



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued : 30-Mar-2021
Délivré par voie électronique : 30-Mar-2021
Toronto

CORINNE SUTEJ

Plaintiff

and

BRAD J. LAMB REALTY INC., BRAD J. LAMB, and LAMB DEVELOPMENT
CORP.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the statement of claim served with this notice of action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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IF YOU PAY THE PLAINTIFF'S CLAIM, and \$ 1,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$100 for costs and have the costs assessed by the court.

Date: March 29, 2021

Issued by _____
Local registrar

Address of court office 393 University Ave
10th Floor
Toronto, Ontario
M5G 1E6

TO: **Brad J. Lamb Realty Inc.**
778 King Street West
Toronto, Ontario, M5V 1N6

AND TO: **Brad J. Lamb**
778 King Street West
Toronto, Ontario, M5V 1N6

AND TO: **Lamb Development Corp.**
778 King Street West
Toronto, Ontario, M5V 1N6

CLAIM

1. The plaintiff, Corinne Sutej claims on her own behalf and on behalf of the members of the class of persons the "**Class Members**" (defined *infra*) who invested in the "**Development Properties**" (defined *infra*), against Brad J. Lamb Realty Inc., Brad J. Lamb, and Lamb Developments Corp. (collectively, the "**defendants**"):

- (a) an order certifying this action as a class proceeding and appointing her as the representative of the Class Members;

- (b) general and special damages payable jointly and severally in an amount to be determined for the losses incurred by the Class Members as a result of the defendants':
 - i) fraudulent and/or negligent misconduct;
 - ii) breach of fiduciary duties;
 - iii) negligent and/or fraudulent misrepresentation;
 - iv) deceit; and
 - v) unjust enrichment;
 - (c) punitive, exemplary and aggravated damages payable jointly and severally by the defendants, in the amount of \$1,000,000;
 - (d) an interlocutory and final accounting of all funds received by the defendants from the Class Members;
 - (e) an accounting of all sums received by the defendants as a result of their tortious conduct to the Class Members and an order for payment to the Class Members of all sums found due on the taking of the account;
 - (f) all such other accounts, inquiries, directions or other relief as may be necessary;
 - (g) the costs of this action on a substantial indemnity basis;
 - (h) pre-judgment interest and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended; and,
 - (i) such further and other relief as this Honourable Court may deem just.
2. The plaintiff brings this action on behalf of the following class (the “**Class**” or “**Class Members**”): all persons wherever they may reside or be domiciled, who invested

in a syndicated mortgage loan investment (“**Fortress SML**”) that was secured by the land of any of the following constructed or proposed development projects (each a “**Development Property**” and collectively the “**Development Properties**”):

- (a) 6th and Tenth Condominiums (633-10th Ave SW, Calgary, AB);
- (b) Jasper House (10160/68 106th St NW, Edmonton, AB);
- (c) The Woodsworth (f.k.a. The James) (452-458 Richmond St W, Toronto, ON);
- (d) Wellington House (422-424 Wellington St W, Toronto, ON);
- (e) The Harlowe (604-618 Richmond St W, Toronto, ON);
- (f) North Condominiums (10305/21 106th St NW, Edmonton, AB);
- (g) Soba (203 Catherine Street Ottawa, ON); and
- (h) The Orchard (602, 606, 610, 620, 624, 626, 628 12th Ave SE, Calgary, AB)

THE PARTIES

The Plaintiff

3. The plaintiff is an investor who resides in Rockland, Ontario. Ms. Sutej became an investor in The Orchard property in Calgary, Alberta when she invested \$25,000 on April 28, 2014.

4. At the time that the plaintiff made her investment, she relied upon the information the defendants provided to her concerning the present and future value of The Orchard property, the level of risk associated with her investment, and the date by which The Orchard property would be built.

The Defendants

5. The defendant, Brad J. Lamb (“**Mr. Lamb**”) is a well-known Canadian real estate broker and condominium developer who began working in the real estate industry in the 1980s. Mr. Lamb is the president of Brad J. Lamb Realty Inc. (“**BLR**”). Over the last 30 years, he has led the marketing and sales programs for dozens of condominium projects in Toronto, Ottawa and Montreal. Mr. Lamb is acknowledged in Toronto as one of the city’s foremost condominium sales experts. Mr. Lamb previously had a reality television show named *Big City Broker* on a Canadian network for several years which focused on the workings of BLR.

