

COURT FILE NUMBER	1901-11574
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	PANTERRA MORTGAGE & FINANCIAL CORPORATION LTD.
DEFENDANTS	1075397 ALBERTA LTD., RIGSAT COMMUNICATIONS INC., PETROCRAFT PRODUCTS LTD., TERENCE PHILLIPS, and LISA PHILLIPS
DOCUMENT	AFFIDAVIT
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	DLA PIPER (CANADA) LLP 1000, 250 - 2nd Street SW Calgary, AB, T2P 0C1 Attention: G. Brian Davison, Q.C. Phone: 403-294-3590 Fax: 403-296-4474 File No.: 104076-00001

AFFIDAVIT OF TERENCE "TERRY" PHILLIPS
Sworn on June 25, 2020

I, Terence "Terry" Phillips, of Calgary, Alberta, SWEAR THAT:

1. I am a Defendant in the within proceedings and I am the sole director and voting shareholder of the Defendant, 1075397 Alberta Ltd. ("**107 Ltd.**"). As such, I have personal knowledge of the matters herein deposed to except where stated to be based upon information and belief, in which case I verily believe the same to be true.
2. I am swearing this Affidavit to supplement the evidence already sworn by me in my Affidavit dated March 6, 2020 in this Action (the "**March Affidavit**"), and to respond to the Receivership Application by the Plaintiff in this Action, Panterra Mortgage & Financial Corporation Ltd. ("**Panterra**").
3. I adopt the short-form definitions established in my March Affidavit and incorporate them hereafter.

There is equity in the Property

4. Based on the appraisals obtained by 107 Ltd., there is enough value in the Property to repay the Panterra mortgage in full.
5. In Exhibit "H" of my March Affidavit, Colliers appraised the value of the Property at \$3,720,000 as of June 15, 2019.
6. A more recent appraisal completed by CBRE Limited Valuation & Advisory Services ("CBRE"), and attached to the Affidavit of Value of Chris Marlyn, appraised the value of the Property at \$4,050,000 as of April 1, 2020.
7. As of June 9th, 2020, the balance owing on the Mortgage is \$3,571,792.15 based on the Payout Statement attached at Exhibit "2" of the Affidavit of Brian Beck sworn June 16, 2020. The Payout Statement indicates the mortgage is reducing monthly.

The Refinancing Efforts

8. There are lenders who have expressed interest in providing financing to 107 Ltd. in order to partially deal with the encumbrances on the Property. Jim Peplinski Leasing ("**Peplinski**") had agreed to provide financing to 107 Ltd.'s subsidiary Rigsat Communications Inc. ("**Rigsat**") (the "**Peplinski Offer**") subject to receiving written confirmation that Panterra has no interest in certain assets of Rigsat (which Peplinski seeks to take as collateral as a condition for offering financing (the "**No Interest Letter**"). A copy of the No Interest Letter dated March 5, 2020 is attached to this Affidavit as **Exhibit "A"**.
9. On March 25, 2020, my counsel wrote to Panterra's counsel providing the No Interest Letter and requesting confirmation whether Panterra will sign the document. My counsel followed up with Mr. LeGeyt requesting a response on March 31, April 17, April 23, April 27, and May 8, 2020.
10. Finally, on May 15, 2020 Mr. LeGeyt advised Panterra would not sign the No Interest Letter, a copy of which is attached to this Affidavit as **Exhibit "B"**. As a result, the Peplinski financing was lost.
11. I have made applications to various lenders for financing sufficient to payout the Panterra mortgage, but no financing is possible until the writs on the property are retired and/or information to assess Cococo's financial ability to pay the rent as well as a report on the structure and maintenance of the interior and exterior of the building has been provided. Cococo has failed to provide such information. A copy of correspondence between myself and Brian Beck regarding my requests for Cococo's financial information is attached to this Affidavit as **Exhibit "C"**.
12. In addition to the refinancing efforts, I have also made several suggestions to Panterra regarding a repayment plan for the Mortgage.
13. In April of 2019, I wrote to Brian Beck and inquired about whether Panterra would consider taking a second mortgage on my home for the Mortgage arrears. A copy of this correspondence is attached to this Affidavit as **Exhibit "D"**.

The Quinney Writs

14. As can be seen from the title to the Property attached as Exhibit "A" to my March 2020 Affidavit, there are Writs of Enforcement registered against the Property by Arthur and Sue Quinney (the "**Quinneys**") in the amount(s) of \$527,861 and \$207,442 respectively (the "**Writ(s)**").
15. Since 2015, 107 Ltd. and I have been engaged in discussions with the Quinneys and their counsel regarding a repayment plan to deal with the Writs and have them discharged.
16. Due to a number of factors, including a matrimonial dispute between the Quinneys, we have not yet reached a resolution regarding the Writs. However, these discussions continue.

