

COURT FILE NUMBER 1303 15731
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFFS RIDGE DEVELOPMENT CORPORATION
DEFENDANTS 1324206 ALBERTA LTD.
DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT
Allan Garber Professional Corporation
Barrister and Solicitor
Suite 201, 11404 Winterburn Road NW
Edmonton, AB T5S 2Y3
Attn: Allan A. Garber
Tel: (780) 455-1244
Fax: (780) 455-4522
File No.: 2013SH00321852



**AFFIDAVIT of Derek Prue
Sworn on November 12, 2013**

I, Derek Prue, of the City of Edmonton, President of the Province of Alberta **MAKE OATH AND SWEAR THE FOLLOWING:**

1. I am the sole Director and Shareholder of Prairie Western Development Corporation. As such I have personal knowledge of the facts herein sworn to except as otherwise stated.
2. Prairie Western Development Corporation ("Prairie Western") owns one-third of the shares of 1324206 Alberta Ltd. Prairie Western is also a partner in the Whitemud Heights Partnership.
3. Prairie Western is not opposed to a receiver and manager being appointed. However, Prairie Western is opposed to the receiver/manager being Alvarez & Marsal Canada Inc., or KPMG Inc.
4. Prairie Western has commenced two actions against 1324206 Alberta Ltd.
5. In the first action, 1303 01489, Prairie Western alleges that municipal water and sanitary services have not been provided to the Project because, among other things, John Barath, Ridge Development Corporation and 1324206 Alberta Ltd. paid management fees to Ridge or other non-arms length entities after substantial completion of the Project, in preference to monies owing to Enoch.

6. In 2009, I was the President and one of the Directors of 1324206 Alberta Ltd. Without my knowledge, the Royal Bank approached Barath and 1324206 Alberta Ltd. for the purpose of installing KPMG Inc. as monitor of the business and affairs of 1324206 Alberta Ltd. and the Whitemud Heights Project (the "Project").
7. In or about October of 2009, without the authority of 1324206 Alberta Ltd., Barath and 1324206 Alberta Ltd. entered into a monitoring agreement (the "Monitoring Agreement") with the Royal Bank of Canada. The Royal Bank was paid an administration fee of \$100,000 in respect of the Monitoring Agreement. I do not know whether the Royal Bank also negotiated a more favourable interest rate.
8. KPMG, as monitor of the Project, was retained to direct the business, property and affairs of 1324206 Alberta Ltd. in relation to the Project.
9. As of October 2009, when the Monitoring Agreement was executed, construction of the Project was essentially complete, save for landscaping and connection of the valves for the services, and only \$16,681,909 of the Royal Bank \$20 million credit facility had been drawn down with respect to construction of the Project.
10. Tim Reid was acting as the monitor on behalf of KPMG Inc.
11. Tim Reid and officials from the Royal Bank (Hoover Young and Dave Majeski) refused to return my telephone calls. They refused to meet with me. They did not return my emails. They did not forward documentation that I had requested from them. They continued to meet with and correspond with Barath and Ridge.
12. During the course of the first litigation, bank statements have been produced showing payments of \$32,850.00 every month to Ridge. No back-up has been produced for the payments made to Ridge. Attached as Exhibit "A" to this my Affidavit is a letter from my counsel requesting same. I am advised by Mr. Garber and do believe that he has not received a response to his letter.
13. KPMG was initially sued in relation to their involvement in the first action. Attached as Exhibit "B" to this my Affidavit is the Amended Statement of Claim.
14. KPMG was removed from the lawsuit because a clause in the Monitoring Agreement made them immune from liability.
15. Tim Reid left KPMG. He is now acting as the monitor of the Project through Alvarez & Marsal Canada Inc.
16. In the second action, 1303 03058, Prairie Western has sued Ridge Development Corporation and 1324206 Alberta Ltd. for \$1,459,557.00 for unpaid project management fees in relation to the Project.
17. Prairie Western and Ridge have competing claims against 1324206 Alberta Ltd.

