

COURT FILE NUMBER 1501-04677

COURT COURT OF QUEEN'S BENCH OF ALBERTA

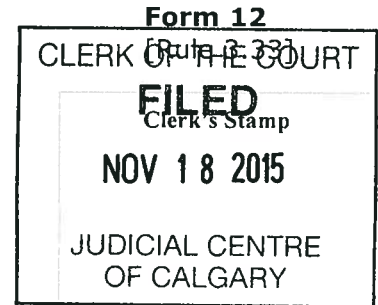
JUDICIAL CENTRE CALGARY

PLAINTIFF: THE STUDENTS' ASSOCIATION OF THE UNIVERSITY OF CALGARY, known as THE UNIVERSITY OF CALGARY STUDENTS' UNION

DEFENDANTS: THE GOVERNORS OF THE UNIVERSITY OF CALGARY and THE UNIVERSITY OF CALGARY

DOCUMENT **REPLY TO STATEMENT OF DEFENCE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
 McLeod Law LLP
 300, 14505 Bannister Rd. S.E.
 Calgary, AB T2X 3J3
 Tel: (403) 278-9411
 Fax: (403) 271-1769
 Attn: Michael C. Kwiatkowski
 File No: 036-098909-123



This is the Reply by the Plaintiff, The Students' Association of The University of Calgary, known as The University of Calgary Students' Union, to the Statement of Defence filed by the Defendants, The Governors of the University of Calgary and The University of Calgary, on November 10, 2015.

Statement of facts relied on:

1. The Students' Association of The University of Calgary, known as The University of Calgary Students' Union (the "Plaintiff"), repeats and adopts the facts as stated in its Statement of Claim.
2. The Plaintiff repeats and adopts the abbreviations and definitions in the Statement of Claim, and the Statement of Defence, where necessary, for ease of use and reference.
3. Except as expressly admitted herein, the Plaintiff denies the allegations set out in the Statement of Defence of the Defendants, The Governors of the University of Calgary

and the University of Calgary (collectively herein, the "Defendant"), and puts the Defendant to the strict proof thereof.

4. In reply generally to all of the allegations contained in the Statement of Defence, the Plaintiff states that the Defendant's Statement of Defence contains many mistruths and inaccuracies, and is representative of continued oppressive conduct and high handed behaviour of the Defendant.
5. The Plaintiff states, and the fact remains, that at all times material:
 - a. The Plaintiff was and is an owner of the Building;
 - b. The Plaintiff has, since 1969, contributed over \$19,025,000.00 towards the construction costs, operations and various renovations to the Building;
 - c. The Defendant has, until recently, identified the Plaintiff as a co-owner of the Building with the Defendant;
 - d. The Defendant has, until recently, led the Plaintiff to believe it was a co-owner of the Building with the Defendant, and by its actions or inactions, permitted the Plaintiff to act as co-owner of the Building, to which the Plaintiff relied; and
 - e. From the recent actions of the Defendant, it is clear that the Defendant induced the Plaintiff to make significant monetary contributions to the Building since the 1960's (including a recent contribution of \$13,100,000.00 in 2002 under the 1999 Agreement) knowing that, in 2015, it would terminate all agreements with the Plaintiff and take control and management of the Building, which Building is co-owned by the Plaintiff. The Plaintiff will then be left with no control, input or stake in a Building which it co-owns and has managed for forty-six (46) years.
6. The fact remains that the Defendant has elected to terminate the 1999 Agreement, and on December 10, 2015, the Defendant has threatened to take full control of the Building, including, but not limited to:
 - a. Control and management of all space in the Building, including Plaintiff controlled space, common area space, and Governors controlled space, all of which includes:
 - i. Management of the loading dock in the Building;

- ii. Paper and cardboard sorting;
 - iii. Bottle and can sorting;
 - iv. Repairs and maintenance;
 - v. Food court and common area hourly garbage removal, compost removal, and table sanitization; and
 - vi. Emergency response and security;
- b. The control and management of all of the Plaintiff's employees and contractors who manage the Building, including salaries and benefits;
 - c. The control and management of all of the commercial tenants, including leasing revenue and the types of commercial tenants who, and will, occupy the Building;
 - d. The control and management of the Building's concert venue and ballroom, including the revenue generated from same and the types of performances;
 - e. The control and management of the "Den", which is the Plaintiff's bar and restaurant;
 - f. The control and management of all conferences, meetings, activities and bookings for the Building; and
 - g. Such other particulars as will be proven at the trial of this Action.

