

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

LOIS V. SIDORSKY

Plaintiff

- and -

ARCUS DEVELOPMENTS INC.

WILLIAM KNOX, DIANNA LYNNE WIDNEY, DEBRA L. WIEGERS, BARBARA PERKINS, JASON STRUDWICK, C. YVONNE MARR, JAMES MORSON, PATRICIA MORSON, DARREN MORSON, PRISCILLA ASAMOAH, JOHN P. DONOVAN, CHERYL DONOVAN, CANHAM HOLDINGS LTD., HOWARD WAYE, STEPHANIE MORSON, SHANE MORSON, CHEVIOT ROAD CORP., 624309 SASKATCHEWAN LTD., GERALD E. GREENWALL, LYNN GREENWALL, E. DWIGHT CYMBALIUK, BARRY CHUGG, ROSLYN HANSON, WOWZER INC., JENNIFER REDING, BRANT REDING, MOLLY MAK, CARLA LINES, MADISON AVENUE PROPERTIES INC., TOM DONAGHY, DEBRA ISAAC, JAMES WAYNE WARNICA, SWN HOLDINGS LTD., STEPHEN TRIMBLE, SUSAN TRIMBLE, STEVE CASEY, ROSE CASEY, SHANE FIELD, AQUILA HOLDINGS LTD., CLIFF WIEGERS, MONIKA BERDUSCO, KARAL HOLDINGS LTD., TREVOR SMITH, GISELE DURAND SMITH, COLIN COULOMBE, GAYLE LINBERG, 995128 ALBERTA LTD., GORDON FROST, HEATHER MCKAY, GERRIT KLOET, ANNA-MARIE CUGLIETTA, JAMES BLAIR, LAURA CUGLIETTA, LYLE MICHELSON, JANET ANDERSON, DANIELLE ROLINE, MARGE PIERZCHAJLO, TIMOTHY ANDERSON, BRENT BAILEY, MICHAEL BROUGH, PATRICIA DONNELLY, CANDEN RESOURCES LTD., JANIS M. KIMBALL, BARRY M. J. KIMBALL, HOWARD CHEW, PAUL RADOSTITS, AMANDA C. FLEMMER, VINAY MORKER, DAVID ALEXANDER BYRON, FRANCIS DEVEREUX DUFFIN, RONALD EDWARD JONES, POLMED RESEARCH INC., WENDY CATHERINE MANNING, 1230987 ALBERTA INC., ADAM MILLS, KELLY DODDS, QUENTIN FAUTH, DAVID JOHN HERTZ, JAMES FOX, GARY WALDRON, DIANNE WALDRON, DWIGHT H. VAN MIDDLESWORTH, SHARON F. VAN MIDDLESWORTH, BRETT W. KRYSKOW, ART A. MARCHE, ROBERT SKINNER, NORMAN EATON, MICHAEL LAMBROS, BRENDA LAMBROS, MYLES TRAWICK, BRYCE G. BONNEVILLE, NICOLE MIKIC, SARAH UNDERHILL, ROCHELLE UNDERHILL, TERRI COOKE-KINSELLA, MARGARET NEMETH, VIC GUPTA, JAMES MCINTYRE, DAWN MCINTYRE, CHAYNNA HAY, ADELE ZUCHETTO, DEAN ZUCHETTO, TIM MCGOVERN, KENNETH F. MCGOVERN, AUDREY MCGOVERN, CONTEMPORARY KEY INVESTMENTS INC., DAREN WESLEY WILLEMS, ARLEEN DELORES WILLEMS, MARK REIS, ELIZABETH SYLVESTRE, LOUISE KNIGHT, MIKE KERTESZ, WISSAM NOUR, TYLER WAYE, ALISON ROGERS, GEOFF ROGERS, CAROL PLOEN-HOSEQUOOD, KRISTEN VOGT, BRYCE G. BONNEVILLE PROFESSIONAL CORPORATION, KARL WILDENHOFF, ROB STEPHANSON, ALLISON STEPHANSON, MOOREA PARTNERCO LTD., SPRING PARTNERCO LTD., JIM JONES AND DONNA JONES

