

COURT FILE NUMBER

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFF

SERVUS CREDIT UNION LTD.

DEFENDANTS

CHATEAU INN LTD., BECA
INTERNATIONAL LTD., ALBERT DAVID
MESSIER, THE ESTATE OF ALBERT
DAVID MESSIER, and JOHN or JANE DOE
as the Litigation Representative of THE
ESTATE OF ALBERT DAVID MESSIER,
deceased

Clerk's Stamp

DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

MILLER THOMSON LLP
Barristers and Solicitors
2700, Commerce Place
10155-102 Street
Edmonton, AB, Canada T5J 4G8
Phone: 780.429.1751 Fax: 780.424.5866

Lawyer's Name: Spencer Norris
Lawyer's Email: snorris@millerthomson.com
File No.: 0138667.0314

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. The Plaintiff, Servus Credit Union Ltd. ("**Servus**") is a financial institution, operating pursuant to the *Credit Union Act*, RSA 2000, c. C-32, which provides financial services throughout the Province of Alberta, and whose head office is located in the City of Edmonton in the Province of Alberta.
2. The Defendant, Chateau Inn Ltd. ("**Chateau Inn**") is a body corporate incorporated pursuant to the laws of the Province of Alberta, having its registered office in the Town of Sylvan Lake, Alberta.
3. Chateau Inn operates and owns a hotel (the "**Hotel**") in the Town of Sylvan Lake, operating under the name Best Western Plus Chateau Inn Sylvan Lake, located at or around 5027 Lakeshore Drive, Sylvan Lake, AB, on the lands legally described as:

PLAN 5569KS
BLOCK A
LOTS 7 TO 9 INCLUSIVE
EXCEPTING THEREOUT ALL MINES AND MINERALS

(the "**Lands**")

4. The Defendant, Beca International Ltd. ("**Beca**"), is a body corporate incorporated pursuant to the laws of the Province of Alberta, having its registered office in the town of Sylvan Lake, Alberta. Beca \ is the successor corporation of Beca and Bear Development Corp. upon their amalgamation on or around January 31, 2019. Following the amalgamation, Beca owns a 95% interest in Chateau Inn.
5. The Defendant, Albert David Messier ("**Messier**"), was an individual living in or around Norglenwold, Alberta. On or around February 10, 2023, Messier passed away.
6. Prior to his passing, Messier was a director and shareholder of Beca \ and director of Chateau Inn.
7. There has not been a grant of probate with respect to Messier estate.
8. Chateau Inn, Beca, and Messier are collectively referred to as the "**Defendants**".

CREDIT FACILITIES

9. On the application of Chateau Inn, Servus agreed to extend to Chateau Inn the following:
 - (a) a demand mortgage facility in the amount of \$7,475,000 (the "**Mortgage Facility**");
 - (b) an authorized overdraft facility in the amount of \$50,000 (the "**Overdraft Facility**");
 - (c) a Canadian Emergency Business Act loan in the amount of \$60,000 (the "**CEBA Loan**"); and
 - (d) a Highly Affected Sectors Credit Availability Program loan (the "**HASCAP Loan**");

(the "**Credit Facilities**")

the terms of which are set out in certain loan documents, including:

 - (e) the Credit Facility Letter dated June 15, 2020;
 - (f) the Credit Facility Letter Amendment dated February 23, 2021;
 - (g) the Credit Facility Letter Amendment dated May 25, 2021;
 - (h) the Credit Facility Letter Amendment dated September 29, 2021; and
 - (i) the Authorized Overdraft Agreement dated April 26, 2019.

