, and breached:

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

(b) fiduciary duties; and,

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

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

MORTGAGE LAW IN ONTARIO

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

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

35. A license is required for anyone who:

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

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

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

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

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

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

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

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

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

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

FORTRESS' BUSINESS MODEL

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

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

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

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

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

43. Fortress' development agreements with developers/builders called for advance payments to Fortress of "anticipated profits" at the time the financing was raised. This resulted in a substantial portion of the investors' money (approximately 35%) being retained by Fortress years before any profits were actually earned, if at all. It diverted the loan money away from the developer or builder. Fortress used the funds that it retained to pay mortgage broker and agents' commissions at inflated rates of 15% in total, as well as to pay the Sorrenti Defendants for the allegedly "independent" legal advice that they provided to investors (discussed further below). The rest it kept as its own profits. The fact that Fortress held back approximately 35% of the investors' funds to pay these Fortress-related fees and commissions was not disclosed, including to the Investors, and was intentionally withheld from the Investors by Fortress, BDMC and the Fortress Brokers.

44. BDMC or Sorrenti Law, as the mortgage administrators, also retained another 16% of investors' capital in an "interest reserve", which was used by the mortgage administrator to pay

investors the interest payable under the syndicated mortgage loans over the first two years of the mortgage's term. Effectively, this was a return of capital, as the interest paid to the investors was actually part of the capital they invested. The result was that Investors paid taxes on ostensible income that was actually a return of capital.

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

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

47. The result was that the developer or builder received no more than 50% of the funds raised from investors for use in the development of the project itself. This fact was not disclosed to the investors, including Medland and the Class, it was intentionally withheld from the investors, including Medland and the Class, by Fortress, BDMC and the Fortress Brokers, and was negligently withheld by the Sorrenti Defendants.

48. Fortress raised the capital to finance the developments predominantly from small and unsophisticated investors. Approximately 80 – 85% of the investors in Fortress syndicated

mortgage loans held their investments in registered accounts such as registered retirement savings plans, registered education savings plans, or registered retirement income funds. The fact that the syndicated mortgage loans were allegedly eligible to be held in a registered account was a key representation and selling feature of the Fortress syndicated mortgage loans, including the SMLs.

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

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

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

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

53. In 2013, Fortress entered into agreements with FFM and the other Fortress Brokers to have these mortgage brokers market the mortgage investments widely to members of the public, as well as to other mortgage brokers and agents who, in turn, would act as their agents to solicit investments in the Fortress syndicated mortgage loans from members of the public.

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

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

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

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

(a) were fully secured against the development property;

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

(c) were safe, low risk, and secure investments, including that Fortress "chooses projects that have minimal zoning risk and strong sales objectives to protect the investor from any sort of protracted delays";

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

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

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

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

(Together, the "Core Misrepresentations".)

58. Fortress, BDMC, Galati, Spadafora, Perlov, FFM and the other Fortress Brokers all knew that the Core Misrepresentations were made to potential investors, including Medland and Class,

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

59. Fortress, BDMC, Galati, Spadafora, Perlov, FFM and the other Fortress Brokers intended that the investors, including Medland and the Class, would rely upon the Core Misrepresentations when making their decisions to invest in the Fortress syndicated mortgage loans. The Investors did rely upon the Core Misrepresentations set out in the marketing materials and provided to them at Fortress seminars and by representatives of Fortress, BDMC and the Fortress Brokers when the Investors decided to invest in the SMLs.

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

61. Fortress, BMDC and the Fortress Brokers knew that they needed evidence that the syndicated mortgage loans would qualify to be held in registered accounts, which meant proof that the loan to land value ratio was less than 100%, otherwise the scheme would fail. However, these defendants did not obtain appraisals for the developments based on the actual "as is" value of the properties. Instead, they obtained either appraisals or "opinions of value" based upon a hypothetical future value calculated as if the project was completed. The appraisals or opinions of value were not compliant with CUSPAP, including the opinions of value prepared in respect of the Sutton Project (the "Misrepresentation of Value").

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

63. Fortress, BDMC, Galati, Spadafora, Perlov, FFM and the other Fortress Brokers made the Core Misrepresentations and Misrepresentation of Value to induce the investors to invest in the Fortress syndicated mortgage loans. These defendants knew that the investors would rely upon these misrepresentations in making their decisions to invest in the Fortress syndicated mortgage loans. The Investors did, in fact, rely upon the core misrepresentations and Misrepresentations of Value of the Sutton Project made by these defendants in deciding to invest in the SMLs, including the decision to hold the investments in registered accounts.

64. Had Fortress, BDMC, Galati, Spadafora, Perlov, FFM and the other Fortress Brokers disclosed the true value of the development properties rather than grossly inflated values, none of

the syndicated mortgage loans would have been registered plan-eligible according to regulations set out by the Canada Revenue Agency, the Fortress syndicated mortgage lending scheme would have failed, and the Investors would not have invested in the SMLs.

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

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

THE SUTTON PROJECT

67. The Sutton Project is now fully built out. All residential units have been sold and closed. Twelve commercial units, four locker units and two parking spaces (the "Remaining Units") remain unsold, and Adi is collecting rent for some or all of these units which are leased, and has not accounted to the Investors for the rent proceeds. There will be insufficient proceeds from the sale of the Remaining Units to repay the SMLs in full. As such, the Investors have been damaged.

68. There are two SMLs registered on title to the Sutton Project, held by a total of 456 Investors. The First SML is in the total face amount of $11.6 million, and the Second SML is in the face amount of $8 million. Both SMLs matured on April 4, 2016, and are in default.

69. On or before September 4, 2012, and approximately two months prior to the purchase of the first four parcels, and approximately nine months prior to the purchase of the fifth parcel of land underlying the Sutton Project, Adi agreed to borrow from Fortress Developments $11.6 million as a development loan (the "Fortress Agreement"). This loan was for pre-construction (mezzanine-like) financing, but anticipated that Fortress would be paid a 50% profit participation interest in the Project, a portion of which would be paid up front. Fortress would obtain the capital for the development loan through selling interests in a syndicated mortgage to be registered on title to the Sutton Project.

70. Key provisions of the Fortress Agreement were:

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

(b) the maximum amount of the secured portion of the syndicated mortgage loan would be $11.6 million;

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

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

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

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

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

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

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

(j) The term of the First SML was approximately three years to October 4, 2015 with an option for Adi to extend the term for a further six months to April 4, 2016.

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

72. A Second Fortress Agreement was entered into by Fortress and Adi, or the Fortress Agreement was amended in or about 2014 pursuant to which Fortress committed to fund up to a further $17.6 million through another syndicated mortgage, which would rank in third priority, behind the First SML. The terms of the Second Fortress Agreement are substantially the same as the original Fortress Agreement, or they are an amendment to the Fortress Agreement.

73. Fortress began its marketing efforts for the Sutton Project in or about August 2012. Fortress and BDMC marketed and sold the First SML to the Investors in a manner consistent with Fortress' usual business model, set out above. The marketing and sale of the First SML was predominantly to unsophisticated retail investors, the vast majority of whom invested through registered plans, such as their retirement savings plans. The fact that the SML qualified to be held in a registered account was a key selling feature, emphasizing the security of the investment. When the Fortress Brokers were incorporated, they, too, marketed the Sutton Project to Investors in the same manner.

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

75. On August 22, 2012, Kevin Ferguson and Jeff Cheong of Legacy Global Mercantile Partners Ltd. delivered an opinion of value of the subject lands (the "Opinion"). The Opinion was based upon the assumption of approval of the site plan for the Sutton Project, which included, at the time, two - four storey condominiums and 20 townhomes, totalling 254 units. The Opinion concluded that the subject lands had an approximate market value of $10 - $11 million, as built.

76. At the time the Opinion was provided, the Sutton Project property was not zoned to allow for the development that was to be marketed by Fortress, Adi and BDMC. In order to proceed, it was necessary to obtain both an Official Plan and zoning amendment, both of which had not yet been submitted. The City of Burlington and Adi did agree to terms on the zoning of the Project on December 3, 2014, 15½ months after the date of the Opinion. The Opinion was revised in December 13, 2013, and was increased to $16 million, based on new assumptions and was updated from time to time thereafter (the "Updated Opinions").

