

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

**SUPPLEMENT TO FIRST REPORT OF THE RECEIVER
DATED JUNE 18, 2012**

1. The purpose of this supplement to the First Report of the Receiver dated June 18, 2012 (the “**First Report**”) is to correct and clarify certain statements contained in the First Report relating to the leases and agreements of purchase and sale relating to certain units in the Debtor’s property at 50 Sunny Meadow Blvd. (the “**Property**”).

Subordination clauses in leases

2. In paragraph 26 of the First Report it is stated that the leases do not contain express subordination clauses, subordinating the leases to the interests of any mortgages registered against title to the Property. Upon further examination by the Receiver of the Debtor’s records, the following appears to be the case:

- (a) There are 3 leases which apparently relate to units 223, 313 and 315 respectively (see Appendix “E” to the First Report) that contain an express subordination clause, subordinating the leases to all mortgages registered against title. The clause reads as follows:

“13.03 Subordination – Subject to Section 13.04, this Lease, at the option of any mortgagee, trustee or charge, is and shall be subject and subordinate in all respects to any and all mortgages (including deeds of trust and mortgage) now or hereinafter registered against title to the Building or Land and all advances thereunder, past, present or future and to all renewals, modifications, consolidations, replacements and extensions thereof. The Tenant agrees to execute promptly and in any event within 10 days after request therefor by the Landlord or the mortgagee or trustee under any such mortgage or deed of trust and mortgage an instrument of subordination as may be requested.” [Emphasis added.]

- (b) There are 2 leases which apparently relate to units 108 and 224 respectively which contain an express subordination clause subordinating the leases to subsequent mortgages registered against title. The clause reads as follows:

“Section 7.1 Subordination

- (a) The Tenant covenants that this Lease and everything herein contained shall be subordinate to any charge or charges from time to time hereinafter created by the Landlord in respect of the Commercial Development or any part thereof, by way of mortgage, including deeds of trust and instruments supplemental thereto, and that the Tenant will at any time and from time to time, as required by the Landlord during the Term, give such further assurances as may be reasonably required to evidence and effectuate this subordination of its rights and privileges hereunder to the holder or holders of any such charge or charges. If the Tenant fails to execute any certificate, agreement, instrument or document as required by the foregoing [*sic*] provision within 10 days after request by the Landlord, then the Landlord shall have the right, without limiting any other right of the Landlord hereunder or a [*sic*] law, to execute any such certificate, agreement, instrument or document on behalf [*sic*] the Tenant and in the Tenant’s name, for which purpose the Tenant hereby appoints the Landlord as the Tenants [*sic*] attorney pursuant to the Powers of the [*sic*] Attorney Act (Ontario). [Emphasis added]

A copy of the lease respecting Unit 108 is not included in Appendix "E" to the First Report as the copy contained in the Debtor's records was not executed by the Debtor. A copy is attached hereto as Appendix "A". As noted in paragraph 28 (dd) the Former Receiver has reported that this lease may have been terminated.

- (c) As noted in paragraph 28 (hh) of the First Report, Units 306 and 307 appear to be subject to a lease, but the only document in the Debtor's records in that regard consists of an "Addendum" to a lease with no subordination clause whatsoever (see Appendix "E" to First Report).

Release of trust funds

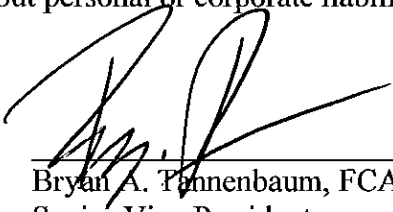
3. In paragraph 28 (l) of the First Report, referring to the status of Unit 201, the Receiver stated that that unit is subject to an agreement of purchase and sale and that the deposits apparently remain in trust. On further review of the records of the Debtor's lawyers, it appears that there may have been deposits (or closing funds) paid by the purchaser, but released from trust. The Former Receiver received correspondence from Mr. Lakhwinder Gill, a lawyer who represents Mr. Balwant Singh Brar who apparently entered into an agreement with the Debtor to purchase Unit 201. The correspondence indicates that Mr. Brar may have paid the sum of \$228,385.50 to the Debtor's lawyers, Sikder Professional Corporation, with respect to the purchase of Unit 201.
4. Sikder Professional Corporation provided copies of its trust records to the Former Receiver. Those records included client ledger sheets identified by units in the Debtor's Property at 50 Sunny Meadow Blvd. There was no ledger sheet identified as relating to Unit 201. However, there was a ledger sheet identified as relating to Unit 210. A copy of that ledger sheet is attached hereto as Appendix "B". That ledger sheet shows that the sum of \$228,385.50 was received from a Mr. Balwant Brar, was deposited in trust and then disbursed from trust in early November, 2010.

5. The Receiver believes that it may be that the ledger sheet identified as relating to Unit 210 may contain a typographical error and may in fact relate to Unit 201, given the coincidence of the deposit amounts and given the fact that the Debtor's records do not contain copies of any agreement of purchase and sale relating to Unit 210. However, the records of the Debtor and its former lawyers are such that the Receiver cannot be certain in this regard.

Respectfully submitted at Toronto, Ontario this ^{28TH}28 day of June, 2012.

DELOITTE & TOUCHE INC.
in its capacity as the court-appointed
receiver of 2012241 Ontario Limited
without personal or corporate liability

Per:


Bryan A. Fannenbaum, FCA, FCIRP
Senior Vice-President