

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

BETWEEN:

ALBERTA TREASURY BRANCHES

Plaintiff

-and-

**PENN-TEK TRUSS & FLOOR SYSTEMS INC.,
1006495 ALBERTA LTD., ARNOLD PENNER and
DOROTHY PENNER**

Defendant

STATEMENT OF CLAIM

1. The Plaintiff, Alberta Treasury Branches ("ATB"), is a body corporate having been established under and pursuant to the provisions of the *Alberta Treasury Branches Act* R.S.A. 2000, c. A-37.
2. The Defendant Penn-Tek Truss & Floor Systems Inc. ("Penn-Tek"), so far as is known to the Plaintiff, is a body corporate having been incorporated under and pursuant to the provisions of the *Alberta Business Corporations Act*, R.S.A. 2000, c. B-9.
3. The Defendant 1006495 Alberta Ltd. ("1006495"), so far as is known to the Plaintiff, is a body corporate having been incorporated under and pursuant to the provisions of the *Alberta Business Corporations Act*, R.S.A. 2000, c. B-9.
4. The Defendants, Arnold Penner and Dorothy Penner, so far as is known to the Plaintiff, are individuals residing near the Town of Olds, in the Province of Alberta.
5. Pursuant to a commitment letter made in writing and dated May 18, 2004, ATB extended the following credit facilities to 1006495:
 - (a) \$32,000 Independent Business Loan;
 - (b) \$50,000 Business MasterCard;

(collectively hereinafter referred to as the “1006495 Credit Facilities”).

6. The 1006495 Credit Facilities are all payable on demand by ATB.

7. As security for repayment of the indebtedness arising under and pursuant to the 1006495 Credit Facilities, 1006495 executed and delivered a general security agreement dated May 14, 2004 (the “1006495 GSA”) granting ATB a security interest in all of 1006495’s property, assets and undertaking. ATB perfected the security interest in the personal property that forms the subject matter of the security interest in the 1006495 GSA by registering a financing statement with the Alberta Personal Property Registry on June 21, 2004 under registration no. 04062103025.

8. On April 28, 2008 ATB delivered a letter (the “1006495 Demand Letter”) to 10064956 demanding repayment in full of all amounts due and owing outstanding under and pursuant to the 1006495 Credit Facilities within ten (10) days of the date of receipt of the Demand Letter. Included with the Demand Letter was a notice of intention to enforce security issued under and pursuant to s. 244 of the *Bankruptcy and Insolvency Act* (Canada). 1006495 received the 1006495 Demand Letter on April 29, 2008.

9. The 1006495 Demand Letter set out the following amounts due and owing to ATB under and pursuant to the following 1006495 Credit Facilities as at April 28, 2008:

(a) Independent Business Loan, broken down into separate loans as follows:

(i) Loan 852-1147641-01 - \$9,779.19
Interest - \$130.41
Per Diem - \$2.08

(ii) Loan 852-1147641-24 - \$16,361.43
Interest - \$43.14
Per Diem - \$8.63

(iii) Loan 852-1147641-30 - \$100.00
Interest - \$0.00
Per Diem - \$0.05

(b) MasterCard, broken down into separate loans as follows:

(i) MasterCard #5475 1140 0430 3263 - \$7,815.69
Interest - \$6.24
Per Diem - \$2.08

- (ii) MasterCard #5475 1120 0128 3488 - \$25,517.82
Interest - \$16.23
Per Diem - \$5.41

for an aggregate amount payable of \$59,770.15 together with interest as the same accrues due and with costs as provided for in the documents comprising the 1006495 Credit Facilities and the 1006495 GSA including, without limitation, legal costs as calculated between a solicitor and own client with a right to full indemnity.

10. 1006495 has failed to repay the amounts as set out in the Demand Letter.

11. Pursuant to a commitment letter made in writing and dated March 26, 2007, ATB extended the following credit facilities to Penn-Tek:

- (c) \$500,000 (maximum) Independent Business Revolving Line of Credit;
- (d) \$750,000 Independent Business Loan;
- (e) \$50,000 Business MasterCard;

(collectively hereinafter referred to as the "Penn-Tek Credit Facilities").

