



Clerk's stamp:

COURT FILE NO. 1701- 07734

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ALBERTA TREASURY BRANCHES

DEFENDANTS MRMA COMMERCIAL REAL ESTATE HOLDINGS LTD., SUNSET GRILL (RED DEER) INC., SUNSET GRILL (ST. ALBERT) INC., WOODLAND HOSPITALITY INC., ALAN ARSENAULT AND MARIA ARSENAULT

DOCUMENT **STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **BLAKE, CASSELS & GRAYDON LLP**  
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File Ref.: 81518/137

**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.

**Statement of facts relied on:**

*The Parties*

1. The Plaintiff, Alberta Treasury Branches ("**ATB**" or the "**Lender**"), is not a chartered bank. ATB is regulated entirely by the Government of Alberta, under the authority of the *Alberta Treasury Branches Act*, Chapter A-37.9, 1997, and *Treasury Branches Regulation 187/ 97*. ATB is a financial institution and crown corporation owned by the Province of Alberta.
2. The Defendant, MRMA Commercial Real Estate Holdings Ltd. ("**MRMA**") is a company incorporated pursuant to the laws of the Province of Alberta with its registered office in Calgary, Alberta.
3. The Defendant, Sunset Grill (Red Deer) Inc. ("**Sunset Red Deer**") is a company incorporated pursuant to the laws of the Province of Alberta with its registered office in Calgary, Alberta.
4. The Defendant, Sunset Grill (St. Albert) Inc. ("**Sunset St. Albert**" and together with Sunset Red Deer and MRMA, the "**Borrowers**") is a company incorporated pursuant to the laws of the Province of Alberta with its registered office in Calgary, Alberta.
5. The Defendant, Woodland Hospitality Inc. ("**Woodland**" and together with the Borrowers, the "**Corporate Debtors**") is a company incorporated pursuant to the laws of the Province of Alberta with its registered office in Calgary, Alberta.
6. The Defendant, Alan Arsenault ("**AA**") is a resident of Calgary, Alberta and is a director of each of the Corporate Debtors.
7. The Defendant, Maria Arsenault ("**MA**" and together with AA and the Corporate Debtors, the "**Debtors**") is a resident of Calgary, Alberta and is a director of Sunset Red Deer and Sunset St. Albert.

*The Loans and Security*

8. Pursuant to the terms of an amended and restated commitment letter between ATB and MRMA dated July 2, 2015, and accepted on July 13, 2015 (the "**MRMA Credit Agreement**"), the Lender made available to MRMA the following demand credit facilities: (i) a non-revolving loan facility; (ii) a revolving operating facility; and (iii) a non-revolving reducing facility.
9. As at June 6, 2017, the amount owing to ATB by MRMA under the MRMA Credit Agreement is \$9,041,288.42 (the "**MRMA Indebtedness**"), with interest accruing on the MRMA Indebtedness at \$911.30 per diem.
10. The MRMA Indebtedness is secured by the following:
  - (a) a general security agreement dated May 16, 2014 granted by MRMA in favour of the Lender;
  - (b) a collateral mortgage dated May 16, 2014 granted by MRMA in favour of the Lender;
  - (c) an amending agreement to the Mortgage dated July 17, 2015;
  - (d) a general assignment of leases and rents dated May 16, 2014;
  - (e) an assignment of deposit certificate dated May 23, 2014 in the amount of \$34,329.00 granted by MRMA in favour of the Lender;
  - (f) an unlimited guarantee dated July 17, 2015 granted by Woodland (the "**Woodland Guarantee**") in favour of the Lender;
  - (g) a general security agreement dated July 17, 2015 granted by Woodland in favour of the Lender;
  - (h) an unlimited guarantee dated July 17, 2015 granted by Sunset Red Deer in favour of the Lender;

