



Court File No.: CV-19-628258-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE

)

THURSDAY, THE 1<sup>st</sup>

JUSTICE

)

DAY OF JUNE, 2023

)

BETWEEN:

**LAW SOCIETY OF ONTARIO**

**Applicant**

- and -

**DEREK SORRENTI and  
SORRENTI LAW PROFESSIONAL CORPORATION**

**Respondents**

**APPLICATION UNDER  
SECTION 49.47 OF THE *LAW SOCIETY ACT*, R.S.O. 1990, c. L.8  
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 c. C.43**

**ORDER  
(Sutton Settlement Agreement Approval)**

**THIS MOTION**, made by FAAN Mortgage Administrators Inc. ("**FAAN Mortgage**"), in its capacity as Court-appointed trustee (in such capacity, the "**Trustee**") pursuant to an Order of this Court made on September 30, 2019 (the "**Appointment Order**") of all of the assets, undertakings and properties in the possession, power or control of Derek Sorrenti ("**Sorrenti**") or Sorrenti Law Professional Corporation ("**SLPC**") relating to Sorrenti's and SLPC's trusteeship and administration of syndicated mortgage loans in projects affiliated with Fortress Real Developments Inc. ("**FRDI**") and all of its direct or indirect affiliates and any entity under common control with FRDI, pursuant to section 49.47 of the *Law Society Act*, R.S.O. 1990, c. L.8, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for an

Order, *inter alia*, (i) approving and ratifying the Settlement and Mutual Release Agreement attached at Schedule “B” to this Order (the “**Sutton Settlement Agreement**”); and (ii) ordering ADI LINK and ADG, as the case may be, to pay the Settlement Payment to the Trustee in accordance with and subject to the terms of the Sutton Settlement Agreement, was heard this day by videoconference;

**ON READING** the Sixth Report of the Trustee dated May 4, 2023 (“**Sixth Report**”), and on hearing the submissions of counsel for the Trustee; Chaitons LLP, in its capacity as Representative Counsel; counsel for the ADI Defendant Companies; counsel for OTC; Sutton Plaintiff’s Counsel; and such other counsel as were present, no one else appearing for any other person on the service list, as appears from the affidavit of service of Blair McRadu sworn May 8, 2023, filed;

#### **INTERPRETATION**

1. **THIS COURT ORDERS** that all capitalized terms used but not defined herein shall have the meanings given to them in the Sutton Settlement Agreement, as applicable.

#### **SERVICE**

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Sixth Report on the Service List and on the Sutton Investor Releasers is hereby validated so that notice of this Motion is approved, this Motion is properly returnable today and the Court hereby dispenses with further service thereof.

#### **APPROVAL OF THE SUTTON SETTLEMENT AGREEMENT**

3. **THIS COURT ORDERS** that (i) the Sutton Settlement Agreement be and is hereby approved in its entirety and shall be implemented and enforced in accordance with its terms; (ii) ADI LINK and/or ADG, as the case may be, are hereby directed to pay the Settlement Payment (less the Initial Payment) to the Trustee in trust subject to and in accordance with the terms of the Sutton Settlement Agreement; and (iii) the execution of the Sutton Settlement Agreement by the Trustee, OTC and Representative Counsel is hereby ratified and approved, and the Trustee, OTC

and Representative Counsel are hereby authorized and directed to comply with all of their obligations under the Sutton Settlement Agreement.

4. **THIS COURT ORDERS** that the Sutton Settlement Agreement is fair, reasonable and in the best interests of the Sutton Investor Releasers, the Sorrenti Releasers, and the OTC Releasers.

5. **THIS COURT ORDERS** that this Order, including the Sutton Settlement Agreement, is binding upon each of the Sutton Investor Releasers, the Sorrenti Releasers, and the OTC Releasers, including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this Action.

6. **THIS COURT ORDERS** that an allocation of \$500,000 from the Settlement Payment shall be made to Sutton Plaintiff's Counsel in accordance with the terms of the Sutton Settlement Agreement.

