

COURT FILE NUMBER

Clerk's Stamp

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLANTIFFS

**TIMBERCREEK MORTGAGE
SERVICING INC., and
COMPUTERSHARE TRUST COMPANY
OF CANADA solely in its capacity as bare
trustee for TIMBERCREEK MORTGAGE
SERVICING INC.**

DEFENDANTS

**SCREO I 700 2ND INC., 58508 ALBERTA
LTD. and SCREO I 700 2ND L.P. by its
general partner SCREO I 700 2ND GP INC.**

DOCUMENT

STATEMENT OF CLAIM

**ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT**

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NOTICE TO DEFENDANTS:

You are being sued. You are the defendant(s).

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

STATEMENT OF FACTS RELIED ON:

I. THE PARTIES

The Parties

1. The Plaintiff, Timbercreek Mortgage Servicing Inc. ("**Timbercreek**"), is a corporation incorporated pursuant to the laws of the Province of Ontario, with a registered office in Toronto, Ontario. Timbercreek is extra-provincially registered to carry on business in Alberta.
2. Timbercreek provides secured loans to commercial borrowers in Canada, and is a part of the Timbercreek Capital group of companies, which is a major Canadian alternative real estate lender.

3. The Plaintiff, Computershare Trust Company of Canada (“**Computershare**”), is a corporation incorporated pursuant to the federal laws of Canada, with a registered office in Toronto, Ontario. Computershare is extra-provincially registered to carry on business in Alberta.
4. As more fully detailed below, Computershare is a company which, among other things, acts as an agent, nominee, and bare trustee for Timbercreek, from time to time, in respect of certain mortgage loans and security (Computershare is hereinafter referred to in such capacity as the “**Nominee**”).
5. The Defendant, SCREO I 700 2ND Inc. (“**SCREO**”) is a corporation registered pursuant to the laws of the Province of Ontario, with a registered office located in Toronto, Ontario. SCREO is extra-provincially registered to carry on business in Alberta.
6. SCREO is part of the Slate Asset Management (“**Slate**”) group of companies, which is a major Canadian real estate asset manager.
7. The Defendant, 58508 Alberta Ltd. (“**585**”), is a corporation incorporated pursuant to the laws of the Province of Alberta, with a registered office in Calgary, Alberta. 585 is also part of the Slate group of companies.
8. The Defendant, SCREO I 700 2ND L.P. (“**SCREO LP**”) is a limited partnership registered pursuant to the laws of the Province of Ontario and extra-provincially registered in Alberta. SCREO LP is the 100% voting shareholder of SCREO and 585. SCREO LP’s general partner is SCREO I 700 2ND GP Inc. (“**SCREO GP**”).
9. The Defendants, SCREO and 585, are sometimes collectively referred to herein as the “**Borrower**”.

II. FACTUAL BACKGROUND

The Loan and Loan Agreement

10. Pursuant to a loan agreement dated November 27, 2018, as amended from time to time (the “**Loan Agreement**”), Timbercreek advanced as the “**Lender**”, to the Borrower, an equity take out facility of up to \$93,400,000 and a repositioning facility of up to \$67,900,000 (collectively, the “**Loan**”).
11. Among other things, the Loan Agreement, as amended, provides that:
 - a) the Loan has a maturity date of September 1, 2024, at which time the whole of the Loan, including the principal sum and interest, shall terminate and become immediately due and

payable;

- b) until maturity, the Borrower shall pay interest on the Loan, on the first business day of the month, calculated at the floating rate equal to the TD Prime Rate + 2.80% until August 1, 2024 and increasing to the TD Prime Rate + 4.80% thereafter, subject to a floor rate equal to 6.75% (the “**Interest Rate**”);
- c) an “Event of Default” under the Loan Agreement includes a financial default by the Borrower, which has not been remedied within five business days of written notice; and
- d) the Borrower shall provide first-ranking security for the Loan, including the Mortgages (as defined below), which security will be drafted in favour of the Nominee, as agent, nominee, and bare trustee for and on behalf of Timbercreek.

