

COURT FILE NUMBER: 2403 00813
COURT: COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

PLAINTIFF: JASPER SUMMERLEA SHOPPING CENTER LTD., by its Court-appointed Receiver and Manager, MNP LTD.

DEFENDANTS: JUDY PING CHEN, also known as JUDY CHEN, KIN MIN LEE, JOHN DOE, JANE DOE, ABC CORPORATION, BANK OF MONTREAL, and ROYAL BANK OF CANADA

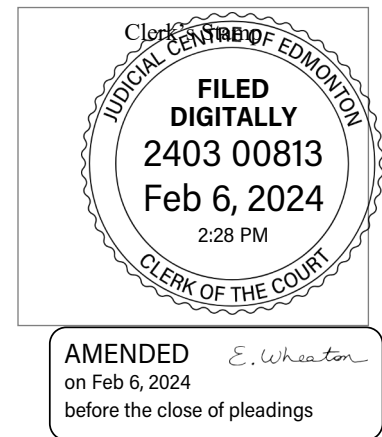
DOCUMENT: **AMENDED AMENDED AMENDED STATEMENT OF CLAIM**

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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 upon:

1. Jasper Summerlea Shopping Center Ltd. (“**Summerlea**”) is incorporated pursuant to the laws of the Province of Alberta.
2. Judy Chen, also known as Judy Ping Chen (“**Chen**”), was the sole registered Director and shareholder of Summerlea at all times material hereto. A search performed upon Summerlea at the Alberta Corporate Registry reveals her residential address to be located in the City of Edmonton (the “**Edmonton Address**”).
3. Kin Min Lee is an authorized signed of the Account, as defined below, and is, so far as is known to the Plaintiff, a resident of the City of Edmonton.
4. MNP Ltd. (the “**Receiver**”) was appointed as the Receiver of all of Summerlea’s current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the “**Property**”), pursuant to a Receivership Order pronounced by this Honourable Court in Court File No. 2303 12261 on August 17, 2023 (the “**Receivership Date**”).
5. Pursuant to the terms of the Receivership Order, the Receiver is empowered and authorized to, *inter alia*:
 - (a) Manage, operate, and carry on the business of Summerlea;
 - (b) Take possession of and exercise control over the Property;
 - (c) Receive, preserve, and protect the Property;
 - (d) Receive and collect all monies and accounts then owed or thereafter owing to Summerlea, and to exercise all remedies of Summerlea in collecting those amounts; and
 - (e) Initiate, prosecute, and continue the prosecution of any and all legal proceedings then pending or thereafter instituted with respect of Summerlea or the Property.

6. The Receivership Order further compels all Persons, as defined therein, to provide to the Receiver copies of or access to all Records, also as defined therein, related to the business or affairs of Summerlea (the “**Disclosure Provisions**”).
7. Chen received notice of the Receivership Order. Immediately following its pronouncement, the Receiver requesting the delivery of various financial information and items concerning the Property from Chen, via her legal counsel. Amongst the items requested were any undeposited cheques in her possession and made payable to Summerlea.
8. The Receiver notified the Canada Revenue Agency (the “**CRA**”) of the Receivership on August 24, 2023.
9. On December 21, 2023, the CRA advised the Receiver that a GST/HST refund in the amount of \$587,667.21 was issued to Summerlea by way of a cheque dated August 23, 2023 (“**Refund Cheque**”). The CRA further advised that the Refund Cheque was mailed to the Edmonton Address and had been negotiated for deposit.
10. The Refund Cheque was not deposited to any account then known by the Receiver to be held by Summerlea.
11. By correspondence dated December 21, 2023, the Receiver demanded that Chen forthwith:
 - (a) Provide full account particulars, if the Refund Cheque was deposited into an account held by Summerlea, but as yet undisclosed to the Receiver;
 - (b) If the Refund Cheque was endorsed to a third party, disclose the identity of that third party; or
 - (c) Pay the sum of \$587,667.21, plus any interest or profits earned thereon, to the Receiver if the cheque was endorsed personally to Chen.
12. Chen has failed or refused to comply with or acknowledge the Receiver’s demand (the “**Demand**”).

