

**Form 10**  
[Rule 3.25]

Clerk's stamp:

COURT FILE NUMBER	2101-
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	PANTERRA MORTGAGE & FINANCIAL CORPORATION LTD.
DEFENDANT	COCOCO CHOCOLATIERS INC.
DOCUMENT	<b><u>STATEMENT OF CLAIM</u></b>

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Dentons Canada LLP  
Bankers Court  
15th Floor, 850 - 2nd Street S.W.  
Calgary, Alberta T2P 0R8

Attention: David Mann QC / John Regush  
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File No.: 562129-3

**NOTICE TO DEFENDANT**

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

**Note: State below only facts and not evidence (*Rule 13.6*)**

**Statement of facts relied on:**

**The Parties**

1. The Plaintiff, Panterra Mortgage & Financial Corporation Ltd., formerly named 1870340 Alberta Ltd. (the "**Lender**") is a corporation incorporated pursuant to the laws of Alberta and carries on business in Alberta.
2. The Defendant, Cococo Chocolatiers Inc. ("**Cococo**"), is a corporation incorporated pursuant to the laws of Alberta and carries on business in Alberta.
3. Cococo's prior legal name is 1563181 Alberta Ltd.

**Loan Agreements**

4. Pursuant to an Assignment Agreement dated September 15, 2017, as amended and rectified by an Amendment and Rectification Agreement dated September 15, 2017 (collectively, the “**Assignment Agreement**”) Lender acquired an assignment of the entire indebtedness of Cococo then owed to 261820 Alberta Ltd., and related security.
5. The indebtedness and security relate to certain loans and advances made by 261820 Alberta Ltd. to Cococo and Cococo’s amalgamation predecessor.
6. More particularly, the Lender took an assignment of the indebtedness of Cococo pursuant to the following loans and advances made to Cococo (collectively, the “**Assignment**”):

<u>Date of Advance</u>	<u>Amount of Advance</u>
October 22, 2010	\$2,000,000.00, pursuant to a promissory note dated October 22, 2010, as amended by an amended promissory note dated July 2, 2012 (the “ <b>2010 Working Capital Loan</b> ”)
July 31, 2012	\$2,000,000.00, pursuant to a promissory note dated July 3, 2012 (the “ <b>2012 Working Capital Loan</b> ”)
August 27, 2012	
October 15, 2012	
September 5, 2013	\$20,000.00
August 31, 2015	\$350,000.00
October 31, 2015	\$850,000.00
December 31, 2015	\$550,000.00
July 31, 2016	\$585,000.00
September 30, 2016	\$719,452.78
October 31, 2016	\$514,471.00
November 30, 2016	\$277,672.00

7. The 2010 Working Capital Loan was originally established as, and remains today, an obligation payable upon demand. Its terms originally provided for the payment of interest at a rate of HSBC Bank prime plus 1%.

8. The 2010 Working Capital Loan was amended in 2012 by deleting the requirement to pay interest, and by allowing for prepayment without penalty or bonus.
9. The 2012 Working Capital Loan established an interest-free revolving line of credit facility to a maximum principal amount of \$2,000,000. The loan had a 6-year term and required full payment on July 2, 2018. Cococo was entitled to prepay the loan at any time without penalty.
10. Pursuant to a letter agreement dated September 15, 2017, the Lender also made available to Cococo a further demand revolving loan to the maximum amount of \$1,500,000 (the “**2017 Operating Loan Agreement**”).
11. Terms of the 2017 Operating Loan Agreement as implemented include, among others, that:
  - (a) Cococo agreed that amounts advanced and outstanding under the 2017 Operating Loan Agreement shall at no time exceed the prescribed margin requirement;
  - (b) interest before default is payable at a rate equal to HSBC Bank prime plus 1.00% per annum;
  - (c) Cococo is responsible for all reasonable legal fees and disbursements, on a solicitor and own client basis, in respect of the loan, including enforcement costs;
  - (d) all amounts outstanding are repayable on demand by the Lender.
12. As of August 11, 2021, pursuant to the Assignment and the 2017 Operating Loan Agreement (collectively, the “**Loans**”), Cococo’s indebtedness due and owing to the Lender totals, \$10,696,769.25 plus costs (including legal costs on a solicitor and own-client full indemnity basis), and fees, all of which, together with interest, continue to accrue (collectively, the “**Indebtedness**”).

