

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

MAPLEVIEW DEVELOPMENTS LTD., PACE MAPLEVIEW LTD and 2552741
ONTARIO INC.

Respondents

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 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

**FACTUM OF THE RECEIVER
(Motion Returnable September 17, 2024)**

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capacity as Receiver

TO: **SERVICE LIST**

PART I - NATURE OF THE MOTION

1. The issue on this motion is whether the Lien Claims have priority over the KingSett Mortgage and constitute Priority Payables under the Sale Agreement (as those terms are defined below). They do not. The Lien Claims only have priority to the extent of any deficiency in the holdback required to be retained under the *Construction Act*.¹

2. This receivership proceeding involves lands in Barrie (the “**Lands**”) that Mapleview Developments Ltd. (“**Mapleview**”) was developing into townhomes. To finance that work, Mapleview borrowed from KingSett Mortgage Corporation (“**KingSett**”) and others, and granted those creditors mortgages over the Lands.

3. The Respondents defaulted on their obligations to KingSett and KSV Restructuring Inc. was appointed as receiver (in that capacity, the “**Receiver**”). Pursuant to a Stalking Horse Agreement of Purchase and Sale dated May 9, 2024 (the “**Sale Agreement**”) and the AVO (defined and described below), the Receiver sold the Lands to Dunsire Homes Inc. (the “**Purchaser**”). The purchase price under the Sale Agreement includes an amount equal to the amount of “Priority Payables” (as defined below).

4. Since December 2023, twenty-one contractors (the “**Lien Claimants**”) have registered claims for lien (“**Lien Claims**”) ² on title to the Lands pursuant to the *Construction Act*. Certain Lien Claimants (the “**Objecting Lien Claimants**”) allege that their *entire* claims have priority over the KingSett Mortgage, and therefore must be paid.

¹ R.S.O. 1990, c C.30 [*Construction Act*].

² See Appendix “A” for a table setting out the details of the Lien Claims.

5. The priority asserted by the Objecting Lien Claimants is fundamentally inconsistent with both the purpose and text of the *Construction Act*. The *Construction Act* is intended to balance the interests of parties involved in construction projects, including lien claimants and mortgagees, which it accomplishes by granting mortgagees priority rights over lien claimants in a number of circumstances, while at the same time granting lien claimants priority over mortgagees in respect of any deficiencies in the statutory holdback. Accepting the unprecedented priority asserted by the Objecting Lien Claimants would disregard the statutory balancing act embodied in the *Construction Act*, and would further disregard the clear and unambiguous priority granted to KingSett pursuant to both s. 78(2) of the *Construction Act*, as the provider of a “building mortgage,” and s. 78(6), as a subsequent mortgagee whose mortgage was registered after the first lien arose, but prior to a lien being preserved or perfected, and who did not receive written notice of a lien prior to advancing funds.

6. The Objecting Lien Claimants’ arguments regarding priority should therefore be rejected, and only the deficiency in the statutory holdback should have priority over the KingSett Mortgage and constitute a Priority Payable.

PART II - SUMMARY OF FACTS

A. Background

7. Prior to the commencement of these receivership proceedings, the Respondents (the “**Debtors**”) were collectively engaged in developing the Urban North Townhomes project (the “**Project**”), a residential townhome project that was being developed on the Lands.³ In order to finance the construction of the Project, KingSett and Mapleview entered into several commitment letters (the “**Prior Commitment Letters**”) and registered related mortgage security. The Prior

³ Second Report of the Receiver dated July 26, 2024 at para. 2.2.1 [Second Report].