13. Upon obtaining and examining a copy of the cancelled Refund Cheque, the Receiver determined that it had been deposited to an account (the “**Summerlea Account**”) held at the Royal Bank of Canada (“**RBC**”) on August 28, 2023, eleven days following the Receivership Date.
14. The Summerlea Account, as well as all funds on deposit within it, form a part of the Property. Certain books and records relating thereto and in respect of the numerous transactions that occurred thereon since the date of its opening (the “**Account Records**”) were therefore provided to the Receiver by RBC in accordance with its obligations under the Disclosure Provisions.
15. The Account Records reveal that the Summerlea Account was opened under and pursuant to a Master Client Agreement for Business Clients dated August 26, 2023, executed by and naming Chen and Kin Min Lee (“**Lee**”) as authorized signing officers (the “**Client Agreement**”).
16. Pursuant to Section “A” of the Client Agreement, Chen and Lee falsely, or in the alternative recklessly, certified to RBC that they each have the power and authority to exercise rights on behalf of Summerlea, and to conduct business and delegate power and authority on its behalf.
17. Various transactions occurred on the Summerlea Account (the “**Transactions**”), including but not limited to the following:
 - (a) Numerous point of sale transactions relating to day to day consumer purchases, including several that followed the date of the Demand;
 - (b) A \$2,000.00 online transfer sent to Chen;
 - (c) Various cash withdrawals;
 - (d) Two withdrawals, one in the amount of \$500,000.00 and the other in the amount of \$40,000.00, concurrently deposited into RBC Account Nos. 5051032 and 5413760 (“**Account 032**” and “**Account 760**”, but collectively, the “**Transfer Accounts**”);
 - (e) The issuance of several bank drafts made payable to third parties;

- (f) The issuance of two bank drafts totalling \$11,600.00 and made payable to Chen.
18. ~~The identity of the holder or holders of the Transfers Accounts is unknown to the Plaintiff.~~ The Plaintiff states that it holds a proprietary interest in and to any funds held therein to the credit of the Transfer Accounts in an amount not exceeding the amounts withdrawn from the Summerlea Account and deposited therein.
19. On January 15, 2024, the funds then held to the credit of the Summerlea Account, being the sum of \$20,754.22, were remitted to the Receiver.
20. By Order pronounced in this Action on January 15, 2024, this Honourable Court directed RBC to provide information relating to the Transfer Accounts of the nature described therein to the Receiver.
21. The information disclosed pursuant to that Order reveals, *inter alia*, that:
- (a) Account 032 received the \$500,000.00 withdrawal from the Summerlea Account and is held in the name of Lee (the “500k Deposit”). On November 6, 2023, a branch-to-branch transaction resulted in a \$460,000.00 debit to the account (the “460k Debit”);
- (a) Account 760 received the \$40,000.00 withdrawal from the Summerlea Account and is jointly held by Chen and Michelle Ming Lee. Several email transfers followed the deposit. The account was cleared by a \$19,804.11 cash withdrawal on October 24, 2023.
- (collectively, the “Transfer Account Transactions”)
- ~~22. The recipient or recipients of the funds subject to the Transfer Account Transactions is unknown to the Plaintiff.~~
- 19-23. By Order pronounced in this Action on January 19, 2024, this Honourable Court further directed RBC to provide information relating to the Transfer Account Transactions. The information disclosed pursuant to that Order reveals, *inter alia*, that:
- (a) The 460k Debit resulted from the issuance of a Bank Draft dated November 4, 2023, made payable to the order of Lee, which was subsequently negotiated for deposit to an account held at the Bank of Montreal (“BMO”), being Account No. 7507319 (the “BMO Account”);

(b) On January 17, 2024, a Bank Draft made payable to Lee's order was issued from the funds held in Account 032, which was also subsequently negotiated for deposit into the BMO Account.

20.24. By Order pronounced in this Action on January 24, 2024, this Honourable Court further directed BMO to provide information relating to the BMO Account and the details of all debits occurring thereon from and after the deposit of the above-mentioned bank drafts to the BMO Account.

21.25. The information disclosed pursuant to that Order reveals that Lee is the holder of the BMO Account. On January 16, 2024, a Bank Draft made payable to Lee's order in the amount of \$372,000.00 was issued from the funds held in the BMO Account. On January 18, 2024, the Bank Draft was negotiated at National Money Mart Company.

22.26. The Plaintiff states that Chen ~~and Lee~~ acted under false pretenses for the prominent design and purpose of diverting funds from the Plaintiff by way of fraud, theft, embezzlement, misappropriation, or defalcation, and did so with the intent of causing damage to the Plaintiff, or in the alternative knew or ought to have known that damage would be caused to the Plaintiff as a result of those action, and did so with full knowledge or in reckless disregard of the Receivership Order.

