Form 27
[Rules 6.3 and 10.52(1)]

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JUDICIAL CENTRE
OF CALGARY

COURT FILE NUMBER	1701-03460
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT	ALBERTA ENERGY REGULATOR
RESPONDENTS	LEXIN RESOURCES LTD., 1051393 B.C. LTD., 0989 RESOURCE PARTNERSHIP, LR PROCESSING LTD. and LR PROCESSING PARTNERSHIP
DOCUMENT	**APPLICATION BY YOUNG ENERGYSERVE INC.**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**Billington Barristers** 1910 Elveden House 717 - 7th Avenue SW Calgary, AB T2P 0Z3 Main: (403) 930-4100 Fax: (403) 930-4110 **Attn: Richard N. Billington, Q.C.** Direct: (403) 930-4101 File: 16001-001

NOTICE TO RESPONDENTS: LR Processing Ltd., and LR Processing Partnership, MFC Power Limited Partnership, and MFC Power General Partner Ltd.

AND TO: Grant Thornton Limited, Receiver

This application is made against you. You are a Respondents. You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date: **Thursday, March 28, 2019**

Time: **10:00 a.m.**

Where: **Calgary Court Centre, 601-5th Street SW, Calgary, Alberta**

Before Whom: **The Honourable Justice D. B. Nixon**

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. Young EnergyServe Inc. ("YES"), a creditor of the Respondents LR Processing Ltd. and LR Processing Partnership (together referred to herein as "LR Processing"), seeks:

   i. Leave to bring this application pursuant to paragraphs 9, 10, and 11 of the March 20, 2017 Order of the Honourable Justice P. R. Jeffrey appointing Grant Thornton Limited Receiver of the assets and undertaking of Lexin Resources Ltd. ("Lexin"), and pursuant to paragraphs 10, 11, and 12 of the June 13, 2017 Order of the Honourable Justice K. M. Eidvisk, adding LR Processing and others to the Lexin Receivership.

   ii. An Order requiring the Respondents to disclose to YES and the Receiver Grant Thornton Limited (the "Receiver") all information and documents regarding any efforts by the Respondents or their parent, subsidiary, or affiliated corporations and partnerships, to sell, transfer, encumber, or otherwise dispose of the 16.4 MW Power Plant (the "Power Plant") located on the Mazeppa Gas Plant quarter section (the "Mazeppa Lands").

   iii. An Order restraining any such efforts to market, sell, transfer, encumber, or otherwise dispose of the Power Plant until full disclosure has been made pursuant to the Order sought in sub-paragraph ii above.

   iv. An Order restraining the Respondents and their parent, subsidiary, or affiliated corporations or partnerships from detaching or severing any of the Power Plant fixtures and equipment from the Mazeppa Lands, and from removing any fixtures or equipment from the Mazeppa Lands.

   v. An Order requiring the Respondents and their parent, subsidiary, and affiliated corporations and partnerships to obtain an Order of this Court approving any final sale, transfer, or other disposition of the Power Plant or the Power Plant fixtures and equipment.

vi. An Order requiring the Respondents and their parent, subsidiary, and affiliated corporations and partnerships to include a provision in any marketing materials offering the Power Plant or its equipment or fixtures for sale, stating that any agreement with respect to the sale or disposition of the Power Plant or its fixtures and equipment is subject to court approval, and to include a provision in any agreement for the sale, transfer, or other disposition of the Power Plant or its fixtures and equipment, that such agreement is conditional on court approval.

vii. An Order requiring the Respondents and their parent, subsidiary, and affiliated corporations and partnerships to pay the proceeds of any sale of the Power Plant or its fixtures and equipment into court, or alternatively to the Receiver, pending the determination of claims raised by YES in Alberta Court of Queen's Bench Court File Number 1601-01798 (the "YES Action"), including the claim that YES has a valid and enforceable lien interest in the Mazeppa Lands, and the claim in the YES Action for a declaration setting aside transactions under which MFC Power Limited Partnership and MFC Power General Partner Ltd. (together referred to herein as "MFC Power") claim an interest in the Power Plant, as fraudulent conveyances and preferences.

2. The costs of this application on a solicitor and his own client full indemnity basis.

3. Such further and other relief as this Honourable Court may deem just.

Grounds for making this application:

4. In 2014, LR Processing built a 16.4 MW Power Plant on the Mazeppa Lands. The construction of the Power Plant cost approximately $24 million, which was paid by LR Processing.

