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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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.

Applicants

RESPONDING FACTUM OF QM GP INC.
(RE: Phantom Disposal Motion returnable July 28, 2026)

July 24, 2026

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TO: THE SERVICE LIST

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PART I – OVERVIEW

1. QM GP Inc. ("**New QM**") is effectively the purchaser of the Applicants' business in this matter as a result of an Approval and Reverse Vesting Order ("**ARVO**") granted in this proceeding. It files this factum in opposition to a motion by 2386843 Ontario Inc. o/a Phantom Disposal for leave to continue an action issued in violation of the stay of proceedings in this matter.

2. The problem with Phantom Disposal's motion is that part of the Statement of Claim for which (retroactive) leave is requested seeks relief that is barred by the ARVO. In particular, the Statement of Claim appears to seek relief against assets that were expressly vested in New QM, and against which all claims were expressly released. Phantom Disposal's Factum clears up any possible ambiguity on that point by making that intent express.

3. Those portions of the claim are untenable and would amount to a collateral attack on the ARVO and on the basis of the transaction by which New QM assumed the business of the Applicants in a going concern transaction approved by this Court under authority of the CCAA. That would be problematic on its own, but is all the more so when:

a) what Phantom Disposal now attacks was expressly sought in the motion materials for the ARVO and in the Court's resulting endorsement;

b) Phantom Disposal did not attend, much less object to, the motion for the ARVO; and

c) neither did Phantom Disposal seek to appeal the ARVO.

4. Leave should not be granted for Phantom Disposal's Statement of Claim to continue without requiring that the untenable claims be deleted in order to maintain the coherence of these proceedings and to ensure compliance with prior orders.

PART II – FACTS

A. The CCAA Proceedings

5. The proceedings in this matter were in brief as follows:

   a) on July 29, 2025, QM GP Inc. and Highpoint Environmental Services Inc. as Applicants sought and obtained an initial order under the CCAA;[1]

   b) at the same time, the Applicants sought and obtained a Lien Regularization Order ("**LRO**") in order to govern the process by which liens could be asserted against projects on which the Applicants were engaged but without halting the flow of funds in the same manner as would normally be the case with processes under the *Construction Act*;[2]

   c) on August 7, 2025, the comeback hearing was held, which resulted in an amended and restated initial order and also an order approving a sales and solicitation process ("**SISP**");[3]

   d) the SISP resulted in a bid by WeShall Investments Inc., which was the shareholder of the Applicants, to acquire the business on a going concern basis by way of a reverse vesting order;

   e) on October 24, 2025, a motion for the ARVO in connection with that transaction was granted by the Court; and[4]

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[1] The Fifth Report of the Monitor dated May 13, 2026 ("**Fifth Report**") at para 1.1.

[2] Fifth Report at para 1.3; Fifth Report, Appendix A, Lien Regularization Order of Justice Steele dated July 29, 2025.

[3] Fifth Report at para 1.4; Affidavit of James Dunn affirmed March 25, 2026, Tab B of the Phantom Disposal's Motion Record dated March 25, 2026 ("**Dunn Affidavit**"), Exhibit 11, SISP Approval Order of Justice Steele dated August 7, 2025.

[4] Fifth Report at para 1.5; Fifth Report, Appendix B, Approval and Reverse Vesting Order of Justice Cavanagh dated October 24, 2025 ("**ARVO**"); Dunn Affidavit, Exhibit 13, Approval and Vesting Order of Justice Cavanagh dated October 24, 2025.

f) following closing of that transaction (and the usual renaming of this proceeding in the name of the ResidualCo into which the liabilities of the Applicants were vested in the ARVO), the Monitor has been administering the estate of ResidualCo, and in aid of that the Court has extended the stay of proceedings in that regard twice, with the stay now extended to October 30, 2026.[5]

6. Part of the restructuring pursued by the Applicants involved an analysis of which construction contracts and projects they wished to continue, and which they did not. The former were included in the provisions of the LRO as "Continuing Projects", while the latter were not included in the LRO and were moreover the subject of CCAA disclaimers.[6]

7. The going concern transaction by which New QM expressly contemplated that it would acquire the Continuing Projects free and clear. All rights in connection with the Continuing Projects, including the accounts receivable, were expressly vested in New QM, and all claims in connection with those projects were vested in ResidualCo and released as against New QM and the relevant assets.[7]

8. The ARVO had further specific provisions in respect of lien claims. It specifically prohibited any lien claim in respect of a Continuing Project for any pre-filing work by a claimant and restricted such claims to ResidualCo's assets.[8] For greater certainty, the ARVO went on in para. 19 to state the following:

