

Squamish Joint Venture Group vs. Servus Credit Union

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Via E-Mail

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**To: Garth Warner, President/CEO
Darcy Peelar, Chief Credit Officer
Gail Stepanik-Keber, Chief Brand & Corporate Social Responsibility Officer**

RE: Squamish Joint Venture Group v. Servus Credit Union

The current legal challenges have been brought to my attention for my assessment of the issues and conduct of the stakeholders involved.

The mediation of December 16, 2014 has not yet resolved the issues concerning the court challenges between the Squamish Joint Venture Group and Servus Credit Union. The current efforts to date, continues to elicit further confusion about what was actually agreed to at the mediation. There continues to be significant legal fees generated by the legal representatives of the Squamish Joint Venture Group of investors (SQ JV Group) Burnet, Duckworth & Palmer, LLP (BDP) and Servus Credit Union Ltd. (Servus) legal team of Duncan & Craig, LLP.

It is clear that the mediation process was deeply flawed, non transparent and did not present a process that could address the current business case conflict between the two parties. The current lack of consensus and continued legal fees from both parties legal representatives have displayed through their actions (emails, meetings, court filings, etc.) that they do not possess the necessary conviction - experience, understanding, skills or abilities to deal with this particular business conflict.

Despite the four-year lapse of time, there continues to be thinly veiled personal animosities and hidden agendas from both sides of the conflict. This animosity (indicative of low emotional quotient), negatively affects all of the stakeholder's judgement(s), leading to an observed inability to look at the big picture business case between Servus and the Squamish JV Group, separate from each parties own self-interests and personal agendas, fueled by feelings of "moral injury" which manifests itself during meetings and in private conversations among the two parties and their legal representatives. The reason

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for the current impasse in attempts to settle the legal issues is this unwarranted negative group sub-culture that ultimately did not serve either party well in mediation.

Intervention and direction by Servus' Board of Directors is warranted, to resolve the issues and mitigate the risks of this conflict becoming public and continued (non-recoverable funds) legal costs.

Background

The initial notion to seek mediation as proposed by BDP on behalf of the SQ JV Group investors has been rebuffed by Servus over the last four years. With my intervention and subsequent *Executive Summary Corporate Liability Assessment Report*, and direct email contact with the Board Members of Servus Credit Union Ltd. over the last year, a mediation date was set for December 16, 2014 to avoid further legal challenges.

It was my understanding that both Servus and the Squamish JV Group of investors would seek to mediate the issues and seek an out of court global settlement to all matters associated with the Squamish JV Project and related business entities.

However, the agreement to mediate had a few caveats:

- i) That Angelo Mangatal, Member Servus Credit Union/Retired Public Servant, stand down: take no further action on the file, until mediation is explored;
- ii) That the mediation included a global settlement to all Squamish Project matters including the defamation case against Servus brought by Brian Ostrander.

The assertions made by BDP on behalf of the Squamish JV Group have merit in my opinion: in the context of Servus **acting in “bad faith”** and **not exercising “due diligence”** in effecting standard bank documents for the courts to rely on; to “secure” their loans and assign liability which is standard banking practice(s). Further evidence developed from existing court documents (for example the Larry Wurth case¹) reflect the issues identified in my *Executive Summary Corporate Liability Assessment*, including advising Servus that the financial picture has changed for the guarantors and there Servus will incur further legal costs to obtain and enforce any judgements, and many guarantors may not have the ability to pay.

In developing the Mediation strategy – it begs the question: What happened to the confidence that Servus had in the project and the project manager (Brian Ostrander)? How did such a lack of due diligence by Servus officials, in what is considered normal banking practice, go unnoticed by the management of Servus' organization? And if it was noticed – What was done to correct the lack of proper documentation on the guarantees(?); and what happened to the accepted business case that the completed project - as part of the Olympics, would be financially viable in the future, and an economic windfall for local industry and residents in the community?

¹ Citation: *Wurth v 1135096 Alberta Ltd.*, 2014 ABQB 520

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There is an overabundance of evidence from court documents and public reports (including newspaper articles) on what happened prior to and during the foreclosure action by Servus. This available public documentation when presented in ‘context’ may carry enough weight for a trial judge to rule in favor of the SQ JV Group of investors as the aggrieved party and assert that they are owed millions of dollars in lost revenue and investment due to Servus’ actions, lack of due diligence and acting in bad faith. The SQ JV Group at mediation – continued to argue that the guarantees are nil and void with BDP’s supporting legal arguments.

