

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

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C., 1985, C.  
B-3, AS AMENDED**

**IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF CYMI CANADA INC. FILED IN  
THE CITY OF OTTAWA, IN THE PROVINCE OF  
ONTARIO**

**AIDE MEMOIRE OF CYMI CANADA INC**  
*(Case Conference Returnable September 17, 2026 at 9:30am)*

1. CYMI Canada Inc. (“**CYMI**”) filed a Notice of Intention under the Bankruptcy and Insolvency Act (BIA) on May 12, 2026, and has obtained 3 extensions of the stay in order to allow it additional time to file a proposal on the last extension. At the last extension hearing on August 20, 2026, CYMI asked for directions to schedule the present application, but the Honourable Justice Dunphy indicated it was preferable to schedule a case conference in order to do same and hence CYMI has scheduled the present case conference. Attached is the Endorsement of the Honourable Justice Dunphy re same from August 20, 2026.
2. The purpose of this case conference is (i) to add an application (the “**Application**”) that CYMI Canada Inc. (“**CYMI**”) is filing against Mosaic Transit Constructors General Partnership (“**Mosaic**”) to compel payment of a \$4,988,976.22 construction holdback (the “**Holdback**”) to the Commercial List; and (ii) to set an expedited schedule for the hearing of that Application consistent with the outside deadline for the filing of a proposal.
3. CYMI takes the position that the Holdback is owing and payable to it pursuant to Subcontract No. 50-CS-08, dated January 17, 2019 between CYMI and Mosaic (the “**Subcontract**”).
4. The recovery of the Holdback is critical to the restructuring efforts of CYMI, with particular respect to their notice of intention to make a proposal (the “**NOI**”) pursuant to section 50.4 of the [\*Bankruptcy and Insolvency Act\*](#) (“**BIA**”).
5. Pursuant to Section [50.4 \(8\)](#) and [50.4 \(9\)](#) of the BIA, the current BIA stay extension expires October 5, 2026 and the ultimate 6 month proposal period will expire on November 11, 2026.

### **Why an Application for the Determination of CYMI's Entitlement to the Mosaic Holdback?**

6. Under rule [14.05 \(3\) \(d\)](#) of the [Rules of Civil Procedure](#), a proceeding may be brought by application where the relief claimed is "the determination of rights that depend on the interpretation of a deed, will, **contract** or other instrument, or on the interpretation of a statute, order in council, regulation or municipal by-law or resolution" [Emphasis added].
7. The payment of the Holdback turns on the interpretation the Holdback Period as defined in the Subcontract. That the period has expired is not contested.
8. Further, rule [14.05 \(3\) \(h\)](#) states that a proceeding may be brought by application where the relief claimed is "in respect of any matter where it is unlikely that there will be any material facts in dispute requiring a trial".
9. There are no material facts in this matter that are in dispute such that would require trial.
10. Accordingly, pursuant to rule [14.05 \(3\) \(d\)](#) and [\(e\)](#), CYMI has appropriately commenced an application against Mosaic for the determination of CYMI's immediate entitlement of the Holdback.

### **The Grounds on which the Application is Made – Expiry of Holdback Period**

11. Relying on subparagraphs (n) – (q) of the Application, the Subcontract is governed by the [Construction Lien Act](#) as it was before July 1, 2018 (the "CLA").
12. Section 22 of the CLA required Mosaic to retain a statutory holdback equal to ten percent of the value of the services and materials supplied by CYMI under the Subcontract.
13. The Subcontract defines the "Holdback Period" as:  
"the latter date of expiration of the holdback period in the CLA,  
specifically applied to both the Subcontractor Work and to the  
Construction Contractor's work."
14. The parties thereby expressly incorporated the applicable statutory holdback periods under the CLA into the contractual mechanism governing release of the Holdback.
15. The holdback periods relating to both CYMI's work and Mosaic's work have expired and as such, the Holdback Period has expired and that is not contested. As such the holdback is owing.

