

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

IN THE MATTER OF AN APPLICATION UNDER SECTION 47 (1)
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3

AND IN THE MATTER OF SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43

THE HONOURABLE MR.)
JUSTICE WILTON-SIEGEL)
TUESDAY THE 24TH
DAY OF MARCH, 2009

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

-and -

ANN-MAURA DEVELOPMENTS INC.

Respondent

ORDER

THIS REQUEST made by the Applicant, Firm Capital Mortgage Fund Inc. ("FCM") for interim relief pending the hearing of FCM's application for an order pursuant to Subsection 47 (1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended 9the ("BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C43, as amended the ("CJA") appointing Zeifman Partners Inc. as interim receiver and receiver and manager (in such capacities, the "Receiver") without security, of the

Property, Security, and Assets of the respondent Ann-Maura Developments Inc. (the "Debtor") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING, the affidavits of Jonathan Mair sworn March 16, 20, and 24, 2009, and the exhibits attached thereto, on hearing the submissions of counsel for the Applicant and counsel for the Respondent, no one appearing for Vector Financial Services Limited ("Vector") and Maple Drywall Inc. ("Maple") although they were served, and on reading the consent of Zeifman Partners Inc. to act as Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the notice of application and the application record is hereby abridged so that this hearing is properly returnable today, and hereby dispenses with further service thereof on the Respondent, Vector, or Maple.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to subsection 47 (1) of the BIA and section 101 of the CJA, Zeifman Partners Inc. is hereby appointed Interim Receiver without security (the "Receiver"), of the Property as defined in Schedule A attached hereto for the limited purpose of arranging for and maintaining insurance coverage at the Property (the "Insurance Purpose").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of

the following in connection with the Property only where the Receiver considers it necessary or desirable for the Insurance Purpose:

- (a) to take possession and control of the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of the locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to engage consultants, agents, experts, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers conferred by this Order;
- (d) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets;
- (e) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (f) to undertake environmental or worker's health and safety assessments of the Property and operations of the Debtor in connection therewith;
- (g) to report to, meet with and discuss with such persons as the Receiver deems appropriate on all matters relating to the Insurance Purpose and

the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (h) to register a copy of this Order and any other Order in respect of the Property against title to any of the Property;
- (i) to apply for any permits, licences, approvals or permissions with respect to the Property as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought necessary by the Receiver, in the name of the Debtor;
- (j) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter in occupation agreements for any of the Property;
- (k) to take any steps reasonably incidental to the exercise of these powers;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accounts, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing collectively, being "Persons" and each being a "Person") shall

forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

NO PROCEEDINGS AGAINST THE RECEIVER

5. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO INTERFERENCE WITH THE RECEIVER

6. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, or interfere with, any licence or permit in favour of or held by the Debtor in connection with the Property, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

7. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services in connection with the Property, including but without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of the Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver for the Insurance Purpose, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may

be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by the Court.

LIMITATION ON ENVIRONMENTAL LIABILITIES

8. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or take control, care, charge, possession or management (separately and/or collectively "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, but without limitation, the *Canadian Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and power under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation unless it is actually in possession.

LIMITATION ON RECEIVER'S LIABILITY

9. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

10. **THIS COURT ORDERS** that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a second charge on the Property ranking subsequent in priority to the Mortgage and security held by the Applicant with respect to the Property and prior to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "Receiver's Charge").

11. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Superior Court of Justice.

12. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when as approved by this Court.

FUNDING OF THE RECEIVERSHIP

13. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$50,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems

advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for payment of the monies borrowed, together with interest and charges thereon, ranking subsequent in priority to (i) the mortgage and security held by the applicant with respect to the Property (ii) the first mortgage and security held by Firm Capital Mortgage Fund Inc. with respect to the Property and (iii) the Receiver's Charge and prior to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any other Person.

14. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

15. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "D" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to the Order.

16. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any all of the Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

17. **THIS COURT ORDERS** that notwithstanding paragraphs 13 to 16 inclusive above, and as alternative thereto, the Receiver is hereby authorized to borrow money to fund the exercise of its powers and duties hereunder by way of advances from the Applicant which advances shall be secured by the Applicant's Security on the Property, with the same priority that may attach to such security.

