

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
SANDRA MEDLAND) Ashlee Hudie and Tina Q. Yang, for the
Plaintiff) Plaintiff
)
- and -)
)
FORTRESS REAL CAPITAL INC.,) Lisa Parliament and Jeremy Rankin for the
FORTRESS REAL DEVELOPMENTS) Defendants ADI Developments (Link) Inc.
INC., ADI DEVELOPMENTS (LINK)) and ADI Development Group Inc.
INC., ADI DEVELOPMENT GROUP)
INC., BUILDING & DEVELOPMENT) Mary Paterson for FAAN Mortgage
MORTGAGES CANADA INC.,) Administrators in its capacity as Trustee of
ESTATE OF ILDINA GALATI by its) Derek Sorrenti and Sorrenti Professional Law
Trustee in Bankruptcy CROWE) Corporation
SOBERMAN INC., FFM CAPITAL) Ryan Morris and Daniel Szirmak for Olympia
INC., ROSALIA SPADAFORA, SAUL) Trust Company
PERLOV, DEREK SORRENTI, and)
SORRENTI LAW PROFESSIONAL) George Benchetrit, Court-Appointed
CORPORATION) Representative Counsel for Investors
)
)
Defendants)
)
Proceeding under the *Class Proceedings*) HEARD: July 5, 2023
Act, 1992)
)

PERELL, J.

REASONS FOR DECISION

[1] Pursuant to the *Class Proceedings Act, 1992*,¹ the Plaintiff Sandra Medland brings a motion for an order

- a. lifting the stay of proceedings granted in respect of ADI Developments (LINK) Inc. and ADI Development Group Inc. (collectively, the “ADI Defendants”) in the order of

¹ S.O. 1992, c. 6.

this Court dated January 13, 2022, and

b. approving the dismissal of the within action as against the ADI Defendants, without costs, and with prejudice.

[2] In this action, Ms. Medland sues Fortress Real Capital Inc., Fortress Real Developments Inc., Adi Developments (Link) Inc., Adi Development Group Inc., Building & Development Mortgages Canada Inc., Estate of Ildina Galati by its Trustee in Bankruptcy Crowe Soberman Inc., FFM Capital Inc., Rosalia Spadafora, Saul Perlov, Derek Sorrenti, and Sorrenti Law Professional Corporation.

[3] Ms. Medland’s action concerns failed investments in two syndicated mortgage loans on a Burlington development named the “Sutton Project”, and later the “Link”. The loans were pursuant to: (a) a \$11.6 million Loan Agreement dated September 4, 2012; and (b) \$7.991 million Loan Agreement dated April 4, 2014. The entire principal amount of \$19.6 million, plus accrued remains outstanding.

[4] The two ADI Defendants, Adi Developments (Link) Inc. and Adi Development Group Inc., are the borrower and guarantor, respectively of the loan agreements.

[5] In her proposed class action, the putative class members include all persons in Canada who invested in the syndicated mortgages. Ms. Medland advances claims in negligence, negligent misrepresentation, and breach of contract.

[6] This action was previously certified for settlement purposes as against certain defendants but has not been certified as against the ADI Defendants.

[7] The syndicated mortgages were formerly held in trust by the Defendants Derek Sorrenti and Sorrenti Professional Corporation but on September 30, 2019, FAAN Mortgage Administrators Inc. was appointed pursuant to s. 49.47 of the *Law Society Act*,² and s. 101 of the *Courts of Justice Act*, RSO 1990 c. C.43.

[8] FANN commenced an action to enforce the syndicated mortgages and in light of that action, Ms. Medland’s predecessor as plaintiff consented to an order staying this proposed class action as against the ADI Defendants.

[9] After extensive negotiations, a settlement was reached in the FAAN Action. Ms. Medland’s counsel and the court-appointed representative counsel for the investors in the syndicated mortgage were involved in those negotiations.

[10] The FAAN Action settlement provides for payments totaling \$18,297,216, plus amounts to be determined in respect of rents paid, and to be paid, by commercial tenants of the Sutton/the Link project. The installment payment dates are related to milestones in sales of remaining Sutton/the Link project units, and other Adi development projects, but the settlement provides for additional guarantees and security to guard against revenue flow issues.

[11] Under the settlement, the investors who comprise the putative class in this action will be receiving at least \$18.3 million – which constitutes over 91% of the investors’ principal owing – from the ADI Defendants.

[12] On June 1, 2023, Justice McEwen approved that settlement as being fair, reasonable, and

² R.S.O. 1990, c. L.8.

in the best interests of the investors.

[13] Given the substantial recovery achieved from the ADI Defendants on behalf of the proposed class, and the unlikelihood of achieving any further meaningful recovery from these Defendants, Ms. Medland submits that it would be reasonable and efficient to dismiss her proposed class action as against the ADI Defendants.