6. The defendant, BLR, is a Canadian real estate development company that seeks out and analyzes real estate development opportunities in major Canadian markets. The company has sold over 29,000 condominiums since 1988, valued at over \$8.5 billion, and was founded by Mr. Lamb.

7. The defendant, Lamb Development Corp. is a Toronto-based real-estate condominium development company that specializes in urban projects and offers a wide range of services including residential design, development, and customer relations. Lamb Development Corp. was founded by Mr. Lamb in 2001.

FACTUAL BACKGROUND*Fortress Real Developments*

8. Fortress Real Developments (“**Fortress**”) is a real estate development company responsible for initiating property development projects funded by syndicated mortgage investments. It was founded in 2008 by Jawad Rathore (“**Mr. Rathore**”) and Vincenzo

Petrozza (“**Mr. Petrozza**”). The company is based out of Toronto, but has expanded to include projects in Ottawa, Regina, Calgary, Winnipeg and British Columbia.

The Fortress Scheme

9. In or around 2008, Fortress and its network of non-arms length mortgage administrators and brokers Building & Development Mortgages Canada Inc. (“**BDMC**”), Sorrenti Law Professional Corporation (“**Sorrenti**”), FDS Broker Services Inc., FFM Capital Inc. and FMP Mortgage Investments Inc. (collectively, the “**Fortress-Related Entities**”) raised several million dollars in Fortress SML investment funds from the Class Members.

10. A syndicate mortgage loan (“**SML**”) is a mortgage for which mortgage funds are collected from one or more investors. These funds are then pooled and provided to a developer borrower in exchange for a fixed rate of interest and a registered charge on the subject property.

11. Mr. Lamb marketed the Development Properties to prospective investors, including the Class Members, as a secure investment and promoted Fortress and the Fortress Related Entities as trustworthy parties who would provide the Class Members with profitable returns. However, contrary to what the defendants represented to the Class Members, the Fortress SMLs were high risk due to their financing structure, including high professional fees, advance profit sharing, lack of proper appraisal, and automatic subordination of creditor priority.

12. Neither Fortress nor the defendants disclosed to the Class Members that a significant portion of their Fortress SML investment principal would never be put toward

construction of the Development Property securing the Fortress SML. Of the funds advanced by the Class Members, a significant amount of the funds, in some cases as much as 35%, was used to pay “development consultant fees.” These fees were taken as an advance from the Class Members’ investment principal and split between Fortress, the mortgage administrator (i.e. BDMC or Sorrenti), the brokerages and other service providers.

13. Neither Fortress nor the defendants disclosed to the Class Members that, in some instances, an additional portion of their investment principal was set aside in an “interest reserve” account to pay the interest owed to those same investors. In such instances, to the knowledge of the defendants, the Class Members were unknowingly being paid their interest on the loan from their own investment capital. In addition, the interest reserve accounts would sometimes be used for matters unrelated to the Fortress SML investors, such as paying interest to higher priority construction lenders and other expenses incurred by the developer.

14. Due to this financing structure, which guaranteed significant upfront fees to Fortress, Fortress ran out of financing as it was paying too much money to investors before the Development Properties were completed. This resulted in Fortress stealing money from new projects to pay dividends and expenses on older uncompleted projects. In April 2018, the Royal Canadian Mounted Police (“**RCMP**”) obtained a search warrant and raided Fortress’s headquarters based on evidence that Fortress had fraudulently misappropriated investors’ funds in connection with the Fortress SMLs.

15. On September 30, 2019, pursuant to an order of the Ontario Superior Court of Justice, FAAN Mortgage Administrators Inc. (“FAAN”) was appointed as trustee (the “Trustee”) over assets, undertakings and properties of Fortress.

The Development Properties

16. The defendants initiated 14 condominium projects with Fortress. For the Development Properties (a) the amounts owing under Fortress SMLs have come due with no repayment to the Class Members; and/or (b) there are potential issues with the project including, but not limited to, the priority lender issuing a notice of sale or commencing other enforcement proceedings, zoning/permitting issues and budget shortfalls.

17. All of the Development Properties are currently distressed and the entirety of the principal amounts owed to the Class Members will not be recovered. A brief description of each Development Property is provided below:

(a) The Harlowe: The Class Members provided approximately \$20.8 million in funds for the Harlowe project, of which only \$15.6 million was returned on their investment. As a result of the defendants’ tortious conduct, the Class Members have suffered losses in excess of \$5.2 million.

