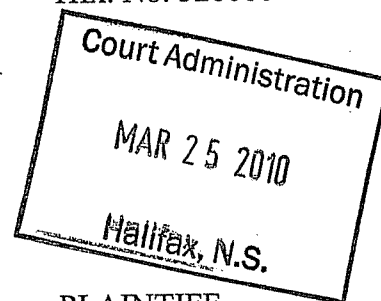


2010

Hfx. No. 326000

SUPREME COURT OF NOVA SCOTIA
In Bankruptcy



BETWEEN:

ADDENDA CAPITAL INC., a body corporate

PLAINTIFF

- and -

NOVA NEW ENGLAND LIMITED, a body corporate, **JAMES BRENNAN** and **TERRANCE BRENNAN**

DEFENDANTS

AFFIDAVIT OF ELVIRA DUBÉ

I, Elvira Dubé, of Regina, Saskatchewan, give evidence as follows:

1. I am the Assistant Vice-President, Mortgages of Addenda Capital Inc. ("Addenda").
2. I have personal knowledge of the evidence sworn to in this Affidavit, except where otherwise stated to be based upon information or belief, in which case I do verily believe it to be true.
3. I state, in this Affidavit, the source of any information that is not based on my own personal knowledge, and I state the belief of the source.
4. Nova New England Limited ("NNE") is the owner of the property located at 66-70-72 Ochterloney Street, 41 Wentworth Street, Dartmouth, Nova Scotia (the "Property"), on which NNE constructed buildings containing both commercial space that has been leased as well as residential units, which are intended to be registered as condominiums and are now partially occupied.

Security Documents

5. On or about June 11, 2008, Co-operators Investment Counselling Limited ("Co-operators") agreed to provide financing to NNE for the construction of a residential and commercial condominium project located at the Property.
6. In total, Co-operators loaned funds to NNE in the amount of \$8,980,000, which was secured by, *inter alia*, a Mortgage, registered at the Land Registration Office at Halifax, County of Halifax, Nova Scotia on June 12, 2008 as Document No. 90877441. Attached hereto and marked Exhibit "1" is a true copy of the mortgage of land between Co-

operators and NNEL dated June 11, 2008, securing the principal sum of \$8,980,000 (the "**Mortgage**").

7. The interest on the Mortgage is calculated as the greater of seven (7) per cent or The Bank of Nova Scotia Prime Lending Rate plus One Point Seven Five Percent (1.75%), in each case calculated as simple interest and compounded from the date of advance.
8. The principal sum plus accrued interest was due to be paid in full by October 1, 2009.
9. Pursuant to the terms of the Mortgage, the Defendants, James Brennan and Terrance Brennan each provided personal guarantees for payment of principal sum of \$8,980,000 plus interest.
10. Attached hereto and marked Exhibit "2" is a true copy of the General Assignment of Rents and Other Monies (the "**Assignment of Rents**") between Co-operators and NNEL dated June 11, 2008, as collateral security for NNEL's obligations to Co-operators under the Mortgage.
11. Attached hereto and marked Exhibit "3" is a true copy of the Assignment of Material Documents (the "**Assignment of Material Documents**") between Co-operators and NNEL dated June 11, 2008, as collateral security for the obligations of NNEL under the Mortgage.
12. Attached hereto and marked Exhibit "4" is a true copy of the Security Agreement (the "**Security Agreement**") between Co-operators and NNEL dated June 11, 2008, as collateral security for the obligations of NNEL under the Mortgage.

Assignment of Mortgage

13. On or about August 19, 2008, Co-operators assigned the Mortgage, the Assignment of Rents, the Assignment of Material Documents and the Security Agreement to Addenda pursuant to an assignment of security (the "**Security Assignment**"). Attached and marked as Exhibit "5" is a true copy of the Security Assignment.

Mortgage Amending Agreement

14. On or about September 29, 2009, Addenda offered the following extension terms to NNEL: (1) the final advance of funds would be extended from October 1, 2009 to November 17, 2009; and (2) the commitment expiry and repayment of the loan in full was extended from October 1, 2009 to January 29, 2010. This offer was accepted by the Defendants on September 30, 2009, a copy of which is attached and marked as Exhibit "6".
15. On or about November 26, 2009, NNEL and Addenda entered into a mortgage amending agreement (the "**Mortgage Amending Agreement**") pursuant to which the principal amount outstanding was increased to \$9,730,000. Attached and marked as Exhibit "7" is a true copy of the Mortgage Amending Agreement.

