Court File No. CV-21-____________-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

B E T W E E N:

CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED

Applicant

- and –

2441472 ONTARIO INC. .

Respondent

RESPONDENT'S RESPONDING RECORD

KWM LAW PROFESSIONAL CORPORATION
K.W,McKenzie LSO#16891A
Suite 102
3-200 Memorial Ave
Orillia, ON
L3V 5X6
Phone 705-323-5833
Fax 705-482-0648
Lawyers for Respondent

Court File No. CV-21-____________-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

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RESPONDENT'S MOTION INDEX

Court File No. CV-21-____________-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED

Applicant

- and –

2441472 ONTARIO INC. .

Respondent

NOTICE OF RESPONDENT'S MOTION

The Respondent will make a motion to the court on Tuesday September 7th, 2021 or such other date as assigned by the Court or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard by video conference to be arranged or which has already been arranged by Applicant's lawyers.

THE MOTION IS FOR an Order striking out the *ex parte* Order dated August 12th, 2021

For an Order setting a date for the hearing of a motion for a stay of this application.

For an Order setting a date for argument of costs.

For such other relief as may be advised.

GROUNDS

1. An Interim Receivership Order was granted without notice on August 9, 2021 against 2441472 Ontario Inc. (244)

2. Rule 39.01 (6): A party making a motion without notice is obligated to provide full disclosure of all facts to Court, including those which do not support the Applicant's argument. The penalty for failing to do so is that the Order will be set aside.

3. In this matter the Receiver has acknowledged that its information and belief cannot be relied on. In addition it has not only failed to provide full disclosure it has relied on an affidavit from one of the parties to a long standing Energy Services Agreement (ESA) contract between St. Mary's

Cement and 244. The affidavit is misleading and withholds crucial and material evidence which should have been disclosed.

4. The Receiver failed to disclose the existence of a March, 2018 Interim Settlement agreement which was in good standing on August 12, 2021 and had resolved all allegations of default. The Receiver claims that it is owed money but does not provide detailed accounting of the funds it has received.

5. The Receiver has failed to advise the Court that the relationship between SMC and 244 continues on a good faith contractual basis and that there are numerous emails and communications among the staff of both parties to show there is no breakdown in the ESA contract.

6. The Receiver has failed to advise the Court that issues among 244, SMC and the Receiver must be resolved by arbitration so that this Court action must be stayed pursuant to the Arbitrations Act 1991 S.O.1991 C. 17 section 7.

7. The status quo as at August 12th, 2021 shows that the Interim Settlement was in good standing and there has been no default under the ESA.

8. The remedy where there has been material lack of disclosure is to dismiss the without notice Order and require that the Plaintiff return matters to the status they were in before they unfairly approached the Court. Rule 39.01 (6)

9. The Court's ruling that there must be no notice of the application was based on false or misleading evidence which the Receiver should have doublechecked rather than provide an affidavit based on hearsay.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

Affidavit of Craig Clydesdale.

August 30, 2021

KWM LAW PROFESSIONAL CORPORATION
K.W,McKenzie LSO#16891A
Suite 102
3-200 Memorial Ave
Orillia, ON
L3V 5X6
Phone 705-323-5833
Fax 705-482-0648
Lawyers for Respondent

TO

AIRD & BERLIS LLP
Barristers and Solicitors
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181 Bay Street
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Email: mspence@airdberlis.com
Damian Lu – LSO# 80070O
Email: dlu@airdberlis.com
Lawyers for the Applicant

Court File No. CV-21-____________-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

B E T W E E N:

CRYSTAL WEALTH MORTGAGE STRATEGY, by its Court-Appointed Receiver and Manager, GRANT THORNTON LIMITED

Applicant

- and –

2441472 ONTARIO INC. .

Respondent

AFFIDAVIT OF CRAIG CLYDESDALE

1. I am CEO of 2441472 Ontario Inc. (244) and make oath and say as follows:

2. I have been involved in the business of design and installation of onsite Independent energy platform ,cogeneration systems for over 20 years.

3. On July 17th, 2014 St. Mary's Cement Inc (Canada) (SMC) signed an Energy Services Agreement dated November 27, 2013 with 2363265 Ontario Inc. (236)

4. 236 agreed to install a MCS COGEN MARK 6 CoEnergyPod ('MCS Pod') at SMC premises in Toronto. A copy of the executed Energy Services Agreement (ESA) is attached as Appendix C to the Proposed Receiver's Report (the Report). The terms of ESA at paragraph 1.3 required 236 to supply Electricity and Heat to SMC at its head

office location. SMC was required to pay $25,950 per month. The ESA contains a Dispute Resolution formula requiring arbitration if the dispute is not resolved by negotiation. [1] On September 22, 2014 the ESA was amended to provide more HVAC services and the payment was increased to $34,950. [2]

5. The MCS Pod and its control mechanisms comprise an intricate and complicated installation that was designed and built specially for SMC's plant and offices. It is located in 2 containers enclosure that measure 30 X 4 meters and no unauthorized persons are allowed to enter because it would be dangerous unless accompanied and supervised by persons trained and supervised by 244. Exhibit A hereto shows pictures of the installation.

6. Discussions with respect to this complexity and danger have been ongoing and even as far back as Jul 10, 2017 244 made SMC aware of the intricacy of the installation and the operation of the MCS PoD. Any arbitrary and ill prepared entry is unsafe and would likely cause problems and may damage or otherwise impair the operation of the MCS PoD which would greatly decrease its usefulness and value. I have attached an email exchange – Exhibit B- which is an exchange involving our people, Steve and Morley, and Marc Vermiere at St Mary's regarding concerns and complications and training that needed to be dealt with at the time relating to an upcoming inspection. This type of information is important and should have been made known to the Court on August 9th before the Receiver would take any action.

7. 244 arranged to finance the installation of the MCS PoD with Crystal Enhanced Mortgage Fund (the Fund). The terms of the loan were $1,800,000.00 repayable by consecutive blended monthly payments of principal and interest based on an amortization period of 15 with the proviso that until the MCS Pod was installed and commissioned 244 was only required to pay interest payments [3] At closing of the financing transaction

[1] Asselstine affidavit Exhibit A ; Application Record p. 740, 741 746
[2] Asselstine affidavit Exhibit B ; Application Record p. 750
[3] The Report p. 118 ff

the ESA was assigned to 244 on November 20, 2014 [4] and 244 signed a GSA.[5] and promissory note (exhibit C hereto) in favor of the Fund . SMC consented to this transaction. [6] As part of this consent SMC agreed as follows:

> *Early Termination*
>
> *Section 9.2 of the Energy Services Agreement provides for early termination. Notwithstanding anything else contained in the Energy Services Agreement or any Schedule thereto, you agree that you will not exercise such early termination unless as part of the Early Termination Fee, you pay an amount equal to (a) the amount of principal then outstanding under the Credit Facility, plus (b) any accrued and unpaid interest to the effective date of termination; plus (c) the aggregate of the difference between (i) the amount of interest required to be paid to the Fund from the date of advance to the effective date of termination and (ii) the amount of interest that the Fund would have been entitled to receive from the date of advance to the effective date of termination if the applicable interest rate were increased by 2.00% per annum; plus (d) an amount equal to six months' interest on the principal then outstanding.*[7]

8. As part of the closing of the financing 244 assigned the ESA to the Fund.[8] Par. 3 of the Assignment Agreement states:

> ***3. No Assumption by the Fund of Assignor's Obligations to Perform under ESA***
>
> *The Assignor and the Fund agree that the Fund has been granted certain security rights and interests but has not assumed any obligations or liabilities of the Assignor under the Energy Services Agreement and Assignor agrees that the Customer shall not look to the Fund for the performance and discharge of such obligations and liabilities.·*

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[4] Asselstine affidavit Exhibit C ; Application Record p. 754
[5] The Report p. 138 ff
[6] Asselstine affidavit Exhibit D ; Application Record p. 759
[7] Asselstine affidavit Exhibit D; Application Record p.760
[8] The Report p. 113 ff

9. There has been no default and no need to replace or assist 244 in carrying out its ESA contractual obligations to SMC and the Fund.

10. For reasons not made clear to me somehow SMC and the Receiver caused a failure in payments by SMC to 244 for a period between October 2017 and March 2018 and in turn 244 could not pay the Fund. I have been told there was a trust fund or escrow account created but I have not received documents or a full accounting relating to the arrangement between SMC and the Fund. SMC and the Fund's arrangement meant that 244 was not paid for several months before Christmas 2017 however 244 continued to fulfil its contractual obligations to SMC. In December 2017 when payments to 244 were being withheld 244's lawyer wrote to SMC and the Receiver proposing a standstill agreement which is attached and shows 244's good faith was ongoing. (Exhibit D hereto)

11. SMC and the Fund waited until March 2018 before agreeing to start paying 244 again when we entered into an Interim Settlement. (Exhibit E hereto). Even though 244 was not being paid during that period it continued to provide full service to SMC. The Interim Settlement brought the loan owing to the Fund into good standing.

12. The Interim Settlement settled all outstanding money issues and cured any allegations of default in payments to the Fund. The Interim Settlement agreement remained in place and payments continued for 3 years and 4 months with no complaints or defaults until suddenly on the afternoon of Friday August 13th, 2021 -after the August 9th, 2021 *ex parte* hearing,- I was as advised by email from SMC's lawyers that SMC was revoking the Interim Settlement which revocation was to take effect as of August 20th, 2021. (Exhibit F hereto).

