

COURT FILE NUMBER

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COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF ARNAKI LTD.

DEFENDANT SOI VACUA INC.

**DOCUMENT** **STATEMENT OF CLAIM**

**ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION** Chitz Pathak LLP  
77 King Street West, Suite 700  
TD North Tower, P.O. Box 118  
Toronto, Ontario M5K 1G8

OF PARTIES  
FILING THIS  
DOCUMENT Telephone 416-368-6200  
Facsimile 416-368-0300  
Email: [ebirnboim@cpllp.com](mailto:ebirnboim@cpllp.com) / [mcrampton@cpllp.com](mailto:mcrampton@cpllp.com)

**Attention: Elliot Birnboim / Michael Crampton**

## **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:**

## Parties

1. The Plaintiff, Arnaki Ltd. ("Arnaki"), is a corporation incorporated pursuant to the laws of the British Virgin Islands with offices in Road Town, Tortola, British Virgin Islands. Arnaki's parent, Murchinson Ltd., is an investment firm headquartered in Toronto, Ontario, and has been overseeing recovery of Arnaki's loans to the Respondent, Solvaqua Inc. ("Solvaqua").
  2. Solvaqua, is a corporation incorporated pursuant to the laws of the Province of Alberta with a registered office in Calgary, Alberta.

## Loans to Solvaqua

3. Solvaqua is in the business of providing proprietary wastewater management solutions based on nanopolymerization technology that allows isolated areas to reuse water, thereby decreasing freshwater usage. Based out of Calgary, Alberta, Solvaqua's business plan intended to implement the technology in foreign jurisdictions pursuant to three "Project Charters" with two United States-based companies: VivaVentures Inc., and the Clear Capital Group of Companies.
  4. Arnaki and Solvaqua entered into a series of loan agreements pursuant to which Arnaki advanced funds to Solvaqua:
    - (a) Under a Loan Agreement dated August 31, 2020, Arnaki loaned Solvaqua a principal amount of two million United States dollars (USD\$2,000,000) (the "**First Tranche**") to be repaid on the maturity date of April 1, 2021.

- (b) Under a Loan Agreement dated January 4, 2021, Arnaki loaned Solvaqua a principal amount of two million United States dollars (USD\$2,000,000) (the “**Second Tranche**”) to be repaid on the maturity date of September 1, 2021.
  - (c) Under a Loan Agreement dated February 1, 2021, Arnaki loaned Solvaqua a principal amount of two million United States dollars (USD\$2,000,000) (the “**Third Tranche**”, and together with the First Tranche the Second Tranche, the “**Loans**”) to be repaid on the maturity date of September 1, 2021.
5. The funds advanced pursuant to the Loans were each tied to contracts for overseas sale of Solvaqua's water management systems. Solvaqua's contracts with their overseas buyers were insured by Export Development Canada (“**EDC**”).

#### **Security Granted to Arnaki**

- 6. As security for the Loans, Solvaqua granted Arnaki security over all of Solvaqua's present and future undertakings, assets and property (the “**Collateral**”), pursuant to the following (collectively, the “**GSAs**”):
  - (a) General Security Agreement dated August 31, 2020.
  - (b) General Security Agreement dated January 4, 2021.
  - (c) General Security Agreement dated February 1, 2021.
- 7. Arnaki's security interest under the above GSAs was perfected through the filing of the security agreement registered in the Alberta Personal Property Registry as registration number 20091025542.
- 8. Section 6.8 of the GSAs specifically allows for the appointment of a receiver or receiver-manager of the Collateral any time after the security interests granted to Arnaki over the Collateral become enforceable.

