

COURT FILE NUMBER	2003 06728
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFFS (DEFENDANTS BY COUNTERCLAIM)	ROMSPEN MORTGAGE LIMITED PARTNERSHIP and ROMSPEN INVESTMENT CORPORATION
DEFENDANTS (PLAINTIFFS BY COUNTERCLAIM)	3443 ZEN GARDEN LIMITED PARTNERSHIP, LOT 11 GP LTD, LOT 11 LIMITED PARTNERSHIP, ECO INDUSTRIAL BUSINESS PARK INC, ABSOLUTE ENERGY RESOURCES INC, ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC and DANIEL ALEXANDER WHITE
COURT FILE NUMBER	1903 21473
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFFS	LOT 11 LIMITED PARTNERSHIP by its general partner LOT 11 GP LTD, ECO-INDUSTRIAL BUSINESS PARK INC, ABSOLUTE ENERGY RESOURCES INC, ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC and DANIEL ALEXANDER WHITE
DEFENDANT	ROMSPEN INVESTMENT CORPORATION
APPLICANTS:	DANIEL ALEXANDER WHITE and DAN WHITE FAMILY TRUST
RESPONDENTS:	MNP LTD in its capacity as Receiver for LOT 11 LIMITED PARTNERSHIP, LOT 11 GP LTD, ABSOLUTE ENERGY RESOURCES INC and ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC, MNP LTD in its capacity as Trustee in Bankruptcy for ECO-INDUSTRIAL BUSINESS PARK INC, ROMSPEN INVESTMENT CORPORATION and ROMSPEN MORTGAGE LIMITED PARTNERSHIP
DOCUMENT	AFFIDAVIT

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

Roberts O'Kelly Law
403, 10113 104 Street
Edmonton, AB T5J 1A1

Attention: Sharon Roberts
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F: (780) 699 7672
E: sharon@robertsokelly.com
File Number: 66-001

Affidavit of Haven Eboni Edwards, sworn September 12, 2022

1. I, Haven Eboni Edwards, resident of Edmonton, Alberta, am employed as a Legal Assistant with Roberts O'Kelly Law.
2. Attached and marked as **Exhibit "1"** is the August 11, 2022, letter to Judge Pitman from Henderson Flores, Mr. White's lawyer in the US Proceedings.
3. Attached and marked as **Exhibit "2"** is the August 12, 2022, letter to Judge Pitman from Counsel for the Receiver in the US Proceedings.
4. Attached and marked as **Exhibit "3"** are the submissions of the Receiver filed August 31, 2022.
5. Attached and marked as **Exhibit "4"** is the September 8, 2022, email of Bruce Duke, Counsel for Mr. White in the US Proceedings.
6. Attached and marked collectively as **Exhibit "5"** are the following corporate searches:
 - a. Lot 11 GP Ltd., dated September 7, 2022;
 - b. Absolute Energy Resources Inc., dated September 7, 2022;
 - c. Absolute Environmental Waste Management Inc., dated September 7, 2022;
 - d. Eco-Industrial Business Park Inc., dated September 7, 2022;
 - e. Symmetry Asset Management Inc., dated September 12, 2022;
 - f. 1468527 Alberta Ltd., dated September 12, 2022.
7. I make this affidavit in support of the Application by the "White Parties", made returnable September 21 and 22, 2022.

)
)
)
)

Orlagh O'Kelly
Barrister and Solicitor

Haven Eboni Edwards



901 S. MoPac Expressway
Bldg. 1, Suite #300
Austin, Texas 78746
Tel: 512-439-3200 | Fax: 512-439-3201

August 11, 2022

I hereby certify this to be Exhibit 1
to the Affidavit of H Edwards sworn
this 12th day of September 2022

SENT VIA ECF FILING and EMAIL

Honorable Robert Pitman
United States District Judge
for the United States District Court for the Western District of Texas
501 W 5th Street
Austin, TX 78701

Orlagh O'Kelly
Barrister and Solicitor

RE: White. et al v. Rompsen Investment Corp., et al., Case No. 1:21-CV-00517-RP

Dear Judge Pitman,

I and my co-counsel from the law firms of Nix Patterson, LLP, and Miller, Keffer, Pedigo have recently entered our appearances on behalf of the Plaintiffs.

We understand that the Defendants' motions to dismiss became ripe prior to Plaintiffs retaining us and that those motions are pending before the Court. However, given the substitution of counsel and the gravity of the issues before the Court, we intend to file a motion seeking leave to file amended responses to the motions to dismiss. While this may not be typical, in light of the change in counsel and the amount in controversy, we would appreciate the Court's consideration of Plaintiffs' motion for leave to amend their responses prior to ruling on the motions to dismiss. Plaintiffs will commit to file the motion for leave by August 31, 2022.

Plaintiffs have conferred with counsel for the Rompsen Defendants, and they oppose this request. Plaintiffs also attempted to confer with counsel for Defendants Zarafshani and Panache Construction but have not yet heard back from them. However, we believed it was necessary to bring this issue to Court's attention promptly. We assume Defendants Zarafshani and Panache Construction will also oppose the request.

Should the Court grant Plaintiffs' forthcoming motion for leave to file amended responses, Plaintiffs of course would not oppose the Defendants amending their replies.

Sincerely yours,
Hendler Flores Law, PLLC

cc: All counsel of record

WWW.HENDLERLAW.COM

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

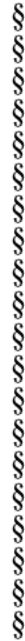
DANIEL WHITE and DAN WHITE
FAMILY TRUST,

Plaintiff,

vs.

ROMSPEN INVESTMENT
CORPORATION; ROMSPEN MORTGAGE
LIMITED PARTNERSHIP; WESLEY
ROITMAN; RICHARD WELDON;
CHRISTOPHER MILAM; PANACHE
CONSTRUCTION AND DEVELOPMENT,
INC.; and ADAM ZARAFSHANI,

Defendants.



I hereby certify this to be Exhibit 2
to the Affidavit of H Edwards sworn
this 12th day of September 2022

Orlagh O'Kelly
Barrister and Solicitor

Civil Action No.: 1:21-cv-00517-RP

**DEFENDANTS ROMSPEN MORTGAGE LIMITED PARTNERSHIP'S, ROMSPEN
INVESTMENT CORPORATION'S, WESLEY ROITMAN'S, AND RICHARD
WELDON'S OBJECTION TO PLAINTIFFS' LETTER TO THE COURT**

Defendants Romspen Mortgage Limited Partnership, Romspen Investment Corporation, Wesley Roitman, and Richard Weldon (collectively, the "Romspen Defendants") file this objection to Plaintiffs Dan White and Dan White Family Trust's letter to the Court [Docket No. 87].

1. On August 11, 2022, counsel for Plaintiffs filed a letter to the Court ("Plaintiffs' Letter") requesting the Court's consideration of a forthcoming motion for leave to file new responses in opposition to the Romspen Defendants' motion to dismiss [Docket No. 74 – filed on April 4, 2022]. The Romspen Defendants object that Plaintiffs' Letter requesting a stay of the proceedings is both without cause and procedurally defective.

2. To begin with, Plaintiffs' only justification for their requests is that they have acquired new counsel. The additional attorneys are now the fifth, sixth, and seventh firms that have

appeared in this case on Plaintiffs' behalf, and they join two firms that are still counsel-of-record for Plaintiffs: Bruce J. Duke LLC and Howry Breen Herman LLP.

3. Both Bruce J. Duke and Randy Howry of Howry Breen Herman LLP signed the two on-file responses in opposition [Docket Nos. 76, 77 – filed on April 27, 2022]. Plaintiffs' Letter provides no justification for alleging these responses are inadequate nor any allegation that Mr. Duke and Mr. Howry inadequately represented Plaintiffs. Likewise, Plaintiffs' Letter provides no basis or cause supporting a stay of these proceedings on the motion to dismiss.

4. Indeed, Plaintiffs' attempt to delay the Court's ruling on the motion to dismiss by hiring new counsel follows a similar pattern. The origin of this case dates back nearly two years ago in an adversarial proceeding filed on August 20, 2020, before Judge Mott, 20-01047-HCM ("Adversary Dkt."). Plaintiffs filed three versions of their complaint in the Adversary before moving to withdraw the reference to avoid responding to the Romspen Defendants' motion to dismiss. [Adversary Dkt. No. 44]. Simultaneously, Plaintiffs filed this lawsuit while the Adversary remained pending. [Dkt. No. 1]. Since then, Plaintiffs have amended their complaint in this case three additional times—bringing Plaintiffs' total to seven separate versions of their complaint over this litigation. [Docket Nos. 1, 4, 57, 70] [Adversary Dkt. Nos. 1, 3, 36].

5. Suffice it to say, Plaintiffs have had more than enough time and opportunities to plead and present their case and oppose the Romspen Defendants' motion to dismiss.

