

Court File No.

CV-17-568 766

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

(Court Seal)

1842752 ONTARIO INC.

Plaintiff

and



FORTRESS WISMER 3-2011 LTD., FORTRESS BRANT PARK-2011 LTD.,
FORTRESS CALGARY 2011 LTD., VINCE PETROZZA
and PAOLO PETROZZA

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

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 Jan 31/17 Issued by M. Jolly
Local Registrar

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

TO: FORTRESS WISMER 3-2011 LTD.
25 Brodie Drive, Suite #1
Richmond Hill, ON L4B 3K7

AND TO: FORTRESS BRANT PARK-2011 LTD.
25 Brodie Drive, Suite #1
Richmond Hill, ON L4B 3K7

AND TO: FORTRESS CALGARY 2011 LTD.
25 Brodie Drive, Suite #1
Richmond Hill, ON L4B 3K7

AND TO: VINCE PETROZZA
471 Sunset Beach Road
Richmond Hill, ON L4E 3J3

AND TO: PAOLO PETROZZA
211 Greenbrooke Drive
Woodbridge, ON L4L 8L1

CLAIM

1. The Plaintiff claims:

- (a) Damages in the amount of \$100,000.00 from the Defendant Fortress Wismer 3-2011 Ltd.;
- (b) Damages in the amount of \$100,000.00 from the Defendant Fortress Brant Park-2011 Ltd.;
- (c) Damages in the amount of \$100,000.00 from the Defendant Fortress Calgary 2011 Ltd.;
- (d) Damages in the amount of \$300,000 from the Defendants Vince Petrozza and Paolo Petrozza;
- (e) Interest on the said sums from the date of default in payment of interest to the present at the amount of 8% per annum, compounded monthly;
- (f) In the alternative, interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) its costs on a solicitor and client basis, or alternatively, substantial indemnity costs plus HST; and
- (h) such further and other relief as to this Honourable Court may deem just.

2. The Plaintiff (“**1842752**”) is a company incorporated pursuant to the laws of Ontario and is located in Barrie, Ontario. The principal of 1842752 is Walter E. Huff (“**Huff**”), a resident of Barrie, Ontario.

3. The Defendant, Fortress Wismer 3-2011 Ltd. (“**Fortress Wismer**”) is a company incorporated pursuant to the laws of Ontario and is located in Richmond Hill, Ontario.

4. The Defendant, Fortress Brant Park-2011 Ltd. (“**Fortress Brant Park**”) is a company incorporated pursuant to the laws of Ontario and is located in Richmond Hill, Ontario.

5. The Defendant, Fortress Calgary 2011 Ltd. (“**Fortress Calgary**”) is a company incorporated pursuant to the laws of Ontario and is located in Richmond Hill, Ontario.

6. The Defendant, Vince Petrozza (“**Vince**”) is an officer and director of Fortress Wismer, Fortress Brant Park and Fortress Calgary.

7. The Defendant, Paolo Petrozza (“**Paolo**”) is an officer and director of Fortress Wismer, Fortress Brant Park and Fortress Calgary.

1842572 Invests with Fortress

8. In or around the early months of 2015, a friend of Huff’s, Eric Maizis, who is also a real estate agent, told Huff that he could earn a good rate of return on invested funds through a friend of Maizis’ in Barrie, Liam Doherty (“**Doherty**”).

9. In April 2015 Huff contacted Doherty who was a sales agent with an investment firm in Barrie, Steveloc Management Inc. (“**Steveloc**”). Upon learning that Huff had funds to invest, Doherty encouraged Huff to attend a meeting with Doherty being held by one of two related

Toronto real estate investment firms, Fortress Real Capital Inc. or Fortress Real Developments Inc. (collectively "**Fortress**"), at a meeting facility in the Toronto area near Highway 27 and Eglinton.

10. Huff agreed to attend the meeting with his father, Walter Huff Sr. Many people attended the meeting. A presentation was made which "pitched" the virtues of investing money with Fortress in the real estate market. Attendees were told that money invested in Fortress real estate projects were safe, secure and low risk investments paying monthly interest at an 8% annual rate. The spokespeople for Fortress at the meeting were Vince and Frank Margani.

11. At the meeting Huff was provided with a Fortress brochure marketing several different development projects and put under immense pressure to invest. Huff had no experience investing in investments of this nature.