77. The Opinion and Updated Opinions were used to deceive the Investors regarding the risk they were taking and the ability to hold the SLMs in registered accounts, and formed the basis of the Misrepresentation of Value for the Sutton Project.

78. Adi's purchase of the first four of five parcels underlying the Sutton Project (5210, 5218, 5226 Dundas Street and 2500 Burloak Drive) for a total of $1.9 million was registered on title on November 8, 2012. The remaining parcel (5236 Dundas Street) was purchased by Adi on June 14, 2013, for $733,076. The total purchase price for the five parcels making up the Sutton Project was $2,633,076. This was the actual, as-is market value of the subject lands, which was never disclosed to the Investors, even though the broker, BDMC or the Fortress Brokers, was obliged to disclose this agreement of purchase and sale for the 12 month period following the closing, if the agreement was available to it, (which it was).

79. The Sutton Project was more than fully leveraged from the outset. When Adi acquired the first four parcels, it granted a mortgage to the then first mortgagee group in the amount of $1.8 million, and bridge financing in the form of a Demand Debenture to a group of investors for $3.275 million. These charges were eventually discharged and replaced with a new first charge granted

to the construction lender. In addition, a charge in favour of Aviva Insurance Company of Canada in the amount of $16 million on October 30, 2015 was registered on title to all five parcels of the Sutton Project, securing the purchase deposits. The First SML was postponed to the Aviva charge by Sorrenti.

80. Adi did not invest any of its own capital in acquiring the Sutton Project. This fact was never disclosed to the Investors by Fortress, BDMC, the Fortress Brokers, or the Sorrenti Defendants.

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

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

83. In providing its purported ILA, the Sorrenti Defendants repeated the Core Misrepresentations and Misrepresentation of Value. The Sorrenti Defendants' advice was not independent, it was misleading, and it was negligent. They provided a boilerplate promotion of the SML investments without providing a reasonable discussion of the risks associated with the SML investments, and without tailoring the advice to the client's individual circumstances, comprehension levels, or risk profile.

84. Each of Fortress, BDMC, the Fortress Brokers, and the Sorrenti Defendants falsely represented to the Investors that:

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

(b) the appraised "as is" value of the lands was at least $10 million based on the Opinion, or more based upon the Updated Opinions;

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

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

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

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

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

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

85. Fortress, BDMC, the Fortress Brokers, and the Sorrenti Defendants made these misrepresentations to induce the Investors to enter into the SMLs. The Investors relied upon these misrepresentations when making their investments in the SMLs, and they relied upon the ILA that they received from the Sorrenti Defendants to reassure them that investment in the SMLs were safe, secure, and appropriate based upon their investment objectives.

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

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

88. The misrepresentations set out above, at paragraphs 84 - 87 are the "Sutton Misrepresentations".

89. Had the true facts about the SMLs been disclosed to the Investors, rather than the Core Misrepresentations, the Misrepresentation of Value and the Sutton Misrepresentations, the Investors would not have invested in the SMLs.

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

(a) the SMLs were high-risk investments;

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

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

(d) the SMLs were not fully secured against the subject lands;

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

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

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

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

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

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

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

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

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

(n) Adi had no revenue source from which to pay the interest payments due under the SMLs;

(o) zoning approvals were not yet in place for the proposed development upon which the original Opinion's assumptions were based, and therefore the Opinion was not a hard, reliable valuation of even the projected market value of the subject lands;

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

(q) the SML Agreements contained postponement and standstill provisions which would limit the Investors' ability to enforce the SMLs in the event of default, and no advice was provided to the Investors as to what the terms of any such postponement and standstill would include or how that might affect the Investors' ability to enforce the SMLs if they went into default;

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

Agreements, and purported to prevent the Investors from acting upon their security in the event of default or when it came due, unless the "Senior Security" lender(s) consented to such action;

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

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

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

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

93. As Trustee, Sorrenti held title to the mortgages underlying the SMLs on behalf of the Investors. As mortgage administrator, Sorrenti Law was required to act in a fiduciary capacity to

administer and enforce the SMLs. However, in both capacities, the Sorrenti Defendants failed to take any steps to protect the Investors' interests, to enforce the terms of the SMLs in favour of the Investors when the SMLs fell into default, or to advise the Investors that they could take such actions on their own. The Sorrenti Defendants abdicated their responsibilities as both Trustee and Administrator.

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

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

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

97. The Investors (through FAAN) were unable to enforce the default under the SMLs because the Sorrenti Defendants entered into postponement and subordination agreements with the construction lenders that prevent the Investors from taking any steps to enforce their rights until the construction lenders are paid in full or to commence enforcement action. These postponement and subordination agreements exceeded the authority granted to the Sorrenti Defendants in the SML Agreements, and as such, the Sorrenti Defendants breached their contracts with the Investors, acted in breach of trust and breach of fiduciary duty, and they were negligent.

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

The First SML

99. By agreement dated September 4, 2012, Adi and Adi Guarantor entered into a syndicated mortgage loan agreement (the "SML Agreement") with Sorrenti in Trust as the lender. Key terms of the SML Agreement were:

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

b) The First SML would be registered against the subject property in the amount of up to $11.6 million. This was, in fact, done and registered in Land Registry Office #20 in Milton, Ontario on November 8, 2012 as Instrument HR1062915 on the first four parcels;

c) The First SML proceeds were to pay for Adi's "soft costs to be incurred prior to the construction financing of the [Sutton] Project";

d) The First SML could be subordinated to "Permitted Encumbrances", *i.e.* the first-ranking construction financing which was not to exceed $45 million plus a 10% contingency, if required, for a total of $49.5 million. No other financial encumbrances were permitted in priority to the First SML;

e) The term of the First SML was until October 4, 2015, with an option for Adi to extend the term for a further six months to April 4, 2016;

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

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

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

i) Adi Guarantor guaranteed the obligations of Adi under the SML Agreement;

j) Adi and Adi Guarantor provided an indemnity, indemnifying the lender from and against all costs and expenses imposed on the lender arising from the lender being the lender in respect of the Project;

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

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

> The Lender [Sorrenti] covenants and agrees as follows:
>
> a) to postpone and subordinate the [SML Agreement] in favour of First-Ranking Construction Loan Security and to enter into such standstill agreements as shall be reasonable in the circumstances.

100. No further particulars were provided with respect to the terms of any postponement and subordination agreement, and no draft agreement was appended to the SML Agreement. The "term reasonable in the circumstances" was ambiguous, and must be interpreted against Adi and in favour of the Investors.

101. The First SML was registered on title to the first four parcels of the Sutton Project on November 8, 2012 (the day Adi acquired the parcels) in the face amount of $5.6 million, naming Sorrenti as the mortgagee. On November 13, 2012, the mortgagee was changed to Sorrenti and Olympia, jointly (with Olympia holding title as bare trustee for the Investors holding their investments in their registered accounts, and Sorrenti holding title as bare trustee for the rest of the Investors). Although registered against the subject lands, the First SML was unsecured when granted, as the as-is value of the Sutton Project was less than the first ranking charges on title.

102. From time to time thereafter, the amount of the First SML was increased, ultimately to $11.6 million on February 4, 2014, and registered on title to the first four parcels of the subject lands.

103. The First SML was not registered on title to the fifth parcel of the subject lands until February 4, 2014, in the face amount of $10.25 million, as Instrument No. HR1163239. Sorrenti was negligent in failing to register the First SML on title to the fifth parcel at the time this parcel was acquired for those Investors who invested in the First SML before it was registered on title to this parcel, and for those Investors who invested after October 8, 2013 when the total amount of the First SML exceeded $10.25 million, leaving these Investors incompletely registered on title, and therefore incompletely secured.

104. The terms of the charge registered on title to the subject lands to secure the First SML were materially inconsistent with the SML Agreement with respect to postponement, subordination and standstill terms. Particularly, the charge stated:

(a) the "Permitted Encumbrances" – which are referred to as "Senior Security" in the registered charge, could "increase from time to time as may be necessary to reflect

any necessary adjustments to the project as to scope of the project or anticipated costs (the "Total Adjusted Senior Security");

(b) the SMLs would be postponed to all of the Total Adjusted Senior Security (*i.e.* not limited to a maximum of $49.5 million as provided for in the SML agreement);

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

(d) the Lender could not take any collection or enforcement proceedings or seek remedies against Adi or Adi Guarantor, or against the subject lands as a result of any breach or default, unless first approved in writing by all the holders of the Total Adjusted Senior Security.

