



Court File No.:

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

Electronically issued
Délivré par voie électronique : 31-Jan-2022
Toronto

ERNST & YOUNG INC., in its capacity as Court-Appointed Monitor
of Bondfield Construction Company Limited

Plaintiff

- and -

JOHN AQUINO and 2304288 ONTARIO INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: January , 2022

Issued by _____
Local registrar

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Toronto, ON M5G 1R7

TO: JOHN AQUINO
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AND TO: 2304288 ONTARIO INC.
30 Puccini Drive
Richmond Hill, ON L4E 2Y4

CLAIM

1. The plaintiff claims:

- (a) an order declaring that the Defendants are liable to Bondfield Construction Company Limited (**Bondfield**) for fraud, breach of fiduciary duty, knowing receipt, conspiracy, and unjust enrichment in the amount of \$20,500,000, or such further or other amount as may be particularized prior to trial;
- (b) an order requiring the Defendants to pay Bondfield the amount of \$20,500,000, or such further or other amount as the Defendants may be found to be liable to Bondfield;
- (c) a declaration that the Defendants hold in trust all funds that they received pursuant to the Impugned Transactions, as defined below;
- (d) an order permitting the Monitor to trace any and all funds that have been received by the Defendants as a result of the Impugned Transactions into any funds, real property or personal property of the Defendants and recover against the same;
- (e) in the alternative, an order for a constructive trust over any property of the Defendants into which any funds that have been received by the Defendants as a result of the Impugned Transactions were invested or into which such funds can be traced;
- (f) prejudgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (g) costs of this action on a substantial indemnity basis; and
- (h) such further and other relief as counsel may advise and this Honourable Court may deem just.

2. Bondfield Construction Company Limited (**Bondfield**) is a corporation incorporated pursuant to the Ontario *Business Corporations Act*, RSO 1990, c B-16 (**OBCA**). Together with certain of its affiliates, at all material times Bondfield operated a full-service construction company referred to herein as the “Bondfield Group”. Bondfield was the primary contracting entity between the Bondfield Group and the clients for which it provided construction services.

3. Prior to its insolvency, the Bondfield Group was owned and controlled by members of the Aquino family, namely Ralph Aquino, Steven Aquino and the Defendant, John Aquino. John Aquino is the former president and a 33% shareholder of Bondfield.

4. The Defendant, 2304288 Ontario Inc. (**230**), is John Aquino's holding company.

Bondfield Group's Insolvency

5. On March 5, 2019, the Bondfield Group, including Bondfield (the **CCAA Applicants**), filed an application, returnable on March 6, 2019, seeking an initial order pursuant to the *Companies' Creditor Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the **CCAA**) to, among other things, obtain a stay of proceedings to allow them an opportunity to restructure their business and affairs;

6. On April 3, 2019, the Court granted an Initial Order in those proceedings (as amended and restated, the **Initial Order**) that, among other things, appointed Ernst and Young Inc. as the monitor of the CCAA Applicants (the **Monitor**). The Initial Order also approved a continued stay of proceedings in favour of the CCAA Applicants, a CCAA Filing Agreement between the CCAA Applicants and certain stakeholders, and interim financing facilities, and granted certain other orders to give effect to the CCAA Filing Agreement.

Identification of Financial Irregularities at Bondfield

7. As a result of the Monitor becoming aware of a potentially fraudulent scheme that may have been committed against the Bondfield Group, it sought approval for and undertook an investigation pertaining to same.

8. On May 30, 2019, the Court authorized the Monitor and its counsel, Norton Rose Fulbright Canada LLP to (i) undertake an investigation of this scheme; (ii) engage Ernst & Young LLP (**EY**) to assist in the investigation and (iii) report to the Court regarding the outcome of the investigation (the **Investigation**).

9. EY advised the Monitor of the existence of financial and other irregularities involving a large number of invoices that were submitted by purported suppliers of the Bondfield Group (the **Suppliers of Interest**) and paid by the Bondfield Group, which irregularities suggested that funds may have been misappropriated from the Bondfield Group.

10. EY investigated the irregularities involving the Suppliers of Interest. The records obtained through the Investigation revealed that large sums of money were stolen from Bondfield through a fraudulent invoicing scheme (the “**Fraudulent Invoicing Scheme**”) involving numerous invoicing transactions that took place over a period of at least 7 years and possibly longer (the **Impugned Transactions**). EY determined through the Investigation that at least \$42,307,693 was stolen from Bondfield through the Fraudulent Invoicing Scheme, the particulars of which are set out below.

