

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF SAINT JOHN

IN THE MATTER OF THE RECEIVERSHIP OF **ROYAL OAKS GOLF CLUB INC.**

- and -

PURSUANT TO Section 33 of The *Judicature Act*, R.S.N.B. 1973, Ch. J-2, Rule 41, Rules of court, New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

B E T W E E N:

CWB MAXIMUM FINANCIAL INC.,

Applicant,

- and -

ROYAL OAKS GOLF CLUB INC.,

Respondent.

A F F I D A V I T

I, **WALTER STEVEN LUNN**, of the City of Tucson, State of Arizona, **MAKE OATH AND SAY:**

1. I have received a copy of the filed Notice of Motion of the Applicant which is scheduled to be heard on December 4, 2024 wherein the Applicant is, among other things, requesting approval of a non-related party Claims Process as described in the Third Report of the Receiver dated November 8, 2024 (the "**Third Report**").
2. At paragraphs 39 to 43 of the Third Report, the Receiver concludes that I am a Shareholder and Related Party Creditor, as defined therein, and takes the view that my claims should be resolved outside these proceedings, and that "any residual funds be paid into this Court pending a resolution of the shareholder disputes".
3. I am concerned that this procedure will not permit me to collect what I am owed by the Respondent unlike other unsecured creditors. For the following reasons, I do not believe I should be excluded from making a claim in the Claims Process requested to be approved.
4. I entered into a Share Purchase Agreement ("**SPA**") on March 29, 2019 with the Respondent and others pursuant to which I purchased 125,667 common shares in the

Respondent for Five Hundred Thousand Dollars (\$500,000.00). Attached as Exhibit "A" is a copy of the SPA.

5. Section 2.4 of the SPA provided me with a "put option" whereby I was entitled to have my shares repurchased by the Respondent and others for the sum of Five Hundred and Forty Thousand Dollars (\$540,000.00) after one year. Section 2.4 states:

Section 2.4. Put Option: The Seller [being the Respondent] shall do all acts and execute all such documents to give effect to a put option in respect of the Purchased Shares in favour of the Purchaser [Lunn] as follows:

- (a) On the first anniversary of the Closing Date and within a period of ten (10) Business Days of such anniversary date (the "Put Option Date"), the Purchaser [Lunn] shall have the right, but not the obligation, to put the Purchased Shares to each the Seller [the Respondent] and the Shareholders by written notice (the "Put Option"); and
 - (b) The Seller [the Respondent] and/or the Shareholders either separately or collectively shall purchase the Purchased Shares from the Purchaser at the value of five hundred and forty thousand Canadian dollars (C\$540,000) and shall cause the closing of such purchase to be effected within thirty (30) days after the end of the Put Option period set out in section 2.4(a) above.
6. I negotiated the Put Option because I had originally intended my investment to be for a short term. Prior to the first anniversary of the Closing Date, being March 29, 2020, the Respondent requested me to defer the exercise of my Put Option for a year because of the uncertainty at that time caused by COVID. Although the Respondent was in a good financial situation, I agreed to defer my Put Option for one year because of the extraordinary circumstances regarding COVID. In exchange for my extension, the Respondent agreed to pay me an additional "coupon" amount of \$43,230. Attached as Exhibit "B" is an email from Nicole Clouthier on behalf of the Respondent on March 31, 2020, my reply on April 1, 2020, and Ron Hrynk's subsequent confirmation on April 10, 2020.
 7. On March 29, 2021, I exercised my Put Option. Attached as Exhibit "C" is my email exercising my option and receipt from Nicole Clouthier and Ron Hrynyk.
 8. I received from the Respondent \$83,230.00 in respect of a partial payment of the Put Option but the balance of \$500,000.00 remains outstanding. The Respondent failed to fully honour the Put Option as it had agreed without any valid justification of which I am aware.
 9. The primary shareholders of the Respondent became embroiled in a dispute which remains unresolved. I have made a claim to have the Put option honoured as part of this litigation. Attached as Exhibit "D" are the pleadings in respect of this dispute.
 10. If the Respondent had honoured its obligation to repurchase my shares in 2021 as it was required to do, I would have been paid out and no longer listed as a shareholder of the

Respondent. Under these circumstances, I believe that my exercise of the Put Option created a debt owing to me by the Corporation. As the debt obligation was crystallized upon my proper exercise of my Put Option, I believe that I should be permitted to make a claim under the Claims Process proposed by the Receiver similar to other unsecured creditors.

11. I make this Affidavit for the purpose of requesting to be permitted to make a claim in the Claims Process proposed by the Receiver as an unsecured creditor, and for no improper purpose.

SWORN TO before me at the City of Saint)
John, Province of New Brunswick, while)
the deponent was present in the City of)
Pittsburgh in the State of Pennsylvania and)
appeared before me by way of)
videoconference technology,)
this 27th day of November, 2024)

BEFORE ME:)



William C. Kean)
A COMMISSIONER OF OATHS)
BEING A SOLICITOR)



Walter Steven Lunn

Exhibit "A"
Nov. 27/21
[Signature]

SHARE PURCHASE AGREEMENT

THIS AGREEMENT dated as of the 29th day of March, 2019;

BETWEEN:

Royal Oaks Golf Club Inc., a limited liability partnership organized under the laws of the Province of New Brunswick ("**Seller**")

- and -

Walter Steven Lunn, of PO Box 42369, Abu Dhabi, United Arab Emirates ("**Purchaser**")

- and -

HR Corporate Strategies Ltd, a body corporate organized under the laws of the Province of Ontario ("**HR Corporate**")

- and -

TW1 Oaks Inc., a body corporate organized under the laws of the Province of Ontario ("**TW1 Oaks**")

Ron, Jacquie and TW1 Oaks collectively, the "**Shareholders**"; and

each of the above being a "**Party**" and collectively, the "**Parties**".

WHEREAS the Seller is the registered and beneficial owner of the Purchased Shares;

AND WHEREAS the Purchaser desires to purchase the Purchased Shares from the Seller;

AND WHEREAS the Parties wish to confirm certain matters relating to the Purchased Shares;

NOW THEREFORE in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which each of the Parties hereto hereby acknowledges, the Parties hereto hereby covenant and agree as follows:

ARTICLE ONE INTERPRETATION

Section 1.1. Definitions: In this Agreement, unless the subject matter or context is inconsistent therewith, the following words shall have the following meanings:

- (a) "**Closing Date**" means on or before 29th March, 2019;
- (b) "**Corporation**" means Royal Oaks Golf Club Inc., a body corporate incorporated under the laws of the Province of New Brunswick;
- (c) "**Purchased Shares**" means, 125,667 common shares in the capital of the Corporation; and

- (d) **"Purchase Price"** means the five hundred thousand Canadian dollars (C\$500,000.00) in respect of the Purchased Shares.

ARTICLE TWO PURCHASE AND SALE

Section 2.1. **Purchase of Shares:** Subject to the terms and conditions hereinafter contained, the Seller hereby sells the Purchased Shares to the Purchaser for the Purchase Price on the Closing Date, and the Purchaser hereby purchases the Purchased Shares from the Seller for the Purchase Price on the Closing Date.

Section 2.2. **Payment of Purchase Price:** The Purchaser hereby agrees to pay the Purchase Price on the Closing Date to the Seller in freely accessible funds to such bank account as may be notified to the Purchaser.

Section 2.3. **Transfer of Purchased Shares:** The Seller shall deliver to the Purchaser all necessary conveyances, bills of sale, assurances, transfers, assignments and consents and any other documents necessary or reasonably required to effectively transfer the Purchased Shares to the Purchaser, free and clear of all liens, charges or other encumbrances whatsoever, including, without limitation, certificates representing the Purchased Shares, duly endorsed in blank for transfer, or accompanied by a stock transfer form, and resolutions of the directors (and if applicable, the shareholders) of the Corporation consenting to and approving the transfer of the Purchased Shares from the Seller to the Purchaser, other than as disclosed to, and accepted by, the Purchaser.

Section 2.4. **Put Option:** The Seller shall do all such acts and execute all such documents to give effect to a put option in respect of the Purchased Shares in favour of the Purchaser as follows:

- (a) On the first anniversary of the Closing Date and within a period of ten (10) Business Days of such anniversary date (the **"Put Option Date"**), the Purchaser shall have the right, but not the obligation, to put the Purchased Shares to each of the Seller and the Shareholders by written notice (the **"Put Option"**); and
- (b) The Seller and/or the Shareholders either separately or collectively shall purchase the Purchased Shares from the Purchaser at the value of five hundred and forty thousand Canadian dollars (C\$540,000.00) and shall cause the closing of such purchase to be effected within thirty (30) days after the end of the Put Option period set out in Section 2.4(a) above.
- (c) Where the Put Option is not exercised under Section 2.4(a) and (b) above, the Parties acknowledge and agree that the Put Option shall be cancelled and that the terms and conditions of Section 2.5 shall then apply to the Purchased Shares.

Section 2.5. **Cancellation of the Put Option:** The Purchaser shall have right but not the obligation to cancel the put option at any time prior to the Put Option Date in relation to all but not less than all of the Purchase Shares upon reasonable notice to the Shareholders and the

Parties agree that they shall do all such acts and execute all such documents as may be required to cancel the put option and recognise the Purchased Shares as common shares in the capital of the Corporation with full voting rights, including but not limited to the entry into of the shareholders agreement substantially in the form attached hereto at Exhibit A (the "Shareholders Agreement").

Section 2.6. Put Option Terms: Unless and until the Put Option is cancelled pursuant to Section 2.5 above, the Purchaser acknowledges and agrees that the Purchased Shares shall be deemed to be non-voting shares and that it shall not have the benefit of any voting rights under the Shareholders Agreement. Each of the Parties hereby agrees that the certificate representing the Purchased Shares shall be endorsed with a legend in substantially the following form:

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS SET FORTH IN A SHARE PURCHASE AGREEMENT BETWEEN THE HOLDER OF THIS CERTIFICATE AND CERTAIN OTHER PARTIES. TRANSFER OF THE SHARES IS SUBJECT TO THE RESTRICTIONS CONTAINED IN SUCH AGREEMENT.

ARTICLE THREE CLOSING

Section 3.1. Closing Deliveries: On the Closing Date, the Seller shall deliver, or cause to be delivered, to Purchaser the share certificates representing the Purchased Shares duly endorsed in blank for transfer or stock transfer forms and such other documents as are contemplated by Section 2.3 hereof.

Section 3.2. Conditions: The obligations of the Seller and Purchaser under this Agreement are subject to the fulfilment at or prior to the Closing Date of the following conditions, with each of paragraphs (a) and (b) being for the sole benefit of the Seller and being subject to being waived in writing in whole or in part by the Seller and with each of paragraphs (c) and (d) being for the sole benefit of Purchaser and being subject to being waived in writing in whole or in part by Purchaser:

- (a) all the representations and warranties herein of Purchaser shall be true at and as of the Closing Date with the same effect as though they had been made at and as of the Closing Date;
- (b) Purchaser shall have complied with all covenants to be complied with by Purchaser at or prior to the Closing Date as set forth herein;
- (c) all the representations and warranties herein of the Seller shall be true at and as of the Closing Date with the same effect as though they had been made at and as of the Closing Date; and
- (d) The Seller shall have complied with all covenants to be complied with by the Seller at or prior to the Closing Date as set forth herein.

