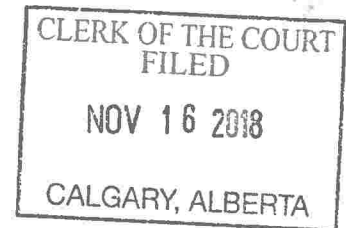


COURT FILE NUMBER: 1801-13299
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF ROYAL BANK OF CANADA



DEFENDANTS NEVAS REALTY INC., ANDREW SCHNEIDER,
JAMES QUILTY, AND MARVIN WOYCENKO

DOCUMENT: AMENDED STATEMENT OF CLAIM

AMENDED this 16th day of November, 2018 Pursuant to Rule 3.62

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

MLT AIKINS LLP
Barristers and Solicitors
1600, 520 3rd Ave SW
Calgary, Alberta T2P 0R3
Phone: 403.693.4305/4347
Fax: 403.508.4349
Attention: Dean A. Hutchison/Catrina J. Webster
File No.: 001480-0179

dated the 16th day of November, 2018

CLERK OF THE COURT

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.

1. The claims of the Plaintiff, the Royal Bank of Canada ("RBC"), is in debt and breach of contract for monies owed by the Defendants, Nevas Realty Inc. ("Nevas"), Andrew Schneider, James Quilty and Marvin Woycenko

Statement of facts relied on:

2. The Plaintiff, RBC, is a Canadian chartered bank formed in accordance with the laws of Canada and having branches located in the Province of Alberta.
3. The Defendant, Nevas Realty, is a corporation incorporated pursuant to the laws of the Province of Alberta with its registered office located in the City of Calgary. The Directors of Nevas are James Quilty, Andrew Schneider, Kevin Woycenko, and Marvin Woycenko.
4. To the best knowledge of RBC, the Defendant, Andrew Schneider, is an individual resident in the Town of Manitock, in the Province of Ontario.
5. To the best knowledge of RBC, the Defendant, Andrew Schneider, is an individual resident in the City of Swift Current, in the Province of Saskatchewan.
6. To the best knowledge of RBC, the Defendant, Marvin Woycenko, is an individual resident in the City of Calgary, in the Province of Alberta.

The Loan Agreements

7. RBC and Nevas entered into the following loan agreements setting out the terms of the loans granted by RBC to Nevas:
 - (a) Royal Bank of Canada Commitment Letter dated February 7, 2017 and executed by Nevas on March 12, 2017 (the "Swift Current Property Commitment Letter")
 - (b) Royal Bank of Canada Commitment Letter dated March 3, 2017 and executed by Nevas on March 12, 2017 (the "Eamon Property Commitment Letter"); and
 - (c) Full Disclosure Conditional Sale Contract between Nevas, Marvin Woycenko, Shaganappi Motors (1976) Ltd. and RBC dated May 26, 2017 (the "Vehicle Loan Agreement")

(collectively, the "**Loan Agreements**").
8. Pursuant to the Loan Agreements, RBC agreed to advance funds to Nevas, on certain terms and conditions agreed to by Nevas. The Loan Agreements provide that, upon default, Nevas agrees to be liable for and pay all court costs, legal fees and expenses incurred by RBC, including all legal fees on a solicitor and own client (full-indemnity) basis, and an event of default occurs if, among other things, Nevas fails to pay any principal, interest, or other amount when due or fails to perform any obligation as required under the Loan Agreements.
9. In accordance with the Loan Agreements, RBC made three credit facilities available to Nevas:
 - (a) a mortgage facility in the principal amount of \$3,500,000.00 (the "Swift Current Property Mortgage Facility");
 - (b) a mortgage facility in the principal amount of \$1,700,000.00 (the "Eamon Property Mortgage Facility"); and
 - (c) a vehicle loan facility (made to both Nevas and to Marvin Woycenko as "Co-Buyer") in the principal amount of \$90,011.49 (the "Vehicle Loan Facility")

(collectively, the "**Credit Facilities**").
10. Advances of monies under the Credit Facilities were made by RBC to Nevas .

The Mortgages and Security Agreements

11. As security for Nevas' obligations under the Swift Current Property Commitment Letter, Nevas granted:

- (a) a Mortgage dated May 9, 2017 executed by Nevas in favour of RBC in the principal sum of \$3,500,000.00 (the "**Swift Current Property Mortgage**") regarding property municipally located at 406 Cheade Street West, Swift Current, Saskatchewan, and legally described as:

Surface Parcel #144271111
Lot 15
Blk/Par 86
Plan No K5486
Extension 0
As described on Certificate of Title 92SC03255

Certificate of Title 92SC03255 in Mineral Parcel #150402215
Lot 15
Blk/Par 86
Plan No K5486
Extension 0
As described in Certificate of Title 92SC03255

