

**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*

B E T W E E N :

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

- and -

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

Respondents

**RESPONDING APPLICATION RECORD**

Date: October 15, 2018

**SHIBLEY RIGHTON LLP**  
Barristers & Solicitors  
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**TO: THIS HONOURABLE COURT**

**AND TO THE ATTACHED SERVICE LIST**

**AMENDED SERVICE LIST**  
(as at October 11, 2018)

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(as at October 11, 2018)**

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**(as at October 9, 2018)**

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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**

B E T W E E N:

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

— and —

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

Respondents

**AFFIDAVIT OF EDWARD SULLIVAN**

I, EDWARD SULLIVAN, student-at -law, of the City of Toronto in the Province  
of Ontario, MAKE OATH AND SAY:

1. I am an articulated student with Shibley Righton LLP who, together with Nicholas Richter, are lawyers for the lien claimant Gilbert Steel Limited in this application and as such I have knowledge of the matters sworn to herein.

2. Attached as Exhibit “A” hereto is the statement of claim of Gilbert Steel Limited in court file no. CV-18-595231 issued April 5, 2018 in respect of the lien registered as instrument number AT4807083 against the project known as “Brookdale on Avenue Road” (the “Lien

Action”).


3. Attached as Exhibit “B” hereto is the statement of defence in the Lien Action of the defendant Firm Capital Mortgage Fund Inc. dated May 25, 2018.

4. Attached as Exhibit “C” hereto is the statement of defence in the Lien Action of the defendants Quincy Investments Ltd., 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 dated May 25, 2018.

5. Attached as Exhibit “D” hereto is the statement of defence in the Lien Action of Jaekel Capital Inc. dated June 1, 2018.

6. I make this affidavit in response to this application, and for no other or improper purpose.

SWORN BEFORE ME at the City of )  
Toronto in the Province of Ontario )  
this 15<sup>th</sup> day of October, 2018 )

  
Thomas McRae  
A Commissioner, etc.

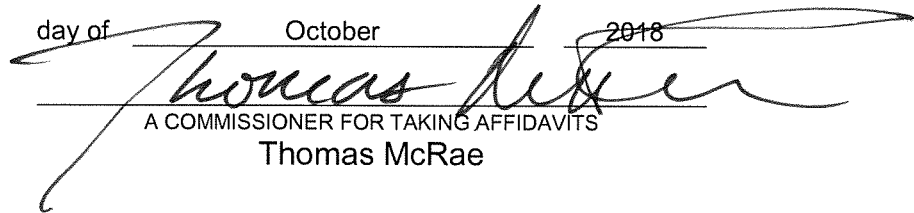
  
EDWARD SULLIVAN

This is Exhibit           "A"           referred to in the

affidavit of           Edward Sullivan          

sworn before me, this           15th          

day of           October                     2018          

A large, stylized handwritten signature in black ink, which appears to read "Thomas McRae". The signature is written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Thomas McRae

Court File No.

CN-18395231

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*  
R.S.O. 1990, c. C.30

**BETWEEN:**

**GILBERT STEEL LIMITED**

**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**

**STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

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 statement of claim 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.

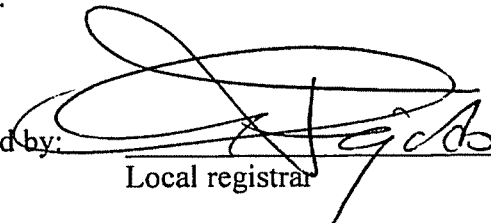
Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

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.

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 \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: April 5, 2018

Issued by:   
Local registrar

Address of court office:  
393 University Avenue  
Toronto, Ontario  
M5G 1E6

TO: Fortress Brookdale Inc.  
25 Brodie Drive, Unit 1  
Richmond Hill, Ontario  
L4B 3K7

AND TO: Jaekel Capital Inc.  
10376 Yonge Street, Suite 203  
Richmond Hill, Ontario  
L4C 3B8

AND TO: Building & Development Mortgages Canada Inc.  
25 Brodie Drive, Unit 8  
Richmond Hill, Ontario  
L4B 3K7

AND TO: Computershare Trust Company of Canada  
510 Burrard Street, 3<sup>rd</sup> Floor  
Vancouver, British Columbia  
V6C 3B9  
Attn: Private Capital Solutions

and

100 University Avenue, 11<sup>th</sup> Floor  
Toronto, Ontario  
M5J 2Y1

AND TO: Olympia Trust Company  
125-9<sup>th</sup> Avenue SE, Suite 2200  
Calgary, Alberta  
T2G 0P6

and

120 Adelaide Street West, Suite 920  
Toronto, Ontario  
M5H 1T1

AND TO: Firm Capital Mortgage Fund Inc.  
163 Cartwright Avenue  
Toronto, Ontario  
M6A 1V5

AND TO: Quincy Investments Limited  
31 Densley Avenue  
Toronto, Ontario  
M6M 2P5

