

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

SUNFLOWER BANK, N.A.,)	
)	
Plaintiff)	
v.)	Case No. 11-CV-1324-JWL-JPO
)	
H.P. CONSTRUCTION LTD.,)	
)	
Defendant)	

AMENDED COMPLAINT

COMES NOW the Plaintiff, Sunflower Bank, N.A., and for its cause of action herein against the Defendant, H.P. Construction Ltd., states and alleges as follows:

Jurisdiction

1. The jurisdiction of this Court attaches under the provisions of 28 U.S.C. § 1332(a)(2) because the amount in controversy exceeds, exclusive of interest and costs, the sum of seventy-five thousand dollars, and is between a citizen of a state and a subject of a foreign state.

2. The Plaintiff is a national banking association organized and existing under and by virtue of the laws of the United States with its principal place of business at 3025 Cortland Circle, Salina, Saline County, Kansas.

3. Defendant’s counsel previously stated that the Defendant is a California corporation headquartered in San Diego, California. (See attached Exhibit A).

4. Since the filing of the Complaint, the Plaintiff has learned that the Defendant is a Canadian corporation headquartered in Abbotsford, British Columbia. (See attached Exhibits B and C.)

Facts

5. In 2009, the Defendant leased certain construction equipment (“Equipment”),

including shoring panels, props, and extensions that were patented or trademarked as “TABLA”, from a third-party lessor, A-1 Scaffold & Shoring, LLC (“A-1S”).

6. In December 2009, the lease term ended.

7. The Defendant, however, refused and failed to return the Equipment to A-1S.

8. On December 21, 2009, notice was mailed by A-1S to the Defendant of the Plaintiff’s security interest and lien on the Equipment. (See attached Exhibit D).

9. In December 2009, the Equipment was transferred from A-1S to A-1 Plank and Scaffold Manufacturing, Inc. (“A-1”) in satisfaction of A-1S’s indebtedness.

10. On February 21, 2010, A-1 filed for relief under Chapter 11 of the Bankruptcy Code.

11. At the time of filing, the Equipment was among the assets of A-1.

12. The Plaintiff acquired all of the Equipment by and through a sale pursuant to 11 U.S.C. § 363 that was confirmed by the Bankruptcy Court.

13. On May 5, 2011, the Defendant provided notice of its intent to sell the Plaintiff’s property.

14. On May 12, 2011, the Plaintiff reasserted its ownership of the Equipment and requested a time to inspect the Equipment. (See attached Exhibit E).

15. On August 5, 2011, the Plaintiff formally demanded the return of the Equipment.

16. The Defendant categorically refused to return the Equipment.

17. The Defendant arranged for the Plaintiff’s inspection of the Equipment on or about September 10, 2011.

18. The Plaintiff was prepared to inspect the Equipment at the arranged time, but the Defendant provided an improper or fraudulent address and failed to appear. (See attached Exhibit B).

Conversion

19. The Plaintiff incorporates herein by reference as if more fully set forth herein each and every other paragraph of this Complaint.

20. The Defendant lawfully came into possession of the Equipment.

21. The Defendant has assumed and exercised, without authorization, the right of ownership over goods and personal chattels belonging to the Plaintiff to the exclusion of the Plaintiff's rights.

22. As a result of the Defendant's conversion, the Plaintiff has suffered damages and is entitled to actual damages.

WHEREFORE, the Plaintiff demands judgment against the Defendant in an amount of or exceeding \$380,418.21, plus interest accrued at the statutory rate, and for such other and further relief as the Court deems just and equitable.

/s/ Michael P. Alley
Michael P. Alley, KS #19790
CLARK, MIZE & LINVILLE, CHARTERED
P.O. Box 380
Salina, KS 67402-0380
Tel. (785) 823-6325; Fax (785) 823-1868
mpalley@cml-law.com
Attorneys for Plaintiff, Sunflower Bank, N.A.

