Court File No. CV-25-00748510-00CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**

B E T W E E N:

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1001387025 ONTARIO INC.**

Applicant

# RESPONDING FACTUM OF EASTERN CONSTRUCTION COMPANY LIMITED

**(Motion Returnable July 28, 2026)**

July 27, 2026


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**TO:    SERVICE LIST**

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## PART I – OVERVIEW

1. Eastern Construction Company Limited ("**Eastern**") is a respondent to this motion brought by 2386843 Ontario Inc. o/a Phantom Disposal ("**Phantom**") to lift the stay of proceedings (the "**Stay**") imposed under the *Companies' Creditors Arrangement Act* (the "**CCAA**"),[1] to permit Phantom to advance its lien claim against security posted by Eastern in Court File No. CV-25-00755681-0000 (the "**Phantom Lien Action**"). Eastern takes no position on whether the Stay should be lifted.

2. Eastern's submissions on this motion are focused on two narrow issues. First, if the Stay is lifted, any issues arising from the interaction between the *Construction Act*,[2] and the CCAA Orders (defined below) should remain within, or be conducted subject to the supervision of, the Commercial List, to avoid a multiplicity of proceedings. Second, Eastern requires access to documents in the possession of ResidualCo, the Monitor, and/or NewQM concerning the characterization of the Project, to ensure fairness to Eastern in the Phantom Lien Action or any related proceeding.

## PART II – FACTUAL BACKGROUND

### (a) Contractual Framework

3. Eastern is the construction manager for the redevelopment of the De La Salle College – Oaklands Student Wellness Centre at 131 Farnham Avenue, Toronto (the "**Project**"), pursuant to a Construction Management Contract dated May 8, 2023 (the "**Prime Contract**") with Oaklands Charitable Properties Foundation (the "**Owner**").[3]

[1] RSC 1985, c C-36 ("**CCAA**").
[2] RSO 1990, c C.30 ("***Construction Act***").
[3] Affidavit of Andy Pabla affirmed May 8, 2026, para 10 ["**Pabla Affidavit**"], Responding Motion Record of Eastern Construction Company Limited, Tab 1 ["**Eastern MR**"].

4. Eastern engaged QM LP, by its general partner QM GP Inc. ("QM"), under two subcontracts in connection with the Project:[4]

(a) a subcontract for abatement and demolition work entered into as of November 2, 2023 (the "**Continuing Subcontract**"); and

(b) a subcontract for excavation and backfill work entered into as of February 12, 2024 (the "**Disclaimed Subcontract**").

5. QM retained Phantom as a sub-subcontractor for disposal services on the Project. Eastern has no contract with Phantom and no knowledge of the arrangements between QM and Phantom.[5]

**(b) The CCAA Proceedings**

6. The following orders (collectively, the "**CCAA Orders**") were made in these proceedings:

(a) on July 29, 2025, an Initial Order of Justice Steele and a Lien Regularization Order (the "**LRO**"), which categorized QM's projects as either "Continuing QM Projects" or projects whose related contracts had been disclaimed;[6]

(b) on August 7, 2025, an Amended and Restated Initial Order (the "**ARIO**");[7]

(c) on October 24, 2025, an Approval and Reverse Vesting Order (the "**ARVO**"), pursuant to which certain assets and liabilities of QM were vested in 1001387025 Ontario Inc. ("**ResidualCo**"), which was substituted as the sole applicant in these proceedings, while QM's operating business continued under new ownership ("**NewQM**");[8] and

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[4] Pabla Affidavit, para 11.
[5] Pabla Affidavit, paras 12-13.
[6] Affidavit of James Dunn affirmed March 25, 2026 ["**Dunn Affidavit**"] Exhibits 6-7, Motion Record of 2386843 Ontario Inc. o/a Phantom Disposal, Tab B ["**Phantom MR**"]; Pabla Affidavit, paras 4-5; *QM GP Inc v High Point Environmental Services Inc*, 2025 ONSC 4492, at paras 76-82.
[7] Dunn Affidavit, Exhibit 10; Pabla Affidavit, para 7.
[8] Dunn Affidavit, Exhibit 12; Pabla Affidavit, para 8.