7. **THIS COURT ORDERS** that should the Sutton Class Proceeding Order, OTC Third Party Dismissal Order, and Trustee Action Dismissal Order become Final orders and all steps required by the Sutton Settlement Agreement in conjunction with the granting of the security in respect of the Station West Property have been completed, the Trustee shall serve a Trustee's certificate on the Service List substantially in the form attached as Schedule "A" hereto (the "**Trustee's Certificate**").

8. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate as soon as practicable after service thereof.

9. **THIS COURT ORDERS AND DECLARES** that, upon the Closing Date:

- (a) The Sutton Investor Releasers, the Sorrenti Releasers, and the OTC Releasers, hereby release, extinguish, expunge, and discharge all of the Released Claims as against the ADI Releasees;
- (b) Any and all proceedings asserting Released Claims as against the ADI Releasees by any of the Sutton Investor Releasers, the Sorrenti Releasers, or the OTC Releasers shall be dismissed against the ADI Releasees, without costs and with prejudice;
- (c) The Sutton Investor Releasers, the Sorrenti Releasers, and the OTC Releasers shall be enjoined from making, instituting, maintaining, continuing, intervening in, or

asserting, commencing or threatening to commence, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, claim, proceeding or demand, of any nature whatsoever, against any one or more of the ADI Releasees in connection with the Released Claims and this Order may be raised as a complete bar to any such action, claim, proceeding or demand, and any such actions, claims or proceedings in which the Sutton Investor Releasors, the Sorrenti Releasors, or the OTC Releasors assert Released Claims against the ADI Releasees shall be dismissed with prejudice and without costs as against the ADI Releasees;

- (d) The Sutton Investor Releasors, the Sorrenti Releasors, and the OTC Releasors shall not now or hereafter institute, maintain, continue, intervene in, or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any proceeding, cause of action, claim or demand against any person who might claim over against any of the ADI Releasees, or who might claim contribution and indemnity under any statutory provision or otherwise from any of the ADI Releasees, or who might seek declaratory relief in a third party proceeding against any of the ADI Releasees in connection with the Released Claims and all such claims are forever barred, prohibited and enjoined, including without limitation against OTC in the OTC Action. However, for greater certainty, (i) the Sutton Class Proceeding is permitted to proceed against all Non-Settling Sutton Defendants subject to the terms of the Approval Order and provided no relief for or arising from any Released Claims is sought against any Non-Settling Sutton Defendant, named or unnamed alleged co-conspirator, or other person; (ii) the OTC Action is permitted to proceed against OTC subject to the terms of the Approval Order and provided that the claims in the OTC Action will be limited such that no claim for contribution, indemnity or other relief over against any of the ADI Releasees arises or can be maintained against the ADI Releasees at law; and (iii) OTC shall not be precluded from maintaining any existing third party claim in the OTC Action against any defendant that is not an ADI Releasee subject to the terms of the Approval Order and provided no relief for or arising from any Released Claims is sought against any of the existing third party defendants, named or unnamed alleged co-conspirator, or other person;
- (e) All claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to or arising from the Released Claims, which were or could have been brought in any action by any Non-Settling Sutton Defendant, any named or unnamed co-conspirator that is not an ADI Releasee or by any other person or party, including OTC, against an ADI Releasee or by an ADI Releasee against any Non-Settling Sutton Defendant or any named or unnamed co-conspirator that is not an ADI Releasee or any other person or party, including OTC, are barred, prohibited and enjoined in accordance with the terms of this Order;
- (f) If, in the absence of this Order, any person made or could have made a claim for contribution, indemnity or other claim over, whether in equity or in law, by statute

or otherwise, from or against any one or more of the ADI Releasees in connection with the Released Claims, then:

- (i) The Sutton Investor Releasors, the Sorrenti Releasors, and the OTC Releasors shall not be entitled to claim or recover from any Non-Settling Sutton Defendant in the Sutton Class Proceeding, named or unnamed alleged co-conspirator, or from any other person, including without limitation OTC in OTC Action, that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs that corresponds to the proportionate liability of the ADI Releasees proven at trial or otherwise;
- (ii) The Sutton Investor Releasors and the OTC Releasors shall limit their claims against any Non-Settling Sutton Defendant(s), named or unnamed alleged co-conspirator or other person, including without limitation OTC in the OTC Action, to include only, and shall only seek to recover from any Non-Settling Sutton Defendant(s) in the Sutton Class Proceeding, named or unnamed alleged co-conspirator, or any other person, including OTC in the OTC Action, such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs attributable to the aggregate of the several liability of each Non-Settling Sutton Defendant in the Sutton Class Proceeding, named or unnamed alleged co-conspirator that is not an ADI Releasee, or other person that is not an ADI Releasee, and of OTC in the OTC Action, if any, and, for greater certainty, the Sutton Investor Releasors and OTC Releasors shall only be entitled to claim and seek to recover on a joint and several basis as between each Non-Settling Sutton Defendant(s) in the Sutton Class Proceeding, named or unnamed alleged co-conspirator and/or any other person or party that is not an ADI Releasee, including OTC in OTC Action, if any, if permitted by law;
- (iii) For the sole purpose of determining the liability of the Non-Settling Defendants in the Sutton Class Proceeding and OTC and the third parties in the OTC Action that are not ADI Releasees, the Court shall have full authority to determine the Proportionate Liability of the ADI Releasees at the trial or other disposition of either the Sutton Class Proceeding or the OTC Action, regardless of whether the ADI Releasees participate in that proceeding, provided that the Proportionate Liability of the ADI Releasees shall only apply in the Sutton Class Proceeding and the OTC Action, if and as applicable, and shall only apply for the purpose of determining the liability of the Non-Settling Defendants in the Sutton Class Proceeding and the defendant and third parties in the OTC Action and shall not be binding on, or constitute a finding against, the ADI Releasees for any purpose whatsoever in those or any other proceeding, nor may such determination modify the terms of the Sutton Settlement Agreement. Such determination shall happen only once. Subject to the foregoing, the Parties hereto shall not object to: (A) the proceeding in which such determination is made being the

OTC Action, rather than in the Sutton Class Proceeding; or (B) any Party hereto, at that Party's election, appearing and being heard on such determination; and

- (iv) Subject to the Sutton Settlement Agreement, the Sorrenti Releasors no longer have claims for contribution, indemnity or other claim over and shall not assert any claims against any person who has made or could have made a claim for contribution, indemnity or other claim over, whether in equity or in law, by statute or otherwise, from or against any one or more of the ADI Releasees in connection with the Released Claims.
- (g) Further to the OTC Third Party Claim and the OTC Action, from the date the Sutton Settlement Agreement is fully executed, the ADI Defendant Companies shall not intentionally dispose of or destroy any documents then in their power, possession or control that are relevant to matters in issue in the OTC Third Party Claim and shall take reasonable commercial steps to prevent any automated disposal or destruction of such documents. The foregoing obligations shall terminate if the claims commenced by any current or future plaintiff(s) in the OTC Action do not include or no longer include claims for recovery of monies in respect of the ADI LINK Project or if the plaintiff in the OTC Action is unsuccessful in reversing the decision to refuse certification of the OTC Action in such plaintiff's pending appeal or any subsequent appeal. Only OTC shall have the right, if any, to initiate proceedings to enforce this term. In any event, a breach of this section by the ADI Defendant Companies, or any of them, is not a breach of the Sutton Settlement Agreement.
- (h) For any Sutton Investor Releasor who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors, the use of the terms "Sutton Investor Releasors" and "Released Claims" in this Order does not constitute a release of claims by such Sutton Investor Releasor but that Sutton Investor Releasor instead covenants and undertakes not to sue, make in any way any of the Released Claims or to threaten, commence, or continue any of the Released Claims in any jurisdiction against the ADI Releasees;
- (i) Nothing in this Order is intended to or shall limit, restrict, or affect any position, argument or defence that may be asserted by the Non-Settling Sutton Defendants in the Sutton Proceeding or the OTC Action regarding the reduction of any judgment against them;
- (j) Except as provided herein, this Order does not affect any claims or causes of action that any Sutton Investor Releasors have or may have against any Non-Settling Sutton Defendant(s) or named or unnamed co-conspirators who are not ADI Releasees; and
- (k) The Approval of the Sutton Settlement Agreement and any reasons given by this Court in relation thereto, except in relation to the bar order provisions at paragraph (e) and any reasons given in connection with the bar order provisions at paragraph

(f) above, are without prejudice to the rights and defences of the Non-Settling Sutton Defendants in connection with the Sutton Class Proceeding and, without restricting the generality of the foregoing, may not be relied on by any person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Sutton Class Proceeding as against the Non-Settling Sutton Defendants or any other person.

