

FORM 3-9  
(Rule 3-9)

FILED IN THE OFFICE OF THE  
LOCAL REGISTRAR ON THE  
10<sup>th</sup> DAY OF March 2020

COURT FILE NUMBER QBG 399 of 2020

Received by A. SIEDEN  
DEPUTY LOCAL REGISTRAR  
Judicial Centre of Saskatoon

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE SASKATOON

PLAINTIFF CANADIAN MORTGAGE SERVICING CORPORATION

DEFENDANT KORF PROPERTIES LTD.

**NOTICE TO DEFENDANT**

1. The Plaintiff may enter judgment in accordance with this Statement of Claim or the judgment that may be granted pursuant to *The Queen's Bench Rules* unless, in accordance with paragraph 2, you:
  - (a) serve a Statement of Defence on the Plaintiff; and
  - (b) file a copy of it in the office of the local registrar of the Court for the judicial centre named above.
2. The Statement of Defence must be served and filed within the following period of days after you are served with the Statement of Claim (excluding the day of service):
  - (a) 20 days if you were served in Saskatchewan;
  - (b) 30 days if you were served elsewhere in Canada or in the United States of America;
  - (c) 40 days if you were served outside Canada and the United States of America.
3. In many cases a Defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every Defendant should consult a lawyer as to his or her rights.
4. This Statement of Claim is to be served within 6 months from the date on which it is issued.
5. This Statement of Claim is issued at the above-named judicial centre on the 10<sup>th</sup> day of March, 2020.

A. SIEDEN  
DEPUTY LOCAL REGISTRAR

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(Deputy) Local Registrar

## STATEMENT OF CLAIM

### The Parties

1. The Plaintiff, **CANADIAN MORTGAGE SERVICING CORPORATION ("CMSC")**, is a mortgage servicing corporation with its head office in the City of Toronto, Ontario. At all material times hereto, CMSC was licensed to carry on business in the Province of Saskatchewan.
2. The Defendant, **KORF PROPERTIES LTD. ("KPL")**, is a corporation incorporated pursuant to the laws of Saskatchewan with its registered office located in Regina, Saskatchewan. KPL was incorporated in 2008 and carries on business as a real estate holding company.

### Financing Provided to KPL and Security Provided by KPL

3. Atrium Mortgage Investment Corporation ("**Atrium**") is a mortgage investment corporation with its head office in the City of Toronto, Ontario. As more particularly described below, Atrium is the predecessor in title to CMSC in regard to the indebtedness owed by KPL which is the subject matter of this action.
4. By means of a mortgage granted by KPL in favour of Atrium originally dated December 1, 2014 and extended on February 23, 2017 to January 15, 2018 (the "**Mortgage**"), Atrium advanced to KPL financing in the original principal amount of \$18,500,000.00 (the "**Loan**").
5. In order to secure the repayment by KPL to Atrium of the amounts advanced by Atrium to KPL pursuant to the Mortgage, as well as the repayment of other amounts owing by KPL to Atrium pursuant to the Loan (collectively, the "**Indebtedness**"), KPL granted to Atrium the following security in the assets of KPL, namely:
  - (a) KPL granted the Mortgage to and in favour of Atrium of all right, title and interest of KPL in or to twelve (12) properties owned by KPL (collectively, the "**Properties**") and more particularly described as follows:
    - i. seventy-three (73) multi-family units contained within five (5) low rise apartment buildings located in the City of Estevan, Saskatchewan;

- ii. approximately 58,200 square feet of industrial warehouse space located within five (5) buildings located in the City of Estevan, Saskatchewan;
  - iii. approximately six (6) acres of serviced heavy industrial zoned land located in the City of Estevan, Saskatchewan;
  - iv. one light industrial building comprising approximately 33,000 square feet on a 3.5 acre property outside the City of Regina located in the Rural Municipality of Sherwood No. 159, Saskatchewan (the "**RM of Sherwood**"); and
  - v. one industrial building comprising approximately 17,600 square feet on a 20 acre property located in the County of Vermillion River, Alberta (the "**County of Vermillion River**");
- (b) a General Assignment of Leases and Rents dated December 1, 2014 (the "**Assignment of Leases and Rents**"), whereby KPL assigned to Atrium as security for the Indebtedness all of interests of KPL in certain leases and rents pertaining to the Properties;
  - (c) a Security Agreement dated December 1, 2014 (the "**Security Agreement**"), whereby KPL assigned to Atrium an interest in all property described therein;
  - (d) an Assignment of Insurance dated December 1, 2014 (the "**Assignment of Insurance**") executed by KPL in favour of Atrium; and
  - (e) an Assignment and Postponement of Shareholder Loans made effective on December 1, 2014 (the "**Assignment and Postponement**") by Kordel Korf, Do All Industries Ltd., P & O Assets Ltd., P & O Assets XEG Ltd., Korf Aviation Ltd., Sightcutting and Forming Ltd., Korf Farms Ltd., Korf Holdings Ltd., Do All Industries USA Ltd., South East Electric Ltd., Korf Developments Ltd., Korf Family Trust, Korf Family Trust II and Metigoshe Recreational Holdings Ltd. in favour of Atrium as security for the Loan.
6. The Mortgage, the Assignment of Leases and Rents, the Security Agreement, the Assignment of Insurance and the Assignment and Postponement are hereinafter collectively described as the "**Security**".