AND TO: 969592 Ontario Limited  
31 Densley Avenue  
Toronto, Ontario  
M6M 2P5

AND TO: 969593 Ontario Limited  
31 Densley Avenue  
Toronto, Ontario  
M6M 2P5

- AND TO: 2307271 Ontario Inc.  
40 Hazelridge Court  
Kleinburg, Ontario  
L0J 1C0
- AND TO: Sasso Auto Consulting Inc.  
185 Bishop Avenue  
Toronto, Ontario  
M2M 1Z7
- AND TO: Angelo Grossi  
36 Pebblelane Court  
Richmond Hill, Ontario  
L4C 6X2
- AND TO: David Mark Doubilet  
70 Heath Street East  
Toronto, Ontario  
M4T 1S3
- AND TO: Gus Stamatiou  
54 Kettle Court  
Vaughan, Ontario  
L6A 2M2
- AND TO: Robert Di Matteo  
20 Cachet Woods Court, Unit 2  
Markham, Ontario  
L6C 3G1
- AND TO: Tonino Amendola  
18 Norcross Road  
Toronto, Ontario  
M3H 2R4

**CLAIM**

1. The plaintiff, Gilbert Steel Limited (“Gilbert Steel”), claims:
  - (a) payment of the sum of \$859,955.39;
  - (b) prejudgment and postjudgment interest on the above amount in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
  - (c) its costs of this action on a substantial indemnity basis, together with all applicable taxes thereon;
  - (d) that, in default of payment of the sum of \$859,955.39 plus costs, all the estate and interest of the defendants in the Lands (as defined below) be sold and the proceeds be applied toward payment of Gilbert Steel’s claim pursuant to the *Construction Lien Act*, R.S.O. 1990, c. C.30;
  - (e) full priority over the mortgages of the defendants 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 (collectively, the “Mortgagees”) or, in the alternative, priority over the Mortgagees’ mortgages to the extent of any deficiency in the holdbacks required to be retained pursuant to the *Construction Lien Act* or, in the further alternative, priority over the Mortgagees’ mortgages to the extent that any amounts advanced exceeded the actual value of the premises at the time when the first lien arose or, in the further alternative, priority over the Mortgagees’ mortgages to the extent of any amounts advanced after the first lien arose;



(f) for the purposes aforesaid, all proper directions to be given and accounts taken;  
and

(g) such further and other relief as this Honourable Court may deem just.

2. Gilbert Steel is a company incorporated under the laws of Ontario and carries on business, among other things, supplying reinforcing steel.

3. The defendant Fortress Brookdale Inc. (“Fortress”) is a company incorporated under the laws of Ontario and carries on business, among other things, as an owner and developer of the Project (as defined below). At all material times, Fortress was the registered owner of the lands described in the Claim for Lien attached hereto as Appendix “A” (the “Lands”).

4. The defendant Jaekel Capital Inc. (“Jaekel”) is a company incorporated under the laws of Ontario and carries on business, among other things, as a mortgage lender.

5. The defendant Building & Development Mortgages Canada Inc. (“BDMC”) is a company incorporated under the laws of Ontario and carries on business, among other things, as a mortgage lender.

6. The defendant Computershare Trust Company of Canada (“Computershare”) is a company incorporated under the laws of Canada and carries on business, among other things, as a mortgage lender. Computershare operates in Ontario from offices in Toronto.

7. The defendant Olympia Trust Company (“Olympia”) is a company incorporated under the laws of Alberta and carries on business, among other things, as a mortgage lender.

8. The defendant Firm Capital Mortgage Fund Inc. (“Firm Capital”) is a company incorporated under the laws of Ontario and carries on business, among other things, as a mortgage lender.

9. The defendant Quincy Investments Limited (“Quincy”) is a company incorporated under the laws of Ontario and carries on business, among other things, as a mortgage lender.
10. The defendant 969592 Ontario Limited (“969592”) is a company incorporated under the laws of Ontario and carries on business, among other things, as a mortgage lender.
11. The defendant 969593 Ontario Limited (“969593”) is a company incorporated under the laws of Ontario and carries on business, among other things, as a mortgage lender.
12. The defendant 2307271 Ontario Inc. (“2307271”) is a company incorporated under the laws of Ontario and carries on business, among other things, as a mortgage lender.
13. The defendant Sasso Auto Consulting Inc. (“Sasso”) is a company incorporated under the laws of Ontario and carries on business, among other things, as a mortgage lender.
14. The defendants Angelo Grossi (“Grossi”), David Mark Doubilet (“Doubilet”), Gus Stamatiou (“Stamatiou”), Robert Di Matteo (“Di Matteo”), and Tonino Amendola (“Amendola”) are individuals residing in Ontario.
15. In or about November 2016, Gilbert Steel entered into an agreement with Fortress to supply reinforcing steel for a construction project known as “Brookdale on Avenue Road” (the “Project”), which is situated on the Lands.
16. Gilbert Steel commenced work on the Project on July 7, 2017.
17. Gilbert Steel has completed all of its obligations to date under its agreement with Fortress, but Fortress has refused or neglected to pay Gilbert Steel \$859,955.39, plus interest, which is due and owing to Gilbert Steel. Fortress has therefore breached its contract with Gilbert Steel.

18. By reason of supplying services and materials to the Project, Gilbert Steel became entitled to a lien upon the interest of the defendants in the Lands for the sum of \$859,955.39, plus costs, pursuant to the *Construction Lien Act*.

19. On February 22, 2018, Gilbert Steel caused to be registered a claim for lien against the title to the Lands in the Land Registry Office for the Land Titles Division of Toronto (No. 80) as instrument number AT4807083 in accordance with the *Construction Lien Act*. A copy of the registered claim for lien is attached as Appendix "A". Gilbert Steel claims a lien against the interest of every person identified as an owner of the premises described in the claim for lien attached as Appendix "A".