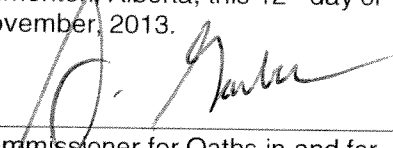
18. For the reasons previously stated, Tim Reid and Alvarez & Marsal are in a conflict of interest to deal with the competing claims of Prairie Western and Ridge. I have very serious concerns that Alvarez and Marsal will prefer the interests of Ridge over Prairie Western.

19. Prairie Western had filed Certificates of *Lis Pendens* with respect to both actions and Notices with the Indian Lands Registry System.

20. I make this Affidavit in opposition to the Application appointing Alvarez & Marsal as Receiver and Manager of 1324206 Alberta Ltd. and the Whitemud Heights Project.

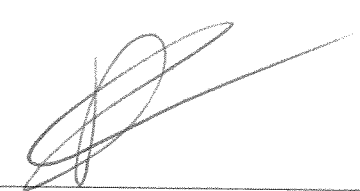
SWORN BEFORE ME at

Edmonton, Alberta, this 12th day of
November, 2013.



Commissioner for Oaths in and for
the Province of Alberta

Allan A. Garber
Barrister and Solicitor



Derek Prue

Allan Garber Professional Corporation
Barrister and Solicitor

October 18, 2013

Purdon Caskenette
10263-178 Street
Edmonton, AB T5S 1M3
Via Facsimile: (780) 486-7735

Attention: Peter Purdon

Dear Sir:

Re: Prairie Western v. Enoch Cree Nation et al
Action No. 1303 04189

This is Exhibit "A" referred to in the
Affidavit of
Desole Prue
Sworn and Subscribed 12 day
of November A.D., 20 13
[Signature]
A Notary Public / A Commissioner for Oaths
in and for the Province of Alberta

I acknowledge receipt of the bank statements for 1324206 Alberta Ltd. I note that Ridge is paying itself \$32,850.00 every month. Please produce the supporting invoices or backup for these payments and add same to the Supplemental Affidavit of Records.

Yours truly,

Allan Garber Professional Corporation
Per:

Allan A. Garber
AG/mc

201, 11404 Winterburn Road
Edmonton, Alberta T5S 2Y3
Ph: (780) 455-1244 Fax: (780) 455-4522
agarber@sky-rider.ca

Affidavit of
 Sworn before me this 12th day
 of November A.D., 2013
 A Notary Public, A Commissioner for Oaths
 in and for the Province of Alberta

Form 10
 [Rule 3.25]



COURT FILE NUMBER 1303 01489
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE EDMONTON
 PLAINTIFF PRAIRIE WESTERN DEVELOPMENT CORPORATION
 DEFENDANTS ENOCH CREE NATION NO. 440 as represented by Chief and Council; PARAGON GAMING EC COMPANY as general partner and on behalf of ENOCH/PARAGON LIMITED PARTNERSHIP; ENOCH/PARAGON LIMITED PARTNERSHIP, ENOCH UTILITIES LTD., DEAN ALEXANDER, RON MORIN, NOLA WANUCH, HARRY SHARPHEAD, SHANE MORIN, LYLE L. MORIN, KIRBY PEACOCK, JOHN THOMAS Jr., KELLY MORIN, LORNE MORIN, WAYNE MORIN, 1324206 ALBERTA LTD., RIDGE DEVELOPMENT CORPORATION, JOHN JOSEPH BARATH and KPMG INC.

DOCUMENT **AMENDED STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
 Allan Garber Professional Corporation
 Barrister and Solicitor
 Suite 201, 11404 Winterburn Road NW
 Edmonton, Alberta T5S 2Y3
 Tel: (780) 455-1244
 Fax: (780) 455-4522
 Lawyer: Allan A. Garber

NOTICE TO DEFENDANT

You are being sued. You are a defendant.

