



**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

BETWEEN:

ARLENE MCDOWELL and BRYAN MADRYGA

Plaintiffs

- and -

FORTRESS REAL CAPITAL INC., FORTRESS REAL DEVELOPMENTS INC., JAWAD RATHORE, VINCENZO PETROZZA, LAMB CALGARY INC., ORCHARD CALGARY INC., BUILDING & DEVELOPMENT MORTGAGES CANADA INC., ILDINA GALATI, FFM CAPITAL INC., ROSALIA SPADAFORA, KRISH KOCHHAR, TONY MAZZOLI, SAUL PERLOV, FMP MORTGAGE INVESTMENTS INC., MICHAEL DARAMOLA, TONINO AMENDOLA, GRAHAM MCWATERS, DEREK SORRENTI, GRANT MORGAN, SORRENTI LAW PROFESSIONAL CORPORATION, OLYMPIA TRUST COMPANY

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff' lawyer or, where the Plaintiff do not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

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

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

REQUEST TO REDEEM

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

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

REQUEST FOR SALE

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

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

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

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

Date 24 FEBRUARY 2017

Issued by

Address of
court office:

393 University Avenue, 10th Floor
Toronto, Ontario
M5G 1E6

Helena Tsakiris

Local Registrar

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: JAWAD RATHORE
25 Brodie Drive, Unit 8
Richmond Hill, ON L4B 3K7

AND TO: VINCENZO PETROZZA
25 Brodie Drive, Unit 8
Richmond Hill, ON L4B 3K7

AND TO: LAMB CALGARY INC.
3000, 700-9th Avenue S.W.
Calgary, AB T2P 3V4

AND TO: ORCHARD CALGARY INC.
25 Brodie Drive, Unit 8
Richmond Hill, ON L4B 3K7

AND TO: BUILDING & DEVELOPMENT MORTGAGES CANADA INC.
25 Brodie Drive, Unit 8
Richmond Hill, ON L4B 3K7

AND TO: ILDINA GALATI
25 Brodie Drive, Unit 8
Richmond Hill, ON L4B 3K7

AND TO: 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: KRISH KOCHHAR
4-81 Zenway Blvd.
Woodbridge, ON L4H 0S5

AND TO: TONY MAZZOLI
4-81 Zenway Blvd.
Woodbridge, ON L4H 0S5

**AND TO: SAUL PERLOV
4-81 Zenway Blvd.
Woodbridge, ON L4H 0S5**

**AND TO: FMP MORTGAGE INVESTMENTS INC.
930 The East Mall
Toronto, ON M9B 6J9**

**AND TO: MICHAEL DARAMOLA
c/o FMP Mortgage Investments Inc.
930 The East Mall
Toronto, ON M9B 6J9**

**AND TO: TONINO AMENDOLA
c/o FMP Mortgage Investments Inc.
930 The East Mall
Toronto, ON M9B 6J9**

**AND TO: GRAHAM MCWATERS
c/o FMP Mortgage Investments Inc.
930 The East Mall
Toronto, ON M9B 6J9**

**AND TO: DEREK SORRENTI
Sorrenti Law Professional Corporation
310-3300 Highway 7
Vaughan, ON L4K 4M3**

**AND TO: GRANT MORGAN
c/o SORRENTI LAW PROFESSIONAL CORPORATION
310-3300 Highway 7
Vaughan, ON L4K 4M3**

**AND TO: SORRENTI LAW PROFESSIONAL CORPORATION
310-3300 Highway 7
Vaughan, ON L4K 4M3**

**AND TO: OLYMPIA TRUST COMPANY
125-9th Avenue SE, Suite 2200
Calgary, AB T2G 0P6**

CLAIM

1. The Plaintiffs claim on their own behalf and on behalf of all members of the Class (as further defined herein):
 - a) An Order certifying this proceeding as a class proceeding and appointing the Plaintiffs as representative Plaintiffs for the members of the Class (as further defined herein) and any appropriate subclass thereof;
 - b) Rescission of all agreements between the Plaintiffs and the Defendants with respect to the Plaintiffs' investment in a syndicated mortgage registered against the lands underlying the Orchard development at 602, 606, 610, 620, 624, 626 and 628 12th Avenue S.E., in Calgary, Alberta (the "**Project**");
 - c) Rescission of all agreements between the Plaintiffs and the Defendants with respect to investments in the Bonds (as further described herein);
 - d) A Declaration that the Defendant Fortress Real Development Inc. ("**Fortress Developments**") holds its interest in an agreement dated on or around January 23, 2014 with the Defendant Lamb Calgary Inc. ("**Lamb Calgary**") in trust for the Plaintiffs;
 - e) A Declaration that the Defendants, Building & Development Mortgages Canada Inc. ("**BDMC**") and Olympia Trust Company ("**Olympia**") henceforth do not act in the capacity as trustees on behalf of the Plaintiffs with respect to the Project;
 - f) Appointment of a trustee or trustees to act on behalf of the Plaintiffs with respect to their investment in the Project;
 - g) An interim Order that all amounts paid to or held by Fortress Developments or the Defendant Fortress Real Capital Inc. ("**Fortress Capital**") or any of the Defendants

as advances against anticipated profits, development consultant fees/costs and commissions be immediately paid into Court pursuant to the provisions of Rule 45 of the *Rules of Civil Procedure*;

- h) An accounting of all funds received by the Defendants from the Plaintiffs;
- i) Disgorgement of all profits earned by the Defendants with respect to the Project;
- j) An equitable tracing of all funds received by the Defendants from the Plaintiffs;
- k) General damages in the amount of \$35,000,000;
- l) Exemplary, punitive and aggravated damages in the amount of \$3,500,000;
- m) Pre and post-judgment interest at the rate of 8% per annum, compounded quarterly, pursuant to the terms of the Syndicated Mortgage (as defined below);
- n) In the alternative to subparagraph (m) above, pre- and post-judgment interest in accordance with the *Court of Justice Act*, R.S.O. 1990, c. C-43 and the amendments thereto;
- o) Costs of this action on a substantial indemnity basis together with the Harmonized Sales Tax thereon; and
- p) Such further and other relief as the nature of this case may require and to this Honourable Court may seem just.

