

2. **THIS COURT ORDERS** that Central be authorized, pursuant to section 38 of the *Bankruptcy and Insolvency Act*, to take proceedings forthwith in its own name and at its own expense and risk, against any party to set aside or review or obtain judgment for damages arising from payments by the Bankrupt to Carrel & Partners LLP ("**C&P**") on or about October 4, 2007 totalling approximately \$118,900 (the "**Proceedings**") including, without limitation, an action substantially in the form attached hereto as **Schedule "A"** (the "**Action**") and conducting examinations pursuant to section 163(1) of the *Bankruptcy and Insolvency Act*.

3. **THIS COURT ORDERS AND DIRECTS** the Trustee to:

- a. execute an assignment substantially in the form appended hereto as **Schedule "B"** assigning all its right, title and interest in the Proceedings to Central, for the benefit of Central and such other creditors as may join in the Proceedings; and,
- b. transfer and make available to Central and such other creditors as may join in the Proceedings all books and documents in support thereof or relevant thereto.

4. **THIS COURT ORDERS AND DIRECTS** that the Trustee shall provide Central with a list of the names and addresses of all creditors in this estate (the "**List of Creditors**") within two days of the date of this Order.

5. **THIS COURT ORDERS** that notice of the making of this Order upon the other creditors of the Bankrupt (the "**Notice**") shall be deemed to be sufficiently served by:

- a. mailing, within 7 days of the date of this order, a letter substantially in the form appended hereto as **Schedule "C"** (the "**Notice Letter**") in a prepaid addressed envelope by regular registered mail to each of the creditors

appearing on the List of Creditors at the address as shown on the List of Creditors; and,

- b. posting a copy of this order, the motion record filed by Central in support of this motion and the text of s.38 of the BIA at www.gowlings.com/restructuring/fibratech for a minimum of 22 days from the Date of Service (as defined below).

6. **THIS COURT ORDERS** that service of the Notice shall be deemed to be made on the date on which the Notice Letter is mailed in the manner provided above (the “**Date of Service**”).

7. **THIS COURT ORDERS** that, in addition to any dividends to which they may be entitled out of the Bankrupt’s other assets, all benefits derived from the Proceedings, together with any costs payable by the defendants to the Proceedings (the “**Benefits of the Proceedings**”), shall vest exclusively in Central and in such other creditors of the Bankrupt who, within fourteen (14) days of the Date of Service, notify Central’s solicitors of their agreement to contribute to the expense and risk of this motion and the Proceedings, *pro rata* according to the amount of their respective claims (including, without limitation and unless otherwise ordered by this court, any monetary retainer required by Central’s counsel), in writing, by fax, directed as follows:

Gowling Lafleur Henderson LLP
Barristers and Solicitors
1 First Canadian Place, Suite 1600
100 King Street West
Toronto, Ontario M5X 1G5

Attention: Heath Whiteley
Fax: 416-863-3403

and such vesting shall be free and clear of any and all of the estates, titles, rights, benefits, interests, claims, liens, hypothecs, security interests, trusts or deemed trusts

(whether statutory or otherwise), assignments, executions, judgments, options, agreements, rights of distress, legal, equitable or contractual set-offs, options, adverse claims, levies, agreements, taxes, disputes, debts, charges, mortgages, encumbrances, claims provable or any other rights or claims howsoever arising, whether contractual, statutory, by operation of law or otherwise, whether or not they have attached or been perfected, registered or filed, whether secured or unsecured or otherwise, by or of any and all other persons or entities of any kind whatsoever, including, without limitation, all individuals, firms, corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and administrative bodies, agencies, authorities and tribunals and all other natural persons or corporations, whether acting in their capacity as principals or as agents, trustees, executors, administrators or other legal representatives, provided that:

- (a) the Benefits of the Proceedings shall be used first to pay or reimburse the actual costs of bringing this Motion and then the actual costs of bringing the Proceedings;
- (b) that the total amount recovered by Central and such others as may join with it in the Action shall not exceed the amount of their respective claims in this bankruptcy together with the costs of bringing this Motion and the Proceedings; and,
- (c) nothing in this order or any action taken pursuant to this order shall be determinative of the standing of any party other than Central as a creditor and, in the event that the claim of a party which has elected to participate in the Proceedings is subsequently determined to be invalid, then that party shall only be entitled to have their costs of the Proceedings reimbursed out of the Benefit of the Proceedings and, for greater certainty, they shall not be entitled to any other share of the Benefit of the Proceedings.

8. **THIS COURT ORDERS** that if any creditor or creditors fail to participate in the Proceedings as provided for in paragraph 7 within fourteen (14) days of the Date of Service, they shall thereafter be excluded from participating in the Benefits of the Proceedings.

9. **THIS COURT ORDERS** that in the event that there is a surplus after paying or reimbursing the costs of bringing this Motion and the Proceedings and the claims of and of such other creditors, if any, entitled to participate in the Proceedings, according to the priority of the same, respectively, as determined by paragraph 7 hereof, such surplus shall be paid to the Trustee in augmentation of the Bankrupt's estate.



Judge or Registrar

TOR_LAW\6867020\1

ENTRE 0 BOOK
INSUIT 0 REGISTRAR _____
DATE June 19 2008
No. 540 PER
No. POUR

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: June , 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
P7B 6M9

Attn: Roderick W. Johansen
Tel: 807-346-3000
Fax: 807-346-3600

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, 2007, 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 Fibrattech.

10. Fibrattech 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 Fibrattech 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 Fibrattech 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 June 13, 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.