AMENDED THIS 7 DAY OF Feb A.D. 2013
 PURSUANT TO RULE 360 UNDER ORDER-CONSENT DATE
 DAY OF _____ A.D. 20____

CLERK OF THE COURT

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. The Plaintiff Prairie Western Development Corporation (hereafter "Prairie Western") is a body corporate incorporated under the laws of the Province of Alberta and carries on the business of real estate development in the City of Edmonton and elsewhere in the Province of Alberta. Mr. Derek Prue is the president and director of Prairie Western.
2. The Defendant Enoch Cree Nation No. 440 as represented by Chief and Council (hereafter "Enoch") is a body of Indians who constitute a Band within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5, as amended.
3. The Defendant Dean Alexander (hereafter "Alexander") is a member of the Enoch Cree Nation and resides on the Stony Plain Indian Reserve No. 135 (hereafter "Reserve Lands"), which lands are held for the use and benefit of Enoch.
4. The Defendants Ron Morin, Nola Wanuch, Harry Sharphead, Shane Morin, Lyle L. Morin, Kirby Peacock, John Thomas Jr., Kelly Morin, Lorne Morin and Wayne Morin are individual members of the of the Enoch Cree Nation and are hereafter collectively referred to as the "Individual Defendants."
5. The Defendant Ron Morin is Chief of the Enoch Cree Nation. The remaining Individual Defendants are members of the Enoch Cree Nation Band Council.
6. The Defendant Paragon Gaming EC Company (hereafter "Paragon") is a body corporate incorporated under the laws of Nova Scotia and has its head office in Nevada, one of the United States of America. Paragon is the general partner of the Defendant Enoch/Paragon Limited Partnership (hereafter "EPLP").
7. EPLP is a limited partnership registered under the laws of the Province of Alberta. Its ownership includes a beneficial interest held in trust for the members of the Enoch Cree Nation. The precise nature of this beneficial ownership is not known to the Plaintiffs but is known to the Defendants Enoch, Paragon and EPLP.
8. The Defendant EPLP operates the River Cree Casino and Resort which is located on a portion of the Reserve Lands.
9. The Defendant Enoch Utilities Limited (hereafter Enoch Utilities) is a body corporate wholly owned and controlled by Enoch through its Chief and Counsel (the Individual

Defendants), all of whom at all material times were Directors of Enoch Utilities. The Individual Defendants are the guiding mind and will of Enoch Utilities.

10. The Defendants identified in paragraphs 2 through 9 herein are hereafter collectively referred to as the "Enoch Defendants."
11. The Defendant 1324206 Alberta Ltd. (hereafter the "Corporation") is a body corporate incorporated under the laws of the Province of Alberta and carries on the business of real estate development in the City of Edmonton and elsewhere in the Province of Alberta.
12. The Defendant Ridge Development Corporation (hereafter "Ridge") is a body corporate incorporated under the laws of the Province of Alberta. Ridge and the Plaintiff each own 33 1/3 percent of the outstanding voting shares of the Corporation.
13. The Defendant John Joseph Barath (hereafter "Barath") at all times material hereto was a director of the Corporation. Barath is also the sole director and shareholder of Ridge.
14. The Defendant KPMG Inc. ("KPMG") is a body corporate incorporated under the laws of Canada, and provides business consulting and management services in Alberta and elsewhere in Canada.
15. In or about 2003, Mr. Derek Prue, the president of the Plaintiff, identified an opportunity to develop and construct a multi-residential condominium project on part of the Reserve Lands.
16. The Plaintiff then spent considerable time, resources and expense negotiating the right to lease a portion of the Reserve Lands held by the Defendant Alexander under a Certificate of Possession in respect of:

Canada Lands Survey System Plan No. 96507

within Lot 186, Plan 92619 CLSR

within the NE ¼ 23-52-26 W4M (hereafter the "Project Lands"),

and to construct thereon a 123-unit multi-family residential complex and related infrastructure in which the Plaintiff, or its nominee, would sell sub-lease interests (hereafter the "Project").
17. As a result of those negotiations, on or about October 31, 2006, the Joint Venture Partner (JVP) Group as represented by Derek Prue, and on behalf of the Plaintiff,

entered into a Memorandum of Understanding with the Defendant Alexander with respect to development and construction of the Project on the Project Lands.

