

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

IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,  
R.S.O. 1990, c.C.30, AS AMENDED

AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.  
FOR THE APOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE  
*CONSTRUCTION LIEN ACT*, R.S.O. 1990, c.C.30, AS AMENDED

**MOTION RECORD OF SEREEN PAINTING LTD.**

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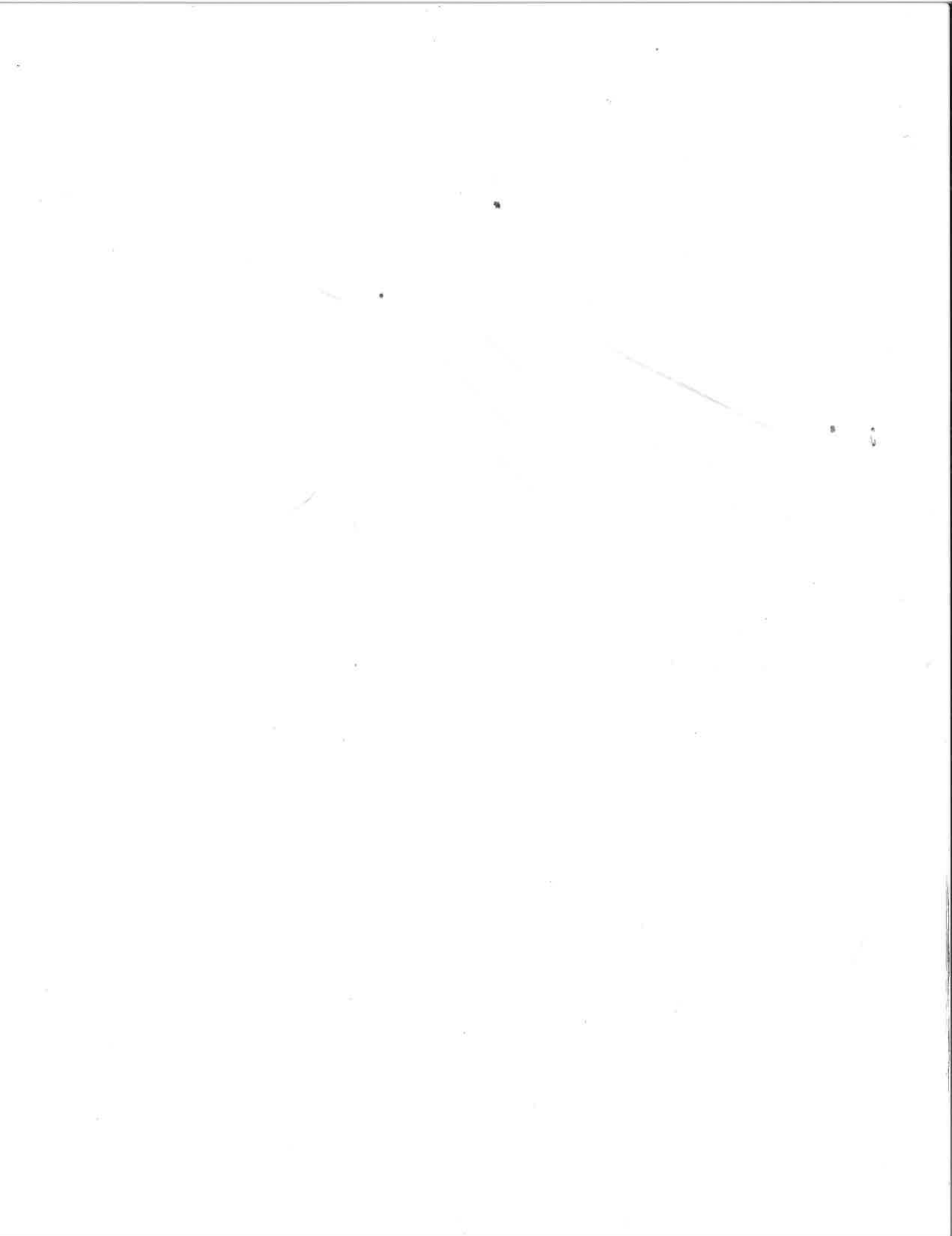
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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,  
R.S.O. 1990, c.C.30, AS AMENDED

AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.  
FOR THE APOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE  
*CONSTRUCTION LIEN ACT*, R.S.O. 1990, c.C.30, AS AMENDED

**NOTICE OF MOTION**

SEREEN PAINTING LTD. ("**Sereen**") will make a Motion to a Judge on Wednesday the 16<sup>th</sup> day of May, 2016 at 10:00 a.m., or as soon after that time as the Motion can be heard at the court house, 330 University Ave, Toronto, Ontario M5G 1R7.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard (choose appropriate option)

in writing under subrule 37.12.1(1) because it is (insert one of on consent, unopposed or made without notice);

in writing as an opposed motion under subrule 37.12.1(4);

orally.

