



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

CITY OF GREATER SUDBURY

Plaintiff

and

**JOHN DOE, JANE DOE, 14645065 CANADA INC., BANK OF NOVA SCOTIA,
ROYAL BANK OF CANADA, THE TORONTO-DOMINION BANK, CANADIAN
IMPERIAL BANK OF COMMERCE, BANK OF MONTREAL and ABC BANK**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL

FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date of January 15, 2024

issue: _____

Issued by _____

Local Registrar

Address of

court office: 330 University Ave., 9th Floor
Toronto ON M5G 1R7

TO: JOHN JOE and JANE DOE

AND TO: 14645065 CANADA INC.
6 Blakeley Road
North York, Ontario, M2N 2S2

AND TO: BANK OF NOVA SCOTIA
Scarborough Town CT, 300 Borough Dr,
Scarborough, ON M1P 4P5

AND TO: ROYAL BANK OF CANADA

AND TO: CANADIAN IMPERIAL BANK OF COMMERCE

AND TO: THE TORONTO-DOMINION BANK

AND TO: BANK OF MONTREAL

CLAIM

1. The plaintiff, City of Greater Sudbury, claims:
 - (a) An Order tracing the proceeds of an electronic funds transfer (“**EFT**”) in the amount of \$1,501,380.66 (the “**EFT Funds**”) made by the plaintiff on or about December 21, 2023 into an account held by persons unknown at Bank of Nova Scotia (“**BNS**”) at Transit No. 84962 and Account No. 0132411 (the “**BNS Account**”) to wherever they may be held, including but not limited to accounts held by persons unknown at BNS, Royal Bank of Canada (“**RBC**”), The Toronto-Dominion Bank (“**TD**”), Canadian Imperial Bank of Commerce (“**CIBC**”), Bank of Montreal (“**BMO**”), ABC Bank and any other financial institution;
 - (b) As against each of John Doe, Jane Doe, 14645065 Canada Inc., BNS and any other financial institutions into which the EFT Funds were deposited or to which the EFT Funds can be traced, an Order requiring payment of the EFT Funds or proceeds thereof to the plaintiff;
 - (c) An Order authorizing and directing BNS, RBC and any other financial institution into which the EFT Funds were deposited or into which the EFT Funds can be traced to:
 - (i) freeze the BNS Account and any other accounts into which the proceeds of the EFT Funds can be traced;

- (ii) disclose all information required to trace the EFT Funds, including but not limited to account opening information and documents, the identities of the recipients of the EFT Funds or proceeds thereof and where the EFT Funds or proceeds thereof are currently held; and
 - (iii) return the EFT Funds to the plaintiff.
- (d) as against the defendants, John Doe, Jane Doe, and other persons unknown, damages in the amount of \$1,501,380.66 for fraud, fraudulent misrepresentation, theft, conversion, conspiracy to defraud and unjust enrichment;
- (e) An Order declaring that each of the recipients of the EFT Funds, including the proceeds thereof, have been unjustly enriched by the receipt or benefit of funds which do not belong to them and an order requiring that the funds be disgorged to the plaintiff;
- (f) Pre-judgment and post-judgment interest pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (g) The plaintiff's costs on a full indemnity basis, together with all applicable taxes; and
- (h) Such further and other relief as to this Honourable Court may deem just.

The Parties

2. The plaintiff, City of Greater Sudbury (sometimes referred to as the “**City**”), is a city located in the Province of Ontario. The City is a client of RBC.

3. The defendants, John Doe and Jane Doe, are pseudonyms for persons unknown who defrauded the plaintiff and/or who received the proceeds of the fraud committed against the plaintiff, as hereinafter described (collectively, the “**Fraudsters**”).

4. The defendant, 14645065 Canada Inc., is a company incorporated under the *Canada Business Corporations Act* on January 3, 2023, with a registered office address at 6 Blakeley Road, North York, Ontario, M2N 2S2. The directors/officers of 14645065 Canada Inc. are reflected in the public record for this company as Pirinthapan Sathiyantham and Sai Pavan reddy Edla.