[14] Having obtained the benefit of a reasonable settlement from the ADI Defendants, and with this action remaining as a vehicle for the ongoing prosecution of their claims against a number of remaining defendants, the putative class members will not be prejudiced by the dismissal of this action as against the ADI Defendants.

[15] The ADI Defendants have consented to a lift of the Stay Order for the purposes of effecting the FAAN Action settlement and obtaining a dismissal of this action as against them.

[16] Ms. Medland's counsel's opinion is that the terms of the FAAN Action settlement are fair and reasonable, and that there is no reasonable prospect that further recovery could be obtained from either of the ADI Defendants in the proposed class action.

[17] Ms. Medland proposes that an order be granted providing that no notice of dismissal need be published to the putative class members. Ample notice of the terms of settlement, including notice of the release of all claims against the ADI Defendants, will be provided to the investors by FAAN.

[18] Section 29 of the *Class Proceedings Act, 1992* requires court approval for the discontinuance, abandonment, dismissal, or settlement of a proceeding commenced under the Act. Section 29 states:

Discontinuance, abandonment and settlement

29. (1) A proceeding commenced under this Act and a proceeding certified as a class proceeding under this Act may be discontinued or abandoned only with the approval of the court, on such terms as the court considers appropriate.

Settlement without court approval not binding

(2) A settlement of a class proceeding is not binding unless approved by the court.

Effect of settlement

(3) A settlement of a class proceeding that is approved by the court binds all class members.

Notice: dismissal, discontinuance, abandonment or settlement

(4) In dismissing a proceeding for delay or in approving a discontinuance, abandonment or settlement, the court shall consider whether notice should be given under section 19 and whether any notice should include,

- (a) an account of the conduct of the proceeding;
- (b) a statement of the result of the proceeding; and
- (c) a description of any plan for distributing settlement funds.

[19] A motion for discontinuance, abandonment, or dismissal should be carefully scrutinized, and the court should consider, among other things: whether the proceeding was commenced for an

improper purpose; whether, if necessary, there is a viable replacement party so that putative class members are not prejudiced; or whether the defendant will be prejudiced.³

[20] The fundamental concern on a motion for court approval of a discontinuance, abandonment, or dismissal is that the interests of putative Class Members will not be prejudiced or that any prejudice is mitigated.⁴

[21] I am satisfied that the test for the approval of a discontinuance is satisfied in the circumstances of the immediate case and that the Order should be granted as requested. It is obvious that the action was brought in good faith and that there is no prejudice to granting the dismissal. Justice McEwen has already found that the settlement is fair, reasonable and in the best interests of the investors. I concur in his assessment.

[22] Order accordingly.

Perell, J.

Released: July 5, 2023

³ *Green v. The Hospital for Sick Children*, 2021 ONSC 8237; *Batten v. Boehringer Ingelheim*, 2021 ONSC 6606; *Johnson v. North American Palladium Ltd.*, 2021 ONSC 3346; *Bardoul v. Novartis Pharmaceuticals Canada Inc.*, 2021 ONSC 2261; *Winter v. C.R. Bard*, 2020 ONSC 3532; *Naylor v. Coloplast Canada Corporation*, 2016 ONSC 1294; *Drywall Acoustic Lathing and Insulation Local 675 Pension Fund (Trustees of) v. SNC-Lavalin Group Inc.*, 2012 ONSC 5288; *Frank v. Farlie, Turner & Co, LLC*, 2011 ONSC 7137; *Hudson v Austin*, 2010 ONSC 2789; *Sollen v. Pfizer*, [2008] O.J. No 4787 (C.A.), aff'g [2008] O.J. No. 866 (S.C.J.); *Logan v. Canada (Minister of Health)*, [2003] O.J. No. 418 (S.C.J.), aff'd (2004), 71 O.R. (3d) 451 (C.A.).

⁴ *Johnson v. North American Palladium Ltd.*, 2021 ONSC 3346.

CITATION: Medland v. Fortress Real Capital Inc., 2023 ONSC 3987
COURT FILE NO.: CV-16-561293-00CP
DATE: 20230705

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SANDRA MEDLAND

Plaintiff

- and -

**FORTRESS REAL CAPITAL INC., FORTRESS
REAL DEVELOPMENTS INC., ADI
DEVELOPMENTS (LINK) INC., ADI
DEVELOPMENT GROUP INC., BUILDING &
DEVELOPMENT MORTGAGES CANADA INC.,
ESTATE OF ILDINA GALATI by its Trustee in
Bankruptcy CROWE SOBERMAN INC., FFM
CAPITAL INC., ROSALIA SPADAFORA, SAUL
PERLOV, DEREK SORRENTI, and SORRENTI
LAW PROFESSIONAL CORPORATION**

Defendants

REASONS FOR DECISION

PERELL J.

Released: July 5, 2023