**THE MOTION IS FOR** (State here the precise relief sought)

- (a) An Order for payment by the Monitor to Sereen Painting Ltd. in the amount of \$74,749.00 in the form of the draft Order included in the Motion Record;
- (b) Leave to bring this motion if necessary;

- (c) An abridgment of time for the service and filing of this motion if necessary;
- (d) The costs of this motion on a substantial indemnity basis; and
- (e) Such further and other Relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THE MOTION ARE**

1. 144 Park Ltd. (the "**Company**") contracted with Screen Painting Ltd. (the "**Lien Claimant**") to supply materials and/or services in connection with construction of a 19 story, 149 unit residential condominium building and 8 townhouses (the "**Project**") situate upon the real property municipally known as 144 Park Street, Waterloo, Ontario (the "**Property**").
2. The Company is the registered owner of the Property.
3. Laurentian Bank of Canada (the "**Laurentian**") provided construction financing to the Company to fund the Project (the "**Laurentian Loan**").
4. The Laurentian Loan is secured by, among other things, a mortgage registered against the Property on May 25, 2012 in favour of Laurentian as instrument number WR690395 in the principal amount of \$40,000,000.00 (the "**Laurentian Mortgage**").
5. Aviva Insurance Company of Canada ("**Aviva**") provided construction financing to the Company to fund the Project (the "**Aviva Loan**").
6. The Aviva Loan is secured by, among other things, a mortgage registered against the Property on September 1, 2011 in favour of Aviva as instrument number WR639368 in the principal amount of \$8,500,000.00 (the "**Aviva Mortgage**").
7. Allen Street Holdings Inc. ("**Allen Street**") provided construction financing to the Company to fund the Project (the "**Allen Street Loan**").

8. The Allen Street Loan is secured by, among other things, a mortgage registered against the Property on September 1, 2011 in favour of the Allen Street as Instrument Number WR639369 in the principal amount of \$3,000,000.00 (the "**Allen Street Mortgage**").

9. Marshallzehr Group Inc. ("**MGI**") provided construction financing to the Company to fund the Project (the "**MGI Loan**").

10. The MGI Loan is secured by, among other things, a mortgage registered against the Property on December 13, 2011 in favour of the MGI as instrument number WR660381 in the principal amount of \$2,887,696.00 (the "**MGI Mortgage**").

11. The Lien Claimant supplied materials and services for the Project to the improvement of the Property with a value of \$747,490.55.

12. The Lien Claim submitted invoices to the Company in the amount of \$747,490.55, of which the Company paid \$401,538.55, leaving a balance owing to the Lien Claimant of \$345,952.00.

13. The Lien Claimant registered a construction lien against the Property on December 22, 2014 in the amount of \$345,952.00 as Instrument Number WR858991 (the "**Construction Lien**").

14. The Lien Claimant commenced an action in the Ontario Superior Court of Justice, Court File No. C-160-15 naming, among others, Laurentian, Aviva, Allen Street and MGI, as defendants (the "**Lien Action**").

15. In total 20 construction lien claimants registered construction liens on the Property. The aggregate face amount of those liens total \$4,333,788.00.

16. Pursuant to the Order of Justice Newbould made on January 22, 2015 (the "**Initial Order**"), the Company brought an application for the appointment of a trustee (the "**CLA Proceedings**") under section 68 (1) of the *Construction Lien Act* (the "**CLA**"). The Initial Order appointed Collins Barrow Toronto Limited (the "**Trustee**") as Trustee in the CLA Proceedings.

17. Pursuant to the Order of Justice Wilton-Siegel made on April 23, 2015, the Trustee was ordered and directed to implement and administer a construction lien claims process (the "**Claim Process Order**"). The Claims Process Order authorized and directed the Trustee to make recommendations to the court regarding the determination of holdback(s) and priorities with respect to the improvement of the Property, including priorities with respect to proceeds of any sale of the Property.

18. Pursuant to paragraph 4 of the Initial Order, the Trustee completed the sale of condominium units at the Property (the "**Sale**"). After payment of certain estate expenses, there was a positive balance of cash and cash equivalents comprising the property of the Company, including the net proceeds of the Sale (the "**Proceeds**").

