

Court File Number

Court

COURT OF QUEEN'S BENCH OF ALBERTA

Judicial Centre

Calgary

Plaintiff

PACER CONSTRUCTION HOLDINGS
CORPORATION

Defendants

PACER PROMEC ENERGY CORPORATION
AND PACER PROMEC ENERGY
CONSTRUCTION CORPORATION

Document

STATEMENT OF CLAIM

Address for Service and
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Party Filing this Document

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File No.: 120631.1017

NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Statement of facts relied on:

The Parties

1. The Plaintiff, Pacer Construction Holdings Corporation (“Pacer”) is a corporation duly incorporated pursuant to the laws of the Province of Alberta. Its registered office is located in Calgary, Alberta. Pacer is in the business of providing construction and other services to companies in the oil and gas exploration and production industries.
2. The Defendant, Pacer Promec Energy Corporation (“PPEC”) is a corporation duly incorporated pursuant to the laws of the Province of Alberta. Its registered office is located at 200-1040 7th Avenue SW in Calgary, Alberta. PPEC’s operations involve the provision of a wide range of civil, mechanical and electrical contracting services to customers in the oil sands developments of northern Alberta.
3. Pacer is a 50% shareholder in PPEC. The other 50% shareholder is an electromechanical construction company named Construction Promec Inc. (“Promec”), which is a corporation incorporated under the laws of Canada that has its registered office in Rouyn-Noranda, Quebec. Promec is not a party to this action.
4. The Defendant Pacer Promec Energy Construction Corporation (“PPEC Construction”) is a corporation duly incorporated pursuant to the laws of the Province of Alberta. Its registered office is located at 200-1040 7th Avenue SW in Calgary, Alberta. PPEC Construction is a wholly owned subsidiary of PPEC and employs certain employees working on PPEC contracts.

The Credit Agreement

5. On May 23, 2014, PPEC (as borrower) and the National Bank of Canada (as lender) entered into a Credit Agreement (the “Credit Agreement”), by which National Bank agreed to make available to PPEC the following three credit facilities in the aggregate amount of CAD\$30,850,000 (the “Credit Facilities”):
 - (i) A demand revolving credit facility for general corporate purposes, in a principal amount of the lesser of \$30,000,000 and the borrowing base, a fluctuating amount calculated in accordance with the terms of the Credit Agreement (“Facility 1”);
 - (ii) A treasury risk management facility to authorize PPEC to incur obligations under hedging contracts with National Bank, and assist it

in its hedging strategies, with an aggregate risk content not exceeding \$500,000 ("Facility 2"); and

- (iii) A demand MasterCard facility for general corporate purposes for a principal amount not exceeding \$350,000 ("Facility 3").
6. The interest on prime rate loans borrowed under Facility 1 accrues at a fluctuating rate set by National Bank from time to time, plus the applicable contractual margin of 0.50%. There are no amounts outstanding under Facility 2 or Facility 3.
 7. The Credit Facilities are repayable on demand. Furthermore, PPEC is required to make payments as necessary to ensure that the amount outstanding under Facility 1 never exceeds the lesser of the borrowing base at any given time and \$30 million.
 8. Pacer and Promec are also parties to the Credit Agreement.

National Bank's Security

9. As security for the payment of the amounts advanced pursuant to the Credit Agreement, PPEC granted to National Bank the following security (together, the "Security"):
 - a) a General Security Agreement executed by PPEC on May 23, 2014 (the "GSA"), and duly registered on May 23, 2014 in the Alberta Personal Property Registry under the registration number 14052332978; a Land Charge was also registered on that date under the registration number 14052332997;
 - b) a Hypothec on the Universality of Movable Property executed by PPEC on May 23, 2014 (the "Hypothec") and duly registered on May 28, 2014 in the Quebec Register of Personal and Movable Real Rights under the registration number 14-0469469-0001; and
 - c) a Set-Off and Security Agreement with respect to Deposits executed by PPEC on April 9, 2014 (the "Deposit Security Agreement"), duly registered on April 15, 2014 in the Quebec Register of Personal and Movable Real Rights under the registration number 14-0311999-0007, and on April 17, 2014 in the Alberta Personal Property Registry under the registration number 14041710023.
10. Under a Guarantee and Subordination Agreement dated May 23, 2014 (the "Guarantee"), Pacer and Promec also solidarily (jointly and severally) guaranteed PPEC's obligations to National Bank under the Credit Agreement, and undertook to cover any of PPEC's borrowing base deficit.

PPEC's Defaults, and National Bank's Demands for Repayment

11. On November 7, 2014, National Bank issued and delivered a notice of default to PPEC, Pacer, and Promec, advising that PPEC was in default under the Credit Agreement because it did not meet all three financial ratio covenants set forth in

section 13 of the Credit Agreement. The notice called on Pacer and Promec to proceed with injections of capital or subordinated debt into PPEC, in accordance with their obligations under the Credit Agreement and the Guarantee.

