

COURT FILE NUMBER 2403 03944
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON
PLAINTIFF ROYNAT INC.
DEFENDANTS JANMAR INVESTMENTS (ALBERTA) LTD.,
1406676 ALBERTA LTD., MARJORIE CARR
and WARD FLEMING
DOCUMENT **STATEMENT OF CLAIM**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT DUNCAN CRAIG LLP
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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.

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

Statement of facts relied on:

1. The Plaintiff, Roynat Inc. (the "**Plaintiff**") is a corporation registered extra-provincially in Alberta that carries on business throughout the Province of Alberta.
2. The Defendants, Janmar Investments (Alberta) Ltd. ("**Janmar**") and 1406676 Alberta Ltd. ("**140**") are corporations incorporated pursuant to the laws of the Province of Alberta.
3. The Defendants, Marjorie Carr ("**Marjorie**") and Ward Fleming ("**Fleming**") to the best of the Plaintiff's knowledge reside in the Province of Alberta.

Loan Agreements and Janmar Security

4. By an Offer of Finance dated January 25, 2017, the Plaintiff agreed to provide Janmar with financing in the total principal sum of \$8,050,000.00 (the "**Loan Agreement #1**"), together with interest thereon at the Plaintiff's annual fixed interest rate established from time to time plus 8.78% per annum, calculated and compounded monthly, and costs on a solicitor and own client full indemnity basis.

5. By an Offer of Finance dated August 31, 2017, the Plaintiff agreed to provide Janmar with financing in the total principal sum of \$1,000,000.00 (the "**Loan Agreement #2**", with Loan Agreement #1 and Loan Agreement #2 being the "**Loan Agreements**"), together with interest thereon at the Plaintiff's Canadian Variable Rate (as defined in Loan Agreement #2) plus 4.00% per annum (or after a satisfactory lease is entered into on the Janmar Lands, plus 3.00% per annum), calculated and compounded monthly and costs on a solicitor and own client full indemnity basis.
6. By a Demand Debenture made by Janmar on February 7, 2017, and registered in the Land Titles Office for the Alberta Land Registration District on March 6, 2017 as instrument number 172 060 051 Janmar agreed to pay on demand to the Plaintiff all amounts owing under the Loan Agreements up to the principal sum of \$11,00,000.00 plus interest at the rate of 25% per annum payable monthly (the "**Janmar Debenture**"). Under the Janmar Debenture, as continuing security for the payment and performance of all present and future indebtedness by Janmar to the Plaintiff, Janmar granted a mortgage and charge to and in favour of the Plaintiff in, among other property, the following:
 - (a) PLAN 1520043
BLOCK 2
LOT 4
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.596 HECTARES (1.47 ACRES) MORE OR LESS
("**Janmar Lands**")
 - (b) All of its freehold and leasehold real and immovable property;
 - (c) All of its present and after acquired personal property;
 - (d) All accounts, instruments, debts which are then due, owing or accruing due or which may thereafter become due, owing or accruing due to Janmar together with all records (whether in writing or not) and all other documents of every kind in which in any way evidence or relate to any or all accounts, instruments and debts; and
 - (e) All of its present and after acquired inventory.
7. By the Janmar Debenture, Janmar agreed that upon default, the Plaintiff could, among other remedies, appoint a person to be a Receiver of any or all of Janmar's present or after acquired personal or real property.
8. By the Loan Agreements and Janmar Debenture, Janmar agreed to pay the Plaintiff when due, all amounts (whether principal, interest calculated at the rate specified therein, or other sums) owing to the Plaintiff and further agreed to pay, on demand, all legal and other costs incurred by the Plaintiff in respect of the credit facilities, including, without restriction, for the preparation, registration or realization on the security and collection of the indebtedness, all with legal costs on a solicitor and his own client full indemnity basis.
9. By a General Assignment of Leases and Rents dated February 7, 2017, Janmar agreed, among other things, that the Plaintiff is authorized, at the Plaintiff's option, to deliver to any or all tenants of the Janmar Lands a notice to pay all rents to the Plaintiff.

Guarantees and Other Security

10. In consideration for the Loan Agreements and the Plaintiff extending credit from time to time to Janmar:
 - (a) 140 executed and delivered a written guarantee of Janmar to the Plaintiff dated February 7, 2017, by which 140 guaranteed unconditionally and promised to pay to the Plaintiff all debts and liabilities of Janmar to the Plaintiff, present or future, plus interest thereon and any and all costs, charges and expenses which may be incurred by the Plaintiff in recovering any indebtedness of Janmar thereby guaranteed or in enforcing the guarantee, including, without limitation, lawyer fees on a solicitor and his own client full indemnity basis (the “**140 Guarantee**”);
 - (b) Fleming executed and delivered a written guarantee of Janmar to the Plaintiff dated February 7, 2017, by which Fleming guaranteed unconditionally and promised to pay to the Plaintiff all debts and liabilities of Janmar to the Plaintiff, present or future, up to a maximum of \$1,000,000 plus interest thereon and any and all costs, charges and expenses which may be incurred by the Plaintiff in recovering any indebtedness of Janmar thereby guaranteed or in enforcing the guarantee, including, without limitation, lawyer fees on a solicitor and his own client full indemnity basis (the “**Fleming Guarantee**”); and
 - (c) Marjorie executed and delivered a written guarantee of Janmar to the Plaintiff dated April 23, 2021, by which Marjorie guaranteed unconditionally and promised to pay to the Plaintiff all debts and liabilities of Janmar to the Plaintiff, present or future, up to a maximum of \$1,000,000 plus interest thereon and any and all costs, charges and expenses which may be incurred by the Plaintiff in recovering any indebtedness of Janmar thereby guaranteed or in enforcing the guarantee, including, without limitation, lawyer fees on a solicitor and his own client full indemnity basis (the “**Marjorie Guarantee**”);

(collectively, the “**Guarantees**”).
11. As security collateral to the Guarantees, 140 executed a general security agreement in favour of Janmar, granting the Plaintiff a security interest over all present and after acquired personal and real property of 140.

