



File No.: 40685
Via Email: CommercialCoordinator.QBEdmonton@albertacourts.ca

MOHAMED AMERY
Direct Line: 403-536-9593
Email: mamery@linmac.com

May 5, 2023

Court of King's Bench of Alberta

Law Courts Building
1A Sir Winston Churchill Square
Edmonton, AB T5J 0R2

Attention: The Honourable Mr. Justice Lema

Dear Sir:

Re: Royal Bank of Canada v Faissal Mouhamad Professional Corporation, et al
ABKB No. 2203-12557

We write as counsel for InvestPlus Master Limited Partnership (“**InvestPlus Partnership**”) and InvestPlus REIT—hereafter “**our clients**”. The Receiver in the above-captioned matter has brought an application on the Commercial List slated for May 8, 2023, at 2:00 pm (the “**Application**”). For brevity, proper nouns described herein—unless specifically defined—carry the definitions ascribed to them in the Application.

Our clients have serious procedural and substantive concerns in relation to the Application.

Our office received the Application and the associated Seventh Report late on Thursday, May 4, 2023. Earlier that afternoon, the Receiver’s counsel phoned the undersigned, enquiring as to our clients’ position relative to the Application. We advised that the Application and Seventh Report were filtered out by our firm’s information technology (IT) “firewall”. We thus did not receive the materials prior to the Receiver’s counsel sending same to the undersigned just yesterday. Evidently, the serving email contained a certain “HTML” link that was caught by the firewall. This issue has been addressed by our IT team.

In any event, we sought an adjournment from the Receiver so that we may properly review and provide a fulsome response, including an affidavit, in relation to the Application. The Receiver denied our request, forcing the undersigned to write you the within letter on the evening of Friday, May 5, 2023.

Our clients seek a 2-week adjournment so that they may produce a response affidavit and so that the Court may adjudicate the Application having full regard to all salient issues.

Substantively, the Application addresses many things, including specifically—in relation to our clients—the proposed 985842 Sale Process (or simply hereafter the “**Sale Process**”). We have several concerns, and thus oppose the Application, in respect to the proposed process.

- 1) The Sale Process is fundamentally flawed. The Receiver is seeking to market units where there is no proof the units were even issued for value in the first place. 985842 Alberta Limited (“**985 Alberta**”) did not pay cash money for the units. The units were



issued as part consideration for a sale of property by 985 Alberta to InvestPlus Partnership. The latter has maintained that 985 Alberta engaged in fraud as part of that transaction. This is currently the subject of litigation commenced by InvestPlus REIT and InvestPlus GP Ltd. in Action No. 2101-09699 (the “**Litigation**”). A copy of the Statement of Claim issued in that Litigation is enclosed in this letter. Note that our office is successor counsel to Bennett Jones LLP, our clients’ initial counsel in the Action. In short, there should be no sale process unless and until there is an adjudication in that lawsuit. The stay of litigation against 985 Alberta should be lifted so that our clients may seek such a determination.

