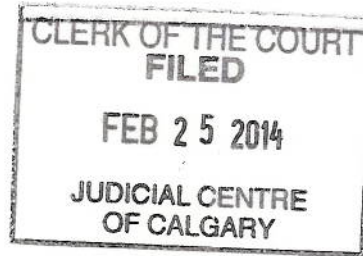


Clerk's Stamp:



COURT FILE NUMBER 1401-02111

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF

CANADA MORTGAGE AND HOUSING CORPORATION

DEFENDANT(S)

CALGARY EAST VILLAGE HOUSING SOCIETY

DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Brian W. Summers and Ryan F.T. Quinlan
Dentons Canada LLP
2900 Manulife Place
10180 – 101 Street
Edmonton, Alberta T5J 3V5
Ph. (780) 423-7312 Fx. (780) 423-7276
File No.: 125733-545

NOTICE TO DEFENDANT

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, Canada Mortgage and Housing Corporation ("CMHC"), is a federal crown corporation established under the *Canada Mortgage and Housing Corporation Act*, R.S.C. 1985, c. C-7, as amended.
2. The Defendant, Calgary East Village Housing Society ("CEVHS") is a body corporate incorporated pursuant to the *Societies Act* of Alberta.
3. CEVHS is a recipient of financial contributions and assistance from CMHC.
4. CEVHS' primary purpose and activity is to provide and maintain a high-rise, not-for-profit residential apartment complex in the city of Calgary, Alberta for low and medium income residents. That apartment complex is municipally located at 750-5 Street SE, Calgary AB T2G 5B4 (the "Project").
5. CEVHS is the lessee of an undivided 13/19 interest and the Golden Age Club ("Golden Age") is the lessee of an undivided 6/19 interest in the lands on which the Project is located. The fee

simple title is registered in the name of the City of Calgary. CEVHS's leasehold titles are described as follows:

CONDOMINIUM PLAN 8510609
UNITS 3-15 INCLUSIVE
AND 624 UNDIVIDED ONE TEN THOUSANDTH SHARES IN
THE COMMON PROPERTY THEREIN
EXCEPTING THEREOUT ALL MINES AND MINERALS

(individually and collectively the "Lands")

THE LOAN AND SECURITY FOR THE LOAN

6. In or about 1979, CEVHS arranged for a loan from Murray & Company Limited ("Murray") in order to finance construction of the Project.
7. By a mortgage pursuant to the *Land Titles Act* dated October 8, 1982 and registered in the Land Titles Office as instrument number 821 195 529 ("First Mortgage"), CEVHS and Golden Age mortgaged to Murray their leasehold interests in the Lands for securing payment of the sum of \$10,646,371.69, plus interest thereon at a rate of 18.75% per annum, calculated monthly not in advance (the "Loan").
8. By the First Mortgage, CEVHS and Golden Age covenanted with the mortgagee to:
 - (a) pay all taxes, rates, liens, charges, encumbrances or claims which are or may become claims against the Lands; and
 - (b) maintain in form, substance and amount (and with insurance satisfactory to the mortgagee) all insurance required by the mortgagee from time to time with respect to the mortgaged lands;
 - (c) repair, maintain, restore, keep and put in order all buildings, erections, equipment, machinery and improvements on the mortgaged lands in good condition and repair, and not permit waste to be committed or suffered on the mortgaged lands or any part thereof (the "First Mortgage Repair Covenant").
9. In default of the First Mortgage Repair Covenant, all sums advanced become immediately due and payable, without demand, at the option of the mortgagee, and the mortgagee becomes entitled to enter upon the Lands and construct, repair or put in order any buildings or other improvements on the Lands, and all reasonable costs, expenses and charges, including allowances for time and services of any CMHC employee or agent, may be added to the First Mortgage.
10. By way of an Assumption and Operating Agreement between the City of Calgary, Calhome Properties Ltd. ("Calhome"), Murray, CMHC, CEVHS and Golden Age dated July 7, 1983, and registered in the Land Titles Office by way of a Caveat registered as instrument number 831 129 617, Murray agreed to discharge the First Mortgage as against the interest of Golden Age, amongst other terms (the "Assumption and Operating Agreement Caveat").
11. The First Mortgage has been amended and extended from time to time.
12. As a result of a series of transfers and assignments, each of which were registered in the Land Titles Office, CMHC obtained all right, power, title and interest in the First Mortgage, Assumption and Operating Agreement Caveat and all agreements amending and/or extending the First

Mortgage that were executed prior to April 26, 1995. From and after April 26, 1995, CMHC has been and continues to be the mortgagee under the First Mortgage.

13. There is due and owing to CMHC by CEVHS, pursuant to the First Mortgage the sum of \$5,546,901.63 as of February 19, 2014, plus interest charged thereon and costs.