Forbearance Agreement

12. By a Forbearance Agreement dated effective November 2022 (the “**Forbearance Agreement**”), between, among others, Janmar, 140, Marjorie, Fleming and the Plaintiff, Janmar, 140, Marjorie and Fleming acknowledged, among other things, that:
 - (a) Janmar was in default of its obligations to the Plaintiff;
 - (b) The indebtedness and loans made by the Plaintiff to Janmar were due and owing;
 - (c) The Guarantors were validly executed;

- (d) There was no defence or set-off available to either Janmar or 140, Marjorie or Fleming to the claims of the Plaintiff for repayment of the loans or for payment under the Guarantees; and
 - (e) All legal fees on a solicitor and own client full indemnity basis in connected with preparation and enforcement of the Forbearance Agreement or any of the Loan Agreements, Janmar Debenture or related security shall form part of the indebtedness.
13. By the Forbearance Agreement, the Defendants irrevocably executed and delivered to the Plaintiff a Consent Redemption Order, Consent Receivership Order, Consent Appointment of Receiver of Rents and Consent Judgment (collectively the “**Consent Orders**”).
14. By a Forbearance Amending and Extension Agreement dated June 8, 2023, between Janmar, 140, Marjorie, Fleming and the Plaintiff, the parties agreed, among other things, to extend the forbearance period, and the deadline for Janmar to pay the indebtedness owing to the Plaintiff, to October 31, 2023.

Default

15. Janmar defaulted under the terms and conditions of the Loan Agreements, Janmar Debenture and the Forbearance Agreement and on or about September 29, 2022 the Plaintiff did demand payment of the indebtedness from the Defendants (the “**Demand**”) and issued, to the corporate Defendants, a Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act* (Canada).
16. The forbearance period under the Forbearance Agreement, as amended, has expired and the indebtedness is fully due and owing to the Plaintiff.
17. As of February 23, 2024, there is due and owing to the Plaintiff by Janmar the amount of \$5,516,385.13, plus interest which continues to accrue pursuant to the terms of the Loan Agreements together with costs on a solicitor and his own client full indemnity basis.
18. As of February 23, 2024:
- (a) 140 is indebted to the Plaintiff pursuant to the 140 Guarantee in the amount of \$5,516,385.13 plus interest which continues to accrue pursuant to the terms of the Loan Agreements together with costs on a solicitor and his own client full indemnity basis;
 - (b) Marjorie is indebted to the Plaintiff pursuant to the Marjorie Guarantee in the amount of \$1,000,000.00 plus interest thereon after the Demand at the rate pursuant to the Loan Agreements, which continues to accrue together with costs on a solicitor and his own client full indemnity basis; and
 - (c) Fleming is indebted to the Plaintiff pursuant to the Fleming Guarantee in the amount of \$1,000,000.00 plus interest thereon after the Demand at the rate pursuant to the Loan Agreements, which continues to accrue together with costs on a solicitor and his own client full indemnity basis.

Remedy sought:

19. Judgment against the Defendants, jointly and severally, in the following amounts as at February 23, 2024:
 - (a) As against Janmar and 140, \$5,516,385.13;
 - (b) As against Marjorie and Fleming, \$1,000,000.00 plus interest thereon after the Demand at the rate pursuant to the Loan Agreements;

plus further interest which continues to accrue thereafter in accordance with the Loan Agreements and Janmar Debenture, or alternatively, interest pursuant to the *Judgment Interest Act*;
20. Costs of this action against the Defendants, and each of them, on a solicitor and own client full indemnity basis;
21. A declaration as to the amounts owing under the Janmar Debenture with interest according to the terms of the said Loan Agreements and Janmar Debenture and in default of payment, sale or foreclosure and possession of the Janmar Lands;
22. An order shortening the period of redemption with respect to the Janmar Lands;
23. An order for possession of the Janmar Lands;
24. Granting the Consent Orders, or any one or more of the Consent Orders, provided by the Defendants pursuant to the Forbearance Agreement;
25. An order for the appointment of a Receiver over all of Janmar's current and future assets, undertakings and properties of every nature;
26. Waiver of the requirement for the parties to engage in a dispute resolution process as contemplated by Rule 4.16 of the *Alberta Rules of Court*; and
27. Such further and other relief as the nature of the case may require and this Honourable Court may deem just.

NOTICE TO THE DEFENDANTS

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

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a Statement of Defence or a Demand for Notice in the office of the clerk of the Court of King's Bench at Edmonton, Alberta, AND serving your Statement of Defence or a Demand for Notice on the Plaintiff's address for service.

WARNING

If you do not file and serve a Statement of Defence or a Demand for Notice within your time period, you risk losing the lawsuit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the Plaintiff against you.