- 2) At paragraph 16 of the Seventh Report, the Receiver is suggesting that the realization efforts for the units in question take place outside of the Receivership proceedings because 985 Alberta has limited resources to pursue the claim. This makes no sense. 985 Alberta is not *pursuing* any claim. It is a Defendant in the Litigation. The entire proposed process is untenable: why would the Receiver solicit offers at all? The Receiver’s statement in paragraph 16 and the very Sale Process are contradictory. If the Sale Process is to take place “outside of the receivership proceedings”, it makes the most sense that that process take place within Action No. 2101-09699—indeed *after* adjudication of that Action.
- 3) The proposed letter by the Receiver—Schedule A of the proposed Order (Investment Sale Process)—is replete with problems.
 - (a) Contrary to the statement in paragraph #1, the LP Units were not converted into Class A units. The Class A Units were issued as distributions on the LP Units prior to cancellation of both the LP Units and Class A Units. The Receiver’s counsel has misinterpreted the situation and has included misleading information in the offer letter.
 - (b) Further, inclusion of any comments related to the Receiver’s legal counsel’s opinion, specifically the following sentence, are incredibly problematic: “The Receiver’s legal counsel has reviewed the information provided and determined that the conversion of the LP Units and the subsequent cancellation of the Class A Units were likely not completed pursuant to the express terms of the various underlying agreements.”
 - (i) The undersigned specifically wrote to the Receiver’s counsel yesterday on this issue, stating: “Please provide back-up for this determination. Is there a written report that presents this analysis? Without presentation of any such report to a prospective buyer, this highlighted statement is unsubstantiated at best and perhaps misleading and improper. I would imagine that a prudent buyer would want to see such analysis.”
 - (ii) In response, the Receiver’s counsel stated only: “There will be no written report prepared by our Firm and provided to potential purchasers. The sale will be completed on an “as is, where is” basis. The merits of your clients’ allegations must be judicially determined. The sale process is transparent that the investments are disputed and subject to active litigation.”



- (iii) We could not agree more with the statement that the “investments are disputed and subject to active litigation”. That is our whole point.
- (c) Paragraph 3 of the proposed letter fails to state that the Litigation has been stayed due to the Receivership proceedings.
- (d) Quite oddly, the 7 items listed on page 2 of the proposed letter do not even include the filed pleadings in the Litigation.

In summary, the Application should be adjourned so that the Court could have proper evidence and argument before it.

Yours truly,
LINMAC LLP



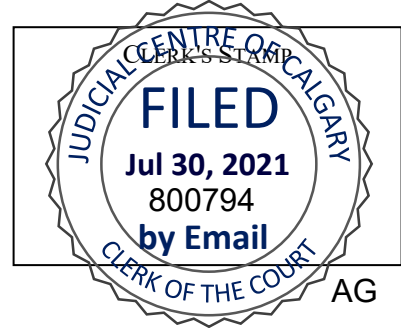
Mohamed Amery
MA:sp

Enclosure 1 – Statement of Claim

Enclosure 2 – Correspondence between Receiver’s Counsel and InvestPlus’ Counsel

cc: Client

FORM 10
[RULE 3.25]



COURT FILE NUMBER 2101-09699
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFFS INVESTPLUS REIT and INVESTPLUS GP LTD.
DEFENDANTS 985842 ALBERTA LTD., FAISSAL MOUHAMAD
and MAMMOUD MOUHAMAD

DOCUMENT **STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

BENNETT JONES LLP
Barristers and Solicitors
4500, 855 – 2nd Street SW
Calgary, Alberta T2P 4K7

Attention: Blair C. Yorke-Slader, Q.C.
Telephone No.: 403-298-3291
Fax No.: 403-265-7219
Client File No.: 90557-3

NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

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

Statement of facts relied on:

1. The Plaintiff InvestPlus REIT (the "**REIT**") is a real estate investment trust formed pursuant to the laws of Alberta.
2. The Plaintiff InvestPlus GP Ltd. ("InvestPlus GP") is a body corporate with a registered office in Calgary, Alberta, and is the general partner of a limited partnership affiliated with the REIT.

