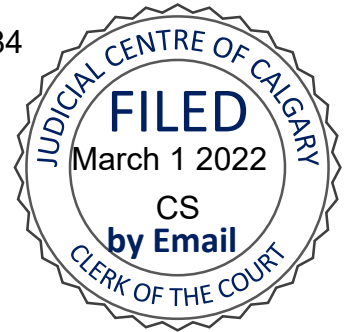


C30284

COURT FILE NUMBER: 2201- 02699
COURT COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF NATIONAL BANK OF CANADA
DEFENDANTS BALANCED ENERGY OILFIELD SERVICES INC.,
BALANCED ENERGY OILFIELD SERVICES (USA)
INC., BALANCED ENERGY HOLDINGS INC.,
MICHELLE THOMAS, NEIL SCHMEICHEL,
DARREN MILLER, and CODIE BELLAMY



COM
March 7 2022

DOCUMENT: **STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
MLT AIKINS LLP
2100, 222 - 3rd Ave SW
Calgary, Alberta T2P 0B4
Phone: 403.693.5420/4347
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Attention: Ryan Zahara/Catrina Webster
File: 0002330.00382

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:

Parties and Background

1. The Plaintiff, National Bank of Canada ("**NBC**"), is a Canadian chartered bank formed in accordance of the laws of Canada which the provisions of the *Bank Act*, SC 1991, c 46 apply, and having branch offices in the City of Calgary, in the Province of Alberta, and elsewhere.
2. The Defendant, Balanced Energy Oilfield Services Inc. ("**BCAN**"), is a company incorporated pursuant to the laws of the Province of Alberta, with its registered office in the City of Lethbridge in the Province of Alberta.

3. The Defendant, Balanced Energy Oilfield Services (USA) Inc. (“**BUSA**”, together with BCAN, the “**Borrowers**”), is a company incorporated pursuant to the laws of the State of Delaware.
4. The Defendant, Balanced Energy Holdings Inc. (“**BEH**”), is a company incorporated pursuant to the laws of the Province of Alberta, with its registered office in the City of Lethbridge, in the Province of Alberta.
5. To the best knowledge of NBC, the individual Defendants, Michelle Thomas, Neil Schmeichel, Darren Miller, and Codie Bellamy, each reside in Brooks, Alberta.
6. NBC advanced funds to BCAN and BUSA pursuant to the Offer of Financing, the Forbearance Agreement, the First Amending Agreement, the Second Amending Agreement, the Third Amending Agreement, and the Fourth Amending Agreement (each as defined below) and Michelle Thomas, Neil Schmeichel, Darren Miller, and Codie Bellamy each guaranteed that indebtedness of BCAN and BUSA to NBC.
7. NBC also advanced additional funds to BCAN pursuant to the HASCAP Offer of Financing (as defined below) and BUSA, Michelle Thomas, Neil Schmeichel, Darren Miller, and Codie Bellamy each guaranteed the indebtedness of BCAN under the HASCAP Offer of Financing.
8. As security for the indebtedness owing under the Offers of Financing, BCAN granted a general security agreement, BUSA granted a security agreement, and BUSA granted a general security agreement each in favour of NBC as security for the indebtedness of BCAN and BUSA and for the indebtedness of BCAN under the HASCAP Offer of Financing.
9. NBC is concurrently filing an application to appoint a receiver over the assets, property, and undertakings of BCAN, BUSA, and BEH pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”).