Surface Parcel #144273304
Lot 14
Blk/Par 86
Plan No K5486
Extension 0
As described in Certificate of Title 92SC03255

Certificate of Title 92SC03255 in Mineral Parcel #150402204
Lot 14
Blk/Par 86
Plan No K5486
Extension 0
As described in Certificate of Title 92SC03255

Surface Parcel #144273292
Lot 13
Blk/Par 86
Plan No K5486
Extension 0
As described in Certificate of Title 92SC03255

Certificate of Title 92SC03255 in Mineral Parcel #150402192
Lot 13
Blk/Par 86
Plan No K5486
Extension 0
As described in Certificate of Title 92SC03255

(collectively, the "**Swift Current Property**");

- (b) a Site Specific Security Agreement executed by Nevas on May 9, 2017 whereby Nevas granted RBC a security interest in all of its present and after-acquired personal property located at the Swift Current Property (the "Swift Current Property Security Agreement ");
- (c) an Assignment of Rents for the sum of \$3,500,000.00 respecting the Swift Current Property executed by Nevas on May 9, 2017 for the Swift Current Property (the "Swift Current Property Assignment of Rents"); and
- (d) a General Assignment of Leases for the sum of \$3,500,000.00 respecting the Swift Current Property executed by Nevas on May 9, 2017 for the Swift Current Property (the "Swift Current Property Assignment of Leases").

12. As security for Nevas' obligations under the Eamon Property Commitment Letter, Nevas granted:

- (a) a Commercial Mortgage executed April 7, 2017 by Nevas in favour of RBC in the principal sum of \$1,700,000.00 (the "Eamon Property Mortgage") regarding the property municipally located at 10909 Eamon Road N.W., Calgary, Alberta and legally described as:

PLAN 3892GP
BLOCK 4
LOT 4
EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "Eamon Property"); and

- (b) a Site Specific Security Agreement executed by Nevas on April 7, 2017 whereby Nevas granted RBC a security interest in all of its present and after-acquired personal property located at the Eamon Property (the "Eamon Property Security Agreement "); and
- (c) an Assignment of Rents for the sum of \$1,700,000.00 respecting the Eamon Property executed by Nevas on April 7, 2017 for the Eamon Property the "Eamon Property Assignment of Rents").

13. As security for Nevas' and Marvin Woycenko's respective obligations under the Vehicle Loan Agreement, a security interest over a 2017 Chevrolet Corvette, serial number 1G1YU2D65H5604863 (the "Vehicle") pursuant to the Vehicle Loan Agreement.

14. The Swift Current Property Mortgage requires Nevas to pay interest at a rate of 3.81 % per annum (the "Swift Current Property Mortgage Interest Rate").

15. The Eamon Property Mortgage requires Nevas to pay interest at a rate of 4.48% per annum (the "Eamon Property Mortgage Interest Rate").

16. The Vehicle Loan Agreement requires Nevas and Marvin Woycenko to pay interest on the Vehicle Loan Facility at a rate of 0.99% per annum.
17. RBC registered the Swift Current Property Mortgage, the Swift Current Property Assignment of Rents and the Swift Current Property Assignment of Leases against the Certificate of Title to each of the properties comprising the Swift Current Property at the Saskatchewan Land Titles Office: (i) on May 12, 2017 with respect to the Swift Current Property Mortgage; (ii) on June 6, 2017 with respect to Swift Current Property Assignment of Rents; and (iii) on June 6, 2017 with respect to the Swift Current Property Assignment of Leases.
18. RBC also registered the security interest granted by Nevas pursuant to the Swift Current Property Security Agreement at the Saskatchewan Personal Property against Nevas.
19. RBC registered the Eamon Property Mortgage and the Eamon Property Assignment of Rents against the Certificate of Title to the Eamon Property at the Alberta Land Titles Office on March 19, 2018 under registration number 181 059 889 and 181 059 891, respectively.
20. RBC also registered the security interests granted by Nevas pursuant to the Eamon Property Security Agreement and the Vehicle Loan Agreement respecting the Vehicle at the Alberta Personal Property Registry against Nevas.
21. RBC still further registered the security interest granted by Marvin Woycenko pursuant to Vehicle Loan Agreement respecting the Vehicle at the Alberta Personal Property Registry against Marvin Woycencko.

The Guarantee of the Eamon Property Mortgage

22. As further security for all amounts owing from Nevas to RBC under the Eamon Property Commitment Letter and Eamon Property Mortgage, the Defendants Andrew Schneider, James Quilty, and Marvin Woycenko each respectfully entered into a Guarantee of Mortgage executed on April 21, 2017 by each of Andrew Schneider, James Quilty, and Marvin Woycenko in favour of RBC (the "Guarantee of Eamon Property Mortgage") whereby each of Andrew Schneider James Quilty, and Marvin Woycenko, guaranteed to pay on demand all indebtedness owed by Nevas to RBC under the Eamon Property Commitment Letter and Eamon Property Mortgage.