6. Now, nearly two years after filing suit and after finally responding to the Romspen Defendants' motion to dismiss, Plaintiffs seek yet another means to delay this case without cause and without a good faith basis. The papers on the motion to dismiss have been under submission since April 27, 2022. Plaintiffs now attempt to abuse the Court's permitted discretion to take the motion to dismiss under advisement. The time in which relief sought is under the Court's

advisement is not an opportunity to alter the parties' positions while the Court considers such relief. The Romspen Defendants are prejudiced by having the clock restart on the dispositive motion process after having been involved in this same litigation since August 2020. When does the moving target ever stop?

7. Moreover, to the extent that Plaintiffs' Letter seeks relief from the Court, it does not appear to abide by this Court's local civil rules for motions under CV-7 and CV-10. The Letter is an inappropriate format to seek substantive relief. In fact, the Letter fails to seek any substantive relief. It simply asks the Court to hold off on its ruling on the motion to dismiss while the Plaintiffs prepare a formal request for leave to file an inappropriate and untimely amendment without cause. The Letter is procedurally defective and substantively ill taken.

8. The Romspen Defendants respectfully request that the Court disregard Plaintiffs' Letter and proceed with ruling on the pending motions to dismiss in due course at the appropriate time in the Court's permitted discretion. In the event that Plaintiffs file a motion for leave to file amended responses, the Romspen Defendants will oppose such a motion and respectfully request that such a motion be denied.

[signature page follows]

August 12, 2022

Respectfully Submitted,

By: /s/ Thomas C. Scannell

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WESLEY ROITMAN, AND RICHARD
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CERTIFICATE OF SERVICE

The undersigned certifies that on August 12, 2022, counsel for the Romspen Defendants served on counsel for the Plaintiff a copy of this objection via the Court's electronic filing system.

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/s/ Thomas C. Scannell

Thomas C. Scannell

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DANIEL WHITE AND DAN WHITE §
FAMILY TRUST, §
Plaintiffs, §
§
V. §
§
ROMSPEN MORTGAGE LIMITED §
PARTNERSHIP; §
ROMSPEN INVESTMENT §
CORPORATION; §
WESLEY ROITMAN, RICHARD §
WELDON, §
CHRISTOPHER MILAM, ADAM §
ZARAFSHANI; §
AND PANACHE CONSTRUCTION §
AND DEVELOPMENT, INC., §
Defendants. §

Civil Action No.: 1:21-CV-00517-RP

I hereby certify this to be Exhibit 3
to the Affidavit of H Edwards sworn
this 12th day of September 2022

Orlagh O'Kelly
Barrister and Solicitor

**PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED OMNIBUS
RESPONSE TO DEFENDANTS' MOTIONS TO DISMISS**

Plaintiffs, through new counsel, hereby move for leave to file an amended brief in response to Defendants' Motions to Dismiss (Dkt. Nos. 74 & 75). In support of this motion, Plaintiffs assert the following:

1. Defendants filed their Motions to Dismiss in April, 2022. Plaintiffs responded on April 27, 2022. Those Motions stood fully briefed as of May 9, 2022.
2. Plaintiffs retained the new counsel earlier this month (August 2022).
3. While Plaintiffs and their new counsel continue to adhere and advance the capable briefing submitted by prior counsel, after careful review of the briefing, Plaintiffs' new counsel identified additional arguments they believe are imperative for the Court to consider for a complete analysis of the issues presented—particularly given the dispositive nature of Defendants' Motions. This case has a convoluted past, mired in the procedural thicket of a prior bankruptcy. Defendants'

Motions present complex issues that require robust and thorough analysis. And the additional briefing Plaintiffs seek leave to submit will aid the Court's analysis.

4. Specifically, new counsel submits that Defendants improperly rely on “matters outside the pleadings” under Rule 12(d). As such, those matters—and arguments based upon them—must be excluded, or the Court must recast the motion as a motion for summary judgment, and Plaintiffs must be given an adequate opportunity in discovery to marshal evidence in response. *See* Fed. R. Civ. Proc. 12(d). This issue is critical to the Court's decision, yet it goes unaddressed in the current briefing.

5. Plaintiffs' proposed amended response brief (attached here as Exhibit A) explains these arguments in detail and further develops and expands upon other arguments discussed in Plaintiffs original responses. Plaintiffs respectfully submit that this additional briefing will aid the Court's resolution of the complex and dispositive questions presented in Defendants' Motions.

6. There is precedent in this circuit for allowing supplemental briefing in circumstances such as these. *See* Memorandum Order, *Mosing v. Boston*, Case No. 6:14-cv-02608-SMD-PJH (W.D. La. Jan. 5, 2017, Dkt. No. 112) (attached as Exhibit B). In the *Mosing* case, the court noted “[t]he procedural posture of the instant case is unusual, and counsel for Boston and LaBarge are new to the case.” *Id.* at 2. And, despite the fact that the matter at issue was “fully briefed,” the court ruled that “new counsel . . . should be afforded the opportunity to respond” and granted the parties opportunities to file supplemental briefs. *Id.*

7. The same circumstances noted in *Mosing* exist here. As discussed above, this case has a convoluted and unusual history. Plaintiffs' new counsel appeared in the case less than a month ago and have worked quickly and diligently to amend the briefing as soon as practicable.

Moreover, the matter at issue here (unlike the motion to transfer in *Mosing*) is a dispositive motion. Thus, the rationale in *Mosing* should apply with even greater force.

8. Finally, to cure any prejudice Defendants may experience, Plaintiffs do not oppose Defendants filing supplemental or amended replies in accordance with a schedule that accommodates the Court's and Defendants' respective schedules.

* * *

For the foregoing reasons, Plaintiffs respectfully request the Court grant this motion and allow Plaintiffs to file the brief attached here as Exhibit A.

Dated: August 31, 2022

By: /s/ Scott M. Hendler

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on August 31, 2022, and that all counsel of record were served by CM/ECF.

By: /s/ Scott Hendler
Scott Hendler

the project into bankruptcy¹ and then swooped in to take the Austin Property (now named Zen Garden) at the foreclosure price. This was the first phase of its loan-to-own plans. But Romspen did not stop there.

From the very beginning, Romspen had insisted that White pledge as additional collateral other highly valuable properties that White owned in Canada. Unfortunately, White trusted Romspen. White agreed to serve as individual guarantor on loans for the Austin Project and secured that guarantee with interests in his Canadian properties. This resulted in the Austin Project being greatly over-collateralized—a classic move by hard money lenders like Romspen. After fraudulently forcing default and taking possession of the Austin Property, Romspen is now trying to foreclose on White’s Canadian properties too. This was Defendants’ plan all along, and so far, they have gotten away with it.

But Defendants have escaped scrutiny for long enough. Defendants’ Motions to Dismiss (Dkt. Nos. 74 and 75, the “Motions”) are their latest attempt to weaponize the American judicial system. The Court should deny Defendants’ Motions for the following reasons:

A. Defendants present and rely upon “matters outside the pleadings.” Under Federal Rule of Civil Procedure 12(d), those matters (and arguments based on them) must be excluded, or the Motions must be recast as motions for summary judgement. If the latter, then Plaintiffs must be given an adequate opportunity in discovery to marshal evidence in response.

B. Plaintiffs have standing to pursue Plaintiffs’ own claims. Defendants attempt to mire this case in bankruptcy procedural minutiae, but there is no dispute that Plaintiffs can pursue the claims here that belong uniquely to Plaintiffs.

¹ See generally *In re 3443 Zen Garden, L.P.*, Case No. 20-10410 (Bankr. W.D. Tx.) (the “Zen Garden bankruptcy”). 3443 Zen Garden, L.P. or “Zen Garden” was the name of the entity that last housed the Austin Property, successor to the MOS8 entities.

C. Plaintiffs Third Amended Complaint (“Complaint” or “T.A.C.”) satisfies the requirements of both Rule 8 and Rule 9(b). The Complaint provides more than enough detail to put Defendants on notice and allow them to adequately defend themselves, and it provides particular details about the who, what, where, when and how of Defendants’ fraud.

I. LEGAL STANDARD

This Court has received several iterations now of the ordinary standards governing 12(b) motions. As such, Plaintiffs focus here on the standards related to Plaintiffs’ 12(d) arguments.

Rule 12(d) states, “[i]f, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.” Fed. R. Civ. P. 12(d).

In the Fifth Circuit, there is only “one limited exception” that *may* allow (it is discretionary) a court to review materials outside the pleadings at the motion to dismiss stage. *See Scanlan v. Tex. A&M Univ.*, 343 F.3d 533, 536 (5th Cir. 2003). In *Collins v. Morgan Stanley Dean Witter*, the Fifth Circuit “note[d] approvingly” the exception articulated in other circuits whereby “documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff’s complaint and are central to her claim.” 224 F.3d 496, 498-99 (5th Cir. 2000) (quoting *Venture Assocs. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir. 1993)). An essential fact to the discussion in *Collins* was that the plaintiff did not object to the district court’s consideration of the extraneous materials and did not raise it on appeal. *Id.* at 498. As the Circuit explained just a few years later: “The fact that the plaintiffs [in *Collins*] did not object to, or appeal, the district court’s consideration of those documents was central to this Court’s approval of that practice.” *Scanlan*, 343 F.3d at 536.

