

Court File No. CV-11-9242-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE MORAWETZ

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WEDNESDAY THE 21st DAY
OF DECEMBER, 2011

**IN THE MATTER OF section 101 of
the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended**

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2811 DEVELOPMENT CORPORATION

Respondent

SECOND INTERIM DISTRIBUTION ORDER

THIS MOTION, made by DELOITTE & TOUCHE INC. in its capacity as the court-appointed receiver (the "**Receiver**") of certain of the assets, undertaking and property (the "**Assets**") of 2811 Development Corporation (the "**Debtor**"), for directions respecting (i) certain disputes between Lombard General Insurance Company of Canada ("**Lombard**"), Firm Capital Mortgage Fund Inc. ("**Firm Capital**"), White Bear Developments Inc. ("**White Bear**") and Key Pendragon Enterprises Inc. ("**Key Pendragon**"), (ii) distribution of the proceeds of sale of the

Assets, and (iii) other relief as set forth below was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the appointment order herein of the Honourable Mr. Justice C.L. Campbell dated June 29, 2011 (the "**Appointment Order**"), the Approval, Vesting and Interim Disbursement Order of the Honourable Mr. Justice Morawetz dated November 15, 2011 (the "**Vesting Order**"), the Third Report of the Receiver dated November 3, 2011 (the "**Third Report**"), the Supplement to the Third Report dated November 11, 2011 (the "**Supplementary Report**") the Fourth Report of the Receiver dated December 1, 2011 (the "**Fourth Report**"), the interim distribution order of the Honourable Mr. Justice Morawetz herein dated December 7, 2011 (the "**Interim Distribution Order**") the Fifth Report of the Receiver dated December 20, 2011 (the "**Fifth Report**"), the affidavits of Anthony O'Brien sworn November 2, 2011 and December 2, 2011 respectively, and on hearing the submissions of counsel for the Receiver, Firm Capital, Key Pendragon, White Bear, Lombard, and Con-Drain Company (1983) Limited ("**Con-Drain**"), no one appearing for any other person on the service list, although properly served as appears from the affidavit of Sam P. Rappos sworn December 20, 2011, filed, and having been advised that Lombard, Firm Capital, White Bear and Key Pendragon have settled their disputes and the Contested Amounts Motion contemplated in paragraph 6 of the Interim Distribution Order will therefore not proceed,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record dated December 20, 2011 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 the capitalized words herein shall have the meaning attributed to them in the Vesting Order, the Interim Distribution Order and the Fifth Report.

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to distribute the following amounts from the Net Sale Proceeds as defined in the Interim Distribution Order:

(a) to Firm Capital the amount of \$329,574.00 in full satisfaction of its claims with respect to the loan renewal fee and interest pursuant to section 17 of the Ontario *Mortgages Act*

referred to in subparagraph 4(a), and the legal fees and disbursements and other costs referred to in subparagraph 5(a), of the Interim Distribution Order,

(b) to White Bear the amount of \$156,024.24 in full satisfaction of its claims with respect to the forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* referred to in clause 4(b)(i), and the legal fees and disbursements and other costs referred to in subparagraph 5(b), of the Interim Distribution Order;

(c) to Key Pendragon the amount of \$288,512.31 in full satisfaction of its claims with respect to the forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* referred to in clauses 4(c)(i), 4(d)(i) and 4(e)(i), and the legal fees and disbursements and other costs referred to in subparagraph 5(b), of the Interim Distribution Order,;

(d) to Lombard the amount of \$ 2,365,291.42 on account of the indebtedness owing to it by the Debtor for principal, interest and costs secured by the Lombard mortgages registered against title to the Assets as Instrument No.s AT974288, AT1085822 and AT1187188 plus interest thereon in the amount of \$1,141.01 per day from and including November 2, 2011 to the date of payment.

(e) to Con-Drain the amount of \$57,314.12 on account of the indebtedness owing to it by the Debtor and secured by the Con-Drain mortgage registered against title to the Assets as Instrument No. AT2561525.

4. **THIS COURT ORDERS** that the Receiver shall no longer be obliged to maintain the holdbacks referred to in paragraphs 4 and 5 of the Interim Distribution Order.

5. **THIS COURT ORDERS** that subject to the holdbacks referred to in paragraph 6 below the Receiver is hereby authorized to distribute the balance of the Net Sale Proceeds to the law firm of Harris, Sheaffer LLP, in trust on the following terms.

(a) All funds received by Harris, Sheaffer LLP pursuant to this order (the "**Unit Purchaser Deposit Trust Funds**") shall be held in trust for the benefit of Unit Purchasers entitled to claim refunds of deposits paid to the Debtor or any escrow agent holding purchaser deposits pursuant to agreements to purchase condominium units from the Debtor as described in

the Receiver's Fifth Report ("**Deposit Refund Claims**") and shall be paid to Unit Purchasers only on written direction from Lombard to Harris, Sheaffer LLP and as provided for in such direction without further inquiry, consent of the Receiver or further court order.