**ARTICLE FOUR
REPRESENTATIONS AND WARRANTIES**

Section 4.1. Representations and Warranties of the Seller: The Seller represents and warrants to Purchaser that:

- (a) each of the Purchased Shares has been duly and validly issued by the Corporation and is a fully-paid and non-assessable share in the capital stock of the Corporation;
- (b) The Seller is the registered and beneficial owner of the Purchased Shares free and clear of all liens, charges or other encumbrances, and has good and marketable title thereto and that, upon completion of the transactions contemplated herein, Purchaser shall hold [*insert number of shares*] of the issued and outstanding shares of the Corporation, and no person (including the Seller) shall have any agreement, option, or right in respect of the issuance of any additional equity or equity-like interest in the capital of the Corporation other than as expressly disclosed to the Purchaser;
- (c) The Seller has all necessary corporate power and capacity and is otherwise legally entitled to enter into this Agreement and to transfer the Purchased Shares to Purchaser on the terms and conditions set out in this Agreement; and
- (d) The Seller is not a non-resident of Canada for purposes of Section 116 of the *Income Tax Act* (Canada).

Section 4.2. Representations and Warranties of Purchaser: Purchaser hereby represents and warrants to the Seller that:

- (a) the fulfilment of the obligations of Purchaser hereunder will not be in contravention of any of the provisions of the constating documents of Purchaser; and
- (b) it has reviewed the Shareholders Agreement as attached hereto in Annex A and acknowledges and agrees to the terms and conditions as set out therein; and
- (c) it has reviewed the Voting Agreement as attached hereto in Annex B and acknowledges and agrees to the terms and conditions set out therein.

**ARTICLE FIVE
COVENANTS**

Section 5.1. Covenants of the Seller: The Seller hereby covenants with Purchaser as follows:

- (a) to cause all necessary steps and corporate proceedings to be taken to effectively and validly carry out the transactions contemplated herein;
- (b) to cause the share certificates representing the Purchased Shares to be delivered to Purchaser on or before the Closing Date, duly endorsed in blank for transfer, or accompanied by a stock transfer form transferring the Purchased

Shares to Purchaser duly executed in blank, and to cause the transfer of the Purchased Shares to be duly recorded on the books and records of the Corporation.

Section 5.2. Covenants of Purchaser: Purchaser hereby covenants with the Seller to cause all necessary steps and corporate proceedings to be taken to effectively and validly carry out the transactions contemplated herein.

ARTICLE SIX MISCELLANEOUS

Section 6.1. Applicable Law: This Agreement shall be construed and interpreted in accordance with the laws of the Province of New Brunswick and the federal laws of Canada applicable therein and the parties hereby attorn to the non-exclusive jurisdiction of the courts of such Province.

Section 6.2. Further Assurances: The parties hereto agree to sign or execute all such other deeds and documents and do such other things as may be necessary or desirable for more completely and effectually carrying out the terms and intention of this Agreement (including, without limitation, delivering or causing to be delivered any such documents as Purchaser may reasonably request to evidence the existence of the debt described in Section 4.1(d) hereof).

Section 6.3. Binding Effect: This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns, and shall enure to the benefit of the parties hereto, their respective successors and permitted assigns.

Section 6.4. No Assignment: This Agreement may not be assigned by either party without the express prior written consent of the other party hereto.

Section 6.5. Time: Time is in all respects of the essence of this Agreement.

Section 6.6. Obligations Surviving Closing: The parties agree that the representations and warranties set out in Sections 4.1 and 4.2 hereof shall survive closing.

Section 6.7. Counterpart and Electronic Transmission: This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all such counterparts taken together shall constitute one and the same Agreement. To evidence the fact that it has executed this Agreement, a party may send a copy of its executed counterpart to the other parties by facsimile transmission or other form of electronic transmission and such party shall be deemed to have executed this Agreement on the date it sent such transmission. In such event, such party shall forthwith deliver to the other party the counterpart of this Agreement executed by such party.


[remainder of page intentionally left blank - signature page to follow]

IN WITNESS WHEREOF the parties hereto have executed and delivered this Agreement as of the day and year first above written.

ROYAL OAKS GOLF CLUB INC.

Per: _____
Name:
Title:

WALTER STEVEN LUNN

Per:  _____
Name: *WALTER STEVEN LUNN*
Title: *MR.*

HR CORPORATE STRATEGIES LTD.

Per: _____
Name:
Title:

TW1 OAKS INC.

Per: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused their signatures to be written and attested at the city and state first above written.

[Signature]
James L. ...
Director

ROYAL OAKS GOLF CLUB INC.
By *[Signature]* Ron Hyatt
Director

WALTER E. EVEN LARK
By *[Signature]*
Vice President

INTEGRATED STRATEGIES LTD.
By *[Signature]* Ron Hyatt
President

ROYAL OAKS GOLF CLUB INC.
By *[Signature]* James L. ...
Director

Exhibit "B"
November 27, 2024
Wethers

From: "nlcoleclouthier@rocketmail.com" <nlcoleclouthier@rocketmail.com>
Subject: Royal Oaks Golf Club Catch-Up
Date: March 31, 2020 at 5:05:20 PM EDT
To: Steve Lunn <stevelunn60@gmail.com>

Hi Steve,

Wow, what a time to be emailing you. Since last we corresponded, the world certainly has changed and the impacts are widely and globally felt and changing hour by hour.

I do hope this email finds you and your loved ones well and healthy!

The family and I returned March 19th and have been in self-isolation ever since. We finally get to do our own grocery shopping this Friday!

In respect of the golf course, before I get into a fuller update, I would need to ask for a signature on our TD bank account please. We recently paid off a Line of Credit and as such TD requires that we are moved from a commercial account to a small business account. This will allow us to save on fees and during covid-19 will make applying for financial support easier. Attached is the form to move our visa to small business account. Would you be able to sign and return the attached document to me at your earliest convenience?

In respect of the golf course then: Well, we are getting the financials completed and overall it is positive. Even with a 20% loss in our golf season - we did not open until June 7th - we only lost out on golf revenue by 7.1% from 2018. F&B performed well, even with the loss of our Director of F&B at end of August and our new Executive Chef not starting until November, and overall was down only 2.7% against 2018! (The fact that F&B is not trending same or worse than golf revenue also shows that the restaurant as a standalone business centre is growing on its own and more and more independent from golf!)

Overall we were able to improve profitability by 0.2% from 2018 and it shows that the focus on costs had the right impact and provides a solid basis to keep growing the business. Instrumental in growing the business is the hire of our new GM, Chris Medford, who started March 1st. With what he has been able to achieve just in the first month and especially given covid-19 impacts, we are extremely excited to see the growth he will be able to bring to the business, for our 20th anniversary and the seasons ahead!

Unfortunately, covid-19 did hit us at the golf course at a particularly vulnerable time. We have had to close the restaurant, had all our events cancel for March and have had to let most of our staff go. We are still hopeful to have a golf season this year and have therefore kept the minimal team of Superintendent and Assistant Superintendent to focus on the course and internally our new GM and Office Manager/Executive Assistant to focus on updating policies and more importantly sale of memberships. Our bookkeeper is down to minimum hours as we try to strike the right balance between being able to get ready for the season ahead whilst having no revenue coming in since March 1st and adapting to a daily new normal.

With your investment, as you know, you have a right to put the shares back to the golf club including being paid out on the dividend. You are also able to continue your investment and we would be able to offer an extension of the dividend terms for another year if that would be of interest to you. As for paying out the dividend for 2019-2020 in the most tax efficient manner, I have not landed on a best course of action and it would really depend on what you wanted to do. We could treat it as re-invested and thereby delay the tax impact or potentially structure it as an option, again deferring the tax impact. Let me know what you would like to do on this, however. Payment out I understand would be a taxable event.

Our medium to long-term vision for the golf course has slightly changed direction as we feel a hotel would not be the best next phase just yet. Investors are hesitant as soon as you utter the words 'hotel' and for more immediate capital injection into the golf club, developing certain lands on the golf club would probably be best use of money and provide more certain dividend from both a timing and IRR perspective. We are actively looking at zoning, construction and ultimately structuring best investment for equity of the around 2.7 acres on the golf course that would lend itself well to development. I have attached some zoning of the land areas for your information.

Esmond and I are still committed to the golf course and our team on the ground. We are excited for our 20th anniversary season this year and the years ahead as we see operations improve and go from strength to strength - we very much appreciate your support in this endeavour! We are happy to discuss openly the challenges and successes of the golf course, and would certainly be open to discussing your preferred options with regard to your investment.

Anytime you have chance for a call, let us know - would love to catch up more properly over the phone.

Best wishes for now and stay healthy!

Nicole

From: Walter Steven Lunn <stevelunn60@gmail.com>

Subject: Re: Royal Oaks Golf Club Catch-Up

Date: April 1, 2020 at 3:11:48 AM EDT

To: nicoleclouthier@rocketmail.com

Hello Nicole

Glad to see you all back safe and well - hope you have enough food in the house to see you through until Friday! As requested I attach the signed TD account.

At this time of global uncertainty I believe the right thing to do would be to continue my investment and to reinvest the dividend, I'm not sure how this would change any shareholding, if at all, but rest assured I look at this as a long term investment. When the books are closed for 2019, can you please send a copy.

Donna officially retired yesterday and now enjoys her new title of "housewife" - I don't think! As for myself look to finish in August, well that's the plan for the time being.

The land photos you sent should be fairly straightforward to develop, not like our Tucson plot half way up a mountain.

Would love to talk - perhaps once I have seen last years numbers.

If this virus lasts a summer in Abu Dhabi - then we really will be worried! Stay well, Best wishes Steve

Begin forwarded message:

From: Ron Hrynyk <ronhrynyk1@gmail.com>
Subject: Re: Steve Lunn ROGC Participation
Date: April 10, 2020 at 10:49:26 AM EDT
To: Nicole Clouthier <Nicole.Clouthier@royaloaks.nb.ca>
Cc: Jacqueline Boddaert <jboddaert1@gmail.com>, Esmond Clouthier <esmond.clouthier@royaloaks.nb.ca>

Sounds fair Nicolé & Es,

Proceed

Ron Hrynyk
Chairman
HR Corporate Strategies
2495 Lloydtown Aurora Side Road
King City, ON L7B 1A3
(416) 301-2564

Email : ron@hrcorpstrategies.com

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On Apr 10, 2020, at 10:35 AM, Nicole Clouthier
<Nicole.Clouthier@royaloaks.nb.ca> wrote:

Morning Ron,

Just to confirm our discussions in respect of Steve's investment in the golf course.

Steve's investment as 25% non-voting common shareholder to be extended by another year, i.e. with the same option to convert or put back the shares AND with coupon of 8%, until end March 2021.

Coupon of 8% earned end March 2019 to end March 2020 not to be paid out at this time but to be re-invested. Believe we cannot add to his shares as will throw out equity so proposal is that the \$40k earned end March 2020 is reflected as a promissory note with repayment of \$40k + 8% interest to be paid out end March 2021.

Please can you confirm your agreement with the above and we will reach out to Steve as well as counsel to paper the changes and reflect in corporate books.