June ■, 2008

GOWLING LAFLEUR HENDERSON LLP

Barristers and Solicitors
Suite 1600, First Canadian Place
100 King Street West
Toronto, Ontario M5X 1G5

Heath P.L. Whiteley

Tel: (416) 862-4400
Fax: (416) 862-7661

Solicitors for the Plaintiff

Schedule "B"
ASSIGNMENT

B E T W E E N:

GRANT THORNTON LIMITED, Trustee of the Estate of
FIBRATECH MANUFACTURING INC., a bankrupt
(hereinafter referred to as the "**Assignor**")

- and -

CREDIT UNION CENTRAL OF ONTARIO LIMITED
(hereinafter referred to as the "**Assignee**")

WHEREAS:

- A. the Assignor is the trustee of the Estate of Fibrattech Manufacturing Inc. (the "**Bankrupt**"), a bankrupt;
- B. the Assignee has requested that the Assignor take proceedings to set aside or obtain a judgment for damages resulting from payments by the Bankrupt to Carrel & Partners LLP on or about October 4, 2007 totalling approximately \$118,900 (the "**Transactions**");
- C. the Assignor has refused to take such proceedings by reason of lack of funds in the bankrupt estate;
- D. by Order of the Honourable Justice ● dated June 13, 2008 (the "**Order**"), the Assignee, pursuant to section 38 of the *Bankruptcy and Insolvency Act*, R.S.C.

1985, c. B-3, as amended (the "**BIA**") was authorized to commence an action in its own name and at its own expense and risk to set aside or obtain judgment for damages in respect of the Transactions and for other related relief (the "**Proceedings**") including, without limitation, proceedings pursuant to sections 91, 95 and 100 of the BIA, the *Fraudulent Conveyance Act*, R.S.O. 1990 C. F. 29, the *Assignments and Preferences Act*, R.S.O. 1990, c. A.33, and the Bankrupt's incorporating legislation; and,

- E. the Order further directed the Assignor to execute this assignment assigning all its right, title and interest in the subject matter of the Proceedings to the Assignee;

NOW THIS ASSIGNMENT WITNESSES that, in consideration of the premises and pursuant to the directions contained in the said Order,

- (1) The Assignor does hereby assign absolutely to the Assignee and such other creditors as may be entitled to share pursuant to the provisions in the Order, any and all estate, right, title, interest, claim, demand and cause of action, both at law and in equity, including any document in support thereof, which the Assignor has in relation to the Transactions, including, without limitation, the Proceedings, without recourse of any kind whatsoever to the Assignor.
- (2) The Assignor represents and warrants to the Assignee that it has not previously pledged, assigned or encumbered the Proceedings.
- (3) Subject to the representation and warranty in paragraph 2 hereof, the Assignor makes no representation or warranty of any kind whatsoever with respect to the Proceedings. Without limitation to the foregoing, the Assignor makes no representation or warranty of any kind whatsoever with respect to the validity, enforceability, existence, assignability, collectability, or value of the Proceedings.
- (4) Until such time as the Assignor is discharged as trustee of the Estate of the Bankrupt, the Assignor agrees to execute and deliver to the Assignee at the

Assignee's expense all such further documents and instruments as the Assignee may reasonably require, in furtherance hereof.

Dated at Thunder Bay, Ontario this day of June, 2008.

Grant Thornton Limited, in its capacity as
Trustee of the estate of Fibratex
Manufacturing Inc., a bankrupt

Per: _____
Russ Leroux



Schedule "C"

June ■, 2008

VIA REGISTERED MAIL

Suite 1600
1 First Canadian Place
100 King Street West
Toronto, Ontario
Canada M5X 1G5
Telephone (416) 862-7525
Facsimile (416) 862-7661
www.gowlings.com

Heath P.L. Whiteley
Direct (416) 862-4400
Direct Fax (416) 863-3403
Assistant (416) 369-6684

To: The Creditors of Fibrattech Manufacturing Inc.

Re: In the Matter of the Bankruptcy of Fibrattech Manufacturing Inc.

We are writing to notify you that on [date], 2008, the Ontario Superior Court of Justice (In Bankruptcy and Insolvency) made an order (the "**Order**") pursuant to section 38 of the *Bankruptcy and Insolvency Act* authorizing Credit Union Central of Ontario Limited ("**Central**"), a creditor of the Bankrupt, to bring proceedings to set aside or obtain a judgment for damages in respect of certain transactions (the "**Transactions**") completed by the Bankrupt (the "**Proceedings**"), in its own name and at its own expense and risk.

The Order provides, among other things, that all benefits derived from the Proceedings shall belong exclusively to Central **and to such other creditors who may within fourteen (14) days of the date of this letter provide notice of their agreement to contribute *pro rata* to the expenses and risks of the Proceedings, including any monetary retainer that we may require, which notice must be sent to us in writing, by fax, to the attention of the undersigned.**

A complete copy of the Order and the Motion Record filed with the Court by Central describing the Transactions and the Proceedings, may be found at:

www.gowlings.com/restructuring/fibrattech.

Should you wish to share in the costs, expenses and risks of the Proceedings in exchange for participation in any benefit thereof, please so indicate in writing in accordance with the terms of the Order. If you elect not to do so, you will be banned from any future participation in the Proceedings.

Yours very truly,

GOWLING LAFLEUR HENDERSON LLP

Heath P.L. Whiteley
HW:dn

TOR_LAW 6873128\1

CREDIT UNION CENTRAL OF ONTARIO LIMITED
Plaintiff

-and-

GRANT THORNTON LIMITED
Defendant

Court File No.: 21-1002518

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

ORDER

GOWLING LAFLEUR HENDERSON LLP

Barristers and Solicitors
Suite 1600, First Canadian Place
100 King Street West
Toronto, Ontario M5X 1G5

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Tel: (416) 862-4400
Fax: (416) 862-7661

Solicitors for the Plaintiff