20. At all material times, the Lands were occupied by the defendants (or, in the alternative, the defendants had an interest in the premises) and Gilbert Steel supplied services and materials to the Lands at the request, upon the credit, on behalf, with the consent, and for the direct benefit of the defendants and, accordingly, the defendants are and were, at all material times, owners within the meaning of the *Construction Lien Act*.

21. By Instrument Number AT3894769 registered on May 28, 2015, the Lands were mortgaged in favour of Jaekel (formerly RW Fortress Inc.) for the sum of \$6,600,000.00 (which amount was amended from time to time by subsequent instruments). Gilbert Steel claims full priority over this mortgage or, in the alternative, priority over the mortgage to the extent of any deficiency in the holdbacks required to be retained pursuant to the *Construction Lien Act* or, in the further alternative, priority over the mortgage to the extent that any amounts advanced exceeded the actual value of the premises at the time when the first lien arose or, in the further alternative, priority over the mortgage to the extent of any amounts advanced after the first lien arose.

22. By Instrument Number AT3955352 registered on July 23, 2015, the Lands were mortgaged in favour of BDMC (formerly Centro Mortgage Inc.) and, by subsequent instruments, in favour of Building and Olympia for the sum of \$10,300,000.00 (which amount was amended from time to time by subsequent instruments). Gilbert Steel claims full priority over this

mortgage or, in the alternative, priority over the mortgage to the extent of any deficiency in the holdbacks required to be retained pursuant to the *Construction Lien Act* or, in the further alternative, priority over the mortgage to the extent that any amounts advanced exceeded the actual value of the premises at the time when the first lien arose or, in the further alternative, priority over the mortgage to the extent of any amounts advanced after the first lien arose.

23. By Instrument Number AT4065378 registered on November 13, 2015, the Lands were mortgaged in favour of Quincy, 969592, 969593, 2307271, Sasso, Grossi, Doubilet, Stamatiou, Di Matteo, and Amendola for the sum of \$5,330,000.00. Gilbert Steel claims full priority over this mortgage or, in the alternative, priority over the mortgage to the extent of any deficiency in the holdbacks required to be retained pursuant to the *Construction Lien Act* or, in the further alternative, priority over the mortgage to the extent that any amounts advanced exceeded the actual value of the premises at the time when the first lien arose or, in the further alternative, priority over the mortgage to the extent of any amounts advanced after the first lien arose.

24. By Instrument Number AT4591073 registered on June 7, 2017, the Lands were mortgaged in favour of Firm Capital for the sum of \$18,500,000.00. Gilbert Steel claims full priority over this mortgage or, in the alternative, priority over the mortgage to the extent of any deficiency in the holdbacks required to be retained pursuant to the *Construction Lien Act* or, in the further alternative, priority over the mortgage to the extent that any amounts advanced exceeded the actual value of the premises at the time when the first lien arose or, in the further alternative, priority over the mortgage to the extent of any amounts advanced after the first lien arose.

25. By Instrument Number AT4707175 registered on October 17, 2017, the Lands were mortgaged in favour of BDMC and, by subsequent instruments, in favour of BDMC and Computershare for the sum of \$4,800,000.00. Gilbert Steel claims full priority over this mortgage or, in the alternative, priority over the mortgage to the extent of any deficiency in the holdbacks required to be retained pursuant to the *Construction Lien Act* or, in the further alternative, priority over the mortgage to the extent that any amounts advanced exceeded the

actual value of the premises at the time when the first lien arose or, in the further alternative, priority over the mortgage to the extent of any amounts advanced after the first lien arose.

26. In default of payment of Gilbert Steel's claim, Gilbert Steel requests an order that all of the defendants' estate and interest in the Lands be sold and the proceeds applied toward payment of Gilbert Steel's claim pursuant to the *Construction Lien Act*.

27. In the alternative, Gilbert Steel states that it is entitled to payment of its claim by way of damages for breach of contract or, in the further alternative, on a *quantum meruit* basis.

28. If it becomes necessary to serve any of the defendants outside Ontario, Gilbert Steel pleads and relies upon Rules 17.02(a), (f)(i), (f)(iv), (n), and (p) of the Rules of Civil Procedure to permit service outside Ontario, without leave, together with the following facts:

- (a) the claim is in respect of real property in Ontario;
- (b) the claim is in respect of a contract where the contract was made in Ontario and a breach of the contract has been committed in Ontario;
- (c) the claim is authorized by the *Construction Lien Act* to be made against a person outside Ontario by a proceeding commenced in Ontario; and
- (d) the claim is against defendants all of whom are ordinarily resident or carry on business in Ontario.