Thanks.

Best,

Nicole

<image001.jpg>

Nicole Clouthier

401 Royal Oaks Boulevard
Moncton, NB, Canada
E1H 0A2
royaloaks.ca

Exhibit "C"
November 27, 2024
Wilhelm

On Apr 1, 2021, at 9:23 AM, Ron Hrynyk <ronhrynyk1@gmail.com> wrote:

Steve

Thank you for your email. Just want to confirm receipt of the notice.

We are reviewing the agreement and will confirm appropriate dates accordingly.

Best Regards,

Ron Hrynyk

Chairman

HR Corporate Strategies

2495 Lloydtown Aurora Side Road

King City, ON L7B 1A3

(416) 301-2564

Email : ron@hrcorpstrategies.com

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On Mar 30, 2021, at 4:04 PM, Nicole Clouthier
<twelve12invest@gmail.com> wrote:

Dear Steve,

On behalf of TW1 Oaks Inc., we hereby confirm receipt of your email notice below.

We are of course saddened to have received your notice but appreciate you sticking with us, especially through the Covid year, and renewing your option to 2021.

As per the terms of the SPA, I believe that we will need to conclude this transaction by May 12th, unless an extension is otherwise agreed.

Please can all parties hereto confirm collective understanding of time periods pursuant to the agreement.

Much appreciated.

Kind regards,

Nicole and Esmond

Twelve12 Investment & Consultancy Inc
twelve12.ca
Cell: 289-383-5585

On Mar 29, 2021, at 11:50 AM, Walter Steven Lunn
<stevelunn60@gmail.com> wrote:

CAUTION: This email originated from outside of Royal
Oaks Golf Club. Do not click links or open attachments
unless you recognize the sender and know the content
is safe.

Dear Shareholders

Please accept this email as formal notice to exercise my
Put Option.

As you may be aware I have now retired, and having
done so am reliant on income from investments,
without any coupon from my investment in ROGC for
two years I now, somewhat reluctantly exercise the Put
Option.

I of course wish ROGC and its shareholders a successful
future.

Sincerely, Steve Lunn

Exhibit "D"
November 27, 2024
Willis

Court File No: MC 314-2021

Numéro de cause: _____

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

COUR DU BANC DE LA REINE DU NOUVEAU-BRUNSWICK

TRIAL DIVISION

DIVISION DE PREMIÈRE INSTANCE

JUDICIAL DISTRICT OF MONCTON

CIRCONSCRIPTION JUDICIAIRE DE MONCTON

BETWEEN:

ENTRE:

TW1 OAKS INC.,

Plaintiff,

COURT OF QUEEN'S BENCH
TRIAL DIVISION
MONCTON, N.B.
FILED/REGISTERED

Demandeur

- and -

- et - MAY 12 2021

RONONALD HRYNYK and HR
CORPORATE STRATEGIES INC.

Defendants.

COUR DU BANC DE LA REINE
DIV DE PREMIÈRE INSTANCE
MONCTON, N.B.
DÉPOSÉ/ENREGISTRÉ

Défendeur

NOTICE OF ACTION WITH
STATEMENT OF CLAIM ATTACHED
(FORM 16A)

AVIS DE POURSUITE ACCOMPAGNÉ
D'UN EXPOSÉ DE LA DEMANDE
(FORMULE 16A)

To: Ronald Hrynyk
2495 Lloydtown Aurora Side Road
King City, ON L7B 1A3

DESTINATAIRE:

And to: HR Corporate Strategies
c/o Ronald Hrynyk
2495 Lloydtown Aurora Side Road
King City, ON L7B 1A3

LEGAL PROCEEDINGS HAVE
BEEN COMMENCED AGAINST YOU BY
FILING THIS NOTICE OF ACTION WITH
STATEMENT OF CLAIM ATTACHED.

PAR LE DÉPÔT DU PRÉSENT
AVIS DE POURSUITE ACCOMPAGNÉ
D'UN EXPOSÉ DE LA DEMANDE, UNE
POURSUIITE JUDICIAIRE A ÉTÉ
ENGAGÉE CONTRE VOUS.

If you wish to defend these
proceedings, either you or a New
Brunswick lawyer acting on your behalf
must prepare your Statement of Defence in
the form prescribed by the *Rules of Court*
and serve it on the Plaintiff or the Plaintiff's
lawyer at the address shown below and,
with proof of such service, file it in this
Court Office together with the filing fee of
\$50.

Si vous désirez présenter une
défense dans cette instance, vous-même
ou un avocat du Nouveau-Brunswick
chargé de vous représenter devrez rédiger
un exposé de votre défense en la forme
prescrite par les Règles de procédure, le
signifier au demandeur ou à son avocat à
l'adresse indiquée ci-dessous et le
déposer au greffe de cette Cour avec un
droit de dépôt de \$50 et une preuve de sa

signification:

- | | |
|---|---|
| (a) if you are served in New Brunswick, WITHIN 20 DAYS after service on you of this Notice of Action with Statement of Claim Attached, or | (a) DANS LES 20 JOURS de la signification qui vous sera faite du présent avis de poursuite accompagné d'un exposé de la demande, si elle vous est faite au Nouveau-Brunswick ou |
| (b) if you are served elsewhere in Canada or in the United States of America, WITHIN 40 DAYS after such service, or | (b) DANS LES 40 JOURS de la signification, si elle vous est faite dans une autre région du Canada ou dans les États-Unis d'Amérique ou |
| (c) if you are served anywhere else, WITHIN 60 DAYS after such service. | (c) DANS LES 60 JOURS de la signification, si elle vous est faite ailleurs. |

If you fail to do so, you may be deemed to have admitted any claim made against you, and without further notice to you, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

Si vous omettez de le faire, vous pourrez être réputé avoir admis toute demande formulée contre vous et, sans autre avis, JUGEMENT POURRA ÊTRE RENDU CONTRE VOUS EN VOTRE ABSENCE.

You are advised that:

Sachez que:

- | | |
|--|--|
| (a) you are entitled to issue documents and present evidence in the proceeding in English or French or both; | (a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues; |
| (b) the Plaintiff intends to proceed in the English language; and | (b) le Demandeur a l'intention d'utiliser la langue anglaise; et |
| (c) your Statement of Defence must indicate the language in which you intend to proceed. | (c) l'exposé de votre défense doit indiquer la langue que vous avez l'intention d'utiliser. |

If you pay to the Plaintiff or the Plaintiff's lawyer the amount of the Plaintiff's claim, together with the sum of \$100 for the Plaintiff's costs, within the time you are required to serve and file your Statement of Defence, further proceedings will be stayed or you may apply to the court to have the action dismissed.

Si, dans le délai accordé pour la signification et le dépôt de l'exposé de votre défense, vous payez au demandeur ou à son avocat le montant qu'il réclame, plus \$100 pour couvrir ses frais, il y aura suspension de l'instance ou vous pourrez demander à la cour de rejeter l'action.

THIS NOTICE is signed and sealed
for the Court of Queen's Bench by Chantal
Morneau, Clerk of the Court at Moncton,
New Brunswick, on the 19th day of May
2021.

L.S. St. Chantal Moreau
Législateur, Avocat, J. judiciaire

Chantal Moreau, Clerk

CET AVIS est signé et scellé au
nom de la Cour du Banc de la Reine par
_____, greffière de la Cour à
_____, ce _____ jour de mai 2021.

Address:

Court of Queen's Bench of New Brunswick,
Moncton Law Courts
145 Assumption Blvd.
Moncton, NB E1C 0R2

Adresse:

STATEMENT OF CLAIM

1. The Plaintiff, TW1 Oaks Inc. ("TW1") is a corporation incorporated pursuant to the laws of the Province of Ontario with a registered office at 167 Brule Trail, King, Ontario.
2. The Defendant, HR Corporate Strategies Inc. ("HR") is a corporation incorporated pursuant to the laws of the Province of Ontario with a registered office at 2495 Lloydtown Aurora Side Road, King, Ontario.
3. TW1 and HR are the voting shareholders of the Royal Oaks Golf Club Inc. ("**Royal Oaks**" or "**the Corporation**"), a New Brunswick corporation that owns and operates the Royal Oaks Golf Club in Moncton, New Brunswick.
4. The Defendant, Ronald Hrynyk ("**Hrynyk**") resides at 2495 Lloydtown Aurora Side Road in King City, Ontario. Hrynyk is a director and officer of Royal Oaks and a shareholder, director and officer of HR.

Shareholders and Directors of Royal Oaks

5. TW1 became a shareholder of Royal Oaks in January of 2018.
6. At that time, its only other shareholder was a limited liability partnership, Sunset CRE Investments I LPP, organised under the laws of British Columbia, and whose sole members were Hrynyk (50%) and Patrick Miniutti ("**Miniutti**") (50%). TW1 purchased one third of the shares in the Corporation and acquired a proportionate share of its existing debt.
7. In March of 2019, a corporate reorganization agreed to by all shareholders provided TW1 with a majority of the voting shares of the Corporation; removed Miniutti from the exercise of any voting rights or involvement in business operations; and added a new investor, Walter Stephen Lunn ("**Lunn**") who provided capital in exchange for non-voting common shares with a put option.
8. The shareholdings of the Corporation from March 29, 2019 and to the present date are as follows:
 - (a) TW1: 218,000 voting common shares;
 - (b) HR: 159,000 voting common shares;

- (c) Lunn: 125,677 non-voting common shares; and
 - (d) Miniutti: 100,000 non-voting class "C" preferred shares.
9. HR and TW1, as voting shareholders, are parties to a Shareholders' Agreement dated March 29, 2019 ("the Shareholders' Agreement").
10. Section 3 of the Shareholders' Agreement states that the Board of Directors of the Corporation shall be composed of three (3) directors. It further confirms the appointment of Esmond Clouthier ("Clouthier"), who is a principal of TW1, and Hrynyk as the initial directors to manage the affairs by unanimous decision until appointment of a third director.
11. As of the present date, Clouthier (President) and Hrynyk (Secretary-Treasurer) are the only directors of the Corporation.

Shareholders and Directors of the Ontario Corporation

12. 2246329 Ontario Inc. ("the Ontario Corporation") is an Ontario corporation that owns vacant land for development at 195 Royal Oaks Boulevard in Moncton, New Brunswick, which is adjacent to Royal Oaks.
13. The shareholders of the Ontario Corporation are TW1 (54%) and HR (46%). Its directors are Hrynyk (President) and Clouthier (Vice-President).

Representations & Reasonable Expectations

14. Hrynyk induced TW1 to purchase shares in the Ontario Corporation and Royal Oaks and to acquire a significant portion of its existing debt on the representation, among others, that Royal Oaks was a long term investment with the opportunity to grow and develop a golf course that would not only generate investment return over time, but also become a significant source of pride and enjoyment for its owners, members and the community. Although it faced challenges at the time, the golf course itself had tremendous potential, which was further enhanced by the vacant land for development held by the Ontario Corporation.
15. The prospect of a long term development was particularly enticing to TW1. Its principals have significant experience in golf course operations and real property development and identified Royal Oaks as a "passion project" which they and their family could build and develop, with pride, over time.