Commitment Letters related to financing improvements to the Lands, including land servicing, land development and construction.⁴

8. Kingsett and Maplevue entered into an amended and restated commitment letter on September 23, 2022 (the “**A&R Commitment Letter**”), whereby Kingsett financed improvements to the Lands through loan facilities secured by registered mortgages (collectively, the “**Loan Facilities**”).⁵ Kingsett and Maplevue entered into the A&R Commitment Letter in order to include certain additional lands as security for the Loan Facilities and to consolidate the Prior Commitment Letters.⁶

9. The loan facilities provided under the Prior Commitment Letters were secured by two mortgages in respect the Lands, each of which was registered on title on October 17, 2019 (the “**Original Kingsett Mortgages**”).⁷ Following the parties entering into the A&R Commitment Letter, a mortgage was registered on title to the Lands on December 8, 2022, as security for the restated obligations under the A&R Commitment Letter (the “**Kingsett Mortgage**”). The Original Kingsett Mortgages were removed from title the following day.⁸

10. The Kingsett Mortgage is an amendment and restatement of the Original Kingsett Mortgages, and exclusively incorporates and secures amounts advanced under the Prior Commitment Letters and secured under the Original Kingsett Mortgages.⁹

⁴ Affidavit of Daniel Pollack sworn August 14, 2024, at para. 13 [Pollack Affidavit].

⁵ Pollack Affidavit, at para. 15.

⁶ Pollack Affidavit, at para. 19.

⁷ Affidavit of Carolin Jumaa affirmed August 2, 2024, at para. 3 [Jumaa Affidavit].

⁸ Jumaa Affidavit at paras. 5-6.

⁹ Pollack Affidavit at para. 19. The Kingsett Mortgage was registered because an existing mortgage may not be amended to include additional charged lands, and therefore a new charge was required.

11. The Lands are also subject to charges held on behalf of, or directly by, Aggregated Investments Inc. (the “**Assumed Mortgages**”). The KingSett Mortgage has priority to the Assumed Mortgages on the Lands where Lien Claims are registered on title.¹⁰

B. The Receivership

12. On March 21, 2024, the Receiver was appointed over the Lands, among other property of the Debtors. This Court approved the Sale Agreement and a sale process for the Lands by order dated May 30, 2024. The Sale Agreement was deemed to be the successful bid in that sale process.

13. Under the terms of the Sale Agreement, a portion of the purchase price is equal to the sum of the “**Priority Payables**,” which is defined as:

any payables that have priority over the Assumed Mortgages, excluding any Harmonized Sales Tax owing by the Debtors, but including amounts that have priority pursuant to s.78(2) of the *Construction Act*, RSO 1990, c C30, as determined by the Receiver in consultation with the Purchaser, both acting reasonably, or as determined by the Court, after application of any amount of cash on hand of the Debtors, excluding the Deposit, immediately prior to Closing.

14. The Receiver, acting under the advice of its counsel, concluded that the priority of the Lien Claimants under s. 78 was limited to any deficiency in the 10% holdback that was required to be retained by Maplevue under the *Construction Act*. The Receiver therefore previously proposed to retain a reserve in respect of any claims in relation to the statutory holdback deficiency (the “**Holdback Reserve**”). The Holdback Reserve was to be held by the Receiver from the cash proceeds of the Transaction, pending a determination of the Holdback Claims (defined below).¹¹

¹⁰ Second Report at para. 3.1.1. As the Receiver is not aware of any challenges with respect to the Assumed Mortgages, this Factum is therefore confined to addressing the concerns regarding the KingSett Mortgage raised in the materials of the Objecting Lien Claimants.

¹¹ Second Report at paras. 7.1.1-7.1.7.

15. In order to determine the size of the Holdback Reserve, the Receiver and its counsel conducted an extensive review of the holdback amounts that may be owed to the Lien Claimants (the “**Holdback Claims**”), including by (i) reviewing the Debtors’ books and records in order to determine the total goods and services provided by the Lien Claimants and the outstanding indebtedness thereto; (ii) emailing the Lien Claimants to request any relevant documentation; and (iii) conducting searches of publicly available records. On the basis of this review, the Receiver and its counsel calculated the maximum potential Holdback Claim owing to each Lien Claimant, which was used to size the Holdback Reserve.¹²