> For clarity, Pre-Filing Lien Claims are Excluded Liabilities vested in ResidualCo and any holder of a Pre-Filing Lien Claim <u>may not claim against any Owner (as defined in the LRO), any other payor on a Continuing Project or any Holdback (as defined in the LRO) amount in respect of a Continuing Project with respect to such Pre-Filing Lien Claim and the sole remedy for such claimants in respect of a Pre-Filing Lien Claim shall be against ResidualCo;</u> *provided*, *however*, that nothing in

[5] ARVO; Dunn Affidavit, Exhibit 14, Ancillary Relief Order of Justice Cavanagh dated October 24, 2025.
[6] Fifth Report at para 1.3.
[7] Fifth Report at para 1.7; ARVO at para 6(c).
[8] ARVO at paras 19-20.

> this sentence shall be construed so as to affect the rights of any Person under a Bond (as defined in the LRO) (emphasis added)[9]

9. The ARVO then also effectively removed the LRO's restrictions on the payment of holdback funds in para. 20, and to effectively state that normal construction law provisions would apply thereafter.[10] In view of the vesting of the Continuing Projects in New QM, the release of any claims against those assets, and the prohibition of lien claims as noted above, this had the practical effect of allowing/compelling the payment of funds to New QM going forward.

10. The intended effect of barring any lien claims against a Continuing Project was expressly at issue in the motion for the ARVO. The Court's endorsement granting the ARVO specifically commented as follows:

> **Should the Court Prevent the Enforcement of Pre-Filing Lien Claims?**
>
> [15] <u>As part of the RVO, the Applicants are also seeking relief to prevent any person from preserving or perfecting a Pre-Filing Lien Claim on any Continuing Project Contracts in respect to services or work performed prior to the Filing Date</u>.
>
> [16] Following the commencement of the CCAA Proceedings, the Court granted the Lien Regularization Order on August 7, 2025 ("LRO") which specifically governed claims under Provincial Lien Legislation (as defined in the LRO) related to the Continuing QM Projects. The LRO operated by staying the rights of any person who had a Lien Claim to serve, register, preserve, or perfect that claim against the projects. Instead of pursuing individual project security, the LRO provided a centralized process. Lien Claimants were required to assert their interests by delivering a Lien Notice to the Monitor. This mechanism was intended to support the Company's flow of funds and minimize disruption to the restructuring efforts caused by piecemeal lien registrations.
>
> [17] I am satisfied that this relief is appropriate in the circumstances. <u>The Pre-Filing Lien Claims will be vested out to ResidualCo and can be advanced as a claim against the Lien Charge against the proceeds of the Transactions</u>. (emphasis added)[11]

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[9] ARVO at <u>para 19</u>.
[10] ARVO at <u>para 20</u>.
[11] Endorsement of Justice Cavanagh dated October 24, 2025 (CV-25-00748510-00CL) ("**October 24 Endorsement**") at <u>paras 15-17</u>.

B. Phantom Disposal's position in the CCAA Proceedings

11. Phantom Disposal complains in its materials that the initial order, the LRO and the amended and restated initial order were obtained on little notice to lien claimants.[12]

12. It is unclear how that pertains to the issues on this motion. What is, however, clear is that Phantom Disposal sought no reconsideration or variation of those orders.

13. Of greater pertinence to this motion is the fact that Phantom Disposal did not appear at, much less oppose, the hearing for the ARVO.[13]

14. Phantom Disposal similarly took no steps to seek to appeal the ARVO.

15. Its first litigation step in this proceeding was to seek leave retroactively for the lien claim that it filed, and the Statement of Claim it subsequently issued in support of that lien claim, which is what is before the Court now.

C. The Phantom Disposal Statement of Claim

16. Phantom Disposal registered a claim for lien on August 22, 2025.[14] It issued a Statement of Claim thereafter on November 20, 2025.[15] Phantom Disposal claims in respect of work that it did at 131 Farnham Avenue in Toronto, which is the premises of De La Salle College "Oaklands" (the "**Premises**").[16]

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[12] Factum of the Moving Party, 2386845 Ontario Inc. o/a Phantom Disposal dated July 20, 2026 ("**Phantom Factum**") at para 8.
[13] October 24 Endorsement.
[14] Dunn Affidavit, Exhibit 21, Registered Claim for Lien (Phantom – Instrument No. AT6887642).
[15] Dunn Affidavit, Exhibit 24, Statement of Claim (Phantom Lien Action - CV-25-0755681-0000) ("**Statement of Claim**")
[16] Statement of Claim at para 6.

17. The Phantom Disposal Statement of Claim named, among others, ResidualCo and also New QM as defendants.[17] Prior to this motion, Phantom Disposal sought neither leave nor consent of the Applicant under these proceedings and of the Monitor.