16. Attached hereto and marked Exhibit "8" is a true copy of the Security Agreement (the "**2009 Security Agreement**") between Addenda and NNEL dated November 26, 2009, as collateral security for the obligations of NNEL under the Mortgage as amended by the Mortgage Amending Agreement.
17. The Defendant, Terrance Brennan, provided a personal guarantee for the payment of principal sum of \$9,730,000 plus interest pursuant to a guarantee and postponement of claim dated November 26, 2009 (the "**TBrennan Guarantee**"). Attached and marked as Exhibit "9" is a true copy of the TBrennan Guarantee.
18. The Defendant, James Brennan, provided a personal guarantee for the payment of principal sum of \$9,730,000 plus interest pursuant to a guarantee and postponement of claim dated November 27, 2009 (the "**JBrennan Guarantee**"). Attached and marked as Exhibit "10" is a true copy of the JBrennan Guarantee.

Demand Letters

19. NNEL failed to pay the Mortgage, as amended by the Mortgage Amending Agreement, when it came due on January 29, 2010.
20. Attached hereto and marked Exhibit "11" is a true copy of the Demand Letter from Douglas J. Mathews, to NNEL, dated February 8, 2010. A copy of Addenda's Notice of Intention to Enforce a Security, dated February 8, 2010, was attached to this Demand Letter.
21. The Notice of Intention to Enforce a Security set out a total amount of indebtedness of NNEL, secured by security as \$9,727,534.52 (as of January 29, 2010), together with accrued interest of \$266,165.56, for a total amount outstanding as of January 29, 2010 of \$9,993,700.08.
22. On February 8, 2010, a demand letter was sent by Douglas Mathews to the Defendant, James Brennan, demanding payment of the indebtedness of NNEL in the amount of \$9,993,700.08 pursuant to the terms of the Guarantee and Postponement of claim dated June 11, 2008. A true copy of the February 8, 2010 demand letter from Douglas Mathews to James Brennan is attached hereto and marked as Exhibit "12".
23. On February 8, 2010, a demand letter was sent by Douglas Mathews to the Defendant, Terrance Brennan, demanding payment of the indebtedness of NNEL in the amount of \$9,993,700.08 pursuant to the terms of the Guarantee and Postponement of Claim dated June 11, 2008. A true copy of the February 8, 2010 demand letter from Douglas Mathews to Terrance Brennan is attached hereto and marked as Exhibit "13".
24. Despite the demands for payment by Addenda to NNEL, payment has not been made and the Mortgage remains in default.
25. As of March 2, 2010, the total amount owing from NNEL to Addenda was \$9,727,534.52 as the principal amount and \$302,889.49 as the accrued interest for a total amount outstanding of \$10,030,424.01.

Instrument Appointment of Receiver or Receiver/Manager

26. Attached hereto and marked as Exhibit "14" is a true copy of a letter from Addenda to BDO Canada Limited ("BDO") dated February 12, 2010 (the "Initial Appointment Letter") pursuant to which BDO is appointed to act as receiver of NNEL with certain specific and limited duties, as defined in the Initial Appointment Letter, with effect from February 18, 2010. The effective date was later changed by Addenda to February 19, 2010.
27. Attached hereto and marked as Exhibit "15" is a true copy of a letter dated February 18, 2010 from Montrose Mortgage (Atlantic), acting as agent for Addenda, to BDO pursuant to which BDO's mandate as receiver was to be extended to include the collection of occupancy fees, rents and gas recoveries under the terms of the Assignment of Rents.
28. Attached hereto and marked as Exhibit "16" is a letter dated March 16, 2010 from Addenda to BDO, appointing BDO as a Receiver and Receiver/Manager without limitations and with the full powers of a Receiver or Receiver/Manager over the property of NNEL, as charged by the mortgage security of Addenda referred to herein.

