

MAR 17 2015

NO. *S152303*  
VANCOUVER REGISTRY



**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

HSBC BANK CANADA

PLAINTIFF

AND:

CONTECH ENTERPRISES INC.  
BUSINESS DEVELOPMENT BANK OF CANADA  
LAUREL RAYANI  
CARY GREGORY  
JANET GREGORY  
JULIEN SELLGREN  
JANET SHANNON  
MARK GRAMBART  
BURMAN AND BURMAN CORP.  
MICHAEL BRENNER  
ANDERS TREIBERG  
ELISABETH TREIBERG  
MINZAR HOLDINGS LTD.  
0872951 B.C. LTD.  
FIRST WEST CREDIT UNION  
VEGHERB, LLC  
SADLER FARMS LTD.  
PAUL HOOPER  
MARIANNE HOOPER  
BC ADVANTAGE FUNDS (VCC) LTD.  
ECL HOLDINGS LTD.  
ST. PATRICK HOLDINGS LTD.  
BWF HOLDINGS LTD.  
DENMAN ISLAND CHOCOLATE LTD.

DEFENDANTS

**NOTICE OF CIVIL CLAIM**

Form 11

**ENDORSEMENT ON ORIGINATING PROCESS  
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiff claims the right to serve this Notice of Civil Claim on the Defendants, or any of them, outside British Columbia on the ground that the proceeding concerns contractual obligations and the contractual obligations, to a substantial extent, were to be performed in British Columbia, pursuant to Rule 4-5(1) and s. 10(e) of the *Court Jurisdiction and Proceedings Transfer Act*.

**This action has been started by the Plaintiff for the relief set out in Part 2 below.**

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

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiffs.

If you intend to make a Counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-noted registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.**

### **Time for Response to Civil Claim**

A Response to Civil Claim must be filed and served on the Plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

### **Part 1: STATEMENT OF FACTS**

1. The Plaintiff is a chartered bank of Canada having an office in the Province of British Columbia and an address for delivery for the purpose of these proceedings of c/o 1600 Cathedral Place, 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.
2. The Defendants have addresses as follows:

|   |  |
|---|--|
| Contech Enterprises Inc.<br>c/o Deloitte Restructuring Inc.<br>2800 – 1055 Dunsmuir Street<br>Vancouver, BC V7X 1P4 | Minzar Holdings Ltd.<br>c/o Its Registered Office<br>900 – 1175 Douglas Street<br>Victoria, BC V8W 2E1 |
| Business Development Bank of Canada<br>505 Burrard Street, Suite 2100<br>P.O. Box 6,<br>Vancouver, BC V7X 1M6       | 0872951 B.C. Ltd<br>c/o Its Registered Office<br>#305 – 2692 Clearbrook Road<br>Abbotsford, BC V2T 2Y8 |

