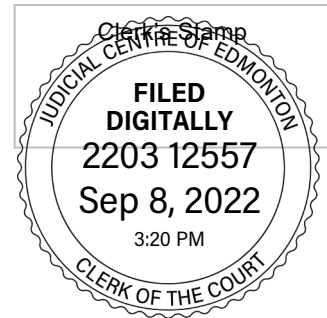


COURT FILE NUMBER 2203-12557
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON



PLAINTIFF **ROYAL BANK OF CANADA**

DEFENDANTS **FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED**

DOCUMENT **BRIEF OF LAW OF FETOUN AHMAD, 52 DENTAL CORPORATION, AND DELTA DENTAL CORP.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **CODY AND COMPANY LAW OFFICE 4905C 50 Ave Olds, Alberta T4H 1P5 Attention: Carli Sylvestre Phone: (403) 556-1528 Fax: (403) 556-1728 Our File No: 22364**

BRIEF OF LAW OF FETOUN AHMAD, 52 DENTAL CORPORATION, AND DELTA DENTAL CORP.

Justice Commercial Chambers: WEDNESDAY, SEPTEMBER 24, 2022

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I INTRODUCTION

1. This Application is brought by Royal Bank of Canada (“RBC”) for the appointment of a receiver over, *inter alia*, Faissal Mouhamad Professional Corporation (“FMPC”), Fetoun Ahmad, Delta Dental Corp. (“Delta Corp”), and 52 Dental Corporation (“52 Dental”).
2. The Applicant originally brought an action with regard to a loan entered into between FMPC and RBC and alleged that their interest in the security provided by FMPC was threatened and therefore demanded repayment of the loan. The Applicant then brought an application on August 23, 2022, to be granted a receivership over FMPC, Delta Corp, and 52 Dental. At that time, MNP was appointed as interim receiver over FMPC, Delta Corp, and 52 Dental until such a time where the parties had appropriate time to prepare and return to chambers on September 14, 2022.

II. Facts

3. Fetoun Ahmad (“Fetoun”) is the sole director and shareholder of Delta Corp and 52 Dental, all three of which are defendants in this action.¹
4. Fetoun is married to Faissal Mouhamad (“Faissal”), Faissal is a dentist and operates under the trade name Delta Dental. Faissal owns FMPC, Mclvor Developments Ltd. (“Mclvor”), 985842 Alberta Ltd., 52 Wellness Centre Inc., Paradise Mclvor Developments Ltd., and Michael Dave Management Ltd (collectively referred to as “Faissal’s Companies”). Faissal is the sole shareholder and director of each company.²
5. From 2018 until December 15, 2021 Fetoun provided management services to Delta Dental. Fetoun performed these services as a sole proprietorship during that period.³
6. In 2021 Fetoun decided to perform these functions through a corporation and Delta Corp was transferred to her on December 14, 2021. At the time of this transfer Delta Corp had no assets.⁴
7. Delta Corp provides management services to Delta Dental Clinic located at 7151 Gaetz Avenue E, Red Deer, Alberta (the “Red Deer Clinic”) which is owned by Faissal, FMPC, and Michael Dave Management Ltd. Fetoun is neither a director nor a shareholder in the Delta Dental Clinic. Delta Corp has not taken on any ownership or lease interests in Delta Dental, it only provides services to Delta Dental and its owner.⁵

¹ Affidavit of Fetoun Ahmad sworn September 8, 2022 (“Fetoun”) at paragraphs 2 & 3.

² *Ibid* para 4

³ *Ibid* para 37

⁴ *Ibid* para 11-12

⁵ *Ibid* para 13-14

8. 52 Dental opened, owns and manages 52 Dental Clinic located at Suite 100-3505 52 Street SE, Calgary, Alberta (the “Calgary Clinic”). Fetoun is the sole director and shareholder of 52 Dental. At all relevant times, 52 Dental has been the sole owner and manager of 52 Dental Clinic.⁶
9. Faissal provides dental services to both Delta Dental Clinic and the Calgary Clinic.⁷

The Loan for FMPC

10. FMPC and RBC entered into a loan agreement (the “FMCP loan”) which granted a variety of credit facilities to FMPC for the purpose of providing financing to FMPC to operate a dental practice using his trade name Delta Dental. At no time was Fetoun, Delta Corp, or 52 Dental in anyway privy or party to the FMPC loan or any resulting indebtedness.⁸
11. Fetoun, Delta Corp, and 52 Dental are not shareholders of, directors or officers of, affiliated with or connected to FMPC in any way.⁹

The Loan for Mclvor

12. Mclvor and RBC also entered into a loan agreement (“Mclvor loan”) which provided a line of credit of approximately \$2,500,000.00 plus interest. Fetoun, Delta Dental, or 52 Dental were not involved in the negotiation of, securing of or guaranteeing of the Mclvor loan. At no time was Fetoun, Delta Corp, or 52 Dental in anyway privy or party to the Mclvor loan or any resulting indebtedness.¹⁰
13. Fetoun, Delta Corp, and 52 Dental are not shareholders of, directors or officers of, affiliated with or connected to Mclvor in any way.
14. Mclvor is the owner of 70-acres of undeveloped land in Dewinton, Alberta (the “Dewinton Property”). Mclvor had advised that there is currently an offer for the purchase of the Dewinton Property that is unconditional and is set to close for November 10, 2022. ¹¹
15. The RBC mortgage registered on the title of the Dewinton Property secures all repayment of all of Mclvor’s present indebtedness to RBC, including indebtedness that may arise by way of guarantee.¹²
16. Fetoun was not privy to any information regarding the Mclvor loan or the sale of the Dewinton Property prior to receiving RBC’s Affidavit.¹³

⁶ *Ibid* para 25

⁷ *Ibid* para 23 and 34

⁸ Affidavit of Jocelyn Beriault, sworn August 19, 2022, (“Beriault”) at para 21

⁹ Fetoun *Supra* at para 4 and Beriault *Supra* at para 26-36

¹⁰ Beriault *Supra* at para 23-24

¹¹ Affidavit of Faissal Mouhamad sworn August 23, 2022 (“Faissal”) at para 20-21 and Beriault *Supra* at 100-101

¹² Faissal *Supra* at para 25

Payments

17. RBC has claimed that as FMPC made payments to Delta Corp and 52 Dental. Based on that allegation Delta Corp, 52 Dental, and Fetoun have been added as Defendants to this action. RBC claims concerns that these payments have eroded RBCs security and collateral position are sufficient to bring this case against Fetoun, 52 Dental, and Delta Corp.¹⁴
18. 52 Dental received a loan from FMPC to assist Fetoun in starting up 52 Dental. Faissal was owed this money from FMPC for dental services that he rendered under the trade name Delta Dental. Instead of FMPC making this payment directly to Faissal, Faissal directed his payments directly to 52 Dental. For greater clarity, the monies transferred to 52 Dental were proceeds from Faissal's work, and therefore payments to him in the ordinary course of business, not part of the funds borrowed from RBC.¹⁵
19. Delta Corp was contracted to provide office management and bill paying services to the Delta Dental Clinic in Red Deer commencing December 15, 2021.
20. In April 2022 Delta Corp also took on the billing responsibilities for Delta Dental Clinic as another value added service to its client FMPC doing business as Delta Dental Clinic. At this time, Delta Corp also began providing collection services for Delta Dental as part of its management services. To be clear Delta Corp was never assigned or transferred the accounts receivable, it was only acting to collect them for Delta Dental.¹⁶
21. In neither of these commercial arrangements were any accounts receivable or any other corporate assets of FMPC or its affiliated companies or businesses assigned or transferred to Delta Corp.
22. Delta Corp received payments from FMPC as payment for management services and reimbursement of all payables for the Red Deer Clinic.¹⁷
23. Delta Corp used the payments received from FMPC to pay various business expenses such as payroll, suppliers and similar typical business expenses. Delta Corp deposited these funds to Delta Corp's Bank of Nova Scotia account and paid those expenses from that account.¹⁸
24. Fetoun was not privy to any contractual term between RBC and FMPC and in particular to any such term that required FMPC to deposit all payables and billings into the monitored RBC account. No such requirements were

¹³ Fetoun *Supra* at para 2-4

¹⁴ Beriault *Supra* at 71 and 132

¹⁵ Fetoun *Supra* at para 35

¹⁶ *Ibid* at 16-18

¹⁷ *Ibid* at 17

¹⁸ Fetoun *Supra* at 19

communicated to nor imposed upon Fetoun or her companies prior to this action.¹⁹

25. The payments made to Delta Dental were within the ordinary course of business to ensure that Delta Dental could provide the appropriate management services and pay the payables on behalf of the Red Deer Clinic. While the total sum is eye-catching, it is typical for a dental clinic with two dentists and several staff to have expenses and payroll in these amounts.

PPR

26. To secure the FMPC Loan, FMPC granted to RBC two General Security Agreements (the "GSA's"). The first was entered into on May 16, 2012 and the second was agreed to on August 19, 2016. Both GSA's demonstrated that FMPC granted RBC a security interest in favor of RBC against all of FMPC's present and after-acquired personal property. No such GSA was ever entered into by Fetoun nor Delta Corp nor 52 Dental.²⁰

27. On August 22, 2016 The GSA's were perfected by registration at the Alberta Personal Property Registry. On July 21, 2022 RBC registered Security interests in Delta Corp, 52 Dental, and on August 17, 2022 RBC registered a security charge against Fetoun without reason, court order, or permission or consent of Fetoun, Delta Corp or 52 Dental.²¹

28. On April 26, 2022, CWB registered security against 52 Dental. Neither Fetoun, Delta Corp and 52 Dental were party to this agreement. There are no guarantees between Fetoun or her companies in this transaction.²²

29. Effective July 2022, Faissal was assigned signing authority over the accounts of Delta Corp and 52 Dental to facilitate the corporations' operations and ensure they ran smoothly during Fetoun's trip to Turkey for the month of August.²³

30. Neither Faissal nor any of his corporations have any interests in, claims to or control over Delta Corp or 52 Dental.

Fraudulent Preference

31. RBC claims that FMPC has defaulted by failing to act within the terms of its loan documents and security by transferring property out of RBC's loan account without RBC's consent and outside of the ordinary course of business and for the benefit of another person other than FMPC. In the case of Delta Corp there has been no such transfer of property of any kind from FMPC to these companies. Any transfers of money were within the ordinary course of business to pay typical

¹⁹ *Ibid* at 5-8

²⁰ Beriault *Supra* at para 28-29 and RBC Brief (RBC) at 62

²¹ RBC *Supra* at 62 and Fetoun *Supra* at 34-35

²² Fetoun *Supra* at 41-42

²³ *Ibid* at 21

business expenses as per the companies' management services arrangements.²⁴

32.52 Dental has borrowed money from Faissal and has signed a promissory note to Faissal for same. This loan was arranged in December 2021, long before there was any concerns raised by RBC and in so far as is known to 52 Dental, or Fetoun Ahmad its sole shareholder and Director, this loan has not in any way caused or contributed to FMPC defaulting on any of its obligations to its creditors.²⁵

33.RBC has not indicated that FMPC was currently insolvent or was struggling to make their loan payments prior to the demand payment which was made July 28, 2022. This demand appears to have been made because the receipts of Delta Dental, which were then being handled by Delta Corp, were being processed through Delta Corps accounts rather than through RBC's accounts. Delta Corp was acting according to the management duties it had undertaken to provide to FMPC and Delta Dental. Delta Corp was unaware of any requirement for Delta Dental to process its cash flow through RBC, not having been privy to the loan or subsisting contract with RBC.²⁶

34.FMPC only defaulted in repaying the entirety of the loan after RBC recalled the loan in it's entirety on July 28, 2022.²⁷

35.RBC is aware of the pending sales of both the Red Deer Clinic and the Dewinton Property both of which RBC holds a security interest in. The sale of these assets would be enough to make RBC whole.²⁸

36.RBC alleges payments from FMPC et al to Fetoun, 52 Dental and Delta Corp constituted fraudulent preferences. RBC does not specify which payments are included in this characterization.

III Issues

37.Were there any fraudulent preferences?

38.Did Fetoun or her companies breach the terms of RBC's loan contract?

Were there any Fraudulent Preferences?

39.The *Fraudulent Preferences Act*, RSA 2000, c F-24 ("*FPA*"), requires the transferor to have been insolvent or on the eve of insolvency at the time of the transfer *and* that the transfer was undertaken with intent to defeat, hinder, delay

²⁴ *Ibid* at 50

²⁵ *Ibid* at 35

²⁶ *Ibid* at 7,15,17-18

²⁷ *Ibid* at 47

²⁸ *Ibid* at 51

or prejudice the person's creditors for a payment or transfer to be considered fraudulent.²⁹

40. This means that there has to have been a transfer of property between the alleged transferor and the alleged transferee, and that such transfer was undertaken with the intent to harm the creditor's position. In the present matter there has been no transfer of money's between the debtors and Delta Corp outside of the ordinary course of business and no transfer of property as opposed to money, of any sort or for any reason.
41. The loan to 52 Dental was made in December 2021, fully 6 months prior to any concern's being raised by RBC. The loan did not cause Faissal or any of his affiliated companies to miss any required payments nor did it, insofar as is known by Fetoun or her companies, breach any terms of Faissal's loan agreements with RBC. This loan was not of such type or amount as to render it outside the ordinary course of business for Faissal and his companies.³⁰
42. The second half of the two requirements is that the transfer be undertaken with the intent to defeat, hinder, delay or prejudice the Creditor. We submit that this second clause intends that payments and transfers in the ordinary course of business, i.e. not intended to harm anyone but rather to maintain the ordinary business of the debtor, are not fraudulent preferences.
43. It is significant that the transferor, Faissal *et al*, was at all relevant times solvent and able to pay its bills. RBC has not complained of missed payments prior to the delayed payment following its calling of FMPC's loan for alleged breaches of their contract.
44. It is also important to note that the principal debtor to RBC has informed RBC of proposed sales of the Red Deer clinic and the lands at Dewinton within the next 3-4 months. The proceeds of such sales are in excess of the RBC debt.³¹

Did Fetoun or her companies breach the terms of RBC's loan contract

45. It is common ground among the parties to this action that neither Fetoun Ahmad, Delta Corp nor 52 Dental were party to the RBC loans with Faissal and the other defendants.³²
46. There is no contractual relationship, or any other relationship, between Fetoun Delta Corp or 52 Dental with RBC.³³

²⁹ *Fraudulent Preferences Act* R.S.A. 2000 c. F-24 Section 1(a) &(b)

³⁰ Fetoun *Supra* at 8, 9 and 35

³¹ *Ibid* at 51

³² *Ibid* at 8-9.

³³ *Ibid* at 8-9.

47. Whereas Fetoun and her companies have no contractual relationship with RBC, it is impossible for them to have caused or suffered any breach of any terms of any Contract RBC may seek to enforce.
48. This is the doctrine of privity of contract and it applies to this situation absolutely. As stated and confirmed in *Fraser River Pile & Dredge Ltd. v. Can-Dive Services Ltd.*, 1999 CanLII 654 (SCC), [1999] 3 SCR 108 (“*Fraser River*”) as a general rule the doctrine of privity provides that a contract can neither confer rights nor impose obligations on third parties.³⁴
49. RBC has admitted that they unilaterally registered security interests against Fetoun, Delta Corp and 52 Dental without consent, permission or a court order authorizing such.³⁵
50. The change in operating method from effectively inhouse bookkeeping and office management to engaging a third party management company was a divergence from prior operating practices but this divergence does not make it ‘outside the ordinary course of business’. There is nothing particularly novel in the new operating organization, insofar as this is an organization employed by many professionals for efficiency and allowing the professionals to focus on their area of expertise instead of office and financial management.
51. RBC cites section 47 of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3 (“*BIA*”) stating that such section does not require them to prove insolvency to seek a receiver. That is correct however Section 47 of the *BIA* states that if the court is satisfied that a notice is about to be sent or was sent under subsection 244(1) of the *BIA*, it may, subject to subsection (3), appoint a trustee as interim receiver of all or any part of the debtor’s property that is subject to the security.³⁶
52. Section 244 of the *BIA* states that a secured creditor who intends to enforce a security on all or substantially all of the inventory, accounts receivable, or other property an insolvent person must give notice.³⁷
53. The above two sections when read together are clearly only intended to apply to insolvent persons.
54. Section 47 of the *BIA* limits the actions of the receiver to take control of “all or any part of the debtor’s property *that is subject to the security*” (emphasis added).³⁸

IV Summary

³⁴ *Fraser River Pile & Dredge Ltd. v. Can-Dive Services Ltd.*, 1999 CanLII 654 (SCC), [1999] 3 SCR 108 at paragraph 22

³⁵ Beriault *Supra* at 45

³⁶ *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3 (BIA) Sections 47 (1) and (3)

³⁷ *Ibid* S.244

³⁸ *Ibid* S. 47

55. The interim Order was granted, in part, to allow Fetoun, 52 Dental and Delta Corp, time to review and respond to RBC's application.
56. That review has revealed that these parties are not properly included in the receivership.
57. RBC seeks to have a receiver appointed or continued against Delta Corp and 52 Dental and Fetoun Ahmad.
58. FMPC, Delta Corp, and 52 Dental are distinct and separate legal entities.³⁹
59. Delta Corp accepted payments from FMPC in the ordinary course of business. These payments were for services rendered by Delta Corp and for payment of Delta Dentals payables while Delta Corp was not managing Delta Dental's billings.⁴⁰
60. 52 Dental borrowed start-up capital from FMPC as a loan to facilitate the opening of the Calgary Clinic.⁴¹
61. 52 Dental was never involved in the business operations of Delta Corp or of the Red Deer Clinic.⁴²
62. We submit that FMPC was never insolvent or contemplating bankruptcy. FMPC had been able to comply with their payment schedule for their loans. We base this assertion in the fact that RBC has not claimed missed payments prior to RBC calling the loan on July 28, 2022.⁴³
63. FMPC defaulted in repaying the entirety of the loan as the demand from RBC took place extremely quickly which resulted in FMPC defaulting in the repayments request. It was only at such point that FMPC demonstrated any difficulty in repaying the loan. It is common ground that FMPC et al possess sufficient assets to cover their loans, the issue is liquidity and FMPC et al has taken steps, including receiving unconditional offers to purchase assets the proceeds of such asset sales will be sufficient to satisfy all of RBC's debts.⁴⁴
64. RBC is aware that the FMPC loan is secured by the Dewinton Property which is pending sale on November 10, 2022 with no conditions. RBC has first interest in receiving payment from this sale as they are the first registered mortgagors on the title in the amount of \$6,000,000.00 whereas FMPCs indebtedness is currently \$632,627.73 and McIvors indebtedness is \$2,504,407.54. Therefore,

³⁹ Fetoun *Supra* at 2-4

⁴⁰ *Ibid* at 50

⁴¹ *Ibid* at 35

⁴² *Ibid* at 28

⁴³ *Ibid* at 45-47

⁴⁴ *Ibid* at 47

the mortgage registered on the Dewinton Property is sufficient to cover all debts owed to RBC.⁴⁵

65. The offer to purchase the Dewinton Property is sufficient to repay RBC in full.⁴⁶

66. RBC is aware that Faissal, FMPC and Michael Dave Management Ltd. own the Red Deer Clinic. All three of these entities have provided security for the FMPC loan. The Red Deer Clinic is pending sale on December 21, 2022 where Ghalib Hadi Professional Corporation has agreed to purchase substantially all assets to the business.⁴⁷

67. RBC's decision to recall FMPC's loan was as a result of an alleged breach of contract terms, to which Fetoun, 52 Dental, and Delta Corp were not privy, and not as a result of bankruptcy or insolvency/inability to make payments as agreed. Therefore, any payments made to Fetoun, 52 Dental, and Delta Corp, were not fraudulent preferences.⁴⁸

68. RBC has yet to demonstrate that the alleged fraudulent preference took place.

69. As the transfers to 52 Dental, Delta Corp, and Fetoun took place in the ordinary course of business, then they could not be considered to be a fraudulent preference. As well, as FMPC was neither insolvent or bankrupt, there was no fraudulent preference which contributed to any insolvency.⁴⁹

70. RBC's claims are that Faissal was insolvent and in breach of contract and that Fetoun and her companies had received fraudulent preferences.

71. RBC took it upon themselves to register security interests on Fetoun, Delta Corp, and 52 Dental without consent or court order.

72. Fetoun et al were not parties or guarantors to or for the debt, a fact that RBC admits.

73. Section 47 of the *BIA* works in conjunction with section 244 of that same act. S. 244 states that if you want to take control of a debtor (insolvent person) you must give notice to that debtor. Section 47 says that if a notice under 244 is given then a court can order a receiver to take hold of the debtors' **secured** property.

74. We submit that whereas 52 Dental was not ever party to the RBC loan and whereas no one other than Fetoun has any ownership or directorial interest in 52 Dental, 52 Dental cannot be part of the secured property.

⁴⁵ Beriault *Supra* at 22-23 & 30

⁴⁶ *Ibid* at 100 and 103

⁴⁷ *Ibid* at 92 and 97

⁴⁸ Fetoun *Supra* at 49

⁴⁹ *Ibid* at 50

75. We submit that whereas Delta Corp was transferred to Fetoun before Delta Corp had any assets or value beyond that of an empty shell corporation, it is not property, secured or otherwise, of the RBC debtors.
76. We further submit that whereas the only assets paid to Delta Corp were payments for management services rendered, Delta Corp does not hold any assets that could be characterized as secured property of the RBC debtors.
77. RBC has not shown that any of the property held by Fetoun constitutes any portion of the debtors' secured property.
78. *The Fraudulent Preferences Act* states that for a payment or transfer to be subject to the Act the payor or transferor would have to be insolvent or on the eve of insolvency and transfers the property with the intent to thwart its creditors.
79. We submit that this is intended to permit ordinary course of business transactions.
80. Whereas all of the transfers to Delta Corp were undertaken in the ordinary course of business, to pay for services and supplies for Delta Dental, they do not qualify as fraudulent preferences.
81. The loan to 52 Dental was made in December of 2021 to facilitate the opening of the Calgary dental practice, in which FMPC was providing dental services, this was also an ordinary course of business undertaking. In any event this loan was granted fully 7 months before there was any indication or allegation of insolvency.
82. Fetoun did not receive any payments from FMPC and any transfers between Faissal and Fetoun personally were in the nature of family and household activities.

VII RELIEF SOUGHT

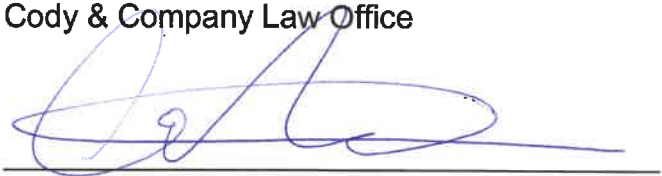
83. The immediate removal of the PPR registrations placed by RBC on Fetoun Ahmad, 52 Dental and Delta Corp.

84. The cessation of the Receivership action against Fetoun Ahmad, 52 Dental and Delta Corp.

All of which is respectfully submitted on September 8, 2022.

Cody & Company Law Office

for



Terrance J. Cody
Counsel for Fetoun Ahmad, 52 Dental
Corporation and Delta Dental Corp.

VIII LIST OF DOCUMENTS and AUTHORITIES

DOCUMENTS

Affidavit of Fetoun Ahmad sworn September 8, 2022

Affidavit of Jocelyn Beriault Sworn August 19, 2022 which is not included as it has been previously submitted as a whole.

RBC's Brief which is not included as it has been previously submitted as a whole.

Affidavit of Faissal Mouhamad sworn August 23, 2022

AUTHORITIES

Fraudulent Preferences Act, RSA 2000, c F-24 (FPA")

Bankruptcy and Insolvency Act, RSC, 1985, c B-3 ("BIA")

Fraser River Pile & Dredge Ltd. v. Can-Dive Services Ltd., 1999 CanLII 654 (SCC), [1999] 3 SCR 108

Footnote 1

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COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Edmonton

PLAINTIFF ROYAL BANK OF CANADA

DEFENDANTS FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED

DOCUMENT AFFIDAVIT



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT CODY AND COMPANY LAW OFFICE
4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
Fax: (403) 556-1728

Our File No: 22364

AFFIDAVIT OF FETOUN AHMAD SWORN SEPTEMBER 8, 2022

I, FETOUN AHMAD, of the City of Red Deer, in the Province of Alberta, Make Oath and Say:

1. That I and my companies Delta Dental Corp, and 52 Dental Corporation, are Defendants in action number 2203-12557
2. As of December 14, 2022, I, Fetoun Ahmad, am the sole Director and Shareholder of Delta Dental Corp ("Delta Corp") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit A" is a copy of the Corporate Search for Delta Dental.

A handwritten signature in blue ink, consisting of a stylized cursive 'F' followed by a loop, located in the bottom right corner of the page.

3. As of December 6, 2021, I, Fetoun Ahmad, am the sole Director and Shareholder of 52 Dental Corporation ("52 Dental") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit B" is a copy of the Corporate Search for 52 Dental Corporation.
4. I am married to the Defendant Faissal Mouhamad ("Faissal") who is a dentist by trade. I have no part in any of his companies or businesses which include, Faissal Mouhamad Professional Corporation ("FMPC"), McIvor Developments Ltd. ("McIvor"), 985842 Alberta Ltd., 52 Wellness Centre Inc. ("52 Wellness"), Paradise McIvor Developments Ltd., and Michael Dave Management Ltd (collectively referred to as "Faissal's Companies").

The Loans

1. According to the Plaintiff, my husband, Faissal, on behalf of FMPC, entered into a loan agreement ("FMPC Loan") with the Royal Bank of Canada ("RBC"). Prior to being formally served the Affidavit of Jocelyn Beriault ("RBCs Affidavit"), the Senior Manager of Special Loans and Advisory Services – Western Region with RBC, on August 23, 2022, I had no knowledge of these dealings. Attached hereto and marked as "Exhibit C" is a copy of the RBC's Affidavit para 21.
2. According to the Plaintiff, Faissal also entered in a loan agreement between McIvor and RBC (the "McIvor Loan"). Prior to being formally served RBCs Affidavit, on August 23, 2022, I had no knowledge of these dealings. Attached hereto and marked as "Exhibit D" is a copy of the RBCs Affidavit para 23.
3. I was not privy to any information relating to any loans Faissal or Faissal's Companies currently have or have had in the past with RBC.
4. I had not been apart of or aware of any contract negotiations for the McIvor loan or the FMPC loan and do not have any knowledge of the loan terms that FMPC or McIvor were to abide by until receiving RBCs affidavit.
5. Neither I nor my companies, Delta Corp and 52 Dental, are, or were guarantors, or provided any security for any Loan Agreements entered into by Faissal or any of Faissal's companies. Attached hereto and marked as "Exhibit E" is a copy of RBCs Affidavit paras 28, 30, and 32.
6. I am informed by my Lawyer and do verily believe same to be true that RBC has brought me, 52 Dental, and Delta Corp on as Defendants in this action as they are attempting to bring my

Footnote 2

COURT FILE NUMBER 2203-12557

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Edmonton

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DEFENDANTS **FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED**

DOCUMENT **AFFIDAVIT**



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Phone: (403) 556-1528
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Our File No: 22364

AFFIDAVIT OF FETOUN AHMAD SWORN SEPTEMBER 8, 2022

I, FETOUN AHMAD, of the City of Red Deer, in the Province of Alberta, Make Oath and Say:

1. That I and my companies Delta Dental Corp, and 52 Dental Corporation, are Defendants in action number 2203-12557
2. As of December 14, 2022, I, Fetoun Ahmad, am the sole Director and Shareholder of Delta Dental Corp ("Delta Corp") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit A" is a copy of the Corporate Search for Delta Dental.