(b) Wellington House: The Class Members provided approximately \$6.3 million in funds for the project. To date, the Class Members have not received any return on their investments. As a result of the defendants’ tortious conduct, the Class Members have suffered losses in excess of \$6.3 million.

(c) Woodsworth: The Class Members provided approximately \$6.7 million in funds for the Woodsworth project, of which only \$4.8 million was returned on

their investment. As a result of the defendants' tortious conduct, the Class Members have suffered losses in excess of \$1.9 million.

(d) The Orchard: The Class Members provided approximately \$15.8 million in funds for the Orchard project under two investment loans. With interest, the amount owed to the Class Members is in excess of \$18.6 million of which only \$1.8 million was returned to the Class Members. As a result of the defendants' tortious conduct, the Class Members have suffered losses in excess of \$16.8 million.

(e) Jasper House: The Class Members provided \$8.3 million in funds for the Jasper House project. The property underlying the Jasper House project was sold by the Trustee for \$4.3 million, however the residual proceeds of \$1.8 million have not been yet been returned to the Class Members. As a result of the defendants' tortious conduct, the Class Members have suffered losses in excess of \$11.5 million comprised of a principal balance of approximately \$8.3 million and accrued interest of approximately \$3.2 million.

(f) North: The Class Members provided approximately \$10.2 million in funds for the North project. In 2020, the property underlying the North project was sold for \$4.7 million, however the Class Members did not receive any proceeds from the sale. As a result of the defendants' tortious conduct, the Class Members have suffered losses in excess of \$10.2 million.

(g) 6th and Tenth: The Class Members provided approximately \$8.8 million in funds for the 6th and Tenth project. The Class Members have not received any returns on their principal investment for this project. As a result of the defendants'

tortious conduct, the Class Members have suffered losses in excess of \$8.8 million.

(h) Soba: The Class Members provided approximately \$10.3 million in funds for the Soba project. The Class Members have not received any returns on their principal investment for this project. As a result of the defendants' tortious conduct, the Class Members have suffered losses in excess of \$8.8 million.

The Defendants' role in Facilitating the Fortress Scheme

18. The defendants relied on Fortress' financing to initiate the Development Properties. As such, Mr. Lamb worked very closely with Fortress in persuading investors and mortgage brokers to provide funds for the Development Properties.

19. Mr. Lamb was aware of Fortress' financing structure, excessive commission fees, and that Fortress was paying interest to investors from their capital investments before the Development Properties were completed. Accordingly, the defenants knew, or ought to have known, that the Development Properties were highly risky investments, that Fortress' financial structure was unsustainable, and that the Class Members faced a significant likelihood that they would incur a loss to all or part of their investments.

20. Despite this knowledge, the defendants promoted the Development Properties as secure investments with fixed quarterly returns and suggested the Class Members could receive annual net returns between 8-36%. Mr. Lamb marketed Fortress and the Development Properties as a low-risk, high return investment opportunities through videos published on internet websites, press releases, and print/social media.

21. In promotional videos intended for SML investors, including the Class Members, Mr. Lamb built a level of trust by educating investors on the process of real estate development and presenting himself as a knowledgeable, experienced, and successful real estate developer. Mr. Lamb consistently emphasized his positive relationship with Fortress, that Fortress was a willing and able partner for the Development Properties, and that Fortress would provide the Class Members with a safe investment opportunity and a great future.

22. Furthermore, and as a result of his personal relationship with the founders of Fortress, Mr. Lamb knew, or ought to have known, that Mr. Rathore and Mr. Petrozza were both previously charged with security related regulatory violations and that this information would compromise the risk inherent in the Class Members' investments. Specifically, prior to founding Fortress, Mr. Rathore was permanently prohibited from conducting securities related businesses by the Mutual Fund Dealers Association ("MFDA") as a result of violating MFDA regulations. Furthermore, in 2011, Mr. Rathore and Mr. Petrozza entered into a settlement agreement with the Ontario Securities Commission ("OSC") for trading securities without proper registrations and "against the public interest".

RIGHTS OF ACTION

Fraudulent / Negligent Misconduct

23. As the developers for the Development Properties, the defendants owed a duty of care to the Class Members to not falsely inflate and misrepresent the expected returns that the Class Members would receive by investing in the Development Properties.