13. 244 has a direct remote connection with the MCS PoD in order to monitor it and exert control. My staff advised me that as at Tuesday August 17th they noticed that the connection had been discontinued. This is a bad idea, if only for safety reasons. After reading the Application Record it is clear that there have been prior communications between the Receiver and SMC that were not disclosed to the Court. It is not clear who

cut off the connection however 244 personnel should have been notified prior to taking any action with respect to the MCS PoD.

14. I was advised by one of our service personnel, Rod Hickey, that he was at SMC on August 12th, 2021 to perform a routine service call when Debbie Barstow of SMC advised him that the CFO of SMC had called her and asked if he could come back a different day to perform the service. Dannielle Bachelor, the SMC operations manager, advised they had received a ticket from the Ministry of Labour who was on site and all non-essential persons were required to leave.

15. A full accounting has not been provided by the Receiver or SMC however there is no possibility that on August 9th , 2021 244 was in default of the promissory note or any promise to pay and there was at that time no possibility that the loan was in default. Even if the Fund now wants payment in full there is an issue that it is not entitled to full payment because the payment obligations are in good standing and there is no default. 244 has not been made aware of any allegation of default in payment to the Fund all the while the Interim Settlement was in place. If the Fund intends to make such a claim it is required to give a full accounting and also provide reasonable notice for 244 to respond which is consistent with normal practice in matters related to GSA's.

16. Even if the Fund now says that there is a default because of SMC's advice on August 13th that it will no longer pay it must give fair and reasonable notice to SMC according to the usual commercial terms which would, at very least, allow until the end of October, 2021 to make good or pay out the loan. In the meantime 244 disputes any allegation by SMC that there has been a default and will invoke the arbitration clause in Article 11 of the ESA to refute any such allegation.

17. That August 13 email advises that SMC believes there are outstanding disputes between OOM and SMC which arose in 2018 but that is false. SMC has never initiated the Dispute Resolution clauses in the ESA . 244 is of the view that its compliance with all its obligations under the ESA have been more than satisfactory it has always acted in good faith within the spirit and intent of the ESA, and more.

18. The termination of the Interim Settlement by SMC effective August 20th, 2021 does not change any of SMC's ESA obligations. SMC is required to pay $34,950 per month and in addition must pay all applicable taxes. As soon as these payments are made 244 will continue to make monthly payments on the loan to the Fund or otherwise as it may direct.

19. The relationship with SMC according to the ESA must be respected by the Receiver and if SMC decides to stop paying then arbitration will follow as required in the ESA and the Receiver will have to become involved in the arbitration until it is resolved. However as of today 244 has not received any notice of default from SMC. In any event SMC is not entitled to withhold payment according to the terms of the ESA which contains the following clause 1.5 *:…This Energy Charge shall be paid by an automated clearing house to the bank account designated by the Supplier on the first business day of every month during the term of this agreement without set off or deduction for any other reason."*

20. The allegation by Mr. Asselstine that service of notice of the Application would have caused 244 to withhold crucial services is extremely unfair, contradicts facts which he knows to be true, and is not logical. If SMC wishes to resile from the ESA it is entitled to do so as long as it complies with the Early Termination payment clause it agreed to. As shown below 244 has never withheld services even when it was not being paid. It would be unreasonable in its day to day dealings in its business to threaten to or otherwise withhold services.

21. This statement in Mr. Asselstine's affidavit and the alleged facts it relies on are known to SMC and the Receiver to be false. *"For reasons that are set out below, SMC has reasonable grounds to believe that the delivery of Power and HVAC Services may be interrupted if the Respondent had notice of this motion by the CW Receiver*." It is not borne out by the history of the SMC-244 relationship and is a fabrication.

22. Notwithstanding the unfair accusation that 244 would withhold services if it is not getting paid and even though the ESA does not permit SMC to withhold payment while disputes

are being resolved 244 will continue to honour the terms of the contract. 244 has never cut off services to a customer or even suggested doing so.

23. Mr.Asselstine's affidavit is false when it does not agree that the relationship between 244 and SMC up to July 2021 has been businesslike and reasonable. For instance over the last year there have been constant interactions and communications among personnel to address minor issues and these are well known and captured in emails that have been exchanged which I note were not produced to the Court. They are attached as exhibit G.

24. The allegation by Mr. Asselstine regarding Toronto Hydro and a connection agreement is a 'red herring' and inaccurate. I know him well enough because of our interactions to say he is not an expert with respect to issues surrounding the services to be provided according to the ESA. SMC acknowledged it already had issues with Toronto Hydro in July 2016 which were not related to 244 -see exhibit H hereto. In that letter it advised Toronto Hydro that it was hiring an expert regarding the MCS Pod issues. I was later advised and verily believe that it hired Hatch Engineering who agreed with 244's analysis that there is no need for a new connection agreement with Toronto Hydro because the MCS PoD is to be islanded. This had been fully demonstrated and acceptable to SMC and well known to Mr. Asselstine especially during a period between Oct 29/15 until Feb 10/16 when Toronto Hydro was unable to provide electricity to SMC while at the same time the MCS Pod worked flawlessly to provide all the electricity chilling and heat that SMC needed. This evidence contradicts Mr. Asselstine's affidavit evidence and I question why it was not disclosed to the Court.

25. SMC already has a connection agreement with Toronto Hydro. If SMC requires an updated connection agreement with Toronto Hydro because it wishes to sell excess electricity to Toronto Hydro it is entitled to do and upon request 244 would assist however 244 has no obligation to do so. Contractually 244 was only ever required to produce electricity from the grid or from the generator but never both at the same time therefore excluding any requirement for the THC connection agreement request. SMC knew this and their own consultant Hatch confirmed that to them.

26. The letter from SMC's lawyers dated February 22, 2018 alleging breaches of the ESA which alleges default because of issues with Toronto Hydro was denied because it was false. SMC never pursued dispute resolution with respect to the alleged issue in that letter and ultimately the Interim Settlement resolved it. 244 would gladly engage in and prevail in dispute resolution about this issue at any time.

27. Even if the MCS PoD were to be unable to provide electricity to SMC- an highly unlikely event because of the way the PoD is set up- there is already backup in place.

28. Mr. Asselstine has failed to advise the Court that SMC's issues with Toronto Hydro were not created by 244. There were issues with Toronto Hydro's meters and overcharging at one time. At another time it appears SMC ignored its obligations to pay Toronto Hydro. The allegation by Mr. Asselstine regarding potential backfeed is misleading and inaccurate and it is clear that Mr. Asselstine has not the expertise or facts at his disposal to make such a statement. If Mr; Asselstine had told the full story he would have included the attached Disconnect Notice from Toronto Hydro where it shows SMC was going to be cut off in late April because it owed $101,555.29 to Toronto Hydro. See exhibit I hereto.

29. 244 has never and would never threaten to cut off electrical service to its customers and Mr. Asselstine knows this is true especially because even when 244 was not being paid it still provided full service. 244 kept providing service because that is what we do i.e. make sure the customer has heat and hydro. Even though it had no obligation to do so was helpful to SMC in negotiating with Toronto Hydro after it received the disconnection notice.

30. Also attached (Exhibit J hereto) is an email to me from Mr. Asselstine on April 21, 2021 which discusses his views of the carbon tax charges that have been added to SMC's required payments. There is a disagreement about this which remains to be resolved but it is not a default or other breach of the agreement and is being sorted out or can be referred to the dispute resolution process in the ESA.

31. If SMC has a dispute with 244 it is entitled to raise it via the Dispute Resolution Clause in the ESA which contains an arbitration clause for disputes that cannot be negotiated or mediated. Even when a dispute resolution might take place SMC is prohibited from withholding payment. SMC has never served any notice and has not invoked arbitration and therefore the allegation that the ESA has been breached is devoid of merit. SMC is required to keep paying and 244 will continue paying the Fund.

32. Now that SMC has revoked the Interim Settlement it is required to make full payment to 244 each month and 244 will pay its monthly payment to the Receiver. There is no justification for the Receiver to suddenly and without notice advise the Court that the ESA is not satisfactory or has been breached at least until there has been a full arbitration between SMC and 244. Because the Receiver has taken the ESA as security it knows that arbitration is required to resolve disputes.

33. Mr. Asselstine's affidavit is misleading both because it misstates facts and also because it fails to tell the whole story which is that 244 has always provided 100% service to SMC and comply with the terms of the ESA even when SMC and the Receiver failed to make payments to 244. 244 provides crucial service to its customers because it delivers electricity and heat energy and it has never failed or refused to honour its contractual agreement to do so nor would it.

34. Mr. Asselstine is not an engineer and has no expertise regarding matters related to electrical and heat generation and supply. SMC's own personnel were happy with 244's work. Also SMC's lawyers, Weir and Foulds, hired an independent expert, Hatch Engineering, who reviewed the installation and the generation of electricity issues and found no fault with them. That expert also advised it was not necessary to obtain a new connection agreement with Toronto Hydro and that the existing 244 installation should operate independently of Toronto Hydro on an islanded basis. This meant that there was no need for a new connection agreement with Toronto Hydro.

35. Mr. Asselstine has failed to disclose an anomaly that he was involved with when he became a director of a company not related to SMC, Pond Biofuels. It is likely that he receives compensation from that company and he may be a shareholder. In or around October 19 2017 Pond Biofuels asked to borrow some equipment from 244 that had been installed SMC. It has still not been returned nor has there been any compensation for the equipment. This was, I understand, to accommodate and assist with plans for Pond Biofuels to enhance its business and launch and IPO that would have benefited all its shareholders. The equipment has never been returned nor has compensation been received.