Cococo Writ

17. The Writ regarding the Consent Judgment in favour of Cococo that is referenced in my March Affidavit has been paid and satisfied. My counsel requested Cococo remove same and file a Satisfaction Piece. Cococo refused to do so unless 107 Ltd. waived any claim it may have against Cococo, and Panterra regarding Cococo's unilateral action to withhold rental payments to 107 Ltd. to satisfy its judgment. A copy of correspondence from Panterra's counsel is attached to this Affidavit as **Exhibit "B"**.

Cococo Rent

18. According to Exhibit "2" of the Affidavit of Brian Beck sworn June 16, 2020, Cococo is paying the monthly rent, operating costs, and property taxes to Panterra. 107 Ltd. has not received any funds from Cococo since the summer of 2018 and has had to pay the property taxes to the City of Calgary from its own resources. The property taxes are paid up and current to the date of this Affidavit.


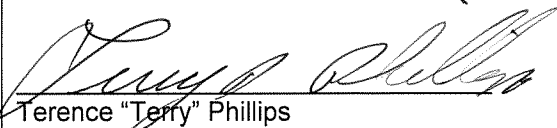
The Cross-Examination of Brian Beck

19. I believe that efforts to obtain refinancing for the Property and to arrange a repayment plan for the Mortgage will continue to be impeded because of the relationship between Panterra and Cococo.
20. As noted in paragraphs 17-24 of my March Affidavit, Panterra and Cococo are related entities controlled either directly or indirectly by common individuals.
21. One of those individuals is Mr. Brian Beck ("**Beck**") who has sworn evidence in support of this Application.
22. On March 5, 2020, Beck was cross-examined on the Affidavit of Default sworn by him on February 3, 2020.
23. The admissions given during Beck's testimony during the cross-examination included the following:
- (a) Panterra and Cococo are related entities;
 - (b) Panterra postponed registration of its Mortgage and Assignment of Rents regarding Cococo's Lease allowing Cococo's lease to take priority on title;
 - (c) Panterra delayed requiring Cococo to pay rent under the Lease and Lease Amending Agreement and understood that the effect of this delay impugned 107 Ltd.'s ability to pay the Mortgage; and
 - (d) One of the intentions of the Lease Amending Agreement was to provide Cococo with the ability to shorten the term of the Lease if 107 Ltd. defaulted on the Mortgage.
24. Attached to this Affidavit as **Exhibit "E"** are excerpts from Beck's cross-examination containing these admissions.

Appointing a Receiver for the Property is Not Productive

25. I do not believe that appointing a Receiver for the Property is appropriate or productive at this time.
26. The amount of monthly rent due from Cococo under the Lease Amending Agreement is sufficient to cover the interest payable and a portion of the Mortgage's principal.
27. Cococo began paying rent in August of 2019 to Panterra and the amount owing on the Mortgage has been decreasing since this time as shown in Exhibit "2" of the June 16, 2020 Affidavit of Brian Beck.
28. Moreover, I anticipate that a Receiver will simply seek to list the Property for sale, indicating the cost of a Receiver are an unnecessary expense
29. 107 Ltd. has listed the Property for sale with CBRE. A copy of the Listing Agreement is attached to this Affidavit as **Exhibit "F"**.

30. Cococo agreed to allow CBRE access to the rented premises on Thursday June 25th, 2020 to review the property and obtain information to complete its marketing material.

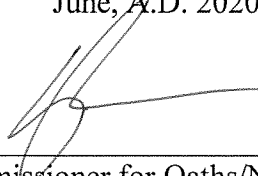
<p>SWORN BEFORE ME at the City of Calgary, in the Province of Alberta, this 25th day of June, 2020.</p>  <hr/> <p>G. Brian Davison QC</p> <p>A Commissioner for Oaths in and for the Province of Alberta</p>	 <hr/> <p>Terence "Terry" Phillips</p>
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G. BRIAN DAVISON
My Commission Expires
at the pleasure of the
Lt. Governor of Alberta

THIS IS EXHIBIT "A"
referred to in the Affidavit of

Terence "Terry" Phillips

sworn before me this 25th day of
June, A.D. 2020.



A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

G. BRIAN DAVISON
My Commission Expires
at the pleasure of the
Lt. Governor of Alberta



Panterra Mortgage & Financial Corporation Ltd.

March 5, 2020

5505 6 Street SE

Calgary, AB T2H 1L6

RE: RIGSAT Communications Inc. (the "Debtor")

As security for certain credit facilities extended or to be extended and/or leases made by Jim Peplinski Leasing Inc. Jim Peplinski Leasing Inc. has or will obtain rights, title, interests, or security interests (collectively a "**Claim**") in or the property described below and all present and future attachments, accessories and accessions thereto and all spare parts, replacements, substitutions, exchanges and trades-ins therefor and all intangibles and proceeds (as defined by law) relating thereto ,including all insurance payments and other indemnities or compensation for loss or damage thereto (the "**Collateral** ").

Jim Peplinski Leasing Inc. wishes to ensure that it will have at all time a first-ranking Claim in the Collateral. Would you kindly agree to the term provided below by signing and returning this letter to JimPeplinski Leasing by email at spurmessur@jimpeplinski.ca .

