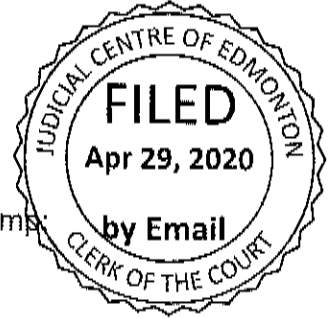


Form 11  
[Rule 3.31]



Clerk's Stamp:

by Email

2003 06728

COURT FILE NUMBER

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFF

ROMSPEN MORTGAGE LIMITED  
PARTNERSHIP and ROMSPEN  
INVESTMENTS CORPORATION

DEFENDANTS

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

DOCUMENT

**STATEMENT OF DEFENCE**

PARTY FILING THIS DOCUMENT:

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

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

Attention: Jonathan Hillson

Dentons Canada LLP  
Barristers and Solicitors  
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Facsimile: (780) 423-7276  
**File: 580694-1**

**Note: State below only facts and not evidence (Rule 13.6)****Statement of facts relied on and any matters that defeat the claim of the Plaintiff:**

1. In answer to the whole of the Statement of Claim, the Defendants do not – in terms of this Action - attorn to the jurisdiction of this Honourable Court and state that this Honourable Court ought to decline jurisdiction over this Action as, for among other reasons, the claims of the Plaintiffs, Romspen Mortgage Limited Partnership (“Romspen LP”) and Romspen Investments Corporation (“Romspen Investment”):
  - (a) arise from a Texas contract that was formed within Texas;
  - (b) are governed by and involve an application of the law of Texas;
  - (c) seek remedies and declarations that are outside of the jurisdiction of this Honourable Court and which are within the exclusive jurisdiction of the Courts of Texas.
2. Unless hereinafter expressly admitted, the Defendants deny the allegations against them contained in the Statement of Claim.
3. The Defendants admit paragraphs 1-2 and 4-10 of the Statement of Claim.
4. The Defendants deny that:
  - (a) the alleged Loan Agreement that is described at paragraph 11 of the Statement of Claim was ever formed or agreed to as – among other things – that alleged Loan Agreement was not signed and its terms were not accepted by Romspen LP and Romspen Investment – or any of them;
  - (b) they are lawfully indebted to Romspen LP and Romspen Investment – or any of them - for the principal amount that is alleged in the Statement of Claim;
  - (c) they agreed to pay interest to Romspen LP and Romspen Investment – or any of them - as alleged in the Statement of Claim.
5. The Defendants, Lot 11 GP Ltd (“Lot 11 GP”), Lot 11 Limited Partnership (“Lot 11 LP”), Eco-Industrial Business Park Inc (“Eco”), Absolute Energy Resources Inc (“Absolute Energy”), Absolute Environmental Waste Management Inc (“Absolute Environmental”) and Daniel Alexander White (“Mr White”), further deny that the alleged

Security that is described at paragraph 15 of the Statement of Claim was lawfully obtained from Lot 11 GP, Lot 11 LP, Eco, Absolute Energy, Absolute Environmental and Mr White – or any one or combination of them.

6. Further, or in the alternative, if Lot 11 GP, Lot 11 LP, Eco, Absolute Energy, Absolute Environmental and Mr White provided any form of security to Romspen LP and Romspen Investment – or any of them, which is not admitted, then Lot 11 GP, Lot 11 LP, Eco, Absolute Energy, Absolute Environmental and Mr White state that:

- (a) they have complied with any and all obligations and duties, whether legal, equitable or otherwise, that may have existed under the terms of any security that was provided, if any;
- (b) the debts that are said to underlie any security that may have been provided, if any, are not due and owing and, therefore, any obligation that Lot 11 GP, Lot 11 LP, Eco, Absolute Energy, Absolute Environmental and Mr White, or any one or combination of them, might have owed to Romspen LP and Romspen Investment – or any of them - to repay or provide indemnification with respect to those debts, if any, has not arisen;
- (c) any security that was provided, if any, did not contain and the parties did not agree to some or all of the terms and conditions that are alleged in the Statement of Claim, or at all;
- (d) any security that was provided, if any, was unenforceable and the relief sought to be exercised by Romspen LP and Romspen Investment – or any of them - is not commercially reasonable or just.

