

COURT FILE NUMBER 1001-15771

COURT KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS CONDOMINIUM CORPORATION NO. 0610078 and HEATHER CMH
MAZUR AS REPRESENTATIVE PLAINTIFFS Oct 24 2022

DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC.,
ROYAL & SUN ALLIANCE INSURANCE COMPANY OF
CANADA, NATIONAL HOME WARRANTY PROGRAMS LTD. ,
DAVID T. SYMONS ARCHITECT LTD., ROBERT SPAETGENS
ARCHITECT LTD. AND DAVID T. SYMONS ARCHITECT LTD.
CARRYING ON BUSINESS AS S2 ARCHITECTURE
PARTNERSHIP, S2 ARCHITECTURE, DURWEST
CONSTRUCTION SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE
SALES LTD., 789072 ALBERTA LTD. AND R.K.G.
DEVELOPMENTS LTD. CARRYING ON BUSINESS AS
LENBETH WEEPING TILE CALGARY and LENBETH
WEEPING TILE CALGARY

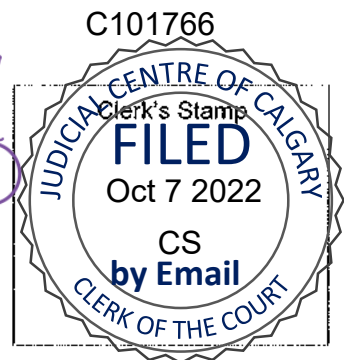
THIRD PARTY DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC.,
ROBERT SPAETGENS ARCHITECT LTD., DAVID T. SYMONS
ARCHITECT LTD., ROBERT SPAETGENS ARCHITECT LTD.
AND DAVID T. SYMONS ARCHITECT LTD. CARRYING ON
BUSINESS AS S2 ARCHITECTURE PARTNERSHIP, S2
ARCHITECTURE, DURWEST CONSTRUCTION SYSTEMS
(ALBERTA) LTD., PRAIRIE PIPE SALES LTD., 789072
ALBERTA LTD., R.K.G. DEVELOPMENTS LTD., PRAIRIE PIPE
SALES LTD., 789072 ALBERTA LTD. AND R.K.G.
DEVELOPMENTS LTD. CARRYING ON BUSINESS AS
LENBETH WEEPING TILE CALGARY and LENBETH
WEEPING TILE CALGARY

DOCUMENT **AFFIDAVIT OF HEATHER HANSEN**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTIES FILING THIS DOCUMENT
PEACOCK LINDER HALT & MACK LLP
Suite 4050, 400 – 3rd Avenue SW
Calgary, Alberta T2P 4H2
Attention: Mylène D. Tiessen
Telephone: (403) 296-2280
Fax: (403) 296-2299
FILE: 4829

Affidavit of Heather Hansen sworn October 7, 2022

Entered



I, Heather Hansen (nee Mazur) of Airdrie, Alberta, MAKE OATH AND SAY THAT:

1. I am one of the representative plaintiffs in this action and I am the corporate representative on behalf of the other representative plaintiff, Condominium Corporation No. 0610078 (the "Condo Corp"), as such I have personal knowledge of the matters sworn to in this affidavit, except where such matters are stated to be based upon information and belief, in which case I believe such information to be true.
2. The Condo Corp is a non-profit condominium corporation for a residential condominium project located at 10 Prestwick Bay S.E., Calgary, commonly known as "Prestwick Pointe Condominiums" ("Prestwick Pointe").
3. Prestwick Pointe consists of four buildings of 376 total residential units, covering an underground parkade (the "Parkade").

The Action

4. In the spring of 2009, as a result of various water leakage problems to the Parkade, the property manager for Prestwick Pointe, Simco Management (Calgary) Inc. ("Simco"), retained Building Science + Architecture Ltd. ("Building Science") to conduct a review with respect to these problems and to provide, among other things, their repair recommendations.
5. To pay for the work and repairs recommended by Building Science the condo board levied contributions from each of the unit owners by way of two special assessments, one in January 2010 and the other in May 2010 (the "Special Assessments").
6. In the years 2011 and 2012 the repairs recommended by Building Science were completed at a cost of approximately \$2.65 million.
7. An action was filed October 25, 2010, to recover the costs of the repairs (the "Action"). The named defendants were Pointe of View Condominiums (Prestwick) Inc. ("Pointe of View"), Royal & Sun Alliance Insurance Company of Canada ("RSA") and National Home Warranty Programs Ltd. ("NHW"). Attached and marked as **Exhibit "A"** is a copy of the Statement of Claim filed October 25, 2010.

Certification of the Action and the Class

8. By order pronounced November 26, 2012, the Action was certified as a class proceeding ("Certification Order"). Attached and marked as **Exhibit "B"** is a copy of the Certification Order.
9. Pursuant to the Certification Order, the class for the purposes of the Action (the "Class") consists of the following:
 - (a) all persons who purchased a condominium unit in Condominium Plan No. 0610078 ("0610078") from Pointe of View and who have paid levies as a result of the Special Assessments; and

- (b) all persons who purchased a condominium unit in 0610078 from other than Pointe of View and who have paid levies as a result of the Special Assessments.
10. I am informed by Mylène Tiessen of Peacock Linder Halt & Mack LLP, class counsel, and do verily believe that notice to the members of the Class was provided in accordance with the Certification Order.
11. I am further informed by Ms. Tiessen and do verily believe that two members of the Class provided notice of intention to opt out by the January 15, 2013, deadline provided for in the Certification Order. Attached and marked as **Exhibit "C"** are the details regarding the two members who opted out.
12. Attached and marked as **Exhibit "D"** is a list of the members of the Class, the condo unit they own or owned, their unit factor, the amount paid by each of them pursuant to the Special Assessments and whether they are now current or past owners of units in Prestwick Pointe.

The Third Party Claims

13. I am informed by Ms. Tiessen and do verily believe that prior to the Certification Order, Pointe of View, RSA and NHW issued third party claims. Attached and marked as **Exhibits "E" and "F"** respectively is a copy of the third party claim of RSA and NHW filed July 6, 2012 and the third party claim of Pointe of View filed July 12, 2012.
14. I am further informed by Ms. Tiessen and do verily believe that since the Action was certified the claims against the third party defendants, MWC Consulting Structural Engineering Inc., Allan Wasnea Engineering Ltd., Idea Group Inc. and Inland Concrete Limited were discontinued. Attached and marked as **Exhibits "G"** is a copy of the filed discontinuances.

Amendments to the Action

15. Pursuant to a consent order pronounced October 6, 2016, and an order pronounced November 9, 2016, the Statement of Claim was amended adding the following defendants: David T. Symons Architect Ltd., Robert Spaetgens Architect Ltd. and David T. Symons Architect Ltd. (collectively "S2 Architecture"); Durwest Construction Systems (Alberta) Ltd. ("Durwest"); and Prairie Pipe Sales Ltd., 789072 Alberta Ltd. and R.K.G. Developments Ltd. are partners carrying on business as Lenbeth Weeping Tile Calgary (collectively "Lenbeth"). Attached and marked as **Exhibits "H" and "I"** respectively is a copy of these orders and attached and marked as **Exhibit "J"** is a copy of the Amended Statement of Claim filed January 16, 2017.
16. Pursuant to an order pronounced May 18, 2017, the plaintiffs were granted leave to amend their Amended Statement of Claim to, among other things, permit me to replace Syd Dombowsky as one of the Representative Plaintiffs. Mr. Dombowsky had passed away suddenly on January 25, 2017. Attached and marked as **Exhibit "K"** is a copy of the Amended Amended Statement of Claim filed May 18, 2017.

The Defendants/Third Party Defendants

17. Pointe of View was the developer and builder of Prestwick Pointe and was the original vendor of the condominium units in the project.
18. As part of the original purchase agreements from Pointe of View, RSA, represented by its agent, NHW issued warranty certificates (the "Warranty Certificate").
19. I am informed by counsel for the Class, Mylène Tiessen and do verily believe that:
 - (a) S2 Architecture provided architectural services in connection with Prestwick Pointe;
 - (b) Durwest supplied and installed waterproofing to the Parkade's suspended concrete slab; and
 - (c) Lenbeth supplied and installed damp proofing to the Parkade.
20. In response to the Action these defendants/third parties filed statements of defence denying the claims against them and raising various defences including defences pursuant to the *Limitations Act*. Attached and marked as **Exhibits "L", "M", "N", "O" and "P"** is a copy of the statements of defence filed on behalf of Pointe of View, RSA and NHW, S2 Architecture, Durwest and Lenbeth.

The Settlement

21. On January 25, 2022, pursuant to without prejudice negotiations, the parties to the Action agreed to resolve this action for a total all-inclusive payment by the defendants/third party defendants to the plaintiffs in the sum of \$1,045,000.
22. I and the Condo Corp support this settlement.

Class Counsel's Retainer

23. I am informed and do verily believe that class counsel, then known as Peacock Linder & Halt LLP entered into a retainer agreement with the Condo Corp dated October 6, 2010. Now shown to me and marked as **Exhibit "Q"** is a copy of that retainer agreement.
24. I am further informed and do verily believe that Peacock Linder Halt & Mack LLP ("PLHM"), the Condo Corp and Syd Dombowsky subsequently entered into a contingency fee agreement dated January 25, 2016 (the "Contingency Agreement"). Now shown to me and marked as **Exhibit "R"** is a copy of the January 25, 2016, agreement.
25. I am further informed by Ms. Tiessen and do verily believe that court approval of the Contingency Agreement was sought, *ex-parte*, from the then case management judge, Madama Justice Strekaf but because that agreement was entered into after the pronouncement of the Certification Order, Justice Strekaf was of the view that Court approval could not be provided.

26. As a result of Mr. Dombowsky's passing, a further contingency fee agreement was entered into between PLHM, the Condo Corp and me effective January 25, 2017. Now shown to me and marked as **Exhibit "S"** is a copy of the January 25, 2017, agreement.
27. Pursuant to these agreements, PLHM is to receive 25% of the settlement in payment of their outstanding legal fees, plus GST, disbursements and other charges. I am informed by Ms. Tiessen and do verily believe that PLHM is prepared to agree to receive 10% of the settlement (i.e. \$104,500) in payment of its outstanding legal fees, plus GST (total amount of \$109,725). I am further informed by Ms. Tiessen that based on their firm's standard charge out rates, the value of the time posted to the file by timekeepers at PLHM, and which is outstanding is over 50% greater than the 10% sum sought to be paid from the settlement. I am further informed by Ms. Tiessen that a copy of the time records will be available to the Court for its review at the time of the settlement approval hearing.
28. Pursuant to these agreement PLHM has charged, and the Condo Corp has paid, disbursements, other charges and applicable GST of \$39,928.47. Now shown to me and marked as **Exhibit "T"** is a copy of the disbursement accounts issues by PLHM and paid by the Condo Corp along with a printout of the General Ledger for the Condo Corp listing these accounts.
29. I am informed by Ms. Tiessen and do verily believe **Exhibits Q, R, S and T** are privileged but will be made available to the Court for its review at the time of the settlement approval hearing.

Simco's Role

30. In its role as property manager, Simco has assisted the Condo Corp, me and class counsel in the handling of the Action including, but not limited to, service of the Certification Order in accordance with the terms of that order, locating records and information to complete the Condo Corp's affidavit of records and responses to undertaking arising from questioning, addressing inquiries from me, class counsel and class members. I am informed by Verna Penner, Director of Property Management at Simco, and do verily believe that the foregoing involved in excess of 325 hours and which would normally be billed at a rate of \$100/hour plus expenses and applicable GST.
31. In addition, Simco assisted the Condo Corp with respect to investigating and addressing the water leakage issues and the Special Assessments which, again, Simco would generally charge an hourly rate plus any expenses and applicable GST.
32. Rather than charging for these services to the Condo Corp, as it would in the normal course, Simco and the Condo Corp agreed that Simco would provide these services in exchange for the payment of 10% of any settlement or judgment awarded as part of this action.
33. I am informed by Ms. Penner and do verily believe that Simco is prepared to agree to a payment of 5% of the settlement amount (i.e. \$52,250) for all amounts that would otherwise have been billed to the Condo Corp, including hourly fees, expenses and applicable GST.

34. I am further informed by Ms. Penner that this payment would also include all hourly fees, expenses and GST associated with providing notice of the settlement approval hearing and Simco's administration of the settlement, if the Court approves such an appointment.

Proposed Distribution of the Settlement Funds

35. If approved, the representative plaintiffs seek an order that would approve the joint appointment of PLHM and Simco to act as administrators of the settlement.
36. The representative plaintiffs also seek an order that directs Simco to distribute the settlement funds in the following manner:
- (a) Reimbursement to the Condo Corp for disbursements, other charges and applicable GST charged by Peacock Linder Halt & Mack LLP (formerly Peacock Linder & Halt LLP) and paid by the Condo Corp in the amount of \$39,928.47;
 - (b) Approve payment of the sum of \$52,250 from the settlement to Simco for all fees, charges and any applicable GST;
 - (c) Approve the payment of legal fees, disbursements, other charges and applicable GST from the settlement to Peacock Linder Halt & Mack LLP, in the aggregate amount of \$109,725;
 - (d) Approve the payment of an honorarium to me in the sum of \$1,000; and
 - (e) Distribution of the remaining funds to the Class members or their assignees, on a *pro rata* basis, based on the amount of the levies paid by each Class member as a result of the Special Assessments.
37. The representative plaintiffs also seek an order to approve the following process by which the Class members will receive their *pro rata* share of the net settlement proceeds:
- (a) Class members who are current Prestwick Pointe unit owners, will not need to do anything to receive compensation and Simco will provide payment to these Class members by a date directed by the Court;
 - (b) Class members who are former Prestwick Pointe unit owners ("former unit owners") will need to complete a claim administration form in order to receive compensation in the form proposed and attached as **Schedule "C"** to the application for approval of the settlement;
 - (c) Former unit owners will have six months from the date of service of the filed Settlement Approval Order to submit a completed claim administration form; and
 - (d) Any amounts not claimed by the six-month deadline provided for above will be deposited into the Condo Corp's reserve fund and utilized in accordance with the Condo Corp's authority with respect to such funds.

Notice to the Class of the Settlement Approval Hearing

38. I am informed by Ms. Penner that in preparation for providing notice to the Class of the settlement approval hearing and anticipated distribution of the settlement funds that Simco has made efforts to confirm the contact information/address for the members of the Class who are former owners of units in Prestwick Pointe.
39. I am informed by information provided by Simco and do verily believe that Simco does not presently have any contact information for only one Class member.
40. Attached to the application for approval of the settlement, as **Schedule "A"**, is the Plaintiffs' proposed plan for providing notice to Class members once the settlement approval hearing has been scheduled.

Notice to the Class of Approval of the Settlement and Distribution of the Settlement Funds

41. Attached to the application for approval of the settlement, as **Schedule "B"**, is the Plaintiffs' proposed plan proceeding with the distribution of the settlement funds in the event that the settlement and distribution is approved by the Court.
42. I make this affidavit in support of an application to approve the Settlement and distribution as set out above.

SWORN BEFORE ME at Calgary, Alberta,)
this 7th day of October 2022.)
)
)
)
)

Commissioner for Oaths in and for Alberta

MYLÈNE D. TIESSSEN
DARRISTOL - SOLICITOR

Heather Hansen

HEATHER HANSEN

THIS IS EXHIBIT "A"
Referred to in the Affidavit of
HEATHER HANSEN
Sworn before me this 7th day
of October, 2022



A Commissioner for Oaths
in and for Alberta
Mylène D. Tiessen
Barrister and Solicitor

Action No. 101-15771

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

BETWEEN:

**CONDOMINIUM CORPORATION NO. 0610078 and
SYD DOMBOWSKY AS REPRESENTATIVE PLAINTIFFS**

Plaintiffs

- and -

**POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC.,
ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA and
NATIONAL HOME WARRANTY PROGRAMS LTD.**

Defendants

BROUGHT PURSUANT TO THE *CLASS PROCEEDINGS ACT*, R.S.A. 2003, c. C-16.5

STATEMENT OF CLAIM

1. The Representative Plaintiff Condominium Corporation No. 0610078 is an Alberta condominium corporation constituted under the *Condominium Property Act*, R.S.A. 2000, c. C-22 with a registered office in Calgary, Alberta.
2. The Representative Plaintiff Syd Domboswky is an individual resident in Calgary, Alberta.
3. The Representative Plaintiffs bring this action on their own behalf and on behalf of all persons who purchased a condominium unit in Condominium Plan No. 0610078 (hereinafter "0610078") from the Defendant Pointe of View Condominiums (Prestwick) Inc. (hereinafter "Pointe of View") and who are current owners of a condominium unit in 0610078 (hereinafter the "Original Owners"); and, all persons who purchased a condominium unit in 0610078 from other than Pointe of View and who are current owners of a condominium unit in 0610078 (hereinafter the "Subsequent Owners")(Collectively, the Original Owners and the Subsequent Owners are referred to as the "Class").

Condominium Plan No. 0610078 is a condominium project located at 10 Prestwick Bay S.E. in Calgary, Alberta and is known as Prestwick Pointe Condominiums (hereinafter the "Project"). The Project consists of four buildings of 376 total residential units. The entire Project covers an underground parkade (hereinafter the "Parkade").

5. Pointe of View is a corporation registered under the laws of Alberta with its registered office in Calgary, Alberta. Pointe of View is the developer of the Project, as defined in the *Condominium Property Act*, R.S.A. 2000, c. C-22. Pointe of View is also the builder of the Project and was the original vendor of the condominium units in the Project.

6. The Defendant National Home Warranty Programs Ltd. is a body corporate with its registered office in Edmonton, Alberta.

7. The Defendant Royal & Sun Alliance Insurance Company of Canada is a body corporate with an office in Calgary, Alberta and carries on business as an insurer in Alberta under the provisions of the *Insurance Act*, R.S.A. 2000, c. I-3.

8. At all times material National Home Warranty Programs Ltd. acted as the authorized agent of the Defendant Royal & Sun Alliance Insurance Company of Canada.

9. Beginning in or around 2004, Pointe of View began offering condominium units in the Project for sale to the public.

10. Pointe of View solicited purchase agreements in writing from the purchasers of the units in the Project, including the Original Owners. Each of the purchase agreements included the following express or implied terms:

- (a) The design and construction of the Project would comply with all applicable legislation, regulations and bylaws, including the *Alberta Building Code* and any development and building permits;
- (b) The design of the Project would adhere to sound industry and design practices and the Project's design would be practical and meet its intended purpose;
- (c) The Project would be constructed in a good and workmanlike manner in conformity with the drawings and specifications and in particular with the specifications described in the schedules to the purchase agreements and would be free of construction deficiencies or structural defects, including any defects due to faulty design, materials, equipment or workmanship;

- (d) The Plaintiffs would be informed of variations or modifications to the Project specifications;
- (e) Construction of the Project would be undertaken and supervised in accordance with industry standards and the intended use of the Project; and
- (f) Pointe of View would warn purchasers of any defects in the design or in the construction of the Project.

11. It was a further term of the purchase agreements that each condominium unit owner would have the benefit of insurance in the form of a warranty certificate issued by Royal & Sun Alliance Insurance Company of Canada represented by its agent, National Home Warranty Programs Ltd. The warranty certificates provided *inter alia*:

The Program shall indemnify the Purchaser, subject to the exclusions, limitations and conditions set out in this Limited Construction Warranty Certificate where a claim for direct loss is made within the Contractual Completion Warranty Period, Defect Warranty Period or Structural Defect Warranty Period.

12. The warranty certificate further stated that the program would "Repair Structural Defects, which occur during the four (4) year period following the expiration of the Builders Warranty."

13. Pointe of View owed a common law duty of care to the Class. Pointe of View owed a duty to design and construct the Project to ensure that it was safe and reasonably free from deficiencies and that it met the reasonable needs of the Class.

14. In about October 2009, significant problems with respect to the construction of the Parkade were discovered by the Plaintiffs including, *inter alia*, defects involving the concrete foundation walls to the exterior of the buildings, the Parkade's suspended concrete slab and the Parkade's drainage system.

15. Pointe of View breached the terms of the purchase agreements and breached its duty of care to the members of the Class in failing to comply with all applicable legislation, regulations and bylaws including the *Alberta Building Code* and in failing to design and construct the Project in a workmanlike manner and according to sound industry design and building practices including the following inadequacies:

- (a) Deficiencies in the Project's perimeter concrete foundations walls;
- (b) Deficiencies in the Parkade's suspended concrete slab;

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- (c) Deficiencies in the buildings drainage system;
- (d) Improper grading of the buildings' perimeters;
- (e) Failure to install drainage gravel and other appropriate drainage systems around the buildings' perimeters;
- (f) Failure to apply damp proofing or waterproofing to the concrete foundations walls;
- (g) Failure to properly install a waterproof membrane for protections of the suspended concrete slab in the Parkade;
- (h) Failure to provide an effective storm water drainage system;
- (i) Failure to waterproof the concrete patios that are located on the Parkade's concrete slab; and
- (j) Such further and other particulars as will be proven at the trial of this matter.

All of which are collectively referred to as the "Construction Deficiencies".

16. Further, the Plaintiffs state that the Construction Deficiencies amount to "Defect(s) or Structural Defect(s)" within the meaning of the warranty certificates.

17. The Plaintiffs further state that the Construction Deficiencies were latent defects which Pointe of View knew or ought to have known would pose a real and substantial danger to the Project's inhabitants, including the members of the Class.

18. In March of 2010, the Plaintiffs served notice of claims in respect of the Construction Deficiencies upon the Defendants. The Defendants have failed to respond to the Plaintiffs' claims.

19. The Plaintiffs state that the Defendants Royal & Sun Alliance Insurance Company of Canada and National Home Warranty Programs Ltd. have breached their obligations under the warranty certificates.

20. The Representative Plaintiffs state that the cost of repair and remediation of the Construction Deficiencies is approximately \$2.7 million and this amount is claimed as damages. Further particulars of the damages will be presented at the trial of this matter as the repair and remediation is ongoing at the time of this pleading.

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The Representative Plaintiffs propose that the trial of this action be held at the Calgary Courts Centre in Calgary, Alberta and estimate that the trial of this action will not take more than 25 days.

WHEREFORE THE PLAINTIFFS CLAIM AGAINST THE DEFENDANTS JOINTLY AND SEVERALLY AS FOLLOWS:

- a. Damages in the sum of \$2,700,000.00 or such amount as is proven at trial;
- b. Declarations as to the Class members' rights pursuant to the warranty certificates;
- c. Interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1, as amended;
- d. Costs; and
- e. Such further and other relief as this Honourable Court deems appropriate.

DATED at the City of Calgary, in the Province of Alberta, this 25th day of October, 2010, **AND DELIVERED BY** Peacock Linder & Halt LLP, Barristers and Solicitors, Suite 850, 607 – 8th Avenue S.W., Calgary, Alberta, T2P 0A7, solicitors for the within Plaintiffs whose address for service is in care of the said Solicitors.

ISSUED out of the Office of the Clerk of the Court of Queen's Bench of Alberta, Judicial District of Calgary, this 25th day of October, 2010.

Ad. Lepetich

Clerk of the Court

NOTICE

**TO: POINTE OF VIEW CONDOMINIUMS
(PRESTWICK) INC.**

**AND TO: ROYAL & SUN ALLIANCE
INSURANCE COMPANY OF CANADA**

**AND TO: NATIONAL HOME WARRANTY
PROGRAMS LTD.**

You have been sued. You are one of the Defendants. You have only 15 days to file and serve a Statement of Defence or Demand of Notice. You or your lawyer(s) must file your Statement of Defence(s) or Demand of Notice(s) in the office of the Clerk of the Court of Queen's Bench in Calgary, Alberta. You or your lawyer(s) must also leave a copy of your Statement of Defence(s) or Demand of Notice(s) at the address for service for the Plaintiffs named in this Statement of Claim.

WARNING: If you do not do both things within 15 days, you may automatically lose the lawsuit. The Plaintiffs may get a Court Judgment against you if you do not file, or do not give a copy to the Plaintiffs or do either thing late.

Action No. *1001-15771*

IN THE COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

**CONDOMINIUM CORPORATION NO. 0610078 and
SYD DOMBOWSKY AS REPRESENTATIVE
PLAINTIFFS**

Plaintiffs

- and -

**POINTE OF VIEW CONDOMINIUMS (PRESTWICK)
INC.,
ROYAL & SUN ALLIANCE INSURANCE COMPANY
OF CANADA and NATIONAL HOME WARRANTY
PROGRAMS LTD.**

Defendants

**BROUGHT PURSUANT TO THE CLASS
PROCEEDINGS ACT, R.S.A. 2003, c. C-16.5**

STATEMENT OF CLAIM

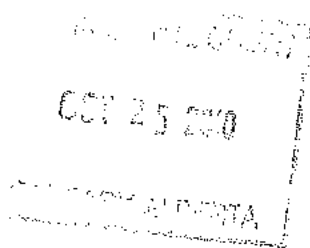
This Statement of Claim is issued by **Peacock Linder & Halt LLP**, solicitors for the Plaintiffs who reside at Calgary, Alberta and whose address for service is in care of said solicitors at Suite 850, 607 – 8th Avenue SW, Calgary, Alberta, T2P 0A7

and is addressed to the Defendants whose residence so far as is known to the Plaintiffs is Calgary, Alberta

Peacock Linder & Halt LLP
Suite 850, 607 – 8th Avenue SW
Calgary, Alberta, T2P 0A7

J. Patrick Peacock, Q.C.

Telephone (403) 296-2280
Fax (403) 296-229
File: 4829/JPP



THIS IS EXHIBIT "B"
Referred to in the Affidavit of
HEATHER HANSEN
Sworn before me this 7th day
of October, 2022



A Commissioner for Oaths
in and for Alberta
Mylène D. Tiessen
Barrister and Solicitor

COURT FILE NUMBER 1001-15771

COURT QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS CONDOMINIUM CORPORATION NO. 0610078 and SYD
DOMBOWSKY AS REPRESENTATIVE PLAINTIFFS

DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESWICK) INC.,
ROYAL & SUN ALLIANCE INSURANCE COMPANY OF
CANADA and NATIONAL HOME WARRANTY PROGRAMS
LTD.

THIRD PARTY
DEFENDANTS

I hereby certify this to be a true copy of
the original order
Dated this 27 day of November 2012
Amie Stalling
for Clerk of the Court

POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC.,
ROBERT SPAETGENS ARCHITECT LTD., DAVID T. SYMONS
ARCHITECT LTD., ROBERT SPAETGENS ARCHITECT LTD.
AND DAVID T. SYMONS ARCHITECT LTD. CARRYING ON
BUSINESS AS S2 ARCHITECTURE PARTNERSHIP, S2
ARCHITECTURE, MWC CONSULTING STRUCTURAL
ENGINEERING LTD., ALLEN WASNEA ENGINEERING LTD.,
IDEA GROUP INC., DURWEST CONSTRUCTION SYSTEMS
(ALBERTA) LTD., PRAIRIE PIPE SALES LTD., 789072
ALBERTA LTD., R.K.G. DEVELOPMENTS LTD., PRAIRIE PIPE
SALES LTD., 789072 ALBERTA LTD. AND R.K.G.
DEVELOPMENTS LTD. CARRYING ON BUSINESS AS
LENBETH WEEPING TILE CALGARY, LENBETH WEEPING
TILE CALGARY and INLAND CONCRETE LIMITED

**BROUGHT PURSUANT TO THE
CLASS PROCEEDINGS ACT, S.A. 2003, c. C-16.5**

DOCUMENT

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

CERTIFICATION ORDER

PEACOCK LINDER & HALT LLP

Suite 850, 400 – 3rd Avenue SW

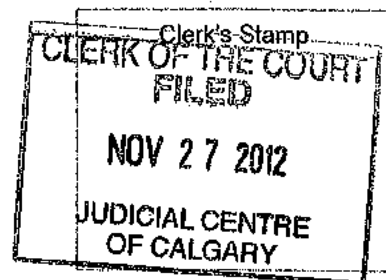
Calgary, Alberta, T2P 4H2

Attention: Mylène D. Tiessen / S.B. Gavin Matthews

Telephone: (403) 296-2280

Fax: (403) 296-2299

FILE: 4829



CERTIFICATION ORDER

DATE ON WHICH ORDER WAS PRONOUNCED: November 26, 2012

NAME OF JUDGE WHO MADE THIS ORDER: Honourable Madam Justice J. Strekaf

UPON THE APPLICATION of the Plaintiffs pursuant to the *Class Proceedings Act*, S.A. 2000, c. C-16.5, for an order certifying this proceeding as a class proceeding; **AND UPON READING THE AFFIDAVIT** of Syd Dombowsky, filed; **AND UPON HEARING** counsel for the Plaintiffs and counsel for the Defendants and various of the Third Party Defendants in attendance; **AND UPON THE COURT BEING SATISFIED THAT:**

- (a) The Statement of Claim filed herein discloses a cause of action;
- (b) There is an identifiable class of two or more persons;
- (c) The claims of the prospective class members raise a common issue;
- (d) A class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues; and
- (e) There is a person eligible to be appointed as a representative plaintiff;

IT IS HEREBY ORDERED THAT:

1. This proceeding is certified as a class proceeding.

Definition of the Class

2. The class for the purposes of this proceeding (the "Class") consists of all of the following:
 - (a) all persons who purchased a condominium unit in Condominium Plan No. 0610078 ("0610078") from Pointe of View Condominiums (Prestwick) Inc. ("Pointe of View") and who have paid levies as a result of the special assessments by Condominium Corporation No. 0610078 (the "Corporation") dated January 28, 2010 and May 17, 2010 (the "Special Assessments"); and
 - (b) all persons who purchased a condominium unit in 0610078 from other than Pointe of View and who have paid levies as a result of the Special Assessments.
3. The determination with respect to who are members of the Class will be made in accordance with the records of the Corporation, or by further direction of this Honourable Court.