105. Effectively, the registered charge terms allowed Adi to put as much secured debt in advance of the SML Investors as it could obtain, the Investors could not object, and had no reasonable means to enforce a default under the SML. They lost many of the fundamental rights included in the SML Agreement. The terms of this charge were not disclosed to the Investors prior to the registration of the charge, and they did not agree to them. None of BDMC, the Fortress Brokers, nor the Sorrenti Defendants reviewed the terms of the charge with the Investors prior to the Investors entering into either the First or Second SML. The Investors did not agree to these terms and Sorrenti had no authority to agree to these terms on behalf of the Investors, to the knowledge of Adi and Adi Guarantor. This non-disclosure was a material omission, was not agreed to by the Investors, and renders the charge unenforceable, or, alternatively, BDMC, the Fortress Brokers, and the Sorrenti Defendants are liable to the Investors for all damages arising from the registration of the charge on terms to which the Investors did not agree.

106. The standstill and postponement terms in the charge are not enforceable against the Investors, who did not agree to these terms. The terms were not "reasonable in the circumstances" at the time the charge was registered, particularly when no construction financing had yet been sought, nor had any construction lender required subordination of the SML. The standstill and postponement terms were, in fact, unreasonable under any circumstances, as well as being inconsistent with the payment, term and default provisions of the SML Agreement. The standstill and postponement terms in the charge were provided without consideration and are therefore not enforceable for this reason, as well.

107. The construction financing was not registered on title to the Sutton Project until the day after the First SML went into default. It was not reasonable in the circumstances for the SMLs to be postponed to new financing when the principal and accrued interest under the SMLs was already due and owing.

108. By permitting the registration of a charge on title that was materially inconsistent with the SML Agreement, Adi and Adi Guarantor failed to act honestly and in good faith in the performance of the SML Agreement, and breached its terms. The Investors have been damaged as a result thereof.

109. In registering a charge on title to the Sutton Project that was materially inconsistent with the SML Agreement, and that substantially prejudiced the rights of the Investors, the Sorrenti Defendants breached their contracts with the Investors, acted in breach of trust and breach of fiduciary duty, and were negligent. Insofar as the Sorrenti Defendants (either as Trustee or Administrator) agreed to subordinate the security of the Investors in excess of $49.5 million in the aggregate, they have damaged the Investors.

The Second SML

110. At some point in early 2014, Fortress, Adi and Adi Guarantor either amended the terms of the Fortress Agreement or entered into a further development agreement on materially similar terms to the Fortress Agreement, pursuant to which Fortress undertook to raise up to an additional $17.6 million in capital for Adi for additional soft costs it was incurring with respect to the Sutton Project, which had expanded to four condominium towers. This additional financing was to rank in priority immediately below the First SML.

111. Thereafter, on April 4, 2014 Sorrenti as Trustee entered into a Second SML Agreement on terms substantially similar to the SML Agreement, as set out above, except that the amount of the Second SML was up to a total of $17.6 million. The term of the Second SML was until April 4, 2016. Adi Guarantor guaranteed the debt. Like the original SML Agreement, the maximum aggregate First-Ranking Construction Loan Security to which the Investors agreed to postpone was $49.5 million. Given the prior-ranking First SML, the maximum first-ranking construction financing that could be secured in advance of the Second SML was $37.9 million.

112. Like the First SML, the registered charge terms securing the Second SML were the same as the charge terms registered in respect of the First SML, and they were materially inconsistent with the Second SML Agreement. The charge terms were not disclosed to those Investors who invested in the Second SML by any of BDMC, the Fortress Brokers or the Sorrenti Defendants, and the Second SML Investors did not agree to these terms.

113. By causing the registration of a charge on title that was materially inconsistent with the Second SML Agreement, Adi and Adi Guarantor failed to act honestly and in good faith in the

performance of the Second SML Agreement, and breached its terms. The Second SML Investors have been damaged as a result thereof.

114. Effectively, the charge terms allowed Adi to put as much secured debt in advance of the SML Investors as it could obtain, the Investors could not object, and had no reasonable means to enforce a default under the SML. They lost many of the fundamental rights included in the SML Agreement. The terms of this charge were not disclosed to the Investors prior to the registration of the charge. None of BDMC, the Fortress Brokers, nor the Sorrenti Defendants reviewed the terms of the charge with the Investors prior to the Investors entering into either the Second SML.

115. The Investors did not agree to the charge terms and Sorrenti, as bare trustee only, had no authority to agree to these terms on behalf of the Investors. Adi and Adi Guarantor knew that Sorrenti did not have the authority to unilaterally agree to the charge terms on behalf of the Investors, but insisted upon the inclusion of the standstill and postponement terms in the charge. This non-disclosure was a material omission, and renders the charge unenforceable. Alternatively, BDMC, the Fortress Brokers, and the Sorrenti Defendants are liable to the Investors for all damages arising from the registration of the charge on terms to which the Investors did not agree.

116. The standstill and postponement terms in the charge are not enforceable against the Investors, who did not agree to these terms. The terms were not "reasonable in the circumstances" at the time the charge was registered, and they were, in fact, unreasonable under any circumstances, as well as being inconsistent with the payment, term and default provisions of the SML Agreement. The standstill and postponement terms in the charge were provided without consideration and are therefore not enforceable for this reason, as well.

117. The construction financing was not registered on title to the Sutton Project until the day after the Second SML went into default. It was not reasonable in the circumstances for the SMLs to be postponed to new financing when the principal and accrued interest under the SMLs was already due and owing.

118. In registering a charge on title to the Sutton Project that was materially inconsistent with the Second SML Agreement, and that substantially prejudiced the rights of the Investors, the Sorrenti Defendants breached their contracts with the Investors, acted in breach of trust and breach of fiduciary duty, and were negligent. Insofar as the Sorrenti Defendants (either as Trustee or Administrator) agreed to subordinate the security of the Investors in excess of $49.5 million in the aggregate, they have damaged the Investors.

The Construction Financing Exceeded $49.5 Million

119. On April 5, 2016, Adi granted a construction mortgage in favour of Meridian Credit Union Limited in the amount of $75 million (the "Meridian Mortgage"). The Aviva first mortgage was postponed to the construction mortgage. At that time, there was, therefore $41.5 million in charges registered on title in priority to the SMLs that ought not to have been granted priority to them.

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

121. Sorrenti and Olympia postponed both the First and Second SMLs in favour of this construction mortgage, even though the amount of the construction mortgage grossly exceeded the amount of construction financing to which the Investors had agreed to postpone their security.

Sorrenti did so without instructions or the consent of the Investors. This was a breach of trust, breach of fiduciary duty, breach of contract and negligence on the part of Sorrenti as Trustee.

122. Sorrenti Law, as the lawyer for the Investors and as administrator of the SMLs, caused the Meridian Mortgage to be registered in priority to the SMLs, and took no steps to correct the excessive postponement, even though it knew that the maximum amount of all secured loans by which the SMLs could be subordinated was $49.5 million. Sorrenti Law breached the terms of its mortgage administration agreement, was negligent and acted in breach of fiduciary duty through its failure to administer the mortgage in the best interests of the Investors, and by registering a postponement that was not consistent with the instructions of the Investors or the terms of the SML Agreement.

123. The Meridian Mortgage was granted by Adi in breach of the terms of the SML Agreements.

124. The Meridian Mortgage has now been discharged, including that portion that ought never to have been registered in priority to the SMLs.

125. Adi and Adi Guarantor are liable for all damages that the Investors in the First SML have incurred as a result of Adi granting the Meridian Mortgage for any amount in excess of $33.5 million (*i.e.* the delta between the $16 million first mortgage and $49.5 million), and for all damages that the Investors in the Second SML have incurred as a result of Adi granting the Meridian Mortgage for any amount in excess of $21.9 million, and as a result of Adi repaying the Meridian Mortgage for any amount in excess of $33.5 million or $21.9 million in advance of the Investors.

Construction Begins and Default Occurs

126. Sales of the units in the first phase of the Sutton Project began in July 2014.

127. Construction of the Sutton Project did not begin until sometime after May 28, 2015, after amendment of the Official Plan and zoning approval was obtained, and Adi had entered into certain required agreements with the City of Burlington.