April 5, 2018

**NICHOLAS A. RICHTER**  
Barrister & Solicitor  
15 Bold Street  
Hamilton, Ontario  
L8P 1T3

Tel: (905) 523-7994  
Fax: (905) 523-6285

Lawyer for the plaintiff

Appendix "A"

LRO # 80 Construction Lien

Received as AT4807083 on 2018 02 22 at 10:53

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

**Properties**

PIN 10189 - 0886 LT  
 Description LOT 32 PLAN 2371 YORK PT 2 66R29204; SUBJECT TO AN EASEMENT AS IN AT4680181; SUBJECT TO AN EASEMENT AS IN AT4753130; CITY OF TORONTO  
 Address TORONTO

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 AT4680181; SUBJECT TO AN EASEMENT AS IN AT4753130; CITY OF TORONTO  
 Address TORONTO

**Consideration**

Consideration \$ 859,955.39

**Claimant(s)**

Name GILBERT STEEL LIMITED  
 Address for Service 1650 Britannia Road East  
 Mississauga, Ontario  
 L4W 1J2

I, Anton Rupert Plobner, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

I, Anton Rupert Plobner, General Manager, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Statements**

Name and Address of Owner See Schedule Name and address of person to whom lien claimant supplied services or materials See Schedule Time within which services or materials were supplied from 2017/07/07 to 2018/01/11 Short description of services or materials that have been supplied Supply of reinforcing steel Contract price or subcontract price \$ 1,064,537.26 (to date, inclusive of HST, at unit rates) Amount claimed as owing in respect of services or materials that have been supplied \$ 859,955.39 (inclusive of H.S.T.)

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Schedule: See Schedules

**Signed By**

Andrea Lee White 250 University Avenue Suite 700 acting for Signed 2018 02 22  
 Toronto Applicant(s)  
 M5H 3E5

Tel 416-214-5200  
 Fax 416-214-5400

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

SHIBLEY RIGHTON LLP 250 University Avenue Suite 700 2018 02 22  
 Toronto  
 M5H 3E5

Tel 416-214-5200  
 Fax 416-214-5400

**Fees/Taxes/Payment**

Statutory Registration Fee \$63.65

Total Paid \$63.65

**File Number**

Claimant Client File Number : 2110346

**Schedule Regarding Statement 3707**

**Name and Address of Owners:**

- 1) **Fortress Brookdale Inc.**  
25 Brodie Drive, Unit 1  
Richmond Hill, Ontario L4B 3K7
  
- 2) **Jaekel Capital Inc.**  
10376 Yonge Street, Suite 203  
Richmond Hill, Ontario L4C 3B8
  
- 3) **Building & Development Mortgages Canada Inc.**  
25 Brodie Drive, Unit 8,  
Richmond Hill, Ontario L4B 3K7
  
- 4) **Computershare Trust Company of Canada**  
510 Burrard Street, 3rd Floor  
Vancouver, B.C. V6C 3B9  
Attn: Private Capital Solutions

and

100 University Avenue, 11<sup>th</sup> Floor  
Toronto, Ontario M5J 2Y1

- 5) **Olympia Trust Company**  
125-9th Avenue SE, Suite 2200  
Calgary, Alberta T2G 0P6

and

120 Adelaide Street West, Suite 920  
Toronto, Ontario M5H 1T1

- 6) **Firm Capital Mortgage Fund Inc.**  
163 Cartwright Avenue  
Toronto, Ontario M6A 1V5
  
- 7) **Quincy Investments Limited**  
31 Densley Avenue  
Toronto, Ontario M6M 2P5



- 8) 969592 Ontario Limited  
31 Densley Avenue  
Toronto, Ontario M6M 2P5
- 9) 969593 Ontario Limited  
31 Densley Avenue  
Toronto, Ontario M6M 2P5
- 10) 2307271 Ontario Inc.  
40 Hazelridge Court  
Kleinburg, Ontario L0J 1C0
- 11) Sasso Auto Consulting Inc.  
185 Bishop Avenue  
Toronto, Ontario M2M 1Z7
- 12) Angelo Grossi  
36 Pebblelane Court  
Richmond Hill, Ontario L4C 6X2
- 13) David Mark Doublet  
70 Heath Street East  
Toronto, Ontario M4T 1S3
- 14) Gus Stamatliou  
54 Kettle Court  
Vaughan, Ontario L6A 2M2
- 15) Robert Di Matteo  
20 Cachet Woods Court, Unit 2  
Markham, Ontario L6C 3G1
- 16) Tonino Amendola  
18 Norcross Road  
Toronto, Ontario M3H 2R4

**Name and address of person to whom lien claimant supplied services or materials:**

- 1) Fortress Brookdale Inc.  
25 Brodie Drive, Unit 1  
Richmond Hill, Ontario L4B 3K7

Court File No. *CN-18595831*

GILBERT STEEL LIMITED  
Plaintiff

and

FORTRESS BROOKDALE INC., *et al.*  
Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*  
R.S.O. 1990, c. C.30

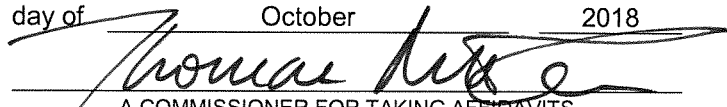
Proceeding commenced at Toronto

**STATEMENT OF CLAIM**

**NICHOLAS A. RICHTER**  
LSUC #36059V  
Barrister & Solicitor  
15 Bold Street  
Hamilton, Ontario  
L8P 1T3  
Tel: (905) 523-7994  
Fax: (905) 523-6285

Lawyer for the plaintiff

This is Exhibit           "B"           referred to in the  
affidavit of           Edward Sullivan            
sworn before me, this           15th            
day of           October                     2018          