(d) on January 29, 2026, a Lien Claims Resolution Order (the "**LCRO**") establishing a claims process for lien claims relating to Continuing QM Projects.[9]

7. On July 31, 2025, QM delivered a notice of disclaimer under section 32 of the CCAA in respect of the Disclaimed Subcontract. The Continuing Subcontract was not disclaimed and remains a Continuing QM Project within the meaning of the LRO.[10] Eastern had no involvement in the continuing/disclaimed categorization.[11]

8. QM and the Monitor characterized QM's projects as Continuing QM Projects or disclaimed projects based on a profitability analysis to which Eastern was not privy. Project 217708 (the Continuing Subcontract) was estimated to be profitable on a go-forward basis and was retained by NewQM, while Project 218031 (the Disclaimed Subcontract) was not.[12]

9. The Monitor's Fifth Report describes ResidualCo as "a shell company with no employees and no knowledge of the QM Group's activities in respect of Project 218031 or any issues that may be in dispute in the Phantom Lien Action," noting the Monitor's own information is limited to the financial data reviewed for that analysis.[13] Eastern has no visibility into the underlying project and accounting records, which reside with the Monitor, ResidualCo, or NewQM.[14]

**(c) Two Distinct Payment Streams**

10. As a result of the disclaimer, two distinct "payment streams" flow from Eastern to QM: one under the Continuing Subcontract, which remains a "Continuing QM Project" under the LRO,

[9] Dunn Affidavit, Exhibit 17; Endorsement of Justice Kimmel dated January 29, 2026, Supplementary Motion Record of 2386843 Ontario Inc. o/a Phantom Disposal, Tab 8 ["**Phantom Supp MR**"]; Fourth Report of the Monitor dated April 22, 2026, para 1.8, Phantom Supp MR, Tab 9.
[10] Pabla Affidavit, para 21.
[11] Pabla Affidavit, para 6.
[12] Monitor's Fifth Report dated May 13, 2026, paras 6.3-6.4 ["**Fifth Report**"], Phantom Supp MR, Tab 10.
[13] Fifth Report, para 6.5.
[14] Pabla Affidavit, para 32.

and one under the Disclaimed Subcontract.[15] The state of Eastern's accounts differ across the two subcontracts, consistent with these separate payment streams.[16]

11. Eastern's ongoing payment obligations under the Continuing Subcontract are governed by the CCAA Orders, while its obligations under the Disclaimed Subcontract are governed by that subcontract's terms and the *Construction Act*.[17]

**(d) The Phantom Lien and the Phantom Lien Action**

12. On August 22, 2025, Phantom registered a claim for lien against title to the Project in the amount of $279,041.02. On October 8, 2025, pursuant to an order of Associate Justice Robinson under section 44 of the *Construction Act*, Eastern posted security in the amount of $348,801.28 (the "**Security**") to vacate Phantom's lien from title.[18] As is conceded by Phantom,[19] the posting of the Security has no impact, under the *Construction Act* or otherwise, as to the merits or quantum of Phantom's lien. The onus will be on Phantom to prove its entitlement.

13. On November 20, 2025, Phantom perfected its lien by commencing the Phantom Lien Action against Eastern, QM, and ResidualCo.[20] Phantom named ResidualCo as a defendant out of caution to preserve its lien within the *Construction Act* timelines,[21] but seeks no relief against ResidualCo or its assets. On April 2, 2026, Phantom discontinued the Phantom Lien Action as against QM. If the Stay is lifted, Eastern will be the sole remaining active defendant.[22]

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[15] Pabla Affidavit, para 21.
[16] Pabla Affidavit, paras 26-27.
[17] Pabla Affidavit, para 22.
[18] Pabla Affidavit, paras 15-16.
[19] Factum of the Moving Party, 2386843 Ontario Inc. o/a Phantom Disposal, dated July 20, 2026, para 50. ["**Phantom Factum**"].
[20] Pabla Affidavit, para 24.
[21] Phantom Factum, paras 33, 38.
[22] Pabla Affidavit, paras 29, 31.