5. The defendant, BNS, is a chartered bank with branches across Canada. BNS has been named as a defendant in this proceeding for the purpose of freezing the EFT Funds, disclosing information and returning the EFT Funds to the plaintiff.

6. The defendants, RBC, TD, CIBC, and BMO (collectively with BNS and ABC Bank, the “**Banks**”) are chartered banks with branches across Canada. The defendant, ABC Bank, is a pseudonym for any other financial institution that may have received proceeds of the fraud described here.

7. The Banks and ABC Bank have been named as defendants in these proceedings for the purpose of freezing the EFT Funds, disclosing information, enabling the plaintiff to

trace the EFT Funds and obtaining judgment against the Banks directing them to pay to the plaintiff the sum of \$1,501,380.66 plus accrued interest thereon or any part thereof which can be traced to accounts held at the Banks.

8. Each of the Banks is subject to the provisions of the *Bank Act*, S.C. 1991, c. 45, as amended (the “**Bank Act**”).

The Fraud

9. On or about August 17, 2022, the City entered into a Design-Build Stipulated Price Contract (the “**Contract**”) with Nomodic Modular Structures Ltd. (“**Nomodic**”) for the construction of affordable modular rental housing in the City (the “**Project**”).

10. On October 6, 2023, Nomodic was adjudged bankrupt.

11. By an agreement dated November 10, 2023, the Contract was assigned to 12466546 Canada Inc. D.B.A. Flex Modular (referred to herein as “**Flex Modular**”).

12. Flex Modular is a company incorporated under the *Canada Business Corporations Act* on November 3, 2020. Flex Modular specializes in modular construction using prefabricated components. Flex Modular’s website address is www.flexmodular.ca.

13. Timothy Terry Lawton (“**Lawton**”) is a director of Flex Modular.

14. Arthur Jaworowski (“**Jaworowski**”) is a senior project manager at Flex Modular.

15. On a date or dates unknown to the plaintiff, persons unknown (hereinafter collectively referred to as the “**Fraudsters**”):

- (a) Opened the BNS Account; and
- (b) Infiltrated the network and email accounts of Flex Modular, including in particular the email account of Jaworowski, by unknown means.

16. On December 6, 2023 at 3:14 PM, Jaworowski sent an email to a senior project manager with the City, attaching Revised Draw PC 14 for the Project. The email was copied, among others, to Lawton.

17. On December 7, 2023 at 9:37 AM, the senior project manager responded to Jaworowski with a number of questions and requests, including advising of the documentation required for the draw request, advising that Flex Module was not yet set up for EFT and advising of the individual at the City to whom the documentation should be submitted.

18. On December 7, 2023 at 10:45 AM, the City sent an email to Jaworowski setting out the information required for the draw request and enclosing the City's EFT form to be able to set up direct deposit (the "**EFT Form**").

19. On December 7, 2023 at 2:04 PM, Jaworowski sent the following documents to the City in support of the draw request:

- (a) Insurance Certificate
- (b) WSIB Clearance Certificate
- (c) Progress Claim

- (d) A Word document on Flex Modular's letterhead entitled "FLEX WIRE EFT INFO" (the "**EFT Instructions**") reflecting the following bank account information at RBC:

Name of Account:	12466546 CANADA INC
Acc No:	1006998
Transit No:	03502
Bank Code:	003
Swift Code:	ROYCCAT2

- (e) EFT Form reflecting the same account information, signed by Jaworowski and John Sigismondo
- (f) Excerpt from an RBC Business Account Statement confirming the account information.

20. Jaworowski's email was copied to Lawton, other City representatives and Jhuliana Manuele, an employee of Flex Modular.

