

Action No. 0903-12151

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

BETWEEN:

BANK OF MONTREAL

PLAINTIFF

- and -

CALGARY WEST HOSPITALITY INC.,
GAMEHOST LIMITED PARTNERSHIP, GAMEHOST MANAGEMENT INC, DARCY
WILL and DAVID WILL

DEFENDANTS

STATEMENT OF CLAIM

1. The Plaintiff, Bank of Montreal ("BMO"), is a bank chartered pursuant to the laws of Canada and carries on business in Edmonton and elsewhere throughout Canada.
2. The Defendant, Calgary West Hospitality Inc. ("Calgary West"), is a corporation incorporated pursuant to the laws of the Province of Alberta.
3. The Defendant, Gamehost Limited Partnership ("Gamehost"), is a limited partnership created pursuant to the laws of the Province of Alberta.
4. The Defendant, Gamehost Management Inc. ("Management") is a corporation incorporated pursuant to the laws of the Province of Alberta and at all material times was the general partner of Gamehost.
5. The Defendant, Darcy Will ("Darcy"), resides in or near Red Deer, Alberta.
6. The Defendant, David Will ("David"), resides in or near Red Deer, Alberta.
7. At all material times on and after March 3, 2008 Calgary West has been the owner of a leasehold interest in the lands hereinafter legally described pursuant to an Indenture dated March

3, 2008 ("Lease") entered into with the Calgary Exhibition and Stampede Limited ("CESL") on the terms and conditions therein contained:

PLAN 0810020
BLOCK 3
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS

ESTATE: LEASHOLD, FOR A TERM OF 050 YEARS
COMMENCING ON THE 03 DAY OF MARCH, 2008
TERMINATING ON THE 28 DAY OF FEBRUARY, 2058
FIFTY YEARS

(hereinafter referred to as the "said Lands");

The Lease further provides for a renewal term of ten (10) years which would be granted by CESL upon the covenants and conditions contained in the Lease. The Lease Agreement exceeds 200 words and a copy was previously provided to the Defendants.

8. Calgary West borrowed money from BMO which Calgary West agreed to repay to BMO with interest.

9. Calgary West is directly indebted to BMO pursuant to such borrowing as follows:

- | | | |
|-----|--|-----------------|
| (a) | Revolver: Principal Balance outstanding as at the close of business on July 27, 2009 | \$ 6,952,560.00 |
| | with interest thereon at the Prime Interest Rate ("Prime Rate") per annum in effect from time to time and as hereinafter defined from and after July 1, 2009. | |
| (b) | Construction Take-Out: | |
| | Component A – the principal amount of \$17,292,000 with interest thereon at the Prime Rate in effect from time to time plus one (1%) percent per annum from and after July 24, 2009. | 17,292,000.00 |
| | Component B – the principal amount of \$16,219,000 with interest thereon at the Prime Rate in effect from time to time plus one (1%) percent per annum from and after July 1, 2009. | 16,219,000.00 |

- | | | |
|-----|--|------------|
| (c) | Swap Over-due Interest with interest at the Prime Rate in effect from time to time plus one (1%) percent per annum from and after July 24, 2009. | 40,037.18 |
| (d) | Mark to market exposure on the termination of the Swap on construction take-out of Component A resulting in the crystallization of the mark to market exposure in the sum of \$650,250 with interest thereon at the Prime Rate in effect from time to time plus one (1%) percent per annum from and after July 24, 2009. | 650,250.00 |
| (e) | Costs on a solicitor and its own client basis; (individually and collectively the "Loans") | |

"Prime Rate" means the floating annual rate of interest established from time to time by BMO as the base rate it will use to determine rates of interest on Canadian dollar loans to its customers in Canada and designated as the Prime Rate.

