

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

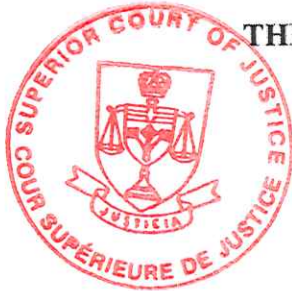
THE HONOURABLE MR.)

THURSDAY, THE 15TH

JUSTICE HAINEY)

DAY OF OCTOBER, 2020

BETWEEN:



THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

**APPLICATION UNDER SECTION 37 OF THE
MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006, S.O. 2006,
c. 29 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43**

TAX OPINIONS ORDER

THIS MOTION, made jointly by FAAN Mortgage Administrators Inc. (“FAAN Mortgage”), in its capacity as Court-appointed trustee (in such capacity, the “Trustee”), of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (“BDMC”) pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and by Chaitons LLP in its capacity as representative counsel (in such capacity, the “Representative Counsel”) pursuant to the Order of this Court dated June 26, 2018 (the “Representative Counsel Order”), for an Order, among other things, authorizing the Trustee to

release the Tax Opinions (defined below) subject to the terms of this Order, was heard this day by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic;

ON READING the Twenty-Second Report of the Trustee dated October 7, 2020 (the “**Twenty-Second Report**”), and on hearing the submissions of counsel for the Trustee, Representative Counsel, and such other counsel as were present, no one appearing for any other person on the service list, although duly served as appears from the affidavits of service of Waleed Malik affirmed on October 7, 2020, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Twenty-Second Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms used but not defined herein shall have the meanings given to them in the Twenty-Second Report.

TAX OPINIONS

3. **THIS COURT ORDERS** that, subject to the terms of this Order, the Trustee is authorized, but not required, to produce copies of any opinion letters that the Trustee has located in the records of BDMC, or that otherwise come into the Trustee’s possession, that were prepared by professional services firms (the “**Tax Opinion Providers**”), that are addressed to one or more of BDMC, Olympia Trust Company (“**Olympia**”), and Computershare Trust Company of Canada (“**Computershare**”), and that address whether certain mortgages to be registered in connection with the development of various real estate projects related to Fortress Real Developments Inc. (the “**Real Estate Projects**”) were qualified investments for trusts governed by registered retirement savings plans, registered retirement income funds, deferred profit sharing plans, registered disability savings plans and tax-free savings plans under the *Income Tax Act* and the *Income Tax Regulations* (the “**Tax Opinions**”), solely for use by a syndicated mortgage lender to one or more of the Real Estate Projects (“**Investor**”), or Representative Counsel on an Investor’s behalf or such other counsel representing one or more Investors (“**Counsel**”), in consideration of

such Investor's legal rights, if any, in an ongoing or potential action or legal proceeding relating to a Real Estate Project to which the Tax Opinion relates (the "**Permitted Use**").

4. **THIS COURT ORDERS** that any Counsel seeking a copy of a Tax Opinion shall send a request in writing to the Trustee: (a) confirming that the Counsel represents one or more Investors that invested in a Real Estate Project to which the requested Tax Opinion relates; and (b) confirming that the Tax Opinion is being requested solely for a Permitted Use. At the Trustee's request, such Counsel will provide evidence satisfactory to the Trustee, in its sole discretion, confirming that the Counsel represents one or more Investors that invested in a Real Estate Project relating to the Tax Opinion being requested.

5. **THIS COURT ORDERS** that any Investor not represented by Counsel shall request the assistance of Representative Counsel to seek a copy of a Tax Opinion. Representative Counsel may send a request in writing on behalf of the Investor to the Trustee: (a) confirming that the Investor invested in a Real Estate Project to which the requested Tax Opinion relates; and (b) confirming that the Tax Opinion is being requested solely for a Permitted Use. At the request of Representative Counsel or the Trustee, such Investor will provide evidence satisfactory to Representative Counsel or the Trustee, as applicable, in its sole discretion, confirming that the Investor invested in a Real Estate Project relating to the Tax Opinion being requested.

6. **THIS COURT ORDERS** that, in response to a request from Counsel or Representative Counsel pursuant to paragraphs 4 or 5 herein, and subject to paragraph 7 below, the Trustee shall (a) if it determines in its reasonable discretion that the Investor or Counsel is requesting the Tax Opinion solely for a Permitted Use, provide a copy of the Tax Opinion or information related thereto to the requesting Counsel or Representative Counsel; and (b) otherwise refuse the request.

7. **THIS COURT ORDERS** that any Counsel or Investor that receives a Tax Opinion or information related thereto from the Trustee or Representative Counsel pursuant to this Order:

- (a) shall not use the Tax Opinion or information related thereto for any purpose other than the Permitted Use set out in its original request;
- (b) shall be subject to the deemed undertaking as described in Rule 30.1 of the *Rules of Civil Procedure* as if the Tax Opinion was a document produced in the ongoing

or potential action or legal proceeding for which the Investor or Counsel is permitted to use the Tax Opinion; and

- (c) shall not share, disseminate, or publicize the Tax Opinion, any part of the Tax Opinion, or any information obtained from the Tax Opinion in any way, including on any electronic or social media or with any other Counsel or Investors, other than as may be required by law in connection with a Permitted Use.

8. **THIS COURT ORDERS** that before providing an Investor a copy of a Tax Opinion or information related thereto pursuant to this Order,

- (a) Representative Counsel will advise such Investor in writing: (i) that they may only use the Tax Opinion or information for the Permitted Use for which the Tax Opinion or information was requested, and (ii) of the limitations on the use of the Tax Opinion or information related thereto contained in this Order, including those set out in paragraph 7; and
- (b) Representative Counsel will ask such Investor to provide an undertaking in writing (which undertaking may be provided in an email to Representative Counsel) confirming that the Investor has reviewed and understood the limitations on their use of the Tax Opinions referenced in paragraph 8(a) above and will abide by such restrictions.