#### **Default, Extension and Partial Recovery from EDC**

- 9. Solvaqua failed to repay Arnaki the principal amount owing under Loan Agreement for the First Tranche on the maturity date of April 1, 2021. Pursuant to an Extension Agreement dated April 1, 2021, Arnaki and Solvaqua agreed to extend the maturity date for the First Tranche to May 1, 2021 in consideration for Solvaqua promising to pay Arnaki an extension fee of USD\$200,000 on May 1, 2021.
- 10. Following Solvaqua's failure to repay Arnaki the principal amount owing under the Loan Agreements for the Second Tranche and Third Tranche by their September 1, 2021 maturity dates, Solvaqua requested extensions of the maturity date. Arnaki charged an extension fee of USD\$225,000 for the Second Tranche and an extension fee of USD\$225,000 for the Third Tranche.
- 11. An insurance claim was made under the insurance provided by EDC on Solvaqua's contract with its buyer connected with the First Tranche after the buyer failed to complete the purchase of equipment from Solvaqua. EDC agreed to pay USD\$1,386,000 on the claim. The \$1,386,000 was repaid to Arnaki pursuant to an assignment of the insurance proceeds given by Solvaqua, and applied against the First Tranche.
- 12. No amounts have been repaid to Arnaki by Solvaqua in satisfaction of the Second Tranche and the Third Tranche. Each of the First Tranche, Second Tranche and Third Tranche are now due and payable, as the applicable maturity date for each of those tranches has now passed.

13. As of July 25, 2022, the outstanding amounts owing to Arnaki from Solvaqua under the Loan Agreements for the First Tranche, Second Tranche, Third Tranche and their related extensions, including interest to July 25, 2022 but exclusive of legal fees and other costs and expenses and interest continuing to accrue, total to **USD\$6,052,288.63** (the “**Indebtedness**”).
14. Pursuant to the terms of the Loan Agreements, Solvaqua committed an Event of Default by failing to pay Arnaki the amounts that became due upon the extended maturity dates. Additionally, the failure of Solvaqua’s overseas customers to complete the purchase of Solvaqua’s equipment pursuant to their contracts with Solvaqua constitute a material adverse change, as determined by Solvaqua, and are further Events of Default.

#### **Demand Letters and Notice of Intention to Enforce Security**

15. On July 27, 2022, Arnaki, by its counsel, sent (by overnight courier):
  - (a) a demand letter to Solvaqua (the “**Demand Letter**”); and,
  - (b) a notice of intention to enforce security under the *Bankruptcy and Insolvency Act* (the “**BIA**”).
16. Following failure of delivery at two separate notice addresses for Solvaqua included in the GSAs and on Solvaqua’s website, and advice from DLA Piper LLP that it no longer acted as Solvaqua’s agent for service, a copy of the Demand Letter and notice of intention to enforce security were emailed on August 3, 2022 to Don McLeod, a consultant that had been acting as Arnaki’s contact at Solvaqua since its sole director and CEO, Chris Tesarski (“**Tesarski**”), stepped aside, purportedly for medical reasons. On August 4, 2022, Mr. McLeod acknowledge receipt of Arnaki’s demand letter and notice of intention to enforce security on behalf of Solvaqua and advised that he would notify Tesarski and Solvaqua’s other creditors of Arnaki’s intention to enforce its security.
17. The 10-day period reference in section 244(2) of the BIA has since expired.

#### **Appointment of Receiver**

18. The Loans remain in default and have matured. Arnaki has failed to comply with the Demand Letter requiring the immediate repayment of the Indebtedness. As such, the full amount of the Indebtedness remains due, owing and payable immediately.
19. Arnaki seeks the appointment of a receiver and manager to manage the Collateral subject to the GSAs and to realize on the GSAs.
20. The GSAs provide for the appointment of a receiver.
21. It is just and convenient to appoint a receiver over the assets, undertakings and properties of Solvaqua to protect the security granted by the GSAs as well as to protect the interests of other creditors.
22. MNP Ltd. has consented to act as receiver and manager of the assets, undertakings and properties of Solvaqua.

#### **Remedy Sought:**

23. The Plaintiff seeks as against Solvaqua:
  - (a) Judgment in the sum of \$6,052,288.63 plus interest thereon at the interest rates set forth in the Loans from July 25, 2022 to the date of Judgment or payment in full, or in the alternative, interest pursuant to the *Judgment Interest Act*, RSA 2000 c. J-1, as amended;

- (b) An Order for the appointment of a receiver or receiver and manager over the assets, undertakings and properties of Solvaqua pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985 c. B-3, as amended, and the *Judicature Act*, RSA 2000, c. J-2, as amended;
- (c) In the alternative:
  - (i) a Preservation Order;
  - (ii) if necessary, an Order for Possession for the personal property of the Debtor secured under the Security
- (d) All legal costs and expenses on a solicitor and client basis in accordance with the GSAs, or in the alternative, costs as the Honourable Court deems appropriate; and
- (e) Such further and other relief as this Honourable Court deems just and appropriate.

#### **NOTICE TO DEFENDANT(S)**

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 Edmonton, 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.