The Crumbling of Concrete Equities

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Angry investors are seeking to unravel the mystery behind a high-profile real estate syndicator's doings that have left their life savings in limbo

by Scott Messenger

For a few hours one Tuesday evening in May, Calgary's Southside Victory Centre seems the perfect place for the shareholders to meet. At least in name. As much optimism and hope fills the church's sanctuary – a cavernous warehouse converted with grey industrial cord and slate-blue paint – as you'd find here among Sunday's faithful. And thanks to recent successes, the 300 or so in attendance ride a sense of triumph, tempered only slightly by the ongoing strategizing for a fight yet to come, and by the plastic containers circulating amongst the congregation to collect funds for the war chest.

As far as takeovers are concerned, this one's going reasonably well, at least according to Terry Town, the wiry middle-ager with the mike at the front of the room. By day he's president of a Calgary filing and storage systems company. But recently, beginning not long after Concrete Equities' March proposal to sell buildings he'd invested in, Town has spent off hours on a campaign to keep control of the properties.

Usually when a company like Concrete — a major Calgary-based real estate syndicator familiar to most as former sponsor of CBC TV's Dragons' Den — plans to turn over or refinance assets, the result is a hefty shareholder payout.

For one thing, it's a buyer's market. For another, the new deal involves investors trading real assets they'd purchased for unsecured debentures. Or at least it did, before Town and the steering committee, the small cast of concerned investors seated on the Southside Victory stage, began the work of seizing control of the troubled portfolio of assets.

"We're the worst group of investors you can have," Town says with the tone of one with the upper hand. Applause rises from an audience diverse enough to prove the dream of getting rich by real estate transcends age, gender and ethnicity. What Town means by "worst" is they're not going to stop until they know what went wrong. Concrete blames the recession. But it would seem that's only a small part of this story, if any of it. Earning respectable initial returns, investors had tolerated, even accepted, management that seemed doomed to dysfunction from the beginning. Recently returned CEO Dave Jones played the absent founder; current president Vincenzo De Palma, whom you might recognize from Concrete's TV ads, drew from a background mostly spent selling lumber out of Prince George, B.C.; 20-something executive Vinnie Aurora's qualifications included being the son of a colleague of Jones; and, along with experience as an investment industry veteran, office manager Dave Humeniuk bore the albatross of a lifetime ban from selling real estate in the province of Alberta. The result: a corporate environment poisoned by infighting and finger-pointing and which produced no significant financial reporting, a lapsed mortgage, allegations of impropriety and incompetence, no dividends since the start of this year despite purportedly cash-positive properties, and, because of it all, more than 2,000 investors raring for a fight.

"Every day that goes by that we don't take control of these buildings, money leaves our bank accounts," Town tells the audience. Thus the move motivated by fear of losing RRSPs, life savings, even their homes, to replace Concrete with Steven Butt, partner at Calgary's Avenue Commercial. As of tonight the dissident investors have already voted in the switch on two buildings. However, Concrete has refused to acknowledge the decisions, leaving investors frustrated and confused, certain there's something they're not being told. Regardless, they're voting on a third property. As Town and the committee pass out ballots, Butt, currently one of the property managers, takes the mike. Tomorrow he'll be visiting Concrete's offices to collect financial records he suspects to be, at best, incomplete, but enough to reveal what went wrong. With that in hand, he'll get on with getting dividends back into the hands of investors. The truth of what has happened with the Concrete investments will be known, he insists. "At the end of the day, we're going to be OK." The audience applauds, unaware that they are the main characters in a cautionary tale of just how bad a seemingly good deal can get.

As it turns out, optimism and hope, which drive so many Alberta investors to place trust where it might not belong, only mean so much when it comes to the markets. Seeing as far as the end of the day is one thing. It's what happens the morning after that's so hard to predict.

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In the basement of an early 20th century walk-up not far from the Stampede Grounds, the offices of Avenue Commercial stretch the building's length but take up a space no wider than a back alley. Steven Butt joins me in a small meeting room, tables a BlackBerry and slides a letter my way.