The Offers of Financing and the HASCAP Offer of Financing

10. NBC advanced funds to BCAN and BUSA pursuant to the following:
 - (a) an offer of financing dated June 8, 2020 between NBC, BCAN, and BUSA and accepted by BCAN and BUSA on June 10, 2020 (the “**Offer of Financing**”);
 - (b) a forbearance and amending agreement effective as of March 2, 2021 (the “**Forbearance Agreement**”);
 - (c) a first amending agreement to the Forbearance Agreement effective as of March 31, 2021 (the “**First Amending Agreement**”);
 - (d) a renewal and amending agreement to the Offer of Financing effective as of June 30, 2021 (the “**Second Amending Agreement**”);
 - (e) an amending agreement to the Offer of Financing and Forbearance Agreement effective as of August 18, 2021 (the “**Third Amending Agreement**”);
 - (f) an extension and amending agreement effective as of August 27, 2021 (the “**Fourth Amending Agreement**”).
11. NBC also advanced additional funds to BCAN pursuant to an offer of financing dated June 25, 2021 between the Lender and BCAN respecting a Highly Affected Sectors Availability Program Term Loan (“**HASCAP Offer of Financing**”; together with the Offer of Financing, the Forbearance Agreement, the First Amending Agreement, the Second Amending Agreement, the Third Amending Agreement and the Fourth Amending Agreement, the “**Offers of Financing**”).
12. BEH, Michelle Thomas, Neil Schmeichel, Darren Miller, and Codie Bellamy guaranteed the indebtedness of BCAN and BUSA pursuant to the Offers of Financing and BEH granted a general security agreement in favour of NBC as security for the indebtedness of BCAN and BUSA for the amounts borrowed under the terms of the Offers of Financing.
13. BUSA, BEH, Michelle Thomas, Neil Schmeichel, Darren Miller, and Codie Bellamy guaranteed the indebtedness of BCAN pursuant to the HASCAP Offer of Financing and

BUSA granted a security agreement and BEH granted a general security agreement in favour of NBC as security for the indebtedness of BCAN for the amounts borrowed under the terms of the HASCAP Offer of Financing.

14. In accordance with the Offer of Financing, NBC extended credit under the following credit facilities (the "**OF Facilities**") to BCAN and BUSA and as of January 26, 2022, the following amounts are outstanding on the OF Facilities, exclusive of legal and professional fees, costs, charges, disbursements, and expenses incurred by NBC prior to or after January 26, 2022:

	Amount in CAD\$ as of January 26, 2022
Demand Revolving Operating Line of Credit	
Principal	\$18,740,196.70
Interest	\$113,578.60
Total	\$18,853,775.30
BCAP Demand Loan	
Principal	\$4,659,572.00
Interest	\$27,567.14
Total	\$4,687,139.14
Mastercard Credit Card	
Principal	\$154,802.80
Interest	\$0.00
Total	\$154,802.80
TOTAL	\$23,695,717.24

15. In accordance with the HASCAP Offer of Financing, NBC extended credit under a Highly Affected Sectors Availability Program Term Loan (the "**HASCAP Facility**", collectively, with the OF Facilities, the "**Facilities**") to BCAN and as of January 26, 2022, the following amounts are outstanding on the HASCAP Facility, exclusive of legal and professional fees, costs, charges, disbursements, and expenses incurred by NBC prior to January 26, 2022:

	Amount in CAD\$ as of January
HASCAP Term Loan	
Principal	\$1,000,000.00
Interest	\$3,397.26
Total	\$1,003,397.26

16. The Facilities are repayable by BCAN and BUSA on demand from NBC.
17. As of January 26, 2022, the total indebtedness of BCAN and BUSA to NBC pursuant to the OF Facilities is \$23,695,717.24 and of BCAN to NBC pursuant to the HASCAP Facility is \$1,003,397.26 which collectively amount to \$24,699,114.50, with interest accruing thereafter at the rates set out in the Offers of Financing, plus all legal and other costs and expenses incurred by NBC in respect of the Offers of Financing on a solicitor and own client (full-indemnity) basis (collectively, the “**Outstanding Indebtedness**”).
18. Pursuant to the Offer of Financing, a Business Credit Availability Program (BCAP) demand loan (the “**BCAP Loan**”) was issued in the amount of \$4,000,000.00, and increased to \$5,175,000.00 pursuant to the terms of the Third Amending Agreement which form part of the OF Facilities. The BCAP Loan was issued under the Economic Development Corporation (“**EDC**”) backed demand loan program to provide additional liquidity for the working capital needs of BCAN that were the result of COVID-19 impacts on business. On February 25, 2021, under a BCAP guarantee granted by EDC and the BCAP Loan, EDC guaranteed 80% of the indebtedness owing under the BCAP Loan in favour of NBC.
19. Pursuant to the HASCAP Offer of Financing, the HASCAP Facility was issued in the amount of \$1,000,000.00 pursuant to the Highly Affected Sectors Availability Loan Guarantee Program. On January 19, 2021, pursuant to a HASCAP guarantee agreement granted by Business Development Corporation (“**BDC**”) and the HASCAP Offer of Financing, BDC guaranteed loans issued under the HASCAP Facility to support BCAN’s business as a result of the negative impacts of COVID-19.