3. The Defendant 985842 Alberta Ltd. ("985842") is a body corporate with a registered office in Red Deer, Alberta.
4. The Defendant Faissal Mouhamad ("Faissal") is an individual resident in or about Red Deer, Alberta, and is the sole director, officer and shareholder of 985842.
5. The Defendant Mammoud Mouhamad ("Mammoud") is an individual resident in or about Red Deer, Alberta, and is Faissal's brother.
6. Pursuant to an Offer to Purchase dated October 2, 2019, and accepted by 985842 effective October 7, 2019 (the "Purchase Agreement"), the REIT "and/or nominee" agreed to purchase and 985842 agreed to sell certain commercial property located at 5018 - 45th Street, Red Deer, Alberta, and known as Gaetz Professional Building (the "Property"), at a price of \$7.2 million. InvestPlus GP was the REIT's nominee.
7. At relevant times during the negotiation of the Purchase Agreement with the Plaintiffs, Mammoud impersonated Faissal.
8. It was an express provision of the Purchase Agreement that 985842 would assign to the Plaintiffs the "leases", defined to mean "the current lease(s) for" the Property. The Property was and is a commercial property, leased to tenants for the purpose of producing income. The Defendants marketed the Property as an income-producing investment, and the Plaintiffs contracted to purchase it on such basis.
9. The Plaintiffs' purchase of the Property from 985842 closed effective January 20, 2020 ("**Closing**"). Effective such date, 985842 transferred the Property to InvestPlus GP and, by an Assignment and Assumption of Leases, assigned certain what it represented were the "leases" to InvestPlus GP.
10. As reflected in the Assignment and Assumption of Leases, there were five tenants of the Property:

Tenant Legal Name	Trade Name

Sarah Moe Professional Corporation	"Central Dental"
632758 Alberta Ltd.	"Money Mart"
Krupal Appa Irajy and Shalini Reddy	"Concept Dental"
2073626 Alberta Ltd.	"Indian Kitchen"
Long-Hodge Holdings Inc.	"Domino's Pizza"

11. Unbeknownst to the Plaintiffs, three of the five leases that 985842 assigned were not, as the Defendants had represented to the Plaintiffs, the current lease(s) for the Property. Instead, the Defendants had orchestrated the creation of misleading lease documents in order falsely to overstate the net income of the Property and to mislead the Plaintiffs into contracting to purchase it for more than it was worth.
12. Particulars of the false and misleading lease documents included the following:

Tenant	Lease Description	Terms Undisclosed by Defendant
Central Dental	Initial term commencing December 31, 2018 and expiring December 31, 2028	Non-arm's length, sham transaction. It was never the intention or expectation of the Defendants that Central Dental would perform its lease obligations. Sarah Moe, the principal of the tenant, is Faissal's sister. Within weeks of Closing, Central Dental ceased operations and began removing fixtures and equipment under the guise of supposedly conducting renovations, which were then not conducted. Within six months of Closing, Central Dental abandoned the Property to join Faisal's Delta Dental Clinic at premises located at 7151 Gaetz Avenue E, Red Deer, Alberta, also owned by one or more of the Defendants and

Tenant	Lease Description	Terms Undisclosed by Defendant
		also operated as a dental clinic. On October 26, 2020, Central Dental made an assignment in bankruptcy.
Concept Dental	Initial term commencing January 1, 2015 and expiring December 31, 2024	At a time unknown to the Plaintiffs, the Defendants purported to sell for \$1 to Concept Dental various dental equipment and fixtures that it later sold to the Plaintiffs, as an inducement to sign the supposed lease at higher stated rental rates than were reflected in the lease.
Domino's Pizza	Initial term commencing February 1, 2020 and expiring January 31, 2023	In or about December 2019, the Defendants paid Domino's Pizza \$15,000 to sign the supposed lease at much higher rates than the tenant had been paying on an overholding basis.

13. As the Defendants intended, their falsification of these leases improperly induced the Plaintiffs, who relied upon the Defendants' representations that these were *bona fide* leases for the Property, into agreeing to pay more for the Property than it was worth.
14. The Plaintiffs seek rescission of the Offer to Purchase and of the purchase and sale of the Property made pursuant thereto, and they seek reimbursement of all expenses incurred by them in relation to or in consequence of the same. In the alternative, the Plaintiffs seek damages against the Defendants, jointly and severally, in the amount of \$2.5 million or such other amount as will be proven at trial.

Remedy sought:

15. The Plaintiffs claim:
 - (a) An Order for rescission of the Offer to Purchase and of the purchase and sale of the Property made pursuant thereto;
 - (b) Damages for all related and consequential expenses incurred by the Plaintiffs;

- (c) In the alternative, damages in the amount of \$2.5 million or such other amount as will be proven at trial;
- (d) Interest thereon calculated at such rate or rates as the Honourable Court may seem appropriate pursuant to the provisions of the *Judgment Interest Act*, R.S.A. 2000, c. J-1, or otherwise;
- (e) Costs of this Action on an enhanced basis; and
- (f) Such further and other relief as to the Honourable Court may seem appropriate.

