

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF THE *Construction Lien Act*, R.S.O. 1990, c. C-30 as amended

THE HONOURABLE)
JUSTICE McEWEN)
)
)
)

FRIDAY , THE 28TH DAY
OF AUGUST, 2020



BETWEEN:

INNOCON, A PARTNERSHIP OF LAFARGE CANADA INC., LEHIGH HANSON
MATERIALS LIMITED, AND INNOCON INC.

Plaintiff

- and -

FORTRESS BROOKDALE INC., JAEKEL CAPITAL INC., BUILDING & DEVELOPMENT
MORTGAGES CANADA INC., COMPUTERSHARE TRUST COMPANY OF CANADA,
OLYMPIA TRUST COMPANY, FIRM CAPITAL MORTGAGE FUND INC., QUINCY
INVESTMENTS LIMITED, 969592 ONTARIO LIMITED, 969593 ONTARIO LIMITED,
2307271 ONTARIO INC., SASSO AUTO CONSULTING INC., ANGELO GROSSI, DAVID
MARK DOUBILET, GUS STAMATIOU, ROBERT DI MATTEO,
and TONINO AMENDOLA

Defendants

Court File No. CV-18-604993-00CL

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

IN THE MATTER OF Sections 97 and 100 of the Courts of Justice Act, R.S.O. 1990
c.C.43, as amended

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

-and-

FORTRESS BROOKDALE INC., FORTRESS AVENUE ROAD (2015) INC. and
FERNBROOK HOMES (BROOKDALE) LIMITED

Respondents

ORDER

THIS MOTION, made in the actions listed in Schedule A attached hereto and in this application, on consent, by FAAN Mortgage Administrators Inc. ("**FAAN Mortgage**") as court-appointed trustee (in such capacity, the "**Trustee**"), of all of the assets, undertakings and properties of the defendant Building & Development Mortgages Canada Inc. ("**BDMC**"), for an Order: (i) discharging the liens of the lien claimants listed in Schedule A hereto; (ii) dismissing the actions listed in Schedule A attached hereto, together with any and all crossclaims, counterclaims and third and subsequent party claims, without costs; (iii) dismissing this application, without costs; (iv) directing the Accountant of the Ontario Superior Court of Justice (the "**Accountant**") to pay out a portion of the funds currently being held in Account No. 552664, originally paid into Court pursuant to the Vesting Order issued by Justice McEwen, dated October 18, 2018, in relation to Court File No. CV-18-604993-00CL, to Glaholt Bowles LLP, counsel to the lien claimant Innocon, a Partnership of Lafarge Canada Inc., Lehigh Hanson Materials Limited, and Innocon Inc. ("**Innocon**"), in trust for the lien claimants listed in Schedule A hereto, a portion of such funds being for costs, to be distributed by Glaholt Bowles LLP as agreed between the lien claimants listed in Schedule A hereto; (v) for an order directing: (a) the law firm Thornton Grout Finnigan LLP to pay the remaining funds it has been holding in trust, as security for the fees of counsel to the applicant Firm Capital Mortgage Fund Inc., and (b) the Receiver RSM Canada Limited (the "**Receiver**") to pay the remaining funds it has been holding in trust in respect of the Respondents, into Account No. 552664; and (vi) for an Order that the Accountant transfer the remaining balance of the amounts in Account No. 552664 to an Account to be set up by the Accountant to the credit of Court File No. CV-18-596204-00CL, was read this day at 393 University Avenue, Toronto, Ontario.

ON THE CONSENT OF the lien claimants Aluma Systems Inc. ("**Aluma**"), Atlas Dewatering Corporation ("**Atlas**"), Concrane Equipment Inc. ("**Concrane**"), D. Zentil Mechanical

Inc. (“**Zentil**”), Dircam Electrical Limited (“**Dircam**”), Gilbert Steel Limited (“**Gilbert**”), Global Precast Inc. (“**Global**”), Innocon, Stephenson’s Rental Services Inc. (“**Stephenson’s**”), Summit Concrete & Drain Ltd. (“**Summit Concrete**”), Summit Forming Ltd. (“**Summit Forming**”), The Fence People Limited (“**Fence People**”), (collectively, the “**Lien Claimants**”) and also on the consent of BDMC, Fortress Brookdale Inc. and Fortress Avenue Road (2015) Inc. through the Receiver, Fortress Real Capital Inc., Fortress Real Developments Inc., Fortress Inc., Centro Mortgage Inc., Dominus Construction Group, Jaekel Capital Inc., Computershare Trust Company of Canada, Olympia Trust Company, Firm Capital Mortgage Fund Inc., Quincy Investments Limited, 969592 Ontario Limited, 969593 Ontario Limited, 2307271 Ontario Inc., Sasso Auto Consulting Inc., Angelo Grossi, David Mark Doubilet, Gus Stamatiou, Robert Di Matteo, Tonino Amendola, Fernbrook Homes (Brookdale) Limited, RW Fortress Inc., and RSM Canada Limited.

