

COURT FILE NUMBER

Clerk's Stamp

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF

ATB FINANCIAL (FORMERLY ALBERTA
TREASURY BRANCHES)

DEFENDANTS

ST. ALBERT LIMITED PARTNERSHIP by
and through its general partner ST. ALBERT
REAL ESTATE SYNDICATE GP LTD., ST.
ALBERT REAL ESTATE SYNDICATE GP
LTD., and JOHN TORODE

DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

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Calgary, AB T2P 0B4
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File: 114153.65

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.

Statement of facts relied on:

The Parties

1. The Plaintiff, ATB Financial, formerly Alberta Treasury Branches ("**ATB**"), is a financial institution and Crown corporation owned by the Province of Alberta. ATB is regulated entirely by the Government of Alberta under the authority of the *ATB Act*, RSA 2000, c A-45.2, and the *Alberta Treasury Branches Regulation*, Alta Reg 187/1997
2. The Defendant, St. Albert Limited Partnership ("**St. Albert LP**"), is a limited partnership registered in accordance with the laws in Alberta.
3. The Defendant, St. Albert Real Estate Syndicate GP Ltd. ("**St. Albert GP**" or the "**Corporate Guarantor**"), is a corporation registered in accordance with the laws in Alberta and with its registered office in Calgary, Alberta. GP is the general partner of St. Albert LP.

4. The Defendant, John Torode (“**Torode**” or the “**Individual Guarantor**” and together with the Corporate Guarantor, the “**Guarantors**”), is an individual who to the best of ATB’s knowledge, resides in Calgary, Alberta. Torode is one of two directors of St. Albert GP.
5. ATB is concurrently filing an application to appoint BDO Canada Ltd. as receiver over the assets, undertakings, and properties of St. Albert LP and St. Albert GP pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), section 13(2) of the *Judicature Act*, RSA 2000, c J-2 (the “**Judicature Act**”), and section 65(7) of the *Personal Property Security Act*, RSA 2000, c P-7 (the “**PPSA**”).

The Commitment Letter

6. Pursuant to a commitment letter, dated April 9, 2020 (the “**Commitment Letter**”), between ATB, as lender, and St. Albert LP, by its general partner, St. Albert GP (jointly, the “**Borrower**”), ATB extended to the Borrower a Non-Revolver, Reducing Credit Facility in the amount of \$8,750,000 (the “**Credit Facility**”) on certain terms and conditions including, but not limited to, the following:
 - a. the Borrower agreed to pay interest on all amounts owing to ATB under the Credit Facility at a rate of 3.75% per annum;
 - b. the Borrower agreed to pay all amounts owing to ATB under the Credit Facility upon demand by ATB and until such demand was made, the Borrower agreed to make monthly payments based on a 240-month amortization and
 - c. the Borrower agreed that it would not permit the Debt Service Coverage (as that term is defined in the Commitment Letter) ratio to be less than 1.25:1.
7. As security for all amounts owing by the Borrower to ATB including, but not limited to, amounts owing pursuant to the Commitment Letter, the Borrower entered into a general security agreement, dated April 20, 2020 (the “**Borrower GSA**”), in favour of ATB in respect of the Borrower’s present and after acquired personal property used in connection with or arising from the business carried on at or about the lands and premises described below, and the proceeds thereof:

Firstly
PLAN 7822207
BLOCK 5
LOT 61
EXCEPTING THEREOUT ALL MINES AND MINERALS

AREA: 0.429 HECTARES (1.06 ACRES) MORE OR LESS

Secondly
PLAN 8222311
BLOCK 5
LOT 65
EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "**Lands**").

8. As further security for all amounts owing by the Borrower to ATB including, but not limited to, amounts owing pursuant to the Commitment Letter, the Guarantors entered into the following:
 - a. an unlimited continuing guarantee and postponement of claims dated April 20, 2020 from the Corporate Guarantor to ATB (the "**Corporate Guarantee**"); and,
 - b. a continuing guarantee and postponement of claims dated April 20, 2020, from the Individual Guarantor to ATB, guaranteeing up to the amount of \$2,250,000 of the Borrower's obligations to ATB (the "**Torode Guarantee**", and together with the Corporate Guarantee, the "**Guarantees**").
9. As further security for all amounts owing by the Borrower to ATB including, but not limited to, amounts owing pursuant to the Commitment Letter, and amounts owing by St. Albert GP to ATB pursuant to the Corporate Guarantee, St. Albert GP entered into the following:
 - a. a general security agreement, dated April 20, 2020 (the "**GP GSA**"), in favour of ATB;
 - b. a collateral mortgage in the amount of \$9,000,000 dated April 20, 2020 (the "**Collateral Mortgage**") in favour of ATB in respect of the Lands; and
 - c. a general assignment of leases and rents, dated April 20, 2020 (the "**GP Assignment**" and together with the Corporate Guarantee, the GP GSA, the Collateral Mortgage, and the GP Assignment, the "**GP Security**") in favour of ATB in respect of the Lands.
10. The Borrower GSA, the Guarantees, and the GP Security are collectively referred to hereinafter as the "**Security**".
11. ATB has perfected its security interests created by the Security by way of registration at the Alberta Personal Property Registry and the Alberta Land Titles Office.