16. On July 26, 2024, the Receiver served a motion for: (i) an approval and vesting order approving the Transaction (the “**AVO**”), which AVO contemplated the Holdback Reserve; and (ii) a distribution order approving a distribution of the proceeds of the transaction to KingSett as secured creditor (the “**Distribution Order**”).¹³

17. On August 1, 2024, one of the Objecting Lien Claimants filed materials objecting to the proposed distribution to KingSett on the basis that the Lien Claimants had priority under the *Construction Act* for the full extent of their Lien Claims, the Holdback Reserve was therefore insufficient and the Receiver should instead be directed to retain the full amount of the Lien Claims (approximately \$19.7 million) as a potential Priority Payable. Several other Lien Claimants also indicated that they would be objecting on the same basis.

¹² Second Report at paras. 7.1.9-7.1.10. For a table listing the maximum potential Priority Payables in respect of each Lien Claimant, and the basis for the calculating same, see Second Report, Appendix “G.”

¹³ Pollack Affidavit at para. 5.

18. On August 2, 2024, the Court therefore adjourned the relief sought, and determined that the portion of the motion pertaining to the distribution and priorities issues should be heard at this motion.¹⁴

19. On August 16, 2024, the Court granted a revised AVO and Distribution Order, which had been amended to make the orders acceptable to the objecting parties.¹⁵ The primary substantive revision to the AVO was that it provided for the collateralization of a reserve equal to the full value of the registered Lien Claims (the “**Lien Claimants’ Reserve**”). The resolution of the *Construction Act* priorities issue, which involves a determination of whether the Lien Claims have priority over the KingSett Mortgage, and are Priority Payables beyond amounts owing in respect of holdback and are therefore payable out of the Lien Claimants’ Reserve, is the only remaining issue before the Court in relation to the Distribution Order.

PART III - THE ISSUES AND THE LAW

20. The issue on this motion is whether the *entire* amounts of the Lien Claims have priority over the KingSett Mortgage and constitute Priority Payables. They are not. The Lien Claims are Priority Payables only with respect to any deficiency in the holdback required to be retained under the *Construction Act*.

A. The KingSett Mortgage Has Priority Pursuant to the *Construction Act*

21. Section 78 of the *Construction Act* establishes the framework for determining the priority between mortgagees and lien claimants. It is designed to balance the competing interests of owners, contractors, and mortgagees (among others), and to fairly allocate risk and benefit among

¹⁴ Pollack Affidavit at para. 6.

¹⁵ *KingSett Mortgage Corporation v. Maplevue Developments Ltd. et al.*, (August 16, 2024) Ont. S.C.J. [Commercial List] Court File No. CV-24-00716511-00CL ([Endorsement of Justice Cavanaugh](#)) at para. 25.

them.¹⁶ As a result, s. 78 seeks to protect the legitimate interests of both mortgagees and lien claimants by granting mortgagees priority over lien claimants in a number of circumstances,¹⁷ while at the same time ensuring that lien claimants generally retain priority with respect to any deficiencies in the statutory holdback.¹⁸ There is therefore “no broad principle that the Act should be interpreted to favour lien claimants”.¹⁹

22. The Receiver does not dispute the Lien Claimants’ potential priority in respect of any verified Holdback Claims. In contrast, and despite the careful steps taken by the Receiver to protect the legitimate interests of the Lien Claimants, the Objecting Lien Claimants request that this Court instead grant the Lien Claimants priority in respect of the entirety of the Lien Claims.

23. The scope of the priority asserted by the Objecting Lien Claimants goes far beyond the rights afforded to them under the *Construction Act*. As is set out in more detail below, KingSett has clear priority over the Lien Claimants pursuant to both ss. 78(2) and 78(6) the *Construction Act*, each of which is sufficient on its own to grant KingSett priority. Further, the broad priority asserted by the Objecting Lien Claimants would be fundamentally inconsistent with the principles underlying the *Construction Act*, which the courts have held is not intended to favour lien claimants over other parties,²⁰ and in particular is not intended to favour the interest of lien claimants over mortgagees beyond the value of the required holdback.²¹

¹⁶ *BCIMC Construction Fund Corp. et al. v. 33 Yorkville Residences Inc et al.*, [2022 ONSC 2326](#) at para. 27 [*BCIMC*], aff’d 2023 ONCA 1.

