

COURT FILE NUMBER 2303 07739
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF **ADDENDA CAPITAL INC.**
DEFENDANTS **112 STREET NW EDMONTON PARTNERS LP by its general partner 112 STREET NW EDMONTON PARTNERS GP INC., 112 STREET NW EDMONTON PARTNERS GP INC., and CANDEREL ENTERPRISES INC.**
DOCUMENT **STATEMENT OF CLAIM**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Jack R. Maslen / Myles Fish
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NOTICE TO DEFENDANTS:

You are being sued. You are the defendant(s).

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

STATEMENT OF FACTS RELIED ON:

The Parties

1. The Plaintiff, Addenda Capital Inc. (“**Addenda**” or the “**Mortgagee**”), is a corporation incorporated pursuant to the laws of the Province of Quebec, which is extra-provincially registered to carry on business in Alberta, and is the lender under the Mortgage (as defined below).
2. The Defendant, 112 Street NW Edmonton Partners LP (“**112 LP**”) is a limited partnership registered pursuant to the laws of the Province of Alberta, and is the borrower under the Loan (as defined below).
3. The Defendant, 112 Street NW Edmonton Partners GP Inc. (“**112 GP**” or the “**Mortgagor**”, and sometimes collectively with 112 LP, the “**Borrower**”) is a corporation incorporated pursuant to the

laws of the Province of Alberta, with its registered office in the City of Calgary. 112 GP is the Mortgagor under the Mortgage, and is the general partner of 112 LP.

4. Canderel Enterprises Inc. (“**Canderel**” or the “**Guarantor**”) is a federal corporation incorporated pursuant to the laws of Canada, with its registered office in the City of Montreal, Quebec, and is the guarantor of the Loan and Mortgage.
5. 112 LP, 112 GP and Canderel are hereinafter sometimes collectively referred to as the “**Defendants**”.

The Loan and Mortgage

6. Pursuant to a Commitment Letter dated October 30, 2017 (the “**Commitment Letter**”), Addenda advanced to 112 LP by its general partner 112 GP a loan in the amount of \$14,600,000.00, plus interest (the “**Loan**”).
7. As security for the Loan, by a Mortgage dated January 31, 2018, as registered with the Land Titles Office on February 13, 2018 as Instrument No. 182 038 067 (the “**Mortgage**”), 112 GP mortgaged to Addenda the lands legally described as:

FIRSTLY :

PLAN (B)

BLOCK TWELVE (12)

THE MOST NORTHERLY TWENTY FOUR (24) FEET IN WIDTH THROUGHOUT OF LOT SIXTY ONE (61)

EXCEPTING THEREOUT:

ALL THAT PORTION WHICH LIES NORTH WEST OF A STRAIGHT LINE DRAWN FROM A POINT IN THE WEST BOUNDARY TEN (10) FEET SOUTH FROM THE NORTH WEST CORNER THEREOF, TO A POINT IN THE NORTH BOUNDARY TEN (10) FEET EAST FROM THE NORTH WEST CORNER THEREOF.

EXCEPTING THEREOUT ALL MINES AND MINERALS

SECONDLY:

PLAN (B)

BLOCK TWELVE (12)

LOT SIXTY ONE (61)

EXCEPTING THEREOUT:

THE MOST NORTHERLY TWENTY FOUR (24) FEET IN WIDTH THROUGHOUT OF SAID LOT

EXCEPTING THEREOUT ALL MINES AND MINERALS

THIRDLY:

PLAN B

BLOCK 12

LOT 62

EXCEPTING THEREOUT ALL MINES AND MINERALS

FOURTHLY:

PLAN B

BLOCK 12

LOT 63

EXCEPTING THEREOUT ALL MINES AND MINERALS

(collectively, the “**Mortgaged Lands**”).