### **The Grounds on which the Application is Made – Performance Security Obligations Fulfilled**

16. The only ground on which Mosaic is resisting paying the holdback is a request that CYMI post additional security for the performance of its warranty work. However, it is not

contested that CYMI has already provided the performance security required by the Subcontract, namely a parent company guarantee from Control y Montajes Industriales CYMI, S.A pursuant to section 5.4 and Schedule D of the Subcontract. This parent company guarantee remains in force. The only issue is whether the contract terms permit a request for further financial assurance as a condition of withholding the holdback. It is a clear question of contract interpretation without material facts in dispute.

### **The Grounds on which the Application is Made – In the Alternative, CYMI is a Beneficiary of a Statutory Trust**

As set out in the Application, Mosaic is a trustee of a statutory trust established pursuant to Part II of the CLA. It is not contested that Mosaic has received trust funds in excess of the amount of the Holdback and has not paid them over to CYMI while amounts remain owing to CYMI. CYMI is entitled to payment from the trust funds of the amounts owing to it in connection with the Finch West LRT Unless Mosaic has an entitlement to withhold same under the contract as noted above, Mosaic has breached its obligations to CYMI as trustee. For the same reasons as above, that is a question of contractual interpretation without disputed facts.

### **Relief Sought by Application**

17. CYMI seeks the following relief within the Application:

- (a) a declaration that the Holdback Period, as defined in the Subcontract, has expired;
- (b) a declaration that the statutory and contractual Holdback retained by Mosaic pursuant to the Subcontract is due and payable to CYMI;
- (c) an Order directing Mosaic to forthwith pay the Holdback to CYMI;
- (d) a declaration that Mosaic is not entitled under the Subcontract or the CLA to withhold the Holdback as additional security for prospective warranty obligations and that it is in breach of trust for not paying an amount equal to the Holdback to CYMI;
- (e) pre-judgment and post-judgment interest pursuant to the Section 3 of the Subcontract or, in the alternative, pursuant to sections 128 and 129 of the [\*Courts of Justice Act\*](#);
- (f) costs of this Application on a substantial indemnity scale; and
- (g) such further and other relief as this Honourable Court deems just.

### **Proposed Timetable of Application**

18. CYMI proposes the following expedited timetable to progress the Application:
- (a) CYMI serves its Application Record by no later than September 21, 2026
  - (b) Mosaic responding materials received no later than September 30, 2026;
  - (c) Completion of cross-examinations, if any, no later than October 7, 2026;
  - (d) report from the Proposal Trustee, TDB Restructuring Limited, received no later than October 12, 2026; and
  - (e) Factums by October 19, 2026
  - (f) hearing conducted as soon as possible upon the completion of the above preferably before November 11, 2026 if possible.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

GARDINER ROBERTS LLP

*CBesant*

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**Christopher Besant**  
Counsel to CYMI Canada Inc.

**ATTACHMENTS:**

- 1. Endorsement of the Honourable Justice Dunphy re same from August 20, 2026.
- 2. Request Form
- 3. Draft Notice of Application

September 14, 2026

**GARDINER ROBERTS LLP**

22 Adelaide Street West, Suite 3600  
Toronto ON M5H 4E3

**Chris Besant (248820)**

T: 416-865-4022

E: [cbesant@grllp.com](mailto:cbesant@grllp.com)

**Saisha Mahil (80083T)**

T: 416-203-9547

E: [smahil@grllp.com](mailto:smahil@grllp.com)

Lawyers for the Applicant,  
CYMI Canada Inc.

# **TAB 1**



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: BK-26-03371910-0033

DATE: August 20, 2026

NO. ON LIST: 3

TITLE OF PROCEEDING: CYMI CANADA INC.