19. Pursuant to paragraph 8 of the Order of Justice Newbould made on August 5, 2015, the Trustee was authorized and directed to retain \$5,400,000.00 (representing 125% of the total value of all lien claims) of the Proceeds in an interest bearing account in respect of lien claims pending further order of the court (the "**Reserve Funds**").

20. The Trustee determined that the Lien Claimant has priority over the mortgagees to the extent of the deficiency in the holdback pursuant to section 78(5) of the *Construction Lien Act*.

21. By order of Justice Newbould made on October 16, 2015, the trustee made distributions from the Reserve Fund to 9 of the 20 remaining lien claimants in the aggregate amount

of \$932,948.74 on account of their priority over the mortgagees to the extent of the deficiency in the holdback.

22. By order of Justice Mesbur made on December 3, 2015, the Trustee made distributions from the Reserve Fund to 8 of the 11 remaining lien claimants in the aggregate amount of \$305,237.54 on account of their priority over the mortgagees to the extent of the deficiency in the holdback.

23. The holdback required to be maintained by the Company pursuant to section 22(1) of the CLA in respect of the Total Value of Services Actually Provided by the Lien Claimant is \$74,749.06 (the "**Holdback Amount**").

24. No funds were retained on account of the Holdback Amount, such that there was a deficiency in the amount required to be maintained pursuant to section 22(1) of the *Construction Lien Act* equal to the Holdback Amount (the "**Holdback Deficiency**").

25. The Lien Claimant is entitled to payment of the Holdback Deficiency from the Proceeds in priority to the claims pursuant to the Laurentian Mortgage, Aviva Mortgage, Allen Street Mortgage and MGI Mortgage.

26. This motion will have no adverse impact on other stakeholders.

27. Paragraph 5, 10, 11, and 33 of the Initial Order.

28. The inherent and equitable jurisdiction of this Honourable Court.

29. Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*; and

30. Such further and other grounds as the lawyers may advise.



**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion: (List the affidavits or other documentary evidence to be relied on)

- (a) Affidavit of Haysam Fattah sworn April 26, 2016;
- (b) The Pleadings and proceeding herein; and
- (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

April 26, 2016

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IN THE MATTER OF THE CONSTRUCTION LIEN ACT R.S.O. 1990, c.C.30, AS AMENDED  
AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.

Court File No. CV-15-10843-0CL

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

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION**

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**AFFIDAVIT OF HAYSAM FATTAH  
Sworn: April 26<sup>th</sup>, 2016**

I, Haysam Fattah, of the City of Hamilton, in the Province of Ontario, MAKE OATH AND  
SAY:

1. I am the owner of Sreen Painting Ltd. ("**Sreen**") and as such have knowledge of the facts to which I herein depose. Where I do not have personal knowledge of the matters herein, I have informed myself and verily believe them to be true.
2. In or about October, 2014, 144 Park Ltd. (the "**Company**") initially contracted with Sreen to supply materials and/or services in connection with construction of a 19 story, 149 unit residential condominium building and 8 townhouses (the "**Project**") situate upon the real property municipally known as 144 Park Street, Waterloo, Ontario (the "**Property**"). Attached hereto and marked as **Exhibit "A"** is a true copy of the executed Contract/Purchase Order.
3. Based on my review of the property abstract, I believe that the Company was at all materials times the registered owner of the Property.

4. Sereen supplied materials and services including contract work and approved extras to the improvement of the Property with a value of \$747,490.55.

5. Sereen submitted invoices to the Company in the amount of \$747,490.55, of which the Company paid \$401,538.55, leaving a balance owing to the Lien Claimant of \$345,952.00. Attached hereto and marked as **Exhibit "B"** is a copy of invoices Sereen submitted to the Company.

6. Sereen properly preserved its lien rights in compliance with the *Construction Lien Act* by registering a construction lien against the Property on December 22, 2014 in the amount of \$345,952.00 as instrument number WR858991 (the "**Construction Lien**"). Attached hereto and marked as **Exhibit "C"** is a true copy of the Construction Lien registered on December 22, 2014.

7. Sereen properly perfected its lien rights by commencing an action in the Ontario Superior Court of Justice, Court File No. C-160-15 naming, among others, Laurentian, Aviva, Allen Street and MGI, as Defendants (the "**Lien Action**") and registering a Certificate of Action on title in accordance with the *Construction Lien Act*. Attached hereto and marked as **Exhibit "D"** and **Exhibit "E"** respectively, are true copies of the Statement of Claim and Certificate of Action.


8. I am advised by my lawyer and do believe the Trustee determined that the Lien Claimant has priority over the mortgagees to the extent of the deficiency in the holdback pursuant to section 78(5) of the *Construction Lien Act*.