16. At the time of its initial acquisition of shares in Royal Oaks in 2018 and the 2019 reorganization and execution of the Shareholder's Agreement, it was the reasonable expectation of TW1 that:

- (a) the directors would act honestly and in good faith, with a view to establishing and maintaining a positive reputation for Royal Oaks in the community;
- (b) the directors would act in compliance with the Corporation's constituting documents, including its articles of incorporation as amended;
- (c) the directors would act in the best interests of the Corporation at all times and not seek to use their power as directors to advance interests as shareholders that conflict with those of the Corporation;
- (d) the investment presented an opportunity for long term growth and development, rather than investment in an asset for liquidation or sale;
- (e) when required, capital contributions would be made by all voting shareholders in proportion to their shareholdings;
- (f) TW1 would lead day-to-day operations and management of the Corporation; and
- (g) Miniutti would cease having any active involvement in day-to-day operations or management of the business.

all of which are referred to herein as "the Reasonable Expectations".

17. In furtherance of and consistent with these representations and Reasonable Expectations, TW1 and its principals invested significant resources, both financial and otherwise, in Royal Oaks. These investments include not only significant capital contributions, but also thousands of hours of time and expertise to overhaul all aspects of operations, including:

- (a) investment in golf course maintenance and repair;
- (b) painstaking rebuild of relationships with employees, suppliers, members, sponsors and the community;
- (c) creation of professional systems to manage finances, budgets, human resources, food and beverage inventory;
- (d) implementation of a strategy for cost reduction and management of the vendor aged list;
- (e) introduction of marketing, corporate partnerships and sponsorship initiatives; and

- (f) improvement of golf programming, overall growing of the game of golf in Moncton, and individual and corporate membership offerings.
- 18. These efforts and investments of TW1 were made in reliance upon the Reasonable Expectations and representations set out herein and have had significant positive results to date. The value and long term viability of Royal Oaks has significantly improved over a short period of time.

Breach of Representations & Reasonable Expectations

- 19. Beginning in or around 2020 and escalating as of March of 2021, Hrynyk and HR have breached these Reasonable Expectations.
- 20. HR is unable or unwilling to make capital contributions in proportion to its shareholding in either Royal Oaks or the Ontario Corporation. HR is openly seeking to sell the asset as quickly as possible, rather than making contributions to its growth and development.
- 21. Since March of 2021, Hrynyk has been using his powers as a director in a manner contrary to the best interests of the Corporation and the Reasonable Expectations of TW1. The particulars of this improper behaviour include:
 - (a) attempting to unilaterally recognize conversion of the Miniutti preferred shares to voting common shares, contrary to the share terms contained in the articles of incorporation;
 - (b) attempting to appoint Hrynyk's wife, Jacqueline Boddaert to the board of directors, without authority to do so, to gain majority control of the board to pursue interests of HR as a shareholder;
 - (c) making disparaging and untrue comments about TW1 and its principals to employees, its bank and its professional service providers, which damages the Corporation's reputation and relationship with these individuals and the broader community;
 - (d) refusing to approve the 2020 financial statements without valid basis for doing so, which damages the Corporation's relationship with its principal lender;
 - (e) failing to distinguish between HR's interests as a shareholder and Hrynyk's role as a director at the board level, which prevents the Corporation from making decisions required to move forward with its business, including to address important financial and operational obligations;
 - (f) threatening to freeze and causing the Corporation's bank account to be frozen in an effort to use the financial crisis caused by inability to pay employees and suppliers as leverage in a shareholders' dispute.

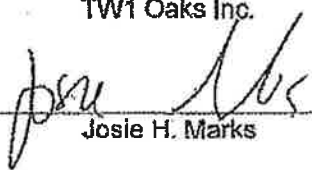
22. As a result of the conduct of HR and Hrynyk, substantial gains made by the Corporation since 2018 have been placed in jeopardy, with damage to the Corporation's reputation, to its relationships with employees, creditors, suppliers and members, and to the value of its shares. Further, the Corporation faces a deadlock in which decisions cannot be made expeditiously or at all, which with the potential for negative short and long term consequences on Royal Oaks.
23. Pursuant to section 166(3) of the *Business Corporations Act* ("the BCA"), the Plaintiff seeks the following relief:
- (a) an order removing Hrynyk as a director and officer of the Corporation;
 - (b) an order that all voting shareholders attend a shareholders' meeting to appoint directors to replace Hrynyk and to fill the third (currently vacant) Board seat;
 - (c) an interim and permanent injunction to enjoin Hrynyk from:
 - (i) communicating directly with employees, service providers or sponsors of the Corporation;
 - (ii) freezing the Corporation's bank account;
 - (iii) making public statements or representations to third parties with respect to the Corporation, TW1 or its principals;
 - (iv) negotiating or attempting to negotiate an asset sale of the business on behalf of the Corporation; and
 - (v) taking any steps to effect conversion of the Miniutti preferred shares to voting common shares absent order of the Court;
 - (d) an order requiring HR to "true up" its obligations to TW1 in proportion to its shareholdings, currently being an amount of \$134,041 or, alternatively, diluting HR's shareholding by a proportionate amount with the discount set out in the Shareholders' Agreement for a defaulting shareholder pursuant to section 7.01(1)(e) of the Shareholders' Agreement;
 - (e) damages for costs and expenses incurred to address Hrynyk's oppressive conduct in an amount to be determined;
 - (f) interest, solicitor-and-client costs, and disbursements; and
 - (g) such other or further relief as this honourable Court deems just.
24. The Plaintiff pleads and relies upon the BCA in its entirety and, in particular, sections 79, 97, 166 thereof.

The Plaintiff intends to proceed in the English language.

DATED at Moncton, New Brunswick, this 12th day of May 2021.

STEWART McKELVEY
Solicitors for the Plaintiff,
TW1 Oaks Inc.

Per: _____


Josie H. Marks

STEWART McKELVEY
Solicitors for the Plaintiffs
Blue Cross Centre
601-644 Main Street
P.O. Box 28051
Moncton, NB E1C 9N4

Tel: (506) 853-1970
Fax: (506) 858-8454
Email: jmarks@stewartmckelvey.com

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF MONCTON

Re: Court File # MC 315 2021
TW1 Oaks Inc v Ronald Hrynyk and HR Corporate Strategies Inc v Esmond Clouthier
Steven Lunn and Twelve12 Investments and Consultancy Inc.

Statement of Defence of Counterclaim – In English

Ronald Hrynyk, in his Statement of Defence, makes a number of conflicting, misleading and untrue statements. If anyone has been wronged in this whole sorry episode it is myself. I give a detailed statement of my involvement below. In summary, I invested C\$500,000 in Royal Oaks Golf Course in March 2019 and had a Put Option set to expire at the end of March 2020, as things turned out Covid struck and, when asked, I agreed to extend the Put Option for another year until end March 2021. Having not received a penny from my investment for two years, I exercised my Put Option on 29 March 2021. Despite asking Hrynyk by email on several occasions, as to his intent to honour my Put Option I have to date, received no positive communication of his intent to do so.

In his Statement of Defence Hrynyk at 6 ii) 'even though such rights did not accrue to Lunn pursuant to the Put Option'. This seems to be Hrynyk wishing to have his cake and wishing to eat it! It is due to his own deceitful actions that I find myself as a shareholder in Royal Oaks Golf Club, a position I did not seek, nor do I want.

I ask the Court to dismiss Hrynyk's Counterclaim and to instruct him to honour my Put Option without further delay.

I estimate that at this time I am owed C\$ 261,485 from Hrynyk. This being 42% (his shareholding) of C\$ 500,000 (C\$ 210,875) and 3 years of interest at the agreed 8% (C\$ 50,610).

I, WALTER STEVEN LUNN, of Tucson, Arizona, SAY AS FOLLOWS:

1. I own 125,667 common shares in Royal Oaks Golf Club Inc. ("ROGC"). As such, I have personal knowledge of the matters referred to herein except where otherwise stated.
2. I am a Chartered Civil Engineer and hold a Master's Degree in Construction Management. I have more than 40 years experiencing leading high profile building and infrastructure projects in many countries, including the United Kingdom, the United Arab Emirates, Malaysia, Saudi Arabia and Jordan.
3. From 2008 to 2015 and from 2018 to 2020, I held senior executive roles with Mubadala Real Estate & Infrastructure ("MREI") and its affiliated companies, before retiring at the end of 2020. MREI is a real estate and business development company based in Abu Dhabi, United Arab Emirates that has investment projects in more than 50 countries.
4. Through MREI, I met Nicole Clouthier ("Nicole"). We worked together at MREI from around 2008 to 2014, during which period Nicole was General Counsel to MREI. In 2014, Nicole resigned her position to relocate with her family to Canada, but we remained in contact.

Investment in ROGC

5. Around late February or early March of 2019, I was approached by Nicole with an opportunity to invest in ROGC.
6. Having worked with Nicole on numerous real estate and business development projects, I trust her as a person who sees a project through and remains loyal to the "double bottom line" that underscored MREI's investment focus: the project must provide both strong financial and social-economic returns. Her vision for ROGC was to grow and develop the Royal Oaks golf course and facilities to meet that double bottom line.
7. Nicole disclosed the troubled past of ROGC which pre-dated her involvement, including poor financial management during the time in which Patrick Miniutti had managed operations. I was advised that a re-organization of the company would occur in conjunction with my investment by which Mr. Miniutti would relinquish his rights as a common shareholder and

be removed from day-to-day operations and management. I felt confident making an investment based upon:

- (a) my first-hand knowledge of Nicole's expertise in supporting and managing large, high profile projects;
 - (b) the expertise of the Nicole's spouse, Esmond Clouthier in the golf industry;
 - (c) the support of the two other common shareholders, TW1 Oaks Inc. ("TW1") and HR Corporate Strategies Ltd. ("HR") for the long-term growth of ROGC; and
 - (d) the proposed re-organization to exclude Mr. Miniutti from day-to-day operations and management.
8. On March 29, 2019, I entered a Share Purchase Agreement with ROGC, HR and TW1 ("the SPA"), a copy of which is attached as Exhibit "A".
9. Pursuant to the SPA, I purchased 125,667 common shares (25% stake) for \$500,000 CDN. The other 75% of common shares were held by TW1 (218,000) and HR (159,000).
10. Section 2.4 of the SPA provided me with a put option, the exercise of which would require TW1, HR and/or ROGC to purchase my shares for \$540,000 (my initial investment plus 8%) after one year.
11. Section 2.6 provided that, so long as the put option was valid, I would not exercise the voting rights attached to my common shares.

Renewal of Put Option In March 2020

12. During the first year of my investment in ROGC, I received periodic updates from Nicole. I was pleased by material improvements in food & beverage operations of ROGC as demonstrated in increase in profit margins and a material reduction in cost base, as well as the increase in weddings, banquets, golf tournaments and corporate sponsorships. The hands-on management of both Nicole and Mr. Clouthier were key drivers of these improvements.
13. As the deadline to exercise the put option approached in March of 2020, ROGC faced challenges as a result of the COVID-19 pandemic. I was advised by Nicole and verity believe that ROGC was in discussions for a forbearance agreement with its senior lender, while also

actively exploring further government and other support to manage the effects of the pandemic.