Representative Plaintiffs

4. The Corporation and Syd Dombowsky are appointed as Representative Plaintiffs.

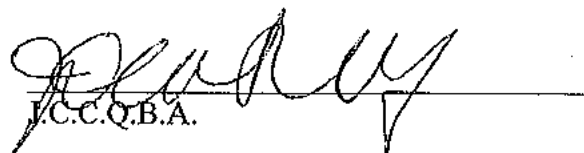
Common Issues and Nature of the Claims

5. The nature of the claims asserted on behalf of the Class, and the relief sought, are set out in the Statement of Claim filed October 25, 2010.
6. Those issues common to members of the Class are as follows:
- (a) The cause of the leakage and other defects and deficiencies discovered in the Project's parkade and drainage system, as more particularly identified in the Statement of Claim;
 - (b) Damages attributable to investigation, repair, and replacement of the defects and deficiencies (the "Remediation Damages"); and
 - (c) Liability for the Remediation Damages, including whether Royal & Sunalliance Insurance Company of Canada or National Home Warranty Programs Ltd. have breached their obligations pursuant to insurance policies issued to the unit owners in the Corporation and are therefore liable to pay for some or all of the cost of the Remediation Damages.

Notice to Members of the Class and Mechanism for Opting Out

7. Notice to members of the Class shall be given by the Representative Plaintiffs as follows:
- (a) Members of the Class who are currently residents of the Project will receive notice by a notice posted on a bulletin board located in the common area of the residential buildings;
 - (b) Members of the Class who are currently owners, whether currently residents or not, of the Project will receive notice by way of regular mail to the most recent address in the records of the Corporation;
 - (c) Members of the Class who are not currently owners and who provided forwarding addresses will receive notice by way of regular mail to the address provided to the Corporation; and
 - (d) Members of the Class who are not currently owners and where no forwarding address was provided will receive notice by posting in the Calgary Herald and Edmonton Journal on one Saturday.
8. Notice:
- (a) Pursuant to paragraphs 7(a) - (c) shall be given in substantially the form set out at Schedule "A" to this Order; and

- (b) Pursuant to paragraph 7(d) shall be given in substantially the form set out at Schedule "B" to this Order.
9. Notice shall be distributed, posted or mailed no later than December 3, 2012. Any member of the Class who wishes to opt out of the class proceeding must provide notice of that intention, in writing, to Class Counsel by no later than January 15, 2013.
10. Costs of giving notice by regular mail and by posting in the newspaper shall, at first instance, be borne by the Plaintiff.
11. The time for making this Application is hereby extended.
12. Costs of the within Application shall be costs in the cause.


J.C.C.Q.B.A.

SCHEDULE "A"

**NOTICE OF CERTIFICATION OF THE POINTE OF VIEW CONDOMINIUMS
(PRESTWICK) INC. PARKADE CLASS ACTION LAWSUIT**

Read this notice carefully as it may affect your rights.

OVERVIEW OF THE LAWSUIT

Starting in 2011 repairs were undertaken at Prestwick Pointe Condominiums located at 10 Prestwick Bay S.E., Calgary (the "Project") as a result of various problems discovered in the parkade and drainage system. The costs of these repairs have been paid for from contributions from unit owners as a result of special assessments in January and May 2010. An action has been commenced against the developer of the project, Pointe of View Condominiums (Prestwick) Inc. and the insurers for each of the units within the Project (Royal & Sunalliance Insurance Company of Canada and National Homes Warranty Programs Ltd.) to recover the cost of the repairs. Third party proceedings have been commenced by the Defendants against various trades and professionals involved in the original design and construction of the Project.

ARE YOU A CLASS MEMBER?

This notice is directed to:

- (a) anyone who purchased a condominium unit in Condominium Plan No. 0610078 ("0610078") from Pointe of View Condominiums (Prestwick) Inc. ("Pointe of View") and has paid levies as a result of the special assessments dated January 28, 2010 and May 17, 2010, by the Corporation to cover the cost of the repairs to the parkade and drainage system (the "Special Assessments"); and
- (b) anyone who purchased a condominium unit in 0610078 from other than Pointe of View and who have paid levies as a result of the Special Assessments.

The class action seeks, among other things, to recover damages for the cost of the investigation and repairs to the parkade and drainage system.

If you are not sure if you are a member of the class in this lawsuit, you should contact counsel for the class ("Class Counsel"). The names and contact information for Class Counsel appear at the end of this Notice.

THE CERTIFICATION ORDER

On November 26, 2012, the action was certified as a class proceeding by order of the Alberta Court of Queen's Bench. The order appointed Condominium Corporation No. 0610078 (the "Corporation") and Syd Dombowsky as the representatives for the Class.

THE ISSUES TO BE DECIDED

The court will resolve the issues common to everyone affected except for those who remove themselves (opt out) from the class.

The issues to be decided by the Court as part of the class proceeding are:

- (a) The cause of the leakage and other defects and deficiencies discovered in the Project's parkade and drainage system, as more particularly identified in the Statement of Claim.
- (b) Damages attributable to investigation, repair, and replacement of the defects and deficiencies (the "Remediation Damages"); and

- (c) Liability for the Remediation Damages, including whether Royal & Sunalliance Insurance Company of Canada or National Home Warranty Programs Ltd. have breached their obligations pursuant to insurance policies issued to the unit owners in the Corporation and are therefore liable to pay for some or all of the cost of the Remediation Damages.

PARTICIPATION IN THE CLASS ACTION

If you are a member of the class and want to participate in the class action, you are automatically included and you do not need to do anything at this time.

Each member of the class who does not opt out of the class action will be bound by the terms of any judgment or settlement whether favourable or not, and will not be able to sue on their own. If the class action is successful, you may be entitled to share in the amount of any award or settlement recovered.

YOU MUST OPT OUT IF YOU DO NOT WANT TO PARTICIPATE IN THE CLASS ACTION

Class members who do not want to participate in the class action must opt out. If you want to opt out of the class action, you must do so by writing to Class Counsel (names and contact information appear at the end of this notice). Your written notice to opt out must include the following:

- your full name, current address, and telephone number;
- a statement that you wish to opt out of the class action; and
- the unit number of the condominium unit(s) you own(ed) in the Project, the

date of purchase and the date of sale, if applicable.

If your written notice to opt out is not received by Class Counsel before January 15, 2012, at 5:00 p.m. MST, you will not be permitted to opt out of the class action.

CLASS COUNSEL CONTACT INFORMATION:

Peacock Linder & Halt LLP
850, 400 - 3rd Ave. S.W.
Calgary, AB T2P 4H2
Telephone: 403-296-2280
Fax: 403-296-2299

Lawyers: Mylène D. Tiessen and S.B. Gavin Matthews

Email: mtiessen@plhlaw.ca
gmatthews@plhlaw.ca

ADDITIONAL INFORMATION

This Notice was approved by order of the Court of Queen's Bench of Alberta. The court offices will be unable to answer any questions about the matters in this Notice. If you have any questions or require more information, please contact Class Counsel.

SCHEDULE "B"**NOTICE OF CERTIFICATION OF
THE POINTE OF VIEW
CONDOMINIUMS (PRESTWICK) INC.
PARKADE CLASS ACTION LAWSUIT**

On November 26, 2012, the Alberta Court of Queen's Bench certified a class action involving Pointe of View Condominiums located at 10 Prestwick Bay S.E., Calgary, with respect to various problems involving the parkade and drainage system. The action seeks to recover costs of these repairs which have been funded by contributions from owners through special assessments from January and May 2010. If you were an owner and contributed to the special assessments you may be a member of the class and this lawsuit may affect your rights. To determine if you are a member of the class and to obtain a complete copy of the certification notice, contact class counsel, Peacock Linder & Halt LLP at 403-296-2280.

THIS IS EXHIBIT "C"
Referred to in the Affidavit of
HEATHER HANSEN
Sworn before me this 7th day
of October, 2022



A Commissioner for Oaths
in and for Alberta
Mylène D. Tiessen
Barrister and Solicitor

CLASS MEMBERS WHO OPTED OUT OF CLASS ACTION

NAME OF CLASS MEMBER	UNIT#	DATE OF RECEIPT OF OPT OUT NOTICE
Tara D. Gerla	2303	January 10, 2013 (letter/email)
Lisa Marie White (nee Peters)	1410 (& parking stall #258)	January 14, 2013 (letter/email)

THIS IS EXHIBIT "D"
Referred to in the Affidavit of
HEATHER HANSEN
Sworn before me this 7th day
of October, 2022



A Commissioner for Oaths
in and for Alberta
Mylène D. Tiessen
Barrister and Solicitor

POINTE AT PRESTWICK
OWNERS IN CLASS ACTION

<u>Unit #</u>	<u>Owner</u>	<u>Factor</u>	<u>Special Assess Amt</u>	<u>Past Owner</u>
1101	Peter Magan	29	\$ 7,504.66	Past
1102	Allen Balfour & Deanna Balfour	29	\$ 7,504.72	Past
1103	Mel Love & Julie Love	26	\$ 6,728.31	Past
1104	Dianna Vandenaeker	26	\$ 6,728.31	Past
1105	Don Coleman & Raven Coleman	26	\$ 6,728.31	Current
1106	Harpreet Gill & Parveen Gill	26	\$ 6,728.31	Current
1107	Pierre Archambault - Moved	26	\$ 6,728.31	Past
1108	Holly Crone	26	\$ 6,728.31	Past
1110	Cheryl Rausch	26	\$ 6,728.31	Past
1112	B2B Bank - Attn: Jeff Grima	21	\$ 5,434.41	Past
1114	Ryan Kobzey	27	\$ 6,987.10	Past
1116	Gary Louie	26	\$ 6,728.31	Past
1117	Home-land Inc.	26	\$ 6,728.31	Past
1118	Larry Olsen & Iris Olsen	26	\$ 6,728.31	Past
1119	Dau Truong	26	\$ 6,728.31	Current
1120	Manik Gogna & Anchan Gogna	26	\$ 6,728.31	Past
1121	Chris Fielding & Leeann Fielding	26	\$ 6,728.31	Current
1122	First National Financial GP Corporation	26	\$ 5,427.40	Past
1122	Rohit Mohindru & Gagan Verma		\$ 1,300.91	Past
1123	Chris McCallum & Karen McCallum	26	\$ 6,728.31	Current

1124	CIBC Mortgages Inc., trading as First Line Mortgages	26	\$ 6,728.31	Past
1125	Dave Halliday & Peggy Halliday	29	\$ 7,504.66	Past
1126	Steve Quelch	29	\$ 7,504.66	Current
1201	Szebasztian Becskei & Faye Yap	29	\$ 7,504.66	Current
1202	Christopher Zadworny & Ryan Wilson	29	\$ 7,504.66	Current
1203	Greg Callsen & Gayle The Estate Meredith Eagleson	26	\$ 6,728.31	Past
1204	Janice Carlene Neeve	28	\$ 7,245.87	Past
1205	Dave Gaudet & Anne - Marie Turski	26	\$ 6,728.31	Past
1206	Victor Parchamento & Josephine Parchamento	26	\$ 6,728.31	Current
1207	Victor Gregorio	26	\$ 6,728.31	Past
1208	Jasonjeet Minhas	26	\$ 6,728.31	Current
1209	Jarrad Wiens	18	\$ 4,658.06	Current
1210	Lucas Barr	30	\$ 7,763.43	Past
1211	Jodi Robertson (Steele)	16	\$ 4,140.50	Past
1212	Jeremy Huybregts & Hank Huybregts	21	\$ 5,434.41	Current
1214	Dennis Johnson & Corinna Johnson	27	\$ 6,987.10	Current
1216	Ermina Bibuljica	26	\$ 6,728.31	Past
1217	Linda Sherwood	26	\$ 6,728.31	Past
1218	Allan Young & Karen Young	26	\$ 6,728.31	Past
1219	Jeffrey Appleby, Terrence Appleby & Christie Appleby	31	\$ 8,022.22	Current
1220	Carter McPhail & Julie McPhail	26	\$ 6,728.31	Past
1221	Alain Siriphokham	26	\$ 6,728.31	Past
1222	Keun Woo Bak	26	\$ 6,728.31	Current

1223	Lyndon Leard	28	\$ 7,245.87	Past
1224	Jana Ladick	26	\$ 6,728.31	Past
1225	Gabriel Bibeau (legally last name changed to Maclean) & Donna Bibeau	29	\$ 7,504.66	Past
1226	David Schlosser & Audrey Schlosser	29	\$ 7,504.66	Current
1301	Martin Kluner	30	\$ 7,763.43	Past
1302	John Bach	29	\$ 7,504.66	Current
1303	Debbie Jones	26	\$ 6,728.31	Past
1304	Bernadette Rollheiser	28	\$ 8,289.60	Past
1305	Carrie Skinner	26	\$ 6,728.31	Past
1306	Derek Schneider	26	\$ 6,728.31	Past
1307	Morgan Martel & Kylie Martel	26	\$ 6,728.31	Current
1308	Samraat Bhatti	26	\$ 6,728.31	Past
1309	April Starcheski	18	\$ 4,658.06	Current
1310	Bradley Stubbs	30	\$ 7,763.43	Past
1311	Kimberly Burroughs	16	\$ 4,140.50	Current
1312	Megan Scheck	21	\$ 5,434.41	Past
1314	Renald Desrochers	27	\$ 6,987.10	Past
1316	Iqtidar Khan	26	\$ 6,728.31	Past
1317	Dumitru Mitroi & Rozelina Mitroi	26	\$ 6,728.31	Current
1318	Talla Derocher & Iris Loewen	26	\$ 6,728.31	Current
1319	Azra Shivji & Salim Shivji	26	\$ 6,728.31	Current
1320	Christopher Graham	26	\$ 6,728.31	Current
1321	Nicole Powlowski & Justin Powlowski	26	\$ 6,728.31	Current

1322	Carson Changthvong	26	\$ 6,728.31	Past
1323	Ryan Saunders	28	\$ 7,245.87	Past
1324	Alan Toop & Raj Sanghera	26	\$ 6,728.31	Past
1325	Shantel Romanson & Shelly Schultz	29	\$ 7,504.66	Past
1326	Kelly Stelter	29	\$ 7,504.66	Past
1401	Ryan House	29	\$ 7,504.66	Past
1402	Chase Sabot & Jamie Sabot	29	\$ 7,504.66	Current
1403	Paul Magnucki & Eva Magnucki	26	\$ 6,728.31	Current
1404	Gaetano Contrino	28	\$ 7,245.87	Past
1405	Robert Horne & Kathy Horne	31	\$ 8,022.22	Current
1406	Azra Shivji & Salim Shivji	26	\$ 6,728.31	Current
1407	Shahzia Mohmad, Osman Omarzay & Orfan Omarzay	26	\$ 6,728.31	Current
1408	0755375 B.C. LTD	26	\$ 6,728.31	Past
1409	Chantelle Wilson	18	\$ 4,658.06	Past
1411	Daniel Harder & Tammy Stewart	16	\$ 4,140.50	Past
1412	Kirk Williamson	21	\$ 5,434.41	Past
1414	Ken South	27	\$ 6,987.10	Current
1416	Stewart Thackrey & Kirsty Thackrey	26	\$ 6,728.31	Past
1417	Kirby Hui & Nancy Hui	26	\$ 6,728.31	Past
1418	Altaf Dewji & Anjum Dewji	26	\$ 6,728.31	Current
1419	Salim Shivji & Azra Shivji	26	\$ 6,728.31	Current
1420	Specon Construction Inc.	26	\$ 6,728.61	Current
1421	Dustin Cremers	26	\$ 6,728.31	Current

1422	Merdina Hodzic	26	\$ 6,728.31	Past
1423	Carlos Santos & Darryl Ortt	28	\$ 7,245.87	Current
1424	Maureen Harder	26	\$ 6,728.31	Current
1425	Christopher Penny & Gregory Penny	29	\$ 7,504.66	Current
1426	Red Eagle Resources Ltd.	35	\$ 9,057.35	Past
2101	Christopher Lynch	29	\$ 7,504.66	Past
2102	Kevin Adelantar	29	\$ 7,504.66	Current
2103	Dauna MacDonald	27	\$ 6,987.10	Past
2104	Peter Budgell & Melissa Budgell	26	\$ 6,728.31	Past
2105	Brent Wallace	26	\$ 6,728.31	Past
2106	Jason Sikora	26	\$ 6,728.31	Current
2107	John Bates	26	\$ 6,728.31	Past
2108	Randall Hnatyshyn	27	\$ 6,987.10	Current
2110	Morgan James Stewart	26	\$ 6,728.31	Past
2112	Blair Langenecker	21	\$ 5,431.41	Past
2114	Darren McKeage & Meagen McKeage	27	\$ 2,701.90	Past
2114	Daniel Stade		\$ 4,285.20	Current
2116	Nick Van Den Akker & Jamie Van Den Akker	26	\$ 6,728.31	Past
2117	Allison Rombough	27	\$ 6,987.10	Past
2118	Gerald & Maria Hurley	26	\$ 6,728.31	Past
2119	David Medhurst & Milka Karanovic	26	\$ 6,728.31	Past
2120	Shezma Kassam	26	\$ 6,728.31	Current
2121	Adrian Tanase & Alina Tanase	26	\$ 6,728.31	Current

2122	Edgar Vargas	34	\$ 8,798.56	Current
2123	Olufemi Tolani & Yetunde Tolani	26	\$ 6,728.31	Current
2124	Collyne Savage	26	\$ 6,728.31	Past
2125	Terence Westley	33	\$ 8,539.79	Past
2126	Udaya Kumar Krishnan & Usha Ramanujam	29	\$ 7,504.66	Past
2201	Dauna-Lee Barkman & Kristina Loewen	29	\$ 7,504.66	Past
2202	1218678 Alberta Ltd.	30	\$ 7,763.43	Current
2203	Glen Miller & Alina Miller	26	\$ 6,728.31	Past
2204	Frank Berg & Joyce Berg	29	\$ 7,504.66	Past
2205	Rubeena Virji	26	\$ 6,728.31	Current
2206	1218678 Alberta Ltd.	27	\$ 6,987.10	Past
2207	Dean Schmidt & Karen Schmidt	26	\$ 6,728.31	Current
2208	Lindsay Diane Kuefler		\$ 2,601.82	Past
2208	Frances Hanson	26	\$ 4,126.49	Past
2209	Melnick Properties Inc.	19	\$ 4,916.85	Current
2210	Diana Baker	31	\$ 8,022.22	Past
2211	Si Yun Li	17	\$ 4,399.29	Past
2212	Filip Prucnal, Leszek Prucnal & Zofia Prucnal	21	\$ 5,434.41	Past
2214	Alison Albert		\$ 3,493.55	Past
2214	Matthew Brown	27	\$ 3,493.55	Past
2216	Shemin Fernandes & Eustace Fernandes	26	\$ 6,728.31	Past
2217	Stefan & Klaudia Kelecsenyi	26	\$ 6,728.31	Current
2218	Hemalkumar & Namita Bhatt	26	\$ 6,728.31	Past

2219	Glen Befus	26	\$ 6,728.31	Past
2220	David Otway & Shirley Otway	26	\$ 6,728.31	Current
2221	Man Management Ltd.	26	\$ 6,728.31	Current
2222	Jennifer Fox	26	\$ 6,728.31	Current
2223	Carrie Rossum	29	\$ 7,504.66	Current
2224	Scott Bizuk & Peter Bizuk	26	\$ 6,728.31	Past
2225	Maggie Seguin	29	\$ 7,504.66	Current
2226	David England	29	\$ 7,504.66	Current
2301	Ivan Hagel & Kathleen Hagel	33	\$ 8,539.79	Current
2302	Maria Togado & Milan Hajek	29	\$ 7,504.66	Past
2304	Kristina Flood & Michael Flood	29	\$ 7,504.66	Past
2305	979116 Alberta inc.	26	\$ 6,728.31	Past
2306	Hui Qing Xin & Yuan Quiang Hu	26	\$ 6,728.31	Past
2307	979116 Alberta Inc.	26	\$ 6,728.31	Past
2308	Magdolna Papp	31	\$ 8,022.22	Current
2309	Joan Parkinson		\$ 1,901.34	Past
2309	Amy Davidson	19	\$ 3,015.51	Current
2310	Jim Fitz-Morris & Susan Fitz-Morris	32	\$ 8,281.00	Past
2311	Melnick Properties Inc.	17	\$ 4,399.29	Current
2312	John Beaupre	21	\$ 5,434.41	Past
2314	Scott Maclean & Gabrielle Maclean	27	\$ 6,987.10	Past
2316	Joanne McPherson & Madeleine McPherson	29	\$ 7,504.66	Past
2317	Shantel Hunter	26	\$ 6,728.31	Past

2318	Sanjay Purohit & Sejal Purohit	26	\$ 6,728.31	Current
2319	Dennis Truber	26	\$ 6,728.31	Past
2320	Teri Kenyon	26	\$ 6,728.31	Past
2321	David Seward & Catherine Seward	26	\$ 6,728.31	Past
2322	Frank Mendes	26	\$ 6,728.31	Past
2323	Dennis Low & Tina Low	29	\$ 7,504.66	Current
2324	Tom Beckedorf	26	\$ 6,728.31	Past
2325	Muluken Tamirat & Saba Tesfaye	29	\$ 7,504.66	Current
2326	Laurie Rowles	29	\$ 7,504.66	Current
2401	Lenais Velasquez	29	\$ 7,504.66	Current
2402	Kulwinder Biro & Ede Biro	29	\$ 7,504.66	Past
2403	Janice Boyenko	26	\$ 6,728.31	Current
2404	David Wood	29	\$ 7,504.66	Past
2405	Ronald Browning & Michelle Lee	26	\$ 6,728.31	Past
2406	Christopher Reitlo	26	\$ 6,728.31	Current
2407	Chelaine Horne	26	\$ 6,728.31	Past
2408	Hyun Woo & Halley Kim	26	\$ 6,728.31	Past
2409	Tanya Jopling	20	\$ 5,175.62	Past
2410	Reion Inc.	31	\$ 8,022.22	Current
2411	Melnick Properties Inc.	17	\$ 4,399.29	Current
2412	Kyle Peters	21	\$ 5,434.41	Current
2414	Karolyn Fleming & Maureen Fleming	27	\$ 6,987.10	Past
2416	Lindsay Miller		\$ 2,601.82	Past

2416	Sohan Gahir & Harsharan Gahir & Ramandeep Bhachoo	26	\$ 4,126.49	Current
2417	Don Coleman	26	\$ 6,728.31	Current
2418	Ralph Magus, Cindy Magus & Marisa Magus	26	\$ 6,728.31	Past
2419	Sabrina MacCarl	26	\$ 6,728.31	Current
2420	Lawrence Zabroski & Amelia Zabroski	26	\$ 6,728.31	Past
2421	Dimitru Mitroi & Rozelina Mitroi	26	\$ 6,728.31	Current
2422	Richard Czarnota	26	\$ 6,728.31	Current
2423	John McCordic & Thelma McCordic	29	\$ 7,504.66	Current
2424	Eduardo O Aldana & Juana Aldana		\$ 4,485.54	Current
2424	Eduardo Aldana	26	\$ 2,242.77	Current
2425	Redeagle Resources Ltd.	30	\$ 7,763.43	Past
2426	Robert Watt	29	\$ 7,504.66	Past
3101	Cornelius Muller & Louise Walton	29	\$ 7,504.66	Past
3102	Jennifer Holm	34	\$ 8,798.56	Past
3103	Rose Perot, Husto & Yvonne Castro, & P & B Chow	26	\$ 6,728.31	Past
3104	William Ringland	29	\$ 7,504.66	Past
3105	Christine Hudak	26	\$ 3,364.15	Current
3105	Heather Hudak		\$ 3,364.15	Current
3106	Morey & Holly Leeming	26	\$ 6,728.31	Past
3107	Kristie Kurschenska	26	\$ 6,728.31	Current
3108	Brad Wey & Shayla Dupont	26	\$ 6,728.31	Past
3110	Christopher Ross	26	\$ 6,728.31	Past
3112	Edmond Wong	22	\$ 5,693.18	Current

3114	Pia Schreiver	27	\$ 6,987.10	Past
3116	Daniel Novakowski	26	\$ 6,728.31	Past
3117	Christina Cordova	26	\$ 6,728.31	Past
3118	Sunni Scott	27	\$ 6,987.10	Past
3119	Gregory Alfred & Ashlee Wall	30	\$ 7,763.43	Past
3120	Christine Paterson	26	\$ 6,728.31	Current
3121	Felicia Cornwall & Roslyn Cornwall	26	\$ 6,728.31	Past
3122	Alla Rogochevski, Jessica Baddeley, Leonid Rogochevski	26	\$ 4,485.54	Current
3122	Alla Rogochevski		\$ 2,242.77	Current
3123	Lisa Keith & Kayla Aube	26	\$ 6,728.31	Past
3124	Angus Development Ltd.c/o Bradley Moodie	26	\$ 6,728.31	Past
3125	First Calgary Savings & Credit Union	29	\$ 7,504.66	Past
3126	Norman Cooper & Joanna Cooper	30	\$ 7,763.43	Past
3201	Kapil Pathak	29	\$ 7,504.66	Past
3202	Shawn Brideau & Lesley Brideau	33	\$ 8,539.79	Current
3203	David Yackulic & Lorraine Yackulic	27	\$ 6,987.10	Current
3204	Joe Janczak	28	\$ 7,245.87	Past
3205	Mark Burton & Terri Eng	27	\$ 6,987.10	Past
3206	Ursula Melski & Kenneth Matheson	26	\$ 6,728.31	Past
3207	Laurie Harding	26	\$ 6,728.31	Current
3208	Kathleen Brooker	26	\$ 6,728.31	Past
3209	Gregory Hawkes	19	\$ 4,916.85	Current
3210	Richard Lawlor	31	\$ 8,022.22	Current

3211	Sharman Shaw, Stuart Shaw & Lei Shaw	17	\$ 4,399.29	Past
3212	Grant Lemon & Keith Lemon	21	\$ 5,434.41	Past
3214	Jonathon Cozza & Kristina Cozza	27	\$ 6,987.10	Current
3216	Donald Hink	26	\$ 6,728.31	Past
3217	Elfride Thompson	26	\$ 6,728.31	Past
3218	Daniel McKean & Sarah Gendron	26	\$ 6,728.31	Current
3219	Romer Gaspar	26	\$ 6,728.31	Past
3220	Jason Bell	26	\$ 6,728.31	Current
3221	Andrew Cantwell	26	\$ 6,728.31	Past
3222	John Anderson	26	\$ 6,728.31	Past
3223	Bhupinder Bath, Kuljinder Bath & Nachhattar Bath	28	\$ 7,245.87	Past
3224	Andrew Katzsach & Susan Bach	26	\$ 6,728.31	Past
3225	Chad Hurlbut		\$ 2,902.04	Past
3225	David Francis	29	\$ 4,602.62	Past
3226	Amie Johnston & Paul Mullen	29	\$ 7,504.66	Past
3301	Bradley Willson & Lindsay Willson	33	\$ 8,539.79	Past
3302	David Wynn & Beatrice Ann Wynn	29	\$ 7,504.66	Past
3303	Kent Alfaro	26	\$ 6,728.31	Current
3304	Kenneth Fitchett & Lona Fitchett	28	\$ 7,245.87	Past
3305	Brandin Schnurer	26	\$ 6,728.31	Past
3306	Frank Mead & Corrine Mead	26	\$ 2,242.77	Past
3306	Danielle Mead-Matthews	26	\$ 4,485.54	Past
3307	Carrie Hunt	26	\$ 6,728.31	Past

3308	Peter Seibert & Monique Seibert	30	\$ 7,763.43	Current
3309	Gail Kidd	19	\$ 4,916.85	Past
3310	John Quirk & Allison Quirk	32	\$ 8,281.00	Past
3311	Michelle Chisholm	17	\$ 4,399.29	Past
3312	Janet McLaren	22	\$ 5,693.18	Past
3314	Edina Wilkinson	27	\$ 6,987.10	Current
3316	Raymond Porco & Julie Porco	26	\$ 6,728.31	Past
3317	Tracy Pierini	26	\$ 6,728.31	Past
3318	Dumitru Mitroi & Rozelina Mitroi	26	\$ 6,728.31	Current
3319	Lynne Stace-Smith	26	\$ 6,728.31	Past
3320	Lisa Hannay	26	\$ 6,728.31	Current
3321	Kelly Bryson	26	\$ 6,728.31	Past
3322	Dumitru Mitroi & Rozelina Mitroi	26	\$ 6,728.31	Current
3323	Mervin Baria	32	\$ 8,281.00	Current
3324	Ewald Schanklies	26	\$ 6,728.31	Past
3325	Sharon Capewell	29	\$ 7,504.66	Current
3326	Dara Mahabir & Lee Debert	29	\$ 7,504.66	Past
3401	Michelle Korodimas	29	\$ 7,504.66	Past
3402	Dwayne Sweany & Dawn Sweany			Past
3402	Dolores Irene Sweany	34	\$ 8,798.56	Past
3403	Joanna Kennedy	27	\$ 6,987.10	Past
3404	William Toews & Mary Toews	28	\$ 7,245.87	Current
3405	Laurie Floyd	30	\$ 7,763.43	Current

3406	Jonathan Yee Lap Lam	26	\$ 6,728.31	Current
3407	Salim Shivji	26	\$ 6,728.31	Current
3408	Kevin Cullen	32	\$ 7,237.27	Current
3409	Phyllis Marie Coulter	19	\$ 4,916.85	Current
3410	James Hannam	31	\$ 8,022.22	Past
3411	Michael Shurson	17	\$ 4,399.29	Current
3412	Vadim Kheyfets	21	\$ 5,434.41	Past
3414	Darcy Phelan	27	\$ 6,987.10	Past
3416	Ian Meadley	26	\$ 6,728.31	Past
3417	Gary Barnes	26	\$ 6,728.31	Past
3418	Dean Hickman & Eugenie Dodds	31	\$ 8,022.22	Past
3419	Glenda Mclsaac, Kent Mclsaac & Dana Mclsaac	26	\$ 6,728.31	Past
3420	Dan Lugaout c/o 1168077 Alberta Ltd.	26	\$ 6,728.31	Past
3421	Stephen Jakubec	26	\$ 6,728.31	Past
3422	Alnasir Kassam & Shenaz Kassam	26	\$ 6,728.31	Past
3423	Thomas Borkristl & Margaret Borkristl	28	\$ 7,245.87	Past
3424	Richard Varty & Sharon Varty		\$ 2,242.77	Current
3424	Ryan Varty	26	\$ 4,485.54	Current
3425	Paul Granter	29	\$ 7,504.66	Past
3426	Tanner Ames & Jenna Ames	29	\$ 7,504.66	Past
4101	Matthew Friess	29	\$ 7,504.66	Current
4102	Dolores Dombowsky	32	\$ 8,281.00	Past

