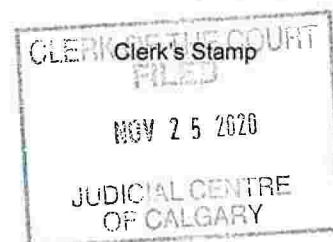


COURT FILE NUMBER 2001- 14421
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF TORONTO-DOMINION BANK
DEFENDANTS THE GENERATION CORPORATION, ELLIS FABRICATIONS INC., GENERATION CONSTRUCTION CORP., GENERATION STEEL INC., GROUNDWORKS SAFETY SYSTEMS INC., JAMES FOLEY, and DANIELLE FOLEY



DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

MLT AIKINS LLP
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Calgary, Alberta T2P 0B4
Phone: 403.693.4347/4311
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Attention: Catrina J. Webster/Kaitlin Ward
File: 0000152.03081

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.

Introduction and Parties

1. The within action of the Plaintiff, the Toronto-Dominion Bank ("**TD Bank**"), is brought against the Defendants, the Generation Corporation ("**Generation Corporation**"), Ellis Fabrications Inc. ("**Ellis Fabrications**"), Generation Construction Corp. ("**Generation Construction**"), Generation Steel Inc. ("**Generation Steel**"), and Groundworks Safety Systems Inc. ("**Groundworks**", and together with Generation Corporation, Ellis Fabrications, Generation Construction, and Generation Steel, the "**Defendants**"), in debt and in breach of contract following the Defendants' breaches of various loan agreements with TD Bank.
2. The Plaintiff, TD Bank, 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, Generation Corporation, is a corporation incorporated pursuant to the laws of the Province of Alberta. The sole directors and shareholders of Generation Corporation are James Foley and Danielle Foley.
4. The Defendant, Ellis Fabrications, is a corporation incorporated pursuant to the laws of the Province of Alberta. The sole directors and shareholders of Ellis Fabrications are James Foley and Danielle Foley.
5. The Defendant, Generation Construction, is a corporation incorporated pursuant to the laws of the Province of Alberta. The directors of Generation Construction are James Foley and Danielle Foley and the 100% voting shareholder is Ellis Fabrications.
6. The Defendant, Generation Steel, is a corporation incorporated pursuant to the laws of the Province of Alberta. The sole director of Generation Steel is James Foley and the 100% voting shareholder is Generation Corporation.
7. The Defendant, Groundworks, is a corporation incorporated pursuant to the laws of the Province of Alberta. The sole director of Groundworks is James Foley and the 100% voting shareholder is Generation Corporation.
8. To the best knowledge of TD Bank, the Defendants, James Foley and Danielle Foley, are individuals residing in the Town of Innisfail, in the Province of Alberta.

The Loan Agreements

9. TD Bank and Generation Corporation entered into a Loan Agreement (the “**Generation Corporation Loan Agreement**”) dated December 24, 2018 and executed by the Generation Corporation on December 28, 2018, whereby TD Bank agreed to advance funds to the Generation Corporation on certain terms and conditions agreed to by the Generation Corporation.
10. TD Bank and Ellis Fabrications entered into: (i) a Loan Agreement dated December 27, 2018 and executed by Ellis Fabrications on December 28, 2018; and (ii) a TD Bank Business Credit Card Agreement, executed by Ellis Fabrications on January 24, 2019 (collectively, the “**Ellis Fabrications Loan Agreements**”). TD Bank agreed to advance

funds to Ellis Fabrications on certain terms and conditions agreed to by Ellis Fabrications.

11. In accordance with the Generation Corporation Loan Agreement and Ellis Fabrications Loan Agreements (collectively, the “**Loan Agreements**”), TD Bank made the following credit facilities available to the Generation Corporation and Ellis Fabrications:
 - a. a demand loan issued to Generation Corporation;
 - b. an operating loan issued to Ellis Fabrications; and
 - c. a TD Business Credit Card facility for Ellis Fabrications
(collectively, the “**Credit Facilities**”).
12. Advances of monies under the Credit Facilities were made by TD Bank to Generation Corporation and Ellis Fabrications.

Guarantees

Guarantees for the Indebtedness of the Generation Corporation

13. As security for all amounts owing by Generation Corporation to TD Bank, the following guarantees were granted by Ellis Fabrications, Generation Construction, Generation Steel, Groundworks, James Foley, and Danielle Foley:
 - a. a Guarantee executed January 8, 2019 by Ellis Fabrications in favour of TD Bank regarding the indebtedness of Generation Corporation in an unlimited amount, plus interest payable from the date of demand;
 - b. a Guarantee executed January 8, 2019 by Generation Construction in favour of TD Bank regarding the indebtedness of Generation Corporation in an unlimited amount, plus interest payable from the date of demand;
 - c. a Guarantee executed January 8, 2019 by Generation Steel in favour of TD Bank regarding the indebtedness of Generation Corporation in an unlimited amount plus interest payable from the date of demand;

- d. a Guarantee executed January 8, 2019 by Groundworks in favour of TD Bank regarding the indebtedness of Generation Corporation in an unlimited amount, plus interest payable from the date of demand;
- e. a Guarantee executed January 8, 2019 by James Foley in favour of TD Bank regarding the indebtedness of Generation Corporation in an unlimited amount, plus interest payable from the date of demand; and
- f. a Guarantee executed January 8, 2019 by Danielle Foley in favour of TD Bank regarding the indebtedness of Generation Corporation in an unlimited amount, plus interest payable from the date of demand

(collectively, the “**Generation Corporation Guarantees**”).

