



**Supplement to the First Report to Court of  
KSV Restructuring Inc.  
as Receiver and Manager of Vandyk –  
Backyard Kings Mill Limited**

July 12, 2024

## Contents

	Page
1.0 Introduction.....	1
1.1 Purpose of this Supplemental Report.....	2
1.2 Restrictions .....	2
2.0 Background on the Lien Claimants .....	2
3.0 Updates since the Delivery of the First Report .....	3
4.0 Recommendations.....	5

## Appendices

Appendix	Tab
Letter from Plycon counsel to the Receiver dated July 3, 2024 .....	A
Email correspondence between the Receiver and the Service List .....	B
Letter from Osler to Plycon counsel dated July 5, 2024.....	C
Letter from MCAP to Plycon counsel dated July 9, 2024.....	D
Letter from Plycon counsel dated July 9, 2024 .....	E
Letter from Plycon counsel dated July 10, 2024 .....	F
Email from Osler to Plycon counsel dated July 10, 2024.....	G
Email from Plycon counsel to Osler and MCAP dated July 11, 2024 .....	H
Email from Osler to Plycon counsel dated July 12, 2024.....	I



COURT FILE NUMBER: CV-23-00710267-00CL

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

**B E T W E E N:**

**MCAP FINANCIAL CORPORATION**

**APPLICANT**

**- AND -**

**VANDYK-BACKYARD KINGS MILL LIMITED**

**RESPONDENT**

**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;  
AND SECTION 68 OF THE CONSTRUCTION ACT, R.S.O. 1990, C. C.30**

**SUPPLEMENT TO THE FIRST REPORT OF  
KSV RESTRUCTURING INC.  
AS RECEIVER AND MANAGER**

**JULY 12, 2024**

## **1.0 Introduction**

1. This report (“Supplemental Report”) supplements the Receiver’s First Report to Court dated June 27, 2024 (“First Report”).
2. Unless otherwise stated, capitalized terms used in this report have the meanings provided to them in the First Report.
3. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) made on December 11, 2023 (the “Receivership Order”), which became effective on January 8, 2024, KSV Restructuring Inc. (“KSV”) was appointed receiver and manager pursuant to section 243 of the Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3 and section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.30, without security, and Construction Lien Trustee, pursuant to section 68 of the Construction Act, R.S.O. 1990, c. C.30 (in such capacities, the “Receiver”), without security, over all property, assets and undertakings of Vandyk-Backyard Kings Mill Limited (“Vandyk-Kings Mill”) acquired for or used in relation to Vandyk-Kings Mill’s business

and the Project, including the proceeds therefrom (collectively, the “Property”). A copy of the Receivership Order was attached to the First Report as Appendix “A”.

4. Pursuant to five additional orders granted by the Court on November 14, 2023, December 12, 2023, January 18, 2024 and January 23, 2024, KSV was also appointed receiver and manager of certain property of other companies within the Vandyk Group.
5. On March 8, 2024, the Court issued the Sale Process Order approving the Sale Process for the Property and the property of certain other entities within the Vandyk Group.
6. On June 27, 2024, the Receiver served the First Report on the Service List for a hearing scheduled on July 4, 2024 before this Court, to seek approval of the AVO and Distribution Order.
7. This Supplemental Report is filed by KSV in its capacity as Receiver and deals with the Receiver’s recommendation in the First Report in respect of the sale of certain Property.
8. Unless otherwise stated, all monetary amounts contained in this Report are expressed in Canadian dollars.

### **1.1 Purpose of this Supplemental Report**

1. The purpose of this Supplemental Report is to summarize the steps that have been taken in these proceedings since the delivery of the First Report in advance of the rescheduled hearing before this Court to seek approval of the AVO and Distribution Order on July 15, 2024.

### **1.2 Restrictions**

1. This Supplemental Report is subject to the restrictions in the First Report.

## **2.0 Background on the Lien Claimants**

1. As described in the First Report, according to searches of title to the Real Property conducted and reviewed by the Receiver’s counsel, Osler, Hoskin & Harcourt LLP (“Osler”) from the Land Registry Office #80 (Toronto), a total of 21 construction liens have been registered on title to the Real Property.
2. A summary of such liens prepared by Osler was attached to the First Report as Appendix “C”. The Receiver served its materials for the AVO and Distribution Order on all parties (or their counsel) who had registered liens against the Real Property (the “Lien Claimants”).
3. In the First Report, the Receiver stated that it understands, and has confirmed with the Vandyk Group, that the Vandyk Group is not holding any funds for the statutory holdback that the Vandyk Group was required to retain pursuant to the *Construction Act*, from payments to parties that supplied services or materials to the Project.