4103	Kamalvir Khara	26	\$ 6,728.31	Past
4104	Jason Roycroft, Mary Bolton, Gary Bolton & Amanda Bolton	26	\$ 6,728.31	Current
4105	Aclabson Acocoro & Ruth Acocoro	26	\$ 6,728.31	Past
4106	Anthony Wallace & Larry Schlamp	26	\$ 6,728.31	Current
4107	Helen Cain	26	\$ 6,728.31	Past
4108	Mitchel Cavanagh & Katrina Cavanagh	26	\$ 6,728.31	Past
4110	Kitty Welbergen	26	\$ 6,728.31	Current
4112	Kari Tansowny	24	\$ 6,210.75	Current
4114	Patrick McPhedran & Brittany McPhedran	27	\$ 6,987.10	Current
4116	Ameerali Somji	26	\$ 6,728.31	Past
4117	Bala Pavananthan	26	\$ 6,728.31	Current
4118	Ryan Burr	26	\$ 6,728.31	Current
4119	Gerald Scott & Leanne Scott	26	\$ 6,728.31	Current
4120	Jesse Landmark	26	\$ 6,728.31	Past
4121	Chuck Lamirande & Karen Lamirande	26	\$ 6,728.31	Current
4122	Jennifer Holmes & Andrew Hengeveld	26	\$ 6,728.31	Past
4123	Kenneth Baker	26	\$ 6,728.31	Current
4124	Darren Martin & Melisa Bennett	27	\$ 6,987.10	Past
4125	Sam Grapentine, Edwin Grapentine & Arlene Grapentine	33	\$ 8,539.79	Current
4126	Helene Howells	30	\$ 7,763.43	Past
4201	Amanda Mossing	29	\$ 7,504.66	Past
4202	Sandra Leslie	29	\$ 7,504.66	Past
4203	Tania Larko	26	\$ 6,728.31	Past

4204	Crystal Thomas	28	\$ 7,245.87	Past
4205	Ryan Thorgrimson	26	\$ 6,728.31	Past
4206	Jonathan Wood	26	\$ 6,728.31	Current
4207	Gaurav Uppal	30	\$ 7,763.43	Past
4208	Lysha Rover	26	\$ 6,728.31	Past
4209	Wayne McCargar & Cara McCargar	19	\$ 4,916.85	Past
4210	Estate of Joseph Viles & Phyllis Penn	31	\$ 8,022.22	Current
4211	Jason Jopling & Eunice Jopling	17	\$ 4,399.29	Past
4212	James Craig	21	\$ 5,434.41	Current
4214	Gary Avery	27	\$ 6,987.10	Past
4216	Lisa Wolansky, Chris Wolansky & Diane Wolansky	26	\$ 6,728.31	Past
4217	Valerie Turner	26	\$ 6,728.31	Current
4218	Blake Beeler	31	\$ 8,022.22	Current
4219	Cindy Burns	26	\$ 6,728.31	Past
4220	Rhiannon Williams	26	\$ 6,728.31	Current
4221	Lorraine Nicole Davis	26	\$ 6,728.31	Past
4222	Jason Parkin & Peter Parkin	26	\$ 6,728.31	Past
4223	Jaime Bowers, Joan Bowers & James Bowers	28	\$ 7,245.87	Current
4224	Kevin Smith & Doreen Bell	26	\$ 6,728.31	Current
4225	John Wood	29	\$ 7,504.66	Past
4226	Susan Boetjer	29	\$ 7,504.66	Past
4301	Sid Johnston & Judy Johnston	29	\$ 7,504.66	Current
4302	Michael Ellison & Diana Ellison	29	\$ 7,504.66	Current

4303	George Brizard	26	\$ 6,728.31	Current
4304	James Smook	28	\$ 7,245.87	Current
4305	Michael Wilson	26	\$ 6,728.31	Past
4306	Robert Seckel	26	\$ 6,728.31	Past
4307	Anjum Dewji & Altaf Dewji	26	\$ 6,728.31	Current
4308	Lisa Crow, Nancy Crow & Bruce Crow	26	\$ 6,728.31	Current
4309	Albert Kopp	19	\$ 4,916.85	Current
4310	Verna Lafferty	31	\$ 4,011.11	Current
4310	Justin Lafferty		\$ 4,011.11	Current
4311	Louise Mackintosh	17	\$ 4,399.29	Past
4312	Raymond Schwab & Barbara Schwab	21	5434.41	Past
4314	David Huffman	28	\$ 7,245.87	Past
4316	Geoffrey Gay, Michael Gay, Judith Gay & Courtney Hodge	26	\$ 6,728.31	Past
4317	Jennifer Keim	26	\$ 6,728.31	Past
4318	Blanche Sefcik & Debbie Sefcik	26	\$ 6,728.31	Current
4319	Amanda Ness	26	\$ 6,728.31	Past
4320	Kyle Marr	26	\$ 6,728.31	Past
4321	Deborah Laberge	26	\$ 6,728.31	Past
4322	Frenulla Manji	26	\$ 6,728.31	Past
4323	Heather Hansen & Susanne Mazur	30	\$ 7,763.43	Current
4324	Patrick Seymour & Jessie Foley	26	\$ 6,728.31	Current
4325	Shauna Ryz	29	\$ 7,504.66	Current
4326	Glenn Graham	34	\$ 8,798.56	Current

4401	Merrill Harrison	29	\$ 7,504.66	Past
4402	Scott Pittman & Devena Pittman	29	\$ 7,504.66	Past
4403	Jonathan Weisgerber	31	\$ 8,022.22	Current
4404	Shelley Brandy	32	\$ 8,281.00	Past
4405	Brennan Brow & Marie Sutherby	26	\$ 6,728.31	Current
4406	Chistopher Sands & Christina Coker	26	\$ 6,728.31	Past
4407	Bela Patel	27	\$ 6,987.10	Current
4408	Jan Vogel & Laurence Vogel	26	\$ 6,728.31	Current
4409	Wesley Reyda	20	\$ 5,175.62	Past
4410	Shiraz Harji, Zenab Harji & Jennie Harji	31	\$ 8,022.22	Current
4411	Shane Stanford	17	\$ 4,399.29	Past
4412	Curtis Smith & Marian Smith	22	\$ 5,693.18	Past
4414	Rodney Nelson	28	\$ 7,245.87	Past
4416	Rekko Oil & Gas Consultant/ Krys Olchowec c/o Boswell Kruger		\$ 4,126.49	Current
4416	Alnasir Kassam & Shenaz Kassam	26	\$ 2,601.82	Past
4417	Troy Hill	26	\$ 6,728.31	Current
4418	Katherine Cutts	26	\$ 6,728.31	Current
4419	Wasko Angelovski & Natasha Angelovski	26	\$ 6,728.31	Past
4420	Tracy Geddes	26	\$ 6,728.31	Current
4421	Robert Weinheimer	26	\$ 6,728.31	Past
4422	Redeagle Resources	30	\$ 7,763.43	Past
4423	Wayne Holloway	29	\$ 7,504.66	Past
4424	Sonya Johnson	26	\$ 6,728.31	Current

4425	Becki Quarrier	29	\$ 7,504.66	Current
4426	David Rhindress & Shirley Rhindress	30	\$ 7,763.43	Past

THIS IS EXHIBIT "E"
Referred to in the Affidavit of
HEATHER HANSEN
Sworn before me this 7th day
of October, 2022



A Commissioner for Oaths
in and for Alberta
Mylène D. Tiessen
Barrister and Solicitor

Form 18
Rule 3.45

COURT FILE NO. 1001 15771

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY



PLAINTIFFS CONDOMINIUM CORPORATION 0610078 and SYD DOMBOWSKY
AS REPRESENTATIVE PLAINTIFFS

DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROYAL &
SUN ALLIANCE INSURANCE COMPANY OF CANADA and
NATIONAL HOME WARRANTY PROGRAMS LTD.

DOCUMENT THIRD PARTY CLAIM

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

BRIAN E. WALLACE
Barrister & Solicitor
Phone: (780) 428-6036
Fax: (780) 428-9683
File No.: 174558

DUNCAN & CRAIG LLP
LAWYERS & MEDIATORS
2800 Scotia Place
10060 Jasper Avenue
Edmonton, Alberta, Canada, T5J 3V6

**NOTICE FROM THE DEFENDANTS, ROYAL & SUN ALLIANCE INSURANCE COMPANY OF
CANADA and NATIONAL HOME WARRANTY PROGRAMS LTD. and TO THIRD PARTY
DEFENDANT(S):**

POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC.
ROBERT SPAETGENS ARCHITECT LTD.
DAVID T. SYMONS ARCHITECT LTD.
ROBERT SPAETGENS ARCHITECT LTD. AND DAVID T. SYMONS ARCHITECT LTD.
carrying on business as S2 ARCHITECTURE PARTNERSHIP
S2 ARCHITECTURE
MWC CONSULTING STRUCTURAL ENGINEERS INC.
ALLEN WASNEA ENGINEERING LTD.
IDEA GROUP INC.
OURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD.
PRAIRIE PIPE SALES LTD.
789072 ALBERTA LTD.
R.K.G. DEVELOPMENTS LTD.
PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD. AND R.K.G. DEVELOPMENTS LTD.
carrying on business as LENBETH WEEPING TILE CALGARY
LENBETH WEEPING TILE CALGARY
INLAND CONCRETE LIMITED

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This Third Party Claim is made against you. You are a Third Party 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 within action has been brought against the Defendants, ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA and NATIONAL HOME WARRANTY PROGRAMS LTD. (hereinafter collectively referred to as the "Program"). The Plaintiff claims against the Program judgment and other such relief as appears in the Statement of Claim.

2. The Program denies any liability to the Plaintiffs, and disputes the claim of the Plaintiff on the grounds appearing in its Statement of Defence, a copy of which is attached hereto.

3. If the Program is in any way liable to the Plaintiffs, which is not admitted, it claims to be entitled to full contribution or indemnity from the Third Party Defendants, in whole or in part, on the grounds set out herein.

Parties

4. The Third Party Defendant, POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC. ("Pointe of View"), is a body corporate duly registered according to the laws of the Province of Alberta and carries on business as a developer of condominium projects.

5. The Third Party Defendants ROBERT SPAETGENS ARCHITECT LTD. and DAVID T. SYMONS ARCHITECT LTD. ("Spaetgens and Symons") are architects and carry on business of architecture, consulting, designing and other related services in and around Calgary, Alberta.

6. The Third Party Defendants ROBERT SPAETGENS ARCHITECT LTD. and DAVID T. SYMONS ARCHITECT LTD. are a partnership registered as S2 Architecture, carrying on the business of architecture, consulting, designing and other related services in and around Calgary, Alberta.

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7. The Third Party Defendant S2 ARCHITECTURE ("S2") is a partnership carrying on the business of architecture, consulting, designing and other related services in and around Calgary, Alberta.

8. The Third Party Defendant, MWC CONSULTING STRUCTURAL ENGINEERS INC. ("MWC") is a body corporate duly registered according to the laws of the Province of Alberta, carrying on business as a consulting and structural engineering company in and around Calgary, Alberta.

9. The Third Party Defendant, ALLEN WASNEA ENGINEERING LTD. ("Wasnea") is a body corporate duly registered according to the laws of the Province of Alberta, carrying on business as a consulting and engineering company in and around Calgary, Alberta.

10. The Third Party Defendant, IDEA GROUP INC. ("Idea") is a body corporate duly registered according to the laws of the Province of Alberta, carrying on business providing land planning, engineering design and project management services in and around Calgary, Alberta.

11. The Third Party Defendant, DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD. ("Durwest") is a body corporate duly registered according to the laws of the Province of Alberta, carrying on business providing construction and project management services in and around Calgary, Alberta.

12. The Third Party Defendants PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD. and R.K.G. DEVELOPMENTS LTD. (the "Lenbeth Partners") are a partnership registered as Lenbeth Weeping Tile Calgary, carrying on business of installation of weeping tile and basement insulation and other related services in and around Calgary, Alberta.

13. The Third Party Defendant, LENBETH WEEPING TILE CALGARY ("Lenbeth") is a partnership carrying on business of installation of weeping tile and basement insulation and other related services in and around Calgary, Alberta.

14. The Third Party Defendant, INLAND CONCRETE LIMITED ("Inland") is a body corporate incorporated pursuant to the laws of Canada carrying on business of concrete supplier, installer and designer in and around Calgary, Alberta.

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Facts

15. Pointe of View contracted with the Third Party Defendants, Spaetgens and Symons, S2, MWC, Wasnea and Idea (collectively the "Design Professionals"), or one of more of them, to act as the architects, engineers, and design professionals and to oversee the project including but not limited to the design of the parkade structure, patios, concrete foundations, drainage systems and waterproofing.

16. Pointe of View contracted with the Third Party Defendant, Durwest to act as general contractor and construction manager of the Pointe of View Condominiums (Prestwick). Durwest engaged Lenbeth Partners, Lenbeth, Inland, and other contractors and sub-contractors to construct the Project. Durwest was at all relevant times involved in the construction of the Project including but not limited to the parkade structure, patios, concrete foundations, drainage systems, and water proofing.

17. It was a term of the each of the contracts referenced in paragraphs 15 and 16, either expressed or implied, that the design and installation of the components and construction of the parkade structure, patios, concrete foundation, drainage systems and water proofing be done in accordance with the *Alberta Building Code* and industry standards.

18. By an agreement made between the National Home Warranty Programs Ltd., as agent for Royal & Sun Alliance Insurance Company of Canada, and Pointe of View Condominiums (Prestwick) Inc. (the "Builder Agreement"), the Program provided a Limited Construction Warranty (the "Limited Warranty") with respect to the construction of the Project.

19. The Builder Agreement provides that Pointe of View shall indemnify and save harmless the Program, with respect to every cost, expense or payment incurred by the Program which the Program is required to make by reason of any obligation imposed by the Builder Agreement with Pointe of View or undertaken by the Program pursuant to the provisions of the Builder Agreement or under the provisions of the Limited Warranty or any assurance issued pursuant thereto including without limitation all costs which the Program may incur in investigating, negotiating, settling or litigating any claim or with respect to the fees of consultants, lawyers and others whom the Program may retain in connection with any claim made against the Program under the Builder Agreement.

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20. The Plaintiff alleges that it observed ingress of water into the underground parking garage and the ingress of water through the exterior roof, walls and windows, of Pointe of View.

21. If there is any water ingress and resulting loss and damage as alleged by the Plaintiff in the Statement of Claim, or at all, which is not admitted, the Program states that such loss and damage was not caused or contributed to by any negligence, breach of contract, breach of duty or breach of any statutory requirement by the Program but that such was caused in whole, or in part, by the negligence, breach of duty, and breach of contract by any one or more of the Design Professionals, or any combination of them, particulars of which include:

- a) Failing to exercise reasonable care, skill and diligence in performing their respective duties;
- b) Failing to design an adequate parkade structure, patios, concrete foundation, drainage system and waterproofing;
- c) Failing to ensure the design of the parkade structure had proper drainage and waterproofing;
- d) Failing to ensure that the parkade structure, patios, concrete foundation, drainage system and waterproofing met the *Alberta Building Code*;
- e) Failing to ensure that the parkade structure, patios, concrete foundation, drainage system and waterproofing were sufficient to prevent the infiltration of moisture and leaking;
- f) Failing to adequately inspect and test the parkade structure, patios, concrete foundation, drainage system and waterproofing to ensure it was constructed in accordance with the design and specifications;
- g) Failing to ensure that the materials and methods used in construction of the parkade structure, patios, concrete foundations, drainage system and waterproofing met industry standards and were reasonably fit for the purpose intended;
- h) Such further and other particulars of negligence or breach of contract as may be proven at the trial of this action.

22. If there is any water ingress and resulting loss and damage as alleged by the Plaintiff in the Statement of Claim, or at all, which is not admitted, the Program states that such loss and damage was not caused or contributed to by any negligence, breach of contract, breach of duty or breach of any statutory requirement by the Program but that such was caused in whole, or in part, by the negligence, breach of duty, and breach of contract by any one or

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more of Durwest, Lenbeth Partners, Lenbeth, and Inland, or any combination of them, particulars of which include:

- i) Failing to exercise reasonable care, skill and diligence in performing their respective duties;
- j) Failing to design and construct an adequate parkade structure, patios, concrete foundation, drainage system and waterproofing;
- k) Failing to ensure the design and construction of the parkade structure had proper drainage and waterproofing;
- l) Failing to ensure that the parkade structure, patios, concrete foundation, drainage system and waterproofing was constructed in accordance with design specifications and met the *Alberta Building Code*;
- m) Failing to ensure that the parkade structure, patios, concrete foundation, drainage system and waterproofing were sufficient to prevent the infiltration of moisture and leaking;
- n) Failing to adequately inspect and test the parkade structure, patios, concrete foundation, drainage system and waterproofing to ensure it was constructed in accordance with the design and specifications;
- o) Failing to ensure that the materials and methods used in construction of the parkade structure, patios, concrete foundations, drainage system and waterproofing met industry standards and were reasonably fit for the purpose intended;
- p) Failing to properly construct and install the components of the parkade structure, patios, concrete foundation, drainage system and waterproofing;
- q) Such further and other particulars of negligence or breach of contract as may be proven at the trial of this action.

23. The Program pleads and relies upon the provisions of the *Contributory Negligence Act*, R.S.A. 2000, c. C-27, as amended, and the *Tort Feasors Act*, R.S.A. 2000, c. T-5, as amended.

Remedy sought:

24. The Program claims against the Third Party Defendants, and each of them:

- (a) To be indemnified in whole or in part in respect of any judgments and costs in this action, which may be obtained by the Plaintiff against the Program;
- (b) Judgment in these proceedings against the Third Party Defendants;

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(c) Costs of this action and of these Third Party proceedings.

Statement of Claim:

25. A copy of the Statement of Claim filed in this action is attached.

NOTICE TO THE THIRD PARTY DEFENDANTS

You only have a short time to do something to respond to this third party 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 defendants'/third party plaintiffs' 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 claim against you automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give judgment to the defendants/third party plaintiffs against you.

This third party claim must be tried with other claims in the action unless the Court otherwise orders.

If you do not file a statement of defence disputing liability of the defendants to the plaintiff, you admit the validity of any judgment that the plaintiffs obtains against the defendants, whether obtained by agreement or otherwise.

If you do not file a statement of defence disputing your own liability to the third party plaintiffs under the third party claim, you admit liability to the extent claimed in the third party claim.

Action No. 1001-15771

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

BETWEEN:

**CONDOMINIUM CORPORATION NO. 0610078 and
SYD DOMBOWSKY AS REPRESENTATIVE PLAINTIFFS**

Plaintiffs

- and -

**POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC.,
ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA and
NATIONAL HOME WARRANTY PROGRAMS LTD.**

Defendants

BROUGHT PURSUANT TO THE *CLASS PROCEEDINGS ACT*, R.S.A. 2003, c. C-16.5

STATEMENT OF CLAIM

1. The Representative Plaintiff Condominium Corporation No. 0610078 is an Alberta condominium corporation constituted under the *Condominium Property Act*, R.S.A. 2000, c. C-22 with a registered office in Calgary, Alberta.
2. The Representative Plaintiff Syd Domboswky is an individual resident in Calgary, Alberta.
3. The Representative Plaintiffs bring this action on their own behalf and on behalf of all persons who purchased a condominium unit in Condominium Plan No. 0610078 (hereinafter "0610078") from the Defendant Pointe of View Condominiums (Prestwick) Inc. (hereinafter "Pointe of View") and who are current owners of a condominium unit in 0610078 (hereinafter the "Original Owners"); and, all persons who purchased a condominium unit in 0610078 from other than Pointe of View and who are current owners of a condominium unit in 0610078 (hereinafter the "Subsequent Owners")(Collectively, the Original Owners and the Subsequent Owners are referred to as the "Class").

4. Condominium Plan No. 0610078 is a condominium project located at 10 Prestwick Bay S.E. in Calgary, Alberta and is known as Prestwick Pointe Condominiums (hereinafter the "Project"). The Project consists of four buildings of 376 total residential units. The entire Project covers an underground parkade (hereinafter the "Parkade").

5. Pointe of View is a corporation registered under the laws of Alberta with its registered office in Calgary, Alberta. Pointe of View is the developer of the Project, as defined in the *Condominium Property Act*, R.S.A. 2000, c. C-22. Pointe of View is also the builder of the Project and was the original vendor of the condominium units in the Project.

6. The Defendant National Home Warranty Programs Ltd. is a body corporate with its registered office in Edmonton, Alberta.

7. The Defendant Royal & Sun Alliance Insurance Company of Canada is a body corporate with an office in Calgary, Alberta and carries on business as an insurer in Alberta under the provisions of the *Insurance Act*, R.S.A. 2000, c. I-3.

8. At all times material National Home Warranty Programs Ltd. acted as the authorized agent of the Defendant Royal & Sun Alliance Insurance Company of Canada.

9. Beginning in or around 2004, Pointe of View began offering condominium units in the Project for sale to the public.

10. Pointe of View solicited purchase agreements in writing from the purchasers of the units in the Project, including the Original Owners. Each of the purchase agreements included the following express or implied terms:

- (a) The design and construction of the Project would comply with all applicable legislation, regulations and bylaws, including the *Alberta Building Code* and any development and building permits;
- (b) The design of the Project would adhere to sound industry and design practices and the Project's design would be practical and meet its intended purpose;
- (c) The Project would be constructed in a good and workmanlike manner in conformity with the drawings and specifications and in particular with the specifications described in the schedules to the purchase agreements and would be free of construction deficiencies or structural defects, including any defects due to faulty design, materials, equipment or workmanship;

- (d) The Plaintiffs would be informed of variations or modifications to the Project specifications;
- (e) Construction of the Project would be undertaken and supervised in accordance with industry standards and the intended use of the Project; and
- (f) Pointe of View would warn purchasers of any defects in the design or in the construction of the Project.

11. It was a further term of the purchase agreements that each condominium unit owner would have the benefit of insurance in the form of a warranty certificate issued by Royal & Sun Alliance Insurance Company of Canada represented by its agent, National Home Warranty Programs Ltd. The warranty certificates provided *inter alia*:

The Program shall indemnify the Purchaser, subject to the exclusions, limitations and conditions set out in this Limited Construction Warranty Certificate where a claim for direct loss is made within the Contractual Completion Warranty Period, Defect Warranty Period or Structural Defect Warranty Period.

12. The warranty certificate further stated that the program would "Repair Structural Defects, which occur during the four (4) year period following the expiration of the Builders Warranty."

13. Pointe of View owed a common law duty of care to the Class. Pointe of View owed a duty to design and construct the Project to ensure that it was safe and reasonably free from deficiencies and that it met the reasonable needs of the Class.

14. In about October 2009, significant problems with respect to the construction of the Parkade were discovered by the Plaintiffs including, *inter alia*, defects involving the concrete foundation walls to the exterior of the buildings, the Parkade's suspended concrete slab and the Parkade's drainage system.

15. Pointe of View breached the terms of the purchase agreements and breached its duty of care to the members of the Class in failing to comply with all applicable legislation, regulations and bylaws including the *Alberta Building Code* and in failing to design and construct the Project in a workmanlike manner and according to sound industry design and building practices including the following inadequacies:

- (a) Deficiencies in the Project's perimeter concrete foundations walls;
- (b) Deficiencies in the Parkade's suspended concrete slab;

- (c) Deficiencies in the buildings drainage system;
- (d) Improper grading of the buildings' perimeters;
- (e) Failure to install drainage gravel and other appropriate drainage systems around the buildings' perimeters;
- (f) Failure to apply damp proofing or waterproofing to the concrete foundations walls;
- (g) Failure to properly install a waterproof membrane for protections of the suspended concrete slab in the Parkade;
- (h) Failure to provide an effective storm water drainage system;
- (i) Failure to waterproof the concrete patios that are located on the Parkade's concrete slab; and
- (j) Such further and other particulars as will be proven at the trial of this matter.

All of which are collectively referred to as the "Construction Deficiencies".

16. Further, the Plaintiffs state that the Construction Deficiencies amount to "Defect(s) or Structural Defect(s)" within the meaning of the warranty certificates.

17. The Plaintiffs further state that the Construction Deficiencies were latent defects which Pointe of View knew or ought to have known would pose a real and substantial danger to the Project's inhabitants, including the members of the Class.

18. In March of 2010, the Plaintiffs served notice of claims in respect of the Construction Deficiencies upon the Defendants. The Defendants have failed to respond to the Plaintiffs' claims.

19. The Plaintiffs state that the Defendants Royal & Sun Alliance Insurance Company of Canada and National Home Warranty Programs Ltd. have breached their obligations under the warranty certificates.

20. The Representative Plaintiffs state that the cost of repair and remediation of the Construction Deficiencies is approximately \$2.7 million and this amount is claimed as damages. Further particulars of the damages will be presented at the trial of this matter as the repair and remediation is ongoing at the time of this pleading.

21. The Representative Plaintiffs propose that the trial of this action be held at the Calgary Courts Centre in Calgary, Alberta and estimate that the trial of this action will not take more than 25 days.

WHEREFORE THE PLAINTIFFS CLAIM AGAINST THE DEFENDANTS JOINTLY AND SEVERALLY AS FOLLOWS:

- a. Damages in the sum of \$2,700,000.00 or such amount as is proven at trial;
- b. Declarations as to the Class members' rights pursuant to the warranty certificates;
- c. Interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1, as amended;
- d. Costs; and
- e. Such further and other relief as this Honourable Court deems appropriate.

DATED at the City of Calgary, in the Province of Alberta, this 25th day of October, 2010, **AND DELIVERED BY** Peacock Linder & Halt LLP, Barristers and Solicitors, Suite 850, 607 - 8th Avenue S.W., Calgary, Alberta, T2P 0A7, solicitors for the within Plaintiffs whose address for service is in care of the said Solicitors.

ISSUED out of the Office of the Clerk of the Court of Queen's Bench of Alberta, Judicial District of Calgary, this 25th day of October, 2010.



Clerk of the Court

NOTICE

**TO: POINTE OF VIEW CONDOMINIUMS
(PRESTWICK) INC.**

**AND TO: ROYAL & SUN ALLIANCE
INSURANCE COMPANY OF CANADA**

**AND TO: NATIONAL HOME WARRANTY
PROGRAMS LTD.**

You have been sued. You are one of the Defendants. You have only 15 days to file and serve a Statement of Defence or Demand of Notice. You or your lawyer(s) must file your Statement of Defence(s) or Demand of Notice(s) in the office of the Clerk of the Court of Queen's Bench in Calgary, Alberta. You or your lawyer(s) must also leave a copy of your Statement of Defence(s) or Demand of Notice(s) at the address for service for the Plaintiffs named in this Statement of Claim.

WARNING: If you do not do both things within 15 days, you may automatically lose the lawsuit. The Plaintiffs may get a Court Judgment against you if you do not file, or do not give a copy to the Plaintiffs or do either thing late.

Action No. *1001-15771*

**IN THE COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

BETWEEN:

**CONDOMINIUM CORPORATION NO. 0610078 and
SYD DOMBOWSKY AS REPRESENTATIVE
PLAINTIFFS**

Plaintiffs**- and -**

**POINTE OF VIEW CONDOMINIUMS (PRESTWICK)
INC.,
ROYAL & SUN ALLIANCE INSURANCE COMPANY
OF CANADA and NATIONAL HOME WARRANTY
PROGRAMS LTD.**

Defendants

**BROUGHT PURSUANT TO THE CLASS
PROCEEDINGS ACT, R.S.A. 2003, c. C-16.5**

STATEMENT OF CLAIM

This Statement of Claim is issued by **Peacock Linder & Halt LLP**, solicitors for the Plaintiffs who reside at Calgary, Alberta and whose address for service is in care of said solicitors at Suite 850, 607 – 8th Avenue SW, Calgary, Alberta, T2P 0A7

and is addressed to the Defendants whose residence so far as is known to the Plaintiffs is Calgary, Alberta

Peacock Linder & Halt LLP
Suite 850, 607 – 8th Avenue SW
Calgary, Alberta, T2P 0A7

J. Patrick Peacock, Q.C.

Telephone (403) 296-2280
Fax (403) 296-229
File: 4829/JPP

THIS IS EXHIBIT "F"
Referred to in the Affidavit of
HEATHER HANSEN
Sworn before me this 7th day
of October, 2022



A Commissioner for Oaths
in and for Alberta
Mylène D. Tieszen
Barrister and Solicitor

COURT FILE NO. 1001 - 15771

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS CONDOMINIUM CORPORATION NO. 0610078
and SYD DOMBOWSKY AS REPRESENTATIVE
PLAINTIFF

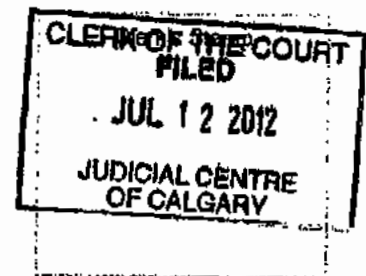
DEFENDANTS POINTE OF VIEW CONDOMINIUMS
(PRESTWICK) INC., ROYAL & SUN ALLIANCE
INSURANCE COMPANY OF CANADA and
NATIONAL HOME WARRANTY PROGRAMS
LTD.

THIRD PARTY DEFENDANTS MWC CONSULTING STRUCTURAL ENGINEERS
INC., INLAND CONCRETE LIMITED., S2
ARCHITECTURE, ALLEN WASNEA
ENGINEERING LTD., IDEA GROUP INC.,
LENBETH WEEPING TILE (CALGARY) and
DURWEST CONSTRUCTION SYSTEMS
(ALBERTA) LTD.

