

Schedule "A"

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CREDIT UNION CENTRAL OF ONTARIO LIMITED

Plaintiff

- and -

CARREL & PARTNERS LLP

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT

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 \$100.00 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 \$100.00 for costs and have the costs assessed by the court.

Issued: May , 2008

Issued by: _____
Local Registrar

Address of
court office:

393 University Avenue
10th Floor
Toronto, Ontario
M5G 1E6

TO: **CARREL & PARTNERS LLP**
1136 Alloy Drive, Suite 1400
Thunder Bay, ON
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Attn: Roderick W. Johansen
Tel: 807-346-3000
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THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN RULE 76 OF THE RULES OF CIVIL PROCEDURE.

C L A I M

1. The plaintiff, Credit Union Central of Ontario Limited ("**Central**"), in its capacities as a secured creditor of Fibrattech Manufacturing Inc. ("**Fibrattech**") and as an assignee of certain rights of Grant Thornton Limited, trustee in bankruptcy of Fibrattech, claims as against the defendant, Carrel & Partners LLP ("**C&P**"):
 - (a) a declaration that certain of the monies paid by Fibrattech to C&P on or about October 4, 2007 and subsequently applied by C&P against the Accounts (hereinafter defined) constitutes a preference contrary to section 95 of the *Bankruptcy and Insolvency Act* (the "**BIA**") and is void as against Central;
 - (b) if necessary, an accounting and/or taxation of the Accounts in order to determine the sum in (a) above;
 - (c) an Order directing and requiring C&P to remit the sum in (a) above plus interest since November 22, 2007;
 - (d) pre-judgment and post-judgment interest from November 22, 2007 at the rate(s) provided by the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (e) costs of the within action on a solicitor and client basis; and
 - (f) such further and other relief as to this Honourable Court may deem just.

The Parties

2. Central is a corporation in the business of providing financial services, including the lending of money, pursuant to the *Credit Union and Caisse Populaires Act* (Ontario).
3. C&P is a limited partnership carrying on the practice of law in the City of Thunder Bay and acted as the solicitors for Fibrattech Manufacturing Inc., a bankrupt ("**Fibrattech**").

Financing to Fibrattech

4. By letters dated March 9 and September 23, 2005 and April 11, 2007 (collectively, the "**Commitment Letters**"), Central, among others (collectively, the "**Lenders**"), agreed to provide financing to Fibrattech and took certain security in respect thereof.

The Default and Demand

5. Fibrattech defaulted in its obligations to the Lenders and Central under the terms of the Commitment Letters.
6. By letter dated October 4, 2007 (the "**Demand**"), Central demanded repayment of the outstanding indebtedness by October 15, 2007 and notified Fibrattech of its intention to enforce its security as required by section 244 of the BIA.
7. On October 9, 2007, Fibrattech filed a notice of intention to make a proposal under the BIA (the "**NOI**") and named Grant Thornton Limited as Proposal Trustee.
8. On or about October 22, 2002, Central learned that coincidental with the Demand Fibrattech paid \$118,900 to C&P.
9. On or about October 25, 2007, C&P agreed to return \$55,000 to Grant Thornton Limited with the balance of the payment (namely, \$63,900) to be used, to the extent

required, to provide continuing service to Fibratech.

10. Fibratech was deemed to have made an assignment in bankruptcy on November 9, 2007 (as a proposal had not been filed and an extension of time had not been sought) and Grant Thornton Limited was appointed Trustee in Bankruptcy (the “**Trustee**”).
11. On or about January 23, 2008, the Trustee provided Central with a copy of the following accounts rendered by C&P to Fibratech totaling \$70,753.78 along with the billing reports referable thereto (collectively, the “**Accounts**”):

Date	Amount
October 23, 2007	\$8,558.86
October 24, 2007	\$46,107.08
November 22, 2007	\$16,087.84

12. The Accounts indicate that:
 - (a) C&P charged a fee premium totalling \$22,243.50, exclusive of G.S.T;
 - (b) very few of the docket entries correspond to the time period immediately prior to the NOI and ending with the Bankruptcy;
 - (c) very few of the docket entries relate to the NOI and the development of a proposal; and
 - (d) the amount referable to “continuing service” to Fibratech is far less than \$63,9000.
13. C&P applied the \$63,900 against the Accounts.

14. At the first Meeting of Inspectors on March 7, 2008, the inspectors of Fibrattech passed a resolution authorizing the Trustee to release the cause of action against C&P to Central (the "**Resolution**").
15. By letter dated March 27, 2007, Central made demand on C&P for the return of certain of the funds C&P applied against the Accounts.
16. Further to an order of the Bankruptcy Court made ■, 2008, the Trustee executed a written assignment further to which the Trustee assigned to Central all its right, title and interest in the action relating to C&P applying the \$63,900 against the Accounts.
17. By virtue of the foregoing, C&P's application of certain of the \$63,900 constitutes a preference (the "**Preference**") which is void against Central.
18. By virtue of the foregoing, and the operation of the BIA and/or the *Personal Property Security Act* (Ontario), the amount of the Preference was and is the property of Central.
19. To date no amount has been received by Central from C&P in connection with the Preference.

The Plaintiff proposes that this action be tried at Toronto.

May ■, 2008

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