



This is the 2nd Affidavit of
Kyle Record in this case and
was made on the 25th day of September, 2019

No. S1710393
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985, c. C-44, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
ALL CANADIAN INVESTMENT CORPORATION

AFFIDAVIT

I, Kyle Record, of 1200 - 1075 West Georgia Street, Vancouver, Paralegal, AFFIRM
THAT:

1. I am a paralegal with the law firm Watson Goepel LLP, counsel for the Petitioner in these proceedings, and as such have personal knowledge of the facts and matters deposed to in this Affidavit, save and except where they are said to be based on information and belief, in which case I believe them to be true.
2. On September 16, 2019, the petitioner filed a notice of civil claim against Censorio Group (Hastings & Carleton) Holdings Ltd. and Peter Censorio. Attached here and marked as **Exhibit "A"** is a copy of the filed notice of civil claim.

- 3. On September 16, 2019, the petitioner registered a certificate of pending litigation against certain lands, legally known and described as:

PID 029 877 555

Lot 1 District Lot 121 Group 1 New Westminster District

Plan EPP56644

Attached here and marked as **Exhibit "B"** is a copy of the certificate of pending litigation which was registered.

AFFIRMED BEFORE ME at the City of)
 Vancouver, in the Province of British)
 Columbia, this 25th day of September 2019.)

 A Commissioner for taking Affidavits within)
 British Columbia)

 Kyle Record

JEREMY D. WEST
Barrister & Solicitor
WATSON GOEPEL LLP
 1200 - 1075 W. Georgia Street
 Vancouver, B.C. V6E 3C9
 Tel: 604-688-1301 Fax: 604-688-8193

SEP 16 2019

No. S1910311
Vancouver Registry



THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ALL CANADIAN INVESTMENT CORPORATION

PLAINTIFF

AND:

CENSORIO GROUP (HASTINGS & CARLETON) HOLDINGS LTD.
and PETER CENSORIO

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

Time for Response to Civil Claim

A Response to Civil Claim Must be filed and served on the Plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed Notice of Civil Claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed Notice of Civil Claim was served on you,

This is Exhibit "A" referred to in the
Affidavit of Kyle Record
sworn (or affirmed) before me at
Vancouver, B.C.
this 15 day of September, 2019.

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A Commissioner for Taking Affidavits
within British Columbia

- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed Notice of Civil Claim was served on you, or
- (d) if the time for Response to Civil Claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

1. The Plaintiff, All Canadian Investment Corporation ("ACIC"), is a company duly incorporated pursuant to the laws of British Columbia with an address for service in these proceedings of 1200-1075 West Georgia Street, Vancouver, British Columbia.
2. ACIC is a mortgage investment corporation which has been in business since 1998. Its business is to provide loans to borrowers which are secured by, amongst other things, registered, unregistered and equitable mortgages on real properties.
3. The Defendant, Censorio Group (Hastings & Carleton) Holdings Ltd. ("Carleton Holdings"), is a company duly incorporated pursuant to the laws of British Columbia with a registered office of 4723 Hastings Street, Vancouver, British Columbia. Carleton Holdings was incorporated on March 18, 2011.
4. The Defendant, Peter Censorio ("Censorio"), is a director of, and the directing mind of, Carleton Holdings.

The Carleton Lands

5. In April 2011, Carleton Holdings was desirous to purchase the lands and premises located at 4227 Hastings Street, Burnaby, British Columbia known and legally described as:

PID: 003-329-232
 Parcel "A" (Explanatory Plan 14860) Lots 29 and 30 Block 7 District Lot 121 Group 1 New Westminster District Plan 1054
 (the "Former Carleton Lands").

- 6. In order to secure funding to purchase the Former Carleton Lands, in or around April 26, 2011, by written agreement signed by ACIC, Censorio and Carleton Holdings (as amended from time to time, the "Carleton Loan Agreement"), the parties agreed that, *inter alia*:
 - a. ACIC would lend \$1,250,000.00 to Carleton Holdings;
 - b. Censorio was a guarantor of Carleton Holdings' obligations;
 - c. the loan was secured by way of a registered mortgage charge on the Former Carleton Lands; and
 - d. interest on the monies advanced under the Carleton Loan Agreement would accrue at a rate of 12% per annum calculated and paid quarterly.

7. On or about April 27, 2011, Carleton Holdings acquired the Former Carleton Lands.

8. In or around June 2012, Carleton Holdings was the registered owner of the lands and premises located at 4221 Hastings Street, Burnaby, British Columbia known and legally described as:

PID: 002-645-068
 Lot 31 Block 7 District Lot 121 Group 1 New Westminster District Plan
 1054

(the "Additional Lands").

- 9. On or around June 28, 2012, ACIC, Censorio, and Carleton Holdings agreed that:
 - a. ACIC would re-advance \$280,000.00 to Carleton Holdings on the terms and conditions set out in the Carleton Loan Agreement (the "Re-Advance");
 - b. the mortgage on the Former Carleton Lands was extended to also

mortgage and charge the Additional Lands, such that the monies advances under the Carleton Loan Agreement and the Re-Advance were secured by way of a mortgage charge on the Former Carleton Lands and the Additional Lands;

- c. Censorio would guarantee the Re-Advance;
- d. interest on the Re-Advance would accrue at a rate of 12% per annum calculated and paid quarterly.

10. On or about June 28, 2016, the Former Carleton Lands and the Additional Lands were consolidated to create 4221/4223 Hastings Street, Burnaby, British Columbia, legally known and described as:

PID: 029-877-555
LOT 1 DISTRICT LOT 121 GROUP 1 NEW WESTMINSTER
DISTRICT PLAN EPP56644

(the "Carleton Lands").