DOCUMENT THIRD PARTY CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Demianschuk Lequier Burke & Hoffinger LLP
1200, 1015 - 4th Street S.W.
Calgary, Alberta T2R 1J4

Attention: Alexander M. Kooiman
alex@legalsolutions.ca
Telephone: 403-252-9937
Fax: 403-263-8529
File: 51,785



NOTICE FROM THE DEFENDANT POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC. TO THE THIRD PARTY DEFENDANTS MWC CONSULTING STRUCTURAL ENGINEERS INC., INLAND CONCRETE LTD., S2 ARCHITECTURE, ALLEN WASNEA ENGINEERING LTD., IDEA GROUP INC., LENBETH WEEPING TILE CALGARY and DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD.

A Third Party Claim is made against you. You are a Third Party 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:

1. The Defendant Pointe of View Condominiums (Prestwick) Inc. adopts the capitalized terms as defined in the Statement of Claim and used by the Plaintiff throughout the Statement of Claim.
2. The Third Party Defendant MWC Consulting Structural Engineers Inc. is a body corporate duly registered pursuant to the laws of the Province of Alberta and carries on business in the Province of Alberta.
3. The Third Party Defendant Inland Concrete Limited is a body corporate duly registered pursuant to the laws of the Province of Alberta and carries on business in the Province of Alberta.
4. The Third Party Defendant S2 Architecture is a partnership registered pursuant to the laws of the Province of Alberta and carries on business in the Province of Alberta.
5. The Third Party Defendant Allen Wasnea Engineering Ltd. is a body corporate duly registered pursuant to the laws of the Province of Alberta and carries on business in the Province of Alberta.
6. The Third Party Defendant Idea Group Inc. is a body corporate duly registered pursuant to the laws of the Province of Alberta and carries on business in the Province of Alberta.
7. The Third Party Defendant Lenbeth Weeping Tile Calgary is a partnership duly registered pursuant to the laws of the Province of Alberta and carries on business in the Province of Alberta.
8. The Third Party Defendant Durwest Construction Systems (Alberta) Ltd. is a body corporate duly registered pursuant to the laws of the Province of Alberta and carries on business in the Province of Alberta.
9. On the 25th of October, 2010, the Plaintiffs filed a Statement of Claim against the Defendant Pointe of View Condominiums (Prestwick) Inc. alleging that Pointe of View Condominiums (Prestwick) Inc. failed to design and construct the Project in a good and workmanlike manner and free of construction deficiencies as set out in the Statement of Claim, a copy of which is attached hereto.

10. The Defendant Pointe of View Condominiums (Prestwick) Inc. disputes the Plaintiffs' claim on the grounds set out in the Statement of Defence, a copy of which is attached hereto.
11. In the event that the Defendant Pointe of View Condominiums (Prestwick) Inc. is held liable to the Plaintiffs for contribution or indemnity, it claims contribution or indemnity from the Third Party Defendants MWC Consulting Structural Engineers Inc., Inland Concrete Limited, S2 Architecture, Allan Wasnea Engineering Ltd., Idea Group Inc., Lenbeth Weeping Tile Calgary, and Durwest Construction Systems (Alberta) Ltd. to the extent of any amount which the Plaintiffs may recover against the Defendant Pointe of View Condominiums (Prestwick) Inc. whether for damages or for costs.

As to the Third Party Defendant MWC Consulting Structural Engineers Inc.

12. Pursuant to an agreement (the "MWC Agreement") with the Defendant Pointe of View Condominiums (Prestwick) Inc., the Third Party Defendant MWC Consulting Structural Engineers Inc. agreed to provide design and inspection services for the completion of the perimeter concrete foundation walls and parkade suspended concrete slab at the Project.
13. It was a term of the MWC Agreement that the Third Party Defendant MWC Consulting Structural Engineers Inc. would perform the work in a proper and workmanlike manner and in accordance with the requirements of the MWC Agreement.
14. Pointe of View Condominiums (Prestwick) Inc. states and the fact is that the Third Party Defendant MWC Consulting Structural Engineers Inc. failed to prosecute the work in accordance with the MWC Agreement resulting in numerous deficiencies (hereinafter the "MWC Deficiencies").

As to the Third Party Defendant Inland Concrete Limited

15. Pursuant to an agreement (the "Inland Agreement") with the Defendant Pointe of View Condominiums (Prestwick) Inc., the Third Party Defendant Inland Concrete Limited (the agreed to provide materials for the completion of the perimeter concrete foundation walls and parkade suspended concrete slab at the Project.

16. It was a term of the Inland Agreement that the Third Party Defendant Inland Concrete Limited would perform the work in a proper and workmanlike manner and in accordance with the requirements of the Inland Agreement.
17. The Defendant Pointe of View Condominiums (Prestwick) Inc. states and the fact is that the Third Party Defendant Inland Concrete Limited failed to perform the work in accordance with the Inland Agreement resulting in numerous deficiencies (hereinafter the "Inland Deficiencies").

As to the Third Party Defendant S2 Architecture

18. Pursuant to an agreement (the "S2 Agreement") with the Defendant Pointe of View Condominiums (Prestwick) Inc., the Third Party Defendant S2 Architecture agreed to provide design and inspection services for the completion of the perimeter concrete foundation walls and parkade suspended concrete slab at the Project.
19. It was a term of the S2 Agreement that the Third Party Defendant S2 Architecture would perform the work in a proper and workmanlike manner and in accordance with the requirements of the S2 Agreement.
20. Pointe of View Condominiums (Prestwick) Inc. states and the fact is that the Third Party Defendant S2 Architecture failed to prosecute the work in accordance with the S2 Agreement resulting in numerous deficiencies (hereinafter the "S2 Deficiencies").

As to the Third Party Defendant Allen Wasnea Engineering Ltd.

21. Pursuant to an agreement (the "Allen Wasnea Agreement") with the Defendant Pointe of View Condominiums (Prestwick) Inc., the Third Party Defendant Allen Wasnea Engineering Ltd. agreed to provide design and inspection services for the completion of the drainage system and storm water drainage at the Project.
22. It was a term of the Allen Wasnea Agreement that the Third Party Defendant Allen Wasnea Engineering Ltd. would perform the work in a proper and workmanlike manner

and in accordance with the requirements of the Allen Wasnea Agreement.

23. The Defendant Pointe of View Condominiums (Prestwick) Inc. states and the fact is that the Third Party Defendant Allen Wasnea Engineering Ltd. failed to prosecute the work in accordance with the Allen Wasnea Agreement resulting in numerous deficiencies (hereinafter the "Allen Wasnea Deficiencies").

As to the Third Party Defendant Idea Group Inc.

24. Pursuant to an agreement (the "Idea Group Agreement") with the Defendant Pointe of View Condominiums (Prestwick) Inc., the Third Party Defendant Idea Group Inc. agreed to provide materials and services for the completion of the drainage system at the Project.
25. It was a term of the Idea Group Agreement that the Third Party Defendant Idea Group Inc. would perform the work in a proper and workmanlike manner and in accordance with the requirements of the Idea Group Agreement.
26. The Defendant Pointe of View Condominiums (Prestwick) Inc. states and the fact is that the Third Party Defendant Idea Group Inc. failed to prosecute the work in accordance with the Idea Group Agreement resulting in numerous deficiencies (hereinafter the "Idea Group Deficiencies").

As to the Third Party Defendant Lenbeth Weeping Tile Calgary

27. Pursuant to an agreement (the "Lenbeth Agreement") with the Defendant Pointe of View Condominiums (Prestwick) Inc., the Third Party Defendant Lenbeth Weeping Tile Calgary agreed to provide materials and services for the completion of the drainage system perimeters and damp-proofing to foundation walls at the Project.
28. It was a term of the Lenbeth Agreement that the Third Party Defendant Lenbeth Weeping Tile Calgary would perform the work in a proper and workmanlike manner and in accordance with the requirements of the Lenbeth Agreement.
29. The Defendant Pointe of View Condominiums (Prestwick) Inc. states and the fact is that

the Third Party Defendant Lenbeth Weeping Tile Calgary failed to prosecute the work in accordance with the Lenbeth Agreement resulting in numerous deficiencies (hereinafter the "Lenbeth Deficiencies").

As to the Third Party Defendant Durwest Construction Systems (Alberta) Ltd.

30. Pursuant to an agreement (the "Durwest Agreement") with the Defendant Pointe of View Condominiums (Prestwick) Inc., the Third Party Defendant Durwest Construction Systems (Alberta) Ltd. agreed to provide materials and services for the completion of the waterproof membranes and waterproof concrete patios at the Project.
31. It was a term of the Durwest Agreement that the Third Party Defendant Durwest Construction Systems (Alberta) Ltd. would perform the work in a proper and workmanlike manner and in accordance with the requirements of the Durwest Agreement.
32. The Defendant Pointe of View Condominiums (Prestwick) Inc. states and the fact is that the Third Party Defendant Durwest Construction Systems (Alberta) Ltd. failed to prosecute the work in accordance with the Durwest Agreement resulting in numerous deficiencies (hereinafter the "Durwest Deficiencies").
33. The Defendant Pointe of View Condominiums (Prestwick) Inc. further states that if the Plaintiffs have suffered loss or damage as alleged, which is denied, such loss or damage was caused by the negligence or breach of contract of the Third Party Defendants and each of them, particulars of which include *inter alia* the following:
 - a. failing to perform the work in relation to the Project in accordance with their agreements with the Defendant Pointe of View Condominiums (Prestwick) Inc and in accordance with the generally accepted industry design and building standards in the Province of Alberta and elsewhere in Canada;
 - b. failing to properly construct the perimeter concrete foundation walls and parkade suspended concrete slab;
 - c. failing to properly construct the drainage system;

- d. failing to install drainage gravel and other appropriate drainage systems around the perimeters;
- e. failing to apply damp proofing or waterproofing to the concrete foundation walls;
- f. failing to properly install a waterproof membrane for protection of the suspended concrete slab of the parkade in the Project;
- g. failing to waterproof the concrete patios that are located on the concrete slab of the parkade in the Project; and
- h. such further and better particulars as they become known to the Defendant Pointe of View Condominiums (Prestwick) Inc.

34. The Defendant Pointe of View Condominiums (Prestwick) Inc. states that if the Plaintiffs have suffered loss or damage, as alleged or at all, and if the Defendant Pointe of View Condominiums (Prestwick) Inc. is responsible for such, all of which is not admitted, but specifically denied, the Defendant Pointe of View Condominiums (Prestwick) Inc. is entitled to damages, contribution or indemnity from the Third Party Defendants as a result of their wrongful actions described herein.

35. The Defendant Pointe of View Condominiums (Prestwick) Inc. pleads and relies upon the provisions of the *Tort-feasors Act*, R.S.A. 2000, c T-5 and the *Contributory Negligence Act*, RSA 2000, c. C-27 both as amended.

Remedy sought:

- 36. Indemnity or in the alternative contribution by the Third Party Defendants;
- 37. Interest pursuant to the *Judgment Interest Act*, R.S.A. 2000 c. J-1 is now enforced and whereas amended;
- 38. Costs of this Action;

39. Such further and other relieve as counsel may advise and this Honourable Court may deem just.

NOTICE TO THE THIRD PARTY DEFENDANTS

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 601 - 5 Street SW, Calgary, 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.

Action No. 1001-15 771**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY****BETWEEN:****CONDOMINIUM CORPORATION NO. 0610078 and
SYD DOMBOWSKY AS REPRESENTATIVE PLAINTIFFS****Plaintiffs****- and -****POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC.,
ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA and
NATIONAL HOME WARRANTY PROGRAMS LTD.****Defendants****BROUGHT PURSUANT TO THE CLASS PROCEEDINGS ACT, R.S.A. 2003, c. C-16.1.****STATEMENT OF CLAIM**

1. The Representative Plaintiff Condominium Corporation No. 0610078 is an Alberta condominium corporation constituted under the *Condominium Property Act*, R.S.A. 2000, c. C-22 with a registered office in Calgary, Alberta.
2. The Representative Plaintiff Syd Dombowsky is an individual resident in Calgary, Alberta.
3. The Representative Plaintiffs bring this action on their own behalf and on behalf of all persons who purchased a condominium unit in Condominium Plan No. 0610078 (hereinafter "0610078") from the Defendant Pointe of View Condominiums (Prestwick) Inc. (hereinafter "Pointe of View") and who are current owners of a condominium unit in 0610078 (hereinafter the "Original Owners"); and, all persons who purchased a condominium unit in 0610078 from other than Pointe of View and who are current owners of a condominium unit in 0610078 (hereinafter the "Subsequent Owners") (Collectively, the Original Owners and the Subsequent Owners are referred to as the "Class").

- 2 -

4. Condominium Plan No. 0610078 is a condominium project located at 10 Prestwick Bay S.E. in Calgary, Alberta and is known as Prestwick Pointe Condominiums (hereinafter the "Project"). The Project consists of four buildings of 376 total residential units. The entire Project covers an underground parkade (hereinafter the "Parkade").

5. Pointe of View is a corporation registered under the laws of Alberta with its registered office in Calgary, Alberta. Pointe of View is the developer of the Project, as defined in the *Condominium Property Act*, R.S.A. 2000, c. C-22. Pointe of View is also the builder of the Project and was the original vendor of the condominium units in the Project.

6. The Defendant National Home Warranty Programs Ltd. is a body corporate with its registered office in Edmonton, Alberta.

7. The Defendant Royal & Sun Alliance Insurance Company of Canada is a body corporate with an office in Calgary, Alberta and carries on business as an insurer in Alberta under the provisions of the *Insurance Act*, R.S.A. 2000, c. I-3.

8. At all times material National Home Warranty Programs Ltd. acted as the authorized agent of the Defendant Royal & Sun Alliance Insurance Company of Canada.

9. Beginning in or around 2004, Pointe of View began offering condominium units in the Project for sale to the public.

10. Pointe of View solicited purchase agreements in writing from the purchasers of the units in the Project, including the Original Owners. Each of the purchase agreements included the following express or implied terms:

- (a) The design and construction of the Project would comply with all applicable legislation, regulations and bylaws, including the *Alberta Building Code* and any development and building permits;
- (b) The design of the Project would adhere to sound industry and design practices and the Project's design would be practical and meet its intended purpose;
- (c) The Project would be constructed in a good and workmanlike manner in conformity with the drawings and specifications and in particular with the specifications described in the schedules to the purchase agreements and would be free of construction deficiencies or structural defects, including any defects due to faulty design, materials, equipment or workmanship;

- 3 -

- (d) The Plaintiffs would be informed of variations or modifications to the Project specifications;
- (e) Construction of the Project would be undertaken and supervised in accordance with industry standards and the intended use of the Project; and
- (f) Pointe of View would warn purchasers of any defects in the design or in the construction of the Project.

11. It was a further term of the purchase agreements that each condominium unit owner would have the benefit of insurance in the form of a warranty certificate issued by Royal & Sun Alliance Insurance Company of Canada represented by its agent, National Home Warranty Programs Ltd. The warranty certificates provided *inter alia*:

The Program shall indemnify the Purchaser, subject to the exclusions, limitations and conditions set out in this Limited Construction Warranty Certificate where a claim for direct loss is made within the Contractual Completion Warranty Period, Defect Warranty Period or Structural Defect Warranty Period.

12. The warranty certificate further stated that the program would "Repair Structural Defects, which occur during the four (4) year period following the expiration of the Builders Warranty."

13. Pointe of View owed a common law duty of care to the Class. Pointe of View owed a duty to design and construct the Project to ensure that it was safe and reasonably free from deficiencies and that it met the reasonable needs of the Class.

14. In about October 2009, significant problems with respect to the construction of the Parkade were discovered by the Plaintiffs including, *inter alia*, defects involving the concrete foundation walls to the exterior of the buildings, the Parkade's suspended concrete slab and the Parkade's drainage system.

15. Pointe of View breached the terms of the purchase agreements and breached its duty of care to the members of the Class in failing to comply with all applicable legislation, regulations and bylaws including the *Alberta Building Code* and in failing to design and construct the Project in a workmanlike manner and according to sound industry design and building practices including the following inadequacies:

- (a) Deficiencies in the Project's perimeter concrete foundations walls;
- (b) Deficiencies in the Parkade's suspended concrete slab;

- 4 -

- (c) Deficiencies in the buildings drainage system;
- (d) Improper grading of the buildings' perimeter;
- (e) Failure to install drainage gravel and other appropriate drainage systems around the buildings' perimeters;
- (f) Failure to apply damp proofing or waterproofing to the concrete foundations walls;
- (g) Failure to properly install a waterproof membrane for protections of the suspended concrete slab in the Parkade;
- (h) Failure to provide an effective storm water drainage system;
- (i) Failure to waterproof the concrete patios that are located on the Parkade's concrete slab; and
- (j) Such further and other particulars as will be proven at the trial of this matter.

All of which are collectively referred to as the "Construction Deficiencies".

16. Further, the Plaintiffs state that the Construction Deficiencies amount to "Defect(s) or Structural Defect(s)" within the meaning of the warranty certificates.

17. The Plaintiffs further state that the Construction Deficiencies were latent defects which Pointe of View knew or ought to have known would pose a real and substantial danger to the Project's inhabitants, including the members of the Class.

18. In March of 2010, the Plaintiffs served notice of claims in respect of the Construction Deficiencies upon the Defendants. The Defendants have failed to respond to the Plaintiffs' claims.

19. The Plaintiffs state that the Defendants Royal & Sun Alliance Insurance Company of Canada and National Home Warranty Programs Ltd. have breached their obligations under the warranty certificates.

20. The Representative Plaintiffs state that the cost of repair and remediation of the Construction Deficiencies is approximately \$2.7 million and this amount is claimed as damages. Further particulars of the damages will be presented at the trial of this matter as the repair and remediation is ongoing at the time of this pleading.

Clerk of the Court

NOTICE

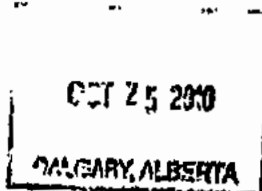
**TO: POINTE OF VIEW CONDOMINIUMS
(PRESTWICK) INC.**

**AND TO: ROYAL & SUN ALLIANCE
INSURANCE COMPANY OF CANADA**

**AND TO: NATIONAL HOME WARRANTY
PROGRAMS LTD.**

You have been sued. You are one of the Defendants. You have only 15 days to file and serve a Statement of Defence or Demand of Notice. You or your lawyer(s) must file your Statement of Defence(s) or Demand of Notice(s) in the office of the Clerk of the Court of Queen's Bench in Calgary, Alberta. You or your lawyer(s) must also leave a copy of your Statement of Defence(s) or Demand of Notice(s) at the address for service for the Plaintiffs named in this Statement of Claim.

WARNING: If you do not do both things within 15 days, you may automatically lose the lawsuit. The Plaintiffs may get a Court Judgment against you if you do not file, or do not give a copy to the Plaintiffs or do either thing late.



Action No. **001-1571**

**IN THE COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

BETWEEN:

**CONDOMINIUM CORPORATION NO. 0610078 and
SYD DOMBOWSKY AS REPRESENTATIVE
PLAINTIFFS**

Plaintiffs

- and -

**POINTE OF VIEW CONDOMINIUMS (PRESTWICK)
INC.,
ROYAL & SUN ALLIANCE INSURANCE COMPANY
OF CANADA and NATIONAL HOME WARRANTY
PROGRAMS LTD.**

Defendants

**BROUGHT PURSUANT TO THE CLASS
PROCEEDINGS ACT, R.S.A. 2003, c. C-16.3**

STATEMENT OF CLAIM

This Statement of Claim is issued by Peacock Linder & Helt LLP, solicitors for the Plaintiffs who reside at Calgary, Alberta and whose address for service is in care of said solicitors at Suite 850, 607 - 8th Avenue SW, Calgary, Alberta, T2P 0A7


and is addressed to the Defendants whose residence so far as is known to the Plaintiffs is Calgary, Alberta

**Peacock Linder & Helt LLP
Suite 850, 607 - 8th Avenue SW
Calgary, Alberta, T2P 0A7**

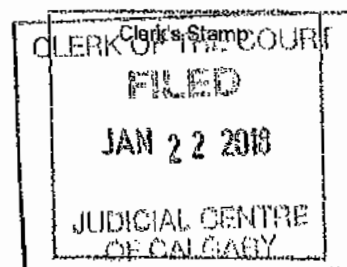
J. Patrick Peacock, Q.C.

**Telephone (403) 296-2280
Fax (403) 296-2229
File: 4829/JPP**

THIS IS EXHIBIT "G"
Referred to in the Affidavit of
HEATHER HANSEN
Sworn before me this 7th day
of October, 2022



A Commissioner for Oaths
in and for Alberta
Mylene D. Tiosson
Barrister and Solicitor



COURT FILE NO.	1001 - 15771
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFFS	CONDOMINIUM CORPORATION NO. 0610078 and HEATHER MAZUR AS REPRESENTATIVE PLAINTIFF
DEFENDANTS	POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA and NATIONAL HOME WARRANTY PROGRAMS LTD.
THIRD PARTY DEFENDANTS	POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROBERT SPAETGENS ARCHITECT LTD., DAVID T. SYMONS ARCHITECT LTD., ROBERT SPAETGENS ARCHITECT LTD. AND DAVID T. SYMONS ARCHITECT LTD. carrying on business as S2 ARCHITECTURE PARTNERSHIP, S2 ARCHITECTURE, MWC CONSULTING STRUCTURAL ENGINEERS INC., ALLEN WASNEA ENGINEERING LTD., IDEA GROUP INC., DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD., R.K.G. DEVELOPMENTS LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD. AND R.K.G. DEVELOPMENTS LTD. carrying on business as LENBETH WEEPING TILE CALGARY, LENBETH WEEPING TILE CALGARY, INLAND CONCRETE LIMITED
THIRD PARTY DEFENDANTS	MWC CONSULTING STRUCTURAL ENGINEERS INC., INLAND CONCRETE LIMITED., S2 ARCHITECTURE, ALLEN WASNEA ENGINEERING LTD., IDEA GROUP INC., LENBETH WEEPING TILE (CALGARY) and DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD.
DOCUMENT	PARTIAL DISCONTINUANCE OF THIRD PARTY CLAIM
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Chomicki Baril Mah LLP 1201, 10088 - 102 nd Avenue Edmonton, AB T5J 4K2 Attention: Tom Schmit p. 780.423.3441 f. 780.420.1763 e. tschmit@cbmlp.com Solicitor's file no. 27610-56

The Defendant, Pointe of View Condominiums (Prestwick) Inc., hereby discontinues their Third Party Claim as against the Third Party Defendant, Allen Wasnea Engineering Ltd., on a without costs basis pursuant to an agreement reached between the parties.

DATED at the City of Calgary, in the Province of Alberta, this 22 day of January, 2018.

SCOTT VENTURO RUDAKOFF LLP

Per: 

Scott Chimuk
Solicitors for the Defendant,
Pointe of View Condominiums (Prestwick) Inc.

CONSENTED TO BY:

CHOMIKI BARIL MAH LLP

Per: 

Tom Schmit
Solicitors for the Third Party Defendant,
Allen Wasnea Engineering Ltd.

CLERK OF THE COURT
FILED
MAR 04 2015
 JUDICIAL CENTRE
 OF CALGARY

Form 23
Alberta Rules of Court
 [Rules 4.36(4), 4.36(1) and 13.41(2)]

Clerk's Stamp:

COURT FILE NUMBER	1001-15771
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	CONDOMINIUM CORPORATION NO. 0610078 and SYD DOMBOWSKY as representative plaintiff
DEFENDANTS	POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA and NATIONAL HOME WARRANTY PROGRAMS LTD.
THIRD PARTY DEFENDANTS	POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROBERT SPAETGENS ARCHITECT LTD., DAVID T. SYMONS ARCHITECT LTD., ROBERT SPAETGENS ARCHITECT LTD. AND DAVID T. SYMONS ARCHITECT LTD. carrying on business as S2 ARCHITECTURE PARTNERSHIP, S2 ARCHITECTURE, MWC CONSULTING STRUCTURAL ENGINEERS INC., ALLEN WASNEA ENGINEERING LTD., IDEA GROUP INC., DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD., R.K.G. DEVELOPMENTS LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD. AND R.K.G DEVELOPMENTS LTD. carrying on business as LENBETH WEEPING TILE CALGARY, LENBETH WEEPING TILE CALGARY, INLAND CONCRETE LIMITED
THIRD PARTY DEFENDANTS <i>(Third Party Claim of Royal & Sun Alliance Insurance Company of Canada and National Home Warranty Programs Ltd.)</i>	MWC CONSULTING STRUCTURAL ENGINEERS INC., INLAND CONCRETE LIMITED., S2 ARCHITECTURE, ALLEN WASNEA ENGINEERING LTD., IDEA GROUP INC., LENBETH WEEPING TILE (CALGARY) and DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD.
DOCUMENT	PARTIAL DISCONTINUANCE OF THIRD PARTY CLAIM

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

**DEMIANTSCHUK LEQUIER BURKE
& HOFFINGER LLP**
1200, 1015 - 4 Street SW
Calgary, Alberta T2R 1J4

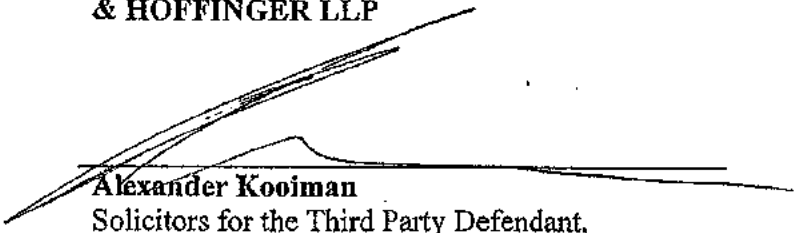
Attention: Alexander Kooiman
Solicitors for the Third Party Defendant,
Pointe of View Condominiums (Prestwick) Inc.

Telephone: (403) 252-9937
Fax: (403) 263-8529
E-mail: alex@dlbhlaw.com

The Defendant, Pointe of View Condominiums (Prestwick) Inc., hereby discontinues their Third Party Claim as against the Third Party Defendant, Idea Group Inc., on a without costs basis pursuant to an agreement reached between the parties.

DATED at the City of Calgary, in the Province of Alberta, this 2nd day of ~~February~~ ^{March}, 2015.


**DEMIANTSCHUK LEQUIER BURKE
& HOFFINGER LLP**



Alexander Kooiman
Solicitors for the Third Party Defendant,
Pointe of View Condominiums (Prestwick) Inc.

**CONSENTED TO DISCONTINUANCE
AND WAIVER OF COSTS:**

BROWNLEE LLP



Cecilia Hoover
Solicitors for the Third Party Defendant,
Idea Group Inc.

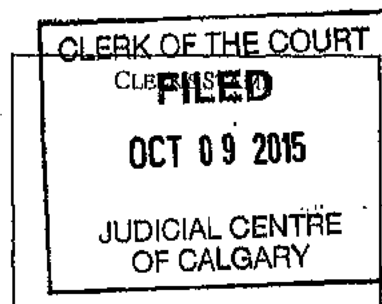
NOTE

The discontinuance of the action/part, the other party is entitled to costs unless the other party consents to a discontinuance without costs (Rule 4.36(4)).

NOTE

The discontinuance of the action/part of the action may not be raised as a defence to any subsequent action for the same or substantially the same claim (Rule 4.36(5)).

FORM 23
[RULE 4.36(4)]



COURT FILE NUMBER	1001-15771
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFFS	CONDOMINIUM CORPORATION 0610078 and SYD DOMBOWSKY AS REPRESENTATIVE PLAINTIFFS
DEFENDANTS	POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA and NATIONAL HOME WARRANTY PROGRAMS LTD.
THIRD PARTY DEFENDANTS	POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROBERT SPAETGENS ARCHITECT LTD., DAVID T. SYMONS ARCHITECT LTD., ROBERT SPAETGENS ARCHITECT LTD. and DAVID T. SYMONS ARCHITECT LTD. carrying on business as S2 ARCHITECTURE PARTNERSHIP, S2 ARCHITECTURE, MWC CONSULTING STRUCTURAL ENGINEERS INC., ALLEN WASNEA ENGINEERING LTD., IDEA GROUP INC., DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD., R.K.G. DEVELOPMENTS LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD., and R.K.G. DEVELOPMENTS LTD. carrying on business as LENBETH WEEPING TILE CALGARY, LENBETH WEEPING TILE CALGARY, INLAND CONCRETE LIMITED
DOCUMENT	<u>DISCONTINUANCE OF CLAIM</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS	BENNETT JONES LLP Barristers and Solicitors 4500, 855-2 nd Street, SW

- 2 -

DOCUMENT

Calgary, Alberta T2P 4K7

Attention: Blair C. Yorke-Slader, Q.C./Codie
Chisholm

Telephone No.: 403-298-3291/3008

Fax No.: 403-265-7219

Client File No.: 18977-353

The Defendants, Royal & Sun Alliance Insurance Company of Canada and National Home
Warranty Programs Ltd., discontinue the Third Party Claim against Inland ~~Contract~~
Limited without costs, pursuant to an agreement reached between the parties. **CONCRETE**

DUNCAN & CRAIG LLP


Per:


 Brian E. Wallace
 Counsel for Royal & Sun Alliance
 Insurance Company of Canada and
 National Home Warranty
 Programs Ltd.

CONSENT TO DISCONTINUANCE AND
 WAIVER OF COSTS:

BENNETT JONES LLP

Per:


 Codie Chisholm
 Counsel for Inland Concrete Ltd.

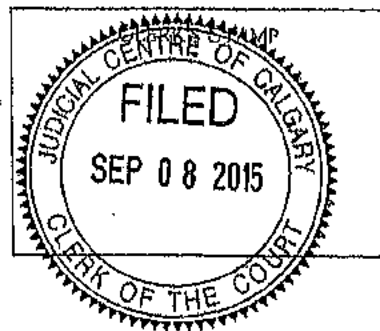
NOTE

If you discontinue the action/part of the action, the other party is entitled to costs unless the other party consents to a discontinuance without costs (Rule 4.36(4)).

NOTE

The discontinuance of the action/part of the action may not be raised as a defence to any subsequent action for the same or substantially the same claim (Rule 4.36(5)).