NOTICE TO THE DEFENDANT

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

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

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

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiffs against you.

Stephanie Proulx

From: Preet Saini <Preet.Saini@mcmillan.ca>
Sent: May 5, 2023 11:26 AM
To: Mohamed Amery
Cc: Vanessa Allen; Adam Maerov; Stephanie Proulx; Melanie Cheddi
Subject: RE: 985482 Alberta Ltd. - in Receivership/ Cancelled Shares
Attachments: RE: 985482 Alberta Ltd. - in Receivership/ Cancelled Shares

Follow Up Flag: Follow up
Flag Status: Completed

Hi Mohamed,

Regarding your request for an adjournment, I have attached my response from yesterday afternoon. You have had notice of the relief sought in the Receiver's application since May 1st, we have delivery receipts from May 2nd and May 3rd serving you with our materials, and you have confirmed receipt from yesterday. The Receiver does not consent to an adjournment in the circumstances.

There will be no written report prepared by our Firm and provided to potential purchasers. The sale will be completed on an "as is, where is" basis. The merits of your clients' allegations must be judicially determined. The sale process is transparent that the investments are disputed and subject to active litigation.

Please let me know if you would like to discuss in advance of Monday. I also ask that you confirm receipt of my email by reply email.

Thanks,
Preet



Preet Saini
Partner
Pronoun: He/Him/His
d 403.531.4716
Preet.Saini@mcmillan.ca

Assistant: Irma Alvarado | 403.531.4728 | irma.alvarado@mcmillan.ca

CONFIDENTIALITY NOTICE: This email, including any attachments, may contain information that is confidential and privileged. Any unauthorized disclosure, copying or use of this email is prohibited. If you are not the intended recipient, please notify us by reply email or telephone call and permanently delete this email and any copies immediately.

Please consider the environment before printing this e-mail.

From: Mohamed Amery <mamery@linmac.com>
Sent: Thursday, May 4, 2023 6:31 PM
To: Preet Saini <Preet.Saini@mcmillan.ca>; Vanessa Allen <Vanessa.Allen@mnp.ca>; Stephanie Proulx <sproulx@linmac.com>
Cc: Adam Maerov <Adam.Maerov@mcmillan.ca>; Melanie Cheddi <melanie.cheddi@mcmillan.ca>
Subject: RE: 985482 Alberta Ltd. - in Receivership/ Cancelled Shares

[EXTERNAL/EXTERNE]

I observe an interesting comment in the Application materials and the Seventh Report:

"InvestPlus LP has taken the position that LP Units were converted to Class A Units, which were subsequently cancelled and, as such, have no value. The Receiver's legal counsel has reviewed the information provided and determined that the conversion of the LP Units and the subsequent cancellation of the Class A Units were likely not completed pursuant to the express terms of the various underlying agreements."

Please provide back-up for this determination. Is there a written report that presents this analysis? Without presentation of any such report to a prospective buyer, this highlighted statement is unsubstantiated at best and perhaps misleading and improper. I would imagine that a prudent buyer would want to see such analysis.

Mohamed Amery

Partner

p +1 403 536 9593

c +1 403 473 3626

mamery@linmac.com

LINMAC LLP

linmac.com

VANCOUVER | CALGARY | TORONTO

NOTICE REGARDING SERVICE: This email address is not an address for service pursuant to Rule 11.21 of the Alberta Rules of Court.

PRIVILEGE AND CONFIDENTIALITY NOTICE: This communication and any attachment is confidential and may be subject to solicitor-client privilege. It should only be read by the person to whom it is addressed. If you have received this communication in error, please notify us by reply and delete the communication.