

AUG 04 2022

No. \_\_\_\_\_  
Vancouver Registry



**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

VANCOUVER CITY SAVINGS CREDIT UNION

Petitioner

AND:

CEDAR ROAD BIOENERGY INC.  
SUNCURRENT INDUSTRIES INC.  
PAUL LIDDY

Respondents

**PETITION TO THE COURT**

**ON NOTICE TO THE RESPONDENTS**

This proceeding is brought for the relief set out in Part 1 below by the person named as Petitioner in the style of proceedings above.

If you intend to respond to this Petition, you or your lawyer must

- a) file a Response to Petition in Form 67 in the above-named registry of this Court within the time for Response to Petition described below, and
- b) serve on the Petitioner
  - i) 2 copies of the filed Response to Petition, and
  - ii) 2 copies of each filed Affidavit on which you intend to rely at the Hearing.

**ORDERS, INCLUDING ORDERS GRANTING THE RELIEF CLAIMED, MAY BE MADE AGAINST YOU, WITHOUT ANY FURTHER NOTICE TO YOU, IF YOU FAIL TO FILE THE RESPONSE TO THE PETITION WITHIN THE TIME FOR RESPONSE.**

**TIME FOR RESPONSE TO THE PETITION**

A Response to Petition must be filed and served on the Petitioner,

- a) if you were served with the Petition anywhere in Canada, within 21 days after that service,

- b) if you were served with the Petition anywhere in the United States of America, within 35 days after that service,
- c) if you were served with the Petition anywhere else, within 49 days after that service, or
- d) if the time for Response has been set by Order of the Court, within that time.

(1)	<p>THE ADDRESS OF THE REGISTRY IS:</p> <p>The Supreme Court of British Columbia  The Law Courts  800 Smithe Street  Vancouver, BC V6Z 2E1</p>
(2)	<p>THE ADDRESS FOR SERVICE OF THE PETITIONER IS:</p> <p>VANCOUVER CITY SAVINGS CREDIT UNION c/o  P.O. Box 49130  2900 – 595 Burrard Street  Vancouver B.C V7X 1J5</p> <p>Fax number address for service (if any) of the Petitioner:  N/A</p> <p>E-mail address for service (if any) of the Petitioner:  N/A</p>
(3)	<p>THE NAME AND OFFICE ADDRESS OF THE PETITIONER'S LAWYER IS:</p> <p>Alan A. Frydenlund, Q.C.  OWEN BIRD LAW CORPORATION  P.O. Box 49130  2900 – 595 Burrard Street  Vancouver, BC V7X 1J5</p>

#### **PART 1: ORDER(S) SOUGHT**

- A. An order appointing D. Manning & Associates Inc. as Receiver and Manager over all of the undertakings, property and assets of the Respondent Cedar Road Bioenergy Inc.
- B. At the application of the Petitioner order appointing D. Manning & Associates Inc. as Receiver and Manager over all of the undertakings, property and assets of the Respondent Cedar Road Bioenergy Inc.

- C. A declaration that the Petitioner has a charge over the property and assets of Cedar Road Bioenergy Inc. and Suncurrent Industries Inc.
- D. Judgment against the Respondents Cedar Road Bioenergy Inc., Suncurrent Industries Inc., and Paul Liddy.
- E. An Order for any further relief that this Honourable Court may seem just.

## **PART 2: FACTUAL BASIS**

### **Parties**

1. The Petitioner, VANCOUVER CITY SAVINGS CREDIT UNION, ("**Vancity**") is a credit union having an address for service in these proceedings c/o 2900 – 595 Burrard Street, Vancouver, B.C. V7X 1J5.
2. The Respondent CEDAR ROAD BIOENERGY INC. ("**Bioenergy**"), is a British Columbia corporation having been continued into British Columbia from Alberta October 21, 2010 under incorporation number C893418.
3. The Respondent SUNCURRENT INDUSTRIES INC. ("**Suncurrent**"), is a British Columbia corporation having been continued into British Columbia from Alberta January 17, 2019 under incorporation number C1194490.
4. The Respondent PAUL LIDDY ("**Liddy**"), is the sole director of Bioenergy and Suncurrent.
5. Bioenergy was formerly known as CEDAR ROAD LFG INC. ("**Cedar Road**"). Cedar Road changed its name to Bioenergy when it continued into British Columbia.

