

COURT FILE NUMBER
 COURT COURT OF QUEEN'S BENCH OF ALBERTA
 JUDICIAL CENTRE CALGARY
 PLAINTIFF BANK OF MONTREAL
 DEFENDANTS TRADESMEN ENTERPRISES LIMITED
 PARTNERSHIP, and TRADESMEN ENTERPRISES INC.
 DOCUMENT **STATEMENT OF CLAIM**

Clerk's Stamp

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
 Josef G.A. Kruger, Q.C. / Jack R. Maslen
 Borden Ladner Gervais LLP
 1900, 520 3rd Ave. S.W.
 Calgary, AB T2P 0R3
 Telephone: (403) 232-9563 / 9790
 Facsimile: (403) 266-1395
 Email: JKruger@blg.com / JMaslen@blg.com
 File No. 407500.000127

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:**I. THE PARTIES**

1. The Plaintiff, Bank of Montreal ("**BMO**" or the "**Plaintiff**"), is a bank formed under Schedule I of the *Bank Act*, SC 1991, c 46, and carries on business in the Province of Alberta, and elsewhere in Canada, with offices in the City of Calgary.
2. The Defendant, Tradesmen Enterprises Limited Partnership ("**Tradesmen LP**" or the "**Borrower**"), is a limited partnership registered in the Province of Alberta.
3. The Defendant, Tradesmen Enterprises Inc. ("**Tradesmen Inc.**" or the "**Guarantor**"), is a corporation formed under the laws of the Province of Alberta, with its registered address in the City of Calgary. Tradesmen Inc. is the general partner of Tradesmen LP.

4. Trademen LP and Trademen Inc. are collectively referred to as “**Tradesmen**” or the “**Defendants**”.

II. BACKGROUND

Loan Agreement

5. Pursuant to a loan agreement dated as of April 16, 2013, between Trademen LP, as borrower, and BMO, as lender, BMO made available to Trademen LP several credit facilities (the “**Loan Agreement**”).
6. As security for Trademen LP’s obligations to BMO under the Loan Agreement, Trademen LP and Trademen Inc. provided, among other things and as applicable, the following security:
 - (a) a security agreement dated April 17, 2013 of Trademen LP, pursuant to which Trademen LP granted BMO a security interest and charge over all of its present and future property and assets, real and personal, moveable or immovable of whatever nature and kind (the “**Borrower GSA**”), which was duly registered with the Alberta Personal Property Registry (the “**PPR**”) as Registrations Numbers 13041222344 and 13041222383;
 - (b) a guarantee for indebtedness dated as of April 17, 2013 of Trademen Inc., pursuant to which Trademen Inc. gave an unlimited and continuing guarantee of all of Trademen LP’s present and future debts and liabilities to BMO (the “**Tradesmen Inc. Guarantee**”); and
 - (c) a security agreement dated April 17, 2013 of Trademen Inc., pursuant to which Trademen Inc. granted to BMO a security interest and charge over all of its present and future property and assets, real and personal, moveable or immovable of whatever nature and kind (the “**Guarantor GSA**”), which was duly registered with the PPR as Registration Numbers 13041222221 and 13041222300.
7. Among other things, the GSAs state that an event of default, as defined under the Loan Agreement, constitute an event of default under the GSAs thereby entitling BMO to realize on its security by any method not prohibited by law, including by appointing a receiver.

Restated Loan Agreement

8. Pursuant to certain amending agreements, Tradesmen LP and BMO amended, restated and extended the credit facilities advanced to Tradesmen LP under the Loan Agreement from time to time. Ultimately, by a fourth amended and restated loan agreement (the “**Restated Loan Agreement**”) dated as of July 6, 2020, BMO agreed to make available to Tradesmen LP, *inter alia*:
- (a) a demand revolving credit facility (“**Facility 1**”) up to \$23,000,000;
 - (b) a corporate MasterCard credit facility (“**Facility 2**”) up to \$200,000;
 - (c) a treasury risk management facility up to \$500,000 deemed risk as calculated by BMO; and
 - (d) a demand letter of credit facility up to \$15,000,000, which was guaranteed by Export Development Canada (“**EDC**”) pursuant to the terms and conditions of the EDC account performance security guarantee issued by EDC to BMO on July 31, 2017 (the “**EDC Account PSG**”);
- (collectively, the “**Pre-NOI Facilities**”).
9. Under the Restated Loan Agreement, Tradesmen LP covenanted and agreed, *inter alia*:
- (a) to punctually pay all obligations owing under the Restated Loan Agreement when due;
 - (b) to do all things necessary to defend, protect and maintain its property from all material adverse claims;
 - (c) to not terminate, cancel or suspend any “Material Contract” as defined in the Restated Loan Agreement;
 - (d) to perform its obligations under all Material Contracts and all other agreements relating to its properties and businesses;
 - (e) that any breach or contravention of any term or condition of the Restated Loan Agreement, or any other loan document, would constitute a “Default”; and

