



COURT FILE NUMBER 2001 - 00425

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ROYAL BANK OF CANADA

DEFENDANTS MCARTHUR FURNITURE (ALBERTA) LTD., MTK PROPERTIES LTD., THERESA POUND and EDWIN POUND

DOCUMENT STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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 File No. 55398-52

NOTICE TO DEFENDANT

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)

The Parties

1. The Plaintiff, Royal Bank of Canada ("**RBC**" or the "**Lender**") is a Schedule I Bank under the *Bank Act*, SC 1991 c 46, with offices throughout Canada.
2. The Defendant, McArthur Furniture (Alberta) Ltd. ("**McArthur**") is a corporation incorporated under the laws of Alberta.

3. The Defendant, MTK Properties Ltd. ("**MTK**") is a corporation incorporated under the laws of Alberta. McArthur and MTK in their capacity as borrowers are collectively referred to as the "**Borrowers**".
4. The Defendant, Robert Pound ("**Robert**") is an individual resident in Alberta.
5. The Defendant, Theresa Pound ("**Theresa**"), is an individual resident in Alberta. Robert and Theresa are collectively referred to as the "**Individual Guarantors**".
6. McArthur and MTK, when referred to in their capacity as guarantors, and the Individual Guarantors are collectively referred to as the "**Guarantors**" and each as a "**Guarantor**".

The McArthur Loan Agreement and Guarantees

7. RBC extended credit facilities and related services to McArthur pursuant to a credit facility dated November 8, 2011, as amended from time to time (the "**McArthur Loan Agreement**").
8. As at January 6, 2020 McArthur was indebted to RBC for CAD \$653,578.88, plus interest and costs which continue to accrue, in respect of funds borrowed under the McArthur Loan Agreement (the "**McArthur Indebtedness**").
9. The following guarantees were granted in favour of RBC with respect to the McArthur Indebtedness:
 - (a) the Individual Guarantors each provided RBC with a limited guarantees to a maximum of CAD \$375,000.00 and interest thereon as specified of all of the present and future indebtedness of McArthur, including the postponement of any future debts owed to the Individual Guarantors by McArthur, pursuant to guarantee and postponement of claims dated July 16 and 17, 2014 respectively; and
 - (b) MTK provided RBC with a limited guarantee to a maximum of CAD \$1,150,000.00 and interest thereon as specified of all of the present and future indebtedness of McArthur, including the postponement of any future debts owed to MTK by McArthur, pursuant to a guarantee and postponement of claim dated July 18, 2014,

(collectively, the "**McArthur Guarantees**").

The McArthur Security

10. McArthur granted security to RBC in respect of all of its obligations, indebtedness, and liabilities to RBC under the McArthur Loan Agreement, including a General Security Agreement dated January 11, 2012, charging all present and after-acquired personal property and all proceeds and renewals thereof, accretions thereto, and substitutions therefor (the "**McArthur Security**").
11. The McArthur Security was duly registered in the Alberta Personal Property Registry on September 22, 2011.

The MTK Loan Agreement and Guarantees

12. RBC extended credit facilities and related services to MTK pursuant to commitment letters with respect to the properties municipally described as 67 Glenbrook Place SW, Calgary, Alberta (the "**Glenbrook Property**") and 141 Gateway Drive NE, Airdrie, Alberta (the "**Airdrie Property**") as amended from time to time (the "**MTK Loan Agreements**"). The MTK Loan Agreements and the McArthur Loan Agreement are collectively referred to as the "**Loan Agreements**".
13. As of January 6, 2020 McArthur was indebted to RBC for of CAD \$7,193,879.32, plus interest and costs which continue to accrue, in respect of funds borrowed under the MTK Loan Agreements (the "**MTK Indebtedness**"). The MTK Indebtedness and the McArthur Indebtedness are collectively referred to as the "**Indebtedness**".
14. The following guarantees were granted in favour of RBC with respect to the MTK Indebtedness (the "**MTK Guarantees**"):
 - (a) the Individual Guarantors provided RBC with:
 - (i) a limited guarantee of mortgage to a maximum of CAD \$187,500.00 and interest thereon as specified of all of the present and future indebtedness of MTK with respect to the mortgage registered against the Glenbrook Property (the "**Glenbrook Mortgage**"); and
 - (ii) a mortgage guarantee with respect to the mortgage registered against the Airdrie Property (the "**Airdrie Mortgage**"); and

(b) McArthur provided RBC with a mortgage guarantee with respect to each of the Glenbrook Mortgage and the Airdrie Mortgage (collectively, the "**MTK Mortgages**").

