

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 LINDBERG, 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-HOSEGOD, 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

BEFORE MASTER **J. HANEbury**)
IN CHAMBERS)

At the Court of Queen's Bench, in the City of
Calgary, in the Province of Alberta, on
October 21, 2010.

ORDER NISI/ORDER FOR SALE

UPON THE APPLICATION of the Plaintiff; AND UPON REFERENCE being made to the Statement of Claim, and evidence of service thereof, the Notice of Motion, the Affidavit of Default, Affidavit of Value, the Certified Copy of Title to the Property, and Statement of Mortgage Indebtedness, all filed; AND UPON NOTING the consent of counsel for Arcus Developments Inc. on its own behalf and on behalf of the co-Defendants not represented by Mr. Billington or Mr. Kirwin; AND UPON NOTING the consent of counsel for the other Defendants; AND UPON HEARING Counsel for the Plaintiff;

IT IS HEREBY ORDERED THAT:

1. Summary judgment is granted in favour of the Plaintiff and the defences plead by the Defendants are dismissed. Default judgment is granted in favour of the Plaintiff against the remainder of the Defendants.
2. The Mortgage dated November 15, 2005 (the "Mortgage") is hereby declared valid and enforceable.
3. There is owing to the Plaintiff under the Mortgage, as at October 20, 2010, the sum of \$4,746,633.24 and costs and expenses as provided by the Mortgage (the "Mortgage Debt") plus \$780.14 per diem interest. The Mortgage Debt shall be realized by a sale of the Property, in default of which foreclosure may be ordered as hereinafter provided. The Property is legally described as:

THE SOUTHEAST QUARTER OF SECTION THIRTY SIX (36)
IN TOWNSHIP TWENTY TWO (22) RANGE TWENTY NINE (29)
WEST OF THE FOURTH MERIDIAN
AS SHOWN ON TOWNSHIP PLAN APPROVED AT OTTAWA 16 JUNE 1891
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
EXCEPTING:

PLAN	NUMBER HECTARES	ACRES MORE OR LESS
ROADWAY	81114214.97	12.28

EXCEPTING THEREOUT ALL MINES AND MINERALS AND THE RIGHT TO
WORK THE SAME

(the "Property")

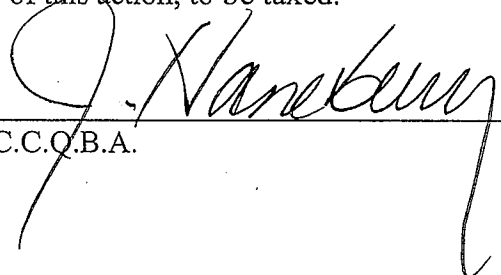
4. If the Defendants or anyone entitled so to do, pays to the Plaintiff within 90 days from the date of this Order or after the said period and before the Plaintiff obtains a Final Order for Foreclosure, Order Confirming Sale and Vesting Title or a Rice Order, the Mortgage

Debt, costs to be taxed, together with any other sum due to the Plaintiff under the Mortgage, including interest, the Plaintiff shall execute and deliver to the person so paying, at the expense of the person paying, a discharge or transfer, as the case shall require, of the Mortgage security in the Statement of Claim mentioned, and deliver up all documents relating to the Property.

5. Unless within the redemption period the Plaintiff is paid the Mortgage Debt, costs and other sums due under the Mortgage, the Property shall be offered for sale by Judicial Listing with a licensed Real Estate Agent selected at the sole discretion of the Plaintiff at the Property's Fair Market Value of \$6,130,000, or other value as may be determined by the Court after performing a market analysis, as set forth in the Affidavit of Value filed herein, with a Member of the Calgary Real Estate Board for a period of 90 days according to the terms of the Judicial Sale Listing which is attached to and forms part of this Order.
6. The Realtor, to be selected by the Plaintiff, shall be entitled to post a "FOR SALE" sign customarily posted by the Realtor at a conspicuous location on the Property, which sign shall remain during the currency of the Judicial Listing Agreement and shall not be interfered with by any person under any circumstances.
7. The Defendants, and any person or persons in possession of the Property or any part of it, shall co-operate with the listing agent appointed by the Court, and in particular shall provide all information in their possession reasonably necessary to market the Property.
8. The Defendants, and any person or persons in possession of the Property or any part of it, shall make the Property available at all reasonable times to enable such viewings by any representative or any other Realtor and/or prospective Purchaser.
9. In the event that the Mortgage is redeemed by any party entitled to do so at any time, after the listing takes effect, there shall be paid, as part of the costs of redemption, all reasonable fees for services rendered and expenses incurred by the listing agent, such fees and expenses not to exceed the sum or \$10,000.
10. In the event the Property is or becomes vacant and apparently abandoned, then the Plaintiff, or the Plaintiff's duly authorized agent, or the Realtor, shall be at liberty to enter the Property for the purposes of doing any and all things necessary to preserve the