The Mortgages

12. As security for the Loan, SCREO and 585 provided the following mortgages:

- a) a mortgage granted by SCREO in favour of the Nominee dated November 21, 2018, in the principal amount of \$161,300,000, as amended from time to time (the “**SCREO Mortgage**”); and
- b) a mortgage granted by 585 in favour of the Nominee dated November 21, 2018, in the principal amount of \$161,300,000, as amended from time to time (the “**585 Mortgage**” and, together with the SCREO Mortgage, the “**Mortgages**”).

13. The SCREO Mortgage is a first mortgage and charge in respect of:

- a) the fee simple lands legally described as:

Title 181 077 052

PLAN 7410276

BLOCK 49

LOT 41

EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.458 HECTARES (1.13 ACRES) MORE OR LESS;

Title 181 077 052 +1

PLAN "A" CALGARY

BLOCK FORTY NINE (49)

LOT THIRTY (30)

EXCEPTING THE EASTERLY EIGHT AND ONE HALF (8 1/2) INCHES THROUGHOUT OF SAID LOT; and

Title 181 077 052 +2

PLAN "A" CALGARY

BLOCK FORTY NINE (49)

LOT TWENTY NINE (29) AND THE MOST EASTERLY EIGHT AND ONE HALF (8 1/2) INCHES OF LOT THIRTY (30),

(collectively, the “**Mortgaged Lands**”); and

- b) the leasehold estate, arising from a ground lease dated April 19, 1974, which is legally described as:

Title 181 077 053

PLAN "A" CALGARY

BLOCK FORTY NINE (49)

THOSE PORTIONS OF LOTS NINE (9), TEN (10) AND ELEVEN (11) WHICH LIE ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF THREE THOUSAND FOUR HUNDRED AND FORTY ONE AND FIVE TENTHS (3441.5) FEET ABOVE MEAN SEA LEVEL AND DETERMINED BY REFERENCE TO ALBERTA SURVEY CONTROL MONUMENT NO. 655-4.181 HAVING AN ELEVATION OF THREE THOUSAND FOUR HUNDRED AND THIRTY SEVEN AND FIFTY SEVEN HUNDREDTHS (3437.57) FEET CONFIRMED ON THE 15 DAY OF OCTOBER 1970 BY THE DIRECTOR OF SURVEYS OF THE PROVINCE OF ALBERTA BOUNDED AS FOLLOWS: COMMENCING AT A POINT IN THE NORTH BOUNDARY OF LOT NINE (9) DISTANT FIFTEEN (15) FEET EASTERLY FROM THE NORTH WEST CORNER OF THE SAID LOT NINE (9) THENCE SOUTHERLY PARALLEL WITH THE WEST BOUNDARY OF THE SAID LOT NINE (9) ON AN ASSUMED BEARING OF SOUTH TWO (2) DEGREES THIRTY SEVEN (37) MINUTES THIRTY (30) SECONDS WEST A DISTANCE OF ONE HUNDRED THIRTY AND SIX HUNDREDTHS (130.06) FEET MORE OR LESS TO THE SOUTH BOUNDARY OF SAID LOT NINE (9) THENCE EASTERLY ALONG THE SOUTH BOUNDARY OF LOTS NINE (9) TEN (10) AND ELEVEN (11) ON A BEARING OF SOUTH EIGHTY SEVEN (87) DEGREES TWENTY ONE (21) MINUTES FIVE (5) SECONDS EAST A DISTANCE OF FORTY AND FOURTEEN HUNDREDTHS (40.14) FEET THENCE ON A BEARING OF NORTH TWO (2) DEGREES THIRTY NINE (39) MINUTES THIRTY FIVE (35) SECONDS EAST A DISTANCE OF THIRTY SEVEN AND FIFTY THREE HUNDREDTHS (37.53) FEET THENCE ON A BEARING OF NORTH EIGHTY SEVEN (87) DEGREES TWENTY (20) MINUTES TWENTY FIVE (25) SECONDS WEST, A DISTANCE OF FOURTEEN AND FORTY SIX HUNDREDTHS (14.46) FEET, THENCE ON A BEARING OF NORTH TWO (2) DEGREES THIRTY NINE (39) MINUTES THIRTY FIVE (35) SECONDS EAST A DISTANCE OF EIGHTEEN AND TWENTY SEVEN HUNDREDTHS (18.27) FEET THENCE ON A BEARING OF SOUTH EIGHTY SEVEN (87) DEGREES TWENTY (20) MINUTES TWENTY FIVE SECONDS EAST A DISTANCE OF FOURTEEN AND FORTY SIX HUNDREDTHS (14.46) FEET,

