



No. H-251466
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DOMAIN MORTGAGE CORP., as mortgage administrator and bare trustee
for Capstone Mortgage Pool and
Capstone Mortgage Opportunities Fund LP

PETITIONER

AND:

1119356 B.C. LTD.
CENTRA LIMITED PARTNERSHIP
1138624 B.C. LTD.
1877725 ALBERTA LTD.
ZAFIR RASHID
HARPREET (HARIS) THIARA
SATPREET THIARA
FRANCISCO IGNACIO
TRISURA GUARANTEE INSURANCE COMPANY
JB SOLUTIONS ULC
1299881 BC LTD.
TANDEM MECHANICAL SYSTEMS LTD.
METRO-CAN CONSTRUCTION (OT) LTD.
B&B EXCAVATION AND SHORING LTD.
RPMC INVESTMENT INC.
541823 B.C. LTD.
ALL TENTANTS AND/OR OCCUPIERS OF THE
SUBJECT LANDS AND PREMISES

RESPONDENTS

APPLICATION RESPONSE

FORM 33 (RULE 8-1(10))

Application response of: METRO-CAN CONSTRUCTION (OT) LTD. (the “application respondent”)

THIS IS A RESPONSE TO the notice of application of the Petitioner filed February 25, 2026.

The application respondent estimates that the application will take 1 hour.

PART 1: ORDERS CONSENTED TO

The application respondent consents to the granting of none of the orders set out in Part 1 of the notice of application.

PART 2: ORDERS OPPOSED

The application respondent opposes the granting of none of the orders set out in Part 1 of the notice of application.

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of the orders set out in Part 1 of the notice of application.

PART 4: FACTUAL BASIS

Background

1. Metro-Can Construction (OT) LTD. ("**Metro-Can OT**"), is a British Columbia company operating as a construction general contractor.
2. 1119356 B.C. Ltd. ("**111 B.C.**") is the registered owner of a property located in the City of Surrey, in the Province of British Columbia and legally described as:

PID: 026-731-134
Parcel A Section 26 Block 5 North Range 2
West New Westminster District Plan
BCP24667

(the "**Lands**")

3. On or about December 23, 2020, Metro-Can OT entered into a CCDC 2 stipulated price contract with 1138624 B.C. Ltd. ("**113 B.C.**") (the "**GC Contract**") whereby Metro-Can OT agreed to provide general contracting services and/or materials for the construction of an improvement known as the Centra condominium project at a cost of \$55,440,000.00 (the "**Improvement**").

4. In breach of the GC Contract, 113 B.C. has refused or neglected to make payment for the general contracting services and materials provided by Metro-Can OT. There remains due and owing to Metro-Can OT from 113 B.C. for work performed and/or material supplied and delivered to the Improvement being constructed on the Lands the sum of \$11,480,103.79, plus interest.

Builders Lien

5. By virtue of services and materials supplied by Metro-Can OT to the Lands, Metro-Can OT claims, *inter alia*, that it is entitled to builders' liens in the amount of \$11,480,103.79.
6. In particular, on or about November 12, 2024, Metro-Can OT by its authorized representative made a claim of lien pursuant to the British Columbia *Builders Lien Act*, S.B.C. 1997, c. 45 [*BLA*], alleging that the sum of \$9,598,108.58 was due and owing, by causing said claim of lien to be filed against the Lands at the Land Title Office in the City of New Westminster, in the Province of British Columbia. That claim of lien was registered under number CB1708860 (the "**First Lien Claim**").

Affidavit #1 of K. Buquet made January 8, 2026, Ex. A.

7. On or about October 29, 2025, Metro-Can OT by its authorized representative made a subsequent claim of lien pursuant to the *BLA*, alleging that the sum of \$1,881,995.21 was due and owing, by causing said claim of lien to be filed against the Lands at the Land Title Office in the City of New Westminster, in the Province of British Columbia. That claim of lien was registered under number CB2423171 (the "**Second Lien Claim**").