Property, and show the Property to prospective purchasers. In this regard, the Plaintiff and/or such agent or realtor shall not be considered a Mortgagee in possession or a trespasser.

- 11. The Court may, at any time and upon application by any interested party, vary the terms of the Judicial Listing.
- 12. The requirements of Rule 693(1)(a) and (b) of the Alberta *Rules of Court* are hereby dispensed with.
- 13. Service of the within Order and any subsequent documents upon the Defendants shall be effected either (a) upon counsel representing such party or parties, or (b) in accordance with the Order of March 19, 2010 or by registered mail or by courier, addressed to them at the last known address of the Defendants. Any subsequent encumbrancers, if any, may be served by ordinary mail at the address set out on the Certificate of Title, and same shall be good and sufficient service notwithstanding the return of the registered mail or courier due to non-acceptance or other cause.
- 14. The Plaintiff is granted solicitor and client costs of this action, to be taxed.



 M.C.C.Q.B.A.

ENTERED this ____ day of October, 2010.

Entered this 21st day
 of October, 20
 Clerk of the Court





JUDICIAL SALE LISTING

TO: Licensed Real Estate Agent

1. You are authorized as an officer of the Court to list for sale the Property municipally described as 15665 – 104 Street SE, Calgary, Alberta with the Multiple Listing Service (MLS) or any other appropriate listing service in effect in the area in which the Property is located.
2. The Property shall be offered for sale at the price of \$6,130,000, or such other amounts as may be ordered by the Court from time to time, subject to only the following encumbrances:

Nil

3. The listing shall take effect immediately upon the expiry of the redemption period and shall continue for a period of 90 days thereafter, subject to renewal by the Court.
4. If, as a result of this listing, a purchaser is introduced whose offer is accepted by the Court, and the transaction is completed by the Purchaser paying the full Purchase Price and title is transferred to the Purchaser, then in such event, you will receive a commission of 4% on the purchase price, exclusive of GST. In the event that a purchaser fails to complete the purchase, the disposition of the deposit shall be at the discretion of the Court.
5. All offers shall be accompanied by a deposit of at least \$50,000 certified cheque or money order, payable to your real estate firm, in trust, and shall be in a form and on terms acceptable to Bennett Jones LLP.
6. Commission shall only be paid to the listing agent. Any selling agent shall look solely to the listing agent for any commission.
7. Within three (3) days of receiving any reasonable offer to purchase, you shall forward a copy of the offer to the solicitors for the Plaintiff, who may instruct a counter-offer to be made, negotiate the removal of conditions, or reject the offer outright if it is more than 30% below the listing price. Upon accepting the offer, the Plaintiff shall apply with reasonable promptness to the Court for approval.
8. In the event that no offers are received during the Judicial Listing period, you shall advise the solicitors for the Plaintiff in writing immediately following the expiry of the listing.
9. In the event that the Property is redeemed by the Defendants, any subsequent encumbrancer or anyone else entitled to do so, at any time after the Judicial Listing takes effect, there shall be paid as part of the costs of redemption, a reasonable fee for services rendered and expenses incurred by you as the listing agent. However, these reasonable costs and expenses shall not exceed the amount of \$10,000.
10. All Real Estate Purchase Contracts shall:

- (a) Be in writing and signed by the Offeror(s);
- (b) Be subject to the approval and acceptance of this Court on terms it considers appropriate;
- (c) Provide for a possession date to be determined by this Court;
- (d) Shall be accompanied by Schedule "A"; and
- (e) Be accompanied by a certified cheque or money order payable to your real estate firm for the deposit amount referred to therein.

