

Action No. 0901 - 12606

IN THE COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL DISTRICT OF CALGARY

BETWEEN :

EL GOLFO INVESTMENT CORPORATION by its receiver
And manager, ERNST & YOUNG INC.

Plaintiff

-and-

DAVID HUMENIUK and ELIZABETH HUMENIUK

Defendants

STATEMENT OF DEFENCE

The Plaintiff has provided a statement of claim based on documents and the sworn statement of Mr. Vincenzo DePalma. The defendants acknowledge the documents that were a matter of public record but dispute information from documents that were not a matter of public record. The Defendants also dispute the accuracy of statements made by Mr. De Palma as he was not privy to certain situations that occurred in his position as an employee. The defendants further challenges the veracity of certain statements he has made which will be documented hereunder:

- 1) Mr. De Palma's statement contains some inaccuracies and omissions. The general partner consisted of two individuals with equal shares. Mr. Verun (Vinny) Aurora took on the lead responsibility for the El Golfo land hold. In 2007 Mr. De Palma was an employee and not privy to all phases of the company operation which brings his knowledge of events into question.
- 2) The attached offering memorandum provided by Mr. De Palma is a draft which was never given an opinion letter by the Law firm Fraser Milner Casgrain LLP as indicated in the body.
- 3) The purchase price for the property described as lot 5 was \$5,000,000 with costs of commissions and overhead based on the sale of all available units being approximately \$3,750,000 which provided a lift of \$16,250,000. The lift was defined as the profit after expenses which belonged to the general partners. This meant that once the land was paid for the general partners would have access to their portion or the profits. The return to the investors in the case of this land hold would come from appreciation of the value of the

properly over an undefined period of time and not from the lift. The projections were based on sales of comparable properties. The property was purchased for just over \$5/ sq. m. while land a few kilometers away had sold for \$29 / sq. m.

4) Verun (Vinny) Aurora negotiated the purchase and dealt solely with the partnership with Ben Aguilera and David Letourneau and the acquiring of the property. Lot 5 was identified and there were options to purchase other parcels of land adjacent to Jot 5. Dave Humeniuk had no part in the purchase except for a flyover to observe the hectares of sand in the earliest stage of the purchase. Mr. Aurora moved the purchase forward and provided information that was used to set up the El Golfo Land Hold.

5) While ensuring that the limited partners where part of the offer to purchase Dave Humeniuk did determine that Mr. Aurora had allowed the actual purchase of the property to be solely in the name of a company owned by Mr. Aguilera and Mr. Letoumeau. While this was corrected it provided doubt in Mr. Aurora's ability to protect the interests of both the Limited Partners and General Partner as well as the integrity of Mr. Letourneau and Mr. Aguilera.

5) Further concern developed when Mr. Aurora arbitrarily decided that the two partners in Phoenix, who contributed nothing to the raising of funds would be paid substantial finders fees. At this time it became clear that there was a problem with the purchase of lot #5. Mr. Aurora had a number of discussions with Mr. Aguilera and Mr. Letourneau which resulted in a replacement of lot five by three larger parcels of land further down the beach which was arbitrarily designated as lot 5. In addition Mr. Aurora agreed to a new schedule of payments which Mr. Humeniuk first became aware of when a payment became due ad was made without the finders fee. Mr. Aurora had made the switch of properties without notification to the Limited Partners.

6) In an attempt to inform the investors and protect the limited partnership the draft offering memorandum was prepared by Dave Humeniuk. By the time it was ready to send to Fraser Milner Casgrain LLP. the project had been sold out and Mr. Aurora indicated that it could be used for Phase II which were additional lots that Mr. Aguilera and Mr. Letourneau and Mr. Aurora had under contract.

7) Profits were being taken up front by Mr. Aguilera and Mr. Letourneau and perhaps Mr. Aurora through them. Once lot 5 funds had been paid Mr. Humeniuk exercised his right to take a portion of his share of the profits. Although Mr. Aurora and Mr. De Palma would like the court to believe that Mr. Aurora's name was forged he did in fact sign wire transfers. In fact at a later date he had a stamp prepared with his signature as he did not want to sign the numerous documents and cheques that were written.

8) A further inaccuracy is noted in Mr. De Palma's sworn statement in that one of the payment amounts in this action came from a draft from Mr. Humeniuk's account at First Calgary Financial. Mr. Humeniuk admits two errors in judgment. The first was that the profits of the general partner should have been moved from the trust account. The second was using the existing wiring process through the Scotiabank be cause it was in place

instead of setting up his own wire transfer system. He however, felt that the two signatures requirement ensured that both he and Mr. Aurora were aware of all monetary transactions.