Designation of Place of Trial

The Plaintiff hereby designates Wichita, Kansas as the place of trial in this case.

/s/ Michael P. Alley
Michael P. Alley, KS #19790
CLARK, MIZE & LINVILLE, CHARTERED
P.O. Box 380
Salina, KS 67402-0380
Tel. (785) 823-6325; Fax (785) 823-1868
mpalley@cml-law.com
Attorneys for Plaintiff, Sunflower Bank, N.A.

EXHIBIT A

05/05/2011 15:25 FAX 619 293 7362

MARKS, GOLIA & FINCH

002/008

ROBERT J. MARKS, APC *
 DAVIDE GOLIA
 P. RANDOLPH FINCH JR.
 JASON R. THORNTON
 JEFFREY B. BAIRD
 CHAD T. WISCHNIK
 LOUIS J. BLUM
 DAVID S. DEMIAN
 STEPHEN J. SCHULTZ *
 MARK T. BENNETT *
 DAVID W. SMILEY
 BERNARD F. KING III
 NOWELL A. LANTZ
 JUSTIN M. STOGER
 ALLISON N. COOPER

* OF COUNSEL VIA MERRILL,
 SCHULTZ & BENNETT, LTD.

MARKS, GOLIA & FINCH, LLP
 ATTORNEYS AT LAW
 8620 SPECTRUM CENTER BOULEVARD - SUITE 900
 SAN DIEGO, CALIFORNIA 92123-1489
 TELEPHONE (658) 737-3100
 FACSIMILE (658) 737-3101
 INTERNET www.mgfllp.com
 E-MAIL pfinch@mgfllp.com

May 5, 2011

ANDREA L. PETRAY
 JON F. GAUTHIER, APC *
 DANIELLE C. HUMPHRIES
 CHRISTOPHER R. SILLARI
 DUSTIN R. JONES
 LAURA B. MACNEEL
 RODRIGO F. MOREIRA
 AJAY C. SHAH
 DANIEL P. SCHOLZ
 ELISHA A. HARP
 RYAN P. KENNEDY
 ADAM C. WITT
 BRETT T. WALKER
 M. KATY ROSS
 ROSS M. MATTESON

* OF COUNSEL

OUR FILE NUMBER

596.001

VIA FACSIMILE (416) 598-5466

Mr. J. Robert McLuskie
 Walsh McLuskie Doyle
 180 Dundas Street West, Suite 2308
 Toronto, Ontario
 M5G 1Z8

VIA FACSIMILE (785) 826-2284

Sunflower Bank, N.A.
 Attn: Loan Processing Department
 2070 South Ohio Street
 Salina, Kansas 67401-6702

VIA FACSIMILE (785) 625-8452

Mr. Dwight Allenbaugh
 A-1 Scaffold & Shoring, LLC
 500 Commerce Pkwy Hays
 Kansas, Kansas, 67601

Re: TABLA Storage Rent Due

Dear Messrs:

We represent H.P. Construction, Ltd., a California corporation headquartered in San Diego, California. In 2009, H.P. rented certain shoring panels and related props and extensions from A-1 Scaffold & Shoring, LLC. We believe these items are patented and/or trademarked TABLA products. The rental term ended in December 2009 and A-1 was paid in full by H.P. Since December 2009, A-1 failed and refused to take back the rented items and they have been stored by H.P. at a cost of \$6,000.00 per month. The items have been moved several times over the last year and a half but the rent now due from A-1 to H.P. exceeds \$102,000.00, (\$6,000.00 per month * 17 months).

After H.P. asked A-1 to pick-up the rented items, H.P. received two competing claims to the off-rent items, dated December 21, 2009 and January 12, 2010, copies of which are enclosed at Tabs 1 and 2. These claims are by A-1 on behalf of itself and Sunflower Bank, N.A., its purported secured creditor (Tab 1), and Gillespie Practical Technologies Inc., Gilcheck Management Inc., and Paul Gillespie (Tab 2).