The Guarantees

20. As security for all amounts owing by BCAN to NBC, on February 20, 2018, BEH granted a guarantee in favour of NBC regarding the indebtedness of BCAN in an unlimited amount, plus interest payable from the date of demand, including all legal fees on a solicitor and own client (full-indemnity) basis (the “**BEH Guarantee**”).
21. As further security for all amounts owing by BCAN to NBC, on July 6, 2021, BUSA granted a guarantee in favour of NBC regarding the indebtedness of BCAN in an

unlimited amount, plus interest payable from the date of demand, including all legal fees on a solicitor and own client (full-indemnity) basis (the “**BUSA Guarantee**”).

22. As further security for all amounts owing by BCAN and BUSA, each of Michelle Thomas, Neil Schmeichel, Darren Miller, and Codie Bellamy (collectively, the “**Individual Guarantors**”) granted the following guarantees (collectively, the “**Individual Guarantees**”):
- (a) a guarantee in favour of NBC by Michelle Thomas in the amount of \$300,000.00;
 - (b) a guarantee in favour of NBC by Neil Schmeichel in the amount of \$300,000.00;
 - (c) a guarantee in favour of NBC by Darren Miller in the amount of \$300,000.00; and
 - (d) a guarantee in favour of NBC by Codie Bellamy in the amount of \$300,000.00.

The Security

23. As security for all amounts owing by BCAN and BUSA to NBC, on February 20, 2018, BCAN granted a General Security Agreement in favour of NBC (the “**BCAN GSA**”).
24. On February 16, 2018, NBC registered the BCAN GSA against BCAN at the Alberta Personal Property Registry (“**PPR**”).
25. As further security for all amounts owing by BCAN and BUSA to NBC and as further security for the obligations pursuant to the BUSA Guarantee, on September 26, 2018, BUSA granted a Security Agreement in favour of NBC (the “**BUSA SA**”).
26. On September 27, 2018, NBC registered the BUSA SA in the Uniform Commercial Code Filing Registry.
27. As further security for the obligations pursuant to the BEH Guarantee, on February 20, 2018, BEH granted a General Security Agreement in favour of NBC (the “**BEH GSA**”).
28. On February 16, 2018, NBC registered the BEH GSA against BEH at the Alberta PPR.
29. The BCAN GSA, the BUSA SA, and the BEH GSA and are collectively referred to herein as the “**Security**”.

The Forbearance Term and Financial Difficulty

30. Beginning in December 2020, BCAN began experiencing financial difficulty and defaulted under the terms of the Offer of Financing. As a result, on March 2, 2021, NBC entered into the Forbearance Agreement with BCAN and the related guarantors to provide the parties an opportunity to find alternative financing or other sources of equity to improve its balance sheet.
31. Pursuant to the Forbearance Agreement, BCAN acknowledged the occurrence of Events of Default as defined under the Offer of Financing, including the following:
 - (a) breach of BCAN's undertaking to maintain a funded debt to EBITDA coverage ratio of not more than 6.75, effective September 30, 2020, and 13.75;1, effective December 31, 2020; and
 - (b) breach of BCAN's undertaking to maintain a fixed charge coverage ratio of at least 1.500:1.00 based on consolidated financial statements of BCAN provided on a quarterly basis for the periods ending September 30, 2020 and December 31, 2020.
32. The terms of the Forbearance Agreement, included, among others, the following:
 - (a) BCAN would repay the Outstanding Indebtedness by August 31, 2021 (the "**Forbearance Term**");
 - (b) BCAN would provide certain financial disclosure to NBC, including a 2021 baseline budget (the "**Budget**") along with monthly variance reporting;
 - (c) BCAN would maintain an EBITDA of no less than 85% of the cumulative monthly EBITDA contained in the Budget for the period of March 1, 2021 to August 31, 2021;
 - (d) NBC would forbear from enforcing its rights against BCAN until the termination or expiration of the Forbearance Agreement; and

(e) NBC would engage FTI Consulting Canada Inc. (“**FTI**”) as a financial advisor to provide financial and other advisory services to NBC in respect of BCAN and BUSA and the Offers of Financing.

33. The Forbearance Agreement was amended by certain amendments including the Third Amending Agreement which extended the Forbearance Term to December 31, 2021.

a. Cash Flow Shortfall

34. On August 18, 2021, in accordance with the Third Amending Agreement, BCAN provided a Budget for the period of July 1, 2021 to December 31, 2021 (the “**Revised Budget**”).