I hereby certify this to be a true copy of
the original D.R.O.E.Y.
Dated this 8th day of September, 2015
[Signature]
for Clerk of the Court



COURT FILE NUMBER	1001-15771
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFFS	CONDOMINIUM CORPORATION 0610078 and SYD DOMBOWSKY AS REPRESENTATIVE PLAINTIFFS
DEFENDANTS	POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA and NATIONAL HOME WARRANTY PROGRAMS LTD.
THIRD PARTY DEFENDANTS	POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROBERT SPAETGENS ARCHITECT LTD., DAVID T. SYMONS ARCHITECT LTD., ROBERT SPAETGENS ARCHITECT LTD. and DAVID T. SYMONS ARCHITECT LTD. carrying on business as S2 ARCHITECTURE PARTNERSHIP, S2 ARCHITECTURE, MWC CONSULTING STRUCTURAL ENGINEERS INC., ALLEN WASNEA ENGINEERING LTD., IDEA GROUP INC., DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD., R.K.G. DEVELOPMENTS LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD., and R.K.G. DEVELOPMENTS LTD. carrying on business as LENBETH WEEPING TILE CALGARY, LENBETH WEEPING TILE CALGARY, INLAND CONCRETE LIMITED
DOCUMENT	<u>CONSENT DISMISSAL ORDER</u>

- 2 -

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

BENNETT JONES LLP
Barristers and Solicitors
4500 Bankers Hall East
855 - 2nd Street S.W.
Calgary, Alberta T2P 4K7

Attention: Blair C. Yorke-Slader, Q.C./Codie
Chisholm
Telephone No.: 403-298-3291/3008
Fax No.: 403-265-7219
Client File No.: 18977-353

DATE ON WHICH ORDER WAS
PRONOUNCED

September 3, 2015

LOCATION AT WHICH ORDER WAS
MADE

Calgary Courts Centre
601 - 5th St SW
Calgary, AB T2P 5P7

NAME OF JUDGE
WHO MADE THIS ORDER

Master J.T. Prowse

ORDER


UPON the filing of the Third Party Claim of Defendant, Pointe of View Condominiums (Prestwick) Inc. ("POV") against numerous parties, including the Third Party Defendant, Inland Concrete Limited, who is the predecessor corporation of Lehigh Hanson Materials Limited, ("Inland") on July 12, 2012 (the "POV Third Party Claim"); AND UPON it appearing that POV does not intend to pursue this Third Party Claim any further against Inland; AND UPON noting the consent of counsel for POV; AND UPON noting the consent for counsel of Inland;

IT IS HEREBY ORDERED THAT:

1. The POV Third Party Claim shall be dismissed forthwith against Inland without costs by consent of all parties.
2. The within dismissal shall have the same force and effect as if it had been pronounced as the decision of this Honourable Court after a full and complete trial of this action on the merits.
3. This Order may be consented to in counterpart and via facsimile.

- 3 -

CONSENTED TO this 3rd September day of August, 2015.


J.C. B.A.

BENNETT JONES LLP

Per:



Codie L. Chisholm

Counsel for the Third Party Defendant, Inland Concrete
Limited

CONSENTED TO this 3rd September day of August, 2015.

DEMIANTSCHUK LEQUIER-BURKE & HOFFINGER LLP

Per:


Alexander M. KooimanCounsel for the Defendant, Pointe of View
Condominiums (Preswick) Inc.

THIS IS EXHIBIT "H"
Referred to in the Affidavit of
HEATHER HANSEN
Sworn before me this 7th day
of October, 2022



A Commissioner for Oaths
in and for Alberta

Mylène D. Tieszen
Barrister and Solicitor

COURT FILE NUMBER 1001-15771

COURT COURT OF QUEEN'S BENCH OF ALBERTA

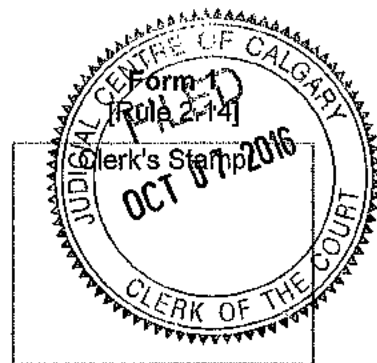
JUDICIAL CENTRE CALGARY

PLAINTIFF(S) CONDOMINIUM CORPORATION NO. 0610078 and SYD DOMBOWSKY AS REPRESENTATIVE PLAINTIFF

DEFENDANT(S) POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA and NATIONAL HOME WARRANTY PROGRAMS LTD.

THIRD PARTY DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROBERT SPAETGENS ARCHITECT LTD. DAVID T. SYMONS ARCHITECT LTD., ROBERT SPAETGENS ARCHITECT LTD AND DAVID T. SYMONS ARCHITECT LTD. carrying on business as S2 ARCHITECTURE PARTNERSHIP, S2 ARCHITECTURE, MWC CONSULTING STRUCTURAL ENGINEERING INC., ALLEN WASNEA ENGINEERING LTD. IDEA GROUP INC., DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD., R.K.G. DEVELOPMENTS LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD. AND R.K.G. DEVELOPMENTS LTD. carrying on business as LENBETH WEEPING TILE CALGARY, LENBETH WEEPING TILE CALGARY and INLAND CONCRETE LIMITED

DOCUMENT CONSENT ORDER



I hereby certify this to be a true copy of the original Order

Dated this 7 day of October, 2016
[Signature]
 for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED: October 6, 2016

NAME OF JUSTICE WHO MADE THIS ORDER: Justice J. Strekaf

UPON THE APPLICATION of the Plaintiffs, Condominium Corporation No. 0610078 and Syd Dombowsky, to add the Third Party Defendants, Robert Spaetgens Architect Ltd., David T.

Symons Architect Ltd., Robert Spaetgens Architect Ltd. and David T. Symons Architect Ltd., carrying on business as S2 Architecture Partnership, and S2 Architecture (Collectively, "S2"); Durawest Construction Systems (Alberta) Ltd., Prairie Pipe Sales Ltd., 789072 Alberta Ltd., R.K.G. Developments Ltd., carrying on business as Lenbeth Weeping Tile Calgary, Keystone Excavation Ltd., Artemis Landscapes, Design Ltd., and NW Construction AB Inc., AND UPON noting the consent of counsel for S2; AND UPON hearing from counsel for S2; IT IS HEREBY ORDERED THAT:

1. The Plaintiffs are granted leave to amend their Statement of Claim to add S2 as a defendant and the Plaintiffs shall file and serve their Amended Statement of claim in accordance with the date and in the form directed by the Case Management Justice, Justice Strekaf, arising out of the Plaintiffs' application to amend scheduled to be heard October 6, 2016.
2. S2's consent to the above amendment is without prejudice to its ability to argue any and all limitations defences it may have, or will have, relating to this action at any subsequent application or at the trial of this action.
3. S2's consent to this Order will not be used by the Plaintiffs to support any equitable limitations defence as against S2.
4. There shall be no costs associated with the Plaintiffs' Application to Amend awarded against S2.
5. There shall be no costs arising out of this Order.
6. This order may be consented to via facsimile or electronic transmission.


M.C.C.Q.B.A.

Consented to this 10th day of October, 2016

Norton Rose Fulbright Canada LLP

Per: 

Kelly Moffet-Burima
Counsel for S2

Consented to this 27th day of September, 2016

Peacock Linder Halt & Mack LLP

Per: 

Mylene Tiessen
Counsel for the Plaintiffs

THIS IS EXHIBIT "I"
Referred to in the Affidavit of
HEATHER HANSEN
Sworn before me this 7th day
of October, 2022



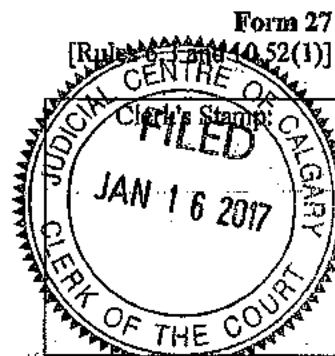
A Commissioner for Oaths
in and for Alberta

Mylène D. Tiossen
Barrister and Solicitor

I hereby certify this to be a true copy of
the original Order

Dated this 16 day of Feb/17

C. [Signature]
for Clerk of the Court



COURT FILE NUMBER 1001-15771

COURT QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS CONDOMINIUM CORPORATION NO. 0610078 and SYD
DOMBOWSKY as Representative Plaintiffs

DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESWICK) INC.,
ROYAL & SUN ALLIANCE INSURANCE COMPANY OF
CANADA and NATIONAL HOME WARRANTY PROGRAMS
LTD.

THIRD PARTY DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC.,
ROBERT SPAETGENS ARCHITECT LTD., DAVID T.
SYMONS ARCHITECT LTD., ROBERT SPAETGENS
ARCHITECT LTD. and DAVID T. SYMONS ARCHITECT
LTD. carrying on business as S2 ARCHITECTURE
PARTNERSHIP, S2 ARCHITECTURE, MWC CONSULTING
STRUCTURAL ENGINEERING LTD. INC., ALLEN
WASNEA ENGINEERING LTD., IDEA GROUP INC.,
DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD.,
PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD., R.K.G.
DEVELOPMENTS LTD., PRAIRIE PIPE SALES LTD., 789072
ALBERTA LTD. AND R.K.G. DEVELOPMENTS LTD.
carrying on business as LENBETH WEEPING TILE
CALGARY, LENBETH WEEPING TILE CALGARY and
INLAND CONCRETE LIMITED

DOCUMENT ORDER

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT PEACOCK LINDER HALT & MACK LLP
Suite 4050, 400 - 3rd Avenue SW
Calgary, Alberta T2P 4H2
Attention: Mylene D. Tiessen
Telephone: (403) 296-2280
Fax: (403) 296-2299
File: 4829

DATE ON WHICH ORDER WAS PRONOUNCED: November 9, 2016

NAME OF JUSTICE WHO MADE THIS ORDER: Justice J. Strekal

LOCATION OF HEARING: Calgary, Alberta

UPON THE APPLICATION OF THE PLAINTIFFS seeking leave to amend their Statement of Claim to, *inter alia*, add certain defendants which application was heard October 6, 2016; **AND UPON HAVING READ** the affidavits of Syd Dombowsky, Renald Bedard, Trevor Hall, Kevin Nichol and Stephanie Lanz, filed, as well as having read the transcript from the questioning of Syd Dombowsky and Renald Bedard on their affidavits; **AND UPON HAVING READ** the briefs of law filed by Counsel for the Plaintiffs and Counsel for Keystone Excavation Ltd., Artemis Landscapes & Design Ltd. and NW Construction AB Inc. (the "Non-Third Party Proposed Defendants"); **AND UPON HEARING** representations from Counsel for the Plaintiffs and Counsel for the Non-Third Party Proposed Defendants; **AND UPON HAVING ISSUED** a Memorandum of Decision dated November 9, 2016;

IT IS HEREBY ORDERED THAT:

1. The Plaintiffs application to add:

(a) Durwest Construction Systems (Alberta) Ltd. ("Durwest"); and

(b) Prairie Pipe Sales Ltd., 789072 Alberta Ltd. and R.K.G. Developments Ltd. carrying on business as Lenbeth Weeping Tile Calgary and Lenbeth Weeping Tile Calgary (collectively "Lenbeth");

is granted without costs and without prejudice to Durwest's or Lenbeth's ability to argue any limitations defences at any subsequent application or at trial.

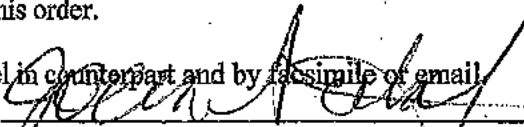
2. The Plaintiffs' are granted leave to amend their Statement of Claim in the form attached.

3. The Plaintiffs' Amended Statement of Claim is to be filed and served on the other parties to these proceedings by no later than five days after the date this order is filed.

4. The Plaintiffs' application to add the Non-Third Party Proposed Defendants is dismissed.

5. If the Plaintiffs and the Non-Third Party Proposed Defendants cannot agree on costs, they are at liberty to make written submissions to the Honourable Justice J. Strekaf within 45 days of the date of pronouncement of this order.

6. This Order may be approved by counsel in counterpart and by facsimile or email.


Justice of the Court of Queen's Bench of
Alberta

APPROVED AS TO FORM OF ORDER GRANTED:

**PEACOCK LINDER HALT & MACK
LLP**

Per:

Mylène D. Tiessen,
Counsel for Condominium
Corporation No. 0610078 and Syd
Dombowsky as Representative
Plaintiffs

McLENNAN ROSS LLP

Per:

Alexis Mullan
Jennifer Biernaskie,
Counsel for Prairie Pipe Sales Ltd.,
789072 Alberta Ltd., R.K.G.
Developments Ltd., Prairie Pipe Sales,
789072 Alberta Ltd., and R.K.G.
Developments Ltd. carrying on
business as Lenbeth Weeping Tile
Calgary and Lenbeth Weeping Tile
Calgary

**BURNET, DUCKWORTH & PALMER
LLP**

Per:

Jonathan Selnes,
Counsel for Durwest Construction
Systems (Alberta) Ltd.

BROWNLEE LLP

Per:

Nabeel Peermohamed,
Counsel for Artemis Landscapes &
Design Ltd.

CBM LLP

Per:

Tom Schmit,
Counsel for Allen Wasnea
Engineering Ltd.

DUNCAN CRAIG LLP

Per:

Brian Wallace,
Counsel for Royal & Sun Alliance
Insurance Company of Canada and
National Home Warranty Programs
Ltd.

**PEACOCK LINDER HALT & MACK
LLP**

Per:

 Mylène D. Tiessen,
 Counsel for Condominium
 Corporation No. 0610078 and Syd
 Dombowsky as Representative
 Plaintiffs

McLENNAN ROSS LLP

Per:

 Jennifer Biernaskie,
 Counsel for Prairie Pipe Sales Ltd.,
 789072 Alberta Ltd., R.K.G.
 Developments Ltd., Prairie Pipe Sales,
 789072 Alberta Ltd., and R.K.G.
 Developments Ltd. carrying on
 business as Lenbeth Weeping Tile
 Calgary and Lenbeth Weeping Tile
 Calgary

**BURNET, DUCKWORTH & PALMER
LLP**

Per:

 Jonathan Selnes,
 Counsel for Durwest Construction
 Systems (Alberta) Ltd.

BROWNLEE LLP

Per:

 Nabeel Peermohamed,
 Counsel for Artemis Landscapes &
 Design Ltd.

CBM LLP

Per:

 Tom Schmit,
 Counsel for Allen Wasnea
 Engineering Ltd.

DUNCAN CRAIG LLP

Per:

 Brian Wallace,
 Counsel for Royal & Sun Alliance
 Insurance Company of Canada and
 National Home Warranty Programs
 Ltd.

**PEACOCK LINDER HALT & MACK
LLP**

Per:

Myliene D. Tiessen,
Counsel for Condominium
Corporation No. 0610078 and Syd
Dombowsky as Representative
Plaintiffs

McLENNAN ROSS LLP

Per:

Jennifer Biernaskie,
Counsel for Prairie Pipe Sales Ltd.,
789072 Alberta Ltd., R.K.G.
Developments Ltd., Prairie Pipe Sales,
789072 Alberta Ltd., and R.K.G.
Developments Ltd. carrying on
business as Lenbeth Weeping Tile
Calgary and Lenbeth Weeping Tile
Calgary

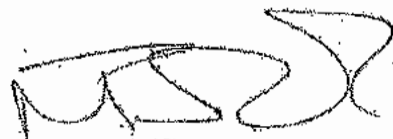
**BURNET, DUCKWORTH & PALMER
LLP**

Per:

Jonathan Selnes,
Counsel for Durwest Construction
Systems (Alberta) Ltd.

BROWNLEE LLP

Per:


Nabeel Peermohamed,
Counsel for Artemis Landscapes &
Design Ltd.

CBM LLP

Per:

Tom Schmit,
Counsel for Allen Wasnea
Engineering Ltd.

DUNCAN CRAIG LLP

Per:

Brian Wallace,
Counsel for Royal & Sun Alliance
Insurance Company of Canada and
National Home Warranty Programs
Ltd.

**PEACOCK LINDER HALT & MACK
LLP**

Per:

 Mylene D. Tiessen,
 Counsel for Condominium
 Corporation No. 0610078 and Syd
 Dombowsky as Representative
 Plaintiffs

McLENNAN ROSS LLP

Per:

 Jennifer Biernaskie,
 Counsel for Prairie Pipe Sales Ltd.,
 789072 Alberta Ltd., R.K.G.
 Developments Ltd., Prairie Pipe Sales,
 789072 Alberta Ltd., and R.K.G.
 Developments Ltd. carrying on
 business as Lenbeth Weeping Tile
 Calgary and Lenbeth Weeping Tile
 Calgary

**BURNET, DUCKWORTH & PALMER
LLP**

Per:

 Jonathan Selnes,
 Counsel for Durwest Construction
 Systems (Alberta) Ltd.

BROWNLEE LLP

Per:

 Nabeel Peermohamed,
 Counsel for Artemis Landscapes &
 Design Ltd.

CBM LLP

Per:

 Tom Schmit,
 Counsel for Allen Wasnea
 Engineering Ltd.

DUNCAN CRAIG LLP

Per:

 Brian Wallace,
 Counsel for Royal & Sun Alliance
 Insurance Company of Canada and
 National Home Warranty Programs
 Ltd.

3

**PEACOCK LINDER HALT & MACK
LLP**

Per:

Mylène D. Tiessen,
Counsel for Condominium
Corporation No. 0610078 and Syd
Dombowsky as Representative
Plaintiffs

McLENNAN ROSS LLP

Per:

Jennifer Biernaskie,
Counsel for Prairie Pipe Sales Ltd.,
789072 Alberta Ltd., R.K.G.
Developments Ltd., Prairie Pipe Sales,
789072 Alberta Ltd., and R.K.G.
Developments Ltd. carrying on
business as Lenbeth Weeping Tile
Calgary and Lenbeth Weeping Tile
Calgary

**BURNET, DUCKWORTH & PALMER
LLP**

Per:

Jonathan Selnes,
Counsel for Durwest Construction
Systems (Alberta) Ltd.

BROWNLEE LLP

Per:

Nabeel Peermohamed,
Counsel for Artemis Landscapes &
Design Ltd.

CBM LLP

Per:

Tom Schmit,
Counsel for Allen Wasnea
Engineering Ltd.

DUNCAN CRAIG LLP

Per:

Brian Wallace,
Counsel for Royal & Sun Alliance
Insurance Company of Canada and
National Home Warranty Programs
Ltd.

Kelly Moller-Burrows,
 Counsel for Robert Spiegens
 Architect Ltd, David T. Symons
 Architect Ltd, S2 Architecture
 Partnership and S2 Architecture

Per:

NORTON ROSE FULBRIGHT LLP

Todd Kabbol,
 Counsel for Keystone Excavation
 Ltd.

Per:

FIELD LLP

Celeste Small,
 Counsel for Pointe of View
 Condominiums (Preswick) Inc.

Per:

SCOTT VENTURO LLP

Jennifer Blanehard,
 Counsel for NW Construction AB Inc.

Per:

HENDRIX LAW

FIELD LLP

Per:

Todd Kathol,
Counsel for Keystone Excavation
Ltd.

NORTON ROSE FULBRIGHT LLP

Per:

Kelly Moffet Burina,
Counsel for Robert Spaetgens
Architect Ltd, David T. Symons
Architect Ltd., S2 Architecture
Partnership and S2 Architecture

HENDRIX LAW

Per:

Jennifer Blanchard,
Counsel for NW Construction AB Inc.

SCOTT VENTURO LLP

Per:

Celeste Small,
Counsel for Pointe of View
Condominiums (Prestwick) Inc.

4

FIELD LLP

Per:

Todd Kathol,
Counsel for Keystone Excavation
Ltd.

HENDRIX LAW

Per:

Jennifer Blanchard,
Counsel for NW Construction AB Inc.

NORTON ROSE FULBRIGHT LLP

Per:

Kelly Moffet-Burima,
Counsel for Robert Spaetgens
Architect Ltd, David T. Symons
Architect Ltd., S2 Architecture
Partnership and S2 Architecture

SCOTT VENTURO LLP

Per:

Celeste Small,
Counsel for Pointe of View
Condominiums (Prestwick) Inc.

FIELD LLP

Per:

Todd Kathol,
Counsel for Keystone Excavation
Ltd.

HENDRIX LAW

Per:

Jennifer Blanchard,
Counsel for NW Construction AB Inc.

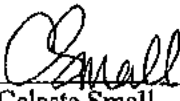
NORTON ROSE FULBRIGHT LLP

Per:

Kelly Moffet-Burima,
Counsel for Robert Spaetgens
Architect Ltd, David T. Symons
Architect Ltd., S2 Architecture
Partnership and S2 Architecture

SCOTT VENTURO LLP

Per:


Celeste Small,
Counsel for Points of View
Condominiums (Prestwick) Inc.

Clerk's Stamp

COURT FILE NUMBER 1001-15771

COURT QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS CONDOMINIUM CORPORATION NO. 0610078 and SYD
DOMBOWSKY AS REPRESENTATIVE PLAINTIFFSDEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC.,
ROYAL & SUN ALLIANCE INSURANCE COMPANY OF
CANADA, ^ NATIONAL HOME WARRANTY PROGRAMS
LTD., DAVID T. SYMONS ARCHITECT LTD., ROBERT
SPAETGENS ARCHITECT LTD. AND DAVID T. SYMONS
ARCHITECT LTD. CARRYING ON BUSINESS AS S2
ARCHITECTURE PARTNERSHIP, S2 ARCHITECTURE,
DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD.,
PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD. AND
R.K.G. DEVELOPMENTS LTD. CARRYING ON BUSINESS AS
LENBETH WEEPING TILE CALGARY and LENBETH
WEEPING TILE CALGARYTHIRD PARTY DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC.,
ROBERT SPAETGENS ARCHITECT LTD., DAVID T. SYMONS
ARCHITECT LTD., ROBERT SPAETGENS ARCHITECT LTD.
AND DAVID T. SYMONS ARCHITECT LTD. CARRYING ON
BUSINESS AS S2 ARCHITECTURE PARTNERSHIP, S2
ARCHITECTURE, MWC CONSULTING STRUCTURAL
ENGINEERING LTD., ALLEN WASNEA ENGINEERING LTD.,
IDEA GROUP INC., DURWEST CONSTRUCTION SYSTEMS
(ALBERTA) LTD., PRAIRIE PIPE SALES LTD., 789072
ALBERTA LTD., R.K.G. DEVELOPMENTS LTD., PRAIRIE PIPE
SALES LTD., 789072 ALBERTA LTD. AND R.K.G.
DEVELOPMENTS LTD. CARRYING ON BUSINESS AS
LENBETH WEEPING TILE CALGARY, LENBETH WEEPING
TILE CALGARY and INLAND CONCRETE LIMITED**BROUGHT PURSUANT TO THE
CLASS PROCEEDINGS ACT, S.A. 2003, c. C-16.5**

DOCUMENT

AMENDED STATEMENT OF CLAIMADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF**PEACOCK LINDER ^ HALT & MACK LLP**
Suite 4050, 400 – 3rd Avenue SW
Calgary, Alberta T2P 4H2
Attention: **Mylène D. Tiessen**

- 2 -

PARTY FILING THIS Telephone: (403) 296-2280
DOCUMENT Fax: (403) 296-2299
FILE: 4829

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.

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

Statement of facts relied on:

1. The Representative Plaintiff Condominium Corporation No. 0610078 is an Alberta condominium corporation constituted under the *Condominium Property Act*, R.S.A. 2000, c. C-22 with a registered office in Calgary, Alberta.
2. The Representative Plaintiff Syd Dombowsky is an individual resident in Calgary, Alberta.
3. The Representative Plaintiffs brings this action on their own behalf and on behalf of all persons who purchased a condominium unit in Condominium Plan No. 0610078 (hereinafter "0610078") from the Defendant Pointe of View Condominiums (Prestwick) Inc. (hereinafter "Pointe of View") and who ^ paid levies as a result of the special assessments by 0610078 dated January 28, 2010 and May 17, 2010 (the "Special Assessments"); and, all persons who purchased a condominium unit in 0610078 from other than Pointe of View and who ^ have paid levies as a result of the Special Assessments (^ the "Class").
4. Condominium Plan No. 0610078 is a condominium project located at 10 Prestwick Bay S.E. in Calgary, Alberta and is known as Prestwick Pointe Condominiums (hereinafter the "Project"). The Project consists of four buildings of 376 total residential units. The entire project covers an underground parkade (hereinafter the "Parkade").
5. Pointe of View Condominiums (Prestwick) Inc. is a corporation registered under the laws of Alberta with its registered office in Calgary, Alberta. Pointe of View is the developer of the Project, as defined in the *Condominium Property Act*, R.S.A. 2000, c. C-22. Pointe

- 3 -

of View is also the builder of the Project and was the original vendor of the condominium units to the Project.

6. The Defendant National Home Warranty Programs Ltd. is a body corporate with an office in Edmonton, Alberta.
7. The Defendant Royal & Sun Alliance Insurance Company of Canada is a body corporate with an office in Calgary, Alberta and carries on business as an insurer in Alberta under the provisions of the *Insurance Act*, R.S.A. 2000, c. I-3.
8. At all times material National Home Warranty Programs Ltd. acted as the authorized agent of the Defendant Royal & Sun Alliance Insurance Company of Canada.
9. The Defendants David T. Symons Architect Ltd., Robert Spaetgens Architect Ltd. and David T. Symons Architect Ltd. are partners carrying on business as S2 Architecture Partnership (previously known as SSE Architecture) which Defendant is an Alberta registered partnership providing architectural services (these Defendants hereinafter collectively referred to as "S2 Architecture").
10. The Defendant Durwest Construction Systems (Alberta) Ltd. ("Durwest") is a corporation registered under the laws of Alberta with its registered office in Calgary, Alberta and carries on business in various trades including, *inter alia*, commercial and industrial waterproofing.
11. The Defendants Prairie Pipe Sales Ltd., 789072 Alberta Ltd. and R.K.G. Developments Ltd. are partners carrying on business as Lenbeth Weeping Tile Calgary, which Defendant is an Alberta registered partnership, providing damp proofing supply and installation and other services (these Defendants hereinafter collectively referred to as "Lenbeth").
12. Prior to and during the construction of the Project, Pointe of View, or its agent, UPA Pointe Group Limited Partnership, entered into contracts with:
 - (a) S2 Architecture with respect to the design of the Project, including, *inter alia*, the Parkade and as part of that contract S2 Architecture agreed and did conduct site visits and reports during the contract administration portion of the Project; and

- 4 -

- (b) Durwest and Lenbeth with respect to the waterproofing of the Parkade, concrete patios, wood columns and garbage enclosures on the Project.
13. The contracts described above gave rise to a duty of care by S2 Architecture, Durwest and Lenbeth, (the "Contractors") to render the Project fit for the Project's inhabitants, including members of the Class, and to carry out their work in accordance with the applicable standard of care. Each of the Contractors knew at the time they entered into the contracts that a breach of this duty of care would cause the damage claimed herein.
14. Further, at all material times it was foreseeable to the Contractors that the Project's inhabitants, including members of the Class, relied upon the Contractors to take reasonable care in the discharge of their contractual and general duties in relation to the contract work.
15. Further, it was an express or implied term of the contracts described above that the work contemplated by these contracts would be carried out in a skilled and workmanlike manner and would comply with all codes, statutes, regulations and industry standards.
16. Each of the Contractors owed the Project's inhabitants, including members of the Class, a duty to care to ensure the Project, including the parkade, was constructed in accordance with any applicable manufacturer's specifications and comply with all applicable codes and all materials used would meet any applicable manufacturer's specifications and comply with all applicable codes.
17. Beginning in or around 2004, Pointe of View began offering condominium units in the Project for sale to the public.
18. Pointe of View solicited purchase agreements in writing from the purchasers of the units in the Project, including the Original Owners. Each of the purchase agreements included the following expense or implied terms:
- (a) The design and construction of the Project would comply with all applicable legislation, regulations and bylaws, including the *Alberta Building Code* and any development and building permits;
- (b) The design of the Project would adhere to sound industry and design practices and the Project's design would be practical and meet its intended purpose;

- 5 -

- (c) The Project would be constructed in a workmanlike manner in conformity with the drawings and specifications and in particular with the specifications described in the schedules to the purchase agreements and would be free of construction deficiencies or structural defects, including any defects due to faulty design, materials, equipment or workmanship;
 - (d) The Plaintiffs would be informed of variations or modifications to the Project specifications;
 - (e) Construction of the Project would be undertaken and supervised in accordance with industry standards and the intended use of the Project; and
 - (f) Pointe of View would warn purchasers of any defects in the design or in the construction of the Project.
19. It was a term a further term of the purchase agreements that each condominium unit would have the benefit of insurance in the form of a warranty certificate issued by Royal & Sun Alliance Insurance Company of Canada represented by its agent National Home Warranty Programs Ltd. The warranty certificates provided *inter alia*:
- The program shall indemnify the purchaser, subject to the exclusions, limitations and conditions set out in this Limited Construction Warranty Certificate where a claim for direct loss is made within the Contractual Completion Warranty Period, Defect Warranty Period or Structural Defect Warranty Period
20. The warranty certificate further stated that the program would "Repair Structural Defects, which occur during the four (4) year period following the expiration of the Builder's Warranty."
21. Pointe of View owed a common law duty of care to the Class. Pointe of View owed a duty to design and construct the Project to ensure that it was safe and reasonably free from deficiencies and that it met the reasonable needs of the Class.
22. In about October 2009, significant problems with respect to the construction of the Parkade were discovered by the Plaintiffs including, *inter alia*, defects involving the concrete foundation walls to the exterior of the buildings, the parkade suspended concrete slab and the Parkade's drainage system.
23. Pointe of View breached the terms of the purchase agreements and Pointe of View and the Contractors breached ^ their duties of care to the members of the Class in failing to

- 6 -

comply with all applicable legislation, regulations and bylaws including the *Alberta Building Code* and in failing to design and construct the Project in a workmanlike manner and according to sound industry design and building practices including the following inadequacies:

- (a) Deficiencies in the Project's perimeter concrete foundations walls;
- (b) Deficiencies in the Parkade's suspended concrete slab;
- (c) Deficiencies in the buildings' drainage system;
- (d) Improper grading of the buildings' perimeters;
- (e) Failure to install drainage gravel and other appropriate drainage systems around the buildings' perimeters;
- (f) Failure to apply damp proofing or waterproofing to the concrete foundation^ walls or, alternatively, failure to install effective damp proofing or water proofing to the concrete foundation walls;
- (g) Failure to properly install a waterproof membrane for protection^ of the suspended concrete slab in the Parkade;
- (h) Failure to provide an effective storm water drainage system;
- (i) Failure to waterproof the concrete patios that are located on the Parkade's concrete slab; and
- (j) Such further and other particulars as will be proven at the trial of this matter.