- (f) that notwithstanding anything above or otherwise contained in the Restated Loan Agreement, BMO was entitled to, in its sole discretion and for any reason, and at any time, demand repayment of any or all obligations under any of the Pre-NOI Facilities.
10. Tradesmen LP's obligations in respect of the Pre-NOI Facilities were secured by various security (collectively, the "**Security**"), namely:
- (a) operating loan agreement(s) executed by Tradesmen LP;
 - (b) a power of attorney and agreement regarding banker's acceptances executed by Tradesmen LP;
 - (c) indemnity agreements with respect to letters of credit executed by Tradesmen LP;
 - (d) a MasterCard indemnity agreement executed by Tradesmen LP;
 - (e) the GSAs;
 - (f) the Tradesmen Inc. Guarantee;
 - (g) an insurance binder letter addressed to BMO identifying all applicable policies of insurance held by Tradesmen LP and Tradesmen Inc. and confirming BMO as a first loss payee;
 - (h) landlord consents and agreements with landlords of applicable leased premises of Tradesmen LP and Tradesmen Inc. where all books and records of Tradesmen LP and Tradesmen Inc. are located (as applicable);
 - (i) the EDC Account PSG;
 - (j) a guarantee for indebtedness from each of PEF 2010 (A) Limited Partnership, PEF 2010 (B) Limited Partnership, and PEF 2010 (C) Limited Partnership (collectively, the "**PEF LPs**"), dated July 6, 2020, pursuant to which the PEF LPs jointly and severally provided a continuing guarantee of all of Tradesmen LP's present and future debts and liabilities to BMO under the Restated Loan Agreement up to specified aggregate amounts;
 - (k) a subordination and standstill agreement, made July 6, 2020, among the PEF LPs, Tradesmen LP, Tradesmen Inc. and BMO, whereby the PEF LPs agreed to defer, postpone

and subordinate all indebtedness and claims they may have against Tradesmen to those of BMO as the senior creditor; and

- (l) an updated insurance binder letter addressed to BMO identifying all applicable policies of insurance held by Tradesmen LP and Tradesmen Inc. and confirming BMO as a first loss payee.

III. TECK CONTRACT

11. In or around May 2019, Tradesmen LP and Teck Coal Limited (“**Teck**”) entered into a works agreement (the “**Teck Contract**”). The Teck Contract pertained to the Fording River Operations Active Water Treatment Facility South (the “**Project**”), located near Elkford, British Columbia, which is owned by Teck.
12. Under the Teck Contract, Teck engaged Tradesmen LP to, among other things, supply, install and complete the structural, mechanical and piping scope for the Project.
13. On January 11, 2021, Teck gave formal notice to Tradesmen LP that it was terminating the Teck Contract due to Tradesmen LP’s alleged breaches.
14. As a result of Teck’s termination of the Teck Contract, Tradesmen LP’s going business was no longer viable. Following the loss of the Teck Contract, Tradesmen experienced a severe liquidity crisis. Tradesmen’s primary asset is now litigation of its claims against Teck and others.

IV. DEFAULTS AND DEMANDS

15. Since in or around January 2021, Tradesmen LP defaulted, or has otherwise breached, its obligations under the Restated Loan Agreement, the Borrower GSA and such other Security as applicable by:
 - (a) allowing borrowings under Facility 1 to fall into an overdraft position, by more than \$1.2 million, and failing to make payment of the overdraft amount;
 - (b) the termination of the Teck Contract effective as of January 11, 2021, a Material Contract within the meaning of the Restated Loan Agreement, resulting in an event or circumstance which in the sole, reasonable opinion of BMO constitutes a Material Adverse Effect within the meaning of the Restated Loan Agreement;

- (c) failing to meet its liabilities generally as they become due and becoming insolvent; and
 - (d) such other or further defaults as may be proven at the trial of this action.
16. As a result of Tradesmen LP's defaults or breaches, BMO's rights and remedies under the Borrower GSA and the other Security became enforceable.
 17. Accordingly, by letter dated January 14, 2021, BMO issued a formal and final demand to Tradesmen LP for payment in full of all amounts due and owing by Tradesmen LP to BMO, which then totalled \$25,941,648.81 together with interest and charges continuing to accrue thereon (the "**January Indebtedness**"). In the same letter, BMO also delivered to Tradesmen LP a Notice of Intention to Enforce Security under section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**").
 18. As a further result of Tradesmen LP's defaults or breaches, the Tradesmen Inc. Guarantee became enforceable, and concurrent with its issuance of the demand and Notice of Intention to Enforce Security to Tradesmen LP, on January 14, 2021, BMO issued a formal and final demand to Tradesmen Inc. for payment in full of the January Indebtedness. In the same correspondence, BMO delivered to Tradesmen Inc. a Notice of Intention to Enforce Security under section 244 of the BIA.

