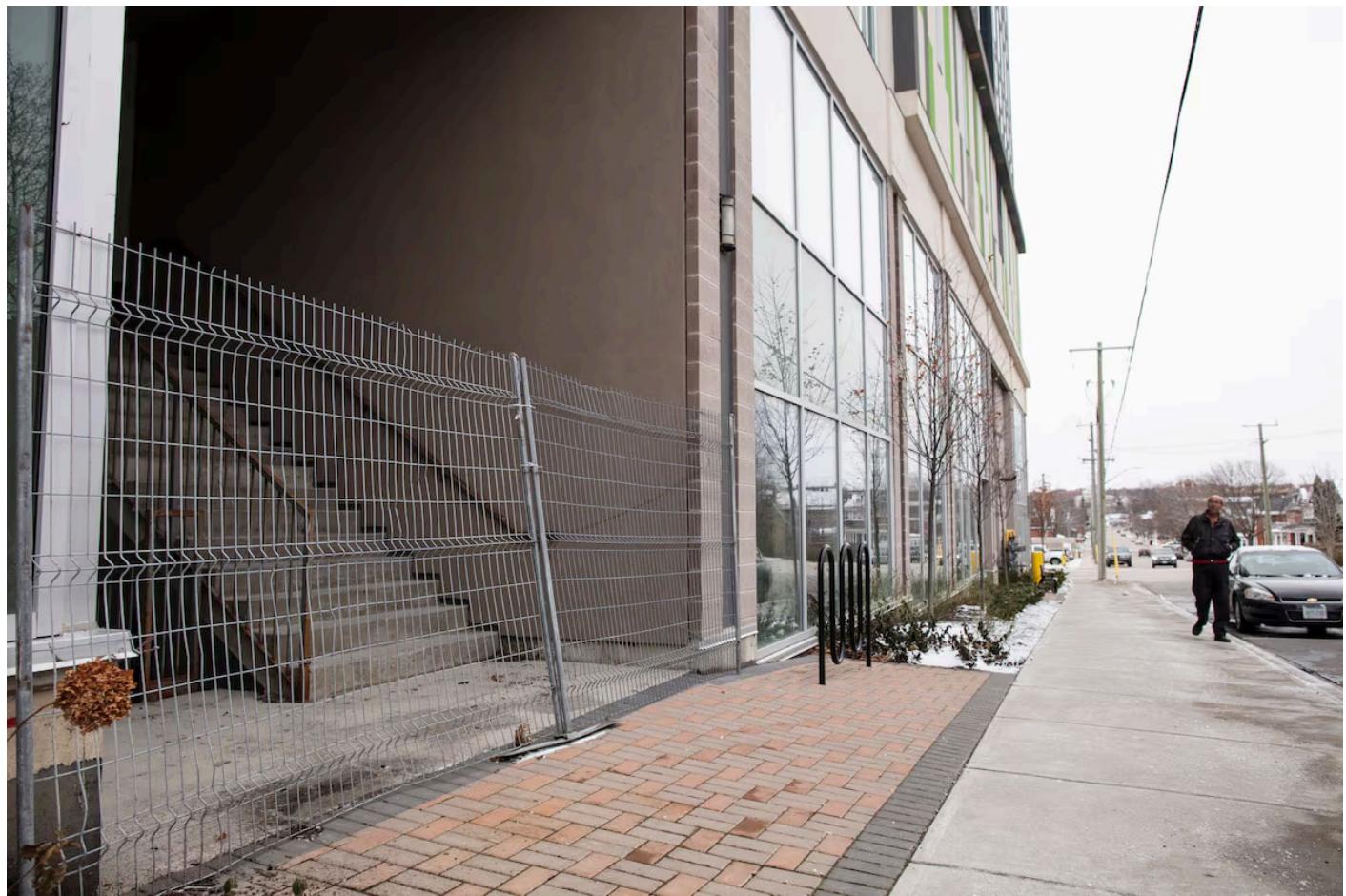


Fortress Real Developments co-founders sentenced to five years in prison

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Fencing blocks an entrance to the Collier Centre in Barrie, Ont., in 2018. The mixed-use development was one of two projects at the heart of the criminal case against Fortress Real Developments' co-founders.

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The co-founders of Fortress Real Developments Inc. have been sentenced to five years in prison and ordered to pay \$12.2-million each for defrauding investors in the now-defunct syndicated mortgage company.