18. The Statement of Claim is not clear, however, as to whether it claims relief against New QM.

19. The uncertainty arises because the former Applicants had two contracts at the Premises, one for demolition work and one for excavation work. The Applicants in the CCAA proceeding elected to keep the former as a Continuing Project, and to disclaim the latter and to therefore not include it in the LRO.[18]

20. The Statement of Claim on the one hand appears to acknowledge that the former Applicants had two contracts at the Premises, and that in turn the former Applicants entered into two subcontracts with Phantom Disposal and invoiced the former Applicants on that basis.[19]

21. The Statement of Claim goes on, however, to effectively plead that such a distinction should not be recognized by the Court.[20]

22. Since bringing this motion, Phantom Disposal has discontinued the claim against New QM. This appears to be an attempt to make it seem like Phantom Disposal's claims do not run afoul of the ARVO.

23. Phantom Disposal's Factum in support of this motion helps resolve some of the uncertainty resulting from the wording of the Statement of Claim and the discontinuance against New QM. It clarifies that while Phantom Disposal is only asserting claims in respect of the

[17] Statement of Claim at paras 4 and 5.
[18] Fifth Report at para 4.3; Dunn Affidavit, Exhibit 8, Fourth Amended Schedule "A" to LRO (Monitor Website) at 44; Exhibit 9, Notice of Disclaimer dated July 31, 2025 ("**Notice of Disclaimer**").
[19] Statement of Claim at paras 8, 11, and 12.
[20] Statement of Claim at paras 9, and 13.

disclaimed contract, which was therefore not a Continuing Contract within the meaning of the ARVO, Phantom Disposal does also say that its collection remedies extend to the funds payable under the Continuing Project to which the ARVO does apply.[21]

24. Phantom Disposal's claim therefore does make claims against assets and rights of New QM, including asserted priority over its rights in the proceeds of the Continuing Project at the Premises, even if ostensibly not including New QM as a party anymore.

PART III – ISSUES & ARGUMENT

25. For New QM, the sole issue on this motion is whether leave should be granted for the Phantom Statement of Claim (albeit retroactively) when it makes claims against the Continuing Project at the Premises and therefore against New QM's interests in that regard?

26. The answer is "no", for two reasons:

a) Firstly, the ARVO prohibits such claims, which are therefore impermissible under several doctrines.

b) Secondly, to the extent that it is relevant, the Court had ample jurisdiction to make the impugned provisions of the ARVO even if they alter what would otherwise happen under provincial lien legislation.

A. The portions of the Phantom Disposal Statement of Claim seeking relief against a Continuing Project that is now the property of New QM are an impermissible attack on prior Court Orders

27. The Statement of Claim requested by Phantom cannot be granted by virtue of the interrelated but distinct doctrines of collateral attack, issue estoppel, and abuse of process.[22] On its face, Phantom's motion is an attempt to do indirectly what it is not entitled to do directly

[21] Phantom Factum at paras 29, 33, 47 and 49.
[22] *Becker v Walgate*, 2025 ONCA 696 at para 32 ("***Becker***").

because of a prior court order. This is the very essence of a collateral attack, is an abuse of process, and is barred by *res judicata*.

(1) The Phantom Motion is a Collateral Attack on Prior Orders of this Court

28. It is trite law that an order pronounced by a court of competent jurisdiction should not be brought into question in subsequent proceedings except those provided by law for the express purpose of attacking it.[23] This is not that case.

29. As the Ontario Court of Appeal recently stated in *Becker v Walgate*,

> "The rule against collateral attacks prevents a party from challenging the validity of a binding order in the wrong forum: *Wilson v. The Queen* [1983] 2 S.C.R. 594, at p. 599; *Garland v. Consumers' Gas Co*, 2004 SCC 25 at para. 72; and *Canada (Attorney General) v. TeleZone Inc*, 2010 SCC 62 at para. 60. The rule is meant to protect the integrity of the justice system by stopping attempts to circumvent the consequences of an order: *Garland*, at para. 72."[24] [Emphasis added].

30. The ARVO is a final order. Any attack on the relief granted therein should not be taken lightly. Phantom had the opportunity to appeal the ARVO if it felt, as it now asserts, that the ARVO is wrong at law with respect to the Phantom Lien Action. It did not. A motion is not the appropriate forum to determine whether the ARVO should be overridden.