18. Pursuant to the Memorandum of Understanding, the Defendant Alexander agreed to lease the Project Lands to the Plaintiff, to arrange all servicing required for the Project, including a servicing agreement with the Band or Band entity responsible for providing the services, and to obtain all Band approvals required for the Project.
19. Meanwhile, the Plaintiff entered into negotiations with The Defendant Enoch, seeking assurances that Enoch would not obstruct, or otherwise prevent, the development of the Project, and that Enoch would lend its co-operation to the Project.
20. Recognizing that successful development of the Project was in its best interests, the Defendant Enoch entered into a Cooperation Agreement dated January, 2007 with the Plaintiff and the Defendant Alexander whereby Enoch agreed, *inter alia*:
 - a) to provide any consents or approvals within its power or control under the *Indian Act* or any other Applicable Law (as defined therein) as required by the financing agreements for the Project, or as necessary for the development, construction, efficient operation and financing of the Project;
 - b) to enter into such agreements with the Plaintiff or the residents of the Project as would be necessary or desirable in order to ensure that utilities such as power, water and sewage would be provided to the Project.
21. The Defendants Enoch and Alexander further pledged their continued cooperation to assist the Project in providing approvals as may be required in connection with the Project.
22. It was a term of the Co-operation Agreement, express or implied, that the Defendant Alexander and the Defendant Enoch, and any entities controlled by Enoch, would act in good faith and with a view to the best interests of the Project by providing such consents or approvals as would be necessary for the successful development of the Project.
23. Relying on the promised cooperation of the Defendants Enoch and Alexander, the Plaintiff, acting in good faith, continued to incur expenses to develop the Project.
24. The negotiations between the Plaintiff and the Defendant Alexander culminated in a Master Development Agreement executed on May 7, 2007 in which the Plaintiff and the Defendant Alexander agreed to negotiate and perform any further agreements as may be required, to perform all other acts required in furtherance of the purpose

of the Agreement, and to act in utmost good faith and with a view to the best interests of the Project.

25. In particular, the Defendant Alexander agreed to use his best efforts to arrange, but not pay for, the adequate and unhindered provision of utilities such as water and sewage for the Project, and to use his best efforts to obtain such Enoch resolutions as may be necessary to allow the Plaintiff and the Defendant Alexander to carry out the terms of the Master Development Agreement.
26. Throughout this timeframe, the Defendants Enoch and Alexander represented to the Plaintiff that they would provide all necessary consents, approvals, agreements and resolutions to ensure that water and sewage would be provided to the Project (the "Representations").
27. Relying on the commitments, Representations and good faith assurances made by Enoch and Alexander, the Plaintiff incurred pre-development costs including legal, engineering, administration and overhead expenses, in the amount of \$450,000.
28. On May 11, 2007, the Plaintiff entered into a Partnership (hereafter the "Partnership") with the Defendant Ridge and White Castle Realty Investments for the purpose of developing, operating, maintaining and disposing of the Project. The Plaintiff owns one-third of the Partnership's interests.
29. The Partnership incorporated the Corporation to carry out the financing and construction of the Project.
30. Relying upon the Representations of the Defendants Enoch and Alexander, and the commitments, obligations and good-faith assurances contained in the Cooperation Agreement and the Master Development Agreement or otherwise, the Corporation, on behalf of the Plaintiff and as the Plaintiff's nominee:
 - a) entered into a Commercial Head Lease dated February 21, 2008 with Her Majesty the Queen in Right of Canada as represented by the Minister of Indian Affairs and Northern Development for possession of the Project Lands; and
 - b) constructed the Project, and in so doing incurred costs and expenses in an amount known to the Corporation.
31. By the fall of 2009, the infrastructure had been constructed to allow tie-in of municipal water and sewer services to the Project. The Project was substantially complete by May of 2010.