23. The Eamon Property Mortgage, the Eamon Property Security Agreement, the Swift Current Property Mortgage, and the Swift Current Property Security Agreement, each provide that, upon default, Nevas is liable to RBC for all costs, fees, disbursements and professional fees of any agent engaged by RBC and legal fees on a solicitor and own client (full-indemnity) basis.
24. The Guarantee of Eamon Property Mortgage provides that, upon default, Andrew Schneider, James Quilty, and Marvin Woycenko are liable to RBC for all costs, fees, disbursements and professional fees of any agent engaged by RBC and legal fees on a solicitor and own client (full-indemnity) basis.
25. The Vehicle Loan Agreement provides that Nevas and Marvin Woycenko must reimburse RBC for the full amount of all legal costs to collect any amounts owed to it thereunder.

Default Under the Loan Agreements and the Guarantee of Mortgage and Demands for Payment

26. Nevas failed to make payments on the Credit Facilities as required under the Loan Agreements which constituted a default pursuant to the Loan Agreements, the Swift Current Property Mortgage, the Eamon Property Mortgage (collectively, the "Mortgages"), the Swift Current Property Security Agreement and the Eamon Property Security Agreement (collectively, the "Security Agreements").
27. By a letter dated August 10, 2018, from its legal counsel, MLT Aikins LLP ("MLT Aikins"), to Nevas, RBC demanded immediate payment of the Debt (as defined below), in the amount then owing, in full from Nevas (the "Nevas Demand Letter"). The Nevas Demand Letter noted that Nevas had defaulted under the terms of the Loan Agreements by failing to comply with financial covenants and by failing to pay all amounts owing on the date required for payment. Enclosed with the Nevas Demand Letter was a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "244 Notice").
28. By letters dated August 16, 2018, from its legal counsel, MLT Aikins, to Andrew Schneider, James Quilty, and Marvin Woycenko RBC demanded immediate payment of \$1,785,215.60, together with applicable interest, from Andrew Schneider, James Quilty, and Marvin Woycenko with respect to their obligations under the Eamon Property Guarantee of Mortgage (collectively, the "Guarantors Demand Letters"). The Guarantors Demand Letters enclosed a copy of the Nevas Demand Letter and the 244 Notice, noted that Nevas was in default of its obligations under

the Loan Agreements and that demand for payment of the Debt (as defined below) had been made on Nevas, and demanded payment from Andrew Schneider, James Quilty, and Marvin Woycenko for the amounts owed by them to RBC under the Eamon Property Guarantee of Mortgage.

29. The Guarantors Demand Letters to Marvin Woycenko further made note of his default of his obligations under the Vehicle Loan Agreement and demanded payment of the amounts owed to RBC thereunder.

Outstanding Indebtedness

30. As of September 5, 2018, the sum of \$5,219,772.62 (the "Debt") is owing with respect to amounts advanced by RBC to Nevas pursuant to the Loan Agreements and Credit Facilities, (exclusive of legal fees and legal disbursement) incurred by RBC with respect to the enforcement of its rights and remedies under the Loan Agreements, the Mortgages, the Security Agreements, and the Guarantee of Eamon Property Mortgage. The amount of the Debt consists of: (i) the sum of \$1,719,030.90 owing with respect to the Eamon Property Mortgage Facility; (ii) the sum of \$72,656.13 owing with respect to the Vehicle Loan Facility; and (iii) the sum of \$3,428,176.59 owing with respect to the Swift Current Property Mortgage Facility.
31. In addition to the Debt, there is interest and costs that continue to accrue in accordance with the terms of the Loan Agreements, the Mortgages, the Security Agreements, and the Guarantee of Eamon Property Mortgage.
32. The Defendant, Nevas, has failed, refused or neglected to pay the amounts owed by them to RBC with respect to the Swift Current Property Mortgage Facility and the Eamon Property Mortgage Facility and the full amount remains justly due and owing.
33. The Defendants, Nevas and Marvin Woycencko, have failed, refused or neglected to pay the amounts owed by them to RBC with respect to the Vehicle Loan Facility and the full amount remains justly due and owing.
34. The Defendants, Andrew Schneider, James Quilty, and Marvin Woycenko, have failed, refused or neglected to pay the amounts owed by them to RBC under the Guarantee of Eamon Property Mortgage Facility and the full amount guaranteed thereunder remains justly due and owing.

35. Nevas is in default of its obligations under the terms of the Loan Agreements, the Mortgages, and the Security Agreements which defaults include, but are not limited to:

- (a) failing to pay the amounts owed under the Mortgages and the Vehicle Loan Agreement as required, or upon RBC's demand;
- (b) failing to abide by financial covenants;
- (c) failing to pay the Debt upon RBC's demand;
- (d) generally failing to pay its debts as such debts become due; and
- (e) such other events of default as may be proven at trial.