21. The City confirmed receipt of the email on December 7, 2023 at 3:02 PM.

22. On or before December 8, 2023, the Fraudsters infiltrated Jaworoski's email account.

23. On December 8, 2023 at 8:17 AM, the Fraudsters, impersonating Jaworoski and using his real email address, arthur@flexmodular.ca, sent an email to the City stating:

So sorry for the confusion, but our accounting department just confirmed we changed our bank recently from RBC to ScotiaBank which I have re-attached the correct information for the EFT along with the requested documents for your reference.

Please can you confirm receipt and have it updated as soon as possible. Also, can we get an expected time frame for the payment ?

Please let me know if you need anything else.

24. The email included the entire legitimate email chain referred to above and included all of the same documents previously submitted by Jaworoski, except that the RBC Business Account Statement was not included and the EFT Form and EFT Instructions were changed to reflect the following bank account information:

Name of Account:	14645065 CANADA INC
Acc No:	0132411
Transit No:	84962
Bank Code:	002
Swift Code:	NOSCCATT
Bank Address:	Scarborough Town CT, 300 Borough Dr, Scarborough, ON M1P 4P5

25. Bank Code 002 refers to BNS.

26. On December 8, 2023 at 8:41 AM, the City submitted the revised information to the City's Accounts Payable group.

27. On December 8, 2023 at 9:07 AM, the City's Accounts Payable Lead, submitted the information to the City's Accounts Payable/Accounts Receivable set-up group.

28. On December 8, 2023 at 9:56 AM, the City sent an email to Jaworowski advising as follows:

Hi there,

Thank you for sending in your banking information

I have noticed that the 14645065 Canada Inc on the EFT form doesn't match the 12466546 Canada Inc on your invoice.

It also doesn't match on the Wire EFT Info either. The HST number matches 12466546 Canada Inc.

Could you please fix the EFT to have the correct Supplier name on it and the o/a should have the full name Flex Modular Inc.

Please also sign and date in Section C of the EFT form.

We also require a bank document that has 12466546 Canada Inc o/a Flex Modular Inc on it with the correct banking information on it.

If you do not have a bank document, you would have to get the bank to stamp and initial in Section B2

Please send back to this email address.

29. The Fraudsters intercepted this email. On December 8, 2023 at 11:33 AM, the Fraudsters, posing as Jaworowski, responded as follows:

Pardon the confusion as our accounting is going through a heavy workload due to the end of the year account balancing and audit. Moving forward, please find the corrected information for your reference and kindly confirm if they're accurate and will suffice for your request.

Please let me know if you need anything else.

30. Attached to this email were an amended EFT Form showing 12466546 Canada Inc o/a Flex and amended EFT Instructions showing the name of the BNS Account as

12466546 Canada Inc. In addition, the Fraudsters attached a purported excerpt from a Scotiabank Business Account Statement reflecting 12466546 Canada Inc. as owner of the BNS Account.

31. On December 8, 2023 at 12:23 PM, the City sent a further email to Jaworowski, with the following requests:

Thank you for the updated information.

Sorry to bug you again,

For the Supplier Legal Name – can you add Modular Inc after the word Flex as this is what is on your invoice and on your Wire info.

Also, on you Wire info, the number 14645065 is still on there. It was corrected under Name of Account, but not changed above that.

Do you have a bank document from the bank that has 12466546 Canada Inc o/a Flex Modular Inc on it?

32. Again, the Fraudsters intercepted this email. On December 8, 2023 at 12:42 PM, the Fraudsters, posing as Jaworowski, sent an email to the City as follows:

Hi Darlene

Sorry once again, please find attached the correct EFT Form and the EFT/Wire instructions for your reference.

I have requested additional documents from our bank rep, and will send them as soon as I receive them but can we proceed with this for now ?

Please let me know if you need anything else.

33. Attached to this email was a further amended EFT Form and further amended EFT Instructions reflecting: “12466546 Canada Inc o/a Flex Modular Inc.”

34. On December 8, 2023 at 2:17 PM, the City responded as follows:

Hi Arthur,

Thank you for the updated info.