9. I am advised by my lawyer and do believe that the Company did not retain any funds on account of the Holdback Amount, such that there was a deficiency in the amount required to be maintained under section 22(1) of the *Construction Lien Act*.

10. The Trustee has taken the position that Sereen's holdback claim is significantly less than Sereen is claiming.

11. I make this affidavit in good faith and for no improper purpose.

**SWORN BEFORE ME** at the City of Hamilton, in the Province of Ontario on April 26, 2016

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

  
\_\_\_\_\_  
**HAYSAM FATTAH**

Charlotte Kathleen Walton, a Commissioner, etc.,  
Province of Ontario, for SimpsonWigle Law LLP.  
Expires May 26, 2016.

This is Exhibit A referred to in the Affidavit of  
Haysam Fattah sworn April 26, 2016.



---

*Commissioner for Taking Affidavits (or as may be)*

Charlotte Kathleen Walton, a Commissioner, etc.,  
Province of Ontario, for SimpsonWigle Law LLP.  
Expires May 26, 2016.

'84.4  
EJL

**Contract / Purchase Order**

**144 PARK LTD.**  
8791 WOODBINE AVE.  
SUITE 100

MARKHAM ON L3R 0P4  
905-944-0907 Fax: (905)-944-0474

Date: 09/19/14  
PO #: SER-058-050-01

Job # 058-050-001

Screen Painting Ltd.  
6785 KAZOO COURT  
MISSISSAUGA, ON L5W 1L5

Park Steet & Allen Street  
Waterloo ON

Fax: 905-795-2268

**Scope Of Work**

144 Park Condominiums Uptown Waterloo  
c/o 145 Caroline St. Waterloo, ON N2L 5T1

To complete the work for Painitng: floor 1-9 -touch-up only,  
floors 10-19 - caulking in suites wall/ to wood, HM frames &  
doors, staining of varnish at wood in, garbage room,  
electrical, hoist suites 406-906-supply and install,  
touch-up material, common area, garage, staircases,  
townhouses -8 - touch-ups (\$45/hr).

**Item Cost Code**

1	09-900 S	Painting	Estimated Start Date:	
		Floor 1-9-touch-ups		21,000.00
2	09-900 S	Painting		
		Floor 10-19-\$30,000/each		300,000.00
3	09-900 S	Painting		
		Wallpaper S&I		83,200.00
4	09-900 S	Painting		
		Suites 406-906-hoist		18,000.00
5	09-900 S	Painting		
		Touch-up material Please quote purchase order number on invoice.		3,500.00
		This order is subject to the terms and condltions noted on the reverse side of this order.		
6	09-900 S	White - Purchaser Copy Canary - Seller Copy Pink - Accounting Copy Goldenrod - Control Copy		

Contract / Purchase Order

144 PARK LTD.  
8791 WOODBINE AVE.  
SUITE 100

MARKHAM ON L3R 0P4  
905-944-0907 Fax: (905)-944-0474

Screen Painting Ltd.  
6785 KAZOO COURT  
MISSISSAUGA, ON L5W 1L5

Fax: 905-795-2268

Date: 09/19/14  
PO #: SER-058-050-01

Job # 058-050-001

Park Steet & Allen Street  
Waterloo ON

7 09-900 S Painting  
Townhouses - 8

Estimated Start Date: 30,000.00

Total \$ 540,700.00

**Terms**

Payment Terms: Please refer to CCA contract.  
Taxes: All taxes extra.  
Holdback: Invoices subject to 10 % holdback.

Supplier agrees to abide by the standard "Terms and Conditions" which have been previously provided.

Screen Painting Ltd.

Signature

Haysam Fattah

Name - Please print

Dated: Oct 6, 2014

144 PARK LTD.

Signature

MARKO A. JURICIC

Name - Please print

OCT 07 2014

Dated:

Please quote purchase order number on invoice.  
This order is subject to the terms and conditions noted on the reverse side of this order.  
White - Purchaser Copy Canary - Seller Copy Pink - Accounting Copy Goldenrod - Control Copy



This is Exhibit B referred to in the Affidavit of  
Haysam Fattah sworn April 26, 2016.

*CK Walton*

---

*Commissioner for Taking Affidavits (or as may be)*

Charlotte Kathleen Walton, a Commissioner, etc.,  
Province of Ontario, for SimpsonWigle Law LLP.  
Expires May 26, 2016.































This is Exhibit C referred to in the Affidavit of  
Haysam Fattah sworn April 26, 2016.