10. By a Debenture (the "Debenture"), payable on demand, Calgary West mortgaged, charged and secured in favour of BMO:

- (a) as and by way of a fixed and specific mortgage and charge and security interest, all of its present and after acquired real and immovable property (including, all leases and leasehold lands and also mortgages and charges such leasehold lands by way of sub-lease) and all of its present and after acquired buildings, erections, improvements, fixtures and plant (whether the same form part of the realty or not) and all appurtenances to any of the foregoing, including without limitation the Lease and the Lands;
- (b) as and by way of a specific mortgage and charge and interest, all of its present and after acquired goods and equipment, including without limitation, all fixtures, plant, machinery, tools and furniture now or hereafter owned or acquired;
- (c) as and by way of a continuing security interest, all its present and after acquired inventory, including without limitation, all raw materials, goods in process, finished goods and packaging material and goods acquired or held for sale or furnished or to be furnished under contracts of rental or service;
- (d) as and by way of a continuing security interest, all its present and after acquired intangibles, including without limitation, all its present and after acquired book debts, accounts and other amounts receivable, contract rights and choses in action of every kind or nature and insurance rights arising from or out of the property referred to in paragraphs (a), (b) or (c) hereof, goodwill, chattel paper, instruments, documents of title, investments, money and securities;

- (e) as and by way of a floating charge, a continuing security interest in, all of its present and after acquired real and personal property, assets, and undertaking, tangible and intangible, legal and equitable, moveable and immovable, of whatsoever nature and kind: and,
- (f) as and by way of a continuing security interest the proceeds arising from any dealing with the property to in paragraphs (a) through (e) inclusive hereof in any form including without limitation real and immovable property, goods, securities, instruments, documents of title, chattel paper, intangibles or money;

for securing payment of loans up to the sum of Fifty Million (\$50,000,000.00) Dollars plus costs on a solicitor and its own client basis plus interest at the rate of twenty-five (25%) percent per annum, from and including February 28, 2008 until full and final payment and discharge hereof, as well after as before demand, default and judgment in like money, and to pay interest on overdue and unpaid interest at the same interest rate such interest accruing shall be calculated daily in accordance with the "nominal rate" method of interest calculation on the basis of a 365 day year (or 366 day year in the case of a leap year) and shall be due and payable in arrears on the third business day of each calendar month.

11. By the Debenture, Calgary West covenanted with BMO to:

- (a) pay all liens, rates, charges or encumbrances on the lands which may fall due or be unpaid;
- (b) insure buildings on the lands against fire and other perils;
- (c) keep the Lands in good repair, maintain, restore and amend, keep, make good, finish, add too, and put in order the Lands; and
- (d) in the event of any loss or damage or destruction of the Lands, then, upon receipt of notice from BMO, to repair, rebuild or reinstate the Lands.

In default of any or all of the above, BMO is entitled by the Debenture to do the same and add to the Debenture all costs and expenses incurred by BMO in that regard and in respect to any proceedings taken to realize the money secured by the Debenture, including legal costs, taxes as between solicitor and its own client and an allowance for the time, work and expenses of BMO its servants or agents.

12. As evidence of and security for the indebtedness of Calgary West to BMO, Calgary West granted to BMO, in addition to the Debenture, without limitation:

- (a) Letter Agreement dated as of January 23, 2008;
- (b) Debenture Pledge Agreement dated as of February 28, 2008;
- (c) General Assignment of Rents dated as of February 28, 2008; and
- (d) General Assignment of Leases dated as of February 28, 2008.

The Letter Agreement, the Debenture Pledge Agreement, the General Assignment of Rents and the General Assignment of Leases all exceed 200 words and copies of these documents have previously been provided to the Defendants. All capitalized terms not defined in the Statement of Claim shall have the meaning ascribed to such terms as set out in the Debenture Pledge Agreement and the Debenture.

13. Pursuant to the Debenture Pledge Agreement, Calgary West:

- (a) did thereby deliver, assign, pledge and deposit to and with BMO, and grant to and in favour of BMO a continuing first priority security interest in the Debenture, to be held by BMO, pursuant to the provisions thereof as general and continuing collateral security for the payment, performance and final and indefeasible satisfaction in full of each and every Obligation; and
- (b) notwithstanding the principal sum of the Debenture and the interest rate thereon, the obligations secured by the Debenture pledged and deposited with BMO pursuant thereto would not exceed the amount of the Obligations from time to time owing by Calgary West to BMO.

