



Court File No. **VLC-S-S-229879**
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

FORT ST. JAMES GREEN ENERGY LIMITED PARTNERSHIP
SOCIETE EN COMMANDITE FORT ST. JAMES ENERGIE VERTE

PLAINTIFF

AND:

IBERDROLA S.A.

DEFENDANT

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for Response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,

- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The plaintiff, Fort St. James Green Energy Limited Partnership Societe En Commandite Fort St. James Energie Verte, is a limited partnership formed in Quebec that is extra-provincially registered in British Columbia with a registered office address at 1500 Royal Centre, PO Box 11117, 1055 West Georgia Street, Vancouver, British Columbia V6E 4N7.
2. At all material times, the plaintiff was a limited partnership between Fort St. James Green Energy General Partner Ltd. Commandite Fort St. James Energie Verte Ltee, as general partner, and 7961286 Canada Inc. and Western Bioenergy Inc., as limited partners.
3. Iberdrola Energy Projects Canada Corporation (the “**EPC Contractor**”), is a company incorporated under the laws of British Columbia with a registered and records office located at 25th Floor, 700 West Georgia Street, Vancouver, British Columbia V7Y 1B3.
4. The defendant, Iberdrola S.A. (“**Iberdrola**”) is a company incorporated under the laws of Spain with a registered address located at Plaza Euskadi 5, Bilbao, Spain.
5. Iberdrola is the parent company of the EPC Contractor.

The Project

6. The plaintiff is the owner of a 40-megawatt BioMass power generation project (the “**Project**”), which involves the financing, design, engineering, procurement, construction, commissioning, operation and maintenance of a power plant located in Fort St. James, British Columbia (the “**Power Plant**”). The Project was intended to supply metered energy to B.C. Hydro.
7. On or about October 24, 2013, the plaintiff entered into an agreement with the EPC Contractor in relation to the provision of engineering, procurement, construction,

commissioning, testing and training services (the “**Works**”) for the Project (the “**EPC Contract**”).

8. It was an express or implied term of the EPC Contract that:
- (a) the EPC Contractor shall have full responsibility for the design of the Power Plant in accordance with the EPC Contract, including but not limited to the Construction Standards;
 - (b) the EPC Contractor shall design the Power Plant on the basis that the design and specifications would meet the operability and design lifespan of 30 years;
 - (c) the EPC Contractor shall direct and supervise the Works using its best efforts and attention;
 - (d) the EPC Contractor shall carry out the construction of the Works and complete the performance of the Works using the appropriate design, engineering, procurement, construction, commissioning and testing practices;
 - (e) the EPC Contractor shall employ only qualified and duly licensed personnel to perform engineering design, architectural and other professional services in the performance of the Works;
 - (f) the EPC Contractor shall ensure that all Works shall be performed with the degree of care, skill and responsibility, as is customary among such licensed personnel;
 - (g) the EPC Contractor shall comply in all respects with all applicable laws and permits relating to the Power Plant in the performance of the Works and agrees to indemnify and hold harmless the plaintiff from and against losses, claims or penalties related to any failure to conform with applicable laws and permits;
 - (h) the EPC Contractor shall exercise reasonable care to ensure that all components used in constructing the Power Plant are appropriate and fit for the operation of the Power Plant; and
 - (i) the EPC Contractor shall carry out all necessary testing on all components of the Power Plant;
 - (j) the EPC Contractor shall be liable for the acts, omissions, breaches, defaults, non-compliance, negligence and wilful misconduct of any EPC Contractor Parties and the use of an EPC Contractor Party does not in any way relieve

EPC Contractor of its responsibilities and obligations for the Work and the performance of this EPC Contractor Party

- (k) all warranties under the ECP Contract in favour of Project Co will commence on PAD and run for a period of 24 months (the “**Warranty Period**”).
- (l) The EPC Contractor shall inspect as soon as reasonably practicable if EPC Contractor has already demobilized from the Site, and no later than twenty four (24) hours from Notice from Project Co, and promptly correct and make good, at its own expense, any Defects which are discovered during the Warranty Period. EPC Contractor is responsible for performing at its expense any reasonable tests that Project Co may require to verify that any re-design, correction, repairs or replacements are effective and efficient and have not affected the operation of Energy production of the Power Plant.
- (m) the EPC Contractor shall comply with the provisions of Schedule 5 – EPC Contractor Insurance Requirements.
- (n) the EPC Contractor will be held responsible for any damage occurring after PAD: (i) to the Power Plant; or (ii) to Project Co’s existing structures, materials, or equipment adjacent to or on the Site, in each case to the extent arising from the negligence or wilful misconduct of EPC Contractor or EPC Contractor Parties, and shall repair or replace any such damaged structures, materials, or equipment at no additional cost to Project Co...
- (o) the EPC Contractor shall deliver the EPC Parent Company Guarantee in the form attached as Schedule 12 on or prior to the Financial Close Delivery Date and shall ensure that the EPC Parent Company Guarantee remains in full force and effect until the end of the Warranty Period.
- (p) the EPC Contractor shall indemnify and save harmless Project Co and each Project Co Indemnified Person from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them resulting from, in respect of, or arising out of any one or more of the following:
 - i. any physical loss of or damage to all or any part of the Site and the Power Plant, or to any equipment, assets or any other property related thereto, the death or personal injury of any person, any physical loss of or damage to property or assets of any third party or any other loss or damage of any third party, in each case, arising out of, or in consequence of, or involving or relating to, the performance or any material breach of this Contract by EPC Contractor or any material