Nature of the Action

2. The class action against the Defendants concerns an investment made by the Plaintiffs and other members of the proposed class, all of whom are residents of Ontario, in a syndicated mortgage (the "**Syndicated Mortgage**") registered against the lands underlying the Project (as fully described in Schedule "A" herein) and an offering of 8%

participating bonds (the “**Bonds**”), both marketed and sold by the Defendants Fortress Capital, Fortress Developments (the two Fortress Defendants are collectively referred to as “**Fortress**”), the Defendant Orchard Calgary Inc. (“**Orchard Calgary**”), BDMC, the Defendant FFM Capital Inc. (“**FFM**”), the Defendant FMP Mortgage Investments Inc. (“**FMP**”) and other mortgage brokerage firms.

The Parties

3. The Plaintiff, Arlene McDowell (“**McDowell**”), resides in the City of Toronto in the Province of Ontario.
4. The Plaintiff Bryan Madryga (“**Madryga**”) resides in the City of Markham in the Province of Ontario.
5. Fortress Capital is a company incorporated under the laws of Canada with an office in the Town of Richmond Hill and is in the business of real estate development.
6. Fortress Developments is a company incorporated under the laws of the Province of Ontario with an office in the Town of Richmond Hill and is in the business of real estate development.
7. The Defendant Jawad Rathore (“**Rathore**”) is a resident of the City of Markham and is a director and officer of Fortress Developments. The marketing documents of Fortress Developments list Rathore as its President and CEO. Rathore has an indirect financial interest in Lamb Calgary and Orchard Calgary.
8. The Defendant Vincenzo Petrozza (“**Petrozza**”) is a resident of the Town of Richmond Hill and is an officer of Fortress Developments and a director of Fortress Capital. The marketing documents of Fortress Developments list Petrozza as its Vice President and

COO. Petrozza is licensed as a mortgage broker or agent with BDMC. Petrozza has an indirect financial interest in Lamb Calgary and Orchard Calgary.

9. Lamb Calgary is a company incorporated under the laws of the Province of Alberta on January 20, 2014 for the purpose of developing the Project. Lamb Calgary is 50% owned by Fortress Orchard 2014 Inc., a company incorporated in Ontario and controlled by Rathore and Petrozza.
10. Orchard Calgary is a company incorporated under the laws of the Province of Alberta on March 12, 2014 with its head office in the City of Calgary. Lamb Calgary is 20% owned by Fortress Orchard 2014 Inc., a company incorporated in Ontario and controlled by Rathore and Petrozza. Orchard Calgary is the company that issued the Bonds.
11. BDMC is a company incorporated under the laws of the Province of Ontario with an office in the Town of Richmond Hill. It is a related company to Fortress. One or more of the principals of BDMC has an interest, directly or beneficially, in Lamb Calgary. BDMC is a mortgage brokerage licensed under and governed by the provisions of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 (the “Act”). BDMC also carries on business under the trade name Centro Mortgage Inc.
12. The Defendant, Ildina Galati (“**Galati**”), is a resident of the City of Vaughan and is the principal broker and a director of BDMC.
13. FFM is a company incorporated under the laws of the Province of Ontario with an office in the City of Vaughan. FFM is a mortgage brokerage licensed by and governed by the provisions of the Act. FFM also carries on business under the trade name Fortress Financial Management.
14. The Defendant, Rosalia Spadafora (“**Spadafora**”), carries on business in the City of Vaughan and is the principal broker of FFM.

15. The Defendant, Krish Kochhar ("**Kochhar**"), is a resident of the Town of Oakville and is a director of FFM.
16. The Defendant, Tony Mazzoli ("**Mazzoli**"), is a resident of the City of Vaughan and is a director of FFM.
17. The Defendant, Saul Perlov ("**Perlov**"), is a resident of the City of Toronto and is a director of FFM.
18. FMP is a company incorporated under the laws of the Province of Ontario with an office in the City of Toronto. FMP is a mortgage brokerage licensed under and governed by the provisions of the Act. FMP also carries on business under the name Fortress Mortgage Professionals.
19. The Defendant, Michael Daramola ("**Daramola**"), carries on business in the City of Toronto and is the principal broker of FMP.
20. The Defendant, Tonino Anendola ("**Anendola**"), carries on business in the City of Toronto and is a director and officer of FMP.
21. The Defendant, Graham McWaters ("**McWaters**"), is a resident of the Town of Richmond Hill and is a registered mortgage agent in the Province of Ontario in the employ of or independently contracted by FMP.
22. The Defendant, Derek Sorrenti ("**Sorrenti**"), is a lawyer licensed to practice law in the Province of Ontario with an office in the City of Vaughan.
23. The Defendant, Grant Morgan ("**Morgan**"), is a lawyer licensed to practice law in the Province of Ontario. At the relevant times he was a lawyer employed by Sorrenti's legal practice.

24. The Defendant, Sorrenti Law Professional Corporation (“**Sorrenti Law**”), is a professional corporation incorporated under the laws of the Province of Ontario with an office in the City of Vaughan. Sorrenti Law operates Sorrenti’s practice of law.

25. Olympia is a trust company incorporated under the laws of the Province of Alberta with its head office in the City of Calgary.

Statutory Overview

26. The Act and its Regulations impose high standards of practice for mortgage brokerages, principal brokers, brokers, agents, mortgage administrators and brokerage officers and directors which includes the following:

- a) Not to give or assist in giving any false or deceptive information or document when carrying on business;
- b) Not to act with respect to a mortgage if there is reason to doubt the mortgage is lawful;
- c) Not to act or omit to do anything that results in the facilitation of dishonesty, fraud, crime or illegal conduct;
- d) To take reasonable steps to ensure that mortgages sold to investors are suitable for investors having regard to their circumstances;
- e) To disclose in writing the material risks of each mortgage to investors;
- f) To disclose in writing to investors the nature of the relationships between the mortgage brokerage facilitating the mortgage and each party to the mortgage;
- g) To disclose in writing to an investor any conflicts of interest; and

h) To establish and implement policies and procedures that are reasonably designed to ensure the brokerage and its brokers/agents comply with all legal requirements and that all brokers/agents are adequately supervised.

27. In Ontario, syndicated mortgages and the mortgage brokerage industry are regulated by the Financial Services Commission of Ontario (“FSCO”). FSCO is a regulatory commission established by the Province of Ontario under the provisions of the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 with a legislative mandate to regulate the mortgage brokerage industry in Ontario to protect the public interest and enhance public confidence in the industry.

