

Form 10
[Rule 3.25]

COURT FILE NUMBER 2301-13873

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF(S) LEAN SYSTEMS LIMITED PARTNERSHIP
and LEAN SYSTEMS GP INC.

DEFENDANT(S) NVENT ELECTRIC PLC, DAVID THOMAS
SOUTHWELL, and PROXILOGICA CORP.

DOCUMENT **AMENDED STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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AMENDED *E. Wheaton*
on Dec 22, 2023
before the close of pleadings

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

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

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

Parties

1. The Plaintiff, LEAN Systems Limited Partnership ("**LEAN LP**"), is a partnership duly registered as a limited partnership pursuant to the laws of the Province of Alberta.

2. The Plaintiff, LEAN Systems GP Inc. ("**LEAN GP**"), is a corporation duly incorporated pursuant to the laws of the Province of Alberta. LEAN GP is the general partner of LEAN LP. The director of LEAN GP is Bill Halina ("**Mr. Halina**"). The shareholders are Michael Janke and The Veus Corporation.
3. The Defendant, nVent Electric plc ("**nVent**") is a corporation duly incorporated pursuant to the laws of Ireland with its headquarters in London, United Kingdom.
4. The Defendant, Dr. David Thomas Southwell ("**Dr. Southwell**"), is an individual who is a resident of the Hamlet of Sherwood Park in the Province of Alberta. He has a PhD in Engineering and Electronics and a background developing software and hardware for the high-performance computing industry.
5. The Defendant, Proxilogica Corp. ("**Proxilogica**"), is a corporation duly incorporated pursuant to the laws of the Province of Alberta. Dr. Southwell is the sole director and shareholder of Proxilogica.

Background

6. In or around February 2018, Dr. Southwell entered into a business relationship with Sweet Tea Provisions Ltd ("**Provisions**") to design a "grow light" system suitable for the commercial marijuana industry. The system was to include LED-based lights with specific wavelengths, cameras and wireless data collection for the purpose of optimizing growth and productivity of cannabis plants.
7. On or around April 13, 2018, Dr. Southwell entered into a "contribution agreement" (#904287) with the National Research Council under the Industrial Assistance Research Program ("**IRAP**"), whereby Proxilogica received a non-repayable grant in the amount of \$200,000 over a [^] 13-month period. The objective of this IRAP project was to design a system for processing "big data analytics". Aided by LEAN LP, the scope of the IRAP project was revised in or around September 2018 to include software development for an autonomous greenhouse monitoring system.
8. On or around April 28, 2018, Dr. Southwell decided to sever his relationship with Provisions and approached Mr. Halina with a project proposal. Dr. Southwell, through his newly incorporated corporation, Proxilogica, would develop an autonomous greenhouse

monitoring system, code named: “**Sentinel**” (the “**Sentinel Project**”). The concept for the Sentinel would be similar, but more advanced than the one contemplated in his prior relationship with Provisions. Dr. Southwell engaged Mr. Halina as a business advisor to, among other things, help obtain investments for this Sentinel Project.

9. Dr. Southwell indicated that he would lead a small team of 4 qualified engineers to develop the software and hardware that would make up the Sentinel Project. He expressed confidence in his ability to develop the monitoring system and its marketability, particularly in the emerging cannabis space. Dr. Southwell was the only person involved in the Sentinel Project with the technical, industry and leadership expertise to develop these technologies.
10. LEAN LP was established specifically to fund the development of Dr. Southwell’s proposed Sentinel Project. LEAN GP was incorporated as the general partner of LEAN LP.
11. LEAN LP was a vehicle for funding the Sentinel Project, not for carrying it out. LEAN LP had no technological staff or facilities of its own. It was dependent on Dr. Southwell to realize his conception of a marketable greenhouse monitoring system.

Agreements

12. On or around July 19, 2018, LEAN LP and Proxiloga entered into a Software License Agreement (“**Software Agreement**”). Dr. Southwell executed the Software Agreement on behalf of Proxiloga. The purpose of the Software Agreement was to grant LEAN LP a perpetual, revocable, worldwide, exclusive, and transferable license to the software developed under the IRAP project. The licence was limited to the horticultural industry. This software suite was defined in detail by Dr. Southwell in the Software Agreement under the name “**BMC+**”.
13. In consideration for the license to BMC+, LEAN LP issued 400 of the 1,000 available units in LEAN LP to Proxiloga. The Software Agreement was amended pursuant to a License Amending Agreement dated May 6, 2019 (the “Amending Agreement”). This [^] Amending Agreement had the effect of removing the previously incorporated obligation placed on

LEAN LP to commercialize the Sentinel system in accordance with certain milestones as set out in the Software Agreement.

