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COURT FILE NUMBER

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFF

BANK OF MONTREAL

DEFENDANTS

LADACOR AMS LTD., NOMADS PIPELINE CONSULTING LTD., 2367147 ONTARIO INC., and DONALD KLISOWSKY

DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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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.

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

Statement of facts relied on:

1. The Plaintiff, Bank of Montreal ("BMO"), is a Bank chartered pursuant to the Laws of Canada with offices in Edmonton and elsewhere throughout Alberta.
2. The Defendants, LADACOR AMS Ltd. ("Ladacor"), Nomads Pipeline Consulting Ltd. ("Nomads"), 2367147 Ontario Inc. ("236"), and Donald Klisowsky ("Donald") are customers and/or debtors of BMO. Each of Ladacor and Nomads are incorporated pursuant to the laws of the Province of Alberta and the registered office of each is located in Calgary, Alberta. 236 is incorporated pursuant to the laws of Ontario with its registered office located in Calgary, Alberta. Donald resides in Calgary, Alberta.
3. BMO provided loans and/or other credit to Ladacor. Each of Nomads, 236, and Donald has guaranteed to BMO the indebtedness of Ladacor to BMO on a joint and several basis.

LADACOR'S DIRECT INDEBTEDNESS

4. Ladacor borrowed money from BMO which it agreed to repay to BMO with interest. As a result of such Ladacor borrowed money from BMO which it agreed to repay to BMO with interest. As a result of such borrowing, Ladacor is directly indebted to BMO as follows:

- (a) Operating Loan – Account No. 0010-1954-233 - outstanding balance as at May 11, 2018 of \$4,691,234.47 plus interest thereon and thereafter at the rate of 1.00% per annum above the prime rate of interest maintained by BMO from time to time (“Prime”);
- (b) Corporate MasterCard – Account No. 5476790000055442 - outstanding balance as at May 11, 2018 of \$15,326.24 plus interest thereon and thereafter at the rate of 18.4% per annum;
- (c) Corporate MasterCard – Account No. 5476790000055459 - outstanding balance as at May 11, 2018 of \$4,943.09 plus interest thereon and thereafter at the rate of 18.4% per annum;
- (d) Corporate MasterCard – Account No. 5476790000055467 - outstanding balance as at May 11, 2018 of \$3,758.55 plus interest thereon and thereafter at the rate of 18.4% per annum;
- (e) Corporate MasterCard – Account No. 5476790000055475 - outstanding balance as at May 11, 2018 of \$7,736.43 plus interest thereon and thereafter at the rate of 18.4% per annum;
- (f) Corporate MasterCard – Account No. 5476790000055483 - outstanding balance as at May 11, 2018 of \$6,046.24 plus interest thereon and thereafter at the rate of 18.4% per annum;
- (g) Corporate MasterCard – Account No. 5476790000055491 - outstanding balance as at May 11, 2018 of \$8,086.88 plus interest thereon and thereafter at the rate of 18.4% per annum;
- (h) Corporate MasterCard – Account No. 5476790000062554 - outstanding balance as at May 11, 2018 of \$410.24 plus interest thereon and thereafter at the rate of 18.4% per annum;
- (i) any further credit or other loan amounts extended by BMO to 236 from and after May 11, 2018, in BMO's absolute discretion; and
- (j) costs on a solicitor and own client full indemnity basis with respect to all legal and financial advisory, incurred from time to time

(all sums payable to BMO in paragraphs (a) – (i) above are herein collectively referred to as the “Ladacor Indebtedness”).

5. **GUARANTEE GRANTED BY NOMADS**

6. On or about August 9, 2017, Nomads granted to BMO a Guarantee and Postponement of Claim guaranteeing to BMO all of the indebtedness of Ladacor to BMO limited to \$5,000,000.00, plus interest from demand at the rate of 3.00% per annum above Prime, plus costs on a solicitor and own client full indemnity basis (the “Nomads Guarantee”).