12. The Penn-Tek Credit Facilities are all payable on demand by ATB.

13. As security for repayment of the indebtedness arising under and pursuant to the Penn-Tek Credit Facilities, Penn-Tek executed and delivered a general security agreement dated April 4, 2007 (the "Penn-Tek GSA") granting ATB a security interest in all of Penn-Tek's property, assets and undertaking. ATB perfected the security interest in the personal property that forms the subject matter of the security interest in the Penn-Tek GSA by registering a financing statement with the Alberta Personal Property Registry on April 18, 2007 under registration no.07041810149.

14. On April 28, 2008 ATB delivered a letter (the "Demand Letter") to Penn-Tek demanding repayment in full of all amounts due and owing outstanding under and pursuant to the Credit Facilities within ten (10) days of the date of receipt of the Demand Letter. Included with the Demand Letter was a notice of intention to enforce security issued under and pursuant to s. 244 of the *Bankruptcy and Insolvency Act* (Canada). Penn-Tek received the Demand Letter on April 29, 2008.

15. The Demand Letter set out the following amounts due and owing to ATB under and pursuant to the following Credit Facilities as at April 28, 2008:

- (f) Independent Business Revolving Line of Credit - \$750,000.00
Interest - \$4,119.86
Per Diem Interest - \$138.70
- (g) Independent Business Loan - \$500,000.00
Interest - \$2,738.64
Per Diem - \$92.47
- (h) MasterCard - \$49,986.39
Interest - \$31.83
Per Diem - \$10.61
- (i) Expense Account - \$100.00
Interest - \$0
Per Diem - \$0.01
- (j) Irrevocable Letter of Credit - \$5,000
Interest - \$0
Per Diem - \$0

for an aggregate amount payable of \$1,311,076.72 together with interest as the same accrues due and with costs as provided for in the documents comprising the Penn-Tek Credit Facilities and the Penn-Tek GSA including, without limitation, legal costs as calculated between a solicitor and own client with a right to full indemnity.

16. Penn-Tek has failed to repay the amounts as set out in the Demand Letter.

17. Pursuant to a guarantee in writing and dated April 4, 2007, 1006495 unconditionally guaranteed payment of all of the future debts and liabilities of Penn-Tek to ATB . The guarantee (the "1006495 Guarantee") requires payment by 1006495 to ATB of all Penn-Tek's liabilities to ATB including all costs, charges and expenses, including without limitation, lawyers fees as between a solicitor and own client on a full indemnity basis incurred by ATB in the enforcement of the Guarantee.

18. Pursuant to a guarantee in writing and dated June 3, 2004, Arnold Penner unconditionally guaranteed payment of all of the future debts and liabilities of 1006495 to ATB . The guarantee (the "Arnold Penner Guarantee") requires payment by Arnold Penner to ATB of all 1006495's liabilities to ATB including all costs, charges and expenses, including without limitation, lawyers fees as

between a solicitor and own client on a full indemnity basis incurred by ATB in the enforcement of the Arnold Penner Guarantee.

19. Pursuant to a guarantee in writing and dated June 3, 2004, Dorothy Penner unconditionally guaranteed payment of all of the future debts and liabilities of 1006495 to ATB . The guarantee (the “Dorothy Penner Guarantee”) requires payment by Dorothy Penner to ATB of all 1006495’s liabilities ATB including all costs, charges and expenses, including without limitation, lawyers fees as between a solicitor and own client on a full indemnity basis incurred by ATB in the enforcement of the Dorothy Penner Guarantee.

20. By written demand dated April 28, 2008, ATB has made demand for payment of the amount of \$1,371,746.87 upon 1006495, Arnold Penner and Dorothy Penner with respect to each of the 1006495 Guarantees, the Penn-Tek Guarantee and the Dorothy Penner Guarantee. The said amounts owing to ATB remain outstanding.