11. Nothing in this Judicial Listing shall:

- (a) Affect the Defendants, any subsequent encumbrancers, or anyone else entitled to do so, rights to redeem or sell the Property;
- (b) Affect the Plaintiff's right to make a proposal to purchase the Property or otherwise acquire the Property after the expiry of this Judicial Listing, without any liability for real estate commissions; or
- (c) Create or impose any liability on the Plaintiff or this Court for the payment of any real estate commission or compensation arising out of this Judicial Listing.

12. Any sale pursuant to this Judicial Listing must be approved by the Court according to the terms imposed by the Court. There shall be no warranties or undertakings provided on any sale through the Court pursuant to this Judicial Listing.

13. Where there is a conflict or discrepancy between the terms and conditions in this Order and the terms and conditions in the Real Estate Purchase Contract, the terms and conditions in this Order shall supersede and shall apply in place of such other conflicting terms and conditions.

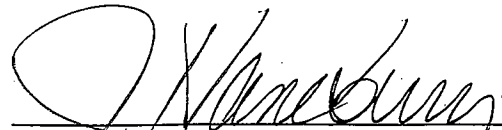
ACCEPTED ON THIS _____ DAY OF _____, 2010.

By:

an Agent licensed pursuant to the *Real Estate Act*, R.S.A. 2000, c. R-5.

Per: _____

APPROVED ON THIS _____ DAY OF _____, 2010.



M.C.C.Q.B.A.

SCHEDULE "A"
TO THE REAL ESTATE PURCHASE CONTRACT

ENTERED INTO BETWEEN:

Court of Queen's Bench of Alberta, care of Lois V. Sidorsky (the "Seller")

and _____ (the "Buyer__")
of _____ (fill in) _____ (the "Property")

The terms of this schedule replace, modify or add to the terms of the agreement of purchase and sale (the "Real Estate Purchase Contract") to which this schedule is attached. Where there is any inconsistency between the terms of this Schedule and the Real Estate Purchase Contract, the provisions of this Schedule shall prevail.

"AS IS - WHERE IS"

1. The Buyer acknowledges and agrees to purchase the Property, all buildings and improvements located on the Property, and any and all fixtures ("Attached Goods") and chattels ("Unattached Goods") included in the Real Estate Purchase Contract or included in the sale of the Property "as is" and agrees with the Seller that neither the Seller, nor its agents or representatives have made any representations or warranties with respect to the Property, any buildings or improvements located on the Property, or any Attached Goods or Unattached Goods included in the sale of the Property. Without limiting the generality of the foregoing, the Buyer agrees that neither the Seller nor its agents have made any representations or warranties with respect to:
 - (a) the condition of any buildings or improvements located on the Property;
 - (b) the condition of any Attached Goods or Unattached Goods included in the Real Estate Purchase Contract or otherwise sold with the Property;
 - (c) whether the Property complies with any existing land use or zoning bylaws or regulations, or municipal development agreements or plans;
 - (d) the location of any buildings and other improvements on the Property and whether such location complies with any applicable municipal bylaws or regulations;
 - (e) whether or not any buildings or improvements located on the property encroach onto any neighbouring lands or any easements or rights of way;
 - (f) whether or not any buildings or improvements located on any neighbouring lands encroach onto the Property;
 - (g) the size and dimensions of the Property or any buildings or improvements located thereon;
 - (h) whether or not the Property is contaminated with any hazardous substance within the meaning of the *Environmental Protection and Enhancement Act*; and
 - (i) whether or not any of the buildings or other improvements located on the Property have been insulated with urea formaldehyde insulation.

OWNERSHIP OF UNATTACHED GOODS

2. The Buyer agrees that the Seller is selling only such interest as it may have in any Attached Goods or Unattached Goods referred to in the Real Estate Purchase Contract, or which may be located on the Property, and the Seller does not warrant that it has title to such Attached Goods or Unattached Goods. Further, the Buyer agrees that the Seller will not be liable for the removal of any chattels found on the

Property prior to or on the date of closing. On closing, the Buyer may have possession of the Attached Goods and Unattached Goods which are then on or about the Property on an "as is" basis, and the Seller will not provide a Bill of Sale, Warranty, or other title document to the Buyer. Further, there will be no adjustment or abatement of any kind to the Purchase Price with respect to any Attached Goods or Unattached Goods.