15. The MTK Guarantees and the McArthur Guarantees are collectively referred to as the "**Guarantees**".

The MTK Security

16. To secure the obligations owing to RBC, MTK granted the following security in favour of RBC:

(a) With respect to the Glenbrook Property:

- (i) the Glenbrook Mortgage;
- (ii) a General Assignment of Rents and Leases;
- (iii) a Specific Assignment of the lease entered into by McArthur; and
- (iv) a Site Specific Security Agreement; and

(b) with respect to the Airdrie Property:

- (i) the Airdrie Mortgage;
- (ii) a General Assignment of Rents and Leases;
- (iii) a Specific Assignment of the lease entered into by McArthur; and
- (iv) a Site Specific Security Agreement,

(collectively, the "**MTK Security**").

17. The Assignments of Rents and Leases and the MTK Mortgages were duly registered on January 13, 2012 against the Certificates of Title for the Glenbrook Property and the Airdrie Property. The Site Specific Security Agreements were registered at the Alberta Personal Property Registry on September 13, 2018.

18. The McArthur Security and the MTK Security are collectively referred to as the "**Security**".

Defaults and Demand

19. The Borrowers and the Guarantors are in default of their obligations to RBC, as more particularly set out below.

(a) The Borrowers

20. The Borrowers are in default of the Loan Agreements and the Security, and all amounts owing to RBC under the Loan Agreements are immediately due and payable. The Borrowers' defaults include, among others:
- (a) the failure to make scheduled payments to RBC in accordance with the Loan Agreements and the MTK Mortgages;
 - (b) a material adverse change to each of the Borrowers' financial position; and
 - (c) the loans under the Loan Agreements have matured.
21. On October 11, 2018, RBC provided notice of the foregoing defaults and notices of intention to enforce security pursuant to section 244(1) of the *BIA* to the Borrowers (each a "**244 Notice**"). Concurrently therewith RBC, demanded repayment of the Indebtedness. The Borrowers have failed or neglected, and continue to fail or neglect, to repay the Indebtedness, and are in default of their obligations under the Loan Agreements.

(b) The Guarantors

22. The Indebtedness (or portion thereof) is payable by the Guarantors to RBC on demand pursuant to the terms of the terms of the Guarantees.
23. On October 11, 2018, RBC demanded repayment of Indebtedness from the Guarantors and the Guarantors have failed or neglected, and continue to fail or neglect, to repay the Indebtedness, and are default of their obligations under their respective Guarantees.

Forbearance Agreement

24. In October of 2018, RBC, the Borrowers and the Guarantors entered into a Forbearance Agreement, which was subsequently amended and extended by a Forbearance Extension Agreement dated April 18, 2019 (as amended, the "**Forbearance Agreement**").
25. Appended as Schedule "F" to the Forbearance Agreement is a form of consent receivership order executed by counsel to the Borrowers (the "**Consent Receivership Order**"), to be held by RBC

pursuant to the terms of the Forbearance Agreement and the Borrowers and Guarantors agreed that RBC was entitled to complete any blanks in the Consent Receivership Order at its sole discretion.

26. Pursuant to the Forbearance Agreement, the Borrowers and Guarantors each acknowledged and agreed in favour of RBC that:

- (a) the Borrowers were in default of the terms of the Loan Agreements and the Security;
- (b) the Borrowers and Guarantors expressly did not dispute, in any way, their liability to repay the Indebtedness together with all other present and future indebtedness, fees, expenses and other liabilities direct or indirect, absolutely or contingent, due by the Borrowers to RBC (the "**Obligations**") on any basis and that they had no claims for set-off, counterclaim or damages on any basis whatsoever against RBC or any of its directors, officers, employees, representatives and agents;
- (c) the execution of the Forbearance Agreement constituted a demand by RBC for repayment of the Indebtedness and that each of the Borrowers and Guarantors acknowledged receipt of the demands and 244 Notices referenced above;
- (d) the Loan Agreements and Guarantees were duly and properly executed and are valid, binding enforceable in accordance with their terms,
- (e) the Security is valid, binding, enforceable and secures, in accordance with its terms, the repayment and performance of all obligations of the Borrowers and Guarantors to RBC, including without limitation the Obligations and the Indebtedness;
- (f) the Security has not been discharged, varied, waived or altered and is binding upon each of the Borrowers and the Guarantors;
- (g) RBC was in a position to demand repayment of the Obligations and the Indebtedness and to enforce all of its right and remedies, as it may deem appropriate, including the Security; and
- (h) upon the occurrence of an "**Event of Default**" under the Forbearance Agreement, which includes, among other things, any further defaults under the Loan Agreements or Security, RBC may immediately proceed to enforce any or all of its rights and remedies, including without limitation the Security, and that RBC may take whatever steps it deems necessary