---

*Commissioner for Taking Affidavits (or as may be)*

Charlotte Kathleen Walton, a Commissioner, etc.,  
Province of Ontario, for SimpsonWigle Law LLP.  
Expires May 26, 2016.



The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

**Properties**

**PIN** 22417 - 0134 LT  
**Description** LOTS 2 & 3, PART OF LOTS 1, 4, 5, & 6 PLAN 186, BEING PART 2 ON 58R-17836;  
 SUBJECT TO AN EASEMENT AS IN WR666363; CITY OF WATERLOO  
**Address** 145 CAROLINE AVENUE  
 WATERLOO

**PIN** 22417 - 0135 LT  
**Description** PART OF LOTS 217, 218, 219 & 267 PLAN 385, BEING PART 1 ON 58R-17836;  
 SUBJECT TO AN EASEMENT AS IN WR666363; CITY OF WATERLOO  
**Address** 145 CAROLINE AVENUE  
 WATERLOO

**Consideration**

Consideration \$ 345,952.00

**Claimant(s)**

**Name** SEREEN PAINTING LTD.  
**Address for Service** 6785 KAZOO COURT  
 MISSISSAUGA, ON  
 L5W 1L5

I, HAYSAM FATTAH, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

This document is not authorized under Power of Attorney by this party.

**Statements**

Name and Address of Owner 144 PARK LTD., 8791 WOODBINE AVENUE, SUITE 100, MARKHAM, ON., L3R 0P4 Name and address of person to whom lien claimant supplied services or materials 144 PARK LTD., 8791 WOODBINE AVENUE, SUITE 100, MARKHAM, ON., L3R 0P4 Time within which services or materials were supplied from 2014/09/19 to 2014/11/28 Short description of services or materials that have been supplied PAINTING, CAULKING, STAINING, TOUCH-UPS Contract price or subcontract price \$540,700.00 Amount claimed as owing in respect of services or materials that have been supplied \$345,952.00

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

**Signed By**

Julian Bernard Keller 301-25 Watline Ave. acting for Signed 2014 12 22  
 Mississauga Applicant(s)  
 L4Z 2Z1

Tel 905-890-2211  
 Fax 9058902246

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

JULIAN B KELLER LAW OFFICE 301-25 Watline Ave. 2014 12 22  
 Mississauga  
 L4Z 2Z1

Tel 905-890-2211  
 Fax 9058902246

**Fees/Taxes/Payment**

Statutory Registration Fee \$60.00  
 Total Paid \$60.00

This is Exhibit D referred to in the Affidavit of  
Haysam Fattah sworn April 26, 2016.



---

*Commissioner for Taking Affidavits (or as may be)*

Charlotte Kathleen Walton, a Commissioner, etc.,  
Province of Ontario, for SimpsonWigle Law LLP.  
Expires May 26, 2016.

*C-160-15*  
Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
IN THE MATTER OF the Construction Lien Act, R.S.O. 1990, c. C.30 as amended

*BETWEEN:*

**SEREN PAINTING LTD.**

Plaintiff

-and-

**144 PARK LTD., AVIVA INSURANCE COMPANY OF CANADA,  
ALLEN STREET HOLDINGS INC.,  
MARSHALLZEHR GROUP INC. and  
LAURENTIAN BANK OF CANADA**

Defendants

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiff. The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THE PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**IF YOU PAY THE PLAINTIFF'S CLAIM**, and \$1,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

**TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED** if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: February 13<sup>th</sup>, 2015

Issued by:

*Sylvia Ross*  
LOCAL Registrar **Sylvia Ross**

Address of Court office:

~~200 Frederick Street~~  
Kitchener, ON N2H 6N9  
SUPERIOR COURT OF JUSTICE  
Waterloo Region Courthouse  
85 Frederick Street  
Kitchener, ON N2H 0A7

S.R. ✓  
144 PARK LTD. ✓  
TO: 8791 Woodbine Avenue  
Suite 100  
Markham, ON L3R 0P4

AND

TO: Laurentian Bank of Canada  
130 Adelaide Street West  
Suite 300  
Toronto, ON M5H 3P5

AND

TO: Aviva Insurance Company of Canada  
2200 Eglinton Avenue East  
Toronto, ON M1L 4S8