8. The Mortgage and Loan had a maturity date of February 1, 2023.
9. 112 GP is the registered owner of the Mortgaged Lands. Accordingly, pursuant to a Beneficial Owner’s Agreement dated January 31, 2018 between 112 GP, Addenda, and 112 LP, 112 LP confirmed that it is the beneficial owner of the Mortgaged Lands and charged, assigned and created a security interest in the Mortgaged Lands in favour of Addenda.
10. The Mortgage provides, among other things, that the Borrower is to make monthly instalment payments, due on the first of each month, and that the entire amount of the Loan becomes due and payable to Addenda on the maturity date.
11. Pursuant to the Loan and Mortgage, the Borrower agreed that, in the event of a default that has not been cured within three business days, among other things:
 - a) the whole of the Loan, including interest, fees, and expenses, including legal costs on a solicitor-and-his-own client basis, would immediately become due and payable;
 - b) the Mortgagee would be entitled to enter into the Mortgaged Lands and, whether in or out of possession, collect rents and profits thereof;
 - c) the Mortgagee would be entitled to commence foreclosure proceedings; and
 - d) the Mortgagee may appoint a receiver and manager in respect of the Mortgaged Lands.
12. The Mortgage also provided that all fees and expenses (including legal fees on a solicitor-and-own-client, full indemnity basis) incurred in exercising or enforcing or attempting to enforce, or in pursuance of any right, power, remedy or purpose under the Mortgage, would be secured by the Mortgage and be charges against the Mortgaged Lands.

The Collateral Security

13. As further security for repayment of amounts owing under the Mortgage, the Borrower provided, among other things:
- a) a General Assignment of Rents and Leases dated January 31, 2018, and a Specific Assignment of Leases dated January 31, 2018 (both registered with the Land Titles Office on February 13, 2018 as Instrument No. 182 038 068 (collectively, the “**Assignments**”), pursuant to which 112 GP assigned all rents payable in respect of the Mortgaged Lands to Addenda; and
 - b) a Security Agreement dated January 31, 2018, as registered with the Alberta Personal Property Registry (“**PPR**”) as Registration No. 18012630193 (the “**Security Agreement**”), pursuant to which the Borrower granted a security interest in all of its present and after acquired personal property now or hereafter located on, arising from or used or acquired in connection with the Mortgaged Lands.
14. The Assignments and Security Agreement are sometimes hereinafter collectively referred to as the “**Collateral Security**”.

The Canderel Guarantee

15. As yet further security for repayment of amounts owing under the Mortgage, Canderel executed a Guarantee of Mortgage dated January 31, 2018 (the “**Guarantee**”), whereunder Canderel unconditionally and absolutely guaranteed to Addenda repayment of, without limitation, any and all obligations, indebtedness and liability of every nature and description payable by the Borrower to Addenda secured by the Mortgage. Canderel’s liability under the Guarantee is limited to the principal sum of \$4,000,000.00, plus interest on such principal sum computed from the date of demand at the interest rate in the Mortgage, and Addenda’s legal costs on a solicitor-and-his-own client basis incurred to enforce the Guarantee.
16. The Guarantee also provides, among other things, that:
- a) Addenda is not bound to exhaust its legal remedies against the Borrower before requiring payment by the Guarantor; and
 - b) any and all indebtedness of the Borrower to the Guarantor is assigned to Addenda, shall be held in trust by the Guarantor for Addenda, and upon demand by Addenda, shall be paid to Addenda without in any way limiting or lessening the liability of Canderel under the Guarantee.
17. Addenda registered the Guarantee against Canderel with the PPR as Registration No. 18012630177.

Unsuccessful Attempts to Renew Mortgage

18. Beginning in or around mid-2022, Addenda engaged in discussions with the Borrower and Canderel, as applicable, with respect to the possible renewal of the Loan and Mortgage. As part of these discussions, Addenda agreed to extend the maturity date of the Loan and Mortgage first from February 1, 2023 to March 1, 2023, and subsequently to April 1, 2023.
19. The Borrower, and/or Canderel on behalf of the Borrower, advised that it did not intend to renew or extend the Loan or Mortgage beyond April 1, 2023. As a result, the Mortgage matured on April 1, 2023.
20. However, the Borrower failed to repay the Loan or Mortgage in full on April 1, 2023, or make any other payment on April 1, 2023.