A handwritten signature in blue ink, appearing to be a stylized cursive name, located in the bottom right corner of the page.

3. As of December 6, 2021, I, Fetoun Ahmad, am the sole Director and Shareholder of 52 Dental Corporation (“52 Dental”) which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as “**Exhibit B**” is a copy of the Corporate Search for 52 Dental Corporation.
4. I am married to the Defendant Faissal Mouhamad (“Faissal”) who is a dentist by trade. I have no part in any of his companies or businesses which include, Faissal Mouhamad Professional Corporation (“FMPC”), McIvor Developments Ltd. (“McIvor”), 985842 Alberta Ltd., 52 Wellness Centre Inc. (“52 Wellness”), Paradise McIvor Developments Ltd., and Michael Dave Management Ltd (collectively referred to as “Faissal’s Companies”).

The Loans

1. According to the Plaintiff, my husband, Faissal, on behalf of FMPC, entered into a loan agreement (“FMPC Loan”) with the Royal Bank of Canada (“RBC”). Prior to being formally served the Affidavit of Jocelyn Beriault (“RBCs Affidavit”), the Senior Manager of Special Loans and Advisory Services – Western Region with RBC, on August 23, 2022, I had no knowledge of these dealings. Attached hereto and marked as “**Exhibit C**” is a copy of the RBC’s Affidavit para 21.
2. According to the Plaintiff, Faissal also entered in a loan agreement between McIvor and RBC (the “McIvor Loan”). Prior to being formally served RBCs Affidavit, on August 23, 2022, I had no knowledge of these dealings. Attached hereto and marked as “**Exhibit D**” is a copy of the RBCs Affidavit para 23.
3. I was not privy to any information relating to any loans Faissal or Faissal’s Companies currently have or have had in the past with RBC.
4. I had not been apart of or aware of any contract negotiations for the McIvor loan or the FMPC loan and do not have any knowledge of the loan terms that FMPC or McIvor were to abide by until receiving RBCs affidavit.
5. Neither I nor my companies, Delta Corp and 52 Dental, are, or were guarantors, or provided any security for any Loan Agreements entered into by Faissal or any of Faissal’s companies. Attached hereto and marked as “**Exhibit E**” is a copy of RBCs Affidavit paras 28, 30, and 32.
6. I am informed by my Lawyer and do verily believe same to be true that RBC has brought me, 52 Dental, and Delta Corp on as Defendants in this action as they are attempting to bring my

Footnote 3

COURT FILE NUMBER 2203-12557

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Edmonton

PLAINTIFF **ROYAL BANK OF CANADA**

DEFENDANTS **FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED**

DOCUMENT **AFFIDAVIT**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT CODY AND COMPANY LAW OFFICE
4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
Fax: (403) 556-1728

Our File No: 22364

AFFIDAVIT OF FETOUN AHMAD SWORN SEPTEMBER 8, 2022

I, FETOUN AHMAD, of the City of Red Deer, in the Province of Alberta, Make Oath and Say:

1. That I and my companies Delta Dental Corp, and 52 Dental Corporation, are Defendants in action number 2203-12557
2. As of December 14, 2022, I, Fetoun Ahmad, am the sole Director and Shareholder of Delta Dental Corp ("Delta Corp") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit A" is a copy of the Corporate Search for Delta Dental.

A handwritten signature in blue ink, appearing to be a stylized cursive name, located in the bottom right corner of the page.

- a. Delta Corp – 22072128251 Registered on July 21, 2022;
- b. 52 Dental - 22072128251 Registered on July 21, 2022;
- c. Fetoun Ahmad – 22081709434 Registered on August 17, 2022;
- d. Fetoun Ahmad – 22081711767 Registered on August 17, 2022;
(Collectively known as the “registrations”)

Attached hereto and marked as “**Exhibit N**” is a copy of the registration search conducted on August 25, 2022.

35. The registrations were done without a court order, my permission or my consent.
36. My counsel has drafted an application to strike the PPR registrations against me, Delta Corp, and 52 Dental as they were improperly registered. This will be filed and served pending the outcome of the upcoming September 14, 2022 application.
37. The Security Agreement registered on April 26, 2022 with registration number 22042607078 registered by CWB National Leasing Inc. (“CWB”) is to my knowledge for the leasing of equipment for the Red Deer Clinic. To the best of my knowledge, there was a lease entered into between Delta Dental, Faissal, FMPC and CWB prior to the creation of 52 Dental. I do not have knowledge of this lease as I, 52 Dental and Delta Corp were not a party to this agreement. The registration against 52 Dental was done without a court order, my permission, or my consent. Attached hereto and marked as “**Exhibit O**” is a copy of the registration search conducted on August 25, 2022.
38. After informing Faissal of this registration in September 2022, Faissal provided me with a copy of the only lease agreement signed with CWB which demonstrates that neither I nor 52 Dental, and Delta Corp were parties to this agreement. Attached hereto and marked as “**Exhibit P**” is a copy of the lease agreement with CWB.

Reliance

39. I am relying entirely on the information provided to me in the RBC Affidavit as well as the Statement of Claim with regards to all loans entered into by Faissal on behalf of his companies.
40. RBC indicated that FMPC has defaulted in acting within the terms of it’s loan agreement by transferring property out of RBC’s loan account without RBCs consent and outside of the ordinary course of business for the benefit of another person other than FMPC. Attached hereto and marked as “**Exhibit Q**” is a copy of line 57 of the Statement of Claim.
41. There is no indication in the Statement of Claim that FMPC was insolvent or could not pay their debts nor does the Statement of Claim indicate that FMPC failed to make any of their loan payments.
42. On or about July 28, 2022, RBC demanded repayment from FMPC of the indebtedness owed from FMPC to RBC. RBC also demanded repayment for the McIvor Loan. Attached hereto

Footnote 4

COURT FILE NUMBER 2203-12557
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE Edmonton
PLAINTIFF ROYAL BANK OF CANADA



DEFENDANTS FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED

DOCUMENT AFFIDAVIT

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4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
Fax: (403) 556-1728

Our File No: 22364

AFFIDAVIT OF FETOUN AHMAD SWORN SEPTEMBER 8, 2022

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A handwritten signature in blue ink, appearing to be a stylized 'S' or 'F'.

companies into a receivership on a loan to which neither I nor 52 dental, and Delta Corp were privy.

Delta Dental Corp

11. Delta Corp was originally incorporated by Faissal on August 28, 2017 and Faissal was the sole director at that time. Delta Corp was struck from the Alberta Corporate Registry for failure to file annual returns on February 2, 2020. Delta Corp was revived by a solicitor on May 18, 2021 and Faissal was registered as its sole director and shareholder at that time. Faissal then changed the director and shareholder of Delta Corp to myself on December 14, 2021. Attached hereto and marked as “**Exhibit F**” is a copy of the Certificate of Revival of Delta Corp.
12. At the time of transferring Delta Corp into my name, Delta Corp had no value and no assets.
13. My company, Delta Corp, was revived for the purpose of managing Delta Dental Clinic located at 7151 Gaetz Avenue E, Red Deer, Alberta (the “Red Deer Clinic”) which is a dentistry clinic in Red Deer, Alberta and is owned by Faissal, FMPC, and Michael Dave Management Ltd. and Faissal is the sole director and shareholder.
14. Delta Corp was originally incorporated with the intention of doing the management for the Red Deer Clinic. However, Faissal decided to manage the Red Deer Clinic through FMPC. Therefore, Faissal allowed Delta Corp to be struck from the record as it was not being used. Later, Faissal decided he no longer wanted the management of the Red Deer Clinic run through FMPC as he wanted to focus on his clinical work and mentoring. He then revived Delta Corp and transferred it to me and contracted with me to take over all management of the Red Deer Clinic.
15. The management services provided by Delta Corp to the Red Deer Clinic include providing dental supplies, maintenance, lab fees, upkeep, office supplies, janitorial services, etc.
16. In terms of Delta Corps financials, Delta Corp began handling the Red Deer Clinics payables on December 15, 2021. For a time, FMPC was still receiving the billables. Attached hereto and marked as “**Exhibit G**” is a copy of Delta Corps bank statements.
17. FMPC wrote cheques to Delta Corp as payment/reimbursement of and for Delta Corp’s management of and payment of the payables for the Red Deer Clinic as all or substantially all of the Red Deer Clinics revenues continued to go to FMPC.
18. It was not until approximately April 15, 2022 that Delta Corp began also managing the Red Deer Clinics billing/receivables. Attached hereto and marked as “**Exhibit G**” is a copy of Delta Corps bank statements.

Footnote 5

COURT FILE NUMBER 2203-12557

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Edmonton

PLAINTIFF **ROYAL BANK OF CANADA**



DEFENDANTS **FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED**

DOCUMENT **AFFIDAVIT**

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4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
Fax: (403) 556-1728

Our File No: 22364

AFFIDAVIT OF FETOUN AHMAD SWORN SEPTEMBER 8, 2022

I, FETOUN AHMAD, of the City of Red Deer, in the Province of Alberta, Make Oath and Say:

1. That I and my companies Delta Dental Corp, and 52 Dental Corporation, are Defendants in action number 2203-12557
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companies into a receivership on a loan to which neither I nor 52 dental, and Delta Corp were privy.

Delta Dental Corp

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12. At the time of transferring Delta Corp into my name, Delta Corp had no value and no assets.
13. My company, Delta Corp, was revived for the purpose of managing Delta Dental Clinic located at 7151 Gaetz Avenue E, Red Deer, Alberta (the “Red Deer Clinic”) which is a dentistry clinic in Red Deer, Alberta and is owned by Faissal, FMPC, and Michael Dave Management Ltd. and Faissal is the sole director and shareholder.
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15. The management services provided by Delta Corp to the Red Deer Clinic include providing dental supplies, maintenance, lab fees, upkeep, office supplies, janitorial services, etc.
16. In terms of Delta Corps financials, Delta Corp began handling the Red Deer Clinics payables on December 15, 2021. For a time, FMPC was still receiving the billables. Attached hereto and marked as “**Exhibit G**” is a copy of Delta Corps bank statements.
17. FMPC wrote cheques to Delta Corp as payment/reimbursement of and for Delta Corp’s management of and payment of the payables for the Red Deer Clinic as all or substantially all of the Red Deer Clinics revenues continued to go to FMPC.
18. It was not until approximately April 15, 2022 that Delta Corp began also managing the Red Deer Clinics billing/receivables. Attached hereto and marked as “**Exhibit G**” is a copy of Delta Corps bank statements.

Footnote 6

COURT FILE NUMBER 2203-12557
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE Edmonton
PLAINTIFF ROYAL BANK OF CANADA



DEFENDANTS FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED

DOCUMENT AFFIDAVIT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT CODY AND COMPANY LAW OFFICE
4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
Fax: (403) 556-1728

Our File No: 22364

AFFIDAVIT OF FETOUN AHMAD SWORN SEPTEMBER 8, 2022

I, FETOUN AHMAD, of the City of Red Deer, in the Province of Alberta, Make Oath and Say:

1. That I and my companies Delta Dental Corp, and 52 Dental Corporation, are Defendants in action number 2203-12557
2. As of December 14, 2022, I, Fetoun Ahmad, am the sole Director and Shareholder of Delta Dental Corp ("Delta Corp") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit A" is a copy of the Corporate Search for Delta Dental.

A handwritten signature in blue ink, appearing to be a stylized cursive name, located in the bottom right corner of the page.

19. Delta Corp maintains operating accounts at the Bank of Nova Scotia. Most of the revenue of the Red Deer clinic is receipted and most of the Red Deer clinics expenses are paid from the Bank of Nova Scotia account.
20. Faissal under his trade name Delta Dental provides dental services at the Red Deer clinic.
21. Faissal was given signing authority on Delta Corp's Bank of Nova scotia account on July 6, 2022 only due to the fact that I was about to leave the country for medical treatment. This was done to avoid any interruptions in the business' payables.
22. All patient charts are owned/controlled by the dentists practicing in the Red Deer Clinic and not by Delta Corp. Delta Corp also does not have any ownership or control over the Calgary Clinics patient charts. Attached hereto and marked as "**Exhibit H**" is a copy of Affidavit of Faissal Mouhamad sworn August 23, 2022.
23. Faissal under his trade name Delta Dental and provides dental services at the Red Deer clinic. Faissal is paid by Delta Dental for his services at the Red Deer Clinic.
24. I am not a dentist, licensed or otherwise. However, as far as I am aware, the ownership of dental clinics in Alberta is not limited to licensed dentists. Rather, the Alberta Dental Association and College (the "**College**") requires a licensed dentist to have care and control over patient files/charts and over any drugs, medications and controlled substances. At all times, I have complied with the College's requirements in that regard.

52 Dental

25. 52 Dental was incorporated for the purpose of the management and ownership of the 52 Dental Clinic which is a dental clinic operating in Suite 100-3505 52 Street SE, Calgary, Alberta (the "Calgary Clinic").
26. The Calgary Clinic opened on June 11, 2022.
27. 52 Dental leases office space from 52 Wellness who owns the building in which 52 Dental operates.
28. 52 Dental does not have any involvement with Delta Corp or the Red Deer Clinic and is a separate and distinct entity. The only overlap is that Faissal and Dr. Ghalib Hadi both provide dental services out of the Calgary Clinic and the Red Deer Clinic.
29. 52 Dental owns all the leasehold improvements, administrative management equipment, and hygiene care equipment while the balance of the equipment is leased by 52 Dental. All equipment is solely used in the Calgary Clinic. Attached hereto and marked as "**Exhibit I**" is a copy of 52 Dental's equipment lease agreement.

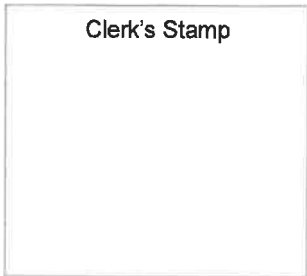
Footnote 7

COURT FILE NUMBER 2203-12557

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Edmonton

PLAINTIFF **ROYAL BANK OF CANADA**



DEFENDANTS **FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED**

DOCUMENT **AFFIDAVIT**

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4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
Fax: (403) 556-1728

Our File No: 22364

AFFIDAVIT OF FETOUN AHMAD SWORN SEPTEMBER 14, 2022

I, FETOUN AHMAD, of the City of Red Deer, in the Province of Alberta, Make Oath and Say:

1. That I and my companies Delta Dental Corp, and 52 Dental Corporation, are Defendants in action number 2203-12557
2. As of December 14, 2022, I, Fetoun Ahmad, am the sole Director and Shareholder of Delta Dental Corp ("Delta Corp") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit A" is a copy of the Corporate Search for Delta Dental.

A handwritten signature in blue ink, appearing to be a stylized 'F' or similar character, located at the bottom right of the page.

19. Delta Corp maintains operating accounts at the Bank of Nova Scotia. Most of the revenue of the Red Deer clinic is receipted and most of the Red Deer clinics expenses are paid from the Bank of Nova Scotia account.
20. Faissal under his trade name Delta Dental provides dental services at the Red Deer clinic.
21. Faissal was given signing authority on Delta Corp's Bank of Nova scotia account on July 6, 2022 only due to the fact that I was about to leave the country for medical treatment. This was done to avoid any interruptions in the business' payables.
22. All patient charts are owned/controlled by the dentists practicing in the Red Deer Clinic and not by Delta Corp. Delta Corp also does not have any ownership or control over the Calgary Clinics patient charts. Attached hereto and marked as "Exhibit H" is a copy of Affidavit of Faissal Mouhamad sworn August 23, 2022.
23. Faissal under his trade name Delta Dental and provides dental services at the Red Deer clinic. Faissal is paid by Delta Dental for his services at the Red Deer Clinic.
24. I am not a dentist, licensed or otherwise. However, as far as I am aware, the ownership of dental clinics in Alberta is not limited to licensed dentists. Rather, the Alberta Dental Association and College (the "College") requires a licensed dentist to have care and control over patient files/charts and over any drugs, medications and controlled substances. At all times, I have complied with the College's requirements in that regard.

52 Dental

25. 52 Dental was incorporated for the purpose of the management and ownership of the 52 Dental Clinic which is a dental clinic operating in Suite 100-3505 52 Street SE, Calgary, Alberta (the "Calgary Clinic").
26. The Calgary Clinic opened on June 11, 2022.
27. 52 Dental leases office space from 52 Wellness who owns the building in which 52 Dental operates.
28. 52 Dental does not have any involvement with Delta Corp or the Red Deer Clinic and is a separate and distinct entity. The only overlap is that Faissal and Dr. Ghalib Hadi both provide dental services out of the Calgary Clinic and the Red Deer Clinic.
29. 52 Dental owns all the leasehold improvements, administrative management equipment, and hygiene care equipment while the balance of the equipment is leased by 52 Dental. All equipment is solely used in the Calgary Clinic. Attached hereto and marked as "Exhibit I" is a copy of 52 Dental's equipment lease agreement.

30. 52 Dental has never used any of its equipment in the Red Deer Clinic and has never used any of the Red Deer Clinics equipment in its clinic or operation.
31. 52 Dental provides management services for the Calgary clinic which include managing all or most of the Calgary Clinic billing and payment of business expenses.
32. All patient charts are owned/controlled by the dentists practicing in the Calgary Clinic and not by 52 Dental. 52 Dental also does not have any ownership or control over the Red Deer Clinics patient charts. Attached hereto and marked as “Exhibit J” is a copy of Affidavit of Faissal Mouhamad sworn August 23, 2022.
33. 52 Dental maintains operating accounts at the Bank of Nova Scotia. The revenue of the Calgary clinic is receipted, and the Calgary clinics expenses are paid from the Bank of Nova Scotia account.
34. Faissal provides dental services at the Calgary clinic. Faissal is paid by 52 Dental for his services at the Calgary Clinic.
35. Faissal agreed to a loan in the amount of \$300,000 between himself and 52 Dental which accrues interest at a rate of 5% per annum. These payments were made by Faissal to 52 Dental from FMPC. The cheques written by FMPC to 52 Dental were salary payments owed to Faissal from working as a dentist, as opposed to receiving the payments himself, Faissal assigned these payments to 52 Dental as apart of their loan agreement. These payments were made in increments and 52 Dental has not yet received the entirety of the \$300,000 dollar loan. Attached hereto and marked as “Exhibit K” is a copy of the income statements from February 18, 2022 to June 27, 2022 and the Promissory Note for the loan.

Payments to Fetoun

36. The payments made to me from FMPC were paid as reimbursements for office expenses and maintenance. As well, Faissal paid his shareholder loan from FMPC directly to me, Fetoun, as I am the person who looks after our family expenses. Attached hereto and marked as “Exhibit L” is a copy of records detailing the payments made from FMPC to Fetoun.
37. Prior to December 2021, payments made to me from FMPC for management services which I provided to the Red Deer Clinic since 2018. Attached hereto and marked as “Exhibit M” is a copy of the Statement of Business or Professional Activity for the period 2018 to 2021.

Personal Property Registration

38. On August 30, 2022, I was provided a Personal Property Registry Search Result Report (“PPR”) for Faissal Mouhamad by my counsel. The PPR demonstrated that RBC had registered themselves as secured parties against myself and my companies as follows:



Footnote 8

Form 49
[Rule 13.19]

Clerk's stamp:

| | |
|---|--|
| COURT FILE NUMBER | 2203 12557 |
| COURT OF QUEEN'S BENCH OF ALBERTA | |
| JUDICIAL CENTRE | EDMONTON |
| PLAINTIFF | ROYAL BANK OF CANADA |
| DEFENDANTS | FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD also known as FETOUN AHMED |
| DOCUMENT | <u>AFFIDAVIT OF JOCELYN BERIAULT</u> |
| ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT | MILLER THOMSON LLP Barristers and Solicitors 2700, Commerce Place 10155-102 Street Edmonton, AB, Canada T5J 4G8 Phone: 780.429.1751 Fax: 780.424.5866 |
| | Lawyer's Name: Susy M. Trace Lawyer's Email: strace@millerthomson.com File No.: 0255685.0004 |

AFFIDAVIT OF JOCELYN BERIAULT

Sworn on August 19, 2022

I, Jocelyn Beriault, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a Senior Manager of Special Loans and Advisory Services – Western Region with Royal Bank of Canada (“**RBC**”), and as such, have personal knowledge of the facts and matters herein deposed to, except where stated to be based upon information and belief, and where so stated I verily believe the same to be true.

14. Attached to my Affidavit and marked collectively as **Exhibit "A"** are copies of searches of Faissal PC, Mclvor, 985, 52 Dental, Delta Corp., 52 Wellness, Paradise Mclvor and Michael Dave Ltd. conducted at the Alberta Corporate Registry.
15. To the best of RBC's knowledge, Faissal and FMPC operate a dental clinic located at 7151 Gaetz Avenue E, Red Deer, Alberta (the "**Red Deer Location**") under the trade name "**Delta Dental**" (the "**Business**").
16. Delta Dental is a registered trade name with the Corporate Registration System, and FMPC and Faissal are registered declarants of the trade name.
17. Attached to my Affidavit and marked collectively as **Exhibit "B"** is a copy of two trade name searches for "Delta Dental" at the Alberta Corporate Registry.
18. FMPC, Mclvor and 985 are collectively referred to in my Affidavit as the "**Original Corporate Debtors**", and together with Faissal, the "**Original Debtors**".
19. Mclvor owns bare land legally described as:

MERIDIAN 4 RANGE 29 TOWNSHIP 21
SECTION 32
THAT PORTION OF THE SOUTH WEST QUARTER
WHICH LIES NORTH EAST OF ROAD PLAN 8210125
CONTAINING 44.2 HECTARES (109.2 ACRES) MORE OF LESS
EXCEPTING THEREOUT:
PLAN NUMBER HECTARES ACRES-MORE OR LESS
ROAD 0210206 0.860 2.13
ROAD 0211040 3.66 9.04
SUBDIVISION 0211003 7.40 18.29
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME
(the "**Mclvor Lands**").

20. Attached to my Affidavit and marked as **Exhibit "C"** is a copy of the land title certificate of the Mclvor Lands from the Alberta Land Titles Office (the "**LTO**") dated July 20, 2022.

FMPC Credit Facilities

21. On application of FMPC, RBC agreed to extend the following credit facilities for the purpose of providing financing to FMPC to operate a dental practice using the trade name Delta Dental:
 - (a) Revolving Demand Facility for up to the principal amount of \$500,000.00, plus interest at the rate of RBC's prime interest rate in effect from time-to-time ("**Prime**") (the "**FMPC Operating LOC**");
 - (b) Royal Bank Visa Facility for up to the principal amount of \$75,000.00, plus interest at the rates of interest agreed to between RBC and FMPC pursuant to the RBC Royal Bank VISA Business Card Agreement (the "**Visa Facility**"); and
 - (c) Canadian Emergency Business Account in the amount of \$60,000 (the "**CEBA Facility**");(collectively the "**FMPC Credit Facilities**");

the terms of which are set out in the following loan agreements:

- (d) Credit Facilities Agreement dated August 4, 2016, between RBC and FMPC and attached to my Affidavit as **Exhibit "D"**;
- (e) Renewal Agreement dated September 10, 2018, between RBC and FMPC and attached to my Affidavit as **Exhibit "E"**;
- (f) Credit Agreement dated September 8, 2020, between RBC and FMPC and attached to my Affidavit as **Exhibit "F"**;
- (g) Credit Agreement dated December 20, 2021, between RBC and FMPC and attached to my Affidavit as **Exhibit "G"**;
- (h) Credit Agreement dated May 2, 2022, between RBC and FMPC and attached to my Affidavit as **Exhibit "H"**;
- (i) Canada Emergency Business Account Agreement and attached to my Affidavit as **Exhibit "I"**; and
- (j) RBC Royal Bank VISA Business Card Agreement and attached to my Affidavit as **Exhibit "J"**;

(the documents referred to in Paragraphs 21 (d)-(j) are collectively referred to in my Affidavit as the **"FMPC Loan Agreements"**).

22. As of August 10, 2022, the amount of indebtedness owing to RBC pursuant to the FMPC Credit Facilities totaled:

| Loan | Principal | Per Diem |
|--------------------|---------------------|-----------------|
| FMPC Operating LOC | \$500,947.73 | \$64.38 |
| Visa Facility | \$71,680.00 | \$40.00 |
| CEBA Facility | \$60,000 | |
| Total | \$632,627.73 | \$104.38 |

plus further amounts that may have been advanced by reason of the revolving nature of the FMPC Credit Facilities from and after August 10, 2022, plus further interest thereon from and after August 10, 2022, plus all of RBC's costs, including legal costs, on a solicitor and client full indemnity basis (the **"FMPC Direct Indebtedness"**).

23. Mclvor has also borrowed money from RBC, and has agreed to repay such borrowings with interest and costs on a solicitor and client full indemnity basis. As of August 15, 2022, the direct indebtedness owing to RBC by Mclvor is the total amount of \$2,504,407.54, plus interest from and after August 16, 2022 at the *per diem* rate of \$339.04, plus all additional amounts advanced to the Borrower by reason of the revolving nature of the credit facilities available to Mclvor, plus interest on such amounts, plus all of RBC's legal fees and costs incurred on a solicitor and own client full indemnity basis (the **"Mclvor Direct Indebtedness"**).

Footnote 9

COURT FILE NUMBER 2203-12557

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Edmonton

PLAINTIFF **ROYAL BANK OF CANADA**

DEFENDANTS **FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED**

DOCUMENT **AFFIDAVIT**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT CODY AND COMPANY LAW OFFICE
4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
Fax: (403) 556-1728

Our File No: 22364

AFFIDAVIT OF FETOUN AHMAD SWORN SEPTEMBER 8, 2022

I, FETOUN AHMAD, of the City of Red Deer, in the Province of Alberta, Make Oath and Say:

1. That I and my companies Delta Dental Corp, and 52 Dental Corporation, are Defendants in action number 2203-12557
2. As of December 14, 2022, I, Fetoun Ahmad, am the sole Director and Shareholder of Delta Dental Corp ("Delta Corp") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit A" is a copy of the Corporate Search for Delta Dental.

A handwritten signature in blue ink, appearing to be a stylized cursive name, located in the bottom right corner of the page.

3. As of December 6, 2021, I, Fetoun Ahmad, am the sole Director and Shareholder of 52 Dental Corporation (“52 Dental”) which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as “**Exhibit B**” is a copy of the Corporate Search for 52 Dental Corporation.
4. I am married to the Defendant Faissal Mouhamad (“Faissal”) who is a dentist by trade. I have no part in any of his companies or businesses which include, Faissal Mouhamad Professional Corporation (“FMPC”), McIvor Developments Ltd. (“McIvor”), 985842 Alberta Ltd., 52 Wellness Centre Inc. (“52 Wellness”), Paradise McIvor Developments Ltd., and Michael Dave Management Ltd (collectively referred to as “Faissal’s Companies”).