### **Indebtedness**

6. By a business banking promissory note dated January 18, 2017 the Respondent Bioenergy agreed to repay the sum of \$1,300,000 to the Petitioner, Vancity

together with interest at the rate of 3.25% per annum, calculated monthly not in advance (the "**Term Loan**").

7. By a business operating loan agreement dated January 18, 2017 the Respondent Bioenergy agreed to repay the sum of \$20,000 to Vancity together with interest at the rate of Vancity's prime rate, being the floating rate of interest established and announced by Vancity from time to time, plus 1.5%, accruing from the date of each advance, calculated monthly and payable on the last day of each month (the "**Operating Loan**").
8. As of July 7, 2022 \$796,336.28 was due and owing to Vancity under the Operating Loan and Term Loan.

### **Security**

9. By a business and commercial loan general security agreement dated for reference January 18, 2017 made between the Respondent, Bioenergy., as debtor, and the Petitioner, Vancity, as lender, and registered in the Personal Property Registry, in the Province of British Columbia, on January 31, 2017, under base registration number 797619J (the "**Bioenergy GSA**") the Bioenergy charged all of its present and after acquired personal property, including, without limitation, accounts, intangibles, documents of title, instruments, documents, equipment, inventory and proceeds wherever situate, including, without further limitation, Fuel Gas Booster, Gas Conditioner Skid (#FGB560001), GE Jenbacher engines/generator sets (#4721681 Module #4721691, JD 390, and #5721691 Module #4721702), Engine housing for each engine, all permits, licences, and approvals held by Bioenergy in relation to its business and project at the Regional District of Nanaimo ("**RDN**") landfill site on property legally described as PID 013-239-813, Lot 1, Sections 2 and 3, Nanaimo District, Plan 48020, Except Part in plan VIP 66090, (collectively the "**Bioenergy Property**") to and in favour of the Petitioner Vancity in full priority to the interests therein or claims thereto of others their respective heirs, executors, administrators, successors and assigns,

and any persons claiming by, through or under them to secure the Term Loan and the Operating Loan (collectively the "**Loans**").

10. By a guarantee and postponement of claim executed January 18, 2017 made between the Respondent, Suncurrent, as guarantor, and the Petitioner, Vancity, as lender, the said Respondent unconditionally guaranteed all of the present and future indebtedness and liabilities, direct and indirect, absolute and contingent of the Respondent, Bioenergy, to the Petitioner Vancity including costs, expenses and interest (the "**Suncurrent Guarantee**").
11. By a business and commercial loan general security agreement dated for reference January 18, 2017 made between the Respondent, Suncurrent, as debtor, and the Petitioner, Vancity, as lender, and registered in the Personal Property Registry, in the Province of British Columbia, on January 31, 2017, under base registration number 797640J (the "**Suncurrent GSA**") the Suncurrent charged all of its present and after acquired personal property, including, without limitation, accounts, intangibles, documents of title, instruments, documents, equipment, inventory and proceeds wherever situate, (collectively the "**Suncurrent Property**") to and in favour of the Petitioner Vancity in full priority to the interests therein or claims thereto of others their respective heirs, executors, administrators, successors and assigns, and any persons claiming by, through or under them to secure the Suncurrent Guarantee and the Loans.
12. By a guarantee and postponement of claim executed January 18, 2017 made between the Respondent, Liddy, as guarantor, and the Petitioner, Vancity, as lender, Liddy unconditionally guaranteed all of the present and future indebtedness and liabilities, direct and indirect, absolute and contingent of the Bioenergy, to the Petitioner, Vancity including costs, expenses and interest (the "**Liddy Guarantee**").

### **Business of Bioenergy**

13. RDN is the registered owner of property legally described as PID 013-239-813, Lot 1, Sections 2 and 3, Nanaimo District, Plan 48020, Except Part in plan VIP 66090 (the "**Lands**").
14. The Lands are used by RDN as a landfill site which were identified by the Respondents as a source for methane gas which could be harvested and converted into electricity and sold to third parties.
15. RDN entered into a development agreement in or about July, 2005 originally with Suncurrent, which was assigned to Cedar Road (now Bioenergy) in November, 2005 (the "**Assignment Agreement**") to permit Bioenergy to construct and operate a facility to harvest methane gas, convert it to electricity which was ultimately sold to third parties including B.C. Hydro.
16. The business of Bioenergy was interrupted by labour shortages, material and equipment servicing delays in early 2020 which, in large part has been attributed, by Liddy to the Covid-19 outbreak.
17. According to Liddy the business of Bioenergy is not operating due to parts and servicing required for each of Bioenergy's two generators and those parts are not currently available due to supply chain delays.