The undersigned has not assigned any claim that the undersigned may have in or to the Collateral and for good and valuable consideration.

The undersigned hereby confirms that the undersigned has no claim in or to the Collateral and, to the extent that the undersigned has any Claim, the undersigned hereby releases , renounces, waives and disclaims any claim that the undersigned may have in or to the Collateral. The undersigned agrees upon Jim Peplinski Leasing Inc request to amend or discharge any Claim granted by the Debtor in favour of the undersigned and any registration made by the undersigned against the Debtor so as to discharge the Collateral for any such Claim or registration.

The undersigned agrees not to rely on any registration made in favour of the undersigned either before or after Jim Peplinski Leasing Inc. has made a registration to claim , in respect of any claim that the undersigned may hold or take at any time hereafter, priority over the claim of Jim Peplinski Leasing Inc. in or to the Collateral , whether affixed or not. This waiver shall be binding upon and shall ensure to the benefit of the undersigned and Jim Peplinski Leasing Inc. and their respective successors and assigns.

ACKNOWLEDGED AND ACCEPTED BY Panterra Mortgage & Financial Corporation Ltd.

By:

Date:

Title:

RE: Waiver in favour of Jim Peplinski Leasing Inc. by Panterra Mortgage & Financial Corporation Ltd.

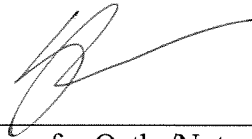
Quantity	Year	Make/Model	Serial Number
1	2014	Ford F350 XLT	1FT8W3BT2EEA69793
1	2010	Ford F350 XLT	1FTWW3BR5AEA15457
1	2011	Ford F350 XLT	1FT8W3BT4BEA92567
1	2011	Ford F350 XLT	1FT8W3BT4BEB55201
1	2011	Ford F350 XLT	1FT8W3BT2BEA92566
1	2007	Ford F350 XLT	1FTWW31P97EB37845
1	2007	Ford F350 XLT	1FTWW31P47EB37848
1	2015	Ford F350 XLT	1FT8W3BT8FEB97716
1	2014	Ford F350 XLT	1FT8W3BT1EEA06135
1	2007	Ford F350 XLT	1FTWW31P27EB37847

Creditor Initials:

THIS IS EXHIBIT "B"
referred to in the Affidavit of

Terence "Terry" Phillips

sworn before me this 25th day of
June, A.D. 2020.



A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

G. BRIAN DAVISON
My Commission Expires
at the pleasure of the
Lt. Governor of Alberta

Davison, Brian

From: David LeGeyt <dlegeyt@bdplaw.com>
Sent: Friday, May 15, 2020 9:48 AM
To: Davison, Brian
Cc: Nutt, Kim; Terry D Phillips; Brian Beck
Subject: [EXTERNAL] RE: Panterra v 1075397 Alberta Ltd.
Attachments: Brian Beck Undertaking #1.pdf; GST Remittance Confirmation (HSBC) Apr 30 2020 \$12,788.43.pdf; Panterra Mortgage GST Holding Account Balance (1075397) - to Apr 1 2020.pdf; 1075397 Alberta Ltd Statement - May 11 2020.pdf

Hi Brian.

I am writing in response to your email below, and I am using the same numbering.

1. Via answer to Undertaking #1 arising from Mr. Beck's cross-examination (attached - "Brian Beck Undertaking #1", sent to you in March 2020), it was confirmed that Panterra Mortgage was, through to and inclusive of the March 2020 rent period, then holding \$11,352.20 in a GST account to the credit of 1075397. That calculation reflected GST amounts accruing at a rate of \$1432.23 per month. Panterra remitted GST on that same basis, including April's GST, on April 30, 2020. See attached "GST Remittance Confirmation (HSBC) Apr 30 2020 \$12,788.43" (i.e. \$11,352.20 + \$1432.23 = \$12,788.43) and "Panterra Mortgage GST Holding Account Balance (1075397) - to Apr 1 2010". Because of the rent-adjustment correspondence received directly by Cococo from DLA Piper dated May 8, 2020, the historical GST amounts have changed slightly and a catch-up remittance will be made by Panterra both for the month of May (as adjusted) and also on a catch-up basis for all months in respect of which we now have slightly different numbers for CAM amounts under the Lease for the pre-May period. We will provide you with proof of these future GST remittance as they are made.
2. An updated mortgage statement is attached - "1075397 Alberta Ltd. - May 11 2020".
3. Cococo will not sign a Satisfaction Piece or discharge its writ unless your client agrees that rent was legally and properly set off. For clarity - With reference to the Lease between 1075397 Alberta Ltd. ('Landlord') and Cococo Chocolatiers Inc. ('Tenant') (the "Original Lease"), as amended by Lease Amending Agreement between Landlord and Tenant made as of August 31, 2018 (the "Lease Amendment") (the Original Lease and the Lease Amendment being, 'the Lease'), my client will execute the satisfaction piece and discharge its writ only after first receiving your client's written confirmation and acknowledgment, for all purposes, that Rent (as defined by the Lease) was duly and validly set-off by the Tenant under the Lease (section 6 as amended) for and as between the dates September 1, 2018 and August 3, 2019. Please confirm whether your client is in agreement with this.
4. As you are aware Panterra has a security interest in certain property of Rigsat. As you are also aware, Rigsat is a guarantor of the 107 debt, and Panterra anticipates obtaining a deficiency judgment against Rigsat pursuant to that guarantee. As a result Panterra will not sign the no interest letter.

