

COURT FILE	2201 09318
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	ARNAKI LTD.
DEFENDANT	SOLVAQUA INC.
DOCUMENT	AFFIDAVIT
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Field LLP 400, 444 – 7 Avenue S.W. Calgary, AB T2P 0X8 Lawyer: Douglas Nishimura/Erika A. Carrasco Phone Number: (403) 260-8548 Fax Number: (403) 264-7084 File No. 50500-8

AFFIDAVIT OF ELVINA HUSSEIN
SWORN JULY 6, 2023

I, ELVINA HUSSEIN, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY THAT:

1. I am a Legal Assistant at Field LLP, counsel for Export Development Canada, in the within action, and, as such, have personal knowledge of the matters herein deposed to except where stated to be based upon information and belief, in which case I verily believe same to be true.
2. Attached hereto and marked as **Exhibit "A"** is a copy of the email and chart received from counsel for the Respondent on June 20, 2023, with responses to some of the Undertakings and noting refusals in response to others.
3. Attached hereto and marked as **Exhibit "B"** is a is copy of the correspondence from counsel for the Applicant to counsel for the Respondent dated June 26, 2023, advising that the Applicant did not agree with the refusals and sought to compel the remaining responses.
4. I am advised by Applicant's counsel that to date, the Applicant has not received proper and complete responses to the outstanding undertakings.

5. I make this Affidavit in support of the Cross Application of the Applicant, seeking an Order compelling the Respondent to provide all responses to the outstanding undertakings requested at the Questioning on Affidavit of Paul Zogala, held December 21, 2022.

SWORN BEFORE ME at the City of Calgary,)
in the Province of Alberta, this 6th day of)
July 2023.)
)
)
)
)



A Commissioner for Oaths in and for
Alberta



ELVINA HUSSEIN

LISA ROY
A Commissioner for Oaths
in and for Alberta
My Commission Expires Jan. 18, 2026

Elvina Hussein

From: Douglas Nishimura
Sent: Thursday, July 6, 2023 3:48 PM
To: Elvina Hussein
Subject: FW: 2201 09319 - Arnaki Ltd. v SolvAQUA Inc. - Thursday, July 13, 2023 at 10:00 am
Attachments: Chart of UTs-UAs-Refs, cross of P Zogala, Dec 21.22(1400-1203-5075.1).pdf



Douglas S Nishimura | Partner
T 403-260-8548 | F 403-264-7084 | DNishimura@fieldlaw.com
400 - 444 7 AVE SW, Calgary AB T2P 0X8

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This is Exhibit "A" referred to in the
Affidavit of
Elvina Hussein
Sworn before me this 6 day
of July 2023
Lisa Roy
A Commissioner for Oaths In and for Alberta

LISA ROY
A Commissioner for Oaths
in and for Alberta
My Commission Expires Jan. 18, 2024

From: Michael Crampton <MCrampton@cpllp.com>
Sent: Tuesday, June 20, 2023 12:39 PM
To: Douglas Nishimura <DNishimura@fieldlaw.com>; jkingston@mccuaig.com
Subject: RE: 2201 09319 - Arnaki Ltd. v SolvAQUA Inc. - Thursday, July 13, 2023 at 10:00 am

Mr. Nishimura,

Thank you for the reminder about questioning. See attached Mr. Zogala's answers to undertakings and positions on questions refused.

Regards,
Michael

From: Douglas Nishimura <DNishimura@fieldlaw.com>
Sent: Tuesday, June 20, 2023 11:56 AM
To: Michael Crampton <MCrampton@cpllp.com>; joliver@cassels.com; dmarechal@cassels.com; Elliot Birnboim <EBirnboim@cpllp.com>; jkingston@mccuaig.com; mjames@wt.ca; ep@albertacounsel.com; Elvina Hussein <EHussein@fieldlaw.com>
Cc: vanessa.allen@mnp.ca; ctesarski@solvaqua.com; dmcleod@solvaqua.com
Subject: RE: 2201 09319 - Arnaki Ltd. v SolvAQUA Inc. - Thursday, July 13, 2023 at 10:00 am

[External Sender]

I do not anticipate filing further evidence, unless further evidence is filed by other parties that requires a response. We have also questioned Mr. Crampton's affiant and he has questioned ours. So my assessment is that Mr. Crampton's schedule is acceptable with the rather large caveat that I am not sure what others intend to file, and that I am unsure of the scope and basis of at least one of the parties' claims.