12. Although Huff was attracted to the investments because of the high rate of interest they paid and their safety and security, he had no idea how to evaluate the investment and which of the available Fortress investments he should consider. Accordingly, Huff took advice from the representatives of Fortress and from Doherty. Huff relied upon this advice, both written and oral, in deciding to make the investments herein.

13. At no time up to this point or after, was Huff or 1842752 asked to complete and provide to Steveloc, a "Know Your Client Form" so that the Defendants could evaluate Huff and 1842752's risk profile to ensure an investment in a Fortress project was appropriate.

14. Huff committed to investing \$300,000.00 at the sales meeting. The Defendants selected the three Fortress projects in which Huff (and 1842752) would invest money.

The Three Fortress Projects

15. One of the Fortress projects recommended to Huff was a development at 9560 Markham Road in Markham, Ontario in Wismer Commons, a residential area of Markham (the “**Wismer Project**”). A private placement of debt was being offered to investors by Fortress Wismer.

16. Another of the Fortress projects recommended to Huff was a development at 426-436 Adelaide Street West in Toronto, Ontario (the “**Brant Park Project**”). A private placement of debt was being offered to investors by Fortress Brant Park.

17. The third Fortress project recommended to Huff was a development at 633-10th Avenue SW in Calgary, Alberta (the “**Calgary Project**”). A private placement of debt was being offered to investors by Fortress Calgary.

18. The Defendants did not advise Huff that the syndicated mortgages that were on title to the lands underlying each of the above projects were either in default or would soon be in default because of the non-payment of interest to investors.

The Subscription and Loan Agreements

19. Huff was provided with a Subscription Agreement for each of the three private placements of debt. Each had virtually identical terms (except for the maturity date of the different issues of debt discussed below). At no time were the documents explained to him. The Defendants knew or ought to have known that Huff would have difficulty understanding the legal aspects of the documents. Huff was not advised to obtain independent legal advice before executing the documents.

20. The Subscription Agreements contained four schedules as follows:

- a) Schedule “A” is entitled “A Certificate of an Accredited Investor” and contains the various exemptions to securities laws that would allow the Defendants to sell the debt to Huff and 1842752 in compliance with the securities laws in Canada. The form was completed for Huff to indicate Huff and/or 1842752 had net assets in excess of \$1 million and annual net income in excess of \$200,000. No one ever asked any questions of Huff to determine whether these exemption criteria were met. In fact, neither Huff nor 1842752 met either of these criteria which the Defendants knew or ought to have known.
- b) Schedule “B” contained the Term Sheet for the private placement of debt.
- c) Schedule “C” contained the Loan Agreement 1842752 would execute in order to “invest” in each Fortress project.
- d) Schedule “D” purported to provide pro forma financial statements for each Fortress company. None were attached nor were any ever given to Huff.

21. Huff was told he was investing in the real estate projects themselves and that each Fortress company owned the lands underlying the real estate project. The Subscription Agreements defined the term Property in each Subscription Agreement as:

- a) With respect to the Wismer Project as “Fortress Wismer 3 2011 Ltd., being the lands and improvements located at 9560 Markham Road, Markham, Ontario”.

- b) With respect to the Brant Park Project as “Fortress Brant Park 2011 Ltd., being the lands and improvements located at 434-436 Adelaide St. W., 428 Adelaide St. W., 430 Adelaide St. W., 432 Adelaide St. W., Toronto, Ontario”.
- c) With respect to the Fortress Calgary Project as “Fortress Calgary 2011 Ltd., being the lands and improvements located at 633-10th Avenue SW Calgary Alberta”.

22. In fact, this was not true. Fortress Wismer has never owned the Wismer Project lands. Fortress Brant Park has never owned the Brant Park Project lands. Fortress Calgary has never owned the Calgary Project lands. 1842752’s investments were unsecured loans to Fortress companies with no assets.