36. I make this affidavit in support of a motion to set aside the August 9th, 2021 Order of this Court.

SWORN remotely by Craig Clydesale
of the City of Burlington in the Province of
Ontario, before me at the City of
Orillia, in the Province of Ontario
Ontario, on August 30, 2021 in accordance
with 0. Reg. 431/20, Administering Oath
or Declaration Remotely. Mr. Clydesdale affixed his
signature electronically in my virtual presence.

DocuSigned by:
35148D7FC2054C8...

Craig Clydesdale

K.W. McKenzie, Commissioner of Oaths

Exhibit A to the affidavit of Craig Clydesdale

Sworn Virtually August 30, 2021

K.W. McKenzie

A Commissioner etc.

CC016

CC017


GLYCOL HTG. RET.
GLYCOL COOL. RET.
GLYCOL HTG. SUP.
GLYCOL HTG. SUP.
GLYCOL COOL. RET.
GLYCOL COOL SUP.
GLYCOL HTG. SUP.
GLYCOL HTG. SUP.
GLYCOL HTG. RET.
GLYCOL HTG. RET.

CC018

CC019

CC020

CC021


Schneider Electric
Xantrex XW
Hybrid Inverter/Charger
Schneider Electric
Xantrex XW
Hybrid Inverter/Charger
Schneider Electric
Xantrex XW
Hybrid Inverter/Charger
DANGER
LIEBHERR
0009
LIEBHERR


CC022
WARNING
BACK UP GENERATION
MAY BE PRESENT
Circuit Breakers can be supplied from Multiple Power Sources
DANGER
Incoming Lines
Conducteurs d'entrée
WARNING
AVERTISSEMENT
ALL-IN-ONE
CubicleBUS
CLOSE
OPEN
SIEMENS

CC023


CC024

Exhibit B to the affidavit of Craig Clydesdale

Sworn virtually August 30, 2021

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K.W. McKenzie

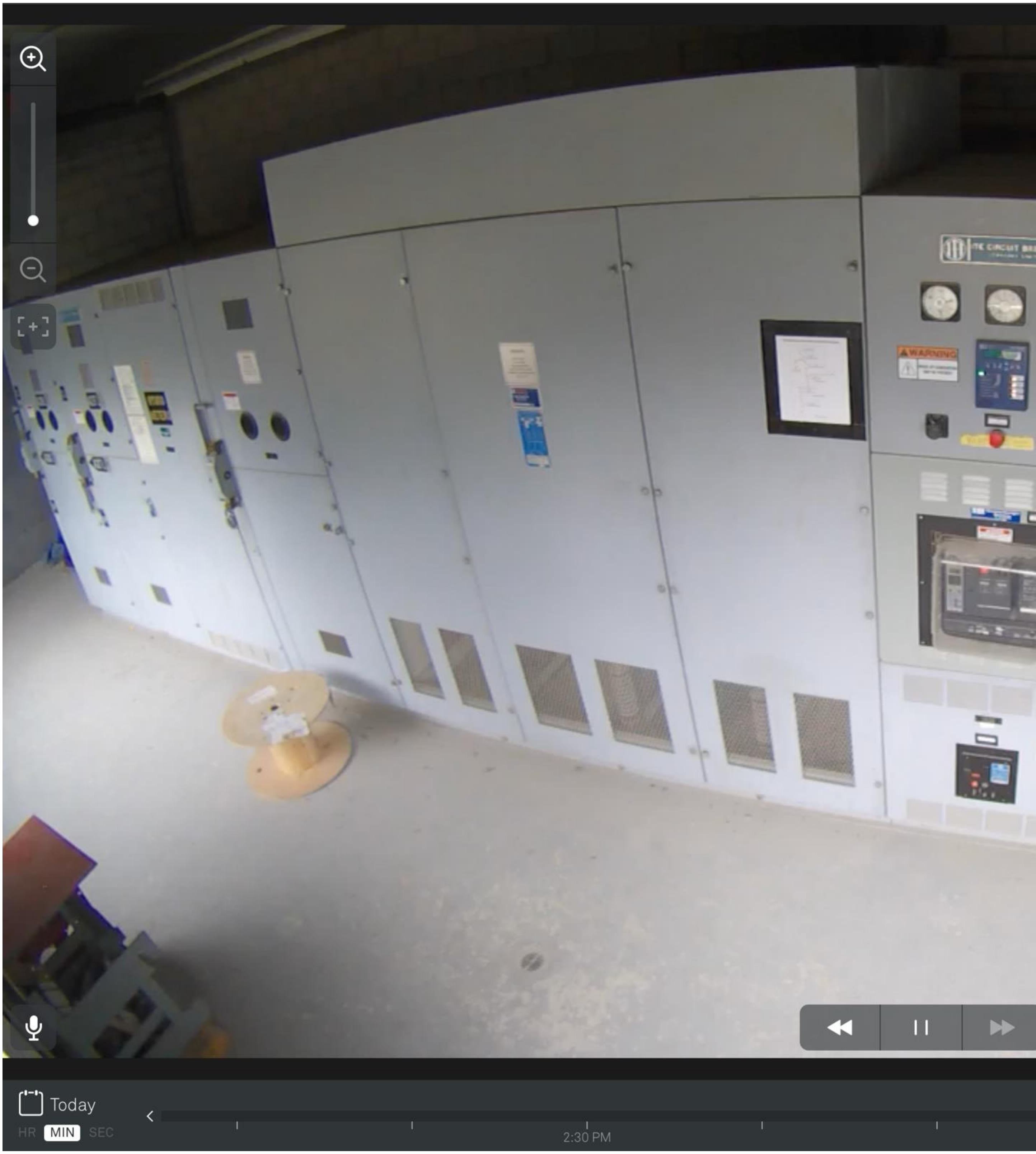
A Commissioner etc.

On Jul 10, 2017, at 5:04 PM, Steve Murphy <steve@genphix.com> wrote:

Good Day Marc,

For the site inspection, we have important safety training that is required for all personnel entering the Co-Gen room and or Main Electrical room to ensure due to the electrical arc flash hazard specified by CSA Z462n that is present in both areas.

I will send the courses to Marcin that he will need to complete in order to gain access to the rooms and also have him coordinate with our site safety officer to escort him in to the areas as permitted by his PPE.
We have Cameras in all locations to monitor real time for safety, we have attached the pictures of each room from our live feed.


Today
HR
MIN
SEC
2:30 PM


Press esc to exit full screen
GLYCOL HTG. SUP.
Today
HR MIN SEC
2:30 PM

Co-Gen= CAT 2
Main Electrical Room=CAT 2

Kind Regards, personalle
Steve Murphy
Genphix.com
M: 403-990-8415

On Jul 10, 2017, at 11:22 AM, Marc Vermeire <marc.vermeire@vcimentos.com> wrote:

Marcin will be on site on Friday, confirmed by phone
We will need the system unlocked for his access,
Thanks

<Mail Attachment.ics>

Exhibit C to the affidavit of Craig Clydesdale

Sworn virtually August 30, 2021

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K.W. McKenzie

A Commissioner etc.

PROMISSORY NOTE

TO: **CRYSTAL ENHANCED MORTGAGE FUND** (the "**Lender**")

FROM: **2441472 ONTARIO INC.** (the "**Debtor**")

DATE: November ●, 2014

FOR VALUE RECEIVED, and intending to be legally bound, the Debtor promises to pay, in accordance with the terms and conditions hereof, to the order of Lender at the office of Lender at 3385 Harvester Road, Suite 200, Burlington, Ontario, L7N 3N2, the principal amount specified below ("**Principal**") together with interest at the rate specified below ("**Interest**") on the amount of Principal from time to time outstanding. All payments received under this promissory note (this "**Note**") shall be applied first to the payment of Interest, and second to the payment of Principal.

This Note is a negotiable instrument.

The following are the terms and condition of the Note:

1. Principal

(1) The Principal of this Note is a maximum of CDN $1,800,000;

(2) Advances of Principal may be made under this Note in full or in tranches.

(3) The liability of the Debtor and of any guarantor of the Debtor ("**Guarantor**") (collectively, the Debtor and Guarantor are the "**Credit Parties**") or endorser in respect of Principal shall not exceed the aggregate of advances of Principal less the aggregate amount of Principal repaid.

(4) The indebtedness of the Debtor under this Note from time to time will be determined by reference to the books and records maintained by the Lender concerning advances made and payments received. The records maintained by the Lender will constitute, in the absence of manifest error, prima facie evidence of the indebtedness of the Debtor to the Lender hereunder and all details in relation thereto. The failure of the Lender to correctly record any such amount or date will not, however, adversely affect the obligation of the Debtor to pay amounts due hereunder to the Lender in accordance with the terms hereof.

2. Payment

The Principal and Interest payable under this Note shall be repayable in accordance with the terms of the letter loan agreement dated November ●, 2014 entered into between the Debtor and the Lender as the same may be amended, restated, modified or replaced from time to time.

3. Interest Rate

Interest shall be payable upon the amounts advanced under this Note at the rate of **[11%/13%]** per annum, calculated and payable monthly in arrears, on the [last/●] day of each and every month, on the basis of the then current calendar year for the actual number of days elapsed, with interest on all overdue interest calculated as aforesaid and compounded monthly at the aforesaid rate from the due date thereof without necessity of notice or demand, the whole before as well as after maturity, demand, default or judgement.

4. Presentment, etc.

The Credit Parties hereby waive presentment, demand, notice of dishonour, notice of protest, notice of non-payment and any other notice required by law to be given to any Credit Party on this Note in connection with the delivery, acceptance, performance, default or enforcement of this Note and consent to,

(a) any delays, extensions, renewals or other modifications of this Note;
(b) any waivers of any term or condition of this Note; and
(c) the release of any of the Credit Parties under this Note or of any security given by any Credit Party in respect of that Credit Party's obligations under this Note;

by Lender or any other person, and the Credit Parties severally agree that no such action or failure to act by Lender or any other person shall affect or impair the obligations of any of the Credit Parties, or be construed as being a waiver by Lender or that other person of its rights under the Note.