Additionally, the defendants were required to provide accurate and transparent information concerning any and all risks that Fortress would lack adequate financing to ensure the Development Properties could be fully built as a result of its inappropriate financial scheme.

24. Mr. Lamb knew, or ought to have known, that the Development Properties were inappropriately high-risk investments that were unlikely to be built or would offer the Class Members any profitable returns on their investments.

25. The defendants breached this duty of care by aggressively soliciting the Development Properties to the Class Members despite knowing that the Development Properties had virtually no chance of succeeding to completion.

Fraudulent / Negligent Misrepresentation

26. The defendants negligently and fraudulently made misrepresentations, *inter alia*, to the Class Members (who reasonably relied upon them before, during and after making the investments), either knowingly, or without belief in their truth, or recklessly as to their truth, or alternatively, carelessly and in breach of a duty to take reasonable care that the representation was accurate by:

- (a) stating untruths with respect to the expected returns and timeline to complete the Development Properties; and
- (b) failing to advise the Class Members that Fortress, and other related parties, did not intend to build the Development Properties but instead intended to take the Class Members' investments for their own gain.

27. The defendants knew, or ought to have known, that their misrepresentation of the expected value and timeline of the Development Properties, Fortress' reckless spending of the Class Members' investments, combined with unreasonably high commissions and fees would place great risk on the Class Members' investments, effectively preventing them from any opportunity to receive a profitable return on their investment.

Breach of Fiduciary Duty

28. The defendants committed a breach of fiduciary duty by failing to act in the best interests of the Class Members, by failing to provide the Class Members with accurate information regarding the risk and timeline of their investments.

Deceit

29. The defendants committed the tort of deceit against the Class Members by intentionally misrepresenting the value and timing of the Development Properties for the express intention of defrauding the Class Members, subsequently causing their loss.

30. The defendants knew, or ought to have known, that Fortress had no intention of building the Development Properties and the defendants fabricated the future returns to the Class Members in an effort to obtain more funding.

Unjust Enrichment

31. The defendants have been unjustly enriched by personally receiving funds from the Class Members, directly or indirectly, when they failed to properly ensure that the

Class Members' investments were used for the construction of the Development Properties.

32. The defendants obtained a financial benefit corresponding to the Class Members' loss due to the investment funds the Class Members' provided, directly or indirectly, to the defendants.

33. There is no juristic reason for the defendants' unjust enrichment at the expense of the Class Members.

DAMAGES

34. As a result of the defendants' fraudulent and negligent misconduct, breach of fiduciary duty, negligent and fraudulent misrepresentation, deceit, and unjust enrichment, the Class Members have suffered damages for which the defendants are liable.

35. The Class Members have suffered damages as a result of the defendants' actions, in an amount to be determined prior to trial.

36. Further, the Class Members have suffered special damages as a result of the defendants' misconduct. Particulars of the Class Members' special damages will be provided prior to trial.

37. The plaintiff commences this action on behalf of all the Class Members to recover *inter alia* the full amount of their losses as a result of the defendants' wrongful conduct.

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

38. The plaintiff pleads that this action has a real and substantial connection with Ontario because, among other things: (a) the plaintiff is resident in Ontario; (b) the

defendants are residents in Ontario; (c) the vast majority of Class Members reside in Ontario; and (d) the property securing the Development Properties is substantially situated in Ontario.

RELEVANT LEGISLATION

39. The plaintiff pleads and relies on upon the *Class Proceeding Act*, 1992, S.O. 1992, c.6, as amended.

Date: March 29, 2021

**GROIA & COMPANY
PROFESSIONAL CORPORATION**
Wildeboer Dellelce Place
365 Bay Street, 11th Floor
Toronto, ON M5H 2V1
Fax: 416-203-9231

Bonnie Roberts Jones (LSO# 41256L)
Tel : 416-203-4476
Fax : 416-203-9231

COURT FILE NO.:

CORINNE SUTEJ
Plaintiff

and

BRAD J. LAMB REALTY INC. et al.
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
(Proceeding commenced at TORONTO)

STATEMENT OF CLAIM

GROIA & COMPANY
Professional Corporation ■ Lawyers
Wildeboer Dellelce Place
365 Bay Street, 11th Floor
Toronto, Ontario M5H 2V1
Tel: (416) 203-2115
Fax: (416) 203-9231

Bonnie Roberts Jones LSO#: 41256L

Lawyers for the Plaintiff