

COURT FILE NUMBER 2201-

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF THE BANK OF MONTREAL

DEFENDANTS THE INSTITUTE OF WELLNESS AND ADVANCED AESTHETICS LTD., WANDA LEE, THE ESTATE OF JONATHAN PATRICK LEE, 1608309 ALBERTA LTD., and MOUNT ROYAL SURGICAL CENTRE INC.

DOCUMENT STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

Burnet, Duckworth & Palmer LLP

2400, 525 – 8 Avenue SW

Calgary, Alberta T2P 1G1

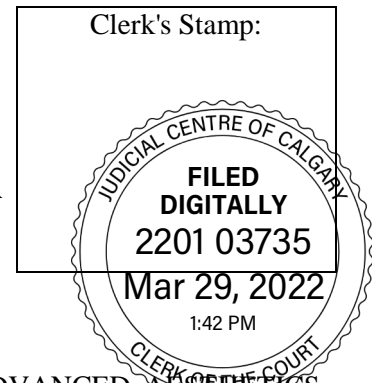
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File No. 75453-11



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, the Bank of Montreal ("**BMO**"), is a Schedule I bank under the *Bank Act*, SC 1991 c 46, with offices throughout Canada.
2. The Defendant The Institute of Wellness and Advanced Aesthetics Ltd. ("**IWAA**" or the "**Borrower**") is a corporation incorporated under the laws of Alberta.

3. To the best of BMO's information, IWAA carries on business as a provider of a number of cosmetic and aesthetic services out of the Leased Premises (defined below).
4. The Defendant 1608309 Alberta Ltd., previously named Jonathan P. Lee Professional Corporation ("**Jonathan PC**"), is a corporation incorporated under the laws of Alberta.
5. To the best of BMO's information, Jonathan PC carried on business as the professional corporation of Jonathan Patrick Lee ("**Jonathan**") pursuant to the provisions of the *Health Professions Act* and under a permit from the College of Physicians & Surgeons of Alberta (CPSA).
6. To the best of BMO's information, Jonathan was an individual resident in Alberta who passed away on June 28, 2020.
7. The Defendant Mount Royal Surgical Centre Inc. ("**MRSC**" and together with IWAA and Jonathan PC, the "**Debtors**") is a corporation incorporated under the laws of Alberta.
8. To the best of BMO's information, MRSC carries on business at the Leased Premises (defined below) as a surgical centre where plastic surgeries and other cosmetic procedures are performed.
9. To the best of BMO's information, the Defendant Wanda Lee ("**Wanda**") is an individual, resident in Alberta, and is the sole director and shareholder of each of IWAA and MRSC and the personal representative of the Defendant, the Estate of Jonathan.
10. As set forth in greater detail below, Wanda and Jonathan jointly guaranteed IWAA's obligations to BMO (in such capacity, the "**Individual Guarantors**").
11. Jonathan PC and MRSC have also guaranteed IWAA's obligations to BMO (in such capacity, the "**Corporate Guarantors**" and together with the Individual Guarantors, the "**Guarantors**").

The Loans and Indebtedness

12. BMO extended credit facilities and related services to the Borrower (collectively, the "**Loans**") pursuant to, among others, a Letter of Agreement executed October 11, 2019, a Letter of Agreement—Amendment executed October 22, 2019, a Commercial Card Agreement Onboarding Documentation executed December 15, 2019 and a Letter of Agreement – Amendment dated October 14, 2021 (collectively, the "**Loan Agreement**").

13. As at March 2, 2022, IWAA was indebted to BMO for \$2,246,056.33 in respect of funds borrowed pursuant to the Loans, plus interest and costs, which, which continue to accrue (the "**Indebtedness**").