14. I agreed to refrain from exercising of my put option on the one year anniversary of the SPA in exchange for an extension of the put option, on the same terms and conditions, for a further year, along with deferral of payment of my 8% coupon, with interest, until March of 2021.
15. Attached as **Exhibit "B"** is a copy of my email exchanges with Nicole with respect to this arrangement. Attached as **Exhibit "C"** is a copy of an email exchange provided to me by Nicole in which Ronald Hrynyk, on behalf of HR, agreed to this extension.

Exercise and Cancellation of Put Option – March-May, 2021

16. On March 29, 2021, I provided notice to TW1 and HR of my intent to exercise my put option. Receipt of this Notice was acknowledged by TW1 (through Nicole) on March 30, 2021 and by HR (through Mr. Hrynyk) on April 1, 2021. A copy of the email chain with my notice and the acknowledgements of receipt is attached as **Exhibit "D"**.
17. On April 12, 2021, having received no further communication, I sent a follow-up email to all parties asking for an update. A copy of this email is attached as **Exhibit "E"**.
18. On May 5, 2021, only one week away from the date the put option was supposed to close and having still not received any substantive response, I followed up again. A copy of this email is attached as **Exhibit "F"**.
19. On May 7, 2021, I was copied into email exchanges between the principles of HR and TW1, in which HR appeared to be question the validity of my put option. A copy of this email exchange is attached as **Exhibit "G"**.
20. By emails dated May 12, 2021 (a copy of which is attached as **Exhibit "H"**) and May 13, 2021 (a copy of which is attached as **Exhibit "I"**), Mr. Hrynyk set out various arguments, many of which are conflicting and make little sense. However, I nonetheless understood these emails to confirm that HR did not intend to honour the put option.
21. As conveyed by my response on May 15, 2021 (a copy of which is attached as **Exhibit "J"**) I was extremely upset with the approach taken by Mr. Hrynyk and HR.
22. On May 21-22, 2021 and May 28, 2021, I communicated further with Mr. Hrynyk, a copy of which email exchanges are attached as **Exhibit "K"** and **Exhibit "L"** respectively.

23. This flurry of emails from Mr. Hrynyk throughout May of 2021 left me quite taken aback. At no time prior to May of 2021 had anyone ever questioned the validity of my put option. My \$500,000 investment had been readily accepted in 2019 in exchange for a SPA executed by Mr. Hrynyk, as President of HR. When ROGC faced significant challenges due to the pandemic, I had agreed to extend my Put Option, again with the concurrence of Mr. Hrynyk on behalf of HR. Now, when it came time for me to exercise my contractual right pursuant to the SPA, Mr. Hrynyk was suddenly questioning the validity of the contractual agreements previously agreed to by him and HR without any objection.
24. The 30-day time frame to purchase my shares under the SPA, as extended, lapsed without any purchase and HR had made it clear that it did not even recognize the existence of a put option. There being no effective put option, I am not aware of any basis upon which I can be denied my voting rights as the holder of 125,667 common shares of ROGC.

Appointment as Director

25. In the meantime, on or around May 9, 2021 (following the email exchanges at Exhibit G), I was asked by Nicole, on behalf of TW1, whether I would be willing to act as a director of ROGC. As it appeared clear by that time that the put option transaction would not close within the 30 days as stipulated by the SPA such that I would remain a shareholder after that date, I agreed to act as a director if elected.
26. The shareholders meeting to elect me as a director was ultimately scheduled for June 2, 2021.
27. On May 27, 2021, I received companion notices from Mr. Hrynyk on behalf of HR and Patrick and Aline Miniutti objecting to my appointment as a director of ROGC. Copies of these notices are attached respectively as Exhibits "M" and "N".
28. I understand that Mr. and Mrs. Miniutti also sought urgent intervention from the Court in Moncton, New Brunswick to prevent the shareholders' meeting from proceeding as scheduled on June 2, 2021, but the Court refused their request for an urgent hearing.
29. At this stage, I was very concerned about the future of ROGC and, consequently, my investment. Mr. Hrynyk's refusal to acknowledge HR's contractual agreements under the SPA, combined with the lack of coherence of his objections to these agreements, left me seriously concerned about his integrity and business judgment as a director. He appeared to be acting in concert with Mr. Miniutti in an effort to take control of the Corporation, when

Mr. Minlutti's poor financial management had already led to difficulties requiring my investment in the first place.

30. On May 31, 2021, I appointed Nicole as my proxy to attend the shareholders' meeting of June 2, 2021.
31. The shareholders' meeting occurred on June 2, 2021 and I was elected as a director of the Corporation. A copy of the minutes of such shareholders' meeting, along with my proxy form, is attached as Exhibit "O".
32. I attended a subsequent board meeting on June 10, 2021, at which Mr. Hrynyk, Mr. Clouthier and I were present. A copy of the minutes of that meeting is attached as Exhibit "P".
33. I have 40+ years of working with large, high profile projects in various countries. I have served as a board director for various companies, including Mubadala, one of the world's largest. I understand the fiduciary responsibilities and duties of a director which, in this case, require acting in the best interests of ROGC. I have and will continue to discharge my duties as a director in accordance with these fiduciary duties



Walter Steven Lunn

23 May 2022

COPY

Court File # MC 314 2021

Dossier No.

IN THE COURT OF QUEEN'S BENCH OF
NEW BRUNSWICK

COUR DU BANC DE LA REINE DU
NOUVEAU BRUNSWICK

TRIAL DIVISION

DIVISION DE PROCÈS

JUDICIAL DISTRICT OF MONCTON

CIRCONSCRIPTION JUDICIAIRE DE
SAINT JEAN

BETWEEN: TW1 OAKS INC.,

ENTRE:

Plaintiff;

Demandeur,

-and-

-et-

**RONALD HRYNYK and
HR CORPORATE
STRATEGIES INC.**

Defendants;

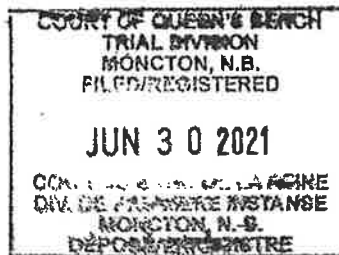
Défendeurs,

-and-

-et-

**ESMOND CLOUTHIER,
STEPHEN LUNN and
TWELVE12
INVESTMENTS AND
CONSULTANCY INC.**

Parties Added by
Counterclaim.



Partie ajoutée par
reconvention

NOTICE OF COUNTERCLAIM

(Form 27C-2)

**AVIS DE DEMANDE
RECONVENTIONNELLE**

(Formule 27C-2)

To: **ESMOND CLOUTHIER**
167 Brule Trail
King, Ontario L7B 0C7

Destinataire:

And: **STEPHEN LUNN**
PO Box # 42369
Abu Dhabi, United Arab Emirates

And: **TWELVE12 INVESTMENTS
AND CONSULTANCY INC.**
167 Brule Trail
King, Ontario L7B 0C7

THE DEFENDANTS IN THIS ACTION
HAVE FILED THE WITHIN COUNTER-
CLAIM AGAINST THE PLAINTIFF AND
YOU;

If you wish to defend the Counterclaim, either
you or a New Brunswick lawyer acting on your
behalf must prepare your Defence to
Counterclaim in the form prescribed by the
Rules of Court and

- (a) serve it on the Defendants or their
lawyer at the address shown herein, and
- (b) with proof of such service, file it in this
Court office WITHIN 20 DAYS after service
on you of the Statement of Claim and this
Statement of Defence and Counterclaim.

If you fail to do so, you may be deemed to have
admitted the counterclaim and, without further
notice to you, JUDGMENT MAY BE GIVEN
AGAINST YOU IN YOUR ABSENCE.

You are advised that:

- (a) you are entitled to issue documents and
present evidence in the proceeding in English
or French or both;
- (b) the Plaintiff intends to proceed in the
English language and the Defendants intend to
proceed in the English language;

LE DÉFENDEUR DANS CETTE ACTION A
DÉPOSÉ LA DEMANDE RECONVEN-
TIONNELLE CI-INCLUSE CONTRE LE
DEMANDEUR ET VOUS-MÊME;

Si vous désirez présenter une défense à la
demande reconventionnelle, vous-même ou un
avocat du Nouveau-Brunswick chargé de vous
représenter devrez rédiger votre défense
reconventionnelle en la forme prescrite par les
Règles de procédure, puis

- (a) la signifier au défendeur ou à son
avocat à l'adresse ci-indiquée et
- (b) la déposer au greffe de cette Cour avec
une preuve de sa signification DANS LES 20
JOURS de la signification qui vous sera faite
de l'exposé de la demande et du présent exposé
de la défense et demande reconventionnelle;

Si vous omettez de le faire, vous pourrez être
réputé avoir admis la demande
reconventionnelle et, sans autre avis,
JUGEMENT POURRA ÊTRE RENDU
CONTRE VOUS EN VOTRE ABSENCE.

Sachez que:

- (a) vous avez le droit dans la présente
instance, d'émettre des documents et de
présenter votre preuve en français, en anglais
ou dans les deux langues;
- (b) le demandeur a l'intention d'utiliser la
langue ____ et le défendeur, la langue ____;

(c) you must indicate in your Defence to Counterclaim the language in which you intend to proceed; and

(d) if you require the services of an interpreter at the trial you must advise the Clerk at least 7 days before the trial.

(c) vous devez indiquer dans votre défense reconventionnelle la langue que vous avez l'intention d'utiliser; et

(d) si vous avez besoin des services d'un interprète au procès, vous devrez en aviser le greffier au moins 7 jours avant le procès.

THIS NOTICE is signed and sealed for the Court of Queen's Bench by Chantal Moreau, Clerk of the Court at Moncton, New Brunswick, on the 30th day of June, 2021.

CET AVIS est signé et scellé au nom de la Cour du Banc de la Reine par greffier de la Cour à _____ ce _____ jour de _____, 20__.

L.S. Copy
S.L. copie
Chantal Moreau
Legal Officer / Conseillère juridique

Chantal Moreau
Clerk of the Court

Greffier

Court Seal

Sceau de la Cour

Court of Queen's Bench of New Brunswick
Trial Division
145 Assumption Blvd.
Moncton NB E1C 0R2
Tel (506) 856-2307

Cour du Banc de la Reine du Nouveau-Brunswick
145 boul. Assomption
Moncton N.B. E1C 0R2
Tel (506) 856-2307

STATEMENT OF DEFENCE

1. The Defendants, Ronald Hrynyk and HR Corporate Strategies Ltd. (respectively and individually “**Hrynyk**” and “**HR**” and collectively the “**Defendants**”) admit the statements of fact contained in paragraphs 1, 3, 4, 5, 7, 9, 10, 11 and 13 of the Plaintiff’s Statement of Claim dated May 12, 2021.

2. The Defendants admit the statements of fact contained in paragraph 2 of the Statement of Claim, save and except to clarify that the proper name of the corporate Defendant is “HR Corporate Strategies Ltd.” and not “HR Corporate Strategies Inc.”.

3. The Defendants also admit the statements of fact contained in paragraph 12 of the Statement of Claim, save and except to clarify that the proper name of “2246329 Ontario Inc.” is “2246329 Ontario Limited”, and the vacant development land held by 2246329 Ontario Limited is adjacent to the golf course property owned by Royal Oaks Golf Club Inc. (hereinafter “**ROGC**” or the “**Corporation**”), which is doing business as the “Royal Oaks Golf Club”.