5. Under an Asset Purchase Agreement dated August 31, 2015, LR Processing purported to sell all of its Power Plant assets to MFC Power. The purchased assets included all machinery, plant, equipment, trade fixtures, furnishings, and accessories comprising the Power Plant and pertaining to the power business. All the purchased assets were located in or on the site of the Power Plant within the Mazeppa Gas Plant. "Fee simple title" to the Power Plant property was excluded from the purchased Assets under Schedule 2.2 of the Asset Purchase Agreement.

6. In October, November, and December of 2015, YES completed a "Turnaround Project" at the Mazeppa Gas Plant. This involved cleaning, servicing, and repairing the gas process vessels and equipment at the Mazeppa Gas Plant in preparation for an API inspection. YES undertook the Turnaround Project under contract to LR Processing, and the work was completed by December 5, 2015. The balance outstanding for the work YES performed is $1,678,995.40.

7. Under a Lease Agreement dated December 7, 2015 (the "MFC Power Lease") LR Processing purported to grant MFC Power an interest in the Mazeppa Lands. The Respondents registered a Caveat (the "Caveat") with respect to the MFC Power Lease on December 21, 2015.

8. On December 23, 2015 YES filed a builder's lien for material, equipment, and labour provided under the Turnaround Contract.

9. The transaction under which MFC Power purports to have acquired the Power Plant assets from LR Processing was recorded "through a series of accounting entries" among related parties in the MFC Bancorp Group. These entries include a $14.4 million intercompany receivable supported by a disbursement of funds from RBI account 007154311204, but the bank statements for that account in December of 2015, and in the year 2016, show that no such bank transactions exist.

10. At the time the Asset Purchase Agreement and the MFC Power Lease were entered into, LR Processing was insolvent, unable to pay its debts in full, and knew that it was on the eve of insolvency. The Asset Purchase Agreement, MFC Power Lease, and the

Caveat were entered into and registered with the intent to defeat, hinder, delay, or prejudice creditors, including YES.

11. The Asset Purchase Agreement and the MFC Power Lease were entered into, and the Caveat was registered, with the intent to give a preference to MFC Power over the interests of other creditors, including YES, and the effect of these agreements was to give MFC Power a preference over other creditors.

12. The Asset Purchase Agreement, the MFC Power Lease, and the registration of the Caveat are void as against YES. In the Statement of Claim filed February 3, 2016 in the YES Action, YES seeks a declaration that the Lease and Caveat are fraudulent conveyances or preferences, and an Order setting aside the Lease and directing the Registrar of Titles to remove the Caveat from the Certificate of Title for the Mazeppa Lands.

13. In 2016, LR Processing began proceedings to subdivide the Mazeppa Lands into two parcels, so that title to the portion of the Mazeppa Lands where the Power Plant was located would be separate from the title to the parcel where the Mazeppa Gas Plant and agricultural lands were situated. A bylaw to re-designate a portion of the Mazeppa Lands to allow for its future subdivision was introduced at a meeting of the Council of the Municipal District of Foothills No. 31 on September 14, 2016. At that time, consideration of the proposed bylaw was postponed to allow LR Processing to obtain approvals from the AER and the AUC, and to enter into a development agreement and meet other requirements. The Mazeppa Lands have not been subdivided, and are still registered as a single parcel, but the application to subdivide the lands is pending.

14. YES brought an originating application for a Bankruptcy Order against LR Processing in Alberta Court of Queen's Bench File Numbers 25-094659 and 25-094662 (the "Bankruptcy Proceedings"). Following the trial of an issue, the Honourable Madam Justice J. Strekaf granted an Order on November 25, 2016 under which LR Processing Partnership and LR Processing Ltd. were adjudged bankrupt, and Bankruptcy Orders were made against them. MNP Limited was appointed trustee of the estate of LR Processing.

15. Proceedings under the LR Processing Bankruptcy Order were stayed when LR Processing filed an appeal against the Order on November 30, 2016. In order to avoid duplication of proceedings, YES consented to the June 13, 2017 Order of Justice Eidvisk, adding LR Processing to the Lexin Receivership. The Receiver eventually withdrew the appeal from the Bankruptcy Order, but a stay of proceedings with respect to the Bankruptcy Order remains in effect under an August 7, 2018 Order granted on consent of the affected parties by the Honourable Justice Horner.