31. In *Thrive Capital Management Ltd. v Noble 1324 Queen Inc.,* 2020 ONSC 8195, the Ontario Superior Court denied a motion brought by mortgagees seeking payment from proceeds of a sale approved by a prior court order. In his decision to deny the mortgagees' motion, Koehnen J. found that the mortgagees were estopped from bringing the motion by the principles of issue estoppel and collateral attack.[25] As in the present case, the mortgagees were given notice of the

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[23] *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 at para 20 ("***Danyluk***"); *See also Inter Pipeline Ltd v Teine Energy Ltd*, 2025 ABCA 368 at para 9, *citing Ernst & Young Inc v Central Guaranty Trust Company*, 2006 ABCA 337 at para 47.
[24] *Becker* at para 28.
[25] *Thrive Capital Management Ltd. v Noble 1324 Queen Inc.*, 2020 ONSC 8195 at para 6 ("***Thrive Capital***").

hearing where the sale was approved and served with the materials. The mortgagees did not attend the hearing and did not submit any responding material. The Court stated,

> "Their failure to attend on July 13 constitutes a collateral attack on the sale order I made on that day. Their motion before me today is, in effect, a motion that reverses, varies or nullifies the financial effect of the order I made on July 13. That amounts to a collateral attack on the July 13 order: *Sabre Inc. v. International Air Transport Association*, 2009 CanLII 71004Ont SCJ Commercial List at para 13.
>
> Their motion is also barred by the concept of issue estoppel. Issue estoppel prevents litigation of matters previously considered by the court. The subject matter of issue estoppel includes conclusions of law, as well as facts and conclusions that were "fundamental to the decision arrived at" or were "necessarily bound up" with an earlier determination: *Danyluk v Ainsworth Technologies* 2001 SCC 44 at para 24; *The Catalyst Capital Group Inc. v. VimpelCom Ltd* 2019 ONCA 354 (CanLII), at para 27. Whether the First Mortgagees had made claims against the property beyond principal and simple interest owing on maturity was an issue on July 13. The First Mortgagees had notice of that issue and should not now be allowed to relitigate it."[26]

(2) The Phantom Motion is Barred by the Doctrine of Issue Estoppel

32. The doctrine of issue estoppel is a branch of *res judicata* that precludes the re-litigation of issues that have already been decided in a different proceeding.[27] There are three preconditions to invoking issue estoppel.[28] All are met in this case.

(a) *The Issues are the Same*

33. The first precondition of issue estoppel is that the issue be the same as the one decided in the prior order.[29] Phantom's motion effectively asks this Court to allow the Phantom Lien Action against New QM.[30] The ARVO already established that Phantom does not have a claim against New QM.[31] The issue before this Court is the same.

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[26] *Thrive Capital* at paras 20-21.
[27] *Danyluk* at para 20.
[28] *Danyluk* at paras 24-25, *citing Angle v M.N.R.*, 1974 CanLII 168 (SCC), [1975] 2 SCR 248 at p 254 ("***Angle***"); *See also McIntosh v Parent* 1924 CanLII 401 (ON CA), [1924] 4 D.L.R. 420 (Ont. C.A.) at p 422.
[29] *Danyluk* at para 25, *citing Angle* at p 254.
[30] Notice of Motion dated March 25, 2026, Tab A of the Phantom Disposal's Motion Record dated March 25, 2026 at paras 25 and 32.
[31] ARVO at para 19.

(b) *The Order was Final*

34. The second precondition for invoking issue estoppel is that the prior order be a final order.[32] The ARVO is a final order approving, among other things, the QM Transaction and vesting out the assets and liabilities of the QM Parties in accordance with the Subscription Agreement.[33] It was not appealed.[34] As such, the second precondition is met.[35]

(c) *The Same Parties are Involved*

35. The third precondition for invoking issue estoppel is that the parties involved in both matters be the same.[36] The QM Parties were the only named parties in the CCAA Proceeding. Phantom was a stakeholder involved in the CCAA Proceeding from the outset. Phantom was served with the notice of disclaimer on the Non-Continuing QM Project at De La Salle College, immediately after the CCAA Proceeding commenced.[37] Thereafter, Phantom was served with all material from the CCAA Proceeding via the service list maintained by the Monitor.[38]

36. Phantom had the opportunity to file material or make submissions at the ARVO hearing regarding its position that the Phantom lien claim is sheltered under another lien claim such that leave is not required and Phantom is permitted to claim against New QM despite the ARVO.[39] It did not.

