



COURT FILE NUMBER 1601-06667
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE Calgary
PLAINTIFF CENTURY SERVICES CORP.
DEFENDANTS R3 ENERGY SERVICES INC., DEAN
RUTLEDGE, 1189269 ALBERTA LTD., R3
ENERGY SERVICES LLC, and TEXAS PRO
DYNO LLC
DOCUMENT STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
John L. Ircandia, Q.C.; Patrick T. McCarthy, Q.C.
Borden Ladner Gervais LLP
1900, 520 3rd Ave. S.W.
Calgary, AB T2P 0R3
Telephone: (403) 232-9500
Facsimile: (403) 266-1395
Email: jircandia@blg.com;
pmccarthy@blg.com
File No. 418656/000210

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:

Background

1. The Plaintiff Century Services Corp. ("Century") is a private corporation duly registered pursuant to the laws of the Province of Alberta, with offices located in the City of Calgary, Alberta, whose business includes providing asset based loan facilities.

2. The Defendant R3 Energy Services Inc. (“**R3**”) is a private corporation duly registered pursuant to the laws of the Province of Alberta, with offices located in the City of Calgary, Alberta, and who operates out of an industrial compound located in or near the town of Nisku, Alberta.
3. The Defendant R3 Energy Services LLC (“**R3 Texas**”) is a limited liability company duly registered pursuant to the laws of the State of Texas, which conducts a business similar to that of R3 in or around Odessa, Texas.
4. The Defendant 1189269 Alberta Ltd. (the “**Numbered Company**”) is a private corporate duly registered pursuant to the laws of the Province of Alberta, with a registered office located in Calgary, Alberta.
5. The Defendant Texas Pro Dyno LLC (“**Dyno**”) is a limited liability company duly registered pursuant to the laws of the State of Texas.
6. The Defendant Dean Rutledge (“**Rutledge**”) is an individual resident in the City of Calgary. At all material times Rutledge was the sole director and President and Chief Executive Officer of R3, the sole shareholder of R3, the majority shareholder of the Numbered Company, and the sole director and principal, if not sole, shareholder of each of R3 Texas and Dyno.
7. Century Services LP provided credit facilities to R3 pursuant to a loan agreement dated July 31, 2014 (the “**Loan Agreement**”). The interest of Century LP was subsequently duly assigned to Century.
8. Pursuant to the Loan Agreement and subsequent assignment, Century provided the following credit facilities to R3:
 - a) A demand, revolving, accounts receivable facility in the maximum principal amount of CDN\$2,000,000.00; and
 - b) A demand, non-revolving, term loan in the maximum principal amount of CDN\$3,100,000.00.
9. As security for the amounts advanced under the Loan Agreement, Century was provided with various security, including the following:
 - a) A promissory note from R3 to Century in the amount of CDN\$5,100,000;
 - b) A general security agreement dated July 31, 2014, from R3 granting Century a first charge on all present and after-acquired property of R3 (the “**R3 GSA**”);

- c) A guarantee and postponement of claim dated July 31, 2014, limited to the principal sum of CDN\$750,000 from Rutledge (the “**Rutledge Guarantee**”);
- d) A general security agreement dated July 31, 2014, from Rutledge granting Century a first charge on all present and after-acquired property of Rutledge (the “**Rutledge GSA**”); and
- e) An assignment of the rights, benefits and interests of R3 in certain insurance policies and all proceeds resulting therefrom,

(collectively the “**Century Security**”).

- 10. Pursuant to the terms of the R3 GSA and the Rutledge GSA, respectively, R3 and Rutledge each agreed that Century would be entitled to seek the appointment of a receiver and/or receiver manager of R3 and Rutledge in the event of default.
- 11. All Century Security which required registration was duly registered pursuant to the laws of the province of Alberta as well as pursuant the Uniform Commercial Code of the United States.