14. Eastern has no contractual relationship with Phantom and no information on the particulars of any sub-subcontract between QM and Phantom.[23] It is simply a non-contracting "payer" to QM (and not to Phantom) under section 1(1) of the *Construction Act*[24] who posted the Security so that payments and work on the Project could continue without incurring delays and damages.

**(e) The May 27, 2026 Case Conference**

15. On May 27, 2026, on the initial return of this motion, Justice Myers observed that the motion "raises an interesting point about how to protect third parties from procedural prejudice upon a debtor being split in two by a reverse vesting order," and that "it may be that the material institutional knowledge about [Phantom's] claim, including documents, was passed on to the buyer and is no longer within the command of the CCAA debtor or Monitor." His Honour analogized to cases involving Pierringer agreements, in which a court will be concerned that third parties in litigation "be protected from prejudice arising from the form of a process adopted to implement a settlement made by a party opposite," and directed that if the issue could not be resolved among Eastern, Phantom, the Monitor, and NewQM, the Court would resolve it for them.[25]

## PART III – STATEMENT OF ISSUES

16. This motion raises two issues as they relate to Eastern:

(a) If the Stay is lifted, should the Commercial List retain supervisory jurisdiction over issues requiring interpretation of the CCAA Orders and the *Construction Act*?

(b) Should any order lifting the Stay include provisions for Eastern's access to documents in the possession of ResidualCo, the Monitor and/or NewQM?

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[23] Pabla Affidavit, para 13.
[24] *Supra* note 2, s 1(1): "payer" means the owner, contractor or subcontractor who is liable to pay for the services or materials supplied to an improvement under a contract or subcontract.
[25] Endorsement of Justice Myers dated May 27, 2026, paras 3-4 ["**Myers Endorsement**"].

17. Eastern takes no position on whether the Stay should be lifted. Eastern's submissions below are limited to these two issues.

## PART IV – LAW AND ARGUMENT

### ISSUE 1 - The Commercial List Should Retain Jurisdiction

18. Ordinarily, construction lien reference procedures are well-suited to resolving lien disputes. Subsection 58(1) of the *Construction Act* permits a judge to refer a lien action to an associate judge with full jurisdiction to try and dispose of the action and all matters arising in connection with it.[26]

19. This is not an ordinary lien dispute. The Phantom Lien Action arises from and is inextricably connected to the CCAA Orders, including the characterization of the Project's subcontracts as continuing or disclaimed, the treatment of holdback under the LRO and ARVO, and the claims process established by the LCRO. These matters fall squarely within the Commercial List's supervisory jurisdiction.

#### (a) Determination of Phantom's Lien Rights Requires Commercial List Expertise

20. Phantom submits that lien rights arise on an improvement-by-improvement basis, that QM's choice to disclaim certain subcontracts while continuing others should have no bearing on the quantification of its lien under s. 17(1) of the *Construction Act*, and that the s. 17(1) ceiling should capture "everything Eastern owes QM in relation to the improvement," including holdback under the Continuing Subcontract.[27] The Monitor and NewQM take the opposite view that Phantom's recovery cannot extend to amounts owing, or holdback accruing, under the Continuing

[26] *Construction Act*, *supra* note 2, s 58(1).
[27] Phantom Factum at paras 47-48, 67, 69.

Subcontract.[28] Eastern's primary concern on this point is that, as a payer to QM, it is not required to pay the same funds twice (i.e. once to QM and once to Phantom). That is not a controversial position and is conceded by Phantom.[29]

21. Resolving that dispute requires examining how s. 17(1) interacts with s. 22(1) of the *Construction Act* and with the CCAA Orders' continuing/disclaimed distinction—a distinction with no counterpart under the ordinary *Construction Act* scheme and arising solely from these CCAA proceedings.

22. Section 22(1) of the *Construction Act* states:

> Each payer upon a contract or subcontract under which a lien may arise shall retain a holdback equal to 10 per cent of the price of the services or materials ***<u>as they are actually supplied under the contract or subcontract</u>*** until all liens that may be claimed against the holdback in respect of the supplied services or materials have expired or been satisfied, discharged or otherwise provided for under this Act. [emphasis added]

23. Section 17(1) of the *Construction Act* provides that the quantum of any lien by a sub-subcontractor is limited to the "least amount owed…by a payer to the contractor or to any subcontractor whose contract or subcontract was in whole or in part performed by the supply of services or materials giving rise to the lien."

