



Court File No. CV15-10843-00CL

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

THE HONOURABLE Mr. )

THURSDAY, THE 23<sup>rd</sup> DAY

JUSTICE Wilton-Siegel )

OF APRIL, 2015

*Handwritten initials/signature*

**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 APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE  
*CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED**

**ORDER**

(re Construction Lien Claims Process)

**THIS MOTION** made by Collins Barrow Toronto Limited, in its capacity as Court-appointed trustee over the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario and legally described in **Schedule "A"** attached hereto (the "**Property**"), pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "**Trustee**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report of the Trustee dated April 17, 2015 and the Appendices thereto, and on hearing the submissions of counsel for the Trustee and counsel for those other

parties listed on the Counsel Slip, no one else appearing although duly served as appears from the affidavit of service of Sam Rappos sworn April 20, 2015, filed,

### **CLAIMS PROCESS**

1. **THIS COURT ORDERS AND DECLARES** that the process set out in this Order (the "**Construction Lien Claims Process**") for the submission, review and determination of all lien claims (each, a "**Claim**") pursuant to the *Construction Lien Act* (Ontario) (the "**CLA**") for the provision of services and materials prior to January 22, 2015 with respect to the improvement (the "**Improvement**") located on the Property is hereby approved and is the exclusive process by which all Claims shall be determined, and all Claims shall attorn to the Construction Lien Claims Process.

2. **THIS COURT ORDERS** that the Trustee shall implement and administer the Construction Lien Claims Process, including the review, determination (including, but not limited to, the determination of the quantum and timeliness of all liens), acceptance, revision, disallowance and/or settlement of any Claims by any party filing a Claim pursuant to the provisions of this Order (each, a "**Lien Claimant**"), and may take any steps which the Trustee believes are incidental or necessary for the implementation of the Construction Lien Claims Process.

3. **THIS COURT ORDERS AND DIRECTS** all Claims shall be administered pursuant to the Construction Lien Claims Process by the Trustee, under the supervision of this Court, and any determination or disposition of any Claim by the Trustee shall have the same force and effect as if made by a court of competent jurisdiction pursuant to the *CLA*. The Trustee shall, as necessary, consult with 144 Park Ltd. ("**144 Park**") with respect to the quantum and timeliness

of all Claims. The Trustee may retain any consultant or assistant as it may require to assist in the review and determination of any Claim.

4. **THIS COURT ORDERS AND DIRECTS** that in order to file a Claim pursuant to the Construction Lien Claims Process, a Lien Claimant shall provide, if it has not done so to date, the following to the Trustee on or before 5:00 p.m. Toronto time on May 29, 2015 (the "**Claims Bar Date**"):

- (a) copies of the Lien Claimant's Statement of Claim and Certificate of Action;
- (b) copies of the applicable Land Registry Construction Lien and Certificate instruments;
- (c) a copy of any contract or subcontract including the names of the parties to any contract or subcontract, any change orders, amendments, purchase orders, documentation evidencing the last date on which the Lien Claimant provided services or materials to the Improvement or other related documents on which such Claim is asserted;
- (d) the contract price and a statement of account, including the dates and amounts of payments received;
- (e) a copy of any labour and material payment bond posted by a subcontractor with a contractor or by a subcontractor with a subcontractor; and
- (f) any other documents or information as the Trustee may reasonably request for the purpose of assessing and determining any Claims in accordance with this Order.

5. **THIS COURT ORDERS** that the Trustee is hereby authorized and directed to make recommendations to the Court regarding the determination of holdback(s) and priorities with respect to the Improvement and the Property, including priorities with respect to any proceeds of the sale of the Property. The Trustee shall serve its report to the Court setting out such recommendations on the Service List in this proceeding no less than 10 days prior to the return date of any motion where the Court will be asked to make a determination as to the holdbacks and priorities with respect to the Improvement and the Property.

#### **DETERMINATION OF CLAIMS**

6. **THIS COURT ORDERS** that the Trustee shall accept, revise and/or disallow a Claim as set out in a Lien Claimant's Statement of Claim by delivering a notice of determination including the reasons for such determination (a "**Notice of Determination**"), and all documentation, if any, referred to in the Notice of Determination to such Lien Claimant.

#### **DISPUTE NOTICE AND APPEALS**

7. **THIS COURT ORDERS** that a Lien Claimant may appeal the revision and/or disallowance (as the case may be) of its Claim as set out in a Notice of Determination by delivering a Dispute Notice to the Trustee substantially in the form attached to this Order as **Schedule "B"** (a "**Dispute Notice**") within 10 days of the sending of such Notice of Determination by the Trustee. Any Lien Claimant who does not deliver a Dispute Notice within 10 days of the sending of a Notice of Determination with respect to its Claim shall be deemed to have accepted the Trustee's determination as set out in the Notice of Determination, which shall be final and binding, and any portion, or the whole, of the Claim (as the case may be) which is

disallowed in the Notice of Determination shall be forever barred and extinguished pursuant to this Order.