14. Gamehost did grant to BMO a Guarantee and Postponement of Claim ("Gamehost Guarantee"), in writing, dated March 26, 2008 guaranteeing to BMO the indebtedness of Calgary West for up to the sum of Five Million (\$5,000,000) Dollars with interest from the date of demand at the Prime Rate plus Five (5%) percent per annum together with costs on a solicitor and its own client basis and all other costs, and expenses. Management is liable as general partner for all amounts due and owing by Gamehost under the Gamehost Guarantee.

15. Darcy and David did jointly and severally grant to BMO a Guarantee and Postponement of Claim, in writing, dated February 28, 2008 guaranteeing to BMO the indebtedness of Calgary West for up to the sum of Seventeen Million Five Hundred Thousand (\$17,500,000) Dollars with

interest from the date of demand at the Prime Rate plus Five (5%) percent per annum together with costs on a solicitor and its own client basis and all other costs, and expenses.

16. Default has been made in payment of the principal and in payment of interest by the Defendants.

17. On July 29, 2009 BMO demanded payment of the amounts due and owing to BMO from the Defendants, but the Defendants have failed and neglected and continue to fail and neglect to pay all or any of the indebtedness owing to BMO. Concurrent with service of the written demand upon Calgary West on July 29, 2009, BMO did issue to Calgary West a Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act* (“*BLA*”).

18. BMO proposes that the trial of this action be held at the Law Courts Building, in the City of Edmonton, in the Province of Alberta. The trial of the within action will not likely take more than 25 days to try.

WHEREFORE THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS JOINTLY AND SEVERALLY:

- (a) a declaration as to the amount owing under the Debenture with interest accruing according to the terms thereof and in default of payment, sale to the Plaintiff or otherwise, sale of the whole, or any part of the undertaking, property and assets of Calgary West;
- (b) a declaration there is due and owing to BMO from Calgary West the following amounts:
 - (i) Revolver: Principal Balance outstanding as at the close of business on July 27, 2009 \$ 6,952,560.00
with interest thereon at the Prime Interest Rate (“Prime Rate”) per annum in effect from time to time and as hereinafter defined from and after July 1, 2009.
 - (ii) Construction Take-Out:

Component A – the principal amount of \$17,292,000 with interest thereon at the Prime Rate in effect time to time plus one (1%) percent per annum from and after July 24, 2009.	17,292,000.00
Component B – the principal amount of \$16,219,000 with interest thereon at the Prime Rate in effect from time to time plus one (1%) percent per annum from and after July 1, 2009.	16,219,000.00
(iii) Swap Over-due Interest with interest at the Prime Rate in effect from time to time plus one (1%) percent per annum from and after July 24, 2009	40,037.18
(iv) Mark to market exposure on the termination of the Swap on construction take-out of Component A resulting in the crystallization of the mark to market exposure in the sum of \$650,250 with interest thereon at the Prime Rate in effect from time to time plus one (1%) percent per annum from and after July 24, 2009	650,250.00
(c) costs on a solicitor and his own client basis;	
(d) judgment against Calgary West for the amounts found to be due and owing to BMO plus interest thereon at the applicable rates for the applicable period as is determined by this Honourable Court;	
(e) a declaration that the Debenture secures and encumbers the undertaking, property and assets of Calgary West;	
(f) an inquiry of what the property comprised and charged and secured by the Debenture consists of and in whom the same is vested and what other encumbrances or claims affect the property and an accounting of what is due to such other encumbrancers or claimants;	
(g) such further accounts and inquiries as may be necessary;	
(h) the appointment of a Receiver or Receiver and Manager of the undertaking, property, and assets of Calgary West;	
(i) the appointment of an Interim Receiver of the undertaking, property and assets of Calgary West;	
(j) in the alternative, such appointment or relief as may be necessary to ensure the preservation of the undertaking, property and assets of Calgary West;	

