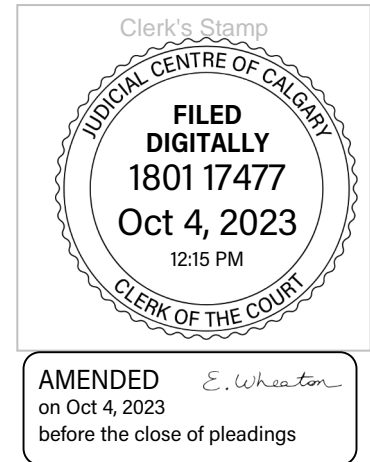


COURT FILE NO.: 1801-17477
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF GARFIELD GANONG



DEFENDANTS NORTHWYND RESORT PROPERTIES LTD., PAUL HAMILTON, KEN BATEMAN, JOHN ANDERSEN, RON FERBER, NORTHMONT LIMITED PARTNERSHIP, NORTHMONT RESORT PROPERTIES LTD., 2008164 ALBERTA LTD., KIRK WANKEL, JOHN/JANE DOE 1 THROUGH 10, XYZ CORPORATION 1 THROUGH 10, and ABC PARTNERSHIP OR LIMITED PARTNERSHIP 1 THROUGH 10.

DOCUMENT **AMENDED STATEMENT OF DEFENCE**

PARTY FILING THIS DOCUMENT NORTHWYND RESORT PROPERTIES LTD., PAUL HAMILTON, KEN BATEMAN, JOHN ANDERSEN, RON FERBER, NORTHMONT LIMITED PARTNERSHIP, NORTHMONT RESORT PROPERTIES LTD. AND KIRK WANKEL (IN HIS CAPACITY AS CEO/CFO AND DIRECTOR OF NORTHWYND RESORT PROPERTIES LTD. AND DIRECTOR OF NORTHMONT LP.)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Gowling WLG (Canada) LLP**
1600, 421 – 7th Avenue S.W.
Calgary, AB T2P 4K9
Telephone (403) 298-1000
Facsimile (403) 263-9193
File No. A160933

Attention: David C. Bishop/Ricki T. Johnston

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. Except where expressly admitted herein, the Defendants Northwynd Resort Properties Ltd. ("**Northwynd**"), Paul Hamilton, Ken Bateman, John Anderson, Ron Ferber (Paul Hamilton, Ken Bateman, John Anderson and Ron Ferber collectively the "**Trustees**"), Northmont Limited Partnership ("**Northmont LP**"), Northmont Resort Properties Ltd. ("**Northmont**"), and Kirk Wankel in his capacity as CEO/CFO and Director of Northwynd, and Director of Northmont LP ("**Wankel**") (Northwynd, Northmont LP, Northmont and Wankel collectively referred to as the "**Corp Defendants**" and the Corp Defendants and Trustees collectively hereinafter the "**Defendants**"), expressly deny all allegations in the Amended Amended Statement of Claim (the "**Claim**").
2. The Defendants admit the facts as pleaded in paragraphs 3, 5, 7, 14, 20, 21, 22 and 23 of the Claim. The Defendants state that some or all of the matters pleaded at paragraphs 24, 25, 26, 27, 34, 38 and 39 of the Claim are in the nature of argument or evidence, not facts, and are improperly pleaded.
3. Each of the Trustees was a Unitholder in the Northwynd REIT and volunteered to act as a trustee. The Defendants deny the Trustees were trustees for the Northwynd REIT at all material times as alleged at paragraphs 8, 9, 10 and 11 of the Claim or otherwise. Each of the Trustees was appointed on a date subsequent to many of the events alleged in the Claim. Further, after July 4, 2014 the Trustees' powers and obligations were limited solely to those required to oversee the wind-up of the Northwynd REIT and continued in that limited capacity until January 4, 2016 on which date each of the Trustees was discharged.
4. The Defendants deny the allegations with regard to Wankel at paragraphs 15 and 30 of the Claim. Wankel was the CEO, CFO and a director of Northwynd, and a director only of Northmont.
5. The Defendants deny Fairmont Resort Properties Limited ("**FRPL**") placed a first charge mortgage on the title of the Resort Properties, as defined in the Claim whether as alleged in paragraph 24 of the Claim or otherwise. The investment of the Plaintiffs in FRPL was not secured against the properties constituting the Fairmont Vacation Villas, as defined in the Claim.
6. Further with regard to the title to the Resort Properties:
 - (a) The Defendants deny that the Fairmont Vacation Villas were transferred to Northmont as alleged in paragraph 27 of the Claim or at all;
 - (b) At no time did Fairmont hold title to the Fairmont Vacation Villas; and
 - (c) Title to the Fairmont Vacation Villas was held by a legal trustee, Philip K Matkin Professional Corporation and Carthew Registry Services Ltd. (the "**Legal Trustee**") for the benefit of the holders of timeshare interests in Fairmont Vacation Villas ("**Timeshare Owners**") and Northmont LP to the extent of its residual interest after the rights of the Timeshare Owners, if any.