32. In partial fulfillment of its obligations to the Plaintiff under the Cooperation Agreement, Enoch:

- a) Entered into Agreement M-271 with the City of Edmonton for the provision of municipal water and sewage services to the first phase of development on the Enoch Reserve, including the Project. The Agreement is dated August 6, 2009 and was amended by agreement dated February 1, 2010;
- b) Entered into a Servicing Agreement dated September 20, 2011 with the Defendant Paragon as general partner and on behalf of EPLP to extend municipal water and sewer services from the River Cree Casino and Resort to the Project; and
- c) Caused Enoch Utilities to enter into a Servicing Agreement dated September 21, 2011 with the Corporation whereby Enoch Utilities agreed to provide municipal water and sewer services to the Project.

33. In breach of the Cooperation Agreement, the Defendant Enoch and the Individual Defendants, acting in bad faith:

- a) failed to utilize or employ their power and influence to cause Enoch Utilities to supply municipal water and sewage to the Project;
- b) failed to take the necessary, or any, steps to ensure that municipal water and sewer services were provided to the Project;
- c) failed to provide consents or approvals within its power or control as required or as necessary for the development and construction of the Project;
- d) failed to act in good faith with a view to the best interests of the Project; and
- e) failed to provide their continued co-operation to assist the Project.

34. In breach of the Co-operation Agreement, the Defendant Alexander, acting in bad faith, failed to provide his continued co-operation to assist the Project.

35. In breach of the Master Development Agreement, the Defendant Alexander, acting in bad faith:

- a) failed, neglected or refused to take the necessary, or any, steps to ensure that municipal water and sewer services were provided to the Project;
- b) failed to use his best efforts to arrange for the adequate and unhindered provision of utilities such as water and sewer for the Project;

- c) failed to use his best efforts to obtain such Enoch resolutions as may be necessary for the successful development of the Project; and
- d) failed to act in good faith with a view to the best interests of the Project.

36. As a result of the breach of contract and the bad faith conduct of Alexander and Enoch and the Individual Defendants as described herein, the Project remains unoccupied, expenses and interest costs continue to accrue and sub-lease interests in the Project cannot be conveyed, all of which has caused the Plaintiff loss and damages.

Enoch Utilities

37. The Defendant Enoch Utilities had knowledge of the Co-operation Agreement and the Master Development Agreement through its Directors, who at all material times were the Chief and Council of Enoch, and who are the Individual Defendants.
38. Enoch Utilities owed the Plaintiff a legal duty to refrain from inducing Enoch and Alexander to breach the Cooperation Agreement and Master Development Agreement with the Plaintiff.
39. In breach of its legal duties, the Defendant Enoch Utilities wrongfully and intentionally, and without legal justification, induced or procured the breach by Enoch and Alexander of their contracts with the Plaintiff by failing, neglecting or refusing to take the necessary or any steps to provide municipal water and sewer services to the Project, or to obtain necessary consents and approvals with respect to same.
40. As a result of the foregoing, municipal water and sewer services have not been supplied to the Project, the sale of sub-lease units in the Project cannot be completed and the Project remains unoccupied, all of which has caused the Plaintiff loss and damages.