4. The Defendants have no knowledge of the allegations made in paragraph 15 of the Statement of Claim and put the Plaintiff to the strict proof thereof.

5. The Defendants deny the allegations made in paragraphs 6, 8, 14, 16, 17, 18, 19, 20, 21 and 22 of the Statement of Claim, and all other allegations made in the Statement of Claim, except to the extent expressly hereinafter admitted.

6. As to the entirety of the Plaintiff's Statement of Claim, the Defendants say, and the facts are, as follows:

- (a) The Defendant, Hrynyk, is the sole director and sole shareholder of HR, and is commonly referred to as "Ron";
- (b) Hrynyk's wife is Jacqueline Boddaert who is commonly referred to as "Jacquie";
- (c) Esmond Clouthier and his wife, Nicole Clouthier (individually and respectively "**Esmond**" and "**Nicole**" and collectively the "**Clouthiers**") are the only directors and shareholders of the Plaintiff, TW1 Oaks Inc. (hereinafter "**TW1**");
- (d) HR and TW1 are voting shareholders of ROGC and until recent events, as hereinafter described, they were the only directors and officers of ROGC;
- (e) ROGC operates the Royal Oaks Golf Club from lands and facilities (the "**Golf Club Property**") situate in the City of Moncton, New Brunswick;
- (f) ROGC has mortgaged the Golf Club Property to CWB Maxium Financial Inc. ("**Maxium**") which indebtedness is in part personally guaranteed (the "**Guarantee**") by Hrynyk;
- (g) In or about October, 2016, Hrynyk and HR became aware that the Clouthiers were interested in a business opportunity which led, over

the following ten (10) months, to them investing in ROGC and 2264329 Ontario Limited through the Plaintiff, TW1;

- (h) Prior to this investment by the Clouthiers, ROGC was wholly owned by Sunset CRE Investments I LLP ("**Sunset**") which, in turn, was owned equally by Hrynyk and Patrick Miniutti ("**Miniutti**");
- (i) From January 2018, Esmond and Nicole, through a related entity, Twelve12 Investments and Consultancy Inc. ("**Twelve12**"), were responsible for the day to day operations management of ROGC pursuant to a management consultancy agreement (the "**Twelve12 Agreement**") in a co-management arrangement with Miniutti, but this arrangement terminated in July 2018, when Miniutti stepped back from operational issues at ROGC;
- (j) Despite the termination of this management arrangement, day to day operations management of ROGC was continued by Nicole and Esmond and the employed staff of ROGC pursuant to the Twelve12 Agreement;
- (k) Several other agreements were executed and delivered during 2017, 2018 and 2019, including a ROGC shareholders agreement (the "**Shareholders Agreement**"), a share purchase agreement (the "**SPA**"), and a share purchase amendment agreement (the "**SPAA**"), which were made concurrently and as collateral contracts during a significant re-organization of ROGC effective as of March 29, 2019 (the "**Re-organization**");

- (l) The Shareholders Agreement entered into by TW1, HR, and ROGC, provided, *inter alia*, for the following:
- i) that HR and TW1 vote their shares in ROGC to elect Esmond and Hrynyk as the only directors to manage the affairs of the Corporation by unanimous decision;
 - ii) that Esmond was to be designated as the President of ROGC and Hrynyk as the Secretary-Treasurer; and
 - iii) that Esmond and Hrynyk, signing together, were to execute "all banking instruments";
- (m) The SPA, entered into by ROGC, a new shareholder Stephen Lunn ("Lunn"), HR and TW1, provided, *inter alia*, for:
- i) the acquisition, by Lunn of 125,667 non-voting common shares (the "Lunn Shares") in ROGC;
 - ii) the option for Lunn (the "Put Option") to put the Lunn Shares, at a predetermined price and within a predetermined time frame, to ROGC, TW1 and to "Jacquie and Ron"; and
 - iii) the option to convert the Lunn Shares to common shares with voting rights, provided reasonable prior notice to cancel the Put Option was delivered by Lunn;
- (n) The SPAA, entered into between ROGC, TW1, HR, Patrick and Aline Miniutti (the "Miniuttis"), and Sunset, a former shareholder:
- i) caused ROGC to issue 100,000 non-voting class C preferred shares (the "Miniutti Preferred Shares") to Patrick and Aline Miniutti (the "Miniuttis");

- ii) entitled the Miniuttis a right to convert (the **“Conversion Right”**) the Miniutti Preferred Shares into voting common shares of ROGC pursuant to ROGC’s constating documents, and in accordance with the provisions of the SPAA; and
 - iii) granted to HR, TW1, and ROGC collectively the right (the **“Call Option”**) to call and purchase the Miniutti Preferred Shares, in the event the Miniuttis did not convert them in accordance with their Conversion Right;
- o) In 2018, 2019, and 2020, during the continuance of day to day operations management of ROGC by Twelve12 and others, ROGC recorded an increasingly negative financial performance, accumulating aggregate operating deficits approaching one million (\$1,000,000.00) dollars; ROGC was also required to enter into a forbearance agreement with Maxium due to its failure to perform loan covenants;
 - p) In early March, 2021, Hrynyk received a draft of ROGC’s 2020 financial statements from Nicole and Esmond, which omitted disclosure of a large payable owing for the years 2018, 2019 and 2020, and created deceptively false impressions for Maxium;
 - q) As a result, Hrynyk proceeded with a secondary review of the 2020 financial statements, including certain non-arms length transactions and payments to TW1, Esmond, Nicole, and Twelve12;
 - r) Hrynyk sought disclosure of information and documentation from Esmond, Nicole and ROGC’s external accountants to substantiate the entries on the financial statements;

- s) After several failed attempts to obtain the banking documentation, Hrynyk, in his capacity as a director and officer of ROGC, requested the information directly from representatives of the Toronto Dominion Bank (the "TD"), and the TD provided several certified copies of banking resolutions that had been lodged with it for the operation of ROGC's bank account;
- t) To Hrynyk's dismay, three of those certified copies (the "**Impugned Resolutions**") purported to have been passed by the board of directors of ROGC subsequent in time to the execution of the Shareholders Agreement requiring all banking documentation to be signed by Esmond and by him;
- u) None of the Impugned Resolutions were authorized by Hrynyk but each was certified by Esmond and Nicole to be a "true copy of a resolution duly passed by the board of directors of the Corporation... now in full force and effect and unamended";
- v) In contravention of the Shareholders Agreement, none of the Impugned Resolutions had Hrynyk listed as a signing officer;
- w) None of the three Impugned Resolutions were ever adopted by the directors of ROGC, but were deceptively delivered to the TD and falsely represented to the TD to be true;
- x) After numerous failed efforts by Hrynyk to obtain rectification of such matters and Esmond's future compliance with the provisions of the Shareholders Agreement, Hrynyk advised Esmond that he

would be obliged to contact the TD and restrict any further unauthorized access to the bank account, pending a proper resolution of the ROGC signing authorities;

- y) Upon realizing the reality of the situation, the TD placed a hold on the bank account pending the filing of properly authorized banking resolutions;
- z) Subsequently, the Plaintiff initiated these proceedings in this Court; after consensual banking arrangements were agreed to, a Consent Order (the “**Consent Order**”) was issued by this Court enabling the continued operation of ROGC’s bank account at the TD, subject however to agreed limitations and restrictions;
- aa) In the result, the Consent Order:
 - i) removed Nicole as a signing officer;
 - ii) facilitated ordinary operating expense payments;
 - iii) mandated that all expenditures in excess of \$20,000.00 be approved by the two directors, Hrynyk and Esmond;
- bb) On March 19, 2021, the Miniuttis gave notice to ROGC, Esmond, and Hrynyk (the “**Conversion Notice**”) of their desire to exercise their Conversion Right in respect of the Miniutti Preferred Shares;
- cc) The Conversion Notice provided by the Miniuttis was accompanied, as required, by an attornment to the Shareholders Agreement and further advised of the Miniuttis’ appointment of

Jacquie as a director of ROGC, pursuant to the Miniutti's right to appoint a director to the board of directors of ROGC;

- dd) Notwithstanding receipt of the Conversion Notice by ROGC, TW1 immediately purported, by notice to the Miniuttis (the "Call Notice"), to purchase for its own behalf the Miniutti Preferred Shares, ostensibly pursuant to the SPAA;
- ee) Concurrently with delivery of the Call Notice, TW1 unlawfully and without authority from ROGC or from its directors or other shareholder, HR, advised the Miniuttis that the Conversion Notice was allegedly not effective, contending that it supposedly lacked "reasonable notice", and that it required a prior attornment to the Shareholders Agreement;
- ff) At a board of directors meeting of ROGC, duly called and held on April 26, 2016, approval was given by ROGC for the conversion of the Miniutti Preferred Shares in accordance with the Conversion Notice, and despite the Call Notice delivered by TW1; Esmond's conflict of interest as a director was raised as a *bona fides* issue disqualifying him from voting;
- gg) The shares to which the Miniuttis were entitled pursuant to the Conversion Notice given by them, although duly approved for issuance, were not thereafter issued and delivered by ROGC;
- hh) Instead, at a meeting (the "Impugned Shareholders' Meeting") called by TW1 and conducted outside of the Province of New

Brunswick in violation of section 84(1) of the *Business Corporations Act* S.N.B. 1981, c. B-9.1 (the “**BCA**”) by telephone conference on June 2, 2021, TW1 purported to hold a shareholders meeting in the absence of HR’s proxy and the Miniuttis;

- ii) At the Impugned Shareholders’ Meeting, Lunn, purporting to have voting rights even though such rights did not accrue to Lunn pursuant to the Put Option, and TW1, represented by Esmond, unlawfully purported to adopt a resolution appointing Lunn as a director of ROGC;
- jj) Approximately one week later, on June 10, 2021, Esmond purported to hold a directors’ meeting of ROGC (the “**Impugned Directors’ Meeting**”), although objected to in writing by Hrynyk, and at that meeting Esmond and Lunn colluded to effect:
 - i) the removal of Hrynyk as Secretary-Treasurer;
 - ii) the replacement of Hrynyk with Nicole as Secretary-Treasurer;
 - iii) the approval of ROGC’s 2020 false and deceptive financial statements for presentation to Maxium; and
 - iv) an amendment to the signing authorities at the TD;

all in violation of rules of governance, the BCA, the Shareholders Agreement, and the Consent Order.

7. As a result of the foregoing wrongful acts, omissions, breaches of contract, violation of statutory authority, and breach of fiduciary duty, the

Plaintiff, TW1, and its principal, Esmond, acted in contempt of the Consent Order and contrary to the Defendants' Reasonable Expectations (as defined hereinafter).

8. The Defendants expressly deny the claim in the Plaintiff's Statement of Claim to the effect that it has been adversely affected by the matters complained of. In the alternative, the Defendants say that if TW1 has been affected (which is denied), TW1 and its principal come before this Court with 'unclean hands' and are disentitled to equitable or statutory oppression remedies.