7. The Defendants state the following with regard to the ownership of the Corporate Defendants:
 - (a) In response to paragraph 29 of the Claim, Northwynd LP and Northmont LP were 99.9% owned by Northwynd REIT, and 0.1% owned by Northwynd and Northmont respectively, as their General Partner's.
 - (b) In response to paragraph 30 of the Claim, Northwynd REIT did not become the sole "owner" of the Resort Properties. Northwynd REIT, indirectly through its 99.9% ownership of Northwynd LP and ownership of Northwynd, acquired the interests of Fairmont, including both its debts and assets pursuant to the Foreclosure Agreement dated June 15, 2010 (the "**Foreclosure Agreement**"). The debts and assets transferred included Fairmont's reversionary beneficial interest in some but not all of the Timeshare agreements known as Vacation Interval Agreements ("**VIAs**") in connection with the Resort Properties.
 - (c) Northwynd REIT's assets post foreclosure and at all times prior to wind-up were 99.99% ownership of Northwynd LP and 100% ownership of Northwynd. Northwynd was the general partner of Northwynd LP owning the remaining 0.01% and was also administrator of Northwynd REIT. Northwynd LP directly and indirectly owned 100% of Northmont LP.
8. The Defendants deny the allegation indirectly made at paragraphs 35 and 36 of the Claim in relation to the financial position of the Northwynd REIT. Having been established as a result of the insolvency proceedings of FRPL in an attempt to preserve some value for the bondholders of FRPL, given extensive challenges in the timeshare industry during the relevant times and the cost implications of considerable deferred maintenance at the Resort, and the ongoing litigation with Timeshare Owners, the Northwynd REIT was at all times during its existence in significant financial difficulty.
9. Further, the difficult financial status of the Northwynd REIT was at all relevant times accurately described and disclosed to the Unitholders. In particular, the Defendants deny the allegation at paragraph 35 of the Claim that the decision not to incur the costs of audited financial statements was a failure to disclose relevant information to the Unitholders. The lack of audited financial statements did not alter the disclosure of all facts relevant to the financial situation of the Northwynd REIT, was a decision made prior to the appointment of these Trustees, was a decision made to avoid costs given the financial situation of Northwynd REIT and was duly reported on to the Unitholders.
10. On or about April 19, 2010, FRPL (which later became Northwynd) entered into an Administration Agreement with the Northwynd REIT to provide management and general administration for Northwynd REIT's affairs (the "**Administration Agreement**"). In and around October 2012, Northwynd management developed the Resort Realignment Plan:
 - (a) As part of the Resort Realignment Plan the Timeshare Owners were to be assessed for required renovations/repairs and required to pay a renovation fee (the "**Renovation Fee**"), or
 - (b) Alternatively, the Timeshare Owners could terminate their VIAs for a cancellation fee (the "**Cancellation Fee**") with the intent of ultimately allowing for a sale of portions of Fairmont; and