### **Security**

13. The security assigned to the Lender in 2017 included two general security agreements, dated October 22, 2010 and July 3, 2012 respectively.
14. Additionally, the Lender obtained a third general security agreement from Cococo dated September 15, 2017.
15. The foregoing are collectively referred to as the “**Security**”.
16. The Security provides the Lender with, among other things, a security interest in all of Cococo’s present and after acquired personal property and a floating charge over its real property, securing the payment, performance, and satisfaction of each and every obligation, indebtedness, and liability of Cococo to the Lender, including but not limited to the Indebtedness.

17. The Lender perfected the interests granted by the Security through registrations made in the Alberta Personal Property Registry.

### **Default and Demand for Repayment**

18. Cococo is in default of the Loans, including but not limited to by reason of failing to make payment of amounts owing to the Lender. Additionally, certain of the loan facilities provided are term facilities that have matured.
19. On July 27, 2021 the Lender, through its legal counsel, issued a demand letter to Cococo for payment of all amounts outstanding to the Lender and a Notice of Intention to Enforce Security pursuant to subsection 244 of the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3.
20. Despite the Lender's demand, Cococo has failed or neglected to pay, and continues to fail or neglect to pay the Indebtedness (as defined herein) to the Lender.
21. It is a term of the 2017 Operating Loan Agreement that the indebtedness owing thereunder shall continue to accrue interest on all amounts outstanding at the rates set forth therein.
22. In the alternative, the Lender pleads and relies on the provisions of the *Judgment Interest Act*, RSA 2000, c J-1, as amended.
23. The Lender believes the nature of this claim is not one that will or is likely to result in an agreement between the parties, and that a Dispute Resolution Process would not be beneficial or would be futile. A decision of this Honourable Court is necessary and desirable in the circumstances.

### **Receivership**

24. The appointment of a receiver and manager over the assets, properties, and undertakings of Cococo is necessary, just, and convenient in the circumstances.
25. Concurrently with its appointment, the receiver and manager should be authorized and directed to conduct a sales process to realize upon the assets of Cococo; more particularly, the receiver and manager should be empowered to conduct a sales process that uses a credit bid submitted by the Lender as a stalking horse bid.

### **Service**

26. The Loans are Alberta contracts governed by Alberta law.
27. Cococo is an Alberta corporation.
28. Cococo's assets and the collateral subject to the Security are primarily located in Alberta.
29. The Loans and the Security were breached in Alberta.

30. Based on the foregoing, the Lender asserts a real and substantial connection of this claim to Alberta. The Lender relies on these facts as grounds for service of this Statement of Claim on Cococo.

**Remedy sought:**

31. The Lender respectfully seeks:
- (a) an Order validating the service of this Statement of Claim on Cococo;
  - (b) a declaration that the Security is valid and enforceable as against Cococo;
  - (c) a declaration that Cococo is in default of its obligations to the Lender in respect of the Loans and the Security;
  - (d) judgment as against Cococo in the amount of the Indebtedness, together with interest according to the terms of the Loans, fees and expenses;
  - (e) an order appointing a receiver and manager over the property, assets, and undertaking of Cococo;
  - (f) an Order authorizing and directing the receiver and manager to implement a sales process for Cococo's assets and authorizing and approving the Lender's credit bid, which will serve as a stalking horse bid in the sales process;
  - (g) an Order waiving Rule 4.16 of the *Alberta Rules of Court*, Alta Reg 124/2010;
  - (h) interest on all amounts outstanding, both before and after judgment, in accordance with the agreements of the parties or, in the alternative, interest as set forth in the *Judgment Interest Act*, RSA 2000 c J-1, as amended;
  - (i) such further and other relief as this Honourable Court deems just and appropriate.

**NOTICE TO THE DEFENDANT**

You only have a short time to do something to defend yourself against this claim:

- 20 days if you are served in Alberta
- 1 month if you are served outside Alberta but in Canada
- 2 months if you are served outside Canada

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.