23. Huff was asked to sign three Loan Agreements similar to that set out in Schedule “C” of the Subscription Agreements (the “**Agreements**”) committing to the investment on behalf of 1842752. The Agreements are essentially promissory notes evidencing a loan to each Fortress company in the amount of \$100,000.00 paying interest monthly at an annual rate of 8% per annum. The maturity date of each of the Agreements was as follows:

- a) The Fortress Wismer Agreement was due on November 1, 2015 but could be extended by Fortress Wismer for 12 months to November 1, 2016.
- b) The Fortress Brant Park Agreement was due on May 30, 2016 but could be extended by Fortress Brant Park for 12 months to May 30, 2017.
- c) The Fortress Calgary Agreement was due on April 27, 2017 but could be extended by Fortress Calgary for 90 days to July 27, 2017.

24. Huff signed each Agreement on behalf of 1842752 on April 27, 2015 and provided \$300,000 to Fortress (\$100,000 to each of Fortress Wismer, Fortress Brant Park and Fortress Calgary). Vince executed the Agreements on behalf of each Fortress company.

25. The Agreements state that “the use of the proceeds of the Loan will be limited to the purchase, development and marketing costs of”:

- a) In the case of the Wismer Project, “the Fortress Wismer 3 2011 Ltd., being the lands and improvements located at 9560 Markham Road, Markham, Ontario (the “Property”) including interest payments on the loan until such time as the project generates revenues”.
- b) In the case of the Brant Park Project, “the Fortress Brant Park 2011 Ltd., being the lands and improvements located at 434-436 Adelaide St. W., 428 Adelaide St. W., 430 Adelaide St. W., 432 Adelaide St. W., Toronto, Ontario (the “Property”) including interest payments on the loan until such time as the project generates revenues”.
- c) In the case of the Calgary Project, “the Fortress Calgary 2011 Ltd., being the lands and improvements located at 633-10th Avenue SW Calgary Alberta (the “Property”) including interest payments on the loan until such time as the project generates revenues”.

26. As stated above, these representations were not true as none of the Fortress companies owned the land underlying the Fortress projects.

Default Occurs

27. Interest was paid monthly on each of the loans through to November 15, 2015.

28. The Agreement with respect to the Wismer Project stipulated that upon providing notice, Fortress Wismer could extend the term of the Agreement for one year to November 1, 2016. In early December 2015, Fortress Wismer purported to exercise its option to extend the loan for one year to November 1, 2016. This extension was accepted in writing by 1842752 on December 9, 2015.

29. Although not required to do so under the provisions of the Fortress Calgary Agreement which expired on April 27, 2017, in early December 2015, Fortress Calgary purported to exercise its option to extend the loan from December 27, 2015 for 16 months to April 27, 2017. This extension was accepted in writing by 1842752 on December 10, 2015.

30. In exercising these options, Fortress Wismer and Fortress Calgary did not disclose to 1842752 that neither company would be paying the interest due less than one week later on December 15, 2015 nor that interest would not, in fact, be paid at any time thereafter.

31. In extending the Agreements, the Defendants represented that Fortress Wismer and Fortress Calgary had sufficient funds to make the interest payment due one week later and all interest payments due during the extension period as well as the repayment of principal when the loans came due.

32. 1842752 pleads the Defendants knew or ought to have known such representation was false and knew that there were inadequate funds to pay the interest due one week later let alone funds to pay interest in subsequent months and repay the principal when the loans came due. The Defendants knowingly misled 1842752.

The Three Fortress Agreements are in Default Entitling 1842752 to Immediate Repayment

33. No interest has been paid under the Fortress Wismer Agreement and the Fortress Calgary Agreement since November 15, 2015 and under the Fortress Brant Park Agreement since either November 15 or December 15, 2015. Under the provisions of the Agreements, this constitutes an act of default and 1842752 is entitled to immediate repayment of all principal and interest due from each company.

34. By “Memos” dated December 31, 2015, each Fortress company communicated with investors in the different projects to advise the projects would now enter a period of “interest accrual” and no interest would be paid for the remainder of their terms.

35. In fact, the Agreements do not provide for a right of interest accrual. In any event, the maturity dates of the Fortress Wismer and Fortress Brant Park Agreements of November 1, 2016 and May 27, 2016 respectively have passed and no principal or outstanding interest has been paid to 1842752.

36. 1842752 claims the immediate repayment of its principal of \$300,000 and all interest due from November 15, 2015, compounded monthly at 8% interest per annum.