- (c) The Renovation Fees and the Cancellation Fees did not go to Northwynd as alleged at paragraph 33 of the Claim or otherwise. The Renovation Fees went to Northmont LP as the manager of the Resort on behalf of and for the benefit of the Timeshare Owners. The Cancellation Fees went to Northmont LP as counterparty to the VIA's; and
 - (d) Each of the Unitholders was provided with ongoing disclosure of the Resort Realignment Plan.
- 11. On or about November 19, 2012, Wankel entered into an Amended and Restated Employment Agreement with Northwynd.
- 12. On April 8, 2013, in order to proceed with the Resort Realignment Plan and remove the VIAs from some or all of the Resort properties, Northmont LP sought consent from the Legal Trustee. The Legal Trustee declined to provide that consent and instead sought the courts' direction (the "**Petition**").
- 13. In addition to the Petition, the Resort Realignment Plan gave rise to extensive litigation between Northmont and various Timeshare Owners who opposed the Resort Realignment Plan and disputed their obligation to pay Renovation Fees or Cancellation Fees. A large group of Timeshare Owners involved in the litigation were referred to collectively as the Geldert Group. The litigation by the Geldert Group persisted until late 2018 (the Petition and the litigation described in this paragraph hereinafter the "**Timeshare Litigation**").
- 14. None of the Defendants was involved with the creation of the Northwynd REIT, the determination of its structure, or the rights that might attach to any Trust Unit. As a result of the structure in the March 4, 2010 Declaration of Trust that pre-dated the involvement of the Defendants and governed the management of the Northwynd REIT (the "**Declaration of Trust**"):
 - (a) There were two types of Trust Units held by Unitholders, established on the date the Northwynd REIT was created, being Series A Trust Units and Series B Trust Units; and
 - (b) The Declaration of Trust and its structure of Trust Units did not allow for a partial distribution of capital to Unitholders. For any partial distribution the Northwynd REIT would be required to be wound-up to permit a return of capital to the Series B Trust Unit holders.
- 15. In order to ensure their understanding of the Declaration of Trust was correct, the Trustees sought and obtained on behalf of Northwynd REIT, a legal opinion confirming the restriction on partial distributions under the Declaration of Trust, the advisability of a wind-up and a timeline requiring that the wind-up be completed within 30 months of its initiation to avoid issues with the Canada Revenue Agency.
- 16. On June 3, 2014, the Northwynd REIT distributed an information circular to the Unitholders (the "**Information Circular**") to provide notice of an Annual and Special Meeting of the Unitholders at which the proposed winding up would be subject to a vote. On July 3, 2014 the meeting was held and the Unitholders voted in favor of the wind-up motion (the "**Wind-Up**"). The Unitholders were provided with detailed notice and information regarding the Wind-Up in advance of and subsequent to the July 3, 2014 meeting.

17. A Wind-Up Notice was issued by the Northwynd REIT on July 4, 2014 (the “**Wind-Up Notice**”). The Wind-Up Notice provided details to the Unitholders of how to surrender their Trust Units. Various Trust Units were surrendered in response and there were no Unitholders remaining in the Northwynd REIT after January 4, 2016, as all Trust Units had been cancelled or surrendered by this date. The Wind-Up Period extended to January of 2017 (the “**Wind-Up Period**”).
18. The only remaining interest after January 4, 2017, was the interest held by former Unitholders who had cancelled their Trust Units and now held an interest in any distribution of Trust assets as a beneficiary to the Promissory Note.
19. The Defendants expressly deny the allegations regarding the sale of the Resort at paragraphs 36, 37, 38, 44, 45, 46 47, and 48 of the Claim. During the Wind-Up Period attempts were made to sell assets, but third parties were not prepared to proceed to close a sale without the conclusion of the Resort Realignment Plan necessary to allow transfer of some or all of the Resort unencumbered by the various VIAs. Specifically, these Defendants state:
 - (a) The Information Circular did not require that Northwynd REIT retain a commercial real estate firm to market its assets whether as alleged at paragraph 36 of the Claim or otherwise;
 - (b) Nonetheless, in an effort to dispose of assets to the benefit of the Unitholders during the Wind-Up Period, Northwynd REIT did work with Colliers International (“**Colliers**”), a commercial real estate firm, throughout the relevant period on the potential marketing and sale of the Resort;
 - (c) Colliers advised there was no market for a sale of the resort in its current state, in large part because the resort was encumbered by the VIAs and the ongoing Timeshare Litigation;
 - (d) Additionally, during the Wind-Up Period, Northwynd found a third party potentially interested in purchasing a portion of the Resort Lands referred to as the “Hillside Lands” provided Northmont could provide clean title;
 - (e) A Purchase and Sale Agreement was reached for the sale of the Hillside Lands (“**Hillside PSA**”) in February of 2017 conditional on Northmont LP being able to transfer title by December 31, 2017; and
 - (f) In order to meet the conditions of the Hillside PSA the resolution of the Timeshare Litigation and removal of the VIAs from Hillside Lands was required. Neither of these conditions were satisfied.
20. Given the Wind-Up Period could not be extended and it appeared no arms-length sale of all of the assets and liabilities of Northwynd REIT could be concluded by December 31, 2016, the Trustees and Wankel considered the possibility of non-arms length options. The Trustees sought and received legal advice as to the permissibility of such a non-arm’s length sale and on the belief the transaction was permissible and in the best interests of the Unitholders, the Trustees independently made the decision to enter into a Purchase and Sale Agreement with the Defendant, 2008164 Alberta Ltd. (“**200 Alberta**”) a numbered company controlled by Wankel (the “**200 PSA**”).