7. By means of a Mortgage and Security Assignment Agreement made effective as of February 26, 2020, Atrium irrevocably assigned and transferred to and in favour of CMSC all right, title and interest of Atrium in or to the Loan, the Indebtedness, the Properties, the Assignment of Leases and Rents, the Security Agreement, the Assignment of Insurance, the Assignment and Postponement and the Security.

**Default By KPL**

8. The Mortgage provides that KPL is deemed to be in default of the Mortgage if KPL fails to make payment of any instalment of principal or interest on account of the Mortgage as they become due. The Mortgage further provides that KPL is required to pay, *inter alia*, all municipal taxes on the Properties as they become due.
9. KPL has defaulted in its obligations under the Loan by failing to make the required monthly interest payments on the Loan which were due to be paid by KPL to Atrium on each of:
  - (a) August 15, September 15, October 15, November 15 and December 15 of 2017;
  - (b) the fifteenth (15th) day of each month in 2018;
  - (c) the fifteenth (15th) day of each month in 2019; and
  - (d) January 15 and February 15 of 2020.
10. The Mortgage matured and the Indebtedness became due and payable in its entirety by KPL to Atrium on January 15, 2018.
11. KPL further defaulted in its obligations under the Loan by failing to pay municipal property taxes on the Properties as they became due. After inquiry by Atrium as to the amounts of municipal property tax arrears owing by KPL, Atrium caused the amounts more particularly described below to be paid to the City of Estevan, Saskatchewan, the Rural Municipality of Sherwood No. 159, Saskatchewan and the County of Vermillion River, Alberta (collectively, the "**Municipalities**") to satisfy all outstanding municipal property taxes owing by KPL to the Municipalities. Further, and in particular, on or about December 22, 2017:

- (a) Atrium caused the sum of \$230,883.38 to be paid to the City of Estevan to satisfy all outstanding arrears of municipal property taxes on the Properties owing by KPL to the City of Estevan;
  - (b) Atrium caused the sum of \$75,810.60 to be paid to the RM of Sherwood to satisfy all outstanding arrears of municipal property taxes on the Properties owing by KPL to the RM of Sherwood; and
  - (c) Atrium caused the sum of \$69,085.41 to be paid to the County of Vermillion River to satisfy all outstanding arrears of municipal property taxes on the Properties owing by KPL to the County of Vermillion River.
12. Atrium claims its contractual right under the Security to add \$375,779.39 to the Indebtedness, being the amounts of municipal property taxes paid by it on behalf of KPL to the Municipalities on or about December 21, 2017.
  13. In the event of default, the Mortgage states that Atrium as mortgagee may, *inter alia*, appoint a receiver of the Properties or any part thereof. The Mortgage further provides that Atrium may demand the entire Indebtedness as immediately due and payable.
  14. As a result of the acts of default committed by KPL in respect of the Loan, by letter dated December 1, 2017, Atrium demanded that KPL (and Kordel Korf as guarantor) make payment in full of the full amounts due under the Loan.
  15. Following receipt of Atrium's December 1, 2017 demand, KPL (as borrower) requested of Atrium (as lender) to forbear from enforcement of the Security. Atrium agreed to KPL's request and subsequently entered into a Forbearance Agreement with KPL dated April 1, 2018, and subsequently amended on September 1, 2018 and April 1, 2019 (the "**Forbearance Agreement**").
  16. The Forbearance Agreement expired on December 31, 2019.
  17. As at January 31, 2020, KPL was indebted to Atrium in regard to the Loan in the total aggregate amount of \$23,103,873.95(the "**Indebtedness**"), plus interest on that amount accruing from and after that date (at a per diem rate of \$4,843.18), as well as additional legal fees incurred by Atrium from and after that date in regard to the

Security and in regard to recovery of the Indebtedness. As at January 31, 2020, the particulars of the Indebtedness owed by KPL to Atrium were as follows:

Principal Balance to July 15, 2017	\$18,500,000.00
Interest Due (July 15 – August 14, 2017)	\$118,708.33
Interest Due (August 15 – September 14, 2017)	\$118,708.33
Interest Due (September 15 – October 14, 2017)	\$118,708.33
Interest Due (October 15 – November 14, 2017)	\$118,708.33
Interest Due (November 15 – December 14, 2017)	\$118,708.33
Interest Due (December 15, 2017 – January 14, 2018)	\$118,708.33
Interest Due (January 15 – February 14, 2018)	\$118,708.33
Interest Due (February 15 – March 14, 2018)	\$118,708.33
Interest Due (March 15 – April 14, 2018)	\$118,708.33
Interest Due (April 15 – May 14, 2018)	\$118,708.33
Interest Due (May 15 – June 14, 2018)	\$118,708.33
Interest Due (June 15 – July 14, 2018)	\$118,708.33
Interest Due (July 15 – August 14, 2018)	\$118,708.33
Interest Due (August 15 – September 14, 2018)	\$118,708.33
Interest Due (September 15 – October 14, 2018)	\$118,708.33
Interest Due (October 15 – November 14, 2018)	\$118,708.33
Interest Due (November 15 – December 14, 2018)	\$118,708.33
Interest Due (December 15, 2018 – January 14, 2019)	\$118,708.33
Interest Due (January 15 – February 14, 2019)	\$118,708.33
Interest Due (February 15 – March 14, 2019)	\$118,708.33
Interest Due (March 15 – April 14, 2019)	\$118,708.33
Interest Due (April 15 – May 14, 2019)	\$118,708.33
Interest Due (May 15 – June 14, 2019)	\$118,708.33
Interest Due (June 15 – July 14, 2019)	\$118,708.33
Interest Due (July 15 – August 14, 2019)	\$118,708.33
Interest Due (August 15 – September 14, 2019)	\$118,708.33
Interest Due (September 15 – October 14, 2019)	\$118,708.33
Interest Due (October 15 – November 14, 2019)	\$118,708.33
Interest Due (November 15 – December 14, 2019)	\$118,708.33
Interest Due (December 15, 2019– January 14, 2020)	\$118,708.33
Interest Due January 15 – January 31, 2020 inclusive	\$62,273.22
Late Interest	\$451,390.43
Inspection Fee (March 27, 2017)	\$950.33
Tax Certificate Fee (December 8, 2017)	\$10.00
Appraisal (December 8, 2017)	\$15,000.00
Tax Certificate Fees (December 18, 2017)	\$275.00
Tax Certificate Fee (December 18, 2017)	\$20.00

o/s Property Taxes (December 21, 2017)	\$234,188.86
o/s Property Taxes (December 21, 2017)	\$75,810.60
o/s Property Taxes (December 21, 2017)	\$74,085.41
Notary & Printing Costs (February 6, 2018)	\$210.34
Appraisal Fee (April 13, 2018)	\$15,975.00
Tax Certificate Fee (June 27, 2018)	\$20.00
Tax Certificate Fee (July 24, 2018)	\$10.25
Tax Certificate Fee (July 25, 2018)	\$125.00
Late Fees (May 15, 2017 – January 15, 2020)	\$4950.00
Default Proceedings Fee	\$600.00
Legal Fees	\$106,729.61
<b>TOTAL</b>	<b>\$23,103,873.95</b>

18. As a result of KPL's continuing acts of default in respect of the Loan, by letter dated February 13, 2020, Atrium demanded that KPL (and Kordel Korf as guarantor) make payment of the Indebtedness (plus additional interest accrued from and after December 31, 2019 at the per diem rate of \$4,843.18 and legal fees incurred to the date of payment) on or before February 25, 2020.
19. KPL has failed, neglected or refused and continues to fail, neglect or refuse to pay the Indebtedness to Atrium.

**Relief Sought**

20. By reason of the facts and matters described above, the Plaintiff, **CANADIAN MORTGAGE SERVICING CORPORATION**, hereby claims the following items of relief against the Defendant, **KORF PROPERTIES LTD.:**
  - (a) judgment in the amount of \$23,103,873.95;
  - (b) interest on \$23,103,873.95 accruing from and after January 31, 2020 at a per diem rate of \$4,843.18;
  - (c) an Order appointing a Receiver of all of the property, assets and undertakings of Korf Properties Ltd., pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3; section 65(1) of *The Queen's Bench Act*, 1998, SS 1998, c Q-1,01 and section 64(8) of *The Personal Property Security Act*, 1993, SS 1993, c P-6.2;

- (d) all legal costs and expenses incurred by Atrium and CMSC on a solicitor and own client basis; and
- (e) such further and other relief as counsel may advise and this Honourable Court may allow.

DATED at Saskatoon, Saskatchewan, this 10<sup>th</sup> day of March, 2020.

**MLT AIKINS LLP**

Per: 

Jeffrey M. Lee, Q.C. and K. James  
Rose, Counsel for the Plaintiff,  
Canadian Mortgage Servicing  
Corporation

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