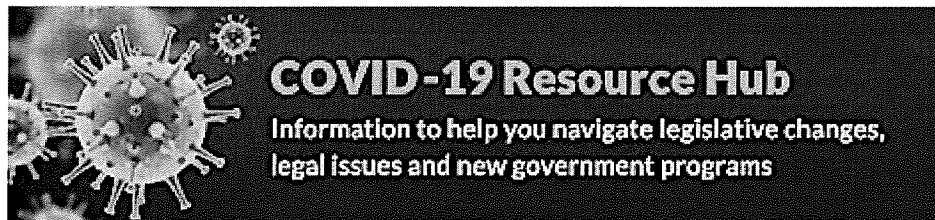
I look forward to receiving your response to this email.

David LeGeyt

Partner

BD&P BURNET, DUCKWORTH & PALMER LLP Law Firm

BD&P is here to help you in this chaotic and difficult time. Even if we aren't physically in our office, we will always respond to your emails and your calls. Stay healthy and take care.



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From: Davison, Brian <brian.davison@dlapiper.com>
Sent: Friday, May 08, 2020 2:43 PM
To: David LeGeyt <dlegeyt@bdplaw.com>
Cc: Nutt, Kim <kim.nutt@dlapiper.com>; Terry D Phillips <tphillips@rigsat.com>
Subject: [EXT] Panterra v 1075397 Alberta Ltd.

David,

I'm following up on a number of issues in this matter and would appreciate information in return:

- 1 GST. Please advise what amounts and the period of time for Panterra and / or COCOCO has remitted the GST due on the rent.
- 2 Mortgage debt: Please provide a statement of the amount due under the mortgage
- 3 Please have the attached satisfaction piece executed by COCOCO filed and its writ discharged
- 4 I have asked several time that Panterra execute the Peplinski letter of no interest to allow that refinancing to proceed. May I have a response.

G. Brian Davison *
Partner

T +1 403.294.3590
F +1 403.776.8864
E brian.davison@dlapiper.com



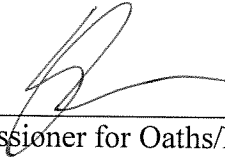
DLA Piper (Canada) LLP
Suite 1000, Livingston Place West
250 2nd St SW
Calgary, AB T2P 0C1
www.dlapiper.com
* Professional Corporation

This e-mail and any attachment(s) are confidential and may be privileged. If you are not the intended recipient please notify me immediately by return e-mail, delete this e-mail and do not copy, use or disclose it.

THIS IS EXHIBIT "C"
referred to in the Affidavit of

Terence "Terry" Phillips

sworn before me this 25th day of
June, A.D. 2020.



A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

G. BRIAN DAVISON
My Commission Expires
at the pleasure of the
Lt. Governor of Alberta

Davison, Brian

From: Davison, Brian
Sent: Wednesday, June 24, 2020 10:15 AM
To: Kim Nutt
Subject: Fwd: [EXTERNAL] FW: Loan
Attachments: image001.jpg

Cheers

Begin forwarded message:

From: Terry D Phillips <tphillips@rigsat.com>
Date: June 24, 2020 at 7:33:22 AM MDT
To: "Davison, Brian" <brian.davison@ca.dlapiper.com>
Subject: [EXTERNAL] FW: Loan

Terry D Phillips
tphillips@rigsat.com
Tel: (403)250-5417
Fax:(403)250-5452
Cell:(403)880-1441



From: Brian Beck [mailto:brianbeck@glbh.com]
Sent: June-04-19 2:27 PM
To: Terry Phillips
Subject: Re: Loan

Hi Terry,

Sorry I was in meetings all day yesterday and my Controller was off volunteering.

No, actually, we have not filed a tax return since 2016. There are various reasons, and although I understand why you might think that, the correct answer is actually that we do not have statements for any of 2016 / 2017 / 2018 at the moment. There is a backlog project being worked through to fix this problem, but I don't have an ETA at this time.