1. **THIS COURT ORDERS** on consent that the lien preserved through the registration of the Claim for Lien of Aluma registered on June 28, 2018 as Instrument No. AT4897958 in the Land Registry Office for the Land Titles Division of Toronto (No. 80), against the title to the lands and premises referred to in Schedule B annexed hereto, together with other lands described in the said Claim for Lien, be and the same is hereby, discharged.
2. **THIS COURT ORDERS** on consent that the lien preserved through the registration of the Claim for Lien of Atlas registered on February 13, 2018 as Instrument No. AT4801687 in the Land Registry Office for the Land Titles Division of Toronto (No. 80), against the title to the lands and premises referred to in Schedule B annexed hereto, together with other lands described in the said Claim for Lien, be and the same is hereby, discharged.

3. **THIS COURT ORDERS** on consent that the liens preserved through the registration of the Claims for Lien of Concrane registered on (i) April 26, 2018 as Instrument No. AT4850172, (ii) July 18, 2018 as Instrument No. AT4912720, and (iii) October 4, 2018 as Instrument No. AT4976190, each registered in the Land Registry Office for the Land Titles Division of Toronto (No. 80), against the title to the lands and premises referred to in Schedule B annexed hereto, together with other lands described in the said Claims for Lien, be and the same are hereby, discharged.
4. **THIS COURT ORDERS** on consent that the lien preserved through the registration of the Claim for Lien of Zentil on January 30, 2018 as Instrument No. AT4791585 in the Land Registry Office for the Land Titles Division of Toronto (No. 80), against the title to the lands and premises referred to in Schedule B annexed hereto, together with other lands described in the said Claim for Lien, be and the same is hereby, discharged.
5. **THIS COURT ORDERS** on consent that the liens preserved through the registration of the Claims for Lien of Dircam registered on (i) February 15, 2018 as Instrument No. AT4803253, and (ii) February 15, 2018 as Instrument No. AT4803254, each registered in the Land Registry Office for the Land Titles Division of Toronto (No. 80), against the title to the lands and premises referred to in Schedule B annexed hereto, together with other lands described in the said Claims for Lien, be and the same are hereby, discharged.
6. **THIS COURT ORDERS** on consent that the lien preserved through the registration of the Claim for Lien of Gilbert on February 22, 2018 as Instrument No. AT4807083 in the Land Registry Office for the Land Titles Division of Toronto (No. 80), against the title to the lands and premises referred to in Schedule B annexed hereto, together with other lands described in the said Claim for Lien, be and the same is hereby, discharged.
7. **THIS COURT ORDERS** on consent that the lien preserved through the registration of the Claim for Lien of Global on March 12, 2018 as Instrument No. AT4818840 in the Land Registry Office for the Land Titles Division of Toronto (No. 80), against the

- title to the lands and premises referred to in Schedule B annexed hereto, together with other lands described in the said Claim for Lien, be and the same is hereby, discharged.
8. **THIS COURT ORDERS** on consent that the lien preserved through the registration of the Claim for Lien of Innocon on February 13, 2018 as Instrument No. AT4801986 in the Land Registry Office for the Land Titles Division of Toronto (No. 80), against the title to the lands and premises referred to in Schedule B annexed hereto, together with other lands described in the said Claim for Lien, be and the same is hereby, discharged.
 9. **THIS COURT ORDERS** on consent that the lien preserved through the registration of the Claim for Lien of Stephenson's on July 5, 2018 as Instrument No. AT4902724 in the Land Registry Office for the Land Titles Division of Toronto (No. 80), against the title to the lands and premises referred to in Schedule B annexed hereto, together with other lands described in the said Claim for Lien, be and the same is hereby, discharged.
 10. **THIS COURT ORDERS** on consent that the lien preserved through the registration of the Claim for Lien of Summit Concrete on January 29, 2018 as Instrument No. AT4790996 in the Land Registry Office for the Land Titles Division of Toronto (No. 80), against the title to the lands and premises referred to in Schedule B annexed hereto, together with other lands described in the said Claim for Lien, be and the same is hereby, discharged.
 11. **THIS COURT ORDERS** on consent that the liens preserved through the registration of the Claims for Lien of Summit Forming registered on (i) January 29, 2018 as Instrument No. AT4790997, and (ii) April 19, 2018 as Instrument No. AT4845648, each registered in the Land Registry Office for the Land Titles Division of Toronto (No. 80), against the title to the lands and premises referred to in Schedule B annexed hereto, together with other lands described in the said Claims for Lien, be and the same is hereby, discharged.