BEFORE: JUSTICE S. DUNPHY

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

| Name of Person Appearing | Name of Party                               | Contact Info                                             |
|--------------------------|---------------------------------------------|----------------------------------------------------------|
| Chris Besant             | Counsel for the Applicant, CYMI Canada Inc. | <a href="mailto:cbesant@grllp.com">cbesant@grllp.com</a> |

**For Defendant, Respondent, Responding Party:**

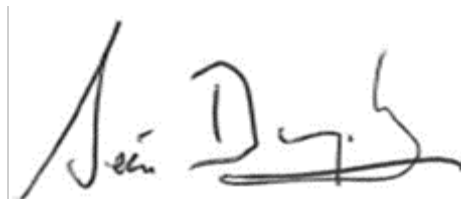
| Name of Person Appearing | Name of Party                                               | Contact Info                                                     |
|--------------------------|-------------------------------------------------------------|------------------------------------------------------------------|
| Eva Hyderman             | Counsel for the Proposal Trustee, TDB Restructuring Limited | <a href="mailto:ehyderman@cassels.com">ehyderman@cassels.com</a> |

**For Other, Self-Represented:**

| Name of Person Appearing               | Name of Party                               | Contact Info                                                                                                                                                 |
|----------------------------------------|---------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Bryan Tannenbaum<br>Nisan Thurairatnam | Proposal Trustee, TDB Restructuring Limited | <a href="mailto:btannenbaum@tdbadvisory.ca">btannenbaum@tdbadvisory.ca</a><br><a href="mailto:nthurairatnam@tdbadvisory.ca">nthurairatnam@tdbadvisory.ca</a> |

## **ENDORSEMENT OF JUSTICE:**

- [1] This is a motion for a third extension of the stay or proceedings in respect of a BIA proposal. The debtor has provided a full accounting of progress made and I am satisfied that progress towards a potentially successful proposal has been made and is continuing. The requested extension will see the stay expiring well within the statutory limit of five months past the initial stay of 30 days.
- [2] I have reviewed the Proposal Trustee's report and am happy to approve the Trustee's activities as reported upon therein subject to the usual caveats about the import of judicial approval of such reports.
- [3] The debtor has advised of an intended motion to compel payment of a holdback amount of approximately \$5 million by Mosaic Transit Constructors which has the potential to be a material element of a proposal or conversely a material obstacle to its success. Efforts to engage Mosaic's counsel in discussions of a motion timetable to resolve this issue have been met with silence thus far.
- [4] The debtor will be seeking a date for a case conference to finalize a timetable for the hearing of this intended motion which is the normal first step for scheduling motions in the Commercial Court. If Mosaic does not participate in the process, the timetable will be fixed without its input. It would therefore be advisable for Mosaic to engage unless of course the dispute is resolved without need for the court's intervention.
- [5] The requested order extending the stay and approving the Proposal Trustee's activities is approved and will be signed today.

A handwritten signature in black ink, appearing to read 'Sean Dunphy', is written over a horizontal line.

Date: Aug 20, 2026

Sean Dunphy

## **TAB 2**

|                              |                     |
|------------------------------|---------------------|
| Commercial List File Number: | BK-26-03371910-0033 |
| Civil File Number:           | YR/CV/#####         |

Date: August 25, 2026

## **SUPERIOR COURT OF JUSTICE** **COMMERCIAL LIST**

9:30 A.M.Scheduling/Chambers HEARING REQUEST FORM for matters already on The Commercial List