The Defaults and Demands

21. Since on or around April 1, 2023, the Borrower has defaulted on its obligations under the Loan, Mortgage, and Collateral Security, as applicable, by, *inter alia*, failing to make payments when due and owing.
22. Consequently, on or about April 10, 2023, Addenda issued to the Borrower a demand for payment of the whole of the indebtedness secured by the Mortgage in the amount of \$12,783,728.48 plus interest and charges continuing to accrue (the “**Borrower Demand**”), and a Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“*BIA*”) in respect of the Mortgage and Collateral Security (the “**Borrower NOI**”).
23. By letter dated April 10, 2023, Addenda also issued a formal demand for payment to the Guarantor, pursuant to the terms of the Guarantee (the “**Guarantor Demand**”), and enclosed a Notice of Intention to Enforce Security pursuant to Section 244 of the *BIA* (the “**Guarantor NOI**”).
24. Notwithstanding the Borrower Demand, the Borrower NOI, the Guarantor Demand and the Guarantor NOI, the Defendants have failed to pay the amounts owing.
25. As at April 28, 2023, the amount owing to Addenda secured by the Mortgage was \$12,809,715.97, plus interest and other chargeable costs continuing to accrue thereon (the “**Indebtedness**”).
26. As at April 28, 2023, the amount owing to Addenda pursuant to the Guarantee was \$4,000,000.00, plus interest accrued since the Guarantor Demand, and interest and other chargeable costs

continuing to accrue thereon, as well as such indebtedness of the Borrower to the Guarantor assigned to Addenda (the “**Guarantee Indebtedness**”).

27. The Indebtedness and Guarantee Indebtedness are each just debts duly owed to Addenda that are being improperly withheld by the Defendants, as applicable.

REMEDY SOUGHT:

28. WHEREFORE, the Plaintiff seeks as follows:
- a) a declaration that the Borrower is in default of the Loan, Mortgage and Collateral Security, as applicable;
 - b) a declaration that the Mortgage and Collateral Security are valid and have become enforceable;
 - c) a declaration as to the amount owing by the Borrower under the Loan and Mortgage with interest, as applicable, in an amount not less than the Indebtedness;
 - d) a declaration that the Guarantor is in default of the Guarantee, and that the Guarantee is valid and has become enforceable;
 - e) a declaration as to the amount owing by the Guarantor under the Guarantee, in an amount not less than the Guarantor Indebtedness;
 - f) an Order appointing MNP Ltd. as receiver and manager over all of the property of the Borrower, or alternatively over the Mortgaged Lands and Collateral Security, pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, and the *Judicature Act*, RSA 2000, c J-2;
 - g) alternatively, an Order directing the sale or foreclosure of the Mortgaged Lands, an Order providing for a one-day redemption period or such other redemption period as the Court may direct, an Order for possession of the Mortgaged Lands, and/or an Order for interim preservation of the Mortgaged Lands;
 - h) judgment against the Borrower in the amount found to be owing under the Loan and Mortgage, together with interest according to the terms of the Mortgage, or alternatively, pursuant to the *Judgment Interest Act*, RSA 2000, c J-1;
 - i) judgment against the Guarantor in the amount found to be owing under the Guarantee, together with interest according to the terms of the Mortgage and Guarantee, or alternatively, pursuant to the *Judgment Interest Act*, RSA 2000, c J-1;
 - j) costs for this action payable on a solicitor and own client, full indemnity basis pursuant to the terms of the Mortgage, or alternatively, in accordance with the *Alberta Rules of Court*, Alta Reg, 124/2010; and
 - k) such other relief as this Honourable Court deems appropriate.

NOTICE TO THE DEFENDANTS

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 King's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff'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 against you.