05/05/2011 15:25 FAX 619 293 7362

MARKS, GOLIA & FINCH

003/008

Mr. J. Robert McLuskie
Mr. Dwight Allenbaugh
Sunflower Bank, N.A.
May 5, 2011
Page 2 of 2

Since receipt of these letters enclosed at Tabs 1 and 2, H.P. has received no other communications despite its efforts to have these items moved from its storage site. Pursuant to California law, this is a 10 day notice of H.P.'s intent to sell the items to recoup its storage costs.

Thank you for your understanding and attention to this matter.

Very truly yours,



P. Randolph Finch Jr., of
MARKS, GOLIA & FINCH, LLP

Enclosures

PRF:kam/31E3457

cc: H.P. Int'l, Ltd.
Attn: Mr. Henry Penner, President

EXHIBIT B

MARKS, FINCH, THORNTON & BAIRD, LLP

ROBERT J. MARKS, APC *
P. RANDOLPH FINCH JR.
JASON R. THORNTON
JEFFREY B. BAIRD
CHAD T. WISHCHUK
LOUIS J. BLUM
DAVID S. DEMIAN
STEPHEN J. SCHULTZ +
MARK T. BENNETT +
DAVID W. SMILEY
BERNARD F. KING III
NOWELL A. LANTZ
JUSTIN M. STOGER
ALLISON N. COOPER
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FACSIMILE (858) 737-3101
INTERNET www.mftb.com
E-MAIL pfinch@mftb.com

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RODRIGO F. MOREIRA
DANIEL P. SCHOLZ
ELISHA A. HARP
RYAN P. KENNEDY
ADAM C. WITT
BRETT T. WALKER
M. KATY ROSS
ROSS M. MATTESON
ANDREW A. MULLEN

December 9, 2011

* OF COUNSEL

+ OF COUNSEL via MERRILL,
SCHULTZ & BENNETT, LTD.

OUR FILE NUMBER

1679.002

VIA ELECTRONIC MAIL

Michael P. Alley, Esq.
Clarke, Mize and Linville, Chartered
129 South Eight
P.O. Box 380
Salina, Kansas 67402-0380

Re: *Sunflower Bank, N.A. v. H.P. Construction Ltd.*

Kansas District Court Case No. 11-CV-1324-JWL-JPO

Dear Mr. Alley:

We are in receipt of the complaint of Sunflower Bank, N.A. ("Sunflower") against H.P. Construction, Ltd. ("H.P. Construction") and accompanying waiver of service. This is to inform you that H.P. Construction is a Canadian corporation, headquartered at 202-33386 South Fraser Way, Abbotsford, British Columbia, V2S 2B5. In our earlier correspondence dated May 5, 2011, I misspoke when I stated that H.P. Construction was a California corporation headquartered in San Diego, California. At the time, I was under the mistaken impression that H.P. Construction was a citizen of a similarly named entity that we also represent. Please forgive any confusion this may have caused.

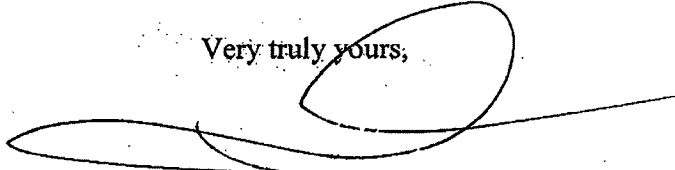
With regard to the waiver of service, we are not H.P. Construction's agent for service of process and are not authorized to waive service on its behalf. If Sunflower wishes to serve H.P. Construction, then it must follow the requirements of FRCP Rule 4(f)(1) and serve H.P. Construction in Canada in accordance with the protocols of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, to which Canada is a signatory.