|  |  |
|--|--|
| <p>Laurel Rayani<br/>128 Eberts Street<br/>Victoria, BC V8S 3H7</p>  | <p>First West Credit Union<br/>c/o Miller Thomson LLP<br/>(Attention: Mr. Brent Clark)<br/>#1000 – 840 Howe Street<br/>Vancouver, BC V6Z 2M1</p> |
| <p>Cary Gregory<br/>1160 Baltimore Pike<br/>Gettysburg, Pennsylvania 17325</p>                                   | <p>Vegherb, LLC<br/>c/o Shields Harney<br/>(Attention: Mr. Gregory Harney)<br/>#602 - 732 Broughton Street<br/>Victoria, BC V8W 1E1</p>          |
| <p>Janet Gregory<br/>1160 Baltimore Pike<br/>Gettysburg, Pennsylvania 17325</p>                                  | <p>Sadler Farms Ltd.<br/>c/o Its Registered Office<br/>1800 – 401 West Georgia Street<br/>Vancouver, BC V6B 5A1</p>                              |
| <p>Julien Sellgren<br/>1996 West 13<sup>th</sup> Avenue<br/>Vancouver, BC V6J 2H6</p>                            | <p>Paul Hooper<br/>207 Mary Hill Road<br/>Victoria, BC V9C 3Z2</p>   |
| <p>Janet Shannon<br/>2090 Stonehewer Place<br/>Victoria, BC V8S 2Z7</p>  | <p>Marianne Hooper<br/>207 Mary Hill Road<br/>Victoria, BC V9C 3Z2</p>   |
| <p>Mark Grambart<br/>3008 Oakdowne Road<br/>Victoria, BC V8R 5N9</p>   | <p>B.C. Advantage Funds (VCC) Ltd.<br/>c/o Its Registered Office<br/>2900 – 550 Burrard Street<br/>Vancouver, BC V6C 0A3</p>                     |
| <p>Burman and Burman Corp.<br/>c/o Its Registered Office<br/>895 Strangecrest Place<br/>Victoria, BC V8Y 1J7</p> | <p>ECL Holdings Ltd.<br/>c/o Its Registered Office<br/>7<sup>th</sup> floor – 1175 Douglas Street<br/>Victoria, BC V8W 2E1</p>                   |
| <p>Michael Brenner<br/>2741 Dallaire Avenue SW<br/>Calgary, Alberta T3E 7T1</p>                                  | <p>St. Patrick Holdings Ltd.<br/>c/o Its Registered Office<br/>26 Bastion Square<br/>Third floor – Burnes House<br/>Victoria, BC V8W 1H9</p>     |
| <p>Anders Treberg<br/>474 Smelt Bay Road, Box 248<br/>Mansons Landing, BC V0P 1K0</p>                            | <p>BWF Holdings Ltd.<br/>c/o Its Registered Office<br/>#305 – 2692 Clearbrook Road<br/>Abbotsford, BC V2T 2Y8</p>                                |
| <p>Elisabeth Treiberg<br/>474 Smelt Bay Road, Box 248<br/>Mansons Landing, BC V0P 1K0</p>                        | <p>Denman Island Chocolate Ltd.<br/>c/o Its Registered Office<br/>4321 Denman Road<br/>Denman Island, BC V0R 1T0</p>                             |

3. The Defendant, Contech Enterprises Inc. ("**Contech**"), is a company duly incorporated under the laws of the Province of British Columbia with its registered office at 2900 – 550 Burrard Street, Vancouver, BC V6C 0A3, as set out above.
4. At all material times, Contech had a banking relationship with the Plaintiff and obtained various credit facilities from the Plaintiff, including a demand loan.
5. On September 29, 2011, Contech granted a General Security Agreement (the "**GSA**") in favour of the Plaintiff to secure all outstanding liabilities and obligations of Contech to the Plaintiff.
6. Notice of the GSA was registered in the British Columbia Personal Property Registry on July 20, 2011 under base registration number 259740G.
7. The GSA is held by the Plaintiff as continuing security to cover and secure the payment of all and every indebtedness and liability, present and future, direct or indirect, absolute or contingent of Contech to the Plaintiff.
8. By the terms of the GSA, Contech, as general and continuing security for the payment of each and every obligation, indebtedness and liability of Contech to the Plaintiff (including interest thereon), present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed, wheresoever and howsoever incurred, and any ultimate unpaid balance thereof, including all future advances and re-advances, and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again and whether Contech be bound alone or with another or others and whether as principal or surety, granted to the Plaintiff by way of mortgage, charge, assignment and transfer, a security interest in all presently owned and thereafter acquired personal property of Contech of whatsoever nature and kind and wheresoever situate and all proceeds thereof and therefrom, renewals thereof, accessions thereto and substitutions therefore (collectively the "**Personal Property Collateral**"), including, without limiting the generality of the foregoing, all the presently owned or held and thereafter acquired right, title and interest of Contech in and to all Goods (including all accessories, attachments, additions and accessions thereto), Chattel Paper, Documents of Title (whether negotiable or not), Instruments, Intangibles (including all patents, trade-marks, copyrights, industrial designs and other intellectual property and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefore), Licences, Money, Securities, Investment Property and all:
  - (a) Inventory of whatsoever nature and kind and wheresoever situate;
  - (b) Equipment (other than Inventory) of whatsoever nature and kind and wheresoever situate, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature and kind;
  - (c) book accounts and book debts and generally all Accounts, debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit, letters of guarantee and advices of credit, which were then due, owing or accruing or growing due to or owned by or which may thereafter become due, owing or accruing or growing due to or owned by Contech (the "**Debts**");