The Loans

5. According to the Plaintiff, my husband, Faissal, on behalf of FMPC, entered into a loan agreement (“FMPC Loan”) with the Royal Bank of Canada (“RBC”). Prior to being formally served the Affidavit of Jocelyn Beriault (“RBCs Affidavit”), the Senior Manager of Special Loans and Advisory Services – Western Region with RBC, on August 23, 2022, I had no knowledge of these dealings. Attached hereto and marked as “**Exhibit C**” is a copy of the RBC’s Affidavit para 21.
6. According to the Plaintiff, Faissal also entered in a loan agreement between McIvor and RBC (the “McIvor Loan”). Prior to being formally served RBCs Affidavit, on August 23, 2022, I had no knowledge of these dealings. Attached hereto and marked as “**Exhibit D**” is a copy of the RBCs Affidavit para 23.
7. I was not privy to any information relating to any loans Faissal or Faissal’s Companies currently have or have had in the past with RBC.
8. I had not been apart of or aware of any contract negotiations for the McIvor loan or the FMPC loan and do not have any knowledge of the loan terms that FMPC or McIvor were to abide by until receiving RBCs affidavit.
9. Neither I nor my companies, Delta Corp and 52 Dental, are, or were guarantors, or provided any security for any Loan Agreements entered into by Faissal or any of Faissal’s companies. Attached hereto and marked as “**Exhibit E**” is a copy of RBCs Affidavit paras 28, 30, and 32.
10. I am informed by my Lawyer and do verily believe same to be true that RBC has brought me, 52 Dental, and Delta Corp on as Defendants in this action as they are attempting to bring my

Form 49
[Rule 13.19]

Clerk's stamp:

| | |
|---|--|
| COURT FILE NUMBER | 2203 12557 |
| COURT OF QUEEN'S BENCH OF ALBERTA | |
| JUDICIAL CENTRE | EDMONTON |
| PLAINTIFF | ROYAL BANK OF CANADA |
| DEFENDANTS | FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD also known as FETOUN AHMED |
| DOCUMENT | <u>AFFIDAVIT OF JOCELYN BERIAULT</u> |
| ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT | MILLER THOMSON LLP Barristers and Solicitors 2700, Commerce Place 10155-102 Street Edmonton, AB, Canada T5J 4G8 Phone: 780.429.1751 Fax: 780.424.5866 |
| | Lawyer's Name: Susy M. Trace Lawyer's Email: strace@millerthomson.com File No.: 0255685.0004 |

AFFIDAVIT OF JOCELYN BERIAULT

Sworn on August 19, 2022

I, Jocelyn Beriault, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a Senior Manager of Special Loans and Advisory Services – Western Region with Royal Bank of Canada (“**RBC**”), and as such, have personal knowledge of the facts and matters herein deposed to, except where stated to be based upon information and belief, and where so stated I verily believe the same to be true.

14. Attached to my Affidavit and marked collectively as **Exhibit "A"** are copies of searches of Faissal PC, Mclvor, 985, 52 Dental, Delta Corp., 52 Wellness, Paradise Mclvor and Michael Dave Ltd. conducted at the Alberta Corporate Registry.
15. To the best of RBC's knowledge, Faissal and FMPC operate a dental clinic located at 7151 Gaetz Avenue E, Red Deer, Alberta (the "**Red Deer Location**") under the trade name "**Delta Dental**" (the "**Business**").
16. Delta Dental is a registered trade name with the Corporate Registration System, and FMPC and Faissal are registered declarants of the trade name.
17. Attached to my Affidavit and marked collectively as **Exhibit "B"** is a copy of two trade name searches for "Delta Dental" at the Alberta Corporate Registry.
18. FMPC, Mclvor and 985 are collectively referred to in my Affidavit as the "**Original Corporate Debtors**", and together with Faissal, the "**Original Debtors**".
19. Mclvor owns bare land legally described as:

MERIDIAN 4 RANGE 29 TOWNSHIP 21
SECTION 32
THAT PORTION OF THE SOUTH WEST QUARTER
WHICH LIES NORTH EAST OF ROAD PLAN 8210125
CONTAINING 44.2 HECTARES (109.2 ACRES) MORE OF LESS
EXCEPTING THEREOUT:

| PLAN | NUMBER | HECTARES | ACRES-MORE OR LESS |
|-------------|---------|----------|--------------------|
| ROAD | 0210206 | 0.860 | 2.13 |
| ROAD | 0211040 | 3.66 | 9.04 |
| SUBDIVISION | 0211003 | 7.40 | 18.29 |

EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME
(the "**Mclvor Lands**").

20. Attached to my Affidavit and marked as **Exhibit "C"** is a copy of the land title certificate of the Mclvor Lands from the Alberta Land Titles Office (the "**LTO**") dated July 20, 2022.

FMPC Credit Facilities

21. On application of FMPC, RBC agreed to extend the following credit facilities for the purpose of providing financing to FMPC to operate a dental practice using the trade name Delta Dental:
 - (a) Revolving Demand Facility for up to the principal amount of \$500,000.00, plus interest at the rate of RBC's prime interest rate in effect from time-to-time ("**Prime**") (the "**FMPC Operating LOC**");
 - (b) Royal Bank Visa Facility for up to the principal amount of \$75,000.00, plus interest at the rates of interest agreed to between RBC and FMPC pursuant to the RBC Royal Bank VISA Business Card Agreement (the "**Visa Facility**"); and
 - (c) Canadian Emergency Business Account in the amount of \$60,000 (the "**CEBA Facility**");(collectively the "**FMPC Credit Facilities**");

the terms of which are set out in the following loan agreements:

- (d) Credit Facilities Agreement dated August 4, 2016, between RBC and FMPC and attached to my Affidavit as **Exhibit "D"**;
- (e) Renewal Agreement dated September 10, 2018, between RBC and FMPC and attached to my Affidavit as **Exhibit "E"**;
- (f) Credit Agreement dated September 8, 2020, between RBC and FMPC and attached to my Affidavit as **Exhibit "F"**;
- (g) Credit Agreement dated December 20, 2021, between RBC and FMPC and attached to my Affidavit as **Exhibit "G"**;
- (h) Credit Agreement dated May 2, 2022, between RBC and FMPC and attached to my Affidavit as **Exhibit "H"**;
- (i) Canada Emergency Business Account Agreement and attached to my Affidavit as **Exhibit "I"**; and
- (j) RBC Royal Bank VISA Business Card Agreement and attached to my Affidavit as **Exhibit "J"**;

(the documents referred to in Paragraphs 21 (d)-(j) are collectively referred to in my Affidavit as the **"FMPC Loan Agreements"**).

22. As of August 10, 2022, the amount of indebtedness owing to RBC pursuant to the FMPC Credit Facilities totaled:

| Loan | Principal | Per Diem |
|--------------------|---------------------|-----------------|
| FMPC Operating LOC | \$500,947.73 | \$64.38 |
| Visa Facility | \$71,680.00 | \$40.00 |
| CEBA Facility | \$60,000 | |
| Total | \$632,627.73 | \$104.38 |

plus further amounts that may have been advanced by reason of the revolving nature of the FMPC Credit Facilities from and after August 10, 2022, plus further interest thereon from and after August 10, 2022, plus all of RBC's costs, including legal costs, on a solicitor and client full indemnity basis (the **"FMPC Direct Indebtedness"**).

23. Mclvor has also borrowed money from RBC, and has agreed to repay such borrowings with interest and costs on a solicitor and client full indemnity basis. As of August 15, 2022, the direct indebtedness owing to RBC by Mclvor is the total amount of \$2,504,407.54, plus interest from and after August 16, 2022 at the *per diem* rate of \$339.04, plus all additional amounts advanced to the Borrower by reason of the revolving nature of the credit facilities available to Mclvor, plus interest on such amounts, plus all of RBC's legal fees and costs incurred on a solicitor and own client full indemnity basis (the **"Mclvor Direct Indebtedness"**).

Footnote 10

Form 49
[Rule 13.19]

Clerk's stamp:

| | |
|---|--|
| COURT FILE NUMBER | 2203 12557 |
| COURT OF QUEEN'S BENCH OF ALBERTA | |
| JUDICIAL CENTRE | EDMONTON |
| PLAINTIFF | ROYAL BANK OF CANADA |
| DEFENDANTS | FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD also known as FETOUN AHMED |
| DOCUMENT | <u>AFFIDAVIT OF JOCELYN BERIAULT</u> |
| ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT | MILLER THOMSON LLP Barristers and Solicitors 2700, Commerce Place 10155-102 Street Edmonton, AB, Canada T5J 4G8 Phone: 780.429.1751 Fax: 780.424.5866 |
| | Lawyer's Name: Susy M. Trace Lawyer's Email: strace@millerthomson.com File No.: 0255685.0004 |

AFFIDAVIT OF JOCELYN BERIAULT

Sworn on August 19, 2022

I, Jocelyn Beriault, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a Senior Manager of Special Loans and Advisory Services – Western Region with Royal Bank of Canada (“**RBC**”), and as such, have personal knowledge of the facts and matters herein deposed to, except where stated to be based upon information and belief, and where so stated I verily believe the same to be true.

the terms of which are set out in the following loan agreements:

- (d) Credit Facilities Agreement dated August 4, 2016, between RBC and FMPC and attached to my Affidavit as **Exhibit "D"**;
- (e) Renewal Agreement dated September 10, 2018, between RBC and FMPC and attached to my Affidavit as **Exhibit "E"**;
- (f) Credit Agreement dated September 8, 2020, between RBC and FMPC and attached to my Affidavit as **Exhibit "F"**;
- (g) Credit Agreement dated December 20, 2021, between RBC and FMPC and attached to my Affidavit as **Exhibit "G"**;
- (h) Credit Agreement dated May 2, 2022, between RBC and FMPC and attached to my Affidavit as **Exhibit "H"**;
- (i) Canada Emergency Business Account Agreement and attached to my Affidavit as **Exhibit "I"**; and
- (j) RBC Royal Bank VISA Business Card Agreement and attached to my Affidavit as **Exhibit "J"**;

(the documents referred to in Paragraphs 21 (d)-(j) are collectively referred to in my Affidavit as the "**FMPC Loan Agreements**").

22. As of August 10, 2022, the amount of indebtedness owing to RBC pursuant to the FMPC Credit Facilities totaled:

| Loan | Principal | Per Diem |
|--------------------|---------------------|-----------------|
| FMPC Operating LOC | \$500,947.73 | \$64.38 |
| Visa Facility | \$71,680.00 | \$40.00 |
| CEBA Facility | \$60,000 | |
| Total | \$632,627.73 | \$104.38 |

plus further amounts that may have been advanced by reason of the revolving nature of the FMPC Credit Facilities from and after August 10, 2022, plus further interest thereon from and after August 10, 2022, plus all of RBC's costs, including legal costs, on a solicitor and client full indemnity basis (the "**FMPC Direct Indebtedness**").

23. Mclvor has also borrowed money from RBC, and has agreed to repay such borrowings with interest and costs on a solicitor and client full indemnity basis. As of August 15, 2022, the direct indebtedness owing to RBC by Mclvor is the total amount of \$2,504,407.54, plus interest from and after August 16, 2022 at the *per diem* rate of \$339.04, plus all additional amounts advanced to the Borrower by reason of the revolving nature of the credit facilities available to Mclvor, plus interest on such amounts, plus all of RBC's legal fees and costs incurred on a solicitor and own client full indemnity basis (the "**Mclvor Direct Indebtedness**").

24. FMPC, Faissal, 985 and Paradise Mclvor have also each separately guaranteed to RBC the Mclvor Direct Indebtedness for up to the principal amount of \$2,500,000.00, plus interest at the rate of Prime plus 5%, plus all of RBC's costs on a solicitor and client full indemnity basis (collectively the "**Mclvor Guaranteed Indebtedness**"). RBC has demanded repayment from Mclvor of the Mclvor Direct Indebtedness, and has demanded repayment from each of FMPC, Faissal 985, and Paradise Mclvor of the Mclvor Guaranteed Indebtedness and has issued to each of them notices of intention to enforce security pursuant to s. 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**"), however the demand and notice period applicable to such demands and notices has not expired as at the date of swearing this Affidavit.
25. As at the date of swearing this Affidavit, RBC has not demanded repayment of the CEBA Facility. Nothing in this Affidavit is meant to waive RBC's right to demand payment of the CEBA Facility, and RBC reserves all of its rights and remedies to do so in future if it comes to believe it is in its interests to do so.

The Guarantees

26. To secure all indebtedness owing by FMPC to RBC, including the FMPC Direct Indebtedness, the following guarantees were executed in favour of RBC:
- (a) a Guarantee and Postponement of Claim dated August 12, 2016 executed by Mclvor in favour of RBC, guaranteeing to RBC all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing to RBC by FMPC, including interest, costs, expenses, and other obligations, for up to the principal sum of \$3,250,000.00, plus interest thereon, plus all of RBC's fees, costs, charges and expenses, including legal fees and disbursements on a solicitor and own client full indemnity basis;
 - (b) a Guarantee and Postponement of Claim dated August 12, 2016 executed by 985 in favour of RBC guaranteeing to RBC all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing to RBC by FMPC, including interest, costs, expenses, and other obligations, for up to the principal sum of \$3,250,000.00, plus interest thereon, plus all of RBC's fees, costs, charges and expenses, including legal fees and disbursements on a solicitor and own client full indemnity basis; and
 - (c) a Guarantee and Postponement of Claim dated August 12, 2016 executed by Faissal, guaranteeing to RBC all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing to RBC by FMPC, including interest, costs, expenses, and other obligations, for up to the principal sum of \$3,250,000.00, plus interest thereon, plus all of RBC's fees, costs, charges and expenses, including legal fees and disbursements on a solicitor and own client full indemnity basis;
- (the guarantees referred to in Paragraphs 26 (a)-(c) are collectively referred to in this Affidavit as the "**FMPC Guarantees**").
27. Attached to my Affidavit and marked collectively as **Exhibit "K"** are copies of the FMPC Guarantees.

Footnote 11

COURT FILE NUMBER 2203-12557

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF ROYAL BANK OF CANADA

DEFENDANT FAISSAL MOUHAMAD PROFESSIONAL CORPORATION,
MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52
DENTAL CORPORATION, 52 WELLNESS CENTRE INC.,
PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE
MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN
AHMAD, also known as FETOUN AHMED

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT WARREN SINCLAIR LLP
600, 4911 – 51 STREET
RED DEER, AB T4N 6V4
ATTENTION: MATTHEW R. PARK
PHONE: (403) 343-3320
FAX: (403) 343-6069
FILE NUMBER: 127984/MP

AFFIDAVIT OF Faissal Mouhamad

Sworn on August 23, 2022

I, FAISSAL MOUHAMAD, of Red Deer County, in the Province of Alberta, Businessman, MAKE OATH AND SAY AS FOLLOWS:

Introduction:

1. I have personal knowledge of the matters hereinafter deposed to, except where stated to be based on information and belief, in which case I verily believe the same to be

15. Bank of Nova Scotia has extended credit facilities to 52 Dental, the terms of which include a requirement that all revenue generated from the Calgary Clinic be deposited to 52 Dental's Bank of Nova Scotia operating account.

The Red Deer Dental Clinic:

16. As I previously indicated, I currently provide dental services to the Red Deer Clinic and the Calgary Clinic.
17. The Red Deer Clinic is an operational, fully functioning dental practice. It provides dental services 7 days a week, through 6 dentists (including me), 3 dental hygienists, 5 dental assistants, a sterilization technician and 7 administrative/support staff.

Sale of the Red Deer Clinic:

18. An unconditional agreement has been entered into to sell the Red Deer Clinic to Ghalib Hadi Professional Corporation (the "**Asset Purchase Agreement**"), the principal of which is Dr. Ghalib Hadi, a dentist who provides dental services to both the Red Deer Clinic and the Calgary Clinic. A redacted copy of the Asset Purchase Agreement is exhibited to the affidavit sworn by Jocelyn Beriault in this matter on August 19, 2022 (the "**Beriault Affidavit**").
19. The closing date provided for by the Asset Purchase Agreement is December 21, 2022.

Dewinton Property Sale:

20. **McIvor is the registered owner of an undeveloped, approximately 70-acre parcel of land located in the vicinity of Dewinton, Alberta (the "Dewinton Property"). Marked as Exhibit "A" and attached hereto is a Land Title Certificate for the Dewinton Property as of August 22, 2022**

21. McIvor has had the Dewinton Property listed for sale with Steve Seiler, a realtor with KDI Commercial Inc., since September 9, 2020 and has accepted an offer from Samer Altalaj to purchase that property for an amount sufficient to pay the indebtedness owed to the Plaintiff in full (the “**Altalaj Offer**”). A redacted copy of the Altalaj Offer is exhibited to the Beriault Affidavit.
22. The Altalaj Offer is unconditional and is slated to close on November 10, 2022.
23. The registrations against title include to the Dewinton Property include:
 - a) A mortgage in favor of Royal Bank of Canada (the “**RBC Mortgage**”);
 - b) A mortgage in favor of Faissal PC and 985;
 - c) A caveat in favour of the Plaintiff (the “**Caveat**”); and
 - d) A Certificate of *Lis Pendens* in favor of the Plaintiff (the “**CLP**”).
24. In addition to the registrations mentioned above, there is a Certificate of *Lis Pendens* in favor of the Plaintiff in the Pending Registration Que at the Land Titles Office (the “**Pending CLP**”), as well as discharge of a utility right of way or right of way agreement and what I understand to be a purchaser’s lien caveat in favour of Mr. Altalaj.
25. The RBC Mortgage secures repayment of all of McIvor’s present and future indebtedness to RBC, including any indebtedness that arises by way of guarantee.
26. The Caveat, CLP and Pending CLP relate to disputes between various defendants named in this action (including McIvor) and my brother, Mahmoud Mohamad (“**Moe**”), which have resulted in contested lawsuits. Marked as **Exhibit “B”** and attached hereto is a true copy of the Amended Statement of Claim filed in the action

Form 49
[Rule 13.19]

Clerk's stamp:

COURT FILE NUMBER 2203 12557
COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE **EDMONTON**
PLAINTIFF ROYAL BANK OF CANADA
DEFENDANTS **FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD also known as FETOUN AHMED**

DOCUMENT

AFFIDAVIT OF JOCELYN BERIAULT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

MILLER THOMSON LLP
Barristers and Solicitors
2700, Commerce Place
10155-102 Street
Edmonton, AB, Canada T5J 4G8
Phone: 780.429.1751 Fax: 780.424.5866

Lawyer's
Name: Susy M. Trace
Lawyer's
Email: strace@millerthomson.com
File No.: 0255685.0004

AFFIDAVIT OF JOCELYN BERIAULT

Sworn on August 19, 2022

I, Jocelyn Beriault, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a Senior Manager of Special Loans and Advisory Services – Western Region with Royal Bank of Canada (“**RBC**”), and as such, have personal knowledge of the facts and matters herein deposed to, except where stated to be based upon information and belief, and where so stated I verily believe the same to be true.

96. I understand that Hadi is a licensed dentist and that he may provide dental services for FMPC, though I have no personal knowledge of this fact and do not know why FMPC has paid GHPC no less than \$291,270.36 since 2020.
97. By the APA, GHPC has agreed to purchase the Business, with a closing date of December 21, 2022.
98. RBC has several concerns with the APA including the following:
- (a) either or both of Hadi or GHPC may not be arms' length to FMPC or Faissal given the payments to GHPC and the fact that Hadi is a creditor of 52 Wellness;
 - (b) GHPC has agreed to release two deposits to FMPC, Faissal and Michael Dave Ltd. in the aggregate amount of \$575,000, whether or not the transaction contemplated by the sale closes;
 - (c) there is no non-competition agreement respecting Faissal contained in the APA;
 - (d) RBC has not been provided with an appraisal of the Business and therefore is unable to determine if the purchase price is reasonable;
 - (e) FMPC's Solicitor has advised RBC's Solicitor that the purchase price for the Business is less than fair market value;
 - (f) RBC has asked FMPC, Faissal and Michael Dave Ltd. through counsel why Michael Dave Ltd. is a party to the APA. As far as RBC is aware, Michael Dave Ltd. only owns the land and building where the Business is operated, but the land is not included in the APA. RBC has also requested confirmation of what assets being sold are owned by Michael Dave Ltd. As of the date of swearing this Affidavit, no reply has been received from FMPC, Faissal and Michael Dave Ltd. to this inquiry and therefore RBC is unable to determine how much of the sale proceeds from the APA should be paid to RBC pursuant to the Security; and
 - (g) the purchase price is not sufficient to repay all amounts owing to RBC by FMPC and Faissal, including the FMPC Direct Indebtedness and the Mclvor Guaranteed Indebtedness.
99. As at the date of swearing this Affidavit, RBC's concerns regarding the APA have not been resolved and therefore RBC is not supportive of the APA and does not provide its consent to the sale contemplated thereby.

II. Samer Altallaj and the Offer to Purchase the Mclvor Lands

100. RBC has been provided with an Offer to Purchase and Interim Agreement dated in or around November 18, 2021 between Samer Altalaj and/or nominee ("**Samer**") as purchaser and Mclvor as vendor (the "**Mclvor Lands Offer**").
101. Attached to my Affidavit and marked collectively as **Exhibit "LL"** is a redacted copy of the Mclvor Lands Offer and two Amending Agreements to the Mclvor Lands Offer dated March 29, 2022 and July 9, 2022.
102. RBC also received an Exclusive Commercial Marketing Agreement between Mclvor and KDI Commercial Inc. dated September 9, 2020 (the "**Listing Agreement**") to sell the Mclvor Lands from Steve Seiler, who is named as a senior associate on the Listing

Footnote 12

COURT FILE NUMBER 2203-12557

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF ROYAL BANK OF CANADA

DEFENDANT FAISSAL MOUHAMAD PROFESSIONAL CORPORATION,
MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52
DENTAL CORPORATION, 52 WELLNESS CENTRE INC.,
PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE
MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN
AHMAD, also known as FETOUN AHMED

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT WARREN SINCLAIR LLP
600, 4911 – 51 STREET
RED DEER, AB T4N 6V4
ATTENTION: MATTHEW R. PARK
PHONE: (403) 343-3320
FAX: (403) 343-6069
FILE NUMBER: 127984/MP

AFFIDAVIT OF Faissal Mouhamad

Sworn on August 23, 2022

I, FAISSAL MOUHAMAD, of Red Deer County, in the Province of Alberta, Businessman, MAKE OATH AND SAY AS FOLLOWS:

Introduction:

1. I have personal knowledge of the matters hereinafter deposed to, except where stated to be based on information and belief, in which case I verily believe the same to be

21. McIvor has had the Dewinton Property listed for sale with Steve Seiler, a realtor with KDI Commercial Inc., since September 9, 2020 and has accepted an offer from Samer Altalaj to purchase that property for an amount sufficient to pay the indebtedness owed to the Plaintiff in full (the “**Altalaj Offer**”). A redacted copy of the Altalaj Offer is exhibited to the Beriault Affidavit.
22. The Altalaj Offer is unconditional and is slated to close on November 10, 2022.
23. The registrations against title include to the Dewinton Property include:
 - a) A mortgage in favor of Royal Bank of Canada (the “**RBC Mortgage**”);
 - b) A mortgage in favor of Faissal PC and 985;
 - c) A caveat in favour of the Plaintiff (the “**Caveat**”); and
 - d) A Certificate of *Lis Pendens* in favor of the Plaintiff (the “**CLP**”).
24. In addition to the registrations mentioned above, there is a Certificate of *Lis Pendens* in favor of the Plaintiff in the Pending Registration Que at the Land Titles Office (the “**Pending CLP**”), as well as discharge of a utility right of way or right of way agreement and what I understand to be a purchaser’s lien caveat in favour of Mr. Altalaj.
25. **The RBC Mortgage secures repayment of all of McIvor’s present and future indebtedness to RBC, including any indebtedness that arises by way of guarantee.**
26. The Caveat, CLP and Pending CLP relate to disputes between various defendants named in this action (including McIvor) and my brother, Mahmoud Mohamad (“**Moe**”), which have resulted in contested lawsuits. Marked as **Exhibit “B”** and attached hereto is a true copy of the Amended Statement of Claim filed in the action

Footnote 13

COURT FILE NUMBER 2203-12557

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Edmonton

PLAINTIFF **ROYAL BANK OF CANADA**

DEFENDANTS **FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED**

DOCUMENT **AFFIDAVIT**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT CODY AND COMPANY LAW OFFICE
4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
Fax: (403) 556-1728

Our File No: 22364

AFFIDAVIT OF FETOUN AHMAD SWORN SEPTEMBER 8, 2022

I, FETOUN AHMAD, of the City of Red Deer, in the Province of Alberta, Make Oath and Say:

1. That I and my companies Delta Dental Corp, and 52 Dental Corporation, are Defendants in action number 2203-12557
2. As of December 14, 2022, I, Fetoun Ahmad, am the sole Director and Shareholder of Delta Dental Corp ("Delta Corp") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit A" is a copy of the Corporate Search for Delta Dental.

A handwritten signature in blue ink, appearing to be a stylized cursive name, located in the bottom right corner of the page.

3. As of December 6, 2021, I, Fetoun Ahmad, am the sole Director and Shareholder of 52 Dental Corporation (“52 Dental”) which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as “**Exhibit B**” is a copy of the Corporate Search for 52 Dental Corporation.
4. I am married to the Defendant Faissal Mouhamad (“Faissal”) who is a dentist by trade. I have no part in any of his companies or businesses which include, Faissal Mouhamad Professional Corporation (“FMPC”), McIvor Developments Ltd. (“McIvor”), 985842 Alberta Ltd., 52 Wellness Centre Inc. (“52 Wellness”), Paradise McIvor Developments Ltd., and Michael Dave Management Ltd (collectively referred to as “Faissal’s Companies”).

The Loans

1. According to the Plaintiff, my husband, Faissal, on behalf of FMPC, entered into a loan agreement (“FMPC Loan”) with the Royal Bank of Canada (“RBC”). Prior to being formally served the Affidavit of Jocelyn Beriault (“RBCs Affidavit”), the Senior Manager of Special Loans and Advisory Services – Western Region with RBC, on August 23, 2022, I had no knowledge of these dealings. Attached hereto and marked as “**Exhibit C**” is a copy of the RBC’s Affidavit para 21.
2. According to the Plaintiff, Faissal also entered in a loan agreement between McIvor and RBC (the “McIvor Loan”). Prior to being formally served RBCs Affidavit, on August 23, 2022, I had no knowledge of these dealings. Attached hereto and marked as “**Exhibit D**” is a copy of the RBCs Affidavit para 23.
3. I was not privy to any information relating to any loans Faissal or Faissal’s Companies currently have or have had in the past with RBC.
4. I had not been apart of or aware of any contract negotiations for the McIvor loan or the FMPC loan and do not have any knowledge of the loan terms that FMPC or McIvor were to abide by until receiving RBCs affidavit.
5. Neither I nor my companies, Delta Corp and 52 Dental, are, or were guarantors, or provided any security for any Loan Agreements entered into by Faissal or any of Faissal’s companies. Attached hereto and marked as “**Exhibit E**” is a copy of RBCs Affidavit paras 28, 30, and 32.
6. I am informed by my Lawyer and do verily believe same to be true that RBC has brought me, 52 Dental, and Delta Corp on as Defendants in this action as they are attempting to bring my

Footnote 14

Form 49
[Rule 13.19]

Clerk's stamp:

| | |
|---|--|
| COURT FILE NUMBER | 2203 12557 |
| COURT OF QUEEN'S BENCH OF ALBERTA | |
| JUDICIAL CENTRE | EDMONTON |
| PLAINTIFF | ROYAL BANK OF CANADA |
| DEFENDANTS | FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD also known as FETOUN AHMED |
| DOCUMENT | <u>AFFIDAVIT OF JOCELYN BERIAULT</u> |
| ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT | MILLER THOMSON LLP Barristers and Solicitors 2700, Commerce Place 10155-102 Street Edmonton, AB, Canada T5J 4G8 Phone: 780.429.1751 Fax: 780.424.5866 |
| | Lawyer's Name: Susy M. Trace Lawyer's Email: strace@millerthomson.com File No.: 0255685.0004 |

AFFIDAVIT OF JOCELYN BERIAULT

Sworn on August 19, 2022

I, Jocelyn Beriault, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a Senior Manager of Special Loans and Advisory Services – Western Region with Royal Bank of Canada (“**RBC**”), and as such, have personal knowledge of the facts and matters herein deposed to, except where stated to be based upon information and belief, and where so stated I verily believe the same to be true.

