

COURT FILE NUMBER **1901-03824**
COURT COURT OF QUEEN'S BENCH OF ALBERTA

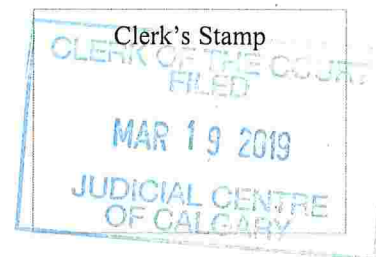
 IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE Calgary

PLAINTIFF ROYAL BANK OF CANADA

DEFENDANTS SURFACE PRO SERVICES INC., ATKINS
 KUNTZ CONSTRUCTION GROUP INC.,
 2049829 ALBERTA INC., DOUGLAS
 ATKINS, DAVID KUNTZ and ROGER
 LEADER

DOCUMENT **STATEMENT OF CLAIM**



Fiat:
The clerk of the
Court shall file
this Statement
of Claim in
Action No 1901-
03824

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
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"K. Yamauchi"

J.C.C.Q.B.A
March 19/2019

NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

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

Statement of facts relied on:

1. The Plaintiff, Royal Bank of Canada (the "Bank" or "RBC"), is a chartered bank incorporated under the *Bank Act*, SC 1991, c 46, Schedule I, extra-provincially registered to carry on business in the Province of Alberta, with branches located in the City of Calgary and elsewhere throughout the Province of Alberta and Canada.

2. The Defendant, Surface Pro Services Inc. (“SPS”), is a body corporate duly incorporated pursuant to the laws of the Province of Alberta, with a registered office located in Calgary, Alberta.
3. The Defendant, Atkins Kuntz Construction Group Inc. (“AKC”) is a body corporate duly incorporated pursuant to the laws of the Province of Alberta, with a registered office located in Calgary, Alberta.
4. The Defendant, 2049829 Alberta Inc. (“204”) is a body corporate duly incorporated pursuant to the laws of the Province of Alberta, with a registered office located in Calgary, Alberta.
5. The Defendants, Douglas Atkins (“Atkins”), David Kuntz (“Kuntz”) and Roger Leader (“Leader”) are, as far as the Plaintiff is aware, individuals residing in the Province of Alberta. All three of Atkins, Kuntz and Leader are directors of AKC and 204. Atkins and Kuntz are also directors of SPS.

Loans and Security

6. The Bank provided a series of loans (the “Loans”) to each of SPS, AKC and 204 (sometimes collectively referred to as the “Borrowers”) on an individual basis, which have been cross-guaranteed and cross-collateralized by certain of the Borrowers.

Surface Pro Services Inc.

- (a) SPS entered into a loan agreement with the Bank dated March 9, 2017, which was renewed, amended and amended and restated on a number of occasions, including but not limited to loan amendments dated June 12, 2017, October 30, 2017 and July 24, 2018 (collectively, the “SPS Loan Agreement”).
- (b) The SPS Loan Agreement established a number of facilities advanced to SPS by the Bank, including but not limited to the following:
 - (i) A revolving demand facility in the principal amount of \$250,000, together with interest at the rate of RBP + 2.25%;
 - (ii) A temporary increase to the demand facility described in subparagraph 6(b)(i) of this Statement of Claim (the “Temporary SPS Facility Increase”);
 - (iii) A revolving lease line of credit in the principal amount of \$350,000;
 - (iv) A VISA business card with a maximum limit of \$100,000; and

- (v) Business vehicle loans and/or contracts outstanding at any time and from time to time (collectively, the “**SPS Loans**”).
7. As security for the SPS Loans, SPS executed in favor of the Bank a general security agreement pursuant to which SPS pledged all of its present and after acquired personal property to the Bank as collateral security for all outstanding obligations owed by SPS to the Bank (the “**SPS GSA**”).
 8. The SPS Loans were guaranteed by Atkins, in his personal capacity, pursuant a Guarantee and Postponement of Claim dated September 10, 2014, in the principal amount of \$100,000, together with interest at a rate of RBP + 5.00% per annum (the “**SPS Guarantee**”).
- Atkins Kuntz Construction Group Inc.*
9. AKC entered into a loan agreement with the Bank dated October 31, 2017 (the “**AKC Loan Agreement**”).
 - (a) The AKC Loan Agreement established a number of facilities advanced to AKC by the Bank, including but not limited to the following:
 - (i) A revolving demand facility in the principal amount of \$350,000, together with interest at the rate of RBP + 2.25%;
 - (ii) A temporary increase to the demand facility described in subparagraph 9(a)(i) of this Statement of Claim (the “**Temporary AKC Facility Increase**”);
 - (iii) A revolving demand facility in the principal amount of \$150,000, together with interest at the rate of RBP + 2.25%; and
 - (iv) A VISA business card with a maximum limit of \$50,000(collectively, the “**AKC Loans**”).
 10. As security for the AKC Loans, AKC executed in favor of the Bank a general security agreement pursuant to which AKC pledged all of its present and after acquired personal property to the Bank as collateral security for all outstanding obligations owed by SPS to the Bank (the “**AKC GSA**”).
 11. The AKC Loans were guaranteed by Atkins and Kuntz, jointly and severally in their personal capacity, pursuant to a Guarantee and Postponement of Claim dated February 12, 2014 in the principal amount of \$150,000, together with interest at a rate of RBP + 5.00% per annum (the “**AKC Guarantee**”).