|          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>A</b> | <p>PLEASE NOTE: The 9:30 hearing procedure is only for <i>ex parte</i> (must be justified), urgent, scheduling and consent matters which take no longer than 15 minutes" This restriction will be enforced. This matter is (tick one or more);</p> <p style="text-align: center;"> <input type="checkbox"/> <i>ex parte</i>              <input type="checkbox"/> urgent              <input type="checkbox"/> scheduling              <input type="checkbox"/> consent              <input type="checkbox"/> other (explain)         </p> <p>OR</p> <p><input checked="" type="checkbox"/> Case Conference</p> <p>These appointments can be for longer than 15 minutes. Specify requested length: 30 minutes</p> |
| <b>B</b> | <p>Short Title of Proceeding:</p> <p>In the Matter of the Notice of Intention to Make a Proposal of CYMI Canada Inc.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>C</b> | <p>Date(s) Requested:</p> <p>September 17, 2026</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>D</b> | <p>The following is a brief description of the matter to be considered at the 9:30 appointment:</p> <p>CYMI Canada Inc. is seeking to schedule a case conference in accordance with the Endorsement of Justice Dunphy dated August 20, 2026 to finalize a timetable for its motion to compel payment of a holdback amount of approximately \$5 million by Mosaic Transit Group.</p>                                                                                                                                                                                                                                                                                                                               |
| <b>E</b> | <p>The following materials will be necessary for the matter to be considered. (it is the responsibility of counsel to confirm that the proper materials are available for the Court.)</p> <ol style="list-style-type: none"> <li>1. The Endorsement of Justice Dunphy dated August 20, 2026</li> <li>2. The Motion Record of CYMI Canada Inc. dated June 5, 2026</li> <li>3. The Motion Record of CYMI Canada Inc. dated July 3, 2026</li> <li>4. The Motion Record of CYMI Canada Inc. dated August 18, 2026</li> </ol>                                                                                                                                                                                          |
| <b>F</b> | <p>Is any Judge seized of these matters or any judicial conflicts? <input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> The Honourable Justice</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

| COUNSEL FOR APPLICANT/MOVING PARTY |                                                                                                               | COUNSEL FOR RESPONDENT / OTHER PARTY |                                                                          |
|------------------------------------|---------------------------------------------------------------------------------------------------------------|--------------------------------------|--------------------------------------------------------------------------|
| <b>Party</b>                       | CYMI Canada Inc.                                                                                              | <b>Party</b>                         | Mosaic Transit Group                                                     |
| <b>Counsel</b>                     | Chris Besant                                                                                                  | <b>Counsel</b>                       | Paul Dipede                                                              |
| <b>Address</b>                     | Gardiner Roberts LLP<br>Bay Adelaide Centre - East Tower, 22 Adelaide St W,<br>Ste. 3600, Toronto, ON M5H 4E3 | <b>Address</b>                       | 8 – 555 Hanlan Road<br>Woodbridge ON L4L 4R8                             |
| <b>Phone</b>                       | 416.865.4022                                                                                                  | <b>Phone</b>                         | 647-988-3976                                                             |
| <b>Fax</b>                         |                                                                                                               | <b>Fax</b>                           |                                                                          |
| <b>E-Mail</b>                      | <a href="mailto:cbesant@grllp.com">cbesant@grllp.com</a>                                                      | <b>E-Mail</b>                        | <a href="mailto:pdipede@mosaictransit.com">pdipede@mosaictransit.com</a> |

(IF MORE THAN 2 PARTIES INVOLVED, ADD ADDITIONAL SIGNATURES AND PARTICULARS ON REVERSE OR SEPARATE PAGE)

To be submitted to: Commercial List Office, 330 University Avenue, 9<sup>th</sup> Floor, Toronto Ontario **via email to**  
**mag.csd.to.scjcom@ontario.ca**

**Endorsement/Disposition**

# **TAB 3**

Court File No.

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

CYMI CANADA INC.

Applicant

and

MOSAIC TRANSIT CONSTRUCTORS GENERAL PARTNERSHIP

Respondent

**APPLICATION UNDER** Rules 14.05(3)(d) & 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, and under Part II and Part IV of the *Construction Lien Act*, R.S.O. 1990, c. C.30

**NOTICE OF APPLICATION**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- ☐ In person
- ☐ By telephone conference
- ☒ By video conference

at the following location:

330 University Avenue, 9<sup>th</sup> Floor, Toronto, ON M5G 1E6

on a date to be set by the Registrar.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of court office: Superior Court of Justice  
330 University Avenue  
Toronto, ON M5G 1R7

TO: **MOSAIC TRANSIT CONSTRUCTORS GENERAL PARTNERSHIP**  
8 – 555 Hanlan Road  
Woodbridge ON  
L4L 4R8

Paul Dipede  
[pdipede@dpdlaw.ca](mailto:pdipede@dpdlaw.ca) and [pdipede@mosaictransit.com](mailto:pdipede@mosaictransit.com)