negligent act or omission of EPC Contractor or any EPC Contractor Party...

- ii. material breach by EPC Contractor of any representation or warranty under this Contract;
- (q) that all parts of the Work shall be designed and constructed in accordance with all requirements of this Contract, including applicable Construction Standards;
- (r) the Power Plant as designed and constructed can be operated in accordance with Good Utility Practice;
- (s) all Equipment, materials and components shall be new and of good quality;
- (t) that all parts of the Work shall be free from Defects; and,
- (u) as of the Effective Date and the Commencement Date, and acknowledges that Project Co is relying on various representations and warranties in entering into this Contract as follows:
 - i. experience – The EPC Contractor is experienced in the design, engineering, procurement, construction, commissioning, performance testing and training services required for biomass power plant projects similar to the Project. Subject to its right to retain Subcontractors under this Contract, EPC Contractor has the experience, resources, sufficient staff of qualified and competent personnel and capability to carry out the Works in accordance with this Contract.

The Incident

- 9. On or about December 31, 2019, a surge capacitor located in the main termination box (the “**Main Termination Box**”) of the Power Plant failed and experienced a ground fault situation, leading to the failure of a second surge capacitor which caused an arc flash (collectively, the “**Surge Capacitors**”). The arc flash ignited oil which was contained within the surge capacitor, resulting in fire within the Main Termination Box (the “**Incident**”).
- 10. The Incident was caused and/or contributed to by:
 - (a) selection and use of Surge Capacitors that were unfit for the operation of the Power Plant and the applicable industry standards, having regard to the

voltage, temperature and current for which they would normally be put in the circumstances;

- (b) improper design of the Power Plant, including but not limited to the design of the Main Termination Box;
 - (c) failure to test the Main Termination Box, including the Surge Capacitors to ensure the Surge Capacitors and other components within the Main Termination Box are free of defects and/or fit for the operation of the Power Plant.
11. As a result of the Incident, the plaintiff suffered loss, damage and expense associated with the physical damage to the Power Plant, the Main Termination Box and contents thereon, the particulars of which include, but are not limited to:
- (a) the cost of repairs to the Main Termination Box;
 - (b) the cost and expense related to removal and installation of the Main Termination Box;
 - (c) the costs of repairs to the outbound electrical cables to the power grid;
 - (d) the cost of investigating the Incident and the damage to the Power Plant and the Main Termination Box;
 - (e) the cost of engineering and related services required to repair the damage;
 - (f) business interruption losses arising out of the Incident;
 - (g) the cost of managing, administering and accounting for the damage;
 - (h) diminution in the value of the Power Plant; and
 - (i) such further damage as may be proven at trial.

(the “**Resulting Damage**”)

12. The Incident and the Resulting Damage were caused and/or contributed to by, *inter alia*, the breach of the EPC Contract by the EPC Contractor.
13. The particulars of the breach of contract of the EPC Contractor include, but are not limited to:

- (a) failing to design and construct the Power Plant, including the Main Termination Box, in a good and workmanlike manner, and in compliance with all applicable contracts, bylaws, regulations and standards of the energy industry;
- (b) failing to design the Power Plant, including the Main Termination Box so that it will have a design life of 30 years;
- (c) failing to retain reasonably skilled and competent agents, professionals, employees and subcontractors while designing and constructing the Power Plant, particularly the Main Termination Box;
- (d) failing to direct and supervise the Works, including the design and construction of the Main Termination Box, using its best effort and attention;
- (e) failing to exercise reasonable care to ensure that all components used in constructing the Power Plant, including the Surge Capacitors, are appropriate and fit for the operation of the Power Plant;
- (f) failing to carry out all necessary testing on the Main termination Box, including but not limited to the Surge Capacitors;
- (g) failing to select surge capacitors that are fit for the operation of the Power Plant;
- (h) failing to perform a check or adequate inspection on the Main Termination Box, including the Surge Capacitors, upon installation;
- (i) failing to instruct John Doe Subcontractor and/or its agents to properly inspect and supervise the installation of the Main Termination Box and the Surge Capacitors;
- (j) using components that were inappropriate or unfit for their intended purpose for the Main Termination Box;
- (k) failing to supply components of the Main Termination Box that were fit for their intended purpose, and would be durable for a reasonable period of time having regard to the use for which they would normally be put in the circumstances;
- (l) failing to ensure components of the Main Termination Box, including the Surge Capacitors are of good quality;