37. As the Supreme Court highlighted in *Danyluk,*

> "The law rightly seeks a finality to litigation. To advance that objective, it requires litigants to put their best foot forward to establish the truth of their allegations when

[32] *Danyluk* at para 25.
[33] *Extreme Retail (Canada) Inc. v Bank of Montreal*, 2007 CanLII 36637 (ON SC) at paras 20-22, *citing Air Canada Pilots Association v Air Canada Ace Aviation Holdings Inc.*, 2007 CanLII 337 (ON SC) at para 44; See also *Danyluk* at para 20.
[34] *Kowarsky v Hunt Estate*, 2022 BCSC 2257 at para 54 ("***Kowarsky***")
[35] *Kowarsky* at paras 53-54.
[36] *Danyluk* at para 25.
[37] Fifth Report at para 4.3; Notice of Disclaimer.
[38] *See* the Monitor's website, showing that Phantom was served with all relevant CCAA materials through its inclusion on the service list.
[39] Dunn Affidavit, Exhibit 35, Letter to Monitor re Consent to Lift Stay dated February 22, 2026.

first called upon to do so. A litigant, to use the vernacular, is only entitled to one bite at the cherry. The appellant chose the ESA as her forum. She lost. An issue, once decided, should not generally be re-litigated to the benefit of the losing party and the harassment of the winner. A person should only be vexed once in the same cause. Duplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided."[40] [Emphasis added].

38. The same principles and reasoning apply to the motion at hand.

39. In *Re Cliffs Over Maple Bay*, the British Columbia Court of Appeal reversed the lower court's order granting an application for the disposition of funds on the basis that the application engaged the doctrine of issue estoppel.[41] Like the instant case, *Re Cliffs* involved a proceeding under the CCAA. During the CCAA proceeding, the court made an order determining priority as between two creditors. That order was not appealed. The non-priority creditor then brought a separate application relying on the equitable doctrine of unjust enrichment and trust law to determine whether the funds had been advanced and unlawfully paid out from a trust account.[42] On appeal, the Court found that the application judge (who was the same judge that issued the prior order) had erred by granting the order regarding the disposition of funds.[43] The Court held that the determination of priority was a final order and that the doctrine of issue estoppel was engaged,

> "[…] The question for us is whether the chambers judge proceeded on a wrong principle or failed to give weight or sufficient weight to valid considerations in exercising his discretion as he did. In my view, he did err in failing to recognize the finality of his earlier order as between Century and Fisgard Liberty and in failing to give consideration to the narrowness of the circumstances in which his discretion could properly be exercised. It cannot be said "special circumstances" existed here: this was a monetary dispute between sophisticated lenders that had been decided in favour of one of them, and it was not open to the Court to change its mind in favour of a party that had thought of additional arguments that it could and should have mounted at the previous hearing. No overriding question of fairness was engaged. Indeed, in my view, it would be unfair to permit Century's arguments to prevail. I would allow the appeal on this ground."[44]

[40] *Danyluk* at para 18.
[41] *Cliffs Over Maple Bay (Re)*, 2011 BCCA 180 at para 71 ("***Re Cliffs***").
[42] *Re Cliffs* at paras 1-3.
[43] *Re Cliffs* at para 41.
[44] *Re Cliffs* at para 48.

40. The Phantom Lien Action violates the ARVO and should never have been issued. To request that this Court stamp the claim with approval *nunc pro tunc* is contrary to the principles stated above.

(3) The Phantom Motion is an Abuse of Process

41. Abuse of process is a flexible doctrine that engages the Court's inherent power to protect the administration of justice and prevent it from being brought into disrepute.[45] It is a doctrine based on fairness and stands as its own canon while housing the more particularized doctrines of issue estoppel and collateral attack.[46]

42. As the Ontario Court of Appeal stated in *Becker*,

> "The doctrine of abuse of process applies in a variety of legal contexts: *C.U.P.E.*, at para. 36; *Behn v. Moulton Contracting Ltd*, 2013 SCC 26, at para. 39. Unlike the doctrines of *res judicata* or issue estoppel, abuse of process is characterized by its flexibility and is not encumbered by specific requirements: *C.U.P.E.*, at para. 42; *Behn* , at para. 40; and *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, at para. 35. Ultimately, it serves to prevent the pursuit of litigation that would "violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice": *C.U.P.E.*, at para. 37."
>
> Amongst other matters, the doctrine of abuse of process serves to prevent the relitigation of issues that have already been decided: C.U.P.E., at para. 37. It can also apply to issues that could have been determined in prior proceedings: *Aba-Alkhail v. University of Ottawa*, 2013 ONCA 633, at para. 12, leave to appeal refused, [2013] S.C.C.A. No. 491; *Winter v. Sherman Estate*, 2018 ONCA 703, at para. 7, leave to appeal refused, [2019] S.C.C.A. No. 438; *The Catalyst Capital Group Inc. v. VimpelCom Ltd*, 2019 ONCA 354, at para. 67, leave to appeal refused, [2019] S.C.C.A. No. 284; and *Quinn v. British Columbia*, 2018 BCCA 320, at para. 84, leave to appeal refused, [2018] S.C.C.A. No. 463."[47] [Emphasis added].