THE CLAIM AGAINST SERVUS

Sometime in July of 2010, Servus' counsel, Darren Bieganek, Duncan & Craig LLP, made a false and defamatory statement claiming that the developer of the Hotel, Brian Ostrander, was an un-discharged bankrupt. This statement was untrue. Mr. Ostrander had declared bankruptcy in the mid-1990s, but he had been discharged from bankruptcy for almost a decade. A simple bankruptcy and insolvency search of Mr. Ostrander’s credit profile provides court documentation of this fact (something that Servus was required to do before granting loans in the millions of dollars under the direction of Mr. Ostrander).

The defamatory statement was passed-on to some of Mr. Ostrander's investors in other projects, This false information instantly spread throughout Mr. Ostrander's business and personal contacts severely harming his reputation in the community and diminishing his ability to obtain investors and financing to mitigate losses and find future investors for projects.

Servus’ representatives should have verified the bankruptcy information - I therefore find it hard to believe that a simple credit check was not done before advancing loans of this amount. The credit check would not even have shown Brian Ostrander as a discharged bankrupt (as it was more than seven years after the discharge), in fact, the opposite would have been demonstrated - **his credit worthiness at the time of the granting of the credit and that he had the experience and credentials to lead in the project(s).**

The legal perspective put forth by Servus’ legal team about Mr. Ostrander’s lack of competence may have legal merit, however it should be rejected as the opposite perspective would carry more weight – **that Brian Ostrander was an expert and a viable project manager until he was defamed by Servus causing loss of investor confidence and the downfall of the project(s).** To assert anything else would not be true and does not help the case for a mediated settlement.

It is this type of theory statement above that exposes the veiled animosity that still exists towards Brian Ostrander, as once defamatory statements are made, it has a lasting effect whether true or not. Servus should be very concerned about their part in the defamation – in my opinion the defamation was calculated to use Mr. Ostrander as a scapegoat to deflect focus from the real culprit(s) for the downfall and inability to restructure and save the project; Servus Credit Union Ltd (foreclosure action and fire sale); the Contractors for the project (overbilling while leveraging the Olympic deadline for completion); and the unprecedented global economic downturn in the finance industry resulting in negative effects on availability of investment capital (for property development) in Canada and the United States.

A major contributing factor that led to the current business conflict is the initial assessments and optimism - independent projections of the potential financial windfall of the completed project - based on

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and anticipated positive financial effect that normally surrounds an Olympic project in the community. In the beginning of the project - the financial potential and strong economy contributed to the lack of due diligence by Servus for not correctly executing bank documents and the resulting confusion among investors about the process of the guarantees, it's meaning for each of them (individually and severally) of which Servus was the responsible party to effect correctly, in addition to the administrative requirements and explaining at the very least, the liability for signatories, within the financial governance (as the bank) for the project.

“The Olympics were a galvanizing force in B.C. for several years leading up to the 2010, but the long-term and economic impacts have been unclear.”² Unfortunately, the financial crisis of 2008/9 and fallout (2010/2012), occurred as the Squamish JV Project was still under construction - lower assessments and a business culture of object fear of loss of investment and in this case investors unfamiliar with global economics – and specifically, despite further resources available to investors and other stakeholders (Servus Credit Union, Provincial Utility providers and Contractors) there was no consensus to finish the project and stay the course until the financial crisis was over or at the very least, mitigate potential losses.

Servus’ part the foreclosure action relied on the fact that they already, to their mind, had personal guarantees from the investors to rely on. However, in this business case given the circumstances, and makeup of the SQ JV Group of investors, the personal guarantees should have provided enough of a safety net to allow Servus to consider options to refinance, supporting the remaining investors and minimize losses to the local industry and community.

A poignant example that I am familiar with during the financial crisis, is the Calgary, AB Deerfoot Meadows Project, which was constructed in the same economic hard times as Squamish Hotel to a tune of \$400M. Similar issues affected the Calgary project, however the difference was that the project continued to be fully supported despite the financial crisis, resulting in the realization of projected profits, albeit, over a longer timeline, 3-5 years for return on investment (ROI).

Another problematic issue to the business case was the lack of sophistication of the SQ JV Group investors and Servus to recognize that the expertise that was needed to “fix” the project was in fact doing that (the project manager) - the lack of support and libel by Servus and the area contractors about Brian Ostrander (project Manager) at this critical juncture - was the “straw that broke the camel’s back” and ultimately triggered the financial business losses to all involved stakeholders.

Further to Brian Ostrander’s defamation action, is the fact that Servus sought judgment against the Ostrander’s (Brian and his soon to be ex-wife Angela Ostrander) personally for Servus’ own lack of due diligence. Servus has filed court documents claiming fraud, attacking the family trust, claiming funds from the sale of the personal residence (which were spent to support the project) and initiating fruitless “financial and asset tracing actions” to lend credence to their unsupported claims.