8. **THIS COURT ORDERS AND DIRECTS** that any appeal or dispute of a Notice of Determination as set out in a Dispute Notice, shall be referred to a claims officer to be appointed by further order of this Court on recommendation by the Trustee (the "**Claims Officer**") or brought before this Court for adjudication. Any appeal or dispute of a Notice of Determination as set out in a Dispute Notice shall be conducted as a hearing *de novo* and any appeal of any decision of the Claims Officer shall be heard by this Court on a timetable approved by this Court and shall be final and binding on all parties with no further appeal thereof.

#### **CLAIMS BAR PROVISIONS**

9. **THIS COURT ORDERS** that any Claim:

- (a) the particulars of which are not delivered to the Trustee by the Claims Bar Date in accordance with paragraph 4 above; or
- (b) for which a Dispute Notice is not delivered within 10 days of the sending of a Notice of Determination by the Trustee but only with respect to any portion, or the whole (as the case may be) of any such Claim which is disallowed,

shall be forever barred and extinguished and such Lien Claimant submitting the Claim shall be forever estopped and enjoined from asserting or enforcing any further Claims against the Property and 144 Park except that nothing in this Order shall bar or extinguish any Claim in its entirety or any part thereof which has been accepted by the Trustee, or approved by the Claims Officer or this Court, as applicable.

10. **THIS COURT ORDERS** that the Trustee shall incur no liability or obligations as a result of the carrying out of the terms of this Order and the implementation and administration of the Construction Lien Claims Process.

#### **NOTICES AND COMMUNICATION**

11. **THIS COURT ORDERS** that, except as otherwise provided herein, the Trustee may deliver any notice or other communication to be given under this Order to Lien Claimants by forwarding true copies thereof by e-mail to such Lien Claimants or parties at the address on the Service List, and that any such service or notice by e-mail shall be deemed to be received on the day the e-mail is sent by the Trustee.

12. **THIS COURT ORDERS** that any notice or other communication to be given under this Order by a Lien Claimant to the Trustee shall be in writing in substantially the form, if any, provided for in this Order and will be effective only if delivered by e-mail addressed to:

**COLLINS BARROW TORONTO LIMITED**

11 King St. West Suite 700, Box 27  
Toronto, ON M5H 4C7  
Attention: Arif Dhanani  
Email: andhanani@collinsbarrow.com

- with a copy to -

**CHAITONS LLP**

5000 Yonge Street, 10th Floor  
Toronto, ON M2N 7E9  
Attention: Sam Rappos  
Email: samr@chaitons.com

13. **THIS COURT ORDERS** that, notwithstanding the terms of this Order, any party may apply to this Court from time to time for direction with respect to the Construction Lien Claims

Process and/or such further order or orders as this Court may consider necessary or desirable to amend or supplement this Order.

C. Van-M.T.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

APR 23 2015

NB

**SCHEDULE "A"**

PIN 22417-0135 (LT)  
LRO # 58

Property 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

PIN 22417-0134 (LT)  
LRO # 58

Property 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



**SCHEDULE "B"**

**Dispute Notice Re: 144 Park Ltd.**

Defined terms not defined within this Dispute Notice form have the meaning ascribed thereto in the Construction Lien Claims Process Order dated April 23, 2015. Pursuant to paragraph 7 of the Construction Lien Claims Process Order, we hereby give you notice of our intention to dispute the Notice of Determination dated \_\_\_\_\_ issued by Collins Barrow Toronto Limited as Trustee of the Property in respect of our Claim.

Name of Creditor: \_\_\_\_\_

Reasons for Dispute (attach additional sheets and copies of all supporting documentation, if necessary):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Authorized Signing Officer: \_\_\_\_\_

Date: \_\_\_\_\_

(Please print name) \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ Facsimile Number: ( ) \_\_\_\_\_

Full Mailing Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

THIS FORM AND SUPPORTING DOCUMENTATION TO BE RETURNED BY E-MAIL, TO THE ADDRESS INDICATED HEREIN AND TO BE RECEIVED NO LATER THAN 10 DAYS AFTER SENDING OF THE NOTICE OF DETERMINATION BY THE TRUSTEE TO:

**COLLINS BARROW TORONTO LIMITED**

11 King St. West Suite 700, Box 27

Toronto, ON M5H 4C7

Attention: Arif Dhanani

Email: andhanani@collinsbarrow.com

- with a copy to -

**CHAITONS LLP**  
5000 Yonge Street, 10th Floor  
Toronto, ON M2N 7E9  
Attention: Sam Rappos  
Email: samr@chaitons.com

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

Court File No. CV15-10843-00CL

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

Proceedings commenced at Toronto

**ORDER**

(re Construction Lien Claims Process)

**CHAITONS LLP**  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

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**Lawyers for the Trustee**