

Court of Appeal Court File No.:  
Court File No. CV-15-10882-00CL

**COURT OF APPEAL FOR ONTARIO**

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

**NOTICE OF APPEAL**

**THE LIEN CLAIMANTS** Dircam Electric Ltd., Procan Inc., Imperial Trim Supply Ltd., and Frenel Kitchens Limited, appeal to the Court of Appeal from the Order of Mr. Justice H.J. Wilton-Siegel dated December 6, 2016, made at Toronto (the “Order”).

**THE APPELLANTS ASK** for the following:

1. An order setting aside Mr. Justice H.J. Wilton-Siegel’s order that the second mortgage registered by AM-Stat Corporation, on September 4, 2013, in the principal amount of \$10 million, on the Phase II Commercial Project and the Vacant Lands (the “Am-Stat Mortgage”), has priority over the Lien Claimants;
2. An order that the Lien Claimants have priority over AM-Stat Mortgage; and
3. An order for costs of the appeal in favour of the Appellants.

**THE GROUNDS OF APPEAL** are as follows:

1. As part of the Construction Lien proceedings, the Lien Claimants sought a declaration for priority over the mortgages registered against the lands owned by Jade-Kennedy Corp. Given the Honourable Mr. Justice H.J. Wilton-Siegel found that the Am-Stat Mortgage has priority over the Lien Claimants, the Lien Claimants will not receive any further payment from the estate of Jade-Kennedy Development Corp.
2. The Lien Claimants respectfully submit that the Honourable Mr. Justice H.J. Wilton-Siegel made the following errors:
  - a. His Honour erred in finding that all monies advanced under the Am-Stat Mortgage represent an advance as described in section 78(6) of the *Construction Lien Act*;
  - b. His Honour erred in finding the monies advanced under the AM-Stat Mortgage were advanced to Jade-Kennedy Development Corp., or advanced for the benefit of Jade-Kennedy Development Corp.;
  - c. His Honour erred in finding that AM-Stat Corp. had satisfied its evidentiary burden of establishing that the funds (or a portion of the funds) were not advanced solely for the benefit of Milliken Development Corp.; and
  - d. His Honour erred in finding that AM-Stat Corp. had satisfied its evidentiary burden of establishing that the AM-Stat Mortgage (in whole or in part) was not just security for a guarantee provided by Jade-Kennedy Development Corp. of a loan by Am-Stat Corp. (as lender) to Milliken Development Corp. (as borrower).

3. As His Honour found that the AM-Stat Mortgage had priority to the Lien Claimants, it was not necessary for His Honour to make any finding with respect to whether the Lien Claimants have valid lien claims against the Vacant Lands. The Lien Claimants submit that the Vacant Lands are “enjoyed therewith” the other phases of the Project, and therefore, they have valid lien claims against the Vacant Lands.

**THE BASIS OF THE APPELLATE COURT’S JURISDICTION IS:**

- a. Section 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990 c.43.
- b. The Order appealed from is final.
- c. Leave to appeal is not required.

January 3, 2017

**LEVINE SHERKIN BOUSSIDAN**  
Barristers  
23 Lesmill Road., Suite 300  
Toronto ON M3B 3P6

**KEVIN D. SHERKIN LSUC# 27099B**  
Email: Kevin@lsblaw.com  
**JEREMY SACKS LSUC# 62361R**  
Email: jeremy@lsblaw.com

Tel: 416-224-2400  
Fax: 416-224-2408  
Email: Jeremy@lsblaw.com

Lawyers for the Appellants Dircam Electric  
Ltd. and Procan Inc.

**DEVRY SMITH FRANK LLP**  
Lawyers & Mediators  
95 Barber Greene Road, Suite 100  
Toronto, Ontario M3C 3E9

**ADAM V. GROSSI**  
LSUC #: 61525R

Tel : (416) 449-1400  
Fax: (416) 449-7071

Lawyers for the Appellants Imperial Trim  
Supply Ltd. and Frendel Kitchens Limited

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Proceeding commenced at Toronto

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**LEVINE, SHERKIN, BOUSSIDAN**

A Professional Corporation of Barristers

23 Lesmill Road

Suite 300

Toronto, ON M3B 3P6

**KEVIN D. SHERKIN - LSUC#27099B**

**JEREMY SACKS - LSUC#62361R**

Tel: (416) 224-2400

Fax: (416) 224-2408

Lawyers for Dircam Electric Limited,  
Great Pyramid Aluminum Ltd. and Procan Inc.