7. Nomads is indebted to BMO for the Ladacor Indebtedness pursuant to the Nomads Guarantee (the "Nomads Guaranteed Indebtedness").

GUARANTEE GRANTED BY 236

8. On or about August 9, 2017, 236 granted to BMO a Guarantee and Postponement of Claim guaranteeing to BMO all of the indebtedness of Ladacor to BMO in the amount of \$5,000,000.00, plus interest from demand at the rate of 3.00% per annum above Prime, plus costs on a solicitor and own client full indemnity basis (the "236 Guarantee").
9. 236 is indebted to BMO for the Ladacor Indebtedness pursuant to the 236 Guarantee (the "236 Guaranteed Indebtedness").

GUARANTEE GRANTED BY DONALD

10. On or about August 1, 2017, Donald granted to BMO a Guarantee and Postponement of Claim guaranteeing to BMO all of the indebtedness of Ladacor to BMO in the amount of \$5,000,000.00, plus interest at the rate of 3.00% per annum above Prime, plus costs on a solicitor and own client full indemnity basis (the "Donald Guarantee").
11. Donald is indebted to BMO for the Ladacor Indebtedness pursuant to the Donald Guarantee (the "Donald Guaranteed Indebtedness").

The LADACOR SECURITY

12. On or about August 1, 2017, Ladacor granted to BMO a General Security Agreement – Floating Charge on Land (the "Ladacor GSA") securing to BMO all of its present and after acquired property, including, without limitation, all accounts receivable, goods, equipment, inventory, intellectual property and the proceeds thereof. The Ladacor GSA also grants BMO a mortgage by way of a floating charge over all of Ladacor's present and after acquired real property. The Ladacor GSA secures all of the Ladacor Indebtedness. BMO has crystallized the floating charge.
13. Default has been made in payment of the principal sum and payment of interest secured by the Ladacor GSA. All sums secured by the Ladacor GSA are due and owing.
14. BMO has perfected its security interests created by the Ladacor GSA by registration in the Alberta Personal Property Registry.
15. On or about August 15, 2017, Ladacor granted to BMO security under section 427 of the *Bank Act* assigning and securing in favour of BMO all of Ladacor's present and future interest in all goods, wares, and merchandise held by Ladacor from time to time as a wholesale or retail purchaser or shipper of, or dealer in such goods, wares, and merchandise manufactured or otherwise, on the security of such goods, wares, and merchandise and all goods, wares, and merchandise used in or procured for the packing of such goods, wares, and merchandise, and all goods, wares, and merchandise manufactured or produced by Ladacor or procured for such manufacture or production and all goods, wares, and merchandise used in or procured for the packing of such goods, wares, and merchandise so manufactured or produced (the "Ladacor *Bank Act* Security"). The Ladacor *Bank Act* Security secures all of the Ladacor Indebtedness.
16. The assignment granted to BMO by the Ladacor *Bank Act* Security was registered with an authorized Section 427 *Bank Act* Registrar on or about August 14, 2017.

THE NOMADS SECURITY

17. On or about August 9, 2017, Nomads granted to BMO a General Security Agreement – Floating Charge on Land (the “Nomads GSA”) securing to BMO all of its present and after acquired property, including, without limitation, all accounts receivable, goods, equipment, inventory, intellectual property and the proceeds thereof. The Nomads GSA also grants BMO a mortgage by way of a floating charge over all of Nomads’ present and after acquired real property. The Nomads GSA secures all of the Nomads Guaranteed Indebtedness. BMO has crystallized the floating charge.
18. Default has been made in payment of the principal sum and payment of interest secured by the Nomads GSA. All sums secured by the Nomads GSA are due and owing.
19. BMO has perfected its security interest created by the Nomads GSA by registration in the Alberta Personal Property Registry.
20. On or about August 9, 2017, Nomads granted to BMO an Assignment, Postponement, and Subordination Agreement (the “Nomads Assignment”) assigning, postponing, and subordinating any indebtedness of Ladacor owed to Nomads to BMO.
21. BMO has perfected its security interest created by the Nomads Assignment by registration in the Alberta Personal Property Registry.