V. TRADESMEN NOI PROCEEDINGS

19. As set out above, the loss of the Teck Contract caused Tradesmen to experience a severe liquidity crisis, which included, *inter alia*, defaults on its obligations to BMO.
20. On February 1, 2021, each of Tradesmen LP and Tradesmen Inc. filed Notices of Intention to Make a Proposal ("**NOIs**"), pursuant to section 50.4(1) of the BIA bearing Alberta Court of Queen's Bench File No. BK01-095189 (the "**NOI Proceedings**").
21. On March 2, 2021, Tradesmen applied for and was granted an Order extending the time within which it was required to file a proposal to its creditors from March 3, 2021 to April 16, 2021.
22. BMO supported the NOI Proceedings and, among other things, entered into an amended and restated interim financing agreement with Tradesmen dated as of March 2, 2021 (the "**Interim Financing Agreement**"). Under the Interim Financing Agreement, BMO agreed to make available to Tradesmen LP a senior secured super-priority, interim, revolving credit facility, for the purposes

of the NOI Proceedings, up to a maximum principal amount of \$2.8 million (the “**Interim Facility**”).

23. Pursuant to an amended and restated Order, pronounced on March 2, 2021 (the “**Interim Finance Order**”), the Court granted BMO a super priority charge on or over all of Tradesmen’s property, subject only to an Administration Charge (as defined in the Interim Finance Order), as security for Tradesmen LP’s borrowings under the Interim Facility (the “**Interim Financing Charge**”).

IV. FURTHER DEFAULTS AND CURRENT INDEBTEDNESS TO BMO

24. Tradesmen now advises BMO that it will not seek to file a proposal to its creditors or otherwise seek a further extension of the stay of proceedings in the NOI process. As a result, Tradesmen will be deemed to have made an assignment into bankruptcy on or about April 17, 2021.
25. Tradesmen’s anticipated deemed assignment into bankruptcy constitutes a “Material Adverse Change” and “Event of Default” under the Interim Financing Agreement. Consequently, BMO’s rights and remedies under the Interim Financing Agreement, including its security under the Interim Financing Charge, are now enforceable.
26. BMO’s rights and remedies under the Interim Financing Agreement are in addition to BMO’s rights and remedies under the Security, including the Borrower GSA, the Tradesmen Inc. Guarantee, and the Guarantor GSA, each of which is valid and now enforceable.
27. As of March 30, 2021, the total amount due and owing by Tradesmen LP to BMO, and guaranteed by Tradesmen Inc., totalled \$19,414,771.54, together with interest and charges continuing to accrue thereon (the “**Current Indebtedness**”). The Current Indebtedness comprises:
 - (a) \$2,361,942.06 under the Interim Facility;
 - (b) \$17,024,682.26 under Facility 1; and
 - (c) \$28,147.22 under Facility 2.
28. The Defendants have failed to repay the Current Indebtedness, which represents a just debt owed to BMO, the payment of which is being improperly withheld.

29. The Plaintiff proposes that the trial of this action be held at the Calgary Courts Centre, in the Province of Alberta, and estimates it will take no longer than 25 days.

REMEDY SOUGHT:

30. WHEREFORE, the Plaintiff claims as follows:

- (a) a declaration that Tradesmen LP is in default of the Restated Loan Agreement, the Interim Financing Agreement, the Borrower GSA and the Security as applicable;
- (b) a declaration that Tradesmen Inc. is in default of the Tradesmen Inc. Guarantee, the Interim Financing Agreement, the Guarantor GSA, and the Security as applicable;
- (c) a declaration that the Security, and the Interim Financing Charge, are valid and have become enforceable;
- (d) an order appointing KSV Restructuring Inc. as receiver and manager over all of the property of each of Tradesmen LP and Tradesmen Inc.;
- (e) judgment in an amount not less than \$19,414,771.54, together with interest and chargeable costs accruing thereon at the rates set out in the Restated Loan Agreement or Interim Financing Agreement, as applicable, or such other amount as may be proven at trial, as against Tradesmen LP and Tradesmen Inc. jointly and severally;
- (f) costs for this action payable on a full-indemnity basis pursuant to the terms of the Restated Loan Agreement or Interim Financing Agreement, or alternatively, in accordance with the *Alberta Rules of Court*, AR 124/2010; and
- (g) such further and other relief as this Honourable Court deems 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 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.