  
A COMMISSIONER FOR TAKING AFFIDAVITS  
Thomas McRae

# TGF

Thornton Grout Finnigan LLP  
RESTRUCTURING + LITIGATION

Toronto-Dominion Centre  
100 Wellington Street West  
Suite 3200, P.O. Box 329  
Toronto, ON Canada M5K 1K7  
T 416.304.1616 F 416.304.1313

Sapna Thakker  
T: 416-304-0601  
E: sthakker@tgf.ca  
File No.1440-008

May 25, 2018

**VIA FACSIMILE**

Nicholas A. Richter  
Barrister & Solicitor  
15 Bold Street  
Hamilton, ON  
L8P 1T3

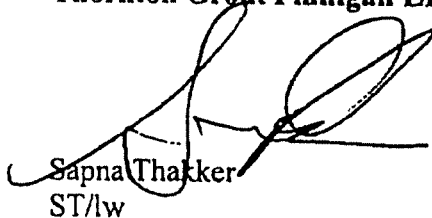
Dear Mr. Richter:

Re: ***Gilbert Steel Limited v. Fortress Brookdale Inc., et al***  
**Court File No. CV-18-595231**

Please find attached the Statement of Defence of Firm Capital, which is hereby served upon you pursuant to the *Rules of Civil Procedure* and the *Construction Lien Act*, R.S.O. 1990, c. C.30.

Yours truly,

**Thornton Grout Finnigan LLP**



Sapna Thakker  
ST/lw

Encl.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**BETWEEN**

**GILBERT STEEL LIMITED**

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

**STATEMENT OF DEFENCE OF THE DEFENDANT  
FIRM CAPITAL MORTGAGE FUND INC.**

1. The defendant, Firm Capital Mortgage Fund Inc. ("**Firm Capital**"), admits the allegations of fact contained in paragraphs 3 and 8 of the plaintiff's Statement of Claim (the "**Claim**").
2. The defendant has no knowledge of the allegations contained in paragraphs 2, 4-7, and 9-16 of the Claim.

3. The defendant denies the allegations contained in paragraphs 1, 17-28 of the Claim. Except as is expressly admitted, the defendant denies the balance of the allegations of fact contained in the Claim, and puts the plaintiff to the strict proof thereof.

***Firm Capital***

4. The defendant, Firm Capital is incorporated pursuant to the laws of the Province of Ontario and was at all material times a mortgagee of the lands and premises more particularly described as follows:

- (a) PIN No. 10189-0866 (LT), Lot 32, Plan 2371, York, Part 2, 66R29204, subject to an easement as in AT4660181, subject to an easement as in AT4753130, City of Toronto; and
- (b) PIN No. 10189-0865 (LT), Lots 33 & 34, Plan 2371, Part Lot 42A & Lot 43A, Plan 2247, Part 1, 66R29204; together with an easement over Part 3, 66R29204 as in AT4379990, subject to an easement as in AT4660181, subject to an easement as in AT4753130, City of Toronto.

The above are municipally known as 1678-1704 Avenue Road, 375-377 Fairlawn Avenue and 412-416 Brookdale Avenue, Toronto (the "**Property**").

5. Firm Capital has no knowledge of whether the plaintiff, Gilbert Steel Limited ("**Gilbert Steel**") supplied any labour, materials or services to the Property. Gilbert Steel did not supply any labour, services or materials at the request of, on behalf of, with the consent of, or for the direct benefit of Firm Capital. There is no agreement, express or implied, written or oral, between Gilbert Steel and Firm Capital.

***Mortgage Commitment***

6. Firm Capital Corporation, an affiliate of Firm Capital, issued a Mortgage Loan Commitment dated April 18, 2017 (the “**Mortgage Commitment**”) for a mortgage loan to be made available to Fortress Brookdale Inc., together with its beneficiaries (collectively, the “**Borrowers**”) in the principal amount of \$18,500,000 plus interest and costs. The Mortgage Commitment issued by Firm Capital Corporation was subsequently assigned to Firm Capital.

7. Pursuant to the Mortgage Commitment, a mortgage in favour of Firm Capital was registered on June 7, 2017 over the Property as Instrument No. AT4591073 (the “**Mortgage**”). Advances under the Mortgage were available and made as follows:

- (a) a \$17,000,000 Loan Advance Facility, the purpose of which was to refinance the existing first mortgage land loan, which was advanced on June 7, 2017; and
- (b) a \$1,500,000 Construction Hard Cost Facility, the purpose of which was to finance certain construction costs incurred by the Borrowers. This portion was advanced by way of four separate draws in the following amounts (in each case including an advance fee of \$580.00) on the following dates:

- (i) June 7, 2017 - \$359,914.00;
- (ii) July 11, 2017 - \$442,357.00;
- (iii) July 24, 2017 - \$223,493.00; and
- (iv) October 4, 2017 - \$185,957.00.

8. The Mortgage registered against the Property secures all of the Borrowers’ obligations under the Mortgage Commitment.

9. In accordance with the terms of the Mortgage Commitment, the Borrowers were required to provide a report of a construction monitor prior to any advance being made to the Borrowers under the Mortgage. The construction monitor certified the amount of funds not to be advanced by Firm Capital in respect of each advance under the Mortgage. Firm Capital complied with the construction monitor's reports and did not advance the appropriate funds as certified by the construction monitor.

10. Certain charges were permitted to be registered on title to the Property, provided that each would be fully postponed to the first-ranking charge in favour of Firm Capital.