24. How the disclaimed/continuing distinction interacts with these statutory provisions is the crux of this dispute over whether the funds available to satisfy Phantom's lien are confined to the Disclaimed Subcontract stream, or whether the "lease amount owed" measure in s. 17(1) may also

[28] Factum of the Respondent, the Monitor, dated July 24, 2026 at paras 26-31; Factum of the Respondent, QM GP Inc., at paras 7-9, 23-24.
[29] Phantom Factum at para 39 (Phantom accepts it may not seek recovery against ResidualCo or its assets, limiting recovery to Eastern's posted security)

reach amounts payable under the Continuing Subcontract. Answering this question depends on how the CCAA Orders are construed, and not solely on the text of the *Construction Act*.

25. That inquiry also requires consideration of the LRO and LCRO claims process under which Phantom has itself submitted a Lien Notice in respect of amounts under the Continuing Subcontract,[30] and which may bear on whether, and how, any claim touching that subcontract can or should proceed outside that process.

26. In its factum, Phantom refers to several decisions addressing lien quantification and priority under the Construction Act, including *Prasher Steel,*[31] *Scott Steel*,[32] and *35 Mercer*.[33] However, none of these decisions addresses how section 17(1) applies where a CCAA order has divided a single payer's obligations to one subcontractor into separate continuing and disclaimed streams administered through different processes.

27. Eastern submits that, to the extent Phantom's lien claim touches upon work performed under the Continuing Subcontract, it falls within the scope of the LRO and LCRO and ought to be addressed within the CCAA claims process. If Phantom's work was performed exclusively under the Disclaimed Subcontract, the statutory cap on Phantom's lien is limited to the least amount owing by Eastern to QM under the Disclaimed Subcontract, not the aggregate of both payment streams. Permitting Phantom to reach amounts owing under the Continuing Subcontract through the Phantom Lien Action would circumvent the LCRO process and create risks of double recovery and inconsistent adjudication.

[30] Fifth Report, para 4.2.
[31] *Prasher Steel Ltd v Pre-Eng Contracting Ltd*, 2024 ONSC 4772 (Div Ct) at para 9.
[32] *Scott Steel Erectors Inc v Ausenco Engineering Canada Inc*, 2025 ONSC 473 at paras 92, 107.
[33] *35 Mercer Limited v Intact Insurance Company*, 2025 ONSC 2353 at paras 10, 16-17.

28. Phantom's insistence on an "improvement-based" framework risks placing Eastern in an impossible position: defending against a claim seeking access to funds properly referable to the Continuing Subcontract stream governed by the CCAA Orders and the LCRO. Eastern submits these intertwined questions require the Commercial List's ongoing supervision given the process that has already unfolded and the orders that have already been issued.

### (b) A Section 58 *Construction Act* Reference Risks a Multiplicity of Proceedings

29. Section 138 of the *Courts of Justice Act* provides that "[a]s far as possible, a multiplicity of legal proceedings shall be avoided."[34] The legislature deliberately chose prescriptive language. Allowing the Phantom Lien Action to proceed by way of a section 58 reference while the interpretation of the CCAA Orders remains subject to this Court's supervisory jurisdiction would engage precisely the concerns this provision was enacted to address.

30. Courts have held that multiplicity concerns arise where duplicative proceedings would "waste the resources of the parties, courts and witnesses, or risk inconsistent results and therefore undermine the credibility of the judicial process."[35] This Court's supervisory jurisdiction over its own orders, and the CCAA's preference for resolving disputes within a single proceeding, reinforce this conclusion. Section 11 of the CCAA confers broad discretion on a supervising court to make any order it considers appropriate,[36] and the CCAA is designed as a flexible, single-proceeding model that avoids fragmenting insolvency-related disputes across multiple forums.[37]

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[34] RSO 1990, c C.43, s 138.
[35] *Oakleigh Holdings Inc v Demikon Construction Ltd*, 2026 ONSC 1660 at para 25, citing *Saskatchewan (Environment) v Métis Nation – Saskatchewan*, 2025 SCC 4 at para 40.
[36] CCAA, s 11.
[37] *Century Services Ltd v Canada (Attorney General)*, 2010 SCC 60 at para 22.