¹⁷ See *Construction Act*, ss. 78(2), 78(3), 78(4), and 78(6).

¹⁸ See *Construction Act*, ss. 78(2) and 78(5).

¹⁹ *BCIMC* at paras 27.

²⁰ *BCIMC*, at para. 27

²¹ *RSG Mechanical Inc. v. 1398796 Ontario Inc.*, [2015 ONSC 2070](#) at para. 29.

24. The Receiver therefore submits that the court should determine that the KingSett Mortgage has priority over the Lien Claims, and that only the acknowledged deficiency in the statutory holdback constitutes a Priority Payable.

(a) The KingSett Mortgage Has Priority Under Section 78(2)

25. Section 78(2) of the *Construction Act* provides a limited priority to lien claimants over a mortgagee who provides a building mortgage (regardless of the date that the mortgage, or any mortgage taken out to repay it, is registered), which is limited to any deficiency in the holdback:

Building mortgage

(2) Where a mortgagee takes a mortgage with the intention to secure the financing of an improvement, the liens arising from the improvement have priority over that mortgage, and any mortgage taken out to repay that mortgage, to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV, irrespective of when that mortgage, or the mortgage taken out to repay it, is registered.

26. The sole prerequisite to the application of s. 78(2) is that the mortgage must be taken “with the intention to secure financing of an improvement,” with improvement in turn being broadly defined to include, among other things, “any alteration, addition or capital repair to the land,” and “any construction, erection or installation on the land.”²² The relevant consideration in this analysis is whether the mortgagee intended the loan to be used in this manner,²³ which is established with reference to all relevant circumstances and correspondence between the parties.²⁴

²² *Construction Act*, s. 1(1), “improvement.”

²³ *Northway Developments Inc. v. 1200946 Ontario Inc.*, [1998 CarswellOnt 3048](#) (ONCJ) at para. 10.

²⁴ David Bristow et al., *Construction, Builders' and Mechanics' Liens in Canada*, 8th ed., (Toronto: Thomson Reuters Canada, 2020) at § 8:22.

27. As the Ontario Court of Appeal has noted, where the mortgagee's intention to finance an improvement is established, s. 78(2) restricts the priority of lien claims "solely to any deficiency in the holdback amount, and not over the mortgage generally."²⁵

28. The authors of the leading text, *Construction Law in Canada*, Justice Leonard Ricchetti and Timothy J. Murphy, state the same principle as follows:

A building mortgage is defined as a mortgage taken by a mortgagee "with the intention to secure financing of an improvement". Liens arising from the improvement have priority over a building mortgage to the extent of any deficiencies in the holdbacks required to be retained by the owner under Part IV of the Act. This exposure to a lender can be onerous but the limitation is, in a practical sense, approximately 10 per cent of the value of the work done on the improvement. As a result, the practical effect of s. 78(2) is to limit the exposure of a mortgagee under a building mortgage to approximately 10% of the value of the work done on an improvement (i.e., the holdback amount).²⁶ (*emphasis added; citations omitted*)

29. Another text, *Construction, Builders' and Mechanics' Liens in Canada (8th Edition)*, repeats the principle:

Section 78(2) of the Ontario Act identifies and isolates a certain type of mortgage that is subject to a limited but absolute loss of priority: the "building mortgage". A building mortgage is one taken with the intention of securing the financing of an "improvement", or to repay such a mortgage. Regardless of when such a mortgage is registered, it loses

²⁵ *Bianco v. Deem Management Services Limited*, [2021 ONCA 859](#) (Ontario Court of Appeal), at para. 29 (*emphasis added*). See also *BCIMC*, at para. 23, in which the court stated that "The key principle is that the lien claimant receives priority only to the extent of any deficiency in the owner's holdback."