12. **THIS COURT ORDERS** on consent that the lien preserved through the registration of the Claim for Lien of Summit Concrete on February 1, 2018 as Instrument No. AT4795275 in the Land Registry Office for the Land Titles Division of Toronto (No. 80), against the title to the lands and premises referred to in Schedule B annexed hereto, together with other lands described in the said Claim for Lien, be and the same is hereby, discharged.
13. **THIS COURT ORDERS** on consent that the lien preserved through the registration of the Claim for Lien of Summit Concrete on February 1, 2018 as Instrument No. AT4795274 in the Land Registry Office for the Land Titles Division of Toronto (No. 80), against the title to the lands and premises referred to in Schedule B annexed hereto, together with other lands described in the said Claim for Lien, be and the same is hereby, discharged.
14. **THIS COURT ORDERS** on consent that the lien preserved through the registration of the Claim for Lien of Fence People on March 1, 2018 as Instrument No. AT4813373 in the Land Registry Office for the Land Titles Division of Toronto (No. 80), against the title to the lands and premises referred to in Schedule B annexed hereto, together with other lands described in the said Claim for Lien, be and the same is hereby, discharged.
15. **THIS COURT ORDERS** on consent that the actions listed in Schedule A attached hereto, together with any and all crossclaims, counterclaims and third and subsequent party claims, be and the same are hereby dismissed with prejudice, without costs payable to any Defendant to those actions.
16. **THIS COURT ORDERS** on consent that, subject to amounts ordered to be paid to the second mortgagees, Quincy Investments Limited, 969592 Ontario Limited, 969593 Ontario Limited, 2307271 Ontario Inc., Sasso Auto Consulting Inc., Angelo Grossi, David Mark Doubilet, Gus Stamatiou, Robert Di Matteo and Tonino Amendola (the "Quincy Mortgagees") pursuant to the Order of the Honourable Justice McEwen dated March 21, 2019, the actions listed in Schedule A attached hereto, together with any and

all crossclaims, counterclaims and third and subsequent party claims, be and the same are hereby dismissed with prejudice against the Quincy Mortgagees on consent and on a without costs basis.

17. **THIS COURT ORDERS** on consent that, subject to amounts ordered to be paid to the mortgagee, Jaekel Capital Inc., pursuant to the Order of the Honourable Justice McEwen dated March 21, 2019, the actions listed in Schedule A attached hereto, together with any and all crossclaims, counterclaims and third and subsequent party claims, be and the same are hereby dismissed with prejudice against Jaekel Capital Inc. on consent and on a without costs basis.
18. **THIS COURT ORDERS** on consent that, subject to amounts ordered to be paid to the mortgagee, Firm Capital Mortgage Fund Inc., pursuant to the Order of the Honourable Justice McEwen dated October 18, 2018, the actions listed in Schedule A attached hereto, together with any and all crossclaims, counterclaims and third and subsequent party claims, be and the same are hereby dismissed with prejudice against Firm Capital Mortgage Fund Inc. on consent and on a without costs basis.
19. **THIS COURT ORDERS** on consent that this application is hereby dismissed, without costs.
20. **THIS COURT ORDERS AND DIRECTS:** (i) the law firm Thornton Grout Finnigan LLP to pay the remaining funds it has been holding in trust, as security for the fees of counsel to the applicant Firm Capital Mortgage Fund Inc., after the deduction of the accrued fees of Thornton Grout Finnigan LLP, and (ii) the Receiver to pay the remaining funds it has been holding in trust in respect of the Respondents, into Account No. 552664.
21. **THIS COURT ORDERS** on consent, with respect to the funds currently held by the Accountant of the Ontario Superior Court of Justice in Account No. 552664, including after the payments referred to in paragraph 20 above, that the Accountant of the Superior Court of Justice:

- a) pay \$4,551,903.04 (the “**Settlement Payment and Costs Payment**”) to Glaholt Bowles LLP in trust for the Lien Claimants, to be distributed by Glaholt Bowles LLP to the Lien Claimants and to carriage counsel Beard Winter LLP, Glaholt Bowles LLP and Aird and Berlis LLP, in accordance with Schedule C attached which also sets out the source of funds available to pay the lien claims and carriage costs.
- b) transfer the balance of the amount in Account No. 552664, after the payment to Glaholt Bowles LLP referred to in paragraph (a) above, to an Account to be set up by the Accountant of the Superior Court of Justice to the credit of Court File No. CV-18-596204-00CL, where such amounts are to be held by the Accountant of the Superior Court of Justice in an interest-bearing account for the benefit of all those claiming an interest in such funds, pending further order of the Court.