Affidavit #1 of K. Buquet made January 8, 2026, Ex. B.

Procedural History

8. On October 31, 2025, Metro-Can OT filed a Notice of Civil Claim in the Vancouver Registry under matter number S-258214 against 113 B.C. and 111 B.C. pursuant to the *BLA*, and in common law breach of contract, unjust enrichment, and quantum meruit (the "**Metro-Can OT Action**").

Affidavit #1 of K. Buquet made January 8, 2026, Ex. C.

The Holdback Account

9. In accordance with the *BLA*, 113 B.C. and 111 B.C. were required to maintain and did maintain a Holdback Account in relation to the improvements on the Lands for the benefit of Metro-Can OT.
10. On January 13, 2026, in the Metro-Can OT Action, Justice Hoffman ordered that 113 B.C. and 111 B.C. authorize Metro-Can OT as a co-signatory of the Holdback Account and that the 113 B.C. and 111 B.C. disclose the particulars of the credits to and payments from the Holdback Account funds by January 20, 2026 (the “**Holdback Order**”).

Affidavit #1 of C. Yoon made February 27, 2026, Ex. A

11. On February 3, 2026, in the Metro-Can OT Action, Justice Kirchner ordered that 113 B.C. and 111 B.C. were in contempt of court for failure to comply with the Holdback Order.

Affidavit #1 of C. Yoon made February 27, 2026, Ex. B

Metro-Can OT’s Position

12. Pursuant to sections 4 and 5 of the *BLA*, the Holdback Account creates a trust for, and funds held into the Holdback Account are for, the beneficial interest of the contractor and do not form part of the mortgagor’s estate and cannot be accessed by a mortgagee. Accordingly, Metro-Can OT asserts ownership over any funds held into the Holdback Account or, in the alternative, claims a right to such funds in priority to the mortgagees.

PART 5: LEGAL BASIS

13. Sections 4 and 5 of the *BLA* govern the mandatory holdback requirements and provide:

Holdback

4 (1)The person primarily liable on each contract, and the person primarily liable on each subcontract, under which a lien may arise under this Act must retain a holdback equal to 10% of the greater of

(a) the value of the work or material as they are actually provided under the contract or subcontract, and

(b) the amount of any payment made on account of the contract or subcontract price.

(2) The obligation to retain the holdback under subsection (1) applies whether or not the contract or subcontract provides for periodic payments or payment on completion.

...

Holdback account

5 (1) Subject to subsection (8), an owner must

(a) establish at a savings institution a holdback account for each contract under which a lien may arise,

(b) pay into the holdback account the amount the owner is required to retain under section 4, and

(c) administer the holdback account together with the contractor from whom the holdback was retained.

(2) Subject to sections 9 and 34, all amounts deposited into a holdback account

(a) are charged with payment of all liens arising under the contractor from whom the holdback was retained,

(b) subject to paragraph (a), are held in trust for the contractor referred to in paragraph (a), and

(c) must not be paid out of the account without the agreement of all the persons who administer the account.

Builders Lien Act, SBC 1997, c. 45

14. In *0409725 B.C. Ltd. (Bankruptcy of)*, 2015 BCSC 561, this court determined that funds held in trust pursuant to section 10 of the *BLA* are protected from bankruptcy proceedings. Such trust funds are not considered part of the bankrupt's estate and cannot be accessed by creditors in the bankruptcy process.

0409725 B.C. Ltd. (Bankruptcy of), 2015 BCSC 561

15. Similar to section 10, sections 4 and 5 of the *BLA* create a statutory trust over funds deposited into the Holdback Account for the benefit of the contractor.

PART 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Karen Buquet made and filed January 8, 2026; and
2. Affidavit #1 of Channie Yoon made and filed February 27, 2026.
3. The pleadings filed herein; and
4. Such further and other material as counsel may advise.

The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

Date: 27 February 2026



HARPER GREY LLP
(Per Salman Y. Bhura)
Lawyer for the application respondent,
Metro-Can Construction (OT) Ltd.