12. On February 4, 2015, National Bank, through its counsel, demanded that Pacer and Promec confirm their position in writing with regards to their obligation under the Credit Agreement and the Guarantee to cover any Borrowing Base deficit and any overdrafts by PPEC under the Credit Agreement.
13. On February 11, 2015, National Bank sent a letter to PPEC, Pacer, and Promec formally insisting that PPEC, and Pacer and Promec as PPEC's guarantors, communicate their respective positions and proposals to remedy the existing defaults by February 12, 2015. No such proposal was able to be made.
14. On February 18, 2015, National Bank, through its counsel, issued and delivered to PPEC a Demand of Payment and Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, in which PPEC was advised that:
 - a) The amount owed to National Bank by PPEC was \$26,043,421.37 in principal and interests as of February 18, 2015.
 - b) PPEC was in continuing default under the Credit Agreement for the following reasons:
 - i. PPEC did not meet the financial ratio covenants set out in section 13 in the Credit Agreement;
 - ii. The borrowing base deficit was \$12.9 million and the guarantors Pacer and Promec had failed to cover that deficit;
 - iii. PPEC's shareholders, Pacer and Promec, were in deadlock as to the cure of PPEC's continuing defaults, which had created a corporate governance issue that constituted a Material Adverse Change under the Credit Agreement; and
 - iv. Pacer and Promec had refused or failed to comply with National Bank's February 4, 2015 formal request made pursuant to the Guarantee.
 - c) PPEC's right to use the Credit Facilities was terminated, and payment of the debt was demanded on or before March 2, 2015.
 - d) National Bank intended to enforce its security under the GSA, the Hypothec, and the Deposit Security Agreement on the property of PPEC.

15. Also on February 18, 2015, National Bank demanded from Pacer and Promec, as guarantors of the Credit Agreement, the payment pursuant to the Guarantee of all indebtedness of PPEC to National Bank under the Credit Agreement, and specifically the amount of \$26,043,421.37, by February 20, 2015.

Payment on the Guarantee

16. On March 5, 2015, Pacer honoured the Guarantee by paying PPEC's debt to National Bank under the Credit Agreement in full, which by that date amounted to \$26,229,431.71.
17. Pacer was thereby subrogated to National Bank's rights under the Credit Agreement.
18. On the same day, Pacer took an assignment of all of National Bank's security held over PPEC's property, including the GSA, the Hypothec, and the Deposit Security Agreement (the "Assignment").

Indebtedness

19. Events of default have existed under the Credit Agreement since November 7, 2014. The full amount of PPEC's indebtedness to National Bank under the Credit Agreement was called, due, and payable as of the bank's demand of February 18, 2015. PPEC has not repaid any amount owing under the Credit Agreement.
20. As a result of Pacer's payment on the Guarantee, all amounts owing by PPEC under the Credit Agreement, specifically \$26,229,431.71 plus applicable interest, are now due and payable to Pacer (the "Indebtedness"). Pacer holds the Security over PPEC's property to secure repayment of the Indebtedness, pursuant to its payment on the Guarantee and the Assignment.
21. PPEC has not repaid Pacer any amount due and payable under the Credit Agreement.

Procedural Issues

22. It is submitted that the Pacer's claim raises no triable issues and any defence would be without merit. Accordingly, no trial will be necessary and in the event a defence is submitted by PPEC, Pacer will request an order for summary judgment.
23. In the event that a trial is ordered as necessary, Pacer proposes that the trial of this action be held at the Courts Centre, in the City of Calgary, in the Province of Alberta.

Remedy Sought:

24. Pacer seeks the following remedies against PPEC:
 - a) A declaration that PPEC is in default under the Credit Agreement, the Security, and its payment of the Indebtedness to Pacer;

- b) A declaration as to the amounts owing to Pacer by PPEC and judgment in the amount found to be owing;
- c) A declaration that the Security held by Pacer against PPEC is enforceable and that the Security constitutes valid and enforceable security in accordance with the terms thereof;
- d) An order for the appointment of a receiver over all of the assets, undertakings and property of PPEC and PPEC Construction or such assets, undertakings and property as Pacer may direct and deem appropriate from time to time;
- e) Interest in accordance with the terms of the Credit Agreement and the Security, or, alternatively pursuant to the provisions of the *Judgment Interest Act*, R.S.A. 2000, c. J-8;
- f) Costs on a solicitor and his own client basis in accordance with the terms of the Credit Agreement and the Security, or, alternatively, on a party and party scale; and
- g) Such further and other relief as this Honourable Court may deem just and appropriate.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND by serving your statement of defence or a demand for notice on the plaintiff(s)' address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.