28. The sale of the Bonds is regulated by securities commissions across Canada pursuant to provincial securities legislation. In Ontario, the Bonds are regulated by the Ontario Securities Commission (the “OSC”) under the provisions of the Ontario *Securities Act*, R.S.O. 1990, c. S-5 (the “**Securities Act**”).

Background of Fortress and Its Principals

29. Rathore and Petrozza founded Fortress in 2008. Prior to that time these Defendants had been active in the securities markets in Ontario.

30. Fortress enters into development agreements with developers/builders whereby it provides real estate financing for the developments. In return, Fortress receives a profit participation of 50% in the development project.

31. Fortress provides the capital to the developers/builders. The developers/builders are, in turn, responsible for all aspects of developing and building the individual projects.

32. To finance the projects, Fortress raises capital through syndicated mortgages, predominantly from small and unsophisticated investors. These mortgages are registered against the land underlying the planned real estate developments.
33. Fortress' agreements with developers/builders call for payments to Fortress of "advanced profits" or significant "development consultant fees/costs" at the time financing is raised. This results in a substantial portion of an investor's money (approximately 35%) being retained by Fortress. The funds retained by Fortress are also used to pay broker and agent commissions and for independent legal advice allegedly provided to investors. This fact is not disclosed to investors in the syndicated mortgages.
34. Additional funds are retained to pay investors their "interest" over the term of the loan. This means investors are paying themselves "interest" from their own capital they invested. This fact is not disclosed to investors in the syndicated mortgages.
35. The result is the developer receives an amount approximately less than 50% of the funds raised from investors for use in the development of the project itself.
36. As part of its marketing of investments, Fortress provides prospective investors with an inflated current value for the real estate investment by way of "appraisals" or "letters of opinion". Appraisals, if provided, do not meet the professional standards set by the Appraisal Institute of Canada.
37. Whether an appraisal or letter of opinion is prepared, both purport to provide a "current" or "as is" value for the underlying property based on a hypothetical future value dependent on certain milestones or future events that have not occurred. These do not conform with the requirements of the Act or FSCO. In the case of appraisals, these are also not prepared in accordance with standards of the Appraisal Institute of Canada.

38. The investments are formally sold to investors by BDMC although investors often never meet with BDMC or any of its brokers or agents prior to making their investment decision. BDMC is sometimes also the mortgage administrator for the investments.
39. Fortress has developed a network of mortgage brokers and agents to sell its mortgage investments. Fortress has an agreement with three mortgage brokerage firms, FFM, FMP and FDS Broker Services Inc., to market the mortgage investments widely to other mortgage brokers and agents who, in turn, solicit interest from members of the public in the Fortress investments.
40. None of the significant risks that apply to the investments (as defined as the Undisclosed Risks set out below in this Statement of Claim) are disclosed to potential investors.
41. Upon a successful sale, the various mortgage brokers and agents (including referring brokers, agents and others) share a commission of 15%. This is significantly higher than traditional commissions paid in the mortgage industry.
42. The Fortress syndicated mortgages are formally held by a trustee such as BDMC and Olympia on behalf of the individual investors.
43. Neither Fortress company is licensed under the Act. Accordingly, both companies are prohibited by the Act from dealing or trading in mortgages and mortgage lending.
44. Contrary to the provisions of the Act, Fortress enters into loan agreements with developers with respect to the development of real estate and often deals directly with members of the public to sell its mortgage investments.
45. Investors in the syndicated mortgages sign documentation acknowledging they have received independent legal advice with respect to their execution of the investment documents. Investors are advised that Fortress (or the borrower) can provide a lawyer to

give “free” independent legal advice. If the investor wishes to use their own lawyer, investors are told they are responsible for the lawyer’s fees.

46. Most if not all investors accept this offer of “free” independent legal advice so as to save the cost of paying for the independent legal advice themselves. In this case, the “independent legal advice” is provided by Sorrenti and others employed by Sorrenti Law who are paid by Fortress (and the borrower) for this service.
47. The investor usually does not meet with the lawyer providing independent legal advice. The advice is usually provided on the telephone with the mortgage broker or agent who was involved in obtaining the investment present for the call.
48. This “independent legal advice” is neither independent nor is it proper legal advice. None of the significant risks associated with the syndicated mortgage is discussed with the investor. The advice is not provided in accordance with the Rules of Professional Conduct as established by the Law Society of Upper Canada.

Purchase of the Project Lands

49. The Project is a two phase development project in Calgary, Alberta on an approximately 61,000 square foot site encompassing two high-rise condominium towers with residential units and commercial/retail space.
50. Lamb Calgary took title to the Project lands on or about May 9, 2014 pursuant to purchase agreements entered into in October 2013. Purchase price was \$8.3 million. Lamb Calgary provided no equity for the purchase. After closing, the two mortgages on title to the Project lands were:
 - a) A first mortgage in the amount of \$4,300,000 in favour of Harbour Mortgage Corp., registered in June 2014 (the “**First Mortgage**”); and

b) The Syndicated Mortgage in the amount of \$12,300,000.

51. The zoning for the Project lands was CC-X Centre City Mixed Use District Under Calgary Land Use By-Law IP2007. This zoning required amendment if the Project was to be constructed as marketed. This was not disclosed to investors considering an investment in the Syndicated Mortgage.

Lamb Calgary's Agreements with Fortress and BDMC

52. On or around January 23, 2014, Lamb Calgary agreed to borrow the amount of \$32,700,000 (the "**Development Loan**") from Fortress Developments (the "**Development Agreement**").

53. Key provisions of the Development Agreement were:

- a) The Development Loan was divided into a secured portion and an unsecured portion. The secured portion was to be secured by a mortgage registered against the Project property (the Syndicated Mortgage);
- b) Fortress Developments assigned its interest in the secured portion of the Development Loan to BDMC. (A separate loan agreement between BDMC and Lamb Calgary was executed on January 23, 2014 and is discussed below);
- c) Fortress was entitled to 50% of the profit of the Project as its consideration for entering into the Development Agreement (less certain adjusting amounts);
- d) The term of the Development Loan was four years from the date of the advance of the loan with an option for Lamb Calgary to extend the term for up to three more years under certain conditions. The relevant dates, once crystallized, were April 16, 2018 and April 16, 2021 respectively;

- e) The Development Agreement allowed Fortress to retain 35% of all amounts raised from investors as an advance against anticipated profits or development consultant fees/costs, and for commissions and legal fees; and
- f) In addition to the 35% of investors' money withheld by Fortress, a further amount from the funds raised from investors was to be set aside to pay investors their 8% interest per year. In other words, investors were to be paid "interest" from the capital they invested in the project.

