

COURT FILE NUMBER

Clerk's Stamp

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF/APPLICANT

BANK OF MONTREAL

DEFENDANTS /
RESPONDENTS

METRO PAVING AND ROADBUILDING LTD., METRO
PAVING LTD., METRO PARS CORPORATION and
GRASSLANDS OF BEISEKER DEVELOPMENT
CORPORATION

PARTY FILING THIS
DOCUMENT

BANK OF MONTREAL

DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

Torys LLP
4600 Eighth Avenue Place East
525 - Eighth Ave SW
Calgary, AB T2P 1G1

Attention: Kyle Kashuba
Telephone: + 1 403.776.3744
Fax: +1 403.776.3800
Email: kkashuba@torys.com
File No. 01405-7287

NOTICE TO DEFENDANTS: 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.

Statement of facts relied on:

The Parties

1. Metro Paving and Roadbuilding Ltd. ("**Metro Roadbuilding**") is a corporation incorporated pursuant to the laws of the Province of Alberta (and extra-provincially registered in the Province of Saskatchewan), that carries or carried on business in Calgary, Alberta as a supplier of construction services, including roadbuilding, excavation, gravel base and asphalt paving and services in construction related areas such as project management, shallow utilities, site development and site servicing. As discussed below, Metro Roadbuilding borrowed funds from Bank of Montreal (the "**Bank**") and in support of Grasslands' (defined below) and Metro Paving's (defined below) respective obligations to the Bank, provided a guarantee to the Bank.

2. Metro Paving Ltd. (“**Metro Paving**”) is a corporation amalgamated pursuant to the laws of the Province of Alberta, and is a holding company, whose primary asset is a commercial property in the North East quadrant of the City of Calgary. As discussed below, Metro Paving borrowed funds from the Bank and in support of Grasslands’ and Metro Roadbuilding’s respective obligations to the Bank, provided a guarantee to the Bank.
3. Grasslands of Beiseker Development (“**Grasslands**”) is a corporation incorporated pursuant to the laws of the Province of Alberta, that carries or carried on business in Calgary, Alberta as a land development company. As discussed below, Grasslands borrowed funds from the Bank and in support of Metro Roadbuilding’s and Metro Paving’s respective obligations to the Bank, provided a guarantee to the Bank.
4. Grasslands changed its name from “1706989 Alberta Ltd.” to “Grasslands of Beiseker Development” on October 22, 2012.
5. Metro Pars Corporation is a corporation incorporated pursuant to the laws of the Province of Alberta, and is a holding company that holds construction equipment and leases same to Metro Roadbuilding for use on the construction projects. As discussed below, Metro Pars, in support of Grasslands’, Metro Roadbuilding’s, and Metro Paving’s respective obligations to the Bank, provided a guarantee to the Bank.
6. Metro Roadbuilding, Metro Paving, Metro Pars and Grasslands are collectively referred to herein as the “**Metro Entities**”.

Grasslands

A. *Loans and Security*

7. Pursuant to a Letter Agreement dated March 3, 2020 (the “**Grasslands Letter Agreement**”) among the Bank, as lender, Grasslands, as borrower, and Metro Paving, Metro Pars, and Metro Roadbuilding, as guarantors, the Bank agreed to provide a total facility limit of \$300,000 and made loans to Grasslands (the “**Grasslands’ Loan**”).
8. The repayment of the monies from time to time due and owing by Grasslands to the Bank in respect of the Grasslands’ Loan, is secured in whole or in part by various security instruments, including, but not limited to:

- (a) Security Agreement dated March 13, 2020, granted by Grasslands in favour of the Bank, providing the Bank with a security interest in all present and after-acquired property of Grasslands;
- (b) Mortgage of land in the amount of \$3,000,000 granted by Grasslands to the Bank in respect to the lands legally described as follows (collectively, the “**Grasslands’ Lands**”):

PLAN 0915352
BLOCK 2
LOTS 3 TO 6 (INCLUSIVE)
EXCEPTING THEREOUT ALL MINES AND MINERALS;

PLAN 0915352
BLOCK 2
LOTS 8 TO 36 (INCLUSIVE)
EXCEPTING THEREOUT ALL MINES AND MINERALS;

PLAN 0915352
BLOCK 3
LOTS 1 TO 26 (INCLUSIVE)
EXCEPTING THEREOUT ALL MINES AND MINERALS; and

PLAN 0915352
BLOCK 4
LOTS 2 TO 10 (INCLUSIVE)
EXCEPTING THEREOUT ALL MINES AND MINERALS;