Paragon and EPLP

41. The valves which control the supply of municipal water and sewage services to and from the Project (hereafter "the Valves") are located inside the River Cree Resort and Casino on Reserve Lands leased by Paragon as general partner for and on behalf of EPLP.
42. The Defendants Paragon and EPLP knew of the existence of the contractual relationship between the Plaintiff and the Defendants Enoch and Alexander, and specifically the Cooperation Agreement and the Master Development Agreement, through the Defendant Paragon (whose shareholder is Paragon Gaming Enoch Holdings, Inc.), or through the limited partners of EPLP, or through communications with some or all of the other named Defendants.
43. The Defendants Paragon and EPLP owed the Plaintiff a legal duty to refrain from inducing Enoch and Alexander to breach the Cooperation Agreement and Master Development Agreement.
44. In breach of their legal duties, the Defendants Paragon and EPLP wrongfully and intentionally, and without lawful justification, induced or procured the breach by Enoch and Alexander of their contracts with the Plaintiff by failing, neglecting or refusing to take the necessary or any steps to provide municipal water and sewer services to the Project, and specifically, by failing, neglecting or refusing to open the Valves.
45. As a result, municipal water and sewer services have not been supplied to the Project, the sale of sub-lease units in the Project cannot be completed and the Project remains unoccupied, all of which has caused the Plaintiff loss and damages.
46. Enoch, as beneficial owner of some portion of EPLP, and the Individual Defendants have neglected and failed to use their power and influence to cause Paragon or EPLP to open the Valves, and as a result Enoch is in breach of the Cooperation Agreement.
47. As of the date of the filing of this Statement of Claim, municipal water and sewage services have not been provided to the Project.
48. As a result of the actions of one or all of the Enoch Defendants as herein described, the Plaintiff has suffered and continues to suffer profound damage to its business reputation and good will among First Nations communities.

The Corporation, Barath, Ridge and KPMG

49. Paragraphs 50 through 70 below are pleaded in addition to, or as an alternative to, the allegations contained in paragraphs 15 through 48 above.

50. Pursuant to a Collateral Mortgage dated February 16, 2008, the Royal Bank of Canada, as Mortgagee, agreed to lend the Corporation, as Mortgagor, Twenty Million Dollars (hereafter the "Credit Facility") to finance the construction of the Project.
51. In 2009, without the knowledge of the Plaintiff or Derek Prue, who at that time was one of the directors of the Corporation, the Royal Bank approached Barath and the Corporation for the purpose of installing KPMG Inc. as monitor of the business and affairs of the Corporation and the Project.
52. In or about October of 2009, without the authority of the Corporation, the Defendants Barath and the Corporation purportedly entered into a monitoring agreement (the "Monitoring Agreement") with the Royal Bank of Canada. The Royal Bank was paid an "administration fee" of \$100,000 in respect of the Monitoring Agreement.
53. Pursuant to paragraph 14.8 of the Monitoring Agreement, the Corporation and Barath represented and warranted that the execution and delivery of the Monitoring Agreement and any document contemplated by the Monitoring Agreement had been duly authorized and all corporate and other approvals and resolutions had been obtained prior to the execution and delivery of the Monitoring Agreement.
54. The foregoing representations and warranties are false. Derek Prue, who at that time was one of the directors of the Corporation, had no knowledge of the Monitoring Agreement. Further, there was no directors resolution of the Corporation authorizing the Monitoring Agreement as required by the Corporation's By-Laws.
55. The Royal Bank knew or ought to have known that the Monitoring Agreement was not authorized by the Corporation since it was signed by only one of the Corporation's directors, namely Barath.
56. Without proper or any authority, Barath, Ridge and the Corporation appointed KPMG to manage and direct the business, property and affairs of the Corporation in relation to the Project.
57. KPMG did in fact manage and direct the business, property and affairs of the Corporation, either on its own, or alternatively, in combination with one or both of Barath and the Corporation.
58. Having undertaken to manage and direct the business, property and affairs of the Corporation, either on its own or in combination with one or both of Barath and Ridge, KPMG owed a duty to exercise reasonable care, skill and diligence in carrying out its duties and responsibilities with a view to successful completion of

the Project, including the provision of water and sewer services to the Project, and not to prefer the interests of one shareholder over another.