Defendants

STATEMENT OF DEFENCE

of DEBRA L. WIEGERS, C. YVONNE MARR, JAMES MORSON, PATRICIA MORSON, DARREN MORSON, PRISCILLA ASAMOAH, JOHN P. DONOVAN,

CHERYL DONOVAN, CANHAM HOLDINGS LTD., STEPHANIE MORSON, SHANE MORSON, CHEVIOT ROAD CORP., 624309 SASKATCHEWAN LTD., GERALD E. GREENWALL, LYNN GREENWALL, E. DWIGHT CYMBALIUK, MOLLY MAK, SWN HOLDINGS LTD., STEPHEN TRIMBLE, SUSAN TRIMBLE, STEVE CASEY, ROSE CASEY, SHANE FIELD, AQUILA HOLDINGS LTD., CLIFF WIEGERS, TREVOR SMITH, GISELE DURAND SMITH, 995128 ALBERTA LTD., GORDON FROST, HEATHER MCKAY, ANNA-MARIE CUGLIETTA, LAURA CUGLIETTA, BRENT BAILEY, MICHAEL BROUGH, PATRICIA DONNELLY, CANDEN RESOURCES LTD., PAUL RADOSTITS, AMANDA C. FLEMMER, VINAY MORKER, DAVID ALEXANDER BYRON, POLMED RESEARCH INC., 1230987 ALBERTA INC., ADAM MILLS, KELLY DODDS, QUENTIN FAUTH, DAVID JOHN HERTZ, GARY WALDRON, DIANNE WALDRON, BRETT W. KRYSKOW, ROBERT SKINNER, NORMAN EATON, MYLES TRAWICK, BRYCE G. BONNEVILLE, NICOLE MIKIC, TERRI COOKE-KINSHELLA, MARGARET NEMETH, CHAYNNA HAY, ADELE ZUCHETTO, DEAN ZUCHETTO, DAREN WESLEY WILLEMS, ARLEEN DELORES WILLEMS, ELIZABETH SYLVESTRE, TYLER WAYE, ROB STEPHANSON, ALLISON STEPHANSON, MOOREA PARTNERCO LTD., AND SPRING PARTNERCO LTD.

1. The Defendants, Debra L. Wiegiers, C. Yvonne Marr, James Morson, Patricia Morson, Darren Morson, Priscilla Asamoah, John P. Donovan, Cheryl Donovan, Canham Holdings Ltd., Stephanie Morson, Shane Morson, Cheviot Road Corp., 624309 Saskatchewan Ltd., Gerald E. Greenwall, Lynn Greenwall, E. Dwight Cymbaliuk, Molly Mak, SWN Holdings Ltd., Stephen Trimble, Susan Trimble, Steve Casey, Rose Casey, Shane Field, Aquila Holdings Ltd., Cliff Wiegiers, Trevor Smith, Gisele Durand Smith, 995128 Alberta Ltd., Gordon Frost, Heather McKay, Anna-Marie Cuglietta, Laura Cuglietta, Brent Bailey, Michael Brough, Patricia Donnelly, Canden Resources Ltd., Paul Radostits, Amanda C. Flemmer, Vinay Morker, David Alexander Byron, Polmed Research Inc., 1230987 Alberta Inc., Adam Mills, Kelly Dodds, Quentin Fauth, David John Hertz, Gary Waldron, Dianne Waldron, Brett W. Kryskow, Robert Skinner, Norman Eaton, Myles Trawick, Bryce G. Bonneville, Nicole Mikic, Terri Cooke-Kinshella, Margaret Nemeth, Chaynna Hay, Adele Zuchetto, Dean Zuchetto, Daren Wesley Willems, Arleen Delores Willems, Elizabeth Sylvestre, Tyler Waye, Rob Stephanson, Allison Stephanson, Moorea Partnerco Ltd., and Spring Partnerco Ltd. ("These Defendants") admit:

- a. that Arcus Developments Inc. ("Arcus") is an Alberta corporation carrying on business in Alberta as a real estate developer;
 - b. that Arcus was the Mortgagor in the Mortgage of the Lands;
 - c. that the Mortgage was assigned the Instrument Number alleged in paragraph 1 of the Statement of Claim by the Land Titles Office for the South Alberta Land Registration District;
 - d. that the Lands are in the limits of the City of Calgary; and
 - e. that the Mortgage contemplated the transfer of interests in the Lands to investors in the form of undivided fee simple interests.
2. These Defendants agree with the proposed venue of trial contained in paragraph 19 of the Statement of Claim, and agree with the opinion at paragraph 20 of the Statement of Claim that the trial of the within action is likely to require fewer than 25 days.
 3. Except as expressly admitted herein, These Defendants deny each and every claim within the Statement of Claim and put the Plaintiff to the strict proof thereof.
 4. These Defendants state that the Lands are farm lands, and are utilized for the purpose of carrying out farming operations.
 5. These Defendants are, *inter alia*, investors who hold rights which were contemplated by paragraph 25 of the Mortgage ("UDI Rights"), pursuant to a written agreement executed November 15, 2005 between the Plaintiff and legal counsel for Arcus ("Assignment of Sale Proceeds/Security") and pursuant to a written agreement ("Trust Agreement") dated November 15, 2005 between Arcus, the Plaintiff and Bryce G. Bonneville, Bryce G. Bonneville Professional Corporation, Brandy P Oulton and Brandy P. Oulton Professional Corporation collectively operating as Calgary Corporate Counsel ("Arcus Legal Counsel"). The Assignment of Sale Proceeds/Security and the Trust Agreement expressly