²⁶ Justice Leonard Ricchetti and Timothy J. Murphy, *Construction Law in Canada* (Toronto: LexisNexis Canada, 2010) at Chapter 12, IV.A(1).

priority over the liens arising from that improvement to the extent of any deficiency in the holdbacks mandated by the statute: i.e. 10% of the value of work, services and materials supplied to the improvement.²⁷ (*emphasis added*)

30. The KingSett Mortgage is a “building mortgage”. The KingSett Mortgage was taken with the intention to secure the Loan Facilities, each of which were intended to be exclusively used to finance improvements to the Lands.²⁸ The evidence demonstrates that the Loan Facilities were intended to finance improvements:

- (a) **Description of the Loan Facilities:** In the A&R Commitment Letter (and the Prior Commitment Letters), the loan facilities are described as relating to Land Development, Construction, and (in the case of the A&R Commitment Letter) “cash in lieu of Letter(s) of Credit” (which financed letters of credit posted with the municipality and the hydro authority as security pending the completion of the improvements).²⁹ These descriptions show that the Loan Facilities were intended to fund expenses incurred in the course of constructing improvements on the Lands, and therefore fall within the scope of s. 78(2).
- (b) **Subsequent Use of the Funds:** The fact that the Loan Facilities were intended to finance improvements can also be seen by the fact that all of the funds advanced by KingSett were in fact used solely for the purpose of improving the Lands. None of the funds advanced pursuant to the Loan Facilities were utilized by the Debtors for the initial acquisition of the Lands. All of the Lands were already owned by

²⁷ David Bristow et al., *Construction, Builders' and Mechanics' Liens in Canada*, 8th ed., (Toronto: Thomson Reuters Canada, 2020) at § 8:22.

²⁸ Pollack Affidavit at paras. 8, 17.

²⁹ Pollack Affidavit at para. 17.

Mapleview prior to the execution of the Prior Commitment Letters and the advance of funds by Kingsett thereunder.³⁰

- (c) **Presence of Construction Lien Endorsement:** That each of the Loan Facilities was intended to be used to finance improvements is further demonstrated by the fact that the Stewart Title Loan Policy in respect of the Project includes a “Construction Lien Endorsement,” and applies to all the Loan Facilities. Endorsements of this type are only provided in respect of construction loans.³¹

31. The amounts advanced under the Loan Facilities were intended to be used (and were in fact used) solely to finance improvements to the Lands. As a result, the KingSett Mortgage has priority over the Lien Claims, subject only to the deficiency in the statutory holdback.

(b) The KingSett Mortgage Has Priority Under Subsection 78(6)

32. In addition, the KingSett Mortgage has priority over the Lien Claims pursuant to s. 78(6) of the *Construction Act*, which provides as follows:

General priority against subsequent mortgages

(6) Subject to subsections (2) and (5), a conveyance, mortgage or other agreement affecting the owner’s interest in the premises that is registered after the time when the first lien arose in respect to the improvement, has priority over the liens arising from the improvement to the extent of any advance made in respect of that conveyance, mortgage or other agreement, unless,

(a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or

(b) prior to the time when the advance was made, the person making the advance had received written notice of a lien.

³⁰ Pollack Affidavit at para. 18.

³¹ Pollack Affidavit, at para. 19. The Construction Lien Endorsement can be found in full at Pollack Affidavit, Exhibit “H”, p. 800.

33. The effect of s. 78(6) is to provide a subsequent mortgagee (i.e., a mortgagee in respect of a mortgage that is registered after the time when the first lien arose) with priority over lien claims, subject to the two specified exceptions in (a) and (b). The priority of the mortgagee under s. 78(6) is qualified by s. 78(5), which grants lien claimants priority over the mortgage to the extent of any statutory holdback deficiency (ie. the same priority they enjoy under s. 78(2)).³²

34. There are two prerequisites for a mortgagee obtaining priority for an advance under s. 78(6): (i) the mortgage must be registered after the time when the first lien arose; and (ii) neither of the two statutory exceptions applies.