128. Construction was not nearly complete by the due date of the First SML on October 4, 2015. By letter dated July 1, 2015 Adi exercised its right to extend the First SML for a further six months to April 4, 2016. It did not extend the Second SML.

129. On April 4, 2016 BDMC issued a "Memo" to the Investors. The Memo stated that construction had commenced on the Sutton Project. It represented that the SML Agreements contained provisions for an "ongoing standstill, subordinate and postponement arrangement" that permitted the SMLs to continue on an "interest accrual" basis "for the remainder of the term". The SML Agreements contain no provision allowing for interest accrual after the term of these Agreements expired. Failure to repay the principal and any overdue interest was an event of default under the terms of the SMLs. The term of the SMLs expired on April 4, 2016, and thereafter they were in default.

130. BDMC thereby misrepresented to the Investors that the SML Agreements were not in default, and allowed for a period of interest accrual. It did so intentionally or negligently, to dupe the Investors into believing that they had no right to enforce the SMLs, which were in default. Sorrenti did nothing to correct this misrepresentation. The memo had the intended effect, to the detriment of the Investors.

131. As the Lender and Trustee under the SMLs, Sorrenti was entitled and obligated as of April 4, 2016 to take all actions and exercise all remedies available to the Investors as a result of the defaults. But Sorrenti did nothing. In choosing not to enforce the SML Agreement, Sorrenti preferred the interests of Fortress to those of the Class, and acted in a conflict of interest.

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

(a) advise the Investors of their enforcement rights under the SMLs;

(b) enforce the SMLs following the defaults; or

(c) make a demand on Adi Guarantor for payment under its guarantees.

133. In fact, the Sorrenti Defendants have never communicated with any of the Investors to obtain their instructions with respect to Adi's default under the SMLs, or even to notify them of the status of the SMLs, or about the postponement Sorrenti had executed. The Sorrenti Defendants' conduct was grossly negligent.

134. On May 12, 2016, BDMC issued another "Memo" which misrepresented that the "postpone, standstill, and subordinate provisions" meant that the SMLs were not in default.

135. The May 12, 2016 BDMC memo advised that the SMLs had been postponed to the construction lender (Meridian), and the postponement was increased to $110 million. Inconsistently, at the same time, BDMC sought the Investors' consent to this postponement.

136. In fact, the Meridian Mortgage had already been granted by Adi, and Sorrenti had already postponed the SMLs to it. This fact was not disclosed to Medland and the Class.

137. The Investors never consented to a postponement of their security to construction financing of $75 million or $110 million. If Sorrenti entered into a postponement agreement on either of these terms, he did so without the consent or authority of the Investors and in breach of his contractual and fiduciary duties as Trustee or mortgage administrator, and he was negligent.

138. Any postponement registered on title to the Sutton Project that permits the postponement of the SMLs to construction financing in the amount of either $75 million or $110 millions was registered by Sorrenti Law without the consent or authority of the Investors and in breach of Sorrenti Law's contractual and fiduciary duties, and was negligent.

139. The Investors did not sign the Direction and Indemnity sent by BDMC. In the alternative, if any Investors did sign the Direction and Indemnity, they did so because of the false representations made to them by BDMC which induced them to sign the requested document. The Direction and Indemnity is unenforceable as against those Investors as it was procured by deceit, and after Sorrenti had already postponed the SMLs to the Meridian Mortgage in breach of contract, breach of trust and breach of fiduciary duty.

140. On August 5, 2016 BDMC issued a third Memo to Investors. This Memo falsely stated that the expiry date of the SMLs was October 4, 2016 although they were already in default as of April 4, 2016. This Memo then repeated the false and misleading statements that the SMLs were subject to "standstill, subordinate and postponement arrangement[s]" and "interest accrual" set out in the April 4, 2016 Memo, and misrepresented that this was allowed by the terms of the SML Agreements.

141. As with the earlier memos, BDMC made these misrepresentations to the Investors intentionally or negligently, to dupe the Investors into believing that they had no right to enforce the SMLs, which were in default.

FSRA AND RCMP INVESTIGATIONS

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

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

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

(a) revoked the mortgage broker licenses for:

(i) BDMC;

(ii) Vincenzo Petrozza;

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

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

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

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

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

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

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

149. On April 13, 2018, the RCMP's Integrated Market Enforcement Team obtained a search warrant for Fortress, BDMC and the Fortress Brokers in connection with a fraud investigation into Fortress's syndicated mortgage businesses. In the search warrant, the investigators asserted their belief that the key aspects of this fraud occurred from 2012 to 2017 and include:

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

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

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

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

150. These allegations were true with respect to the Sutton Project and the SMLs. Fortress was engaged in a fraudulent scheme. BDMC, Galati, and the Fortress Brokers were either complicit in the fraud, or they were reckless, or negligent with respect to their role in the scheme. The Sorrenti Defendants were grossly negligent with respect to their role in the scheme.

151. In sum, the actions of Fortress, BDMC, Galati, and the Fortress Brokers in facilitating the SMLs exposed the Investors to tremendous risk due to their financing structure, which included high professional fees, advance profit sharing, lack of proper appraisal, and automatic subordination of creditor priority. The real risks of the SMLs were intentionally not disclosed to Investors at the time they invested, to induce them to invest so that Fortress could take excessive and unearned profits, and so the other defendants would also profit at the expense of the Investors.

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

MEDLAND'S INVESTMENT IN THE SUTTON PROJECT

153. Medland's investments in the SMLs is representative of the investments made by all of the Investors. The Defendants engaged in the same misconduct with all the Investors as they engaged in with Medland.

154. The investment by Medland and her husband in the First SML was the first of several investments that Medland made in Fortress syndicated mortgages. In total, Medland invested $705,000 in Fortress syndicated mortgage loans. These investments were to provide Medland with retirement income – she needed her money to make money to support her through her retirement.

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

156. Michael Daramola of FMP was Medland's mortgage broker, and Magnetic Capital Group was the referring agent with respect to both SML investments.

The 2014 Investment

157. Medland and Leonard jointly invested $59,000 in the First SML, on or about August 21, 2014.

158. Medland became a party to the first SML Agreement, dated September 4, 2012, between Sorrenti, in trust, as Lender, Adi as borrower, and Adi Guarantor as guarantor. The terms of the SML Agreement are set out above.

159. The SML Agreement provides that the Lender agreed to "postpone and subordinate the Loan Documents in favour of the First-Ranking Construction Loan Security and to enter into such standstill agreements as shall be reasonable in the circumstances". No standstill agreement was ever provided to Medland for her approval or consent. The terms of the standstill agreement as registered on title to the Sutton Project were never disclosed to her.

160. The terms of the standstill agreement in the registered charge were not reasonable in the circumstances. Accordingly, Sorrenti acted in breach of his fiduciary and contractual duties owed to Medland and the Investors by agreeing to standstill terms that were materially unfair to and that prejudiced the rights of the Investors, and that were inconsistent with the SML Agreement.

161. Article 12(e), (f) of the SML Agreement provides that each advance of the SML was conditional upon the Lender's receipt of a certificate from Adi that there had been no Event of Default, and that it was in compliance with all the terms of the Agreement, and an appraisal or valuation indicating completed Project value of not less than $10 million. None of these conditions were ever fulfilled, as the Opinion was neither an appraisal nor a valuation. Therefore, Sorrenti, as trustee, ought never to have advanced the loan funds to Adi. Adi never provided Sorrenti with financial statements in respect of the Project, although required to do so under the SML Agreement, and Sorrenti failed to require Adi to fulfil any of its reporting obligations under the

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

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

163. Sorrenti Law was the mortgage administrator, acting under a Participation and Servicing Agreement between the firm and Medland. Under this Agreement, Sorrenti Law agreed that it would be exclusively responsible for the implementation of the SML in accordance with the terms of the SML Agreement. It committed to "perform and attend to all matters and things necessary to administer and service the [SML] in accordance with normal lending practice and with the same degree of care and skill as a prudent lending institution would exercise for its own account". Sorrenti Law was obliged to make reasonable efforts to collect payments due under the SML, and take all reasonable steps to enforce the SML. Sorrenti Law was expressly prohibited from agreeing to renew the SML or make any material amendment, modification or waiver of the terms of the SML Agreement without the Investors' written consent.