## APPLICATION

1. The Applicant, CYMI Canada Inc. (“**CYMI**”), makes application for:
  - (a) a declaration that the Holdback Period, as defined in Subcontract No. 50-CS-08 dated January 17, 2019 (the “**Subcontract**”) between CYMI and Mosaic Transit Constructors General Partnership (“**Mosaic**”), has expired;
  - (b) a declaration that the statutory and contractual holdback retained by Mosaic pursuant to the Subcontract in the amount of \$4,415,023.20, plus applicable HST, totalling \$4,988,976.22 plus applicable interest from February 5, 2026 as claimed in paragraph 1(f) below (the “**Holdback**”), is due and payable to CYMI;
  - (c) an Order directing Mosaic to forthwith pay the Holdback to CYMI;
  - (d) a declaration that Mosaic is not entitled under the Subcontract or the *Construction Lien Act*, R.S.O. 1990, c. C.30 (the “**CLA**”), to withhold the Holdback as additional security for prospective warranty obligations;
  - (e) in the alternative, and without limiting paragraphs (a) through (d), a declaration that
    - i. Mosaic is trustee of trust funds pursuant to Part II of the CLA as applicable to the Finch West Light Rail Transit Project (the “**Finch West LRT**”) equal to the amount of the Holdback;
    - ii. CYMI is the beneficiary of the statutory trust of the Holdback established pursuant to section 8 of the CLA;
    - iii. a declaration that as the trust funds have not been paid to CYMI in accordance with Part II of the CLA, Mosaic has breached its obligations as trustee;
    - iv. an Order requiring Mosaic to pay to CYMI all trust funds equal to the amount of the Holdback to CYMI;

- (f) pre-judgment and post-judgment interest pursuant to the Section 3 of the Subcontract or, in the alternative, pursuant to sections 128 and 129 of the *Courts of Justice Act*;
- (g) costs of this Application on a substantial indemnity scale; and
- (h) such further and other relief as this Honourable Court deems just.

2. The grounds for the application are:

- (a) CYMI is a corporation incorporated under the laws of Ontario with its headquarters located in Toronto, Ontario, and carries on business as an electrical installation and specialty contracting company in the energy, industrial, technology and infrastructure sectors;
- (b) On May 12, 2026, CYMI filed a notice of intention to make a proposal (the “**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (“**BIA**”). TDB Restructuring Limited (the “**Proposal Trustee**”) was appointed as Proposal Trustee of CYMI;
- (c) The NOI proceedings were commenced as a means of stabilizing CYMI’s financial position in order to pursue a restructuring;
- (d) CYMI has worked diligently, in good faith, and with due diligence, together with the Proposal Trustee and its stakeholders, to develop a viable proposal for the benefit of creditors;

- (e) Significant efforts have been undertaken to identify and assess the realizable assets of the CYMI estate and to quantify and resolve claims that may ultimately participate in any proposal;
- (f) One of the most significant realizable assets of the CYMI estate is the Holdback owing by Mosaic under the Subcontract in the amount of \$4,415,023.20 plus applicable HST, totalling \$4,988,976.22 plus applicable interest;
- (g) The Holdback constitutes a material receivable and a significant source of potential recovery for CYMI's creditors;
- (h) Recovery of the Holdback is important to the development and implementation of a viable proposal to creditors;

#### **The Finch West LRT Project**

- (i) The project agreement governing the Finch West LRT was entered into on or about May 3, 2018 between Metrolinx and Mosaic (the "**Project Agreement**");
- (j) On January 17, 2019, Mosaic entered into the Subcontract with CYMI pursuant to which CYMI agreed to design, supply, install, test and commission the Overhead Catenary System ("**OCS**") and Traction Power Substations ("**TPSS**") forming part of the Finch West LRT;
- (k) The OCS and TPSS formed a significant part of the core rail electrification infrastructure for the Finch West LRT;
- (l) CYMI duly supplied services and materials to the Finch West LRT pursuant to the Subcontract;