22. **THIS COURT ORDERS AND DECLARES** on consent that upon completion of the steps listed in the foregoing paragraphs, and in consideration of the acceptance of the Settlement Payment and the Costs Payment, and for the other settlements and compromises set out herein and other good and valuable consideration, in full and final satisfaction of all claims of the Lien Claimants, the Lien Claimants (on behalf of themselves, their affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns and counsel) (collectively, the “**Releasors**”) hereby release, discharge and acquit the Trustee, BDMC, each lender who lent money to any of the Respondents through BDMC, the Receiver, Fortress Brookdale Inc. and Fortress Avenue Road (2015) Inc., Fortress Real Capital Inc., Fortress Real Developments Inc., Fortress Inc., Centro Mortgage Inc., Dominus Construction Group, Jaekel Capital Inc., Computershare Trust Company of Canada, Olympia Trust Company, Firm Capital Mortgage Fund Inc., Quincy Investments Limited, 969592 Ontario Limited, 969593 Ontario Limited, 2307271 Ontario Inc., Sasso Auto Consulting Inc., Angelo Grossi, David Mark Doubilet, Gus Stamatiou, Robert Di Matteo, Tonino Amendola, Fernbrook Homes (Brookdale) Limited, RW Fortress Inc., Summit Forming Ltd., and RSM Canada Limited, each of their respective officers, directors, agents, employees, and each of their respective

successors and assigns and counsel (collectively, the “**Releasees**”) from any and all claims, demands, liens, trust claims, rights, liabilities, and causes of action, whether in law or in equity, whether known or unknown, that any Releasor, at any time had or has, or that they or their respective successors or assigns hereafter have or may have against the Releasees, directly or indirectly arising out of or in any way related to the matters raised in the proceedings listed in Schedule A hereto, or any transactions hereunder or thereunder or raised in this Application.

23. **THIS COURT ORDERS AND DECLARES** that the Releasors (or any of them) shall not commence or continue any claims or proceedings against any person or corporation which might claim over against the Releasees, or who might claim contribution or indemnity under any statutory provision or otherwise from the Releasees, or who might seek declaratory relief in a third party proceeding against the Releasees, in connection with the matters which are released and discharged herein. In respect of the Lien Claimants who have commenced breach of trust claims against any of the Releasees, including the claims listed on Schedule “D”, upon receipt by those Lien Claimants of payment, in full, of their respective share of the Settlement Payment and Costs Payment pursuant to this Order, those Lien Claimants shall discontinue their respective breach of trust claims, with prejudice and without costs.
24. **THIS COURT ORDERS AND DECLARES** that this Full and Final Release constitutes sufficient grounds to enjoin the taking or continuation of any such proceedings.
25. **THIS COURT ORDERS AND DECLARES** that each Releasor, further agrees to forthwith indemnify the Releasees against any loss or damages, including legal fees on a full indemnity basis, incurred by any of the Releasees in consequence of proceedings taken or continued in breach of this Order by that Releasor.
26. **THIS COURT ORDERS** that any party to any of the actions listed in the schedules to this Order may file a copy of this Order in such action.

27. **THIS COURT ORDERS** that Rule 72.03(2)(c)(ii) of the *Rules of Civil Procedure* shall have no application with respect to this Order.



JUSTICE McEWEN

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.

AUG 3 12020

PER / PAR: 

SCHEDULE A

Lien Claimant	Court File No. Superior Court of Justice
Summit Concrete & Drain Ltd.	CV-18-596262
Summit Forming Ltd.	CV-18-596313
D. Zentil Mechanical Ltd.	CV-18-593846
Atlas Dewatering Corporation	CV-18-594235
Innocon Lafarge Canada Inc. Lehigh Hanson Materials Limited Innocon Inc.	CV-18-593304
Dircam Electric Limited	CV-18-595506
Gilbert Steel Limited	CV-18-595231
The Fence People Limited	CV-18-595707
Global Precast Inc.	CV-18-596687
Concrane Equipment Inc.	CV-18-602267
Aluma Systems Inc.	CV-18-00602623-0000
Stephenson's Rental Services Inc.	CV-18-00604524

