

COURT OF APPEAL FOR ONTARIO

BETWEEN:

DOWNING STREET FINANCIAL INC., IN TRUST

Applicant
(Respondent in Appeal)

-and-

**HARMONY VILLAGE-SHEPPARD INC., AS GENERAL PARTNER OF HARMONY
VILLAGE-SHEPPARD LP and CITY CORE DEVELOPMENTS INC.**

Respondents
(Respondents in Appeal)

NOTICE OF APPEAL

THE APPELLANTS, FORTRESS SHEPPARD (2016) INC. FORTRESS REAL DEVELOPMENTS AND DEREK SORRENTI, APPEAL to the Court of Appeal from the Approval and Vesting Order of Mr. Justice Hainey dated June 19, 2017 (the "**Vesting Order**") and the Order of Justice Hainey dated June 19, 2017 dismissing the motion brought by Derek Sorrenti (the "**Fortress Sale Order**") made in the Superior Court of Justice (Commercial List) at Toronto, Ontario.

THE APPELLANTS ASK THAT:

- a) that the Vesting Order and the Fortress Sale Order be set aside;
- b) that an Order be granted that:

- a. directs Rosen Goldberg Inc. (the "**Receiver**") as Receiver of Harmony Village-Sheppard Inc., as general partner of Harmony Village-Sheppard LP (the "**Debtor**") and City Core Developments (the "**Guarantor**") to accept the offer of Fortress Sheppard (2016) Inc. ("**Fortress**") to purchase the property municipally known as 3260 Sheppard Ave East, Toronto, Ontario (the "**Property**") on the terms set out in the Agreement of Purchase and sale dated June 16, 2017 (the "**Fortress Offer**");
- b. approves the sale of the Property on the terms set out in Fortress Offer; and
- c. on closing, vests title to the Property in Fortress Sheppard (2016) Inc., free and clear of all claims, including the claims of the purchasers of the residential condominium units that were to have been developed and constructed on the Property by the Debtor.

THE GROUNDS OF APPEAL ARE AS FOLLOWS:

1. The learned motion's judge made palpable and overriding errors of fact and law resulting in the occurrence of a substantial wrong or miscarriage of justice.
2. The learned motion's judge erred in accepting that the Receiver's recommendation that offer to purchase the Property from Pinnacle International Sheppard Lands Inc. ("**Pinnacle Offer**") be approved as it was the best offer to purchase the Property from the point of view of the majority of stakeholders.
3. The learned motion's judge erred in holding that the Fortress Offer was not preferable to that of the Pinnacle Offer and therefore dismissing the motion brought by Sorrenti to direct the Receiver to accept the Fortress Offer (the "**Sorrenti Motion**").
4. The learned motion's judge erred in applying the proper legal test when approving the Pinnacle Offer and dismissing the Sorrenti Motion.
5. Sorrenti, as trustee for the investors in the syndicated third mortgagee, will incur a loss in

excess of \$10,000 should the Property be sold to Pinnacle pursuant to the Vesting Order. If the Sorrenti Motion had been granted and the Fortress Offer accepted, the investors in the syndicated third mortgagee would not incur a loss on the sale of the Property.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. Rule 31 of the Rules of the *Bankruptcy and Insolvency Act*;
2. Section 193(c) of the *Bankruptcy and Insolvency Act*;
3. Rule 61 of the *Rules of Civil Procedure*;
4. The Vesting Order and the Fortress Sale Order are final;
5. Leave to appeal is not required; and
6. There are no other facts relevant to establishing the jurisdiction of this Court.

June 21, 2017

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TO: **SERVICE LIST**

**DOWNING STREET FINANCIAL
INC. IN TRUST**

- AND -

**HARMONY VILLAGE-SHEPPARD INC., AS GENERAL PARTNER OF
HARMONY VILLAGE-SHEPPARD LP, ET AL.**

Court of Appeal File No.

Court File No.:CV-17-11669-00CL

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**PROCEEDING COMMENCED AT
TORONTO**

NOTICE OF APPEAL

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