Since then, district courts in the Fifth Circuit have applied the *Collins* exception with mixed results. As the Eastern District of Texas recently explained: “Although the Fifth Circuit has not articulated a test for determining when a document is central to a plaintiff’s claims, the case law suggests that documents are central when they are necessary to establish an element of one of the plaintiff’s claims.” *QSL Waco, Inc. v. Lube Holdings, Inc.*, No. 14-cv-591, 2017 U.S. Dist. LEXIS 125169, *6-7 (E.D. Tex. July 10, 2017) (citations omitted).

II. ARGUMENT

A. Defendants Present and Rely on Matters Outside the Pleadings

The Romspen Defendants’ Motion (Doc. No. 74, the “Romspen Motion”) attaches and relies on at least the following “matters outside the pleadings”:

Exhibit 1 – the “Zen Loan Agreement,” which Plaintiff Daniel White alleges he was fraudulently induced to enter as guarantor.

Exhibit 6 – A declaration of Defendant Wesley Roitman.

Neither is attached to Plaintiffs’ Complaint, and neither can qualify for the *Collins* exception.

1. The Zen Loan Agreement

The primary documentary evidence that Romspen relies upon is the Zen Loan Agreement, attached to the Romspen Motion as Exhibit 1. Specifically, Romspen argues that a release contained in the Zen Loan Agreement operates to preclude any claims based on facts occurring prior to the date of the agreement. Romspen Motion at 6, 10-11. Plaintiffs disagree with Defendants’ argument, but the Court should not even entertain it at the pleading stage. The Zen Loan Agreement is classic extrinsic evidence under Rule 12(d). Therefore, it (and Defendants’ arguments based on it) should be excluded.

Contrary to Defendants’ arguments, the Zen Loan Agreement is not “central to Plaintiffs allegations” nor is it “incorporated by reference.” *See id.* at 5, n.7. Under Rule 10(c), a written

instrument only becomes “part of the pleadings” if it is attached as an exhibit. Plaintiffs did no such thing.

Nor did Plaintiffs incorporate the Zen Loan Agreement by reference. The Complaint never uses the phrase “Zen Loan Agreement” (that is Romspen’s term) and only generally references a “second loan agreement” (T.A.C. ¶60), which Defendants surmised is the Zen Loan Agreement. Plaintiffs allege the “second loan agreement” was just one part of the massive fraud Defendants perpetrated. The agreement was procured by fraud, negotiated through collusion, and “contained exorbitant loan fees and interest rates” and “overcollateralization.” *Id.* at ¶58-62. However, its specific terms are outside the pleadings and should not be interpreted at this stage.

The only case Romspen relies on in attempting to force the agreement into the pleadings **stands for the *opposite*** of what Romspen suggests. In *Scanlan v. Texas A&M Univ.*, 343 F.3d 533, 537 (5th Cir. 2003), the Fifth Circuit *reversed* the trial court’s dismissal order because the court considered an online “final report” that plaintiffs quoted in their complaint. The trial court accessed the report using a hyperlink citation in the complaint but relied on provisions of the report cited by the defendant (Texas A&M) to dismiss the case. *Id.* at 336-37. The Fifth Circuit held:

Although the plaintiffs rely on the Final Report in their complaints, certainly the report alone is not central to their claims. Indeed, it is much more central to the University Officials’ defenses. The plaintiffs rely on substantial, other evidence to support their claims. ***Consequently, the district court’s first error was going outside the plaintiffs’ complaints and considering the Final Report.***

Id. at 337 (emphasis added).² The Fifth Circuit then reminded that, “[e]ven if the Final Report fell under the *Collins* exception,” the district court still had to construe the plaintiffs’ factual allegations in the light most favorable to the plaintiffs, which the district court also failed to do. *Id.*

² The Fifth Circuit also rejected the defendant’s arguments that the final report could be considered under the judicial-notice rules, stating that judicial notice “would have been improper because ‘[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally

In *QSL Waco, Inc. v. Lube Holdings, Inc.*, 2017 U.S. Dist. LEXIS 125169, *6 (E.D. Tex. 2017), a case more analogous to this one, the district court refused to consider a franchise agreement containing a disclaimer like the one Defendants assert here. The plaintiffs there alleged they were fraudulently induced into the franchise arrangement. *Id.* at *3. The court explained “the franchise agreement is not central to Plaintiffs’ claims because it is not necessary to establish an element of any of their claims.” *Id.* at *7. Having excluded the franchise agreement, the court logically concluded that “Defendants’ arguments based on the disclaimer language in the franchise agreement are unavailing.” *Id.* But the court went on to explain that even if it were to consider the franchise agreement, “it is not convinced that the disclaimer language is sufficient to foreclose Plaintiffs’ claims at this stage” given plaintiffs’ fraudulent inducement allegations. *Id.* at *8.

Here—like in *Scanlan* and *QSL*—the Zen Loan Agreement is not “central to” Plaintiffs’ claims; rather, it is central to Romspen’s defenses. Plaintiffs allege that Defendants fraudulently induced Mr. White to invest in and personally guarantee the Austin Project long before the Zen Loan Agreement existed and that Defendants then fraudulently induced Mr. White to guarantee the Zen Loan Agreement itself. *See* T.A.C. ¶¶20-23, 61-63, 84. As in *QSL*, Plaintiffs’ fraudulent inducement allegations must be construed in the light most favorable to Plaintiffs, and they should trump any disclaimer language in an instrument that was allegedly procured by fraud. *See* 2017 U.S. Dist. LEXIS 125169, *8. To interpret the Zen Loan Agreement as Romspen asks, the Court would have to ignore Plaintiffs’ fraud allegations and show preference instead to Defendants’ statement of the facts. The Court would have to presume that the Zen Loan Agreement’s release

known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” *Id.* at 537 (quoting Fed. R. Evid 201(b)). Here, issues surrounding the Zen Loan Agreement are hotly disputed, and it cannot be judicially noticed as explained in *Scanlan*.

provision is valid and enforceable, was negotiated in good faith, and not procured by fraud. The Court should refuse to do so, even if the Court finds the Agreement satisfies the *Collins* exception.

Should the Court choose instead to convert the Romspen Motion to one for summary judgment, Plaintiffs' fraudulent inducement allegations also bolster the need for discovery *before* the Court rules on issues related to the Zen Loan Agreement. "Texas law permits proof of extrinsic representations to show that a contract was induced by fraud, even where the written contract purports to be the whole agreement of the parties and provides that neither party has made extrinsic representations." *Verex Assur., Inc. v. First Interstate Bank of Cal.*, 1994 U.S. App. LEXIS 42977, *11 (reversing Rule 12(b)(6) dismissal). Thus, if the Court recasts this as a motion for summary judgment, Plaintiff should be permitted to discovery and present evidence of extrinsic representations to show the Agreement was induced by fraud.

2. The Declaration of Defendant Roitman

The Roitman Declaration could never meet the *Collins* exception because it is not referenced in the Complaint (it did not even exist when the Complaint was filed) and, of course, is not central to Plaintiffs' claims. Rather, Defendants created this piece of testimonial evidence to bootstrap their Motion—the declaration's first paragraph admits as much. The Court should exclude the Roitman Declaration and any arguments based on it.

Exclusion is especially warranted here because the Declaration contains statements of fact that Plaintiffs dispute. For example, the declaration states: "the Romspen Entities sole and exclusive interaction with White is strictly limited to that of creditor-debtor in White's capacity as guarantor under the Lending Transaction." *Id.* at ¶10. The Complaint, on the other hand, alleges that Romspen was and did much more.

For example, the Complaint alleges that Romspen located the Austin Property and induced Mr. White to invest in it. T.A.C. ¶¶19-23. Mr. Roitman himself sent an email to Mr. White stating, “Dan, this is for you. Maybe finally something worth using your loan with us for. Need to hurry though.” *Id.* at ¶21. Romspen (through its officer Weldon) then created several entities under the moniker MOS8 to own and operate the Austin Property and its development. *Id.* at ¶¶24-34. Weldon was then appointed Mr. White’s “nominee and agent” to negotiate on his behalf. *Id.* at ¶28 (citing Exhibit E at §25.1). Romspen also was party and signatory to, among other agreements, the August 31, 2015, Co-Development Agreement for the Austin Property. *Id.* at Exhibit D. Therein, Romspen was not defined as the “lender” but a “Co-Developer” charged with the “management of the Project” and who agreed to perform its duties “in the best interest of Owner.” *Id.* at §§ 1.1 & 1.2. As such, Romspen was vested with contractual and fiduciary duties in its handling of the Austin Property that go well beyond a traditional “lender-borrower or creditor-debtor” relationship. Thus, the Roitman Declaration contains factual testimony that Plaintiffs dispute; this is not proper at the 12(b) stage.