62. Faissal did not previously advise me that he was splitting his time between two dental clinics in different cities and did not previously advise me that he was practicing dentistry at a clinic and under a trade name that is separate and distinct from the Business.
63. I have reviewed an email trail between RBC's Counsel and FMPC's Counsel dated August 15, 2022, whereby FMPC's Counsel advised that most, if not all, of the billing for the Business is now being done through Delta Corp. as opposed to FMPC. Attached to my Affidavit and marked as **Exhibit "DD"** is a copy of the email trail referred to in this Paragraph.
64. RBC has not provided its written consent to the billing of the Business to be done through Delta Corp., has not provided its written consent to the transfer of the Business to any party, has not provided its written consent to the transfer of the accounts receivable to another financial institution or to Delta Corp. and has not provided its written consent to the change of ownership structure of the Original Corporate Debtors or in any way relating to the Business.

II. Payments from FMPC to Delta Corp. and 52 Dental

65. FMPC is not permitted to use the FMPC Credit Facilities for the benefit of or on behalf of any person other than FMPC.
66. After noticing that the amount and frequency of deposits into the FMPC Deposit Account had significantly decreased, I began to review the FMPC Bank Statements, as well as bank statements for deposit accounts held by each of 985 (the "**985 Deposit Account**"), and Mclvor. My review was focused on transactions where larger sums of money were transferred in or out of such accounts, and therefore the conclusive amount of funds transferred out of accounts held by the Original Corporate Debtors may be higher.
67. Attached to my Affidavit and collectively marked as **Exhibit "EE"** are copies of bank statements for the 985 Deposit Account for the 2020 year.
68. Attached to my Affidavit and collectively marked as **Exhibit "FF"** are copies of bank statements for the 985 Deposit Account for the 2021 year.
69. Attached to my Affidavit and collectively marked as **Exhibit "GG"** are copies of bank statements for the 985 Deposit Account for the 2022 year (ending in July);

(the bank statements attached to my Affidavit at Paragraphs 67, 68, and 69 are collectively referred to in my Affidavit as the "**985 Bank Statements**" and collectively with the FMPC Bank Statements, the "**Bank Statements**").
70. The Bank Statements are copies of entries made in the usual and ordinary course of business of RBC, in books or records which were at the time of the making of the entries, one of the ordinary books or records of RBC. The Bank Statements are in the custody and control of RBC.
71. In my review of the Bank Statements, I learned that FMPC paid the total sum of \$1,100,500.00 to Delta Corp. and 52 Dental in several tranches beginning in December of 2021 as follows:
 - (a) the amount of \$830,000 was paid to Delta Corp., \$760,000 of which was paid in 2022 by way of 37 different cheques and \$70,000 of which was paid in December of 2021 by way of 3 separate cheques; and

- (b) the amount of \$270,500 was paid to 52 Dental in 2022 by way of 23 cheques and one electronic transfer.

72. RBC is not aware of any goods or services provided to FMPC by Delta Corp. or 52 Dental, was not advised by FMPC that it would be making these payments and RBC has not provided its written consent to these payments being made.

III. Payments from FMPC and 985 to 52 Wellness

73. In my review of the Bank Statements, I learned that FMPC paid the total sum of \$93,373.25 to or for the benefit of 52 Wellness as follows:

- (a) the sum of \$14,373.25 was paid in 2020;
- (b) the sum of \$60,000.00 was paid in 2021; and
- (c) the sum of \$19,000 was paid in 2022.

74. In my review of the Bank Statements, it appears that 985 paid the total sum of \$191,448.62 for the benefit of 52 Wellness in 2021 as follows:

- (a) on April 12, 2021, a cheque was written to Parkland Geo in the amount of \$595.13 with the memo, "GST";
- (b) on April 12, 2021, a cheque was written to Parkland Geo in the amount of \$11,902.50;
- (c) on April 13, 2021, a cheque was written to Parkland Geo in the amount of \$173.34 containing the memo "GST";
- (d) on April 13, 2021, a cheque was written to Parkland Geo in the amount of \$3,346.84 containing the memo "professional fees";
- (e) on April 14, 2021, a \$10,000 cheque was written to Warren Sinclair containing the memo "additional deposit for 52nd"; and
- (f) on September 9, 2021, the same date as the promissory note referenced in the Faissal Caveat registered against the 52 Wellness Building, a bank draft was written on 985's deposit account in the amount of \$165,422.31. Attached to my Affidavit and marked as **Exhibit "HH"** is a copy of the Bank Draft referred to in this Paragraph (the "**Bank Draft**"). RBC charged a fee to issue the Bank Draft in the amount of \$8.50 and therefore the 985 Bank Statements indicate a withdrawal in the total amount of \$165,430.81. The notation on the Bank Draft says "52nd Wellness Centre".

75. Given the memo notations on some of the cheques and the Bank Draft referenced in paragraph 74 above, the timing of the payments and the fact that the final payment in the amount of \$165,422.31 matches the date that 52 Wellness gave Faissal a promissory note and agreement charging the land over the 52 Wellness Building, I do verily believe that the money referenced in paragraph 74 was paid by 985 for the benefit of 52 Wellness to enable it to purchase the 52 Wellness Building where the 52 Dental Calgary Clinic is currently operating.

- 130. The First FMPC GSA, the Second FMPC GSA, the First Mclvor GSA, the Second Mclvor GSA, and the 985 GSA provide for the appointment of a receiver or a receiver and manager in the event any of them are in default of their obligations to RBC.
- 131. RBC is concerned that its Security and collateral position has eroded by the fact that its Security has being transferred, out of the ordinary course of business, and without its consent to related parties, and is concerned that the accounts receivable of FMPC are being deposited at another financial institution into deposit accounts owned by Delta Corp.
- 132. RBC is alarmed that FMPC has transferred the sum of \$1,100,500.00 to Delta Corp. and 52 Dental in several tranches over the course of nine months and is concerned that the Delta Payments, the FMPC Jovica Payments, the 985 Jovica Payments and the numerous payments to related parties and family members have eroded its Security and collateral position.
- 133. RBC is unsettled by the steps taken by Faissal to transfer Delta Corp. to his wife while remaining a material and necessary presence in its operations given his license to practice dentistry, and being a material and necessary presence in the viability of 52 Dental.
- 134. In order to prevent the further transfer of assets and further erosion of RBC's collateral, and in order to obtain transparency of the operation of the Business, RBC seeks to appoint a Receiver over one or more of the corporate Defendants.
- 135. RBC has lost confidence in the ability of management to operate the Business in a candid and commercially reasonable manner and in compliance with the covenants and obligations owed by the Original Debtors.
- 136. RBC does not consent to the APA, and the Original Debtors have not satisfied RBC that they will be able to close the Mclvor Land Offer.
- 137. I make this Affidavit in support of the appointment of a receiver and manager in respect of the undertakings, property and assets of one or more of the corporate Defendants.

SWORN BEFORE ME at the City of)
Calgary in the Province of Alberta, this)
 19th day of August, 2022.)

 Commissioner for Oaths in and for the)
 Province of Alberta)
)
)
)



 JOCELYN BERIAULT

Arsham Gill
Barrister & Solicitor
 Notary Public and Commissioner for Oaths
 In and for the Province of Alberta

Footnote 15

COURT FILE NUMBER 2203-12557
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE Edmonton
PLAINTIFF ROYAL BANK OF CANADA



DEFENDANTS FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED

DOCUMENT AFFIDAVIT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT CODY AND COMPANY LAW OFFICE
4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
Fax: (403) 556-1728

Our File No: 22364

AFFIDAVIT OF FETOUN AHMAD SWORN SEPTEMBER 8, 2022

I, FETOUN AHMAD, of the City of Red Deer, in the Province of Alberta, Make Oath and Say:

1. That I and my companies Delta Dental Corp, and 52 Dental Corporation, are Defendants in action number 2203-12557
2. As of December 14, 2022, I, Fetoun Ahmad, am the sole Director and Shareholder of Delta Dental Corp ("Delta Corp") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit A" is a copy of the Corporate Search for Delta Dental.

A handwritten signature in blue ink, appearing to be a stylized 'S' or 'F'.

30. 52 Dental has never used any of its equipment in the Red Deer Clinic and has never used any of the Red Deer Clinics equipment in its clinic or operation.
31. 52 Dental provides management services for the Calgary clinic which include managing all or most of the Calgary Clinic billing and payment of business expenses.
32. All patient charts are owned/controlled by the dentists practicing in the Calgary Clinic and not by 52 Dental. 52 Dental also does not have any ownership or control over the Red Deer Clinics patient charts. Attached hereto and marked as “**Exhibit J**” is a copy of Affidavit of Faissal Mouhamad sworn August 23, 2022.
33. 52 Dental maintains operating accounts at the Bank of Nova Scotia. The revenue of the Calgary clinic is received, and the Calgary clinics expenses are paid from the Bank of Nova Scotia account.
34. Faissal provides dental services at the Calgary clinic. Faissal is paid by 52 Dental for his services at the Calgary Clinic.
35. Faissal agreed to a loan in the amount of \$300,000 between himself and 52 Dental which accrues interest at a rate of 5% per annum. These payments were made by Faissal to 52 Dental from FMPC. The cheques written by FMPC to 52 Dental were salary payments owed to Faissal from working as a dentist, as opposed to receiving the payments himself, Faissal assigned these payments to 52 Dental as apart of their loan agreement. These payments were made in increments and 52 Dental has not yet received the entirety of the \$300,000 dollar loan. Attached hereto and marked as “**Exhibit K**” is a copy of the income statements from February 18, 2022 to June 27, 2022 and the Promissory Note for the loan.

Payments to Fetoun

36. The payments made to me from FMPC were paid as reimbursements for office expenses and maintenance. As well, Faissal paid his shareholder loan from FMPC directly to me, Fetoun, as I am the person who looks after our family expenses. Attached hereto and marked as “**Exhibit L**” is a copy of records detailing the payments made from FMPC to Fetoun.
37. Prior to December 2021, payments made to me from FMPC for management services which I provided to the Red Deer Clinic since 2018. Attached hereto and marked as “**Exhibit M**” is a copy of the Statement of Business or Professional Activity for the period 2018 to 2021.

Personal Property Registration

38. On August 30, 2022, I was provided a Personal Property Registry Search Result Report (“PPR”) for Faissal Mouhamad by my counsel. The PPR demonstrated that RBC had registered themselves as secured parties against myself and my companies as follows:

Footnote 16

COURT FILE NUMBER 2203-12557

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Edmonton

PLAINTIFF **ROYAL BANK OF CANADA**

DEFENDANTS **FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED**

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4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
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1. That I and my companies Delta Dental Corp, and 52 Dental Corporation, are Defendants in action number 2203-12557
2. As of December 14, 2022, I, Fetoun Ahmad, am the sole Director and Shareholder of Delta Dental Corp ("Delta Corp") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit A" is a copy of the Corporate Search for Delta Dental.

A handwritten signature in blue ink, appearing to be a stylized cursive name, located in the bottom right corner of the page.

companies into a receivership on a loan to which neither I nor 52 dental, and Delta Corp were privy.

Delta Dental Corp

11. Delta Corp was originally incorporated by Faissal on August 28, 2017 and Faissal was the sole director at that time. Delta Corp was struck from the Alberta Corporate Registry for failure to file annual returns on February 2, 2020. Delta Corp was revived by a solicitor on May 18, 2021 and Faissal was registered as its sole director and shareholder at that time. Faissal then changed the director and shareholder of Delta Corp to myself on December 14, 2021. Attached hereto and marked as “**Exhibit F**” is a copy of the Certificate of Revival of Delta Corp.
12. At the time of transferring Delta Corp into my name, Delta Corp had no value and no assets.
13. My company, Delta Corp, was revived for the purpose of managing Delta Dental Clinic located at 7151 Gaetz Avenue E, Red Deer, Alberta (the “Red Deer Clinic”) which is a dentistry clinic in Red Deer, Alberta and is owned by Faissal, FMPC, and Michael Dave Management Ltd. and Faissal is the sole director and shareholder.
14. Delta Corp was originally incorporated with the intention of doing the management for the Red Deer Clinic. However, Faissal decided to manage the Red Deer Clinic through FMPC. Therefore, Faissal allowed Delta Corp to be struck from the record as it was not being used. Later, Faissal decided he no longer wanted the management of the Red Deer Clinic run through FMPC as he wanted to focus on his clinical work and mentoring. He then revived Delta Corp and transferred it to me and contracted with me to take over all management of the Red Deer Clinic.
15. The management services provided by Delta Corp to the Red Deer Clinic include providing dental supplies, maintenance, lab fees, upkeep, office supplies, janitorial services, etc.
16. In terms of Delta Corps financials, Delta Corp began handling the Red Deer Clinics payables on December 15, 2021. For a time, FMPC was still receiving the billables. Attached hereto and marked as “**Exhibit G**” is a copy of Delta Corps bank statements.
17. FMPC wrote cheques to Delta Corp as payment/reimbursement of and for Delta Corp’s management of and payment of the payables for the Red Deer Clinic as all or substantially all of the Red Deer Clinics revenues continued to go to FMPC.
18. It was not until approximately April 15, 2022 that Delta Corp began also managing the Red Deer Clinics billing/receivables. Attached hereto and marked as “**Exhibit G**” is a copy of Delta Corps bank statements.

Footnote 17

COURT FILE NUMBER 2203-12557
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE Edmonton
PLAINTIFF ROYAL BANK OF CANADA



DEFENDANTS FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED

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Attention: Carli Sylvestre
Phone: (403) 556-1528
Fax: (403) 556-1728

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12. At the time of transferring Delta Corp into my name, Delta Corp had no value and no assets.
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15. The management services provided by Delta Corp to the Red Deer Clinic include providing dental supplies, maintenance, lab fees, upkeep, office supplies, janitorial services, etc.
16. In terms of Delta Corps financials, Delta Corp began handling the Red Deer Clinics payables on December 15, 2021. For a time, FMPC was still receiving the billables. Attached hereto and marked as “**Exhibit G**” is a copy of Delta Corps bank statements.
17. **FMPC wrote cheques to Delta Corp as payment/reimbursement of and for Delta Corp’s management of and payment of the payables for the Red Deer Clinic as all or substantially all of the Red Deer Clinics revenues continued to go to FMPC.**
18. It was not until approximately April 15, 2022 that Delta Corp began also managing the Red Deer Clinics billing/receivables. Attached hereto and marked as “**Exhibit G**” is a copy of Delta Corps bank statements.

Footnote 18

COURT FILE NUMBER 2203-12557
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE Edmonton
PLAINTIFF ROYAL BANK OF CANADA



DEFENDANTS FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED

DOCUMENT AFFIDAVIT

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4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
Fax: (403) 556-1728

Our File No: 22364

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A handwritten signature in blue ink, appearing to be a stylized 'S' or similar character, located in the bottom right corner of the page.

19. Delta Corp maintains operating accounts at the Bank of Nova Scotia. Most of the revenue of the Red Deer clinic is receipted and most of the Red Deer clinics expenses are paid from the Bank of Nova Scotia account.
20. Faissal under his trade name Delta Dental provides dental services at the Red Deer clinic.
21. Faissal was given signing authority on Delta Corp's Bank of Nova scotia account on July 6, 2022 only due to the fact that I was about to leave the country for medical treatment. This was done to avoid any interruptions in the business' payables.
22. All patient charts are owned/controlled by the dentists practicing in the Red Deer Clinic and not by Delta Corp. Delta Corp also does not have any ownership or control over the Calgary Clinics patient charts. Attached hereto and marked as "**Exhibit H**" is a copy of Affidavit of Faissal Mouhamad sworn August 23, 2022.
23. Faissal under his trade name Delta Dental and provides dental services at the Red Deer clinic. Faissal is paid by Delta Dental for his services at the Red Deer Clinic.
24. I am not a dentist, licensed or otherwise. However, as far as I am aware, the ownership of dental clinics in Alberta is not limited to licensed dentists. Rather, the Alberta Dental Association and College (the "**College**") requires a licensed dentist to have care and control over patient files/charts and over any drugs, medications and controlled substances. At all times, I have complied with the College's requirements in that regard.

52 Dental

25. 52 Dental was incorporated for the purpose of the management and ownership of the 52 Dental Clinic which is a dental clinic operating in Suite 100-3505 52 Street SE, Calgary, Alberta (the "Calgary Clinic").
26. The Calgary Clinic opened on June 11, 2022.
27. 52 Dental leases office space from 52 Wellness who owns the building in which 52 Dental operates.
28. 52 Dental does not have any involvement with Delta Corp or the Red Deer Clinic and is a separate and distinct entity. The only overlap is that Faissal and Dr. Ghalib Hadi both provide dental services out of the Calgary Clinic and the Red Deer Clinic.
29. 52 Dental owns all the leasehold improvements, administrative management equipment, and hygiene care equipment while the balance of the equipment is leased by 52 Dental. All equipment is solely used in the Calgary Clinic. Attached hereto and marked as "**Exhibit I**" is a copy of 52 Dental's equipment lease agreement.

Footnote 19

COURT FILE NUMBER 2203-12557

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Edmonton

PLAINTIFF **ROYAL BANK OF CANADA**

DEFENDANTS **FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED**

DOCUMENT **AFFIDAVIT**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT CODY AND COMPANY LAW OFFICE
4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
Fax: (403) 556-1728

Our File No: 22364

AFFIDAVIT OF FETOUN AHMAD SWORN SEPTEMBER ____, 2022

I, FETOUN AHMAD, of the City of Red Deer, in the Province of Alberta, Make Oath and Say:

1. That I and my companies Delta Dental Corp, and 52 Dental Corporation, are Defendants in action number 2203-12557
2. As of December 14, 2022, I, Fetoun Ahmad, am the sole Director and Shareholder of Delta Dental Corp (“Delta Corp”) which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as “**Exhibit A**” is a copy of the Corporate Search for Delta Dental.

3. As of December 6, 2021, I, Fetoun Ahmad, am the sole Director and Shareholder of 52 Dental Corporation (“52 Dental”) which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as “**Exhibit B**” is a copy of the Corporate Search for 52 Dental Corporation.
4. I am married to the Defendant Faissal Mouhamad (“Faissal”) who is a dentist by trade. I have no part in any of his companies or businesses which include, Faissal Mouhamad Professional Corporation (“FMPC”), McIvor Developments Ltd. (“McIvor”), 985842 Alberta Ltd., 52 Wellness Centre Inc. (“52 Wellness”), Paradise McIvor Developments Ltd., and Michael Dave Management Ltd (collectively referred to as “Faissal’s Companies”).

The Loans

5. According to the Plaintiff, my husband, Faissal, on behalf of FMPC, entered into a loan agreement (“FMPC Loan”) with the Royal Bank of Canada (“RBC”). Prior to being formally served the Affidavit of Jocelyn Beriault (“RBCs Affidavit”), the Senior Manager of Special Loans and Advisory Services – Western Region with RBC, on August 23, 2022, I had no knowledge of these dealings. Attached hereto and marked as “**Exhibit C**” is a copy of the RBC’s Affidavit para 21.
6. According to the Plaintiff, Faissal also entered in a loan agreement between McIvor and RBC (the “McIvor Loan”). Prior to being formally served RBCs Affidavit, on August 23, 2022, I had no knowledge of these dealings. Attached hereto and marked as “**Exhibit D**” is a copy of the RBCs Affidavit para 23.
7. I was not privy to any information relating to any loans Faissal or Faissal’s Companies currently have or have had in the past with RBC.
8. I had not been apart of or aware of any contract negotiations for the McIvor loan or the FMPC loan and do not have any knowledge of the loan terms that FMPC or McIvor were to abide by until receiving RBCs affidavit.
9. Neither I nor my companies, Delta Corp and 52 Dental, are, or were guarantors, or provided any security for any Loan Agreements entered into by Faissal or any of Faissal’s companies. Attached hereto and marked as “**Exhibit E**” is a copy of RBCs Affidavit paras 28, 30, and 32.
10. I am informed by my Lawyer and do verily believe same to be true that RBC has brought me, 52 Dental, and Delta Corp on as Defendants in this action as they are attempting to bring my

Footnote 20

Form 49
[Rule 13.19]

Clerk's stamp:

COURT FILE NUMBER 2203 12557
COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE **EDMONTON**
PLAINTIFF ROYAL BANK OF CANADA
DEFENDANTS **FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD also known as FETOUN AHMED**

DOCUMENT

AFFIDAVIT OF JOCELYN BERIAULT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

MILLER THOMSON LLP
Barristers and Solicitors
2700, Commerce Place
10155-102 Street
Edmonton, AB, Canada T5J 4G8
Phone: 780.429.1751 Fax: 780.424.5866

Lawyer's
Name: Susy M. Trace
Lawyer's
Email: strace@millerthomson.com
File No.: 0255685.0004

AFFIDAVIT OF JOCELYN BERIAULT

Sworn on August 19, 2022

I, Jocelyn Beriault, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a Senior Manager of Special Loans and Advisory Services – Western Region with Royal Bank of Canada (“**RBC**”), and as such, have personal knowledge of the facts and matters herein deposed to, except where stated to be based upon information and belief, and where so stated I verily believe the same to be true.

The Security

28. To secure due payment and performance of all present and future indebtedness and liabilities of FMPC to RBC, FMPC granted to RBC the following:
 - (a) General Security Agreement dated May 16, 2012 whereby FMPC granted a security interest in favour of RBC against all of FMPC's present and after-acquired personal property (the "**First FMPC GSA**"). Attached to my Affidavit and marked as **Exhibit "L"** is a copy of the First FMPC GSA; and
 - (b) General Security Agreement dated August 19, 2016 whereby FMPC granted a security interest in favour of RBC against all of FMPC's present and after-acquired personal property (the "**Second FMPC GSA**"). Attached to my Affidavit and marked as **Exhibit "M"** is a copy of the Second FMPC GSA.
29. At all material times, the First FMPC GSA and the Second FMPC GSA have been perfected by registration at the Alberta Personal Property Registry (the "**APPR**"). Attached to my Affidavit and marked as **Exhibit "N"** collectively is a debtor name search for FMPC and Faissal conducted at the APPR on August 18, 2022, evidencing perfection of RBC's security interest pursuant to the First FMPC GSA and the Second FMPC GSA.
30. To secure due payment and performance of all present and future indebtedness and liabilities of Mclvor to RBC, Mclvor granted to RBC the following:
 - (a) General Security Agreement –Floating Charge on Land dated August 12, 2016 whereby Mclvor granted a security interest in favour of RBC against all of Mclvor's present and after-acquired personal property and a floating charge on land (the "**First Mclvor GSA**"). Attached to my Affidavit and marked as **Exhibit "O"** is a copy of the First Mclvor GSA;
 - (b) General Security Agreement dated August 9, 2016 whereby Mclvor granted a security interest in favour of RBC against all of Mclvor's present and after-acquired personal property (the "**Second Mclvor GSA**"). Attached to my Affidavit and marked as **Exhibit "P"** is a copy of the Second Mclvor GSA; and
 - (c) Collateral Mortgage granted by Mclvor in favour of RBC, dated August 12, 2016, securing the principal amount of \$6,000,000.00, plus interest at the rate of Prime plus 5%, plus costs on a solicitor and client full indemnity basis (the "**Collateral Mortgage**"). Attached to my Affidavit and marked as **Exhibit "Q"** is a copy of the Collateral Mortgage.
31. At all material times, the First Mclvor GSA and the Second Mclvor GSA have been perfected by registration at the APPR. Attached to my Affidavit and marked as **Exhibit "R"** is a debtor name search for Mclvor conducted at the APPR on August 18, 2022, evidencing perfection of RBC's security interest pursuant to the First Mclvor GSA and the Second Mclvor GSA.
32. The Collateral Mortgage was registered at the Alberta Land Titles Office on August 28, 2016, under Registration No. 161 203 509, against the Certificate of Title for the Mclvor Lands as evidenced by Exhibit "C" of my Affidavit.
33. To secure due payment and performance of all present and future indebtedness and liabilities of 985 to RBC, 985 granted to RBC the following:

Clerk's stamp:

COURT FILE NUMBER 2203 12557

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Edmonton

PLAINTIFF ROYAL BANK OF CANADA

DEFENDANTS FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED

DOCUMENT

BRIEF OF ROYAL BANK OF CANADA

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

MILLER THOMSON LLP
Counsel to the Respondent/Plaintiff
Barristers and Solicitors
2700, Commerce Place
10155-102 Street
Edmonton, AB, Canada T5J 4G8
Phone: 780.429.1751 Fax: 780.424.5866

Lawyer's Name: Susy M. Trace

Lawyer's Email: strace@millerthomson.com

File No.: 0255685.4

BENCH BRIEF OF THE APPLICANT, ROYAL BANK OF CANADA

DATE OF HEARING: AUGUST 23, 2022

61. RBC has not provided its written consent to the billing of the Business to be done through Delta Corp., nor has RBC provided its written consent to the transfer of the Business to any party. Further, RBC has not provided its written consent to the transfer of the accounts receivable to another financial institution or to Delta Corp. and has not provided its written consent to the change of ownership structure of the FMPC, 985, and McIvor, or in any way relating to the Business.

Beriault Affidavit at para 64.

62. Neither 52 Dental, Delta Corp., 52 Wellness, nor Fetoun are parties to the Security and they have not guaranteed the Indebtedness. RBC has added 52 Dental, Delta Corp., 52 Wellness, and Fetoun as additional debtors to its registrations made at the Alberta Personal Property Registry.

Beriault Affidavit at para 78.

63. RBC has lost confidence in Faissal's ability or willingness to operate and manage the Business in accordance with the term and conditions of the Security, and in a manner not prejudicial to RBC, as a result of the Transfer.

G. Related Party Payments and Payments to Other Creditors

64. RBC is also concerned about significant payments being made by FMPC from the FMPC Despot Account to related parties, creditors of related parties, and others.

I. Payments from FMPC to Delta Corp. and 52 Dental

65. Despite FMPC not being permitted to use the FMPC Credit Facilities for the benefit of or on behalf of any person other than FMPC, FMPC has paid at least the total sum of \$1,100,500.00 to Delta Corp. and 52 Dental in several tranches as follows:
- (a) the amount of \$830,000 was paid to Delta Corp., \$760,000 of which was paid in 2022 by way of 37 different cheques and \$70,000 of which was paid in December of 2021 by way of 3 separate cheques; and
 - (b) the amount of \$270,500 was paid to 52 Dental in 2022 by way of 23 cheques and one electronic transfer.

Beriault Affidavit at paras 65 and 71.

Footnote 21

Clerk's stamp:

COURT FILE NUMBER 2203 12557

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Edmonton

PLAINTIFF ROYAL BANK OF CANADA

DEFENDANTS FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED

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Counsel to the Respondent/Plaintiff
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2700, Commerce Place
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Phone: 780.429.1751 Fax: 780.424.5866

Lawyer's Name: Susy M. Trace

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62. Neither 52 Dental, Delta Corp., 52 Wellness, nor Fetoun are parties to the Security and they have not guaranteed the Indebtedness. RBC has added 52 Dental, Delta Corp., 52 Wellness, and Fetoun as additional debtors to its registrations made at the Alberta Personal Property Registry.

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- (a) the amount of \$830,000 was paid to Delta Corp., \$760,000 of which was paid in 2022 by way of 37 different cheques and \$70,000 of which was paid in December of 2021 by way of 3 separate cheques; and
 - (b) the amount of \$270,500 was paid to 52 Dental in 2022 by way of 23 cheques and one electronic transfer.

Beriault Affidavit at paras 65 and 71.