It is our understanding that there was a miscommunication regarding the location of the TABLA equipment being stored at H.P. Construction. We have confirmed with Mr. Penner that the stored equipment is located at H.P. Construction's equipment yard in

Michael P. Alley, Esq.
December 9, 2011
Page 2 of 2

Canada. The address to the equipment yard is 1777 Townline Road, Abbotsford, British Columbia, V2T 6E2. Again, this equipment is available for Sunflower to pick up provided that it pays the storage fees, which are continuing to accrue at the rate of \$6,000.00 per month. If Sunflower wishes to pay the storage fees and pick up the equipment in Canada or offer to sell H.P. Construction the equipment with a credit for the storage fees, please contact us to discuss these options.

Very truly yours,

A handwritten signature in black ink, appearing to read "P. Randolph Finch Jr.", is written over a horizontal line. The signature is stylized and somewhat cursive.

P. Randolph Finch Jr., of
MARKS, FINCH,
THORNTON & BAIRD, LLP

PRF:mfk/32M4856

cc: H.P. Construction Ltd.
Attn: Mr. Henry Penner (via facsimile only)

EXHIBIT C



**BC Registry
Services**

Mailing Address:
PO BOX 9431 Stn Prov Govt.
Victoria BC V8W 9V3
www.corporateonline.gov.bc.ca

Location:
2nd Floor - 940 Blanshard St.
Victoria BC
250 356-8626

BC Company Summary

For
H.P. CONSTRUCTION LTD.

Date and Time of Search: December 22, 2011 11:33 AM Pacific Time
Currency Date: December 01, 2011

ACTIVE

Incorporation Number: BC0831220
Name of Company: H.P. CONSTRUCTION LTD.
Recognition Date and Time: July 31, 2008 12:01 PM Pacific Time as a result of an Amalgamation
Last Annual Report Filed: July 31, 2011
In Liquidation: No
Receiver: No

AMALGAMATING CORPORATION(S) INFORMATION

Name of Amalgamating Corporation	Incorporation Number in BC
H.P. CONSTRUCTION LTD.	BC0247470
SPIRIT WEST CONSTRUCTION LTD.	BC0570306

REGISTERED OFFICE INFORMATION

Mailing Address:	Delivery Address:
33695 SOUTH FRASER WAY ABBOTSFORD BC V2S 2C1 CANADA	33695 SOUTH FRASER WAY ABBOTSFORD BC V2S 2C1 CANADA

RECORDS OFFICE INFORMATION

Mailing Address:	Delivery Address:
33695 SOUTH FRASER WAY ABBOTSFORD BC V2S 2C1 CANADA	33695 SOUTH FRASER WAY ABBOTSFORD BC V2S 2C1 CANADA

DIRECTOR INFORMATION

Last Name, First Name, Middle Name:

PENNER, HENRY

Mailing Address:

1777 TOWNLINE ROAD
ABBOTSFORD BC V2S 1M3
CANADA

Delivery Address:

1777 TOWNLINE ROAD
ABBOTSFORD BC V2S 1M3
CANADA

Last Name, First Name, Middle Name:

Penner, David John

Mailing Address:

3858 CAVES COURT
ABBOTSFORD BC V3G 0A1
CANADA

Delivery Address:

3858 CAVES COURT
ABBOTSFORD BC V3G 0A1
CANADA

Last Name, First Name, Middle Name:

Penner, John

Mailing Address:

4473 ROSS ROAD
ABBOTSFORD BC V4X 1Z5
CANADA

Delivery Address:

4473 ROSS ROAD
ABBOTSFORD BC V4X 1Z5
CANADA

OFFICER INFORMATION AS AT July 31, 2011

Last Name, First Name, Middle Name:

Penner, Henry

Office(s) Held: (President, Secretary)

Mailing Address:

1777 TOWNLINE ROAD
ABBOTSFORD BC V2S 1M3
CANADA

Delivery Address:

1777 TOWNLINE ROAD
ABBOTSFORD BC V2S 1M3
CANADA



**BC Registry
Services**

Mailing Address:
PO BOX 9431 Stn Prov Govt.
Victoria BC V8W 9V3
www.corporateonline.gov.bc.ca

Location:
2nd Floor - 940 Blanshard St.
Victoria BC
250 356-8626

BC Company Summary

For
SPIRIT WEST CONSTRUCTION LTD.