The Fraudulent Invoicing Scheme

11. From 2011 to 2018, purported suppliers (the “**Suppliers of Interest**”) delivered to Bondfield invoices (the “**Invoices**”) seeking payment for services or materials purportedly supplied to Bondfield on various construction projects. However, none of the purported services or materials described in the Invoices were, in fact, provided to Bondfield by the Suppliers of Interest, or in some cases, at all. John Aquino orchestrated the delivery of the Invoices to Bondfield. John Aquino then caused those invoices to be paid by Bondfield from its general revenues, which primarily consisted of payments on construction projects, and were, accordingly, impressed with trusts in the ordinary course from time to time.

12. The Suppliers of Interest include, but are not limited to:

- (a) 2299726 Ontario Inc.;
- (b) MMC General Contracting Inc.;
- (c) 2483251 Ontario Corp;
- (d) 2483251 Ontario Corp dba Clearway Haulage;
- (e) 2420595 Ontario Ltd. dba Strada Haulage;
- (f) B.I.C Haulage;
- (g) GEM Haulage;
- (h) Peel Region Paving Co. Ltd.;
- (i) Vaughan Haulage;

- (j) Terra Haulage;
- (k) GEM General Contracting;
- (l) ABC Masonry;
- (m) 2420570 Ontario Ltd. dba MTEC Construction;
- (n) RCO General Contracting Inc.;
- (o) Time Passion, Inc.;
- (p) 2104661 Ontario Inc.;
- (q) 2104664 Ontario Inc.;
- (r) Gem Stone; and
- (s) 2466601 Ontario Inc. dba MMC General Contracting;

13. Full particulars of the entities and individuals involved in the Fraudulent Invoicing Scheme are within the knowledge of John Aquino and not within the knowledge of the Monitor and/or Bondfield.

14. As noted above, no services or materials were actually provided by any of the Suppliers of Interest. In fact, nothing of value was provided by the Suppliers of Interest. Instead, the invoices were created and delivered to Bondfield as part of a fraudulent scheme to clandestinely withdraw funds from Bondfield. The withdrawals of funds were hidden from Bondfield and its principals (other than John Aquino) through the use of the Invoices that disguised the true nature of the payments being made.

15. The investigation has revealed that John Aquino orchestrated the Fraudulent Invoicing Scheme. He also played a central role in planning, drafting, receiving, approving and arranging for the payment of the invoices. John Aquino's role in the Fraudulent Invoicing Scheme included:

- (a) Corresponding with Suppliers of Interest to identify the amounts that should be invoiced to Bondfield and the jobs to which the Invoices should be directed;
- (b) Receiving and/or approving the Invoices from the Suppliers of Interest; and

- (c) Signing cheques or otherwise arranging for the payment of the Invoices by Bondfield.

16. In turn, John Aquino benefitted personally from the scheme when he and/or his holding company, 230, received payments on account of the Invoices from the Suppliers of Interest. To the extent that 230 received these stolen funds, the funds were then paid to John Aquino or as he directed.

17. Full particulars of the amounts paid or consideration otherwise given to John Aquino, either directly or indirectly, by the Suppliers of Interest or other persons or entities involved in the Fraudulent Invoicing Scheme are known to John Aquino and 230 and are not within the knowledge of the Monitor and/or Bondfield.

The TUV Application

18. In November 2019, the Monitor commenced an application under the CCAA before the Ontario Superior Court of Justice for a declaration that certain of the Impugned Transactions that occurred within 5 years of Bondfield's insolvency (the "**TUV Statutory Review Period**") were undertaken with the intent of defrauding, defeating or delaying Bondfield's creditors, and therefore were transfers at undervalue within the meaning of Section 96 of the Bankruptcy and Insolvency Act, RSC 1985, c B-3 (the **BIA**) as incorporated into the CCAA. The Monitor also sought to set aside such transactions and/or to recover damages in an amount equivalent to the transfers at undervalue (the "**TUV Application**").

19. In the context of the TUV Application, John Aquino did not dispute the Monitor's position that no value was provided for any of the subject transactions underlying the Fraudulent Invoicing Scheme and thereby admitted the Monitor's allegation in this regard. Such an admission is or ought to be binding on John Aquino for the purposes of this proceeding. In any event, the Monitor pleads and the fact is that no value was provided for any of the transactions underlying the Fraudulent Invoicing Scheme.