All of which are collectively referred to as the "Construction Deficiencies".

- 24. Further, the Plaintiffs state that the Construction Deficiencies amount to "Defect(s) or Structural Defect(s)" within the meaning of the warranty certificates.
- 25. The Plaintiffs further state that the Construction Defects were latent defects which Pointe of View and the Contractors knew or ought to have known would pose a real and substantial danger to the Project's inhabitants, including the members of the Class.
- 26. In March of 2010 the Plaintiffs served notice of claims in respect of the Construction Deficiencies upon the Defendants, Pointe of View, Royal & Sun Alliance Insurance Company of Canada and National Home Warranty Programs Ltd. These Defendants have failed to respond to the Plaintiffs' claims.

- 7 -

27. The Plaintiffs state that the Defendants Royal & Sun Alliance Insurance Company of Canada and National Home Warranty Programs Ltd. have breached their obligations under the warranty certificates.
28. The Representative Plaintiffs state that the cost of repair and remediation of the Construction Deficiencies is approximately \$2.7 million and this amount is claimed as damages. Further particulars of the damages will be presented at the trial of this matter as the repair and remediation is ongoing at the time of this pleadings.

Trial:

29. The Representative Plaintiffs propose that the trial of this action be held at the Calgary Courts Centre in Calgary, Alberta and estimate that the trial of this action will not take more than 25 days.

Remedy sought:

30. Wherefore the Plaintiffs claim against the Defendants jointly and severally as follows:
- (a) Damages in the sum of \$2,700,000.00 or such other amount as proven at trial;
 - (b) Declarations as to the Class members' rights pursuant to the warranty certificates;
 - (c) Interest pursuant to the *Judgement Interest Act*, R.S.A. 2000, c. J-1, as amended;
 - (d) Costs; and
 - (e) Such further and other relief as this Honourable Court deems appropriate.

WARNING**NOTICE TO THE DEFENDANTS**

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 plaintiffs' 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 plaintiffs against you.

THIS IS EXHIBIT "J"
Referred to in the Affidavit of
HEATHER HANSEN
Sworn before me this 7th day
of October, 2022

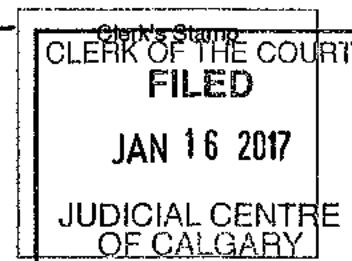


A Commissioner for Oaths
in and for Alberta
Mylène D. Ticsen
Barrister and Solicitor

AMENDED this 16 day of JANUARY 2017 Pursuant to Rule 3.65 dated the 9 day of Nov. 2016

110

CLERK OF THE COURT



COURT FILE NUMBER 1001-15771

COURT QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS CONDOMINIUM CORPORATION NO. 0610078 and SYD DOMBOWSKY AS REPRESENTATIVE PLAINTIFFS

DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA, ^ NATIONAL HOME WARRANTY PROGRAMS LTD., DAVID T. SYMONS ARCHITECT LTD., ROBERT SPAETGENS ARCHITECT LTD. AND DAVID T. SYMONS ARCHITECT LTD. CARRYING ON BUSINESS AS S2 ARCHITECTURE PARTNERSHIP, S2 ARCHITECTURE, DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD. AND R.K.G. DEVELOPMENTS LTD. CARRYING ON BUSINESS AS LENBETH WEEPING TILE CALGARY and LENBETH WEEPING TILE CALGARY

THIRD PARTY DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROBERT SPAETGENS ARCHITECT LTD., DAVID T. SYMONS ARCHITECT LTD., ROBERT SPAETGENS ARCHITECT LTD. AND DAVID T. SYMONS ARCHITECT LTD. CARRYING ON BUSINESS AS S2 ARCHITECTURE PARTNERSHIP, S2 ARCHITECTURE, MWC CONSULTING STRUCTURAL ENGINEERING LTD., ALLEN WASNEA ENGINEERING LTD., IDEA GROUP INC., DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD., R.K.G. DEVELOPMENTS LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD. AND R.K.G. DEVELOPMENTS LTD. CARRYING ON BUSINESS AS LENBETH WEEPING TILE CALGARY, LENBETH WEEPING TILE CALGARY and INLAND CONCRETE LIMITED

**BROUGHT PURSUANT TO THE
CLASS PROCEEDINGS ACT, S.A. 2003, c. C-16.5**

DOCUMENT AMENDED STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF **PEACOCK LINDER ^ HALT & MACK LLP**
Suite 4050, 400 - 3rd Avenue SW
Calgary, Alberta T2P 4H2
Attention: Mylène D. Tiessen

- 2 -

PARTY FILING THIS Telephone: (403) 296-2280
DOCUMENT Fax: (403) 296-2299
 FILE: 4829

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.

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

Statement of facts relied on:

1. The Representative Plaintiff Condominium Corporation No. 0610078 is an Alberta condominium corporation constituted under the *Condominium Property Act*, R.S.A. 2000, c. C-22 with a registered office in Calgary, Alberta.
2. The Representative Plaintiff Syd Dombowsky is an individual resident in Calgary, Alberta.
3. The Representative Plaintiffs brings this action on their own behalf and on behalf of all persons who purchased a condominium unit in Condominium Plan No. 0610078 (hereinafter "0610078") from the Defendant Pointe of View Condominiums (Prestwick) Inc. (hereinafter "Pointe of View") and who ^ paid levies as a result of the special assessments by 0610078 dated January 28, 2010 and May 17, 2010 (the "Special Assessments"); and, all persons who purchased a condominium unit in 0610078 from other than Pointe of View and who ^ have paid levies as a result of the Special Assessments (^ the "Class").
4. Condominium Plan No. 0610078 is a condominium project located at 10 Prestwick Bay S.E. in Calgary, Alberta and is known as Prestwick Pointe Condominiums (hereinafter the "Project"). The Project consists of four buildings of 376 total residential units. The entire project covers an underground parkade (hereinafter the "Parkade").
5. Pointe of View Condominiums (Prestwick) Inc. is a corporation registered under the laws of Alberta with its registered office in Calgary, Alberta. Pointe of View is the developer of the Project, as defined in the *Condominium Property Act*, R.S.A. 2000, c. C-22. Pointe

- 3 -

of View is also the builder of the Project and was the original vendor of the condominium units to the Project.

6. The Defendant National Home Warranty Programs Ltd. is a body corporate with an office in Edmonton, Alberta.
7. The Defendant Royal & Sun Alliance Insurance Company of Canada is a body corporate with an office in Calgary, Alberta and carries on business as an insurer in Alberta under the provisions of the *Insurance Act*, R.S.A. 2000, c. I-3.
8. At all times material National Home Warranty Programs Ltd. acted as the authorized agent of the Defendant Royal & Sun Alliance Insurance Company of Canada.
9. The Defendants David T. Symons Architect Ltd., Robert Spaetgens Architect Ltd. and David T. Symons Architect Ltd. are partners carrying on business as S2 Architecture Partnership (previously known as SSE Architecture) which Defendant is an Alberta registered partnership providing architectural services (these Defendants hereinafter collectively referred to as "S2 Architecture").
10. The Defendant Durwest Construction Systems (Alberta) Ltd. ("Durwest") is a corporation registered under the laws of Alberta with its registered office in Calgary, Alberta and carries on business in various trades including, *inter alia*, commercial and industrial waterproofing.
11. The Defendants Prairie Pipe Sales Ltd., 789072 Alberta Ltd. and R.K.G. Developments Ltd. are partners carrying on business as Lenbeth Weeping Tile Calgary, which Defendant is an Alberta registered partnership, providing damp proofing supply and installation and other services (these Defendants hereinafter collectively referred to as "Lenbeth").
12. Prior to and during the construction of the Project, Pointe of View, or its agent, UPA Pointe Group Limited Partnership, entered into contracts with:
 - (a) S2 Architecture with respect to the design of the Project, including, *inter alia*, the Parkade and as part of that contract S2 Architecture agreed and did conduct site visits and reports during the contract administration portion of the Project; and

- 4 -

- (b) Durwest and Lenbeth with respect to the waterproofing of the Parkade, concrete patios, wood columns and garbage enclosures on the Project.
13. The contracts described above gave rise to a duty of care by S2 Architecture, Durwest and Lenbeth, (the "Contractors") to render the Project fit for the Project's inhabitants, including members of the Class, and to carry out their work in accordance with the applicable standard of care. Each of the Contractors knew at the time they entered into the contracts that a breach of this duty of care would cause the damage claimed herein.
14. Further, at all material times it was foreseeable to the Contractors that the Project's inhabitants, including members of the Class, relied upon the Contractors to take reasonable care in the discharge of their contractual and general duties in relation to the contract work.
15. Further, it was an express or implied term of the contracts described above that the work contemplated by these contracts would be carried out in a skilled and workmanlike manner and would comply with all codes, statutes, regulations and industry standards.
16. Each of the Contractors owed the Project's inhabitants, including members of the Class, a duty to care to ensure the Project, including the parkade, was constructed in accordance with any applicable manufacturer's specifications and comply with all applicable codes and all materials used would meet any applicable manufacturer's specifications and comply with all applicable codes.
17. Beginning in or around 2004, Pointe of View began offering condominium units in the Project for sale to the public.
18. Pointe of View solicited purchase agreements in writing from the purchasers of the units in the Project, including the Original Owners. Each of the purchase agreements included the following expense or implied terms:
- (a) The design and construction of the Project would comply with all applicable legislation, regulations and bylaws, including the *Alberta Building Code* and any development and building permits;
- (b) The design of the Project would adhere to sound industry and design practices and the Project's design would be practical and meet its intended purpose;

- 5 -

- (c) The Project would be constructed in a workmanlike manner in conformity with the drawings and specifications and in particular with the specifications described in the schedules to the purchase agreements and would be free of construction deficiencies or structural defects, including any defects due to faulty design, materials, equipment or workmanship;
 - (d) The Plaintiffs would be informed of variations or modifications to the Project specifications;
 - (e) Construction of the Project would be undertaken and supervised in accordance with industry standards and the intended use of the Project; and
 - (f) Pointe of View would warn purchasers of any defects in the design or in the construction of the Project.
19. It was a term a further term of the purchase agreements that each condominium unit would have the benefit of insurance in the form of a warranty certificate issued by Royal & Sun Alliance Insurance Company of Canada represented by its agent National Home Warranty Programs Ltd. The warranty certificates provided *inter alia*:
- The program shall indemnify the purchaser, subject to the exclusions, limitations and conditions set out in this Limited Construction Warranty Certificate where a claim for direct loss is made within the Contractual Completion Warranty Period, Defect Warranty Period or Structural Defect Warranty Period
20. The warranty certificate further stated that the program would "Repair Structural Defects, which occur during the four (4) year period following the expiration of the Builder's Warranty."
21. Pointe of View owed a common law duty of care to the Class. Pointe of View owed a duty to design and construct the Project to ensure that it was safe and reasonably free from deficiencies and that it met the reasonable needs of the Class.
22. In about October 2009, significant problems with respect to the construction of the Parkade were discovered by the Plaintiffs including, *inter alia*, defects involving the concrete foundation walls to the exterior of the buildings, the parkade suspended concrete slab and the Parkade's drainage system.
23. Pointe of View breached the terms of the purchase agreements and Pointe of View and the Contractors breached ^ their duties of care to the members of the Class in failing to

- 6 -

comply with all applicable legislation, regulations and bylaws including the *Alberta Building Code* and in failing to design and construct the Project in a workmanlike manner and according to sound industry design and building practices including the following inadequacies:

- (a) Deficiencies in the Project's perimeter concrete foundations walls;
- (b) Deficiencies in the Parkade's suspended concrete slab;
- (c) Deficiencies in the buildings' drainage system;
- (d) Improper grading of the buildings' perimeters;
- (e) Failure to install drainage gravel and other appropriate drainage systems around the buildings' perimeters;
- (f) Failure to apply damp proofing or waterproofing to the concrete foundation[^] walls or, alternatively, failure to install effective damp proofing or water proofing to the concrete foundation walls;
- (g) Failure to properly install a waterproof membrane for protection[^] of the suspended concrete slab in the Parkade;
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- (j) Such further and other particulars as will be proven at the trial of this matter.

All of which are collectively referred to as the "Construction Deficiencies".

- 24. Further, the Plaintiffs state that the Construction Deficiencies amount to "Defect(s) or Structural Defect(s)" within the meaning of the warranty certificates.
- 25. The Plaintiffs further state that the Construction Defects were latent defects which Pointe of View and the Contractors knew or ought to have known would pose a real and substantial danger to the Project's inhabitants, including the members of the Class.
- 26. In March of 2010 the Plaintiffs served notice of claims in respect of the Construction Deficiencies upon the Defendants, Pointe of View, Royal & Sun Alliance Insurance Company of Canada and National Home Warranty Programs Ltd. These Defendants have failed to respond to the Plaintiffs' claims.

- 7 -

27. The Plaintiffs state that the Defendants Royal & Sun Alliance Insurance Company of Canada and National Home Warranty Programs Ltd. have breached their obligations under the warranty certificates.
28. The Representative Plaintiffs state that the cost of repair and remediation of the Construction Deficiencies is approximately \$2.7 million and this amount is claimed as damages. Further particulars of the damages will be presented at the trial of this matter as the repair and remediation is ongoing at the time of this pleadings.

Trial:

29. The Representative Plaintiffs propose that the trial of this action be held at the Calgary Courts Centre in Calgary, Alberta and estimate that the trial of this action will not take more than 25 days.

Remedy sought:

30. Wherefore the Plaintiffs claim against the Defendants jointly and severally as follows:
- (a) Damages in the sum of \$2,700,000.00 or such other amount as proven at trial;
 - (b) Declarations as to the Class members' rights pursuant to the warranty certificates;
 - (c) Interest pursuant to the *Judgement Interest Act*, R.S.A. 2000, c. J-1, as amended;
 - (d) Costs; and
 - (e) Such further and other relief as this Honourable Court deems appropriate.

WARNING**NOTICE TO THE DEFENDANTS**

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 plaintiffs' address for service.

WARNING

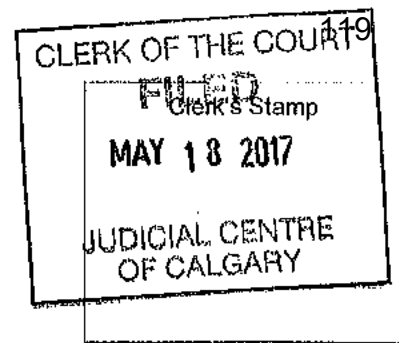
If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiffs against you.

THIS IS EXHIBIT "K"
Referred to in the Affidavit of
HEATHER HANSEN
Sworn before me this 7th day
of October, 2022



A Commissioner for Oaths
in and for Alberta

Mylène D. Tieszen
Barrister and Solicitor



COURT FILE NUMBER 1001-15771

COURT QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS CONDOMINIUM CORPORATION NO. 0610078 and
HEATHER MAZUR AS REPRESENTATIVE PLAINTIFFS

DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC.,
ROYAL & SUN ALLIANCE INSURANCE COMPANY OF
CANADA, NATIONAL HOME WARRANTY PROGRAMS LTD.,
DAVID T. SYMONS ARCHITECT LTD., ROBERT SPAETGENS
ARCHITECT LTD. AND DAVID T. SYMONS ARCHITECT LTD.
CARRYING ON BUSINESS AS S2 ARCHITECTURE
PARTNERSHIP, S2 ARCHITECTURE, DURWEST
CONSTRUCTION SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE
SALES LTD., 789072 ALBERTA LTD. AND R.K.G.
DEVELOPMENTS LTD. CARRYING ON BUSINESS AS
LENBETH WEEPING TILE CALGARY and LENBETH
WEEPING TILE CALGARY

THIRD PARTY DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC.,
ROBERT SPAETGENS ARCHITECT LTD., DAVID T. SYMONS
ARCHITECT LTD., ROBERT SPAETGENS ARCHITECT LTD.
AND DAVID T. SYMONS ARCHITECT LTD. CARRYING ON
BUSINESS AS S2 ARCHITECTURE PARTNERSHIP, S2
ARCHITECTURE, MWC CONSULTING STRUCTURAL
ENGINEERING LTD., ALLEN WASNEA ENGINEERING LTD.,
IDEA GROUP INC., DURWEST CONSTRUCTION SYSTEMS
(ALBERTA) LTD., PRAIRIE PIPE SALES LTD., 789072
ALBERTA LTD., R.K.G. DEVELOPMENTS LTD., PRAIRIE PIPE
SALES LTD., 789072 ALBERTA LTD. AND R.K.G.
DEVELOPMENTS LTD. CARRYING ON BUSINESS AS
LENBETH WEEPING TILE CALGARY, LENBETH WEEPING
TILE CALGARY and INLAND CONCRETE LIMITED

CLERK OF THE COURT

AMENDED this 18th day of May 2017
Rule 3.63 Pursuant to
Dated the 18 day of May 2017

**BROUGHT PURSUANT TO THE
CLASS PROCEEDINGS ACT, S.A. 2003, c. C-16.5**

DOCUMENT

AMENDED AMENDED STATEMENT OF CLAIM

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF

PEACOCK LINDER HALT & MACK LLP
Suite 4050, 400 – 3rd Avenue SW
Calgary, Alberta T2P 4H2
Attention: Mylène D. Tiessen

- 2 -

PARTY FILING THIS Telephone: (403) 296-2280
DOCUMENT Fax: (403) 296-2299
 FILE: 4829

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.

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

Statement of facts relied on:

1. The Representative Plaintiff Condominium Corporation No. 0610078 is an Alberta condominium corporation constituted under the *Condominium Property Act*, R.S.A. 2000, c. C-22 with a registered office in Calgary, Alberta.
2. The Representative Plaintiff Heather Mazur is an individual resident in Calgary, Alberta.
3. The Representative Plaintiffs brings this action on their own behalf and on behalf of all persons who purchased a condominium unit in Condominium Plan No. 0610078 (hereinafter "0610078") from the Defendant Pointe of View Condominiums (Prestwick) Inc. (hereinafter "Pointe of View") and who paid levies as a result of the special assessments by 0610078 dated January 28, 2010 and May 17, 2010 (the "Special Assessments"); and, all persons who purchased a condominium unit in 0610078 from other than Pointe of View and who have paid levies as a result of the Special Assessments (the "Class").
4. Condominium Plan No. 0610078 is a condominium project located at 10 Prestwick Bay S.E. in Calgary, Alberta and is known as Prestwick Pointe Condominiums (hereinafter the "Project"). The Project consists of four buildings of 376 total residential units. The entire project covers an underground parkade (hereinafter the "Parkade").
5. Pointe of View Condominiums (Prestwick) Inc. is a corporation registered under the laws of Alberta with its registered office in Calgary, Alberta. Pointe of View is the developer of the Project, as defined in the *Condominium Property Act*, R.S.A. 2000, c. C-22. Pointe of View is also the builder of the Project and was the original vendor of the condominium units to the Project.

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6. The Defendant National Home Warranty Programs Ltd. is a body corporate with an office in Edmonton, Alberta.
7. The Defendant Royal & Sun Alliance Insurance Company of Canada is a body corporate with an office in Calgary, Alberta and carries on business as an insurer in Alberta under the provisions of the *Insurance Act*, R.S.A. 2000, c. I-3.
8. At all times material National Home Warranty Programs Ltd. acted as the authorized agent of the Defendant Royal & Sun Alliance Insurance Company of Canada.
9. The Defendants David T. Symons Architect Ltd., Robert Spaetgens Architect Ltd. and David T. Symons Architect Ltd. are partners carrying on business as S2 Architecture Partnership (previously known as SSE Architecture) which Defendant is an Alberta registered partnership providing architectural services (these Defendants hereinafter collectively referred to as "S2 Architecture").
10. The Defendant Durwest Construction Systems (Alberta) Ltd. ("Durwest") is a corporation registered under the laws of Alberta with its registered office in Calgary, Alberta and carries on business in various trades including, *inter alia*, commercial and industrial waterproofing.
11. The Defendants Prairie Pipe Sales Ltd., 789072 Alberta Ltd. and R.K.G. Developments Ltd. are partners carrying on business as Lenbeth Weeping Tile Calgary, which Defendant is an Alberta registered partnership, providing damp proofing supply and installation and other services (these Defendants hereinafter collectively referred to as "Lenbeth").
12. Prior to and during the construction of the Project, Pointe of View, or its agent, UPA Pointe Group Limited Partnership, entered into contracts with:
 - (a) S2 Architecture with respect to the design of the Project, including, *inter alia*, the Parkade and as part of that contract S2 Architecture agreed and did conduct site visits and reports during the contract administration portion of the Project; and
 - (b) Durwest and Lenbeth with respect to the waterproofing of the Parkade, concrete patios, wood columns and garbage enclosures on the Project.

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13. The contracts described above gave rise to a duty of care by S2 Architecture, Durwest and Lenbeth, (the "Contractors") to render the Project fit for the Project's inhabitants, including members of the Class, and to carry out their work in accordance with the applicable standard of care. Each of the Contractors knew at the time they entered into the contracts that a breach of this duty of care would cause the damage claimed herein.
14. Further, at all material times it was foreseeable to the Contractors that the Project's inhabitants, including members of the Class, relied upon the Contractors to take reasonable care in the discharge of their contractual and general duties in relation to the contract work.
15. Further, it was an express or implied term of the contracts described above that the work contemplated by these contracts would be carried out in a skilled and workmanlike manner and would comply with all codes, statutes, regulations and industry standards.
16. Each of the Contractors owed the Project's inhabitants, including members of the Class, a duty to care to ensure the Project, including the parkade, was constructed in accordance with any applicable manufacturer's specifications and comply with all applicable codes and all materials used would meet any applicable manufacturer's specifications and comply with all applicable codes.
17. Beginning in or around 2004, Pointe of View began offering condominium units in the Project for sale to the public.
18. Pointe of View solicited purchase agreements in writing from the purchasers of the units in the Project, including the Original Owners. Each of the purchase agreements included the following expense or implied terms:
 - (a) The design and construction of the Project would comply with all applicable legislation, regulations and bylaws, including the *Alberta Building Code* and any development and building permits;
 - (b) The design of the Project would adhere to sound industry and design practices and the Project's design would be practical and meet its intended purpose;
 - (c) The Project would be constructed in a workmanlike manner in conformity with the drawings and specifications and in particular with the specifications described in the schedules to the purchase agreements and would be free of construction

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deficiencies or structural defects, including any defects due to faulty design, materials, equipment or workmanship;

- (d) The Plaintiffs would be informed of variations or modifications to the Project specifications;
 - (e) Construction of the Project would be undertaken and supervised in accordance with industry standards and the intended use of the Project; and
 - (f) Pointe of View would warn purchasers of any defects in the design or in the construction of the Project.
19. It was a term a further term of the purchase agreements that each condominium unit would have the benefit of insurance in the form of a warranty certificate issued by Royal & Sun Alliance Insurance Company of Canada represented by its agent National Home Warranty Programs Ltd. The warranty certificates provided *inter alia*:

The program shall indemnify the purchaser, subject to the exclusions, limitations and conditions set out in this Limited Construction Warranty Certificate where a claim for direct loss is made within the Contractual Completion Warranty Period, Defect Warranty Period or Structural Defect Warranty Period

- 20. The warranty certificate further stated that the program would "Repair Structural Defects, which occur during the four (4) year period following the expiration of the Builder's Warranty."
- 21. Pointe of View owed a common law duty of care to the Class. Pointe of View owed a duty to design and construct the Project to ensure that it was safe and reasonably free from deficiencies and that it met the reasonable needs of the Class.
- 22. In about October 2009, significant problems with respect to the construction of the Parkade were discovered by the Plaintiffs including, *inter alia*, defects involving the concrete foundation walls to the exterior of the buildings, the parkade suspended concrete slab and the Parkade's drainage system.
- 23. Pointe of View breached the terms of the purchase agreements and Pointe of View and the Contractors breached their duties of care to the members of the Class in failing to comply with all applicable legislation, regulations and bylaws including the *Alberta Building Code* and in failing to design and construct the Project in a workmanlike manner

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and according to sound industry design and building practices including the following inadequacies:

- (a) Deficiencies in the Project's perimeter concrete foundations walls;
- (b) Deficiencies in the Parkade's suspended concrete slab;
- (c) Deficiencies in the buildings' drainage system;
- (d) Improper grading of the buildings' perimeters;
- (e) Failure to install drainage gravel and other appropriate drainage systems around the buildings' perimeters;
- (f) Failure to apply damp proofing or waterproofing to the concrete foundation walls or, alternatively, failure to install effective damp proofing or water proofing to the concrete foundation walls;
- (g) Failure to properly install a waterproof membrane for protection of the suspended concrete slab in the Parkade;
- (h) Failure to provide an effective storm water drainage system;
- (i) Failure to waterproof the concrete patios that are located on the Parkade's concrete slab; and
- (j) Such further and other particulars as will be proven at the trial of this matter.

All of which are collectively referred to as the "Construction Deficiencies".

- 24. Further, the Plaintiffs state that the Construction Deficiencies amount to "Defect(s) or Structural Defect(s)" within the meaning of the warranty certificates.
- 25. The Plaintiffs further state that the Construction Defects were latent defects which Pointe of View and the Contractors knew or ought to have known would pose a real and substantial danger to the Project's inhabitants, including the members of the Class.
- 26. In March of 2010 the Plaintiffs served notice of claims in respect of the Construction Deficiencies upon the Defendants, Pointe of View, Royal & Sun Alliance Insurance Company of Canada and National Home Warranty Programs Ltd. These Defendants have failed to respond to the Plaintiffs' claims.

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27. The Plaintiffs state that the Defendants Royal & Sun Alliance Insurance Company of Canada and National Home Warranty Programs Ltd. have breached their obligations under the warranty certificates.
28. The Representative Plaintiffs state that the cost of repair and remediation of the Construction Deficiencies is approximately \$2.7 million and this amount is claimed as damages. Further particulars of the damages will be presented at the trial of this matter as the repair and remediation is ongoing at the time of this pleadings.

Trial:

29. The Representative Plaintiffs propose that the trial of this action be held at the Calgary Courts Centre in Calgary, Alberta and estimate that the trial of this action will not take more than 25 days.

Remedy sought:

30. Wherefore the Plaintiffs claim against the Defendants jointly and severally as follows:
- (a) Damages in the sum of \$2,700,000.00 or such other amount as proven at trial;
 - (b) Declarations as to the Class members' rights pursuant to the warranty certificates;
 - (c) Interest pursuant to the *Judgement Interest Act*, R.S.A. 2000, c. J-1, as amended;
 - (d) Costs; and
 - (e) Such further and other relief as this Honourable Court deems appropriate.

WARNING**NOTICE TO THE DEFENDANTS**

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 plaintiffs' 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 plaintiffs against you.

THIS IS EXHIBIT "L"
Referred to in the Affidavit of
HEATHER HANSEN
Sworn before me this 7th day
of October, 2022



A Commissioner for Oaths
in and for Alberta
Mylene D. Tieszen
Barrister and Solicitor

COURT FILE NO. 1001 – 15771

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CALGARY

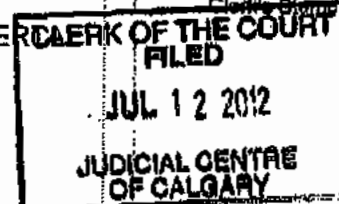
CENTRE

PLAINTIFFS CONDOMINIUM CORPORATION NO. 0610078 and SYD DOMBOWSKY AS REPRESENTATIVE PLAINTIFFS

DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA and NATIONAL HOME WARRANTY PROGRAMS LTD.

DOCUMENT STATEMENT OF DEFENCE OF POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC.

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Demlantschuk Lequer Burke & Hoffinger LLP
1200, 1015 – 4th Street S.W.
Calgary, Alberta T2R 1J4
Attention: Alexander M. Koolman
alex@legalsolutions.ca
Telephone: 403-252-9937
Fax: 403-263-8529
File: 51,785



Statement of facts relied on:

1. The Defendant Pointe of View Condominiums (Prestwick) Inc. denies each and every allegation set out in the Statement of Claim except where expressly admitted herein.
2. The Defendant Pointe of View Condominiums (Prestwick) Inc. admits paragraph 1 of the Statement of Claim but denies that the Representative Plaintiff Condominium Corporation No. 0610078 has any capacity at law to bring this action in its own right.
3. The Defendant Pointe of View Condominiums (Prestwick) Inc. admits paragraph 4 and accedes to the Plaintiffs' proposal expressed in paragraph 21 of the Statement

of Claim.

4. The Defendant Pointe of View Condominiums (Prestwick) Inc. admits that it is a body corporate and the original owner of the property described in the Statement of Claim as the Project but denies that it supplied any labour or material in the construction of the Project.
5. In specific response to paragraph 10 of the Statement of Claim, the Defendant Pointe of View Condominiums (Prestwick) Inc. acknowledges that it entered into written Agreements of Purchase and Sale with various parties (the "Purchasers") who purchased units in the Property from this Defendant. The Agreements of Purchase and Sale were in writing and the written Agreement contained the entire agreement between the parties.
6. In further response to paragraph 10 of the Statement of Claim, the Defendant Pointe of View Condominiums (Prestwick) Inc. acknowledges that, pursuant to the various written Agreements of Purchase and Sale, it provided a covenant to build the project in a good and workmanlike manner, which it did. Save and except for that covenant, this Defendant denies that it made any representation of any nature or kind whatsoever in connection with the Project, or any statement of any nature or kind meant to induce the Purchasers to purchase units in the Property. Furthermore, this Defendant states that the Agreements for Purchase and Sale specifically foreclosed the Purchasers, and therefore the Plaintiffs, from relying upon any representation whatsoever.
7. In specific response to paragraph 13 of the Statement of Claim, the Defendant Pointe of View Condominiums (Prestwick) Inc. denies that it was under any duty of any nature or kind whatsoever, whether described in the Statement of Claim or otherwise, to the Plaintiffs.
8. In further specific response to paragraph 13 of the Statement of Claim, the Defendant Pointe of View Condominiums (Prestwick) Inc. further denies that it ever

had any duty toward any of the Plaintiffs other than those covenants contained within the Agreements of Purchase and Sale referred to herein. For further certainty, this Defendant denies that it was under any duty whatsoever, as developer, vendor or in any other capacity, in favour of the Plaintiffs.