21. On closing and in accordance with the 200 PSA, the assets of Northwynd REIT were transferred to 200 Alberta in return for a Promissory Note. On January 16, 2017, the Trustees issued the Final Wind-Up Notice, providing details of the 200 PSA to the Unit Holders. In accordance with the terms of the 200 PSA, 200 Alberta would operate the business in the ordinary course and continue to try to conclude the Resort Realignment Plan, reach a settlement with the Geldert Group, and conclude the sale of the Hillside Lands while discharging Northmont LP's duty as manager to the Timeshare Owners.
22. The Defendants deny the assets of the Northwynd REIT were transferred for no value whether as alleged at paragraphs 40, 41 and 42 of the Claim or otherwise. Northwynd REIT's assets were sold for a Promissory Note with contingent value, as at the time the 200 PSA was entered into, the assets had no or very little cash value on the open market. The value of the 200 PSA was an the opportunity to recover on behalf of the beneficiaries to the Promissory Note any settlement funds or asset sale proceeds received by Northmont LP in 2017. Furthermore, the PSA provided that 200 AB would acquire all of the assets and liabilities of Northwynd REIT, including numerous entities with no or negative value, in order to allow Northwynd REIT to discharge its obligations under the Declaration of Trust.
23. On or about December 8, 2016, Wankel entered into an Employment Agreement Amendment with Northwynd.
24. Northmont LP, and in particular Wankel, continued to make aggressive efforts to resolve the Timeshare Litigation allowing for the completion of the sale of the Hillside Lands and recovery of further Cancellation Fees and Renovation Fees to the benefit of the beneficiaries to the Promissory Note. However, throughout 2017, the Timeshare litigants and in particular the Geldert Group, resisted any resolution of the Timeshare Litigation, refusing multiple offers of settlement deemed by the Courts to have been reasonable. Without resolution of the Timeshare Litigation, the Legal Trustee continued to refuse to consent to the transfer of the Hillside Lands even after the Petition was resolved in the courts in mid-December 2017.
25. 200 AB and Northmont LP advised the Unitholders, including those that were members of the Geldert Group, on numerous occasions prior to December 31, 2017 that the Promissory Note would be worth \$Nil if the Timeshare Litigation failed to resolve.
26. Counsel for Northmont LP provided a copy of the Final Wind-Up Notice that was sent to Unitholders, including a copy of the Promissory Note, to counsel for the Geldert Group on or about January 16, 2017, providing the Geldert Group, some of whom were also Unitholders, with almost one years' notice of the potential \$Nil value of the Promissory Note.
27. These Defendants deny that a settlement was reached between the parties prior to December 31, 2017.
28. On or about January 8, 2018, a Settlement Agreement was concluded between Northwynd and Northmont LP and the Geldert Group. The terms of the Settlement Agreement included, but were not limited to, the following:
 - (a) Each member of the Geldert Group agreed to pay to Northmont LP 120% of their statement balance (the "**Settlement Funds**"); and