- (i) a general security agreement dated July 17, 2015 granted by Sunset Red Deer in favour of the Lender; and
  - (j) a limited guarantee dated July 17, 2015 in the amount of \$3,400,000 ("**AA MRMA Guarantee**") granted by AA in favour of the Lender (collectively, the "**MRMA Security**");
- 11. Pursuant to the terms of the Woodland Guarantee, Woodland guaranteed payment of the MRMA Indebtedness to the Lender.
- 12. In addition to guaranteeing the MRMA Obligations, Sunset Red Deer is also a borrower under two separate credit agreements with the Lender:
  - (a) a commitment letter between the Lender and Sunset Red Deer dated July 9, 2015, and accepted on August 19, 2015 (the "**SRD Credit Agreement**"); and
  - (b) a Canada Small Business Financing Act Credit Agreement dated July 10, 2015, and accepted July 13, 2015, between the Lender and Sunset Red Deer (the "**SRD CSBFA Agreement**").
- 13. As at June 6, 2017, the total amount owing to ATB by Sunset Red Deer under the SRD Credit Agreement and the SRD CSBFA Agreement is \$401,612.34 (collectively, the "**SRD Indebtedness**"), with interest accruing on the SRD Indebtedness at \$46.03 per diem.
- 14. The SRD Indebtedness is secured by the following:
  - (a) a general security agreement dated August 19, 2015 granted by Sunset Red Deer in favour of the Lender;
  - (b) a limited guarantee dated August 19, 2015 in the amount of \$135,000 ("**1<sup>st</sup> SRD Guarantee**") granted jointly by AA and MA in favour of the Lender; and
  - (c) a limited guarantee dated August 19, 2015 in the amount of \$87,500 ("**2<sup>nd</sup> SRD Guarantee**") granted jointly by AA and MA in favour of the Lender (collectively, the "**SRD Security**").

15. Sunset St. Albert is also a borrower under two separate credit agreements with the Lender:
- (a) a commitment letter between the Lender and Sunset St. Albert dated October 7, 2014, and accepted on October 16, 2014 (the "**SSA Credit Agreement**"; and together with the MRMA Credit Agreement, the SRD Credit Agreement, the SRD CSBFA Credit Agreement and the SSA Credit Agreement, the "**Credit Agreements**");
  - (b) a Canada Small Business Financing Act Credit Agreement dated October 7, 2014, and accepted on October 21, 2014, between the Lender and Sunset St. Albert;
16. As at June 6, 2017, the total amount owing to ATB by Sunset St. Albert under the SSA Credit Agreement and the SSA CSBFA Agreement is \$454,365.76 (collectively, the "**SSA Indebtedness**" and together with the MRMA Indebtedness and the SRD Indebtedness, the "**Outstanding Indebtedness**") with interest accruing on the SSA Indebtedness at \$52.24 per diem.
17. The SRD Indebtedness is secured by the following:
- (a) a general security agreement dated November 19, 2014 granted by Sunset St. Albert in favour of the Lender;
  - (b) a limited guarantee dated November 19, 2014 in the amount of \$135,000 ("**1<sup>st</sup> SSA Guarantee**") granted by AA and MA in favour of the Lender; and
  - (c) a limited guarantee dated November 19, 2014 in the amount of \$89,250 ("**2<sup>nd</sup> SSA Guarantee**") and together with the MRMA Guarantee, the 1<sup>st</sup> SRD Guarantee, the 2<sup>nd</sup> SRD Guarantee and the 1<sup>st</sup> SSA Guarantee, the "**Personal Guarantees**") granted by AA and MA in favour of the Lender (collectively, the "**SSA Security**" and together with the MRMA Security and the SRD Security, the "**Security**").

18. Pursuant to the terms of the Personal Guarantees, AA agreed to guarantee the repayment of the Outstanding Indebtedness up to a total of \$3,446,750.00 plus the interest and costs provided for therein (the "**AA Guaranteed Amount**").
19. Pursuant to the terms of the 1<sup>st</sup> SRD Guarantee, the 2<sup>nd</sup> SRD Guarantee, the 1<sup>st</sup> SSA Guarantee and the 2<sup>nd</sup> SSA Guarantee, AA agreed to guarantee the repayment of the Outstanding Indebtedness up to a total of \$446,750.00, plus the interest and costs provided for therein (the "**MA Guaranteed Amount**" and together with the Outstanding Indebtedness and the AA Guaranteed Amount, the "**Debt**").
20. The Security further provides that the Corporate Debtors are liable to ATB for all reasonable costs, charges and expenses incurred by ATB including, without restricting the generality of the foregoing, legal costs as between a solicitor and his own client on a full indemnity basis.