14. The terms of the Software Agreement, unaltered by the [^] Amending Agreement are, *inter alia*:
 - a. LEAN LP was to have the right to license BMC+, a curated and maintained software suite;
 - b. LEAN LP was to commercialize the Sentinel system within the horticultural industry;
 - c. The license granted by Proxilogica to LEAN LP was to be exclusive and could not be transferred to any other party without LEAN LP's express approval;
 - d. Proxilogica was to maintain and update BMC+ over time;
 - e. Proxilogica was to deposit the initial source code and any modifications or updates to BMC+ in accordance with defined escrow terms. To date, no source code or updates have been provided to the escrow agent in breach of the Software Agreement.
15. On or around July 19, 2018, LEAN LP entered into a Design and Development Agreement (the "Design Agreement") with Proxilogica. Dr. Southwell executed the Design Agreement on behalf of Proxilogica.
16. The purpose of the Design Agreement was for LEAN LP to provide funding to Proxilogica in order for Proxilogica and Dr. Southwell to develop the Sentinel Project technology. Pursuant to the Design Agreement, all software and deliverables developed under this agreement, would be transferred to LEAN LP upon request.
17. The terms of the Design Agreement are, *inter alia*:
 - a. Proxilogica would perform work assigned to it by LEAN LP through task orders;
 - b. Prior to the delivery of any work product, Proxilogica was to test the deliverable to ensure it complied with the requirements;
 - c. All customized software and other deliverables were to be kept within a site(s) designated by LEAN LP and transferred to LEAN LP upon request;

- d. Proxilogica was to invoice LEAN LP for work performed in accordance with rates defined in the Design Agreement and pursuant to the task orders and LEAN LP would compensate Proxilogica on those invoices;
 - e. Proxilogica assigned all "Assigned IP", as defined within the Design Agreement, to LEAN LP;
 - f. The agreement was governed by the laws of Alberta.
18. Development of the technology under this agreement was considered "Assigned IP", which is the property of LEAN LP.
 19. Pursuant to Section 1 of the Design Agreement, "Assigned IP" is defined as

"LEAN Systems' Confidential Information, Customized Software, Developed Hardware, Deliverables and Inventions, and all Intellectual Property Rights related to any of the foregoing; provided, however, that Assigned IP does not include the Software Suite, Modifications thereto and does not include any Prior Inventions unless such Prior Inventions were developed or reduced to practice as part of the Services provided hereunder."
 20. Further, under the Design Agreement "inventions" are defined as:

"any hardware, software, original works of authorship, developments, concepts, improvements, designs, discoveries, inventions, ideas, trademarks or trade secrets, whether or not patentable or registrable under copyright or similar laws, made by Proxilogica or its Representatives in connection with this Agreement."
 21. The Design Agreement also contemplated "Prior Inventions" which are inventions made "...prior to the execution date of any Task Order".
 22. Among other technologies developed under the Design Agreement was the "Firefly" [^] device, which was intended to capture images and information about plants.
 23. Dr. Southwell was the Project Manager under the Software Agreement and the Design Agreement (collectively the "**Agreements**"). He prepared all task orders complete with project plans, gantt charts, engineering and materials budgets. At all times Dr. Southwell controlled the direction and pace of the development.

24. Dr. Southwell would issue invoices from Proxillogica to Lean LP that included engineering costs and his own charges for project management. Lean LP would pay these invoices to fund the Sentinel Project.
25. To further facilitate project development, Mr. Halina and LEAN LP worked closely with Dr. Southwell on funds and grants from various sources, including the federal government and the government of Japan. Additionally, LEAN LP entered into a Material Development Agreement (“**MDA**”) with Agriculture and Agri-Food Canada (“**AAFC**”), a department of the Canadian Government. AAFC, with the aid of their scientific researchers, facilitated Dr. Southwell’s participation in research projects at the AAFC facility in Lethbridge, Alberta to enable him to validate different components of the overall system. LEAN LP provided Dr. Southwell with secure access to two designated servers maintained at a 3rd party, commercial facility specifically to hold government research data. No data was ever uploaded to these servers.
26. Further, funding was provided in the form [^] of grants from the National Research Council of Canada Industrial Research Assistance Program (“**NRC-IRAP**”). LEAN LP provided assistance to obtain NRC-IRAP funding.