20. By judgment dated March 19, 2021, Justice Dietrich found that the subject transfers of funds that were made in connection with the Fraudulent Invoice Scheme during the TUV Statutory Review Period amounted to transfers at undervalue and found John Aquino and certain Suppliers of Interest and their principals jointly and severally liable in the amount of \$21,807,693 (the **Dietrich Decision**). The Monitor pleads that the factual findings made by Justice Dietrich in

respect of the Fraudulent Invoice Scheme are binding against John Aquino in the within proceeding as they relate to the Impugned Transactions that are at issue in this proceeding.

21. At the time of pleading an appeal from the Dietrich Decision had been heard by the Ontario Court of Appeal and was under reserve. In the event the Dietrich Decision is upheld on appeal, the Monitor does not seek to recover any amounts referable to the TUV Statutory Review Period and the Dietrich Decision in the within proceeding.

22. In the event the Dietrich Decision is at all modified on appeal, the Monitor claims for such additional damages as may be applicable for the causes of action pleaded herein arising with respect to the Fraudulent Invoicing Scheme transactions during the TUV Statutory Review Period. The Monitor claims only for such amounts insofar as they are (i) not duplicative of any amounts under the Dietrich Decision that remain owing following the appeal and (ii) remain available due to distinctions between the cause of action for a transfer at undervalue and the causes of action pleaded herein.

Breach of Fiduciary Duty and Knowing Receipt

23. During the period when the Impugned Transactions were carried out, John Aquino was an officer and senior executive of Bondfield and he owed fiduciary duties to Bondfield.

24. The Impugned Transactions were orchestrated and carried out in breach of those fiduciary duties. John Aquino caused and/or directed Bondfield to make payments for purported services for his own personal benefit and not for the benefit of Bondfield. Simply put, John Aquino enriched himself and those he involved in his fraudulent scheme the expense of the Bondfield Group through the improper use of his authority and Bondfield's assets, money and property.

25. Bondfield suffered damages in an amount equal to the value or quantum of the Impugned Transactions.

26. John Aquino and certain of the Suppliers directed funds received from the Impugned Transactions to 230. Full particulars of the quantum of funds directed to 230 are within the knowledge of 230 and John Aquino and not within the knowledge of the Monitor.

27. The Defendants are liable to make restitution of all funds received by them from the Suppliers of Interest or otherwise received by them in connection with the Impugned Transactions.

The Defendants received such funds with full knowledge that they had been obtained in breach of fiduciary duty.

Fraud

28. John Aquino defrauded Bondfield through the Impugned Transactions.

29. John Aquino knowingly and deliberately disguised and misrepresented the nature of the Impugned Transactions to the Bondfield Group as transactions being entered into or payments being made for the benefit of the Bondfield Group and/or to satisfy the Bondfield Group's legitimate obligations, when in fact they were made for the personal benefit of John Aquino and those persons and entities he involved in the Impugned Transactions.

30. Such misrepresentations were made both explicitly and impliedly when John Aquino submitted and approved the Invoices and when he authorized and/or arranged for payment to the Suppliers of Interest and 230.

31. Through his misrepresentations and the misuse of his roles and powers as an officer of Bondfield, John Aquino caused the Impugned Transactions to occur, resulting in Bondfield suffering losses equivalent to the value or quantum of the Impugned Transactions.

Unlawful Means Conspiracy

32. John Aquino and 230 acted in concert with others, including the Suppliers of Interest and their principals, with a common intention to carry out the Fraudulent Invoicing Scheme. They had a common intention of enriching themselves to the detriment of Bondfield.

33. John Aquino, 230 and their co-conspirators engaged in unlawful conduct in furtherance of their scheme, including fraud and theft.

34. The unlawful conduct was directed towards Bondfield.

35. John Aquino, 230 and their co-conspirators knew or ought to have known that injury would result – their scheme necessarily involved Bondfield suffering losses.

36. Bondfield did, in fact, suffer losses equivalent to the value or quantum of the Impugned Transactions.

Unjust Enrichment and Constructive Trust

37. John Aquino and 230 were enriched by the Impugned Transactions. Bondfield suffered a corresponding deprivation, as the Impugned Transactions were made at Bondfield's expense. There was no juristic reason for the enrichment or deprivation.

38. The Monitor asserts that insofar as any funds, services or property received by John Aquino or 230 as a result of the Impugned Transactions can be traced into John Aquino's or 230's property, Bondfield is entitled to a constructive trust over that property.

39. The Plaintiff proposes that this action be tried at Toronto, Ontario.

January 31, 2022

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ERNST & YOUNG INC., in its capacity as Court-Appointed
Monitor of Bondfield Construction Company Limited

and

JOHN AQUINO and
2304288 ONTARIO INC.

Court File No.:

Plaintiff

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at TORONTO

STATEMENT OF CLAIM

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