- 11. Carleton Holdings is the registered owner of the Carleton Lands.
- 12. Prior to the consolidation, ACIC removed its registered mortgage on the Former Carleton Lands and the Additional Lands. At that time the parties agreed that ACIC would retain an unregistered mortgage over, firstly, the Former Carleton Lands and the Additional Lands, and later, the Carleton Lands, as security for the Carleton Loan Agreement and the Re-Advance.
- 13. As at the time of the consolidation, the Former Carleton Lands and the Additional Lands were subject to an equitable mortgage in favour of ACIC and Carleton Holdings' interest in the Carleton Lands is subject to that mortgage.
- 14. ACIC advanced the funds required under the Carleton Loan Agreement and the Re-Advance and has an equitable mortgage on the Carleton Lands.
- 15. The Carleton Loan Agreement and the Re-Advance are in default.

Acknowledgements

- 16. Carleton Holdings and Censorio, and each of them, have acknowledged, and continue to acknowledge, their respective obligations in signed written instruments for the Carleton Loan Agreement and the Re-Advance.

Part 2: RELIEF SOUGHT

- 17. ACIC seeks the following relief:
 - a. a declaration that ACIC is entitled to and has a mortgage on the Carleton Lands to secure the monies advanced under the Carleton Loan Agreement and the Re-Advance and that ACIC's mortgage ranks in priority to the interests of the Defendants;
 - a. an order fixing the amount to be paid by the Defendants to ACIC to pay out the monies advanced under the Carleton Loan Agreement and the Re-Advance;
 - b. a certificate of pending litigation to be registered in the Land Title Office against the title to the Carleton Lands;
 - c. costs; and
 - d. such further and other relief as to this Honourable Court may deem just.

Part 3: LEGAL BASIS

- 18. ACIC pleads and relies on the *Law and Equity Act*, RSBC 1996 c. 253, the *Land Title Act*, RSBC 1996 c. 250, the *Property Law Act*, RSBC 1996 c. 377 and the *Supreme Court Civil Rules*, BC Reg 168/2009.
- 19. The Carleton Lands are security for the amounts due and owing on the Carleton Loan Agreement and the Re-Advance.
- 20. Valuable consideration for the Carleton Loan Agreement and the Re-Advance was provided by ACIC.

21. The Defendants and ACIC share a common intention that the Carleton Lands be security for debts due and owing pursuant to the Carleton Loan Agreement and the Re-Advance or any future advances thereby creating an equitable mortgage over the Carleton Lands.
22. The Defendants have executed written instruments agreeing to grant the above security in the Carleton Lands.

Plaintiff's address for service:

Watson Goepel LLP
Lawyers
1200 - 1075 West Georgia Street
Vancouver, B.C.
V6E 3C9

Fax number address for service (if any): (604) 688-8193

E-mail address for service (if any): n/a

Place of trial: Vancouver, British Columbia

The address of the registry is:

800 Smithe Street, Vancouver, British Columbia

Date: September 16, 2019


for Signature of Jeremy D. West
Counsel for the Plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) - all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

Claim for loan secured by equitable mortgage.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Law and Equity Act, RSBC 1996 c. 253, the Land Title Act, RSBC 1996 c. 250, the Property Law Act, RSBC 1996 c. 377

This is Exhibit "B" referred to in the Affidavit of Kyle Reebert sworn (or affirmed) before me at Vancouver, B.C. this 25 day of September, 2019.

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A Commissioner for Taking Affidavits within British Columbia

Do not write above this line, for Land Title use only

LAND TITLE ACT

Form 31 [Section 215(1)]

CERTIFICATE OF PENDING LITIGATION

NATURE OF INTEREST: CHARGE: **HEREWITH FEE OF \$10.00***
Certificate of Pending Litigation
Legal Description: Lot 1 District Lot 121 Group 1 New Westminster District Plan EPP56644
Parcel Identifier: 029 877 555

Address of person entitled to register this l/s pendens:
All Canadian Investment Corporation
c/o Watson Goepel LLP
Barristers & Solicitors
Suite 1700 - 1075 West Georgia Street
Vancouver, B.C. (604) 688-1301

Full name, address, telephone number of person presenting application:
Ryan R. Lee
WATSON GOEPEL LLP
Barristers & Solicitors
Suite 1700 - 1075 West Georgia Street
Vancouver, B.C. V6E 3C9 Tel: (604) 688-1301

SUPREME COURT OF BRITISH COLUMBIA
VANCOUVER REGISTRY

Signature of Applicant/Solicitor/or authorized agent

For Land Title **SEP 16 2019**
Office Use Only

No. **S1910311**
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ALL CANADIAN INVESTMENT CORPORATION

PLAINTIFF

AND:

CENSORIO GROUP (HASTINGS & CARLETON) HOLDINGS LTD.
and PETER CENSORIO

DEFENDANTS

CERTIFICATE OF PENDING LITIGATION

I CERTIFY that in a proceeding commenced in this Court a claim is made for an estate or interest in land or a right of action in respect of land is given by an enactment other than the *Land Title Act*. The particulars are set out in the attached copy of the document by which claim is made.

Given under my hand and seal of the court at Vancouver, British Columbia this 16 day of September, 2019.

Registrar

E. AU

DEPUTY DISTRICT REGISTRAR

*Fee not applicable where l/s pendens related to proceedings under the Builders Lien Act.