

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF*
JUSTICE ACT, R.S.O. 1990 C. C.43, AS AMENDED, AND SECTION 68 OF THE
CONSTRUCTION ACT, R.S.O. 1990, C. 30, AS AMENDED**

THE HONOURABLE

)

THURSDAY, THE 12TH

JUSTICE *Penny*

)

DAY OF DECEMBER, 2019

)

B E T W E E N:



ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

**ATLAS HEALTHCARE (RICHMOND HILL) LTD.,
ATLAS (RICHMOND HILL) LIMITED PARTNERSHIP,
ATLAS SHOULDICE HEALTHCARE LTD.,
ATLAS SHOULDICE HEALTHCARE LIMITED PARTNERSHIP,
ATLAS HEALTHCARE (BRAMPTON) LTD. and
ATLAS (BRAMPTON) LIMITED PARTNERSHIP**

Respondents

**ORDER
(LIEN CLAIMS PROCESS)**

THIS MOTION by Ernst & Young Inc. (“EYI” or the “**Receiver**”) for an Order, among other things, establishing a claims process for determining the validity and *quantum* of the construction liens registered against title to the property municipally known as 20 Brodie Drive and 9355 Leslie Street in Richmond Hill, Ontario (the “**Atlas RH Real Property**”), was heard this day at 330 University Avenue, Toronto.

ON READING the Fifth Report of the Receiver dated November 15, 2019 (the “**Fifth Report**”) and the Supplement to the Fifth Report dated December 10, 2019 (the “**Supplementary Fifth Report**”), and upon hearing submissions of counsel for the Receiver, Meridian the Respondents, as well as other stakeholders as set out in the Counsel Slip for today’s attendance, no one else appearing although duly served as set out in the affidavit of service of Eric Golden sworn December 10, 2019, filed,

FILING CLAIMS

1. **THIS COURT ORDERS** that on or before December 23, 2019, the Receiver shall provide to each lien claimant who has registered a lien against the Atlas RH Real Property as of the date of this Order, or counsel for each such lien claimant if such counsel is already part of the Service List in the herein proceeding, the form of proof of lien claim attached as Schedule “A” hereto, for the purposes of each lien claimant proving its lien.
2. **THIS COURT ORDERS** that the completed proofs of lien claim shall be provided to the Receiver on or before January 15, 2020 (the “**Claims Bar Date**”). The Claims Bar Date may be extended with the Receiver’s consent in writing, or by further Order of the Court.
3. **THIS COURT ORDERS** that a lien claimant must prove its lien claim on a balance of probabilities.
4. **THIS COURT ORDERS** that any lien claimant who does not serve a proof of lien claim in respect of its lien claim by the Claims Bar Date shall be forever barred from asserting such lien claim against the Respondents, the Receiver, the Atlas RH Real Property, and any “owner” (as defined in the *Construction Act*) of the Atlas RH Real Property, and such lien claim, shall be forever discharged and extinguished, and any such lien claimant shall

not be entitled to receive any distribution from the Receiver, if any, in respect of the proceeds of sale of the Atlas RH Real Property.

5. **THIS COURT ORDERS** that any lien claimant who does not serve the Receiver with a proof of lien claim in respect of its lien claim on or before the Claims Bar Date shall not be entitled to any further notice of any Orders made or steps taken in the within lien claims process.
6. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to use its discretion as to the adequacy of compliance with the manner in which a proof of lien claim is completed, executed and served, and may, where it is satisfied that a lien claim has been adequately proven, waive strict compliance with the requirements of this Order as to the completion, execution and service of the proof of lien claim.

DETERMINATION OF CLAIMS

7. **THIS COURT ORDERS** that the Receiver shall review each proof of lien claim that it receives on or before the Claims Bar Date.
8. **THIS COURT ORDERS** that within 30 days following the Claims Bar Date, the Receiver shall serve on the Service List a preliminary report (the "**Preliminary Lien Report**") summarizing and evaluating the claims of those lien claimants who have delivered a proof of lien claim on or before the Claims Bar Date.
9. **THIS COURT ORDERS** that within 60 days following the Claims Bar Date (the "**Dispute Bar Date**"), any stakeholder, including a lien claimant, who disputes any part the Receiver's evaluation in the Preliminary Lien Report, shall provide the Receiver with a notice setting out full particulars of the dispute (the "**Notice of Dispute**"). If a

stakeholder, including a lien claimant, does not provide the Receiver with a Notice of Dispute by the Dispute Bar Date, then the stakeholder shall be barred from disputing the recommendations of the Receiver in its Final Lien Report (defined below).

10. **THIS COURT ORDERS** that the Receiver shall review each Notice of Dispute. Pursuant to paragraph 3(d) of the Appointment Order of Justice Wilton-Siegel dated December 3, 2018, the Receiver is empowered and authorized, but not obligated, to retain an expert (the “**Expert**”) to review and assist in the review of any proof of lien claim and Notice of Dispute.
11. **THIS COURT ORDERS** that within 120 days following the Claims Bar Date, the Receiver shall serve on the Service List a further report (the “**Final Lien Report**”) evaluating the Notices of Dispute and any opinion(s) of the Expert, and making recommendations to the Court regarding the acceptance, revision or disallowance of any claim. The Receiver may attempt to consensually resolve any lien claim with (a) the lien claimant, and (b) any stakeholder who has filed a Notice of Dispute, prior to the Final Lien Report.

THE CLAIMS HEARING AND APPEALS THEREFROM

12. **THIS COURT ORDERS** that following delivery of the Final Lien Report, a hearing will be scheduled for the determination of any proofs of lien claim and Notices of Dispute that cannot be resolved on consent. At the hearing, the Court’s standard of review of the Receiver’s evaluations and recommendations in the Final Lien Report is that of an appellate court. That is, the Receiver’s evaluations and recommendations are only reviewable on the basis of (a) correctness as to questions of law, and (b) palpable and overriding error as to questions of fact.