11. All other mortgages registered on title to the Property are fully postponed to the first-ranking charge in favour of Firm Capital.

***Firm Capital Denies Gilbert Steel's Claims***

12. Firm Capital states that the Mortgage has full priority over any lien to which Gilbert Steel may be entitled, as:

- (a) the total amount advanced under the Mortgage did not exceed the value of the Property at the time any liens may have first arisen;
- (b) the Mortgage was registered before the lien (as alleged in the Statement of Claim) arose; and
- (c) any advances made under the Mortgage were made prior to the preservation or perfection of any lien on the Property and prior to the receipt of any written notice of the lien.



13. In the alternative, any liability of Firm Capital is limited to any deficiency that may be determined to exist in the amounts not to be advanced by Firm Capital to the Borrowers, and such deficiency is expressly denied.
14. Additionally and in the alternative, Firm Capital denies:
- (a) that Gilbert Steel is entitled to a lien upon the Property;
  - (b) that Gilbert Steel preserved and/or perfected its lien as required by the *Construction Lien Act* (Ontario); and/or
  - (c) that Gilbert Steel has a valid lien claim upon the Property.
15. Firm Capital denies that there has been any unjust enrichment or that Gilbert Steel is entitled to claim on the basis of *quantum meruit*.
16. Firm Capital therefore requests that this Claim be dismissed with costs.

May 25, 2018

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Limited, 2307271 Ontario Inc., Sasso Auto Consulting  
Inc., Angelo Grossi, David Mark Doubliet, Gus  
Stamatiou, Robert Di Matteo, and Tonino Amendola

**GILBERT STEEL LIMITED**

Plaintiff  
and

**FORTRESS BROOKDALE INC. et al.**  
Defendants

Court File No.: CV-18-595231

*ONTARIO*

**SUPERIOR COURT OF JUSTICE**

In the matter of the *Construction Lien Act*,  
R.S.O. 1990, c. C. 30 as amended

Proceedings commenced at Toronto

**STATEMENT OF DEFENCE  
OF THE DEFENDANT  
FIRM CAPITAL MORTGAGE FUND INC.**

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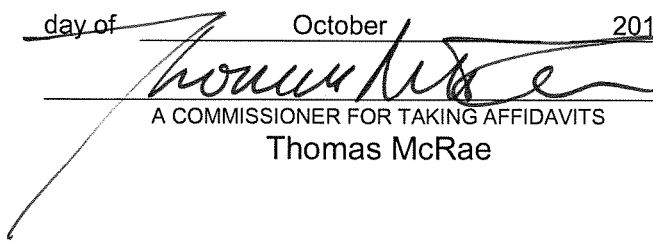
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Lawyers for the Defendant  
Firm Capital Mortgage Fund Inc.

This is Exhibit           "C"           referred to in the  
affidavit of           Edward Sullivan            
sworn before me, this           15th            
day of           October                     2018          

  
A COMMISSIONER FOR TAKING AFFIDAVITS  
Thomas McRae



**CORSIANOS LEE**  
Barristers & Solicitors

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B.A. (Hons.), M.A., LL.B.  
**JACOB H.C. LEE**  
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Email: gcorsianos@cl-law.ca

May 25, 2018

VIA FACSIMILE

TO THE ATTACHED SERVICE LIST

Dear Sirs:/Mesdames:

**RE: Quincy Investments Limited et al ats**  
**Gilbert Steel Limited**  
**Court File No. CV-18-595231**  
**Our File No. 18-1005**

We are counsel for the defendants, 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 ("our clients") in the above-noted matter.

Please find attached the Statement of Defence of the Defendants, 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 which is served upon you pursuant to the *Rules of Civil Procedure*.

Yours very truly,

**CORSIANOS LEE**

Per:

George Corsianos  
GC:mg  
Enc.

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Court File No. CV-18-595231

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**BETWEEN:**

**GILBERT STEEL LIMITED**

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

**STATEMENT OF DEFENCE OF THE DEFENDANTS, QUINCY INVESTMENTS LTD.,  
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**

1. The defendants, Quincy Investments Ltd., 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 (collectively hereinafter referred to as "these defendants") admit the allegations contained in paragraphs 3 and 9-14 of the statement of claim.
2. These defendants have no knowledge of the allegations contained in paragraphs 2, 4-8, 15 and 16 of the statement of claim.
3. These defendants deny the allegations contained in paragraphs 1, 17-28 of the statement of claim, unless as is expressly admitted and put the plaintiff to the strict proof thereof.
4. These defendants state that on September 4, 2015, Fortress Brookdale Inc. ("FBI"), Fortress Avenue Road (2015) Inc. ("FARI") and Fernbrook Homes (Brookdale) Limited ("Fernbrook Homes"), entered into a Loan Agreement with these defendants. Pursuant to the Loan Agreement, these defendants agreed to provide to FBI, FARI and Fernbrook

Homes a non-revolving term loan in the aggregate amount of Four Million One Hundred Thousand Dollars (\$4,100,000.00) (the "Loan"). The Loan was to be used by FBI, FARI and Fernbrook Homes solely to refinance the project and soft costs to be incurred prior to the construction financing of the development of a seven storey residential condominium building on the lands and premises described as follows:

a) PIN: 10189-0245 (LT)