#### *The Defaults and Demand*

21. The Borrowers have been experiencing financial issues for the past 18 months and have been unable to meet their obligations to ATB as they become due.
22. The Borrowers have each committed numerous events of defaults under their respective Credit Agreements, including, but not limited to, the following:

##### *MRMA Credit Agreement*

- (a) failing to pay to the Lender when due all amounts (whether principal, interest or other sums) owing by it to the Lender from time to time;
- (b) permitting the Debt Service Coverage ratio to be less than 1.20:1 - 2016 and 1.40:1 -2017;
- (c) failing to maintain the Replacement Reserve at 3%(4%);
- (d) failing to provide unconsolidated financial statements of Borrower on a review engagement basis and prepared by a firm of qualified accountants within 90 days after the end of each fiscal year;

*SRD Credit Agreement and SSA Credit Agreement*

- (e) failing to pay to the Lender when due all amounts (whether principal, interest or other sums) owing by to the Lender from time to time;
- (f) failing to pay to Lender on demand, all legal (on a solicitor and his own client, full indemnity basis) and other costs incurred by Lender in respect of all Credit Facilities including the preparation, registration and any realization on the Security Documents and other related matters;
- (g) failing to provide unconsolidated financial statements of the Borrower on a notice to reader basis and prepared by a firm of qualified accountants within 120 days after the end of each fiscal year;
- (h) failing to provide, on request, any further information regarding the assets, operations and financial condition of the Borrower and any Guarantor that the Lender may from time to time reasonably require;
- (i) failing to maintain all operating accounts with the Lender at all times;

*SRD CSBFA Agreement and SSA CSBFA Agreement*

- (j) failing to pay to ATB, when due, all Obligations owing by the respective Borrower and the Guarantor to ATB under the Credit Agreement and the Security, including, without restriction, principal, interest, fees, costs, charges, expenses and other sums;
- (k) failing to pay to ATB, on demand, all legal and other costs incurred by ATB in respect of the Credit Facilities, including, without restriction, for the preparation, registration and realization on the Security and collection of the Obligations, all with legal costs on a solicitor and its own client, full Indemnity basis;

- (l) failing to provide ATB with unconsolidated financial statements on a notice to reader basis, prepared by a firm of qualified accountants and signed by the appropriate officer within 120 days after fiscal year end; and
  - (m) failing to provide to ATB any information regarding assets, operations and financial conditions that ATB may from time to time request (collectively, the "**Defaults**").
23. Over the past several months, the relationship between the Lender and the Debtors has deteriorated significantly due the failure of the Debtors to rectify the Defaults.
24. On May 23, 2017, the Lender demanded repayment of the respective portion of the Outstanding Indebtedness owed by each of the Corporate Debtors and also demanded repayment of the AA Guaranteed Amount and the MA Guaranteed Amount from AA and MA, respectively (collectively, the "**Demands**").
25. The Debtors have refused, failed, neglected or been unable to pay their respective portion of the Debt within the notice period set out in the Demands and, in addition to the existing Defaults, have committed another event of default of the terms of the applicable Credit Agreements and Security.
26. As a result of the failure to comply with the Demands, the Debtors' have each breached their obligation to repay their portion of the Debt to ATB pursuant to the terms of the Credit Agreements and the Security.

***Remedy Sought:***

27. ATB seeks the following relief:
- (a) judgement against MRMA for the MRMA Indebtedness, together with any costs and interest thereon at the rate or rates in effect until judgment in this action;
  - (b) judgement against Sunset Red Deer for the SRD Indebtedness, together with any costs thereon at the rate or rates in effect until judgment in this action;



- (c) judgement against Sunset St. Albert for the SSA Indebtedness, together with any costs interest thereon at the rate or rates in effect until judgment in this action;
- (d) judgement against AA in the amount of the AA Guaranteed Amount, together with any costs interest thereon at the rate or rates in effect until judgment in this action;
- (e) judgement against MA in the amount of the MA Guaranteed Amount, together with any costs thereon at the rate or rates in effect until judgment in this action;
- (f) the appointment of a receiver and manager pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and the *Judicature Act*, RSA 2000, c J-2, as amended, over all current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, of the Corporate Debtors;
- (g) costs of this action on a solicitor and his own client basis; and
- (h) such further and other relief as this Honourable Court may allow.

**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