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[45] *Toronto (City) v C.U.P.E., Local 79*, 2003 SCC 63 at para 37 ("***Toronto (City)***"), *citing Canam Enterprises Inc. v Coles* (2000), 2000 CanLII 8514 (ON CA) at para 55, *per* Goudge J.A., dissenting (approved 2002 SCC 63)); **See also** *Saskatchewan (Environment) v Métis Nation – Saskatchewan*, 2025 SCC 4 at para 33.
[46] *Toronto (City)* at para 38; *Danyluk* at paras 20-22.
[47] *Becker* at paras 33-34.

43. Phantom's motion is unquestionably an abuse of process. Phantom seeks to both circumvent the appeals process and make up for its failure to argue its position at the ARVO hearing.

44. In *Marsh Engineering Ltd. v Deloitte & Touche Inc.*, the Ontario Superior Court denied a motion for leave to commence a claim under s. 215 of the *Bankruptcy and Insolvency Act*, finding that the allegations in the claim were *res judicata* and that the claim itself constituted an abuse of process.[48] The Court highlighted that the moving party had participated in the receivership proceedings and did not contest the prior order approving the payments it was now attempting to dispute.[49] The Court stated,

> "As well, all of the payments to the Bank were approved by Order of the Court. The individual plaintiff participated in the receivership proceedings and did not contest the approval of the payments to the Bank. The plaintiffs' allegations amount to a collateral attack upon the several Court Orders approving the actions of the Receiver. In particular, the plaintiffs' allegations against the Bank in the action at hand amount to a collateral attack upon the Court's Approval Order of July 11, 2000. The litigation at hand is in essence an attempt by the plaintiffs to re-litigate a claim which the Court has already implicitly determined through the Approval Orders. *Toronto (City) v. C.U.P.E., Local 79 (2003),* 232 D.L.R. (4th) 385 (S.C.C.). The action at hand constitutes an abuse of process.
>
> In my view, the doctrine of issue estoppel also applies: *Danyluk v. Ainsworth Technologies Inc. (2001)*, 201 D.L.R. (4th) 193 (S.C.C.) at paras. 18-19. There is a public interest in the finality of litigation. The question of the propriety of the payments to the Bank, and the merit of the Bank's underlying claim to such payment, is the same question in essence raised in the claim of the plaintiffs at hand; the Approval Order of July 11, 2000 was final; and the parties to that Order were the parties in the present proceeding. There are not any special circumstances in the case at hand which would justify the Court exercising its discretion against applying issue estoppel and in favour of allowing the plaintiffs to upset the prior determination made in the receivership proceedings by the Approval Order."[50]

45. Similarly, in *Kowarsky v Hunt Estate*, the British Columbia Supreme Court denied an application seeking to vacate two prior orders on the basis that the application was an abuse of

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[48] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 215; *Marsh Engineering Limited v Deloitte & Touche Inc.*, 2008 CanLII 68125 (ON SC) at para 33 ("***Marsh Engineering***").
[49] *Marsh Engineering* at paras 27-28.
[50] *Marsh Engineering* at paras 38-39.

process.[51] The orders at issue were (i) an order extending the redemption period pursuant an order *nisi*, and (ii) an order granting conduct of sale.[52] The Court held that the orders could not be "vacated" as the notice of application sought. The Court went on to say that the two orders remain in place unless set aside pursuant to the rules of court or appealed. Neither was sought on the application. The Court also expressed that the applicant could and should have raised the issues when he was given notice of the order extending the redemption period. He failed to do so despite having the opportunity to make the same arguments made on the application, and thus his application amounted to an abuse of process.[53]

46. In *Becker*, a case involving the appeal of an application decision, the Ontario Court of Appeal found that the judge had erred in ruling that the elements of collateral attack were met but nevertheless upheld the underlying judgment because the application still constituted an abuse of process.[54] As the Court of Appeal stated,

> "The doctrine of collateral attack is not applicable in this case. The Beckers are not trying to attack or circumvent this court's 2020 order. There is no indication that they seek to avoid participating in a trial of the issues identified by this court. Rather, they are trying to add an issue for trial by supplementing the order.
>
> In *Toronto (City) v. C.U.P.E., Local 79,* 2003 SCC 63, at para. 22, the Supreme Court of Canada explained that the doctrine of collateral attack is a particular application of the broader doctrine of abuse of process. As I explain below, I have concluded that the doctrine of abuse of process is applicable here rather than the doctrine of collateral attack.
>
> […]
>
> In this case, the Beckers' second application is an abuse of process because it raises an issue that could and should have been raised on the original application."[55] [Emphasis added].

