

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

BETWEEN:

CANADIAN WESTERN BANK

Plaintiff

- and -

FAIR SKY RESOURCES INC.

Defendant

STATEMENT OF CLAIM

I. THE PARTIES

1. The Plaintiff, Canadian Western Bank ("CWB"), is a Canadian chartered bank with branch offices in the City of Calgary, in the Province of Alberta.
2. The Defendant, Fair Sky Resources Inc. ("Fair Sky"), so far as is known to CWB, is a body corporate duly registered pursuant to the laws of the Province of Alberta.

II. THE LOAN

3. On or about December 29, 2005, CWB and Fair Sky entered into a Demand Revolving Reducing Loan pursuant to which CWB agreed to provide to Fair Sky various credit facilities, in the maximum principal amount of \$2,300,000.00, on all of the terms set out therein.
4. CWB and Fair Sky entered into a First Amending Loan Agreement dated July 26, 2006 pursuant to which CWB agreed to increase the existing credit facility from \$2,300,000.00 to the maximum principal amount of \$3,500,000.00.

5. CWB and Fair Sky entered into a Second Amending Loan Agreement dated October 11, 2006 pursuant to which CWB agreed to increase the existing credit facility from \$3,500,000.00 to the maximum principal amount of \$6,500,000.00 and up to \$7,200,000.00 on December 1, 2006.
6. The Demand Revolving Reducing Loan, the First Amending Loan Agreement and the Second Amending Loan Agreement shall collectively be referred to herein as the "Loan Agreement".
7. In accordance with the terms of the Loan Agreement, CWB advanced loans to Fair Sky from time to time. As of December 5, 2007, the total amount outstanding under the Loan Agreement and owing from Fair Sky to CWB, inclusive of principal and interest, stood at CDN \$2,338,149.47 (per diem of \$512.01), with additional interest and other charges accruing thereon at the rates and on the terms established by the Loan Agreement.
8. In addition to the amounts owing pursuant to the Loan Agreement, Fair Sky, as at December 5, 2007, was also indebted to CWB in the sum of CDN. \$96,486.39 (per diem of \$47.58) on its overdraft demand account and CDN. \$11,410.62 on its MasterCard accounts.
9. Fair Sky agreed to repay principal and interest advanced to it from time to time by CWB at such times and on such terms with such interest and costs as set out under the terms of the Loan Agreement and the Security (as hereinafter defined).

III. CWB's SECURITY

10. As security for repayment of the amounts owing under the Loan Agreement and otherwise, Fair Sky granted to CWB the following security:
 - (a) Revolving Credit Agreement (December 29, 2005);

- (b) Fixed and Floating Charge Demand Debenture (December 29, 2005);
- (c) Negative Pledge and Undertaking (December 29, 2005);
- (d) Instrument of Pledge (December 29, 2005);
- (e) Revolving Credit Agreement (July 26, 2006);
- (f) First Supplemental Debenture (July 26, 2006);
- (g) Revolving Credit Agreement (October 11, 2006); and
- (h) Second Supplemental Debenture (October 11, 2006)

(All of the above security being hereinafter collectively referred to as the "Security")

11. It was an express term of the Loan Agreement that Fair Sky would reimburse CWB for all costs and expenses, including legal fees on a solicitor and his own client basis, incurred by CWB in taking any proceedings for the purpose of protecting or enforcing the remedies provided to CWB under the terms of the Loan Agreement or the Security.

IV. DEMAND FOR PAYMENT

12. Fair Sky is in default of its obligations owing to CWB, and has committed an Event of Default, under the Loan Agreement and the Security including a failure to maintain various financial tests and failing to pay the amounts outstanding when due.
13. As a result of Fair Sky' default under the terms of the Loan Agreement as set out herein, on December 5, 2007 CWB made demand for repayment of all amounts then owing under the Loan Agreement and the Security in accordance with the terms of the Loan Agreement and the Security, including serving on the

Defendants a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* ("BIA").

14. Fair Sky has not made payment to CWB of all amounts owing to CWB under the Loan Agreement, the Security or otherwise in accordance with the Demand.

V. CONCLUSION

15. CWB proposes that the place for the trial of this action be at Calgary, Alberta.
16. CWB estimates that the trial of this action will be less than twenty-five (25) days.

WHEREFORE THE PLAINTIFF CANADIAN WESTERN BANK CLAIMS AS AGAINST THE DEFENDANT FAIR SKY RESOURCES INC.:

- (a) a declaration as to the amounts owing to CWB by Fair Sky and judgment in the amount found to be owing;
- (b) a declaration that the Security held by CWB is valid and enforceable as against Fair Sky;
- (c) the appointment of an interim receiver, or, alternatively, the appointment of a receiver and manager over all of the assets of Fair Sky or such assets as CWB may direct and deem appropriate from time to time;
- (d) interest in accordance with the terms of the Loan Agreement or, alternatively, pursuant to the provisions of the *Judgment Interest Act*;
- (e) costs on a solicitor and his own client basis in accordance with the terms of the Loan Agreement and the Security; and
- (f) such further and other relief as this Honourable Court may allow.

DATED at the City of Calgary, in the Province of Alberta, this 7th day of December, 2007 and **DELIVERED BY** Howard A. Gorman of Macleod Dixon LLP, Barristers and

Solicitors, solicitors for the within Plaintiff, whose address for service is in care of the said solicitors at 3700 Canterra Tower, 400 - 3rd Avenue S.W., Calgary, Alberta, T2P 4H2, Telephone: (403) 267-8222.

ISSUED out of the office of the Clerk of the Court of Queen's Bench of Alberta, Judicial Centre of Calgary, this 7th day of December, 2007.

V.A. BRANDT 

CLERK OF THE COURT

NOTICE:

**TO: FAIR SKY RESOURCES
INC.**

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

Warning:

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

This Statement of Claim is issued by Howard A. Gorman of Macleod Dixon LLP, Solicitors for the Plaintiff who carry on business in the City of Calgary.

and whose address for service is in care of the said solicitors at :

3700, 400 - Third Avenue SW
Calgary, Alberta T2P 4H2
Telephone: (403) 267-8222
Facsimile: (403) 264-5973

and is addressed to the Defendants who carries on business as far as known to the Plaintiff is Calgary, Alberta.

Action No. 0701- 12612

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JUDICIAL CENTRE OF CALGARY

BETWEEN:

CANADIAN WESTERN BANK

Plaintiff

- and -

FAIR SKY RESOURCES INC.

Defendant

STATEMENT OF CLAIM

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