36. Andrew Schneider, James Quilty, and Marvin Woycenko are in default of their respective obligations under the terms of the Guarantee of Eamon Property Mortgage, which defaults include, but are not limited to:

- (a) failing to pay the amounts owed under the Guarantee of Eamon Property Mortgage upon RBC's demand;
- (b) generally failing to pay its debts to RBC as such debts become due; and
- (c) such other events of default as may be proven at trial.

37. Marvin Woycencko is in default of his obligations under the Vehicle Loan Agreement, which defaults include, but are not limited to:

- (a) failing to pay the amounts owed under the Vehicle Loan Agreement upon RBC's demand;
- (b) generally failing to pay its debts to RBC as such debts become due; and
- (c) such other events of default as may be proven at trial.

Remedies sought:

As Against Nevas

38. As a result of the foregoing, RBC respectfully seeks the following relief against Nevas:

- (a) A declaration that Nevas is in default of payment of its indebtedness pursuant to the Loan Agreements, the Mortgages, the Security Agreements, the Swift Current Property Assignment of Rents, the Swift Current Property Assignment of Leases and the Eamon Property Assignment of Rents and that default has been made under the Loan Agreements, the Mortgages, the Security Agreements, the Swift Current Property Assignment of Rents, the Swift Current Property Assignment of Leases and the Eamon Property Assignment of Rents
- (b) A declaration that pursuant to the terms of the Mortgages and Security Agreements:
 - (i) the principal, interest and other monies thereby secured have become due and payable;
 - (ii) the security constituted thereby has become enforceable; and
 - (iii) the charges created thereby have become specifically charged against Nevas' assets thereby charged but not already specifically charged.
- (c) A declaration of the amount owing under the Mortgages, with interest, according to the rates and terms of the Mortgages, and in default of payment, sale to RBC, or otherwise, or foreclosure and in either case, possession of the Swift Current Property and the Eamon Property.
- (d) In the alternative, immediate sale to RBC, or otherwise, foreclosure, in either case, possession of the Swift Current Property and the Eamon Property.
- (e) An Order for the appointment of a Receiver of the Swift Current Property, the Eamon Property all of Nevas' present and after-acquired personal property located at the Swift Current Property and the Eamon Property, and the Vehicle;
- (f) An Order:
 - (i) shortening the period of redemption of the Swift Current Property and the Eamon Property to less than 6 months, or such period as this Honourable Court directs;
 - (ii) alternatively, a direct Order for Sale of the Swift Current Property and/or the Eamon Property to RBC, or other party;
 - (iii) alternatively, a final Order for foreclosure of the Swift Current Property and/or the Eamon Property; and
 - (iv) for possession of the Swift Current Property and/or the Eamon Property.
- (g) Judgment against Nevas in the amount of \$5,219,772.62, or such other amount as may be proven at trial, together with interest thereon pursuant to the terms of the Loan Agreements from September 5, 2018 until Judgment is granted in this Action, or such other interest rate as may be proven at trial, and costs and fees in accordance with the terms of the Loan Agreements, the Mortgages and the Security Agreements.
- (h) Costs on a solicitor and own client (full-indemnity) basis.

- (i) Such further and other relief as this Honourable Court may deem just and appropriate in the circumstances.

As Against Andrew Schneider, James Quilty, and Marvin Woycenko

39. As a result of the foregoing, RBC respectfully seeks the following relief against Andrew Schneider, James Quilty, and Marvin Woycenko:

- (a) Judgment against each of Andrew Schneider, James Quilty, and Marvin Woycenko, in the amount of \$1,719,030.90, or such further and other amounts as may be proven at the trial of this action, plus interest thereon at the interest rates required pursuant to the Guarantee of Eamon Property Mortgage from September 5, 2018 until Judgment is granted in the Action, and costs and fees in accordance with the Guarantee of Eamon Property Mortgage.
- (b) Costs on a solicitor and own client (full-indemnity) basis.
- (c) Such further and other relief as this Honourable Court may deem just and appropriate in the circumstances.

As Against Marvin Woycenko

40. In addition to the relief sought against Marvin Woycenko as set out in the immediately preceding paragraph, RBC further respectfully seeks Judgment against Marvin Woycenko in the amount of \$72,565.13, or such further and other amounts as may be proven at the trial of this action, plus interest thereon at the interest rate of \$1.93 per diem required pursuant to the Vehicle Loan Agreement from September 5, 2018 until Judgment is granted in the Action, and costs and fees in accordance with the Vehicle Loan Agreement.

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 Queen's Bench at CALGARY, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

WARNING

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