or advisable to enforce the Security including, without limitation, the filing of the Consent Receivership Order.

27. Pursuant to the terms of the Forbearance Agreement, RBC agreed to forbear from exercise its rights and remedies under the Loan Agreements and Security until the earliest of the following events:
- (a) any default, including the non-performance of any obligation of any Borrower or Guarantor under any agreement with RBC including, but not limited to, the Loan Agreements, the Security and the Forbearance Agreement;
 - (b) the occurrence, in RBC's opinion acting reasonably, of a material adverse change in the business, financial status, affairs or condition of any Borrower or Guarantor of any kind and arising for any reason, that is not specifically contemplated herein; or
 - (c) the expiry of the "Forbearance Period", which was ultimately extended to June 14, 2019.
28. The Forbearance Period has expired and the Indebtedness and Obligations remain outstanding. Further, the Borrowers remain in in default of the Loan Agreements and the Security, which constitutes an "Event of Default" under the Forbearance Agreement.

Interest and Costs

29. It is a term of the Loan Agreements and the Security that the obligations owed or secured thereby shall continue to accrue interest on all amounts outstanding at the rates set forth therein. In the alternative, RBC pleads and relied on the provisions of the *Judgment Interest Act*, RSA 2000, c J-1, as amended.
30. It is a term of the Loan Agreements and the Security that the Borrowers and Guarantors, as applicable, are responsible for all costs, including solicitor and client full indemnity costs, incurred by RBC in enforcing the Loan Agreements and the Security.

Receiver and Manager

31. It is a term of the Security that if the Borrowers are in default of their obligations to RBC, RBC may apply to this Honourable Court for the appointment of a receiver and manager.

Service

32. The Loan Agreements, the Security and the Forbearance Agreement are all Alberta contracts governed by Alberta law. The loan facilities at issue were created in connection with the operation of the Borrowers' business in Alberta.
33. The Borrowers' registered offices are located in Alberta, and all of their personal and real property is, to the best of RBC's knowledge, located in Alberta.
34. To the best of RBC's knowledge, the Guarantors have personal property in Alberta.
35. Based on the foregoing, RBC asserts a real and substantial connection of this claim to Alberta. RBC relies on these facts as grounds for service of this Statement of Claim on the Borrowers and the Guarantors.
36. The real property described herein is located in Alberta.
37. RBC proposes that the trial of this action be held at the Calgary Courts Centre, in the City of Calgary, in the Province of Alberta.

Remedy sought

38. With respect to the Borrowers and the Guarantors, RBC seeks:
 - (a) an Order validating the service of this Statement of Claim on each of them;
 - (b) a declaration that each of the Borrowers and the Guarantors are in default of their obligations to RBC, as applicable;
 - (c) a declaration of the amount owing by the Borrowers and Guarantors to RBC under the Loan Agreements or Guarantees, as applicable, with interest according to the terms thereof, and judgment in that amount;
 - (d) a declaration that the Security held by RBC is valid and enforceable as against the Borrowers and Guarantors;
 - (e) interest on all amounts outstanding in accordance with the agreements, or in the alternative, interest as set forth in the *Judgment Interest Act* (Alberta);

- (f) costs of this action on a solicitor and client, full indemnity basis; and
- (g) such further and other relief as this Honourable Court may consider appropriate.

39. With respect to the Borrowers, RBC seeks:

- (a) an Order appointing a receiver and manager over the property of the Borrowers; and
- (b) such further and other relief as this Honourable Court may consider appropriate.

NOTICE TO THE DEFENDANT:

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 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 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.