contemplated a payment schedule by Arcus, and expressly identified the equitable interest that the investors in Arcus would be entitled to once they became holders of UDI Rights.

6. At a time unknown to These Defendants, in 2007, Arcus caused in excess of \$1,000,000.00 to be paid to the Plaintiff which was in excess of the amounts scheduled to be paid pursuant to the Mortgage, the Assignment of Sale Proceeds/Security and pursuant to the Trust Agreement, which sum was accepted by the Plaintiff. By accepting the said payment, the Plaintiff has accepted the said sum as a pre-payment of obligations owed pursuant to the Mortgage.
7. These Defendants state, and the fact is that by accepting the payment referred to in the preceding paragraph, the Plaintiff has received the said funds in a situation in which she:
 - a. has the scope for the exercise of discretion or power
 - b. can and has exercised that discretion or power unilaterally, and
 - c. These Defendants were and are in a position of peculiar vulnerability to the exercise of that discretion or power.
8. In all the circumstances, the Plaintiff is a fiduciary of These Defendants as Arcus investors, and that the within action constitutes a breach of fiduciary duties unless and until the amounts owed to the Plaintiff, as specified in the Mortgage, the Assignment of Sale Proceeds/Security and the Trust Agreement have fallen into arrears, having regard to the pre-payment of the sum specified in paragraph 6 hereof (the "Equitable Pre-Payment").
9. These Defendants state that, having regard to the Equitable Pre-Payment, the Mortgage is not in default.

10. In all the circumstances, the Plaintiff is estopped from seeking any or all of the relief claimed in the Statement of Claim, and that the within action by the Plaintiff constitutes a breach of fiduciary obligations owed by the Plaintiff to These Defendants. As such, These Defendants claim to be entitled to full indemnification for all legal costs and disbursements necessitated by the within action on a full indemnity (solicitor and his own client) basis.
11. The Lands have a value significantly in excess of the amount owed to the Plaintiff, and the Plaintiff enjoys the security of such equity.
12. There exist negotiations between the Plaintiff and Arcus with Alberta Infrastructure, a Department of the Province of Alberta, in which Arcus has agreed to the assignment of proceeds to the Plaintiff for a portion of the Lands which are to be expropriated or purchased under threat of expropriation. The Plaintiff has agreed to such an assignment of proceeds, and has agreed to suspend monthly payments under the Mortgage pending from Alberta Infrastructure.
13. In all the circumstances, These Defendants state that the Plaintiff has and continues to enjoy an enhanced financial position and substantial security, and that in the event that any default has occurred, which is not admitted but denied, then These Defendants are entitled to relief from forfeiture pursuant to the *Judicature Act* R.S.A. 2000.
14. The Defendant, Arcus Developments Inc., has advised its investors that they are entitled to legal representation by Billington Barristers to conduct a joint defence of the within action. As of the date of filing of the within Statement of Defence, not all named Defendants have necessarily been made aware of the within claim, nor have they been advised of the opportunity to retain joint defence counsel.
15. It is anticipated that an application will be brought pursuant to Rule 42 of the *Alberta Rules of Court*, or pursuant to the *Class Proceedings Act* S.A. 2003, c. C-16.5, to defend on behalf of all Arcus Investors. In the event such application is

granted, the within Statement of Defence is filed on behalf of all Defendants who will be subject to a common representation order or representative defence order.

WHEREFORE, THESE DEFENDANTS PRAY FOR:

- a. The dismissal of this Claim with costs payable to These Defendants on a Full Indemnity basis.

DATED at the City of Calgary, in the Province of Alberta, this 8th day of February, 2010, AND DELIVERED by Billington Barristers, Solicitors for the said Defendants, whose address for service is in care of said office at 600 Bow Valley Square II, 205 - 5th Avenue SW, Calgary, Alberta, T2P 2V7, Attention: Richard N. Billington, Q.C., Facsimile: (403) 705-3418.

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CLERK OF THE COURT

FEB 08 2010

CALGARY, ALBERTA

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