"I wasn't expecting this," he says, "but when you think it through, it's probably not a bad strategy when you're trying to not give books and not pay tax and not give back money that you've taken from the company." Basically, it's "a pretty good way to walk away from it all."

Just as the so-called limited partners (LPs), the investors gathered last night at Southside Victory, were moving on their takeover plans, the general partners (GPs) at Concrete were crafting countermeasures. The letter, a notice of the company's intention to make a proposal under the Bankruptcy and Insolvency Act, stalls any action against the "insolvent person" – in this case the property voted on last night, Calgary's Castleridge Plaza shopping centre – placing it in receivership under Ernst & Young. Four other properties have gone the same way, including a pair of south-Calgary strip malls and the downtown SNC-Lavalin building for which Butt has been voted in as GP (he's also guarantor of the latter's mortgage, having sold it to Concrete himself), as well as two more downtown office buildings, MEG Place and Concrete Equities Place.

As GP-elect, Butt's an interesting choice. Almost saccharinely sincere at the meeting last night, this morning he's candid but less inclined toward pleasantries. LPs have questioned the due diligence behind Butt's selection. Few would know, for example, that he was investigated by the Real Estate Council of Alberta in 2005 for an under-the-table property management deal a decade ago (since fully resolved). Nor would they know of the aspirations of Dave Jones, who returned last December to Concrete as CEO, to "co-GP" the properties with Butt. That said, he is a willing and vocal opponent of the company for which he has served as property manager.

Butt does stand to gain from the LPs getting their way. He doesn't deny that. There's not a lot of money to be made as a property manager, he says. But as a syndicator, in which Avenue also has experience, there's a buck in having an LP group take an acquisition off your hands, as well as spoils in selling or refinancing one. Nonetheless, he raises an important, even if biased, question. Concrete has already made money here, so why not quit while they're ahead and, well, hand the properties over to him? "Wouldn't you want to do that?" Butt asks. "Unless you're trying to hide something."

Properties under Avenue management were passing profit along to Concrete around the same quarter in which investor dividends dried up. And while prudent companies do cut payouts in tough times, ones looking to keep up shareholder relations would immediately communicate reasons for doing so. Concrete referenced the recession, failing to mention anything about the cash coming in from the properties at the time. And when word leaked from the company's office that monies were mingling freely amongst the properties – each one a separate company – Concrete sought in May to mollify investors with the promise of "a full recreation" of the books. What investors wanted was an externally conducted audit.

There's a reason for all of this, says De Palma, and that's Dave Humeniuk. On or about Christmas Eve, 2008, De Palma claims in a recent affidavit, he and Aurora visited the manager while he was "on an indefinite holiday to Mexico due to an alleged illness" and fired him for neglect of the "Humeniuk duties," which included communicating with investors, organizing shareholder meetings and renewing mortgages. Furthermore, the president alleges in the same affidavit, "I have found evidence suggesting that Mr. Humeniuk may have been using the corporate funds… to pay for his personal expenses and acquisitions." How this went unnoticed in an office run by three people De Palma doesn't say. Instead, with the extent of wrongdoing still unknown, given the state of records Humeniuk neglected to properly tend, De Palma puts himself in the same position as investors, proclaiming, in an early June email to LPs, his own interest in understanding events that undermined the company. Now that "Concrete has been permitted the time to provide books, records and analysis to Ernst & Young supporting the creation of a current financial picture," De Palma wrote in that email, he believes that will happen.

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But is the move to seek the protection of a receiver, as the investors' legal counsel Blair Yorke-Slader puts it, "too clever by half"?

"It's a bit unusual to have the debtor come to the court and say, 'I want a receiver, not because creditors are chasing me, but because my limited partners are chasing me,'" explains the Bennett Jones LLP. "Usually the party that wants the receiver is the creditor… because you don't want the debtor going to Paraguay with the money or you don't want some other creditor getting in line ahead of you." According to him, the logic behind the request is lacking, suggesting only that "'You'd better appoint a receiver because you can't trust me.' That doesn't make any sense."