- (m) The Finch West LRT achieved Substantial Completion effective November 12, 2025 and the warranty period under the Subcontract commenced on that date;

### **Construction Lien Act**

- (n) The Project Agreement governing the Finch West LRT was entered into prior to July 1, 2018;
- (o) Pursuant to section 87.3 of the *Construction Act*, R.S.O. 1990, c. C.30, the CLA, as it existed immediately before July 1, 2018, continues to apply to the Finch West LRT improvement;
- (p) The foregoing applies notwithstanding that the Subcontract was entered into on January 17, 2019;
- (q) Accordingly, the rights and obligations of Mosaic and CYMI respecting statutory holdback and trust funds are governed by the CLA applicable to the improvement;

### **The Holdback**

- (r) Section 22 of the CLA required Mosaic to retain a statutory holdback equal to ten percent of the value of the services and materials supplied by CYMI under the Subcontract;
- (s) In accordance with the *Construction Lien Act* and the Subcontract, Mosaic retained holdback from amounts otherwise payable to CYMI;
- (t) The Subcontract defines the "Holdback Period" as:

"the latter date of expiration of the holdback period in the CLA, specifically applied to both the Subcontractor Work and to the Construction Contractor's work."

- (u) The parties thereby expressly incorporated the applicable statutory holdback periods under the CLA into the contractual mechanism governing release of the Holdback;
- (v) The applicable statutory holdback periods relating to both CYMI's work and Mosaic's work have expired;
- (w) Accordingly, the Holdback Period under the Subcontract has expired;
- (x) CYMI has satisfied the conditions under the Subcontract for payment of the Holdback;
- (y) Section 2.1.13 of the Subcontract provides that Mosaic shall pay the amount withheld from progress payments on the day following expiration of the Holdback Period;
- (z) On February 5, 2026, CYMI delivered an invoice to Mosaic seeking release of the Holdback, but Mosaic failed to pay same and has not done so to date.
- (aa) CYMI thereafter demanded payment by correspondence dated March 2, 2026 and March 19, 2026;
- (bb) By letter dated March 30, 2026, Mosaic acknowledged that the Holdback may become payable but asserted that payment should be conditional upon CYMI providing additional security for warranty obligations, including a performance bond, letter of credit, or revised parent company guarantee;

- (cc) CYMI has already provided the performance security required by the Subcontract, namely a parent company guarantee from Control y Montajes Industriales CYMI, S.A (“**CYMI Spain**”) pursuant to section 5.4 and Schedule D of the Subcontract, and as such not further security is required to be provided and Mosaic has not basis to continue to fail to pay over the Holdback;
- (dd) CYMI Spain’s parent guarantee remains in force;
- (ee) Following the commencement of the NOI proceedings, CYMI and its counsel continued efforts to obtain payment of the Holdback from Mosaic;
- (ff) Despite those ongoing efforts and demands, Mosaic has failed and refused to pay the Holdback;
- (gg) The Subcontract does not entitle Mosaic to continue withholding the Holdback following expiry of the Holdback Period as additional security for prospective warranty obligations;
- (hh) Mosaic has not identified any presently due debt, quantified damages claim, or other matured claim or any other basis entitling it to retain the Holdback;
- (ii) The Holdback is therefore due and payable to CYMI pursuant to the Subcontract and the CLA;

### **Statutory Trust**

- (jj) Part II of the CLA establishes statutory trusts in connection with amounts owing to and received by contractors in respect of an improvement;