LT 32 PL 2371 TWP OF YORK; TORONTO (N YORK), CITY OF TORONTO

b) PIN: 10189-0860 (LT)

FIRSTLY; PT LT 43A PL 2247 TWP OF YORK AS IN TB953411; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; SECONDLY; PT LT 43A PL 2247 TWP OF YORK AS IN NY806826; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; THIRDLY; PT LT 42A, 43A PL 2247 TWP OF YORK AS IN NY791515; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; FORTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK AS IN TR39454; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; FIFTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK PT 2 & 3 64R14089; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; SIXTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK PT 1 64R14089; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; SEVENTHLY; LT 33 PL 2371 TWP OF YORK; PT LT 34 PL 2371 TWP OF YORK AS IN TB940448; EIGHTLY; PT LT 34 PL 2371 TWP OF YORK AS IN TB940447; CITY OF TORONTO (the "Lands")

5. As security for the payment and performance of the obligations of FBI, FARI and Fernbrook Homes, these defendants registered a mortgage in the sum of \$5,330,000.00 on November 13, 2105 as Instrument No. AT4065378 on the Lands.
6. The amount advanced by these defendants was \$4.1 million in a single advance on November 13, 2015.
7. These defendants state that the plaintiff has joined in this action parties who have had absolutely no knowledge or involvement with any of the alleged improvement services to the Lands. These defendants further state that the plaintiff did not supply any labour, services, or materials at the request of, on behalf of, with the consent of, or for the direct benefit of these defendants. There is no agreement, express or implied, written or oral between the plaintiff and these defendants.
8. The plaintiff has added these defendants in this action solely on account of the fact that these defendants hold a mortgage registered against the Lands. However, there is no

basis either under the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "Act") or under any other applicable law whereby the plaintiff's claim for a construction lien could possibly rank in priority to these defendants' mortgage.

9. These defendants state that their mortgage has full priority over any lien to which the plaintiff may be entitled to since their mortgage was not a building mortgage. Secondly, the value of the Lands at the time when the herein alleged construction lien arose exceeded these defendants' mortgage. Thirdly, these defendants' mortgage was advanced and was registered before the alleged construction lien arose.
10. These defendants deny that the plaintiff is entitled to a construction lien upon the Lands, and that it preserved and/or perfected its lien as required by the Act. Accordingly, these defendants state that the plaintiff does not have a valid lien claim upon the Lands.
11. These defendants deny that there has been any unjust enrichment or that the plaintiff is entitled to claim on the basis of *quantum meruit*.
12. These defendants request that this claim be dismissed against them with costs on a full indemnity basis.

Dated: May 25, 2018

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Matteo and Tonino Amendola

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**GILBERT STEEL LIMITED**  
Plaintiff

v.

**FORTRESS BROOKDALE INC. et al**  
Defendants

Court File No. CV-18-595231

May. 25. 2019 3:44PM

Corsianos Lee

No. 6223 P. 12

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**(IN THE MATTER OF THE CONSTRUCTION  
LIEN ACT R.S.O. 1990, C.c.30 as amended)**

Proceeding commenced at TORONTO

STATEMENT OF DEFENCE OF QUINCY  
INVESTMENTS LTD., 969592 ONTARIO  
LIMITED, 969593 ONTARIO LIMITED,  
2307271 ONTARIO INC., SASSO AUTO  
CONSULTING INC., ANGELO GROSSI,  
DAVID MARK DOUBILET, GUS STAMATIOU,  
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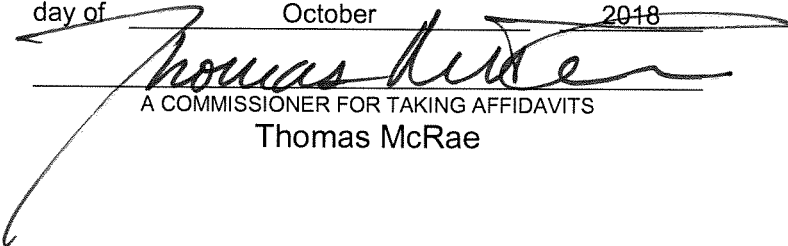
Lawyers for the Defendants, Quincy  
Investments Limited, 969592 Ontario Limited,  
969593 Ontario Limited, 2307271 Ontario  
Inc., Sasso Auto Consulting Inc., Angelo  
Grossi, David Mark Doubilet, Gus Stamatou,  
Robert Di Matteo and Tonino Amendola

This is Exhibit           "D"           referred to in the

affidavit of           Edward Sullivan          

sworn before me, this           15th          

day of           October                     2018          

A handwritten signature in black ink, appearing to read "Thomas McRae", is written over a horizontal line. The signature is stylized and extends above and below the line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Thomas McRae

# AGUECI CALABRETTA

BARRISTERS & SOLICITORS

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L.G. STORTINE, LL.B., LL.M., CRIMINAL COUNSEL

June 1, 2018

**VIA FAX & REGULAR MAIL  
TO THE ATTACHED SERVICE LIST**

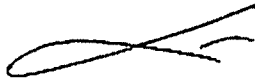
Dear Sirs/Mesdames:

**Re: Jaekel Capital Inc. ats. Gilbert Steel Limited  
Court File No.: CV-18-595231**

---

We are the solicitors for Jaekel Capital Inc. in the above noted matter. Enclosed please find the Statement of Defence of Jaekel Capital Inc., which is being served upon you pursuant to the *Rules of Civil Procedure*.