9. **THIS COURT ORDERS** that the production of any Tax Opinion or information related thereto pursuant to this Order shall not constitute a waiver of any privilege covering any analysis, communications, or other documents relating to the Tax Opinion. For certainty, by not opposing the production of any Tax Opinion by the Trustee pursuant to this Order, the Tax Opinion Providers are not and will not be deemed to be waiving any applicable confidentiality interests or privilege applicable to the Tax Opinion or its contents.

10. **THIS COURT ORDERS** that nothing in this Order shall be deemed to be an acknowledgement by the Tax Opinion Providers, Olympia or Computershare or constitute a finding that: (a) any investor has a legal right to production of any Tax Opinion, (b) any investor is in a relationship of proximity with Olympia, Computershare or any Tax Opinion Provider, (c)

any Investor is known to the Tax Opinion Providers, or (d) any Investor is owed any duty of care by Olympia, Computershare or any Tax Opinion Provider.

11. **THIS COURT ORDERS** that the Trustee will advise the applicable Tax Opinion Provider, Olympia and Computershare if it produces a Tax Opinion issued by or naming any of them, or information related thereto, pursuant to this Order. The Trustee's advice to Olympia or Computershare shall include a copy of the Tax Opinion produced, the name and contact information of Counsel (if applicable) who is provided with the Tax Opinion and the name(s) of the Investor(s) represented by such Counsel (when such names are provided to the Trustee) or, in the alternative, the name(s) of the Investor(s) who were provided the applicable Tax Opinion by Representative Counsel.

LIMITATION ON TRUSTEE'S AND REPRESENTATIVE COUNSEL'S LIABILITY

12. **THIS COURT ORDERS** that the provisions of the Appointment Order, and in particular paragraph 18 thereof, shall apply to the actions that the Trustee takes, as an officer of this Court, in accordance with this Order, and further that the Trustee shall incur no liability or obligation whatsoever as a result of producing one or more Tax Opinions or information related thereto pursuant to this Order, save and except for gross negligence or wilful misconduct on its part. Without limiting the foregoing, by providing a copy of a Tax Opinion or information related thereto pursuant to this Order, the Trustee: (a) shall not be and shall not be deemed to be making any representations or incurring any obligation in connection with the accuracy of the Tax Opinion or information; (b) will not incur any liability as a result of any reliance placed on or use of a Tax Opinion (whether a Permitted Use or not) by any Investor or Counsel that receives a Tax Opinion or information related thereto from the Trustee or by any person who otherwise obtains a copy of the Tax Opinion or information, directly or indirectly, from a Counsel or Investor who received a Tax Opinion; and (c) shall not incur any liability arising from any breach of any confidentiality obligations relating to the Tax Opinions or any restrictions on the use of the Tax Opinions.

13. **THIS COURT ORDERS** that the provisions of the Representative Counsel Order, and in particular paragraph 10 thereof, shall apply to the actions that Representative Counsel takes in accordance with this Order and further that Representative Counsel shall incur no liability or obligation whatsoever as a result of providing one or more Tax Opinions or information related

thereto pursuant to this Order, save and except for gross negligence or wilful misconduct on its part. Without limiting the foregoing, by providing a copy of a Tax Opinion or information related thereto pursuant to this Order, Representative Counsel: (a) shall not be and shall not be deemed to be making any representations or incurring any obligation in connection with the accuracy of the Tax Opinion or information; (b) will not incur any liability as a result of any reliance placed on or use of a Tax Opinion or information (whether a Permitted Use or not) by any Investor that receives a Tax Opinion or information related thereto from the Representative Counsel or by any person who otherwise obtains a copy of the Tax Opinion, directly or indirectly, from an Investor who received a Tax Opinion; and (c) shall not incur any liability arising from any breach of any confidentiality obligations relating to the Tax Opinions or any restrictions on the use of the Tax Opinions.

GENERAL

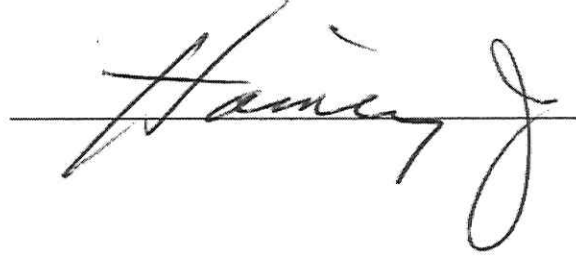
14. **THIS COURT ORDERS** that the provisions of this Order apply, with any necessary modifications, in the proceeding bearing the title of proceedings *Law Society of Ontario v. Derek Sorrenti and Sorrenti Law Professional Corporation* (Court File No.: CV-19-628258-00CL).

15. **THIS COURT ORDERS** that the Trustee, Representative Counsel, the Tax Opinion Providers, Olympia, Computershare, or any Counsel or Investor may apply to this Court for advice and direction, or to seek relief in respect of any matters arising from or under this Order, on notice to the Trustee and any party likely to be affected by the order sought.

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

17. **THIS COURT ORDERS** that the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located,

for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 16 2020

PER / PAR:

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THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA
INC.**

Applicant

Respondent

Court File No. CV-18-596204-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

TAX OPINIONS ORDER

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in its capacity as Court-appointed Trustee of
Building & Development Mortgages Canada Inc.