- (m) failing to ensure that the Main Termination Box was designed, constructed and installed in a good and workmanlike manner, and in compliance with all applicable bylaws, regulations and standards of the construction and energy industry;
- (n) failing to ensure that the Main Termination Box and the Surge Capacitors were free of any defects; and
- (o) such further and other particulars as may become known to the plaintiff.
- (p) failing to repair, or cause to be repaired, all defects covered by the warranty in a timely manner, or at all;
- (q) failing to arrange and pay for the costs of all investigations in relation to the Incident;
- (r) failing to arrange and pay for the costs of all repairs in relation to the Incident;
- (s) conducting itself in a manner that has deprived the plaintiffs of peace of mind to which they are entitled pursuant to the warranty;
- (t) failure to maintain professional liability insurance as required; and,
- (u) such further particulars as the plaintiff may advise.

Claim Against Iberdrola

14. Iberdrola entered into a guarantee agreement (the “**Guarantee**”) with the plaintiff with respect to the EPC Contract.
15. Pursuant to the Guarantee, Iberdrola guaranteed to the plaintiff the full and timely performance of all of the EPC Contractor’s obligations under the EPC Contract, including but not limited to the obligation to maintain insurance required under the EPC Contract.
16. Further, the Guarantee provided that Iberdrola shall indemnify and save the plaintiff harmless from and against any direct and reasonable loss which may arise as a result of any default on part of the EPC Contractor.
17. Iberdrola is liable for the plaintiff’s losses, expenses, costs, and damages suffered as a result of the EPC Contractor’s breach of the EPC Contract.
18. At all material times, Iberdrola has breached the Guarantee, resulting in loss, damage and expense to the plaintiff.

Part 2: RELIEF SOUGHT

1. The plaintiff seeks the following relief:
 - (a) Damage for breach of contract;
 - (b) Special damages;
 - (c) Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996 c. 79 and amendments thereto;
 - (d) Costs on a full indemnity basis pursuant to the EPC Contract or the Guarantee, or alternatively, costs pursuant to the *Supreme Court Civil Rules*; and,
 - (e) Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

1. At all material times the plaintiff engaged the EPC Contractor to perform the Works pursuant to the EPC contract, the terms of which are noted under part 1 above.
2. At all material times, the EPC Contractor breached the EPC Contract, the particulars of which are noted under part 1 above.
3. The Incident and Resulting Damage were caused and/or contributed to by, *inter alia*, the breach of the EPC Contract by the EPC Contractor.
4. At all material times, Iberdrola guaranteed to the plaintiff the full and timely performance of all of the EPC Contractor's obligations under the EPC Contract, including but not limited to the obligation to maintain insurance required under the EPC Contract and to indemnify and save harmless the plaintiff from any and all losses and damages suffered as a result of the EPC Contractor's breach of the EPC Contract.
5. Pursuant to the Guarantee, Iberdrola is liable for the plaintiff's losses, expenses, costs, and damages suffered as a result of the EPC Contractor's breach of the EPC Contract.
6. At all material times, Iberdrola breached the Guarantee, resulting in loss, damage and expense to the plaintiff.
7. The plaintiff further pleads and relies upon:
 - a. *Court Order Interest Act*, RSBC 1996 c 79; and,

b. *Court Jurisdiction and Proceedings Transfer Act SBC 2003 C 28*

Plaintiff's address for service: Owen Bird Law Corporation
2900 – 733 Seymour Street
Vancouver, BC V6B 0S6

Attention: John Kim

Fax number for service: 604-632-4467

Email address for service: jkim@owenbird.com

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street, Vancouver, British
Columbia,
V6Z 2E1

Dated: December 7, 2022



Signature of the Lawyer for the Plaintiff
John Kim

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The plaintiff claims the right to serve this notice of civil claim on the defendant IBERDROLA S.A. outside of British Columbia on the following grounds as set out in s.10 of the *Court Jurisdiction and Proceedings Transfer Act* and on which the plaintiffs relies:

This action

- a. concerns contractual obligations, which, to a substantial extent, were to be performed in British Columbia,
- b. concerns a tort committed in British Columbia; and/or
- c. concerns a business carried on in British Columbia.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The plaintiffs claim for damages including property damage and expenses arising from the defendant's breach of contract.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4: ENACTMENTS BEING RELIED ON

- a) *Court Jurisdiction and Proceedings Transfer Act SBC 2003 C 28*
- b) *Supreme Court Civil Rules, Part 14*