COURT FILE NUMBER 2203-12557

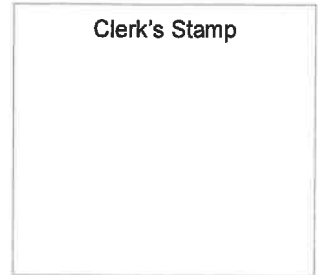
COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Edmonton

PLAINTIFF **ROYAL BANK OF CANADA**

DEFENDANTS **FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED**

DOCUMENT **AFFIDAVIT**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT CODY AND COMPANY LAW OFFICE
4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
Fax: (403) 556-1728

Our File No: 22364

AFFIDAVIT OF FETOUN AHMAD SWORN SEPTEMBER 8, 2022

I, FETOUN AHMAD, of the City of Red Deer, in the Province of Alberta, Make Oath and Say:

1. That I and my companies Delta Dental Corp, and 52 Dental Corporation, are Defendants in action number 2203-12557
2. As of December 14, 2022, I, Fetoun Ahmad, am the sole Director and Shareholder of Delta Dental Corp ("Delta Corp") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit A" is a copy of the Corporate Search for Delta Dental.

A handwritten signature in blue ink, appearing to be a stylized cursive name, located in the bottom right corner of the page.

30. 52 Dental has never used any of its equipment in the Red Deer Clinic and has never used any of the Red Deer Clinics equipment in its clinic or operation.
31. 52 Dental provides management services for the Calgary clinic which include managing all or most of the Calgary Clinic billing and payment of business expenses.
32. All patient charts are owned/controlled by the dentists practicing in the Calgary Clinic and not by 52 Dental. 52 Dental also does not have any ownership or control over the Red Deer Clinics patient charts. Attached hereto and marked as “**Exhibit J**” is a copy of Affidavit of Faissal Mouhamad sworn August 23, 2022.
33. 52 Dental maintains operating accounts at the Bank of Nova Scotia. The revenue of the Calgary clinic is received, and the Calgary clinics expenses are paid from the Bank of Nova Scotia account.
34. Faissal provides dental services at the Calgary clinic. Faissal is paid by 52 Dental for his services at the Calgary Clinic.
35. Faissal agreed to a loan in the amount of \$300,000 between himself and 52 Dental which accrues interest at a rate of 5% per annum. These payments were made by Faissal to 52 Dental from FMPC. The cheques written by FMPC to 52 Dental were salary payments owed to Faissal from working as a dentist, as opposed to receiving the payments himself, Faissal assigned these payments to 52 Dental as apart of their loan agreement. These payments were made in increments and 52 Dental has not yet received the entirety of the \$300,000 dollar loan. Attached hereto and marked as “**Exhibit K**” is a copy of the income statements from February 18, 2022 to June 27, 2022 and the Promissory Note for the loan.

Payments to Fetoun

36. The payments made to me from FMPC were paid as reimbursements for office expenses and maintenance. As well, Faissal paid his shareholder loan from FMPC directly to me, Fetoun, as I am the person who looks after our family expenses. Attached hereto and marked as “**Exhibit L**” is a copy of records detailing the payments made from FMPC to Fetoun.
37. Prior to December 2021, payments made to me from FMPC for management services which I provided to the Red Deer Clinic since 2018. Attached hereto and marked as “**Exhibit M**” is a copy of the Statement of Business or Professional Activity for the period 2018 to 2021.

Personal Property Registration

38. On August 30, 2022, I was provided a Personal Property Registry Search Result Report (“PPR”) for Faissal Mouhamad by my counsel. The PPR demonstrated that RBC had registered themselves as secured parties against myself and my companies as follows:

Footnote 22

COURT FILE NUMBER 2203-12557
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE Edmonton
PLAINTIFF ROYAL BANK OF CANADA



DEFENDANTS FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED

DOCUMENT AFFIDAVIT

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4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
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Our File No: 22364

AFFIDAVIT OF FETOUN AHMAD SWORN SEPTEMBER 8, 2022

I, FETOUN AHMAD, of the City of Red Deer, in the Province of Alberta, Make Oath and Say:

1. That I and my companies Delta Dental Corp, and 52 Dental Corporation, are Defendants in action number 2203-12557
2. As of December 14, 2022, I, Fetoun Ahmad, am the sole Director and Shareholder of Delta Dental Corp ("Delta Corp") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit A" is a copy of the Corporate Search for Delta Dental.

A handwritten signature in blue ink, appearing to be a stylized 'S' or similar character.

- a. Delta Corp – 22072128251 Registered on July 21, 2022;
- b. 52 Dental - 22072128251 Registered on July 21, 2022;
- c. Fetoun Ahmad – 22081709434 Registered on August 17, 2022;
- d. Fetoun Ahmad – 22081711767 Registered on August 17, 2022;
(Collectively known as the “registrations”)

Attached hereto and marked as “**Exhibit N**” is a copy of the registration search conducted on August 25, 2022.

39. The registrations were done without a court order, my permission or my consent.
40. My counsel has drafted an application to strike the PPR registrations against me, Delta Corp, and 52 Dental as they were improperly registered. This will be filed and served pending the outcome of the upcoming September 14, 2022 application.
41. The Security Agreement registered on April 26, 2022 with registration number 22042607078 registered by CWB National Leasing Inc. (“CWB”) is to my knowledge for the leasing of equipment for the Red Deer Clinic. To the best of my knowledge, there was a lease entered into between Delta Dental, Faissal, FMPC and CWB prior to the creation of 52 Dental. I do not have knowledge of this lease as I, 52 Dental and Delta Corp were not a party to this agreement. The registration against 52 Dental was done without a court order, my permission, or my consent. Attached hereto and marked as “**Exhibit O**” is a copy of the registration search conducted on August 25, 2022.
42. After informing Faissal of this registration in September 2022, Faissal provided me with a copy of the only lease agreement signed with CWB which demonstrates that neither I nor 52 Dental, and Delta Corp were parties to this agreement. Attached hereto and marked as “**Exhibit P**” is a copy of the lease agreement with CWB.

Reliance

43. I am relying entirely on the information provided to me in the RBC Affidavit as well as the Statement of Claim with regards to all loans entered into by Faissal on behalf of his companies.
44. RBC indicated that FMPC has defaulted in acting within the terms of its loan agreement by transferring property out of RBC’s loan account without RBC’s consent and outside of the ordinary course of business for the benefit of another person other than FMPC. Attached hereto and marked as “**Exhibit Q**” is a copy of line 57 of the Statement of Claim.
45. There is no indication in the Statement of Claim that FMPC was insolvent or could not pay their debts nor does the Statement of Claim indicate that FMPC failed to make any of their loan payments.
46. On or about July 28, 2022, RBC demanded repayment from FMPC of the indebtedness owed from FMPC to RBC. RBC also demanded repayment for the McIvor Loan. Attached hereto

Footnote 23

COURT FILE NUMBER 2203-12557

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Edmonton

PLAINTIFF **ROYAL BANK OF CANADA**

DEFENDANTS **FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED**

DOCUMENT **AFFIDAVIT**



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4905C 50 Ave
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20. Faissal under his trade name Delta Dental provides dental services at the Red Deer clinic.
21. Faissal was given signing authority on Delta Corp's Bank of Nova scotia account on July 6, 2022 only due to the fact that I was about to leave the country for medical treatment. This was done to avoid any interruptions in the business' payables.
22. All patient charts are owned/controlled by the dentists practicing in the Red Deer Clinic and not by Delta Corp. Delta Corp also does not have any ownership or control over the Calgary Clinics patient charts. Attached hereto and marked as "**Exhibit H**" is a copy of Affidavit of Faissal Mouhamad sworn August 23, 2022.
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24. I am not a dentist, licensed or otherwise. However, as far as I am aware, the ownership of dental clinics in Alberta is not limited to licensed dentists. Rather, the Alberta Dental Association and College (the "**College**") requires a licensed dentist to have care and control over patient files/charts and over any drugs, medications and controlled substances. At all times, I have complied with the College's requirements in that regard.

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25. 52 Dental was incorporated for the purpose of the management and ownership of the 52 Dental Clinic which is a dental clinic operating in Suite 100-3505 52 Street SE, Calgary, Alberta (the "Calgary Clinic").
26. The Calgary Clinic opened on June 11, 2022.
27. 52 Dental leases office space from 52 Wellness who owns the building in which 52 Dental operates.
28. 52 Dental does not have any involvement with Delta Corp or the Red Deer Clinic and is a separate and distinct entity. The only overlap is that Faissal and Dr. Ghalib Hadi both provide dental services out of the Calgary Clinic and the Red Deer Clinic.
29. 52 Dental owns all the leasehold improvements, administrative management equipment, and hygiene care equipment while the balance of the equipment is leased by 52 Dental. All equipment is solely used in the Calgary Clinic. Attached hereto and marked as "**Exhibit I**" is a copy of 52 Dental's equipment lease agreement.

Footnote 24

COURT FILE NUMBER 2203-12557

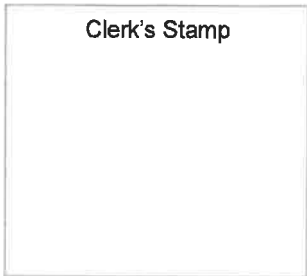
COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Edmonton

PLAINTIFF **ROYAL BANK OF CANADA**

DEFENDANTS **FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED**

DOCUMENT **AFFIDAVIT**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

CODY AND COMPANY LAW OFFICE
4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
Fax: (403) 556-1728

Our File No: 22364

AFFIDAVIT OF FETOUN AHMAD SWORN SEPTEMBER 14, 2022

I, FETOUN AHMAD, of the City of Red Deer, in the Province of Alberta, Make Oath and Say:

1. That I and my companies Delta Dental Corp, and 52 Dental Corporation, are Defendants in action number 2203-12557
2. As of December 14, 2022, I, Fetoun Ahmad, am the sole Director and Shareholder of Delta Dental Corp ("Delta Corp") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit A" is a copy of the Corporate Search for Delta Dental.

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and marked as “**Exhibit R**” is a copy of lines 58-60 of the Statement of Claim, RBC Brief lines 97-98.

47. It was only after RBC called for the repayments of the FMPC loan that FMPC defaulted in repayment of the loans in their entirety. Attached hereto and marked as “**Exhibit S**” is a copy of lines 58-65 of the Statement of Claim.
48. RBC then rushed to get Judgements against FMPC, McIvor, and all parties that provided security for FMPC’s loan on August 10, 2022 as well as including myself, Delta Corp, and 52 Dental in their claim. Attached hereto and marked as “**Exhibit T**” is a copy of lines 68-77 of the Statement of Claim.
49. It is my understanding that the loan was recalled as a result of breach of contract and not insolvency as nothing in RBC’s Statement of Claim or RBC’s Affidavit have indicated to me that FMPC was bankrupt or contemplating bankruptcy.
50. Neither I nor 52 Dental or Delta Corp accepted any transfer from FMPC knowing that it could affect FMPC’s bankruptcy position as all transfers from FMPC were accepted in the ordinary course of business.
51. It is my understanding from RBC’s Affidavit that RBC is aware that FMPC and its guarantors are not insolvent as the FMPC loan and McIvor Loan were guaranteed by the Dewinton Property which is sufficient to make RBC whole in terms of repayment of the loans. RBC has first interest in receiving payment from this sale as they are the first registered mortgagors on the title in the amount of \$6,000,000.00 whereas FMPCs indebtedness is currently \$632,627.73 and McIvors indebtedness is \$2,504,407.54 As well, RBC is aware of the impending sale of the Red Deer Clinic. Therefore, there is ample capital which RBC has a security interest over which would allow for repayment of the FMPC loan. Attached hereto and marked as “**Exhibit U**” is a copy of lines 92, 97, 100 and 103 of the RBCs Affidavit.
52. On August 18, 2022, a bailiff sized the equipment and inventory of the Red Deer Clinic and left the seized property on a Bailee’s Undertaking on the instructions of RBC. Attached hereto and marked as “**Exhibit V**” is a copy of para 127 of RBCs Affidavit.
53. I, Fetoun Ahmad, was not physically present before the commissioner, but I affirmed and virtually signed this Affidavit according to the remote signing principles as set out on the Court of Queen’s Bench of Alberta.
54. This Affidavit is made in support of an Order directing the Plaintiff to release me, Delta Dental, and 52 Dental as Defendants in this action, costs of this application, and any other such further relief as deemed necessary and reasonable by this Honourable Court.

Footnote 25

COURT FILE NUMBER 2203-12557

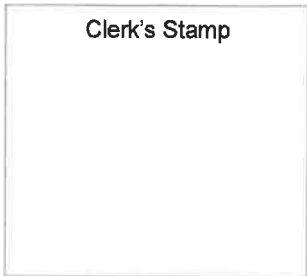
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30. 52 Dental has never used any of its equipment in the Red Deer Clinic and has never used any of the Red Deer Clinics equipment in its clinic or operation.
31. 52 Dental provides management services for the Calgary clinic which include managing all or most of the Calgary Clinic billing and payment of business expenses.
32. All patient charts are owned/controlled by the dentists practicing in the Calgary Clinic and not by 52 Dental. 52 Dental also does not have any ownership or control over the Red Deer Clinics patient charts. Attached hereto and marked as “Exhibit J” is a copy of Affidavit of Faissal Mouhamad sworn August 23, 2022.
33. 52 Dental maintains operating accounts at the Bank of Nova Scotia. The revenue of the Calgary clinic is receipted, and the Calgary clinics expenses are paid from the Bank of Nova Scotia account.
34. Faissal provides dental services at the Calgary clinic. Faissal is paid by 52 Dental for his services at the Calgary Clinic.
35. Faissal agreed to a loan in the amount of \$300,000 between himself and 52 Dental which accrues interest at a rate of 5% per annum. These payments were made by Faissal to 52 Dental from FMPC. The cheques written by FMPC to 52 Dental were salary payments owed to Faissal from working as a dentist, as opposed to receiving the payments himself, Faissal assigned these payments to 52 Dental as apart of their loan agreement. These payments were made in increments and 52 Dental has not yet received the entirety of the \$300,000 dollar loan. Attached hereto and marked as “Exhibit K” is a copy of the income statements from February 18, 2022 to June 27, 2022 and the Promissory Note for the loan.

Payments to Fetoun

36. The payments made to me from FMPC were paid as reimbursements for office expenses and maintenance. As well, Faissal paid his shareholder loan from FMPC directly to me, Fetoun, as I am the person who looks after our family expenses. Attached hereto and marked as “Exhibit L” is a copy of records detailing the payments made from FMPC to Fetoun.
37. Prior to December 2021, payments made to me from FMPC for management services which I provided to the Red Deer Clinic since 2018. Attached hereto and marked as “Exhibit M” is a copy of the Statement of Business or Professional Activity for the period 2018 to 2021.

Personal Property Registration

38. On August 30, 2022, I was provided a Personal Property Registry Search Result Report (“PPR”) for Faissal Mouhamad by my counsel. The PPR demonstrated that RBC had registered themselves as secured parties against myself and my companies as follows:



Footnote 26

COURT FILE NUMBER 2203-12557

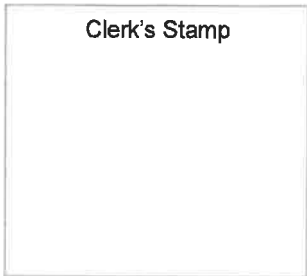
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A handwritten signature in blue ink, appearing to be "Fetoun Ahmad", written in a cursive style.

3. As of December 6, 2021, I, Fetoun Ahmad, am the sole Director and Shareholder of 52 Dental Corporation (“52 Dental”) which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as “**Exhibit B**” is a copy of the Corporate Search for 52 Dental Corporation.
4. I am married to the Defendant Faissal Mouhamad (“Faissal”) who is a dentist by trade. I have no part in any of his companies or businesses which include, Faissal Mouhamad Professional Corporation (“FMPC”), McIvor Developments Ltd. (“McIvor”), 985842 Alberta Ltd., 52 Wellness Centre Inc. (“52 Wellness”), Paradise McIvor Developments Ltd., and Michael Dave Management Ltd (collectively referred to as “Faissal’s Companies”).

The Loans

5. According to the Plaintiff, my husband, Faissal, on behalf of FMPC, entered into a loan agreement (“FMPC Loan”) with the Royal Bank of Canada (“RBC”). Prior to being formally served the Affidavit of Jocelyn Beriault (“RBCs Affidavit”), the Senior Manager of Special Loans and Advisory Services – Western Region with RBC, on August 23, 2022, I had no knowledge of these dealings. Attached hereto and marked as “**Exhibit C**” is a copy of the RBC’s Affidavit para 21.
6. According to the Plaintiff, Faissal also entered in a loan agreement between McIvor and RBC (the “McIvor Loan”). Prior to being formally served RBCs Affidavit, on August 23, 2022, I had no knowledge of these dealings. Attached hereto and marked as “**Exhibit D**” is a copy of the RBCs Affidavit para 23.
7. I was not privy to any information relating to any loans Faissal or Faissal’s Companies currently have or have had in the past with RBC.
8. I had not been apart of or aware of any contract negotiations for the McIvor loan or the FMPC loan and do not have any knowledge of the loan terms that FMPC or McIvor were to abide by until receiving RBCs affidavit.
9. Neither I nor my companies, Delta Corp and 52 Dental, are, or were guarantors, or provided any security for any Loan Agreements entered into by Faissal or any of Faissal’s companies. Attached hereto and marked as “**Exhibit E**” is a copy of RBCs Affidavit paras 28, 30, and 32.
10. I am informed by my Lawyer and do verily believe same to be true that RBC has brought me, 52 Dental, and Delta Corp on as Defendants in this action as they are attempting to bring my

companies into a receivership on a loan to which neither I nor 52 dental, and Delta Corp were privy.

Delta Dental Corp

11. Delta Corp was originally incorporated by Faissal on August 28, 2017 and Faissal was the sole director at that time. Delta Corp was struck from the Alberta Corporate Registry for failure to file annual returns on February 2, 2020. Delta Corp was revived by a solicitor on May 18, 2021 and Faissal was registered as its sole director and shareholder at that time. Faissal then changed the director and shareholder of Delta Corp to myself on December 14, 2021. Attached hereto and marked as “**Exhibit F**” is a copy of the Certificate of Revival of Delta Corp.
12. At the time of transferring Delta Corp into my name, Delta Corp had no value and no assets.
13. My company, Delta Corp, was revived for the purpose of managing Delta Dental Clinic located at 7151 Gaetz Avenue E, Red Deer, Alberta (the “Red Deer Clinic”) which is a dentistry clinic in Red Deer, Alberta and is owned by Faissal, FMPC, and Michael Dave Management Ltd. and Faissal is the sole director and shareholder.
14. Delta Corp was originally incorporated with the intention of doing the management for the Red Deer Clinic. However, Faissal decided to manage the Red Deer Clinic through FMPC. Therefore, Faissal allowed Delta Corp to be struck from the record as it was not being used. Later, Faissal decided he no longer wanted the management of the Red Deer Clinic run through FMPC as he wanted to focus on his clinical work and mentoring. He then revived Delta Corp and transferred it to me and contracted with me to take over all management of the Red Deer Clinic.
15. The management services provided by Delta Corp to the Red Deer Clinic include providing dental supplies, maintenance, lab fees, upkeep, office supplies, janitorial services, etc.
16. In terms of Delta Corps financials, Delta Corp began handling the Red Deer Clinics payables on December 15, 2021. For a time, FMPC was still receiving the billables. Attached hereto and marked as “**Exhibit G**” is a copy of Delta Corps bank statements.
17. FMPC wrote cheques to Delta Corp as payment/reimbursement of and for Delta Corp’s management of and payment of the payables for the Red Deer Clinic as all or substantially all of the Red Deer Clinics revenues continued to go to FMPC.
18. It was not until approximately April 15, 2022 that Delta Corp began also managing the Red Deer Clinics billing/receivables. Attached hereto and marked as “**Exhibit G**” is a copy of Delta Corps bank statements.

Footnote 27

COURT FILE NUMBER 2203-12557

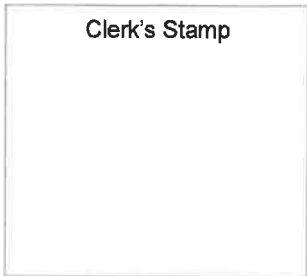
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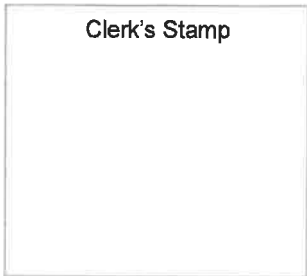
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Footnote 29



Province of Alberta

FRAUDULENT PREFERENCES ACT

Revised Statutes of Alberta 2000
Chapter F-24

Current as of January 1, 2002

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FRAUDULENT PREFERENCES ACT

Chapter F-24

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- 11 Proceeds of unlawfully transferred property
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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Fraudulent transfers

- 1 Subject to sections 6 to 9, every gift, conveyance, assignment, transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made
 - (a) by a person at a time when the person is in insolvent circumstances or is unable to pay the person's debts in full or knows that the person is on the eve of insolvency, and
 - (b) with intent to defeat, hinder, delay or prejudice the person's creditors or any one or more of them,

is void as against any creditor or creditors injured, delayed or prejudiced.

RSA 1980 cF-18 s1

Intent to prefer

2 Subject to sections 6 to 9, every gift, conveyance, assignment, transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made

- (a) by a person at a time when the person is in insolvent circumstances or is unable to pay the person's debts in full or knows that the person is on the eve of insolvency, and
- (b) to or for a creditor with intent to give that creditor preference over the other creditors of the debtor or over any one or more of them,

is void as against the creditor or creditors injured, delayed, prejudiced or postponed.

RSA 1980 cF-18 s2

Preferential effect

3 Subject to sections 6 to 9, every gift, conveyance, assignment, transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made

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- (b) to or for a creditor and having the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them,

is, in and with respect to any action that within one year after the transaction is brought to impeach or set aside the transaction, void as against the creditor or creditors injured, delayed, prejudiced or postponed.

RSA 1980 cF-18 s3

What constitutes transaction

4(1) A transaction is deemed to be one that has the effect of giving a creditor a preference over other creditors, within the meaning of

Footnote 30

COURT FILE NUMBER 2203-12557

COURT COURT OF QUEEN'S BENCH OF ALBERTA

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The Loans

5. According to the Plaintiff, my husband, Faissal, on behalf of FMPC, entered into a loan agreement (“FMPC Loan”) with the Royal Bank of Canada (“RBC”). Prior to being formally served the Affidavit of Jocelyn Beriault (“RBCs Affidavit”), the Senior Manager of Special Loans and Advisory Services – Western Region with RBC, on August 23, 2022, I had no knowledge of these dealings. Attached hereto and marked as “**Exhibit C**” is a copy of the RBC’s Affidavit para 21.
6. According to the Plaintiff, Faissal also entered in a loan agreement between McIvor and RBC (the “McIvor Loan”). Prior to being formally served RBCs Affidavit, on August 23, 2022, I had no knowledge of these dealings. Attached hereto and marked as “**Exhibit D**” is a copy of the RBCs Affidavit para 23.
7. I was not privy to any information relating to any loans Faissal or Faissal’s Companies currently have or have had in the past with RBC.
8. I had not been apart of or aware of any contract negotiations for the McIvor loan or the FMPC loan and do not have any knowledge of the loan terms that FMPC or McIvor were to abide by until receiving RBCs affidavit.
9. Neither I nor my companies, Delta Corp and 52 Dental, are, or were guarantors, or provided any security for any Loan Agreements entered into by Faissal or any of Faissal’s companies. Attached hereto and marked as “**Exhibit E**” is a copy of RBCs Affidavit paras 28, 30, and 32.
10. I am informed by my Lawyer and do verily believe same to be true that RBC has brought me, 52 Dental, and Delta Corp on as Defendants in this action as they are attempting to bring my

30. 52 Dental has never used any of its equipment in the Red Deer Clinic and has never used any of the Red Deer Clinics equipment in its clinic or operation.
31. 52 Dental provides management services for the Calgary clinic which include managing all or most of the Calgary Clinic billing and payment of business expenses.
32. All patient charts are owned/controlled by the dentists practicing in the Calgary Clinic and not by 52 Dental. 52 Dental also does not have any ownership or control over the Red Deer Clinics patient charts. Attached hereto and marked as “**Exhibit J**” is a copy of Affidavit of Faissal Mouhamad sworn August 23, 2022.
33. 52 Dental maintains operating accounts at the Bank of Nova Scotia. The revenue of the Calgary clinic is received, and the Calgary clinics expenses are paid from the Bank of Nova Scotia account.
34. Faissal provides dental services at the Calgary clinic. Faissal is paid by 52 Dental for his services at the Calgary Clinic.
35. Faissal agreed to a loan in the amount of \$300,000 between himself and 52 Dental which accrues interest at a rate of 5% per annum. These payments were made by Faissal to 52 Dental from FMPC. The cheques written by FMPC to 52 Dental were salary payments owed to Faissal from working as a dentist, as opposed to receiving the payments himself, Faissal assigned these payments to 52 Dental as apart of their loan agreement. These payments were made in increments and 52 Dental has not yet received the entirety of the \$300,000 dollar loan. Attached hereto and marked as “**Exhibit K**” is a copy of the income statements from February 18, 2022 to June 27, 2022 and the Promissory Note for the loan.

Payments to Fetoun

36. The payments made to me from FMPC were paid as reimbursements for office expenses and maintenance. As well, Faissal paid his shareholder loan from FMPC directly to me, Fetoun, as I am the person who looks after our family expenses. Attached hereto and marked as “**Exhibit L**” is a copy of records detailing the payments made from FMPC to Fetoun.
37. Prior to December 2021, payments made to me from FMPC for management services which I provided to the Red Deer Clinic since 2018. Attached hereto and marked as “**Exhibit M**” is a copy of the Statement of Business or Professional Activity for the period 2018 to 2021.

Personal Property Registration

38. On August 30, 2022, I was provided a Personal Property Registry Search Result Report (“PPR”) for Faissal Mouhamad by my counsel. The PPR demonstrated that RBC had registered themselves as secured parties against myself and my companies as follows:

Footnote 31

COURT FILE NUMBER 2203-12557
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE Edmonton
PLAINTIFF ROYAL BANK OF CANADA



DEFENDANTS FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED

DOCUMENT AFFIDAVIT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT CODY AND COMPANY LAW OFFICE
4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
Fax: (403) 556-1728

Our File No: 22364

AFFIDAVIT OF FETOUN AHMAD SWORN SEPTEMBER 8, 2022

I, FETOUN AHMAD, of the City of Red Deer, in the Province of Alberta, Make Oath and Say:

1. That I and my companies Delta Dental Corp, and 52 Dental Corporation, are Defendants in action number 2203-12557
2. As of December 14, 2022, I, Fetoun Ahmad, am the sole Director and Shareholder of Delta Dental Corp ("Delta Corp") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit A" is a copy of the Corporate Search for Delta Dental.

A handwritten signature in blue ink, appearing to be a stylized 'S' or similar character.