9. In specific response to paragraph 15, 16 and 17 of the Statement of Claim, the Defendant Pointe of View Condominiums (Prestwick) Inc. specifically denies that there are any defects or deficiencies in the design or construction of the Property. In the event that there are any such deficiencies, this Defendant is not responsible for them and is not liable to the Plaintiffs.
10. In further specific response to paragraphs 15, 16 and 17, the Defendant Pointe of View Condominiums (Prestwick) Inc. states that the design and construction of the Project was performed in accordance with the *Alberta Building Code* and in accordance with all other regulatory requirements, and was in accordance with industry standards and performed in a proper workmanlike manner.
11. In specific response to paragraph 18 of the Statement of Claim, the Defendant Pointe of View Condominiums (Prestwick) Inc. acknowledges that the Plaintiffs brought to its attention an allegation that water had penetrated some of the Property but denies that this had occurred through any fault of the Defendant Pointe of View Condominiums (Prestwick) Inc.
12. The Defendant Pointe of View Condominiums (Prestwick) Inc. denies that it was at any time negligent or in breach of its covenant to the Plaintiffs to build the Project in a good and workmanlike manner and states that at all times this Defendant engaged competent and professional parties, or alternatively parties who held themselves out as competent and professional, and this Defendant did at all times everything which would be expected of a prudent owner and developer of property to ensure that the building would be built correctly, to a high standard, and in accordance with Code. In the event that the Plaintiffs should prove that the Property was not designed or built properly, it is not through any fault or breach of covenant or duty of this Defendant

but rather through the fault of one or more third parties not named.

13. The Defendant Pointe of View Condominiums (Prestwick) Inc. denies that the Plaintiffs have sustained any damages as alleged in the Statement of Claim or at all and puts the Plaintiffs to the strict proof thereof.

14. The Defendant Pointe of View Condominiums (Prestwick) Inc. denies the cost of repair as set forth in the Statement of Claim and denies that remedial work is necessary to the extent claimed by the Plaintiff. This Defendant further states that some or all of the damages claimed by the Plaintiffs may not be the responsibility of any party other than the Plaintiffs.

15. The Defendant Pointe of View Condominiums (Prestwick) Inc. denies that the Plaintiffs have acted prudently in dealing with the alleged damage and in particular the Plaintiffs have not mitigated their damages and have not proceeded to remediate appropriately or effectively, causing further unnecessary damages which are not therefore the responsibility of this Defendant.

16. The within Statement of Claim was filed more than two years after the facts in support of the allegations against the Defendant Pointe of View Condominiums (Prestwick) Inc. were known to the Plaintiffs and the claim of the Plaintiffs is statute-barred by operation of the *Limitations Act*, R.S.A. 2000, c. L-12.

Remedy sought:

17. The Defendant prays that the Statement of Claim be dismissed as against it, with costs ordered against the Plaintiffs.

NOTICE TO THE DEFENDANTS

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 601 - 5 Street SW, 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(s) against you.

THIS IS EXHIBIT "M"
Referred to in the Affidavit of
HEATHER HANSEN
Sworn before me this 7th day
of October, 2022


A Commissioner for Oaths
in and for Alberta

Mylène D. Tieszen
Barrister and Solicitor

COURT FILE NO. 1001 15771

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS CONDOMINIUM CORPORATION 0610078 and SYD DOMBOWSKY AS
REPRESENTATIVE PLAINTIFFS

DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROYAL & SUN
ALLIANCE INSURANCE COMPANY OF CANADA and NATIONAL HOME
WARRANTY PROGRAMS LTD.

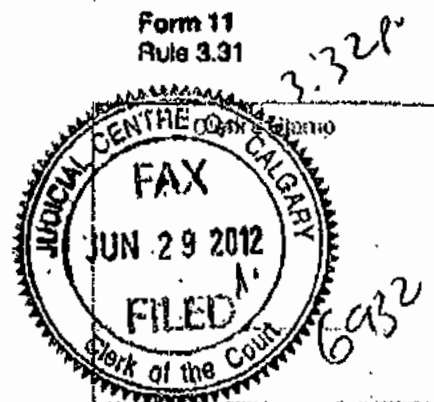
DOCUMENT STATEMENT OF DEFENCE

PARTY FILING ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA and
THIS DOCUMENT NATIONAL HOME WARRANTY PROGRAMS LTD.

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

BRIAN E. WALLACE
Barrister & Solicitor
Phone: (780) 428-6036
Fax: (780) 428-9683
Email: bwallace@dcllp.com

File #174568
DUNCAN & CRAIG LLP
LAWYERS & MEDIATORS
2600 Scotia Place
10060 Jasper Avenue
Edmonton, Alberta, Canada, T5J 3V9



Statement of facts relied on:

1. Unless otherwise admitted herein, the Defendant, ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA ("Royal") denies each and every allegation contained in the Statement of Claim.
2. Unless otherwise admitted herein, the Defendant, NATIONAL HOME WARRANTY PROGRAMS LTD. ("National") denies each and every allegation contained in the Statement of Claim.

3. These Defendants specifically deny that they breached any obligations under any agreement or breached, failed, refused or otherwise omitted to fulfil any obligations under any warranty as alleged in the Statement of Claim herein.
4. These Defendants specifically deny that it is necessary to bring this action pursuant to the *Class Proceedings Act*.

Any matters that defeat the claim of the plaintiff:

5. In answer to the Statement of Claim, these Defendants state that if the allegations contained in the Statement of Claim occurred as alleged, or at all, and if the Plaintiffs suffered the loss and damage as alleged, or at all, all of which is not admitted but denied, then the allegations contained in the Statement of Claim were caused by or contributed to, and any resulting injuries, loss and damage were the result of the negligence of parties other than these Defendants, particulars of which negligence are set out in the Statement of Claim, and which particulars are hereby repeated and plead.
6. Further, or in the alternative, if the Plaintiffs suffered loss or damage as alleged in the Statement of Claim herein, or at all, which is not admitted but denied, then the loss and damage was not caused by the conduct, action, or breach of these Defendants, as alleged in the Statement of Claim and any resulting injuries, loss and damage were caused or contributed to by the misrepresentation, inadequate disclosure, breach of duties, breach of contract or negligence of parties other than these Defendants.
7. Further, or in the alternative, if the Plaintiff Condominium Corporation suffered from deficiencies to the parkade, concrete slab, drainage system, improper grading, failure to install weeping tile, damp proofing or waterproofing of concrete foundation and improper installation of waterproof membranes (the "deficiencies") as alleged in paragraphs 14 and 15 of the Statement of Claim, which is not admitted but denied, the deficiencies have been remedied and repaired by parties other than these Defendants Royal and National and there is no action required by the Defendants Royal and National pursuant to any warranty.

8. Further, or in the alternative, if the Plaintiffs suffered loss or damage as alleged in the Statement of Claim herein, or at all, which is not admitted but denied, then any warranty coverage expired without notice of any claim by the Plaintiffs to these Defendants in accordance with the limitation and time requirements in the terms and conditions of the warranty coverage.
9. Further, or in the alternative, if the Plaintiffs suffered loss or damage as alleged in the Statement of Claim herein, or at all, which is not admitted but denied, any deficiencies, defects, structural defects or other damage as alleged in the Statement of Claim are not deficiencies, defects, structural defects or damage which are covered under the terms and conditions of the warranty coverage.
10. Further, or in the alternative, if the Plaintiffs suffered loss or damage as alleged in the Statement of Claim herein, or at all, which is not admitted but denied, the Plaintiffs have failed to comply with the Purchaser's obligations identified in the purchase agreement with Pointe of View Condominiums (Prestwick) Inc., and obligations pursuant to the warranty coverage (collectively the "Purchaser's Obligations"), and the failure to comply with the said Purchaser's Obligations voids the warranty coverage in its entirety.
11. Further, or in the alternative, if the Plaintiffs suffered loss or damage as alleged in the Statement of Claim herein, or at all, which is not admitted but denied, the loss or damage allegedly suffered is not a structural defect as defined in the warranty.
12. Further, or in the alternative, these Defendants state that the Plaintiffs have not suffered the loss and damage as alleged, or at all, or alternatively the loss and damage claimed is excessive and remote.
13. Further, or in the alternative, if the Plaintiffs suffered from the loss and damage as alleged, or at all, which is not admitted but denied, then these Defendants state that the Plaintiffs have failed to mitigate their loss and damage as required by law, or at all.
14. The Plaintiffs have failed to commence the within action or seek the necessary remedial orders within the time limitations prescribed by the *Limitations Act*, c.L-12, R.S.A. 2000, and accordingly the within action is statute barred.

15. These Defendants Royal and National hereby specifically deny that either of them refused to perform any obligations under the warranty.

16. The Defendants plead and rely upon the provisions of the *Contributory Negligence Act*, R.S.A. 2000, c.C-27 and the *Tort-Feasors Act*, R.S.A. 2000, c. T-5 and the amendments thereto and Regulations thereunder.

Remedy sought:

17. The Statement of Claim be dismissed as against these Defendants, Royal and National with costs.

THIS IS EXHIBIT "N"
Referred to in the Affidavit of
HEATHER HANSEN
Sworn before me this 7th day
of October, 2022



A Commissioner for Oaths
in and for Alberta
Mylène D. Tieszen
Barrister and Solicitor

COURT FILE NUMBER

1001-15771

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFF(S)

CONDOMINIUM CORPORATION NO.
0610078 and SYD DOMBOWSKY AS
REPRESENTATIVE PLAINTIFF

DEFENDANT(S)

POINTE OF VIEW CONDOMINIUMS
(PRESTWICK) INC., ROYAL & SUN
ALLIANCE INSURANCE COMPANY OF
CANADA and NATIONAL HOME WARRANTY
PROGRAMS LTD.

THIRD PARTY DEFENDANTS

POINTE OF VIEW CONDOMINIUMS
(PRESTWICK) INC., ROBERT SPAETGENS
ARCHITECT LTD. DAVID T. SYMONS
ARCHITECT LTD., ROBERT SPAETGENS
ARCHITECT LTD AND DAVID T. SYMONS
ARCHITECT LTD. carrying on business as S2
ARCHITECTURE PARTNERSHIP, S2
ARCHITECTURE, MWC CONSULTING
STRUCTURAL ENGINEERING INC., ALLEN
WASNEA ENGINEERING LTD., IDEA GROUP
INC., DURWEST CONSTRUCTION
SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE
SALES LTD., 789072 ALBERTA LTD., R.K.G.
DEVELOPMENTS LTD., PRAIRIE PIPE
SALES LTD., 789072 ALBERTA LTD. AND
R.K.G. DEVELOPMENTS LTD. carrying on
business as LENBETH WEEPING TILE
CALGARY, LENBETH WEEPING TILE
CALGARY and INLAND CONCRETE LIMITED

DOCUMENT

THIRD PARTY STATEMENT OF DEFENCE

PARTY FILING THIS
DOCUMENT

ROBERT SPAETGENS ARCHITECT LTD., DAVID T. SYMONS
ARCHITECT LTD., ROBERT SPAETGENS ARCHITECT LTD. and
DAVID T. SYMONS ARCHITECT LTD. carrying on business as S2
ARCHITECTURE PARTNERSHIP, AND S2 ARCHITECTURE IN
RESPONSE TO THE THIRD PARTY CLAIM FILED ON BEHALF OF
ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA
and NATIONAL HOME WARRANTY PROGRAMS LTD.

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

Norton Rose Canada LLP
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2
CANADA

Phone: +1 403.267.8222
Fax: +1 403.264.5973

Form 17

(Rule 3.40)

CLERK OF THE COURT

SEP 18 2012

CALGARY, ALBERTA

Attention: Anne L. Kirker, Q.C.

File No. 285373

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

Statement of facts relied on:

1. S2 Architecture adopts the capitalized terms used and defined in the Statement of Claim.
2. Except as expressly admitted herein, Robert Spaetgens Architect Ltd., David T. Symons Architect Ltd., Robert Spaetgens Architect Ltd. and David T. Symons Architect Ltd. carrying on business as S2 Architecture Partnership, and S2 Architecture (collectively referred to as "**S2 Architecture**") deny each and every allegation contained in the Statement of Claim and in the Third Party Claim filed on behalf of Royal & Sun Alliance Insurance Company of Canada ("**RSAICC**") and National Home Warranty Programs Ltd. ("**NHW**").
3. S2 Architecture admits paragraphs 5 and 7 of the Third Party Claim and agrees with the proposal set-out in paragraph 21 of the Statement of Claim.

Any matters that defeat the claim of the defendant(s)/third party plaintiff(s):

4. At all material times, S2 Architecture performed the services they were retained to provide with the skill, care, diligence and competence expected of professional architects in Alberta.
5. In specific response to paragraph 15 of the Third Party Claim, S2 Architecture denies that Pointe of View retained S2 Architecture to oversee the design of the parkade structure, patios, concrete foundations, drainage systems and waterproofing on the Project (the "**Work**").
6. In specific response to paragraph 17 and 21 of the Third Party Claim, S2 Architecture denies that they breached any contractual or other duty owed to RSAICC, NWH, Pointe of View, or the Plaintiffs, or any statutory requirement as alleged, or at all. S2 Architecture denies that it had any on-site responsibility for the Work as alleged, or at all.
7. In specific response to paragraph 3 and 24 of the Third Party Claim, S2 Architecture denies that RSAICC or NWH, or both, are entitled to any contribution or indemnity from S2 Architecture, on the basis alleged, or at all.
8. S2 Architecture further denies that the Plaintiffs are entitled to judgment against the Defendants on the basis alleged, or at all.
9. The Plaintiffs' action was commenced outside the limitation period prescribed by the *Limitations Act*, R.S.A. 2000, c. L-12, as amended.
10. If the Plaintiffs' action is not statute barred and they have suffered losses, damage or expenses as alleged, or at all, the Plaintiffs have failed to take reasonable steps to adequately or appropriately mitigate their losses.
11. Further, and in response to the whole of the Third Party Claim, if RSAICC or NWH bears any liability for losses, damages or expenses suffered by the Plaintiffs, those losses, damages, and expenses were not caused or contributed to by any act or omission on the part of S2 Architecture. Rather, any losses, damages, or expenses suffered by the Plaintiffs were caused or contributed to by other parties responsible for the Work, the particulars of which have been pled in the various paragraphs of the Statement of Claim and Third Party Claim and which particulars are hereby repeated and pled.

12. S2 Architecture further pleads and relies upon the provisions of the *Limitations Act*, RSA 2000, c L-12, the *Contributory Negligence Act*, RSA 2000, c C-23, the *Class Proceedings Act*, SA 2003, c C-16.5, and the *Tort-Feasors Act*, RSA 2000, c T-5.

Dispute of liability:

13. S2 Architecture disputes the Defendants' liability to the Plaintiffs.
14. S2 Architecture disputes its liability to the extent claimed in the Third Party Claim.

Remedy sought:

15. The dismissal of the Plaintiffs' action with costs.
16. In the alternative, if judgment is awarded against RSAICC or NWH, or both, that this Third Party Claim be dismissed with costs.

Form 17
[Rule 3.49]

COURT FILE NUMBER 1001-15771

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF(S) CONDOMINIUM CORPORATION NO.
0610078 and SYD DOMBOWSKY AS
REPRESENTATIVE PLAINTIFF

Clerk's Stamp

CLERK OF THE COURT

SEP 18 2012

CALGARY, ALBERTA

DEFENDANT(S) POINTE OF VIEW CONDOMINIUMS
(PRESTWICK) INC., ROYAL & SUN
ALLIANCE INSURANCE COMPANY OF
CANADA and NATIONAL HOME WARRANTY
PROGRAMS LTD.

THIRD PARTY DEFENDANTS POINTE OF VIEW CONDOMINIUMS
(PRESTWICK) INC., ROBERT SPAETGENS
ARCHITECT LTD. DAVID T. SYMONS
ARCHITECT LTD., ROBERT SPAETGENS
ARCHITECT LTD AND DAVID T. SYMONS
ARCHITECT LTD. carrying on business as S2
ARCHITECTURE PARTNERSHIP, S2
ARCHITECTURE, MWC CONSULTING
STRUCTURAL ENGINEERING INC., ALLEN
WASNEA ENGINEERING LTD. IDEA GROUP
INC., DURWEST CONSTRUCTION
SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE
SALES LTD., 789072 ALBERTA LTD., R.K.G.
DEVELOPMENTS LTD., PRAIRIE PIPE
SALES LTD., 789072 ALBERTA LTD. AND
R.K.G. DEVELOPMENTS LTD. carrying on
business as LENBETH WEEPING TILE
CALGARY, LENBETH WEEPING TILE
CALGARY and INLAND CONCRETE LIMITED

DOCUMENT

THIRD PARTY STATEMENT OF DEFENCE

PARTY FILING THIS
DOCUMENT

S2 ARCHITECTURE IN RESPONSE TO THE THIRD PARTY CLAIM
FILED ON BEHALF OF POINTE OF VIEW CONDOMINIUMS
(PRESTWICK) INC.

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

Norton Rose Canada LLP
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2
CANADA

Phone: +1 403.267.8222
Fax: +1 403.264.5973

Attention: Anne L. Kirker, Q.C.
File No. 285373

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

Statement of facts relied on:

1. S2 Architecture adopts the capitalized terms used and defined in the Statement of Claim.
2. Except as expressly admitted herein, S2 Architecture denies each and every allegation contained in the Statement of Claim and in the Third Party Claim filed on behalf of Pointe of View Condominiums (Prestwick) Inc. ("Pointe of View").
3. S2 Architecture admits paragraph 4 of the Third Party Claim and agrees with the proposal set out in paragraph 21 of the Statement of Claim.

Any matters that defeat the claim of the defendants/third party plaintiffs:

4. At all material times, S2 Architecture performed the services it was retained to provide with the skill, care, diligence and competence expected of professional architects in Alberta.
5. In specific response to paragraph 18 of the Third Party Claim, S2 Architecture denies that Pointe of View retained S2 Architecture to provide design or inspection services for the completion of the perimeter concrete foundation walls and parkade suspended concrete slab at the Project (the "Work").
6. In specific response to paragraphs 19 and 20 of the Third Party Claim, S2 Architecture denies that it breached any contractual or other duty owed to Pointe of View as alleged, or at all. S2 Architecture denies that it had any on-site responsibility for the Work as alleged, or at all.
7. In specific response to paragraphs 11, 34, and 36 of the Third Party Claim, S2 Architecture denies that Pointe of View is entitled to any contribution or indemnity from S2 Architecture, on the basis alleged, or at all.
8. S2 Architecture further denies that the Plaintiffs are entitled to judgment against the Defendants on the basis alleged, or at all.
9. The Plaintiffs' action was commenced outside the limitation period prescribed by the *Limitations Act*, RSA 2000, c L-12, as amended.
10. If the Plaintiffs' action is not statute barred and they have suffered losses, damages, or expenses as alleged, or at all, the Plaintiffs have failed to take reasonable steps to adequately or appropriately mitigate their losses.
11. Further, and in answer to the whole of the Third Party Claim, if Pointe of View bears any liability for losses, damages, or expenses suffered by the Plaintiffs, those losses, damages, and expenses were not caused or contributed to by any act or omission on the part of S2 Architecture. Rather, any losses, damages, or expenses suffered by the Plaintiffs were caused or contributed to by the negligence, breach of duty, or breach of contract of other parties responsible for the Work, the particulars of which have been pled in the various paragraphs of the Statement of Claim and Third Party Claim and which particulars are hereby repeated and pled.
12. S2 Architecture further pleads and relies upon the provisions of the *Limitations Act*, RSA 2000, c L-12, the *Contributory Negligence Act*, RSA 2000, c C-23, the *Class Proceedings Act*, SA 2003, c C-16.5, and the *Tort-Feasors Act*, RSA 2000, c T-5, as amended.

Dispute of liability:

13. S2 Architecture disputes the Defendants' liability to the Plaintiffs.

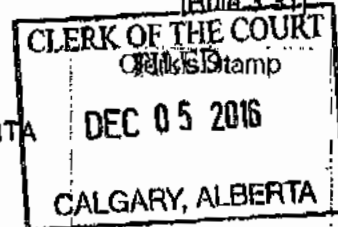
14. S2 Architecture disputes its liability to the extent claimed in the Third Party Claim.

Remedy sought:

15. The dismissal of the Plaintiffs' action with costs.
16. In the alternative, if judgment is awarded against Pointe of View, that this Third Party Claim be dismissed with costs.

Form 11

(Rule 3.31)



COURT FILE NUMBER 1001-15771

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF(S) CONDOMINIUM CORPORATION NO.
0610078 and SYD DOMBOWSKY AS
REPRESENTATIVE PLAINTIFF

DEFENDANT(S) POINTE OF VIEW CONDOMINIUMS
(PRESTWICK) INC., ROYAL & SUN
ALLIANCE INSURANCE COMPANY OF
CANADA, NATIONAL HOME WARRANTY
PROGRAMS LTD., DAVID T. SYMONS
ARCHITECT LTD., ROBERT SPAETGENS
ARCHITECT LTD. AND DAVID T SYMONS
ARCHITECT LTD. CARRYING ON BUSINESS
AS S2 ARCHITECTURE PARTNERSHIP, S2
ARCHITECTURE, DURWEST
CONSTRUCTION SYSTEMS (ALBERTA)
LTD., PRAIRIE PIPE SALES LTD., 789072
ALBERTA LTD. AND R.K.G.
DEVELOPMENTS LTD. CARRYING ON
BUSINESS AS LENBETH WEEPING TILE
CALGARY and LENBETH WEEPING TILE
CALGARY

THIRD PARTY DEFENDANTS POINTE OF VIEW CONDOMINIUMS
(PRESTWICK) INC., ROBERT SPAETGENS
ARCHITECT LTD. DAVID T. SYMONS
ARCHITECT LTD., ROBERT SPAETGENS
ARCHITECT LTD AND DAVID T. SYMONS
ARCHITECT LTD. carrying on business as S2
ARCHITECTURE PARTNERSHIP, S2
ARCHITECTURE, MWC CONSULTING
STRUCTURAL ENGINEERING INC., ALLEN
WASNEA ENGINEERING LTD. IDEA GROUP
INC., DURWEST CONSTRUCTION
SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE
SALES LTD., 789072 ALBERTA LTD., R.K.G.
DEVELOPMENTS LTD., PRAIRIE PIPE
SALES LTD., 789072 ALBERTA LTD. AND
R.K.G. DEVELOPMENTS LTD. carrying on
business as LENBETH WEEPING TILE
CALGARY, LENBETH WEEPING TILE
CALGARY and INLAND CONCRETE LIMITED

**BROUGHT PURSUANT TO THE CLASS PROCEEDINGS ACT,
S.A. 2003, c. C-16.5**

DOCUMENT STATEMENT OF DEFENCE

**PARTY FILING THIS
DOCUMENT**

DAVID T. SYMONS ARCHITECT LTD., ROBERT SPAETGENS
ARCHITECT LTD. AND DAVID T SYMONS ARCHITECT LTD.
CARRYING ON BUSINESS AS S2 ARCHITECTURE
PARTNERSHIP, AND S2 ARCHITECTURE

**ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT**

Norton Rose Fulbright Canada LLP
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2
CANADA

Phone: +1 403.267.8222
Fax: +1 403.264.5973

Attention: Anne L. Kirker, Q.C./Kelly Moffet-Burima
File No. 01115197-0148

Note: State below only facts and not evidence (Rule 3.31)

Statement of facts relied on:

1. David T. Symons Architect Ltd., Robert Spaetgens Architect Ltd. and David T. Symons Architect Ltd., carrying on business as S2 Architecture Partnership, and S2 Architecture (collectively referred to herein as "**S2 Architecture**") adopt the capitalized terms used and defined in the Amended Statement of Claim.
2. Except as expressly admitted herein, S2 Architecture denies each and every allegation contained in the Amended Statement of Claim and puts the Class to the strict proof thereof.
3. S2 Architecture admits paragraphs 9 of the Amended Statement of Claim and agrees with the proposal set out in paragraph 29 of the Amended Statement of Claim.

Any matters that defeat the claim of the plaintiffs:

4. At all material times, S2 Architecture performed the services it was retained to provide with the skill, care, diligence, and competence expected of professional architects in Alberta.
5. In specific response to paragraph 12 of the Amended Statement of Claim, S2 Architecture denies that Pointe of View retained S2 Architecture to provide design or inspection services during the contract administration portion of the Project with respect to the Parkade (the "**Work**").
6. In specific response to paragraphs 13-16 of the Amended Statement of Claim, S2 Architecture denies that it breached any contractual or other duty owed to the Class as alleged, or at all. S2 Architecture denies that it had any on-site responsibility for the Work as alleged, or at all.
7. In specific response to paragraph 23 of the Amended Statement of Claim, and without limiting the generality of the foregoing, S2 Architecture further denies that it:
 - 7.1 failed to design the Project in accordance with sound industry design and building practices;
 - 7.2 installed or constructed any portion of the Project, including those portions outlined in paragraph 23;

- 7.3 failed in any applicable duty to supervise the Work on the Project;
- 7.4 is responsible in any way for the Construction Deficiencies.
8. S2 Architecture denies that the Class has incurred, or will incur, the losses and damages set out in the Amended Statement of claim.
9. In the alternative, if the Class has suffered losses, damages, or expenses as alleged, or at all, the Class has failed to take reasonable steps to adequately or appropriately mitigate their losses.
10. Further, and in answer to the whole of the Amended Statement of Claim, if the Class did suffer any losses, damages, or expenses, those losses, damages, and expenses were not caused or contributed to by any act or omission on the part of S2 Architecture. Rather, any losses, damages, or expenses suffered by the Plaintiffs were caused or contributed to by the negligence, breach of duty, or breach of contract of other parties responsible for the Work, the particulars of which have been pled in the various paragraphs of the Amended Statement of Claim and which particulars are hereby repeated and pled.
11. In the further alternative, if the Class suffered any loss or damage as alleged, or at all, such loss or damage constitutes an unrecoverable pure economic loss as against S2 Architecture.
12. Further, the within action was commenced outside the limitation period prescribed by the *Limitations Act*, RSA 2000, c L-12, as amended.
13. S2 Architecture pleads and relies upon the provisions of the *Limitations Act*, RSA 2000, c L-12, the *Contributory Negligence Act*, RSA 2000, c C-23, the *Class Proceedings Act*, SA 2003, c C-16.5, and the *Tort-Feasors Act*, RSA 2000, c T-5, as amended.

Remedy sought:

14. The dismissal of the Class's action with costs.

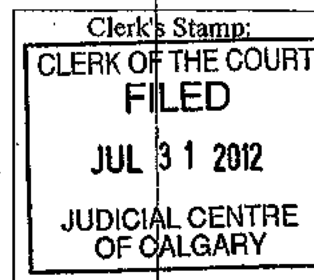
THIS IS EXHIBIT "O"
Referred to in the Affidavit of
HEATHER HANSEN
Sworn before me this 7th day
of October, 2022



A Commissioner for Oaths
in and for Alberta

Mylène D. Tieszen
Barrister and Solicitor

Form 11
[Rule 3.31]



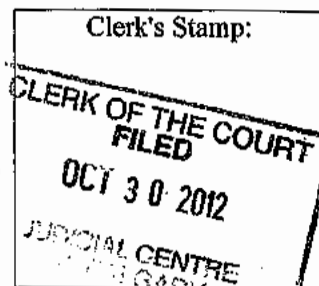
COURT FILE NUMBER	1001-15771
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	CONDOMINIUM CORPORATION NO. 0610078 and SYD DOMBOWSKY as representative Plaintiffs
DEFENDANT	POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA and NATIONAL HOME WARRANTY PROGRAMS LTD.
THIRD PARTIES	POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROBERT SPAETGENS ARCHITECT LTD., DAVID T. SYMONS ARCHITECT LTD., ROBERT SPAETGENS ARCHITECT LTD. AND DAVID T. SYMONS ARCHITECT LTD. carrying on business as S2 ARCHITECTURE PARTNERSHIP, S2 ARCHITECTURE, MWC CONSULTING STRUCTURAL ENGINEERING LTD., IDEA GROUP INC., DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD., R.K.G. DEVELOPMENTS LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD. AND R.K.G. DEVELOPMENTS LTD. carrying on business as LENBETH WEEPING TILE CALGARY, LENBETH WEEPING TILE CALGARY and INLAND CONCRETE LIMITED
DOCUMENT	STATEMENT OF DEFENCE OF THE THIRD PARTY DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD. TO THE THIRD PARTY CLAIM OF THE DEFENDANT POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC.
PARTY FILING THIS DOCUMENT	DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD.
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Burnet, Duckworth & Palmer LLP 2400, 525 - 8 Avenue SW Calgary, Alberta T2P 1G1 Lawyer: Donald J. Chernichen, Q.C. Phone Number: (403) 260-0101 Fax Number: (403) 260-0332 Email Address: djc@bdplaw.com File No. 33335-1420 DJC

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

Statement of facts relied on:

1. The Third Party Durwest Construction Systems (Alberta) Ltd. ("Durwest") denies the liability of the Defendant Pointe of View Condominiums (Prestwick) Inc. ("Pointe of View") to the Plaintiff. However, in the event that Pointe of View is liable to the Plaintiff, which is denied and not admitted, Durwest denies that it is liable to Pointe of View on the basis as alleged or otherwise.
2. Save where herein expressly admitted, Durwest denies each and every allegation contained in the Third Party Claim relative to Durwest and puts Pointe of View to the strict proof thereof.
3. Durwest admits paragraph 8 of the Third Party Claim.
4. In specific reply to paragraph 32 of the Third Party Claim, Durwest denies that it failed to prosecute the work in accordance with the alleged Durwest agreement and further denies the existence of any deficiencies as alleged or otherwise.
5. In specific reply to paragraph 33 of the Third Party Claim, Durwest denies that it was negligent or in breach of contract as alleged or otherwise.
6. In specific reply to paragraph 34 of the Third Party Claim, Durwest denies that Pointe of View is entitled to any indemnity on the basis as alleged or otherwise.
7. Durwest prays that the Third Party Claim of Pointe of View be dismissed as against it, with costs.