59. KPMG received financial remuneration for the management services it provided to the Corporation in relation to the Project.
60. In his capacity as a director of the Corporation, the Defendant Barath owed the Plaintiff and the Corporation a duty of honesty and good faith, a duty to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, and a duty not to prefer the interests of his company, the Defendant Ridge, over the interests of the Corporation or other shareholders of the Corporation, including the Plaintiff.
61. Further, the Corporation owed the Plaintiff a legal duty to act in a manner that was not unfairly prejudicial to the Plaintiff, and that did not unfairly disregard the Plaintiff's interests.
62. As of October 2009, when the Monitoring Agreement was executed:
 - a) construction of the Project was essentially complete, save for landscaping and connection of the Valves; and
 - b) only \$16,681,909 of the Royal Bank \$20 million credit facility had been drawn down with respect to construction of the Project.
63. In breach of their legal duties, the Defendants Barath, the Corporation and KPMG, acting alone or alternatively in league one with the other:
 - a) Preferred Barath's and Ridge's interests over the Plaintiff's interests by arranging, permitting or directing the Corporation to pay project management fees to or on behalf of Barath's company, the Defendant Ridge, in preference to monies owing to Enoch and to the Plaintiff;
 - b) Failed, refused or neglected to pay monies owing to Enoch which were required for the connection of water and sewer services to the Project;
 - c) Failed to properly manage, direct and conduct the business and affairs of the Corporation; and
 - d) Failed to take the necessary, or any, steps to ensure that municipal water and sewer services were provided to the Project,

as a result of which municipal water and sewer services have not been supplied to the Project, and the Plaintiff has suffered damage and loss.

64. In the alternative, the Defendants Barath, Ridge and the Corporation, acting in league one with the other, conspired to harm the Plaintiff, and did harm the Plaintiff, by:

- a) Preferring Barath's and Ridge's interests over the Plaintiff's interests by arranging, permitting or directing the Corporation to pay project management fees to or on behalf of Ridge in preference to monies owing to Enoch and to the Plaintiff;
- b) Failing, refusing or neglecting to pay monies owing to Enoch which were required for the connection of water and sewer services to the Project; and
- c) Failing to properly manage, direct and conduct the business and affairs of the Corporation; and
- d) Failing to take the necessary, or any, steps to ensure that municipal water and sewer services were provided to the Project,

as a result of which municipal water and sewer services have not been supplied to the Project, and the Plaintiff has suffered damage and loss.

65. Acting in bad faith, KPMG failed, neglected or refused to discuss any matters concerning the Corporation with Derek Prue, who until November of 2011 was one of the directors of the Corporation.

66. The actions of the Defendants Barath and the Corporation have been oppressive, unfairly prejudicial to, and unfairly disregard the interests of the Plaintiff within the meaning of s. 242 of the *Business Corporations Act*, RSA 2000 c. B-9.

67. As a result of the foregoing matters, municipal water and sewer services have not been supplied to the Project, the sale of sub-lease units in the Project cannot be completed and the Project remains unoccupied, all of which has caused the Plaintiff loss and damage.

68. Further, the Plaintiff has suffered a profound loss of of its business reputation and good will among First Nations as a direct result of the Project's failure.

69. Ridge has been unjustly enriched by the project management fees paid to or on its behalf pursuant to the Monitoring Agreement and the Plaintiff has suffered a loss or detriment as a result. There is no juristic reason for Ridge to retain such benefit since the project management fees were paid pursuant to an agreement that was not authorized by the directors of the Corporation. In the alternative, the

management fees paid to or on behalf of Ridge were excessive and not required for completion of the Project.

70. The Plaintiff pleads and relies upon sections 239 and 242 of the *Business Corporations Act*.

71. The conduct of the Defendants is high-handed, outrageous and oppressive, and entitles the Plaintiffs to aggravated, exemplary or punitive damages, and costs on a solicitor and client basis.