The Roitman Declaration also acts as a business records affidavit for the Zen Loan Agreement and other extrinsic documents attached to the Motion. This is fatal to Defendants’ *Collins* arguments. Such an affidavit is necessary only to satisfy Federal Rules of *Evidence* about hearsay and authenticity. If the exhibits to the Motion are not evidence outside the pleadings, then why does Romspen need an affidavit to prove them up? The question proves the point. The exhibits are extrinsic *evidence*, and Romspen recognized this.

As with the Zen Loan Agreement, the Court should exclude the Roitman Declaration and the arguments it purportedly supports. Otherwise, the Roitman Declaration operates to convert the Romspen Motion to a motion for summary judgment, necessitating discovery.

B. Plaintiffs have standing to pursue their claims.

Both Motions argue that Plaintiffs lacks standing³ because, according to Defendants, such claims belonged (to some unspecified degree or other) to the Zen Garden bankruptcy estate and were released as part of the bankruptcy proceeding. That is wrong. As the Canadian foreclosure proceedings demonstrate, White plainly has claims and injuries that are unique to him and that exist separate from the claims and injuries of Zen Garden (the entity that ultimately housed the Austin Property). To hold otherwise and prevent White from prosecuting these claims would result in a gross miscarriage of justice.

As a threshold matter, all parties agree that the relevant inquiry here is whether White is asserting his own claims or claims that belonged to the bankruptcy estate. *See* Romspen Mot. at 12-13; Panache Mot. at 9 (both citing *In re MortgageAmerica Corp.*, 714 F.2d 1266 (5th Cir. 1983) for the proposition that the standing analysis “turns on whether the claims the party seeks to assert ultimately belong to the debtor’s estate”). But the agreement ends there; Defendants go on to mischaracterize both the holding of this Fifth Circuit precedent and its resultant effect here.

³ Defendants’ Motions appear to conflate concepts of Article III standing (*i.e.*, whether White has suffered an injury in fact, *see Lujan*, 504 U.S. 555) with prudential rules about who is best suited to assert certain claims in the event of a bankruptcy. *See, e.g., St. Paul Fire & Marine Ins. Co v. Pepsico, Inc.*, 884 F.2d 688, 707 (2d Cir. 1989) (concluding the party lacked “standing” because Congress—not the Constitution—conferred standing to the bankruptcy trustee). The Court should keep these concepts distinct. White has plainly suffered a constitutionally cognizable injury as a result of Defendants’ alleged conduct—he has lost his interests in the Austin property and stands to lose even more as Romspen pursues the Canadian foreclosure proceedings. Indeed, even if White sought to bring claims in a derivative capacity (which he does not), he would still meet the requirements of Article III; Defendants’ citations acknowledge as much. *See In re MortgageAmerica Corp.*, 714 F.2d 1266, 1272, 1276-78 (5th Cir. 1983) (noting that both causes of action were “assertable” by individual creditors, but holding that they were both subject to the automatic stay because they were / sought to recover property of the estate). The question here is whether White has claims that are distinct from those owned by the bankruptcy estate such that they survive the estate’s release and can be pursued by White outside of the bankruptcy. As such, the remainder of this section is devoted to answering that question.

First, contrary to Defendants' descriptions, *MortgageAmerica* does not create a blanket rule that any claim based on allegations of "asset stripping" must belong to the asset-stripped corporation. *See* Romspen Mot. at 13; Panache Mot. at 9. Rather, *MortgageAmerica* was about the scope of bankruptcy's "automatic stay." In that context, the Court looked at the specific claims and remedies to determine whether the claims at issue sought either to recover "property of the estate" or otherwise vindicate rights of the estate so as to trigger the automatic stay. *See* 714 F.2d at 1275-78; *see also In re Schimmelpenninck*, 183 F.3d 347, 360 (5th Cir. 1999) ("To reiterate our earlier observation, in *S.I. Acquisition* we provided two circumstances in which the automatic stay would affect a creditor's claim against a non-debtor affiliate of the debtor: (1) when the claim 'belongs to' the debtor, or (2) when the claim seeks 'recovery or control' of property of the debtor."). The Court noted that the claims at issue there sought to recover actual property of the estate or otherwise could be characterized as benefiting all creditors and shareholders of the debtor such that the automatic stay should apply. *Id.* at 1272, 1277; *see also id.* at 1276 (analogizing such a claim to a typical shareholder-derivative action). This cannot be said of White's claims here.

Instead, White's claims are in a different category of claims: "Actions by individual creditors that affect only that creditor personally." *Schimmelpenninck*, 183 F.3d at 360. White, unlike other creditors, is a guarantor on the Romspen loans, and White claims Defendants fraudulently induced him to serve as guarantor on those loans and to pledge certain properties in Canada as collateral. *See* T.A.C. ¶¶56-71. If White is successful in vindicating these claims, no one argues (nor could they) that White would recover any property belonging to Zen Garden—if anything, White stands to retain *his own* property in Canada and other non-Zen Garden assets that Romspen procured/seek to procure through its fraudulent scheme. Likewise, no one argues (nor could they) that White's claims arising out of his role as guarantor seek to vindicate a generalized

harm felt by all creditors—only White feels the pressure of guaranteeing these loans, and only White stands to benefit if those obligations are excused or if Defendants are ordered to pay damages for the fraud they wrought in procuring such obligations. In words the Fifth Circuit has used to distinguish claims like White’s from claims “belonging to” the estate: White’s claims “rest upon a particular creditor’s [(White’s)] dealings” and “require a showing of fraud on a particular creditor [(White)].” *In re S.I. Acquisition, Inc.*, 817 F.2d 1142, 1152 (5th Cir. 1987).

Recognizing White’s claims as separate from the bankruptcy estate is also consistent with the order of the bankruptcy court that dismissed these claims *without prejudice* so that they may proceed in this Court. *See* Dkt. No. 74-4 at ¶2. The bankruptcy court dismissed the following claims without prejudice:

any and all claims . . . supported by any factual allegations (i) allegedly occurring or taking place prior to the date 3443 Zen Garden Limited Partnership (“Debtor”) came into legal existence; ***or*** (ii) not ***otherwise*** involving, relating to and/or arising from the Debtor in any way

Id. And the court dismissed those claims because it found it lacked subject matter jurisdiction. *Id.* Conversely, the court dismissed *some* post-Zen claims *with* prejudice, because it found “the Debtor’s bankruptcy estate possesses the exclusive standing to assert any claims supported by such Zen Allegations.” *Id.* at ¶3. The clear intent of this order was to resolve the standing debate the Defendants have raised here and to clarify the bankruptcy court’s jurisdiction over those claims that belonged to the estate while freeing those claims that belonged exclusively to White so that they may proceed elsewhere. The bankruptcy court effectuated that split with a temporal division between claims supported by allegations that occur before or after Zen was formed. Yet, even under that test,⁴ White’s claims plainly pass because they all involve allegations about his dealings

⁴ Plaintiffs assert this temporal division is a short-hand way of determining which claims “belong to” the estate, and that the bankruptcy court in no way intended to resolve claims that truly belong

with Defendants *before* the Zen Loan Agreement—*i.e.*, the fraudulent acts Defendants committed to induce White into forming said Agreement.

However, the with-prejudice dismissal includes a **major carve-out** that Defendants fail to disclose to the Court. The order does *not* dismiss with prejudice (or apply the temporal split to) any claims or defenses “purely germane between the White Parties and Romspen Mortgage Limited Partnership”—*i.e.*, claims not belonging in any way to Zen Garden. This carve-out expressly references claims arising out of “contracts and contractual obligations” and specifically enumerates White’s personal guarantee of the Zen Loan Agreement. *See* Dkt. No. 74-4 at 4 (“For the sake of clarity, ***notwithstanding anything herein to the contrary***, nothing in this order shall be deemed to dismiss with prejudice any claims, causes of action, or defenses on matters purely germane between the White Parties and Romspen Mortgage Limited Partnership, including (without limitation) any ***contracts or contractual obligations*** as between the White Parties and Romspen ***including (without limitation) that certain Guarantee executed by White to Romspen*** dated as of April 17, 2018.”). This carve-out protects all of Plaintiffs’ claims in the present case, including claims that Defendant’s fraudulently induced White into certain contracts and/or claims for breach certain obligations. Any contrary conclusion nullifies the bankruptcy court’s without-prejudice dismissal and renders that part of the order purely superfluous.

Disallowing White’s claims would permit Defendants to profit from their scheme by allowing them to pursue White for his obligations as guarantor (which they are doing in Canada

to White—even if they may involve post-Zen allegations. Again, the intent of the bankruptcy court was to retain and exercise jurisdiction over those claims that belonged to the estate while allowing White to pursue his individual claims here. To the extent this Court has any doubts about the effect of this order, Plaintiffs request the opportunity to seek clarification from the bankruptcy court. *See, e.g., In re Applewood Chair Co.*, 203 F.3d 914, 916-18 (5th Cir. 2000) (affirming party’s use of motion to seek clarification of “intent and effect” of bankruptcy court’s order where order ostensibly resolved rights related to non-debtor guarantors).

as we speak), but prevent White from protecting himself with claims—like those here—that seek to remedy Defendant’s fraud in procuring those obligations. “The general rule is that a discharge in bankruptcy does not affect a guarantor’s liability.” *In re Applewood Chair Co.*, 203 F.3d 914, 918 (5th Cir. 2000). The same rule should apply with equal force to claims brought *by* the guarantor—particularly where, as here, those claims seek to remedy fraud in the procurement of such guarantees.