ALL OF THE COURT CHALLENGES HAVE ONLY PROVED THAT THE OSTRANDERS AND SPECIFICALLY BRIAN OSTRANDER (AS PROJECT MANAGER) DID NOT ENRICH HIMSELF AT THE EXPENSE OF HIS PARTNERS OR SERVUS OR ANY OTHER STAKEHOLDER.

² Vancouver Olympics worth the \$7-billion price tag, study says, Mark Hume, The Globe and Mail: Thurs, Oct. 24, 2013

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The facts demonstrate that the Ostrander's put every dollar they had into supporting the Hotel projects including the Squamish Joint Venture. However, SERVUS' unwarranted actions against the Ostrander's were a major contributor to the eventual breakup of the business SQ JV partnerships and Mr. Ostrander's marriage. The mere fact of making the spurious allegations ruined Brian Ostrander's standing with his partners, their spouses and his own spouse, as well as destroying any opportunity to build consensus to save the project. The negative effects of Servus' defamation didn't stop there as Brian Ostrander's ability to continue in the hospitality industry (his chosen profession for 30+ years) was effectively destroyed for a number of years.

Further evidence of Servus' unwarranted actions against the Ostrander's is their inability to follow simple administrative legal processes. For example - they simply failed to serve Angela Ostrander properly. This should have been a simple administrative measure and is a requirement for courts to proceed. Given the current facts of the case there has been no Summary Judgment against the Ostrander's that could be affected and the matters have to be determined by a trial Judge. The court facts allude to this but does not go far enough – if, despite the inadequate processing of documents – **the intent was to guarantee the loans, then we must consider the intent was given based on the expectation that Servus would “act in good faith” and treat the investment group as business partners.** Servus' website advocates that they are more than a bank – their Corporate Social Responsibility (CSR) is stated in detail on their website and corresponding documents. At the very least, **they acted in a vicariously negligent manner in performance of their responsibilities, giving rise to legal (civil court) redress.** This fact was essential to the mediation issues as well, for Brian Ostrander.

Servus' assertion **that there was “co-mingling and/or transfer of funds” is not noteworthy** in the context of the mediation and given the time that has already passed – this becomes a non-issue. To reiterate the above - it has already been determined that the project manager invested and reinvested every dime available to him both professionally and personally to bring all of the projects to a conclusion with minimal losses to all the investors. His personal and business worth has been litigated against by Servus Credit Union; Contractors; and former Business Partners; and despite damaging false assertions - no criminal intent; financial malfeasance (illegal transfers); fraud; self-interested actions or culpability can be attributed to the actions taken four years ago by the project manager.

IN ANY EVENT THERE IS NO MONEY AVAILABLE FROM THE PROJECT MANAGER (Brian Ostrander) as his personal and business net worth were decimated. This is a FACT that Servus Credit Union; litigating contractors and even SOME former business partners and even Canada Revenue Agency (CRA) now acknowledge. However, such acknowledgements are not necessary, the fact is apparent, that he has no ability to pay any guarantees or legal fees.

While what happened was not the “best practice” in business – given the unfortunate fact that the timing of the Olympics is carved in stone, the contractors using this as leverage to increase billing by 30% to 50% of their estimates as the global downturn and financial crisis in Canada affected this project and others – confirmed by internal billings (receivership court documents) and other public source documents is the fact that all reasonable actions to minimize the losses to the projects were taken by the project manager.

"...Why we kept going in Fort Sask.," he added, "was because we knew they were in financial problems and they had to get the (Squamish) hotel built for the Olympics. So we said, 'As long as you keep us current in Squamish, we'll give you some slack in Fort Sask.'"

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...Meanwhile, two sources have confirmed with The Record there is a group or individual that has submitted an offer to buy the property. Neither the offer price nor sale conditions were available at press time.

Leroux said his company became aware of the potential sale through their lawyer. The closing date for the conditions is Aug. 9, he added.

"What they're doing is they're trying to sell it and, obviously, they can't sell it with the liens on it," Leroux said. "Hopefully, the liens will be taken care of once the property is sold."³

It can be accepted that Servus was fully aware about the financial situation of all of the Ostrander projects – their inter-relatedness and financial connectedness as Servus was a part of all of the business projects and mortgager of Brian Ostrander’s personal residence. To date Servus’ internal notes on issues of arrears on the projects, their policies and guidelines have not been provided. At the time of the foreclosure - it may have been necessary to be stingy with information to avoid investor and other stakeholder panic – this is evident that this worked for three of the projects and would have worked for Squamish had the project manager been allowed to use his management expertise to minimize losses to all - including Servus. Servus as banker were also aware of the issues due to their relationship with the Project Manager and the impending financial crisis of 2008 and its lingering negative economic impact. As the financial crisis intensified so too did investor stress which was exacerbated by Servus’ actions and defamation.

