

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
JUSTICE PATTILLO)
MONDAY, THE 7TH
DAY OF JUNE, 2021

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**

JUNE 2021 OMNIBUS ORDER

THIS MOTION, made by FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee (in such capacity, the “**Trustee**”) pursuant to an Order of this Court made on April 20, 2018 (“**Appointment Order**”) of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. 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, for an Order, *inter alia*, (i)

authorizing the Trustee to effect a distribution or distributions to: (a) Whitby Investors in an amount equal to 85% of the Realized Property received by the Trustee in connection with the Whitby Project (“**Whitby Realized Property**”), (b) Nobleton South Investors in an amount equal to 85% of the Realized Property received by the Trustee in connection with the Nobleton South Project (“**Nobleton South Realized Property**”), and (c) Bowmanville Investors in an amount equal to 85% of the Realized Property received by the Trustee in connection with the Bowmanville Project (“**Bowmanville Realized Property**”) (each as such term is defined in the Twenty-Sixth Report (as defined below)), in each case, on a *pro rata* basis to the applicable Investors entitled to such funds and in accordance with the Realized Property Order, as amended, (ii) approving the Trustee’s twenty-sixth report dated May 21, 2021 (the “**Twenty-Sixth Report**”) and twenty-fifth report dated February 16, 2021 (“**Twenty-Fifth Report**” and collectively, the “**Trustee’s Reports**”), as well as the Trustee’s activities described therein, and the Trustee’s fees and disbursements, including the fees and disbursements of its counsel, for the period from October 1, 2020 to April 30, 2021; and (iii) sealing certain confidential exhibits to the Fee Affidavits (as defined below), 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-Sixth Report, the affidavit of Naveed Manzoor sworn May 21, 2021 and attached as Appendix “24” to the Twenty-Sixth Report (the “**Manzoor Affidavit**”) and the affidavit of Michael De Lellis sworn May 20, 2021 and attached as Appendix “25” to the Twenty-Sixth Report (the “**De Lellis Affidavit**” and, together with the Manzoor Affidavit, the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of Chloe Nanfara sworn May 25, 2021, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Twenty-Sixth 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 in this Order but not defined herein shall have the meanings given to them in the Twenty-Sixth Report.

DISTRIBUTIONS OF REALIZED PROPERTY

3. **THIS COURT ORDERS** that the Trustee shall be authorized to make the following distributions of Realized Property, *pro rata* to the applicable Investors entitled to such funds, whether such Realized Property is received before or after the date of this Order:

- (a) a distribution or distributions to Whitby Investors in an amount equal to 85% of the Whitby Realized Property;
- (b) a distribution or distributions to Nobleton South Investors in an amount equal to 85% of the Nobleton South Realized Property; and
- (c) a distribution or distributions to Bowmanville Investors in an amount equal to 85% of the Bowmanville Realized Property;

each such distribution to be made in accordance with the Realized Property Order, as amended.

TRUSTEE'S REPORTS, ACTIVITIES, FEES AND DISBURSEMENTS

4. **THIS COURT ORDERS** that each of the Trustee's Reports and all the actions, conduct and activities of the Trustee as set out in each of the Trustee's Reports, be and are hereby approved.

5. **THIS COURT ORDERS** that the fees and disbursements of the Trustee and its counsel, as set out in the Twenty-Sixth Report and the Fee Affidavits, be and are hereby approved, as follows:

- (a) the following fees and disbursements of the Trustee for the period from October 1, 2020 to April 30, 2021 are approved: fees of \$890,110.40 (plus applicable taxes of \$115,714.35 for an aggregate amount of \$1,005,824.75), and
- (b) the following fees and disbursements of Osler, Hoskin & Harcourt LLP, counsel to the Trustee, for the period from October 1, 2020 to April 30, 2021 are approved: fees of \$1,932,560.94 and disbursements of \$8,106.12 (plus applicable taxes of \$251,955.66, for an aggregate amount of \$2,192,622.72).

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)

Proceeding commenced at Toronto

JUNE 2021 OMNIBUS ORDER

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