

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

2292912 ONTARIO INC.

Applicant

-and-

2380009 ONTARIO LIMITED

Respondent

**MOTION RECORD  
(MOTION RETURNABLE DECEMBER 5, 2017)**

November 21, 2017

**FRED TAYAR & ASSOCIATES  
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Barristers and Solicitors  
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Toronto, Ontario M5H 2M5**

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Mississauga, ON L5B 3C1

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c/o Ernesto Alvarez  
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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN:**

2292912 ONTARIO INC.

Applicant

-and-

2380009 ONTARIO LIMITED

Respondent

**TABLE OF CONTENTS**

1. Notice of Motion dated November 21, 2017
2. Affidavit of Bianca Myles-Jansen sworn November 21, 2017

**EXHIBITS**

- A Invoice No. 14182 dated January 21, 2014 between ECO Energy Homes Services Inc. and 2380009 Ont. Ltd.

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**B E T W E E N:**

2292912 ONTARIO INC.

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-and-

2380009 ONTARIO LIMITED

Respondent

**NOTICE OF MOTION**

**ECO ENERGY HOME SERVICES INC.** ("Eco-Energy") will make a motion to the Judge presiding over the Commercial List, at 330 University Avenue, Toronto, Ontario, on Tuesday, the 5th day of December, 2017.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An order declaring that Eco Energy is the beneficiary of a trust under the *Construction Lien Act* ("CLA"), in respect of rent receipts received by Collins Barrow Toronto Limited, ("Receiver") the Court appointed receiver of the Respondent 2380009 Ontario Limited.
2. An order requiring the Receiver to pay to Eco Energy the full amount of its claim of \$12,560.20 plus interest at the rate of 24% per annum thereon from January 21, 2014 to the date of payment and its legal fees, out of the rent money the Receiver has collected.



3. Such further and other relief as counsel may advise and this Honourable Court permit.

**THE GROUNDS FOR THE MOTION ARE:**

1. Eco Energy delivered and installed an HVAC system in the property municipally known as 2370 South Sheridan Way, Mississauga (the "Property").
2. The Respondent defaulted by only paying a portion of the selling price.
3. Interest accrues on the balance at 24% per annum.
4. The Receiver has collected rent from the occupant of the Property in an amount that exceeds what is owed to Eco Energy.
5. The rent collected is held in trust for Eco Energy as an unpaid supplier of goods and services for the improvement of the Property.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Affidavit of Bianca Myles-Jansen; and
2. Such further and other materials as counsel may advise and this Honourable Court permit.

November 21, 2017

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2292912 ONTARIO INC.

v.

2380009 ONTARIO LIMITED

*Applicant*

*Respondent*

Court File No.: CV-16-011354-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF MOTION**

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**ONTARIO  
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**B E T W E E N:**

2292912 ONTARIO INC.

Applicant

-and-

2380009 ONTARIO LIMITED

Respondent

**AFFIDAVIT OF BIANCA MYLES-JANSEN  
(SWORN NOVEMBER 21, 2017)**

I, BIANCA MYLES-JANSEN, of the Town of Courtice, in the County of Clarington, in the Province of Ontario, Executive Manager, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Executive Manager of the moving party, Eco Energy Home Services Inc. ("Eco Energy"), and as such have knowledge of the matters hereinafter deposed.
2. I commenced my employment at Eco Energy in March 2014.
3. In or about January 2014 Eco Energy was approached by the Respondent to negotiate and enter into an agreement to sell and install two HVAC (air conditioning) systems in the Respondent's building municipally known as 2370 South Sheridan Way, Mississauga (the "Property"). The Respondent was represented through its principal, Marcello Hernandez, who advised Eco Energy that the Respondent was the owner of the Property and the operator of the business therein.



4. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a true copy of the agreement entered into by Eco Energy with the Respondent, which is documented by a selling invoice (bearing number 14182), together with its terms and conditions.