21. As collateral security to both the Arnold Penner Guarantee and the Dorothy Penner Guarantee, Arnold Penner and Dorothy Penner each respectively executed a Land Mortgage (the “Mortgage”) made pursuant to the *Land Titles Act* (Alberta) and registered at the Land Titles Office for the South Alberta Land Registration District on June 9, 2004 as Instrument No. 041 211 666 whereby the following lands were mortgaged to the ATB:

**MERIDIAN 4 RANGE 28 TOWNSHIP 33
SECTION 12
THE NORTHERLY 115.0 METRES OF THE SOUTHERLY
588.5 METRES OF THE WESTERLY 136.0 METRES OF
THE SOUTH WEST QUARTER
CONTAINING 1.564 HECTARES (3.896 ACRES) MORE OR
LESS
EXCEPTING:
PLAN - ROAD WIDENING
NUMBER – 7610677
HECTARES – 0.060
ACRES MORE OR LESS – 0.15
EXCEPTING THEREOUT ALL MINES AND MINERALS**

for securing payment of the sum of THIRTY SEVEN THOUSAND DOLLARS (\$37,000.00) plus interest thereon after demand for payment, both before and after judgment, calculated at a floating rate equal to THREE PERCENT (3%) above the prime lending rate.

22. Pursuant to the terms of the Mortgage, default has been made in payment of the principal and interest due thereunder.

23. It is a term of the Mortgage that in the event of default being made in any way, the whole of the monies secured thereby shall, at the option of the ATB, become due and payable. ATB has elected to declare all such monies immediately due and owing.

24. Under the Mortgage, Arnold Penner and Dorothy Penner covenanted with the ATB to pay all liens, rates, charges or encumbrances on the said lands which may fall due or be unpaid, and also to insure the said buildings on the said lands against damage by fire and other perils. If there is a default in any of these covenants the ATB has the right to perform the same and add to the Mortgage all costs and expenses incurred by the ATB in that regard and in respect of any proceedings taken to realize the monies secured by the Mortgage, including legal costs taxed as between solicitor and own client, and an allowance for the time, work and expenses of the ATB, its servants and agents.

25. ATB does not anticipate the length of this trial will exceed 25 days.

26. ATB proposes that the trial of this matter take place at the Calgary Courts Centre in the City of Calgary, in the Province of Alberta.

WHEREFORE THE PLAINTIFF CLAIMS:

(a) As against Penn-Tek:

- (i) a declaration that ATB possesses a valid and perfected security interest in all of Penn-Tek's property, assets and undertaking;
- (ii) the appointment of a Receiver or a Receiver and Manager over all of the assets, property and undertaking of Penn-Tek;
- (iii) a declaration of Penn-Tek's indebtedness to ATB arising under and pursuant to the Credit Facilities together with judgment therefor in such amount which, as at the date of the Demand Letter was, exclusive of costs, \$1,311,976.72;
- (iv) costs of this action calculated as between a solicitor and his own client with a right to full indemnity or, in the alternative, costs on the party/party scale;
- (v) interest on any judgment amounts in accordance with the applicable rate as set out in the loan documents comprising the Credit Facilities or, in the alternative, interest on all judgment amounts in accordance with the

provisions of the *Judgment Interest Act*, R.S.A. c-J-1 and any amendments made thereto and any regulations made thereunder;

(b) As against 1006495 Alberta Ltd.:

- (i) a declaration that ATB possesses a valid and perfected security interest in all of 1006495's property, assets and undertaking;
- (ii) the appointment of a Receiver or a Receiver and Manager over all of the assets, property and undertaking of 1006495;
- (iii) a declaration of 1006495's indebtedness to ATB arising under and pursuant to the Credit Facilities together with judgment therefor in such amount which, as at the date of the demand was, exclusive of costs, \$1,371,746.87;
- (iv) costs of this action calculated as between a solicitor and his own client with a right to full indemnity or, in the alternative, costs on the party/party scale;
- (v) interest on any judgment amounts in accordance with the applicable rate as set out in the loan documents comprising the Credit Facilities or, in the alternative, interest on all judgment amounts in accordance with the provisions of the *Judgment Interest Act*, R.S.A. c-J-1 and any amendments made thereto and any regulations made thereunder;