5. Usury Laws

Where the rate of interest payable under this Note is found by a competent court of law, governmental agency or other tribunal to exceed the maximum rate of interest permitted by the laws of any applicable jurisdiction or the rules or regulations of any appropriate regulatory authority, then during the time that the rate of interest would exceed the permissible limit, that portion of each interest payment attributable to the portion of the interest rate that exceeds the permissible limit shall be deemed to be a voluntary prepayment of principal.

6. Proper Law

This Note shall be interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and every holder and Credit Party hereby irrevocably attorns to the jurisdiction of the courts of Ontario.

7. Interpretation

In this Note,

(a) a word importing the masculine, feminine or neuter gender only, includes members of the other genders;
(b) a word defined in or importing the singular number has the same meaning when used in the plural number, and vice versa;
(c) the headings to each section are inserted for convenience of reference only and do not form part of the Note;
(d) all reference to Lender shall be deemed to include the successors and assigns of Lender and any holder of the Note; and
(e) all references to the Debtor shall be deemed to include a reference to its heirs, legatees, trustees, executors, administrators, successors and assigns and to every Guarantor, endorser and acceptor of the Note.

Signed as of the date first above written

2441472 ONTARIO INC.

By:______________________________
Name:
Title:

[SIGNATURE PAGE TO PROMISSORY NOTE]

12679779.2

Exhibit D to the affidavit of Craig Clydesdale

Sworn Virtually August 30, 2021

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K.W. McKenzie

A Commissioner etc.

Standstill agreement between St Marys Cement (SMC), 2441472 Ontario Inc (244). and Grant Thornton (GT)Receiver for Crystal Wealth

Whereas

-GT has issued a demand letter to be paid all funds owing by SCM to 244 immediately.

-the time of year (holiday season) has made it impossible to resolve the issues between the parties with respect to this demand at this time

-244 requires ongoing funds to continue to provide services to SMC

-the parties want to resolve any issues in good faith and upon a reasonable schedule

So the parties agree as follows: The next three payments (Dec. 23, Jan 23, Feb. 23 each $38,395.00) owing on the ESA shall be paid by SMC on the basis that $18.395.00 will be paid the Receiver and $20,000.00 will be paid to 244. (Note: add HST to each amount)

In return the Receiver will a) agree not to take any further collection efforts against 244 of any amounts owing by SMC to 244 b) agree that members of 244, SMC, and GT who have authority to make decisions will meet on a good faith, without prejudice, off the record basis on January 9th, 2018 to resolve all outstanding issues as best they can. No agreement shall be binding unless signed by all parties.

Signed December 20, 2017

____

GT

____

SMC

____

244

Exhibit E to the affidavit of Craig Clydesdale

Sworn virtually August 30, 2021

_

____

K.W. McKenzie

A Commissioner etc.

From: Bill McKenzie <lawyerbill@rogers.com>
Sent: Friday, March 16, 2018 8:21 AM
To: Daniel P. Ferguson <FERGUSON@weirfoulds.com>
Subject: RE: Revision

OK good work Dan. My client approves and will send the unit make model and serial number today. I told OOM to email it to Marc at SMC so there is no delay.

Regards, Bill

From: Dan Ferguson [mailto:FERGUSON@weirfoulds.com]
Sent: March-15-18 3:14 PM
To: Bill McKenzie (lawyerbill@rogers.com)
Cc: Jolanta Malicki; Barbara Zeller; Bill Asselstine
Subject: Revision

Without Prejudice

Biil,

St. Marys will agree to OOM being receiving $18,000 plus HST per month (for a total of $20,340 per month) less direct gas payments and applicable HST.

On this basis from the amount presently in trust St Marys will receive $24,474.79 for the payment to Enbridge of gas arrears and $36,545.21 will be paid to OOM for payment of other costs (total $61,020). Each of the Receiver and St Marys will receive $37,112.25 from the trust account.

Future monthly payments will be distributed as follows: $20,340 less monthly gas bill and applicable HST to OOM for payment by it of other costs; monthly gas bill paid directly by St Marys; each of St. Marys and the receiver to receive $12,370.75.

There are no receipted gas bills because Enbridge doesn't issue those types of receipts, but St Marys will provide proof of payment and evidence of the gas bills and accounts.

Except for the revision to the share of proceeds and the verification of gas payments as set out above in this email, the remainder of the previous email settlement offer is unamended.

If agreeable, please confirm OOM's agreement by return email including the unit make, model and serial number in the return email, whereupon I will send the proposed email to the receiver with these financial numbers and amounts in replacement of the financial numbers and amounts in the original draft

DAN FERGUSON* | Partner | T. 416-947-5029 | FERGUSON@weirfoulds.com

Exhibit F to the affidavit of Craig Clydesdale

Sworn virtually August 30, 2021

____

K.W. McKenzie

A Commissioner etc.

From: Wojtek Jaskiewicz <wjaskiewicz@weirfoulds.com>
Sent: Friday, August 13, 2021 12:53 PM
To: 'kwm@kwmckenzielaw.com' <kwm@kwmckenzielaw.com>; 'lawyerbill@rogers.com' <lawyerbill@rogers.com>; Miranda Spence <mspence@airdberlis.com>
Cc: Philip Cho <pcho@weirfoulds.com>; Steve Graff (sgraff@airdberlis.com) <sgraff@airdberlis.com>; Damian Lu (dlu@airdberlis.com) <dlu@airdberlis.com>; Bruce Bando (bruce.bando@ca.gt.com) <bruce.bando@ca.gt.com>; 'craig@oomenergy.com' <craig@oomenergy.com>; Daniel P. Ferguson <FERGUSON@weirfoulds.com>
Subject: St. Marys Cement Inc. (Canada) re 2363265 Ontario Inc.

Counsel,

We refer to our letter dated February 22, 2018 ("**Notice of Default**"), a copy of which is attached, setting out breaches and defaults identified under the Energy Services Agreement dated November 27, 2013 ("**Original ESA**") among St. Marys Cement Inc. (Canada) (the "**Customer**") and 2363265 Ontario Inc. (the "**Supplier**") as amended by an agreement ("**First Amendment**") between the Customer and Supplier, signed by Supplier on July 17, 2014 and by Customer on September 22, 2014 (the Original ESA as amended by the First Amendment herein called the "**ESA**").

We also refer to the interim settlement (the "**Interim Settlement**") substantially set out in the emails dated March 14, 2018, and March 15, 2018, between Mr. Daniel Ferguson, of WeirFoulds LLP, lawyers to the Customer, and Mr. Bill McKenzie, lawyer for the Supplier, which Interim Settlement was accepted on March 16, 2018, as amended. A copy of these emails is also attached.

The Interim Settlement, among other things, provides that it may be terminated by any party upon the provision of five business days prior written notice, which may be delivered by email. Please accept this letter as the Customer's prior written notice that effective August 20, 2021, the Customer is terminating the payment arrangement set out in the Interim Settlement.

WOJTEK JASKIEWICZ | Partner | T. 416-947-5094 | C. 416-268-8746 | wjaskiewicz@weirfoulds.com

WeirFoulds LLP

Exhibit G to the affidavit of Craig Clydesdale

Sworn virtually August 30, 2021

____

K.W. McKenzie

A Commissioner etc.

Various email interchanges among SMC and 244 personnel

From: Debbie Bairstow <debbie.bairstow@vcimentos.com>
Subject: Re: Temperature's
Date: November 14, 2017 at 5:25:46 AM EST
To: Morley Kocken <morley@oomenergy.com>
Cc: Craig Clydesdale <craig@oomenergy.com>

Thanks Morley, I didn't realize we had a boiler to generate heat. I think it would be a very good idea to have this inspected more often if we are going to be using it more frequently. Has the temperature been adjusted on all floors so there is more heat than cooling? Our CEO has an office on the 4th floor at the far end of the building and he was complaining on Friday that he gets a blast of cold air in his office in the afternoon and he wanted it turned down or off. Hopefully now he will find a difference.

I will let you know mid morning if I hear any more complaints.

Thanks for your help.

Deb

Sent from my iPhone

On Nov 13, 2017, at 7:49 PM, Morley Kocken <morley@oomenergy.com> wrote:

Debbie,

The boiler has been inspected, reset and is running as of 7:30 pm.

We have different operating conditions this year as the generator normally provides most of the heat for the office tower. The boiler is operating for more hours than years past.

We will have a technician visit more frequently to check on the boiler operation.

Morley

Sent from my iPhone

On Nov 13, 2017, at 11:58 AM, Debbie Bairstow <debbie.bairstow@vcimentos.com> wrote:

Thanks I will let the staff know the boiler is having issues and should be fixed by tomorrow.

Regards

Debbie Bairstow
Votorantim Cimentos/St Marys Cement
Building Services Coordinator
Corporate Head Office
debbie.bairstow@vcimentos.com

Phone: 416-696-4268
Fax: 416-423-4211
55 Industrial Street, Toronto, ON M4G 3W9

www.votorantimcimentos.com
www.stmaryscement.com

From: Morley Kocken [mailto:morley@oomenergy.com]
Sent: November-13-17 2:42 PM
To: Debbie Bairstow
Cc: Craig Clydesdale
Subject: Re: Temperature's

Debbie,

We have tried some resets on the boiler from the remote controller without success. A technician will be at site by 6 pm and repair by morning.