THENCE ON A BEARING OF NORTH TWO (2) DEGREES THIRTY NINE (39) MINUTES THIRTY FIVE (35) SECONDS EAST A DISTANCE OF THIRTY FIVE AND FORTY TWO HUNDREDTHS (35.42) FEET, THENCE ON A BEARING OF NORTH EIGHTY SEVEN (87) DEGREES TWENTY (20) MINUTES TWENTY FIVE (25) SECONDS WEST A DISTANCE OF NINE AND NINETY ONE ONE HUNDREDTHS (9.91) FEET, THENCE ON A BEARING OF NORTH TWO (2) DEGREES THIRTY NINE (39) MINUTES THIRTY FIVE (35) SECONDS EAST A DISTANCE OF NINETEEN AND SIXTY SEVEN HUNDREDTHS (19.67) FEET, THENCE ON A BEARING OF SOUTH EIGHTY SEVEN (87) DEGREES TWENTY (20) MINUTES TWENTY FIVE (25) SECONDS EAST A DISTANCE OF NINE AND NINETY ONE ONE HUNDREDTHS (9.91) FEET, THENCE ON A BEARING OF NORTH TWO (2) DEGREES THIRTY NINE (39) MINUTES THIRTY FIVE (35) SECONDS EAST A DISTANCE OF NINETEEN AND SEVENTEEN HUNDREDTHS (19.17) FEET MORE OR LESS TO THE NORTH BOUNDARY OF LOT ELEVEN (11) THENCE WESTERLY ALONG THE NORTH BOUNDARY OF LOTS NINE (9), TEN (10) AND ELEVEN (11) ON A BEARING OF NORTH EIGHTY SEVEN (87) DEGREES TWENTY ONE (21) MINUTES TWENTY (20) SECONDS WEST A DISTANCE OF FORTY AND TWENTY TWO HUNDREDTHS (40.22) FEET MORE OR LESS TO THE POINT OF COMMENCEMENT CONTAINING FOUR THOUSAND SEVEN HUNDRED AND SIXTY SEVEN AND TWO ONE HUNDREDTHS (4767.2) SQUARE FEET MORE OR LESS EXCEPTING THEREOUT ALL MINES AND MINERALS

ESTATE: LEASEHOLD
 COMMENCING ON THE 14 DAY OF JANUARY, 1975
 TERMINATING ON THE 30 DAY OF APRIL, 2042
 771087159,

(the “**Leasehold Lands**”).