C. Plaintiffs’ Complaint Satisfies The Federal Rules’ Pleading Requirements

1. Rule 9(b)

Rule 9(b) “does not reflect a subscription to fact pleading and requires only simple, concise, and direct allegations of the circumstances constituting fraud.” *United States ex rel. Grubbs v. Ravikumar Kanneganti*, 565 F.3d 180, 186 (5th Cir. 2009). The rule requires the plaintiff to state the “who, what, when, where, and how of the alleged fraud.” *United States ex rel. Colquitt c. Abbott Labs.*, 858 F.3d 365, 371 (5th Cir. 2017). Plaintiffs have done so here:

- White, a Canadian businessman, and Romspen, a Canadian bank, “had a long-standing relationship,” and “Romspen knew that [White] owned significant properties in Canada.” T.A.C. ¶¶1-6, 86. Ever since their project in 2012, Romspen has insisted that White pledge his Canadian properties as additional collateral for these property-development projects. *See* T.A.C. ¶¶15-18 & Ex. A (pledging the “Edmonton Property”). Defendants “knew . . . that Romspen Investment could not only use [White’s Canadian properties] as security but could foreclose upon such property as part of its scheme.” T.A.C. ¶86.
- “After Plaintiffs did not use the full amount of [a prior credit commitment from Romspen], Romspen investment and its representatives searched for another project for which they could persuade Plaintiffs to use the line of credit.” T.A.C. at 5. “In an email to Mr. Roitman on October 27, 2014, Mr. Weldon said he had received information on the Austin Property, it was ‘perfect’ for Mr. White, and that an auction was imminent” T.A.C. ¶20. “That same day, Mr. Roitman forwarded Mr. Weldon’s email to Mr. White, and added: ‘Dan, this is for you. Maybe finally something worth using your loan with us for. Need to hurry though.’” T.A.C. ¶21 & Ex. B.
- “Romspen, Mr. Roitman, and Mr. Weldon made other representations to Mr. White that his investment in the Austin Property would be a ‘valet investment,’ meaning that Romspen Investment and Mr. Weldon would manage the development, leasing, and sale of the Austin Property, and Mr. White would earn a significant profit in a short period of time.

Romspen Investment, Mr. Roitman, and Mr. Weldon further advised Mr. White that the Austin Property would cost approximately \$5-7 million, but that Mr. White would make a profit of approximately \$100 million in two years.” T.A.C. ¶ 22.

- “Based on those representations, Mr. White agreed to allow Romspen Investment to use a portion of his remaining line of credit from the [prior commitment] to purchase and develop the Austin Property.” T.A.C. ¶23.
- “On July 30, 2015, Romspen Investment amended and restated the [prior commitment], providing for a \$40 million line of credit and securing the financing with several different properties owned by Mr. White and/or the White Family Trust” T.A.C. ¶24.
- On August 31, 2015, Romspen Investment entered into several agreements with the entity formed to purchase the Austin Property (MOS8), including “Co-Management” and “Co-Development” agreements, which effectively gave Romspen control over both dispersal of funds (as the lender) and execution of the construction and development duties on the Austin Property project. *See* T.A.C. ¶¶25-26. That same day, Romspen also amended the terms of the commitment with White entered on July 30; the new terms appointed Weldon to serve as White’s “nominee and agent” and gave Weldon the power to “negotiate . . . any and all agreements, instruments, certificates or other documents necessary to complete the purchase of the Austin Property . . . and to provide for the development and management of the Austin Property.” *See* T.A.C. at 27-28 & Ex. E at § 25.1.
- “On September 30, 2015, [MOS8] entered into an agreement to purchase the Austin Property for \$13 million, well exceeding the \$5-7 million price point represented to Mr. White by Romspen Investment, Mr. Roitman, and Mr. Weldon.” T.A.C. ¶29.
- “To control MOS8’s development over the Austin Property the Romspen Defendants placed defendant Milam, their own representative, in charge of the Austin Property’s development.” T.A.C. ¶34. Milam proceeded to stall the project into default. *See* T.A.C. ¶¶36-43.
- “Defendant Romspen offered a solution by granting Mr. White further loans to invest [in] purchasing the Austin Property from MOS8 and bringing Mr. White’s Company [Zen Garden] deeper into the pit. In July, 2016, Defendant Romspen created a \$40,000,000 loan to Zen Garden to complete the development of the Austin Property. . . . As part of the loan agreement Mr. White and his assets assumed MOS8’s debt, while Defendants Romspen reaped even more origination and administrative fees” T.A.C. ¶¶ 45-48.
- Enter Zarafshani. “During 2017, Mr. White visited the Austin Property and was approached by Mr. Zarafshani, who introduced himself as a ‘scrap buyer.’ Mr. Zarafshani claimed to be a local developer who owned Panache, a local construction company, and was familiar with local construction and development. Mr. Zarafshani sought to persuade Mr. White that Panache would be indispensable in the development of the Austin Property. Mr. Zarafshani attempted to induce a contract by falsely and misleadingly representing statements including but not limited to: . . . Panache possessed sufficient skill and resources necessary to ensure timely development of the Austin Property within proposed budgetary

guidelines[;] Panache could use its experience in local construction to secure more favorable loan terms from Romspen Investment; [and] Panache could ensure timely construction draws from Romspen Investment.” T.A.C. ¶¶50-51.

- “Mr. White came to rely upon Mr. Zarafshani’s and Panache’s representations as real estate developers and experienced players in the local construction industry and hired Panache as the general contractor for development of the Austin Property. . . . Mr. White also appointed Mr. Zarafshani to become director of Mr. White’s assets and serve as his trustee. Mr. White relied on Mr. Zarafshani and Panache to manage the business affairs and the development of the Austin Property.” T.A.C. ¶¶52-54.
- “Zarafshani intentionally ingratiated himself with Plaintiffs in order to be in a position to loot and steal Plaintiffs’ assets in conspiracy with Romspen.” T.A.C. ¶ 134. Zarafshani’s company Panache “never intended to develop the Austin Property for Plaintiffs. Instead, Panache’s sole purposes was to assist and conspire with Romspen Investment, Romspen Mortgage, Mr. Weldon, Mr. Roitman, [and] Mr. Milam . . . to steal the Austin Property from Plaintiffs.” T.A.C. ¶124.
- In February of 2018, “[i]n a final effort to salvage development of the Austin Property,” Plaintiffs and Zen Garden entered into a second large, cross-collateralized loan with Romspen Mortgage. *See* T.A.C. at 11-12. “Mr. Zarafshani conducted loan negotiations on behalf of Zen Garden at the insistence of Romspen Mortgage.” T.A.C. ¶57. “Mr. Zarafshani and Romspen Mortgage improperly colluded during the loan negotiations in breach of their fiduciary duties to Mr. White and his assets.” T.A.C. ¶58. “Defendants conspired to engineer a fraudulent loan scheme to force Mr. White and Zen Garden to default on payments on the Austin Property, with the intent to purchase the property at a discounted foreclosure rate.” T.A.C. ¶63.
- Under this new loan agreement, “Romspen Mortgage committed to lend Zen Garden an additional \$125,000,000” in exchange for “exorbitant loan fees and interest rates.” T.A.C. ¶¶56, 60. “The loan further required great overcollateralization between the Austin Property and other of Mr. White’s assets in Canada (worth in excess of \$260 million USD).” T.A.C. ¶61.
- “Mr. Zarafshani went on to act as Romspen Mortgage’s puppet within Zen Gardens, intentionally sabotaging the development.” T.A.C. ¶59. “Romspen Mortgage intentionally or recklessly delayed and failed to make requisite disbursements to stall and sabotage the development of the Austin Property.” T.A.C. ¶ 62. “Romspen Mortgage consistently and unreasonably denied Mr. White and Zen Garden’s draw requests on the loan.” T.A.C. ¶64. “Romspen Mortgage refused to honor the loan agreement with Zen Garden, resulting in Zen Garden declaring bankruptcy and the loss of the Austin Property.” T.A.C. ¶67.
- Then, “when the Austin Property was put up for auction, Mr., Zarafshani and Romspen Mortgage . . . issued false statements on the property value and conditions to drive away potential bidders . . . [and] to further drive down the auction price. As a result of Defendant’s false statements, a reasonable bid offer was never received,” and Romspen ultimately recovered the property on credit. *See* T.A.C. ¶¶68-70.

- Defendants “associated together for the common purpose of engaging in a course of dealing to cause Plaintiffs to guarantee loan obligations related to the Austin Property, to cause Plaintiffs to submit other property they own as collateral to secure those guarantees; and to improperly engineer defaults under the loan obligations in order to attempt to foreclose on and acquire Plaintiffs’ separate property.” T.A.C. ¶78. And Defendants succeeded.
- “Mr. White and his assets suffered irreparable damage to their image as well as significant financial losses due to the collapse of the Austin Property’s development.” T.A.C. ¶71.