47. In the instant case, Phantom *is* trying to attack and circumvent the Court's prior order such that collateral attack is applicable. That being said, the Phantom motion is undoubtedly also an

[51] *Kowarsky* at paras 6 and 65.
[52] *Kowarsky* at para 2.
[53] *Kowarsky* at paras 5-6.
[54] *Becker* at para 31.
[55] *Becker* at paras 30-31 and 37.

abuse of process because it raises an issue that could and should have been raised at the ARVO hearing.

48. The Ontario Court of Appeal in *Becker* also clarifies an important point. The plaintiff in *Becker* tried arguing that the prior order gave rise to concerns over the interpretation and application of the *Rules of Civil Procedure*.[56] Similarly, Phantom argues that their motion and the Phantom Lien Action give rise to concerns over the interpretation and application of the Ontario *Construction Act*. As the Court of Appeal found in *Becker*, the issues before this Court are the proper interpretation of the ARVO.[57] Whether the *Construction Act* gives rise to any rights of Phantom that override the ARVO is a matter that should have been dealt with at first instance, or on appeal. This motion is not the right time or place for Phantom to assert its rights.

B. The CCAA Court had (ample) jurisdiction to make the ARVO even if it affected provincial lien legislation and claims

49. Strictly speaking, it is not relevant to consider or determine whether the ARVO was properly granted. The principles noted above are based on the presumption of the correctness of Court orders, and on the need for certainty and finality in the Court's process with the resulting requirement that a party aggrieved with a decision take the appropriate steps to challenge that decision in a timely manner.

50. That said, there should be no reason to doubt that the Court had jurisdiction to make the ARVO, including its determination as to the entitlement to the proceeds of the Continuing Projects and the delineation of what was, and was not, vested in New QM and in ResidualCo, respectively.

51. Both of those points are contested by Phantom Disposal. It asserts that it had, and should still have, rights in the proceeds of the Continuing Project at the Premises for its lien claim in

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[56] *Rules of Civil Procedure*, RRO 1990, Reg 194, s 1.04; *Becker* at para 5.
[57] *Becker* at para 43.

connection with the Non-Continuing Project at the Premises,[58] and says that lien rights are substantive rights that the CCAA Court should not have displaced.[59] It similarly says that the distinction between Continuing Projects and Non-Continuing Projects in the ARVO (and presumably in the LRO) contravenes the *Construction Act.*[60]

52. The arguments that Phantom Disposal makes are based on *Construction Act* provisions that would, if those arguments had been made in a timely fashion to object to or appeal from the ARVO, fail on the basis of conflict with the provisions of the CCAA and the determinations of this Court in this proceeding under that statute.

53. Any argument that a CCAA Court cannot alter the entitlement of lien claims is contradicted by a wealth of case law. A recent example is the decision of Justice Penny in *Waygar Capital Inc. v. Quality Rugs of Canada Limited*, where the Court noted the operational conflict between the trust provisions of the *Construction Act* and the CCAA, and concluded that the latter prevailed:

> [26]…While it is true that s. 8 trusts survive insolvency proceedings, it is equally clear that priorities created by provincial legislation may conflict with the court-ordered priority of a DIP charge under section 11.2. In that circumstance, there is an operational conflict and the court-ordered priority under the CCAA prevails to the extent of the conflict….
>
> [29] …While a statutory trust under provincial law may remain effective in an insolvency, it may not be effective if doing so would conflict with an order under the CCAA establishing a specific superior priority. This is because paramountcy would require that the trust be considered inoperative, in whole or in part, to the extent of the conflict: *Urbancorp*, at para. 45.[61]

54. The jurisdiction of the Court to authorize a disposition of the assets of a company subject to a CCAA proceeding on a free and clear basis is squarely addressed in section 36(6) of the Act, which provides that the Court may authorize a sale or disposition free and clear of any security,

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[58] Phantom Factum at paras 33, 49 and 67-69.
[59] Phantom Factum at paras 23-24.
[60] Phantom Factum at para 47.
[61] *Waygar Capital Inc. v Quality Rugs of Canada Limited*, 2024 ONSC 2486 at paras 26 and 29.

charge or other restriction.[62] This is reflected in the model approval and vesting order for this Court, which provides:

> THIS COURT ORDERS AND DECLARES that ….all of the Debtor's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, ***trusts or deemed trusts (whether contractual, statutory, or otherwise), liens,*** executions…(emphasis added).