- (b) Each member of the Geldert Group agreed to provide a full and final release in favour of Northmont, Northmont LP, their respective officers, directors, employees, and agents and Related Parties (including shareholders, affiliates and related corporations) from any and all claims, whatsoever of all claims with respect to anything arising directly or indirectly from or by any reason of or related to the VIAs or the subject matter of the VIAs or the Timeshare Litigation in favour of Northmont LP and related entities (the “**Northmont Release**”)
29. The settlement of the Timeshare Litigation and receipt of settlement funds by Northmont LP occurred well into 2018 as did the ultimate sale of the Hillside Lands and subsequent receipt of sale proceeds.
30. As such, on December 31, 2017 the Promissory Note was valued at \$Nil. The Trustees had no role in the declaration of \$Nil value, whether as alleged at paragraph 38 of the Claim or otherwise, having been discharged a year prior.
31. The Defendants state that the Claim entirely mischaracterizes the current corporate and ownership structures connected with the Resort:
- (a) The Fairmont Vacation Villa Assets are not currently being operated as a resort whether as alleged at paragraph 50 of the Claim or otherwise:
 - (b) The Fairmont Vacation Villa Assets continue to operate under a timeshare plan and for the benefit of existing Timeshare Owners;
 - (c) The Resort operated at all relevant times as a timeshare plan pursuant to the laws of British Columbia and the VIAs;
 - (d) Northmont, as successor to Northmont LP continues to be subject to the VIAs, and the residual interests upon the expiry of some but not all of the VIAs;
 - (e) Northwynd LP and Northmont LP were wound up into their respective General Partners in tax reorganizations; and
 - (f) Currently, Northwynd LP’s assets are held by Northwynd, and Northmont LP’s assets are held by Northmont.

Any matters that defeat the claim of the plaintiff(s):

A. Alleged Breaches by Trustees

32. The Defendants deny that the Trustees owed any duty of care to the Plaintiffs, whether contractual, fiduciary or in tort and whether as alleged in the Claim or otherwise.
33. In the alternative, if the Trustees did owe a duty of care, whether contractual, fiduciary or in tort and whether as alleged in the Claim or otherwise, which is denied, the Defendants deny that the Trustees, or any of them, breached any of their duties to the Plaintiffs whether as alleged at paragraphs 52 to 54 of the Claim or otherwise.

34. In particular the Trustees deny each specific allegation of breach of any contractual obligation:
- (a) The Trustees deny any breach of any duty to the Plaintiff in their representations regarding the Wind-Up whether as alleged at paragraph 52 or at all;
 - (b) The Trustees expressly deny that any actions taken constitute a breach of the Declaration of Trust whether as alleged at paragraph 52 or otherwise and instead state that at all times the actions of the Trustees were consistent with all obligations under the Declaration of Trust and in accordance with their powers thereunder;
 - (c) The Trustees expressly deny that they owed any duty, whether pursuant to the Winding-Up Notice or otherwise, to retain a commercial realtor whether as alleged at paragraph 52 of the Claim or otherwise. Alternatively, if the Trustees did owe such a duty, which is denied, they deny any actions taken in connection with the sale of the Northwynd REIT assets during the Winding-Up constitute a breach of that duty and instead state that the Northwynd REIT did retain such a commercial realtor;
35. The Trustees expressly deny that any actions taken constitute a breach of any fiduciary duty to the Unitholders and state that they acted as all times reasonably, diligently, honestly, in the best interest of the Unitholders and in accordance with properly obtained legal and other expert advice. These Defendants expressly deny that the Trustees preferred the interests of 200 Alberta and Wankel over those of the Unitholders;
36. The Trustees deny any reliance by the Unitholders on a misrepresentation by the Trustees whether as alleged at paragraphs 35 and 53 and of the Claim or otherwise and whether in connection with the retention of a commercial realtor, audited financial statements or otherwise. Particularly:
- (a) The Trustees made no decision regarding an audit whether as alleged at paragraph 35 of the Claim or otherwise and made no representation therein or in connection therewith. Alternatively, to the extent any such decision or representation was made regarding the audit which is denied, lack of disclosure of audited financial statements was in no way incorrect or misleading as the Northwynd REIT was in significant financial difficulty and any audited financial statement would have been consistent with disclosed information;
 - (b) There was no misrepresentation to the Unitholders at the Wind-Up Meeting whether as alleged at paragraph 53 of the Claim or otherwise. The Trustees expressly deny that any representation regarding a commercial realtor was made at the Winding-Up Meeting. Alternatively, to the extent any such representation was made, which is denied, it was accurate;
 - (c) Alternatively if there was a misrepresentation at the Winding-Up Meeting, which is denied, there was no reliance on that misrepresentation by the Unitholders the vast majority of whom who did not attend the meeting; and
 - (d) To the extent there was a misrepresentation at the Winding-Up meeting and there was reliance on that misrepresentation by the Unitholders, which is denied, that reliance in no way caused or contributed to any loss or damage by the Plaintiff;