I will set you up as a supplier in our system, but we will require the bank document before setting up the payment.

Thank you so much.

Have a great day!

35. Again, the Fraudsters intercepted this email. On Monday, December 11, 2023 at 9:59 AM, the Fraudsters, posing as Jaworowski, sent the following email to the City:

Please find attached the bank document for your reference (Bank Letterhead) and confirm if we're good to go.

Also Sarah, please find attached the revised invoice from payment 14 to 13 for your reference as requested.

Please let me know if you need anything else.

We look forward to receiving payment !

36. Attached to this email was an updated Progress Claim and invoice changing the draw request to draw #13 and a letter on the letterhead of BNS from Vicki Arciero, Client Services Officer, Scotia Banking Centre, purporting to confirm the banking details for Flex Modular at the BNS Account.

37. In reliance on all of this information, the City set up the EFT for Flex Modular using the BNS Account.

38. On December 21, 2023, the City processed an EFT payment in the amount of \$1,501,380.66 from its account at RBC to the BNS Account, believing that it was paying Flex Modular for its invoice for services in respect of the Project.

39. On or about December 28, 2023, the City learned that Flex Modular did not receive the EFT Funds. Upon further investigation by the City, RBC and BNS, the City discovered that it was a victim of fraud and that the BNS Account did not belong to Flex Modular.

40. Following discovery and notification of the fraud, the City has been advised that the BNS Account has been temporarily frozen, pending legal proceedings by the City to trace and recover the EFT Funds.

41. The plaintiff pleads that John Doe, Jane Doe, 14645065 Canada Inc. and other persons unknown have no legal entitlement to the EFT Funds. John Doe, Jane Doe, 14645065 Canada Inc. and any other recipients of the EFT Funds have been unjustly enriched by the deposit of the EFT Funds to the BNS Account.

42. The plaintiff pleads that the Fraudsters, including John Doe, Jane Doe and other persons whose identities are unknown, conspired to defraud the City. Particulars of the fraud and conspiracy, to the extent they are currently known to the City, include:

- (a) They opened the BNS Account at the Scarborough Town Centre in Toronto, Ontario;

- (b) They infiltrated the network and email accounts of Flex Modular and one or more of its employees and obtained confidential information about the Project;
- (c) They impersonated employees of Flex Modular, and in particular Jaworowski, in communicating with the City;
- (d) They intercepted emails from the City to Flex Modular seeking further information and verification of the instructions and responded to such emails, posing as Jaworowski;
- (e) They created fraudulent and forged documents, including the fraudulent and forged EFT Forms, Information Forms, Scotiabank Business Account Statement and letter from BNS;
- (f) They created and provided the fraudulent and forged documents to the City to induce the City to set up the EFT using the BNS Account and to send the EFT funds to the BNS Account; and
- (g) They fraudulently induced the City to transfer \$1,501,380.66 to the BNS Account.

Claim Against BNS and the Banks

43. The plaintiff seeks an order authorizing and directing BNS, RBC and any other Banks with knowledge of the EFT Funds to disclose information required to trace the

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proceeds of the EFT Funds, to freeze the proceeds of the EFT Funds and to return the EFT Funds to the City.

44. With respect to the claim against BNS and the other Banks, the plaintiff pleads and relies upon Section 437(2) of the Bank Act.

Date: January 15, 2024

Fogler, Rubinoff LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Catherine Francis (LSO# 26900N)
cfrancis@foglers.com
Tel: 416.941.8861

Lawyers for the Plaintiff

B E T W E E N

CITY OF GREATER SUDBURY

-and-

JOHN DOE, et al.

Plaintiff

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

STATEMENT OF CLAIM

Fogler, Rubinoff LLP
Lawyers
77 King Street West
Suite 3000, P.O. Box 95
TD Centre North Tower
Toronto, ON M5K 1G8

Catherine Francis (LSO# 26900N)
cfrancis@foglers.com
Tel: 416.941.8861

Lawyers for the Plaintiff