Fortress Breached Securities Laws

37. Further, 1842752 pleads each of the Agreements constituted the sale of a “security” as defined by the Ontario *Securities Act* (the “Act”) and at no time was either Huff or 1842752 qualified to purchase securities of this nature pursuant to the exemptions provided under the Act.

38. Further, at no time was Huff or 1842752 provided with an Offering Memorandum that is required to be provided to exempt purchasers of securities under the Act.

39. The sale of securities in contravention of the provisions of the Act is a void sale. 1842752 is entitled to the return of its money plus interest.

40. 1842752 further states that the Subscription Agreements failed to disclose that the Fortress companies were not entitled to enter into the Agreements with 1842752 because of an Order imposed by the Ontario Securities Commission on Vince that provided “for a period of 15 years from 2011, Petrozza shall be prohibited from becoming or acting as a Director or Officer of any issuer that ‘distributes securities under a prospectus or prospectus exemption under the *Securities Act*’”.

41. As a result of Vince’s failure to honour the terms of his prohibition, the Agreements are void entitling 1842752 to the return of its money plus interest.

42. Further, Vince and Paulo are liable individually to 1842752 under the provisions of the Act.

Misrepresentation

43. 1842752 pleads the Defendants owed it a duty of care. They made several actionable misrepresentations to Huff and 1842752 that have caused 1842752 damages. The misrepresentations are:

- a) They represented the investments as safe and secure when they were unsecured loans to companies with no tangible assets.

- b) They failed to advise Huff and 1842752 that the syndicated mortgages that were on title to the lands underlying each of the Fortress projects were either in default or would soon be in default because of the non-payment of interest to investors.
- c) They failed to ensure Huff and 1842752 completed a “Know Your Client” form and to ensure the investments were suitable for their investment needs.
- d) They sold the investments to Huff and 1842752 when they knew or ought to have known Huff did not understand their financial and legal terms.
- e) They failed to ensure Huff and 1842752 obtained independent legal advice.
- f) They failed to provide Huff and 1842752 with financial statements for each Fortress company contrary to the representation that financial statements were included in Schedule “D” to the Subscription Agreements.
- g) They failed to disclose how the funds raised by each Fortress company would be spent.
- h) They misrepresented that each Fortress company would be the owner of lands underlying the real estate project.
- i) They misrepresented that Fortress Wismer and Fortress Calgary could pay interest and principal when said amounts were due when they extended the two Agreements in December 2015.
- j) They misrepresented that the three Agreements entitled the Fortress companies to stop paying interest as part of an “interest accrual”.

- k) They improperly completed the Certificate of an Accredited Investor for Huff and 1842752 to set out that Huff and 1842752 were exempt investors under the Act.
- l) They failed to provide 1842752 with an Offering Memorandum.
- m) They failed to disclose that Vince was prohibited from dealing in securities and, accordingly, the Fortress companies were not entitled to enter into the Agreements.
- n) They took out fees and charges from the Fortress companies without proper disclosure in the Subscription Agreements.

44. Huff and 1842752 relied upon these misrepresentations in deciding to enter into the Agreements.

45. Huff and 1842752 plead they are entitled to rescission of the Agreements and repayment of their principal plus interest at an annual rate of 8%, compounded monthly.

Oppression

46. The Fortress Defendants are also liable to 1842752 for oppressive conduct under the provisions of section 248 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B-16. Vince and Paulo are liable for said conduct as directors and officers of the Fortress companies.

47. Particulars of the oppression are the misrepresentations made to Huff and 1842752 set out in this Statement of Claim.

Place of Trial

48. The Plaintiff proposes that this action be tried at Toronto.

January 31, 2017

LEVINE SHERKIN BOUSSIDAN

Barristers

23 Lesmill Road, Suite 300

Toronto ON M3B 3P6

KEVIN D. SHERKIN LSUC# 27099B

MITCHELL WINE LSUC# 23941V

Tel: 416-224-2400

Fax: 416-224-2408

Email Kevin@lsblaw.com/Mitch@lsblaw.com

Lawyers for the Plaintiff

1842752 ONTARIO INC.

Plaintiff

-and-

FORTRESS WISMER 3-2011 LTD. et al

Defendants

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STATEMENT OF CLAIM

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

KEVIN D. SHERKIN LSUC# 27099B
MITCHELL WINE LSUC# 23941V

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

Lawyers for the Plaintiff