- (e) The Winding-Up, if induced by a misrepresentation which is denied, caused no loss or damage to the Plaintiff leading to no diminution in the value of the units in the Northwynd REIT;
37. The Trustees deny they were negligent in connection with the matters alleged at paragraph 54 of the Claim or otherwise. The Trustees expressly state that the steps taken to enter the Winding-Up and then execute the sale to 200 AB were prudent and reasonable and resulted in some return to the Unitholders. The alternative to the Winding-Up and the sale to 200 Alberta was the very likely insolvency of Northmont LP and the loss of the entirety of the Unitholders' investment.
38. The Trustees state, and the facts are, that they acted honestly and in good faith, and exercised the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, and acted in accordance with their powers and obligations under the Declaration of Trust and the Wind-Up Resolution.
- B. Alleged Breaches by Corp Defendants
39. These Defendants deny that the Corp Defendants owed any duty of care to the Plaintiffs, whether contractual, fiduciary or in tort and whether as alleged in the Claim or otherwise.
40. In the alternative, if the Corp Defendants did owe a duty of care, whether contractual, fiduciary or in tort and whether as alleged in the Claim or otherwise, which is denied, these Defendants deny that the Corp Defendants, or any of them, breached any of their duties to the Plaintiffs whether as alleged at paragraphs 52 to 54 of the Claim or otherwise.
41. The Corp Defendants and each of them deny they were unjustly enriched as alleged at paragraph 60 of the Claim or at all. The Corp Defendants and each of them expressly deny receipt of any benefit from the execution of 200 PSA.
42. In the alternative, if the Corp Defendants were enriched, which is denied, the Plaintiffs suffered no corresponding deprivation. The Plaintiffs had no legal or beneficial interest in nor entitlement to any amounts transferred to the Corp Defendants, or any of them. Any and all funds transferred to the Corp Defendants, or any of them, were transferred subject to the legal entitlements of the Timeshare Owners and did not deprive the Unitholders.
43. In the further alternative, if the Corp Defendants, or any of them were enriched and the Plaintiffs suffered a corresponding deprivation both of which are denied, there are juristic reasons for such enrichments, such reasons including but not restricted to the legal obligations of Northmont LP to the Timeshare Owners and the legal entitlement of the Timeshare Owners to some of the proceeds from the resolution of the Timeshare Litigation.
44. The Corp Defendants deny any and all allegations of oppressive action as alleged at paragraphs 67 to 69 of the Claim or otherwise. To the extent any actions were taken by the Corp Defendants in connection with the sale to 200 Alberta which are denied, all such actions were taken in an attempt to provide a return to Northwynd REIT Unitholders. The Corp Defendants further deny that they disregarded the Northwynd REIT Unitholders' interests in their operation of the business.

45. The Corp Defendants acted prudently and reasonably and made commercially reasonable and justifiable decisions based on professional advice and the information available, and at all material times, made such decisions for the benefit of the Northwynd REIT Unitholders subject to the rights of the Timeshare Owners.

C. Damages

46. If there has been any breach of any duty owed by the Defendants, or any of them to the Plaintiffs, which is denied, the Defendants deny the Plaintiffs have suffered loss or damage whether as alleged in the Statement of Claim or at all. In the alternative, if the Plaintiffs have suffered loss or damage, which is denied, the losses and damages alleged are excessive and inconsistent with the facts pleaded in the Claim.