(collectively, "**Facility Documents**")
10. The Mortgage Facility and Overdraft Facility are payable on demand and are due, owing, and payable in full to Servus. It is a further term of the Mortgage Facility and Overdraft Facility that Chateau Inn shall pay to Servus all costs and expenses (including legal fees on a solicitor and own client full indemnity basis) incurred by Servus to establish, preserve or enforce any rights granted to Servus under the terms of the Mortgage Facility and Overdraft Facility.
11. It is a further term of the Credit Facilities, express or implied that:
 - (a) interest on amounts outstanding under the Mortgage Facility accrue at an annual interest rate of 8.44% per annum, calculated daily and payable monthly;
 - (b) prior to demand, Chateau Inn shall make monthly blended payments to the Mortgage Facility of \$52,235.00 applied firstly to interest and secondly to principal; originally amortized over a 24.75 year period with term expiring November 10, 2023;

- (c) interest on amounts outstanding under the Overdraft Facility accrue at an annual interest rate of Servus's Prime Lending Rate, from time to time, plus 3.05% per annum, floating, calculated daily and payable monthly in arrears;
- (d) prior to demand, Chateau Inn shall pay interest accrued on the Overdraft Facility monthly;
- (e) interest on amounts outstanding under the HASCAP Loan accrue at an annual interest rate of 4.00% per annum, calculated daily and payable monthly in arrears;
- (f) prior to default, Chateau Inn shall repay the HASCAP Loan by making monthly blended payments of \$2,765.00 commencing April 1, 2022; applied firstly to interest and secondly to principal;
- (g) the CEBA Loan is repayable in full by no later than December 31, 2023.

THE GUARANTEES GRANTED BY THE DEFENDANTS

- 12. To secure all indebtedness owed by Chateau Inn to Servus, including the Credit Facilities, Beca executed a Guarantee and Postponement (Unlimited) dated May 5, 2017 in favour of Servus with respect to the indebtedness and obligations of Chateau Inn owing to Servus, plus all indebtedness interest thereon from the date of demand for payment at the rate agreed to by Chateau Inn, plus costs, including legal costs incurred by Servus in enforcing and obtaining payment under the guarantee, including the enforcement of any security held by Servus, on a solicitor and own client full indemnity basis (the "**Beca Guarantee**").
- 13. To further secure all indebtedness owed by Chateau Inn to Servus, including the Credit Facilities, Alberta Messier executed a Guarantee and Postponement (Limited) dated February 11, 2015 in favour of Servus with respect to the indebtedness and obligations of Chateau Inn owing to Servus, plus interest thereon from the date of demand for payment at the rate agreed to by Chateau Inn, plus costs, including legal costs incurred by Servus in enforcing and obtaining payment under the Guarantee, including the enforcement of any security held by Servus, on a solicitor and his own client indemnity basis (the "**Messier Guarantee**").

SECURITIES GRANTED BY DEFENDANTS

- 14. To secure due payment and discharge of all present and future indebtedness and liabilities of Chateau Inn to Servus, Chateau Inn granted or caused to be granted in favour of Servus a General Security Agreement dated February 11, 2015 granting Servus a security in all present and after-acquired property of Chateau Inn (the "**Chateau Inn GSA**").
- 15. As further security, Bear Development Corp. (now Beca) executed in favour of Servus an Assignment and Postponement dated February 11, 2015 granting a security interest to Servus in all and every indebtedness and liability, present and future, direct and indirect, absolute and contingent of Chateau Inn to Bear Development Corp. (the "**Beca Assignment**").
- 16. As further security, Messier executed in favour of Servus an Assignment and Postponement dated February 11, 2015 granting a security interest to Servus in all and every indebtedness and liability, present and future, direct and indirect, absolute and contingent of Chateau Inn to Messier (the "**Messier Assignment**").

COLLATERAL MORTGAGE GRANTED BY CHATEAU INN LTD.

