

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

THE HONOURABLE MR.) FRIDAY, THE 22nd
)
JUSTICE PERELL) DAY OF JULY, 2011

B E T W E E N:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2811 DEVELOPMENT CORPORATION

Respondent

ORDER

THIS MOTION made by Deloitte & Touche Inc., in its capacity as the receiver (the “**Receiver**”) of certain of the assets, undertakings and properties of 2811 Development Corporation (the “**Debtor**”), for the relief set out in its Notice of Motion herein dated July 14, 2011, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated July 15, 2011 and the Exhibits thereto and on hearing the submissions of counsel for the Receiver and counsel for the Debtor, no one else appearing although served as evidenced by the Affidavit of Maria Magni sworn July 15, 2011, filed.

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged such that this Motion is properly returnable today, that all parties entitled to notice of the Motion have been duly served with notice, that no other parties are affected by this Order, and that any requirement for service of the Notice of Motion and the Motion Record upon any party other than the parties served is unnecessary and is hereby dispensed with and that the service of the Notice of Motion and the Motion Record is hereby validated in all respects.

2. **THIS COURT ORDERS** that the Debtor and Mr. Charles Chan, the Debtor's President, are required to provide the Receiver with all of the contact information for the Debtor's creditors that is required by the Receiver to comply with the notice to creditor requirements set out in paragraph 30 of the Order of the Honourable Mr. Justice Campbell dated June 29, 2011 and the *Bankruptcy and Insolvency Act* (Canada) by no later than 5:00 p.m. on July 22, 2011.

3. **THIS COURT ORDERS** that the Debtor shall immediately comply with the provisions of the Order of the Honourable Mr. Justice Campbell dated June 29, 2011 appointing the Receiver (the "Appointment Order"), including but not limited to those provisions of the Appointment Order requiring the delivery of the Debtor's Records to the Receiver, which shall be delivered to the Receiver by no later than 5:00 p.m. on July 22, 2011.

4. **THIS COURT ORDERS** that the Receiver shall have its costs of this motion on a substantial indemnity basis payable ~~forthwith.~~ *in any event of the cause from the estate in receivership.*

Panel, T

FIRM CAPITAL MORTGAGE FUND INC.

and

Applicant

2811 DEVELOPMENT CORPORATION

Respondent

Court File No.: CV11-9242-00CL

ONTARIO

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

Proceedings commenced at **Toronto**

ORDER

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Lawyers for the Receiver, Deloitte & Touche Inc.

July 22, 2011

On June 29, 2011, Justice Campbell appointed Beloitte & Touche Inc. ("Beloitte") Receiver. Under the Receivership Order, Beloitte is obliged to give notice of the receivership to creditors of the respondent mortgagee 2811 Development Corp. Beloitte brings a motion to have 2811 Development and its president Charles Chou provide it with the contact information it needs to give the notices. This motion is supported by a subsequent mortgage. The motion is opposed by 2811 Development because they say that giving notice to the creditors may impede a joint venture agreement just signed that if closed would see the redemption of the mortgages on the property and the payment of the creditors, along with the discharge of the Receiver. The Receiver replies that the receivership should continue and run parallel with the ~~completion~~ completion of the steps necessary to close the joint venture agreement. I agree with the Receiver's position. The receivership is, in effect, a power of sale proceeding and the ~~mortgagee's~~ mortgagee's request is, in effect, a request to enjoin the progress of the receivership. The law, however, is that a power of sale is rarely enjoined ~~on a stay order~~ unless the mortgagee redeems, which in this case the mortgagee agrees to do, but has not yet done. The fact that the mortgagee is concerned about the effect of notice being given to the ~~creditors~~ creditors suggests to me that the joint venture prospects are far from firm and thus redemption is problematic. Accordingly, I grant the motion. I have signed the Order.

Perell J.