9) The next inaccuracy in Mr. Depalma's statement is that the trust which is required to show ownership of the condo property described as Condominio La Cima 111, Trolongacio Paseo de Las Conchas Chinas # 179, Departmental 11 -A, Colonia Amapas, Puerto Vallarta, Jalisco, Mexico, to this date remains in Daniel and Sandra Scott's name and has never been transferred to Mr. and Mrs. Humeniuk's name.

10) Mr. De Palma's statement further indicates that condo fees were sent from the El Golfo account to Mr. Kelly Douglas. He however fails to also state that a discussion had occurred which identified the need for someone to oversee the development project in Puerto Vallarta as the general contractor was building a product that was worth less than projected and that 58.0% of costs had been paid out for 48% completed work. The El Golfo Investment Corporation or more precisely its Mexican entity had been operating without a local bank account or accountant which was required by the Mexican Government. The setting up of a local office would have corrected the situation. Mr. Humeniuk had identified Mr. Nelson who speaks both Spanish and English fluently as that onsite person, had discussed the matter with Mr. Aurora and then had forwarded him dollars to set up the office. The dollars were wired under both Mr. Aurora's signature and Mr. Humeniuk's as required by company policy.

11) Mr. Aurora was specifically in charge of development projects because he supposedly had experience in developments through the Aurora Family Holdings. However, funds raised from investors were used to payout existing debt and then the profits from the El Golfo project were used to pay for the Puerto Vallarta development. Mr. Aurora had not accounted for the fact that a development does not produce income until it is completed and sold. Mr. Humeniuk had no experience in development projects and therefore followed Mr. Aurora's lead. Mr. Humeniuk put a halt to the project, had an audit and outside appraisal completed when it became evident that there was another agenda on the El Golfo land hold profits.

12) Mr. Humeniuk is not an accountant and on numerous occasions brought up the need for a comptroller. Mr. Humeniuk hired a bookkeeper Barb Crawshaw who managed the day to day booking and the reconciling of bank statements at the end of each month. The accountant who Mr. Aurora introduced to the process completed the first year's financial statement with numerous irregularities. Mr. Humeniuk and Mrs. Crawshaw spent many hours trying to put the books in order. Mr. Humeniuk hired the firm of Muldner and Associates to correct the accounting from day one and produce documents under a review engagement that could be provided to the government for tax purposes and to the limited partners. This process was in place and moving forward when Mr. Humeniuk left the company.

13) Mr. Humeniuk believes that this lawsuit is one of the results of a conspiracy by Mr. Aurora and Mr. De Palma to remove him from the day to day operation and reinvested profits so that they could form a relationship with Mr. Riaz Mamdani, a wealthy businessman and owner of millions of sq. ft of commercial properties. Mr. Humeniuk after due diligence and legal advice from two law firms had declined to participate in one of Mr. Mamdani's projects. From August through the end of November 2008 Mr. Humeniuk made it clear that the company could not survive on debt without revenue which was Mr. De Palma's area of responsibility.

14) The conspiracy began in August 2008 when Mr. De Palma and Mr. Aurora sought and obtained 100% financing on the Symcor/Otis property purchase at an interest rate that would become 59.0% at the end of a one year term. Mr. Mamdani was one of the group of lenders. Mr. Humeniuk was out of the country when this occurred.

15) At the same time a \$5,000,000 loan from P-3 Holdings became due and payable. In spite of Mr. Humeniuk's protestations Mr. Aurora and Mr. De Palma had no intention of paying the debt. This caused personal harm to Mr. Humeniuk as the loan had been granted because of a personal relationship with the principals of P-3 Holdings. Mr. Humeniuk forced the issue which was resolved by a debt arranged by Mr. Aurora from another third party securing the debt with shares held in all Concrete Associated Companies. This debt is in default and has provided Mr. Aurora and Mr. De Palma the opportunity to divest themselves of the responsibility as shareholders. Their action has removed Mr. Humeniuk as a President, Director and shareholder in the various concrete Companies.

16) Mr. Aurora and Mr. De Palma further contributed to the eventual insolvency of the Concrete group of companies through the raising of capital through debentures without any identified means of repaying the debt under the terms of the debentures. Mr. Aurora signed all documents while Mr. Aurora and Vice President, Scott MacKenzie sold the investors on the offering.

17) Prior to Mr. Humeniuk's leaving on a required health leave Mr. Aurora and Mr. De Palma further conspired with Dave Jones to put the SNC Lavalin Project in financial difficulty and then transfer control of that limited partnership to Mr. Jones without involving Mr. Humeniuk in any of the negotiations.