Date and Time of Search: December 28, 2011 09:36 AM Pacific Time
Currency Date: December 01, 2011

HISTORICAL - Amalgamated on July 31, 2008

Incorporation Number:	BC0570306	
Name of Company:	SPIRIT WEST CONSTRUCTION LTD.	
Recognition Date:	Incorporated on August 18, 1998	In Liquidation: No
Last Annual Report Filed:	August 18, 2007	Receiver: No

AMALGAMATED INTO

Name of Amalgamated Company:	H.P. CONSTRUCTION LTD.
Incorporation Number:	BC0831220

REGISTERED OFFICE INFORMATION

Mailing Address: 33695 SOUTH FRASER WAY ABBOTSFORD BC V2S 2C1 CANADA	Delivery Address: 33695 SOUTH FRASER WAY ABBOTSFORD BC V2S 2C1 CANADA
--	---

RECORDS OFFICE INFORMATION

Mailing Address: 33695 SOUTH FRASER WAY ABBOTSFORD BC V2S 2C1 CANADA	Delivery Address: 33695 SOUTH FRASER WAY ABBOTSFORD BC V2S 2C1 CANADA
--	---

DIRECTOR INFORMATION

Last Name, First Name, Middle Name:
PENNER, HENRY

Mailing Address: 1777 TOWNLINE ROAD RR 1 ABBOTSFORD BC V2S1M3	Delivery Address: 1777 TOWNLINE ROAD RR 1 ABBOTSFORD BC V2S1M3
--	---

OFFICER INFORMATION AS AT August 18, 2007

Last Name, First Name, Middle Name:

Penner, Henry

Office(s) Held: (President, Secretary)

Mailing Address:

1777 TOWNLINE ROAD
ABBOTSFORD BC V2S 1M3
CANADA

Delivery Address:

1777 TOWNLINE ROAD
ABBOTSFORD BC V2S 1M3
CANADA

EXHIBIT D

05/05/2011 15:25 FAX 619 293 7362

MARKS, GOLIA & FINCH

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Apr 25 11 01:53p

858-831-0897

p.4

(US) 625-7510 • Fax: (US) 625-8452 • (800) 625-7510

December 21, 2009

TO: HP Construction Ltd
#202 - 33386 South Fraser Way
Abbotsford, BC V2S 2B5
Canada

RE: Ownership and Security Interest in Rental Equipment of
A-1 Scaffold & Shoring, LLC in Your Possession

Dear Madam or Sir:

You are currently in possession of Table related concrete forms and shoring products that are owned by A-1 Scaffold & Shoring, LLC. The equipment and any rental payments are subject to the lien of Sunflower Bank, N.A. of Salina, Kansas.

Any claim by any other party, including Gilcheck Management, Gillespie Practical Technologies, Inc. and/or Paul A. Gillespie, is subordinate and inferior to the ownership interest of A-1 Scaffold & Shoring, LLC and the security interest and lien of Sunflower Bank, N.A.

You are hereby directed, that neither Gilcheck Management, Gillespie Practical Technologies, Inc. and/or Paul A. Gillespie or any entity claiming by, through and under these parties, has any right to the leased equipment or rental payments. In the event you should remit any rental payment(s) directly to these parties or surrender any leased equipment to these parties, you will be subject to claims for damages and conversion of assets by A-1 Scaffold & Shoring, LLC and Sunflower Bank, N.A.

We regret this development, but wish to bring this to your attention. We hope that this does not jeopardize our ongoing business relationship, but wish you to be acquainted with the matter.

Very truly yours,

A-1 SCAFFOLD & SHORING, LLC


Dwight Altenbaugh
President

cc: Sunflower Bank, N.A.