Morley

Sent from my iPhone

On Nov 13, 2017, at 5:30 AM, Debbie Bairstow <debbie.bairstow@vcimentos.com> wrote:

Good Morning Morley

I have had several complaints this morning about the cold temperature in the office on all floors. Can we turn down the cold air and get some heat going. The sensor on the 2nd floor is only reading 19.8.

Thanks

Debbie Bairstow
Votorantim Cimentos/St Marys Cement
Building Services Coordinator
Corporate Head Office
debbie.bairstow@vcimentos.com

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Fax: 416-423-4211
55 Industrial Street, Toronto, ON M4G 3W9

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www.stmaryscement.com

****

September 28, 2017

From: Debbie Bairstow <debbie.bairstow@vcimentos.com>
Subject: Re: Generator
Date: September 28, 2017 at 6:56:56 PM EDT
To: Steve Murphy <steve@genphix.com>
Cc: Craig Clydesdale <craig@oomenergy.com>, Morley Kocken <morley@oomenergy.com>

Thanks Steve for looking after us.

Have a great night.

Deb

Sent from my iPhone

On Sep 28, 2017, at 6:46 PM, Steve Murphy <steve@genphix.com> wrote:

Hi Debbie,

We have determined that the Diesel has a coolant leak and will be back out tomorrow to find the leak, the alarm has been silenced at the Gen and we left the tape on the annunciator in the office until we can confirm everything is ok.

Kind Regards,

Steve Murphy
Genphix.com
M: 403-990-8415

On Sep 28, 2017, at 10:09 AM, Morley Kocken <morley@oomenergy.com> wrote:

Debbie,

We have a technician scheduled to go out for maintenance and will have the back up generator serviced.

Morley

Sent from my iPhone

On Sep 28, 2017, at 4:41 AM, Debbie Bairstow <debbie.bairstow@vcimentos.com> wrote:

Good morning Morley I just got a phone call I'm not at work this morning and the box was screaming again this morning the girl said that it said generator on load and loaw coolant. I'm not sure there's anybody on site doing work but I'm not on site today I have to go in for jury duty selection this morning. if you can look into it and get back to me i would appreciate it.

thank you

Deb

Sent from my iPhone

****

October 13, 2017

From: Debbie Bairstow <debbie.bairstow@vcimentos.com>
Subject: RE: Cold
Date: October 13, 2017 at 1:24:49 PM EDT
To: Morley Kocken <morley@oomenergy.com>
Cc: Craig Clydesdale <craig@oomenergy.com>, Steve Murphy <steve@genphix.com>

Thanks Morley, it's getting to be that time of year again when we start feeling the cold again.

Regards

Debbie Bairstow
Votorantim Cimentos/St Marys Cement
Building Services Coordinator
Corporate Head Office
debbie.bairstow@vcimentos.com

Phone: 416-696-4268
Fax: 416-423-4211
55 Industrial Street, Toronto, ON M4G 3W9

www.votorantimcimentos.com
www.stmaryscement.com

From: Morley Kocken [mailto:morley@oomenergy.com]
Sent: October-13-17 1:15 PM
To: Debbie Bairstow
Cc: Craig Clydesdale; Steve Murphy
Subject: Re: Cold

Debbie,

I have moved floors 2 & 3 up to 23.0 and 23.5 Deg. C. respectivly. Let me know how that helps.

Have a good weekend yourself.
Morley

On Oct 13, 2017, at 8:32 AM, Debbie Bairstow <debbie.bairstow@vcimentos.com> wrote:

Hi Morley

Can we adjust the temperature a bit?

Thanks & have a great weekend.

Debbie Bairstow
Votorantim Cimentos/St Marys Cement
Building Services Coordinator
Corporate Head Office
debbie.bairstow@vcimentos.com

Phone: 416-696-4268
Fax: 416-423-4211
55 Industrial Street, Toronto, ON M4G 3W9

www.votorantimcimentos.com
www.stmaryscement.com

From: Lucy Prosser
Sent: October-13-17 11:29 AM
To: Debbie Bairstow
Subject: Cold

Hi,
I have been told that it is very cold in here on the 2nd 3rd

Lucy Prosser
Votorantim Cimentos
St Marys Cement | Receptionist
Head Office
Lucy.Prosser@vcimentos.com

Phone: 416-423-1300 Ext 0
55 Industrial St Toronto, ON M4G 3W9

votorantimcimentos.com
www.stmaryscement.com

****

October 17, 2017

From: Debbie Bairstow <debbie.bairstow@vcimentos.com>
Subject: Re: Air conditioner
Date: October 17, 2017 at 9:03:01 PM EDT
To: Morley Kocken <morley@oomenergy.com>
Cc: Craig Clydesdale <craig@oomenergy.com>, Steve Murphy <steve@genphix.com>

Thanks Morley I will let you know how they are fairing tomorrow.

Have a great night

Deb

Sent from my iPhone

On Oct 17, 2017, at 3:55 PM, Morley Kocken <morley@oomenergy.com> wrote:

Debbie,

Floor 1 set point of 23 deg C and lowest temp showing was 22 deg C.

I have raised set point to 24 deg C let me know how that is.

Morley

On Oct 17, 2017, at 12:48 PM, Debbie Bairstow <debbie.bairstow@vcimentos.com> wrote:

Hi Morley

Can you please adjust the temperature on the first floor.

Thanks

Debbie Bairstow
Votorantim Cimentos/St Marys Cement
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Corporate Head Office
debbie.bairstow@vcimentos.com

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55 Industrial Street, Toronto, ON M4G 3W9

www.votorantimcimentos.com
www.stmaryscement.com

From: Lucy Prosser
Sent: October-17-17 2:50 PM
To: Debbie Bairstow
Subject: Air conditioner

Hi Debbie,

Its really cold on the first floor Tech area

Lucy Prosser
Votorantim Cimentos
St Marys Cement | Receptionist
Head Office
Lucy.Prosser@vcimentos.com

Phone: 416-423-1300 Ext 0
55 Industrial St Toronto, ON M4G 3W9

votorantimcimentos.com
www.stmaryscement.com

****

November 14, 2017

From: Debbie Bairstow <debbie.bairstow@vcimentos.com>
Subject: Re: Temperature's
Date: November 14, 2017 at 5:25:46 AM EST
To: Morley Kocken <morley@oomenergy.com>
Cc: Craig Clydesdale <craig@oomenergy.com>

Thanks Morley, I didn't realize we had a boiler to generate heat. I think it would be a very good idea to have this inspected more often if we are going to be using it more frequently. Has the temperature been adjusted on all floors so there is more heat than cooling? Our CEO has an office on the 4th floor at the far end of the building and he was complaining on Friday that he gets a blast of cold air in his office in the afternoon and he wanted it turned down or off. Hopefully now he will find a difference.

I will let you know mid morning if I hear any more complaints.

Thanks for your help.

Deb

Sent from my iPhone

On Nov 13, 2017, at 7:49 PM, Morley Kocken <morley@oomenergy.com> wrote:

Debbie,

The boiler has been inspected, reset and is running as of 7:30 pm.

We have different operating conditions this year as the generator normally provides most of the heat for the office tower. The boiler is operating for more hours than years past.

We will have a technician visit more frequently to check on the boiler operation.

Morley

Sent from my iPhone

On Nov 13, 2017, at 11:58 AM, Debbie Bairstow <debbie.bairstow@vcimentos.com> wrote:

Thanks I will let the staff know the boiler is having issues and should be fixed by tomorrow.

Regards

Debbie Bairstow
Votorantim Cimentos/St Marys Cement
Building Services Coordinator
Corporate Head Office
debbie.bairstow@vcimentos.com

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From: Morley Kocken [mailto:morley@oomenergy.com]
Sent: November-13-17 2:42 PM
To: Debbie Bairstow
Cc: Craig Clydesdale
Subject: Re: Temperature's

Debbie,

We have tried some resets on the boiler from the remote controller without success. A technician will be at site by 6 pm and repair by morning.

Morley

Sent from my iPhone

On Nov 13, 2017, at 5:30 AM, Debbie Bairstow <debbie.bairstow@vcimentos.com> wrote:

Good Morning Morley

I have had several complaints this morning about the cold temperature in the office on all floors. Can we turn down the cold air and get some heat going. The sensor on the 2nd floor is only reading 19.8.

Thanks

Debbie Bairstow
Votorantim Cimentos/St Marys Cement
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www.votorantimcimentos.com
www.stmaryscement.com

****

January 8, 2018

From: Debbie Bairstow <debbie.bairstow@vcimentos.com>
Subject: RE: Heat on 3rd floor
Date: January 8, 2018 at 9:33:32 AM EST
To: Morley Kocken <morley@oomenergy.com>
Cc: Steve Murphy <steve@oomenergy.com>, Rod Hickey <rod@oomenergy.com>, "Craig Clydesdale" <craig@oomenergy.com>

Thanks for looking after us Morley.

Deb

-----Original Message-----
From: Morley Kocken [mailto:morley@oomenergy.com]
Sent: January-08-18 9:24 AM
To: Debbie Bairstow
Cc: Steve Murphy; Rod Hickey; Craig Clydesdale
Subject: Re: Heat on 3rd floor

Debbie,

There was a high voltage trip on the fan VFD controller, floor #3 RTU.
The VFD has been reset and the RTU is now functioning correctly.
We will confirm when temperatures reach set point and calms down later this morning

Morley

On Jan 8, 2018, at 2:21 AM, Debbie Bairstow <debbie.bairstow@vcimentos.com> wrote:

Thanks Morley

Deb

Sent from my iPhone

On Jan 8, 2018, at 4:04 AM, Morley Kocken <morley@oomenergy.com> wrote:

Debbie,

The Roof Top unit for floor 3 has stopped working and Rod will be onsite this morning to troubleshoot.