THE OPERATING AGREEMENT

14. On or about November 5, 1984, CEVHS entered into an agreement with CMHC (the "Operating Agreement") pursuant to section 56.1 (now section 95) of the *National Housing Act* ("NHA"). That provision in the NHA permits CMHC to make a financial contribution to an "eligible contribution recipient", such as CEVHS, to meet the costs of rental housing projects and to reduce the cost of rentals of these housing projects.
15. Under the terms of the Operating Agreement, CMHC agreed to provide financial contributions to CEVHS for the purpose of enabling CEVHS to meet the costs of rental housing and to reduce the amount of rent in the Project (the "Contributions"). Essentially, the Contributions provide the difference between the operating costs of the Project, including payment of the Loan, and the rental income it receives from tenants of the Project.
16. The amount of the Contributions provided by CMHC under the Operating Agreement has been amended from time to time.
17. Pursuant to the Operating Agreement, CEVHS is required to provide a minimum of 15% of its units to income-tested residents, and to manage and operate the Project in accordance with the terms of the Operating Agreement.
18. Further pursuant to the Operating Agreement, an amount of revenue each year, as determined by CMHC, was to be set aside in a special bank account for replacement reserves (i.e. for long term maintenance and preservation) (the "Replacement Reserve Fund"), and the use or disposition of the reserve funds was subject to the approval or direction of CMHC (the "Replacement Reserve Fund Covenant").
19. Under the Operating Agreement, CEVHS covenanted and agreed with CMHC that it would:
 - (a) efficiently manage and maintain the Project in a satisfactory state of repair (the "Operating Management and Repair Covenant"); and
 - (b) not allow any charges or other encumbrances on the Lands and the Project without the approval of CMHC (the "Non-Encumbrance Covenant").
20. Upon a default of CEVHS under the Operating Agreement, CMHC has the right to discontinue all Contributions.
21. The Operating Agreement sets out a framework for the provision of public financial assistance, and it reflects a public policy orientation and objective.

THE RETROFIT AGREEMENT

22. On or about August 12, 2010, CMHC and CEVHS entered into an agreement (the "Retrofit Agreement") under which CMHC agreed to provide financial contributions in the sum of \$139,957.00 to CEVHS for the purpose of enabling CEVHS to develop, repair and rehabilitate the Project (the "Retrofit Contributions").
23. CMHC did advance \$139,957.00 in Retrofit Contributions to CEVHS pursuant to the Retrofit Agreement.

24. In the event of a default on the terms of the Retrofit Agreement by CEVHS, or default in the terms of any prior mortgage, including the First Mortgage, the entire amount of the Retrofit Contributions, at CMHC's sole option, becomes immediately due and payable under the Retrofit Agreement.
25. The Retrofit Agreement sets out a framework for the provision of public financial assistance, and it reflects a public policy orientation and objective.

SECURITY FOR THE RETROFIT CONTRIBUTIONS

26. By a collateral mortgage dated December 6, 2010 and registered in the Land Titles Office as instrument number 101 365 707, CEVHS mortgaged to CMHC its leasehold interest in the Lands for securing payment of the sum of \$139,957.00, plus interest thereon at a rate of 5.75% per annum, compounded semi-annually not in advance (the "Second Mortgage").
27. By the Second Mortgage, CEVHS covenanted with CMHC that:
 - (d) it would not permit waste to be committed or suffered on the Lands and that CEVHS would maintain the buildings and other improvements on the Lands in good order and repair to the satisfaction of CMHC (the "Second Mortgage Repair Covenant");
 - (e) it would not permit any alterations or additions to the Lands without the consent of CMHC (the "Second Mortgage Alteration Covenant")
28. In the event of default in payment or of any covenant or obligation under the Second Mortgage, all sums advanced and secured by the Second Mortgage become immediately due and payable, without demand, at the option of CMHC, and CMHC becomes entitled to enter upon and manage, repair and maintain the Lands and to collect rents, and to pay all reasonable costs, expenses and charges, including allowances for time and services of any CMHC employee or agent, may be added to the Second Mortgage.
29. Further, under the Second Mortgage a default under a prior charge, including the First Mortgage, constitutes a default under the Second Mortgage.

DISREPAIR OF THE PROJECT

30. CEVHS has allowed the building exterior to the Project to fall into a significant state of disrepair and poor condition. This disrepair at least includes issues with or damage to the exterior sheathing, gypsum board, poly vapour barrier, stucco cladding, control joints, flashing, windows, window frames, aluminum framing, studs, insulation and masonry brick veneer, as well as general damage as a result of mold, moisture damage and water damage ("Disrepair").

REPAIRS COMMENCED ON THE PROJECT

31. In or about April 2013, CEVHS retained Ellis-Don Construction Services Inc. ("Ellis-Don") to act as general contractor to complete approximately \$4,290,191.38 in repairs and renovations to the Project (the "Commenced Repairs").
32. CEVHS entered into its agreement with Ellis Don without having sought or obtained the necessary financing, and without the consent of CMHC, as required under the terms of the Operating Agreement.
33. Further, CEVHS used the Replacement Reserve Fund to partially pay for the Commenced Repairs without notice to CMHC, nor the approval or direction of CMHC. As a result, CEVHS has breached this term of the Operating Agreement.