72. The Plaintiff proposes that the trial of this action be held at the Law Courts, in Edmonton, Alberta.

73. The Plaintiff expects that the trial of this action will take more than 25 days.

Remedy sought:

As against one or all of the Enoch Defendants:

74. Damages for wasted leasing and pre-development costs and expenses incurred by the Plaintiff in relation to the Project, including administration and overhead, in the amount of \$450,000.

75. Damages for lost profits and lost opportunity costs in the amount of \$3 million.

76. Damages for loss of business reputation and good will in the amount of \$1 million.

In the alternative;

A) As against the Defendants Barath and the Corporation:

77. A Declaration that the Monitoring Agreement was not authorized by a resolution of the directors of the Corporation, that the representations and warranties in paragraph 14.8 of the Monitoring Agreement are false, and that the Monitoring Agreement is of no force or effect.

78. A Declaration that the actions of the Defendants Barath and the Corporation have been oppressive, unfairly prejudicial to, and unfairly disregard the interests of the Plaintiff within the meaning of s. 242 of the *Business Corporations Act*, RSA 2000 c. B-9.

79. An Order pursuant to s. 242(3) of the *Business Corporations Act*:

- a) requiring the Corporation, within a time specified by this court, to produce to the court and to the Plaintiff financial statements in the form required by s. 155 of the Act;
- b) requiring an accounting with respect to the draw-down of funds from the Credit Facility and the payment of project management fees to Ridge pursuant to the Monitoring Agreement;
- c) prohibiting the Corporation from dealing with, assigning or otherwise disposing of any exigible property in which it has an interest, including the Commercial Head Lease, pending the relief requested above being granted by this court; and
- d) such further order as this court may direct.

B) As against one or all of Barath, the Corporation and KPMG:

- 80. A Declaration that Barath, the Corporation and KPMG directed, permitted or authorized the payment of project management fees to Ridge in preference to monies owing to Enoch with respect to the supply of water and services to the Project.
- 81. A Declaration that Barath, the Corporation and KPMG failed to properly manage, direct and conduct the business and affairs of the Corporation with a view to completion of the Project;
- 82. Damages in such amount as may be proven at trial with respect to the Plaintiff's one-third share of all expenses incurred by the Corporation in relation to the unlawful Monitoring Agreement including, but not limited to:
 - A) legal fees paid to Brownlee LLP;
 - B) the administration fee of \$100,000 paid to the Royal Bank of Canada;
 - C) management fees paid to KPMG.
- 83. Damages in such amount as may be proven at trial with respect to losses incurred by the Plaintiff as a result of the payment of project management fees to Ridge in preference to the sums owing to Enoch.
- 84. Damages for wasted leasing and pre-development costs and expenses incurred by the Plaintiff in relation to the Project (including administration and overhead) in the amount of \$450,000.00.

85. Damages for lost profits and lost opportunity costs in the amount of \$3 million.
86. Damages for loss of business reputation and good will in the amount of \$1 million.

C) As against the Defendant Ridge:

87. An Order requiring Ridge to account for all project management fees paid to or on its behalf pursuant to the Monitoring Agreement; and
88. An Order of restitution in favor of the Plaintiff for one-third of such amount.

As against one or all of the Enoch Defendants, or in the alternative as against any one or all of Barath, the Corporation, Ridge, Barath and KPMG, or in the further alternative, as against any one or all of the Defendants:

89. Aggravated, exemplary or punitive damages in the amount of \$500,000 or such other amount as deemed appropriate by this Honourable Court;
90. Interest pursuant to the *Judgment Interest Act* of Alberta;
91. Costs of this action on a solicitor and client full indemnity basis, and
92. Such further and other relief as deemed just and appropriate by this Honourable Court.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not

serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.