Events of Default & Appointment of Receiver

- 12. Commencing in early 2016, R3 defaulted under the terms of the Loan Agreement. In particular, R3 has:
 - (a) failed to make payments when properly due and owing (in fact no payment has been received from R3 since February 22, 2016);
 - (b) failed to provide required financial reporting since January, 2016;
 - (c) has closed its offices in Calgary and its industrial yard in Nisku and effectively ceased to carry on business in the province of Alberta; and
 - (d) has, without the approval of Century, transferred all of its assets and property to a company owned and operated by Rutledge, R3 Texas, in or around the city of Odessa in the state of Texas,

all of which actions constitute “**Events of Default**” as defined by the Loan Agreement and the Century Security.

- 13. As a result of these Events of Default, by letter to R3 dated April 26, 2016, Century issued a formal demand for repayment of all outstanding amounts. In addition, also on April 26, 2016, Century delivered a notice of intention to enforce security pursuant to the *Bankruptcy and Insolvency Act* (“**BIA**”) against R3 (together, the “**R3 Demands**”).

14. Further, by letter to Rutledge dated April 26, 2016, Century issued a formal demand for the repayment of all outstanding amounts owing pursuant to the Rutledge Guarantee. In addition, also on April 26, 2016, Century delivered a notice of intention to enforce security pursuant to the BIA against Rutledge (together, the “**Rutledge Demands**”).
15. Despite the R3 Demands and the Rutledge Demands, no payments whatsoever have been received by Century.
16. As of May 17, 2016 the amounts due and owing by R3 to Century pursuant to the Loan Agreement were \$2,658,825.00 (Canadian Funds) and \$367,559 (U.S. Funds) together with accrued and accruing commissions, costs, fees and expenses incurred or to be incurred by Century (together, the “**Indebtedness**”).
17. Pursuant to the R3 GSA and the Rutledge GSA, Century is entitled to seek the appointment of a receiver as a result of the Events of Default and outstanding Indebtedness.
18. Hardie & Kelly Inc. has consented to act as receiver of each of R3 and Rutledge.
19. The Indebtedness, along with all monies due and owing pursuant to the Rutledge Guarantee, are just debts properly due and owing by R3 and Rutledge, respectively.

Removal of Assets from Jurisdiction & Fraudulent Preferences

20. Both the Calgary office of R3 and the industrial compound out of which R3 operated its business in Nisku have effectively been closed and all material assets of R3 have now been removed to near or around the City of Odessa, Texas.
21. The majority of these removed R3 assets are under the control and possession of R3 Texas and are being actively used by R3 Texas in its own business. R3 Texas has not paid R3 rent or any other form of compensation in connection with its use of R3’s assets. The co-mingled use of those assets by R3 Texas is diminishing their value and making tracing and identification of R3’s assets and Century’s Security increasingly difficult.
22. Further, it is evident that while there has been a significant increase in the fixed assets in R3 Texas, there has been a corresponding decrease in R3’s fixed assets. This is balanced on R3 Texas’ balance sheet by showing a liability from R3 Texas to R3 in the approximate amount of

\$2,100,000. As a result of the depletion of R3's fixed assets, there has also been a significant depletion in R3's accounts receivable, as these were revenue generating assets.