Any matters that defeat the claim/defence of the Defendant:

7. In reply generally to the Statement of Defence, the Plaintiff states that the Defendant has completely ignored the agreements made between the Plaintiff and the Defendant prior to 1981, such as the 1969 Operating Agreement. The agreements and representations made by the Defendant to the Plaintiff prior to 1981 are critical to this matter, and many form the basis for the Plaintiff's claim in this Action.

8. At Paragraph 14 of the Statement of Defence, the Defendant states:

...any statement prior to 1981 which may have been made by members or representative of the Governors, or which may have appeared in any minutes, correspondence or agreement signed by the Plaintiff and the Governors, to the effect that the Plaintiff held an ownership interest in the Building, did not accurately reflect the nature of the Plaintiff's legal rights and status with respect to the Property. Accordingly, such statements are not legally binding

on the Governors and do not constitute acknowledgement or admission regarding any ownership interest in the Property on the part of the Plaintiff.

The Plaintiff states that the Defendant's position as set out in Paragraph 14 of the Statement of Defence is unfounded, groundless and absurd.

9. In specific reply to Paragraphs 7, 15, 16 , and 18 through 21 of the Statement of Defence, the Plaintiff states, and the fact is, that the Plaintiff has, at all times material, asserted an ownership interest in the Building, and there is no one point in time whereby the Plaintiff relinquished, waived or surrendered that ownership interest, ever.
10. In specific reply to Paragraph 21 of the Statement of Defence, the Plaintiff denies that it is estopped from asserting an ownership interest in the Building, and puts the Defendant to the strict proof thereof.
11. In specific reply to Paragraphs 12 and 13 of the Statement of Defence, wherein the Defendant alleges that the Governors were precluded from conveying an ownership interest in the Land unless and until prior approval is obtained from the Lieutenant Governor in Council, the Plaintiff states that the Defendant was negligent in failing to take steps to seek the approval from the Lieutenant Governor in Council for same, even though the Defendant knew it held the Building in trust for the Plaintiff and, at all times material, had acknowledged the Plaintiff as a co-owner of the Building.
12. In specific reply to Paragraphs 31 through 34 of the Statement of Defence, wherein the Defendant alleges that the Plaintiff's claim is statute barred, or barred by an equitable doctrine, the Plaintiff pleads, *inter alia*, that it was not informed about the termination of the 1999 Agreement until September 23, 2014, when the Defendant wrote a letter to the Plaintiff, informing the Plaintiff that the 1999 Agreement would terminate on December 9, 2015. Based upon continuing agreements - written, verbal or on an ad hoc basis - for the Building since 1969, the Plaintiff relied upon the fact that the Plaintiff and the Defendant would continue operating under the terms and conditions of the 1999 Agreement, or enter into a new agreement as they always have: neither have occurred. Further, throughout 2014 and 2015, the Defendant made representations to the Plaintiff that a "new agreement" would be

imminent, to which the Plaintiff relied upon. The Defendant had already extended the 1999 Agreement from 2013 to 2014 for a period of one (1) year.

13. Further, it was not until October 8, 2015, whereby the Defendant informed the Plaintiff that it was not considering the Plaintiff as an owner of the Building, rather, that it was only a manager and operator.

14. Further, on November 9, 2015, the Defendant notified the Plaintiff that, upon the expiry of the 1999 Agreement on December 9, 2015, the Defendant would assume entire control of the Building and the revenue generated from same: this was the first time the Defendant has ever taken this position when an agreement had expired.

15. In further reply to Paragraphs 32 and 34 of the Statement of Defence, the Plaintiff denies any acquiescence in respect of its claims. The Plaintiff further denies the Defendant has been prejudiced, and puts the Defendant to the strict proof thereof.

Remedy sought:

16. The Plaintiff repeats and adopts the remedies sought in its Statement of Claim.

NOTE

This reply may only make admissions or respond to matters raised for the first time in the statement of defence (Rules 3.33(2)(b) and 13.10).