Regardless of admitting to LPs the mistake of having been uncommunicative, Concrete executives weren't interested in clearing up the mystery of the company's motivations. Despite the breakdown in its relationship with investors, De Palma told me there's no story here, not until Ernst & Young has done its job.

CEO Dave Jones, meanwhile, could not be reached for comment. During our brief introduction by telephone, in which he promised a followup conversation that he would defer until too late for press, Jones (also president and CEO of Wealthstreet Inc., the Calgary investment firm that sold Concrete products) snarled that he was not a "stupid" man, then offered his services in editing this story.

The only person to offer a look inside Concrete Equities in those months leading up to the investor rebellion was Dave Humeniuk, the former office administrator who "should flee the country immediately," as Yorke-Slader puts it, "if he's done the things they've accused him of." Instead, he moved into a new Calgary office and set up his own real estate investment outfit last March.

Responding to De Palma's allegations of negligence, Humeniuk naturally seeks to turn the tables. "I spent a lot of time – what's the word I'm looking for – babysitting the other two."

Vinnie Aurora "contributed very little" to daily operations, says Humeniuk, while "Mr. De Palma enjoyed his career on television and commercials and forgot about bringing dollars in the door." But if true, Humeniuk's litany of complaints about the job he left do point to what caused the cracks in the Concrete business model. To start: De Palma and Aurora secured "very expensive money" for deals he considered beyond the company's means. As well, vacancies in buildings seemed to him to be going unfilled on purpose, which lowered the properties' value. Overall, it was a lack of co-operation, he says, that led to the failure to file financials, organize shareholder meetings, and to the lapse of the mortgage on the SNC-Lavalin building. "I'm 60 years old. I'm spending 14 hours a day in the office. I'm having to yell at my partners to get their attention. 'I don't need this,'" he told himself. "'Fine, I'll retire.'"

Humeniuk does admit to there being loans between the properties, but only of those comprising the directors' cuts. (Cautioning against the installation of a new GP in his June email, De Palma also alluded to co-mingling, though more direly, warning in his June email of "a potential cross-liability among partnerships. This is particularly dangerous given that the analysis of all transactions between the partnerships has yet to be completed.") And the misappropriated funds? Humeniuk sighs.

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"I wasn't going to do this, but I will." After his departure, Humeniuk claims De Palma and

Aurora visited his office and accused him of stealing millions. "They told me that they had a private detective that had found accounts in Nevada and somewhere offshore, and that they could make all of my worries go away if I paid them $150,000 cash that day. My response to that was, 'I will deal with you in court.'"

It's Humeniuk's mention of "very expensive money" that hints at where all the trouble might have begun.

While Terry Town mobilized following the lapse of the mortgage of the SNC-Lavalin building, one of his own investments, the original red flag was a 56-page "information circular" issued mid-March and detailing plans for restructuring Concrete Equities. "In our view," the company explained in an accompanying letter, "it has become imperative that in the short to medium term we must be prepared to insulate investors against further potential volatility that may arise from the volatility in the tenancy market and which has the potential to affect each specific investment." In plainer terms (a rarity in the document), Concrete had decided it was time to unload its assets, of which Calgary's Strategic Group, headed by low-profile millionaire Riaz Mamdani, was willing to relieve it. Details including a termination fee of 2% of a building's original price as paid by a limited partnership, as well as imminent dates for the transactions to close, meant this was more than a proposal. When such negotiations were initiated remains uncertain, though a meeting between shareholders and Concrete soon after the announced restructuring suggests the companies were in contact as early as the boom-time days of June 2008, well before "today's volatile and recessionary marketplace" outlined in that letter. No sales prices are given.

The circular shows Concrete's capacity for seeing the bad in everything. Because a building is fully occupied, it "has higher exposure to lower market rental rates." With no current indications of intentions to renew, a major lease is set to expire – in 2012. Overall, "the softening of the Calgary real estate market" has stripped any silver lining from the very dark clouds stretching from things as they are to well beyond the visible horizon, making Concrete's intention to roll the separate properties into a single fund, leaving investors with a 6% unsecured debenture – rather than the real assets they purchased – seem like the lesser of two evils.