- 17. By a Collateral Mortgage made under the *Lands Titles Act*, dated February 11, 2015, and registered at the Alberta Land Titles Office on February 11, 2015, as Instrument No. 152 056 054, Chateau Inn mortgaged the Lands for securing repayment of all amounts owing to Servus by Chateau Inn from time to time, whether present or future, direct or indirect, absolute or contingent, matured or not and however arising, and whether pursuant to a revolving line of credit, and whether incurred or arising before, during or after the time that Chateau Inn is the owner of the Lands, including principal, interest and costs, up to the principal amount of \$12,000,000.00, plus interest at a rate of 10.00% *per annum* above the prime lending rate established by Servus from time to time, and all costs, charges, and expenses, including legal fees and disbursements as between a solicitor and own client on a full indemnity basis (the "**Original Mortgage**").

18. On April 20, 2015, Chateau Inn Ltd. executed a Mortgage Amendment Agreement reducing the principal amount of the Original Mortgage from \$12,000,000 to \$7,475,000 (the “**Mortgage Amendment Agreement**” and, collectively, with the Original Chateau Inn Mortgage, the “**Chateau Inn Mortgage**”) registered at the Land Titles Office as Instrument 152 124 030.
19. By the Chateau Inn Mortgage, it is provided that on the default of payment of any principal or interest on any of the money secured by the Chateau Inn Mortgage, or on default of any covenant, obligation, or liability of Chateau Inn to Servus thereunder or in any other security or agreement, then the whole principal sum secure by the Chateau Inn Mortgage and all interest and other indebtedness shall become due and payable.
20. By the Chateau Inn Mortgage, Chateau Inn agreed that the taking of judgment under any of the covenants contained in the Chateau Inn Mortgage contained in the Chateau Inn Mortgage shall not operate as a merger of Chateau Inn’s obligations under the Chateau Inn Mortgage or any of their indebtedness and liability to Servus.
21. By the Chateau Inn Mortgage, Chateau Inn covenanted with Servus to pay all taxes, rates liens, changes encumbrances or claims which may fall due or be unpaid and also to insure the buildings on the Lands against damage by fire and other risks, in default of all or any of which Servus should have the right to do the same and add to the Chateau Inn Mortgage all costs and expenses, including fees and charges of Servus’s solicitors as between a solicitor and own client on a full indemnity basis incurred by it in that regard and in respect to any proceedings taken to realize on the property secured by the Chateau Inn Mortgage.
22. The Chateau Inn Mortgage further provides that if default is made any payment or principal sum or interest secured by the Chateau Inn Mortgage, or in the observance or performance of any of the covenants, agreements or provisos therein contained, Sevus may appoint a receiver of the income of the Lands or any part or parts thereof.
23. On or around February 11, 2015, Chateau Inn executed a General Assignment of Leases and Rents in favour of Servus with respect to the Lands.
24. Furthermore, Chateau Inn, Bear Development Corp. (now Beca), and Messier entered into an Environmental Indemnity Agreement dated February 11, 2015 with respect to the Lands.

INDEBTEDNESS AND DEFAULT

25. As at April 4, 2023, there is outstanding under the Credit Facilities, plus further amounts owed in respect of costs and expenses incurred by Servus including legal costs on a solicitor and own client full indemnity basis, plus further accruing interest thereon, the following amounts:

Description	Principal	Accrued Interest	Total	Per Diem
Demand Mortgage Facility	\$6,500,125.24	\$127,671.54	\$6,627,796.78	\$1,503.04
CEBA Loan	\$60,000.00	\$ -	\$60,000.00	
HASCAP Loan	\$224,398.23	\$73.78	\$224,472.01	\$24.59
Authorized Overdraft Facility	\$39,463.53	\$ -	\$39,463.53	
Total	\$6,823,987.00	\$127,745.32	\$6,951,732.32	\$1,527.63
Total, plus further interest, costs, charges and expenses, including legal fees on a solicitor and own client full indemnity basis (the “ Indebtedness ”): \$6,951,732.32				