2049829 Alberta Inc.

12. 204 entered into a loan agreement with the Bank dated September 11, 2017 (the “**204 Loan Agreement**”).
13. The 204 Loan Agreement established a fixed rate term facility in the principal amount of \$2,295,000, with interest at a rate to be determined at the time of borrowing (the “**204 Loans**”).
14. As security for the 204 Loans, 204 executed in favour of the Bank a general security agreement pursuant to which 204 pledged
 - (a) all of its present and after acquired personal property; and
 - (b) a mortgage and charge over all of its present and after acquired interest in property, assets and undertaking including all real, immovable and leasehold property and all easements, rights-of-way, privileges, benefits, licences, improvements and rights and all structures, plant and other fixtures
 to the Bank as collateral security for all outstanding obligations owed by 204 to the Bank (the “**204 GSA**”).
15. In addition, 204 granted a collateral mortgage to the Bank in the principal amount of \$2,295,000, charging the lands legally described as: Plan 1412150, Block 33, Lot 2, excepting thereout all mines and minerals (the “**Collateral Mortgage**”), as security for its obligations under the 204 Loan Agreement.
16. The 204 Loans were guaranteed by SPS, AKC, and each of Atkins, Kuntz and Leader, in their personal capacity, pursuant to the following:
 - (a) Guarantee and Postponement of Claim pledged by SPS dated January 18, 2018 in the principal amount of \$1,420,000, together with interest at a rate of RBP + 5.00% per annum;
 - (b) Guarantee and Postponement of Claim pledged by AKC dated January 18, 2018 in the principal amount of \$1,150,000, together with interest at a rate of RBP + 5.00% per annum; and
 - (c) Guarantee and Postponement of Claim pledged jointly and severally by Atkins, Kuntz and Leader dated January 18, 2018 in the principal amount of \$506,250, together with interest at a rate of RBP + 5.00% per annum
 (collectively, the “**204 Guarantees**”).

17. The SPS GSA, the SPS Guarantee, the AKC GSA, the AKC Guarantee, the 204 GSA, the Collateral Mortgage and the 204 Guarantees are collectively referred to herein as the “**Security**”.

Guarantees

18. The SPS Guarantee, the AKC Guarantee and the 204 Guarantees (sometimes together, the “**Guarantees**”), among other things, provide that:
- (a) The Bank is not required exhaust its recourse against the Borrowers or any other security which the Bank may hold before being entitled to payment from the guarantors under the Guarantees;
 - (b) All indebtedness and liabilities of any of the Borrowers to the guarantors or any of them, as the case may be, is assigned to the Bank and postponed to the liabilities owed to the guarantors and all monies received by the guarantors is received in trust for the Bank and is forthwith required to be paid to the Bank;
 - (c) Each of the Guarantees is in addition to and not in substitution for any other guarantee, by whomsoever given, at any time held by the Bank;
 - (d) The Guarantees shall not be considered as wholly or partially satisfied by the payment or liquidation at any time of any sums of money being due or remaining unpaid to the Bank and all dividends, compositions, proceeds of security valued and payments received by the Bank from any of the Borrowers or from others shall be regarded for all purposes as payments in gross without any right on the part of the guarantors to claim in reduction of the liability under the Guarantees, the benefit of any such dividends, compositions, proceeds or payments and the guarantors shall have no right to be subrogated in any rights of the Bank until the Bank has received payment in full of all liabilities; and
 - (e) When demand for payment has been made, the guarantors shall be liable to the Bank for all legal costs (on a solicitor and own client basis) incurred by or on behalf of the Bank resulting from any action instituted on the basis of the Guarantees.

Defaults

19. Each of SPS, AKC and 204 has defaulted under the terms of the Loans. In particular, SPS and AKC have each failed to repay balances due and owing under the Temporary SPS Facility Increase and the Temporary AKC Facility Increase, respectively, further constituting a breach of the debt repayment covenant under their respective loan agreements and an event of default under their respective general security agreements. Further, each of SPS and AKC has overdrawn on their respective deposit accounts (the “**Account Debts**”).