Douglas S Nishimura | Partner
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From: Michael Crampton <MCrampton@cpllp.com>
Sent: Thursday, June 15, 2023 2:20 PM

To: joliver@cassels.com; dmarechal@cassels.com; Elliot Birnboim <EBirnboim@cpllp.com>; Douglas Nishimura <DNishimura@fieldlaw.com>; jkingston@mccuaig.com; mjames@wt.ca; ep@albertacounsel.com
Cc: vanessa.allen@mdp.ca; ctesarski@solvaqua.com; dmcleod@solvaqua.com
Subject: RE: 2201 09319 - Arnaki Ltd. v SolvAQUA Inc. - Thursday, July 13, 2023 at 10:00 am

Hello everyone,

I have removed the court. Further to MNP's letter encouraging the parties to set a timetable for the July 13, 2023 hearing, here is what Arnaki proposes:

1. Receiver's motion materials and second report – June 19, 2023
2. Responding materials from any parties opposing the SVO – June 23, 2023
3. Reply materials, if any, from non-Receiver parties supporting the SVO – June 26, 2023
4. Briefs of parties opposing the SVO – June 29, 2023
5. Reply briefs of non-Receiver parties supporting the SVO – July 6, 2023

Regards,
Michael



Michael Crampton
Phone: 416.644.9979
Fax: 416.368.0300
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Toronto ON M5K 1G8
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From: Rena Neale <Rena.Neale@albertacourts.ca>
Sent: Monday, May 29, 2023 12:02 PM
To: joliver@cassels.com; dmarechal@cassels.com; Elliot Birnboim <ebirnboim@cpllp.com>; Michael Crampton <mcrampton@cpllp.com>; dnishimura@fieldlaw.com; jkingston@mccuaig.com; mjames@wt.ca; ep@albertacounsel.com
Cc: vanessa.allen@mdp.ca; ctesarski@solvaqua.com; dmcleod@solvaqua.com; CommercialCoordinator QBCalgary <CommercialCoordinator.QBCalgary@albertacourts.ca>
Subject: 2201 09319 - Arnaki Ltd. v SolvAQUA Inc. - Thursday, July 13, 2023 at 10:00 am

[External Sender]

Dear Counsel:

This matter comes before Justice Jones on July 13, 2023 at 10:00 am. It is currently scheduled for a half-day.

Please note, Justices of this Court retain discretion to determine the nature of materials provided in anticipation of an application and the timing of submissions. While applicants must observe the requirements of Commercial Practice Note 1, Justice Jones also requires that:

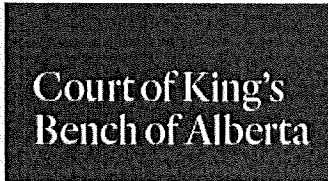
- a) all materials which any of the parties wish Justice Jones to consider for purposes of an application must be hand delivered to his attention on the 24th floor of the Calgary Court Centre **not later than 4:00 p.m. on the Thursday of the week before the application is to be heard.**

b) Materials delivered should be contained in three ring binders (not cerelox), tabbed and indexed.

These requirements apply to respondents as well as applicants. Please ensure that respondents, if any, to your application are made aware of these requirements.

Materials not delivered in accordance with these requirements will not be considered by Justice Jones.

Yours truly,



Rena Neale

Judicial Assistant to

Justice J. T. Eamon
Justice D. A. Labrenz
Justice R. W. Armstrong
Justice C. M. Jones

E: rena.neale@albertacourts.ca

P: 403-592-4735

Court of King's Bench of Alberta
Calgary Courts Centre
601 5 Street SW
Calgary, Alberta T2P 5P7

This email is intended only for the person to whom it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use that a person other than the addressee makes of this communication is prohibited.

Cross-examination of Paul Zogala, December 21, 2022

Undertakings:

U/T#	Q#	P#	Undertaking	Answer
1.	51	15	To provide the amount of the loans advanced under the loans from Arnaki to Solvaqua; the amount of interest that's owing under the loans; and any credits for repayment.	Amount advanced: USD\$4,800,000 Interest as at August 19, 2022 (Receivership order): USD\$741,885.88 Credits for repayment: USD\$1,386,000

Under Advisements:

U/A#	Q#	P#	Under Advisement	Answer or Position
1.	33	9	To provide details of the corporate relationship between Murchinson and Arnaki.	Refused, irrelevant.
2.	61	19	To provide the evidence that satisfied the condition precedent or evidence of EDC's insurance over the borrower's receivables.	Refused, irrelevant.
3.	62	19	To provide the assignment of the EDC insurance in favour of Arnaki provided with respect to paragraph 3.1(h) of the August 31, 2020 Loan Agreement.	There is no assignment agreement. The Direction to Pay attached as Exhibit "E" to the Affidavit of Dan Barona was provided to Arnaki by Solvaqua and considered acceptable.
4.	66	21	To provide whatever was received in respect of the insurance and loss payee endorsements referred to in	Refused, irrelevant.