REAL PROPERTY REPORT & COMPLIANCE

3. The Seller is not required to provide the Buyer with a real property report or compliance certificate. Should the Seller provide the Buyer with a copy of a survey or real property report, the Buyer agrees that any use of or reliance upon such document shall be at the Buyer's own risk. The Buyer must satisfy himself that the survey or real property report which the Seller might provide accurately reflects the Property and the buildings and improvements located thereon as they currently exist and the Seller shall not be responsible for any errors or omissions which might exist on such document. The Seller does not represent or warrant the accuracy or validity of the said survey or real property report or compliance certificate.

CONDOMINIUM

4. If the Property is a condominium:
 - (a) the Seller is not required to provide any condominium documentation to the Buyer, and the Buyer shall be solely responsible to obtain any condominium documentation he may require. Without limiting the generality of the foregoing, the Buyer must obtain on his own and at his sole cost and expense any estoppel certificate, copy of the condominium bylaws, and financial statements for the Condominium Corporation that he may require;
 - (b) the Buyer must satisfy himself with the condition of the condominium unit, the common property, and the financial condition of the condominium corporation and agrees that neither the Seller, nor its agents, have made any representations or warranties pertaining to same including, without limiting the generality of the foregoing, the adequacy of any reserve fund the condominium corporation might have, any potential special assessments which might be levied by the condominium corporation, or the existence of any legal actions pending against the condominium corporation;
 - (c) the Seller shall be responsible for amounts payable up to the closing date on account of any condominium fees and special assessments levied by the condominium corporation.

GOODS AND SERVICES TAX (G.S.T.)

5. In addition to the purchase price payable hereunder, the Buyer shall pay to the Seller and indemnify the Seller against all Goods and Services Tax ("G.S.T.") payable on the purchase price as required by the *Excise Tax Act*. The Seller will not provide to the Buyer a Certificate of Exempt Supply, or any other certificate certifying that this purchase and sale transaction is not subject to the Goods and Services Tax. Should the Seller fail to collect G.S.T. from the Buyer, it shall not be construed by the Buyer as a certification by the Seller that no G.S.T. is payable by the Buyer hereunder, and the Buyer shall remain liable for any G.S.T. which might be payable with respect to this transaction.

ACCEPTANCE BY FACSIMILE

6. The Seller and Buyer agree that this contract may be signed in counterpart, and the acceptance of this offer communicated or confirmed by facsimile transmission shall be binding upon the parties. The Buyer agrees to promptly deliver an executed original Real Estate Purchase Contract to the Seller.

FORECLOSURE PROCEEDINGS

7. If this offer is being made pursuant to or in a Court of Queen's Bench foreclosure proceedings, such offer may only be accepted by order of said Court and is subject to the terms of that Order. Any agreement arising out of the Seller's acceptance of this offer is conditional upon the approval thereof of the said Court.

SELLER'S INITIALS _____

BUYER'S INITIALS _____

BUYER'S INITIALS _____

DATE _____, 2010

DATE: _____, 2010

Action No: 0901 – 18396

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,
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COULOMBE, GAYLE LINDBERG, 995128 ALBERTA LTD., GORDON
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ZUCHETTO, TIM MCGOVERN, KENNETH F. MCGOVERN, AUDREY
MCGOVERN, CONTEMPORARY KEY INVESTMENTS INC., DAREN
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CAROL PLOEN-HOSEGOOD, KRISTEN VOGT, BRYCE G**

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KARL WILDENHOFF, ROB STEPHANSON, ALLISON STEPHANSON,
MOOREA PARTNERCO LTD., SPRING PARTNERCO LTD., JIM
JONES and DONNA JONES**

Defendants

**ORDER NISI /
ORDER FOR SALE**

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Calgary, Alberta T2P 4K7

Ken Lenz

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Our File No: 65586-1