- (kk) Pursuant to section 8(1) of the CLA, all amounts owing to or received by Mosaic on account of the contract price for the Finch West LRT constitute trust funds;
- (ll) Mosaic is trustee of such trust funds;
- (mm) CYMI supplied services and materials to the Finch West LRT pursuant to the Subcontract;
- (nn) Mosaic remains indebted to CYMI in the amount of \$4,988,976.22 in respect of services and materials supplied to the improvement;
- (oo) CYMI is therefore a beneficiary of the statutory trust established pursuant to section 8 of the CLA;
- (pp) Mosaic has received amounts from the owner on account of the Finch West LRT contract in excess of the Holdback. Such amounts constitute trust funds within the meaning of Part II of the CLA;
- (qq) Despite demand, Mosaic has failed or refused to pay over trust funds received in connection with the Finch West LRT equal to the Holdback owing;
- (rr) As trust funds in excess of the Holdback have been received by Mosaic and not paid over to CYMI in accordance with Part II of the CLA while an amount equal to the Holdback remains owing to CYMI, Mosaic has breached its obligations as trustee;
- (ss) CYMI is entitled to payment from trust funds received by Mosaic owing to it in connection with the Finch West LRT equal to the Holdback;

### **Mosaic's Purported Basis for Non-Payment**

- (tt) Mosaic asserts that it is entitled to continue retaining the Holdback pending provision of additional security for future warranty obligations;
- (uu) CYMI denies that Mosaic has any contractual or statutory entitlement to retain the Holdback on that basis;
- (vv) A demand for additional security against contingent and unliquidated future warranty exposure does not entitle Mosaic to continue withholding amounts otherwise due and payable under the Subcontract or under the CLA;

### **CYMI's Proposal Proceedings and Expedited Determination**

- (ww) CYMI is presently engaged in proposal proceedings pursuant to the BIA. Absent a successful proposal, CYMI will be deemed bankrupt upon expiry of the period within which a proposal may be filed under the BIA – i.e. November 12, 2026;
- (xx) The Holdback constitutes a material asset and receivable of CYMI;
- (yy) Recovery of the Holdback is material to CYMI's restructuring and to the interests of its creditors and other stakeholders;
- (zz) The issues raised by this Application are discrete and principally concern: (i) the uncontested expiry of the Holdback Period and Mosaic's obligation to pay the Holdback; (ii) the uncontested existence and administration of the statutory trust under section 8 of the CLA in an amount in excess of the Holdback; and (iii) Mosaic's lack of compliance with its statutory and fiduciary obligations as trustee,

which issue depends on the interpretation of one clause in a contract and no contested facts ;

- (aaa) The issues are capable of determination on a substantially documentary record;
- (bbb) CYMI intends to seek an expedited timetable and hearing of this Application on the Commercial List;
- (ccc) Part II and Part IV of the *Construction Lien Act*, R.S.O. 1990, c. C.30;
- (ddd) section 87.3 of the *Construction Act*, R.S.O. 1990, c. C.30;
- (eee) Rules 1.04, 2.03, 14.05(3)(d) and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
- (fff) sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (ggg) the inherent and equitable jurisdiction of this Honourable Court; and
- (hhh) such further and other grounds as counsel may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:

- (a) the Affidavit of Oscar de la Fuente Tome; and
- (b) such further and other evidence as counsel may advise and this Honourable Court may permit.

September 14, 2026

**GARDINER ROBERTS LLP**

Lawyers  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West, Suite 3600  
Toronto ON M5H 4E3

**Chris Besant (24882O)**

T: 416-865-4022

E: [cbesant@grllp.com](mailto:cbesant@grllp.com)

**Saisha Mahil (80083T)**

T: 416-203-9547

E: [smahil@grllp.com](mailto:smahil@grllp.com)

Lawyers for the Applicant,  
CYMI Canada Inc.

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C., 1985, C. B-3, AS AMENDED

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF CYMI CANADA INC. FILED IN THE CITY OF OTTAWA, IN THE PROVINCE OF ONTARIO

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**AIDE MEMOIRE**

**GARDINER ROBERTS LLP**

Bay Adelaide Centre, East Tower  
22 Adelaide Street West, Suite 3600  
Toronto ON M5H 4E3

**Chris Besant (24882O)**

416-865-4022  
[cbesant@grllp.com](mailto:cbesant@grllp.com)

**Saisha Mahil (80083T)**

416-203-9547  
[smahil@grllp.com](mailto:smahil@grllp.com)

Lawyers for CYMI Canada Inc.