Brian

On Jun 3, 2019, at 8:35 AM, Terry D Phillips <tphillips@rigsat.com> wrote:

Hi Brian

Thanks for getting back to me

Wouldn't you still have finials as you have to report to the government. So whatever you can put together that would be great

I talked to an appraiser and they think it's still is the same as my last appraisal

Thanks Terry

Terry D Phillips
tphillips@rigsat.com
Tel: (403)250-5417
Fax:(403)250-5452
Cell:(403)880-1441
<image001.jpg>

From: Brian Beck [<mailto:brianbeck@glbh.com>]
Sent: May-31-19 4:56 PM
To: Terry Phillips
Subject: Re: Loan

Hi Terry,

We can talk early next week if you want, but just quickly late on a Friday -

The simplest and most practical way for me to answer your question is to share with you the fact that Cococo does not have financials, and has not in fact had any resolved financial statements for a couple of years.

The reason for the lack of financial statements is that Cococo lacks "going concern" status given its current problems, and so the outside accounting firm's process got stuck.

The bank then withdrew support and so the need for the financial statements changed from that perspective, too. Cococo's bank support is now non-arm's length and does not require financial statement reporting as such.

If there were statements (or if we were to pull together internal information), what this would show is significant operating losses, and an excess of net debt (both short-term and longer-term) that is freely callable —*i.e.* nothing that would lend support to the value of Cococo's lease, or to refinancing.

I meant to email you after our last meeting to update you. Right after our meeting I engaged the appraiser to provide an updated report on the building. I haven't heard back yet, but will check.

Brian

On May 31, 2019, at 2:26 PM, Terry Phillips <tphillips@rigsat.com> wrote:

Hi Brian

How are you

Can I get the cococo financials for refinancing the 2320 property

The lender is requesting this information

Terry

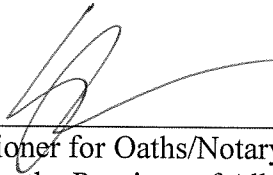
Please excuse any auto corrections

Sent from my iPhone

THIS IS EXHIBIT "D"
referred to in the Affidavit of

Terence "Terry" Phillips

sworn before me this 25th day of
June, A.D. 2020.



A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

G. BRIAN DAVISON
My Commission Expires
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Lt. Governor of Alberta

Davison, Brian

From: Davison, Brian
Sent: Wednesday, June 24, 2020 10:16 AM
To: Kim Nutt
Subject: Fwd: [EXTERNAL] FW: chat
Attachments: image001.jpg

Cheers

Begin forwarded message:

From: Terry D Phillips <tphillips@rigsat.com>
Date: June 24, 2020 at 7:34:05 AM MDT
To: "Davison, Brian" <brian.davison@ca.dlapiper.com>
Subject: [EXTERNAL] FW: chat

My offer of second mortgage proposal

Terry D Phillips
tphillips@rigsat.com
Tel: (403)250-5417
Fax:(403)250-5452
Cell:(403)880-1441



From: Brian Beck [mailto:brianbeck@glbh.com]
Sent: April-10-19 5:04 PM
To: Terry Phillips
Subject: Re: chat

Hi Terry,

I am well; hope you are, too.

Sorry for the slow reply. My day was absolutely packed.

I am around tomorrow (Thurs) AM if you would like to get together for a few minutes?

Brian

On Apr 10, 2019, at 9:03 AM, Terry D Phillips <tphillips@rigsat.com> wrote:

Hey Brian

How are things

Do you have time for a chat

Also did you give any consideration to carrying a second mortgage for the difference of what I can get on a first with a bank

Then I can work on getting a second from someone else

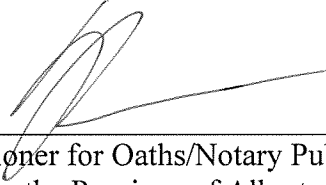
We could do a second and standard rates with a 7 year payout in conjunction with remainder of lease. Let me know

Terry D Phillips
tphillips@rigsat.com
Tel: (403)250-5417
Fax:(403)250-5452
Cell:(403)880-1441
<image001.jpg>

THIS IS EXHIBIT "E"
referred to in the Affidavit of

Terence "Terry" Phillips

sworn before me this 25th day of
June, A.D. 2020.



A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

G. BRIAN DAVISON
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G. BRIAN DAVISON
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1 couple of things as to how Cococo and Panterra
2 Mortgage are related. I understand that you are a
3 director of both Panterra Mortgage and Cococo, is
4 that correct?

5 A. Yes.

6 Q. And I understand that you are the sole director of
7 Panterra Mortgage, is that correct?

8 A. Yes.

9 Q. I also understand that you, through your company,
10 Fezziwig's Holding Company Ltd., own 25 percent of
11 Cococo; does that accord with your understanding?

12 A. That's not accurately expressed.

13 Q. In what respect is it inaccurate?

14 A. That Holding Company owns 50 percent of another
15 company which in turn owns 80 percent of the common
16 shares of Cococo. There are other equity interests
17 in Cococo as well. So it depends upon in that
18 respect how deep you get into ownership.

19 Q. Mr. Beck, I have done some corporate searches of
20 Cococo and Panterra Mortgage, and I have followed
21 on Cococo what is registered backwards.

