



Court File No. **VLC-S-S-196066**

No. \_\_\_\_\_  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

**CANADIAN IMPERIAL BANK OF COMMERCE**

PLAINTIFF

AND

**VINCO HOLDINGS LTD AND WATERWAY HOUSEBOATS LTD.**

DEFENDANTS

**NOTICE OF CIVIL CLAIM**

**This action has been started by the Plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a Counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.**

**Time for Response to Civil Claim**

A Response to Civil Claim must be filed and served on the Plaintiff,

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,

- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Civil Claim has been set by order of the Court, within that time.

**CLAIM OF PLAINTIFF**

**Part 1: STATEMENT OF FACTS**

**The Loan to Vinco Holdings Ltd.**

- 1. The Plaintiff, Canadian Imperial Bank of Commerce (“**CIBC**”), is a chartered bank of Canada with an office at 199 Bay Street, Toronto, Ontario.
- 2. The Defendants Vinco Holdings Ltd. (“**Vinco**”) and Waterway Houseboats Ltd. (“**Waterway Houseboats**”, together with Vinco, the “**Defendants**”) are companies incorporated in the Province of British Columbia with a registered office of 1100 – 1631 Dickson Avenue, Kelowna, B.C.
- 3. CIBC provided a demand loan to the defendant Vinco pursuant to a Credit Agreement dated December 8, 2011 (together with all amendments thereto, the “**Credit Agreement**”).
- 4. The facilities available to Vinco pursuant to the Credit Agreement are as follows:

<b>CREDIT</b>	<b>DATE ADDED</b>	<b>PURPOSE</b>	<b>CONDITIONS</b>	<b>AMOUNT OWING (as at May 14, 2019)</b>
Credit A: Demand Revolving Loan	December 8, 2011	To finance normal working capital requirements from time to time.	As of November 30 of 2018, the Credit Limit must reduce to \$1,000,000.  A “clean-up” period applies to this facility, where the account must be in a credit balance for at least 5 consecutive days	\$1,765,298.93

CREDIT	DATE ADDED	PURPOSE	CONDITIONS	AMOUNT OWING (as at May 14, 2019)
			during any calendar year.	
Credit B: Demand Installment Loan	December 8, 2011	To refinance existing Bank of Montreal loans.		\$2,000,698.56
Credit C: Demand Installment Loan	December 8, 2011	To finance the extension of a sewer line.		\$421,078.52
Credit D: Demand Installment Loan	December 8, 2011	To finance the extension of the dock facility on Vinco's property.		\$449,782.22
Credit E: Demand Installment Loan	November 10, 2014	To recapitalize the Demand Revolving Loan (Credit A) for non-recurring 2012 floor related capital expenditures, losses and expenses.	The net proceeds of the lawsuit settlement related to the 2012 flood (as described below), after repayment of 2012 accounts payable to boat owners, will be applied to a permanent reduction of this loan.	\$1,636,358.35
Credit F: Demand Installment Loan	November 18, 2015	To finance capital expenditures.		\$1,500,273.45
Credit G: Demand Installment Loan	July 4, 2018	To finance the purchase of the houseboat vessel Penelope.		\$195,822.00
<b>TOTAL:</b>				<b>\$7,969,327.03</b>

5. The Credit Agreement includes, among others, the following covenants:
- (a) Adjusted Fixed Charge Coverage Ratio: Vinco's adjusted fixed charge coverage ratio is not to be less than 1.20:1, tested annually based on the combined income of the Defendants and any related holding company as designated by CIBC; and
  - (b) Capital Withdrawals: There will be no capital withdrawals by either of the Defendants without CIBC's prior consent.
6. In this Notice of Civil Claim, all funds advanced to Vinco pursuant to the Credit Agreement, plus interest accrued thereon from such date at the applicable rates, together with all applicable costs, expenses and charges, including but not limited to legal and other fees incurred by or on behalf of CIBC and owing by the Defendants to CIBC pursuant to the Credit Agreement and other agreements between the Defendants and CIBC shall be referred to as the "Loan".
7. Waterway Houseboats has granted CIBC an unlimited guarantee dated November 29, 2010, to secure Vinco's obligations to CIBC under the Credit Agreement (the "Guarantee").