164. Sorrenti Law failed to perform its duties as mortgage administrator honestly and in good faith. It breached the terms of the Participation and Servicing Agreement, by entering into a standstill agreement that was not consistent with the SML Agreement, and in failing to exercise the degree of care and skill that a prudent lending institution would exercise for its own account in administering the SMLs. Sorrenti has admitted that he lacked the capacity to properly administer the SMLs.

165. Sorrenti did not ensure that all the preconditions were met before advancing any of the First or Second SML loan proceeds to Adi, in breach of his fiduciary and contractual obligations, including the duty of honest performance of contract owed to the Investors.

166. Adi breached the covenant with respect to permitted encumbrances by granting construction loans in excess of the Permitted Encumbrances, and Sorrenti breached his fiduciary and contractual duties owed to the Investors by granting standstill and postponement agreements that permitted Adi to grant construction financing in excess of the Permitted Encumbrances.

167. The terms of the standstill agreement were not reasonable. Accordingly, Sorrenti acted in breach of contract, breach of fiduciary duty, and breach of trust in executing the standstill agreements on behalf of the Investors.

168. Ildina Galati of BDMC and Michael Daramola of FMP prepared an Investor/Lender Disclosure Statement for Brokered Transactions (the "Disclosure Statement") in respect of Medland's first investment, which was provided to Medland before she completed her investment in the First SML. Medland relied upon the representations in the Disclosure Statement in making the investment in the First SML.

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

170. The Disclosure Statement represented to Medland that an appraisal had been done for the property, and that the appraised "as is" value was $16 million for the vacant land. The "appraisal"

was said to be dated December 13, 2013, and that the "appraiser" was Kevin Ferguson & Jeff Cheong, Legacy Global Mercantile Partners Ltd.

171. The "appraisal" was no such thing. It was the updated Opinion which was based upon the estimated value of the developed Project based on various assumptions. This was not an as-is appraisal prepared in accordance with CUSPAP by an appraiser qualified with the AACI.

172. The Disclosure Statement advised that this investment represented 0.51% of the total SML, the face value of the SML was $11.6 million, and that there were 330 other Investors at that time. The SML was to pay interest of 8% per year, and would mature on October 4, 2015, but could be extended to April 4, 2016.

173. The Disclosure Statement confirmed that the First SML was a second mortgage and that the first mortgage was for $2.327 million, in favour of Cameron Stephens. The loan to value ratio was therefore calculated to be 90%.

174. No fees payable from the loan proceeds, or separately payable, were disclosed in the Disclosure Statement, other than $100 per client per year to Sorrenti, In Trust, described as a "legal fee".

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

176. The Form 9D represented that the principal amount of the SML was $11,600,000, which was a second ranking mortgage, behind a first mortgage in the amount of $2,327,000. The SML would be postponed to construction financing and development agreements with the City of

Burlington. The first advance was reported to be 0.51% of the total SML loan. The SML term was an interest- only loan for 3 years, coming due on October 4, 2015, with an option for Adi to extend the term for 6 months to April 4, 2016.

177. Interest was payable at the rate of 8% per year, and would be paid quarterly. Medland was never told that the interest payments that she received would be made from an "interest reserve" funded by 16% of the capital of her loan. Rather, the Form 9D expressly stated at paragraph 19 that interest would not be disbursed to the lender until it was received from the Borrower.

178. The Form 9D also represented that the value of the subject property was $16,000,000 based upon the Opinion, and that, therefore, the property was encumbered to 90% of its value by the first mortgage and this SML. This was materially false since the Opinion was based on an estimate of value of the Sutton Project on an as-built basis. The subject lands were actually encumbered well beyond their as-is value.

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

(a) Medland's investment of $59,000 represented 0.51% of the total loan to the borrower;

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

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

(d) the SML would be required to postpone and standstill to prior construction financing charges to a maximum of $45 million, and would be permitted on the

basis of cost consultant reports prepared for Adi, and that the Trustee might be requested to execute other documents for the purpose of facilitating the development of the Sutton Project, and confirmed that she provided the Trustee with consent to execute such required documents;

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

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

(i) $100 for legal fees, plus a fee of $3,000 on initial registration,

(ii) and a mortgage broker fee of 3% payable to BDMC.

180. Medland also entered into a "Memorandum of Understanding" with FMP and BDMC dated August 13, 2014. This confirmed that Magnetic Capital Group, as the referring agent was not the mortgage broker for the transaction. It set out the duties of FMP and BDMC, which included:

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

BDMC and FMP breached their contract and fiduciary duties with Medland by failing to meet any of these duties when selling the SMLs to her.

181. Sorrenti and Medland executed a Declaration of Bare Trust whereby Sorrenti agreed to hold her interest in the SML in trust as bare trustee. Under the Declaration, Sorrenti agreed to deal with the SML as directed by Medland, the beneficiary. He was not granted the power to act on his own without direction from Medland, yet he proceeded to do so, regardless, in breach of contract, breach of trust and in breach of his fiduciary duties.

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

183. In this Confirmation of Lender's Interest agreement, Medland agreed to postpone and subordinate her interest in the First SML in favour of one or more arm's length construction loans in an aggregate principal amount not to exceed $45 million plus a 10% contingency, if required. Hence the maximum security that could rank in advance of the First SML was $49.5 million.

184. Medland and Leonard waived receiving ILA with respect to the First SML. They relied upon the advice and the representations that they received from Fortress, BDMC and FMP about the Sutton Project and the safety and security of the First SML. They were never advised by anyone that the Core Misrepresentations, the Sutton Misrepresentations or the Misrepresentation of Value were not true. If Medland and Leonard had been told about any of the misrepresentations, they would not have invested in the First SML, and Medland would not have invested in the Second SML or in any other Fortress syndicated mortgage.

185. Medland asserts that while she did not obtain ILA in respect of her first investment in the SML, the Class members did, and she asserts a claim in negligence and breach of fiduciary duty on behalf of the Class against the Sorrenti Defendants in respect of the ILA they provided to Class Members for both the First and Second SML.

186. Medland's investment in the SML was registered on September 4, 2014 in the name of Derek Sorrenti in trust. The SML Agreement to which Medland became a party had already been made between Adi and Derek Sorrenti, in trust on September 4, 2012.

187. Leonard died on December 31, 2014. Medland became the surviving sole owner of the First SML investment thereafter.

The 2015 Investment

188. On or about April 9, 2015, Medland made a further investment of $59,100 in the Second SML, which was registered on title to the subject lands on April 10, 2015 as a third charge as Instrument No. HR1174204. This investment was held by Medland in her RRIF held in an Olympia registered account.

189. On April 9, 2015, FMP purported to undertake a client suitability review with Medland, which plainly indicated that the Second SML was an inappropriate investment for her. FMP knew that Medland was widowed, was retired, and would be relying on the income from her investments to fund her retirement.

190. The Second SML Agreement was dated April 4, 2014 between Sorrenti Law, in trust, as the Lender, Adi as the Borrower and Adi Guarantor as the Guarantor. The Second SML was to be for up to $17.6 million "to provide for the Borrower's soft costs to be incurred prior to the

construction financing of the Project". It was ultimately funded in the amount of $7,991,000 by the Second SML Investors.

191. Medland chose to invest in the Second SML because she had been convinced of its safety and security through the Core Misrepresentations, and the Sutton Misrepresentations and the Misrepresentation of Value that she had received from Fortress, BDMC and FMP, and because she had received the interest payments from the first SML investment regularly, which reassured her that the SMLs for the Sutton Project were safe and reliable investments.

192. While Medland and Leonard waived receiving ILA for the first investment, after Leonard's death, Medland did seek and obtain ostensible ILA from Grant Morgan at Sorrenti Law for her subsequent investment in the Second SML.

193. At all times, the Sorrenti Defendants knew, or ought reasonably to have known, that Medland relied upon their ILA when she made the investment in the Second SML. Morgan did not warn her about any of the Core Misrepresentations, the Sutton Misrepresentations or the Misrepresentation of Value. If Medland had been told about any of the misrepresentations, she would not have invested in the Second SML.