This recitation plainly passes scrutiny under Rule 9(b). It tells the story—with names, dates, places, and (at times) direct quotes—of an opportunistic hard money lender that took advantage of an investor thousands of miles away from the investment. The lender (Romspen) insinuated itself in every aspect of the project: it found the property, it financed the purchase, it managed the project, and it put its people on the ground to oversee the project—all so that, when the time was right, it could plunge the project into the ground and recover, not only the coveted Austin Property, but White’s Canadian properties Romspen had eyed all along.

It also tells the story of the individuals who helped facilitate this scheme. It tells the story of Mr. Weldon, a partner at Romspen who also purported to act as Mr. White’s “agent” when negotiating the agreements surrounding the Austin Property. It tells the story of Mr. Milam, who Romspen handpicked to oversee the project and ensure things never progressed too far and that default was always within reach. And it tells the story of Mr. Zarafshani, who ingratiated himself with Mr. White and—like Mr. Weldon—purported to serve as a Mr. White’s fiduciary while simultaneously stalling the Austin project to assist Romspen’s loan-to-own scheme.

These allegations show common law fraud. They show RICO violations—that (1) an international enterprise formed between the Romspen Defendants, Milam, Zarafshani and Panache ostensibly to develop the Austin Property on White’s behalf, but that (2) secretly plotted to defraud White out of his investment and ownership in the properties in Austin and Canada, and (3) did so through the mail and “wires” (*i.e.*, email) in violation of the mail- and wire-fraud statutes. *See* 18

U.S.C § 1962(b)-(d); 18 U.S.C. §§ 1341 (mail fraud) & 1343 (wire fraud). And they show a clear breach of fiduciary duties—that (1) Romspen (through Weldon) made itself more than just a lender / creditor to White when it agreed to act as his “agent” and negotiate these agreements on his behalf, that (2) Zarafshani likewise assumed a fiduciary duty to White when he was appointed as trustee, and yet (3) both of them colluded against White and his interests in this scheme to defraud.

Moreover, Mr. White is not the only person to have reached the conclusion that Romspen always had a nefarious motive. The trustee in the Zen Garden bankruptcy—after a full opportunity at discovery, including “thousands of pages of documents, interviewing witnesses, and serving subpoenas”—independently concluded as follows:

- “Romspen’s conduct with respect to the Loan strongly suggests Romspen *never intended to perform its funding obligations to the Debtor.*” Exhibit 1 (Trustee’s Emergency Motion to Limit Romspen Credit Bid) at 10.
- “The Trustee’s investigation developed compelling evidence of Romspen *intentionally* depriving the Debtor of necessary third-party funding in violation of Romspen’s own loan documents.” *Id.* at 11.
- “Romspen starved the Debtor of [other] funding⁵ *with full knowledge* of the resulting negative impact on the Project and over the Debtor’s and Romspen’s own agents’ repeated pleas and warning, *revealing Romspen’s intent to stall and impede the Debtor into default.*” *Id.* at 15.
- “Having backed the Debtor into a desperate corner, Romspen withheld funding of long-pending draw requests to pressure the Debtor to execute a forbearance agreement providing Romspen expansive rights and further control and demanding the Debtor’s execution of deed in lieu to assign the Campus to Romspen. Romspen’s demand for a deed to the Campus is *telling of Romspen’s ‘loan to own’ intentions.*” *Id.* at 16.
- “Romspen’s *wrongful* actions choked the Project of needed construction, reducing the Campus’s value, damaged the Debtor’s image, brand, and reputation; and ultimately forced the Debtor to foreclosure, culminating in a receivership and this involuntary bankruptcy.” *Id.* at 17.

⁵ Per the Trustee’s accounting, Romspen’s actions deprived Zen Garden of a total of “*one-third of its budgeted financing for the Project*, further sealing the Debtor’s predictable fate.” *Id.* at 16 (emphasis in original).

While these facts may not be alleged *verbatim* in Plaintiffs’ Third Amended Complaint, the Complaint tells the exact same story. And, moreover, these factual findings from the trustee—not mere allegations—show both indicia of reliability in Plaintiffs’ allegations *and* the benefit that full discovery will provide. It also shows that Defendants have more than sufficient notice of the claims against them. There is simply no reason to dismiss these claims at the 12(b) stage.

2. Rule 8

a. Plaintiffs allege a plausible breach of contract claim.

The Romspen Defendants claim that Plaintiffs’ breach of contract allegations are generic, rote, and fail to identify the contracts at issue and how they were breached. Romspen Motion at 22-23. This is not accurate. Plaintiffs attached and identified several contracts upon which their breach-of-contract claims are based. Specifically, the following contracts are defined in, attached to, and thus properly considered part of the Complaint:

- The “2012 Contract” (defined in ¶15 and attached as part of Exhibit A);
- The “2013 Contract” (defined in ¶15 and attached as part of Exhibit A);
- The “August 2015 Commitment” (defined in ¶27 and attached as Exhibit E); and
- The “Romspen/MOS8 Agreements” (defined in ¶26 and attached as Exhibit D).

As outlined in ¶¶25-35 and Exhibit E to the Complaint, the August 2015 Commitment, among other things, (1) allowed for the creation of the MOS8 entities in order to purchase, develop and manage the Austin Property (*see* Exhibit E at §1(a)-(d)); and (2) designated Defendant Weldon, an officer of Romspen, as White’s nominee and agent to “negotiate, execute, and deliver” the agreements necessary “to complete the purchase of the Austin Property” and “to provide for the development and management of the Austin Property[.]” *Id.* at §25.1. MOS8 would be capitalized by White and jointly owned by White and Romspen, but the agency delegation in the August 2015 Commitment put Romspen in the driver’s seat.

Romspen created the web of MOS8 entities, and Weldon named himself and Defendant Milam as partners in them. *See id.* as ¶¶25-26 and Exhibit C. Romspen then executed the Romspen/MOS8 Agreements, which included the August 31, 2015 “Co-Development Agreement” between MOS8, Romspen, and Milam. *Id.*; *see also id.* at Exhibit D. The Co-Development agreement required Romspen and/or Milam, each as a Co-Developer, to “perform the services required by it hereunder in a manner at least equivalent in quality and efficiency to other experienced Co-Developers performing similar services for similar projects and in any event exercising its commercially reasonable efforts, skill and expertise in the best interest of Owner.” *Id.* at §1.2. The Co-Development Agreement also contains a laundry list of the services required, including preparing all plans and drawing; obtaining all required entitlements and licenses; selecting and working with contractors; consulting on all contractor agreements; preparing financial projections; and generally overseeing the development and construction. *See id.* at §2.1. The Complaint clearly alleges that Romspen and Milam breached these duties and instead drove the Austin Property into the ground. *See supra* pp. 13-15; *see also, e.g.*, T.A.C. ¶¶34-41. These allegations are more than enough under Rule 8.

b. Plaintiffs allege civil conspiracy for vicarious liability.

Plaintiffs have not alleged an independent cause of action for civil conspiracy, as it is likely no such claim exists under Texas law. *See Agar Corp., Inc. v. Electro Circuits Int’l, LLC*, 580 S.W.3d 136, 142 (Tex. 2019). Rather, in Texas, “a proven civil conspiracy means ‘each of [the] defendants in error is responsible for all acts done by any of the conspirators in furtherance of the unlawful combination.’” *Id.* at 140 (quoting *State v. Standard Oil Co.*, 130 Tex. 313, 107 S.W.2d 550, 559 (Tex. 1937)). That is, civil conspiracy is a mechanism of vicarious liability separate from the more common (also pled here) theory of *respondeat superior*.

The Complaint clearly alleges facts to support the existence of such a conspiracy between Romspen, Roitman, Weldon, Milam and Zarafshani. For example:

- “To control MOS8’s development over the Austin Property, the Romspen Defendants placed defendant Milam, their own representative, in charge of the Austin Property’s development.” ¶34
- Romspen “engineered a default of th[e Zen Garden] loan, with assistance from Panache and Mr. Zarafshani.” Heading F.
- “Mr. Zarafshani and Romspen Mortgage improperly colluded during the loan negotiations in breach of their fiduciary duties to Mr. White and his assets.” ¶58
- “Defendants conspired to engineer a fraudulent loan scheme to force Mr. White and Zen Garden to default on payments on the Austin Property, with the intent to purchase the property as a discounted foreclosure rate.” ¶63.
- “Romspen Investment, Romspen Mortgage, Mr. Milam, Panache, and Mr. Zarafshani further associated together for the common purpose of engaging in a course of dealing to cause plaintiffs to guarantee loan obligations related to the Austin Property to cause Plaintiffs to submit other property they own as collateral to secure those guarantees; and to improperly engineer defaults under the loan obligations in order to attempt to foreclose on and acquire Plaintiff’s separate property.” ¶78.