AND

TO: Allen Street Holdings Inc.  
217 Corrie Crescent  
Waterloo, On N2L 5W3

AND

TO: Marshallzehr Group Inc.  
465 Phillip Street No. 206  
Waterloo, ON N2L 6C7

**CLAIM**

## 1. The Plaintiff Claims:

- A) Under the *Construction Lien Act*, R.S.O. 1990, chapter C. 30 as amended (the "Act") against the Defendants;
- i) payment of the sum of \$345,952.00;
  - ii) prejudgment interest on the said sum pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, chapter C. 43, as amended;
  - iii) in the alternative, prejudgment interest on the said sum in accordance with the agreement between the Plaintiff and the Defendants, at the rate of 24 per cent per annum;
  - iv) a declaration that the Plaintiff is entitled to a lien upon the interest of the statutory owner for the price of the services and materials supplied by the Plaintiff;
  - v) its costs of this action on a solicitor and client basis, including HST;
  - vi) in default of payment, an order that the estate and interest of the Defendant in the lands and premises referred to in Schedule "A" attached hereto ("the lands") be sold and that the proceeds be applied toward payment of the Plaintiff's claims in accordance with the provisions of the Act;
  - vii) full priority over the hereinafter referred to mortgages of the Defendants, Laurentian Bank of Canada, Aviva Insurance Company of Canada, Allen Street Holdings Inc. and Marshallzehr Group Inc., or alternatively, priority

over the mortgages to the extent of the portion that was advanced after the time when the first lien arose, or in the further alternative, priority to the extent of any deficiency in the holdbacks required to be kept by the owner(s) of the lands in respect of the subject improvements;

viii) an Order consolidating this action with all other actions brought to perfect a construction lien arising from the subject improvement.

ix) that all accounts be taken, all inquiries be made, all directions be given and all other things necessary to dispose of the action be done; and

x) such further and other relief as this Honourable Court consider just and proper.

B) By way of personal judgment against the Defendant, 144 Park Ltd.:

(i) payment of the sum of \$345,952.00;

(ii) prejudgment interest on the said sum pursuant to the provisions of the Courts of Justice Act;

(iii) in the alternative, prejudgment interest on the said sum in accordance with the agreement between the Plaintiff and the Defendants, at the rate of 24 per cent per annum;

(iv) its costs of this action on a solicitor and client basis including HST; and

(v) such further and other relief as this Honourable Court considers just and proper.

2. The Plaintiff, Sereen Painting Ltd. ("Sereen") is a corporation incorporated pursuant to the laws of the Province of Ontario.

3. The Defendant, 144 Park Ltd. ("144 Park") is a corporation incorporated pursuant to the laws of the Province of Ontario.
4. The Defendant, Aviva Insurance Company of Canada ("Aviva") holds a mortgage on the lands, being Instrument No. WR639368, which was registered on September 1, 2011.
5. The Defendant, Allen Street Holdings Inc. ("Allen") holds a mortgage on the lands, being Instrument No. WR639369, which was registered on September 1, 2011.
6. The Defendant, Marshallzehr Group Inc. ("Marshallzehr") holds a mortgage on the lands, being Instrument No. WR660381, which was registered on December 13, 2011.
7. The Defendant, Laurentian Bank of Canada ("Laurentian") holds a mortgage on the lands, being Instrument No. WR690395, which was registered on May 25, 2012.
8. The Defendants were at all material times, a registered owner of the lands, or an "owner" within the meaning of the Act.
9. The Defendant, 144 Park hired the Plaintiff to supply services, and materials in connection with an improvement at 145 Caroline Avenue, Waterloo, Ontario. At all material times 144 Park was acting as partner, joint venturer or agent of its Co-Defendants.
10. The total value of services and materials supplied by the Plaintiff to the project was \$540,700.00.
11. The Plaintiff received some payments leaving a balance owing of \$345,952.00.
12. The project occurring at the lands was an "improvement" under the Act.



13. A term of the agreement between the Plaintiff and Jade-Kennedy was that invoices would be rendered periodically by the Plaintiff and paid within 30 days, failing which interest would accrue at the rate of 24 per cent per annum.
14. The Plaintiff claims said amount in the alternative on the basis of quantum meruit or unjust enrichment.
15. By reason of the supply of services and materials as aforesaid, the Plaintiff is entitled to a lien upon the interest of the Defendants in the lands for the balance owing together with interest and the costs of this action.
16. On or about the 22<sup>nd</sup> day of December, 2014, the Plaintiff caused to be registered a claim for lien, in the proper Land Registry Office as Instrument WR858991. A true copy of the claim for lien is attached hereto as Schedule "A". The claim for lien was signed by Haysam Fattah.
17. By registering the aforesaid lien, the Plaintiff properly preserved its claim for lien.
18. The Plaintiff alleges that the aforesaid mortgages were taken by the mortgagee thereof with the intention to secure the financing of the improvement and the Plaintiff claims that its lien has priority over the said mortgages, and any mortgages taken out to repay them, to the extent of any deficiency in the holdbacks required to be kept by the owner.
19. In the alternative, the Plaintiff claims that the total amount advanced under the mortgages exceeded the actual value of the lands at the time when the first lien arising from the improvement arose.
20. In the further alternative, the Plaintiff claims that the said mortgagees advanced funds after the date the first lien arising from the improvement was preserved or after the time that the mortgagees first received written notice of lien.