16. In the course of the Lexin Receivership, a variety of issues arose between the Receiver and various Lexin affiliated corporations, including a dispute dealt with in an application by the Receiver for advice and direction regarding the validity of a loan purportedly provided by MFC Energy Finance Inc. ("MFC Finance"). The AER and MFC Finance approached the Receiver to determine if the outstanding issues could be resolved, and after negotiations, a Settlement Agreement dated September 24, 2018 was executed by the Receiver, the AER, MFC Finance, 1049597 B.C. Ltd., 1059032 B.C. Ltd., MFC Power Limited Partnership by its general partner MFC Power General Partnership, and Energy Leasing Partners Ltd. Although MFC Finance and its related corporations gave up most of the claims they had made against the Lexin Estate, the Receiver and the AER agreed not to challenge the 2015 sale transaction between LR Processing and MFC Power under which MFC Power purportedly obtained title to the Power Plant, and pursuant to which the MFC Power Lease was executed and the Caveat was filed.

17. In the Settlement Agreement, the Receiver also agreed that MFC Power, on behalf of LR Processing, will be permitted to file a subdivision application, seeking subdivision of the Mazeppa Lands as described above in this application.

18. Although the Receiver agreed not to challenge the validity of the MFC Power Lease or the Purchase Agreement, the Settlement Agreement did provide that the Receiver could report to the Court regarding these matters.

19. The Settlement Agreement was approved by the Court in a November 27, 2018 Order of the Honourable Justice B. E. Romaine.

20. The Receiver summarized the MFC Power transaction in paragraphs 19 through 42 of the Receiver's Ninth Report dated November 7, 2018. As indicated above, the transaction was recorded by means of a series of accounting entries between related entities in the MFC Group. According to the Receiver, the purported consideration for the acquisition of the Power Plant by MFC Power includes $14.4 million of cash inflows which are not supported by the relevant bank statements. In paragraph 41 of the Ninth Report, the Receiver states that it "has attempted to reconcile the accounting information referenced earlier to the financial information contained in the [Asset Purchase Agreement] and the figures do not reconcile." The Receiver determined that it would not investigate the matter further pursuant to the terms of the Settlement Agreement.

21. In its Eleventh Report dated December 6, 2018, at paragraph 38(c) the Receiver states "it has become apparent to the Receiver that the Power Plant owned by MFC Power and situated on the Mazeppa Gas Plant Lands is being actively marketed and parties in that apparent process have been approaching the Receiver with respect to various due diligence issues".

22. The Power Plant can only be lawfully operated to generate electricity by burning gas supplied from the Mazeppa Gas Plant. The sales process carried out under the Receivership did not produce any bids on the Mazeppa Gas Plant that were acceptable to the Receiver. There appears to be no prospect that the Mazeppa Gas Plant will be operated in the future, but the Power Plant equipment is relatively new and likely has substantial value if it can be detached from the land, sold, and reassembled elsewhere. As this equipment and plant is attached to the land, it forms part of the real estate and is subject to the YES lien.

23. The Respondents, or entities related to them in the MFC Bancorp Group, are attempting to market the Power Plant equipment and assets, but are not providing any information regarding the marketing process to the Receiver or to the Court. As the Power Plant represents the single most substantial asset available to the LR Processing Estate, YES and other creditors of LR Processing will be severely prejudiced if the Respondents are able to complete a sale to third parties without court supervision.

Material or evidence to be relied on:

24. The Eleventh Report of the Receiver, dated December 6, 2018;
25. The Tenth Report of the Receiver, dated November 19, 2018;
26. The Ninth Report of the Receiver, dated November 7, 2018;
27. The pleadings and Receiver's reports previously filed in these proceedings;
28. The Affidavit of Ron Young, filed;
29. The Affidavit of Mark Yu, filed;
30. The Affidavit of Guy Young, filed May 10, 2016 in the YES Action;
31. Such further and other materials as counsel may advise and this Honourable Court permit.

Applicable rules:

32. The *Alberta Rules of Court*, AR 124/2010;
33. The *Bankruptcy and Insolvency General Rules.*
34. Such further and other Rules as counsel may advise and this Honourable Court permit.

Applicable Acts and regulations:

35. The *Judicature Act*, RSA 2000, c J-2, section 13;
36. The *Bankruptcy and Insolvency Act*, SRC 1985, c B-3.

Any irregularity complained of or objection relied on:

37. None.

How the application is proposed to be heard or considered:

38. In person before the Honourable Justice D. B. Nixon, with some or all of the parties present.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.