GENERAL

18. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

19. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

20. **THIS COURT ORDERS** that the Receiver shall provide the following persons with access to the Property:

(a) to the Debtor during business hours upon 24 hours' notice and not more than once a day; and

(b) to licensed real estate brokers with prospective purchasers by appointment upon reasonable notice.

21. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on reasonable notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

22. **THIS COURT ORDERS** that the terms of this order are made on an interim basis only, pending the hearing of the application and are without prejudice to any argument the Respondent wishes to advance at that hearing regarding possession of the Property as if this order had not been made.



Christina Irwin
Registrar, Superior Court of Justice

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

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MAR 25 2009

PER / PAR: 

Schedule "A"
THE PROPERTY

1. The lands municipally known as 774, 756, 758, 762, 768 and 770 Annette Street, Toronto, Ontario described as Pin Nos. 10520-0802 (LT), 10520-0803 (LT), 10520-0805 (LT), 10520-0807 (LT), 10520-0808 (LT) and 10520-0809 (LT) being Part of Lots 116, 117, 118 and 119 Plan 893, Annette Runnymede Annex, being Parts 9, 8, 6, 4, 3 and 2 on Plan 66R-22263, together with an undivided common interest in Toronto Common Elements Condominium Corporation 1921 and PIN No. 12921-0001 (LT) (formerly 10520-0810 and 10520-0183) and now 12921-0001 (LT) being Parts of Lots 116, 117, 118, 119 and 120, Plan 893, Annette Runnymede Annex designed as Part 1, Plan 66R-22263, Toronto Common Elements Condominium Plan No. 1921 and its appurtenant interest, City of Toronto (hereinafter referred to as the "Property")

2. The Property shall include all Personal Property owned or acquired by or on behalf of Ann-Maura Developments Inc. or in respect of which Ann-Maura Developments Inc. has any rights (the "Personal Property") and which is now affixed or attached to, the Property, in connection with the use of the Property or any part thereof, and any other Personal Property located on, placed upon, situate in or on the Property necessary for the Insurance Purpose, including, without limitation, all increases, additions, substitutions, repairs, renewals, replacements, accessions, accretions and any improvements to any such Personal Property.

3. The Property shall include all policies of insurance insuring the Property and the building improvements, fixtures and other properties situate in, on, or under the Property or arising out of the interest of Ann-Maura Developments Inc. in the

Property including, without limitation, policies of insurance for property damage, loss of rental income, business interruptions, theft of property, professional liability, general liability, fire and extended perils and boiler and machinery.

“Insurance Policies” means all present and future builders’ risk, hazard, damage, rental or business income loss and public liability policies and all other forms of insurance relating to the Property and any improvements constructed thereon or made thereto.

SCHEDULE "D"**RECEIVER CERTIFICATE**

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that Zeifman Partners Inc., the interim receiver and receiver and manager (the "Receiver") of certain of the assets, undertakings and properties of Ann-Maura Developments, appointed by Order of the Ontario Superior Court of Justice (the "Court") dated ____ day of March, 2009 (the "Order") made in an action having Court file number _____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$1,000,000.00 which the Receiver is authorized to borrow under and pursuant to this Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded (daily/monthly) not in advance on the _____ day of each month after the date hereof at a notional rate per annum equal to the rate of ____ per cent above the prime commercial lending rate of the Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of this Court, a charge upon the whole of the Property (as defined in the Order), ranking subsequent in priority to (i) the first mortgage and security held by Firm Capital Mortgage Fund Inc. with respect to the Property, (ii) the Receiver's Charge and the Receiver's Borrowing Charge set out in the

Order, and (iii) the right of the Receiver to indemnify itself out of such Property in respect to its remuneration and expenses, but shall rank prior the security interest of any other person in the Property.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2009.

ZEIFMAN PARTNERS INC., solely in
its capacity as Receiver of the Property
(as defined in the Order, and not in its
Personal capacity

Per: _____
Name: Allan Rutman

Firm Capital Mortgage Fund Inc.

-and-

Ann-Maura Developments Inc.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

ORDER

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