26. Chateau Inn defaulted in complying with the terms of the Credit Facilities, the Facility Documents, the Chateau Inn GSA, and Chateau Inn Mortgage, by among other things, failing to make payment to the Credit Facilities when due.
27. On or around March 6, 2023, Servus issued a Letter of Default to Chateau Inn. Chateau failed to remedy its defaults.
28. On or around March 21, 2023, Servus issued demands to the Defendants, demanding payment of all amount owing to Servus including the Indebtedness and served upon Chateau Inn and Beca notices of intention to enforce security pursuant to s. 244 of the *Bankruptcy and Insolvency Act*.
29. To date, the Defendants have failed, neglected, or refused to pay the Indebtedness to Servus.
30. Chateau Inn and the Hotel are in financial distress causing the collateral and assets subject to the Chateau Inn GSA and Chateau Inn Mortgage at risk.
31. It is both just and convenient to appoint a receiver-manager over the assets, property, and undertakings of Chateau Inn.

Remedy sought:

32. As against CHATEAU INN LTD.:
 - (h) judgment totaling \$6,627,796.78 as at April 4, 2023, with respect to the Mortgage Facility, with interest to accrue on such judgment at a rate of 8.44% *per annum*, currently at a per diem rate of \$1,503.04, both before and after judgment;
 - (i) judgment totalling \$60,000 as at April 4, 2023, with respect to the CEBA Loan, with interest thereon both before and after judgment pursuant to the *Judgment Interest Act*;
 - (j) judgment totalling \$224,398.23 as at April 4, 2023, with respect to the HASCAP Loan, with interest to accrue on such judgment at a rate of 4.00% *per annum*, currently at a per diem rate of \$24.59, both before and after judgment;
 - (k) judgment totalling \$39,463.53 as at April 4, 2023, with respect to the Authorized Overdraft Facility, with interest to accrue on such judgment at a rate of Servus's Prime Lending Rate, from time to time (currently 6.70%), plus 3.05% per annum both before and after judgment;
 - (l) an Order for Appointment of a Receiver or a Receiver-Manager;
 - (m) in the alternative an Order for the Appointment of an Interim Receiver or an Interim Receiver-Manager;
 - (n) foreclosure of the Lands, an Order for Possession, or a Final Order of Foreclosure;
 - (o) an Order shortening the period of redemption to less than six (6) months or as the Court may direct;
 - (p) an Order allowing the Plaintiff or its duly authorized agent to beat liberty to enter the Lands for the purposes of doing all things necessary to preserve the property and for an Order that the Plaintiff shall not be considered a Mortgagee in possession or trespasser; and
 - (q) in the further alternative, an Order for Sale to the Plaintiff of the Lands.
33. As against BECA INTERNATIONAL LTD.:
 - (a) judgment totaling \$6,627,796.78 as at April 4, 2023, with respect to the Mortgage Facility, with interest to accrue on such judgment at a rate of 8.44% per annum, currently at a per diem rate of \$1,503.04, both before and after judgment;

- (b) judgment totalling \$60,000 as at April 4, 2023, with respect to the CEBA Loan, with interest thereon both before and after judgment pursuant to the Judgment Interest Act;
- (c) judgment totalling \$224,398.23 as at April 4, 2023, with respect to the HASCAP Loan, with interest to accrue on such judgment at a rate of 4.00% per annum, currently at a per diem rate of \$24.59, both before and after judgment; and
- (d) judgment totalling \$39,463.53 as at April 4, 2023, with respect to the Authorized Overdraft Facility, with interest to accrue on such judgment at a rate of Servus's Prime Lending Rate, from time to time (currently 6.70%), plus 3.05% per annum both before and after judgment.

34. As against ALBERT DAVID MESSIER and the ESTATE OF ALBERT DAVID MESSIER:

- (a) An Order appointing Carolyn Messier as litigation representative of the Estate of ALBERT DAVID MESSIER; and
- (b) judgement totaling \$3,900,000 respect to the Indebtedness, with interest to accrue on such judgment at the applicable contractual interest rates provided in the Facility Documents;

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

- 20 days if you are served in Alberta
- 1 month if you are served outside Alberta but in Canada
- 2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of King's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.