These allegations are also more than sufficient under Rule 8.

c. Plaintiffs are not attempting to pierce any corporate veil.

Finally, Defendants’ Motions conflate vicarious liability and veil piercing. Defendants Wesley Roitman and Richard Weldon are named defendants currently being sued in both their individual capacity *and* as officers of the Romspen entities. Plaintiffs allege that the Romspen entities are vicariously liable for Roitman’s and Weldon’s unlawful actions performed in the course and scope of their employment. *See* Complaint at ¶216-221. However, Romspen has not yet filed an answer in this case, and thus Plaintiffs do not fully know how Romspen intends to defend itself. Romspen may claim that Roitman and/or Weldon were acting *outside* the scope of their employment as rogue employees with respect to certain actions. Plaintiffs would dispute that

argument, but if unsuccessful Plaintiffs would be required to pursue Roitman and Weldon as individuals for those actions.

However, if Romspen agrees to stipulate on the record (1) that at all times Roitman and Weldon were acting with the course and scope of their employment with the Romspen Defendants with respect to *all* dealings with Plaintiffs sufficient for vicarious liability purposes, (2) that it will produce Roitman and Weldon's relevant documents and communications and make them available for depositions, and (3) that it will indemnify Roitman and Weldon and pay any judgment rendered against them or Romspen, then Plaintiffs would likely be willing to voluntarily dismiss Roitman and Weldon as individually named Defendants. Until then, Plaintiffs must proceed against Roitman and Weldon both as individuals and as officers and directors of the Romspen entities.

Dated: August 31, 2022

By: /s/ Scott M. Hendler

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on August 31, 2022, and that all counsel of record were served by CM/ECF.

By: /s/ Scott M. Hendler
Scott M. Hendler

[REDACTED]

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Western District of Texas

I hereby certify this to be Exhibit 4
to the Affidavit of H Edwards sworn
this 12th day of September 2022

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Document Number: [92](#)

Docket Text:

PLAINTIFFS' AMENDED OMNIBUS RESPONSE TO [74] AND [75] DEFENDANTS' MOTIONS TO DISMISS.(pg)

1:21-cv-00517-RP Notice has been electronically mailed to:

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1:21-cv-00517-RP Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1080075687 [Date=9/8/2022] [FileNumber=27311554-0
] [1b68dcf4c3098755644cc4d0e13b1f804656e929425d59c18a4a500156683273416
9fb93dffecd5327359e244c564f5972374244e43569d01981dd37e1a6930e]]

Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2022/09/07
Time of Search: 11:44 AM
Search provided by: ELDOR-WAL REGISTRATIONS (1987) LTD
Service Request Number: 38241682
Customer Reference Number:

I hereby certify this to be Exhibit 5
to the Affidavit of H Edwards sworn
this 12th day of September 2022

Corporate Access Number: 2017694700
Business Number: 845017979
Legal Entity Name: LOT 11 GP LTD.

Orlagh O'Kelly
Barrister and Solicitor

Legal Entity Status: Active
Alberta Corporation Type: Named Alberta Corporation
Registration Date: 2013/08/30 YYYY/MM/DD

Registered Office:

Street: 600, 9707 - 110 STREET
City: EDMONTON
Province: ALBERTA
Postal Code: T5K2L9

Records Address:

Street: 600, 9707 - 110 STREET
City: EDMONTON
Province: ALBERTA
Postal Code: T5K2L9

Email Address: RETURNS@HPLEGAL.CA

Directors:

Last Name: WHITE
First Name: DAN
Street/Box Number: 1250 HAYTER ROAD
City: EDMONTON
Province: ALBERTA
Postal Code: T6S1A2

Voting Shareholders:

Legal Entity Name: SYMMETRY ASSET MANAGEMENT INC.
Corporate Access Number: 2014685297
Street: 600, 9707 - 110 STREET NW
City: EDMONTON
Province: ALBERTA
Postal Code: T5K2L9
Percent Of Voting Shares: 100

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: SEE ATTACHED SCHEDULE "A"
Share Transfers Restrictions: SEE ATTACHED SCHEDULE "B"
Min Number Of Directors: 1
Max Number Of Directors: 7
Business Restricted To: THERE SHALL BE NO RESTRICTIONS ON THE BUSINESS WHICH THE CORPORATION MAY CARRY ON.
Business Restricted From: THERE SHALL BE NO RESTRICTIONS ON THE BUSINESS WHICH THE CORPORATION MAY CARRY ON.
Other Provisions: SEE ATTACHED SCHEDULE "C"

Associated Registrations under the Partnership Act:

Trade Partner Name	Registration Number
LOT 11 LIMITED PARTNERSHIP	LP17765314

Other Information:

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
------------------	--------------------------------

2020|2020/12/23

Outstanding Returns:

Annual returns are outstanding for the 2021 file year(s).

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2013/08/30	Incorporate Alberta Corporation
2018/11/23	Change Address
2020/02/21	Update BN
2020/12/23	Enter Annual Returns for Alberta and Extra-Provincial Corp.

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2013/08/30
Restrictions on Share Transfers	ELECTRONIC	2013/08/30
Other Rules or Provisions	ELECTRONIC	2013/08/30

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2022/09/07
Time of Search: 11:44 AM
Search provided by: ELDOR-WAL REGISTRATIONS (1987) LTD
Service Request Number: 38241672
Customer Reference Number:

Corporate Access Number: 2017804531
Business Number: 821331832
Legal Entity Name: ABSOLUTE ENERGY RESOURCES INC.

Legal Entity Status: Active
Alberta Corporation Type: Named Alberta Corporation
Registration Date: 2013/10/24 YYYY/MM/DD
Date of Last Status Change: 2021/12/09 YYYY/MM/DD

Registered Office:

Street: 600, 9707 - 110 STREET NW
City: EDMONTON
Province: ALBERTA
Postal Code: T5K2L9

Records Address:

Street: 600, 9707 - 110 STREET NW
City: EDMONTON
Province: ALBERTA
Postal Code: T5K2L9

Email Address: RETURNS@HPLEGAL.CA

Directors:

Last Name: WHITE
First Name: DAN
Street/Box Number: 1250 HAYTER ROAD
City: EDMONTON
Province: ALBERTA

Postal Code: T6S1A2

Voting Shareholders:

Legal Entity Name: 1468527 ALBERTA LTD.
Corporate Access Number: 2014685271
Street: 600, 9707 - 110 STREET NW
City: EDMONTON
Province: ALBERTA
Postal Code: T5K2L9
Percent Of Voting Shares: 100

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: SEE ATTACHED - SECTION A
Share Transfers Restrictions: SEE ATTACHED - SECTION B
Min Number Of Directors: 1
Max Number Of Directors: 9
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: SEE ATTACHED - SECTION C

Other Information:

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2021	2021/12/09

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2013/10/24	Incorporate Alberta Corporation
2015/09/29	Change Director / Shareholder
2020/02/21	Update BN

2021/12/02	Status Changed to Start for Failure to File Annual Returns
2021/12/09	Enter Annual Returns for Alberta and Extra-Provincial Corp.

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2013/10/24
Restrictions on Share Transfers	ELECTRONIC	2013/10/24
Other Rules or Provisions	ELECTRONIC	2013/10/24

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2022/09/07
Time of Search: 11:44 AM
Search provided by: ELDOR-WAL REGISTRATIONS (1987) LTD
Service Request Number: 38241665
Customer Reference Number:

Corporate Access Number: 2014735753
Business Number: 837352913
Legal Entity Name: ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC.

Name History:

Previous Legal Entity Name	Date of Name Change (YYYY/MM/DD)
ENVIRO SERVICES CORP.	2010/12/08

Legal Entity Status: Active
Alberta Corporation Type: Named Alberta Corporation
Registration Date: 2009/06/09 YYYY/MM/DD

Registered Office:

Street: 600, 9707 - 110 STREET NW
City: EDMONTON
Province: ALBERTA
Postal Code: T5K2L9

Records Address:

Street: 600, 9707 - 110 STREET NW
City: EDMONTON
Province: ALBERTA
Postal Code: T5K2L9

Email Address: RETURNS@HPLEGAL.CA

Primary Agent for Service:

First Name	Firm Name	Street	City	Province	Email
------------	-----------	--------	------	----------	-------

Last Name		Middle Name					Postal Code	
PAYNE	RODERICK	C.	HUSTWICK PAYNE	600, 9707 - 110 STREET NW	EDMONTON	ALBERTA	T5K2L9	RETURNS

Directors:

Last Name: WHITE
First Name: DANIEL
Street/Box Number: 1250 HAYTER ROAD
City: EDMONTON
Province: ALBERTA
Postal Code: T6S1A2

Voting Shareholders:

Legal Entity Name: 1468527 ALBERTA LTD.
Corporate Access Number: 2014685271
Street: 600, 9707 - 110 STREET NW
City: EDMONTON
Province: ALBERTA
Postal Code: T5K2L9
Percent Of Voting Shares: 100

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: SEE SCHEDULE ATTACHED
Share Transfers Restrictions: SEE SCHEDULE ATTACHED
Min Number Of Directors: 1
Max Number Of Directors: 9
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: SEE SCHEDULE ATTACHED

Other Information:

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2021	2021/07/21

Outstanding Returns:

Annual returns are outstanding for the 2022 file year(s).