Town, like others on the steering committee who spent days on the phone locating and rallying shareholders to vote against the deal, isn't inclined to let the market take the blame. "I think greed was really driving things at that point," he says.

As described in the circular, Concrete bought one property last August with funds acquired through a second mortgage at the rate of 40% interest per annum, effective March 1, maturing Aug. 1, 2009. More recently, it acquired two other properties with borrowed money. This time funds came from Strategic subsidiaries, loaned to a numbered company. That numbered company, after purchasing 1,632 of approximately 1,855 units in the limited partnership, then voted in favour of the restructuring. The purchase price isn't given, though the properties were to be syndicated for $31 million. Closing was scheduled for March 31st – one day before sale to Strategic. Given Concrete's tendency to sell acquisitions to investors for more than it paid – a relatively common practice in syndications – the profit could have solved financial binds resulting from decisions that, good enough in a boom, quickly go bad in a downturn.

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"In the original agreement, Concrete Equities was supposed to work in the best interests of the LPs," says Town. "All of a sudden this is in the best interests of anybody and everybody but the limited partners."

Currently, there's a lien of more than $3 million – that 2% break fee – against the Concrete properties that failed to get investor approval for sale. "So our general partner negotiated a deal to sell us to someone without our approval, signed a back-out fee, and when we turned it down and decided to fire them, they basically rolled us into bankruptcy protection," Town summarizes. Then he shares a theory: "I think the real end game here is… to figure out how to make the books look bad enough to liquidate and hand us over to Strategic anyways. I believe that completely, because Strategic now has a very large lien against us. Who would be the natural group to come along and save us?"

But according to Kathy Thompson, communications manager for Strategic, because "the investors didn't approve the transaction" the company "is no longer involved." Will it be involved in the future? Same answer, no elaboration. Thompson had no knowledge of the lien.

But directors at Concrete remain optimistic, Yorke-Slader points out. According to them, the sale to Strategic is "adjourned." Or, as the lawyer clarifies, "postponed, as opposed to cancelled."

After the shareholders' meeting draws to a close that evening at the Southside Victory Centre, I approach the stage where the steering committee is taking questions from a small crowd of investors. That's when I meet Bryan Mitrovic – stocky, self-assured, possessed of a casual brand of belligerence. He smiles. "I've got something for you to hear," he tells me.

With his wife, Julie, in the back seat, he drives quickly and with slightly delayed reactions indicative of too little sleep to his northeast Calgary home. There Mitrovic leads me to the basement office where he conducts business as a real estate investor, mostly buying and renting out houses, a career he took up full time five years ago after spending 16 in a print shop. The $125,000 of his and Julie's RRSPs that he has invested in Concrete represents his first time investing in real estate through someone else. His computer background is a photo of the view from his front door: the artificial lake across the street surrounded by close-set suburban two-storeys. He brings up an audio file of an hour-long conversation he and another investor had with Dave Jones soon after the circular was issued. Until now, it had only been making the rounds of the investors. "I'm a dirty fighter," says Mitrovic. "I'm a fighter like the Concrete boys."

Dressed in the same untucked, unbuttoned purple long-sleeve and white undershirt he'd later be wearing during a June TV interview about the investors' protest outside Concrete's downtown Calgary offices, Mitrovic listens to the interview with a hint of a smirk. Even if Jones agreed to return his and every other investor's money ("Well, that's interesting," says Jones on the recording. "I need to think about that."), Mitrovic wanted the chance to wait out the market. "Real estate heals itself," he tells Jones. As far as he's concerned, the investments are still solid revenue generators, just like Jones said during the Wealthstreet investment seminars where he first pitched them, telling audiences to do what they had to in order to avoid missing the chance, in time, to nearly double their money.