Floor #3 is 4 degrees colder than normal, in some areas.

We have increased temperature on the second floor and may have to turn on base board heat.

Rod will review and advise this morning.

Morley

****

January 1, 2018

From: Morley Kocken <morley@oomenergy.com>
Subject: Leaside boiler performance
Date: January 1, 2018 at 3:18:06 PM EST
To: Craig Clydesdale <craig@oomenergy.com>, Steve Murphy <steve@genphix.com>

Craig,

The Leaside heating design case is for -23 deg.C. with 15% excess capacity; i.e. boiler, pumps, RTU's, piping, ect.

Actual performance on coldest recorded night since commissioning, January 1, 2018

The low last night was -22 deg.C. and the boiler finally stayed firing for 7 hours at 50% capacity.

The RTU's were at sustained 35% to 45% duty except floor 3 which saw 100% duty for several hours.

The floor temperatures were within 1 deg.C. of set-point and no temp below 21.5 deg.C.

The boiler has never run full time for that long a period without turning off as the outside temperatures have never been at design case lows.

The design, RTU's, boiler and BOP are working well and the design case has been validated.

Morley

****
From: Jason Greene <jason.greene@vcimentos.com>
Subject: RE: 3rd Floor Temp @ 55 Industrial St.
Date: September 12, 2017 at 3:49:14 PM EDT
To: Morley Kocken <morley@oomenergy.com>

Cc: Marco Di Carlo <mdicarlo@prophase.ca>, Debbie Bairstow <debbie.bairstow@vcimentos.com>, Lucy Prosser <lucy.prosser@vcimentos.com>, Craig Clydesdale <craig@oomenergy.com>, Rod Hickey <rod@oomenergy.com>

Thanks Morley.

Jason Greene
Votorantim Cimentos
St. Marys Cement Inc. (Canada) | Office Clerk/Building Services
Toronto Head Office
Jason.Greene@vcimentos.com

Phone: 416-696-4444 Ext.2200
Fax: 416-423-4211
Address 55 Industrial Street Toronto, ON M4G 3W9

votorantimcimentos.com
www.stmaryscement.com

From: Morley Kocken [mailto:morley@oomenergy.com]
Sent: September-12-17 1:37 PM
To: Jason Greene
Cc: Marco Di Carlo; Debbie Bairstow; Lucy Prosser; Craig Clydesdale; Rod Hickey
Subject: Re: 3rd Floor Temp @ 55 Industrial St.

Jason/Lucy,

I have remotely reviewed the equipment operation and all is well.

We noticed yesterday that air filters showed some fouling and will be replaced.

I have lowered temperature on 3rd floor by 1 degree for now.

Technician will be at Leaside tomorrow as the new air filters are delayed by 1 day.

Best Regards
Morley

On Sep 12, 2017, at 10:08 AM, Morley Kocken <morley@oomenergy.com> wrote:

Jason,

We scheduled a followup call yesterday and the technician should be there shortly to review equipment.

Best Regards
Morley
On Sep 12, 2017, at 10:05 AM, Jason Greene <jason.greene@vcimentos.com> wrote:

Good afternoon Morley. I know you had somebody come out to our location yesterday (September 11th) to have a look at why the 3rd floor temperature was so high. This morning the floor was perfect, but I just received a phone call that the floor is heating up again. Staff have recorded the temp at 24.5 degrees, is there anybody that can come back to take a look before it really starts to heat up ?

Thanks Morley.
YT

Jason Greene
Votorantim Cimentos
St. Marys Cement Inc. (Canada) | Office Clerk/Building Services
Toronto Head Office
Jason.Greene@vcimentos.com

Phone: 416-696-4444 Ext.2200
Fax: 416-423-4211
Address 55 Industrial Street Toronto, ON M4G 3W9

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www.stmaryscement.com

****

From: Debbie Bairstow <debbie.bairstow@vcimentos.com>
Subject: RE: August Invoice
Date: July 13, 2017 at 10:20:41 AM EDT
To: Paul Jemmett <pjemmett@hydroconnection.com>
Cc: "Pam@oomenergy.Com" <Pam@oomenergy.Com>, 'Pamela Devine' <pameladevine@shaw.ca>, "craig@oomenergy.com" <craig@oomenergy.com>

Good Morning Paul

Very gloomy in Toronto today, no rain so far but they are calling for thunderstorms today. That's a good thing about the rain, mother nature waters the gardens for us so we don't have to drag out the hose.

I'm praying for good weather for the next two weeks…I'm on holidays in about 30 hours…not that I'm counting or anything.

I will send your invoice in today for processing.

Have a great day.

Debbie Bairstow
Votorantim Cimentos/St Marys Cement
Building Services Coordinator
Corporate Head Office
debbie.bairstow@vcimentos.com

Phone: 416-696-4268
Fax: 416-423-4211
55 Industrial Street, Toronto, ON M4G 3W9

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www.stmaryscement.com

From: Paul Jemmett [mailto:pjemmett@hydroconnection.com]
Sent: July-13-17 9:43 AM
To: Debbie Bairstow
Cc: Pam@oomenergy.Com; 'Pamela Devine'; craig@oomenergy.com
Subject: August Invoice
Importance: High

Debbie

Raining cats and dogs today in London.

Weather experts got it wrong again. Were supposed to have severe storms yesterday and today would a nice day.

Good news with the rain is no watering needed, and humidity has dropped.

Subject document is attached.

Have a great weekend.

Regards

Paul

****
From: Steve Murphy <steve@genphix.com>
Subject: Re: Time For Cleaning Again
Date: July 4, 2017 at 5:17:54 PM EDT
To: Craig Clydesdale <craig@oomenergy.com>
Cc: Morley Kocken <morley@oomenergy.com>

Yeah broom and or air compressor which is onsite will work fine.

Kind Regards

Steve Murphy
Genphix
M: 403-990-8415

On Jul 4, 2017, at 3:02 PM, Craig Clydesdale <craig@oomenergy.com> wrote:

Last time I think rod went over with a broom would that work again

Craig Clydesdale
President
OOMenergy.com

Phone: 9054916929
Email: craig@ oomenergy.com

On Jul 4, 2017, at 4:40 PM, Morley Kocken <morley@oomenergy.com> wrote:

Deb,

Thanks for the report on coil status.
We are not seeing problems on our instruments.
We will have people on site this week to do maintenance including the A/C coils.

Thanks
Morley

Sent from my iPhone

On Jul 4, 2017, at 10:48 AM, Debbie Bairstow <debbie.bairstow@vcimentos.com> wrote:

Hi Morley

One of the ladies sent me a picture of the coils. They are quite dirty again.

Thanks

Deb

Sent from my iPhone

Begin forwarded message:

From: Angelique Stegnar <angelique.stegnar@vcimentos.com>
Date: July 4, 2017 at 1:31:53 PM EDT
To: Debbie Bairstow <debbie.bairstow@vcimentos.com>
Subject: Time For Cleaning Again

Hi Debbie,

This is almost fully blocked again. I guess they don't have us on a regular schedule. Two weeks maximum would be my estimation for proper maintenance.

~Angélique

<IMG_3571.JPG>

****
2021 email stream SMC-244

July 13, 2021

Hi Pam

I am doing well thanks, I hope you are as well. The humidity has been fairly high, and we have had a quite a bit of rain this summer so far.

Thanks for the invoice, I will forward it along for processing.

Regards

Debbie Bairstow
Votorantim Cimentos/St Marys Cement
Building Services Coordinator
Corporate Head Office
debbie.bairstow@vcimentos.com

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Cell: 416-518-2312
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55 Industrial Street, Toronto, ON M4G 3W9

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www.stmaryscement.com

From: pameladevine@shaw.ca [mailto:pameladevine@shaw.ca]
Sent: July-13-21 5:08 PM
To: Debbie Bairstow <debbie.bairstow@vcimentos.com>
Subject: August Invoice

EXTERNAL EMAIL / EMAIL EXTERNO

Hello Debbie,

I hope you are keeping well and enjoying your summer. It has been extremely hot here, kinda wishing for the fall.

Here is the invoice from the MCS Group.

Kind regards,
Pam Devine
MCS Group Inc.

****

June 14, 2021

Hi Pamela

I am doing well thanks, I hope you and your family are as well. Thanks for sending the July invoice over, I will forward it along to Shared Services for you.

Take care

Debbie Bairstow
Votorantim Cimentos/St Marys Cement
Building Services Coordinator
Corporate Head Office
debbie.bairstow@vcimentos.com

Phone: 416-696-4268
Cell: 416-518-2312
Fax: 416-423-4211
55 Industrial Street, Toronto, ON M4G 3W9

votorantimcimentos.com
www.stmaryscement.com

From: pameladevine@shaw.ca [mailto:pameladevine@shaw.ca]
Sent: June-14-21 2:12 PM
To: Debbie Bairstow <debbie.bairstow@vcimentos.com>
Subject: July Invoice

EXTERNAL EMAIL / EMAIL EXTERNO

Hello Debbie,

I hope you are keeping well and are as happy as I am just thinking about things getting a bit better out there. I am sending you the invoice for July 2021.

Have a wonderful day,

Kind regards,
Pam Devine
MCS Group

****

Mar 16, 2021

Good Morning Pam

I am doing well thanks, I hope you are as well. Sorry I did not reply to you sooner, I did forward the invoice on for processing and asked about the copy of the invoice you were requesting. I will follow up on that for you.