Guarantees for the Indebtedness of the Ellis Fabrication

- 14. As security for all amounts owing by Ellis Fabrications to TD Bank, the following guarantees were granted by Generation Corporation, Generation Construction, Generation Steel, Groundworks, James Foley, and Danielle Foley:
 - a. a Guarantee executed January 8, 2019 by Generation Corporation in favour of TD Bank regarding the indebtedness of Ellis Fabrications in an unlimited amount, plus interest payable from the date of demand;
 - b. a Guarantee executed January 8, 2019 by Generation Construction in favour of TD Bank regarding the indebtedness of Ellis Fabrications in an unlimited amount, plus interest payable from the date of demand;
 - c. a Guarantee executed January 8, 2019 by Generation Steel in favour of TD Bank regarding the indebtedness of Ellis Fabrications in an unlimited amount, plus interest payable from the date of demand;
 - d. a Guarantee executed January 8, 2019 by Groundworks in favour of TD Bank regarding the indebtedness of Ellis Fabrications in an unlimited amount, plus interest payable from the date of demand;

- e. a Guarantee executed January 8, 2019 by James Foley in favour of TD Bank regarding the indebtedness of Ellis Fabrications in an unlimited amount, plus interest payable from the date of demand; and
- f. a Guarantee executed January 8, 2019 by Danielle Foley in favour of TD Bank regarding the indebtedness of Ellis Fabrications in an unlimited amount, plus interest payable from the date of demand

(collectively, the “**Ellis Fabrications Guarantees**”, and together with the Generation Corporation Guarantees, the “**Guarantees**”).

The General Security Agreements

- 15. As security for all amounts owing from the Generation Corporation to TD Bank pursuant to the Loan Agreement and the Guarantees, Generation Corporation, Ellis Fabrications, Generation Construction, Generation Steel, and Groundworks entered into the following General Security Agreement in favour of TD Bank (collectively, the “**GSAs**”):
 - a. a General Security Agreement executed January 8, 2019 by Generation Corporation in favour of TD Bank and granting TD Bank a security interest in all present and after-acquired personal property of Generation Corporation and all proceeds thereof;
 - b. a General Security Agreement executed January 8, 2019 by Ellis Fabrications in favour of TD Bank and granting TD Bank a security interest in all present and after-acquired personal property of Ellis Fabrications and all proceeds thereof;
 - c. a General Security Agreement executed January 8, 2019 by Generation Construction in favour of TD Bank and granting TD Bank a security interest in all present and after-acquired personal property of Generation Construction and all proceeds thereof;
 - d. a General Security Agreement executed January 8, 2019 by Generation Steel in favour of TD Bank and granting TD Bank a security interest in all present

and after-acquired personal property of Generation Steel and all proceeds thereof; and

- e. a General Security Agreement executed January 8, 2019 by Groundworks Safety Systems in favour of TD Bank and granting TD Bank a security interest in all present and after-acquired personal property of Groundworks and all proceeds thereof.
16. TD Bank registered the security interests granted by Generation Corporation, Ellis Fabrications, Generation Construction, Generation Steel, and Groundworks under the respective GSAs at the Alberta Personal Property Registry.

The Collateral Mortgage Property

17. As further security for all amounts owing from the Generation Corporation to TD Bank, on January 8, 2019, Generation Corporation granted TD Bank a Collateral Mortgage in the principal sum of \$6,412,500.00 (the "**Collateral Mortgage**") regarding the property legally described as:

PLAN 8023047
BLOCK 2
LOT 2A
EXCEPTING THEREOUT ALL MINES AND MINERALS

and

PLAN 7722535
BLOCK 2
LOT 3
EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "**Mortgaged Property**").

18. On January 18, 2019, the Collateral Mortgage was registered against the Mortgaged Property under registration number 192 015 251.
19. As further security for all amounts owing from the Generation Corporation to TD Bank, on January 8, 2019, Generation Corporation granted TD Bank a General Assignment of Rents and Leases respecting the Mortgaged Property.