Yours very truly,  
**AGUECI & CALABRETTA**



**James M. Butson**  
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Court File No.: CV-18-595231

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE CONSTRUCTION LIEN ACT  
R.S.O. 1990 c. C. 30, as amended**

**BETWEEN:**

**GILBERT STEEL LIMITED**

Plaintiff

- and -

**FORTRESS BROOKDALE INC., JAEKEL CAPITAL INC., BUILDING &  
DEVELOPMENT MORTGAGES CANADA INC., COMPUTERSHARE TRUST  
COMPANY OF CANADA, FIRM CAPITAL MORTGAGE FUND INC., QUINCY  
INVESTMENTS LTD., 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

**STATEMENT OF DEFENCE OF THE DEFENDANT,  
JAEKEL CAPITAL INC.**

1. The Defendant, Jaekel Capital Inc. ("Jaekel"), admits the allegation at paragraph 4 and 21 of the Statement of Claim, to the extent that Jaekel, formerly known as RW Fortress, granted a mortgage in the sum of \$6,600,000.00.

2. Jaekel has no knowledge of the allegations contained in paragraphs 2, 3, 5 through to 14 of the Statement of Claim.

3. Jaekel denies the allegations contained in paragraphs 1, 15 through to 20, the allegations at paragraph 21 (except as identified above), and 22 through to 28 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.

4. A charge/mortgage of land (hereinafter referred to as the "charge") was made between RW Fortress Inc., as chargee, and the Defendant, Fortress Brookdale Inc., as chargor, which charge was registered on the 28<sup>th</sup> day of May, 2015, in the Land Registry Office for the Land Titles Division of Toronto (No. 66) Toronto as Instrument No. AT3894769 securing the sum of \$6,600,000.00, and interest thereon in accordance with the terms set out in the charge on the lands as follows:

A. PIN 10189 – 0860 LT

FIRSTLY; PT LT 43A PL 2247 TWP OF YORK AS IN TB953411:SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; SECONDLY; PT LT 43A PL 2247 TWP OF YORK AS IN NY806826: SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; THIRDLY; PT LT 42A, 43A PL 2247 TWP OF YORK AS IN NY791515; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; FORTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK AS IN TR39454; SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; FIFTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK PT 2 & 3 64R14089: SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; SIXTHLY; PT LT 42A, 43A PL 2247 TWP OF YORK PT 1 64R14089: SAVE AND EXCEPT THE EASEMENT THEREIN DELETED UNDER AT-3451640.; SEVENTHLY; LT 33 PL 2371 TWP OF YORK; PT LT 34 PL 2371 TWP OF YORK AS IN TB940448; EIGHTLY; PT LT 34 PL 2371 TWP OF YORK AS IN TB940447; CITY OF TORONTO

B. PIN 10189 – 0245 LT

LT 32 PL 2371 TWP OF YORK; TORONTO (N YORK), CITY OF TORONTO (the "Lands")

4. Jaekel states. and the fact is, that on May 3, 2016. pursuant to the registration of an Application to Change Name on title to the Lands, the name of "RW Fortress Inc." was changed to



“Jaekel Capital Inc.”, the Defendant herein, and registered as Instrument No.: AT4210360.

5. All advances under the charge were made, and the charge was fully advanced, at the date of registration, and prior to the time when the first lien arose in respect of the Lands.

6. There were no construction liens registered on title to the Lands at the time that the charge was registered nor did Jaekel receive any written notice of lien prior to any advance being made under the charge.

7. At no time did Jaekel contract with the Plaintiff or otherwise enter into any agreement, written or oral, for the provision of any services or labour with the Plaintiff.

8. Jaekel states, and the fact is, at no time did the Plaintiff supply labour, services, or materials at the request of Jaekel. Jaekel is, therefore, not subject to any contract that may have been entered into between the Plaintiff and the remaining Defendants.

9. Jaekel denies that the Plaintiff's lien was preserved or perfected in a timely manner, or in accordance with the provisions of the *Construction Lien Act* and puts the Plaintiff to the strictest proof thereof.

10. Jaekel denies that the Plaintiff is entitled to any priority over the charge herein.

11. Jaekel denies that it has ever received the benefit of any goods or services supplied

by the Plaintiff to the detriment of the Plaintiff. As a result, there is no basis for the Plaintiff's claim of unjust enrichment and/or *quantum meruit*.

12. Jaekel submits that this action be dismissed as against Jaekel, with costs on a substantial indemnity basis.

**DATE: June 1, 2018**

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**GILBERT STEEL LIMITED**  
Plaintiff

vs. **FORTRESS**  
**BROOKDALE INC., ET**  
**AL.**  
Defendants

Court File No.: CV-18-595231

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **TORONTO**

**STATEMENT OF DEFENCE**  
**OF THE DEFENDANT,**  
**JAEKEL CAPITAL INC.**

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*In the matter of Sections 97 and 100 of the Courts of Justice Act, R.S.O. 1990 c. C.43, as amended*

**FIRM CAPITAL MORTGAGE FUND INC.**

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

**Applicant**

**Respondents**

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

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

PROCEEDING COMMENCED AT TORONTO

**RESPONDING APPLICATION RECORD**

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