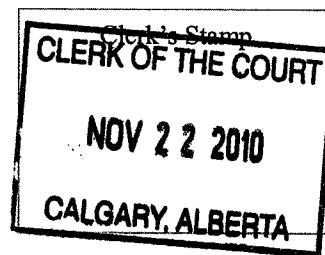


COURT FILE NUMBER **1001-03215**
COURT **COURT OF QUEEN'S BENCH OF ALBERTA**
JUDICIAL CENTRE **Calgary**
PLAINTIFF **FIRST CALGARY SAVINGS & CREDIT
UNION LTD.**



DEFENDANTS **PERERA SHAWNEE LTD., PERERA
DEVELOPMENT CORPORATION,
DON L. PERERA AND SHIRANIE M.
PERERA**

PLAINTIFFS BY
COUNTERCLAIM **PERERA SHAWNEE LTD., DON L.
PERERA AND SHIRANIE M. PERERA**

DEFENDANTS BY
COUNTERCLAIM **FIRST CALGARY SAVINGS & CREDIT
UNION LTD. and DELOITTE &
TOUCHE LLP**

DOCUMENT **STATEMENT OF DEFENCE OF
FIRST CALGARY SAVINGS &
CREDIT UNION LTD. TO
AMENDED COUNTERCLAIM BY
DON L. PERERA AND SHIRANIE
M. PERERA**

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BLG
Borden Ladner Gervais

Statement of facts relied on:

1. The Plaintiff (Defendant by Counterclaim) First Calgary Savings & Credit Union Ltd. (“First Calgary”) adopts, insofar as is practicable, the defined terms in its Amended Statement of Claim and the Statement of Defence (“Defence”) and Counterclaim (the “Counterclaim”). This Statement of Defence to Amended Counterclaim is only in response to the counterclaims by Don L. Perera and Shiranie M. Perera (the “Defendants”).
2. In response to the Counterclaim as a whole, First Calgary denies that it had a duty of good faith other than good faith performance of the Loans and Security, which at all material times it did not breach or fail to perform.
3. The Counterclaim alleges that First Calgary had fiduciary duties under the Loans and Security. At all material times, the Defendants were sophisticated parties, who had access, made use of independent legal advice and negotiated with First Calgary regarding the terms and conditions of the Loans and Security. The Defendants were never uniquely vulnerable to First Calgary, and First Calgary never represented or agreed to put one or more of the Defendants’ interests ahead of First Calgary’s own.
4. Any loss of amounts advanced to one or more of Perera Shawnee Ltd. (“PSL”), any loss of equity by PSL in the PSL lands and any loss of future profits from the development of the PSL Lands, were all caused entirely by the inability of PSL and the Defendants to repay the Loans and adhere to the terms and conditions of the Security, and were not in any way contributed to or caused by First Calgary.

Any matters that defeat the claim of the plaintiff by counterclaim:

5. In response to the entirety of the Counterclaim, First Calgary pleads that it was entitled to negotiate prudent agreements with a group of borrowers who had defaulted on the previous Loans and Security, as outlined in the Amended Statement of Claim, and there is no cause of action or legal right to claim against First Calgary for making agreements that sought to protect its interests. First Calgary was at all material times justified in seeking to enforce its rights under the Loans and Security and protect its interests therein.

6. In response to paragraph 36 of the Counterclaim and all incorporated allegations regarding the Perera November Advance and the alleged "Recapitalization Agreement", First Calgary denies that there was any written or oral Recapitalization Agreement.
7. Any and all agreements between First Calgary and any one or more of the Defendants are in writing and they consist only of the Loans and Security as set out in the Amended Statement of Claim.
8. In further specific response to paragraph 36 of the Counterclaim, it is denied that First Calgary ever agreed, implicitly or expressly, that it would work in good faith or collaboratively with PSL and/or the Defendants to maximize the return for the Defendants from the PSL Lands or its improvements. First Calgary was a lender to PSL and the Defendants with respect to the PSL Lands and the Project as a whole. The Perera November Advance was done with the knowledge of First Calgary and with its agreement to postpone the Personal Mortgage to facilitate the same, but not pursuant to its encouragement or any agreement with the Defendants as alleged or at all. The Defendants chose to re-finance their residence in order to loan the PSL funds to pay its creditors as set out in the Amended Statement of Claim. First Calgary agreed to postpone the Personal Mortgage to allow this to be accomplished.
9. In specific response to paragraphs 37, 37A and 38 of the Counterclaim, it is not clear what the Defendants mean by the "December Loan Agreement" or "December 2009 Agreements". At all material times, PSL and the Defendants were represented by counsel and only executed written agreements, which were read and understood based upon the terms included therein.
10. In further specific response to paragraph 37 and 37A of the Counterclaim, First Calgary denies that anything in the Forbearance Agreement or the provision thereof to PSL and the Defendants was done in bad faith. On or about January 21, 2010, as set out in the Amended Statement of Claim, the Defendants were in default of the Loans and Security, and the Forbearance Agreement was provided to the Defendants in a justified attempt by First Calgary to protect its interests and collateral and to give effect to the terms of the Agreement of Intent.

11. In specific response to paragraph 38 of the Counterclaim, First Calgary states that this paragraph does not disclose a reasonable claim or cause of action. In any event, as alleged in the Amended Statement of Claim, there were multiple defaults under the December Commitment Letter, the December 2009 Loan, the Agreement of Intent and the December 2009 Security.
12. In specific response to paragraph 38A, First Calgary has filed an application to strike out all of paragraph 38A. Paragraph 38A contains frivolous, irrelevant and improper allegations, and constitutes an abuse of process.
13. First Calgary denies that PSL and the Defendants have suffered the damages as alleged in paragraph 39 of the Counterclaim, or at all.
14. The claims of the Defendants, are claims in their capacities as shareholders for damages to PSL and are not permissible at law.
15. In the alternative, in the event that First Calgary is liable to one or more of the Defendants, which is denied, the Defendants contributed to their damages by their failure to act reasonably or take proper care, as set out herein and in the Amended Statement of Claim. First Calgary specifically pleads and relies on the provisions of the *Contributory Negligence Act*, R.S.A. 2000, c. C-27.

Remedy sought:

16. That the Counterclaim be summarily dismissed, with solicitor-client costs.