54. The result of the Development Agreement was that Lamb Calgary would only be able to utilize less than 50% of the amounts raised from investors in the actual development of the Project.

55. By agreement dated January 23, 2014, Lamb Calgary entered into an agreement with Centro in Trust (now BDMC) (the "**Trust Loan Agreement**") with respect to the secured portion of the Development Loan. Key terms of the agreement were:

- a) The amount of the loan was to be \$32,700,000;
- b) The Development Loan was to provide for the payment of the purchase price for the Project lands, reasonable closing costs, reasonable hard or soft costs prior to obtaining construction financing and for amounts required to make up for shortfalls in equity required by a subsequent construction lender;
- c) The term of the Trust Loan Agreement was four years with an option for Lamb Calgary to extend the term under certain conditions for three more years. These dates, once crystallized, were April 16, 2018 and April 16, 2021 respectively;
- d) Interest rate was 8% per annum, payable quarterly in arrears. In the event Lamb Calgary extended the Trust Loan Agreement beyond its initial term and was not in

- default, interest thereafter would not be paid and would be capitalized until the principal of the Development Loan was repaid when due;
- e) The lenders could earn, under certain circumstances, a Deferred Lender Fee of between 12% to 16% of the amounts lent to Lamb Calgary.
 - f) A mortgage, the Syndicated Mortgage, would be registered against the Project property as security for the Development Loan;
 - g) After the initial advance, subsequent advances to Lamb Calgary were to be based upon receipt of a report from a project cost consultant;
 - h) Events of default under the Trust Loan Agreement included the failure to make any interest payments when due; and
 - i) The Trust Loan Agreement obligated BDMC to postpone and subordinate the Development Loan to construction finance lenders and other lenders to the Project.

Opinion of Market Value

56. The firm of Legacy Global Mercantile Partners Ltd. was retained to provide an Opinion of Market Value with respect to the Project lands (the “**Opinion**”).
57. The Opinion is contained in a letter dated January 30, 2014, after the Project lands were under contract for purchase for \$8.3 million but before those transactions closed. The Opinion arrived at a market value for the lands underlying the Project at \$26 to \$29 million, over three times their purchase value.
58. This was based on the assumption that Project had been successfully built which required the City of Calgary to approve a zoning change so as to allow Lamb Calgary to build the Project as contemplated.

59. The Opinion value was based on hypothetical and prospective events. This is contrary to the “current” or “as is” value that must be provided to investors in syndicated mortgages under the Act and according to FSCO requirements.

The Bond Offering

60. On September 25, 2014 Orchard Calgary issued an Offering Memorandum (the “OM”) whereby it set out its intention to sell the Bonds for a total aggregate amount of \$32,700,000 (\$1,000 per Bond). The terms of the OM were as follows:

- a) Proceeds raised from the OM were to be lent to Lamb Calgary by virtue of a loan agreement dated September 25, 2014;
- b) Use of the funds by Lamb Calgary was to pay costs of the Project including demolition, site-work and building costs as well as to pay soft costs including architectural and engineering costs, municipal approval costs and fees, professional fees, financing costs, marketing expenses, wholesaler fees, development fees, commissions and other costs;
- c) Closing date was to be on or before March 31, 2015;
- d) Maturity date of the Bonds was September 25, 2018;
- e) Interest on the bonds was 8% per annum, payable quarterly in arrears. Failure to pay interest when due constituted a material breach of the Bond’s terms;
- f) Selling commissions and fees to be paid under the OM could be as high as approximately 20% of the amount raised; and
- g) The Bonds were to rank *pari passu* with the Syndicated Mortgage against the Project lands.

61. The OM referred to the Opinion and its value for the Project lands of \$26 million. It utilized the Opinion value in arriving at a current loan to value ratio of 64% for all mortgages against the value of the Project lands (First Mortgage principal plus Syndicated Mortgage principal divided by the value of the Project lands)
62. Orchard Calgary purported to offer the Bonds pursuant to an exemption under section 2.3 of National Instrument 45-106 to avoid the requirement to file a prospectus with the various securities commissions across Canada. Investors were required to purchase the Bonds as principals and would be defined as accredited investors as defined in NI 45-106.

Fortress Raises Capital from the Plaintiffs and Other Investors

63. In or about January of 2014 Fortress began its marketing efforts for the Project.
64. Fortress marketed the Project widely to its network of referring mortgage brokers and agents as well as to members of the public. It held seminars for interested investors.
65. In marketing an investment in the Syndicated Mortgage and/or the Bonds, investors were not advised of certain material risks (the “**Undisclosed Risks**”) as follows:
- a) That Fortress, BDMC, Lamb Calgary and Orchard Calgary were related companies thus creating a potential conflict of interest;
 - b) That Fortress was lending money to Lamb Calgary on the security of real estate without being licensed under the provisions of the Act;
 - c) That Fortress was acting as a mortgage broker and selling investments in the Syndicated Mortgage to investors without being licensed under the Act;
 - d) That an investment in the Syndicated Mortgages and the Bonds was not safe and secure but was high in risk and not secure;

- e) That Fortress would retain about 35% of all invested funds in the Syndicated Mortgage as one of the uses that would be made of investor funds;
- f) That neither Fortress nor Lamb Calgary had any equity invested in the Project;
- g) That the true value of the Project lands was substantially less than the Opinion value of \$26-29 million;
- h) That the Opinion was not an appraisal (although misrepresented as such in FSCO disclosure forms given to investors in the Syndicated Mortgage and elsewhere);
- i) That investors who provided money for the Syndicated Mortgage prior to May 9, 2014 had no security against the Project lands since Lamb Calgary did not legally own those lands until its purchase agreement closed on May 9, 2014;
- j) That the investment in the Syndicated Mortgage might not, in fact, be RRSP, RESP and TFSA-eligible because of the true value of the land underlying the Project and the true loan-to-value ratio. The Canada Revenue Agency requires that RRSP, RESP and TFSA-eligible investments cannot have a loan-to-value ratio in excess of 100% of the asset's value. Had the true value of the Project lands been used, the loan-to-value ratio would have been far in excess of 100% of the land value;
- k) That a portion of the capital provided by investors in the Syndicated Mortgage would be withheld from Lamb Calgary as an interest reserve for payment of interest. This would result in investors receiving their own capital as payments of interest (and paying tax on that capital in some cases). This was contrary to the information set out in the FSCO Disclosure that stated interest payments were to be made by the borrower, i.e. Lamb Calgary, not the investors themselves. Any

partial disclosure of this information was not sufficient and was not contractually agreed to by investors;