21. The Plaintiff therefore claims priority over the said mortgages, in whole or in part.

22. The Plaintiff alleges that the Defendants were each a "payer" within the meaning of the Act and, therefore, obligated to retain a holdback equal to the price of all services or materials as they were supplied to the improvement, until all liens that may be claimed against the holdback had expired or were satisfied, discharged or vacated.

23. The Defendants failed to do so. As a result, the Plaintiff has not been paid the amount owing to it.

24. The Defendants also failed to retain the finishing holdback and the notice holdback in amounts sufficient to satisfy the lien, as a result, the Plaintiff has suffered damages.

25. The Plaintiff further states that the statutory liability of the Defendants as owner and payer under the Act is equal to or exceeds the sum of \$345,952.00 together with interest thereon pursuant to the provisions of the said Act and, in particular, sections 23 and 44 thereof.

DATE: February <sup>13<sup>th</sup></sup> 2015

**SimpsonWigle LAW LLP**  
1 Hunter Street East  
Suite 200  
Hamilton, ON L8N 3R1

**DEREK A. SCHMUCK**  
(Member No. 24551U)  
Tel: 905-528-8411  
Fax: 905-528-9008  
[schmuckd@simpsonwigle.com](mailto:schmuckd@simpsonwigle.com)  
Lawyers for the Plaintiff

**Properties**

**PIN** 22417 - 0134 LT  
**Description** LOTS 2 & 3, PART OF LOTS 1, 4, 5, & 6 PLAN 186, BEING PART 2 ON 58R-17836;  
 SUBJECT TO AN EASEMENT AS IN WR866383; CITY OF WATERLOO  
**Address** 145 CAROLINE AVENUE  
 WATERLOO

**PIN** 22417 - 0135 LT  
**Description** PART OF LOTS 217, 218, 219 & 287 PLAN 365, BEING PART 1 ON 58R-17836;  
 SUBJECT TO AN EASEMENT AS IN WR866383; CITY OF WATERLOO  
**Address** 145 CAROLINE AVENUE  
 WATERLOO

**Consideration**

**Consideration** \$ 345,952.00

**Claimant(s)**

**Name** SEREEN PAINTING LTD.  
**Address for Service** 8785 KAZOO COURT  
 MISSISSAUGA, ON  
 L5W 1L5

I, HAYSAM FATTAH, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

This document is not authorized under Power of Attorney by this party.

**Statements**

Name and Address of Owner 144 PARK LTD., 8791 WOODBINE AVENUE, SUITE 100, MARKHAM, ON., L3R 0P4 Name and address of person to whom lien claimant supplied services or materials 144 PARK LTD., 8791 WOODBINE AVENUE, SUITE 100, MARKHAM, ON., L3R 0P4 Time within which services or materials were supplied from 2014/09/19 to 2014/11/28 Short description of services or materials that have been supplied PAINTING, CAULKING, STAINING, TOUCH-UPS Contract price or subcontract price \$540,700.00 Amount claimed as owing in respect of services or materials that have been supplied \$345,952.00

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

**Signed By**

Julian Bernard Keller 301-25 Watline Ave. acting for Signed 2014 12 22  
 Mississauga Applicant(s)  
 L4Z 2Z1

Tel 905-890-2211  
 Fax 9058902246

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

JULIAN B KELLER LAW OFFICE 301-25 Watline Ave. 2014 12 22  
 Mississauga  
 L4Z 2Z1

Tel 905-890-2211  
 Fax 9058902246

**Fees/Taxes/Payment**

**Statutory Registration Fee** \$60.00  
**Total Paid** \$60.00

000041

LRO # 58 Construction Lien

Received as WR858901 on 2014 12 22 at 15:06

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 2

**File Number**

Claimant Client File Number :

K81304

SERREEN PAINTING LTD.

and  
Plaintiff

144 PARK LTD. ET AL

Defendants

C-160-15

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDINGS COMMENCED AT  
KITCHENER**

**STATEMENT OF CLAIM**

SimpsonWigle LAW LLP  
1 Hunter Street East, Suite 200  
Hamilton, ON L8N 3W1

DEREK A. SCHMUCK (LSUC# 24551U)  
Tel: 905-528-8411  
Fax: 905-528-9008  
[schmuckd@simpsonwigle.com](mailto:schmuckd@simpsonwigle.com)

Lawyers for the Plaintiff

This is Exhibit E referred to in the Affidavit of  
Haysam Fattah sworn April ~~26~~, 2016.