23. This transfer of assets by R3 to R3 Texas has essentially converted Century's secured loan based on R3's fixed assets and payables earned on the operation of those assets, to an unsecured receivable owing from R3 Texas to R3, with no specified payment terms.
24. In addition to the R3 equipment that has been transferred to R3 Texas, certain of R3's "dyno" equipment, including numerous motors and potentially other equipment secured by the Century Security, is in the possession of Dyno without any rent or other form of consideration being paid from Dyno to R3.
25. Dyno is using the equipment in a similar manner as R3 Texas; namely, conducting its business utilizing R3's dyno equipment and collecting revenue from such operations thereby diverting revenue from R3 to Century's detriment.
26. R3 has also transferred certain "mud motors" and potentially other equipment secured by the Century Security, to the Numbered Company without any consideration paid from the Numbered Company to R3 for such transfer.
27. The transfer of assets by R3 to R3 Texas from this jurisdiction, the payments made by R3 to R3 Texas, the transfer of assets by R3 to Dyno, and the transfer of assets by R3 to the Numbered Company, all constitute fraudulent preferences or conveyances, as:
 - (a) they were made by R3 at a time when it was in insolvent circumstances, or unable to pay its debts in full, or when it knew that it was on the eve of insolvency;
 - (b) had the effect of giving R3 Texas, Dyno and the Numbered Company a preference over R3's other creditors, including Century, or were made with the intent of giving R3 Texas, Dyno and the Numbered Company a preference;
 - (c) were made with the intention to defraud, defeat, hinder, delay or prejudice R3's creditors, including Century, and R3 Texas, Dyno and the Numbered Company, as the case may be, were aware of such fraudulent intent;
 - (d) were non-arm's length transactions; and
 - (e) were made with no consideration from any of R3 Texas, Dyno or the Numbered Company to R3.

28. Century specifically pleads and relies upon the provisions of the *Fraudulent Preferences Act*, RSA 2000, c F-24 and the *Statute of Fraudulent Conveyances*, 1571 (U.K.), 13 Eliz., c. 5 (the “**Statute of Elizabeth**”).
29. Century proposes that this Action be tried at the Court House, in the City of Calgary, in the Province of Alberta. The trial of this Action will be less than 25 days.

Remedies sought:

30. Judgment against R3 in the amounts of \$2,658,825 (Canadian Funds) and \$367,559 (U.S. Funds), together with interest, costs, fees and other amounts properly due and owing pursuant to the Loan Agreement and the Century Security, as may be proven or acknowledged in the within Action.
31. Judgment against Rutledge in the amount of \$750,000, together with legal fees, other chargeable costs and interest, and together with such other amounts as are found to be owing under the Rutledge Guarantee.
32. A Declaration that the payments due from each of R3 and Rutledge to Century are in default and that all moneys secured by the Century Security are due and owing.
33. A Declaration that the Century Security and other security held by the Plaintiff in support of the Loan Agreement or the obligations of R3 and Rutledge, has become enforceable, that any floating charge security created thereby has become specifically charged against all property, assets and undertakings of R3 and Rutledge, as the case may be, and that such security constitutes valid and enforceable security in accordance with the terms thereof.
34. An Order appointing
- (a) a receiver and/or receiver and manager over R3, the Numbered Company and R3 Texas; and
 - (b) a receiver over the property of Rutledge,
- pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended and the *Judicature Act*, RSA 2000, c J-2.
35. Further, or in the alternative, an Order against each of the Defendants:
- (a) Granting judgment against the Defendants arising from any fraudulent transfer or preference, or reviewable conveyance, including judgment for damages suffered by Century as a result of the wrongful diversion of revenue from R3 to the Defendants;

- (b) Setting aside any fraudulent transfer or preference, or reviewable conveyance;
 - (c) Permitting Century to trace those monies that the Defendants have each fraudulently retained or used, into and through any financial institution accounts or deposit facilities in the name of the Defendants and into or through any assets purchased by the Defendants with Century's monies;
 - (d) Declaring that any real property owned in whole or in part by the Defendants may be sold in order to deliver up to Century the funds which can be traced to those lands;
 - (e) Granting interlocutory and permanent injunctions attaching to the assets of the Defendants and injunctions preventing the Defendants from disposing of any of their assets, including those held by another person on their behalf, wheresoever located, pending the outcome of the trial of this Action.
36. Costs against the Defendants on a solicitor-and-his-own-client, full indemnity basis.
37. Pre-judgment and post-judgment interest on all amounts awarded to Century pursuant to either the interest rates applicable according to the terms of the Loan Agreement and Century Security, or alternatively, pursuant to the *Judgment Interest Act*, RSA 2000, c J-1.
38. Such further and other relief as this Honourable Court deems just in the circumstances.

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(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.