194. Medland received and executed similar documents to those she had received and executed with respect to the First SML investment. The documents contained the same misrepresentations and the same material omissions of facts that were made by the same parties. In all material respects, the documentation with respect to the Second SML was the same, subject to the following changes:

(a) The investment was in respect of the Second SML, in the face amount of $5.8 million, and could increase to a maximum of $17.6 million, and it would rank as

a third ranking charge, but would move to second ranking charge with the agreement of the SML investors in the First SML;

(b) The balance of the first priority mortgage had increased to $3.827 million;

(c) both the first mortgage and the First SML would be postponed in favour of construction financing;

(d) construction financing would be in first position, with the other mortgages subordinating to it;

(e) The maximum of all charges to which the Second SML would postpone and standstill would be a maximum of $45 million plus a 10% contingency if required inclusive of the first mortgage and the First SML;

(f) Medland's loan of $59,100 represented 1.02% of the total loan to the borrower, and the loan to value ratio of all the mortgages on the subject property was 83%;

(g) the current market value of the subject property was represented to be $25.5 million based on a letter of opinion completed by Kevin Ferguson and Jeff Cheong of Legacy Global Mercantile Partners Ltd. dated February 20, 2014;

(h) the term of the loan was 24 months coming due on April 4, 2016, with an option for Adi to extend for an additional 6 months;

(i) the fees paid by Adi would be $100 for legal fees per client per year, plus an initial registration fee of $3,000 + HST, 3% mortgage broker fee payable to BDMC, a "Branch Broker Fee" of $2,955 payable to FMP, and a further sales commission fee of $2,955 payable to FMP-EDGE;

(j) the Investor/Lender Disclosure Statement for Brokered Transactions was prepared and executed by Daramola on behalf of FMP, in which he:

(i) represented that neither FMP nor any mortgage brokerage or agent authorized to deal or trade in mortgages on its behalf did not have a direct or indirect interest in the subject property, including no interest in receiving additional earnings based on the Project's profits, despite the fact that Fortress had an interest in the profits to be generated by the Sutton Project;

(ii) represented that Adi is not related to any broker or agent authorized to deal or trade in mortgages on its behalf, although it was related to Fortress;

(iii) represented that an appraisal had been done for the subject lands dated February 20, 2014 that appraised the "as is" value of the lands at $25.5 million, and was prepared by Kevin Ferguson & Jeff Cheong of Legacy Global Mercantile Partners Ltd.;

(iv) Medland's portion of the Second SML was 1.02% of the total loan, and that there were 190 investors;

(v) Olympia would administer the Second SML for Medland;

(vi) the loan to "as is" value of the Second SML was 83%; and

(vii) an undisclosed percentage of the development fees from the revenue of the Project would be paid to Fortress Developments, and a further undisclosed percentage of the development fees from the revenue of the project would be paid to Adi.

195. Morgan provided Medland with ILA with respect to the Second SML investment into her RIF. The ILA was provided by a telephone call that lasted approximately 15 – 20 minutes, during which Morgan read off a script, from which he did not deviate. The script discussed the particulars of the Second SML, but it did not include a discussion of the actual risks involved in the investment, nor did he identify any of the Core Misrepresentations, the Sutton Misrepresentations or the Misrepresentation of Value. Morgan did not ask any questions about Medland's personal circumstances, her risk tolerances or investment objectives, and he gave no advice to her about whether the Second SML was an appropriate investment in her circumstances.

196. Morgan did not advise Medland that there was no appraisal of the subject lands that complied with CUSPAP, that the Updated Opinion was not an appraisal, or that the Updated Opinion was not based on the current as-is value of the subject lands.

197. Medland was never advised by any of BDMC, FMP or Sorrenti Law that there was no valuation of the Sutton Project that had been prepared in accordance with CUSPAP. She was led to believe that the updated Opinion was an appraisal, and that it correctly provided a current as-is valuation of the subject property at $16 million. These defendants were all negligent in failing to identify to Medland that the Sutton Project was not then worth $16 million.

198. In their reporting letter, the Sorrenti Defendants stated, consistent with their ILA, that there were no bonuses or holdbacks or special terms in respect of the Second SML, and that the only disbursements in respect of the Second SML was a legal fee of $100 per year for the term of this SML, an initial registration fee of $3,000 paid by Adi, and a mortgage broker fee of 3% payable to BDMC also to be paid by Adi. This was false, as Fortress, BDMC and the Fortress Brokers received fees far in excess of 3% of the total advances, and the fees were not paid by Adi, they were paid by the Investors from the principal advanced.

199. Adi did not extend the maturity date of the Second SML. It came due April 4, 2016. Adi did not bother to extend the maturity date of the Second SML because the terms of the charge that Sorrenti registered on title in respect of both SMLs made it unnecessary, as these terms effectively left the Investors powerless to enforce their security, and subordinated to the construction financing.

200. Medland received the April 4, 2016 memo from Galati at BDMC. She relied upon her mortgage broker, BDMC, to accurately report on the terms and status of the SMLs, and therefore believed that she had no recourse but to await the build-out of the Sutton Project.

201. None of the representations in the April 4, 2016 was true. These misrepresentations were made by BMDC to dupe the Investors into believing that they had no right to enforce the SMLs once they were in default. The memo had the intended effect, to the detriment of the Investors.

202. In an undated report from Sorrenti Law as mortgage administrator some time around or after the fall of 2017, Medland and the Investors were advised that the SML (again, there was no specification of which SML was being referenced) had "expired" on April 4, 2016, and that it was subject to "ongoing standstill, subordinate and postponement arrangement between the syndicate mortgage lenders and the priority construction lenders." The letter confirmed that the interest continued to accrue on the loans. It assured Medland that Adi had advised that the revenue earned from the sale of the units in the Sutton Project was expected to be sufficient to repay all the principal and accrued interest to the Investors.

203. The Sorrenti Defendants' report was misleading and contained serious misrepresentations about the true state of the SML investments. Sorrenti did not disclose that the standstill, postponement and subordination agreement in the SML Agreements was inconsistent with the charges he had registered on title, and that the Investors could challenge the enforceability of the charge. The report also failed to disclose that the Investors had the right to, and could take enforcement action based upon the terms of the SML Agreements. The Sorrenti Defendants were negligent in delivering this report to the Investors, and the Investors relied upon the misrepresentations contained in the report to their detriment.

204. Adi's promise that the SMLs would be repaid in full from the proceeds of sale did not come to fruition. The SMLs were not paid out in 2018. The SMLs remain in default.

205. As of August 2021, all the principal remains outstanding on the SMLs ($11.6 million and $7.991 million), and interest is owing of:

a) $5,212,266.55 on the First SML; and

b) $3,270,982.60 on the Second SML.

Interest continues to accrue at 8% per year.

DAVID MARTINO'S INVESTMENT IN THE SML

206. The former Plaintiff, David Martino ("Martino"), was invited to a dinner organized by Fortress to market one of its real estate development syndicated mortgages. The mortgage business interested him, and he ultimately became a licensed mortgage agent and commenced employment with FFM.

207. FFM provided Martino with minimal training with respect to how to properly sell mortgage investments to clients and no training with respect to his obligations under the *MBLAA*. Nor was Martino provided with much background information with respect to the real estate developments he was asked to represent in selling syndicated mortgages. This was common for all FFM agents.

208. The principals of FFM encouraged Martino to obtain as many investors for Fortress syndicated mortgages as possible. From time to time, Martino would raise questions about the details of the syndicated mortgages. At those times, he was told by FFM not to worry about his particular questions, and that the syndicated mortgage investments were solid and fully secure, including with respect to the Sutton Project.

209. In particular, it was never disclosed to Martino by Fortress or FFM that:

a) That the opinions of value provided on Fortress projects were not the same as formal appraisals and did not meet the disclosure requirements under the *MBLAA*, including the Opinions in respect of the Sutton Project;

b) That the current market value of the land underlying the Sutton Project was substantially less than the amount set out in the Opinions;

c) That Fortress retained 35% of amounts raised as advances against anticipated profits;

d) That Investors' interest payments would be made from their own capital invested for two years, and from other Investors' capital thereafter; and

e) That the ILA offered to investors by the Sorrenti Defendants was not proper ILA.

210. Like Medland and the other Class Members, Martino believed that the Fortress projects were safe and secure, based upon the representations made to him by Fortress, FFM and in the ILA that he received from the Sorrenti Defendants, all of which contained the Core Misrepresentations, the Sutton Misrepresentations and the Misrepresentation of Value.

211. In addition to selling his clients investments in Fortress syndicated mortgages, he also invested his own money and money from family members, including in the SML.

212. Martino invested $50,000 from the registered education savings plan account set up for his children at Olympia. The documents related to this investment in the First SML were executed on October 30, 2012.