- and marked as “**Exhibit R**” is a copy of lines 58-60 of the Statement of Claim, RBC Brief lines 97-98.
47. It was only after RBC called for the repayments of the FMPC loan that FMPC defaulted in repayment of the loans in their entirety. Attached hereto and marked as “**Exhibit S**” is a copy of lines 58-65 of the Statement of Claim.
 48. RBC then rushed to get Judgements against FMPC, McIvor, and all parties that provided security for FMPC’s loan on August 10, 2022 as well as including myself, Delta Corp, and 52 Dental in their claim. Attached hereto and marked as “**Exhibit T**” is a copy of lines 68-77 of the Statement of Claim.
 49. It is my understanding that the loan was recalled as a result of breach of contract and not insolvency as nothing in RBC’s Statement of Claim or RBC’s Affidavit have indicated to me that FMPC was bankrupt or contemplating bankruptcy.
 50. Neither I nor 52 Dental or Delta Corp accepted any transfer from FMPC knowing that it could affect FMPC’s bankruptcy position as all transfers from FMPC were accepted in the ordinary course of business.
 51. It is my understanding from RBC’s Affidavit that RBC is aware that FMPC and its guarantors are not insolvent as the FMPC loan and McIvor Loan were guaranteed by the Dewinton Property which is sufficient to make RBC whole in terms of repayment of the loans. RBC has first interest in receiving payment from this sale as they are the first registered mortgagors on the title in the amount of \$6,000,000.00 whereas FMPCs indebtedness is currently \$632,627.73 and McIvors indebtedness is \$2,504,407.54 As well, RBC is aware of the impending sale of the Red Deer Clinic. Therefore, there is ample capital which RBC has a security interest over which would allow for repayment of the FMPC loan. Attached hereto and marked as “**Exhibit U**” is a copy of lines 92, 97, 100 and 103 of the RBCs Affidavit.
 52. On August 18, 2022, a bailiff sized the equipment and inventory of the Red Deer Clinic and left the seized property on a Bailee’s Undertaking on the instructions of RBC. Attached hereto and marked as “**Exhibit V**” is a copy of para 127 of RBCs Affidavit.
 53. I, Fetoun Ahmad, was not physically present before the commissioner, but I affirmed and virtually signed this Affidavit according to the remote signing principles as set out on the Court of Queen’s Bench of Alberta.
 54. This Affidavit is made in support of an Order directing the Plaintiff to release me, Delta Dental, and 52 Dental as Defendants in this action, costs of this application, and any other such further relief as deemed necessary and reasonable by this Honourable Court.

Footnote 32

COURT FILE NUMBER 2203-12557
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE Edmonton
PLAINTIFF ROYAL BANK OF CANADA



DEFENDANTS FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED

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Olds, Alberta T4H 1P5
Attention: Carli Sylvestre
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Fax: (403) 556-1728

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2. As of December 14, 2022, I, Fetoun Ahmad, am the sole Director and Shareholder of Delta Dental Corp ("Delta Corp") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit A" is a copy of the Corporate Search for Delta Dental.

A handwritten signature in blue ink, appearing to be a stylized cursive name, located in the bottom right corner of the page.

3. As of December 6, 2021, I, Fetoun Ahmad, am the sole Director and Shareholder of 52 Dental Corporation (“52 Dental”) which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as “**Exhibit B**” is a copy of the Corporate Search for 52 Dental Corporation.
4. I am married to the Defendant Faissal Mouhamad (“Faissal”) who is a dentist by trade. I have no part in any of his companies or businesses which include, Faissal Mouhamad Professional Corporation (“FMPC”), McIvor Developments Ltd. (“McIvor”), 985842 Alberta Ltd., 52 Wellness Centre Inc. (“52 Wellness”), Paradise McIvor Developments Ltd., and Michael Dave Management Ltd (collectively referred to as “Faissal’s Companies”).

The Loans

5. According to the Plaintiff, my husband, Faissal, on behalf of FMPC, entered into a loan agreement (“FMPC Loan”) with the Royal Bank of Canada (“RBC”). Prior to being formally served the Affidavit of Jocelyn Beriault (“RBCs Affidavit”), the Senior Manager of Special Loans and Advisory Services – Western Region with RBC, on August 23, 2022, I had no knowledge of these dealings. Attached hereto and marked as “**Exhibit C**” is a copy of the RBC’s Affidavit para 21.
6. According to the Plaintiff, Faissal also entered in a loan agreement between McIvor and RBC (the “McIvor Loan”). Prior to being formally served RBCs Affidavit, on August 23, 2022, I had no knowledge of these dealings. Attached hereto and marked as “**Exhibit D**” is a copy of the RBCs Affidavit para 23.
7. I was not privy to any information relating to any loans Faissal or Faissal’s Companies currently have or have had in the past with RBC.
8. I had not been apart of or aware of any contract negotiations for the McIvor loan or the FMPC loan and do not have any knowledge of the loan terms that FMPC or McIvor were to abide by until receiving RBCs affidavit.
9. Neither I nor my companies, Delta Corp and 52 Dental, are, or were guarantors, or provided any security for any Loan Agreements entered into by Faissal or any of Faissal’s companies. Attached hereto and marked as “**Exhibit E**” is a copy of RBCs Affidavit paras 28, 30, and 32.
10. I am informed by my Lawyer and do verily believe same to be true that RBC has brought me, 52 Dental, and Delta Corp on as Defendants in this action as they are attempting to bring my

Footnote 33

COURT FILE NUMBER 2203-12557
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE Edmonton
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3. As of December 6, 2021, I, Fetoun Ahmad, am the sole Director and Shareholder of 52 Dental Corporation (“52 Dental”) which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as “**Exhibit B**” is a copy of the Corporate Search for 52 Dental Corporation.
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9. Neither I nor my companies, Delta Corp and 52 Dental, are, or were guarantors, or provided any security for any Loan Agreements entered into by Faissal or any of Faissal’s companies. Attached hereto and marked as “**Exhibit E**” is a copy of RBCs Affidavit paras 28, 30, and 32.
10. I am informed by my Lawyer and do verily believe same to be true that RBC has brought me, 52 Dental, and Delta Corp on as Defendants in this action as they are attempting to bring my

Footnote 34

Fraser River Pile & Dredge Ltd. *Appellant*

v.

Can-Dive Services Ltd. *Respondent*

INDEXED AS: FRASER RIVER PILE & DREDGE LTD. v. CAN-DIVE SERVICES LTD.

File No.: 26415.

1999: February 25; 1999: September 10.

Present: Gonthier, Cory, McLachlin, Iacobucci, Major, Bastarache and Binnie JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Contracts — Privity of Contract — Insurance policy — Doctrine of principled exception to privity of contract — Insurance policy including waiver of subrogation — Coverage extending to charterers — Charterer negligent in sinking of barge — Barge owner recovering for loss and agreeing to sue charterer — Whether charterer can rely on waiver of subrogation clause to defend against subrogated action initiated by barge owner's insurers on basis of principled exception to the privity of contract doctrine.

A barge owned by the appellant sank while chartered to the respondent. The appellant's insurance policy included clauses waiving subrogation and extending coverage to affiliated companies and charterers. The insurers paid the appellant the fixed amount stipulated in the policy for the loss of the barge. The appellant made a further agreement with the insurers to pursue a negligence action against the respondent and to waive any right to the waiver of subrogation clause. The negligence action against the respondent was allowed at trial, and dismissed on appeal. At issue here is whether a third-party beneficiary can rely on a waiver of subrogation clause to defend against a subrogated action on the basis of a principled exception to the privity of contract doctrine.

Fraser River Pile & Dredge Ltd. *Appelante*

c.

Can-Dive Services Ltd. *Intimée*

RÉPERTORIÉ: FRASER RIVER PILE & DREDGE LTD. c. CAN-DIVE SERVICES LTD.

N° du greffe: 26415.

1999: 25 février; 1999: 10 septembre.

Présents: Les juges Gonthier, Cory, McLachlin, Iacobucci, Major, Bastarache et Binnie.

EN APPEL DE LA COUR D'APPEL DE LA COLOMBIE-BRITANNIQUE

Contrats — Lien contractuel — Police d'assurance — Théorie de l'exception fondée sur des principes à la règle du lien contractuel — Police d'assurance comportant une clause de renonciation à la subrogation — Assurance protégeant les affrèteurs — Négligence de la part de l'affrèteur dans le naufrage d'une barge — Propriétaire de la barge indemnisé de la perte subie et acceptant de poursuivre l'affrèteur — L'affrèteur peut-il invoquer une clause de renonciation à la subrogation pour se défendre contre une action subrogatoire intentée par les assureurs du propriétaire de la barge en vertu d'une exception fondée sur des principes à la règle du lien contractuel?

Une barge appartenant à l'appelante a coulé alors qu'elle était affrétée à l'intimée. La police d'assurance de l'appelante comportait des clauses de renonciation à la subrogation et protégeait les sociétés affiliées et les affrèteurs. Les assureurs ont versé à l'appelante le montant forfaitaire prévu par la police pour la perte de la barge. L'appelante a conclu une autre entente avec les assureurs en vue d'intenter une action fondée sur la négligence contre l'intimée et de renoncer à tout droit susceptible de découler de la clause de renonciation à la subrogation. L'action pour négligence contre l'intimée a été accueillie en première instance, mais rejetée en appel. Il s'agit en l'espèce de savoir si un tiers bénéficiaire peut invoquer une clause de renonciation à la subrogation pour se défendre contre une action subrogatoire intentée en vertu d'une exception fondée sur des principes à la règle du lien contractuel.

gated action on the basis of the agency exception to the doctrine of privity of contract?

- b. Is Can-Dive, as a third-party beneficiary under the insurance policy pursuant to the waiver of subrogation clause, entitled to rely on that clause to defend against the insurer's subrogated action on the basis of the principled exception to the privity of contract doctrine established by the Court's decision in *London Drugs*?

IV. Analysis

- A. *Is Can-Dive, as a third-party beneficiary under the insurance policy pursuant to the waiver of subrogation clause, entitled to rely on that clause to defend against the insurer's subrogated action on the basis of the agency exception to the doctrine of privity of contract?*

The entirety of the dispute between the parties concerns the legal effect to be given to the waiver of subrogation contained in Clause 17 of the appellant Fraser River's contract of insurance, which reads as follows:

17. SUBROGATION AND WAIVER OF SUBROGATION CLAUSE

In the event of any payment under this Policy, the Insurers shall be subrogated to all the Insured's rights of recovery therefor, and the Insured shall execute all papers required and shall do everything that may be necessary to secure such rights, but it is agreed that the Insurers waive any right of subrogation against:

. . . .

- (b) any charterer(s) and/or operator(s) and/or lessee(s) and/or mortgagee(s). . . .

The respondent Can-Dive is seeking to rely on the waiver of subrogation clause contained in the policy to defend against this subrogated action in negligence. As a general rule, however, the doctrine of privity provides that a contract can neither

fondée sur le mandat à la règle du lien contractuel?

- b. En tant que tiers bénéficiaire au sens de la clause de renonciation à la subrogation contenue dans la police d'assurance, Can-Dive a-t-elle le droit d'invoquer cette clause pour se défendre contre l'action subrogatoire intentée par l'assureur, compte tenu de l'exception fondée sur des principes à la règle du lien contractuel, que notre Cour a établie dans l'arrêt *London Drugs*?

IV. Analyse

- A. *En tant que tiers bénéficiaire au sens de la clause de renonciation à la subrogation contenue dans la police d'assurance, Can-Dive a-t-elle le droit d'invoquer cette clause pour se défendre contre l'action subrogatoire intentée par l'assureur, compte tenu de l'exception fondée sur le mandat à la règle du lien contractuel?*

Le différend qui oppose les parties porte entièrement sur l'effet juridique qui doit être donné à la renonciation à la subrogation contenue dans la clause 17 du contrat d'assurance de l'appelante Fraser River, dont voici le libellé:

[TRADUCTION]

17. CLAUDE DE SUBROGATION ET DE RENONCIATION À LA SUBROGATION

En cas de paiement effectué en vertu de la présente police, les assureurs seront subrogés dans tous les droits de recouvrement de l'assuré à cet égard, et l'assuré signera tous les documents requis et fera toute chose qui pourra être nécessaire pour garantir ces droits, mais il est convenu que les assureurs renoncent à tout droit de subrogation contre:

. . . .

- b) un ou des affréteurs, exploitants, preneurs à bail ou créanciers hypothécaires. . . .

L'intimée Can-Dive cherche à invoquer la clause de renonciation à la subrogation contenue dans la police pour se défendre contre la présente action subrogatoire fondée sur la négligence. En règle générale, toutefois, la règle du lien contrac-

21

22

confer rights nor impose obligations on third parties. This appeal is concerned only with the former situation, namely, circumstances in which a third party is seeking to obtain a benefit or right established in its favour pursuant to the terms of the contract. The Court is not called on to address the situation in which a contract imposes obligations on a third party, and I stress that nothing in these reasons should be taken as applicable to the law in this area.

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Although the doctrine of privity would normally be fatal to its case, Can-Dive submits that the principle of agency applies to deem Can-Dive a party to the contract in law, if not in fact, such that privity is no longer a concern. Because of the approach I intend to take to this case, I do not find it necessary to deal with the argument that Can-Dive may rely on the waiver of subrogation clause on this basis. In so stating, I do not wish to be taken as either agreeing or disagreeing with Esson J.A.'s conclusions on this issue. Instead, I prefer to adopt the approach set out in *London Drugs*, *supra*, and consider whether the doctrine of privity should be relaxed in these circumstances.

B. *Is Can-Dive, as a third-party beneficiary under the insurance policy pursuant to the waiver of subrogation clause, entitled to rely on that clause to defend against the insurer's subrogated action on the basis of the principled exception to the privity of contract doctrine established by the Court's decision in London Drugs?*

1. *London Drugs* and a Principled Exception to the Doctrine of Privity of Contract

24

As stated above, Can-Dive's position is that of a third-party beneficiary who normally would be precluded from enforcing or relying on the terms of the policy in effect between Fraser River and its insurers. Accordingly, it is necessary to consider the legal status of the waiver of subrogation clause in light of the Court's decision in *London Drugs*.

tuel prévoit qu'un contrat ne peut ni conférer des droits ni imposer des obligations à des tiers. Le présent pourvoi vise uniquement la première situation, c'est-à-dire celle où un tiers cherche à obtenir un avantage ou un droit établi en sa faveur conformément au contrat. La Cour n'est pas invitée à examiner le cas du contrat qui impose des obligations à un tiers, et je souligne que rien dans les présents motifs ne doit être interprété comme s'appliquant au droit dans ce domaine.

Quoique la règle du lien contractuel lui serait normalement fatale, Can-Dive soutient que le principe du mandat permet de la considérer comme étant une partie au contrat en droit, voire dans les faits, de sorte que le lien contractuel n'est plus un problème. En raison de la façon dont j'entends aborder la présente affaire, je juge inutile d'examiner l'argument selon lequel Can-Dive peut invoquer la clause de renonciation à la subrogation pour ce motif. En affirmant cela, je ne veux pas que l'on croie que j'approuve ou que je rejette les conclusions du juge Esson sur ce point. Je préfère plutôt adopter la méthode énoncée dans l'arrêt *London Drugs*, précité, et examiner s'il y a lieu d'assouplir la règle du lien contractuel dans les circonstances.

B. *En tant que tiers bénéficiaire au sens de la clause de renonciation à la subrogation contenue dans la police d'assurance, Can-Dive a-t-elle le droit d'invoquer cette clause pour se défendre contre l'action subrogatoire intentée par l'assureur, compte tenu de l'exception fondée sur des principes à la règle du lien contractuel, que notre Cour a établie dans l'arrêt London Drugs?*

1. L'arrêt *London Drugs* et l'exception fondée sur des principes à la règle du lien contractuel

Comme nous l'avons vu, la position de Can-Dive est celle d'un tiers bénéficiaire qui serait normalement dans l'impossibilité de faire exécuter ou d'invoquer les stipulations de la police en vigueur entre Fraser River et ses assureurs. Il est donc nécessaire d'examiner le statut juridique de la clause de renonciation à la subrogation compte

Footnote 35

Form 49
[Rule 13.19]

Clerk's stamp:

COURT FILE NUMBER 2203 12557
COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE **EDMONTON**
PLAINTIFF ROYAL BANK OF CANADA
DEFENDANTS **FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD also known as FETOUN AHMED**

DOCUMENT

AFFIDAVIT OF JOCELYN BERIAULT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

MILLER THOMSON LLP
Barristers and Solicitors
2700, Commerce Place
10155-102 Street
Edmonton, AB, Canada T5J 4G8
Phone: 780.429.1751 Fax: 780.424.5866

Lawyer's
Name: Susy M. Trace
Lawyer's
Email: strace@millerthomson.com
File No.: 0255685.0004

AFFIDAVIT OF JOCELYN BERIAULT

Sworn on August 19, 2022

I, Jocelyn Beriault, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a Senior Manager of Special Loans and Advisory Services – Western Region with Royal Bank of Canada (“**RBC**”), and as such, have personal knowledge of the facts and matters herein deposed to, except where stated to be based upon information and belief, and where so stated I verily believe the same to be true.

44. Despite not being a director or shareholder of Delta Corp., it appears that Faissal has signing authority for Delta Corp.'s bank account at Bank of Nova Scotia. Attached to my Affidavit and marked as **Exhibit "V"** is a copy of a cheque written on an account held by Delta Corp. at Bank of Nova Scotia. Based upon my review of RBC's books and records in this matter, I do verily believe that the signature on the cheque is Faissal's.
45. As evidenced by Exhibit "N", on April 26, 2022, CWB registered a security agreement at the APPR and has named as debtors in such registration: 52 Dental, Delta Corp., Faissal and FMPC. Fetoun is not in the registration.
46. There is a dental clinic operating under the name "52nd Dental" in Calgary located at Suite 100 - 3505 52nd Street, SE, Calgary Alberta ("**52 Dental Calgary Clinic**"). The building where 52 Dental Calgary Clinic is located is owned by 52 Wellness (the "**52 Wellness Building**"). Attached to my Affidavit and marked as **Exhibit "W"** is a Certificate of Title for the 52 Wellness Building obtained from the LTO.
47. The Certificate of Title indicates that the 52 Wellness Building was transferred to 52 Wellness on November 25, 2021.
48. Two caveats were registered against the Certificate of Title for the 52 Wellness Building on March 21, 2022 respecting agreements charging land. A Caveat registered as Registration No. 221 059 533 references a promissory note given to Ghalib Hadi ("**Hadi**") dated September 9, 2021 by 52 Wellness in the amount of \$385,000.00 (the "**Hadi Caveat**"). Attached to my Affidavit and marked as **Exhibit "X"** is a copy of the Hadi Caveat obtained from the LTO.
49. A Caveat registered as Registration No. 221 059 534 references a promissory note given to Faissal dated September 9, 2021 by 52 Wellness in the amount of \$700,000 (the "**Faissal Caveat**"). Attached to my Affidavit and marked as **Exhibit "Y"** is a copy of the Faissal Caveat obtained from the LTO.
50. Therefore, despite Delta Corp. and 52 Dental being owned by Fetoun, Faissal's wife, Faissal personally transferred Delta Corp. to his wife, removed himself as director and then replaced himself with his wife. Notwithstanding this, Faissal and FMPC still own the trade name "Delta Dental", Faissal has signing authority on Delta Corp.'s bank account, Faissal and FMPC are named as debtors on an APPR registration respecting a security agreement given to CWB, along with Delta Corp. and 52 Dental while Fetoun is not, and Faissal solely owns and controls 52 Wellness which owns the building within which the 52 Dental Calgary Clinic operates.
 - I. The Transfer of the Accounts Receivable and Operations to Delta Corp.**
51. The Original Corporate Debtors have covenanted and agreed with RBC to not sell, transfer, convey, lease or otherwise dispose of any of their properties or assets other than in the ordinary course of business and on commercially reasonable terms without the prior written consent of RBC.
52. It is a condition of the FMPC Loan Agreements that FMPC must use a deposit account at RBC to operate the Business and has such an account at RBC, Account Number 08259 – 100-077-7 (the "**FMPC Deposit Account**").
53. Attached to my Affidavit and collectively marked as **Exhibit "Z"** are copies of bank statements for the FMPC Deposit Account for the 2020 year.

Footnote 36



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R.S.C., 1985, c. B-3

L.R.C. (1985), ch. B-3

Current to August 28, 2022

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Dernière modification le 9 juin 2022

the property of the debtor and direct the interim receiver to take immediate possession of the property or any part of it on an undertaking being given by the applicant that the court may impose with respect to interference with the debtor's legal rights and with respect to damages in the event of the application being dismissed.

Powers of interim receiver

(2) The interim receiver appointed under subsection (1) may, under the direction of the court, take conservatory measures and summarily dispose of property that is perishable or likely to depreciate rapidly in value and exercise such control over the business of the debtor as the court deems advisable, but the interim receiver shall not unduly interfere with the debtor in the carrying on of his business except as may be necessary for conservatory purposes or to comply with the order of the court.

Place of filing

(3) An application under subsection (1) is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

R.S., 1985, c. B-3, s. 46; 1997, c. 12, s. 27(F); 2004, c. 25, s. 29; 2007, c. 36, s. 13.

Appointment of interim receiver

47 (1) If the court is satisfied that a notice is about to be sent or was sent under subsection 244(1), it may, subject to subsection (3), appoint a trustee as interim receiver of all or any part of the debtor's property that is subject to the security to which the notice relates until the earliest of

(a) the taking of possession by a receiver, within the meaning of subsection 243(2), of the debtor's property over which the interim receiver was appointed,

(b) the taking of possession by a trustee of the debtor's property over which the interim receiver was appointed, and

(c) the expiry of 30 days after the day on which the interim receiver was appointed or of any period specified by the court.

Directions to interim receiver

(2) The court may direct an interim receiver appointed under subsection (1) to do any or all of the following:

(a) take possession of all or part of the debtor's property mentioned in the appointment;

partie des biens du débiteur et lui enjoindre d'en prendre possession dès que le requérant aura donné l'engagement que peut imposer le tribunal relativement à une ingérence dans les droits du débiteur et au préjudice qui peut découler du rejet de la requête.

Pouvoirs du séquestre intérimaire

(2) Le séquestre intérimaire peut, sur l'ordre du tribunal, prendre des mesures conservatoires et disposer sommairement des biens périssables ou susceptibles de perdre rapidement de leur valeur, et il peut exercer sur les affaires du débiteur le contrôle que le tribunal jugera recommandable, mais le séquestre intérimaire ne peut contrecarrer indûment le débiteur dans la conduite de ses affaires, sauf dans la mesure nécessaire à ces fins conservatoires ou pour se conformer à l'ordre du tribunal.

Lieu du dépôt

(3) La demande visant l'obtention de l'ordonnance prévue au paragraphe (1) est déposée auprès du tribunal compétent dans le district judiciaire de la localité du débiteur.

L.R. (1985), ch. B-3, art. 46; 1997, ch. 12, art. 27(F); 2004, ch. 25, art. 29; 2007, ch. 36, art. 13.

Nomination d'un séquestre intérimaire

47 (1) S'il est convaincu qu'un préavis a été envoyé ou est sur le point de l'être aux termes du paragraphe 244(1), le tribunal peut, sous réserve du paragraphe (3), nommer un syndic à titre de séquestre intérimaire de tout ou partie des biens du débiteur faisant l'objet de la garantie sur laquelle porte le préavis. Ce séquestre intérimaire demeure en fonctions jusqu'à celui des événements ci-après qui se produit le premier :

a) la prise de possession par un séquestre, au sens du paragraphe 243(2), des biens du débiteur placés sous la responsabilité du séquestre intérimaire;

b) la prise de possession par un syndic des biens du débiteur placés sous la responsabilité du séquestre intérimaire;

c) l'expiration de la période de trente jours suivant la date de la nomination du séquestre intérimaire ou de la période précisée par le tribunal.

Instructions au séquestre intérimaire

(2) Le tribunal peut enjoindre au séquestre intérimaire :

a) de prendre possession de tout ou partie des biens du débiteur mentionnés dans la nomination;

- (b) exercise such control over that property, and over the debtor's business, as the court considers advisable;
- (c) take conservatory measures; and
- (d) summarily dispose of property that is perishable or likely to depreciate rapidly in value.

When appointment may be made

(3) An appointment of an interim receiver may be made under subsection (1) only if it is shown to the court to be necessary for the protection of

- (a) the debtor's estate; or
- (b) the interests of the creditor who sent the notice under subsection 244(1).

Place of filing

(4) An application under subsection (1) is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

R.S., 1985, c. B-3, s. 47; 1992, c. 27, s. 16; 2005, c. 47, s. 30; 2007, c. 36, s. 14.

Appointment of interim receiver

47.1 (1) If a notice of intention has been filed under section 50.4 or a proposal has been filed under subsection 62(1), the court may at any time after the filing, subject to subsection (3), appoint as interim receiver of all or any part of the debtor's property,

- (a) the trustee under the notice of intention or proposal;
- (b) another trustee; or
- (c) the trustee under the notice of intention or proposal and another trustee jointly.

Duration of appointment

(1.1) The appointment expires on the earliest of

- (a) the taking of possession by a receiver, within the meaning of subsection 243(2), of the debtor's property over which the interim receiver was appointed,
- (b) the taking of possession by a trustee of the debtor's property over which the interim receiver was appointed, and
- (c) court approval of the proposal.

- b) d'exercer sur ces biens ainsi que sur les affaires du débiteur le degré de contrôle que le tribunal estime indiqué;
- c) de prendre des mesures conservatoires;
- d) de disposer sommairement des biens périssables ou susceptibles de perdre rapidement de leur valeur.

Cas de nomination possible

(3) La nomination d'un séquestre intérimaire aux termes du paragraphe (1) ne peut se faire que s'il est démontré au tribunal que cela est nécessaire pour protéger soit l'actif du débiteur, soit les intérêts du créancier qui a donné le préavis visé au paragraphe 244(1).

Lieu du dépôt

(4) La demande visant l'obtention de l'ordonnance prévue au paragraphe (1) est déposée auprès du tribunal compétent dans le district judiciaire de la localité du débiteur.

L.R. (1985), ch. B-3, art. 47; 1992, ch. 27, art. 16; 2005, ch. 47, art. 30; 2007, ch. 36, art. 14.

Nomination d'un séquestre intérimaire

47.1 (1) Après le dépôt d'un avis d'intention aux termes de l'article 50.4 ou d'une proposition aux termes du paragraphe 62(1) et sous réserve du paragraphe (3), le tribunal peut nommer à titre de séquestre intérimaire de tout ou partie des biens du débiteur :

- a) soit le syndic désigné dans l'avis d'intention ou la proposition;
- b) soit un autre syndic;
- c) soit, conjointement, le syndic désigné dans l'avis d'intention ou la proposition et un autre syndic.

Durée des fonctions

(1.1) Le séquestre intérimaire demeure en fonctions jusqu'à celui des événements ci-après qui se produit le premier :

- a) la prise de possession par un séquestre, au sens du paragraphe 243(2), des biens du débiteur placés sous la responsabilité du séquestre intérimaire;
- b) la prise de possession par un syndic des biens du débiteur placés sous la responsabilité du séquestre intérimaire;
- c) l'approbation de la proposition par le tribunal.

Footnote 37



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disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of *disbursements*

(7) In subsection (6), *disbursements* does not include payments made in the operation of a business of the insolvent person or bankrupt.

1992, c. 27, s. 89; 2005, c. 47, s. 115; 2007, c. 36, s. 58.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

- (a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or
- (b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

failli, avec préséance sur les réclamations de tout créancier garanti; le tribunal ne peut toutefois déclarer que la réclamation du séquestre est ainsi garantie que s'il est convaincu que tous les créanciers garantis auxquels l'ordonnance pourrait sérieusement porter atteinte ont été avisés à cet égard suffisamment à l'avance et se sont vu accorder l'occasion de se faire entendre.

Sens de *débours*

(7) Pour l'application du paragraphe (6), ne sont pas comptés comme débours les paiements effectués dans le cadre des opérations propres aux affaires de la personne insolvable ou du failli.

1992, ch. 27, art. 89; 2005, ch. 47, art. 115; 2007, ch. 36, art. 58.

Préavis

244 (1) Le créancier garanti qui se propose de mettre à exécution une garantie portant sur la totalité ou la quasi-totalité du stock, des comptes recevables ou des autres biens d'une personne insolvable acquis ou utilisés dans le cadre des affaires de cette dernière doit lui en donner préavis en la forme et de la manière prescrites.