9. The Defendants admit the statements of fact contained in paragraph 8(a), (b) and (c) of the Plaintiff's Statement of Claim, subject to the foregoing, but deny the inference contained in paragraph 8(d) to the effect that the Miniuttis are not the holders of common shares pursuant to the Conversion Notice duly given and accepted by ROGC.

10. The Defendants admit the statements of fact contained in paragraphs 16(a), (b), (c), and (d) of the Statement of Claim, subject to the foregoing, but deny the allegations contained in paragraphs 16(e), (f) and (g) thereof with respect to the requirements of the Shareholders Agreement, the role of TW1 in the management of ROGC, and the entitlement of the Miniuttis to participate.

11. As to paragraph 8(d) of the Statement of Claim, the Defendants state and the fact is that the Miniutti Preferred Shares have been lawfully converted into 100,000 voting common shares in the capital of ROGC, validly held by the Miniuttis, and that ROGC is required by law to issue a certificate accordingly.

12. As to paragraph 14 of the Statement of Claim, the Defendants acknowledge that they originally introduced TW1 to the business opportunity of

participating in the ownership of ROGC, however all subsequent discussions with and decisions of TW1, Esmond, Nicole or Twelve12, were agreed upon without improper inducement or representation of any kind by the Defendants.

13. As to paragraph 16(e) of the Statement of Claim, the Defendants say that there was no discussion in 2018 about any capital contributions to be made by shareholders to ROGC, and when it was subsequently discussed, a mechanism was agreed upon and incorporated in the Shareholders Agreement that speaks for itself.

14. As to paragraphs 16(f) and (g) of the Statement of Claim, the Defendants say that the day to day operations of ROGC were to be co-managed by Twelve12 and Miniutti pursuant to the Twelve12 Agreement and a similar agreement with Miniutti which terminated in July, 2018, since which time any management by Esmond and Nicole or by Twelve12 has been at the will and pleasure of the directors; at no time did Hrynyk relinquish his authority or responsibility as a director of ROGC during the existence of the Twelve12 Agreement.

15. As to paragraph 17 of the Statement of Claim, the Defendants repeat that any management activities carried out by Twelve12, Esmond or Nicole, were conducted pursuant to the terms of the Twelve12 Agreement, and not by TW1; the Defendants have sought and will continue to seek documentation from ROGC and TW1 to validate and reconcile any capital contributions by TW1 to ROGC in excess of the contributions made to ROGC by HR, and to account for any non-arms length payments by ROGC.

16. As to paragraph 18 of the Statement of Claim, the Defendants again repeat that the referenced efforts at management of day to day operations of ROGC were made by Twelve12, not by TW1, and were made pursuant to the Twelve12

Agreement, not in reliance upon any alleged expectations or representations; as the financial statements of ROGC, when properly constituted, will further demonstrate, the management efforts and investments that TW1 or Twelve12 have made or expended towards ROGC have had a negative financial impact upon the Corporation's undertaking.

17. As to paragraph 20 of the Statement of Claim, while it is acknowledged that HR has been unwilling to make additional capital contributions in the absence of suitable disclosures and proper financial accounting, Hrynyk, with the full knowledge and support of TW1, has been openly seeking funding and support from third parties.

18. As to paragraph 21(a) of the Statement of Claim, Hrynyk says that an appropriate recognition of the Conversion Notice for the Miniutti Preferred Shares was made by him in the exercise of his fiduciary duties and in his capacity as a director of ROGC, at all times in keeping with the legal obligations of ROGC.

19. As to paragraph 21(b) of the Statement of Claim, Hrynyk says that, to the best of his knowledge, any desire by the Miniuttis to have Jacquie appointed as a director of ROGC was taken in good faith in accordance with the provisions of the Shareholders Agreement, and the SPAA, and was not in violation of any reasonable expectations of the parties or of ROGC's constating documents.

20. As to paragraph 21(c) of the Statement of Claim, Hrynyk says that any statements at any time made by him to employees of ROGC, its bank, or its professional service providers, were at all times true when made, and continue to be true.

21. As to paragraph 21(d) of the Statement of Claim, Hrynyk repeats that he had and continues to have a valid basis for refusing as a director to approve deceptively inaccurate and misleading financial statements of ROGC, knowing that they are intended to be represented to and to be relied upon by Maxium in support of credit arrangements for ROGC.

22. As to paragraph 21(e) of the Statement of Claim, HR and Hrynyk say that they have, at all times, respected and will continue to respect their distinct roles and responsibilities as a shareholder and director respectively of ROGC.

23. As to paragraph 21(f) of the Statement of Claim, the Defendants repeat that any discussion regarding ROGC's bank account at TD was undertaken pursuant to the provisions of the Shareholders Agreement, for the reasons stipulated; any decision of ROGC's bank, the TD, to restrict Esmond and Nicole from acting without lawful authority, was that of the TD, and was ultimately affirmed by the Consent Order.

24. As to paragraph 22 of the Statement of Claim, the Defendants repeat that ROGC has suffered extensive financial losses and experienced negative performance since the involvement of TW1 and its principals in the management and operations of ROGC through Twelve12, a fact which will be confirmed by the Corporation's financial statements, and by the evidence adduced in this proceeding.

25. The Defendants deny that the Plaintiff, TW1, is entitled to all or any of the relief sought by paragraph 23 of the Statement of Claim, or that it is entitled to any of the oppression remedies recited therein.

26. The Defendants further assert that if the Plaintiff TW1 has been adversely affected (which is denied) by any actions or omissions other than its own, it has by its own negligence caused or contributed to such damages, or has mitigated any losses it may have suffered.

27. The Defendants respectfully request that the Plaintiff's action be dismissed by this Court with costs on a solicitor-client basis.

COUNTERCLAIM

28. The Defendants by this Counterclaim repeat and rely upon the facts pleaded in paragraphs 1 through 27 of the Statement of Defence as if set forth fully herein.

29. The Defendants counterclaim against the Plaintiff TW1, and against Esmond, Twelve12, and Lunn as Parties Added by Counterclaim.

30. Esmond resides at 67 Brule Trail, King, Ontario.

31. Lunn resides in Abu Dhabi, in the United Arab Emirates.

32. Twelve12 is a corporation incorporated pursuant to the laws of the Province of Ontario with its registered office at 167 Brule Trail, King, Ontario.

33. The Defendants, HR and Hrynyk, assert that at the time of the Re-organization of ROGC and at all material times thereafter it was their reasonable expectation that:

- (a) Esmond would act in compliance with his obligatory statutory duty of care as a director as set forth in section 79 of the BCA;
- (b) Esmond would not use his power as a director, or conspire with Lunn, to advance his own personal interests or those of TW1 as a shareholder that conflicted with those of ROGC;
- (c) TW1, with Esmond's direction as its principal, and Lunn, would comply with all of the provisions of the Shareholders Agreement, the SPA and the SPAA;
- (d) Esmond, Lunn and TW1 would comply with the provisions of the BCA, the Articles of ROGC, and rules of corporate governance;
- (e) Esmond and TW1 would provide all financial information pertaining to ROGC to the Defendants as requested and as required by section 18 of the BCA;
- (f) Hrynyk and HR would not be excluded by Twelve12, Esmond, Lunn, or TW1 from decision making;
- (g) Esmond, Lunn and TW1 would fully disclose to Hrynyk and HR any non-arms' length transactions; and
- (h) TW1, with Esmond's direction as its principal, would comply with the provisions of the Consent Order;

all of which are referred to hereinafter as the **“Defendants’ Reasonable Expectations”**.

34. The Defendants state that TW1, Twelve12, Esmond, Lunn, or some one of more of them acting together, have violated the Defendants’ Reasonable Expectations by:

- i) knowingly presenting or allowing to be presented for approval deceptively false and misleading 2020 financial statements for ROGC and for Maxium to sustain credit;
- ii) providing deceptively false and misleading banking resolutions to the TD, for the operation of ROGC’s bank account,;
- iii) wrongfully interfering with the Miniuttis’ Conversion Right in violation of the duty to act honestly and in good faith;
- iv) wrongfully purporting to exercise the Call Option for their own personal enrichment;
- v) wrongfully holding and purporting to adopt resolutions at the Impugned Shareholders’ Meeting in violation of section 84(1) of the BCA;
- vi) wrongfully holding and purporting to adopt resolutions at the Impugned Directors’ Meeting, including one to remove Hrynyk as the Secretary-Treasurer of ROGC, and replace him with Nicole;

- vii) wrongfully changing the signing authorities at the TD in conflict with and in contempt of the Consent Order; and
- viii) by such further or other improper acts or omissions as may be disclosed by the evidence in this proceeding.

35. The Defendants claim that they have been adversely affected by the oppressive, unfairly prejudicial, and wanton disregard of their interests by Esmond, Lunn, and TW1, or some one or more of them acting together, in violation of the Defendants' Reasonable Expectations. The Defendant Hrynyk has also suffered financial damages and continues to be in financial jeopardy from this oppressive behavior by virtue of his financial exposure under his Guarantee of certain obligations of ROGC to Maxium.

36. The Defendants plead and rely upon sections 18, 79, 84(1), 155, 156, 163, 164 and 166 of the BCA, and other sections of the BCA *in pari materia*.

37. The Defendants accordingly claim by this Counterclaim the following relief, jointly and severally as against Twelve12, TW1, Esmond, and Lunn:

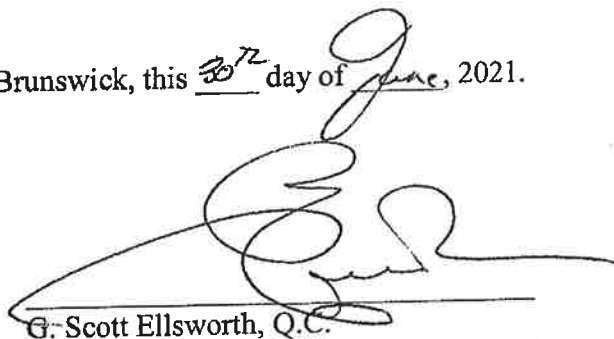
- (a) an Order enforcing the provisions of the Shareholders Agreement and rectifying the directors and officers registers of ROGC by reappointing Hrynyk as the Secretary-Treasurer and removing Nicole from that position;

- (b) an Order directing an investigation under Part XIV of the BCA, and pursuant to section 166(3)(m) of the BCA, which would entail the following relief:
- i) the appointment of an inspector of ROGC;
 - ii) authorizing the inspector to investigate ROGC for the purposes of verifying and reconciling entries in the financial statements of ROGC;
 - iii) authorizing the inspector to reconcile and provide an accounting of the shareholder loan accounts of its shareholders, all payments to Twelve12, or other non-arms length expenditures;
 - iv) authorizing an inspector to enter any premises where the books and records of ROGC are kept, and to examine anything and make copies of any document or record found on the premises;
 - v) requiring Esmond and any other person to produce any and all documents or records to an inspector as may be requested;
 - vi) requiring an inspector to make an interim and final report to the Court;
- (c) in the alternative to the relief claimed in subparagraph (b), an Order for the reconciliation and accounting of the shareholder loans of the shareholders of ROGC, the payments to Twelve12, Esmond or Nicole, and a verification and reconciliation of the entries in the financial statements of ROGC, all by an external accountant appointed pursuant to rules 56 or 57 of the New Brunswick Rules of Court;

- (d) an Order setting aside the Call Notice and disgorging any benefits improperly attained by TW1 or Esmond as a result of their attempt to convert the Miniutti Preferred Shares for their own benefit;
- (e) a Declaration that the Impugned Shareholders' Meeting was not properly held, that all resolutions adopted thereat are void, and that Lunn was not properly appointed as a director of ROGC;
- (f) a Declaration that the Lunn Shares are non-voting;
- (g) an Order removing Lunn as a director and officer of ROGC, and facilitating the appointment of a director by the Miniuttis pursuant to the Conversion Right under the SPAA;
- (h) a Declaration that the Impugned Directors' Meeting was not properly held, and that all resolutions adopted thereat by Esmond and Lunn are void;
- (i) an Order compelling compliance with the Shareholders Agreement, and the Consent Order, in respect of Hrynyk's signing authority as a director;
- (j) an Order rescinding the Twelve12 Agreement;
- (k) an Order suspending Esmond's appointment as a director and officer of ROGC pending the foregoing investigations;

- (l) damages as against Lunn and Esmond for conspiring to defeat the Defendants' Reasonable Expectations;
- (m) in the alternative to the relief requested in subparagraphs (b) and (c), an Order appointing a receiver of ROGC for purposes of determining and making a recommendation to this Court as to whether ROGC should be liquidated;
- (n) full indemnity from TW1, Esmond, and Lunn, for any loss suffered by Hrynyk on his Guarantee to Maxium;
- (o) costs on a solicitor-client basis; and
- (p) such further and other relief as this Honourable Court deems just.