22 A. Okay.

23 Q. And I am going to show you the Cococo Corporate
24 Search. It show that the three directors of Cococo
25 are yourself, Mr. Black and Mr. Freeland. And it
26 shows that the voting shareholders of Cococo are
27 DKM Holdings Inc., which is a company held by the

1 Freelands, and Instant Potatoes Holdings Ltd.; is
2 that correct?

3 A. Yes.

4 Q. And then Instant Potatoes Holdings I get are the
5 shareholders of it are Fezziwig's Holding Company
6 Ltd., which is related to you?

7 A. Yes.

8 Q. And on the other hand 261820 Alberta Ltd. which is
9 owned by Mr. Black and Mr. Black is the sole
10 shareholder?

11 A. Yes.

12 Q. So that what I get from that is, is that Instant
13 Potatoes owns 80 percent of Cococo and that you
14 through Fezziwig's would hold half of that 80
15 percent, is that correct?

16 A. Yes.

17 Q. And I understand that Panterra Mortgage is owned
18 entirely by 261820 Alberta Ltd., which is 100
19 percent owned by Mr. Black, is that correct?

20 A. Yes.

21 Q. Now, from Exhibit "J" to your affidavit I gather
22 that Panterra Mortgage took over from Paragon all
23 of Paragon's security and the debt owed by 107 on
24 or about August 8th, 2018; does that accord with
25 your recollection?

26 A. Yes.

27 Q. And at that time the balance owed on the Panterra

1 Q. And by that postponement I understand that Panterra
2 Mortgage postponed its mortgage and its caveat
3 regarding the Assignment of Rents and Leases to the
4 Cococo lease; does that accord with your
5 understanding?

6 A. Yes.

7 Q. What business reason did Panterra financial have to
8 do that?

9 A. Panterra Financial and Cococo are related
10 corporations. The postponement was put in place or
11 undertaken to reflect the views of ownership as to
12 how they would prefer to have those interests
13 recorded.

14 Q. Let me suggest this to you: Panterra Mortgage and
15 Cococo are related companies and that the reason
16 that Panterra Mortgage agreed to this postponement
17 was to simply make sure that the Cococo mortgage
18 was registered ahead of any previous writ filed on
19 the Title?

20 A. I believe you misspoke. You referred to the Cococo
21 mortgage. You meant the Cococo lease.

22 Q. Correct.

23 A. I don't believe we were at the time thinking of any
24 writs because we were concerned or thinking about
25 the mortgage interest. I do accept that if the
26 lease were given priority ahead of the mortgage
27 would by definition also have priority over the

1 writs.

2 Q. Has Panterra ever done this before for a tenant of
3 a building on a property over which it has a
4 mortgage?

5 A. This is the only mortgage investment involving a
6 third party that Panterra Mortgage has ever been
7 involved in.

8 Q. So the answer to my question is: No, you have
9 never done it before?

10 A. Yes.

11 Q. You are agreeing with me?

12 A. I am agreeing.

13 Q. Would you also agree with me that Cococo payment of
14 rent from and after August of 2018 was to their
15 benefit and to the detriment of 107 and Panterra
16 Mortgage?

17 A. I'm sorry, I don't think I understand the question.

18 **MR. DAVISON:** Would you read it back,
19 please.

20 **COURT REPORTER: (By reading)**

21 "Q. Would you also agree with me that
22 Cococo payment of rent from and after
23 August of 2018 was to their benefit and
24 to the detriment of 107 and Panterra
25 Mortgage?"

26 Q. **MR. DAVISON:** Sorry, let me just add
27 one more piece, Mr. Beck, in the context that

1 Cococo was paying rent but it wasn't paying it
2 either to 107 and 107 was not in a position to
3 forward that rent to Panterra Mortgage?

4 A. I understood it before it was read back. I mean I
5 heard it, I still don't feel like I understand the
6 question you are asking.

7 Q. If Cococo Mortgage was setting off its rent against
8 the judgment the one it had against 107, 107 was
9 deprived of that income, do you understand that?

10 A. Yes.

11 Q. So that 107 did not have that rental income in
12 order to make mortgage payments to Panterra
13 Mortgage, correct?

14 A. So far as that goes.

15 Q. Correct. And then Panterra Mortgage made the
16 decision not to demand or enforce, demand the
17 payment of rent from Cococo or enforce its
18 Assignments of Lease payments, correct?

19 A. Correct.

20 Q. So Panterra Mortgage had the right to demand that
21 Cococo pay the rent to it but it chose not to do so,
22 correct?

23 A. Correct.

24 Q. So that the end result was Cococo received payment
25 of its judgment and Panterra Mortgage accrued money
26 owed to it by 107 at the interest rate set out in
27 the mortgage it held over 107, correct?

