

COURT FILE NUMBER

Clerk's Stamp

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLANTIFFS SHRED CONSULTING LTD., SHRED CAPITAL LTD., AND
LEONITE FUND I, LP

DEFENDANT VOG CALGARY APP DEVELOPER INC.

DOCUMENT **STATEMENT OF CLAIM**

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NOTICE TO DEFENDANTS:

You are being sued. You are the defendant(s).

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, Shred Consulting Ltd. ("**Shred Consulting**"), is a corporation incorporated pursuant to the laws of the Province of British Columbia, with a registered office in Vancouver, British Columbia. Shred Consulting is extra-provincially registered to carry on business in Alberta.
2. The Plaintiff, Shred Capital Ltd. ("**Shred Capital**" and together with Shred Consulting "**Shred**"), is a corporation incorporated pursuant to the laws of the Province of British Columbia, with a registered office in Vancouver, British Columbia. Shred Capital is extra-provincially registered to carry on business in Alberta.
3. Shred provides secured loans to commercial borrowers in Canada.

4. The Plaintiff, Leonite Fund I, LP. ("**Leonite**", and together with Shred, the "**Lender**"), is a limited partnership formulated pursuant to the domestic laws of the State of Delaware. Leonite maintains its principal office in Spring Valley, New York. Leonite is not registered to carry on business in Alberta.
5. Leonite provides secured loans to commercial borrowers in the United States and Canada.
6. Shred and Leonite are related through a common shareholder. The majority shareholder of Shred is a significant shareholder of Leonite's manager.
7. Shred and Leonite, through the common shareholder, collaborate on funding opportunities in Canada where there is an opportunity to access security in a business through tax credits.
8. So far as is know to the Lender, the Defendant, VOG Calgary App Developer Inc ("**VOG**"), is a corporation incorporated pursuant to the laws of the Province of Alberta, with a registered office in Calgary, Alberta.
9. So far as is known to the Lender, VOG carries on business primarily in the area of software development. The principal of VOG is Vincent O'Gorman ("**O'Gorman**").

II. FACTUAL BACKGROUND

The Facilities Agreement

10. Pursuant to a loan agreement dated October 21, 2022 (the "**Facilities Agreement**"), Shred Capital advanced, as lender, to VOG, certain financing facilities.
11. The Facilities Agreement is secured by a security interest granted to Shred in respect of all present and after acquired personal property of VOG.
12. Further, and among other things, the Facilities Agreement provided that:
 - a) VOG was to instruct the Canada Revenue Agency (the "**CRA**") to direct all tax credit proceeds (the "**Refunds**") into a bank account at National Bank of Canada (the "**Designated Account**");
 - b) VOG was to grant Shred Capital third-party access to the Designated Account;

- c) VOG was entitled to request advances from Shred Capital, the quantum of which was based upon the anticipated amount of the Refunds;
 - d) Advances made by Shred Capital to VOG were to be repaid from the Refunds and no other funds were to be deposited into the Designated Account other than the Refunds;
 - e) An “Event of Default” included financial and performance defaults in addition to committing an act of bankruptcy or becoming insolvent;
 - f) Upon the occurrence of an “Event of Default”, all of VOG’s obligations would, upon notice in writing by Shred, become immediately due and payable including all reasonable costs and expenses, including legal fees on a full indemnity basis with respect to the enforcement of the Facilities Agreement; and
 - g) VOG would be required to pay all reasonable costs and expenses, including legal fees on a full indemnity basis with respect to the enforcement of the Facilities Agreement.
13. VOG initially agreed and arranged for the Designated Account to be accessible to Shred.

The Master Services Agreement and Statement of Work

14. Shred Consulting and VOG entered into a Master Services Agreement (the “**MSA**”) on June 15, 2023.
15. Shred Consulting and VOG entered into a Statement of Work (the “**June SOW**” and together with the MSA, the “**Consulting Agreements**”) on June 15, 2023.
16. As consideration, VOG was obliged to pay to Shred Consulting the fees and expenses specified in the June SOW in exchange for consulting and advisory services including, but not limited to refundable tax credits and related accounting services, venture services, grant and government award programs application services, and C-suite/operations services.
17. As a term of the June SOW, VOG acknowledged that any breach of the June SOW or the MSA constituted an “Event of Default” under the Facilities Agreement.
18. Bridge funding of tax credit claims (the “**Bridge Funding**”) for VOG could be provided at VOG’s

request on a right of first refusal basis. The Bridge Funding would be subject to the terms and conditions of Facilities Agreement.

19. Under the June SOW, if there was Bridge Funding from Shred Capital, VOG would instruct the CRA to direct all tax credit proceeds into the Designated Account over which Shred would have access.

The General Security Agreement and Promissory Note

20. On November 14, 2022, Leonite and VOG entered into a General Security Agreement (the “**GSA**”).
21. The GSA provided, among other things, that:
 - a) VOG was to execute and deliver a secured Promissory Note in favour of Leonite;
 - b) VOG was to grant a security interest in favour of Leonite over specified collateral;
 - c) The occurrence of an “Event of Default” would cause the security granted by VOG to Leonite to become immediately enforceable; and
 - d) Leonite would, among other available remedies, be entitled to the appointment of a Receiver in the “Event of Default”.
22. Pursuant to the GSA, VOG granted Leonite a secured Promissory Note dated November 14, 2022, (the “**Promissory Note**”) under which VOG promised to pay Leonite the principal sum of up to \$1,111,111.11 or such further and other amount as advanced by Leonite.
23. The terms of the Promissory Note, prohibited VOG from incurring any indebtedness that was senior to or *pari passu* with (in priority of payment and performance) the obligations of VOG to Leonite.
24. The Promissory Note, among other things, provided:
 - a) As security for the obligations of VOG under the Promissory Note, VOG granted to Leonite a security interest in all of VOG’s present and after acquired property pursuant to the GSA;

- b) That an “Event of Default” included a financial and performance defaults in addition to committing an act of bankruptcy or becoming insolvent; and
- c) That an “Event of Default” also included a cross-default of any term or condition in any other financial instrument.