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"You were telling everyone to go out and take credit lines on their houses. Use your RRSPs and we'll make you a good return on the money, better than the interest on the credit lines," Mitrovic's voice rings over the speakers. "Am I wrong?"

Dave Jones' response comes quickly and candidly: "Well, in all fairness, who thought the world would have turned into this?"

Weeks later, just after the onset of summer, and soon after Madam Justice Barbara Romaine ruled in the Court of Queen's Bench of Alberta that the directors of Concrete Equities were justified in their decision to stay on as GP and enlist the services of a receiver, Mitrovic still isn't sympathizing with Jones.

"The buildings are still making money, so what's he talking about?" says Mitrovic. "It had nothing to do with the markets. He used that to try to manipulate us."

Just as De Palma suggests, more of the story remains to be told. But how he or Dave Jones expect Ernst & Young to exonerate them in the eyes of current and future shareholders remains more mysterious than the circumstances that made receivership necessary. Even if Dave Humeniuk's efforts to build a new business are interrupted by confirmation of De Palma's allegations, the question remains as to how such negligence can go conscionably unchecked, and why it seemed to continue after the former director's "termination." Questioning De Palma in court, Yorke-Slader asked what had happened to $398,000 one of its property managers had disbursed to Concrete between February and May of this year. De Palma said he didn't know. But Humeniuk wasn't there to be the fall guy, and the money didn't go to investors.

But even if the story yet to tell ends well for investors, it's already difficult to deny that, in many ways, the directors of Concrete Equities have won, even if the victory proves pyrrhic, considering the trust that has been lost. But Concrete's decision to place the properties in receivership stands because Justice Romaine believed them to be insolvent in light of a late-entry list of creditors (amongst them, Vinnie Aurora's dad). She also ruled that Concrete remain GP, based partly on her suspicion that the investors' efforts were ill-informed, and partly upon the logic that, once removed, Concrete would have no incentive to co-operate with a new GP's efforts to rebuild business. But, at De Palma's request, she commissioned a management committee, consisting of him, a representative of the Strategic Group, Steven Butt, and the receiver to, as De Palma would say, "maximize the value" to investors. In the meantime, those investors continue to accumulate legal bills and see dividends deferred, regardless of whether their properties turn a profit.

"The bottom line is that the fox now gets to guard the henhouse. And get the eggs. It's ludicrous from a shareholder's viewpoint," says Terry Town. "I almost felt like saying [to Justice Romaine], 'You must think we are all just stupid, stupid people.' Even if we make a stupid decision, does the vote of the shareholder not count anymore?"

It's tempting to look at what has transpired between Concrete Equities and its investors as an advanced exercise in risk management. Like Mitrovic, Town sees long-term stability in real estate and the potential, in time, for profit. Implied is that a strengthened economy will keep risk at a relative minimum. Also implied is that an investment, subject to unpredictability of both markets and management, is not the same as a gamble. Somehow, trust investors place in their management is considered protection from uncertainty. Once that's lost, they want control, for better or worse. Whether that's possible here, even if Butt takes over, is a question without an answer. As Jones suggested – and as last year's oil bust proved – no one can see, or calculate, the future. And that may be the most honest and least comforting thing you'll ever hear from anyone holding a chunk of your life savings.

Town wonders now if they should have voted Butt in sooner. And with the investor uprising quelled, pondering what-ifs is about all he can do, besides trying to recapture the optimism that night at Southside Victory that, at the very least, prevented the sale of the buildings. After all, by most assessments, the Concrete properties started off as good investments. They could be again.

In contrast, Mitrovic plans to keep up the pressure as if it's a battle yet to be won. "Why would we not fight for what's ours?" he asks, despite recognizing that he and every other investor could emerge from this with nothing.

"We are putting a stop to their plans," he says, whether it's true or if he simply needs to believe as much. "Slowly but surely, we are."

In the meantime, Mitrovic vows never to invest with anyone else ever again. The question Concrete has left him with is simple: Who can be trusted? If he's going to be paying his money, he's going to be sure the chances he takes are entirely his own.

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