

S-0001-CV2008000

243

**IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES**

BETWEEN:

**Northwest Territories Business
Development and Investment
Corporation**

Plaintiff

- and -

**Aurora World Corporation, Daryl
Dolynny, Alex Arychuk, Grant Beck, and
N.W.T. Metis Development Corporation**

Defendants

STATEMENT OF CLAIM

Filed by:

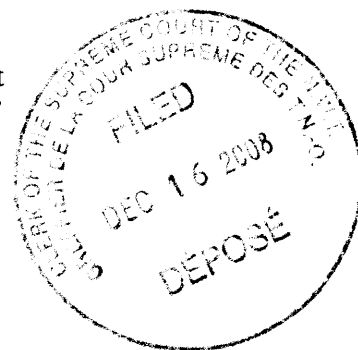
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Our file no. B109/DGM

Plaintiff's address is Yellowknife, NT

Defendants addresses are Yellowknife, NT



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**Aurora World Corporation, Daryl Dolynny, Alex Arychuk, Grant Beck, and N.W.T. Metis
Development Corporation**

Defendants

STATEMENT OF CLAIM

1. The Plaintiff, Northwest Territories Business Development and Investment Corporation is a statutory corporation created pursuant to the *Northwest Territories Business Development and Investment Corporation Act*, (the "BDIC"). BDIC is statutory successor to, and was formerly known as, Northwest Territories Business Credit Corporation ("BCC").
2. The Defendant, Aurora World Corporation is a corporation pursuant to the *Northwest Territories Business Corporations Act* and has a registered office in Yellowknife, Northwest Territories ("AWC").
3. The Defendants Daryl Dolynny, Alex Arychuk, Grant Beck are each business persons, and residents of Yellowknife. The Defendant, N.W.T. Metis Development Corporation is a corporation pursuant to the laws of the Northwest Territories with a registered office in Yellowknife, ("MDC" - the Defendants, Daryl Dolynny, Alex Arychuk, Grant Beck, and MDC are referred to herein as the "Guarantors").
4. BCC advanced the total sum of \$1,815,000.00 to AWC by way of various loan accounts and the said loans were assumed by AWC by a consolidation loan in October 2004 (the "Loan"). The Loan is now owing to BDIC in its capacity as statutory successor to BCC.

5. A loan agreement was signed and accepted on behalf of all of the Defendants on or about October 2004. The said agreement was provided in relation to a proposal by AWC under the *Bankruptcy and Insolvency Act* (the "Loan Agreement" and the "Proposal" respectively).

6. By the Loan Agreement:

- a) The BCC loans to 994494 N.W.T. Ltd., and Raven Tours Ltd. and AWC are consolidated and assumed by AWC; BCC agree to vote in the Proposal and forgive approximately \$815,000.00 of indebtedness upon completion of the Proposal; and at that point the indebtedness owing from AWC to BCC is to be reduced to the post proposal amount of \$1,000,000.00.
- b) AWC agree to repay the Loan based on the post proposal amount of \$1,000,000.00 together with 7.0% interest per annum, and did provide a signed Promissory Note dated September 1, 2004 containing the said repayment terms in accordance with the Loan Agreement and the Proposal (the "Note").
- c) AWC provided a General Security Agreement over all of its present and after acquired personal property. ("GSA")
- d)
 - i) AWC assumed a mortgage of lease between 994424 N.W.T. Ltd. and BCC in the principal amount of \$1,700,000.00 plus interest at the rate of 6.75% per annum. The said mortgage applies to a 25 year lease between 994424 N.W.T. Ltd. and the Commissioner of the Northwest Territories to the Plaintiff, which is dated March 22, 2002 and is registered at the Lands Registry for the Government of the Northwest Territories as Lease number L-1789T, File No.310-Pre.Lake.
 - ii) The said mortgage of lease is registered as against leasehold property situated described therein as follows: "All that parcel of land in the PRELUDE TERRITORIAL PARK in the Northwest Territories, as shown

in red in the sketch annexed to and forming part of this lease.” (herein referred to as the “Leasehold Mortgage”)

- e) AWC provided a mortgage over a fee simple titled property located in downtown Yellowknife and legally described as follows: Lot 4, Block 24, Plan 65, Yellowknife (the “Fee Simple Mortgage”). Collectively the Loan Agreement, GSA, Leasehold Mortgage and Fee Simple Mortgage are referred to as the “Security”.
 - f) BDIC entered into a postponement agreement dated March 9, 2005 with AWC and its primary banker, Canadian Western Bank (“CWB”) respecting the said GSA and Fee Simple Mortgage, whereby they postpone priority to CWB, respecting the Security.
 - g) The Guarantors, on behalf of AWC each provided a continuing written Joint and Several Guarantee of the Loan in favour of the BCC, which is dated November 1, 2004. The said guarantee is limited to the principal sum of \$100,000.00 (the “Guarantee”).
7. According to the Security and Guarantee it is provided that in the event of default being made in any of the covenants, expressed or implied, in any of the said documents, the entire Loan shall become due at the option of the Plaintiff.
 8. A demand was made of the Defendant, AWC and the entire Loan is due and as of November 30, 2008 the Loan was in arrears, and \$1,104,997.24 consisting principal of \$954,464.25 and accrued interest of \$150,532.99 was owing.
 9. According to the Loan Agreement and Guarantee the taking of a judgment or judgments under any of the covenants therein does not operate as a merger.
 10. According to the Security and the Guarantee, the Plaintiff’s reasonable solicitor - client costs of enforcement are to be added to the debt owing upon default.

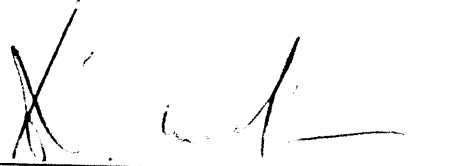
11. The Security and the Guarantee are binding upon the parties hereto and upon their respective successors and assigns.
12. For the Loan the Plaintiff states that the Defendants are wrongfully withholding payment of a just debt.
13. The Plaintiff proposes that this action be tried in the City of Yellowknife, in the Northwest Territories and it should take 3 days.

WHEREFORE THE PLAINTIFF CLAIMS:

- a. A Preservation Order;
- b. A Declaration as to the amount owing under the said Mortgages with interest according to the terms thereof and, in default of payment, sale or foreclosure of the leasehold interest in the said lands;
- c. Judgment as against Daryl Dolynny, Alex Arychuk, Grant Beck, and N.W.T. Metis Development Corporation pursuant to the Guarantee;
- d. An Order for foreclosure and sale of the leasehold interest under the Leasehold Mortgage establishing the period of redemption at such reasonable period as this Honorable Court may direct;
- e. Alternatively, and Order for immediate sale to the Plaintiff or immediate foreclosure of the leasehold interest under the Leasehold Mortgage;
- f. An Order for possession;
- g. An Order for the appointment of a Receiver;
- h. A Certificate of Pending Litigation for the said lands;

- i. Adjournment of relief as against the Fee Simple Mortgage;
- j. All legal costs and expenses incurred or allowed to the Plaintiff including those as between solicitor and his own client and costs of the Plaintiff in realising on the Security;
- k. Such other relief as the nature of this case may require and this Honourable Court may deem just.

DATED AT the City of Yellowknife, in the Northwest Territories this 16th of December 2008, and **DELIVERED BY** Douglas G. McNiven, Solicitor for the Plaintiff, whose address for service is in care of said solicitor at McNiven Law Office 202, 4817 - 49th Street, Yellowknife, Northwest Territories, X1A 3S7



Douglas G. McNiven
Solicitor for the Plaintiff