### **Assets of Bioenergy**

18. Material assets are and relate to the equipment described in the Bioenergy GSA located on the Lands and the tenure of the Respondent Bioenergy on the Lands including:
  - a) The above-noted development agreement dated July 2005 between the Respondent Suncurrent (assigned to the Respondent Bioenergy) (the "**Development Agreement**") and RDN giving Bioenergy access to the Lands to implement and carry on their business;

- b) an operating agreement dated November 2, 2005 between Cedar Road (now Bioenergy) (the "**Operating Agreement**") and RDN, giving Bioenergy access to the Lands to carry on its business;
  - c) an amended and restated collaboration agreement dated August 6, 2009 between Bioenergy (formerly Cedar Road), RDN and BC Bioenergy Network Association (a not-for-profit) (the "**Collaboration Agreement**") establishing an advisory committee with a view to expanding the business of Bioenergy.
19. The Development Agreement and Operating Agreement were amended six times: October 26, 2006, November 27, 2007, June 12, 2008, March 30, 2009, August 29, 2011 and February 20, 2012.
20. By consent agreement dated January 18, 2017 between the Petitioner, Vancity and RDN (the "**Non-Disturbance Agreement**") RDN agreed with Vancity, among other things that RDN:
- a) acknowledged that Vancity has a charge on the Bioenergy Property and that the same shall be considered personal property despite any degree of affixation to the Lands;
  - b) would give notice of amendments or defaults under the Development Agreement and/or Operating Agreement to Vancity;
  - c) would permit Vancity to appoint a receiver with powers to enter the Lands, and/or assume the Development Agreement and Operating Agreement to realize on the assets.
21. Vancity has not received any notices from RDN relative to the Non-Disturbance Agreement.
22. The Collaboration Agreement provides, among other things that RDN will assist with:

- a) establishing a collaborative development and demonstration center (“**CDDC**”) to encourage small to medium sized municipalities to participate in order to identify best practices for sustainable and economically viable projects in relation to waste facilities;
  - b) the CDDC being governed and operated by an advisory board;
  - c) providing information about the CDDC network to stakeholders and academic institutions;
  - d) facilitating the creation of a website dedicated to the undertakings of the CDDC network;
  - e) preparing an annual report for the CDDC network describing projects and the results of projects;
  - f) encouraging technology suppliers to participate in the CDDC network; and
  - g) providing economic, environmental and governance information.
23. It is a term of the Collaboration Agreement that a party may terminate the Collaboration Agreement for cause provided that any material breach of the Collaboration Agreement by the party in breach remains uncured 90 days following written notice thereof from the non-breaching party.
24. Vancity is told by the Respondents that RDN gave notice on April 5, 2022 that they are giving notice of termination of the Collaboration Agreement effective August 7, 2022 without giving a reason of default and therefore there is no ability for the Respondents to cure during the notice period (the “**Termination Notice**”).
25. Liddy and Bioenergy are in the process of negotiating a sale of the business of Bioenergy which will require the consent of RDN however Liddy says that RDN is not considering assignment proposals from Bioenergy.



### **Default and Demand by Vancity**

26. Default was made by Bioenergy under the Loans and accordingly Vancity demanded repayment from Bioenergy, Suncurrent and Liddy by way of demand letters dated July 19, 2022 (the “**Demand Letters**”).
27. The Loans were not repaid by the expiry of the Demand Letters.
28. Liddy, on behalf of Bioenergy signed and returned the acknowledgement, consent and waiver for Vancity to enforce its security (the “**Consent to Enforce**”).

### **Receiver Necessary**

29. The business of Bioenergy is not operating and their Loans with Vancity are in default.
30. Bioenergy and Liddy want to sell the business of Bioenergy (which includes an assignment of the Development Agreement and Operating Agreement) however they are being restricted by RDN.
31. RDN wants to terminate the Collaboration Agreement.
32. A Receiver is permitted, by the Non-Disturbance Agreement to assume the Development Agreement and the Operating Agreement and assign to a third party subject to the consent of RDN (not to be unreasonably withheld) and the Respondents want the business sold.
33. Vancity may be prejudiced by the termination of the Collaboration Agreement.
34. The Respondents support the appointment of a receiver.

### **PART 3: LEGAL BASIS**

1. A secured creditor is entitled to the appointment of a receiver and manager as a matter of course where default has occurred under the security. The court should only exercise its discretion not to make such an appointment only in those

rare occasions where the debtor can show compelling commercial or other reasons why such an order ought not to be made.