20. Furthermore, as of the date of this Statement of Claim, neither SPS nor AKC had sufficient funds in their accounts to satisfy their March 1, 2019 payroll obligations, and the AKC account remains in an unauthorized overdraft position.
21. As SPS and AKC are guarantors of the 204 Loans, the breaches and defaults of SPS and AKC under their respective loan agreements and general security agreements also constitute events of default under the 204 Loan Agreement, which include, among other things:
 - (a) failure of a guarantor to observe any covenant, term or condition or provision contained in any other agreement delivered to the Bank;
 - (b) when a guarantor is unable to pay its debts as they become due;
 - (c) a material adverse change in financial position of a guarantor; and
 - (d) when a guarantor defaults in the payment of any other indebtedness to the Bank.
22. As a result, SPS, AKC and 204 have defaulted under the terms of the Security, including but not limited to, committing a default under the terms of the SPS Loan Agreement and the AKC Loan Agreement, thereby committing a default under the terms of the 204 Loan Agreement.
23. As a result of the events of default, on March 5, 2019, the Bank demanded repayment of the Loans from each of SPS, AKC, 204, Atkins, Kuntz, and Leader (the “**Demand Letters**”). In conjunction with each of the Demand Letters, the Bank issued Notices of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, to each of SPS, AKC and 204 in their capacity as Borrowers, and to SPS and AKC in their capacity as guarantors of the 204 Loans.
24. All of the Defendants have failed, neglected or refused to repay the Loans to the Bank. As at March 1, 2019, the total amount owing to the Bank pursuant to the Loans was \$3,273,666.53 (the “**Indebtedness**”), together with legal fees, other chargeable costs and interest continuing to accrue thereon. In particular:
 - (a) \$484,421.89, together with accrued interest of \$621.52 as well as interest, costs and fees continuing to accrue, is owing under the AKC Loans;
 - (b) \$540,660.61, together with accrued interest of \$163.12 as well as interest, costs and fees continuing to accrue is owing under the SPS Loans; and

- (c) \$2,243,204.81, together with accrued interest of \$4,594.58 as well as interest, costs and fees continuing to accrue was owing under the 204 Loans.
25. The Bank states and the fact is that the entire sum of \$3,273,666.53, together with legal fees, other chargeable costs and interest continuing to accrue thereon is a just debt properly due and owing by the Defendants or any of them as the case may be, to the Bank.
26. Deloitte Restructuring Inc. has consented to act as receiver of SPS, AKC and 204.
27. The Plaintiff requests that the trial of this action be held at the Calgary Courts Centre, in the City of Calgary, in the Province of Alberta, and is expected to take no more than 25 days.

Remedy sought:

28. The Plaintiff, Royal Bank of Canada, seeks:
- (a) Judgment in the aggregate sum of \$3,273,666.53 against the Borrowers in the proportions set out in paragraph 24 of this Statement of Claim;
 - (b) Judgment against each of the guarantors, as follows:
 - (i) Judgment against SPS in the sum of \$1,420,000.00, together with interest, costs and fees continuing to accrue, properly due and owing pursuant to the applicable 204 Guarantee, as may be proven or acknowledged in the within action;
 - (ii) Judgment against AKC in the sum of \$1,150,000, together with interest, costs and fees continuing to accrue, properly due and owing pursuant to the applicable 204 Guarantee, as may be proven or acknowledged in the within action;
 - (iii) Judgment on a joint and several basis against each of Atkins, Kuntz and Leader in the sum of \$506,250, together with interest, costs and fees continuing to accrue, properly due and owing pursuant to the applicable 204 Guarantee, as may be proven or acknowledged in the within action;
 - (iv) Judgment on a joint and several basis against each of Atkins and Kuntz, in the sum of \$150,000, together with interest, costs and fees continuing to accrue, properly due and owing pursuant to the AKC Guarantee, as may be proven or acknowledged in the within action; and
 - (v) Judgment against Atkins, in the sum of \$100,000, together with interest, costs and fees continuing to accrue, properly due and owing pursuant to the SPS Guarantee, as may be proven or acknowledged in the within action;
 - (c) A declaration that the Defendants or any of them, as the case may be, are in default of payment of the outstanding Loans;

- (d) A declaration that the guarantors are in default of payment of the outstanding Indebtedness in the proportions set out in paragraph 28(b) of this Statement of Claim;
- (e) A declaration that the Security and other security held by the Plaintiff in support of the Loans or the obligations of the Defendants, have become enforceable, that any floating charge security created thereby has become specifically charged against all the property, assets and undertakings of SPS, AKC and 204 and that such security constitutes valid and enforceable security in accordance with the terms thereof;
- (f) A declaration that the Guarantees have become enforceable and that such Guarantees constitute valid and enforceable security in accordance with the terms thereof;
- (g) Interest pursuant to the SPS Loan Agreement, the AKC Loan Agreement and the 204 Loan Agreement, as the case may be, or, in the alternative, pursuant to the *Judgment Interest Act*, RSA 2000, c J-1;
- (h) A declaration that the principal, interest and other monies thereby secured by the Security and the Guarantees have become due and payable;
- (i) The appointment of a Receiver or a Receiver and Manager of the property, assets and undertaking of SPS, AKC and 204 pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and the *Judicature Act*, RSA 2000, c J-2;
- (j) Costs on a solicitor and his own client basis; and
- (k) Such further and other relief as this Honourable Court may see fit to allow.

NOTICE TO THE DEFENDANT

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

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

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

WARNING

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