Representations by Southwell

27. In order to raise funds for the Sentinel Project via Lean LP, Dr. Southwell appeared in a video where he set out the Sentinel Project opportunity and the steps needed to carry it out, which involved development, testing, certification and preparations for manufacturability at scale. He also set out the Sentinel Project opportunity and the steps needed to carry it out in investor material and in presentations to investors. It was implicit in these communications that he would lead the development of the Sentinel Project if funding was advanced via investment in Lean LP and he encouraged individuals to invest in Lean LP.
28. Dr. Southwell presented himself and his team to investors and LEAN LP as having successfully developed other technologies in order to convince investors and LEAN LP that he and his team could also deliver on the Sentinel Project. His involvement in the Sentinel Project was therefore key to investment.

29. In order to promote his Sentinel Project, Dr. Southwell met with investors at investment forums, approached companies involved in the cannabis, greenhouse and vertical farming industries and led a tour of his engineering facilities at the Edmonton Research Park. During this tour, he provided an explanation of prior projects he had completed, presented the nature and scope of the Sentinel system, and encouraged investors to purchase units in LEAN LP.
30. He also participated in the development of valuation estimates and revenue and profit projections for LEAN LP. He endorsed a valuation of LEAN LP of \$6,000,000 as of September 2021 and profit projections of \$7,475,752.00 in the Canadian market by 2026. These projections assumed his continued involvement in the Sentinel Project.

Dr. Southwell's Relationship with LEAN LP and the Sentinel Project

31. Dr. Southwell conceived the Sentinel Project. He promoted it as an opportunity to Mr. Halina, investors and LEAN LP. He was the only individual involved with the technological and industry knowledge and leadership skills and vision to realize [^] his ambitious plan for [^] the Sentinel Project and to carry it through the steps he described to parties providing funding, that is development, testing, certification and preparations for manufacturability at scale. The valuation and profit calculations he helped develop[^], endorsed and circulated only made any sense if he took the Sentinel Project through these steps.
32. As LEAN LP was entirely dependent on Dr. Southwell to have a chance to recoup its investment in the Sentinel Project he had promoted to it, Dr. Southwell owed it fiduciary duties, particularly duties of loyalty, care, prudence and confidence. These duties included an obligation not to cease work on the Sentinel Project before completing the steps he outlined to LEAN LP and an obligation not to interfere in Proxilogica's agreements with LEAN LP.
33. Further, or in the alternative, Southwell had an implied contract with LEAN LP to complete the Sentinel Project as he had conceived it and represented it to LEAN LP.
34. Further, or in the alternative, Proxilogica was an *alter ego* for Dr. Southwell, and he was liable for its contractual promises. This is particularly true in the case where Dr. Southwell

would make promises on behalf of Proxillogica that were dependent on whether he intended to fulfill the promise.

35. Further, or in the alternative, Dr. Southwell had a good faith obligation to disclose before LEAN LP invested in the Sentinel Project risks relating to his own plans and if he was not committed to carrying out the Sentinel Project as promoted. Such disclosures would include if he may depart from Proxillogica and the Sentinel Project before completing the steps he outlined to LEAN LP.

Departure of Southwell and Inducement by nVent

36. On or around October 21, 2021, Dr. Southwell informed Mr. Bill Halina, LEAN LP and LEAN GP that he was leaving Proxillogica and accepting employment with the Defendant, nVent. At this point, the development of the Sentinel Project was not complete, though matters were generally proceeding as expected.
37. This departure had the effect of causing Proxillogica to breach both the Design Agreement and the Software Agreement. It was contrary to Dr. Southwell's fiduciary duty to carry out the Sentinel Project steps represented to LEAN LP and its investors. Further, or in the alternative, it was contrary to the implied [^] contract between Dr. Southwell and LEAN LP that he carry out the development steps as represented. Further, it was contrary to his obligation to carry out development tasks as the alter ego of Proxillogica. Finally, Dr. Southwell's willingness to leave Proxillogica and the Sentinel Project before completion should in good faith have been disclosed before investment rather than hidden while Dr. Southwell charged fees to LEAN LP.
38. Dr. Southwell's departure also represented an intentional interference in contractual or economic relations in so much as it made it impossible for Proxillogica to fulfill the Agreements with LEAN LP.
39. In negotiating his departure to nVent, Dr. Southwell further interfered in contractual or economic relations by attempting to negotiate the departure of his team from Proxillogica to nVent, successfully in at least the case of one team member. The efforts to lure Proxillogica employees continued after Dr. Southwell's departure. The departure of his team would further render Proxillogica incapable of fulfilling its contracts with LEAN LP.