14. The 585 Mortgage is a first mortgage and charge in respect of 585’s right, title, estate and interest in the Mortgaged Lands and Leasehold Lands (collectively, the “**Lands**”), including particularly the interests arising from a ground lease dated April 4, 1984 and registered with the Land Titles Office as Caveat re: Lease Instrument 841 112 907.
15. The SCREO Mortgage and 585 Mortgage are duly registered against the Certificates of Title for the Lands as Instruments 181 260 437 and 181 260 438, respectively.
16. The municipal address for the Lands is 700 2nd Street SW, Calgary, Alberta. Located on the Lands is a 40-storey office building, known as “**Stephen Avenue Place**”. Stephen Avenue Place was previously known as the “Scotia Centre”.
17. Among other things, the Mortgages, as amended, provide that:

- a) the Mortgages have a maturity date of September 1, 2024, at which time the whole of the mortgage monies, including the principal sum and interest, is to be fully paid and shall be due and payable;
- b) until maturity, the Borrower shall pay interest on the Loan, on the first day of the month, calculated at the Interest Rate;
- c) an “Event of Default” under the Mortgages includes (i) a financial default by the Borrower that has not been remedied within five business days of written notice, and (ii) an event of default under the Loan Agreement;
- d) upon the occurrence of “Event of Default” under the Mortgages, the Nominee may, among other things, (i) declare, at its option, that the whole of the mortgage monies become due and payable, (ii) foreclose upon the Lands, and/or (iii) seek the appointment of a receiver or receiver and manager; and
- e) all costs for enforcing the Mortgages, including legal costs on a solicitor-client full indemnity basis, are secured by the Mortgages.

The Collateral Security

18. As further security for the Loan and Mortgages, the SCREO and 585 (or both of them) provided, among other things:
- a) a general assignment of rents and leases of SCREO, dated November 27, 2018 (the “**SCREO Assignment**”), pursuant to which SCREO assigned to the Nominee (i) all present and future rents reserved and payable under leases in respect of the Lands, and (ii) the leases in respect of the Lands. The SCREO Assignment was duly registered against the Certificates of Title for the Lands as Instrument Number 181 260 440;
 - b) a general assignment of rents and leases of 585, dated November 27, 2018 (the “**585 Assignment**” and, together with the SCREO Assignment, the “**Assignments**”), pursuant to which 585 assigned to the Nominee (i) all present and future rents reserved and payable under leases in respect of its leasehold estate in the Lands, and (ii) the leases in respect of its leasehold estate in the Lands. The 585 Assignment was duly registered against the Certificates of Title for the Lands as Instrument Number 181 260 439; and

- c) a general security agreement of the Borrower, dated November 27, 2018 (the “**Security Agreement**”), pursuant to which the Borrower granted a security interest in all of its personal property located in or upon, arising out of, or used in conjunction with the Lands to the Nominee. The security interest created by Security Agreement is a first-ranking security interest and duly registered with the Alberta Personal Property Registry as Registration No. 18112324873.
19. The Assignments and Security Agreement (collectively, the “**Collateral Security**”) provide that they are enforceable upon the occurrence of an “Event of Default” under the Loan Agreement.
20. The Lands, including all leasehold estates of SCREO and 585 with respect thereto, together with all property secured by the Collateral Security, is hereafter collectively referred to as the “**Secured Property**”.

The Beneficial Owner’s Agreement

21. As yet further security for the Loan and Mortgages, the Borrower, the Nominee, and SCREO LP (by its general partner, SCREO GP) entered into a beneficial owner’s agreement dated November 27, 2018 as well as a beneficial owner’s agreement dated July 11, 2023 (collectively, the “**Beneficial Owner’s Agreements**”).
22. Among other things, the Beneficial Owner’s Agreements provide that:
- a) SCREO and 585 hold their respective interests in the Lands, including 585’s leasehold interest, together with proceeds therefrom and all assets and personal property related thereto, as trustee for and in trust for SCREO LP as the beneficial owner of such property; and
 - b) SCREO LP, as beneficial owner, has charged, assigned, and created a security interest in all of its right, title and interest in and to the Lands and such related property, in favour of the Nominee, as security for the indebtedness evidenced by the security contemplated by the Loan Agreement.
23. As a result, Timbercreek and the Nominee have security over the Borrower’s entire interests in the Secured Property.