DATED at Moncton, New Brunswick, this 30th day of June, 2021.

A handwritten signature in black ink, appearing to read 'G. Scott Ellsworth', written over a horizontal line.

G. Scott Ellsworth, Q.C.
Ellsworth Johnson & Partners
Solicitor for the Defendants

G. Scott Ellsworth, Q.C.
Ellsworth Johnson & Partners
828 Main Street
PO Box 626
Moncton NB E1C 8M7
Tel (506) 857-8228
Fax (506) 589-4219
Email: sellsworth@ejp.ca
Solicitor for the Defendants

Court File No. MC-314-2021

IN THE COURT OF KING'S BENCH OF
NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF MONCTON

B E T W E E N:

TW1 OAKS INC.,

Plaintiff,

- and -

**RONALD HRYNYK and HR
CORPORATE STRATEGIES INC.,**

Defendants,

- and -

**ESMOND CLOUTHIER, STEPHEN
LUNN, TWELVE12 INVESTMENTS
AND CONSULTANCY INC., and
ROYAL OAKS GOLF CLUB INC.,**

Parties Added by
Counterclaim.

NOTICE OF COUNTERCLAIM ON
BEHALF OF WALTER STEVEN
LUNN
(Form 27C-2)

TO: Royal Oaks Golf Club Inc.
c/o Edwin (Ted) Ehrhardt
Bingham Law
Marven's Place
1 Factory Lane, Suite 310
Moncton, NB E1C 9M3

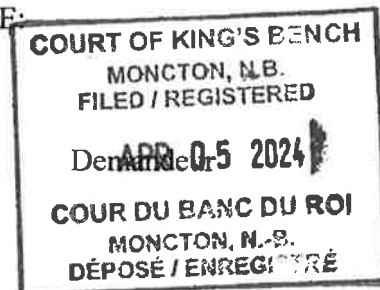
COUR DU BANC DU ROI DU
NOUVEAU-BRUNSWICK

DIVISION DE PREMIERE INSTANCE

CIRCONSCRIPTION JUDICIAIRE DE

E N T R E:

- et -



Défendeur

AVIS DE DEMANDE
RECONVENTIONNELLE
(FORMULE 27C-2)

DESTINAIRE:

THE PARTY ADDED BY COUNTERCLAIM, STEVEN LUNN, IN THIS ACTION HAS FILED THE WITHIN COUNTERCLAIM AGAINST YOU;

If you wish to defend the Counterclaim, either you or a New Brunswick lawyer acting on your behalf must prepare your Defence to Counterclaim in the form prescribed by the Rules of Court and serve it on the Party Added by Counterclaim or his lawyer at the address shown below and, with proof of such service file it in this Court office,

(a) If you are served in New Brunswick, WITHIN 20 DAYS after service on you of this Notice of Counterclaim, or

(b) If you are served elsewhere in Canada or in the United States of America, WITHIN 40 DAYS after such service, or

(c) If you are served anywhere else, WITHIN 60 DAYS after such service.

If you fail to do so you may be deemed to have admitted the counterclaim made against you and without further notice to you JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

You are advised that:

(a) You are entitled to issue documents and present evidence in the proceeding in English or French or both;

LE DÉFENDEUR DANS CETTE ACTION A DÉPOSÉ LA DEMANDE RECONVENTIONNELLE CI-INCLUSE CONTRE LE DEMANDEUR ET VOUS-MÊME

Si vous désirez présenter une défense à la demande reconventionnelle, vous-même ou un avocat du Nouveau-Brunswick chargé de vous représenter devrez rédiger votre défense reconventionnelle en la forme prescrite par les Règles de procédure, puis la signifier au défendeur ou à son avocat à l'adresse indiquée ci-dessous et la déposer au greffe de cette Cour avec une preuve de sa signification:

(a) DANS LES 20 JOURS de la signification que vous sera faite du présent avis de poursuite accompagné d'une demande reconventionnelle, si elle vous est fait au Nouveau-Brunswick ou

(b) DANS LES 40 JOURS de la signification, si elle vous est faite dans une autre région du Canada ou dans les États-Unis d'Amérique ou

(c) DANS LES 60 JOURS de la signification, si elle vous est faite ailleurs.

Si vous omettez de la faire, vous pourrez être réputé avoir admis toute demande reconventionnelle et, sans autre avis, JUGEMENT POURRA ÊTRE RENDU CONTRE VOUS EN VOTRE ABSENCE.

Sachez que:

(a) Vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;

(b) The Party Added by Counterclaim intends to proceed in the English language; and

(c) Your Defence to counterclaim must indicate the language in which you intend to proceed.

(b) Le demandeur a l'intention d'utiliser la langue Anglais; et

(c) L'exposé de votre défense doit indiquer la langue que vous avez l'intention d'utiliser.

THIS NOTICE is signed and sealed for the Court of King's Bench by Sarah Hébert, Clerk of the Court at 145 Assumption Blvd, Moncton, New Brunswick, on the 5th day of April, 2024.

**original signed by /
original signé par
Sarah Hébert**

Sarah Hébert
Clerk of the Court
Judicial District of Moncton

Court of King's Bench of New Brunswick
Trial Division
145 Assumption Blvd.
Moncton, NB E1C 0R2

CET AVIS est signé et scellé au nom de la Cour du Banc de la Reine par _____, greffier de la Cour à _____, ce _____.

STATEMENT OF DEFENCE

1. The Statement of Defence of Counterclaim of Walter Steven Lunn filed June 13, 2022 is incorporated herein by reference.

COUNTERCLAIM OF WALTER STEVEN LUNN

2. The Defendant, Walter Steven Lunn ("Lunn"), of Tucson, Arizona, was added as a party to these proceedings by Counterclaim filed by Ronald Hrynyk ("Hrynyk") and HR Corporate Strategies Inc. ("HR") – who are both Defendants as well as Plaintiffs by Counterclaim.
3. Hrynyk is the directing mind of HR.
4. Royal Oaks Golf Club Inc. ("ROGC") is a body corporate pursuant to the laws of the Province of New Brunswick with registered office at 401 Royal Oaks Blvd., Moncton, New Brunswick. ROGC is added to these proceedings by this counterclaim.
5. HR and the Plaintiff, TW1 Oaks Inc. ("TW1"), are shareholders in ROGC.
6. On March 29, 2019 Lunn entered into a Share Purchase Agreement ("SPA") with ROGC, TW1 and HR. Pursuant to the SPA Lunn purchased 125,667 common shares in ROGC for Five Hundred Thousand Dollars (\$500,000.00).
7. Section 2.4 of the SPA provided Lunn with a "put option" whereby he was entitled to have his shares repurchased by ROGC, TW1 and/or HR for the sum of Five Hundred and Forty Thousand Dollars (\$540,000.00) after one year. Section 2.4 states:

Section 2.4. Put Option: The Seller [ROGC] shall do all acts and execute all such documents to give effect to a put option in respect of the Purchased Shares in favour of the Purchaser [Lunn] as follows:

- (a) On the first anniversary of the Closing Date [March 29, 2019] and within a period of ten (10) Business Days of such anniversary date (the "Put Option Date"), the Purchaser shall have the right, but not the obligation, to put the Purchased Shares to each the Seller and the Shareholders by written notice (the "Put Option"); and
- (b) The Seller and/or the Shareholders either separately or collectively shall purchase the Purchased Shares from the Purchaser at the value of five

hundred and forty thousand Canadian dollars (C\$540,000) and shall cause the closing of such purchase to be effected within thirty (30) days after the end of the Put Option period set out in section 2.4(a) above.

8. Due to the impact of COVID-19, on March 31, 2020, Lunn was asked by Nicole Cloutier, an officer and director of TW1, to agree to a one (1) year extension of the Put Option on the same terms as stated in the SPA. This proposal was agreed to by HR, ROGC and Lunn.

9. On March 29, 2021, Lunn exercised his Put Option. Between June and December, 2021, Lunn was paid Eighty-Three Thousand Two Hundred and Thirty Dollars (\$83,230.00) in respect of interest/dividends that accrued pursuant to the Put Option between March 29, 2019 and the date the Option was exercised: March 29, 2021. However, in breach of the SPA, ROGC, TW1 and HR have failed to pay Lunn Five Hundred Thousand Dollars (\$500,000.00) in accordance with the Put Option.

10. Lunn therefore claims the following for breach of the SPA against ROGC, TW1 and HR, jointly and severally:

- i. An Order declaring that ROGC, TW1 and HR are jointly and severally indebted to Lunn for the principal amount of Five Hundred Thousand Dollars (\$500,000.00) plus compound interest accruing at a rate of eight percent per annum (8%) from March 29, 2021 through to the date of judgment;
- ii. Judgment in favour of Lunn against ROGC, TW1 and HR, jointly and severally for the principal amount of Five Hundred Thousand Dollars (\$500,000.00) plus compound interest accruing at a rate of eight percent per annum (8%) from March 29, 2021 through to the date of judgment;
- iii. Post-judgment interest;
- iv. Costs; and
- v. Such further and other relief as this Honourable Court deems just and expedient.

11. The relief sought hereunder was first requested in the “Statement of Defence of Counterclaim” that Lunn filed on his own behalf on June 13, 2022. The form of that document was incorrect – it should have been in the form of a “Notice of Counterclaim”. Lunn says the use of an improper form was a procedural irregularity that this Honourable Court may correct.

12. Lunn pleads and relies upon s. 21 of the *Limitation of Actions Act*, SNB 2009, c L-8.5.

13. Lunn intends to proceed in the English Language.

DATED at Saint John, New Brunswick, this 27th day of March, 2024.



Michael D. Brenton, K.C.

Brenton Kean

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Steven Lunn

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