(The Facilities Agreement and the Promissory Note are collectively referred to herein as the “**Loan Agreements**”).

III. THE EVENTS OF DEFAULT

a. NOVEMBER DEFAULT

25. VOG has committed various acts of default under the Loan Agreements including, but not limited to, the following:

- a) VOG is insolvent in that it is not able to pay its obligations as they generally become due;
- b) VOG has outstanding obligations to 2M7 Financial in the approximate sum of \$130,000.00;
- c) VOG has outstanding superior priority obligations to CRA in the approximate sum of \$450,000.00;
- d) VOG increased indebtedness owing to Royal Bank of Canada in excess of prescribed tolerances; and
- e) VOG has incurred subordinate secured debt to On Deck Capital Canada, Inc. in the approximate sum of \$250,000.00.

(the “**Triggering Defaults**”).

26. As a result of the Triggering Defaults, on November 20, 2023, the Lender (via legal counsel) issued a notice to VOG in which the Lender advised that VOG was in default of its obligations under the Loan Agreements and the Consulting Agreements (the “**Demand**”). Notices of Intention to Enforce Security pursuant to s. 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3 (the “**BIA**”) were enclosed with the Demand (the “**Notice**”). The Demand requested that VOG cure its default

by November 30, 2023.

27. VOG did not cure its default by November 30, 2023, or at all, resulting in all of the security granted by VOG pursuant to the Loan Agreements and Consulting Agreements to become immediately enforceable in accordance with the terms of the Loan Agreements and Consulting Agreements.
28. As of November 20, 2023, pursuant to the Facilities Agreement and the Consulting Agreements, the sum of \$712,187.76 CAD (excluding legal costs to date) was owing to Shred (the “**Shred Indebtedness**”).
29. As of November 20, 2023, pursuant to the Promissory Note, the sum of \$1,325,167.00 USD (excluding legal costs to date) was owing to Leonite (the “**Leonite Indebtedness**”).

(The Shred Indebtedness and the Leonite Indebtedness are collectively referred to herein as the “**Current Indebtedness**”).

b. FURTHER BREACH AND BAD FAITH ACTION OF VOG

30. On November 27, 2023, the Lender discovered the following:
 - a) VOG had terminated Shred’s third-party access to the Designated Account pursuant to which the Refunds were to be deposited contrary to the terms of the Facilities Agreement; and
 - b) The Refunds received by VOG and deposited in the Designated Account (the “**November Tax Credit**”) were withdrawn by VOG and transferred to a different account with the Royal Bank of Canada (the “**RBC Account**”). None of Shred Capital, Shred Consulting, and Leonite had or have access to the RBC Account.
31. On November 27, 2023, the Lender (via legal counsel) provided notice to VOG of the above further breach and bad faith actions of VOG.
32. The Lender later learned that the RBC Account was swept by The Royal Bank of Canada, another creditor of VOG, for almost \$400,000.00 in order to satisfy its outstanding debt.
33. The swept funds represented amounts from the November Tax Credit that were to be held in the Designated Account and subject to the security of Shred Capital but instead were improperly

deposited into the RBC Account by VOG.

34. VOG is in breach of a number of terms of the following agreements:

- a) Facilities Agreement;
- b) MSA;
- c) June SOW;
- d) GSA; and
- e) Promissory Note.

35. The Current Indebtedness is a just debt owed to the Lender, the payment of which is being improperly withheld.

IV. OTHER

36. The Plaintiffs plead and rely upon the BIA, the *Business Corporations Act*, RSA 2000, c B-9, the *Law of Property Act*, RSA 2000, c L-7, the *Land Titles Act*, RSA 2000, c L-4, the *Judicature Act*, RSA 2000, c J-2, the *Personal Property Security Act*, RSA 2000, c P-7, and such further or other Acts as counsel may advise at the trial of this action.

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

V. REMEDY SOUGHT:

38. WHEREFORE, the Plaintiffs seek as follows:

- a) A declaration that VOG is in default of the Loan Agreements and Consulting Agreements as applicable;
- b) A declaration that the collateral security under the Loan Agreements and Consulting Agreements are valid and have become enforceable;
- c) A declaration as to the amount owing by VOG under the Loan Agreements and Consulting Agreements, as applicable, together with interest according to the terms of the Loan Agreements and Consulting Agreements;

- d) An Order appointing MNP Ltd. as receiver and manager over the Property of VOG, including, without limitation, all legal and beneficial interests therein or relating thereto;
- e) Judgment against VOG in the amount found to be owing under the Loan Agreements and Consulting Agreements, together with interest according to the terms of the Loan Agreements and Consulting Agreements, or alternatively, pursuant to the *Judgment Interest Act*, RSA 2000, c J-1;
- f) Costs for this action payable on a solicitor-client full indemnity basis pursuant to the terms of the Loan Agreements and Consulting Agreements, as applicable, or alternatively, in accordance with the *Alberta Rules of Court*, Alta Reg, 124/2010; and
- g) Such 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 King'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.