35. The KingSett Mortgage fulfills both of these prerequisites. First, the KingSett Mortgage was initially registered in two instruments on October 17, 2019, before being subsequently re-registered in amended and restated form on December 8, 2022.³³ These registrations were made after the date on which the first lien arose in respect of the Project on December 5, 2016.³⁴

36. Second, neither of the statutory exceptions applies. Advances under the KingSett Mortgage were made between October 17, 2019, and February 18, 2022,³⁵ and the A&R Commitment Letter describes the Loan Facilities as being “fully funded” as of September 23, 2022.³⁶ The earliest Lien Claim was registered on title on December 8, 2023, almost two years after the last advance made

³² *Construction Act*, s. 78(5).

³³ Jumaa Affidavit at paras. 3, 5.

³⁴ Jumaa Affidavit at para. 7, and see Appendix “A” to this Factum for a chart of the Lien Claims, including the dates of first and last supply. The date a lien “arises” in respect of an improvement is the date when the lien claimant “first supplies services or materials to the improvement”: *Construction Act*, s. 15. Appendix A shows that the lien of Schaeffer Daldov Purcell (the “Schaeffer Lien”) was the first to arise on the improvement, and that it arose on December 5, 2016 – well prior to the date when the mortgages were registered, making them subsequent mortgages under section 78(6). The Schaeffer Lien is appended to the Jumaa Affidavit as Exhibit “D” (pp. 93-101), with the “Statements” section containing the lien claimant’s statement: “Time within which services or materials were supplied from 2016/12/05 to 2024/02/22” appearing at page 101.

³⁵ Affidavit of Ying (Teddy) Ouyang, Exhibit “A”, Tab 1, Responding Motion Record of the Fuller Landau Group, at pp. 14-15. See Appendix “B” to this Factum for a list of all advances made in respect of the KingSett Mortgage.

³⁶ Pollack Affidavit at para. 16.

under the KingSett Mortgage.³⁷ As the last advance under the KingSett Mortgage significantly predates the earliest lien registration, the s. 78(6)(a) exception cannot apply.

37. Similarly, the s. 78(6)(b) exception does not apply. There is no evidence that any written notice of lien was served on KingSett prior to the time of the last advance on February 18, 2022.

38. The KingSett Mortgage therefore has priority over the Lien Claims pursuant to s. 78(6) of the *Construction Act*, subject only to any deficiency in the statutory holdback.³⁸

PART IV - NATURE OF THE ORDER SOUGHT

39. For the reasons set out above, the Receiver requests that this Court declare that the KingSett Mortgage has priority over the Lien Claims, and that the Lien Claims are not Priority Payables, except with respect to any verified statutory holdback deficiency.

40. The Receiver seeks its costs of this motion from any party that opposes such relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of August, 2024.



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per Roger Gillott
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Lawyers for the Receiver

³⁷ See Appendix “A” for a chart of the Lien Claims, including the dates of registration.

³⁸ Though the Objecting Lien Claimants have not raised any objections with respect to the priority of the Assumed Mortgages, the Receiver notes that the Assumed Mortgages also have priority over the Lien Claims by virtue of s. 78(6). In respect of the dates of registration for the Assumed Mortgages, see Pollack Affidavit, Exhibit “G.” In respect of the dates of advances under the Assumed Mortgages, see Affidavit of Ying (Teddy) Ouyang, Exhibit “A”, Tab 1, Responding Motion Record of the Fuller Landau Group, at pp. 15-16.