34. The Replacement Reserve Fund and other funds available to CEVHS were insufficient to pay for the Commenced Repairs. On or about October 16, 2013, after Ellis-Don had issued invoices totaling \$1,269,636.74 and which had gone unpaid by CEVHS, Ellis-Don abandoned the job site and refused to complete the Commenced Repairs without payment, advising that it would file a builder's lien if necessary.
35. Ellis-Don's abandonment of the job due to non-payment, which left the building envelope exposed as winter approached or began, created clear and serious health and safety issues for the tenants in the Project. As temperatures dropped in the late fall and early winter, problems stemming from the incomplete state of repairs and renovations, including the ingress of cold air into the units and reports of frozen pipes occurred.
36. After or around the time that Ellis Don temporarily abandoned its work on the Project, the project manager retained by CEVHS identified to CMHC the work that had to be completed in order to secure the building for the winter months ("Winterization Work").
37. On November 19, 2013, due to the health and safety risk posed to the tenants, and to protect the value of its security, CMHC agreed to provide an emergency loan to CEVHS in the amount of \$2,198,356.78, to be distributed as follows:
 - (a) \$1,269,636.74 to settle outstanding Ellis-Don invoices; and
 - (b) \$928,720.04 to complete the Winterization Work.(collectively the "Emergency Funding")

on the term that this Emergency Funding was to be added to, and be secured by, the First Mortgage.
38. On November 22, 2013, a builder's lien was filed by H.T. Drywall (CLG) Ltd. in the amount of \$299,228.00. This also amounted to a breach of the Operating Agreement.
39. On November 29, 2013, CMHC provided the Emergency Funding.
40. The Project requires at least a further \$2.1 million in repairs and renovations once the winter months have passed in order to bring the Project back to a good state of repair.

CEVHS HAS BREACHED THE AGREEMENTS AND SECURITY

41. CEVHS has defaulted on and breached the:
 - (a) Operating Management and Repair Covenant, Replacement Reserve Fund Covenant and Non-Encumbrance Covenant in the Operating Agreement.
 - (b) First Mortgage Repair Covenant;
 - (c) Second Mortgage Repair Covenant and the Second Mortgage Alteration Covenant; and
 - (d) Retrofit Agreement.

RELIEF SOUGHT

42. By the issuance of this Statement of Claim, CMHC does not and is not seeking, at this time, to terminate any of the above agreements or obtain any judgment pursuant to the Contribution Agreement, Retrofit Agreement, First Mortgage or Second Mortgage.

43. The preference of CMHC at this time is to preserve the Project and its security, and to achieve compliance with these agreements through the appointment of an experienced, court-appointed receiver and manager.
44. The appointment of a receiver and manager is just and reasonable, as it is in the best interests of the Project's tenants and the public interest.
45. However, CMHC reserves all of its rights and remedies to seek judgment or any other relief pursuant to the Contribution Agreement, Retrofit Agreement, First Mortgage or Second Mortgage at a later date, whether by way of a separate action, an Amendment to this Statement of Claim, or otherwise in its absolute discretion.
46. CMHC states that this action should be categorized as a Standard Case. CMHC states that a Dispute Resolution Process would not be beneficial and would not likely result in an agreement between the parties or alternatively there is a compelling reason why a Dispute Resolution Process should not be attempted by the parties or in the alternative, the Court will be satisfied that engaging in a Dispute Resolution Process would be futile.

Remedy sought:

47. A declaration that CEVHS is in breach of the Contribution Agreement, Retrofit Agreement, first Mortgage and Second Mortgage.
48. The appointment of a receiver or receiver and manager of the undertaking, property and assets of CEVHS.
49. The appointment of an interim receiver or receiver and manager of the undertaking, property and assets of CEVHS.
50. The appointment of a receiver or receiver and manager of the Lands.
51. The appointment of an interim receiver of the Lands;
52. In the alternative, such appointment or relief as may be necessary to ensure the preservation of the Project, including without limitation the Lands.
53. An Order dispensing with any bond or other security that might otherwise be required to be posted by an interim receiver, receiver, receiver and manager or person tasked with the preservation of the Project and Lands.
54. An Order that no action at law or otherwise (other than this action) shall be taken or continued against the interim receiver, the receiver or the receiver and manager of CEVHS' undertaking, property and assets without leave of this Honourable Court first having been obtained.
55. Costs on a solicitor and his own client full indemnity basis or on such further and other basis as this Honourable Court may direct.
56. Such further and other relief as the nature of the case may require and this Honourable Court may seem meet.

NOTICE TO THE DEFENDANT

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 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 against you.