The Borrower Security

14. The Borrower granted, among others, the following security to BMO in respect of all of its obligations, indebtedness, and liabilities under the Loans:
- (a) an Alberta Personal Property Security Act Security Agreement against all present and after acquired personal property (a "**General Security Agreement**") granted by the Borrower in favour of BMO dated November 26, 2019;
 - (b) an Assignment of Moneys Which May Become Payable under Fire Insurance Policies in respect of Account No. 08107992 issued by Federated Insurance, policy period expiring May 6, 2020 in respect of the Leased Premises (as defined below); and
 - (c) an Assignment of Life Insurance Proceeds in the amount of \$1,500,000 under Policy No. 081048984 issued by World Financial Group Insurance Agency of Canada Inc. dated November 28, 2019,
- (collectively, the "**Borrower Security**").

The Guarantees

15. The Individual Guarantors granted a joint limited and continuing guarantee dated November 14, 2019 in the amount of \$4,533,000 in favour of BMO, with respect to the amounts owing by IWAA under the Loans (the "**Individual Guarantee**").
16. In addition to the Individual Guarantee:
- (a) Jonathan PC granted a guarantee dated November 14, 2019 in the amount of \$4,533,000 in favour of BMO; and
 - (b) MRSC granted a guarantee dated March 16, 2022 in the amount of \$2,275,000 in favour of BMO,

each with respect to the amounts owing to IWAA under the Loan Agreements (the "**Corporate Guarantees**") and together with the Individual Guarantee, the "**Guarantees**").

Guarantor Security

17. In support of the Guarantees, the Guarantors granted, among others, the following security in favour of BMO in support of their respective obligations under the Guarantees:
- (a) a mortgage dated January 18, 2022 (the "**Bel-Aire Mortgage**") granted by Wanda over the real property legally described as Plan 5815HT Block 3 Lot 27, excepting thereout all mines and minerals (the "**Bel-Aire Property**");
 - (b) a General Security Agreement dated November 26, 2019 granted by Jonathan PC; and
 - (c) a General Security Agreement dated November 9, 2021 granted by MRSC,
- (collectively, the "**Guarantor Security**" and together with the Borrower Security, the "**Security**").

Demands

18. On or about February 10, 2022, BMO issued notice of default and demand for payment to the Borrower, and concurrently delivered notice of its intention to enforce its Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada) RSC 1985 c B-3 (a "**244 Notice**").
19. Also on or about February 10, 2022, BMO issued a notice of default and a demand for payment to the Guarantors, together with 244 Notices.

Defaults

20. The amounts payable under the Loan Agreements are repayable on demand. In addition, the Borrower has committed certain defaults under the Loan Agreement, including but not limited to the failure to:
- (a) make payments against the Loans as required by the Loan Agreement;
 - (b) remit amounts owing to Canada Revenue Agency when due;

- (c) grant the Bel-Aire Mortgage against the Bel-Aire Property with a second priority ranking in accordance with the terms of the Loan Agreement; and
 - (d) comply with all material agreements, including but not limited to the April 12, 2018 Lease Agreement between the Borrower as tenant and Certus Developments Inc. as landlord (the "**Landlord**") in respect of the premises municipally described as 301 - 3007 14th Street SW Calgary, AB T2T 3V6 (the "**Leased Premises**").
21. Despite BMO's demands for repayment of the Indebtedness, the Borrower and the Guarantors have failed or neglected, and continue to fail or neglect to repay the Indebtedness, and they are in default of their obligations under the Loans, the Guarantees and the Security.
22. On or about March 16, 2022, as a result of, among other things, the Borrower's defaults under the Loan Agreement, BMO, the Borrower and the Guarantors entered into a Forbearance Agreement whereby, among other things, BMO agreed to forbear from exercising its rights under the Loan Agreement and the Security (the "**Forbearance Agreement**").
23. Pursuant to the provisions of the Forbearance Agreement, the Defendants, among other things:
- (a) acknowledged that the Loan Agreement, Guarantees and Security, were properly executed, and are valid, binding and enforceable in accordance with their terms;
 - (b) acknowledged the Indebtedness;
 - (c) waived their ability to dispute, in any way, the liability to repay the Indebtedness and acknowledged and agreed that they had no claim for set-off, counterclaim or damages on any basis whatsoever against BMO;
 - (d) released BMO from all causes of action brought by the Borrower or Guarantors;
 - (e) waived their defences to present and future legal actions or enforcement brought by BMO to collect the Indebtedness or enforce or realize upon the Security; and
 - (f) acknowledged that BMO has not waived any of its rights in respect of the Indebtedness, the Loan Agreement or any Events of Default contained in the Loan Agreement.