Default by the Borrower and the Outstanding Indebtedness

12. Starting on or around December 31, 2021, the Borrower failed to meet the Debt Service Coverage ratio of 1.25:1 as required by the Commitment Letter (the “**Ratio Default**”).
13. On June 26, 2023, ATB issued a Notice of Default to the Borrower advising of the Ratio Default (the “**Notice of Default**”).
14. Notwithstanding the Ratio Default, ATB was prepared to, and made several attempts with the Defendants to propose a forbearance agreement to permit the Borrower time to attempt to increase the occupancy rate of the Property to maximize the value of the Property for a potential sale for the purpose of repaying the Outstanding Indebtedness. However, the Defendants were not agreeable to a forbearance agreement on the terms proposed by ATB. ATB understand that the Borrower was unable to reach an agreement amongst its principals on whether to proceed with a form of forbearance agreement.
15. Starting in or around January 31, 2024, the Borrower failed to make scheduled payments on the Credit Facility as required by the Commitment Letter (the “**Payment Defaults**” and together with the Ratio Default, the “**Commitment Letter Defaults**”).
16. As of March 11, 2024, the total indebtedness of the Borrower to ATB pursuant to the Commitment Letter is \$7,737,946.67 plus interest accruing thereafter at the rates set out in the Commitment Letter, and all legal and other costs and expenses incurred by ATB in respect of the Commitment Letter (collectively, the “**Outstanding Indebtedness**”), which is comprised as follows:

Category	Amount in CAD\$ (as at March 11, 2024)
Credit Facility – 760-37776674200	
Principal	\$7,708,831.92
Accrued Interest	\$20,592.00
Per Diem Interest	\$792.00
TOTAL	\$7,729,424.01
Cost Account – 760-46220277800	
Principal	\$8,460.35
Accrued Interest	\$62.31
Per Diem Interest	\$2.60
TOTAL	\$8,522.66
GRAND TOTAL	\$7,737,946.67

17. As a result of the Payment Defaults, on February 20, 2024, ATB issued demand letters to each of the Borrower, St. Albert GP, and Torode, for payment of the indebtedness then owing to ATB, which at the time totaled \$7,725,222.68 plus any interest accruing thereafter, legal and professional fees, costs, charges, disbursements, and expenses, along with a notice of intention to enforce on the Security pursuant to section 244 of the *BIA* (the “**Demands**”).
18. In response to the Demands, neither the Borrower nor the Guarantors have been able to provide payment in full of the Outstanding Indebtedness and the time for providing notice under section 244 of the *BIA* has now expired.
19. The Defendants have failed, neglected, or otherwise refused to pay the Outstanding Indebtedness to ATB, or any portion thereof, and the full amount of the Outstanding Indebtedness remains due and owing to ATB.
20. The Defendants’ failure to pay the Outstanding Indebtedness constitutes breaches of the Defendants’ respective agreements and obligations to ATB. As a result, ATB has suffered damages and loss in the amount of the Outstanding Indebtedness.
21. Further, or in the alternative, the Defendants have been unjustly enriched in the amount of the Outstanding Indebtedness to the corresponding deprivation of ATB, for which there is no juristic reason.

Remedies Sought:

22. As a result of the foregoing, ATB seeks the following relief:
 - a. a declaration that the Borrower is in default of its obligations to ATB pursuant to the Commitment Letter and the Borrower GSA;
 - b. a declaration that St. Albert GP is in default of its obligations to ATB pursuant to the GP Security;
 - c. a declaration that Torode is in default of his obligations to ATB pursuant to the Torode Guarantee;
 - d. judgment against the Defendants, jointly and severally, for the Outstanding Indebtedness, which as of March 6, 2024, amounts to \$7,737,946.67;
 - e. in the alternative to subparagraph (d), restitution in the amount of \$7,737,946.67 against the Defendants;

- f. contractual interest pursuant to the Security or, in the alternative, pursuant to the *Judgment Interest Act* (Alberta);
- g. costs on a solicitor-client full indemnity basis; and
- h. such further and other relief as counsel may advise and this Honourable Court may permit.

NOTICE TO THE DEFENDANT(S)

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 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 judgment to the plaintiff against you.