35. FTI completed a cumulative variance analysis respecting the Revised Budget which illustrated a negative revenue variance of \$2,300,000 primarily due to lower revenue than forecast. Further, the cumulative EBITDA was \$2,100,000 lower than projected resulting in BCAN being offside its requirement to maintain an EDITDA of no less than 85% of the cumulative monthly EBITDA as required under the Forbearance Agreement.

36. Notwithstanding the additional liquidity received from the BCAP Loan and the HASCAP Facility during the summers of 2020 and 2021, BCAN underperformed against the Revised Budget and continued to experience liquidity constraints and failed to meet its EBITDA Covenant.

37. On November 16, 2021 and November 26, 2021, BCAN provided its 2022 cash flow forecast (the “**2022 Forecast**”) and its proposed operational and structural changes to improve BCAN’s profitability which included liquidating portions of the fleet in order to repay \$2,000,000 towards the Outstanding Indebtedness owing to NBC and pursuing financing from Maynbridge Capital in the amount of \$2,000,000 to generate an additional \$900,000 in available cash for the Borrowers.

38. The 2022 Forecast also demonstrated that there would be negative cash flow, with insufficient funds available under the Offers of Financing to pay operating expenses over the summer months. The amount of additional funds required to bridge the gap during this cash flow negative period peaks at \$2,180,000.00 in August of 2022. Without additional financing the Borrowers will not have sufficient liquidity to bridge this negative

cash flow period to their busy season. NBC is not required or prepared to provide additional liquidity to the Borrowers during this period.

39. Due to the material differences in the financial circumstances of the Borrowers under the Revised Budget and the 2022 Forecast, the proposed solutions to Borrowers' operations would not be material enough to resolve the Borrowers' liquidity crisis and financial challenges generally.
40. Given the anticipated reduction in revenue from the upcoming business slowdown which is projected to commence in approximately June 2022 and without additional financing, NBC believes that it is in the best interest of all stakeholders for a sale of the assets and a continuation of the business in some form in order to preserve jobs for employees and any enterprise value remaining within the business. Any transaction of this nature will be able to be completed by a receiver as soon and as efficiently as possible. Any further delays in the appointment of a receiver could negatively impact the potential realization received by the creditors of the Borrowers.

b. Damaged Equipment and Delays

41. On January 22, 2022, BCAN advised FTI that the outer frame on the landing gear for one of the BCAN rig units was severely damaged while being transported on a trailer. This incident resulted in the landing gear for this rig unit being split 90% of the way through on both sides of the reel trailer. As a result of this incident, the rig unit would be unavailable for approximately 2-4 weeks further impacting the profitability of BCAN. This incident will also likely materially alter the 2022 Forecast and cash flow for this period that was previously presented to NBC. It will also likely result in BCAN failing to meet its optimistic January 2022 and February 2022 revenue projections.

c. Unpaid Trade Payables

42. As of January 23, 2022, BCAN and BUSA have outstanding accounts payable to trade creditors in the amount of \$10,118,000.
43. Of the total outstanding accounts payable, over 50% have been outstanding for over 90 days.

d. Attempts to Complete Sales Process

44. On February 9, 2021, BEH retained BDO Canada LLP (“**BDO**”) to provide the following services: (i) to provide transactional advisory services to BEH in considering potential financing options; (ii) to provide assistance and advise to BEH with the evaluation and negotiation of potential transactions and closing of a transaction; and (iii) to manage and assist with any due diligence process as required by a potential investor and assist with communications and presentations with potential purchasers (collectively, the “**Sales and Investment Process**”).
45. From February 2021 to July 2021, BDO sought potential investors and purchasers in accordance with the Sales and Investment Process.
46. In July 2021, NBC was advised by BEH that all avenues and options had been exhausted under the Sales and Investment Process and no investors or purchasers were identified.
47. Since February 2021, the Borrowers have proposed and attempted multiple options to repay the Outstanding Indebtedness including running a sales and investment process through BDO seeking various refinancing options, none of which were successful or provided for the full repayment of the Outstanding Indebtedness.
48. While these measures would provide some improvement to the Borrowers’ business, the improvement would be incremental and inadequate to materially address its liquidity concerns. Further, no proposal has been presented which would result in a full repayment of the Outstanding Indebtedness to NBC. Following the expiration of the December 31, 2021 Forbearance Term, the Borrowers failed to repay the Outstanding Indebtedness.