THE 236 SECURITY

22. On or about August 9, 2017, 236 granted to BMO a General Security Agreement – Floating Charge on Land (the “236 GSA”) securing to BMO all of its present and after acquired property, including, without limitation, all accounts receivable, goods, equipment, inventory, intellectual property and the proceeds thereof. The 236 GSA also grants BMO a mortgage by way of a floating charge over all of 236’s present and after acquired real property. The 236 GSA secures all of the 236 Guaranteed Indebtedness. BMO has crystallized the floating charge.
23. Default has been made in payment of the principal sum and payment of interest secured by the 236 GSA. All sums secured by the 236 GSA are due and owing.
24. BMO has perfected its security interests created by the 236 GSA by registration in the Alberta Personal Property Registry and the Ontario Personal Property Registry.
25. At all material times, 236 has been and continues to be the registered owner of the following lands:

PCL 43386 SEC DKF; LT 72-82 PL M126; SIOUX LOOKOUT (PIN 42043-1778 LT)

LTS 83, 84, 85, 86, 87, 88, 89, & 90 PL M126; MUNICIPALITY OF SIOUX LOOKOUT (PIN42043-1943 LT)

(the “236 Collateral Mortgage Lands”).
26. By a Collateral Mortgage dated August 11, 2017 and registered in the Ontario Land Titles as instrument number KN80287, 236 mortgaged to BMO the 236 Collateral Mortgage Lands for securing payment of the sum of \$5,000,000.00, plus interest thereon at a rate equal to Prime plus 5% per annum, plus costs on a solicitor and own client full indemnity basis (the "236 Collateral Mortgage").
27. The 236 Collateral Mortgage Lands are located in Ontario.

28. By the 236 Collateral Mortgage 236 covenanted with BMO:
- (a) to pay all taxes, rates and assessments on the 236 Collateral Mortgage Lands which may fall due or be unpaid;
 - (b) to keep the 236 Collateral Mortgage Lands free and clear of all liens, mortgages, charges and other encumbrances which charge or otherwise affect the 236 Mortgage Lands other than any such liens, mortgages, charges or encumbrances approved in writing by BMO;
 - (c) to maintain in form, substance and amount (and with insurance satisfactory to BMO) all insurance required by BMO from time to time with respect to the 236 Collateral Mortgage Lands; and
 - (d) to maintain all buildings, erections, equipment, machinery and improvements on the 236 Collateral Mortgage Lands in good condition and repair to the satisfaction of BMO, and not permit waste to be committed or suffered on the 236 Mortgage Lands or any part thereof.

and in default of any or all of the above, BMO is entitled by the 236 Collateral Mortgage to do the same and to add to the 236 Collateral Mortgage all costs and expenses incurred by BMO in that regard and in respect of any proceedings taken to realize monies secured by the 236 Collateral Mortgage, including legal costs, taxed as between solicitor and own client and an allowance for the time, work, and expense of BMO, its servants, and/or agents.

29. The 236 Collateral Mortgage secures the 236 Guaranteed Indebtedness.

DONALD'S SECURITY

30. On or about August 9, 2017, Donald granted to BMO an Assignment, Postponement, and Subordination Agreement (the "Donald Assignment") assigning, postponing, and subordinating any indebtedness of Ladacor owed to Donald to BMO. The Donald Assignment secures all of the Donald Guaranteed Indebtedness.
31. BMO has perfected its security interest created by the Donald Assignment by registration in the Alberta Personal Property Registry.