23.27. The Plaintiff further states that the actions of Chen ~~and Lee~~ were carried out for the purpose of enriching herself and Lee themselves, or others for their benefit, to the Plaintiff's detriment. There is no juristic reason for their enrichment and the Plaintiff's corresponding detriment such that she is liable to make restitution to the Plaintiff for its losses.

24.28. Further, the Plaintiff is entitled to a constructive trust, or in the alternative a resulting trust, and to an Order for tracing, both a law and in equity, in relation to those of the funds that were misappropriated by Chen ~~and Lee~~, as well as any property, whether real, personal or incorporeal, title to which resulted from the conversion of the funds by her them.

25.29. The Plaintiff states that the \$500k Deposit to Account 032 enriched Lee to the Plaintiff's detriment and that there is no juristic reason for Lee's enrichment and the Plaintiff's

corresponding detriment such that Lee is liable to make restitution to the Plaintiff for its deprivation.

26.30. The Plaintiff states that the \$500k Deposit to Account 032 was received by Lee, to the Plaintiff's detriment, with knowledge that they were obtained under fraudulent circumstances, or in the alternative was reckless or willfully blind of those circumstances. In the alternative, the Plaintiff states that the \$500k Deposit to Account 032 was received by Lee, to the Plaintiff's detriment, for no consideration and with knowledge of facts which would put a reasonable person on inquiry as to the nature of the funds, but failed, refused, or neglected to make such inquiries such that Lee has been unjustly enriched and is liable to make restitution to the Plaintiff. Further, the Plaintiff is entitled to a constructive trust, or in the alternative a resulting trust, and to an Order for tracing, both a law and in equity, in relation to the \$500k Deposit funds, as well as any property, whether real, personal or incorporeal, title to which resulted therefrom.

27.31. Further, the Plaintiff states that Chen was, in her capacity as its Director, at all material times under a duty to act in good faith and in the best interests of Summerlea, and to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, which duty and standards of care she callously disregarded and breached in having committed the acts pleaded herein. The Plaintiff pleads and relies upon the provisions of the *Business Corporations Act*, RSA 2000, c B-9.

28.32. RBC and BMO are is named a as Defendants in this Action solely for the purpose of invoking, as to the BMO Account and the Transfer Accounts and any additional BMO and RBC accounts that received funds as a result of the Transfer Account Transactions, the exception contained in s. 437(2) of the *Bank Act*, SC 1991, c-46.

Remedies sought:

- (a) Judgment against Chen and Lee in the amount of \$566,912.99 ~~\$587,667.21~~, or such further or other amount as may be determined by this Honourable Court;

- (b) An Order declaring that all funds remaining on deposit in the Summerlea Account, the BMO Account, and the Transfer Accounts are the Property of Summerlea, or in the alternative traceable to its benefit;
- (c) An Order declaring any and all property of any nature obtained by Chen and Lee with funds debited from the Account to be held by them as constructive trustee for the benefit of the Plaintiff;
- (d) An Order declaring Chen to be in contempt of the Receivership Order;
- (e) Exemplary or in the alternative punitive damages against Chen in the amount of \$250,000.00, or such other amount as this Honourable Court deems just;
- (f) An Order declaring that any judgment granted in favour of the Plaintiff shall survive a discharge from bankruptcy pursuant to ss. 178(1)(d) and, or in the alternative, (e) of the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3, as amended;
- (g) An Order directing that Chen and Lee provide a complete accounting;
- (h) An Order for the preservation of assets;
- (i) An Order for disclosure of evidence to enable the Plaintiff to identify wrongdoers and to trace and preserve assets;
- (j) A worldwide interlocutory and permanent injunction, *inter alia*, restraining Chen and Lee from disposing of or dealing with any of the funds in her possession or held to her benefit, and any of her property, whether real, personal or incorporeal;
- (k) An Attachment Order made pursuant to the *Civil Enforcement Act*, RSA 2000 c C-15, as amended;
- (l) Interest pursuant to the provisions of the *Judgment Interest Act*, RSA 2000, c J-1, as amended, both before and after judgment;
- (m) Except as to RBC and BMO, costs of this action on a solicitor and own client full indemnity basis;

- (n) Such further and other relief as this Honourable Court deems just and proper in the circumstances.

NOTICE TO THE DEFENDANT(S)

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 the Edmonton Law Courts, 1A Sir Winston Churchill Square, Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

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