31. Litigating these CCAA-related characterization issues in construction lien court rather than the Commercial List risks duplicative proceedings and inconsistent findings on questions of general application to the Project, including the interpretation and effect of the LRO and ARVO.

32. Justice Myers' Endorsement recognized this concern, observing the need to protect third parties from "procedural prejudice upon a debtor being split in two by a reverse vesting order," and analogizing to protections afforded non-settling third parties in the Pierringer context.[38] That concern was more than a case-management observation and it accords with established principle.

33. Courts recognize that protective measures, including access to information, may be required for a party left to face the litigation alone.[39] Those concerns are engaged here: the ARVO divided QM's business and records between NewQM and ResidualCo without Eastern's input, and that allocation now determines what information Eastern can access to defend Phantom's claim.

34. A bifurcated approach—litigating the quantum and scope of Phantom's lien in construction lien court while the Commercial List determines the characterization and effect of the CCAA Orders—would be duplicative and risks inconsistent findings. The disclaimed/continuing distinction has no counterpart under the ordinary *Construction Act* scheme. It is a construct of these CCAA proceedings.

35. Eastern agrees that assessing the scope and quantum of Phantom's lien is a substantive, final determination that ought to be litigated on a full evidentiary record before a single forum equipped to interpret both the *Construction Act* and the CCAA Orders that bear on it. Eastern's request that the Commercial List retain supervision gives effect to that principle.

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[38] Myers Endorsement, *supra* note 25

[39] *Sable Offshore Energy Inc v Ameron International Corp*, 2013 SCC 37, at paras 24-25; *Singh v Mann*, 2021 ONSC 8249 at para 22.

36. Without prejudice to Eastern's neutral position on the Stay, Eastern requests that, if the stay is lifted, this Court direct that the matter remain within, or be conducted subject to the ongoing supervision of, the Commercial List, whether by directing that the Phantom Lien Action proceed by way of trial before a judge of the Commercial List rather than by *Construction Act* reference, or by otherwise reserving to the Commercial List the determination of any issue concerning the interpretation or effect of the CCAA Orders, to avoid a multiplicity of proceedings.

**ISSUE 2 - Eastern Requires Access to ResidualCo Documents to Ensure Fairness**

37. Eastern has no visibility into the basis on which the Project's subcontracts were characterized as continuing or disclaimed. That information originated with QM and the Monitor and, following the reverse vesting transaction, now resides with ResidualCo, the Monitor, and/or NewQM. The key issues in the Phantom Lien Action—the characterization of Phantom's work as falling within the Disclaimed Subcontract stream, the application of the CCAA Orders to the distinct payment streams, and the allocation of sub-subcontractor claims between the two streams—all arise from these CCAA proceedings. The information required to address them is in the hands of the Monitor, ResidualCo, or NewQM, not Eastern.

38. It would be prejudicial to require Eastern to defend these issues alone without the relevant records. As Justice Myers observed, it "may be that the material institutional knowledge about [Phantom's] claim, including documents, was passed on to the buyer and is no longer within the command of the CCAA debtor or Monitor," and courts will strive to protect third parties from prejudice arising from other parties' chosen settlement process.[40]

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[40] Myers Endorsement, *supra* note 25.

39. Accordingly, Eastern respectfully requests that any order of this Court lifting the Stay include provisions for Eastern's access to the books, records, and other documents in the possession of ResidualCo and, to the extent applicable, the Monitor, concerning Project 218031 and the characterization of the Project's subcontracts as continuing or disclaimed, on such terms as the Court considers appropriate.