40. Dr. Southwell's departure also had a direct and adverse effect on the business relationship between LEAN LP, IRAP, AAFC, and willing industry partners. A Material Develop Agreement between LEAN LP and AAFC, initiated on or around October 4, 2019, was nearing successful completion of the second phase of a four-phase program expected to result in system procurement by research facilities across Canada.
41. nVent was aware of the fiduciary and contractual duties that Dr. Southwell had to LEAN LP through the Agreements and his promotion of the projects pursued through those Agreements. Dr. Southwell disclosed these obligations in detail to nVent on several occasions before his departure. In particular, he emphasized to nVent that the Sentinel Project and those parties that invested in it were dependent on him for carrying out development steps and that departure at that time was not "honourable", i.e. contrary to fiduciary obligations. nVent was aware that Proxilogica would not be able to fulfill its obligations to LEAN LP if Southwell and members of his team left Proxilogica.
42. nVent was aware these fiduciary and contractual obligations existed and still enticed Dr. Southwell away from his position with Proxilogica.
43. nVent was made aware of Dr. Southwell's contractual, personal, and ethical obligations by LEAN LP via email on or around October 5, 2021, and, at nVent's request, in a phone call on October 6, 2021, between Mr. Halina and Mr. Greg Horwitz, nVent's VP Mergers & Acquisitions.
44. nVent was further made aware of the potential conflicts through Dr. Southwell. This disclosure occurred. ^ in particular, in a phone call that was held on October 7, 2021, prior to Dr. Southwell's official departure from Proxilogica, between Dr. Southwell and Dr. Aravind Padmanabhan, who is the CTO of nVent. Throughout this phone call, Dr. Southwell identified the ethical and legal concerns he faced with leaving Proxilogica prematurely before the steps in the Sentinel Project were completed.
45. nVent nonetheless pressed ahead with encouraging Dr. Southwell and his team to leave Proxilogica and the Sentinel Project. It therefore induced Dr. Southwell to breach his fiduciary duty. Further, or in the alternative, it knowingly assisted in a breach of fiduciary duty. Further, or in the alternative, it induced Dr. Southwell to breach his contractual obligations or interfered in those contractual or economic relations. Further, or in the

alternative, it interfered in the contractual or economic relations between Proxillogica and LEAN LP by inducing the departure of a key employee and staff members.

Losses from Departure

46. As a result of the departure of Southwell and a member of his team, LEAN LP has suffered the following losses:
 - a. A loss of opportunity to earn profits in an amount to be determined at trial.
 - b. A loss of investment funds, now stranded in a stalled project, in the amount of \$435,231.69 paid to Proxillogica directly and further sums spent on legal and administrative matters ^ in an amount to be proven at trial.
47. The loss of opportunity damages should be calculated based on profit projections endorsed by Dr. Southwell, subject to a discount factor, or some other reasonable method. As noted above, Dr. Southwell circulated a 2026 profit projection of \$7,475,752.00 in the Canadian market in promotional material provided to investors.

Failure to Deliver IP

48. After Dr. Southwell departed Proxillogica to commence employment with nVent, on or around October 12, 2022, LEAN LP served notice on Proxillogica that it was demanding the transfer of all "Assigned IP" under the Design Agreement, which included: confidential information, customized software, developed hardware, deliverables and inventions and all intellectual property rights. The Assigned IP has never been returned or provided to LEAN LP.
49. While the issue of whether the Assigned IP has to be delivered to LEAN LP may be subject to arbitration, it is also a matter of preserving property and injunctive relief on a summary basis. This Court therefore has jurisdiction to rule on it. Further, Southwell and Proxillogica have not responded to proposals to appoint an arbitrator.

Remedy sought:

50. LEAN LP and LEAN GP seek the following relief:
- a. Damages for loss of opportunity in an amount to be proven at trial.
 - b. Damages for the fees paid to Proxilogica in the amount of \$435,231.69.
 - c. Damages for other expenses paid to third parties to further the Sentinel Project in an amount to be proven at trial.
 - d. Return or cancellation of the 402 units of LEAN LP issued to Proxilogica as a result of the breach of the [^] Agreements;
 - e. Punitive damages in the amount of \$100,000.
 - f. Costs on a full indemnity basis.
51. The damages and costs are sought on a joint and several basis against all Defendants.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

- 20 days if you are served in Alberta
- 1 month if you are served outside Alberta but in Canada
- 2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of King's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the lawsuit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.