- (d) deeds, documents, writings, papers, books of account and other books relating to or being records of Debts, Chattel Paper or Documents of Title or by which such were or may thereafter be secured, evidenced, acknowledged or made payable;
- (e) contractual rights and insurance claims and all goodwill;
- (f) monies other than trust monies lawfully belonging to others;

and charged as and by way of a floating charge, in favour of the Plaintiff a security interest in and to all the then owned or held and thereafter acquired property, assets, effects and undertakings of Contech of whatsoever nature and kind and wheresoever situate, other than such of the property, assets, effects and undertakings of Contech as are validly and effectively subjected to the security interest granted to the Plaintiff pursuant to clause 1.2.1 of the GSA, all of which are collectively called the “**Other Collateral**”, including, without limiting the generality of the foregoing, all then owned or held and thereafter acquired right, title and interest of Contech in and to real and immovable and leasehold property and rights whether in fee or of a less estate and all interest in and rights relating to lands and all easements, rights of way, privilege, benefits, licences, improvements and rights whether connected therewith or appurtenant thereto or separately owned or held and all structures, buildings, plan, machinery, fixtures, apparatus and fixed assets;

(The Personal Property Collateral and the Other Collateral are collectively referred to as the “**Collateral**”).

9. As at March 16, 2015 Contech was indebted to the Plaintiff as follows:

| <i>Description</i>              | <i>Amount</i>  | <i>Interest Rate<br/>Per Annum</i> |
|---------------------------------|----------------|------------------------------------|
| Demand Operating Loan           | \$1,154,986.35 | Prime + 3.25%                      |
| MasterCard (limit) <sup>1</sup> | 75,000.00      | 19.9%                              |
| Total                           | \$1,229,986.35 |                                    |

<sup>1</sup>or such lower amount once final balance is verified by the Plaintiff

(the “**Indebtedness**”).

- 10. All of the monies referred to above were justly and truly owed by Contech to the Plaintiff as at March 12, 2015 and are secured by the GSA.
- 11. Contech made an assignment into bankruptcy on March 6, 2015, with Deloitte Restructuring Inc. being appointed as Trustee.
- 12. By virtue of the bankruptcy, the security interest created by the GSA has crystallized.

13. The GSA provides that in the event the security thereby constituted should become enforceable, the Plaintiff could appoint a Receiver or Receiver-Manager of the property charged by the GSA.
14. By Instrument made in writing, March 11, 2015, the Plaintiff appointed Deloitte Restructuring Inc. as Receiver of Contech.
15. Other than Contech, all of the other Defendants are named as parties to this action as they hold security interests in the personal property of Contech, which security interests rank subsequent in priority to the interest of the Plaintiff, except for Business Development Bank of Canada, which has priority as to equipment only.

**Part 2: RELIEF SOUGHT**

16. A declaration that the sum due and owing by Contech to the Plaintiff as at March 16, 2015 plus interest thereafter is as set out in paragraph 9 herein;
17. A Declaration that the GSA is in default;
18. A Declaration that under the GSA, the Plaintiff is entitled to a fixed and specific charge upon and a security interest in all presently owned or held property of Contech, including, without limitation, the following:

all the right, title and interest of Contech in and to all Goods, Chattel Paper, Documents of Title, Instruments, Intangibles (including all patents, trade-marks, copyrights, industrial designs and other intellectual property and all proceeds thereof and therefrom, renewals thereof, Accessions thereto and substitutions therefore), Licences, Money, Securities, and all:

- (i) Inventory of whatsoever nature and kind and wheresoever situate;
- (ii) Equipment (other than Inventory) of whatsoever nature and kind and wheresoever situate, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures and vehicles of whatsoever nature and kind;
- (iii) book accounts and book debts and generally all Accounts, debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit, letters of guarantee and advices of credit, which are now due, owing or accruing or growing due to or owned by Contech;
- (iv) deeds, documents, writings, papers, books of account and other books relating to or being records of Debts, Chattel Paper or Documents of Title or by which such are secured, evidenced, acknowledged or made payable;
- (v) contractual rights and insurance claims and all goodwill, patents, trademarks, copyrights and other industrial property;
- (vi) monies other than trust monies lawfully belonging to others;

(vii) personal property described in any Schedule annexed to the GSA;

19. A Declaration that by virtue of the crystallization of the floating charge contained in the GSA, the Plaintiff is entitled to a security interest and a fixed and specific charge upon all the property, assets, effects and undertakings of Contech of whatsoever nature and kind and wheresoever situate, other than such of the property, assets, effects and undertakings of Contech as are validly and effectively subjected to the security interest granted to the Plaintiff pursuant to clause 1.2.1 of the GSA, all of which are collectively called the "**Contech Other Collateral**", including, without limiting the generality of the foregoing, all right, title and interest of Contech in and to real and immovable and leasehold property and rights whether in fee or of a less estate and all interest in and rights relating to lands and all easements, rights of way, privilege, benefits, licences, improvements and rights whether connected therewith or appurtenant thereto or separately owned or held and all structures, buildings, plan, machinery, fixtures, apparatus and fixed assets;
20. Enforcement of the fixed and specific charges created by the GSA by sale;
21. An Inquiry as to what properties are comprised in and charged by the GSA and in whom the properties are vested;
22. An Inquiry as to what other charges, and their respective priorities, affect the property comprised in and charged by the GSA and in whom and of what part thereof the same are vested;
23. An Accounting as to what is respectively due to such other chargeholders;
24. An Inquiry as to what other debts and liabilities there are, and the amounts thereof, of Contech, by virtue of any statute, ordinance or municipal regulation payable out of the property comprised in or subject to the charges created by the GSA in priority to the monies secured thereby;
25. Possession of the property, rights and assets and undertaking of Contech;
26. Appointment of a Receiver or a Receiver-Manager of the property, rights, assets, businesses and undertakings of Contech, charged by the GSA, with all proper powers and authorities;
27. Solicitor and own Client Costs;
28. Such further and other relief as to this Honourable Court may seem just.

**Part 3: LEGAL BASIS** On the facts set out above, the Plaintiff is entitled to the relief sought, including the appointment of a Receiver or Receiver Manager over the assets and undertakings of Contech pursuant to the GSA.

30. The Plaintiff relies upon Rule 10-2 of the *Supreme Court Civil Rules*, s. 39 of the *Law and Equity Act* and ss. 63 and 66 of the *Personal Property Security Act*, and submits that it is just and equitable to appoint a Receiver or Receiver Manager over the assets and undertaking of Contech.

Plaintiff's address for service is c/o the law firm of Lawson Lundell LLP, whose place of business and address for service is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2 (Attention: Bryan C. Gibbons)


Fax number address for service is: (604) 669-1620

E-mail address for service is: bgibbons@lawsonlundell.com

Place of Trial: Vancouver, British Columbia

The address of the Registry is: 800 Smithe Street, Vancouver,  
British Columbia V6Z 2E1

Dated at the City of Vancouver, in the Province of British Columbia, this 16 day of March, 2015.

  
\_\_\_\_\_  
Lawson Lundell LLP  
Solicitors for the Plaintiff

This Notice of Civil Claim is filed by Bryan C. Gibbons, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.



## APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

The Plaintiff's claim is solely for recovery of money specified or ascertainable, and enforcement of security in respect of that recovery.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

NO. \_\_\_\_\_  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

HSBC BANK CANADA

PLAINTIFF

AND:

CONTECH ENTERPRISES INC.  
AND OTHERS

DEFENDANTS

---

**NOTICE OF CIVIL CLAIM**

---



Barristers & Solicitors  
1600 Cathedral Place  
925 West Georgia Street  
Vancouver, British Columbia  
V6C 3L2  
Phone: (604) 685-3456  
Attention: Bryan C. Gibbons

File No. 74014.122442