## PART V – CONCLUSION

40. For the reasons set out above, Eastern takes no position on the merits of Phantom's motion but respectfully requests that, in the event the Stay is lifted, this Honourable Court:

(a) direct that issues concerning the interpretation or effect of the CCAA Orders, including continuing/disclaimed subcontract characterization, remain within or be conducted subject to Commercial List supervision, to avoid a multiplicity of proceedings;

(b) provide for Eastern's access to the books, records, and documents of ResidualCo, the Monitor, and/or NewQM concerning Project 218031 and the characterization referred to in subparagraph (a), on terms the Court considers appropriate; and

(c) grant such further and other relief as is just.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 27th day of July, 2026.

Per:

Howard D. Krupat / Cristina Fulop

**DLA PIPER CANADA LLP**

Lawyers for the Respondent, Eastern Construction Company Limited

**SCHEDULE "A"**

**LIST OF AUTHORITIES**

1. *QM GP Inc v High Point Environmental Services Inc*, 2025 ONSC 4492.

2. Endorsement of Justice Myers dated May 27, 2026 (attached hereto as **Tab 1**)

3. *Prasher Steel Ltd v Pre-Eng Contracting Ltd*, 2024 ONSC 4772 (Div Ct)

4. *Scott Steel Erectors Inc v Ausenco Engineering Canada Inc*, 2025 ONSC 473

5. *35 Mercer Limited v Intact Insurance Company*, 2025 ONSC 2353

6. *Oakleigh Holdings Inc v Demikon Construction Ltd*, 2026 ONSC 1660

7. *Saskatchewan (Environment) v Métis Nation – Saskatchewan*, 2025 SCC 4

8. *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60

9. *Sable Offshore Energy Inc v Ameron International Corp*, 2013 SCC 37

10. *Singh v Mann*, 2021 ONSC 8249

# TAB 1

**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

**COUNSEL SLIP / ENDORSEMENT**

**COURT FILE NO.:** **CV-00748510-00CL** **DATE:** **May 27, 2026**

**REGISTRAR:** HARRIS, E.

**NO. ON LIST:** **2**

**TITLE OF PROCEEDING:** QM GP INC. et al

**BEFORE: JUSTICE FL MYERS**

## PARTICIPANT INFORMATION

**For Plaintiff, Applicant / Moving Party:**

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| Name of Person Appearing | Name of Party | Contact Info |
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| Andrew Punzo | CSL for Intact Insurance Company | APunzo@blg.com |
| Cristina Fulop | CSL for Eastern Construction | cristina.fulop@ca.dlapiper.com |

**ENDORSEMENT OF JUSTICE FL MYERS:**

1. The motion is adjourned to July 28, 2026 for two hours in person.
2. In the event that the parties settle, they should forward a signed consent form and draft order to my attention through the Commercial List Office and advise the Trial Coordinator that the time can be released.
3. The motion raises an interesting point about how to protect third parties from procedural prejudice upon a debtor being split in two by a reverse vesting order. While Phantom is not entitled to bring its claim against the buyer of the operating business, it may be that the material institutional knowledge about its claim, including documents, was passed on to the buyer and is no longer within the command of the CCAA debtor or Monitor.
4. Like cases involving pierrenger agreements, I would expect a court to be concerned that third parties in litigation be protected from prejudice arising from the form of a process adopted to implement a settlement made by a party opposite.
5. If that cannot be resolved among Eastern Construction, Phantom Disposal, the Monitor and New QM, then the court will resolve the issues for them.

FL Myers J.

Justice FL Myers

Digitally signed by Justice FL Myers
Date: 2026.05.27 11:48:39 -04'00'

## SCHEDULE "B"

## TEXT OF RELEVANT STATUTES, REGULATIONS, AND BY-LAWS

***Companies' Creditors Arrangement Act*, RSC 1985, c C-36**

**General power of court**

**11** Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

**Disclaimer or resiliation of agreements**

**32** (1) Subject to subsections (2) and (3), a debtor company may — on notice given in the prescribed form and manner to the other parties to the agreement and the monitor — disclaim or resiliate any agreement to which the company is a party on the day on which proceedings commence under this Act. The company may not give notice unless the monitor approves the proposed disclaimer or resiliation.

**Court may prohibit disclaimer or resiliation**

(2) Within 15 days after the day on which the company gives notice under subsection (1), a party to the agreement may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement is not to be disclaimed or resiliated.