- l) That Lamb Calgary had to have adequate investor funds available in order to make interest payments under the Syndicated Mortgage and that only investors' capital would be the source of interest payments not any other sources obtained by Fortress or Lamb Calgary. Any partial disclosure of this information was not sufficient and was not contractually agreed to by investors;
- m) That in the event Lamb Calgary extended the Trust Loan Agreement beyond its initial term and was not in default, interest thereafter would not be paid and would be capitalized until the principal of the Development Loan was repaid when due. Any partial disclosure of this information was not sufficient and was not contractually agreed to by investors;
- n) That the "independent legal advice" being provided to investors in the Syndicated Mortgage was not true independent legal advice;
- o) That construction of the Project might not be complete by the due date of the Syndicated Mortgage and that repayment might not occur at that time with interest to start accruing after the initial term of the Syndicated Mortgage. Any partial disclosure of this information was not sufficient and was not contractually agreed to by investors;
- p) That Fortress, BDMC, FFM and FMP were failing in their duty to ensure investments in the Syndicated Mortgage were sold by licensed mortgage brokers who would ensure investors received appropriate advice with respect to their investments;

- q) That the Project as described to investors in the Syndicated Mortgage had not yet received zoning approval from the City of Calgary;
- r) That commissions were being paid to brokerages, brokers and agents and other referring parties in excess to the usual amounts paid in these transactions;
- s) That investors in the Syndicated Mortgage might be postponed to amounts even greater than the disclosed subordination to construction financing in an amount up to \$165 million (which would replace the First Mortgage). Any partial disclosure of this information was not sufficient and was not contractually agreed to by investors;
- t) That investors in the Syndicated Mortgage would be required to “standstill” or “forbear” any defaults in payments due once a construction loan was put in place until the construction loan was retired. Any partial disclosure of this information was not sufficient and was not contractually agreed to by investors;
- u) That the OM was being circulated and the Bonds were being sold. Investors in the Syndicated Mortgage were, therefore, not aware of another \$32,700,000 that might be raised in capital that would rank *pari passu* with their interest in the Project lands;
- v) That funds set aside for interest payments would be held in a non-interest bearing account for investors although the funds would be utilized by one or more of the Defendants to earn income for themselves;
- w) That Olympia’s payments of interest to investors that were held in investors’ RRSP, RESP and TFSA accounts would not pay interest to the investors and

could not be utilized by the investors to purchase investments such as securities although Olympia was able to utilize these funds to earn income for itself;

x) That pursuant to the investment documents for the Syndicated Mortgage, investors (not Fortress, Lamb Calgary, BDMC or Olympia) were responsible for ensuring the investments were RRSP, RESP and TFSA-eligible and investors contractually indemnified Olympia with respect to same. Any partial disclosure of this information was not sufficient and was not contractually agreed to by investors;

y) That in the event of default under the Syndicated Mortgage, investors (not BDMC or Olympia) were the ones contractually obligated to collect all mortgage arrears and to institute legal actions with respect to same. Any partial disclosure of this information was not sufficient and was not contractually agreed to by investors;

z) That notwithstanding that investors might have the contractual obligation to collect mortgage arrears and institute legal proceedings in the event of default, as minority investors in the Syndicated Mortgage they might not be able to compel that steps be taken with respect to the Syndicated Mortgage to protect their legal rights; and

aa) That Olympia was prohibited from operating as a trust company in Ontario under the provisions of the *Loan and Trust Corporations Act*, R.S.O. 1990, c. L-25.

66. Investors in the Syndicated Mortgage were provided with some disclosure material and were required to enter into a number of agreements. Among the disclosure documents given to the Plaintiffs was a FSCO document entitled Investor/Lender Disclosure Statement for Brokered Transactions (the “**Disclosure**”).

67. The Disclosure set out the obligations due to investors of syndicated mortgages:

- a) To disclose in writing whether the selling brokerage acted for the lender or borrower or both in the transaction. This was not done;
- b) To disclose in writing the selling brokerage's relationship with "each party to the transaction". Investors were not advised that Fortress, BDMC and Lamb Calgary were related entities;
- c) To disclose in writing material risks about the transaction that the investor should consider. Investors were never advised of the Undisclosed Risks;
- d) To disclose in writing actual or potential conflicts of interest that might arise from the transaction. Investors were not advised that Fortress, BDMC and Lamb Calgary were related entities or that BDMC was both the selling brokerage of the Syndicated Mortgage, the trustee of the Development Loan and the administrator of the Syndicated Mortgage; and
- e) A caution in the Disclosure was provided for the investor to obtain independent legal advice. Fortress had arranged for investors to obtain legal advice from a lawyer who was to be paid by Fortress (indirectly by Lamb Calgary). This lawyer did not review the Undisclosed Risks with investors. Investors were not advised this was not true independent legal advice.

68. The third page of the Disclosure contained a declaration of the selling brokerage that provided the following information:

- a) That the selling brokerage might receive additional earnings based on the development of the Project and indexed on a percentage of profit. In fact, by this date Fortress, BDMC and others had already received additional earnings paid by Lamb Calgary; and

- b) That the selling brokerage had complied with all requirements of the Act. In fact, BDMC and the other selling brokerages had not complied with all requirements of the Act as set out in this Statement of Claim.