III. THE EVENTS OF DEFAULT

24. On or about September 1, 2023, the Borrower failed to make the scheduled interest payment as required by the Loan Agreement and Mortgages (the “**September Payment**”).
25. Consequently, on or about September 6, 2023, Timbercreek (via legal counsel) issued notices to the Borrower, in which Timbercreek advised that the Borrower was in default of its obligations under the Loan Agreement (the “**Default Notices**”). The Default Notices requested that the Borrower cure its default by September 13, 2023.
26. The Borrower did not make the missed September Payment by September 13, 2023, or at all.
27. As a result, the Borrower committed an “Event of Default” under the Loan Agreement and the Mortgages, and all of the security held by the Nominee as agent, nominee, and bare trustee for Timbercreek became immediately enforceable.
28. In connection with the missed September Payment, the Borrower also advised Timbercreek that the Borrower did not intend to honour the terms of the Loan Agreement on a go-forward basis.
29. Consequently, by letters dated September 15, 2023, Timbercreek (via legal counsel) issued formal demands to each of SCREO and 585 (collectively, the “**Demands**”) for payment in full of all amounts due and owing under the Loan Agreement and Mortgages, which totalled not less than \$134,916,934.89 as of September 15, 2023. The Demands gave the Borrower a deadline of September 25, 2023 to make the required payment. Enclosed with the Demands were Notices of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**NITES**”).
30. On or about September 22, 2023, SCREO provided to Timbercreek a consent and waiver in respect of the NITES.
31. Notwithstanding the Demands and NITES, the Borrower has failed to pay the amounts owing.
32. As of September 25, 2023, there was owing to Timbercreek (and the Nominee), under and by virtue of the Loan Agreement and Mortgages the sum of \$135,288,424.79 (excluding legal costs to date), plus interest and costs continuing to accrue thereon (the “**Current Indebtedness**”).
33. The Current Indebtedness is a just debt owed to Timbercreek (and the Nominee), the payment of which is being improperly withheld.

IV. OTHER

34. The Plaintiffs plead and rely upon the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, the *Business Corporations Act*, RSA 2000, c B-9, the *Law of Property Act*, RSA 2000, c L-7, the *Land Titles Act*, RSA 2000, c L-4, the *Judicature Act*, RSA 2000, c J-2, the *Personal Property Security Act*, RSA 2000, c P-7, and such further or other Acts as counsel may advise at the trial of this action.
35. The Plaintiffs propose that the trial of this action be held at the Calgary Courts Centre, in the Province of Alberta, and estimates that it will take no longer than 25 days.

REMEDY SOUGHT:

36. WHEREFORE, the Plaintiffs seek as follows:
- a) a declaration that SCREO and 585 are in default of the Loan Agreement, the Mortgages and the Collateral Security as applicable;
 - b) a declaration that the Mortgages and the Collateral Security are valid and have become enforceable;
 - c) a declaration as to the amount owing by SCREO and 585 under the Loan Agreement and Mortgages, as applicable, together with interest according to the terms of the Loan Agreement and Mortgages;
 - d) an Order appointing MNP Ltd. as receiver and manager over the Secured Property, including, without limitation, all legal and beneficial interests therein or relating thereto;
 - e) alternatively, an Order directing the sale or foreclosure of the Lands, an Order providing for a one-day redemption period or such other redemption period as the Court may direct, an Order for possession of the Lands, and/or an Order for interim preservation of the Lands;
 - f) judgment against SCREO and 585, joint and severally, in the amount found to be owing under the Loan Agreement and Mortgages, together with interest according to the terms of the Loan Agreement and Mortgages, or alternatively, pursuant to the *Judgment Interest Act*, RSA 2000, c J-1;
 - g) costs for this action payable on a solicitor-client full indemnity basis pursuant to the terms of the Loan Agreement, Mortgages and Collateral Security as applicable, or alternatively,

in accordance with the *Alberta Rules of Court*, Alta Reg, 124/2010; and

h) such other relief as this Honourable Court deems appropriate.

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 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.