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2009/06/09	Incorporate Alberta Corporation
2010/12/08	Name Change Alberta Corporation
2020/02/20	Update BN
2020/08/13	Change Director / Shareholder
2021/07/21	Enter Annual Returns for Alberta and Extra-Provincial Corp.

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2009/06/09
Restrictions on Share Transfers	ELECTRONIC	2009/06/09
Other Rules or Provisions	ELECTRONIC	2009/06/09

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2022/09/07
Time of Search: 11:43 AM
Search provided by: ELDOR-WAL REGISTRATIONS (1987) LTD
Service Request Number: 38241655
Customer Reference Number:

Corporate Access Number: 2013521105
Business Number: 835837410
Legal Entity Name: ECO-INDUSTRIAL BUSINESS PARK INC.

Name History:

Previous Legal Entity Name	Date of Name Change (YYYY/MM/DD)
1352110 ALBERTA LTD.	2008/01/22
WORTHINGTON BUSINESS PARK INC.	2009/04/23

Legal Entity Status: Active
Alberta Corporation Type: Named Alberta Corporation
Registration Date: 2007/09/25 YYYY/MM/DD
Date of Last Status Change: 2011/11/22 YYYY/MM/DD

Registered Office:

Street: 600, 9707 - 110 STREET NW
City: EDMONTON
Province: ALBERTA
Postal Code: T5K2L9

Records Address:

Street: 600, 9707 - 110 STREET NW
City: EDMONTON
Province: ALBERTA
Postal Code: T5K2L9

Email Address: RETURNS@HPLEGAL.CA

Directors:

Last Name: WHITE
First Name: DAN
Street/Box Number: 1250 HAYTER ROAD NW
City: EDMONTON
Province: ALBERTA
Postal Code: T6S1A2

Voting Shareholders:

Legal Entity Name: 1468527 ALBERTA LTD.
Corporate Access Number: 2014685271
Street: 600, 9707 - 110 STREET NW
City: EDMONTON
Province: ALBERTA
Postal Code: T5K2L9
Percent Of Voting Shares: 100

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: SEE ELECTRONIC ATTACHMENT
Share Transfers Restrictions: SEE ELECTRONIC ATTACHMENT
Min Number Of Directors: 1
Max Number Of Directors: 9
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: SEE ELECTRONIC ATTACHMENT

Associated Registrations under the Partnership Act:

Trade Partner Name	Registration Number
WORTHINGTON BUSINESS PARK	TN14951669

Other Information:

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2020	2020/12/23

Outstanding Returns:

Annual returns are outstanding for the 2021 file year(s).

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2007/09/25	Incorporate Alberta Corporation
2009/04/23	Name Change Alberta Corporation
2011/11/02	Status Changed to Start for Failure to File Annual Returns
2014/02/19	Capture Microfilm/Electronic Attachments
2020/02/19	Update BN
2020/08/13	Change Director / Shareholder
2020/12/23	Enter Annual Returns for Alberta and Extra-Provincial Corp.

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2007/09/25
Restrictions on Share Transfers	ELECTRONIC	2007/09/25
Other Rules or Provisions	ELECTRONIC	2007/09/25
Amended Annual Return	10000607116105605	2014/02/19

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2022/09/12
Time of Search: 09:30 AM
Search provided by: ELDOR-WAL REGISTRATIONS (1987) LTD
Service Request Number: 38263584
Customer Reference Number:

Corporate Access Number: 2014685297
Business Number: 838159267
Legal Entity Name: SYMMETRY ASSET MANAGEMENT INC.

Legal Entity Status: Active
Alberta Corporation Type: Named Alberta Corporation
Registration Date: 2009/05/12 YYYY/MM/DD

Registered Office:

Street: 20211 9 AVE SW
City: EDMONTON
Province: ALBERTA
Postal Code: T6M2N9

Records Address:

Street: 20211 9 AVE SW
City: EDMONTON
Province: ALBERTA
Postal Code: T6M2N9

Email Address: DWHITE@SYMMETRYINC.COM

Primary Agent for Service:

Last Name	First Name	Middle Name	Firm Name	Street	City	Province	Postal Code	Email
PAYNE	RODERICK	C.	HUSTWICK PAYNE	600, 9707 - 110 STREET NW	EDMONTON	ALBERTA	T5K2L9	RETURNS@HPLEGAL.CA

Directors:

Last Name: WHITE
First Name: DAN
Street/Box Number: 1250 HAYTER ROAD NW
City: EDMONTON

Province: ALBERTA
Postal Code: T6S1A2

Voting Shareholders:

Legal Entity Name: 1468527 ALBERTA LTD.
Corporate Access Number: 2014685271
Street: 600, 9707 - 110 STREET NW
City: EDMONTON
Province: ALBERTA
Postal Code: T5K2L9
Percent Of Voting Shares: 100

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: SEE SHARE STRUCTURE ATTACHED
Share Transfers Restrictions: SEE SHARE TRANSFER RESTRICTIONS ATTACHED
Min Number Of Directors: 1
Max Number Of Directors: 9
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: SEE OTHER PROVISIONS ATTACHED

Holding Shares In:

Legal Entity Name
LOT 11 GP LTD.

Other Information:

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2021	2021/05/25

Outstanding Returns:

Annual returns are outstanding for the 2022 file year(s).

Filing History:

List Date (YYYY/MM/DD)	Type of Filing

2009/05/12	Incorporate Alberta Corporation
2010/01/08	Change Director / Shareholder
2020/02/20	Update BN
2021/05/25	Enter Annual Returns for Alberta and Extra-Provincial Corp.
2022/01/19	Change Address

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2009/05/12
Restrictions on Share Transfers	ELECTRONIC	2009/05/12
Other Rules or Provisions	ELECTRONIC	2009/05/12

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2022/09/12
Time of Search: 09:30 AM
Search provided by: ELDOR-WAL REGISTRATIONS (1987) LTD
Service Request Number: 38263575
Customer Reference Number:

Corporate Access Number: 2014685271
Business Number: 849746045
Legal Entity Name: 1468527 ALBERTA LTD.

Legal Entity Status: Active
Alberta Corporation Type: Numbered Alberta Corporation
Registration Date: 2009/05/12 YYYY/MM/DD
Date of Last Status Change: 2011/10/12 YYYY/MM/DD

Registered Office:

Street: 20211 9 AVE SW
City: EDMONTON
Province: ALBERTA
Postal Code: T6M2N9

Records Address:

Street: 20211 9 AVE SW
City: EDMONTON
Province: ALBERTA
Postal Code: T6M2N9

Email Address: DHWHITE@SYMMETRYINC.COM

Primary Agent for Service:

Last Name	First Name	Middle Name	Firm Name	Street	City	Province	Postal Code	Email
PAYNE	RODERICK	C.	HUSTWICK PAYNE	600, 9707 - 110 STREET NW	EDMONTON	ALBERTA	T5K2L9	RETURNS@HPLEGAL.CA

Directors:

Last Name: WHITE
First Name: DANIEL
Street/Box Number: 1250 HAYTER ROAD

City: EDMONTON
Province: ALBERTA
Postal Code: T6S1A2

Voting Shareholders:

Last Name: DAN WHITE FAMILY TRUST
Street: 1250 HAYTER ROAD NW
City: EDMONTON
Province: ALBERTA
Postal Code: T6S1A2
Percent Of Voting Shares: 100

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: SEE SHARE STRUCTURE ATTACHED
Share Transfers Restrictions: SEE SHARE TRANSFER RESTRICTIONS ATTACHED
Min Number Of Directors: 1
Max Number Of Directors: 9
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: SEE OTHER PROVISIONS ATTACHED

Holding Shares In:

Legal Entity Name
ECO-INDUSTRIAL BUSINESS PARK INC.
1462760 ALBERTA LTD.
SYMMETRY ASSET MANAGEMENT INC.
ABSOLUTE ENVIRONMENTAL WASTE MANAGEMENT INC.
ABSOLUTE ENERGY RESOURCES INC.
BLUE ROOTS INTERNATIONAL LTD.
PURPLE TREE INTERNATIONAL LTD.

Other Information:

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2021	2021/09/16

Outstanding Returns:

Annual returns are outstanding for the 2022 file year(s).

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2009/05/12	Incorporate Alberta Corporation
2009/11/11	Change Director / Shareholder
2011/07/02	Status Changed to Start for Failure to File Annual Returns
2020/02/20	Update BN
2021/09/16	Enter Annual Returns for Alberta and Extra-Provincial Corp.
2022/01/19	Change Address

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2009/05/12
Restrictions on Share Transfers	ELECTRONIC	2009/05/12
Other Rules or Provisions	ELECTRONIC	2009/05/12

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.