47. If the Plaintiffs have suffered loss or damage which is denied, no alleged breach by these Defendants caused or contributed to any such loss or damage. Any loss to the value of the Unitholders' interest in the Northwynd REIT as a result of the Winding-Up and the 200 PSA, which loss is expressly denied, were caused by actions entirely outside the control of the Defendants.

48. The Defendants state that the progress of the Timeshare Litigation from 2013 to 2018 and the failure of the Geldert Group to settle or resolve the Timeshare Litigation, necessitated the Winding-Up, caused a delay in the Winding-Up, necessitated the execution of the 200 PSA and ultimately was the cause of any loss or damage alleged by the Plaintiffs.

49. Further, or in the alternative, if the Plaintiffs have suffered any losses, or damages as alleged in the Claim, all of which is denied, the Defendants state that the Plaintiffs, or some of them, failed to take appropriate steps to mitigate their losses including:

(a) failing to adequately consider and act upon the information provided by the Trustees, the Corp. Defendants, and 200 Alberta which failures included, but are not limited to:

(i) failing to review and consider, or seek legal advice on the terms of and consequence of the Wind-Up, despite being provided with notice and access to information prior to voting on the Wind-Up Resolution;

(ii) failing to review and consider, or seek legal advice on the terms of the Promissory Note and the effect of the First Payment Date, despite being provided with a copy of the Promissory Note in early 2017; and

(iii) where a Unitholder was also a Time Share Owner;

(A) failing to attempt to settle and finalize the Timeshare Litigation in a timely manner, and before the First Payment Date pursuant to the Promissory Note on December 31, 2017; and

(B) instructing counsel to proceed with multiple court actions, without consideration of the implications for the Promissory Note deadline of December 31, 2017.

50. The Defendants deny there are any grounds to justify an award of punitive damages as claimed at paragraph 75 of the Claim, or at all, and the Defendants rely in support on the facts plead herein.
51. If the Corp Defendants received any benefit from matters alleged in the Claim, which is denied, the Corp Defendants deny there are any grounds for an award of disgorgement or a constructive trust whether as alleged at paragraph 72 of the claim, or at all, and the Corp Defendants rely in support on the facts as plead herein.
52. These Defendants deny there are any grounds (pleaded or otherwise) to justify the remedies plead at paragraph 76 (a)(iii) through (xii).
53. Further, or in the further alternative, all of Northmont, Northmont LP and Wankel in his capacity as an officer of the Corp Defendants rely upon the Northmont Release signed by the Plaintiffs, or some of them, on or about January 8, 2018 releasing, Northmont, Northmont LP, officers, directors, employees, and agents from any and all claims, whatsoever. The Northmont Release is an entire bar to the claims of the Plaintiffs against Northmont, Northmont LP and Wankel in his capacity as an officer of the Corp Defendants.
54. Further, or in the further alternative, any liability of Wankel in his capacity as an officer of Northwynd, is expressly limited by the Administration Agreement solely to liability for gross negligence, wrongful conduct or fraud, and Northwynd and Wankel are entitled to indemnification by the Northwynd REIT for all losses, claims, damages, liabilities, obligations, costs and expenses of whatsoever kind or nature pursuant to the Administration Agreement.
55. In the further alternative, any liability of Wankel, is expressly limited by Wankel's Amended and Restated Employment Agreement dated November 19, 2012 and Employment Agreement Amendment dated December 8, 2016 to liability for gross negligence or unlawful conduct.
56. Further, or in the alternative, any liability of the Trustees is expressly limited by the Administration Agreement to liability for gross negligence, willful misconduct or fraud and all other losses, claims, damages, liabilities, obligations, costs and expenses of whatsoever kind or nature against the Trustees are subject to indemnity by the Northwynd REIT.
57. Further, or in the further alternative, any losses suffered by the Plaintiffs resulted from the their own negligence and the Trustees and the Corp. Defendants plead and rely upon the *Contributory Negligence Act*, RSA 2000, C-27.

Remedy sought

58. Dismissal of the Plaintiffs claim.
59. Costs of this action in favour of the Trustees and Corp. Defendants.
60. Such further and other relief as may be requested of and granted by this Honourable Court.