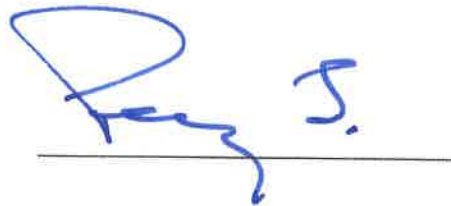
13. **THIS COURT ORDERS** that any appeal of the Court's determination in the lien claims process lies to the Court of Appeal, and only by leave of a judge of the Court of Appeal.

EFFECT ON OTHER PROCEEDINGS

14. **THIS COURT ORDERS** that within lien claims process, and participation in it, is without prejudice to the right(s) of any lien claimant to commence or continue any claim against any person (save for the Receiver and the Respondents) for breach of contract or *quantum meruit* (a "**Proceeding**"), and does not affect, truncate or waive any substantive or procedural rights and/or remedies that a lien claimant may have in any such Proceeding. Notwithstanding the above, the lien claims process also does not affect any substantive or procedural rights that any defendant may have to defend a Proceeding for breach of contract or *quantum meruit*, save and except that the defendant may not assert in a Proceeding that the claim of any lien claimant ought to be dismissed or stayed on grounds of *res judicata* (issue estoppel, and/or cause of action estoppel) and/or abuse of process, by virtue of the lien claimant asserting a claim in the lien claims process.
15. **THIS COURT ORDERS** that the issue of lien claimants' priority claims (if any) over the mortgage of Meridian Credit Union ("**MCU**") registered against the Atlas RH Real Property shall not be determined in the within lien claims process, but any lien claimant who wishes to assert a priority claim in this regard must first prove its lien claim through the lien claims process. The lien claims process, and participation in it by MCU, is without prejudice to and does not affect any substantive or procedural rights that MCU may have in defending against any lien claimant's priority claim.

ADMINISTRATIVE ISSUES

16. **THIS COURT ORDERS** that all documents required to be served herein shall be served by electronic mail to the address for service set out in the Service List.
17. **THIS COURT ORDERS** that the Receiver may apply to the Court for directions regarding the carrying out of the within lien claims process.



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

DEC 12 2019

PER / PAR: **vb**

SCHEDULE "A"
PROOF OF LIEN CLAIM
FOR THE LIEN CLAIMS IN RESPECT OF

20 Brodie Drive and 9355 Leslie Street in Richmond Hill, Ontario
(the "Atlas RH Real Property")

Please read the Lien Claims Process Order dated December 12, 2019 carefully prior to completing this Proof of Claim.

A. PARTICULARS OF LIEN CLAIMANT

1. Full legal name of the lien claimant _____ (the "Lien Claimant")
 2. Full Mailing address of the Lien Claimant:
 3. Telephone Number:
- Email address:
- Attention (Contact Person):

B. PROOF OF LIEN CLAIM

THE UNDERSIGNED HEREBY CERTIFIES:

I _____ (state name, position and title) of the City of _____ in the Province of _____, do solemnly declare and say as follows.

That I am the authorized representative of a lien claimant in respect of the Atlas RH Real Property, and have knowledge of all the circumstances connected with the debt hereinafter referred to.

That at the date hereof, _____ was, and still is, indebted to the Lien Claimant for materials and services supplied on the following contract or contracts in the amounts noted herein.

(specify the particular contract or contracts on which materials and services were supplied, the amounts owing and, in detail, the amount of material and services supplied to the improvement).

C. PARTICULARS OF LIEN CLAIM

Other than as already set out herein, the particulars of the undersigned's lien claim are attached hereto in relation to the improvement of the Atlas RH Real Property.

(Provide all particulars of the claims and supporting documentation that you feel will assist in the determination of your lien claim, including but not limited to: a copy of the lien, amount of your claim, description of transaction(s) or agreement(s) giving rise to the claims, amount of invoices (including paid, partially paid and unpaid invoices), particulars of all credits, discounts, etc.)

D. SERVICE OF PROOF OF LIEN CLAIM

A Proof of Lien Claim must be received by the Receiver by 5:00 p.m. (Eastern Standard Time) on January 15, 2020 (the "**Claims Bar Date**"), or such later date as the Receiver may consent to in writing, or as ordered by the Court.

Failure to file your Proof of Lien Claim as directed by the relevant Claims Bar Date will, among other things, result in your lien claim being barred and you will be prohibited from making or enforcing a lien claim against the Atlas RH Real Property.

This Proof of Lien Claim must be delivered by electronic communication to:

Ernst & Young Inc.
c/o Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

Attention: Eric Golden and Chad Kopach

email: egolden@blaney.com and ckopach@blaney.com
tel: 416-593-1221
fax: 416-593-5437

Any such notice or other communication delivered by a lien claimant shall be deemed to be received upon actual receipt by the Receiver thereof prior to 5:00 p.m. (Eastern Standard Time) on a day that is not a holiday (as defined in the *Rules of Civil Procedure*) or, if delivered after 5:00 p.m. (Eastern Standard Time), on the next day that is not a holiday.

I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Dated at _____ this _____ day of _____, 20__.

Witness
Name:

Lien Claimant
Name:

ROMSPEN INVESTMENT CORPORATION
Applicant

and

Court File No. CV - CV-18-607303-00CL
ATLAS HEALTHCARE (RICHMOND HILL) LTD., ET AL.
Respondents

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

Proceeding commenced at TORONTO

**ORDER
(LIEN CLAIMS PROCESS)**

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