7. If Lot 11 GP, Lot 11 LP, Eco, Absolute Energy, Absolute Environmental and Mr White, or any one or combination of them, entered into the alleged Guarantees that are described in the Statement of Claim (“the Alleged Guarantees”), which is not admitted, then Lot 11 GP, Lot 11 LP, Eco, Absolute Energy, Absolute Environmental and Mr White, or any one or combination of them, state that:

- (a) the Alleged Guarantees – and each of them - were invalid and unenforceable in that – among other things – they failed to comply with and adhere to the *Guarantees Acknowledgment Act*, RSA 2000, c. G-11 and the law of Alberta; and
- (b) the Alleged Guarantees – and each of them - did not contain and the parties did not agree to some or all of the terms and conditions that are alleged in the Statement of Claim, or at all.

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8. Further, or in the alternative, if Lot 11 GP, Lot 11 LP, Eco, Absolute Energy, Absolute Environmental and Mr White, or any one or combination of them, entered into the Alleged Guarantees, which is not admitted, then Lot 11 GP, Lot 11 LP, Eco, Absolute Energy, Absolute Environmental and Mr White state that Romspen LP and Romspen Investment – or any of them:

- (a) made multiple unauthorized material variances to the loan agreements that underlay the Alleged Guarantees, or any of them;
- (b) reduced the total number of Guarantors that were potentially liable to Romspen LP and Romspen Investment – or any of them - after Lot 11 GP, Lot 11 LP, Eco, Absolute Energy, Absolute Environmental and Mr White, or any one or combination of them, entered into the Alleged Guarantees; and
- (c) made such further and other material variances as shall be proven at trial (“the Material Variances”)

9. The Material Variances:

- (a) were or had the potential to be detrimental to Lot 11 GP, Lot 11 LP, Eco, Absolute Energy, Absolute Environmental and Mr White, or any one or combination of them;
- (b) were not consented to by Lot 11 GP, Lot 11 LP, Eco, Absolute Energy, Absolute Environmental and Mr White, or any one or combination of them;
- (c) invalidated any Guarantees that may have been provided by Lot 11 GP, Lot 11 LP, Eco, Absolute Energy, Absolute Environmental and Mr White, or any one or combination of them, if any.

10. Further, Lot 11 GP and Eco deny that:

- (a) they each granted mortgages to Romspen LP and Romspen Investment – or any of them;
- (b) mortgages to the credit of Romspen LP and Romspen Investment – or any of them, were lawfully registered against the lands of Lot 11 GP and Eco;
- (c) any mortgages that were granted to Romspen LP and Romspen Investment – or any of them – contained the terms and conditions that are alleged at paragraph 17 of the Statement of Claim;

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- (d) they violated the terms of any mortgage that may have granted to Romspen LP and Romspen Investment – or any of them, if any;
- (e) an act of cross-default that was attributed to the Defendant, 3443 Zen Garden Limited Partnership (“Zen Garden”), occurred in Texas with respect to any loans that may have existed between Zen Garden and Romspen LP and Romspen Investment – or any of them.

11. Further, or in the alternative:

- (a) the question of whether an act of cross-default that was attributable to Zen Garden has occurred with respect to any loans that may have existed between Zen Garden and Romspen LP and Romspen Investment – or any of them - is a question that is:
  - (i) presently before the Courts of Texas; and
  - (ii) stayed in the Courts of Texas by operation of the law of Texas;
- (b) the ability of Romspen LP and Romspen Investment – or any of them - to commence, continue or pursue enforcement proceedings in Alberta against the Defendants - or any one or combination of them - is stayed by operation of the October 25, 2019 Consent Order of the Honourable Mr Justice J. Gill in Alberta Court of Queen's Bench Action 1903 21473.

12. As such, the Defendants state that this Action constitutes an abuse of process by Romspen LP and Romspen Investment – and each of them.

13. The Defendants deny that the Plaintiffs have suffered loss or damage or that any amount is owed to the Plaintiffs by the Defendants, or any one or combination of them.

14. If the Defendants, or any one or combination of them, are liable to the Plaintiffs for any amount, which is not admitted, then the Defendants claim an amount not less than those referenced in the Counterclaim by way of set off against any indebtedness that may be owed to the Plaintiffs, if any.

15. Further, or in the alternative, if the Plaintiffs have suffered loss or damage or if amounts are owed to the Plaintiffs, which is not admitted, then the Plaintiffs have failed to take all appropriate steps, or any steps, to mitigate this loss or damage and any claim against the Defendants should be reduced or eliminated accordingly and, in any event, this claim is exaggerated, too remote or otherwise unrecoverable.

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16. In the opinion of the Defendants, it will take less than 25 days to try this action.

**Remedy sought:**

17. The Defendants pray that this claim be dismissed with costs.