- (c) Acknowledgement of standard mortgage terms granted by Grasslands dated March 13, 2020;
- (d) General assignment of rents and certain lease rights dated March 16, 2020 in respect to the Grasslands’ Lands granted by Grasslands in favour of the Bank;
- (e) Title insurance in respect of the Grasslands’ Lands;

- (f) Guarantee for indebtedness of an incorporated company dated March 13, 2020 granted by Metro Roadbuilding in support of Grasslands' obligations to the Bank in the aggregate amount of \$300,000;
- (g) Guarantee for indebtedness of an incorporated company dated March 13, 2020 granted by Metro Pars in support of Grasslands' obligations to the Bank in the aggregate amount of \$300,000;
- (h) Guarantee for indebtedness of an incorporated company dated March 13, 2020 granted by Metro Paving in support of Grasslands' obligations to the Bank in the aggregate amount of \$300,000; and
- (i) Subordination and Postponement Agreement dated March 13, 2020 among Echelon Insurance ("**Echelon**"), the Bank, Grasslands, Metro Paving, Metro Roadbuilding and Metro Pars, pursuant to which, *inter alia*, Echelon's security is postponed and subordinated to the Bank's security with respect to the Collateral (as defined in the subject agreement).

B. Breaches

- 9. There is a "Cross Default" provision in the Grasslands Letter Agreement, which provides that, in the event that Metro Roadbuilding becomes in default with the Bank, which it has as outlined below, this will trigger a default between Grasslands and the Bank.

C. Outstanding Indebtedness

- 10. As at January 15, 2021, the amount outstanding and owing by Grasslands to the Bank was CAD \$301,722.99, plus accruing costs and interest (currently interest at \$49.07 *per diem*) (the "**Grasslands Indebtedness**").

Metro Roadbuilding

A. Loans and Security

- 11. Pursuant to a Letter Agreement dated March 4, 2019 (the "**Metro Roadbuilding Letter Agreement**") among the Bank, as lender, Metro Roadbuilding, as borrower, and Metro Paving and Metro Pars, as guarantors, as amended pursuant to a letter agreement dated March 3, 2020 (the "**Amending Letter**"), pursuant to which Grasslands also became a guarantor, the Bank

agreed to provide a total facility limit of \$6,500,000 to Metro Roadbuilding (“**Metro Roadbuilding Loan**”).

12. The repayment of the monies from time to time due and owing by Metro Roadbuilding to the Bank in respect of the Metro Roadbuilding Loan, is secured in whole or in part by various security instruments, including, but not limited to:
 - (a) Security Agreement dated April 10, 2019, granted by Metro Roadbuilding in favour of the Bank, providing the Bank with a security interest in all present and after-acquired property of Metro Roadbuilding, which is primarily situate or located on the Metro Paving Lands (defined below);
 - (b) Mortgage of land in the amount of \$3,200,000 granted by Metro Paving to the Bank in respect to the lands located at 7615 - 40 Street NE, Calgary, Alberta, legally described as Plan Calgary 2474JK, Block 5, Lot 9, excepting thereout Plan/Road Number 8611132 and excepting thereout all mines and minerals (the “**Metro Paving Lands**”);
 - (c) Acknowledgement of standard mortgage terms granted by Metro Paving dated April 10, 2019;
 - (d) General assignment of rents and certain lease rights dated April 10, 2019 in respect to the Metro Paving Lands granted by Metro Paving in favour of the Bank;
 - (e) Guarantee for indebtedness of an incorporated company dated April 10, 2019 granted by Metro Paving in support of Metro Roadbuilding’s obligations to the Bank;
 - (f) Security agreement granted by Metro Paving in favour of the Bank dated April 10, 2019, providing the Bank with a security interest in all present and after-acquired property of Metro Paving;
 - (g) Guarantee for indebtedness of an incorporated company dated April 10, 2019 granted by Metro Pars in support of Metro Roadbuilding’s obligations to the Bank;
 - (h) Security agreement dated April 10, 2019 granted by Metro Pars in favour of the Bank, providing the Bank with a security interest in all present and after-acquired property of Metro Pars, which is primarily situate or located on the Metro Paving Lands;
 - (i) Pursuant to the Amending Letter:

- (i) \$5,000,000 guarantee for indebtedness of an incorporated company dated March 13, 2020, granted by Grasslands in support of Metro Roadbuilding's obligations to the Bank;
- (ii) Mortgage of land in the amount of \$3,000,000 granted by Grasslands to the Bank in respect to the Grasslands' Lands;
- (j) Subordination and Postponement Agreement dated April 17, 2019 among Echelon, the Bank, Metro Paving, Metro Roadbuilding and Metro Pars, pursuant to which, *inter alia*, Echelon's security is postponed and subordinated to the Bank's security with respect to the Collateral (as defined in the subject agreement);
- (k) Subordination and Postponement Agreement dated March 13, 2020 among Echelon, the Bank, Grasslands, Metro Paving, Metro Roadbuilding and Metro Pars, pursuant to which, *inter alia*, Echelon's security is postponed and subordinated to the Bank's security with respect to the Collateral (as defined in the subject agreement); and
- (l) Commercial Card Agreement dated July 17, 2019 between Metro Roadbuilding and the Bank related to a credit limit of \$15,000, together with a BMO Commercial Card Pre-Authorized Debit Agreement dated July 22, 2019 between the subject parties.

B. Breaches

- 13. Metro Roadbuilding is in default of some or all of the above agreements for, amongst other things, exceeding the credit limit, being out of margin on the line of credit, violating covenants, including related to the current ratio, total debt to tangible net worth and debt service coverage.

C. Outstanding Indebtedness

- 14. As at January 15, 2021, the amount outstanding and owing by Metro Roadbuilding to the Bank was \$4,147,609.46, plus accruing costs and interest (currently interest at \$1,058.55 *per diem*) (the "**Metro Roadbuilding Indebtedness**").

Metro Paving

A. Loans and Security

15. Pursuant to a Letter Agreement dated March 4, 2019 (the “**Metro Paving Letter Agreement**”, together with the Grasslands Letter Agreement and Metro Roadbuilding Letter Agreement, the “**Loan Agreements**”) among the Bank, as lender, Metro Paving, as borrower, and Metro Pars and Metro Roadbuilding, as guarantors, the Bank agreed to provide a total facility limit of \$2,700,000 to Metro Paving (“**Metro Paving Loan**”).

16. The repayment of the monies from time to time due and owing by Metro Paving to the Bank in respect of the Metro Paving Loan, is secured in whole or in part by various security instruments, including, but not limited to:
 - (a) Security Agreement dated April 10, 2019, granted by Metro Paving in favour of the Bank, providing the Bank with a security interest in all present and after-acquired property of Metro Paving;
 - (b) Mortgage of land in the amount of \$3,200,000 granted by Metro Paving to the Bank in respect to the Metro Paving Lands;
 - (c) Acknowledgement of standard mortgage terms granted by Metro Paving dated April 10, 2019;
 - (d) General assignment of rents and certain lease rights dated April 10, 2019 in respect to the Metro Paving Lands granted by Metro Paving in favour of the Bank;
 - (e) Assignment of Moneys which May Become Payable Under Fire Insurance Policies dated April 10, 2019 in favour of the Bank;
 - (f) Guarantee for indebtedness of an incorporated company dated April 10, 2019 granted by Metro Roadbuilding in support of Metro Paving’s obligations to the Bank;
 - (g) Security agreement granted by Metro Roadbuilding in favour of the Bank dated April 10th, 2019, providing the Bank with a security interest in all present and after-acquired property of Metro Roadbuilding;

- (h) Guarantee for indebtedness of an incorporated company dated April 10, 2019 granted by Metro Pars in support of Metro Paving's obligations to the Bank;
- (i) Guarantee for indebtedness of an incorporated company dated December 10, 2020 granted by Grasslands in support of Metro Paving's obligations to the Bank, limited to the aggregate amount of \$2,615,000 plus interest thereon at a rate of 5.00 percent per annum above the Bank's prime interest rate in effect from time to time;
- (j) Security agreement dated April 10, 2019 granted by Metro Pars in favour of the Bank, providing the Bank with a security interest in all present and after-acquired property of Metro Pars;
- (k) Subordination and Postponement Agreement dated April 17, 2019 among Echelon, the Bank, Metro Roadbuilding, Metro Paving, and Metro Pars, pursuant to which, *inter alia*, Echelon's security is postponed and subordinated to the Bank's security with respect to the Collateral (as defined in the subject agreement); and
- (l) Subordination and Postponement Agreement dated March 13, 2020 among Echelon, the Bank, Grasslands, Metro Roadbuilding, Metro Paving, and Metro Pars, pursuant to which, *inter alia*, Echelon's security is postponed and subordinated to the Bank's security with respect to the Collateral (as defined in the subject agreement).