#### **Security Provided to CIBC**

8. Vinco owns three pieces of real property in Sicamous, British Columbia. These parcels of land include a waterfront property (the "**Mervyn Road Property**") that is rented by Waterway Houseboats to operate a houseboat rental business. Waterway Houseboats owns 9 houseboats and related equipment.
9. Vinco and Waterway Houseboats have granted security to CIBC to secure Vinco's obligations to CIBC under the Credit Agreement and Waterway Houseboat's obligations to CIBC under the Guarantee. This security includes:
- (a) a Security Agreement dated November 29, 2010, granting CIBC security in all of Vinco's present and after-acquired personal property and Crown License of Occupation 344093 (the "**Vinco GSA**");
  - (b) a Mortgage and Assignment of Rents dated November 29, 2010, granting CIBC security in the amount of \$7,000,000 in the Mervyn Road Property;
  - (c) a Mortgage of License of Occupation dated November 29, 2010, granting CIBC security in Vinco's interest in Crown License of Occupation 344093;
  - (d) a Security Agreement dated November 29, 2010, granting CIBC security in all of Waterway Houseboat's present and after-acquired personal property (the "**Waterway Houseboats GSA**");

- (e) a further Mortgage dated April 4, 2019, on the Mervyn Road Property increasing CIBC's security in that property to \$10,000,000; and
- (f) two Mortgages dated April 4, 2019, on the two additional properties owned by Vinco in Sicamous, B.C.

10. CIBC has registered the Vinco GSA and the Waterway GSA in the British Columbia Personal Property Registry.

### **Default of Vinco**

11. In late 2018 CIBC became aware that Vinco was in default of its obligations under the Credit Agreement. The defaults that CIBC was aware of included:

- (a) making capital advances without CIBC's prior consent to fund the operation of two other businesses run by Mr. John Vinje, Vinco's principal;
  - (b) failing to maintain an Adjusted Fixed Charge Coverage Ratio of not less than 1.20:1;
  - (c) failing to make certain required payments of interest and bank fees on Credit A, which had caused this facility to become overdrawn;
  - (d) failing to reduce the balance of Credit A to \$1,000,000 as of November 30, 2018; and
  - (e) failing to have a "clean-up" period on Credit A during 2018
- (collectively, the "**Defaults**").

12. The Defendants have been aware of the Defaults for approximately six months, or longer, and have not remedied the Defaults. The Defaults are ongoing.

13. As of May 14, 2019, Vinco remained indebted to CIBC in the amount of \$7,969,327.03. Further interest and fees have incurred in addition to this amount since that date.

14. CIBC demanded repayment of the Loan on May 14, 2019 from both Vinco and Waterway Houseboats.

15. The Loan provided by CIBC pursuant to the Credit Agreement is a demand loan. Furthermore, Vinco is in breach of the Credit Agreement.

16. Both Vinco and Waterway have failed to repay the Loan to CIBC.

**Part 2: RELIEF SOUGHT**

17. CIBC claims:

- (a) a declaration that Vinco has defaulted under the terms of the Credit Agreement and the Vinco GSA;
- (b) a declaration that Waterway Houseboats has defaulted under the terms of the Guarantee and the Waterway Houseboats GSA;
- (c) judgment against the Defendants in an amount of \$7,969,327.03, plus all interest and fees that have accrued pursuant to the Credit Agreement and any other agreements between CIBC and the Defendants since May 14, 2019;
- (d) in the alternative, interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- (e) an order appointing a Receiver or a Receiver Manager over the assets, undertakings and properties of Vinco and Waterway;
- (f) costs; and
- (g) such further and other relief as this Honourable Court may deem just.

**Part 3: LEGAL BASIS**

18. Vinco has defaulted under the terms of the Credit Agreement and the Vinco GSA and is liable in debt to the Plaintiff.

19. Waterway Houseboats has defaulted under the terms of the Guarantee and the Waterway Houseboats GSA and is liable in debt to the Plaintiff.

20. The Plaintiff is entitled to the relief sought in this action, including the appointment of a Receiver or a Receiver Manager over the assets of the Defendants pursuant to the Waterway Houseboats GSA and the Vinco GSA.

21. The Plaintiff submits it is just and convenient in all of the circumstances to appoint a Receiver or a Receiver Manager over the assets of the Defendants. The Plaintiff relies upon s. 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 and s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

Plaintiff's address for service: Blake, Cassels & Graydon LLP  
Barristers and Solicitors  
Suite 2600, Three Bentall Centre  
595 Burrard Street, PO Box 49314  
Vancouver, BC V7X 1L3  
Attention: Peter Rubin/Claire Hildebrand

Fax number address for service (if any): 604-631-3309

E-mail address for service (if any): N/A

Place of trial: Vancouver

The address of the registry is: 800 Smithe Street

Date: 5/27/2019



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Signature of lawyer for Plaintiff  
Peter Rubin

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a List of Documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

## APPENDIX

### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

A debt claim brought pursuant to a loan agreement.

### Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

### Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

### Part 4: ENACTMENTS

*Court Order Interest Act*, R.S.B.C. 1996, c. 79  
*Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3  
*Law and Equity Act*, R.S.B.C. 1996, c. 253