69. The final section of the Declaration contained a four page Information Disclosure Summary that stated:

- a) That an appraisal had been done on the lands underlying the Project dated January 30, 2014 which arrived at an “as is” value of \$26 million. The value of \$26 million set out in the Opinion was not an appraisal and was not a reasonable “as is” value for the Project lands. The “as is” value of the lands was substantially less at that time. While the Opinion was referenced in this section, investors were not advised that the Opinion was not an appraisal;
- b) That the loan to value ratio of all encumbrances against the appraised “as is” value of the Project lands was 67%. A 67% loan to value ratio was incorrect as it was based on the Opinion value which was not a reasonable “as is” value. The loan to value ratio at that time would have been substantially greater than 100% of the true value of the Project. A loan to value ratio in excess of 100% of the value of the investment negates the RRSP, RESP and TFSA-eligibility of the investment;
- c) What the referral and brokerage fees to be paid by Lamb Calgary with respect to investments in the Syndicated Mortgage were. The high amounts disclosed in the Disclosure varied from amounts disclosed in other Syndicated Mortgage documents. The disclosed amounts did not accurately set out all commissions being paid to brokers and agents. Nor did this section of the document disclose the significant amounts retained by Fortress as advance payments from Lamb Calgary;

- d) That the following documents were attached to the Disclosure:
- i) Copies of any existing mortgages;
 - ii) Copies of appraisals carried out on the Project within the last 12 months;
 - iii) Copy of an agreement of purchase and sale for the Project if the property was purchased in the previous 12 months; and
 - iv) Documentary evidence of Lamb Calgary's ability to meet the mortgage payments.

With the exception of the Opinion, these documents were not all attached or provided to investors;

- e) That the selling brokerage had provided "all other information an investor of ordinary prudence would consider to be material to a decision whether to lend money on the security of the [Project], so that [in investor could] make an informed decision before [he/she committed] to invest". The selling brokerages omitted to provide significant material information to investors, importantly the Undisclosed Risks; and
- f) That the Disclosure would include a schedule of funds that had been advanced and would be advanced to Lamb Calgary. This was not done.

70. BDMC executed an agreement with investors in the Syndicated Mortgage entitled Confirmation of Lender's Interest. In the document, BDMC agreed as follows:

- a) To provide investors with notice of any material default by Lamb Calgary; and
- b) To enforce the Development Loan (and Syndicated Mortgage) on behalf of investors as would a "prudent lender".

McDowell Invests in the Syndicated Mortgage

71. McDowell is 62 years of age and works in the IT sector. She is a single income earner.
72. In order to improve the yield in her RRSP, McDowell wished to invest in mortgages offering higher rates of return.
73. In April of 2012 McDowell invested in two Fortress developments through FFM. Prior to her decision to invest, McDowell was provided with Fortress marketing documents with respect to some of its development projects. The documents did not disclose any of the Undisclosed Risks.
74. McDowell asked some questions to satisfy herself that the investments were safe and secure for retirement investing. In particular, the Fortress investments appealed to McDowell because of the following factors:
 - a) 8% annual rate of return;
 - b) If the projects were successful, a further success fee;
 - c) Short duration of the loans;
 - d) McDowell would be on title to the properties; and
 - e) The investments were safe and secure.
75. In reliance upon the representations made to her, both oral and in writing, and independent legal advice later purportedly provided to her, McDowell decided to proceed with the investments. McDowell would not have proceeded with the investments had she been advised of the Undisclosed Risks.
76. In order to invest, McDowell completed a document entitled Client Suitability Form. It is required that mortgage brokerages have investors complete this form to ensure that the

investment being sold to the investor is suitable for him/her. The form contained details of McDowell's financial position and her desired investment risk profile.

77. McDowell wrote that her risk tolerance was medium (the second lowest category of four) and that her objective in making the investment was income (in contrast to other options such as "aggressive" or "speculation"). She also indicated she "would rather accept a lower rate of return to reduce [her] risk".
78. All of these instructions were ignored by Fortress, and FFM in selling McDowell her investments. Although BDMC had no involvement with the sale of the investment to McDowell, it was legally responsible for the sale and it too ignored the document's contents.
79. There is no indication the document and the information contained therein was ever reviewed by Fortress, BDMC or FFM.
80. By the spring of 2014, McDowell's investments in the two Fortress projects were performing well in that quarterly interest payments were being made. McDowell was introduced at this time to the Project.
81. Upon satisfying herself that the Project had many of the same attributes as the other two Fortress investments, in particular that it was safe and secure for retirement investing, McDowell decided to proceed with a \$75,000 investment in the Syndicated Mortgage.
82. She executed the Syndicated Mortgage documents on April 1, 2014.
83. Prior to executing the documents, McDowell received "independent legal advice" by telephone, from Sorrenti that was paid for by Fortress and Lamb Calgary. She was not advised of the Undisclosed Risks. McDowell was not advised that the "advice" she was receiving was not true independent legal advice.

Madryga Invests in the Syndicated Mortgage

84. Madryga is 47 years of age. He has a university degree in engineering and has pursued a variety of entrepreneurial careers since that time.
85. In 2010 Madryga started doing some real estate investing. He met McWaters (a mortgage agent with FMP) in the spring of 2012. McWaters introduced Madryga to syndicated mortgages.
86. In May 2012 McWaters invited Madryga to a Fortress seminar about syndicated mortgages and various investment opportunities. Rathore spoke at the seminar.
87. Before and after the seminar, McWaters extolled the investment virtues of syndicated mortgages to Madryga. McWaters stressed the high rate of return paid by the investments and their low risk.
88. Madryga was favourably impressed with the Fortress presentation he attended and with McWaters' representations about the company and syndicated mortgages in general.
89. McWaters provided Madryga with Fortress marketing material and the two engaged in an active email and personal discussion about Fortress investment opportunities.
90. In reliance upon the oral and written representations made to him and the independent legal advice later purportedly provided to him, Madryga decided to proceed with a Fortress investment through his RRSP. He would not have proceeded had he been advised of the Undisclosed Risks.
91. At this time, Madryga completed his Client Suitability Form for FMP (and BDMC). It contained details of Madryga's financial position and his desired investment risk profile.

92. While Madryga indicated in his profile that he was prepared to accept some degree of risk, overall his profile indicated an investment in the Syndicated Mortgage was not suitable for him. Nor was it sufficiently secure for someone investing for retirement.
93. An investment in the Syndicated Mortgage was also not suitable for other investors who also completed Client Suitability Forms for FMP and the other mortgage brokerages.
94. All of these instructions were ignored by Fortress and FMP and the other brokerages in selling Madryga and other investors investments in Syndicated Mortgages. Although BDMC had no involvement with the sale of the investment to Madryga, it was legally responsible for the sale and it too ignored investor investment profiles.
95. There is no indication the document and the information contained therein was ever reviewed by Fortress, BDMC or FMP.
96. By the spring of 2014, Madryga's investment in his Fortress project was performing well in that quarterly interest payments were being made. Madryga was introduced at this time to the Project.
97. Upon satisfying himself that the Project was as safe and secure an investment as his current Fortress investment, Madryga decided to proceed with a \$28,000 investment in the Syndicated Mortgage.
98. Madryga received "independent legal advice" from Morgan that was paid for by Fortress and Lamb Calgary. He was not advised of the Undisclosed Risks. He was not advised that the "advice" he was receiving was not true independent legal advice.
99. Madryga signed the agreements for the Syndicated Mortgage on May 12, 2014.