- 1 Q. I am going to show you what appears to be a Lease
2 Amending Agreement, Mr. Beck, between 107 and
3 Cococo and I am going to take you to the signature
4 page. I want you to confirm to me who signed it on
5 behalf of Cococo?
- 6 A. That's my signature.
- 7 Q. Who drafted the Lease Amending Agreement?
- 8 A. Counsel.
- 9 Q. And you in your position as a lawyer or general
10 counsel or chief operating officer, did you draft
11 that Lease Amendment Agreement?
- 12 A. No.
- 13 Q. Did you give instructions to counsel to draft the
14 Lease Amending Agreement?
- 15 A. Yes.
- 16 Q. Did you review the drafts before the final draft
17 that you have signed?
- 18 A. Yes.
- 19 Q. Did you understand that by the Lease Amending
20 Agreement that this document gave Cococo the right
21 to withhold mortgage payments -- or excuse me,
22 rental payments to 107?
- 23 A. No, it gave the right to set off.
- 24 Q. And did you understand that the effect of this
25 Lease Amending Agreement was to allow Cococo to
26 shorten the term of the lease if 107 was in
27 default?

1 A. Yes.

2 Q. And that was the intention of Cococo in drafting
3 this Lease Amending Agreement?

4 A. It was one of the intentions. The document speaks
5 for itself.

6 Q. I understand that.

7 A. Counsel drafted it, yes.

8 Q. I understand. The Lease Amending Agreement was
9 signed on I think it's August 30th, 2018, is that
10 correct? It may be dated that, Mr. Beck.

11 A. Made as of August 31st, 2018.

12 **MR. DAVISON:** Let's enter that Lease
13 Amendment Agreement as the next exhibit, Mr.
14 LeGeyt.

15 **MR. LeGEYT:** That's fine.

16 **MR. DAVISON:** Exhibit 2, Madam Reporter.

17 **EXHIBIT D-2 - LEASE AMENDING AGREEMENT**
18 **BETWEEN 1075397 AND COCOCO**

19 **MR. DAVISON:** Let's take a five minute
20 break if you don't mind. I may be close to
21 wrapping it up.

22 **(ADJOURNMENT)**

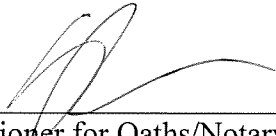
23 **MR. DAVISON:** Thank you, Mr. Beck. Those
24 are all the questions I have. Subject to that one
25 undertaking, Mr. LeGeyt, I will conclude my
26 cross-examination.

27 **MR. LeGEYT:** Thank you very much.

THIS IS EXHIBIT "F"
referred to in the Affidavit of

Terence "Terry" Phillips

sworn before me this 25th day of
June, A.D. 2020.



A Commissioner for Oaths/Notary Public
in and for the Province of Alberta

G. BRIAN DAVISON
My Commission Expires
at the pleasure of the
Lt. Governor of Alberta

EXCLUSIVE SALE LISTING AGREEMENT

TO: CBRE LIMITED
Suite 500, 530 – 8th Avenue S.W.
Calgary, Alberta T2P 3S8

Attention: Iain Ferguson, Luke Hamill, Cam Woods, Blake Ellis, Evan Renwick
and Greg Kwong

Dear Sir(s):

Re: Address: 2320 2 Avenue SE, Calgary, Alberta
Legal Description: Plan 7810519, Block 5, Lot 2(the "Property")

1. In consideration of CBRE Limited ("CBRE") agreeing to market the Property for sale, **1075397 ALBERTA LTD.** (the "Vendor") hereby authorizes and appoints CBRE as its Exclusive Agent to sell the Property for the sum of **THREE MILLION NINE HUNDRED AND NINETY FIVE THOUSAND DOLLARS AND NO CENTS (\$3,995,000.00)** cash or such other terms as may be agreed upon between CBRE and the Vendor and the Vendor agrees to pay to CBRE the commission as defined herein. All deposits shall be forwarded to CBRE to be held in trust.
2. The commission (the "Commission") shall be calculated on the basis of **THREE PERCENT (3.00%)** of the Gross Sale Price (as defined below) for the Property plus GST.

The Commission shall be paid by the Vendor to CBRE on the completion of the Sale (as defined below) of the Property and such Commission shall be deducted from the deposit monies, with any balance payable from the sale proceeds and the Vendor hereby assigns to CBRE such portion of the sale proceeds to pay the balance of the Commission. In the event of a Sale, all documents necessary to complete the transfer of the Property shall be prepared at Vendor's expense.
3. This is an Exclusive Listing and should a Sale be made by whomsoever during the currency hereof, or as a result of negotiations or inquiries originating during such currency, the Commission shall be payable to CBRE Limited.
4. It is understood that CBRE shall be responsible for and shall pay for all sales promotion materials in accordance with a budget to be approved by CBRE Limited. For the purposes of showing the Property, the Vendor agrees to give CBRE quick and convenient access at reasonable times.
5. CBRE, at its cost, shall be allowed to erect "For Sale" and "Sold By" signs on the Property. In addition, CBRE shall be permitted to announce the completion of the transaction following the Sale of the Property by way of printed matter, facsimile communication or electronic mail.