- (k) a declaration that the security granted in favour of BMO may be enforced by the sale of the whole or any part of the undertaking, property and assets of Calgary West;
- (l) judgment against Gamehost Limited Partnership and Gamehost Management Inc. in the sum of Five Million (\$5,000,000.) Dollars plus interest thereon at the rate of Five (5%) percent per annum above the Prime Rate from and after July 29, 2009 together with all other legal or other costs, charges and expenses;
- (m) judgment against David Will and Darcy Will in the sum of Seventeen Million Five Hundred Thousand (\$17,500,000) Dollars plus interest thereon at the rate of Five (5%) percent per annum above the Prime Rate in effect from time to time from and including July 29, 2009 until payment together with all other legal or other costs, charges and expenses;
- (n) an Order dispensing with any bond or other security that might otherwise be required to be posted by an Interim Receiver, Receiver, Receiver and Manager or person charged with the preservation of the Lands and other Property;
- (o) an Order that no action at law or otherwise (other than this action) shall be taken or continued against the Interim Receiver, the Receiver or the Receiver and Manager or the undertaking, property and assets of Calgary West without leave of this Honourable Court first having been obtained;
- (p) costs on a solicitor and his own client basis as against each of the Defendants jointly and severally or costs on such further and other basis as this Honourable Court may direct; and
- (q) such further and other relief as the nature of the case may require and this Honourable Court may permit.

DATED at the City of Edmonton, in the Province of Alberta, this ____ day of AUGUST, 2009, and DELIVERED by Richard J. Cotter, Q.C., of Messrs. Fraser Milner Casgrain LLP, Barristers and Solicitors, 2900 Manulife Place, 10180 - 101 Street, Edmonton, Alberta, T5J 3V5, [phone (780) 423-7316] Solicitors for the Plaintiff 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 Edmonton, this 6 day of AUGUST, 2009.


CLERK OF THE COURT OF QUEEN'S
BENCH OF ALBERTA



NOTICE

**TO: Calgary West Hospitality Inc.
Gamehost Limited Partnership
Gamehost Management Inc.
Darcy Will and David Will**

Action No. **0903 12151**

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

BETWEEN:

BANK OF MONTREAL

Plaintiff

-and-

**CALGARY WEST HOSPITALITY INC.,
GAMEHOST LIMITED PARTNERSHIP,
GAMEHOST MANAGEMENT INC.,
DARCY WILL and DAVID WILL**

Defendants

You have been sued. You are the Defendant(s). You have only 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 Edmonton, 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(s) 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(s) may get a Court judgment against you if you do not file, or do not give a copy to the Plaintiff(s), or do either thing late.

This Statement of Claim is issued by FRASER MILNER CASGRAIN LLP, solicitors for the Plaintiff(s), and whose address for service is in care of said solicitors at:

c/o FRASER MILNER CASGRAIN LLP
2900, 10180 - 101 Street
Manulife Place
Edmonton, Alberta
T5J 3V5

The Lawyer to contact at FRASER MILNER CASGRAIN LLP is Richard J. Cotter, Q.C., telephone (780) 423-7316

at which address service of subsequent proceedings in this action may be served as effectively as if served upon the Plaintiff(s) personally.

STATEMENT OF CLAIM

This Statement of Claim is issued by FRASER MILNER CASGRAIN LLP, Solicitors for the Plaintiff(s) who reside(s) at:

2900 Manulife Place
10180 - 101 Street
Edmonton, Alberta T5J 3V5

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

2900, 10180 - 101 Street
Manulife Place
Edmonton, Alberta T5J 3V5

and is addressed to the Defendant(s) whose residence as far as known to the Plaintiff(s) is:

**CALGARY WEST HOSPITALITY INC.,
GAMEHOST LIMITED PARTNERSHIP,
GAMEHOST MANAGEMENT INC., DARCY
WILL and DAVID WILL**

Solicitor: Richard J. Cotter, Q.C.

Telephone: (780) 423-7316

Facsimile: (780) 423-7276

File: 123233-924/RJC

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