**Court-ordered disclaimer or resiliation**

(3) If the monitor does not approve the proposed disclaimer or resiliation, the company may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement be disclaimed or resiliated.

**Factors to be considered**

(4) In deciding whether to make the order, the court is to consider, among other things,

(a) whether the monitor approved the proposed disclaimer or resiliation;

(b) whether the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and

(c) whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement.

**Date of disclaimer or resiliation**

(5) An agreement is disclaimed or resiliated

(a) if no application is made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1);

(b) if the court dismisses the application made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1) or on any later day fixed by the court; or

(c) if the court orders that the agreement is disclaimed or resiliated under subsection (3), on the day that is 30 days after the day on which the company gives notice or on any later day fixed by the court.

**Intellectual property**

(6) If the company has granted a right to use intellectual property to a party to an agreement, the disclaimer or resiliation does not affect the party's right to use the intellectual property — including the party's right to enforce an exclusive use — during the term of the agreement, including any period for which the party extends the agreement as of right, as long as the party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

**Loss related to disclaimer or resiliation**

(7) If an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim.

**Reasons for disclaimer or resiliation**

(8) A company shall, on request by a party to the agreement, provide in writing the reasons for the proposed disclaimer or resiliation within five days after the day on which the party requests them.

**Exceptions**

(9) This section does not apply in respect of

(a) an eligible financial contract;

(b) a collective agreement;

(c) a financing agreement if the company is the borrower; or

(d) a lease of real property or of an immovable if the company is the lessor.

***Construction Act*, RSO 1990, c C.30**

**Definitions**

**1** (1) In this Act, "payer" means the owner, contractor or subcontractor who is liable to pay for the services or materials supplied to an improvement under a contract or subcontract; ("responsable du paiement")

**When lien arises**

**15** A person's lien arises and takes effect when the person first supplies services or materials to the improvement. Section 17(1)

**Basic holdback**

**22** (1) Each payer upon a contract or subcontract under which a lien may arise shall retain a holdback equal to 10 per cent of the price of the services or materials as they are actually supplied under the contract or subcontract until all liens that may be claimed against the holdback in respect of the supplied services or materials have expired or been satisfied, discharged or otherwise provided for under this Act. R.S.O. 1990, c. C.30, s. 22 (1); 2017, c. 24, s. 17 (1), 66; 2024, c. 20, Sched. 4, s. 25.

**Separate holdback for finishing work**

(2) Where the contract has been certified or declared to be substantially performed but services or materials remain to be supplied to complete the contract, the payer upon the contract, or a subcontract, under which a lien may arise shall retain, from the date certified or declared to be the date of substantial performance of the contract, a separate holdback equal to 10 per cent of the price of the remaining services or materials as they are actually supplied under the contract or subcontract, until all liens that may be claimed against the holdback have expired or been satisfied, discharged or otherwise provided for under this Act.Section 31

**Rules governing certification or declaration of substantial performance**

**32** (1) The following rules govern the certification and declaration of the substantial performance of a contract:

1. On the application of the contractor, the payment certifier shall determine whether the contract has been substantially performed in accordance with section 2, and, if the payment certifier so determines, shall certify the substantial performance of the contract by signing a certificate in the prescribed form. If there is no payment certifier, the owner and contractor shall make the determination jointly and shall both sign the certificate.

2. The payment certifier or the owner and the contractor jointly, as the case may be, shall set out in the certificate the date on which the contract was substantially performed.

3. The date set out in the certificate as the date on which the contract was substantially performed is deemed for the purpose of this Act to be the date on which that event occurred.

4. Where the payment certifier certifies the substantial performance of a contract the payment certifier shall within seven days of the day the certificate is signed give a copy of the certificate to the owner and to the contractor.

5. The contractor shall publish a copy of the certificate in the manner set out in the regulations.

6. Where the contractor does not publish a copy of the certificate within seven days of receiving a copy of the certificate signed by the payment certifier or, where there is no payment certifier, signed by the owner, any person may publish a copy of the certificate.

7. Where there is a failure or refusal to certify substantial performance of the contract within a reasonable time, any person may apply to the court, and the court, upon being satisfied that the contract is substantially performed, and upon such terms as to costs or otherwise as it considers fit, may declare that the contract has been substantially performed, and the declaration has the same force and effect as a certificate of substantial performance of the contract.