B. Breaches

- 17. Metro Paving is in default of some or all of the above agreements for, amongst other things, violating covenants, including related to the current ratio, total debt to tangible net worth and debt service coverage.

C. Outstanding Indebtedness

- 18. As at January 15, 2021, the amount outstanding and owing by Metro Paving to the Bank was CAD \$2,702,614.68, plus accruing costs and interest (currently interest at \$431.55 *per diem*) (the "**Metro Paving Indebtedness**", together with the Grasslands Indebtedness and Metro Roadbuilding Indebtedness, the "**Metro Entities' Indebtedness**").

Demands

19. As a result of the breaches noted above and the deterioration of the financial condition of the Metro Entities, as evidenced by the breaches, and the failure of the Metro Entities to comply with the terms of the Loan Agreements noted above, the Bank demanded:
- (a) the repayment of the Grasslands Indebtedness from Grasslands and the corporate guarantors, Metro Roadbuilding, Metro Paving and Metro Pars pursuant to a demand letter and a Notice of Intention to Enforce Security under subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) dated November 19, 2020;
 - (b) the repayment of the Metro Roadbuilding Indebtedness from Metro Roadbuilding and the corporate guarantors, Grasslands, Metro Paving, and Metro Pars pursuant to a demand letter and a Notice of Intention to Enforce Security under subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) dated November 19, 2020; and
 - (c) the repayment of the Metro Paving Indebtedness from Metro Paving and the corporate guarantors, Metro Roadbuilding and Metro Pars, pursuant to a demand letter and a Notice of Intention to Enforce Security under subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) dated November 20, 2020 (note that the demand was not directed to Grasslands as it provided its guarantee in favour of Metro Paving on December 10, 2020),
- (collectively, the “**Demands**”).
20. To date, the Metro Entities have refused or neglected to pay the amounts demanded pursuant to the Demands.

Indebtedness

21. As of January 15, 2021, the aggregate indebtedness of the Metro Entities equals \$7,151,947.13:
- (a) the Grasslands Indebtedness equals \$301,722.99, broken down as follows:
 - (i) Principal: \$300,000.00;
 - (ii) Interest: \$1,722.99; and

- (iii) Further accruing *per diem* interest of \$49.07;
- (b) the Metro Roadbuilding Indebtedness equals \$4,147,609.46, broken down as follows:
 - (i) Principal: \$4,069,719.42;
 - (ii) Interest: \$31,773.46;
 - (iii) Legal fees: \$46,116.58; and
 - (iv) Further accruing *per diem* interest of \$1,058.55; and
- (c) the Metro Paving Indebtedness equals \$2,702,614.68, broken down as follows:
 - (i) Principal: \$2,650,705.11;
 - (ii) Interest: \$6,060.19;
 - (iii) Fixed Rate Term Loan Break Fee: \$45,849.38; and
 - (iv) Further accruing *per diem* interest of \$431.55.

Remedy Sought

22. The Bank seeks the following remedies against the Metro Entities:
- (a) a declaration that the Metro Entities are in default of their respective Loan Agreement with the Bank and security agreements related thereto, and the payment of their respective Metro Entities' Indebtedness to the Bank;
 - (b) a declaration that the Corporate Guarantees held by the Bank have become enforceable against the applicable Metro Entities in accordance with the terms thereof;
 - (c) the appointment of a receiver and manager over the assets, undertakings and property of the Metro Entities;
 - (d) judgment in the sum of \$7,151,947.13 as of January 15, 2021, or such further and other amount as may be proven, together with interest according to the terms of the Metro Entities respective Loan Agreements and security agreements related thereto;

- (e) judgment for *per diem* amounts accruing on the Metro Entities' Indebtedness after January 15, 2021 to the date of judgment;
- (f) interest in accordance with the terms of the Loan Agreements, or, alternatively, pursuant to the provisions of the *Judgment Interest Act*, RSA 2000, c J-8;
- (g) costs on a solicitor and his own client basis in accordance with the terms of the Loan Agreements and security agreements related thereto, or, alternatively, costs; and
- (h) such further and other relief as this Honourable Court may deem just and appropriate.

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 Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff'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 lawsuit 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.