24. In addition to the defaults under the Loan Agreement and Security, the Defendants are in default of their obligations under the Forbearance Agreement as a result of, among other things, a material adverse change in the status of the Borrower, the particulars of which include, but are not limited to:
- (a) Wanda has resigned, or is in the process of resigning, as an officer of IWAA and MRSC;
 - (b) IWAA has terminated all but one of its employees;
 - (c) one of IWAA's surgeons has resigned; and
 - (d) the Landlord has locked IWAA and MRSC out from the Leased Premises,
- (the "**Forbearance Defaults**").
25. As a result of the Forbearance Defaults, the Forbearance Period (as defined under the Forbearance Agreement) has expired.

Interest and Costs

26. It is a term of the Loans 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, BMO pleads and relies on the provisions of the *Judgment Interest Act*, RSA 2000, c J-1, as amended.
27. It is a term of the Loans and the Security that the Borrower and the Guarantors, as applicable, are responsible for all costs, including solicitor and client full indemnity costs, incurred by BMO in enforcing the Loans and the Security.

Receiver and Manager

28. It is a term of the Security that if the Debtors are in default of their obligations to BMO, BMO may apply to this Honourable Court for the appointment of a receiver and manger.
29. The Debtors are in default of their obligations to BMO and BMO is presently entitled to apply to this Honourable Court to appoint a receiver and manager.

Remedy Sought

30. As against the Borrower and the Guarantors, BMO seeks:
- (a) an Order validating the service of this Statement of Claim;
 - (b) a declaration that the Borrower is in default of its obligations to BMO under the Loans and Security;
 - (c) a declaration that the Guarantors are in default under the Guarantees and the Guarantor Security;
 - (d) a declaration of the amount owing by the Borrower and the Guarantors to BMO under the Loans and Guarantees, as applicable, with interest according to the terms thereof, and judgment in that amount;
 - (e) a declaration that the Security held by BMO is valid and enforceable as against the Borrower and the Guarantors;
 - (f) interest on all amounts outstanding in accordance with the Loans, or in the alternative, interest as set forth in the *Judgment Interest Act* (Alberta);
 - (g) costs of this action on a solicitor and client, full indemnity basis; and
 - (h) such further and other relief as this Honourable Court may consider appropriate.
31. As against the Debtors, BMO Seeks:
- (a) an Order for the appointment of a Receiver or Receiver and Manager over the assets, undertakings and properties of the Debtors pursuant to the *Bankruptcy and Insolvency Act* (Canada), the *Judicature Act* (Alberta), the *Business Corporations Act* (Alberta) and the *Personal Property Security Act* (Alberta), each as amended and applicable; and
 - (b) such further and other relief as the nature of the case may require and to this Honourable Court may seem just.

32. As against Wanda, BMO seeks:

- (a) a declaration as to the amount owing under the Bel-Aire Mortgage with interest according to the terms of the Bel-Aire Mortgage and, in default of payment, sale or foreclosure and possession of the Bel-Aire Property;
- (b) judgment against IWAA in the amount declared to be owing, together with interest thereon at the rate set out in the Bel-Aire Mortgage until payment, or such other rate as the Court shall Order;
- (c) judgment for any deficiency following the sale of the Bel-Aire Property;
- (d) alternatively, a Redemption Order shortening the period of redemption to 1 day or such other time as the Court may direct together with an Order for a Judicial Listing; and
- (e) such further and other relief as the nature of the case may require and to this Honourable Court may seem just.

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.