8. Unless the court otherwise orders, the day the declaration is made shall be deemed to be the date the contract was substantially performed.

9. The person who applied to the court shall publish a copy of the declaration of substantial performance in the manner set out in the regulations.

10. For the purposes of this Part, a certificate or declaration of the substantial performance of a contract has no effect until a copy of the certificate or declaration is published.

**Contents of certificate**

(2) Every certificate or declaration made or given under this section shall include,

(a) the name and address for service of the owner and of the contractor;

(b) the name and address of the payment certifier, where there is one;

(c) a short description of the improvement;

(d) the date on which the contract was substantially performed;

(e) if the lien attaches to the premises, a legal description of the premises, including all property identifier numbers and addresses for the premises; and

(f) if the lien does not attach to the premises, a concise description of the premises, including addresses, and the name and address of the person or body to whom a copy of the claim for lien must be given under section 34.

**Liability for refusal to certify**

(3) Any person who is required by this section to make a determination of the substantial performance of a contract, and who after receiving an application fails or refuses within a reasonable time to certify the substantial performance of the contract, even though there is no reasonable doubt that the contract has, in fact, been substantially performed, is liable to anyone who suffers damages as a result.

**Liability for failure to furnish copy of certificate**

(4) A payment certifier who fails to comply with paragraph 4 of subsection (1) is liable to anyone who suffers damages as a result.

**Vacating lien by payment into court**

**Without notice**

**44** (1) Upon the motion of any person, without notice to any other person, the court shall make an order vacating,

(a) where the lien attaches to the premises, the registration of a claim for lien and any certificate of action in respect of that lien; or

(b) where the lien does not attach to the premises, the claim for lien,

where the person bringing the motion pays into court, or posts security in an amount equal to, the total of,

(c) the full amount claimed as owing in the claim for lien; and

(d) the lesser of $250,000 or 25 per cent of the amount described in clause (c), as security for costs.

**On payment in of reasonable amount**

(2) Upon the motion of any person, the court may make an order vacating the registration of a claim for lien, and any certificate of action in respect of that lien, upon the payment into court or the posting of security of an amount that the court determines to be reasonable in the circumstances to satisfy the lien.

**Referral of reference**

**58** (1) On motion made after the delivery of all statements of defence, or the statement of defence to all crossclaims, counterclaims or third party claims, if any, or after the time for their delivery has expired, a judge may refer the whole action or any part of it for trial,

(a) to an associate judge;

(b) to a person agreed on by the parties; or

(c) if the action is for an amount that is within the monetary jurisdiction of the Small Claims Court, as set out under section 23 of the Courts of Justice Act, to a deputy judge of that Court or to the Small Claims Court Administrative Judge.

**Persons who comprise class**

**79** All persons having a lien who have supplied services or materials to the same payer comprise a class, and a person who has supplied services or materials to more than one payer is a member of every class to the extent to which the person's lien relates to that class.

**Priority between and within class**

**80** (1) Except where it is otherwise provided by this Act,

(a) no person having a lien is entitled to any priority over another member of the same class;

(b) all amounts available to satisfy the liens in respect of an improvement shall be distributed rateably among the members of each class according to their respective rights; and

(c) the lien of every member of a class has priority over the lien of the payer of that class.

**Where conveyance or mortgage void**

(2) Any conveyance or mortgage in respect of the premises to any person entitled to a lien on the premises, in payment of or as security for that claim, whether given before or after that lien arises, is void against all other persons entitled to a lien on the premises.

***Courts of Justice Act*, RSO 1990, c C.43**

**Multiplicity of proceedings**

138 As far as possible, multiplicity of legal proceedings shall be avoided.

**SCHEDULE "C"**

**LAWYER'S CERTIFICATION**

I certify that I am satisfied as to the authenticity of every authority cited in this factum.

*Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, is a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).*

Date: July 27, 2026

Signature

**Cristina Fulop** (LSO #82224H)

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1001387025 ONTARIO INC.**

Court File No. CV-25-00748510-00CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

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