Délai

(2) Dans les cas où un préavis est requis aux termes du paragraphe (1), le créancier garanti ne peut, avant l'expiration d'un délai de dix jours suivant l'envoi du préavis, mettre à exécution la garantie visée par le préavis, à moins que la personne insolvable ne consente à une exécution à une date plus rapprochée.

Préavis

(2.1) Pour l'application du paragraphe (2), le créancier garanti ne peut obtenir le consentement visé par le paragraphe avant l'envoi du préavis visé au paragraphe (1).

Non-application du présent article

(3) Le présent article ne s'applique pas, ou cesse de s'appliquer, au créancier garanti dont le droit de réaliser sa garantie ou d'effectuer toute autre opération, relativement à celle-ci est protégé aux termes du paragraphe 69.1(5) ou (6), ou à l'égard de qui a été levée, aux termes de l'article 69.4, la suspension prévue aux articles 69 à 69.2.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

1992, c. 27, s. 89; 1994, c. 26, s. 9(E).

Receiver to give notice

245 (1) A receiver shall, as soon as possible and not later than ten days after becoming a receiver, by appointment or otherwise, in respect of property of an insolvent person or a bankrupt, send a notice of that fact, in the prescribed form and manner, to the Superintendent, accompanied by the prescribed fee, and

- (a)** in the case of a bankrupt, to the trustee; or
- (b)** in the case of an insolvent person, to the insolvent person and to all creditors of the insolvent person that the receiver, after making reasonable efforts, has ascertained.

Idem

(2) A receiver in respect of property of an insolvent person shall forthwith send notice of his becoming a receiver to any creditor whose name and address he ascertains after sending the notice referred to in subsection (1).

Names and addresses of creditors

(3) An insolvent person shall, forthwith after being notified that there is a receiver in respect of any of his property, provide the receiver with the names and addresses of all creditors.

1992, c. 27, s. 89.

Receiver's statement

246 (1) A receiver shall, forthwith after taking possession or control, whichever occurs first, of property of an insolvent person or a bankrupt, prepare a statement containing the prescribed information relating to the receivership, and shall forthwith provide a copy thereof to the Superintendent and

- (a)** to the insolvent person or the trustee (in the case of a bankrupt); and
- (b)** to any creditor of the insolvent person or the bankrupt who requests a copy at any time up to six months after the end of the receivership.

Idem

(4) Le présent article ne s'applique pas dans les cas où une personne agit, à titre de séquestre, à l'égard de la personne insolvable.

1992, ch. 27, art. 89; 1994, ch. 26, art. 9(A).

Avis du séquestre

245 (1) Le séquestre doit, dans les meilleurs délais et au plus tard dans les dix jours suivant la date où il devient, par nomination ou autrement, séquestre à l'égard de tout ou partie des biens d'une personne insolvable ou d'un failli, en donner avis, en la forme et de la manière prescrites, au surintendant — l'avis devant, dans ce cas, être accompagné des droits prescrits — et :

- a)** s'agissant d'un failli, au syndic;
- b)** s'agissant d'une personne insolvable, à celle-ci, à tous ceux de ses créanciers dont il a pu, en y allant de ses meilleurs efforts, dresser la liste.

Idem

(2) Le séquestre de tout ou partie des biens d'une personne insolvable est tenu de donner immédiatement avis de son entrée en fonctions à tout créancier dont il prend connaissance des nom et adresse après l'envoi de l'avis visé au paragraphe (1).

Nom et adresse des créanciers

(3) La personne insolvable doit, dès qu'elle est avisée de l'entrée en fonctions d'un séquestre à l'égard de tout ou partie de ses biens, fournir à celui-ci la liste des noms et adresses de tous ses créanciers.

1992, ch. 27, art. 89.

Déclaration

246 (1) Le séquestre doit, dès sa prise de possession ou, si elle survient plus tôt, sa prise de contrôle de tout ou partie des biens d'une personne insolvable ou d'un failli, établir une déclaration contenant les renseignements prescrits au sujet de l'exercice de ses attributions à l'égard de ces biens; il en transmet sans délai une copie au surintendant et :

- a)** à la personne insolvable ou, en cas de faillite, au syndic;
- b)** à tout créancier de la personne insolvable ou du failli qui en fait la demande au plus tard six mois après que le séquestre a complété l'exercice de ses attributions en l'espèce.

Footnote 38



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R.S.C., 1985, c. B-3

L.R.C. (1985), ch. B-3

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the property of the debtor and direct the interim receiver to take immediate possession of the property or any part of it on an undertaking being given by the applicant that the court may impose with respect to interference with the debtor's legal rights and with respect to damages in the event of the application being dismissed.

Powers of interim receiver

(2) The interim receiver appointed under subsection (1) may, under the direction of the court, take conservatory measures and summarily dispose of property that is perishable or likely to depreciate rapidly in value and exercise such control over the business of the debtor as the court deems advisable, but the interim receiver shall not unduly interfere with the debtor in the carrying on of his business except as may be necessary for conservatory purposes or to comply with the order of the court.

Place of filing

(3) An application under subsection (1) is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

R.S., 1985, c. B-3, s. 46; 1997, c. 12, s. 27(F); 2004, c. 25, s. 29; 2007, c. 36, s. 13.

Appointment of interim receiver

47 (1) If the court is satisfied that a notice is about to be sent or was sent under subsection 244(1), it may, subject to subsection (3), appoint a trustee as interim receiver of all or any part of the debtor's property that is subject to the security to which the notice relates until the earliest of

(a) the taking of possession by a receiver, within the meaning of subsection 243(2), of the debtor's property over which the interim receiver was appointed,

(b) the taking of possession by a trustee of the debtor's property over which the interim receiver was appointed, and

(c) the expiry of 30 days after the day on which the interim receiver was appointed or of any period specified by the court.

Directions to interim receiver

(2) The court may direct an interim receiver appointed under subsection (1) to do any or all of the following:

(a) take possession of all or part of the debtor's property mentioned in the appointment;

partie des biens du débiteur et lui enjoindre d'en prendre possession dès que le requérant aura donné l'engagement que peut imposer le tribunal relativement à une ingérence dans les droits du débiteur et au préjudice qui peut découler du rejet de la requête.

Pouvoirs du séquestre intérimaire

(2) Le séquestre intérimaire peut, sur l'ordre du tribunal, prendre des mesures conservatoires et disposer sommairement des biens périssables ou susceptibles de perdre rapidement de leur valeur, et il peut exercer sur les affaires du débiteur le contrôle que le tribunal jugera recommandable, mais le séquestre intérimaire ne peut contrecarrer indûment le débiteur dans la conduite de ses affaires, sauf dans la mesure nécessaire à ces fins conservatoires ou pour se conformer à l'ordre du tribunal.

Lieu du dépôt

(3) La demande visant l'obtention de l'ordonnance prévue au paragraphe (1) est déposée auprès du tribunal compétent dans le district judiciaire de la localité du débiteur.

L.R. (1985), ch. B-3, art. 46; 1997, ch. 12, art. 27(F); 2004, ch. 25, art. 29; 2007, ch. 36, art. 13.

Nomination d'un séquestre intérimaire

47 (1) S'il est convaincu qu'un préavis a été envoyé ou est sur le point de l'être aux termes du paragraphe 244(1), le tribunal peut, sous réserve du paragraphe (3), nommer un syndic à titre de séquestre intérimaire de tout ou partie des biens du débiteur faisant l'objet de la garantie sur laquelle porte le préavis. Ce séquestre intérimaire demeure en fonctions jusqu'à celui des événements ci-après qui se produit le premier :

a) la prise de possession par un séquestre, au sens du paragraphe 243(2), des biens du débiteur placés sous la responsabilité du séquestre intérimaire;

b) la prise de possession par un syndic des biens du débiteur placés sous la responsabilité du séquestre intérimaire;

c) l'expiration de la période de trente jours suivant la date de la nomination du séquestre intérimaire ou de la période précisée par le tribunal.

Instructions au séquestre intérimaire

(2) Le tribunal peut enjoindre au séquestre intérimaire :

a) de prendre possession de tout ou partie des biens du débiteur mentionnés dans la nomination;

- (b) exercise such control over that property, and over the debtor's business, as the court considers advisable;
- (c) take conservatory measures; and
- (d) summarily dispose of property that is perishable or likely to depreciate rapidly in value.

When appointment may be made

(3) An appointment of an interim receiver may be made under subsection (1) only if it is shown to the court to be necessary for the protection of

- (a) the debtor's estate; or
- (b) the interests of the creditor who sent the notice under subsection 244(1).

Place of filing

(4) An application under subsection (1) is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

R.S., 1985, c. B-3, s. 47; 1992, c. 27, s. 16; 2005, c. 47, s. 30; 2007, c. 36, s. 14.

Appointment of interim receiver

47.1 (1) If a notice of intention has been filed under section 50.4 or a proposal has been filed under subsection 62(1), the court may at any time after the filing, subject to subsection (3), appoint as interim receiver of all or any part of the debtor's property,

- (a) the trustee under the notice of intention or proposal;
- (b) another trustee; or
- (c) the trustee under the notice of intention or proposal and another trustee jointly.

Duration of appointment

(1.1) The appointment expires on the earliest of

- (a) the taking of possession by a receiver, within the meaning of subsection 243(2), of the debtor's property over which the interim receiver was appointed,
- (b) the taking of possession by a trustee of the debtor's property over which the interim receiver was appointed, and
- (c) court approval of the proposal.

- (b) d'exercer sur ces biens ainsi que sur les affaires du débiteur le degré de contrôle que le tribunal estime indiqué;
- (c) de prendre des mesures conservatoires;
- (d) de disposer sommairement des biens périssables ou susceptibles de perdre rapidement de leur valeur.

Cas de nomination possible

(3) La nomination d'un séquestre intérimaire aux termes du paragraphe (1) ne peut se faire que s'il est démontré au tribunal que cela est nécessaire pour protéger soit l'actif du débiteur, soit les intérêts du créancier qui a donné le préavis visé au paragraphe 244(1).

Lieu du dépôt

(4) La demande visant l'obtention de l'ordonnance prévue au paragraphe (1) est déposée auprès du tribunal compétent dans le district judiciaire de la localité du débiteur.

L.R. (1985), ch. B-3, art. 47; 1992, ch. 27, art. 16; 2005, ch. 47, art. 30; 2007, ch. 36, art. 14.

Nomination d'un séquestre intérimaire

47.1 (1) Après le dépôt d'un avis d'intention aux termes de l'article 50.4 ou d'une proposition aux termes du paragraphe 62(1) et sous réserve du paragraphe (3), le tribunal peut nommer à titre de séquestre intérimaire de tout ou partie des biens du débiteur :

- a) soit le syndic désigné dans l'avis d'intention ou la proposition;
- b) soit un autre syndic;
- c) soit, conjointement, le syndic désigné dans l'avis d'intention ou la proposition et un autre syndic.

Durée des fonctions

(1.1) Le séquestre intérimaire demeure en fonctions jusqu'à celui des événements ci-après qui se produit le premier :

- a) la prise de possession par un séquestre, au sens du paragraphe 243(2), des biens du débiteur placés sous la responsabilité du séquestre intérimaire;
- b) la prise de possession par un syndic des biens du débiteur placés sous la responsabilité du séquestre intérimaire;
- c) l'approbation de la proposition par le tribunal.

Footnote 39

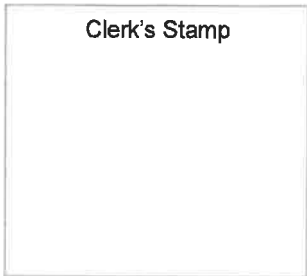
COURT FILE NUMBER 2203-12557

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Edmonton

PLAINTIFF **ROYAL BANK OF CANADA**

DEFENDANTS **FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED**



DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

CODY AND COMPANY LAW OFFICE
4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
Fax: (403) 556-1728

Our File No: 22364

AFFIDAVIT OF FETOUN AHMAD SWORN SEPTEMBER 14, 2022

I, FETOUN AHMAD, of the City of Red Deer, in the Province of Alberta, Make Oath and Say:

1. That I and my companies Delta Dental Corp, and 52 Dental Corporation, are Defendants in action number 2203-12557
2. As of December 14, 2022, I, Fetoun Ahmad, am the sole Director and Shareholder of Delta Dental Corp ("Delta Corp") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit A" is a copy of the Corporate Search for Delta Dental.

3. As of December 6, 2021, I, Fetoun Ahmad, am the sole Director and Shareholder of 52 Dental Corporation ("52 Dental") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit B" is a copy of the Corporate Search for 52 Dental Corporation.
4. I am married to the Defendant Faissal Mouhamad ("Faissal") who is a dentist by trade. I have no part in any of his companies or businesses which include, Faissal Mouhamad Professional Corporation ("FMPC"), McIvor Developments Ltd. ("McIvor"), 985842 Alberta Ltd., 52 Wellness Centre Inc. ("52 Wellness"), Paradise McIvor Developments Ltd., and Michael Dave Management Ltd (collectively referred to as "Faissal's Companies").

The Loans

5. According to the Plaintiff, my husband, Faissal, on behalf of FMPC, entered into a loan agreement ("FMPC Loan") with the Royal Bank of Canada ("RBC"). Prior to being formally served the Affidavit of Jocelyn Beriault ("RBCs Affidavit"), the Senior Manager of Special Loans and Advisory Services – Western Region with RBC, on August 23, 2022, I had no knowledge of these dealings. Attached hereto and marked as "Exhibit C" is a copy of the RBC's Affidavit para 21.
6. According to the Plaintiff, Faissal also entered in a loan agreement between McIvor and RBC (the "McIvor Loan"). Prior to being formally served RBCs Affidavit, on August 23, 2022, I had no knowledge of these dealings. Attached hereto and marked as "Exhibit D" is a copy of the RBCs Affidavit para 23.
7. I was not privy to any information relating to any loans Faissal or Faissal's Companies currently have or have had in the past with RBC.
8. I had not been apart of or aware of any contract negotiations for the McIvor loan or the FMPC loan and do not have any knowledge of the loan terms that FMPC or McIvor were to abide by until receiving RBCs affidavit.
9. Neither I nor my companies, Delta Corp and 52 Dental, are, or were guarantors, or provided any security for any Loan Agreements entered into by Faissal or any of Faissal's companies. Attached hereto and marked as "Exhibit E" is a copy of RBCs Affidavit paras 28, 30, and 32.
10. I am informed by my Lawyer and do verily believe same to be true that RBC has brought me, 52 Dental, and Delta Corp on as Defendants in this action as they are attempting to bring my

Footnote 40

COURT FILE NUMBER 2203-12557

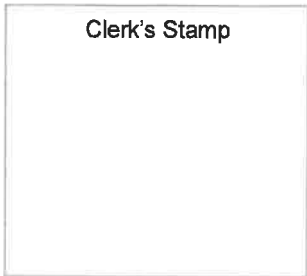
COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Edmonton

PLAINTIFF **ROYAL BANK OF CANADA**

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A handwritten signature in blue ink, appearing to be "Fetoun Ahmad", written over the page number "1".

and marked as “**Exhibit R**” is a copy of lines 58-60 of the Statement of Claim, RBC Brief lines 97-98.

47. It was only after RBC called for the repayments of the FMPC loan that FMPC defaulted in repayment of the loans in their entirety. Attached hereto and marked as “**Exhibit S**” is a copy of lines 58-65 of the Statement of Claim.
48. RBC then rushed to get Judgements against FMPC, McIvor, and all parties that provided security for FMPC’s loan on August 10, 2022 as well as including myself, Delta Corp, and 52 Dental in their claim. Attached hereto and marked as “**Exhibit T**” is a copy of lines 68-77 of the Statement of Claim.
49. It is my understanding that the loan was recalled as a result of breach of contract and not insolvency as nothing in RBC’s Statement of Claim or RBC’s Affidavit have indicated to me that FMPC was bankrupt or contemplating bankruptcy.
50. Neither I nor 52 Dental or Delta Corp accepted any transfer from FMPC knowing that it could affect FMPC’s bankruptcy position as all transfers from FMPC were accepted in the ordinary course of business.
51. It is my understanding from RBC’s Affidavit that RBC is aware that FMPC and its guarantors are not insolvent as the FMPC loan and McIvor Loan were guaranteed by the Dewinton Property which is sufficient to make RBC whole in terms of repayment of the loans. RBC has first interest in receiving payment from this sale as they are the first registered mortgagors on the title in the amount of \$6,000,000.00 whereas FMPCs indebtedness is currently \$632,627.73 and McIvors indebtedness is \$2,504,407.54 As well, RBC is aware of the impending sale of the Red Deer Clinic. Therefore, there is ample capital which RBC has a security interest over which would allow for repayment of the FMPC loan. Attached hereto and marked as “**Exhibit U**” is a copy of lines 92, 97, 100 and 103 of the RBCs Affidavit.
52. On August 18, 2022, a bailiff sized the equipment and inventory of the Red Deer Clinic and left the seized property on a Bailee’s Undertaking on the instructions of RBC. Attached hereto and marked as “**Exhibit V**” is a copy of para 127 of RBCs Affidavit.
53. I, Fetoun Ahmad, was not physically present before the commissioner, but I affirmed and virtually signed this Affidavit according to the remote signing principles as set out on the Court of Queen’s Bench of Alberta.
54. This Affidavit is made in support of an Order directing the Plaintiff to release me, Delta Dental, and 52 Dental as Defendants in this action, costs of this application, and any other such further relief as deemed necessary and reasonable by this Honourable Court.

Footnote 41

COURT FILE NUMBER 2203-12557

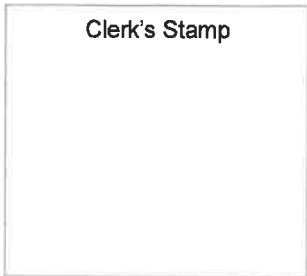
COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Edmonton

PLAINTIFF **ROYAL BANK OF CANADA**

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A handwritten signature in blue ink, appearing to be "Fetoun Ahmad", written in a cursive style.

30. 52 Dental has never used any of its equipment in the Red Deer Clinic and has never used any of the Red Deer Clinics equipment in its clinic or operation.
31. 52 Dental provides management services for the Calgary clinic which include managing all or most of the Calgary Clinic billing and payment of business expenses.
32. All patient charts are owned/controlled by the dentists practicing in the Calgary Clinic and not by 52 Dental. 52 Dental also does not have any ownership or control over the Red Deer Clinics patient charts. Attached hereto and marked as “Exhibit J” is a copy of Affidavit of Faissal Mouhamad sworn August 23, 2022.
33. 52 Dental maintains operating accounts at the Bank of Nova Scotia. The revenue of the Calgary clinic is receipted, and the Calgary clinics expenses are paid from the Bank of Nova Scotia account.
34. Faissal provides dental services at the Calgary clinic. Faissal is paid by 52 Dental for his services at the Calgary Clinic.
35. Faissal agreed to a loan in the amount of \$300,000 between himself and 52 Dental which accrues interest at a rate of 5% per annum. These payments were made by Faissal to 52 Dental from FMPC. The cheques written by FMPC to 52 Dental were salary payments owed to Faissal from working as a dentist, as opposed to receiving the payments himself, Faissal assigned these payments to 52 Dental as apart of their loan agreement. These payments were made in increments and 52 Dental has not yet received the entirety of the \$300,000 dollar loan. Attached hereto and marked as “Exhibit K” is a copy of the income statements from February 18, 2022 to June 27, 2022 and the Promissory Note for the loan

Payments to Fetoun

36. The payments made to me from FMPC were paid as reimbursements for office expenses and maintenance. As well, Faissal paid his shareholder loan from FMPC directly to me, Fetoun, as I am the person who looks after our family expenses. Attached hereto and marked as “Exhibit L” is a copy of records detailing the payments made from FMPC to Fetoun.
37. Prior to December 2021, payments made to me from FMPC for management services which I provided to the Red Deer Clinic since 2018. Attached hereto and marked as “Exhibit M” is a copy of the Statement of Business or Professional Activity for the period 2018 to 2021.

Personal Property Registration

38. On August 30, 2022, I was provided a Personal Property Registry Search Result Report (“PPR”) for Faissal Mouhamad by my counsel. The PPR demonstrated that RBC had registered themselves as secured parties against myself and my companies as follows:



Footnote 42

COURT FILE NUMBER 2203-12557

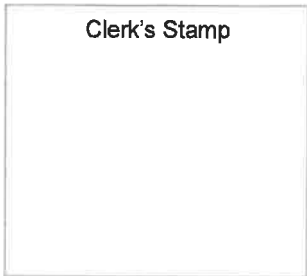
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A handwritten signature in blue ink, appearing to be a stylized 'S' or 'C' followed by a flourish.

19. Delta Corp maintains operating accounts at the Bank of Nova Scotia. Most of the revenue of the Red Deer clinic is receipted and most of the Red Deer clinics expenses are paid from the Bank of Nova Scotia account.
20. Faissal under his trade name Delta Dental provides dental services at the Red Deer clinic.
21. Faissal was given signing authority on Delta Corp's Bank of Nova scotia account on July 6, 2022 only due to the fact that I was about to leave the country for medical treatment. This was done to avoid any interruptions in the business' payables.
22. All patient charts are owned/controlled by the dentists practicing in the Red Deer Clinic and not by Delta Corp. Delta Corp also does not have any ownership or control over the Calgary Clinics patient charts. Attached hereto and marked as "Exhibit H" is a copy of Affidavit of Faissal Mouhamad sworn August 23, 2022.
23. Faissal under his trade name Delta Dental and provides dental services at the Red Deer clinic. Faissal is paid by Delta Dental for his services at the Red Deer Clinic.
24. I am not a dentist, licensed or otherwise. However, as far as I am aware, the ownership of dental clinics in Alberta is not limited to licensed dentists. Rather, the Alberta Dental Association and College (the "College") requires a licensed dentist to have care and control over patient files/charts and over any drugs, medications and controlled substances. At all times, I have complied with the College's requirements in that regard.

52 Dental

25. 52 Dental was incorporated for the purpose of the management and ownership of the 52 Dental Clinic which is a dental clinic operating in Suite 100-3505 52 Street SE, Calgary, Alberta (the "Calgary Clinic").
26. The Calgary Clinic opened on June 11, 2022.
27. 52 Dental leases office space from 52 Wellness who owns the building in which 52 Dental operates.
28. 52 Dental does not have any involvement with Delta Corp or the Red Deer Clinic and is a separate and distinct entity. The only overlap is that Faissal and Dr. Ghalib Hadi both provide dental services out of the Calgary Clinic and the Red Deer Clinic.
29. 52 Dental owns all the leasehold improvements, administrative management equipment, and hygiene care equipment while the balance of the equipment is leased by 52 Dental. All equipment is solely used in the Calgary Clinic. Attached hereto and marked as "Exhibit I" is a copy of 52 Dental's equipment lease agreement.

Footnote 43

COURT FILE NUMBER 2203-12557

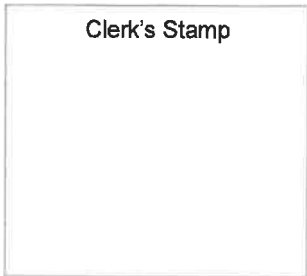
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A handwritten signature in blue ink, appearing to be a stylized 'F' or similar character, located at the bottom right of the page.

- a. Delta Corp – 22072128251 Registered on July 21, 2022;
- b. 52 Dental - 22072128251 Registered on July 21, 2022;
- c. Fetoun Ahmad – 22081709434 Registered on August 17, 2022;
- d. Fetoun Ahmad – 22081711767 Registered on August 17, 2022;
(Collectively known as the “registrations”)

Attached hereto and marked as “**Exhibit N**” is a copy of the registration search conducted on August 25, 2022.

39. The registrations were done without a court order, my permission or my consent.
40. My counsel has drafted an application to strike the PPR registrations against me, Delta Corp, and 52 Dental as they were improperly registered. This will be filed and served pending the outcome of the upcoming September 14, 2022 application.
41. The Security Agreement registered on April 26, 2022 with registration number 22042607078 registered by CWB National Leasing Inc. (“CWB”) is to my knowledge for the leasing of equipment for the Red Deer Clinic. To the best of my knowledge, there was a lease entered into between Delta Dental, Faissal, FMPC and CWB prior to the creation of 52 Dental. I do not have knowledge of this lease as I, 52 Dental and Delta Corp were not a party to this agreement. The registration against 52 Dental was done without a court order, my permission, or my consent. Attached hereto and marked as “**Exhibit O**” is a copy of the registration search conducted on August 25, 2022.
42. After informing Faissal of this registration in September 2022, Faissal provided me with a copy of the only lease agreement signed with CWB which demonstrates that neither I nor 52 Dental, and Delta Corp were parties to this agreement. Attached hereto and marked as “**Exhibit P**” is a copy of the lease agreement with CWB.

Reliance

43. I am relying entirely on the information provided to me in the RBC Affidavit as well as the Statement of Claim with regards to all loans entered into by Faissal on behalf of his companies.
44. RBC indicated that FMPC has defaulted in acting within the terms of its loan agreement by transferring property out of RBC’s loan account without RBC’s consent and outside of the ordinary course of business for the benefit of another person other than FMPC. Attached hereto and marked as “**Exhibit Q**” is a copy of line 57 of the Statement of Claim.
45. There is no indication in the Statement of Claim that FMPC was insolvent or could not pay their debts nor does the Statement of Claim indicate that FMPC failed to make any of their loan payments.
46. On or about July 28, 2022, RBC demanded repayment from FMPC of the indebtedness owed from FMPC to RBC. RBC also demanded repayment for the McIvor Loan. Attached hereto

and marked as “**Exhibit R**” is a copy of lines 58-60 of the Statement of Claim, RBC Brief lines 97-98.

47. It was only after RBC called for the repayments of the FMPC loan that FMPC defaulted in repayment of the loans in their entirety. Attached hereto and marked as “**Exhibit S**” is a copy of lines 58-65 of the Statement of Claim.
48. RBC then rushed to get Judgements against FMPC, McIvor, and all parties that provided security for FMPC’s loan on August 10, 2022 as well as including myself, Delta Corp, and 52 Dental in their claim. Attached hereto and marked as “**Exhibit T**” is a copy of lines 68-77 of the Statement of Claim.
49. It is my understanding that the loan was recalled as a result of breach of contract and not insolvency as nothing in RBC’s Statement of Claim or RBC’s Affidavit have indicated to me that FMPC was bankrupt or contemplating bankruptcy.
50. Neither I nor 52 Dental or Delta Corp accepted any transfer from FMPC knowing that it could affect FMPC’s bankruptcy position as all transfers from FMPC were accepted in the ordinary course of business.
51. It is my understanding from RBC’s Affidavit that RBC is aware that FMPC and its guarantors are not insolvent as the FMPC loan and McIvor Loan were guaranteed by the Dewinton Property which is sufficient to make RBC whole in terms of repayment of the loans. RBC has first interest in receiving payment from this sale as they are the first registered mortgagors on the title in the amount of \$6,000,000.00 whereas FMPCs indebtedness is currently \$632,627.73 and McIvors indebtedness is \$2,504,407.54 As well, RBC is aware of the impending sale of the Red Deer Clinic. Therefore, there is ample capital which RBC has a security interest over which would allow for repayment of the FMPC loan. Attached hereto and marked as “**Exhibit U**” is a copy of lines 92, 97, 100 and 103 of the RBCs Affidavit.
52. On August 18, 2022, a bailiff sized the equipment and inventory of the Red Deer Clinic and left the seized property on a Bailee’s Undertaking on the instructions of RBC. Attached hereto and marked as “**Exhibit V**” is a copy of para 127 of RBCs Affidavit.
53. I, Fetoun Ahmad, was not physically present before the commissioner, but I affirmed and virtually signed this Affidavit according to the remote signing principles as set out on the Court of Queen’s Bench of Alberta.
54. This Affidavit is made in support of an Order directing the Plaintiff to release me, Delta Dental, and 52 Dental as Defendants in this action, costs of this application, and any other such further relief as deemed necessary and reasonable by this Honourable Court.