#### **NO FURTHER LIABILITY OR RESPONSIBILITY**

10. **THIS COURT ORDERS** that, except for the obligations set out herein and in the Sutton Settlement Agreement, the ADI Releasees will have no further liability for any payments, including, without limitation, any liability or responsibility for distribution or administration, any responsibility or liability for any tax or tax filings, any notice or administration costs, counsel fees, or any other fees or costs. For greater certainty, but without limiting the generality of the foregoing, the ADI Releasees shall have no responsibility or liability with respect to any of the administration or distribution of the Settlement Payment, the administration of the Sutton Settlement Agreement, or the payment of any legal fees, disbursements, expenses or costs of or incurred by the Trustee, Representative Counsel, Sutton Plaintiff's Counsel, OTC, the Sorrenti Releasers or the Sutton Investor Releasers.

#### **AID AND RECOGNITION**

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Trustee is authorized and empowered to act as a representative in respect of the within

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside  
Canada.



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**Schedule “A”: Form of Trustee’s Certificate**

Court File No.: CV-19-628258-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**LAW SOCIETY OF ONTARIO**

**Applicant**

- and -

**DEREK SORRENTI and  
SORRENTI LAW PROFESSIONAL CORPORATION**

**Respondents**

**APPLICATION UNDER  
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AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 c. C.43**

**TRUSTEE’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Ontario Superior Court of Justice [Commercial List] (the “**Court**”) dated September 30, 2019, FAAN Mortgage Administrators Inc. was appointed as the trustee (in such capacity, the “**Trustee**”) of all of the assets, undertakings and properties in the possession, power or control of Derek Sorrenti (“**Sorrenti**”) or Sorrenti Law Professional Corporation (“**SLPC**”) relating to Sorrenti’s and SLPC’s trusteeship and administration of syndicated mortgage loans in projects affiliated with Fortress Real Developments Inc. (“**FRDI**”) and all of its direct or indirect affiliates and any entity under common control with FRDI, pursuant to section 49.47 of the *Law Society Act*, R.S.O. 1990, c. L.8, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

B. Pursuant to an Order of the Court dated [\*DATE] (the “**Approval Order**”), the Court approved the Settlement Agreement effective as of [\*DATE], 2023 (the “**Sutton Settlement Agreement**”).

C. The Approval Order contemplated that the Closing Date would occur upon the Trustee delivering the Trustee’s Certificate to the service list in the Trustee Proceeding.

D. The Approval Order states that the Trustee shall certify in the Trustee’s Certificate that the Court has granted the ADI Orders.

E. The Approval Order states that the Trustee shall certify that the limited recourse guarantee and the documentation evidencing the Second Charge has been provided to the Trustee and the Second Charge has been registered on title to the Station West Property.

F. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Approval Order.

**THE TRUSTEE CERTIFIES** the following:

1. The Court granted the Sutton Class Proceeding Order on [date] and such order has become Final;
2. The Court granted the OTC Third Party Dismissal Order on [date] and such order has become Final;
3. The Court granted the Trustee Action Dismissal Order on [date] and such order has become Final; and
4. The limited recourse guarantee and the documentation evidencing the Second Charge has been provided to the Trustee and the Second Charge has been registered on title to the Station West Property.

This Certificate was delivered by the Trustee at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**FAAN Mortgage Administrators Inc., solely  
in its capacity as Court-appointed Trustee of  
the undertaking, property and assets of  
Sorrenti and SLPC, and in no other capacity**

Per: \_\_\_\_\_

Name:

Title:

Court File No. CV-19-628258

**LAW SOCIETY OF ONTARIO**

- and -

**DEREK SORRENTI and SORRENTI  
PROFESSIONAL CORPORATION**

Respondents

Applicant

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
  
Proceedings commenced at Toronto

**ORDER  
(SUTTON SETTLEMENT AGREEMENT)**

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in its capacity as Court-appointed Trustee of L  
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