



Court File No. CV-18-610236-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	WEDNESDAY, THE 25 <sup>TH</sup>
	)	
MADAM JUSTICE B.A. CONWAY	)	DAY OF SEPTEMBER, 2019

**IN THE MATTER OF THE RECEIVERSHIP OF  
2423402 ONTARIO INC.**

**BANK OF MONTREAL**

Applicant

- and -

**2423402 ONTARIO INC.**

Respondent

**ORDER**

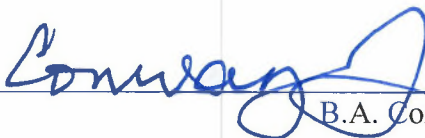
**THIS MOTION**, made by the Bank of Montreal in its capacity as administrative agent under the credit agreement (“**BMO**”) for various relief against Zurich Insurance Company Ltd. (“**Zurich**”), and Zurich’s cross-motion seeking to strike BMO’s motion, were heard on September 24, 2019 at 330 University Avenue, Toronto, Ontario, with oral reasons for judgment delivered this day.

**ON READING** the notices of motion, the affidavits of Eden Orbach sworn on May 6, 2019 and June 7, 2019, the affidavit of Adrian Braganza sworn May 31, 2019, the affidavit of Virginia Fletcher sworn September 23, 2019, the transcript of the cross-examination of Adrian Braganza taken on June 25, 2019, the transcript of the cross-examination of Eden Orbach taken on July 4, 2019, briefs of exhibits and answers to undertakings, and the factums and briefs of authorities of the parties, filed, and on hearing the submissions of counsel for each of BMO, Zurich and Alvarez & Marsal Canada Inc. in its capacity as receiver (the “**Receiver**”) of 2423402 Ontario Inc. (“**ProjectCo**”):

1. **THIS COURT DECLARES** that Bondfield Construction Company Limited (“**Bondfield**”) has been declared by the Receiver, on behalf of ProjectCo, to be in default in respect of its obligations to Project Co under the construction contract between Bondfield and ProjectCo dated August 28, 2014, that the letter from the Receiver to Zurich dated December 7, 2018 was a proper demand under Performance Bond No. 6342957 (the “**Performance Bond**”) on behalf of ProjectCo and that Zurich is obligated to select one of the four options listed in the Performance Bond, in accordance with the terms of the Performance Bond.

2. **THIS COURT ORDERS** that the balance of the motions are dismissed without prejudice to the parties returning to court for adjudication of those issues at a later date.

3. **THIS COURT ORDERS** Zurich shall pay to BMO within 30 days the costs of this motion, fixed in the amount of \$40,000.00, all-inclusive.

  
B.A. Conway J.

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ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

OCT 11 2019

PER / PAR:

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER**

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Lawyers for Bank of Montreal in its capacity as  
administrative agent under the credit agreement

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