---

*Commissioner for Taking Affidavits (or as may be)*

Charlotte Kathleen Walton, a Commissioner, etc.,  
Province of Ontario, for SimpsonWigle Law LLP.  
Expires May 26, 2016.

Court File No.  
C-160-15

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
IN THE MATTER OF the Construction Lien Act, R.S.O. 1990, c. C.30 as amended

*BETWEEN:*

**SERREEN PAINTING LTD.**

Plaintiff

-and-

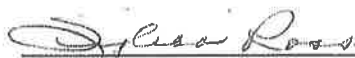
**144 PARK LTD., AVIVA INSURANCE COMPANY OF CANADA,  
ALLEN STREET HOLDINGS INC.,  
MARSHALLZEHR GROUP INC. and  
LAURENTIAN BANK OF CANADA**

Defendants

**CERTIFICATE OF ACTION**

I certify that an action has been commenced in the Ontario Superior Court of Justice under the Construction Lien Act, R.S.O. 1990 chapter C.30 between the above parties in respect of the premises described in Schedule A to this certificate, and relating to the claim for lien bearing the following registration numbers: WR858991

Date: February 13<sup>th</sup>, 2014/2015

  
Local Registrar  
200 Frederick Street  
Kitchener, ON N2H 6N9

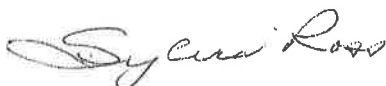
**SCHEDULE "A"**

LOTS 2 & 3, PART OF LOTS 1, 4, 5, & 6 PLAN 186, BEING PART 2 ON 58R-17836;  
SUBJECT TO AN EASEMENT AS IN WR666363; SUBJECT TO AN EASEMENT IN  
GROSS OVER PTS. 1, 2, 3 ON 58R-18429 AS IN WR864508; CITY OF WATERLOO

PIN NO. 22417-0134

PART OF LOTS 217, 218, 219 & 267 PLAN 385, BEING PART 1 ON 58R-17836;  
SUBJECT TO AN EASEMENT AS IN WR666363; CITY OF WATERLOO

PIN NO. 22417-0135



REGISTRAR, SUPERIOR COURT OF JUSTICE  
OFFICIER, COUR SUPÉRIEURE DE JUSTICE

FEB 13 2015



SEREEN PAINTING LTD.

and  
Plaintiff

144 PARK LTD. ET AL

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDINGS COMMENCED AT**

**KITCHENER**

**CERTIFICATE OF ACTION**

SimpsonWigle LAW LLP  
1 Hunter Street East, Suite 200  
Hamilton, ON L8N 3W1

DEREK A. SCHMUCK (LSUC# 24551U)  
Tel: 905-528-8411  
Fax: 905-528-9008  
[schmuckd@simpsonwigle.com](mailto:schmuckd@simpsonwigle.com)

Lawyers for the Plaintiff

IN THE MATTER OF THE CONSTRUCTION LIEN ACT R.S.O. 1990, c.C.30, AS AMENDED  
AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.

Court File No. CV-15-10843-OCL

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

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF HAYSAM FATTAH**  
Sworn: April 23<sup>rd</sup>, 2016

**SimpsonWigle LAW LLP**  
200 – 1 Hunter Street East  
Hamilton, ON L8N 3W1

**Derek A. Schmuck** (LSUC #24551U)  
E-mail: [schmuckd@simpsonwigle.com](mailto:schmuckd@simpsonwigle.com)  
Tel: 905-528-8411  
Fax: 905-528-9008

Lawyers for Screen Painting Ltd.

000047

IN THE MATTER OF THE CONSTRUCTION LIEN ACT R.S.O. 1990, c.C.30, AS AMENDED  
AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.

Court File No. CV-15-10843-0CL

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

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD**

**SimpsonWigle LAW LLP**  
200 – 1 Hunter Street East  
Hamilton, ON L8N 3W1

**Derek A. Schmuck (LSUC #24551U)**  
E-mail: [schmuckd@simpsonwigle.com](mailto:schmuckd@simpsonwigle.com)  
Tel: 905-528-8411  
Fax: 905-528-9008

Lawyers for Sereen Painting Ltd.