

**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

**FACTUM OF THE LIEN CLAIMANT (MOVING PARTY)
SEREEN PAINTING LTD.**

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TO: Service List

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**FACTUM OF THE LIEN CLAIMANT (MOVING PARTY)
SREEN PAINTING LTD.**

PART I – THE FACTS

1. Sreen Painting Ltd. ("**Sreen**") was hired by 144 Park Ltd. to do painting and related services to a construction project consisting of a 19 story condominium building and 8 townhouses.¹
2. Sreen properly preserved and perfected its lien claim.²
3. Sreen actually started work before the written contract was signed in early October 2014.³
4. Sreen was initially hired to correct and assist the original painter (NKP Painting) hired by the owner.⁴
5. Sreen left the job towards the end of completing its work, due to non-payment of its invoices and because 144 Park was insolvent.⁵

¹ Affidavit of Haysam Fattah sworn April 26, 2016, paragraph 2

² Affidavit of Haysam Fattah sworn April 26, 2016, paragraphs 6 and 7

³ Reply Affidavit of Haysam Fattah sworn June 16, 2016, paragraph 13

⁴ Reply Affidavit of Haysam Fattah sworn June 16, 2016, paragraph 13

6. Sereen only invoiced for those parts of the project that it completed.⁶
7. Both the owner and Sereen acted informally. Instructions to do extra work (PDI work) were often given verbally.⁷
8. The owner had 5 or 6 representatives that, from time to time, were directing Sereen on the work to be done.⁸
9. Although there was some initial confusion, Exhibit "A" to the Affidavit sworn June 16, 2016 shows that the total value of work done by Sereen was \$747,130.55. It received payments totalling \$446,047.70, leaving a balance owing, after a further deduction of a back charge in the amount of \$528.61, of \$300,554.24.
10. Earlier, Sereen had missed one (1) payment on one (1) invoice, when it calculated the balance paid and owing.⁹
11. The 10% holdback claim of Sereen is \$74,713.06.
12. While Sereen was on site, 144 Park Ltd. did not dispute the amount invoiced by Sereen or the quality of its work.¹⁰
13. Mr. Fattah personally did some work on this project and was in charge of recording payments made to Sereen.¹¹
14. Contrary to the statement made in the Trustee's 10th report (at tab 1 of the Responding Motion Record of the Trustee), the Mady Group did have a record of the work described in invoice 74-1 as that was base contract work and the written contract contained the scope of work.¹²

⁵ Reply Affidavit of Haysam Fattah sworn June 16, 2016, paragraph 4

⁶ Reply Affidavit of Haysam Fattah sworn June 16, 2016, paragraphs 5 and 7

⁷ Reply Affidavit of Haysam Fattah sworn June 16, 2016, paragraph 14

⁸ Reply Affidavit of Haysam Fattah sworn June 16, 2016, paragraph 14 and Exhibit "B"

⁹ Cross-examination of Haysam Fattah held August 26, 2016

¹⁰ Reply Affidavit of Haysam Fattah sworn June 16, 2016, paragraph 21

¹¹ Cross-examination of Haysam Fattah held of August 26, 2016

¹² Reply Affidavit of Haysam Fattah sworn June 16, 2016, Exhibit "A"

15. Also contrary to the statement in paragraph 31 of that report, the Mady Group did have record of the PDI work referenced in invoices 76, 77, 79, 80, 81, 82, 91 and 92. Some of the emails exchanged by the parties, referencing that work, were attached as Exhibit "B" to the Affidavit of Haysam Fattah sworn June 16, 2016.

16. The materials filed by the Trustee in opposition to this motion contain minimal details of the alleged deficient or incomplete work. There are no photographs of the alleged deficiencies or incomplete work. The contractor providing that evidence only came to the site approximately one (1) year after Sereen left the project. Those deficiencies are disputed by Sereen.¹³

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: September 13, 2016

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¹³ Reply Affidavit of Haysam Fattah sworn June 16, 2016, paragraphs 5, 7, 8 and 9

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

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PROCEEDING COMMENCED AT TORONTO

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