Subsequent Events

100. Sales of units in Phase 1 of the Project started in late 2014. Sales were slow due, at least in part, to the slowdown in the Alberta economy. Only 60% of the condominium units in Phase 1 have been sold to date.
101. Construction was slated to start in the spring of 2015 but has been delayed several times. It is currently scheduled to begin in the spring of 2017.
102. Construction financing has not been secured.
103. Investors in the Syndicated Mortgage received interest payments for the period up to December 31, 2015. Thereafter, Lamb Calgary has failed to make any interest payments in the last 14 months. The failure to pay interest constituted an event of default under the Trust Loan Agreement and Syndicated Mortgage.
104. At no time after default has BDMC contacted the Plaintiffs or other investors in the Syndicated Mortgage to seek instructions as to what steps, if any, to take to protect investors' interests with respect to their investment in the Project.
105. At no time after default has BDMC demanded repayment from Lamb Calgary of the amounts due to investors.

Legal Claims

106. The Plaintiffs plead this action is appropriate for certification under the Class Proceedings Act, 1992, S.O. 1992, c. 6 in that:
 - a) This Statement of Claim discloses one or more causes of action;
 - b) There is an identifiable class of two or more persons that would be represented by the Plaintiffs;
 - c) The Statement of Claim raises common issues;

- d) A class proceeding is the preferable procedure for the resolution of the common issues; and
- e) The Plaintiffs would fairly and adequately represent the interests of the class, will present a plan for the proceeding that will set out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding and the Plaintiffs do not have, on the common issues for the class, a conflict of interest with other class members.

107. The marketing and sales investments in the Syndicated Mortgage and the Bonds were virtually identical for all investors. These materials were widely distributed, the documents investors were required to execute were identical and no investors were advised of the Undisclosed Risks.

108. The Plaintiffs plead that the Defendants who entered into agreements with the Plaintiffs have breached their contractual obligations to the Plaintiffs.

109. The Plaintiffs plead all the Defendants owed a common law and statutory duty of care to the Plaintiffs and all investors in the Syndicated Mortgage and purchasers of the Bonds.

110. The Plaintiffs plead the Defendants owed the Plaintiffs a fiduciary duty.

111. The Defendants' actions in failing to advise the Plaintiffs of the Undisclosed Risks amounted to a breach of contract, a misrepresentation (both under the Securities Act, where applicable, and at common law), a breach of fiduciary duty and a breach of statutory duties owed under the Act. These actions have caused the Plaintiffs significant damages.

112. The Plaintiffs plead the Defendants have preferred their own interests over those of the Plaintiffs. The Defendants have engaged in a conspiracy to commit various unlawful acts with the other Defendants as fully described in this Statement of Claim. This has caused the Plaintiffs damages.

113. The Plaintiffs plead the two Fortress companies, BDMC, FFM, FMP and Olympia committed the following breaches:

- a) They failed to comply with their obligations as set out under the Act, as required by FSCO and as required in the Disclosure;
- b) They failed to ensure the investments in the Syndicated Mortgage were appropriate investments for each investor;
- c) They failed to ensure that BDMC and Olympia took appropriate steps to represent the Plaintiffs and other investors once Lamb Calgary had defaulted in payment of interest;
- d) They failed to seek investor instructions once Lamb Calgary went into default under the Trust Loan Agreement and Syndicated Mortgage;
- e) After default by Lamb Calgary, they misrepresented that interest payable to investors under the Development Loan and Syndicated Mortgage could be accrued instead of paid;
- f) They negotiated or caused to be negotiated a standstill and postponement agreement with Lamb Calgary when they had no authority to do so;
- g) They raised money from investors in the Syndicated Mortgage and the Bonds without accounting for this money and advising investors what amounts remain available to them;
- h) They misappropriated funds provided by investors for purposes unrelated to the development of the Project;
- i) They promoted the services of Olympia when they knew or ought to have known Olympia was prohibited from operating in Ontario under the provisions of the *Loan and Trust Corporations Act*, R.S.O. 1990, c. L-25; and
- j) In the case of Olympia, it was offering its services as a company with whom investors should open investment, RRSP, RESP and TFSA accounts and as a trustee for the

Syndicated Mortgage when it knew it was prohibited from operating in Ontario under the provisions of the *Loan and Trust Corporations Act*, R.S.O. 1990, c. L-25.

114. The Plaintiffs plead the actions of the corporate Defendants (other than Olympia, Lamb Calgary, Orchard Calgary and Sorrenti Law) were oppressive, unfairly prejudicial and unfairly disregarded the interests of the Plaintiffs contrary to the provisions of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B-16 (the “**OBCA**”) and the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the “**CBCA**”) entitling the Plaintiffs to damages.
115. With respect to the two Fortress Defendants, the Plaintiffs plead they committed the following breaches:
- a) They lent money to Lamb Calgary on the security of real estate without being licensed under the provisions of the Act;
 - b) They acted as a mortgage broker and sold investments in the Syndicated Mortgage to investors without being licensed under the Act;
 - c) They failed to ensure investments in the Syndicated Mortgage were sold by licensed mortgage brokers who would ensure investors received appropriate advice with respect to their investments;
 - d) By failing to ensure the investments in the Syndicated Mortgage were appropriate investments for each investor by properly assessing the investor’s risk profile and they sold investments in the Syndicated Mortgage that were not appropriate for investors;
 - e) They failed to disclose to investors their 50% profit participation in the Project as is required by fiduciaries (which Fortress was since it assumed the duties of a mortgage brokerage under the Act); and
 - f) They provided additional advances to Lamb Calgary without obtaining reports from the Project cost consultant as required by the Trust Loan Agreement;

- g) They retained funds received from investors as advances and did not provide these funds to Lamb Calgary (or to investors) when it became clear that the Project would not earn a profit.