5. As may be seen from the contract, Eco Energy was to sell and install the HVAC systems in the Property for a total consideration of \$43,392.00. Eco Energy delivered to and installed the HVAC systems in the Property.

6. Although there were some payments on account, the Respondent was delinquent in making payments as they fell due in January 2014. A balance of \$12,560.20 went into default in January 2014.

7. Paragraphs 7 and 8 of the terms and conditions provide as follows:

"7. Eco Energy Home Services Inc. remains the owner of all the articles herein referred to until payment in full is received. In case of failure to make the payment when due or either of repossessing the said articles or claiming the entire balance due in case of repossession. Eco Energy Home Services Inc. shall have the right to retain all or part of any payments made prior to repossession on the basis of quantum merit and shall more over have the right to dispose of the articles repossessed without any accounting.

8. An server [sic] charge of 2% per Month (24% Annually) will be charge [sic] on overdue amount."

9. The Receiver was appointed in respect of the Property by an Order of this Court on February 7, 2017.

10. From information provided by the Receiver, we understand that the Receiver has collected rent from the tenant occupying the building that is in receivership, in an amount that exceeds Eco Energy's claim.


11. In addition to the interest that has accrued on the debt, we have incurred the sum of \$16,375.70 in legal fees in relation to enforcing our construction trust claim through the receivership process, to the date of the swearing of this affidavit.

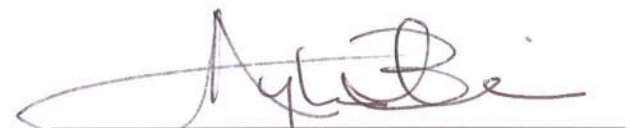
12. I make this Affidavit in support of a motion for an order requiring the Receiver to pay out of the rent monies it has received, the sum of \$40,580.75, which is comprised of the following:

(a) Principal	\$12,560.20
(b) Interest from January 24, 2014 to and including December 5, 2017	\$11,644.85
(c) Legal fees incurred	<u>\$16,375.70</u>
<b>TOTAL:</b>	<b><u>\$40,580.75</u></b>

13. I make this Affidavit in support of an order declaring that Eco Energy is a beneficiary of a trust under the *Construction Lien Act* in respect of rent that has been paid to the Court appointed Receiver by the tenant occupying the Property.

SWORN BEFORE ME at the )  
City of Toronto, Province of )  
Ontario, this 21st day of )  
November, 2017 )  
)  
)  
A Commissioner, etc. )

  
\_\_\_\_\_  
Fred Tavar

  
\_\_\_\_\_  
BIANCA MYLES-JENSEN

THIS IS EXHIBIT "A" TO THE  
AFFIDAVIT OF BIANCA MYLES-JANSEN  
SWORN THIS 21ST DAY OF  
NOVEMBER, 2017



---

A Commissioner, etc.

FRED TAYAR

2292912 ONTARIO INC.

v.

2380009 ONTARIO LIMITED

*Applicant*

*Respondent*

Court File No.: CV-16-011354-00CL

**ONTARIO  
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(Sworn November 21, 2017)

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# eco ENERGY

Home Services Inc.

Sales \* Service \* Installation

24 hrs/7 days Service

HST#: 803689298RT0001

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(326 - 2727)

INVOICE: 14182

Customer Name: MARCELLO 2380009 ONT. LTD.	Date: NOV 29TH. 2013
Address: 2370 SOUTH SHELDON WAY	Tel:
City: MISSISSAUGA Postal Code	Cell: 416.909.0373
Enbridge Acc#	Consultant 647.282.8105
Email: marcelostamar@yahoo.ca	THRONE SINCH
Energy Audit Date:	Time: Auditor:
Installation Date:	Time: Technician:

QTY	MODEL NO.	DESCRIPTION	PRICE
1	ZF120N20N5AAA5	YORK 10TON, 575V, 3PHASE 200,000 BTU	11,500.00
1	ZF240N3ZJ5AAA2	YORK 20TON, 575V, 3PHASE 320,000 BTU.	18,550.00
1		YORK 5TON, 575V, 3PHASE	7,550.00
2		THERMOSTAT PROGRAMMABLE WIRENO REPLACEMENT	800.00
		STANDARD EQUIPMENT WARRANTY Plus 2 YR LABOUR	
		DOES NOT INCLUDE POWER LINE TO UNITS.	
		INCLUDES INSTALLATION, CURB ADJUST CRANE	

Warranty:	<input type="checkbox"/> Furnace	Yrs Parts	Heat Exchanger	Yrs Labor	Subtotal	\$38,400.00
	<input type="checkbox"/> A/C	Yrs Parts	Yrs Labor		Tax	\$4992.00
	<input type="checkbox"/> Tankless	Yrs Parts	Heat Exchanger	Yrs Labor	Total	\$43,392.00
	<input type="checkbox"/> Water Heater	Yrs Parts	Body	Yrs Labor		
Paid By:	Deposit:	<input type="checkbox"/> Cash <input checked="" type="checkbox"/> Cheque <input type="checkbox"/> Credit Card			Deposit	\$8,271.60
	Balance:	<input type="checkbox"/> Cash <input checked="" type="checkbox"/> Cheque <input type="checkbox"/> Financing <input type="checkbox"/> Credit Card			Balance	\$35,120.40
	Card #:		Exp. Date:			

Existing Furnace:	<input type="checkbox"/> Mid-Efficiency	<input type="checkbox"/> Hi-Efficiency	<input type="checkbox"/> High-Boy	<input type="checkbox"/> Low-Boy
Ceiling:	<input type="checkbox"/> Unfinished	<input type="checkbox"/> Drop Ceiling	<input type="checkbox"/> Drywall Ceiling	
Chimney Liner:	<input type="checkbox"/> Required	Filter Rack:	<input type="checkbox"/> Required	
Venting Pipe:	Feet	Condensation Pump	<input type="checkbox"/> Required	

Customer Signature: 

Date: Jan. 21/2014

## Terms and Conditions

1. This document contains all the terms and conditions of sale as agreed by Eco Energy Home Services Inc. and the purchaser, and no other agreement or understanding, verbal or written shall be binding on either party.

2. This contract shall become binding upon Eco Energy Home Services Inc. only upon acceptance by it, by delivering to the customer an accepted and signed copy of the contract, or by the commencement of the installation by Eco Energy Home Services Inc. This contract is not subject to cancellation.

3. Price not including any required increase in the main electrical service or any permit for the premises.

4. The purchaser agrees with the Vendor that concealed space, chimneys attics, etc. reveal difficulties of installation that are beyond the sales consultant's examination and the purchaser agrees to pay any extra work and materials that are needed to complete the work because of these obstruction and difficulty.

5. It is understood that Eco Energy Home Services Inc. don't assume any risks of any other nature in connection with this order and is not responsible for delays, damages of inability to carry on the work of installation caused by or resulting from strikes, fires, accidents, lack of materials or any other cause beyond reasonable control either before or after delivering of material, equipment at the said premises.

6. Eco Energy Home Services Inc. shall not, under any circumstances whatsoever, be liable for any damage to properties or injury to any person either direct or consequential, caused by or arising out of the delivery, installation, operation, use or repossession of the goods. Or from any defect therein or in any part thereof, particularly in regard to soot or dirt damage to rugs, carpets floors or walls during the removal of furnaces, boilers or similar equipment.

7. Eco Energy Home Services Inc. remains the owner of all the articles herein referred to until payment in full is received. In case of failure to make the payment when due or either of repossessing the said articles or claiming the entire balance due in case of repossession. Eco Energy Home Services Inc. shall have the right to retain all or part of any payments made prior to repossession on the basis of quantum merit and shall more over have the right to dispose of the articles repossessed without any accounting.

8. An server charge of 2% per Month ( 24% Annually) will be charge on overdue amount.

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