APPENDIX “A”: CHART OF LIEN CLAIMS ³⁹

Lien Claimant	Lien Amount	Date of Lien Registration	Dates of Supply
CON-DRAIN COMPANY (1983) LIMITED	\$3,404,024.68	12/8/2023	January 15, 2022 to November 24, 2023
CON-DRAIN COMPANY (1983) LIMITED	\$729,256.22	12/8/2023	November 21, 2020 to November 24, 2023
RIVERVALLEY MASONRY GROUP LTD.	\$3,947,900.46	1/16/2024	July 2021 to December 24, 2023
NORTH GATE FARMS LIMITED	\$69,271.58	1/17/2024	March 1, 2018 to December 5, 2023
NORTH GATE FARMS LIMITED	\$473,988.54	1/17/2024	March 1, 2018 to December 5, 2023
HOME LUMBER INC.	\$1,421,466.63	1/25/2024	May 11, 2023 to January 25, 2024
ALPA STAIRS AND RAILINGS INC.	\$195,615.55	1/25/2024	April 6, 2021 to December 7, 2023
NEWMAR WINDOW MANUFACTURING INC.	\$445,756.09	1/26/2024	September 14, 2021 to November 27, 2023
QUALIY RUGS OF CANADA LIMITED O/A QUALITY STERLING GROUP	\$1,016,739.88	1/29/2024	November 11, 2021 to December 14, 2023
FOREMONT DRYWALL CONTRACTING	\$2,453,798.21	2/7/2024	March 15, 2021 to December 15, 2023

³⁹ This chart reflects information set out in the parcel registers attached as Exhibit “G” to the Pollack Affidavit.

Lien Claimant	Lien Amount	Date of Lien Registration	Dates of Supply
SUNBELT RENTALS OF CANADA INC.	\$227,629.24	2/14/2024	April 5, 2021 to February 13, 2024
1588555 ONTARIO INC. O/A NEB'S CAULKING	\$52,553.48	2/22/2024	August 6, 2021 to February 22, 2024
PENEGAL TRIM & SUPPLY LTD.	\$309,908.68	3/19/2024	April 21, 2023 to March 18, 2024
669857 ONTARIO LIMITED	\$476,690.25	3/22/2024	September 9, 2021 to February 27, 2024
MYKON ELECTRIC NORTH LTD.	\$859,890.27	3/25/2024	October 10, 2019 to February 16, 2024
CAPELAS HOMES LTD.	\$1,978,305.85	4/3/2024	August 31, 2021 to March 25, 2024
SCHAEFFER DZALDOV PURCELL LTD.	\$70,354.44	4/5/2024	December 5, 2016 to February 22, 2024
GREENWALL CONCRETE FORMING LTD.	\$103,322.02	4/11/2024	April 29, 2022 to March 14, 2024
BISOUKIS ENTERPRISES LTD.	\$542,070.29	4/18/2024	October 1, 2021 to March 21, 2024
CORTINA KITCHENS INC.	\$342,404.12	4/26/2024	October 20, 2023 to March 25, 2024
1833785 ONTARIO INC.	\$583,386.80	5/17/2024	May 7, 2021 to March 18, 2024
TOTAL	\$19,704,333.28		

APPENDIX “B”: ADVANCES UNDER THE KINGSETT MORTGAGES

IN0509

1. \$29,113,354.00 on October 17, 2019
2. \$2,701,888.00 on November 6, 2019
3. \$4,023,516.00 on December 18, 2019
4. \$909,897.00 on January 29, 2020
5. \$2,661,023.00 on July 2, 2020
6. \$509,811.00 on July 24, 2020
7. \$2,741,975.00 on August 21, 2020
8. \$339,325.00 on September 29, 2020

Total: \$56,000,000.00

IN0510

1. \$11,500,000.00 on October 17, 2019

Total: \$11,500,000.00

IN5021

1. \$8,378,339.56 on January 20, 2020
2. \$121,660.44 on July 24, 2020

Total: \$8,500,000.00

IN5022

1. \$4,500,000.00 on July 30, 2020

Total: \$4,500,000.00

IN5028

1. \$8,437,383.00 on July 30, 2020
2. \$408,779.00 on August 26, 2020
3. \$413,012.00 on September 29, 2020
4. \$759,876.00 on November 3, 2020
5. \$2,312,299.00 on February 2, 2021
6. \$2,047,993.00 on May 14, 2021
7. \$264,486.00 on August 5, 2021
8. \$1,807,717.00 on January 11, 2022
9. \$611,082.00 on February 7, 2022