(b) The Unit Purchaser Deposit Trust Funds shall also be held in trust for the benefit of Lombard to the extent that Lombard becomes entitled thereto as a result of its payment to Unit Purchasers of any Deposit Refund Claims pursuant to the Deposit Insurance Policy issued by Lombard and referred to in the Fifth Report. Payments to be made from the Unit Purchaser Deposit Trust Funds to Lombard shall be made only on written direction from Lombard to Harris, Sheaffer LLP and as provided for in such direction without further inquiry, consent of the Receiver or further court order.

(c) Harris, Sheaffer LLP shall provide Con-Drain's lawyers, Stevensons LLP, with copies of letters to Lombard or Unit Purchasers enclosing payments.

(d) The amount or amounts and timing of any distribution hereunder by the Receiver to Harris, Sheaffer LLP shall be entirely within the unfettered discretion of the Receiver in order to permit the Receiver to maintain sufficient reserves from the Net Sale Proceeds to cover any claims, fees, costs and disbursements that may be incurred prior to the discharge of the Receiver.

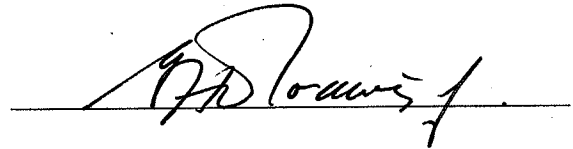
(e) If upon the expiry of the period of 2 years following the date of notice given to condominium purchasers as contemplated at paragraph 14 of the Vesting Order of the Honourable Mr. Justice Morawetz herein dated November 15, 2011 there are Unit Purchaser Deposit Trust Funds, and after payment of all of Lombard's reasonable expenses to administer Refund Claims, the Unit Purchaser Deposit Trust Funds remaining in the possession of Harris, Sheaffer LLP after the payment of all legitimate Deposit Refund Claims made prior to the expiry of that 2 year period (the "**Trust Surplus**") is in excess of \$50,000, Lombard shall make a motion to this court for directions respecting the distribution of the Trust Surplus, such motion to be made on notice to the Receiver (if not then discharged), Con-Drain, Mady Contract Division Ltd., the Debtor and any other person appearing to have an interest in, or claim to, the Trust Surplus, and Harris, Sheaffer LLP shall hold the Trust Surplus and not distribute any portion thereof except in accordance with such directions or further order of this Court.

(f) If, upon the expiry of the period of 2 years following the date of notice given to condominium purchasers as contemplated at paragraph 14 of the Vesting Order of the Honourable Mr. Justice Morawetz herein dated November 15, 2011 the Trust Surplus contemplated in paragraph 5(e) above is \$50,000 or less, the Court directs Lombard to give written notice to Harris, Sheaffer LLP to pay the full amount of the Trust Surplus remaining in Harris, Sheaffer LLP's trust account to Con-Drain directly, and Lombard shall give notice of such payment to the Receiver (if not then discharged), Mady Contract Division Ltd., the Debtor and any other person appearing to have an interest in, or claim to, the Trust Surplus. Harris, Sheaffer LLP may rely on written notice from Lombard to make the payment to Con-Drain without further inquiry, consent of the Receiver or further court order.

6. **THIS COURT ORDERS** that the Receiver is hereby authorized to retain from the Net Sale Proceeds a holdback or holdbacks in an amount or amounts entirely within its unfettered discretion as a reserve for any outstanding or future claims, fees, disbursements or other costs that may be incurred prior to the discharge of the Receiver.

7. **THIS COURT ORDERS** that clause 4 (b)(i) of the Interim Disbursement Order be amended to read as follows:

“(i) the sum of \$382,141.28 on account of forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* claimed by White Bear pursuant to the White Bear Second Mortgage that are contested by Lombard; and”



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PER/PAR:

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FIRM CAPITAL MORTGAGE FUND INC.

- and -

2811 DEVELOPMENT CORPORATION

Applicant

Respondent

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

**PROCEEDINGS COMMENCED AT
TORONTO**

**SECOND INTERIM DISTRIBUTION
ORDER**

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
40 King Street West
Toronto, Ontario M5H 3Y4

John D. Marshall
Tel: (416) 367-6024
Fax: (416) 361-2763
(LSUC #: 16960Q)

Sam P. Rappos
Tel: (416) 367-6033
Fax: (416) 361-7306
(LSUC#51399S)

Solicitors for Deloitte & Touche Inc. in its
capacity as Receiver