Take care

Debbie Bairstow
Votorantim Cimentos/St Marys Cement
Building Services Coordinator
Corporate Head Office
debbie.bairstow@vcimentos.com

Phone: 416-696-4268
Cell: 416-518-2312
Fax: 416-423-4211
55 Industrial Street, Toronto, ON M4G 3W9

votorantimcimentos.com
www.stmaryscement.com

From: pameladevine@shaw.ca [mailto:pameladevine@shaw.ca]
Sent: March-16-21 11:00 AM
To: Debbie Bairstow <debbie.bairstow@vcimentos.com>
Subject: Invoice

EXTERNAL EMAIL / EMAIL EXTERNO

Hello Debbie,

I hope you are staying healthy and well at this time. I just wanted to confirm if you received my email on March 8/21 and the copy of our invoice.

If you could let me know, much appreciated.

Kind regards,

Pam

****

May 11, 2021

***Good Morning Pam

I am keeping well thanks, I hope you and your family are as well. Thanks for sending over the invoice I will forward it on for processing.

Regards

Debbie Bairstow
Votorantim Cimentos/St Marys Cement
Building Services Coordinator
Corporate Head Office
debbie.bairstow@vcimentos.com

Phone: 416-696-4268
Cell: 416-518-2312
Fax: 416-423-4211
55 Industrial Street, Toronto, ON M4G 3W9

votorantimcimentos.com
www.stmaryscement.com

From: pameladevine@shaw.ca [mailto:pameladevine@shaw.ca]
Sent: May-11-21 6:07 PM
To: Debbie Bairstow <debbie.bairstow@vcimentos.com>
Subject: June invoice

EXTERNAL EMAIL / EMAIL EXTERNO

Hello Debbie,

I hope you are keeping well. Please see attached the invoice for June/21.

Kind regards,
Pam Devine
MCS Group

****

Good Morning Pam

I am doing well thanks, I hope you and your family are as well. We are, we just can't get enough vaccinations in to cover everyone. Thanks for sending over the invoice I will forward it along to Shared Services for payment.

Thanks & take care

Regards

Debbie Bairstow
Votorantim Cimentos/St Marys Cement
Building Services Coordinator
Corporate Head Office
debbie.bairstow@vcimentos.com

Phone: 416-696-4268
Cell: 416-518-2312
Fax: 416-423-4211
55 Industrial Street, Toronto, ON M4G 3W9

votorantimcimentos.com
www.stmaryscement.com

****
April 12, 2021

From: pameladevine@shaw.ca [mailto:pameladevine@shaw.ca]
Sent: April-12-21 3:38 PM
To: Debbie Bairstow <debbie.bairstow@vcimentos.com>
Subject: May invoice

EXTERNAL EMAIL / EMAIL EXTERNO

Hello Debbie,

I hope you are keeping well, I hear Ontario is in a bad situation with this Covid. It really is getting quite overwhelming. Here is the May invoice from MCS.

Stay vigilant and hopefully brighter days are ahead.

Kind regards,
Pam Devine
MCS Group

****
Good Morning Pam

I am doing well thanks, I hope you are as well. Sorry I did not reply to you sooner, I did forward the invoice on for processing and asked about the copy of the invoice you were requesting. I will follow up on that for you.

Take care

Debbie Bairstow
Votorantim Cimentos/St Marys Cement
Building Services Coordinator
Corporate Head Office
debbie.bairstow@vcimentos.com

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Cell: 416-518-2312
Fax: 416-423-4211
55 Industrial Street, Toronto, ON M4G 3W9

votorantimcimentos.com
www.stmaryscement.com

From: pameladevine@shaw.ca [mailto:pameladevine@shaw.ca]
Sent: March-16-21 11:00 AM
To: Debbie Bairstow <debbie.bairstow@vcimentos.com>
Subject: Invoice

EXTERNAL EMAIL / EMAIL EXTERNO

Hello Debbie,

I hope you are staying healthy and well at this time. I just wanted to confirm if you received my email on March 8/21 and the copy of our invoice.

If you could let me know, much appreciated.

Kind regards,
Pam

****
Good Morning Pam

I am keeping well thanks, I hope you and your family are as well. Thanks for sending over the invoice I will forward it on for processing.

Regards

Debbie Bairstow
Votorantim Cimentos/St Marys Cement
Building Services Coordinator
Corporate Head Office

debbie.bairstow@vcimentos.com

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From: pameladevine@shaw.ca [mailto:pameladevine@shaw.ca]
Sent: May-11-21 6:07 PM
To: Debbie Bairstow <debbie.bairstow@vcimentos.com>
Subject: June invoice

EXTERNAL EMAIL / EMAIL EXTERNO

Hello Debbie,

I hope you are keeping well. Please see attached the invoice for June/21.

Kind regards,
Pam Devine
MCS Group
****
Hi Pam

I am doing well thanks, I hope you are as well. The humidity has been fairly high, and we have had a quite a bit of rain this summer so far.

Thanks for the invoice, I will forward it along for processing.

Regards

Debbie Bairstow
Votorantim Cimentos/St Marys Cement
Building Services Coordinator
Corporate Head Office
debbie.bairstow@vcimentos.com

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Cell: 416-518-2312
Fax: 416-423-4211
55 Industrial Street, Toronto, ON M4G 3W9

votorantimcimentos.com
www.stmaryscement.com

From: pameladevine@shaw.ca [mailto:pameladevine@shaw.ca]
Sent: July-13-21 5:08 PM
To: Debbie Bairstow <debbie.bairstow@vcimentos.com>
Subject: August Invoice

EXTERNAL EMAIL / EMAIL EXTERNO

Hello Debbie,

I hope you are keeping well and enjoying your summer. It has been extremely hot here, kinda wishing for the fall.

Here is the invoice from the MCS Group.

Kind regards,
Pam Devine
MCS Group Inc.
****
Good Morning Pam

I am doing well thanks, I hope you and your family are as well. We are, we just can't get enough vaccinations in to cover everyone. Thanks for sending over the invoice I will forward it along to Shared Services for payment.

Thanks & take care

Regards

Debbie Bairstow
Votorantim Cimentos/St Marys Cement
Building Services Coordinator
Corporate Head Office
debbie.bairstow@vcimentos.com

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From: pameladevine@shaw.ca [mailto:pameladevine@shaw.ca]
Sent: April-12-21 3:38 PM
To: Debbie Bairstow <debbie.bairstow@vcimentos.com>
Subject: May invoice

EXTERNAL EMAIL / EMAIL EXTERNO

Hello Debbie,

I hope you are keeping well, I hear Ontario is in a bad situation with this Covid. It really is getting quite overwhelming. Here is the May invoice from MCS.

Stay vigilant and hopefully brighter days are ahead.

Kind regards,
Pam Devine
MCS Group
****

Hi Pamela

I am doing well thanks, I hope you and your family are as well. Thanks for sending the July invoice over, I will forward it along to Shared Services for you.

Take care

Debbie Bairstow
Votorantim Cimentos/St Marys Cement
Building Services Coordinator
Corporate Head Office
debbie.bairstow@vcimentos.com

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Cell: 416-518-2312
Fax: 416-423-4211
55 Industrial Street, Toronto, ON M4G 3W9

votorantimcimentos.com
www.stmaryscement.com

From: pameladevine@shaw.ca [mailto:pameladevine@shaw.ca]
Sent: June-14-21 2:12 PM
To: Debbie Bairstow <debbie.bairstow@vcimentos.com>
Subject: July Invoice

EXTERNAL EMAIL / EMAIL EXTERNO

Hello Debbie,

I hope you are keeping well and are as happy as I am just thinking about things getting a bit better out there. I am sending you the invoice for July 2021.

Have a wonderful day,

Kind regards,
Pam Devine
MCS Group
****

Exhibit H to the affidavit of Craig Clydesdale

Sworn virtually August 30, 2021

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K.W. McKenzie

A Commissioner etc.

Barristers & Solicitors

WeirFoulds LLP

July 25, 2016

Robert B. Warren
T: 416-947-5075
rwarren@weirfoulds.com

Kathleen Burke
Toronto Hydro-Electric System Limited
14 Carlton Street
Toronto, ON M5B 1K5

Dear Ms Burke:

Re: St. Marys Cement/Leaside Facility

As I indicated to you in my email of July 19, 2016, we have been retained by St. Marys Cement Inc. (Canada) ("SMC") to advise them with respect to two matters, as follows:

1. The first is a dispute with respect to accounts rendered by Toronto Hydro to SMC. As we understand it, the dispute has both an historical component, related to accounts which have been rendered from at least 2013 on, and an ongoing component, related to the payment of electricity currently being delivered by Toronto Hydro to SMC's Leaside facility. Again as we understand it, an integral component of the dispute is the accuracy of accounts in light of a defective meter;

2. A dispute with respect to the appropriate connection of Toronto Hydro's service line to the Leaside facility in light of the operations of the CHP plant on the site. The CHP plant has not operated since June 10, 2016 when Gary Thompson visited the site and applied a Toronto Hydro lock to the generator's main breaker switch.