Total: \$17,062,627.00

IN5030

1. \$2,655,414.60 on August 27, 2020

Total: \$2,655,414.60

SCHEDULE “A”: LIST OF AUTHORITIES

Cases

1. *BCIMC Construction Fund Corp. et al. v. 33 Yorkville Residences Inc et al.*, [2022 ONSC 2326](#)
2. *Bianco v. Deem Management Services Limited*, [2021 ONCA 859](#)
3. *KingSett Mortgage Corporation v. Mapleview Developments Ltd. et al.*, (August 16, 2024) Ont. S.C.J. [Commercial List] Court File No. CV-24-00716511-00CL ([Endorsement of Justice Cavanaugh](#))
4. *Northway Developments Inc. v. 1200946 Ontario Inc.*, [1998 CarswellOnt 3048](#) (ONCJ)
5. *RSG Mechanical Inc. v. 1398796 Ontario Inc.*, [2015 ONSC 2070](#)

Secondary Sources

1. David Bristow, Duncan Glaholt, Howard Wise, R. Bruce Reynolds, *Construction, Builders' and Mechanics' Liens in Canada*, 8th Edition, (Toronto: Thomson Reuters Canada, 2020)
2. Justice Leonard Ricchetti, Timothy J. Murphy, *Construction Law in Canada* (Toronto: LexisNexis Canada, 2010)

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

CONSTRUCTION ACT

R.S.O. 1990, c C.30, as amended

When lien arises

15 A person’s lien arises and takes effect when the person first supplies services or materials to the improvement.

...

Priority over mortgages, etc.

78 (1) Except as provided in this section, the liens arising from an improvement have priority over all conveyances, mortgages or other agreements affecting the owner’s interest in the premises.

Building mortgage

(2) Where a mortgagee takes a mortgage with the intention to secure the financing of an improvement, the liens arising from the improvement have priority over that mortgage, and any mortgage taken out to repay that mortgage, to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV, irrespective of when that mortgage, or the mortgage taken out to repay it, is registered.

Prior mortgages, prior advances

(3) Subject to subsection (2), and without limiting the effect of subsection (4), all conveyances, mortgages or other agreements affecting the owner’s interest in the premises that were registered prior to the time when the first lien arose in respect of an improvement have priority over the liens arising from the improvement to the extent of the lesser of,

- (a)** the actual value of the premises at the time when the first lien arose; and
- (b)** the total of all amounts that prior to that time were,
 - (i)** advanced in the case of a mortgage, and
 - (ii)** advanced or secured in the case of a conveyance or other agreement.

Prior mortgages, subsequent advances

(4) Subject to subsection (2), a conveyance, mortgage or other agreement affecting the owner’s interest in the premises that was registered prior to the time when the first lien arose in respect of

an improvement, has priority, in addition to the priority to which it is entitled under subsection (3), over the liens arising from the improvement, to the extent of any advance made in respect of that conveyance, mortgage or other agreement after the time when the first lien arose, unless,

(a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or

(b) prior to the time when the advance was made, the person making the advance had received written notice of a lien.

Special priority against subsequent mortgages

(5) Where a mortgage affecting the owner's interest in the premises is registered after the time when the first lien arose in respect of an improvement, the liens arising from the improvement have priority over the mortgage to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV.

General priority against subsequent mortgages

(6) Subject to subsections (2) and (5), a conveyance, mortgage or other agreement affecting the owner's interest in the premises that is registered after the time when the first lien arose in respect to the improvement, has priority over the liens arising from the improvement to the extent of any advance made in respect of that conveyance, mortgage or other agreement, unless,

(a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or

(b) prior to the time when the advance was made, the person making the advance had received written notice of a lien.

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 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

KINGSETT MORTGAGE CORPORATION

and MAPLEVIEW DEVELOPMENTS LTD., PACE MAPLEVIEW LTD. and 2552741 ONTARIO INC.

Applicant

Respondents

Court File No.: CV-24-00716511-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

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