SCHEDULE "B"

Legal Description of the Lands

PIN 10189-0865 (LT)

Description LOTS 33 & 34 PLAN 2371, PART LOT 42A & LOT 43A PLAN 2247 PT 1
66R29204; TOGETHER WITH AN EASEMENT OVER PT 3 66R29204 AS IN
AT4379990; SUBJECT TO AN EASEMENT AS IN AT4660181; SUBJECT TO
AN EASEMENT AS IN AT4753130; CITY OF TORONTO

PIN 10189-0866 (LT)

Description LOT 32 PLAN 2371 YORK PT 2 66R29204; SUBJECT TO AN EASEMENT
AS IN AT4660181; SUBJECT TO AN EASEMENT AS IN AT4753130; CITY
OF TORONTO

SCHEDULE "C"

Lien Claimants	Net Recovery to be paid to Lien Claimant
Summit Concrete & Drain Ltd.	\$ 13,477.14
Summit Forming Ltd.	\$ 1,993,263.43
Summit Forming Ltd.	\$ 283,508.50
D. Zentil Mechanical Inc.	\$ 173,388.89
Atlas Dewatering Corporation	\$ 72,009.01
Innocon	\$ 562,120.03
Dircam Electric Limited	\$ 14,634.65
Dircam Electric Limited	\$ 232,872.58
Gilbert Steel Limited	\$ 429,888.46
The Fence People Limited	\$ 54,047.41
Global Precast Inc.	\$ 318,807.14
Concrane Equipment Inc.	\$ -
Concane Equipment Inc.	\$ 13,585.82
Aluma Systems Inc.	\$ 32,064.70
Stephensons Rental Services	\$ 9,432.20

Total Liens	\$ 4,203,099.96
Payable out of settlement proceeds for salvage costs	\$ 348,803.08
Total settlement proceeds	\$ 4,551,903.04

Total Paid by lien claimants to GB	\$108,418.72
Paid to BW for salvage costs to April 30, 2019	\$84,825.57
Balance held by GB in trust	\$23,593.15
Payable out of settlement proceeds for salvage costs	\$348,803.08
Total available to pay salvage costs	\$372,396.23

Payable to Beard Winter LLP from May 1, 2019 to March 11, 2020	\$ 114,813.71	
Payable to Aird Berlis from May 1, 2019 to March 11, 2020	\$ 65,584.63	
Payable to Glaholt Bowles from May 1, 2019 to March 11, 2020	\$ 112,243.10	
Payable to Air Berlis to April 30, 2019	\$ 16,345.45	
Payable to Glaholt Bowles to April 30, 2019	\$ 44,510.09	
Payable to Aird Berlis for Mediation	\$ 11,020.99	
Payable to Glaholt Bowles for Mediation	\$ 7,878.26	
Payable to Beard Winter for Mediation - included in fees to March 11, 2020	\$ -	
	\$ 372,396.23	\$372,396.23

SCHEDULE "D"

Lien Claimant	Court File No. Superior Court of Justice
Summit Concrete & Drain Ltd. and Summit Forming Ltd.	CV-19-006334270000
Global Precast Inc.	CV-18-599208
Innocon, a Partnership of Lafarge Canada Inc., Lehigh Hanson Materials Limited, and Innocon Inc.	CV-18-00593283-0000

INNOCON, a partnership of Lafarge et al.
Plaintiffs

and
Building & Development Mortgages Canada Inc. et al.
Defendants

Court File No: CV-18-59330z

28 August 20

Order to go on the consent of the parties in this action and the related actions noted herein.

I have been advised by counsel that nothing in this order operates to the prejudice of the parties/stakeholders in the outstanding litigation and a copy of this draft order was circulated to them without objection.
As per paragraph 21 of the Order the Accountant of the Superior Court can make the necessary payments noted therein.

McE

McE

CV-18-596204-00CL.

For the purposes of clarity, the outstanding litigation referred to above is action number

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF the *Construction Lien Act*,
RSO 1990, c C.30, as amended

PROCEEDING COMMENCED AT TORONTO

ORDER

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Michael De Lellis (LSO# 48038U)

Tel: 416.862.5997

Email: mdelellis@osler.com

Jeremy Dacks (LSO# 41851R)

Tel: 416.862.4923

Email: jdacks@osler.com

Roger J. Gillott (LSO# 37816L)

Tel: 416.862.6818

Email: rgillott@osler.com

Lawyers for FAAN Mortgage Administrators Inc.,
in its capacity as Court-appointed trustee of the Defendant,
Building & Development Mortgages Canada Inc.