What cannot be held as reasonable is Servus’ actions during this time: after doing its due diligence and formulating their lending strategy for the SQ JV Project (Hotel Build); which was done with full knowledge of the interconnectedness of the other projects that they either fully-funded or co-funded (Squamish, Fort Saskatchewan, Strathmore, etc.); including personal loans to the project manager for his principal residence and other capital expenses such as vehicles and property improvements; it has been demonstrated in the courts⁴ that the project manager did not attain any financial gain or advantage what-so-ever from the transfer or co-mingling of funds.

The SQ JV Group of investors did not show the maturity necessary to support the project despite having the funds to do so at that time. Servus denied the project manager and investors opportunities to restructure and refinance or allow in this business case, the project manager to seek alternative financing, thus lessening any losses to Servus. **Instead Servus tried to cover up their lack of due diligence in effecting even the simplest of mortgage documents, attachments or guarantees! This is a basic responsibility as a bank to protect their shareholders’ interests. Note that the SQ JV Group are also members of Servus Credit Union and at the very least expected that Servus (their Bank & business partner) would act in “good faith.” To date Servus officials still have not provided their corporate governance documents with respect to the lending in this particular case.**

If in fact Servus’ documents weren’t effected properly – despite Servus’ lawyers’ assertion that the intent of the documents is the key factor in this case? to state the issue in this manner is an attempt to give Servus’ lack of due diligence in preparing the documentation - force in court. Servus contends that the investors knew that they were guaranteeing investments amounts individually and severally. If that can be the basis for the court challenge - then we may also look at the project manager (Brian Ostrander) – there were inter-company transfers (co-mingling of funds) that took place – what was the intent? There

³ Conal MacMillan/Record Staff writer; Hwy 21 hotel in legal trouble, set to be sold, Thursday, August 5, 2010

⁴ Citation: *Wurth v 1135096 Alberta Ltd.*, 2014 ABQB 520

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was no intent to defraud or mislead – it was Brian’s responsibility to ensure that he exhausted all avenues to minimize losses to all investors (including Servus) and ensure projects could be sold for the best possible price. **DID SERVUS DO THE SAME? The answer is NO as demonstrated by the court documents and my Corporate Liability Assessment.**

With respect to the quality of the legal advice given, amount of legal fees expended and the lack of any move to mitigate continued legal expenses, I believe that there has been unethical collusion between BDP (SQ JV Lawyers) and Duncan Craig (Servus’ Lawyers). This lack of professional standards bears scrutiny and should be explored in the context of a formal complaint to the appropriate professional ethical standards committee for review and investigation.

The legal representatives, BDP and Duncan Craig continue to cite legalese which contradicts the facts of the case and subverts any possibility of resolving the conflict through mediation. Both firms use of informal means through individual discussions with investor group members, not considering information of a material nature and failure to provide advice in a transparent manner has caused the current confusion and frustrates attempts to resolve the dispute while significantly increasing their billable hours on the file.

The SQ JV Group and Brian Ostrander continue to assert that his libel suit and the unwarranted actions of Servus and greedy contractors (who tried to extort more money from already agreed upon pricing; using the Olympics as their leverage), is key to the investors being able to argue that they are the AGRIEVED party and not Servus in this business case. Specifically, Servus intentionally ruined the business relationships with false disclosures and malicious intent or at the very least acted in a vicariously negligent manner in ignoring recommendations to not foreclose on the Hotel when it is obvious that what was needed was their financial and moral support of the project manager and the SQ JV Group of investors; which would have ensured payback and avoided significant losses to the small construction business community and other community members in Squamish.

Conclusion

The strength of **the business case against Servus** is in the sequence of actions taken by Servus to facilitate the foreclosure as represented in public court documents including newspaper articles, and internal documents. Under this type of comprehensive assessment - reasonable assumptions based on a preponderance of probabilities; documented evidence about the economic climate at the time; and the demonstrated intent of the parties in conflict given their respective mandates and operational processes – reveal the liability of each stakeholder.

If unable to settle matters with the involvement of the legal representatives, each party to the conflict must pick representatives who are **not lawyers to mediate the issues on their behalf**. The representatives chosen by each group should adhere to the values and ethics of each of their respective organizations; accept accountability for their actions and resolve the issues equitably; that will set the tone, nature and context for resolution of the conflict.

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