116. With respect to Lamb Calgary and Orchard Calgary, these Defendants committed the following breaches:

- a) By failing to pay interest when due, the Trust Loan Agreement, Syndicated Mortgage and the Bonds are now in default. The Plaintiffs have suffered damages and are entitled to pursue contractual remedies arising from this breach;
- b) Lamb Calgary has failed to demand that Fortress repay all investor amounts it received as either advances on profits not yet earned or exorbitant development consultant fees/costs;
- c) They have not properly accounted for the money raised from investors in the Syndicated Mortgage and the Bonds; and
- d) They misappropriated funds provided by investors for purposes unrelated to the development of the Project.

117. With respect to the individual Defendants other than Sorrenti, Morgan and McWaters, the Plaintiffs plead:

- a) These Defendants had a statutory duty under the Act to ensure the companies did not commit an offence under the Act and complied with its provisions. These Defendants also had a fiduciary and common law duty of care to the Plaintiffs. These Defendants failed to meet their obligations;
- b) These Defendants knew or ought to have known of the breaches of contract, care (statutory and common law) and fiduciary duty of their respective companies as set out in this Statement of Claim. These Defendants further knew or ought to have known said

breaches were likely to cause significant damages to the Plaintiffs. Nevertheless, these Defendants took no steps to prevent such harm from occurring;

- c) These Defendants are liable for the actions of their respective companies that were oppressive, unfairly prejudicial and unfairly disregarded the interests of the Plaintiffs contrary to the provisions of the OBCA and the CBCA entitling the Plaintiffs to damages; and
- d) These Defendants acted outside the scope of their duties to their respective companies and, as such, incurred individual liability to the Plaintiffs separate and apart from the liability of their companies.

118. With respect to the Galati, Spadafora and Daramola who are principal brokers of their respective companies, the Plaintiffs plead they failed to meet their statutory duties to ensure:

- a) That their brokerages, brokers and agents complied with all their legal requirements under the Act;
- b) That their brokerages took reasonable steps to deal with any contravention of a requirement established under the Act;
- c) To review the policies and procedures of the brokerage to determine whether they were reasonably designed to ensure that the brokerage, its brokers and agents complied with all requirements under the Act and that each broker and agent was adequately supervised; and
- d) To recommend to the brokerage that it change its policies and procedures to ensure that the legal requirements under the Act were met.

119. With respect to McWaters, the Plaintiffs plead:

- a) He failed to meet his statutory obligations as a mortgage agent under the Act;

- b) He misrepresented the attributes of an investment in the Syndicated Mortgage and failed to disclose material information including the Undisclosed Risks; and
- c) He knew or ought to have known his failure to disclose the Undisclosed Risks amounted to a misrepresentation and he knew or ought to have known Madryga would rely upon these misrepresentations in making an investment in the Syndicated Mortgage.

120. With respect to Sorrenti, Morgan and Sorrenti Law, the Plaintiffs plead the legal advice provided did not meet these Defendants' contractual obligations nor did it meet the standard of care to be expected in the circumstances.

121. These Defendants knew or ought to have known the advice was not true independent legal advice because the legal services were being paid for by Fortress and Lamb Calgary, was not provided in person, was provided in an environment lacking in privacy and confidentiality in the presence of interested parties to the transaction, and did not disclose the material risks of the transaction including the Undisclosed Risks.

122. These Defendants knew or ought to have known the advice did not meet the standard expected of independent legal advice as prescribed by the *Rules of Professional Conduct* of the Law Society of Upper Canada.

Representative Plaintiffs and the Class

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

124. The Plaintiffs plead and rely upon the provisions of the following Acts and the Regulations passed thereunder:

- a) *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29;
- b) *Ontario Securities Act*, R.S.O. 1990, c. S-5;

- c) *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;
- d) *Ontario Business Corporations Act*, R.S.O. 1990, c. B-16;
- e) *Canada Business Corporations Act*, R.S.C. 1985, c. C-44;
- f) *Loan and Trust Corporations Act*, R.S.O. 1990, c. L-25;
- g) *Trustee Act*, R.S.O. 1990, c. T-23; and
- h) *Negligence Act*, R.S.O. 1990, c. N-1.

125. The Plaintiffs are investors in the Syndicated Mortgage and are representative of all other investors in the Project.

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

127. The Plaintiffs and the Class plead this action involves:

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

Place of Trial

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

DATE: February 24, 2017

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

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

Tel: 416-224-2400
Fax: 416-224-2408

Lawyers for the Plaintiffs

SCHEDULE "A" – LEGAL DESCRIPTION OF THE PROPERTY

Property Address & Legal Description:

602 12th Avenue SE Calgary, Alberta
Plan C, Block 76, Lots 43 and 44, City of Calgary
PIN: 031408897

606 12th Avenue SE Calgary, Alberta
Plan C, Block 76, Lots 41 and 42, City of Calgary
PIN: 101219120004

610 12th Avenue SE Calgary, Alberta
Plan C, Block 76, Lots 39 and 40, City of Calgary
PIN: 101219120003

620 12th Avenue SE Calgary, Alberta
Plan C, Block 76, Lots 32 to 38 inclusive, excepting thereout all mines and minerals out of Lots 35 and 36,
City of Calgary
PIN: 101219120001

624 12th Avenue SE Calgary, Alberta
Plan C, Block 76, the westerly 10 feet throughout of Lot 30 and the whole of Lot 31, City of Calgary
PIN: 101219120

626 12th Avenue SE Calgary, Alberta
Plan C, Block 76, the westerly 21 feet throughout Lot 29 and that portion of Lot 30 which lies to the East
of the westerly 10 feet throughout said Lot 30, City of Calgary
PIN: 101219120002

628 12th Avenue SE Calgary, Alberta
Plan C, Block 76, the westerly 6.5 feet of Lot 27, the whole of Lot 28 and that portion of Lot 29 lying to
the East of the westerly 21 feet of said Lot 29, City of Calgary
PIN: 101219120005

ARLENE MCDOWELL and BRYAN MADRYGA
Plaintiffs

-and-

FORTRESS REAL CAPITAL INC. ET AL.
Defendants

Court File No. CV-17- 570361 -00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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

Kevin Sherkin (LSUC 27099B)
Mitchell Wine (LSUC 23941V)

Tel: 416-224-2400
Fax: 416-224-2408

LAWYERS FOR THE PLAINTIFFS