213. In addition, Martino's clients and family members invested a further $510,000 in the SMLs, much of it registered retirement savings plan money. They, too, relied upon the Core

Misrepresentations, the Sutton Misrepresentations and the Misrepresentation of Value, to their detriment.

214. The investments made by Martino and his family are similar to the investments made by the other Investors.

THE CAUSES OF ACTION

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

(a) Fraudulent misrepresentation/deceit;

(b) Negligent misrepresentation;

(c) Negligence;

(d) Breach of fiduciary duty; and

(e) Breach of Contract.

A. FRAUDULENT MISREPRESENTATION/DECEIT

216. Fortress and BDMC, and the Fortress Brokers made fraudulent misrepresentations to Medland and the Class.

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

218. These defendants knowingly made the Core Misrepresentations, the Sutton Misrepresentations, and Misrepresentation of Value to the Investors as set out herein, upon which they knew the Investors would rely, and which included:

(a) misrepresenting that the SMLs were a safe and secure investment, fully secured on the Sutton lands, and omitting to disclose the material risks associated with the investment;

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

(c) misrepresenting that the current "as is" value of the subject lands was as set out in the Opinions, and intentionally concealing that the Opinions were not prepared in compliance with CUSPAP, and were not current value appraisals and were not, in fact, appraisals;

(d) omitting to tell the Investors that Adi would receive no more than 50% of the funds raised in the SMLs and that Fortress would retain approximately 35% of the funds, including to pay for an unearned profit participation;

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

(f) failing to disclose brokerage commissions amounting to 15% of the funds raised would be paid to various brokers, agents and referring parties, which was substantially higher

than typical commissions in the mortgage industry, and much greater than the brokerage fees disclosed to Medland and the Class;

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

(h) misrepresenting that advances under the SMLs would be based upon the "achievement and completion of certain development and construction milestones" based on reports from the cost consultant retained to work on the Sutton Project, when in fact the funds were immediately disbursed by Sorrenti Law;

(i) misrepresenting that the SMLs would not be subordinated to any other mortgage, other than construction financing totalling no more than $49.5 million;

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

(k) misrepresenting that the SMLs would be repaid when they came due when these defendants knew that construction could not be completed by the date the SMLs came due, and still selling the SMLs to Class members after these facts were known; and,

(l) omitting to disclose that the registered terms of the SMLs would include a standstill agreement purporting to prevent the Investors from acting upon their security in the

event of default or when they came due, unless the construction lenders consented to such action.

219. In making their decision to invest in the SMLs, the Investors each relied on the fraudulent misrepresentations by Fortress, BDMC, and the Fortress Brokers to their detriment. Medland and the Class have suffered the loss of their capital and interest at the rate of 8% interest per year because of these defendants' fraudulent misrepresentations.

B. NEGLIGENT MISREPRESENTATION

220. In making their decision to invest in the SMLs, Medland and the Class each relied to their detriment on the misrepresentations made by Fortress, BDMC, Galati, Spadafora, Perlov, the Fortress Brokers, and the Sorrenti Defendants. They have suffered the loss of their capital and interest at the rate of 8% interest per year, as result thereof.

a. The Mortgage Brokers

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

222. In the alternative to paragraphs 216-219 above, if the representations set out in those paragraphs were not made to the Investors by Fortress, BDMC, Galati, Spadafora, Perlov, and the Fortress Brokers fraudulently, then they were made negligently by all of Fortress, BDMC, Galati, Spadafora, Perlov, and the Fortress Brokers.

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

b. Sorrenti Defendants

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

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

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

227. Sorrenti Law also made negligent misrepresentations to the Investors in its undated report from in or after the fall of 2017, in which it represented that the SMLs were not in default and were properly subject to a standstill and postponement until all units were sold in the Sutton Project.

This was not true, but the Investors relied upon Sorrenti Law's misrepresentations to their detriment by being induced into not taking any action to enforce their SMLs, which were in default.

c. Adi and Adi Guarantor

228. Fortress, BDMC, Galati, Spadafora, Perlov, and the Fortress Brokers acted as the agents for Adi and Adi Guarantor in making the misrepresentations to Medland and the Class about the SML investments in the Sutton Project. Adi and Adi Guarantor are liable for the injuries caused to the Investors as a result of the misrepresentations of their agents.

229. Adi and Adi Guarantor knew, or ought reasonably to have known that these misrepresentations were untrue when they were made by their agents. These defendants knew, or ought reasonably to have known that the Investors would rely upon the misrepresentations in making their decision to invest in the SMLs, and the Investors did so rely, to their detriment.

C. NEGLIGENCE

230. Each of the defendants was in a proximate relationship with Medland and the Class giving rise to a duty of care.

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

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

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

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

234. The particulars of the defendants' negligence is set out above, and includes the following.

a. Negligence of all Defendants

235. The defendants failed to disclose the actual as-is value of the Sutton lands to Medland and the Class at the time that they invested in the SMLs and failed to disclose the true risks involved in the investment.

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

b. As against Fortress, BDMC, Galati, Spadafora, Perlov and FFM

237. These defendants failed to ensure that the SMLs complied with all legal requirements and that proper disclosure of all material risks was made to the Investors.

238. These defendants created and disseminated the promotional materials which were inaccurate, false, deceptive, misleading, and failed to contain material information, and which were

designed to convince the Class Members of the safety and high return of the SML investments, which these defendants knew or ought to have known were untrue, the particulars of which are set out above.

239. These defendants failed to provide Medland and the Class with truthful, clear and transparent information about the material facts, risks and fees payable related to SMLs.

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

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

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

243. Fortress introduced the Sutton Project investment to the Investors when only a licensed mortgage brokerage was entitled to make such introductions and BDMC (and the Fortress Brokers) allowed Fortress to do so.

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

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

246. These defendants withheld the fact that 50% of the development consultant fee would be paid to brokers, BDMC (in its capacity as borrower's broker) and Fortress.

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

248. These defendants failed to ensure Medland and the Class obtained genuine ILA, and instead they arranged ILA for the Investors that was not truly independent, but which was designed to encourage the Investors to invest in the SMLs. These defendants withheld and/or concealed the potential and actual conflicts of interest amongst the entities involved in the SMLs, specifically the relationships between Fortress, BDMC, and the Sorrenti Defendants.

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

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

251. These defendants knew or ought to have known Adi had not disclosed information which adversely affected or would be reasonably be seen as adversely affecting the Sutton Project lands or Adi's ability to perform its obligations as Adi was obligated to do under the provisions of the SML Agreements (Article 6.01(h)).

252. These defendants failed to ensure that the SMLs were not subordinated to any other mortgage other than construction financing, to a maximum of $49.5 million.

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

254. These defendants failed to warn or inaccurately explained that "construction financing" references in the SML documents included all the funds needed to complete the Project, including further "mezzanine" debt.

255. Generally, these defendants failed to provide competent mortgage broker services to the Investors.

c. As against the Sorrenti Defendants

256. The Sorrenti Defendants were in a direct and proximate relationship with Medland and the Class in respect of each of the four separate roles that they held with respect to the Sutton Project.

257. The Sorrenti Defendants owed Medland and the Class a duty of care to act as a reasonably prudent real estate solicitor in providing them with ILA, and registering the charges on title to the subject lands.

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

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

260. The Sorrenti Defendants were negligent in performing their duties in each such role, as particularized above at paragraphs 27 – 31, 44 – 46, 82 – 87, 90 – 96, 102 – 104, 106, 108, 11, 113 – 117, 120, 1221, 128 – 130, 134, 135, 192 – 195, 199 and 200, and also below with respect to breach of fiduciary duties. The breaches of fiduciary duty were also acts of negligence by the Sorrenti Defendants.

D. BREACH OF FIDUCIARY DUTY

261. Medland and the Class were in a fiduciary relationship of trust and confidence with the Sorrenti Defendants, BDMC and the Fortress Brokers. These defendants had the ability to exercise

discretion or power to affect the interests of the Investors, making them vulnerable to these defendants' actions. As such these defendants were required to act honestly, in good faith, and strictly in the best interests of Medland and the Class.