EXHIBIT E

CLARK, MIZE & LINVILLE
CHARTERED

PETER L. PETERSON
JOHN W. MIZE
GREG A. BENGTON
MICKEY W. MOSIER
PAULA J. WRIGHT
ERIC N. ANDERSON
DUSTIN J. DENNING
MICHAEL P. ALLEY
PETER S. JOHNSTON
JARED T. HIATT
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AARON O. MARTIN

ATTORNEYS AT LAW
129 S. EIGHTH, P.O. BOX 380
SALINA, KANSAS 67402-0380
TELEPHONE: (785) 823-6325
FAX: (785) 823-1868

128 N. MAIN
LINDSBORG, KANSAS 67456
TELEPHONE: (785) 227-2010

www.cml-law.com

C.L. CLARK (1908 - 2004)
JAMES P. MIZE (1910 - 1988)

AUBREY G. LINVILLE
L.O. BENGTON
RETIRED

May 12, 2011

VIA E-MAIL ATTACHMENT (pfinch@mgfllp.com)

P. Randolph Finch, Jr., Esq.
Marks Golia & Finch, LLP

Re: Sunflower Bank, N.A. / H.P. Construction, Ltd.

Dear Mr. Finch:

I represent Sunflower Bank, N.A. ("Sunflower"). I have reviewed your letter to Sunflower dated May 5, 2011. Sunflower's Special Asset Manager, Chad Steffan, has tried unsuccessfully to contact you over the last several days to discuss your May 5, 2011 letter.

I must first inform you that the TABLA products in question are subject to Sunflower's perfected security interest. In addition, I believe that your client's proposed sale of the TABLA products in question runs afoul of Bankruptcy Code Section 362(a)(3), namely because the TABLA products are most likely property from the bankruptcy estate of A-1 Plank & Scaffold Manufacturing, Inc. and Allenbaugh Family Limited Partnership (collectively "A-1"). As you might be aware, A-1 filed for relief under Chapter 11 of the Bankruptcy Code on February 21, 2010. Sunflower acquired all of A-1's TABLA products by and through a Bankruptcy Code Section 363 Sale in the A-1 bankruptcy cases. Finally, any liens your client might claim are easily avoided under Bankruptcy Code Section 545(3)-(4).

Notwithstanding the foregoing, Sunflower requests that you provide the following information so Sunflower can further evaluate your client's claims:

1. Itemization of the products subject to the purported storage lien.
2. Location of the products subject to the purported storage lien.
3. Explanation of why the products subject to the purported storage lien "have been moved several times over the last year and half" as described in your letter.
4. Explanation of the purported \$6,000 per month charge, including but not limited to invoices that have been provided to A-1, A-1 Scaffold & Shoring, LLC, Allenbaugh family members, and Sunflower.

P. Randolph Finch, Jr., Esq.
Marks Golia & Finch, LLP
Sunflower Bank, N.A. / H.P. Construction, Ltd.
May 12, 2011
Page 2

5. Evidence that the products in question have been stored by your client at the request of A-1 and/or A-1 Scaffold & Shoring, LLC.
6. Copy of the Cal. Civ. Code § 3052 publication notice.


Sunflower also requests that you arrange a time for Sunflower officials to visit the storage facility to physically inspect and inventory the equipment. Please contact me as soon as possible so that we can coordinate this inspection.

In light of these issues, I believe your client should strongly reconsider their intended plan to dispose of the equipment. Assuming *arguendo* that your client's storage liens are valid, Sunflower would be entitled to redeem the equipment. Conversely, if the storage liens are not valid, your client's disposition of the products will likely constitute conversion. It is in the best interests of our respective clients that these issues be sorted out in an orderly fashion.

I look forward to visiting with you very soon.

Very truly yours,

CLARK, MIZE & LINVILLE, CHARTERED



Michael P. Alley
mpalley@cml-law.com

pc: Client-CS; DGR (via e-mail)