55. This is also reflected in one of the more recent decisions from the Court of Appeal for Ontario dealing with *Construction Act* claims and entitlements, which is *Urbancorp Cumberland 2 GP Inc. (Re).*[63] The Court of Appeal quoted from the Supreme Court of Canada in *Indalex*, and commented that:

> "[a]s this passage from *Indalex* makes clear, there is one important exception to the recognition of provincial trusts (in favour of persons other than Her Majesty) in a CCAA proceeding: a provincial trust can lose its effect under the CCAA to the extent the doctrine of paramountcy requires that result."[64]

56. This Court was clearly alive to the objectives of the CCAA when it approved the ARVO and thereby preserved the going concern nature of the business of the former Applicants. The avoidance of the "devastating social and economic effects of bankruptcy or creditor initiated termination of ongoing business operations" referred to in the Supreme Court of Canada's decision in *Century Services*[65] has long grounded such discretion.

PART IV – RELIEF REQUESTED

57. New QM accordingly requests an Order:

a) refusing leave to Phantom Disposal on a retroactive basis for its Statement of Claim unless paragraph 13 thereof is struck;

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[62] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, s. 36(6).
[63] *Urbancorp Cumberland 2 GP Inc. (Re),* 2020 ONCA 197 ("***Urbancorp***")**.**
[64] *Urbancorp* at para 38.
[65] *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60 at para 59.

b) directing that Phantom Disposal's Statement of Claim may not assert any relief in respect of the Continuing Project at the Premises, whether against New QM directly or against any owner or payor of New QM; and

c) awarding New QM its costs of this motion as against Phantom Disposal.

PURSUANT TO RULE 4.06(2.1), THE UNDERSIGNED certifies that they are satisfied as to the authenticity of every authority cited in this factum.

G Schachter

Gabrielle Schachter (LSO No. 80244T)

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 24th DAY OF JULY, 2026

G Schachter

RECONSTRUCT LLP

SCHEDULE "A”
List of Authorities

1.	*Becker v Walgate*, 2025 ONCA 696
2.	*Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44
3.	*Inter Pipeline Ltd v Teine Energy Ltd*, 2025 ABCA 368
4.	*Ernst & Young Inc v Central Guaranty Trust Company*, 2006 ABCA 337
5.	*Thrive Capital Management Ltd. v Noble 1324 Queen Inc.*, 2020 ONSC 8195
6.	*Angle v M.N.R.*, 1974 CanLII 168 (SCC), [1975] 2 SCR 248
7.	*McIntosh v Parent* 1924 CanLII 401 (ON CA), [1924] 4 D.L.R. 420 (Ont. C.A.)
8.	*Extreme Retail (Canada) Inc. v Bank of Montreal*, 2007 CanLII 36637 (ON SC)
9.	*Air Canada Pilots Association v Air Canada Ace Aviation Holdings Inc.*, 2007 CanLII 337 (ON SC)
10.	*Kowarsky v Hunt Estate*, 2022 BCSC 2257
11.	*Cliffs Over Maple Bay (Re)*, 2011 BCCA 180
12.	*Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63
13.	*Canam Enterprises Inc. v. Coles* (2000), 2000 CanLII 8514 (ON CA) (approved 2002 SCC 63))
14.	*Saskatchewan (Environment) v Métis Nation – Saskatchewan*, 2025 SCC 4
15.	*Marsh Engineering Limited v Deloitte & Touche Inc.,* 2008 CanLII 68125 (ON SC)
16.	*Waygar Capital Inc. v Quality Rugs of Canada Limited*, 2024 ONSC 2486
17.	*Urbancorp Cumberland 2 GP Inc. (Re)*, 2020 ONCA 197
18.	*Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60

SCHEDULE "B"
Statutory Authorities

BANKRUPTCY AND INSOLVENCT ACT, RSC 1985, c B-3

No action against Superintendent, etc., without leave of court

215 Except by leave of the court, no action lies against the Superintendent, an official receiver, an interim receiver or a trustee with respect to any report made under, or any action taken pursuant to, this Act.

RULES OF CIVIL PROCEDURE, RRO 1990, Reg 194

Interpretation

General Principle

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

Proportionality

(1.1) In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding.

Matters Not Provided For

(2) Where matters are not provided for in these rules, the practice shall be determined by analogy to them.

"Party and Party" Costs

(4) If a statute, regulation or other document refers to party and party costs, these rules apply as if the reference were to partial indemnity costs.

"Solicitor and Client" Costs

(5) If a statute, regulation or other document refers to solicitor and client costs, these rules apply as if the reference were to substantial indemnity costs.

COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, C C-36

Assets may be disposed of free and clear

36(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* RSC 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)

Proceedings commenced at Toronto

RESPONDING FACTUM OF QM GP INC.
(RE: Phantom Disposal Motion returnable July 28, 2026)

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