(c) As against Arnold Penner.:

- (i) judgment in the amount of \$1,371,746.87;
- (ii) interest on all judgment amounts calculated in accordance with the terms of the Guarantee or, in the alternative, interest calculated under and pursuant to the provisions of the *Judgment Interest Act*, R.S.A. c-J-1;
- (iii) costs of this action calculated as between a solicitor and his own client or, in the alternative, costs on the party/party scale.

(d) As against Dorothy Penner.:

- (i) judgment in the amount of \$1,371,746.87;
- (ii) interest on all judgment amounts calculated in accordance with the terms of the Guarantee or, in the alternative, interest calculated under and pursuant to the provisions of the *Judgment Interest Act*, R.S.A. c-J-1;
- (iii) costs of this action calculated as between a solicitor and his own client or, in the alternative, costs on the party/party scale.

(e) As against both Arnold Penner and Dorothy Penner:

- (i) a declaration as to the amount owing under the Mortgage with interest according to the terms of the Mortgage and in default of payment, sale to the ATB or otherwise, or foreclosure and in either case, possession of the said lands;
- (ii) in the alternative, immediate sale to the ATB or otherwise, or foreclosure and in either case, possession of the said lands;
- (iii) Judgment against in the amount declared to be owing, together with interest thereon at the rate set out in the Mortgage until payment in full, or at such other rate as the Court shall order;
- (iv) an Order:
 - A. shortening the period of redemption to less than six months or as the Court may direct;
 - B. alternatively, a direct Order for Sale to the ATB or other parties;
 - C. alternatively, a Final Order for Foreclosure;
- (v) an Order for Possession;
- (vi) an Order for the appointment of a Receiver;
- (vii) an Order for Assignment of Rents;
- (f) Such other relief as the nature of the case may require and as this Honourable Court may deem fit; and
- (g) Costs of this action, including solicitor-client costs.

DATED at the City of Calgary, in the Province of Alberta, this 16 day of May, 2008, **AND DELIVERED** by **McCARTHY TÉTRAULT LLP**, Barristers and Solicitors, Solicitors for the Plaintiff herein whose address for service is in care of the said Solicitors at Suite 3300, 421-7th Avenue S.W., Calgary AB T2P 4K9.

ISSUED out of the office of the Clerk of the Court of Queen's Bench of Alberta, Judicial District of Calgary, this 16 day of May, 2008.

V.A. BRANDT 

Clerk of the Court

To the Defendants:

No. 0801-0581 A.D. 2007

You have been sued. You are the Defendant. You have only **fifteen (15) days** to file and serve a Statement of Defence or Demand of Notice. You or your lawyer must file your 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 **fifteen (15) days**, you may automatically lose the law suit. The Plaintiff may get a Court Judgement against you if you do not file, or do not give a copy to the Plaintiff, or do either thing late.

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

BETWEEN:

ALBERTA TREASURY BRANCHES

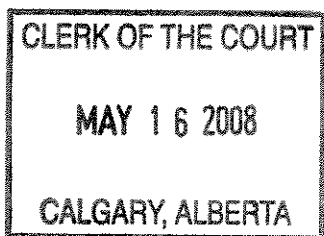
Plaintiff

- and -

PENN-TEK OILFIELD LTD.,
TRUSS + FLOOR SYSTEMS INC.
1006495 ALBERTA LTD.,
ARNOLD PENNER and
DOROTHY PENNER

Defendants

STATEMENT OF CLAIM



McCARTHY TÉTRAULT LLP
Barristers & Solicitors
Suite 3300, 421-7th Avenue S.W.
Calgary AB T2P 4K9

Sean F. Collins
Phone: 403 260-3531
Fax: 403 260-3501

File No.: 174791-402846