Jawad Rathore, Fortress's former chief executive officer, and Vince Petrozza, its former chief operating officer, were found guilty of fraud last year after a criminal trial.

The sentence handed down by Justice Daniel Moore on Monday includes five years of additional imprisonment if Mr. Rathore or Mr. Petrozza fail to pay the fine within 10 years of being released from custody, as well as an order prohibiting them from holding positions that give them authority over other people's money or property.

A judge can impose a fine in lieu of forfeiture when the property that has been deemed to be the proceeds of crime is unavailable to be forfeited.

"Obviously, no sentence that I impose is going to get the investors their money back or undo the significant financial and psychological harms caused," Justice Moore told a Toronto courtroom. He noted that he will also make orders for restitution for those victims who testified at trial, and that any restitution payments will reduce the men's fines.

Lawyers for Mr. Rathore and Mr. Petrozza have appealed the Ontario Court of Justice verdict, and the two men were granted bail on Monday.

"Our appeal alleges that the trial judge seriously misapprehended the evidence related to the opinions of value used on all Fortress projects, including the two projects that were the focus of the trial, leading to an unreasonable verdict," Scott Fenton, counsel for Mr. Rathore, said in a statement.

From the archives: Inside the fall of Fortress

Mr. Rathore and Mr. Petrozza founded Fortress in 2008. The company helped to popularize the concept of bringing syndicated mortgages to the masses by allowing mom-and-pop investors to pool their funds and participate in financing early-stage real estate projects. This type of investment was previously available primarily to wealthy and institutional investors.

More than 14,000 retail investors provided \$920-million in financing to Fortress for 80 construction projects in cities across the country. Some of the projects were completed while others failed.

The criminal case focused on two specific projects: the Colliers Centre in Barrie, Ont., and a proposed 45-storey tower in Winnipeg called SkyCity.

Justice Moore found that Fortress had deceived investors with respect to the amount of security they were getting in its syndicated mortgage loans.

Prosecutors had been seeking 10 years of jail time and the forfeiture of \$26-million.

Defence counsel were seeking a conditional sentence of two years less a day. A conditional sentence is one that can be served outside of prison, for instance under house arrest or curfew.

Justice Moore said the Crown's arguments for a 10-year sentence were based on sentences imposed on offenders who had run Ponzi schemes or other outright scams.

"This was not a pure scam or Ponzi-type scheme where the investment does not even truly exist. That said, the fraud did allow the projects to proceed on an overleveraged basis, meaning that the losses suffered were directly attributable to the fraud," Justice Moore said in his reasons.

He noted several aggravating factors, including the magnitude of the fraud, the fact that it involved a high degree of planning and complexity, that it went on for nearly 4½ years and that almost 800 investors were defrauded.

The fraud targeted mom-and-pop investors, for whom the impact of the losses was, in some instances, “financially catastrophic,” Justice Moore said. He noted that most victims suffered some degree of psychological harm, with some suffering “extremely serious deteriorations of their mental health which in turn also impacted on their physical health.”

Justice Moore said the fact that neither offender has a prior criminal record and that both have strong potential for rehabilitation were mitigating factors.

Mr. Rathore, 49, is married with six children, while Mr. Petrozza, 50, is married with three children, who are all in university.

As the two men stood to receive their sentences, Justice Moore told them they are lucky to have families who support them. They were then escorted from their seats into a glass-walled box before being handcuffed and walked out of the courtroom. Several hours later they were released on bail pending appeal.

In documents filed with the Court of Appeal for Ontario, lawyers for Mr. Rathore and Mr. Petrozza argued that their clients are not flight risks and would surrender into custody when required. Both men have sureties who have pledged \$275,000 in support of their release, the court documents state.

Counsel for the two men argue that the trial judge erred by taking judicial notice, a legal rule that allows a judge to accept certain commonly known facts as true without requiring evidence. They also argue that the judge misapplied a legal test, that his reasons were insufficient and that he “misapprehended” the evidence in several ways.

In Canadian law, misapprehension of evidence occurs when a judge fails to consider evidence that’s relevant to an issue, makes an error as to the substance of that evidence or fails to properly weigh material evidence.

“We look forward to the next stage of the process, which will be to make our arguments to the Court of Appeal,” Mr. Petrozza’s lawyer, Gerald Chan, said in an e-mail.

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