6. The Vendor agrees to forward, and shall direct its property manager to forward, to CBRE all inquiries and any offers or letters of intent received by it with regard to the Sale of the Property.
7. This Exclusive Listing shall remain in full force and effect for **nine (9) months** from the date hereof. Upon the expiration of the **nine (9) month** term, this Exclusive Listing shall continue on a month to month basis, and this month to month extension, if applicable, shall be subject to 30 days written notice of termination by either party. Notwithstanding anything contained herein to the contrary, if an offer to purchase or sell (the "Offer") has been accepted by the Vendor and purchaser, and the Offer is subject to any conditions, and if the date for removal of the condition or conditions (the "Condition Removal Date") extends beyond the dates set out herein then this Exclusive Listing Agreement shall be extended and shall continue in full force and effect until the date all conditions have been waived and the Property sale has closed.
8. The Vendor agrees that all of the information, rent rolls, lease terms and other documentation provided to CBRE are true and correct and, to the best of the knowledge of the Vendor, no environmental issues or hazardous substances have been stored or remain on the Property and CBRE shall be indemnified and saved harmless from any claims, actions, proceedings, liability, costs, including solicitor and its own client costs, which result from or relate to the actions, negligence or misconduct of the Vendor or the Vendor withholding any information.
9. CBRE recommends that the Vendor obtain independent legal, tax or other professional advice relating to this Agreement and the Sale of the Property, as well as the condition and/or legality of the Property, including, but not limited to, the Property's improvements, equipment, soil, tenancies, title, environmental aspects and compliance. CBRE will have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by the Vendor and CBRE. CBRE is not responsible or liable in any matter whatsoever related to any legal documentation or income tax consequences related to or resulting from the sale of the Property. The Vendor further agrees that, in determining the financial soundness of any prospective purchaser, the Vendor will rely solely upon the Vendor's own investigation and evaluation, notwithstanding the assistance of CBRE in gathering any financial information.
10. This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta. If any provision is invalid or unenforceable in any jurisdiction where this Agreement is to be performed, such provision shall be deemed deleted and the remaining portions of this Agreement shall remain valid and binding.
11. For the purposes of this Exclusive Listing Agreement, the following terms shall have the following meanings:

"Gross Sale Price" means the full, true aggregate consideration, exclusive of GST, without duplication, received or receivable by the Vendor, or paid or payable to or at the direction of the Vendor, in consideration of the Sale of the Property, denominated in Canadian dollars.

“Sale” means any sale, exchange or trade of the Property or any interest therein, directly or indirectly, by the Vendor and includes, without limitation, any trade of Property or any issue or transfer of shares or other securities which results in any direct or indirect change of legal or beneficial ownership of any of the shares of the Vendor, whether by sale, exchange or trade of such shares or by way of merger, amalgamation, or reorganization of the Vendor.

Any notice, document or communication required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand to the party to which it is to be given as follows:

If to CBRE Limited:

CBRE Limited
Suite 500, 530 – 8th Avenue S.W.
Calgary, Alberta T2P 3S8
Facsimile #: (403) 269-4202
Attention Lister: Iain Ferguson & Luke Hamill
cc: Mr. Greg L. Kwong
Executive Vice President and
Regional Managing Director, Alberta

If to the Vendor:

Rig Sat Communications Inc.
220 - 19th Street SE
Calgary, Alberta T2E 6P5
Facsimile #: (403) 250-5452
Attention: Terry Phillips

With a copy to:

DLA Piper (Canada) LLP
1000, 250 -2nd Street SW
Calgary, Alberta T2P 0C1
Facsimile #: (403) 296-4474
Attention: G. Brian Davison, Q.C.

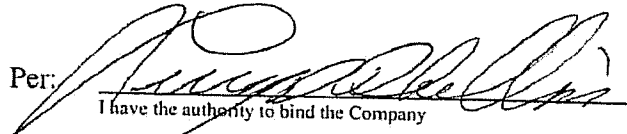
Notices may also be given by fax. Either party may change its address by written notice to the other party.

12. This Agreement constitutes the entire agreement between the Vendor and CBRE and supersedes all prior discussions. No modification of this Agreement will be effective unless made in writing and signed by both the Vendor and CBRE Limited. This Agreement shall be binding upon and enure to the benefit of the successors and assigns of the parties hereto.

13. Notwithstanding anything contained herein, in the event that [REDACTED] purchases the Property from the Vendor, the commission shall be calculated on the basis of **ONE PERCENT (1.0%)** of the Gross Sale Price (as defined herein) for the Property plus GST.

DATED at Calgary, Alberta this 5 day of JUNE, 2020.

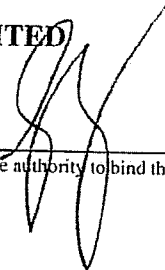
1075397 ALBERTA LTD.

Per: 
I have the authority to bind the Company

Per: _____
I have the authority to bind the Company

ACCEPTED at Calgary, Alberta this 4 day of June, 2020.

CBRE LIMITED

Per: 
I have the authority to bind the Compa