DEMANDS

32. On or about May 2, 2018, BMO demanded payment of the Ladacor Indebtedness, the Nomads Guaranteed Indebtedness, the 236 Guaranteed Indebtedness, and the Donald Guaranteed Indebtedness but the Defendants have failed or neglected and continued to fail or neglect to pay their indebtedness to BMO.
33. Concurrent with the issuance of demands for payment, BMO did serve on each of the Defendants a Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act*.
34. By this Statement of Claim BMO does again demand payment in relation to all of the indebtedness, direct and guaranteed, referenced in this Statement of Claim.
35. Default has been made in payment of the principal sums and interest owing pursuant to or secured by the terms of the Nomads Guarantee, the 236 Guarantee, the Donald Guarantee, the Ladacor GSA, the Ladacor *Bank Act* Security, the Nomads GSA, the Nomads Assignment, the 236 GSA, the 236 Collateral Mortgage, and the Donald Assignment.

36. BMO states that a dispute resolution process would not be beneficial and would not likely result in an agreement between the parties, or alternatively, there is a compelling reason why a dispute resolution process should not be attempted by the parties or in the alternative, engaging in a dispute resolution process would be futile.

Remedy sought:

37. An Order waiving the responsibilities of the parties to participate in a Dispute Resolution Process;
38. Judgment against the Defendants as follows:
- (a) As against Ladacor – \$4,691,234.47 plus interest on such sum from and after May 11, 2018 at a rate equal to Prime plus 1.00% per annum on the sum of and at a rate of Prime plus 18.4% per annum on the sum of \$46,307.67, plus costs on a solicitor and own client full indemnity basis;
 - (b) As against Nomads – \$4,454,510.58 plus interest on such sum from and after May 2, 2018 at a rate equal to Prime plus 3.00% per annum plus costs on a solicitor and own client full indemnity basis;
 - (c) As against 236 – \$4,454,510.58 plus interest on such sum from and after May 2, 2018 at a rate equal to Prime plus 3.00% per annum plus costs on a solicitor and own client full indemnity basis; and
 - (d) As against Donald - \$4,454,510.58 plus interest on such sum from and after May 2, 2018 at a rate equal to Prime plus 3.00% plus costs on a solicitor and own client full indemnity basis;
- or in such further and other amounts as this Honourable Court may direct.
39. Alternatively, interest on all sums due and owing to BMO pursuant to the *Judgment Interest Act*, RSA 2000, c J-1.
40. A declaration as to the amounts owed by the Defendants to BMO.
41. A declaration as to the amount owing under the 236 Collateral Mortgage and sale to BMO or otherwise, or foreclosure and in either case possession of the 236 Collateral Mortgage Lands.
42. In the alternative, immediate foreclosure and possession of the 236 Collateral Mortgage Lands.
43. An order for possession of the 236 Collateral Mortgage Lands.
44. An order shortening the period of redemption with respect to the 236 Collateral Mortgage Lands to such period as this Honourable Court may direct.
45. The appointment of a receiver or receiver and manager of the undertaking, property and assets of each of Ladacor, Nomads, and 236.
46. The appointment of an interim receiver of the undertaking, property and assets of each of Ladacor, Nomads, and 236.
47. In the alternative, such appointment or relief as may be necessary to ensure the preservation of the secured property.

48. An Order dispensing with any bond or other security that might otherwise be required to be posted by an interim receiver, receiver, receiver and manager or person tasked with the preservation of the undertaking, property and assets of each of Ladacor, Nomads, and 236.
49. An Order that no action at law or otherwise (other than this action) shall be taken or continued against the interim receiver, the receiver or the receiver and manager of each of Ladacor, Nomads, and 236 without leave of this Honourable Court first having been obtained.
50. A Declaration that the security granted in favour of BMO may be enforced by the sale of the whole or any part of the property and any assets of each of Ladacor, Nomads, and 236.
51. Such further accounts and inquiries as may be necessary.
52. All legal costs or expenses incurred by or allowed to BMO including those as between a solicitor and own client full indemnity basis, or such further and other basis as this Honourable Court may direct.
53. Such further and other relief as the nature of the case may require and this Honourable Court may deem just.

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 **Edmonton**, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(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.