18) Mr. Humeniuk made it clear that he was unhappy with the process that had occurred and stated that the going forward of the partnership would have to be resolved when he returned in January 2009. Having Mr. Humeniuk physically out of the picture Mr. Aurora and Mr. De Palma escalated the removal plan by accusing him of mismanagement of funds. December 23, 2008 they arrived in Puerto Vallarta made their accusation which Mr. Humeniuk vehemently denied. They offered retirement and funds to ensure that Mr. Humeniuk would not have any future financial concerns. After consideration of the potential problems that the companies would be dealing with in 2009, his age and the ever increasing conflict between Mr. Aurora, Mr. De Palma and Mr. Humeniuk, the offer was accepted by Mr. Humeniuk. Upon their return to Calgary Mr. Humeniuk was

removed as president and a director of all of the corporations within the Concrete Equities group of companies.

19) The alleged wrongful conduct was supposed to have occurred in 2007. Both Mr. Aurora and Mr. De Palma were aware of the purchase in process by Mr. Humeniuk and had both been guests. The alleged wrongful conduct was not an issue until Mr. De Palma and Mr. Aurora needed a scapegoat to account for their mismanagement and inability to meet obligations.

20) Mrs. Humeniuk has been named in the action. She has never had any part in the business affairs of her husband and has not received any benefit from the alleged wrongful conduct. She has however suffered a pulmonary embolism with clots in both lungs which has been attributed to the stress caused by the actions of Mr. Aurora and Mr. De Palma.

21) The business arrangement with Mr. Mamdani did not materialize as quickly as expected which created turmoil with the investors. Rather than dealing with the investors Mr. Aurora and Mr. De Palma chose to publicly slander Mr. Humeniuk with their unproven allegations. While Mr. Aurora and Mr. De Palma refused to speak with investors, Mr. Humeniuk took calls from investors and explained what he believed to be their rights under the legal documents in place.

22) Since Mr. Humeniuk's departure Hens have been filed against the Concrete Properties by Mr. De Palma, Mr. Aurora, Mr. Mamdani and Mr. Aurora's father David Aurora.

23) As most of this action is based on statements made by Mr. De Palma and Mr. Aurora their character needs to be established as credible. Mr. Humeniuk and witnesses will attest to a visit by Mr. Aurora and Mr. De Palma to Mr. Humeniuk's new place of business in the summer of 2009 where they tried to extort \$150,000 from Mr. Humeniuk in exchange for making their accusations go away. They advised Mr. Humeniuk that they had hired a private detective who had turned up Bank accounts in Mr. Humeniuk's name in Nevada and an offshore Caribbean Island. They further stated that Mr. Humeniuk had used Concrete funds to payout his mortgage. The truth of the matter is that no bank accounts exist and the mortgage was paid out after 25 years of payments. They failed to note the \$140,000 mortgage and the \$100,000 personal line of credit registered on the property. When Mr. Humeniuk asked them to leave, both, threatened bodily harm to Mr. Humeniuk and his family and declared that they would see his company Teluric International Investments Ltd. shut down. Mr. Humeniuk filed a police report.

The lawsuit alleges harm to the limited partnership through Mr. Humeniuk's actions and seeks remedies listed in the statement of claim.

- 1) Mr. and Mrs. Humeniuk dispute the allegations and respectfully submit that Mr. Humeniuk was within his rights to receive a portion of his portion of the profits from the El Golfo syndication believing that they were in jeopardy from actions by the other partners.

- 2) Mr. Humeniuk emphatically states that Mr. Aurora was fully aware of the wire transfer and did personally acknowledge that through his signature on the transfer documents.
- 3) He further states that he believed that the land described in the offering memorandum on file had been paid for at the time of his receipt of funds.
- 4) He further believes that statements made by Vincenzo de Palma in this action have numerous inaccuracies.
- 5) He also believes that any harm to the El Golfo Project that may have been done was done by Mr. Verun Aurora initially and Mr. Aurora and Mr. De Palma after his retirement. They were the parties that decided not to make further payments on the "switched" El Golfo Properties after Mr. Humeniuk's retirement. He also alleges that payments for Phase I were used to put properties in Phase II under contract. Mr. Humeniuk further alleges that no harm would have occurred if Mr. Aurora had not switched the initial parcel of land and had not directed payment of funds from Phase J to Phase II lands.
- 6) Mr. Humeniuk states that the threat of harm has been exacted as his wife's illness is a direct result of Mr. Aurora's and Mr. De Palma's actions and that the company Teluric International Investments was unable to sell its product because of the comments made in public and was therefore forced to close its doors. The Humeniuks have not had any income since November 2008 and are in serious financial difficulties.
- 7) Mr. Humeniuk further asks the court to award him damages in the amount of \$1,000,000 plus costs to account for the damages to his name, reputation, the health of his wife and loss of income created by the public defamation of character by Mr. Aurora and Mr. De Palma.

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Plaintiff

-and-

DAVID HUMENTUK and ELIZABETH
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Defendants

ORDER OF THE COURT

AUG 28 2009

CALGARY, ALBERTA

STATEMENT OF DEFENCE

Issued by:

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-and-

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