Demand and Notice of Intention to Enforce Security

49. On January 26, 2022, NBC issued a demand letter and Notice of Intention to enforce its security pursuant to section 244 of the BIA to BCAN (the “**BCAN Demand**”), which required full payment of the Outstanding Indebtedness.
50. Also on January 26, 2022, NBC issued a demand letter and Notice of Intention to enforce its security pursuant to section 244 of the BIA to BUSA (the “**BUSA Demand**”;

together with the BCAN Demand, the “**Demands**”), which required full payment of the indebtedness owing pursuant to the Offers of Financing.

51. Also on January 26, 2022, NBC issued a demand letter and Notice of Intention to enforce its security pursuant to section 244 of the BIA to BUSA (the “**BUSA HASCAP Demand**”), which required full payment of the indebtedness owing pursuant to the HASCAP Facility pursuant to the BUSA Guarantee.
52. Also on January 26, 2022, NBC issued a demand letter and Notice of Intention to enforce its security pursuant to section 244 of the BIA to the guarantor, BEH, which required full payment of the Outstanding Indebtedness pursuant to the terms of the BEH Guarantee (the “**BEH Demand**”).
53. Also on January 26, 2022, NBC issued demand letters to each of Michelle Thomas, Neil Schmeichel, Darren Miller, and Codie Bellamy (collectively, the “**Individual Guarantors’ Demands**”) requiring full payment in the amount of \$300,000 from each of the Individual Guarantors pursuant to the terms of the Individual Guarantees.
54. Following the issuance of the Demands and in accordance with NBC’s obligations to EDC and BDC under the BCAP Loan and the HASCAP Offer of Financing, NBC notified EDC and BDC of the defaults of BCAN and BUSA. NBC further advised that the Facilities had been demanded upon and the Outstanding Indebtedness was required to be repaid in full and Notices of Intention to Enforce were issued to the Borrowers.
55. BCAN, BUSA, BEH have been and remain unable to pay the entire amount of the Outstanding Indebtedness that is due and owing to NBC. The failure of BCAN, BUSA, and BEH to pay amounts owed to NBC when due and owing is an Event of Default pursuant to the terms of the Offers of Financing, the BEH Guarantee, and the Security.
56. The ability of BCAN to continue as going concern businesses is dependent upon the ongoing support and financing from NBC. NBC is no longer prepared to extend any further credit to the Borrowers.
57. The BCAN GSA, the BUSA SE, and the BEH GSA each provide that, upon an Event of Default by BCAN, BUSA, or BEH, NBC is entitled to, among other things, apply for the appointment of a receiver.

REMEDIES SOUGHT:

58. NBC seeks the following relief:

- (a) judgment against BCAN for the Outstanding Indebtedness, which amounts to \$24,699,114.50 as of January 26, 2022, plus interest and expenses, together with any costs and interest thereon at the rate or rates in effect until judgment in this Action;
- (b) judgment against BUSA for the Outstanding Indebtedness, which amounts to \$24,699,114.50 as of January 26, 2022, plus interest and expenses, together with any costs and interest thereon at the rate or rates in effect until judgment in this Action;
- (c) judgment against BEH for the Outstanding Indebtedness, which amounts to \$24,699,114.50 as of January 26, 2022, plus interest and expenses, together with any costs and interest thereon at the rate or rates in effect until judgment in this Action;
- (d) judgment against Michelle Thomas in the amount of \$300,000.00, plus interest and expenses, together with any costs and interest thereon at the rate or rates in effect until judgment in this Action;
- (e) judgment against Neil Schmeichel in the amount of \$300,000.00, plus interest and expenses, together with any costs and interest thereon at the rate or rates in effect until judgment in this Action;
- (f) judgment against Darren Miller in the amount of \$300,000.00, plus interest and expenses, together with any costs and interest thereon at the rate or rates in effect until judgment in this Action;
- (g) judgment against Codie Bellamy in the amount of \$300,000.00, plus interest and expenses, together with any costs and interest thereon at the rate or rates in effect until judgment in this Action;
- (h) the appointment of a receiver and manager pursuant to section 243 of the BIA, over all current and future assets, undertakings, and properties of every nature

and kind whatsoever, and wherever situate, including all proceeds thereof, of BCAN, BUSA, and BEH;

- (i) costs of this action on a solicitor and own client (full-indemnity) basis; and
- (j) such further and other relief as this Honourable Court may allow.

NOTICE TO THE DEFENDANT

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 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 against you.