The Commercial Units

29. In total, there are three (3) commercial units at the Property, which were intended to be sold after they were registered as commercial condominiums units.
30. NNEL entered into an Agreement of Purchase and Sale for one (1) (unit C-2) of the commercial units at the Property.
31. There is a second commercial unit (C-3) rented on the Property to Tara Christine MacDonald and Zane Kelsall (operating as "Two if by Sea Café") pursuant to a lease dated July 31, 2009.
32. Attached hereto and marked Exhibit "17" is a true copy of the notice issued to the tenant in the commercial unit by BDO, dated February 25, 2010, requiring that all rents from the date of the notice forward be paid to BDO.

The Residential Units

33. In total, there are thirty-seven (37) residential units at the Property, which were intended to be sold after they were registered as residential condominiums units. Attached hereto and marked as Exhibit "18" is a schedule summarizing the status of all units (both commercial and residential) at the Property, whether sold or unsold.
34. NNEL entered into Agreements of Purchase and Sale for twenty-two (22) of the residential units at the Property.
35. Sixteen (16) of the residential units are currently occupied by individuals who have entered into agreements of purchase and sale with NNEL. Six (6) residential units are not occupied.

36. Attached hereto and marked Exhibit "19" is a true copy of the form of notice issued to the parties to the agreements of purchase and sale for the residential units by BDO, dated February 25, 2010, requiring that all occupancy fees from the date of the notice forward be paid to BDO.
37. There are fifteen (15) residential units which are unsold or not subject to any Agreement of Sale, as reflected in Exhibit "18".

Completion of the Units

38. To date, the units have not been registered pursuant to the *Condominium Act*, R.S.N.S., 1985, c. 85, as amended, and as such, the sales of the units have not yet closed.
39. Some of the units have not been completed and require considerable internal finishing.
40. Attached and marked as Exhibit "20" is a schedule detailing the projected costs of the work remaining to be completed at the Property to fully finish the units. The schedule was prepared by Vince MacDonald, the project manager originally hired by NNEL but who now has been retained by Addenda. I have reviewed the attached schedule and believe it to be reasonably accurate although it is recognized that these cost estimates are only estimates at this stage.
41. I recognize that additional funds will be necessary to complete the work at the Property. Addenda is prepared to advance up to \$1 million, should Addenda's security be given priority.

Builders' Liens

42. I am advised by my counsel, Maurice P. Chiasson, and do believe that a search has been conducted for liens filed against the Property. Attached hereto as Exhibit "21" is a summary of the liens filed against the Property, with a true copy of the liens and certificates of lis pendens (where filed).
43. In total, the liens filed against the Property amount to \$935,813.02, plus costs and interest (the "Liens").
44. Pursuant to Clause 18 of the Mortgage, NNEL shall not permit any lien, charge or encumbrance on the Property without Addenda's prior written approval. Pursuant to Clause 28 of the Mortgage, NNEL shall, within 10 after receipt of notice of the filing of a construction lien against the Property, have the lien vacated or discharged.
45. To date, all of the lien claimants have refused to consent to the registration of the units as condominiums pursuant to the *Condominium Act*, *supra*, which has prevented the sale and closing of the units.

Appointment of Receiver

46. Addenda seeks the appointment of BDO as receiver pursuant to section 243 of the *Bankruptcy and Insolvency Act* to allow the receiver to, *inter alia*, assume control over

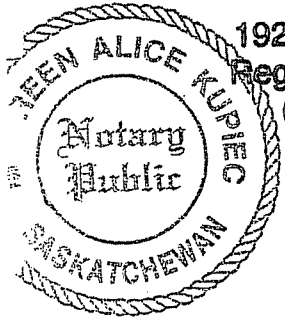
and manage the Property and arrange for the completion of the units so that the units may be registered under the *Condominium Act, supra* and sold.

SWORN TO: at Regina, Province of)
Saskatchewan, this 18 day of March,)
2010, before me:)

Maureen Kupiec)
A Notary Public in and for the Province)
of Saskatchewan)

Elvira Dubé
ELVIRA DUBÉ

MAUREEN A. KUPIEC)
Expiry: _____ A Notary Public)
in and for Saskatchewan)
My commission expires March 31, 2012)



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