We have been instructed by our client to try to resolve these issues as quickly and efficiently as possible. To that end, we propose the following steps:

1. We will retain an independent expert to provide us with an opinion on the steps required to bring the defective meter back on line. That expert will be instructed to provide us with advice on how to accomplish that and to include a review of the two options outlined in your email to our client dated July 11, 2016;

2. With the opinion of the independent expert in hand, we would meet with you to discuss the most cost-effective way to bring the defective meter back on line;

3. One objective, in bringing the defective meter back on line, would be to retrieve historical usage information that would provide, among other things, a benchmark against which we could measure the accuracy of Toronto Hydro's

accounts rendered to our client during the period when the meter was either not operating or not operating correctly;

4. With that benchmark in hand, we could attempt to come to an agreement on (a) the amounts that ought to have been paid by SMC during the period when the meter was either not operating or not operating properly and (b) what amount may now be owed from Toronto Hydro to SMC;

5. With respect to the operation of the CHP plant, we are, again, retaining an independent expert to provide us with advice as to the options available to allow SMC to have the CHP plant operate while maintaining a backup connection to the Toronto Hydro system;

6. With the opinion of that expert in hand, we would propose to meet with you to try to resolve the issue related to the operation of the CHP plant.

Please advise me whether you are in agreement with this proposed framework for the resolution of the two issues. If you are, we can then agree on a timeline for carrying out the framework that would allow Toronto Hydro and our client to resolve the issues as quickly and efficiently as possible.

There are three related matters which we need to consider as we attempt to arrive at a resolution of the issues. One is the question of a tolling agreement that would preserve the respective rights of Toronto Hydro and SMC to make claims with respect to accounts rendered that may be outside of the applicable limitation period. We understand that you will be providing us with a draft of the agreement. Please let us know if you prefer that we prepare one.

The second issue relates to the involvement of Measurement Canada with respect to the defective meter. We are advised that a complaint has been made to Measurement Canada with respect to the defective meter. At this point we do not know the status of that complaint. We assume that notice will have to be given to Measurement Canada with respect to the steps we are taking to bring the defective meter back on line.

Finally, our client would like to pay for electricity delivered to the Leaside facility from the time the CHP plant was shut down on June 10, 2016. In light of the fact that, because of the defective meter, any account for that electricity would be an estimate, we need to agree on the appropriate mechanism for estimating and readjusting for accounts pending the bringing of the meter back on line.

I am copying this letter to your colleague, Daliana Coban, as I understand that she will be taking carriage of these matters upon her return.

There is, as you can appreciate, considerable urgency in resolving these matters. Among other things, the operation of the CHP plant is critical to the operation of an important greenhouse gas reduction initiative. Pond Technologies Inc. is a company that operates an algae photobioreactor at the Leaside site. The algae is grown using the air emissions from the CHP generator that include nitrous oxides, carbon dioxide and other greenhouse gases. Unfortunately, Pond Technologies has not been able to operate its photobioreactor since June 10, 2016 due to the shutdown of the CHP plant. For a variety of reasons, it is essential that the photobioreactor be restarted as soon as possible.

I look forward to hearing from you or Ms. Coban with respect to what I have proposed.

Yours truly,

Robert B. Warren

RBW

cc: Daliana Coban, Toronto Hydro-Electric System Limited
Jolanta Malicki, St. Marys Cement Inc. (Canada)
Dan Ferguson, WeirFoulds LLP

9453752.1

Exhibit I to the affidavit of Craig Clydesdale

Sworn virtually August 30, 2021

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K.W. McKenzie

A Commissioner etc.

CC072

DISCONNECT NOTICE

TORONTO HYDRO

The amount shown on this notice is now **OVERDUE**. Toronto Hydro reserves the right to disconnect electricity service in accordance with its Conditions of Service. Your service may be **DISCONNECTED upon expiry of 10 calendar days from the date of this notice** if full payment has not been received by Toronto Hydro and applied to your account.

Date of notice: April 14 Time: 8:15

Account number: 399 885 0000

Address: 55 Industrial St.

Service will be disconnected between April 25 and May 5

OVERDUE AMOUNT $ 101,555.29

METHODS OF PAYMENT:

Same day options
Visa, MasterCard, Western Union (use code "Arrears.ON")

Regular payment options
Canada Post moneygram, cheque, bank teller, telephone banking, online bank payment. Please ensure payment is sent five business days prior to the disconnection timeframe noted to ensure sufficient processing time.

When payment is made with a Toronto Hydro representative at your property, only Visa or MasterCard will be accepted.

PLEASE BE ADVISED OF THE FOLLOWING SERVICE CHARGES. ANY "AFTER HOURS" CHARGES WILL ONLY BE APPLIED IF RECONNECTION IS REQUESTED BY THE CUSTOMER TO TAKE PLACE OUTSIDE OF REGULAR BUSINESS HOURS.

Collection of Account Charge — no disconnection:	**$ 55.00 + HST**	Applied for each visit to your premises for the purposes of delivering a disconnect notice and collecting any unpaid balance.
Disconnect/Reconnect at meter — regular hours:	**$ 120.00 + HST**	Applied upon reconnection of your property following a standard disconnection.
Disconnect/Reconnect at meter — after hours:	**$ 400.00 + HST**	
Disconnect/Reconnect at pole — regular hours:	**$ 300.00 + HST**	Applied upon reconnection of your property when no direct access to the meter was available at the time of disconnection.
Disconnect/Reconnect at pole — after hours:	**$ 820.00 + HST**	

Toronto Hydro may disconnect electricity service at your premises whether or not you are present. Disconnection or reconnection may also occur without a visit by a Toronto Hydro Representative to your property. Please be advised that if we are unable to gain access to our meter, Toronto Hydro will disconnect your service using alternate methods at your expense, which may include hiring the services of a bailiff and locksmith. Should your electricity service be disconnected or reconnected either directly at your premises, remotely, using an alternate method, or using a bailiff and locksmith, Toronto Hydro will not be responsible for any resulting loss or damage to the premises or its contents.

Your account may be re-assessed for a security deposit.

CONTACT US:

Regular business hours are Monday to Friday, 8:00 a.m. to 4:30 p.m. (excluding all Statutory and Civic Holidays). If your electricity service is disconnected, it will be reconnected within two business days from the receipt of confirmed payment. In order for your service to be reconnected, the account holder or authorized representative must be present at the premises at the time of reconnection.

PLEASE CONTACT US AT **416-542-8000** IMMEDIATELY TO ENSURE CONTINUED SERVICE.

Visit us at **torontohydro.com**

Exhibit J to the affidavit of Craig Clydesdale

Sworn virtually August 30, 2021

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K.W. McKenzie

A Commissioner etc.

From: Bill Asselstine <bill.asselstine@vcimentos.com>
Subject: Re: OOM Invoice No 2020-627
Date: April 22, 2021 at 1:13:47 PM EDT
To: "Craig Clydesdale (craig@mcs12.com)" <craig@mcs12.com>, "Craig Clydesdale (craig@oomenergy.com)" <craig@oomenergy.com>, "Craig Clydesdale - MCS (craig@mcsenergy.net)" <craig@mcsenergy.net>

Craig,

On the latest MCS Energy/OOM Invoice No 2020-627, due date May 1, 2021, you added a new charge labeled as "Federal Carbon Tax" in the amount of $2,080.92 and increased HST as a result as well. It is our understanding that carbon tax is payable on energy that causes carbon pollution but not on maintenance services.

We were surprised to see "Federal Carbon Tax" added to your invoice because its addition is a stark reminder that, contrary to the expectations in the Energy Service Agreement, MCS/OOM is not providing any energy to SMC, instead only maintenance service for the building's HVAC system under the interim settlement agreement (which you will recall is terminable at any time by any of the parties). As you know, SMC pays its Leaside utility invoices directly to Enbridge and Toronto Hydro; OOM is not involved in the payment process of these invoices. Carbon tax is not an opportunity for OOM to raise its maintenance service fees. It is a flow-through fee that should be remitted to the federal government that represents tax on non-environmentally friendly emissions. In the event you can produce copies of the appropriate legislation showing that carbon tax is specifically payable on the maintenance services provided by OOM, we would consider your request. Until such time, SMC will pay the invoice but less the carbon tax charge.

We remain unsatisfied with the OOM's default under the ESA, especially in light of your recent request, which underscores the lack of value provided to us under the current arrangement.

Regards,
Bill

J. William Asselstine
Votorantim Cimentos
St. Marys Cement | Sustainability and Cement Sales Canada
Vice President
Toronto Head Office
bill.asselstine@vcimentos.com<mailto:bill.asselstine@vcimentos.com>

Phone: 416 696 4414
Mobile: 416 580 9204
55 Industrial Street 4th Floor Toronto ON M4G 3W9

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Court File No. CV-21-____________-00CL

CRYSTAL WEALTH MORTGAGE STRATEGY, -
by its Court-Appointed Receiver and Manager,
GRANT THORNTON LIMITED Applicant and **2441472 ONTARIO INC.** Respondent

ONTARIO SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

PROCEEDING COMMENCED AT *Toronto*

CLYDESDALE AFFIDAVIT

KWM LAW PROFESSIONAL CORPORATION
K.W. McKenzie (LSO#16891A)
Suite 102
3-200 Memorial Ave
Orillia, ON
L3V 5X6
Phone 705-323-5833
Fax 705-482-0648
lawyerbill@rogers.com

Lawyers for Respondent

)

Court File No. CV-21-____________-00CL

CRYSTAL WEALTH MORTGAGE STRATEGY, -
by its Court-Appointed Receiver and Manager,
GRANT THORNTON LIMITED Applicant and **2441472 ONTARIO INC.** Respondent

ONTARIO SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

PROCEEDING COMMENCED AT *Toronto*

RESPONDENT'S RESPONDING RECORD

KWM LAW PROFESSIONAL CORPORATION
K.W. McKenzie (LSO#16891A)
Suite 102
3-200 Memorial Ave
Orillia, ON
L3V 5X6
Phone 705-323-5833
Fax 705-482-0648
lawyerbill@rogers.com

Lawyers for Respondent

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