*United Savings Credit Union v. F & R Brokers Inc.*, 2003 BCSC 604  
*Canadian Imperial Bank of Commerce v. Can-Pacific Farms Inc.*, 2012 BCSC 437

2. Default in the present case has occurred. Accordingly, the appointment of a receiver and manager ought to go as a matter of course.
3. The appointment may be made under the *Law and Equity Act* where “just or convenient.”

*Textron Financial Canada Ltd. v. Chetwynd Motels Ltd.*, 2010 BCSC 477

4. Where the security instrument governing the relationship between the debtor and the secured creditor provides for a right to appoint a receiver upon default, the burden on the applicant is relaxed. While the appointment of a receiver is generally regarded as an extraordinary equitable remedy, the nature of the remedy is not extraordinary or equitable in circumstances where commercial parties have expressly contemplated the appointment in a contract governing their relationship.

*Textron* at paras 50 and 75

*Bank of Nova Scotia v. Freure Village on Clair Creek*, [1996] O.J. No. 5088 (G.D.) at para 12

*Canadian Tire Corp. v. Healy*, [2011] O.J. No. 3498 (S.C.J.) at para 18

*Bank of Montreal v. Carnival National Leasing Limited*, [2011] O.J. No. 671 (S.C.J.) at para 27

*Farallon Investments Ltd. v. Bruce Pallett Fruit Farms Ltd.*, [1992] O.J. No. 330 (G.D.) at paras 2 -

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5. In the present case, the parties agreed to the appointment of a receiver upon default in the contracts governing their relationship. Other factors militating in favour of the appointment of a receiver and manager include:
  - a) RDN is purporting to terminate a contract that may be of value to the assets and a receiver should be given the opportunity to investigate and cure;

- b) in the absence of a receiver there is no efficient and effective method for Vancity to realize on its security so that the Loan may be repaid;
- c) the Petitioner requires the assistance of an officer of the Court to mitigate its position and control the business of the Respondent Bioenergy and its relationship with RDN.

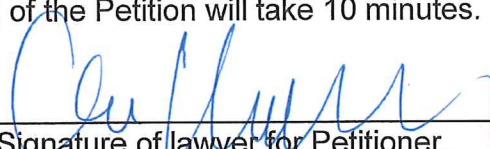
- 6. The Respondents support the appointment of a Receiver.
- 7. The Petitioner will rely upon the law of contract, s. 39 of the *Law and Equity Act*, s. 243(1) of the *BIA*, the *Personal Property Security Act* including s. 66, the Supreme Court Civil Rules including 8-5, 10-1, 10-2, 10-4 and 14-1 and the inherent jurisdiction of this Court.
- 8. Rules 1-3, 10-2, 13-5, 14-1, 16-1, 21-7 and 22-1;
- 9. Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended; and
- 10. Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

**PART 4: MATERIAL TO BE RELIED ON**

- 1. Affidavit #1 of FRANK SEMINARA made August 3, 2022, and
- 2. Affidavit #1 of GEMMA POTTS made August 3, 2022.

The Petitioner estimates that the Hearing of the Petition will take 10 minutes.

Date: AUGUST 4, 2022.

  
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Signature of lawyer for Petitioner,  
VANCOUVER CITY SAVINGS CREDIT  
UNION, Alan A. Frydenlund, Q.C.

**TO BE COMPLETED BY THE COURT ONLY:**

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this Petition

with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Signature of  Judge  Master

No. \_\_\_\_\_  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

VANCOUVER CITY SAVINGS CREDIT UNION

Petitioner

AND:

CEDAR ROAD BIOENRGY INC.  
SUNCURRENT INDUSTRIES INC.  
PAUL LIDDY

Respondents

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION  
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Petitioner, VANCOUVER CITY SAVINGS CREDIT UNION, claims the right to serve this Petition on the Respondents, or any of them, outside British Columbia on the grounds, *inter alia*, that the proceeding:

- (a) is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in property in British Columbia that is immovable or movable property;
- (b) is brought to interpret, rectify, or enforce any deed, contract, or other instrument in relation to property in British Columbia that is immovable or movable property;
- (c) concerns contractual obligations, and the contractual obligations, to a substantial extent, were to be performed in British Columbia;
- (d) concerns contractual obligations, and by its express terms, the contract is governed by the law of British Columbia.