Default Under the Loan Agreements and the Guarantees and Demands for Payment

20. Generation Corporation and Ellis Fabrications failed to comply with the financial covenants and failed to pay amounts owing on the dates required for payment, as required pursuant to the terms of the Loan Agreements, which constituted a default pursuant to the Loan Agreements, the GSAs, the Guarantees, and the Collateral Mortgage.
21. On June 16, 2020, TD Bank demanded immediate payment of the Outstanding Indebtedness in full from each of Generation Corporation and Ellis Fabrications (collectively, the "**Borrower Demand Letters**") and enclosed a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.
22. Also on June 16, 2020, TD Bank demanded immediate payment of the Outstanding Indebtedness, in the amount then owing pursuant to the terms of the Guarantees (collectively, the "**Guarantor Demand Letters**") from Generation Corporation, Ellis Fabrications, Generation Construction, Generation Steel, Groundworks, James Foley, and Danielle Foley (collectively, the "**Guarantors**").
23. The Borrowers and Guarantors have failed to make payments to TD Bank in fulfillment of their respective obligations under the Loan Agreements, the GSAs, the Guarantees, and the Collateral Mortgage.

Outstanding Indebtedness

24. As of November 23, 2020, the Generation Corporation, Ellis Fabrications, Generation Construction, Generation Steel, Groundworks, James Foley, and Danielle Foley are collectively indebted to TD Bank in respect of amounts advanced under the Credit Facilities and pursuant to the Loan Agreements and the Guarantees in the total amount of \$5,740,670.60 (collectively, the "**Outstanding Indebtedness**"), plus interest, costs disbursements, professional fees, and legal fees on a solicitor and own client (full-indemnity) basis.

25. The Defendants have failed, refused, or otherwise neglected to pay the Outstanding Indebtedness, or any part thereof, to TD Bank, and the full amount of the Outstanding Indebtedness remains justly due and owing.
26. Generation Corporation and Ellis Fabrications are in default of their obligations under the terms of the Loan Agreements, the GSAs, and the Collateral Mortgage which defaults include, but are not limited to:
 - a. failing to abide by financial covenants;
 - b. failing to pay the Outstanding Indebtedness upon TD Bank's demand;
 - c. generally failing to pay their debts as such debts become due; and
 - d. such other events of default as may be proven at trial.
27. The Guarantors are in default of their obligations under the Guarantees, including but not limited to, failing to pay amounts owing to TD Bank thereunder upon demand.
28. The GSAs and the Collateral Mortgage create a charge on the assets of Generation Corporation, Ellis Fabrications, Generation Construction, Generation Steel, and Groundworks in favour of TD Bank and provides for the appointment of a Receiver over such assets.
29. The Defendants have no defence to the claim made against them by TD Bank and the only real issue as between TD Bank and the Defendants is the amount to be awarded.

REMEDIES SOUGHT:

As Against Generation Corporation, Ellis Fabrications, Generation Construction, Generation Steel, and Groundworks

30. As a result of the foregoing, TD Bank respectfully seeks the following relief against Generation Corporation, Ellis Fabrications, Generation Construction, Generation Steel, and Groundworks:
 - a. a declaration that Generation Corporation, Ellis Fabrications, Generation Construction, Generation Steel, and Groundworks are in default of payment

of the Outstanding Indebtedness pursuant to the Loan Agreements and Guarantees, and that default has been made under the Loan Agreements, the Guarantees, the GSAs, and the Collateral Mortgage;

- b. a declaration that pursuant to the terms of the GSAs and Collateral Mortgage:
 - 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 the assets of Generation Corporation, Ellis Fabrications, Generation Construction, Generation Steel, and Groundworks thereby charged but not already specifically charged;
- c. an Order for the appointment of a Receiver over all of the undertakings, property and assets of Generation Corporation, Ellis Fabrications, Generation Construction, Generation Steel, and Groundworks;
- d. a declaration of the amount owing under the Collateral Mortgage, with interest, according to the rates and terms of the Collateral Mortgage, and in default of payment, sale to TD Bank, or otherwise, or foreclosure and in either case, possession of the Mortgaged Property;
- e. in the alternative, immediate sale to TD Bank, or otherwise, foreclosure, in either case, possession of the Mortgaged Property;
- f. judgment against Generation Corporation, Ellis Fabrications, Generation Construction, Generation Steel, and Groundworks, jointly and severally, in the amount of \$5,740,670.60, or such other amount as may be proven at trial, together with interest thereon until Judgment is granted in this Action pursuant to the terms of the Loan Agreements and Guarantees, or such other interest rate as may be proven at trial, and costs and fees, including further professional fees, in accordance with the terms of the Loan Agreements, the Guarantees, the GSAs, and the Collateral Mortgage;

- g. costs on a solicitor and own client (full-indemnity) basis; and
- h. such further and other relief as this Honourable Court may deem just and appropriate in the circumstances.

As Against James Foley and Danielle Foley

31. As a result of the foregoing, TD Bank respectfully seeks the following relief against James Foley and Danielle Foley:
- a. Judgment against James Foley and Danielle Foley, in the amount of \$5,740,670.60, or such further and other amounts as may be proven at the trial of this action, plus interest pursuant to the terms of the Guarantees from June 16, 2020 (the date demand for payment was made) until Judgment is granted in the Action, and costs and fees in accordance with the Guarantees;
 - b. costs on a solicitor and own client (full-indemnity) basis; and
 - c. such further and other relief as this Honourable Court may deem just and appropriate in the circumstances.

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.