262. The Sorrenti Defendants, BDMC and the Fortress Brokers owed fiduciary duties to Medland and the Class to:

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

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

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

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

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

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

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

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

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

263. The Sorrenti Defendants, BDMC and the Fortress Brokers all breached the fiduciary duties that they each owed to Medland and the Class, as particularized above with respect to the allegations of negligent misrepresentation and negligence. These defendants acted in their own

self-interest, to the detriment of the investors in the SML. They failed to disclose material facts about the SML and omitted to disclose other material facts. Their negligence, negligent misrepresentations and breach of contract were also breaches of their fiduciary duties owed to the Investors.

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

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

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

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

(d) He failed to ensure the SMLs were only subordinated to other mortgages as agreed upon in the SML Agreements;

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

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

(g) Once the SMLs went into default, he failed to take steps to enforce the Investors' security as he was obligated to do under the SML Agreements' terms; and,

(h) Once the SML 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 instead represented to them that they had no recourse.

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

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

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

(b) It introduced the Sutton Project investment to the Investors 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 SMLs complied with all legal requirements and that proper disclosure of all material risks were made to the Investors;

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

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

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

(g) It failed to ensure the Investors obtained genuine ILA, and instead arranged for ILA that was not truly independent as it was prepackaged and paid for by Fortress, and did

not warn the Investors of the risks associated with investment in the SMLs or the true nature of the Sutton Project;

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

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

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

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

268. Fortress, BDMC, the Fortress Brokers and the Sorrenti Defendants breached their fiduciary duties owed to Medland and the Class, resulting in the Investors sustaining the loss of their entire investments.

E. BREACH OF CONTRACT

a. ***Adi and Adi Guarantor***

269. Medland and the Class entered into the SMLs with Adi and Adi Guarantor. Adi defaulted on the SMLs, and thereby breached its contracts with the Investors.

270. For the duration of the SMLs, Adi failed to notify Medland or the Class about any information adversely affecting the Sutton Project and Adi's assets, liabilities, affairs, business, operations or conditions, financial or otherwise, or its ability to perform its obligations under the SML. It did not disclose that it paid funds from the SMLs to Fortress for "anticipated profits", when no profits had been earned by the Project, thereby diverting the funds from their intended use for the Project's development. These failures to disclose were all in breach of Article 6.01(h) of the SML Agreements.

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

272. Adi's misrepresentations and omissions were a breach of contract that prevented the Investors from being able to take timely action to enforce their mortgage security and the Adi Guarantor's guarantee, which enriched these defendants at the expense of the Investors.

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

274. Adi and Adi Guarantor acted in bad faith by granting the Meridian Mortgage in excess of the amount permitted by the SML Agreements, and causing it to be registered in priority to the

SMLs, thereby impairing the Investors' security and right to priority repayment. Adi and Adi Guarantor had a positive duty to the Investors in performing their obligations under the SML Agreements to correct the misrepresentations of the other defendants, and they failed to do so, in breach of their duty of good faith and honest performance of the contract.

275. Accordingly, all principal and all interest accrued before and after default of the SMLs, and all costs incurred by the Investors in enforcing their rights under the SML Agreements is now due and owing to the investors by Adi and Adi Guarantor.

b. BDMC, Galati, the Fortress Brokers, Spadafora and Perlov

276. Medland and the Class signed a Memorandum of Understanding ("MOU") with BDMC and retained BDMC as their mortgage broker, or they signed a MOU with the Fortress Brokers for the same purpose. Where Class Members retained one of the Fortress Brokers, BDMC acted jointly with the Fortress Brokers in fulfilling the role of mortgage broker.

277. In the MOU, the mortgage brokers set out their duties owed to Medland and the Class as including the following:

(a) Suitability of the lender;

(b) Know Your Client (KYC);

(c) Documentation Completion;

(d) Merits of the Project;

(e) Risk Disclosure; and,

(f) Conflict of interest disclosure.

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

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

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

(c) failed to ensure that an investment in the SMLs were an appropriate investment for each of the Investors based upon their investment objectives, sophistication, and risk tolerance;

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

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

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

280. Spadafora and Perlov failed to ensure that FFM and its brokers and agents complied with the *MBLAA*'s provisions. They knew of these obligations but failed to meet them, as well.

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

282. Had BDMC and FFM met their contractual obligations to the Investors, the Investors never would have invested in the SMLs, and would not have suffered any loss.

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

c. The Sorrenti Defendants

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

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

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

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

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

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

290. Sorrenti, as trustee, breached his contract with the Investors.

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

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

293. Sorrenti further breached his contract with the Investors by causing the charges to be registered on title to the Sutton Project that was materially different from the terms of the SML Agreements. He compounded the breach by then registering the postponements of the SMLs to the Meridian Mortgage, even though it was substantially greater than the maximum amount by which the Investors had agreed to postpone their SMLs to construction financing.

294. Sorrenti failed to fulfill his duties as trustee honestly and in good faith.

295. But for Sorrenti's breaches of contract in performing his role as trustee, none of Medland's or the Class' investment funds would have been advanced to Adi and they would have suffered no loss, and the SMLs would not have been subordinated to an excessive amount of construction

financing. Because of Sorrenti's breaches of contract in performing his role as trustee, Medland and the Class lost their capital and interest at the rate of 8% interest per year. Sorrenti is liable for the losses arising from his breaches of contract, including the lost opportunity to invest their funds in an alternative and appropriate investment.

296. Sorrenti Law also breached its contract with Medland and the Class by performing its duties as mortgage administrator negligently, including by failing to properly advise the Investors when Adi failed to meet its contractual obligations and went into default under terms of the SMLs, and by failing to take any steps to enforce the SMLs and the guarantee once the SMLs were in default.

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

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

RELEVANT LEGISLATION

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

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

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

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

(d) *Business Corporations Act*, R.S.O. 1990, c. B-16;

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

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

PLACE OF TRIAL

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

September 28, 2016

MSTW PROFESSIONAL CORPORATION
20 Adelaide Street East, Suite 1301
Toronto, ON M5C 2T6

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
Tina Q. Yang (LSO No.: 60010N)
tina@waddellphillips.ca
Sophia Irish Dales (LSO No.: 69137Q)
sophia@waddellphillips.ca

Tel: 647.261.4486

Lawyers for the Plaintiff

SCHEDULE "A"

LEGAL DESCRIPTION OF PROPERTY

FIRSTLY

PIN NO.:

07184-0023 (LT)

LEGAL DESCRIPTION:

PT LT 4, CON 1 SOUTH OF DUNDAS STREET, AS IN 846141, CITY OF BURLINGTON

MUNICIPAL ADDRESS:

5210 Dundas Street, Burlington, Ontario

SECONDLY

PIN NO.:

07184-0022 (LT)

LEGAL DESCRIPTION:

PT LT 3, CON 1 SOUTH OF DUNDAS STREET, AS IN 831307; BURLINGTON/NELSON TWP

MUNICIPAL ADDRESS:

5218 Dundas Street, Burlington, Ontario

THIRDLY

PIN NO.:

07184-0021 (LT)

LEGAL DESCRIPTION:

PT LT 3, CON 1 SOUTH OF DUNDAS STREET, AS IN 831307; BURLINGTON/NELSON TWP

MUNICIPAL ADDRESS:

5226 Dundas Street, Burlington, Ontario

FOURTHLY

PIN NO.:

07184-2197 (LT)

LEGAL DESCRIPTION:

BLOCK 38, PLAN 20M822, BURLINGTON

MUNICIPAL ADDRESS:

2500 Burloak Drive, Burlington, Ontario

FIFTHLY

PIN NO.:

07184-4598 (LT)

LEGAL DESCRIPTION:

PART OF LOT 3, CONCESSION 1 SOUTH OF DUNDAS STREET AS IN 569766, SAVE & EXCEPT PARTS 1 & 3, PLAN 20R20094; CITY OF BURLINGTON

MUNICIPAL ADDRESS:

5236 Dundas Street, Burlington, Ontario

SANDRA MEDLAND Plaintiff	-and-	FORTRESS REAL CAPITAL INC. et al. Defendants

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

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

SECOND FRESH AS AMENDED STATEMENT OF CLAIM

MSTW PROFESSIONAL CORPORATION
20 Adelaide Street East, Suite 1301
Toronto, ON M5C 2T6

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
Tina Q. Yang (LSO No.: 60010N)
tina@waddellphillips.ca
Sophia Irish Dales (LSO No.: 69137Q)
sophia@waddellphillips.ca

Tel: 647.261.4486

Lawyers for the Plaintiff