Footnote 44

COURT FILE NUMBER 2203-12557

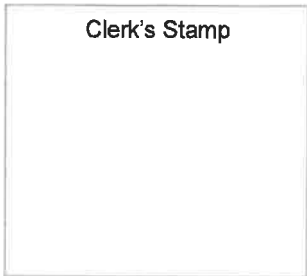
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JUDICIAL CENTRE Edmonton

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54. This Affidavit is made in support of an Order directing the Plaintiff to release me, Delta Dental, and 52 Dental as Defendants in this action, costs of this application, and any other such further relief as deemed necessary and reasonable by this Honourable Court.

Footnote 45

Form 49
[Rule 13.19]

Clerk's stamp:

| | |
|---|--|
| COURT FILE NUMBER | 2203 12557 |
| COURT OF QUEEN'S BENCH OF ALBERTA | |
| JUDICIAL CENTRE | EDMONTON |
| PLAINTIFF | ROYAL BANK OF CANADA |
| DEFENDANTS | FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD also known as FETOUN AHMED |
| DOCUMENT | <u>AFFIDAVIT OF JOCELYN BERIAULT</u> |
| ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT | MILLER THOMSON LLP Barristers and Solicitors 2700, Commerce Place 10155-102 Street Edmonton, AB, Canada T5J 4G8 Phone: 780.429.1751 Fax: 780.424.5866 |
| | Lawyer's Name: Susy M. Trace Lawyer's Email: strace@millerthomson.com File No.: 0255685.0004 |

AFFIDAVIT OF JOCELYN BERIAULT

Sworn on August 19, 2022

I, Jocelyn Beriault, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a Senior Manager of Special Loans and Advisory Services – Western Region with Royal Bank of Canada (“**RBC**”), and as such, have personal knowledge of the facts and matters herein deposed to, except where stated to be based upon information and belief, and where so stated I verily believe the same to be true.

the terms of which are set out in the following loan agreements:

- (d) Credit Facilities Agreement dated August 4, 2016, between RBC and FMPC and attached to my Affidavit as **Exhibit "D"**;
- (e) Renewal Agreement dated September 10, 2018, between RBC and FMPC and attached to my Affidavit as **Exhibit "E"**;
- (f) Credit Agreement dated September 8, 2020, between RBC and FMPC and attached to my Affidavit as **Exhibit "F"**;
- (g) Credit Agreement dated December 20, 2021, between RBC and FMPC and attached to my Affidavit as **Exhibit "G"**;
- (h) Credit Agreement dated May 2, 2022, between RBC and FMPC and attached to my Affidavit as **Exhibit "H"**;
- (i) Canada Emergency Business Account Agreement and attached to my Affidavit as **Exhibit "I"**; and
- (j) RBC Royal Bank VISA Business Card Agreement and attached to my Affidavit as **Exhibit "J"**;

(the documents referred to in Paragraphs 21 (d)-(j) are collectively referred to in my Affidavit as the "**FMPC Loan Agreements**").

22. As of August 10, 2022, the amount of indebtedness owing to RBC pursuant to the FMPC Credit Facilities totaled:

| Loan | Principal | Per Diem |
|--------------------|---------------------|-----------------|
| FMPC Operating LOC | \$500,947.73 | \$64.38 |
| Visa Facility | \$71,680.00 | \$40.00 |
| CEBA Facility | \$60,000 | |
| Total | \$632,627.73 | \$104.38 |

plus further amounts that may have been advanced by reason of the revolving nature of the FMPC Credit Facilities from and after August 10, 2022, plus further interest thereon from and after August 10, 2022, plus all of RBC's costs, including legal costs, on a solicitor and client full indemnity basis (the "**FMPC Direct Indebtedness**").

23. Mclvor has also borrowed money from RBC, and has agreed to repay such borrowings with interest and costs on a solicitor and client full indemnity basis. As of August 15, 2022, the direct indebtedness owing to RBC by Mclvor is the total amount of \$2,504,407.54, plus interest from and after August 16, 2022 at the *per diem* rate of \$339.04, plus all additional amounts advanced to the Borrower by reason of the revolving nature of the credit facilities available to Mclvor, plus interest on such amounts, plus all of RBC's legal fees and costs incurred on a solicitor and own client full indemnity basis (the "**Mclvor Direct Indebtedness**").

The Security

28. To secure due payment and performance of all present and future indebtedness and liabilities of FMPC to RBC, FMPC granted to RBC the following:
 - (a) General Security Agreement dated May 16, 2012 whereby FMPC granted a security interest in favour of RBC against all of FMPC's present and after-acquired personal property (the "**First FMPC GSA**"). Attached to my Affidavit and marked as **Exhibit "L"** is a copy of the First FMPC GSA; and
 - (b) General Security Agreement dated August 19, 2016 whereby FMPC granted a security interest in favour of RBC against all of FMPC's present and after-acquired personal property (the "**Second FMPC GSA**"). Attached to my Affidavit and marked as **Exhibit "M"** is a copy of the Second FMPC GSA.
29. At all material times, the First FMPC GSA and the Second FMPC GSA have been perfected by registration at the Alberta Personal Property Registry (the "**APPR**"). Attached to my Affidavit and marked as **Exhibit "N"** collectively is a debtor name search for FMPC and Faissal conducted at the APPR on August 18, 2022, evidencing perfection of RBC's security interest pursuant to the First FMPC GSA and the Second FMPC GSA.
30. To secure due payment and performance of all present and future indebtedness and liabilities of Mclvor to RBC, Mclvor granted to RBC the following:
 - (a) General Security Agreement –Floating Charge on Land dated August 12, 2016 whereby Mclvor granted a security interest in favour of RBC against all of Mclvor's present and after-acquired personal property and a floating charge on land (the "**First Mclvor GSA**"). Attached to my Affidavit and marked as **Exhibit "O"** is a copy of the First Mclvor GSA;
 - (b) General Security Agreement dated August 9, 2016 whereby Mclvor granted a security interest in favour of RBC against all of Mclvor's present and after-acquired personal property (the "**Second Mclvor GSA**"). Attached to my Affidavit and marked as **Exhibit "P"** is a copy of the Second Mclvor GSA; and
 - (c) Collateral Mortgage granted by Mclvor in favour of RBC, dated August 12, 2016, securing the principal amount of \$6,000,000.00, plus interest at the rate of Prime plus 5%, plus costs on a solicitor and client full indemnity basis (the "**Collateral Mortgage**"). Attached to my Affidavit and marked as **Exhibit "Q"** is a copy of the Collateral Mortgage.
31. At all material times, the First Mclvor GSA and the Second Mclvor GSA have been perfected by registration at the APPR. Attached to my Affidavit and marked as **Exhibit "R"** is a debtor name search for Mclvor conducted at the APPR on August 18, 2022, evidencing perfection of RBC's security interest pursuant to the First Mclvor GSA and the Second Mclvor GSA.
32. The Collateral Mortgage was registered at the Alberta Land Titles Office on August 28, 2016, under Registration No. 161 203 509, against the Certificate of Title for the Mclvor Lands as evidenced by Exhibit "C" of my Affidavit.
33. To secure due payment and performance of all present and future indebtedness and liabilities of 985 to RBC, 985 granted to RBC the following:

Footnote 46

Form 49
[Rule 13.19]

Clerk's stamp:

| | |
|---|--|
| COURT FILE NUMBER | 2203 12557 |
| COURT OF QUEEN'S BENCH OF ALBERTA | |
| JUDICIAL CENTRE | EDMONTON |
| PLAINTIFF | ROYAL BANK OF CANADA |
| DEFENDANTS | FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD also known as FETOUN AHMED |
| DOCUMENT | <u>AFFIDAVIT OF JOCELYN BERIAULT</u> |
| ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT | MILLER THOMSON LLP Barristers and Solicitors 2700, Commerce Place 10155-102 Street Edmonton, AB, Canada T5J 4G8 Phone: 780.429.1751 Fax: 780.424.5866 |
| | Lawyer's Name: Susy M. Trace Lawyer's Email: strace@millerthomson.com File No.: 0255685.0004 |

AFFIDAVIT OF JOCELYN BERIAULT

Sworn on August 19, 2022

I, Jocelyn Beriault, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a Senior Manager of Special Loans and Advisory Services – Western Region with Royal Bank of Canada (“**RBC**”), and as such, have personal knowledge of the facts and matters herein deposed to, except where stated to be based upon information and belief, and where so stated I verily believe the same to be true.

96. I understand that Hadi is a licensed dentist and that he may provide dental services for FMPC, though I have no personal knowledge of this fact and do not know why FMPC has paid GHPC no less than \$291,270.36 since 2020.
97. By the APA, GHPC has agreed to purchase the Business, with a closing date of December 21, 2022.
98. RBC has several concerns with the APA including the following:
- (a) either or both of Hadi or GHPC may not be arms' length to FMPC or Faissal given the payments to GHPC and the fact that Hadi is a creditor of 52 Wellness;
 - (b) GHPC has agreed to release two deposits to FMPC, Faissal and Michael Dave Ltd. in the aggregate amount of \$575,000, whether or not the transaction contemplated by the sale closes;
 - (c) there is no non-competition agreement respecting Faissal contained in the APA;
 - (d) RBC has not been provided with an appraisal of the Business and therefore is unable to determine if the purchase price is reasonable;
 - (e) FMPC's Solicitor has advised RBC's Solicitor that the purchase price for the Business is less than fair market value;
 - (f) RBC has asked FMPC, Faissal and Michael Dave Ltd. through counsel why Michael Dave Ltd. is a party to the APA. As far as RBC is aware, Michael Dave Ltd. only owns the land and building where the Business is operated, but the land is not included in the APA. RBC has also requested confirmation of what assets being sold are owned by Michael Dave Ltd. As of the date of swearing this Affidavit, no reply has been received from FMPC, Faissal and Michael Dave Ltd. to this inquiry and therefore RBC is unable to determine how much of the sale proceeds from the APA should be paid to RBC pursuant to the Security; and
 - (g) the purchase price is not sufficient to repay all amounts owing to RBC by FMPC and Faissal, including the FMPC Direct Indebtedness and the Mclvor Guaranteed Indebtedness.
99. As at the date of swearing this Affidavit, RBC's concerns regarding the APA have not been resolved and therefore RBC is not supportive of the APA and does not provide its consent to the sale contemplated thereby.

II. Samer Altallaj and the Offer to Purchase the Mclvor Lands

100. RBC has been provided with an Offer to Purchase and Interim Agreement dated in or around November 18, 2021 between Samer Altalaj and/or nominee ("**Samer**") as purchaser and Mclvor as vendor (the "**Mclvor Lands Offer**").
101. Attached to my Affidavit and marked collectively as **Exhibit "LL"** is a redacted copy of the Mclvor Lands Offer and two Amending Agreements to the Mclvor Lands Offer dated March 29, 2022 and July 9, 2022.
102. RBC also received an Exclusive Commercial Marketing Agreement between Mclvor and KDI Commercial Inc. dated September 9, 2020 (the "**Listing Agreement**") to sell the Mclvor Lands from Steve Seiler, who is named as a senior associate on the Listing

Agreement. Attached to my Affidavit and marked as **Exhibit "MM"** is a copy of the Listing Agreement for the Mclvor lands, which begins on page 6 of the Exhibit.

103. Samer has offered to purchase the Mclvor Lands for a purchase price that is sufficient to repay RBC in full. However, Mclvor is required to convey clear title to the Mclvor Lands, and to date has not been able to establish that it will be able to do so.
104. On July 20, 2020, Mahmoud commenced a lawsuit against Faissal, Mclvor, Michael Dave Ltd., FMPC and 985 (the "**Mahmoud Action**") alleging, among other things, that:
 - (a) Faissal and Mohamad owned a corporation, 1711403 Alberta Ltd. ("**171**"), with Faissal owning 51% of 171's voting shares and Mohamad owning 49% of 171's voting shares;
 - (b) Faissal and Mohamad purchased the Mclvor Lands and incorporated 171 for the purpose of purchasing and developing in the Mclvor Lands into 144 lots;
 - (c) they purchased the Mclvor Lands for \$1,700,000.00 in 2012;
 - (d) Faissal wrongfully caused the Mclvor Lands to be transferred from 171 to Mclvor without Mohamad's knowledge or consent;
 - (e) Mohamad did not consent to Mclvor securing the Mclvor Lands to RBC;
 - (f) no improvements or developments have been done to the Mclvor Lands;
 - (g) funds advanced to Mclvor by RBC in 2016 were used by Faissal to purchase other properties or fund other investments;
 - (h) Mohamad is a beneficial owner of 50% of the issued and outstanding shares of Mclvor;
 - (i) Mclvor holds 50% of the Mclvor Lands in trust for Mohamad; and
 - (j) seeking damages in the amount of \$3,000,000.00.
105. Attached to my Affidavit and marked as **Exhibit "NN"** is a copy of the Statement of Claim in the Mahmoud Action.
106. Mahmoud has filed a caveat (the "**Mahmoud Caveat**") against the Certificate of Title for the Mclvor Lands, claiming a trust in one half of the Mclvor Lands and preventing the transfer of the Mclvor Lands to any party unless such transfer is subject to the Mahmoud Caveat, as is evidenced by Exhibit "**C**" of my Affidavit.
107. Mahmoud has also filed a Certificate of Lis Pendens against the Certificate of Title for the Mclvor Lands (the "**Mahmoud CLP**"), again, as is evidenced by Exhibit "**C**" of my Affidavit.
108. Mclvor has had to extend its condition removal date twice since last November as it has been unable to discharge the Mahmoud Caveat or the Mahmoud CLP. Mclvor has until September 30, 2022 to remove its condition to discharge the Mahmoud Caveat and the Mahmoud CLP from the Certificate of Title for the Mclvor Lands.

Footnote 47

Form 49
[Rule 13.19]

Clerk's stamp:

| | |
|---|--|
| COURT FILE NUMBER | 2203 12557 |
| COURT OF QUEEN'S BENCH OF ALBERTA | |
| JUDICIAL CENTRE | EDMONTON |
| PLAINTIFF | ROYAL BANK OF CANADA |
| DEFENDANTS | FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD also known as FETOUN AHMED |
| DOCUMENT | <u>AFFIDAVIT OF JOCELYN BERIAULT</u> |
| ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT | MILLER THOMSON LLP Barristers and Solicitors 2700, Commerce Place 10155-102 Street Edmonton, AB, Canada T5J 4G8 Phone: 780.429.1751 Fax: 780.424.5866 |
| | Lawyer's Name: Susy M. Trace Lawyer's Email: strace@millerthomson.com File No.: 0255685.0004 |

AFFIDAVIT OF JOCELYN BERIAULT

Sworn on August 19, 2022

I, Jocelyn Beriault, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a Senior Manager of Special Loans and Advisory Services – Western Region with Royal Bank of Canada (“**RBC**”), and as such, have personal knowledge of the facts and matters herein deposed to, except where stated to be based upon information and belief, and where so stated I verily believe the same to be true.

- (a) FMPC in the amount of \$1,153,432.98;
 - (b) Mclvor in the amount of \$74,474;
 - (c) Paradise Mclvor in the amount of \$829,915.63;
 - (d) Fetoun in the amount of \$25,000,
 - (e) Khaled - \$50,000 on October 16, 2020;
 - (f) Mary Mohamad, who to the best of my knowledge is Mahmoud's daughter and Faissal's niece - \$20,000 on January 22, 2020; and
 - (g) Mahmoud - \$22,000.
89. RBC is not aware of any goods or services provided to 985 by any of FMPC, Mclvor, Paradise Mclvor, Fetoun, Khaled, Mary or Mahmoud. RBC was not advised by 985 that it would be making these payments and RBC has not provided its written consent to these payments being made.
90. I understand that 985 was incorporated to hold real estate property, though I am not aware of any property that it owns as at the date of swearing this Affidavit. I do not know how 985 generates sufficient cash flow to be making all of the payments referred to in my Affidavit.
91. In summary, there are several instances where FMPC and 985, under the direction and control of Faissal, have paid significant sums of money, secured to RBC, to family members and related corporations, for no obvious commercial purpose related to the Business, for no apparent consideration and without notice to RBC.

Ghalib Hadi Professional Corporation and Samer Altallaj

I. Ghalib Hadi and the Offer to Purchase the Business

92. FMPC's counsel has provided to RBC a copy of a signed Asset Purchase Agreement dated August 10, 2022 between Faissal, FMPC and Michael Dave Ltd. as seller and Ghalib Hadi Professional Corporation ("GHPC") as purchaser (the "APA"). Attached to my Affidavit and marked as **Exhibit "JJ"** is a redacted copy of the APA.
93. According to the Alberta Corporate Registry records, Hadi is the sole director and voting shareholder of GHPC. Attached to my Affidavit and marked as **Exhibit "KK"** is a copy of an Alberta Corporate Registry search for GHPC. GHPC's registered office is in Calgary, Alberta.
94. As noted above, Hadi has registered the Hadi Caveat against the 52 Wellness Building, claiming an agreement charging land securing a promissory note granted to Hadi by 52 Wellness in the amount of \$385,000.00.
95. In my review of the Bank Statements, I identified several payments made to GHPC by FMPC, often in \$12,000 increments, in the aggregate amount of no less than \$291,270.36 since 2020.

96. I understand that Hadi is a licensed dentist and that he may provide dental services for FMPC, though I have no personal knowledge of this fact and do not know why FMPC has paid GHPC no less than \$291,270.36 since 2020.
97. By the APA, GHPC has agreed to purchase the Business, with a closing date of December 21, 2022.
98. RBC has several concerns with the APA including the following:
- (a) either or both of Hadi or GHPC may not be arms' length to FMPC or Faissal given the payments to GHPC and the fact that Hadi is a creditor of 52 Wellness;
 - (b) GHPC has agreed to release two deposits to FMPC, Faissal and Michael Dave Ltd. in the aggregate amount of \$575,000, whether or not the transaction contemplated by the sale closes;
 - (c) there is no non-competition agreement respecting Faissal contained in the APA;
 - (d) RBC has not been provided with an appraisal of the Business and therefore is unable to determine if the purchase price is reasonable;
 - (e) FMPC's Solicitor has advised RBC's Solicitor that the purchase price for the Business is less than fair market value;
 - (f) RBC has asked FMPC, Faissal and Michael Dave Ltd. through counsel why Michael Dave Ltd. is a party to the APA. As far as RBC is aware, Michael Dave Ltd. only owns the land and building where the Business is operated, but the land is not included in the APA. RBC has also requested confirmation of what assets being sold are owned by Michael Dave Ltd. As of the date of swearing this Affidavit, no reply has been received from FMPC, Faissal and Michael Dave Ltd. to this inquiry and therefore RBC is unable to determine how much of the sale proceeds from the APA should be paid to RBC pursuant to the Security; and
 - (g) the purchase price is not sufficient to repay all amounts owing to RBC by FMPC and Faissal, including the FMPC Direct Indebtedness and the Mclvor Guaranteed Indebtedness.
99. As at the date of swearing this Affidavit, RBC's concerns regarding the APA have not been resolved and therefore RBC is not supportive of the APA and does not provide its consent to the sale contemplated thereby.

II. Samer Altallaj and the Offer to Purchase the Mclvor Lands

100. RBC has been provided with an Offer to Purchase and Interim Agreement dated in or around November 18, 2021 between Samer Altalaj and/or nominee ("**Samer**") as purchaser and Mclvor as vendor (the "**Mclvor Lands Offer**").
101. Attached to my Affidavit and marked collectively as **Exhibit "LL"** is a redacted copy of the Mclvor Lands Offer and two Amending Agreements to the Mclvor Lands Offer dated March 29, 2022 and July 9, 2022.
102. RBC also received an Exclusive Commercial Marketing Agreement between Mclvor and KDI Commercial Inc. dated September 9, 2020 (the "**Listing Agreement**") to sell the Mclvor Lands from Steve Seiler, who is named as a senior associate on the Listing

Footnote 48

COURT FILE NUMBER 2203-12557
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE Edmonton
PLAINTIFF ROYAL BANK OF CANADA



DEFENDANTS FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED

DOCUMENT AFFIDAVIT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT CODY AND COMPANY LAW OFFICE
4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
Fax: (403) 556-1728

Our File No: 22364

AFFIDAVIT OF FETOUN AHMAD SWORN SEPTEMBER 8, 2022

I, FETOUN AHMAD, of the City of Red Deer, in the Province of Alberta, Make Oath and Say:

1. That I and my companies Delta Dental Corp, and 52 Dental Corporation, are Defendants in action number 2203-12557
2. As of December 14, 2022, I, Fetoun Ahmad, am the sole Director and Shareholder of Delta Dental Corp ("Delta Corp") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit A" is a copy of the Corporate Search for Delta Dental.

A handwritten signature in blue ink, appearing to be a stylized 'S' or similar character.

- and marked as “**Exhibit R**” is a copy of lines 58-60 of the Statement of Claim, RBC Brief lines 97-98.
47. It was only after RBC called for the repayments of the FMPC loan that FMPC defaulted in repayment of the loans in their entirety. Attached hereto and marked as “**Exhibit S**” is a copy of lines 58-65 of the Statement of Claim.
 48. RBC then rushed to get Judgements against FMPC, McIvor, and all parties that provided security for FMPC’s loan on August 10, 2022 as well as including myself, Delta Corp, and 52 Dental in their claim. Attached hereto and marked as “**Exhibit T**” is a copy of lines 68-77 of the Statement of Claim.
 49. **It is my understanding that the loan was recalled as a result of breach of contract and not insolvency as nothing in RBC’s Statement of Claim or RBC’s Affidavit have indicated to me that FMPC was bankrupt or contemplating bankruptcy.**
 50. Neither I nor 52 Dental or Delta Corp accepted any transfer from FMPC knowing that it could affect FMPC’s bankruptcy position as all transfers from FMPC were accepted in the ordinary course of business.
 51. It is my understanding from RBC’s Affidavit that RBC is aware that FMPC and its guarantors are not insolvent as the FMPC loan and McIvor Loan were guaranteed by the Dewinton Property which is sufficient to make RBC whole in terms of repayment of the loans. RBC has first interest in receiving payment from this sale as they are the first registered mortgagors on the title in the amount of \$6,000,000.00 whereas FMPCs indebtedness is currently \$632,627.73 and McIvors indebtedness is \$2,504,407.54 As well, RBC is aware of the impending sale of the Red Deer Clinic. Therefore, there is ample capital which RBC has a security interest over which would allow for repayment of the FMPC loan. Attached hereto and marked as “**Exhibit U**” is a copy of lines 92, 97, 100 and 103 of the RBCs Affidavit.
 52. On August 18, 2022, a bailiff sized the equipment and inventory of the Red Deer Clinic and left the seized property on a Bailee’s Undertaking on the instructions of RBC. Attached hereto and marked as “**Exhibit V**” is a copy of para 127 of RBCs Affidavit.
 53. I, Fetoun Ahmad, was not physically present before the commissioner, but I affirmed and virtually signed this Affidavit according to the remote signing principles as set out on the Court of Queen’s Bench of Alberta.
 54. This Affidavit is made in support of an Order directing the Plaintiff to release me, Delta Dental, and 52 Dental as Defendants in this action, costs of this application, and any other such further relief as deemed necessary and reasonable by this Honourable Court.

Footnote 49

COURT FILE NUMBER 2203-12557

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Edmonton

PLAINTIFF **ROYAL BANK OF CANADA**



DEFENDANTS **FAISSAL MOUHAMAD PROFESSIONAL CORPORATION, MCIVOR DEVELOPMENTS LTD., 985842 ALBERTA LTD., 52 DENTAL CORPORATION, DELTA DENTAL CORP., 52 WELLNESS CENTRE INC., PARADISE MCIVOR DEVELOPMENTS LTD., MICHAEL DAVE MANAGEMENT LTD., FAISSAL MOUHAMAD and FETOUN AHMAD, also known as FETOUN AHMED**

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

CODY AND COMPANY LAW OFFICE
4905C 50 Ave
Olds, Alberta T4H 1P5

Attention: Carli Sylvestre
Phone: (403) 556-1528
Fax: (403) 556-1728

Our File No: 22364

AFFIDAVIT OF FETOUN AHMAD SWORN SEPTEMBER 8, 2022

I, FETOUN AHMAD, of the City of Red Deer, in the Province of Alberta, Make Oath and Say:

1. That I and my companies Delta Dental Corp, and 52 Dental Corporation, are Defendants in action number 2203-12557
2. As of December 14, 2022, I, Fetoun Ahmad, am the sole Director and Shareholder of Delta Dental Corp ("Delta Corp") which is a provincially registered body incorporated pursuant to the laws of Alberta which carries out business in the City of Red Deer and elsewhere in the Province of Alberta. Attached hereto and marked as "Exhibit A" is a copy of the Corporate Search for Delta Dental.

A handwritten signature in blue ink, consisting of a stylized, cursive 'F' followed by a horizontal line and a small flourish.

and marked as “**Exhibit R**” is a copy of lines 58-60 of the Statement of Claim, RBC Brief lines 97-98.

47. It was only after RBC called for the repayments of the FMPC loan that FMPC defaulted in repayment of the loans in their entirety. Attached hereto and marked as “**Exhibit S**” is a copy of lines 58-65 of the Statement of Claim.
48. RBC then rushed to get Judgements against FMPC, McIvor, and all parties that provided security for FMPC’s loan on August 10, 2022 as well as including myself, Delta Corp, and 52 Dental in their claim. Attached hereto and marked as “**Exhibit T**” is a copy of lines 68-77 of the Statement of Claim.
49. It is my understanding that the loan was recalled as a result of breach of contract and not insolvency as nothing in RBC’s Statement of Claim or RBC’s Affidavit have indicated to me that FMPC was bankrupt or contemplating bankruptcy.
50. Neither I nor 52 Dental or Delta Corp accepted any transfer from FMPC knowing that it could affect FMPC’s bankruptcy position as all transfers from FMPC were accepted in the ordinary course of business.
51. It is my understanding from RBC’s Affidavit that RBC is aware that FMPC and its guarantors are not insolvent as the FMPC loan and McIvor Loan were guaranteed by the Dewinton Property which is sufficient to make RBC whole in terms of repayment of the loans. RBC has first interest in receiving payment from this sale as they are the first registered mortgagors on the title in the amount of \$6,000,000.00 whereas FMPCs indebtedness is currently \$632,627.73 and McIvors indebtedness is \$2,504,407.54 As well, RBC is aware of the impending sale of the Red Deer Clinic. Therefore, there is ample capital which RBC has a security interest over which would allow for repayment of the FMPC loan. Attached hereto and marked as “**Exhibit U**” is a copy of lines 92, 97, 100 and 103 of the RBCs Affidavit.
52. On August 18, 2022, a bailiff sized the equipment and inventory of the Red Deer Clinic and left the seized property on a Bailee’s Undertaking on the instructions of RBC. Attached hereto and marked as “**Exhibit V**” is a copy of para 127 of RBCs Affidavit.
53. I, Fetoun Ahmad, was not physically present before the commissioner, but I affirmed and virtually signed this Affidavit according to the remote signing principles as set out on the Court of Queen’s Bench of Alberta.
54. This Affidavit is made in support of an Order directing the Plaintiff to release me, Delta Dental, and 52 Dental as Defendants in this action, costs of this application, and any other such further relief as deemed necessary and reasonable by this Honourable Court.