Form 11
[Rule 3.31]



COURT FILE NUMBER	1001-15771
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	CONDOMINIUM CORPORATION NO. 0610078 and SYD DOMBOWSKY as representative Plaintiffs
DEFENDANT	POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA and NATIONAL HOME WARRANTY PROGRAMS LTD.
THIRD PARTIES	POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROBERT SPAETGENS ARCHITECT LTD., DAVID T. SYMONS ARCHITECT LTD., ROBERT SPAETGENS ARCHITECT LTD. AND DAVID T. SYMONS ARCHITECT LTD. carrying on business as S2 ARCHITECTURE PARTNERSHIP, S2 ARCHITECTURE, MWC CONSULTING STRUCTURAL ENGINEERS INC., IDEA GROUP INC., DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD., R.K.G. DEVELOPMENTS LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD. AND R.K.G. DEVELOPMENTS LTD. carrying on business as LENBETH WEEPING TILE CALGARY, LENBETH WEEPING TILE CALGARY and INLAND CONCRETE LIMITED
DOCUMENT	STATEMENT OF DEFENCE OF THE THIRD PARTY DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD. TO THE THIRD PARTY CLAIM OF ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA and NATIONAL HOME WARRANTY PROGRAMS LTD.
PARTY FILING THIS DOCUMENT	DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD.

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Burnet, Duckworth & Palmer LLP
2400, 525 - 8 Avenue SW
Calgary, Alberta T2P 1G1
Lawyer: Donald J. Chernichen, Q.C.
Phone Number: (403) 260-0101
Fax Number: (403) 260-0332
Email Address: djc@bdplaw.com
File No. 33335-1420 DJC

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

Statement of facts relied on:

1. The Third Party Durwest Construction Systems (Alberta) Ltd. ("Durwest") admits paragraph 11 of the Third Party Claim. However, save where herein expressly admitted, Durwest denies each and every allegation of fact contained in the Third Party Claim and puts the Defendants Royal & Sun Alliance Insurance Company of Canada and National Home Warranty Programs Ltd. ("Royal & Sun Alliance") to the strict proof thereof.
2. In specific reply to paragraph 22 of the Third Party Claim, Durwest denies that it was negligent in the manner as alleged or otherwise and further denies the existence of any breaches of contract.
3. Durwest prays that the Third Party Claim of Royal & Sun Alliance be dismissed as against it, with costs.

Form 11
[Rule 3.31]

Clerk's Stamp: RECEIVED BY THE COURT FILED DEC 08 2016 JUDICIAL CENTRE OF CALGARY
--

COURT FILE NUMBER	1001-15771
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	CONDOMINIUM CORPORATION NO. 0610078 and SYD DOMBOWSKY as representative Plaintiffs
DEFENDANT	POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA, NATIONAL HOME WARRANTY PROGRAMS LTD., <u>DAVID T. SYMONS ARCHITECT LTD., ROBERT SPAETGENS ARCHITECT LTD. AND DAVID T. SYMONS ARCHITECT LTD. carrying on business as S2 ARCHITECTURE PARTNERSHIP, S2 ARCHITECTURE, DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD., AND R.K.G. DEVELOPMENTS LTD. carrying on business as LENBETH WEEPING TILE CALGARY and LENBETH WEEPING TILE CALGARY</u>
THIRD PARTIES	POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROBERT SPAETGENS ARCHITECT LTD., DAVID T. SYMONS ARCHITECT LTD., ROBERT SPAETGENS ARCHITECT LTD. AND DAVID T. SYMONS ARCHITECT LTD. carrying on business as S2 ARCHITECTURE PARTNERSHIP, S2 ARCHITECTURE, MWC CONSULTING STRUCTURAL ENGINEERS INC., ALLEN WASNEA ENGINEERING LTD., IDEA GROUP INC., DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD., R.K.G. DEVELOPMENTS LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD. AND R.K.G. DEVELOPMENTS LTD. carrying on business as LENBETH WEEPING TILE CALGARY, LENBETH WEEPING TILE CALGARY and INLAND CONCRETE LIMITED
	BROUGHT PURSUANT TO THE CLASS PROCEEDING ACT, S.A. 2003, c. C-16.5
DOCUMENT	STATEMENT OF DEFENCE OF THE DEFENDANT DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD. TO THE AMENDED STATEMENT OF CLAIM OF THE PLAINTIFFS CONDOMINIUM CORPORATION NO. 0610078 and SYD DOMBOWSKY as representative Plaintiffs

PARTY FILING THIS DOCUMENT DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD.

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Burnet, Duckworth & Palmer LLP
2400, 525 - 8 Avenue SW
Calgary, Alberta T2P 1G1
Lawyer: Jonathan H. Selnes
Phone Number: (403) 260-0360
Fax Number: (403) 260-0332
Email Address: jselnes@bdplaw.com
File No. 33335-1420 JHS

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

Statement of facts relied on:

1. The Defendant Durwest Construction Systems (Alberta) Ltd. (**Durwest**) denies each and every allegation contained in the Amended Statement of Claim of the Plaintiffs Condominium Corporation No. 0610078 and Syd Dombowsky as representative Plaintiff on behalf of the members of the Class (collectively, the **Plaintiffs**) relative to Durwest except where expressly admitted herein and put the Plaintiffs to the strict proof thereof.
2. Durwest adopts the capitalized terms as defined in the Amended Statement of Claim and used by the Plaintiff throughout the Amended Statement of Claim.
3. Durwest admits paragraph 10 of the Amended Statement of Claim.
4. In specific reply to paragraph 12(b) of the Amended Statement of Claim, Durwest did not enter into agreements for the waterproofing of the wood columns and garbage enclosures of the Project. Further, Durwest did not waterproof the wood columns and garbage enclosures of the Project.
5. In specific reply to paragraphs 13 and 14 of the Amended Statement of Claim, Durwest denies that it was under any duty of any nature whatsoever, whether described in the Amended Statement of Claim or otherwise, to the Plaintiffs.
6. Alternatively, in the event that Durwest owes a duty of care to the Plaintiffs, Durwest satisfied that duty by discharging its contractual and general duties in relation to the contract by working with reasonable care.

7. In specific reply to paragraphs 15 and 16 of the Amended Statement of Claim, Durwest pleads that it did:
 - (a) prosecute its work in accordance with its contract,
 - (b) prosecute its work in a skilled and workmanlike manner and in accordance with all applicable codes, statutes, regulations, and industry standards,
 - (c) work on the Project in accordance with any applicable manufacturer's specifications, and
 - (d) use materials that that would meet any applicable manufacturer's specifications and comply with all applicable codes, statutes, regulations, and industry standards.
8. In specific reply to paragraphs 15 and 16 of the Amended Statement of Claim, Durwest further denies that it owed a duty of care to the Plaintiffs in relation to the construction of the Project, including the parkade.
9. Alternatively, in the event that Durwest owes a duty of care to the Plaintiffs, Durwest satisfied that duty in relation to the construction of the Project, including the parkade.
10. In specific reply to paragraph 23 of the Amended Statement of Claim, Durwest denies that it owed a duty of care to the members of the Class as alleged or at all.
11. Alternatively, in the event that Durwest owes a duty of care to the members of the Class, Durwest satisfied that duty.
12. In specific reply to paragraph 23 of the Amended Statement of Claim, Durwest further denies the existence of any of the Construction Deficiencies as alleged or otherwise. Further, Durwest pleads that it installed effective damp proofing or water proofing on the horizontal elements of the concrete foundation walls.
13. In specific reply to paragraph 25 of the Amended Statement of Claim, Durwest denies that the Construction Defects or Construction Deficiencies were latent defects that Durwest knew or ought to have known would pose a real and substantial danger to the Project's inhabitants, including the members of the Class.
14. The Plaintiffs failed to make their claims within two years of when they knew or ought to have known that:

- (a) The injury or damages had occurred;
 - (b) The injury or damages were attributable to the conduct of Durwest; and
 - (c) That the injury warranted bringing a proceeding.
15. Therefore, the claims against Durwest are statute-barred under the *Limitations Act*, RSA 2000, c. L-12.
 16. Further, or in the alternative, the claims against Durwest were plead outside any applicable limitations period and are statute-barred under the *Limitations Act*, RSA 2000, c. L-12.
 17. Durwest denies that the Plaintiffs have suffered damages as alleged or at all or that it caused or contributed to any damages as alleged or at all.
 18. Further, or in the alternative, if the Plaintiffs have suffered any damages or losses, the Plaintiffs failed to mitigate any such damages or losses and failed to take reasonable steps to lessen any damages or losses.
 19. Further, or in the alternative, if the Plaintiffs have suffered any damages or losses, those damages or losses were not caused or contributed to by any of Durwest's acts or omissions. Rather, the Plaintiffs' damages or losses were caused or contributed to by the breach of duty and/or breach of contract by other parties responsible for the Work, which have been plead in detail in the Amended Statement of Claim and which are repeated and plead by Durwest here.
 20. Durwest pleads and relies upon the provisions of the *Limitations Act*, RSA 2000, c. L-12, as amended, the *Contributory Negligence Act*, RSA 2000, c. C-23, the *Class Proceedings Act*, SA 2003, c. C-16.5, and the *Tort-Feasors Act*, RSA 2000, c. T-5, as amended.

Any matters that defeat the claim of the Plaintiffs.

21. The matters stated in paragraphs 1 through 20 herein.

Remedy sought:

22. Durwest requests that the Amended Statement of Claim of the Plaintiffs be dismissed as against it, with costs ordered against the Plaintiffs.
23. Such other relief as this Honourable Court deems just and appropriate.

THIS IS EXHIBIT "P"
Referred to in the Affidavit of
HEATHER HANSEN
Sworn before me this 7th day
of October, 2022



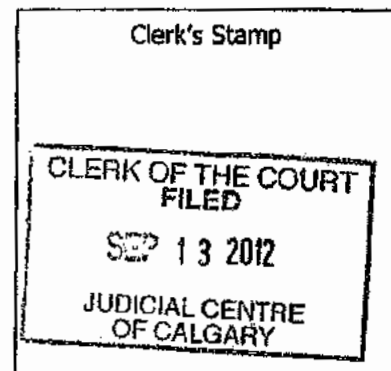
A Commissioner for Oaths
in and for Alberta

Mylène D. Tieszen
Barrister and Solicitor

COURT FILE NO. 1001-15771

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY



PLAINTIFFS CONDOMINIUM CORPORATION NO. 0610078 AND SYD DOMBOWSKY AS REPRESENTATIVE PLAINTIFF

DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA and NATIONAL HOME WARRANTY PROGRAMS LTD.

THIRD PARTY DEFENDANTS MWC CONSULTING STRUCTURAL ENGINEERS INC., INLAND CONCRETE LIMITED, S2 ARCHITECTURE, ALLEN WASNEA ENGINEERING LTD., IDEA GROUP INC., LENBETH WEEPING TILE (CALGARY) and DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD.

DOCUMENT **THIRD PARTY STATEMENT OF DEFENCE OF LENBETH WEEPING TILE (CALGARY)** to the third party claim of Pointe of View Condominiums (Prestwick) Inc.

PARTY FILING THIS DOCUMENT LENBETH WEEPING TILE (CALGARY)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

McLENNAN ROSS LLP
1600 Stock Exchange Tower
300 - 5th Avenue SW
Calgary AB T2P 3C4

Lawyer: Alexis Moulton
Telephone: 403 444-4081
Fax: 403 303-1655
Email: amoulton@mross.com
File No.: 122476

Statement of facts relied on:

1. The Third Party Defendant, Lenbeth Weeping Tile (Calgary) ("Lenbeth") admits paragraph 7 of the Third Party Claim but otherwise denies each and every other allegation as contained in the Third Party Claim except where expressly admitted herein.
2. Lenbeth denies the allegations contained in the Third Party Claim and specifically denies that the Defendants, Pointe of View Condominiums (Prestwick) Inc., Royal & Sun Alliance Insurance Company of Canada and National Home Warranty Programs Ltd., are entitled to indemnity and contribution as alleged or at all.
3. Lenbeth denies that it installed, designed or inspected the grading system, the drainage system, the waterproofing system or the concrete parkade including the foundation walls and suspended concrete slab as alleged or at all.

4. Lenbeth states that it was contracted solely to supply and install weeping tile and then to apply dampproofing and the scope of work performed by Lenbeth was wholly unrelated and unconnected to the allegations of negligence and damages alleged in the Plaintiff's Statement of Claim.
5. In answer to the whole of the Third Party Claim, Lenbeth states that at all material times it performed the scope of work that it was requested to perform in a proper, scientific and workmanlike manner and in accordance with the generally accepted industry standards at that time and in accordance with the plans, specifications and directions provided to it and that it met the applicable standard of care such that Lenbeth denies that the Defendants have the claim over as against them as alleged, or at all and Lenbeth puts the Defendants to the strict proof of that claim as against Lenbeth.
6. The work that was done by Lenbeth was covered by a one year warranty. Lenbeth was never approached by anyone during the warranty period about issues with the work performed by Lenbeth on this project.
7. Lenbeth denies that it owed a duty to the Defendants or the ultimate owners of the Condominium beyond the duration of the warranty.
8. Further, or in the alternative, Lenbeth installed the weeping tile and dampproofing in accordance with manufacturer's specifications and industry standards. Accordingly, Lenbeth denies that it was negligent in the performance of its work or that it breached any terms of contract as alleged in the Third Party Claim or at all.
9. Lenbeth specifically denies that the Plaintiffs have suffered any loss or damage as alleged in the Statement of Claim or at all.
10. Further or in the alternative, Lenbeth states that if the Plaintiffs have suffered any loss or damage, which is not admitted but denied, then the loss or damage being alleged by the Plaintiffs is exaggerated, excessive and too remote and the Plaintiffs have failed to mitigate their damages.
11. Further, or in the alternative, Lenbeth states that if the Plaintiff suffered loss and damage as alleged, or at all, which is not admitted but denied, then the loss or damage was caused or contributed to by the Defendants and Third Parties, other than Lenbeth, the particulars of which negligence, breach of duty, or breach of contract have been plead in the various paragraphs of the Statement of Claim and Third Party Claim and which particulars are hereby repeated and plead such that Lenbeth denies all allegations set forth against it in the Third Party Claim and puts the Defendants to the strict proof thereof.
12. In response to the whole of the Statement of Claim and the Third Party Claim, Lenbeth states these claims are time barred by Section 3 (1) of the *Limitations Act* R.S.A. 2000, c. L-12.
13. Lenbeth pleads and relies upon the provisions of the *Contributory Negligence Act*, R.S.A. 2000, c. C-27 and the *Tortfeasor's Act* R.S.A. 2000, c. T-5.

Dispute of Liability

14. Lenbeth disputes the Defendants liability to the Plaintiff.
15. Lenbeth disputes its liability to the Defendants to the extent claimed in the Third Party Claim filed by the Defendants.

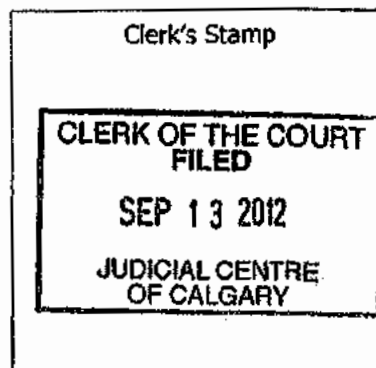
Remedy sought:

16. The Third Party, Lenbeth Weeping Tile (Calgary), prays that the Third Party Claim for indemnity and contribution be dismissed with costs.

COURT FILE NO. 1001-15771

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY



PLAINTIFFS CONDOMINIUM CORPORATION NO. 0610078 and SYD DOMBOWSKY AS REPRESENTATIVE PLAINTIFFS

DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA and NATIONAL HOME WARRANTY PROGRAMS LTD.

THIRD PARTY DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC.; ROBERT SPAETGENS ARCHITECT LTD., DAVID T. SYMONS ARCHITECT LTD., ROBERT SPAETGENS ARCHITECT LTD. AND DAVID T. SYMONS ARCHITECT LTD. carrying on business as S2 ARCHITECTURE PARTNERSHIP, S2 ARCHITECTURE, MWC CONSULTING STRUCTURAL ENGINEERS INC., ALLEN WASNEA ENGINEERING LTD., IDEA GROUP INC., DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD., R.K.G. DEVELOPMENTS LTD., PRAIRIE PIPE SALES, 789072 ALBERTA LTD. AND R.K.G. DEVELOPMENTS LTD., carrying on business as LENBETH WEEPING TILE CALGARY, LENBETH WEEPING TILE CALGARY, INLAND CONCRETE LIMITED

DOCUMENT **THIRD PARTY STATEMENT OF DEFENCE OF PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD., R.K.G. DEVELOPMENTS LTD., PRAIRIE PIPE SALES, 789072 ALBERTA LTD. AND R.K.G. DEVELOPMENTS LTD., CARRYING ON BUSINESS AS LENBETH WEEPING TILE CALGARY and LENBETH WEEPING TILE CALGARY** to the 3rd party claim of Royal & Sun Alliance Insurance company of Canada and national homePARTY FILING THIS DOCUMENT PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD., R.K.G. DEVELOPMENTS LTD., PRAIRIE PIPE SALES, 789072 ALBERTA LTD. AND R.K.G. DEVELOPMENTS LTD., CARRYING ON BUSINESS AS LENBETH WEEPING TILE CALGARY and LENBETH WEEPING TILE CALGARY *Warranty Program Ltd.*ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT McLENNAN ROSS LLP
1600 Stock Exchange Tower
300 - 5th Avenue SW
Calgary AB T2P 3C4Lawyer: Alexis Moulton
Telephone: 403 444-4081
Fax: 403 303-1655
Email: amoulton@mross.com
File No.: 122476

1. The correct legal name of Prairie Pipe Sales Ltd., 789072 Alberta Ltd., R.K.G. Developments Ltd., Prairie Pipe Sales, 789072 Alberta Ltd. And R.K.G. Developments Ltd., carrying on business as

Lenbeth Weeping Tile Calgary and Lenbeth Weeping Tile Calgary is Lenbeth Weeping Tile Calgary (hereinafter collectively referred to as "Lenbeth").

2. Lenbeth admits paragraphs 12 and 13 of the Third Party Claim but otherwise denies each and every other allegation as contained in the Third Party Claim except where expressly admitted herein.
3. Lenbeth denies the allegations contained in the Third Party Claim and specifically denies that the Defendants, Pointe of View Condominiums (Prestwick) Inc., Royal & Sun Alliance Insurance Company of Canada and National Home Warranty Programs Ltd., are entitled to indemnity and contribution as alleged or at all.
4. Lenbeth denies that it installed, designed or inspected the grading system, the drainage system, the waterproofing system or the concrete parkade including the foundation walls and suspended concrete slab as alleged or at all.
5. Lenbeth states that it was contracted solely to supply and install weeping tile and then to apply dampproofing and the scope of work performed by Lenbeth was wholly unrelated and unconnected to the allegations of negligence and damages alleged in the Plaintiff's Statement of Claim.
6. In answer to the whole of the Third Party Claim, Lenbeth states that at all material times it performed the scope of work that it was requested to perform in a proper, scientific and workmanlike manner and in accordance with the generally accepted industry standards at that time and in accordance with the plans, specifications and directions provided to it and that it met the applicable standard of care such that Lenbeth denies that the Defendants have the claim over as against them as alleged, or at all and Lenbeth puts the Defendants to the strict proof of that claim as against Lenbeth.
7. The work that was done by Lenbeth was covered by a one year warranty. Lenbeth was never approached by anyone during the warranty period about issues with the work performed by Lenbeth on this project.
8. Lenbeth denies that it owed a duty to the Defendants or the ultimate owners of the Condominium beyond the duration of the warranty.
9. Further, or in the alternative, Lenbeth installed the Weeping Tile and dampproofing in accordance with manufacturer's specifications and industry standards. Accordingly, Lenbeth denies that it was negligent in the performance of its work or that it breached any terms of contract as alleged in the Third Party Claim or at all.
10. Lenbeth specifically denies that the Plaintiffs have suffered any loss or damage as alleged in the Statement of Claim or at all.
11. Further or in the alternative, Lenbeth states that if the Plaintiffs have suffered any loss or damage, which is not admitted but denied, then the loss or damage being alleged by the Plaintiffs is exaggerated, excessive and too remote and the Plaintiffs have failed to mitigate their damages.
12. Further, or in the alternative, Lenbeth states that if the Plaintiff suffered loss and damage as alleged, or at all, which is not admitted but denied, then the loss or damage was caused or contributed to by the Defendants and Third Parties, other than Lenbeth, the particulars of which negligence, breach of duty, or breach of contract have been plead in the various paragraphs of

the Statement of Claim and Third Party Claim and which particulars are hereby repeated and plead such that Lenbeth denies all allegations set forth against it in the Third Party Claim and puts the Defendants to the strict proof thereof.

13. In response to the whole of the Statement of Claim and the Third Party Claim, Lenbeth states these claims are time barred by Section 3 (1) of the *Limitations Act* R.S.A. 2000, c. L-12.
14. Lenbeth pleads and relies upon the provisions of the *Contributory Negligence Act*, R.S.A. 2000, c. C-27 and the *Tortfeasor's Act* R.S.A. 2000, c. T-5.

Dispute of Liability

15. Lenbeth disputes the Defendants liability to the Plaintiff.
16. Lenbeth disputes its liability to the Defendants to the extent claimed in the Third Party Claim filed by the Defendants.

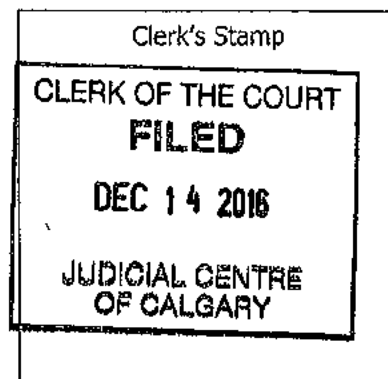
Remedy sought:

17. Lenbeth prays that the Third Party Claim for indemnity and contribution be dismissed with costs.

COURT FILE NO. 1001-15771

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY



PLAINTIFFS CONDOMINIUM CORPORATION NO. 0610078 and SYD DOMBOWSKY AS REPRESENTATIVE PLAINTIFFS

DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROYAL & SUN ALLIANCE INSURANCE COMPANY OF CANADA, NATIONAL HOME WARRANTY PROGRAMS LTD., DAVID T. SYMONS ARCHITECT LTD., ROBERT SPAETGENS ARCHITECT LTD. AND DAVID T. SYMONS ARCHITECT LTD. CARRYING ON BUSINESS AS S2 ARCHITECTURE PARTNERSHIP, S2 ARCHITECTURE, DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD., PRAIRIE PIPE SALES LTD., 780972 ALBERTA LTD. AND R.K.G. DEVELOPMENTS LTD. CARRYING ON BUSINESS AS LENBETH WEEPING TILE CALGARY, LENBETH WEEPING TILE CALGARY

THIRD PARTY DEFENDANTS POINTE OF VIEW CONDOMINIUMS (PRESTWICK) INC., ROBERT SPAETGENS ARCHITECT LTD., DAVID T. SYMONS ARCHITECT LTD., ROBERT SPEATGENS ARCHITECT LTD. AND DAVID T. SYMONS ARCHITECT LTD. CARRYING ON BUSINESS AS S2 ARCHITECTURE PARTNERSHIP, S2 ARCHITECTURE, MWC CONSULTING STRUCTURAL ENGINEERING LTD., ALLEN WASNEA ENGINEERING LTD., IDEA GROUP INC., DURWEST CONSTRUCTION SYSTEMS (ALBERTA) LTD., R.K.G. DEVELOPMENTS LTD., PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD. AND R.K.G. DEVELOPMENTS LTD. CARRYING ON BUSINESS AS LENBETH WEEPING TILE CALGARY, LENBETH WEEPING TILE CALGARY and INLAND CONCRETE LIMITED

BROUGHT PURSUANT TO THE CLASS PROCEEDINGS ACT, S.A. 2003, c. C-16.5

DOCUMENT **STATEMENT OF DEFENCE**

PARTY FILING THIS DOCUMENT PRAIRIE PIPE SALES LTD., 789072 ALBERTA LTD. R.K.G. DEVELOPMENTS LTD. CARRYING ON BUSINESS AS LENBETH WEEPING TILE CALGARY, AND LENBETH WEEPING TILE CALGARY

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

McLENNAN ROSS LLP
 #1000, 350 - 7th Avenue SW
 Calgary, AB T2P 3N9

Lawyer: Alexis Moulton
 Telephone: (403) 444-4081
 Fax: (403) 543-9150
 Email: amoulton@mross.com
 File No.: 122476

Statement of facts relied on:

1. The Defendants, Prairie Pipe Sales Ltd., 789072 Alberta Ltd. R.K.G. Developments Ltd. carrying on business as Lenbeth Weeping Tile Calgary, and Lenbeth Weeping Tile Calgary (collectively, "Lenbeth"), admit paragraph 11 of the Amended Statement of Claim, but otherwise deny each and every allegation set out in the Amended Statement of Claim except where expressly admitted herein, and put the Plaintiffs to the strict proof thereof.
2. Where a term defined in the Amended Statement of Claim is used herein, that term has the same meaning given to it in the Amended Statement of Claim unless otherwise indicated herein.
3. Lenbeth agrees with the proposal and opinion contained at paragraph 29 of the Amended Statement of Claim.
4. At all material times, Lenbeth performed the services it was retained to provide with the skill, care, diligence and competence expected of this type of specialty trade contractor in Alberta.
5. Lenbeth states that it was contracted solely to supply and install weeping tile and apply dampproofing material and the scope of work performed by Lenbeth was wholly unrelated and unconnected to the allegations of negligence and damages alleged in the Plaintiffs' Amended Statement of Claim.
6. The work performed by Lenbeth at the Project was covered by one year warranty. Lenbeth was not advised of any issues with its work during the warranty period relating to the work performed by Lenbeth on the Project.

Any matters that defeat the claim of the Plaintiff(s):

7. In response to the entire Amended Statement of Claim, Lenbeth denies that it was negligent or in breach of any duty of care owed to any party, as alleged, or at all.
8. Lenbeth states that, at all material times, it performed the scope of work that it was requested to perform at the Project in a proper, scientific and workmanlike manner and in accordance with the generally accepted industry standards, good construction practices, the *Alberta Building Code*, all statutory requirements, and in accordance with the plans, specifications, and instructions provided to.
9. In specific response to paragraph 12 of the Amended Statement of Claim, Lenbeth denies that Point of View retained Lenbeth with respect to any waterproofing of the Parkade, concrete patios, wood columns and garbage enclosures on the Project.
10. In specific response to paragraphs 13-16 of the Amended Statement of Claim, Lenbeth denies that it breached any contractual or other duty owed to the Class as alleged, or at all.
11. In specific response to paragraph 23 of the Amended Statement of Claim, and without limiting the generality of the foregoing, Lenbeth further denies that it had any responsibility or involvement in the suspended concrete slab, grading of the building parameters, designing drainage systems, waterproofing, designing or installing effective storm water drainage systems, concrete patios or concrete slabs. Further, Lenbeth was in no way responsible for any design components of any part of the Project.

12. Lenbeth denies that it was aware of the Construction Defects, or any latent defects, that it knew or ought to have known would pose a real and substantial danger to the Project's inhabitants, including the members of the Class, as alleged, or at all.
13. Lenbeth denies that the Class has suffered any losses, damages, or expenses as alleged, or at all.
14. In the alternative, Lenbeth states that if the Class has suffered losses, damages, or expenses, as alleged or at all, which is denied, the losses, damages, or expenses claimed by the Class are excessive, unreasonable, and too remote to be compensable.
15. Further, or in the alternative, Lenbeth states that if the Class has suffered losses, damages, or expenses, as alleged or at all, which is denied, those losses, damages, or expenses were not caused or contributed to by the work performed by Lenbeth on the Project.
16. Further, or in the alternative, Lenbeth states that if the Class has suffered any losses, damages, or expenses, as alleged or at all, which is denied, those losses, damages, or expenses were caused, or materially contributed to, by the negligence of the Class, including, but not limited to:
 - (a) Failing to maintain and inspect the Project on a regular basis, or at all;
 - (b) Failing to investigate and address issues with water infiltration identified at the Project in a timely, reasonable, and effective manner, or at all; and,
 - (c) Such further and other particulars which will be proven at trial.
17. Further, or in the alternative, Lenbeth states that if the Class has suffered any losses, damages, or expenses, as alleged or at all, which is denied, then those losses, damages or expenses were caused, or materially contributed to, by the negligence or breach of contract of the other Defendants in this action, the particulars of which are set out and more particularly described in the Amended Statement of Claim, and those allegations and particulars are adopted herein by reference by Lenbeth.
18. Further, or in the alternative, if the Class has suffered losses, damages, and expenses as alleged, or at all, which is denied, the Class has failed to properly mitigate such losses, damages and expenses by failing to take steps, or proper steps, to repair defects causing the infiltration of water and resultant damage to the Project in a timely manner, or at all.
19. In response to the whole Amended Statement of Claim, Lenbeth pleads that this action is barred as against Lenbeth pursuant to the provisions of the *Limitations Act*, RSA 2000, c. L-12.
20. Lenbeth pleads and relies upon the provisions of the *Contributory Negligence Act*, R.S.A. 2000, c. C-27, the *Tortfeasors Act*, R.S.A. 2000, c. T-5, the *Limitations Act*, RSA 2000, c. L-12, the *Class Proceedings Act*, SA 2003, c. C-16.5 and all regulations and amendments thereto.

Remedy sought:

21. Lenbeth requests that this action be dismissed with costs.