U/A#	Q#	P#	Under Advisement	Answer or Position
			paragraph 3.1(k) of the August 31, 2020 Loan Agreement.	
5.	69	22	To provide whatever related to EDC in Arnaki and Murchinson's file.	Refused, disproportionate and irrelevant.
6.	72	23	Subject to solicitor-client privilege, to provide any notes of telephone conversations or internal discussions with respect to the EDC insurance policies.	None.
7.	72	23	Subject to solicitor-client privilege, to provide any communications with any other party regarding the EDC policies.	Refused, disproportionate.
8.	85	28	To provide any assignment of insurance to Arnaki.	There is no assignment of the insurance proceeds to Arnaki. Internally, the Direction to Pay was referred to as an assignment though Solvaqua formally retained its rights and position as beneficiary under the insurance policy.
9.	93	30-31	To advise whether Solvaqua's claims against EDC are assets of Solvaqua that Arnaki wishes to acquire in the proposed sale in the receivership.	Refused, irrelevant.
10.	112	36	To inquire and find out whether anyone at Murchinson did know how losses would be calculated when the loan to Solvaqua was negotiated and signed.	Refused, irrelevant.

U/A#	Q#	P#	Under Advisement	Answer or Position
11.	114	37	To advise when Arnaki or Murchinson became aware that the VivaVentures transaction was in jeopardy.	Late March/April 2021.
12.	133	42	To inquire with anyone else that would have been in communication from Murchinson or Arnaki with Solvaqua to see if it was communicated by Solvaqua that they should try to sell the equipment prior to making a claim so that their loss would be crystallized.	Murchinson and Arnaki have no record of receiving such communication from a representative of Solvaqua.
13.	155	49	To review records and speak to the people involved from Murchinson or its counsel and confirm if any reasons were given for the apparent delay in payment by EDC after claim submission, and what those reasons were.	Murchinson's records do not indicate a reason for the delay, other than the answers provided by EDC in response to Mr. Reeves's inquiries.
14.	169	53-54	If Arnaki's position is that the GSAs cover all equipment, to advise if Solvaqua communicated to Arnaki that not all the equipment was owned by Solvaqua.	There are no communications from Solvaqua indicating that it did not own the equipment.

Refusals:

R#	Q#	P#	Refusal	Answer or Position
1.	86	28	To advise how many EDC policies were assigned by Solvaqua to Arnaki or Murchinson.	The question was answered in response to question 87. Mr. Zogala corrects his answer to the following: None. As noted above, the proceeds of the first policy were directed to Murchinson pursuant to a Direction to Pay, which was referred to internally at Murchinson as an assignment.
2.	98	31-32	To advise whether the equipment under the other contracts subject to the EDC policies was manufactured.	Refused, requires hearsay or speculation.
3.	101	33	To advise whether Mr. Zogala is aware from the review or knowledge of the EDC policies that the loss is typically calculated by comparing the proposed purchase price under the insured contract with what the equipment was actually sold for.	Refused, premise not established.

Douglas Nishimura
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Assistant: Elvina Hussein
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ehussein@fieldlaw.com
Our File: 50500-8

June 26, 2023

VIA EMAIL

CP LLP
77 King Street West, TD North Tower
Suite 700, P.O. Box 118
Toronto ON M5K 1G8

Attention: Michael Crampton

**Re: Arnaki Ltd. v. SolvAqua Inc.
Court of King's Bench File No. 2201 09319**

We are writing to confirm that you have no further materials which you are submitting on behalf of your clients. If we are incorrect in this, please advise as soon as possible.

We also confirm receipt of your client's Undertaking Responses. For the record, we disagree with you in respect of the objections and refusals your clients have given and do not accept these responses. We will be noting the improper objections and refusals in our written submissions and, filing an application to compel responses to those questions.

Sincerely,

FIELD LLP



Douglas Nishimura
Partner

cc: *Export Development Canada, Attention: Dan Barona*
Field LLP, Attention: Erika Carrasco

This is Exhibit "B" referred to in the
Affidavit of
Elvina Hussein
Sworn before me this 6 day
of July 2023
Lisa Roy
A Commissioner for Oaths in and for Alberta

LISA ROY
A Commissioner for Oaths
in and for Alberta
My Commission Expires Jan. 18, 2024