4. Osler has advised the Receiver that where a mortgagee takes a mortgage with the intention to secure the financing of an improvement, valid liens arising from the improvement may have priority over the mortgage to the extent of any deficiency in the holdbacks that the owner was required to have retained (each a “Holdback Deficiency Priority Claim”).
5. As also described in the First Report, the Receiver and Osler have been reviewing the potential Holdback Deficiency Priority Claims to determine whether they may be entitled to a distribution from the Proceeds of the Transaction (including seeking information from the applicable claimants) and the Receiver noted the following:
  - a) The Project structure was “construction management”, where multiple trade contractors have direct contracts with the owner;
  - b) Based on Osler’s review of the liens registered against the Real Property, 20 parties have registered a total of 21 liens;
  - c) The Receiver and Osler are assessing whether any of such parties may have a Holdback Deficiency Priority Claim and may be entitled to a distribution from the Proceeds in priority to MCAP. Osler has prepared an estimate of the maximum potential Holdback Deficiency Priority Claims based on the information, books and records of Vandyk-Backyard Kings Mill available to the Receiver, including the May CB Ross Report (defined below); and
  - d) Osler has reviewed the report of the quantity surveyor for Vandyk-Backyard Kings Mill Limited, CB Ross Partners (Report No. 20 dated May 31, 2023) (the “May CB Ross Report”). Appendix E (Construction Cost Report) to the CB Ross Report states that as of June 12, 2023, the “Gross Cost to Date” incurred on the Project is \$24,329,299. The May CB Ross Report was attached to the First Report as Appendix “D”. At the time of the First Report, MCAP had advised that it received a draft CB Ross Report for September 2023 (the “September CB Ross Report”) which reflected, the “Gross Cost to Date” incurred on the Project as \$29,643,852. The Receiver did not attach the September CB Ross Report to the First Report as it was delivered to MCAP in draft. Based on the September CB Ross Report, Osler estimated that the maximum potential Holdback Deficiency Priority Claims were 10% of the Gross Cost to Date, which was \$2,964,385 (the “Maximum Holdback Deficiency Priority Claims”).

### **3.0 Updates since the Delivery of the First Report**

1. The day before the hearing scheduled on July 4, 2024 before this Court for approval of the AVO and Distribution Order, several of the Lien Claimants reached out expressing concerns with certain of the proposed relief and the timing for the motion. In particular, counsel for Plycon Forming Ltd. (“Plycon”) sent a letter to the Receiver on July 3, 2024, requesting certain information and documents from the Receiver, including copies of the unredacted APA and the draft September CB Ross Report referenced in the First Report. A copy of the letter from counsel for Plycon is attached as Appendix “A”.
2. In response, the Receiver coordinated with the Court to adjourn the hearing for the AVO and Distribution Order to July 15, 2024. A copy of the email correspondence between the Receiver and the Service List advising of the adjournment, including responses from certain Lien Claimants, is attached as Appendix “B”.

3. Following the adjournment of the hearing, the following additional correspondence was exchanged between the Receiver, MCAP, and certain of the Lien Claimants:
  - a) On July 5, 2024, Osler responded by letter to certain inquiries received from counsel for Plycon, as detailed in its letter dated July 3, 2024. A copy of Osler's responding letter is attached as Appendix "C".
  - b) On July 9, 2024, counsel for MCAP responded by letter to certain inquiries received from counsel for Plycon on July 3, 2024. A copy of MCAP's responding letter is attached as Appendix "D".
  - c) On July 9, 2024, counsel for Plycon responded by letter following receipt of copies of the unredacted APA and the draft September CB Ross Report from the Receiver, pursuant to the terms of its executed NDA (defined below). A copy of the letter from counsel for Plycon is attached as Appendix "E".
  - d) On July 10, 2024, counsel for MCAP again responded by letter, providing additional information to Plycon in response to counsel's letter sent on July 9. A copy of the letter from counsel for MCAP, with enclosures, is attached as Appendix "F".
  - e) On July 10, 2024, Osler sent an email to counsel for Plycon requesting Plycon to consider certain information related to Plycon's lien claim. A copy of the email from Osler is attached as Appendix "G".
  - f) On July 11, 2024, following a meeting held between counsel for certain of the Lien Claimants to discuss the Receiver's Motion Record returnable July 15, 2024, counsel for Plycon sent an email to Osler and counsel for MCAP summarizing Plycon's position. A copy of the email from counsel for Plycon is attached as Appendix "H".
  - g) On July 12, 2024, Osler sent an email to Plycon's counsel responding to the positions set forth in the email noted in (f), above. A copy of the email from Osler to counsel for Plycon is attached as Appendix "I".
4. As described in the First Report, with respect to the proposed Distribution Order, based on the Purchase Price, the Receiver is of the view that the Proceeds will be sufficient to address any claims that are in priority to the secured amounts owing to MCAP for which the proposed distribution is contemplated. In support of this conclusion, the Receiver stated that it anticipates that: (i) approximately \$1.2 million will be required for the purposes of paying tax arrears, broker commissions and case costs, and (ii) the estimated Maximum Potential Holdback Deficiency Priority Claims is \$2,964,385 (the amounts set forth in (i) and (ii) collectively being the "Potential Priority Amounts"). The Purchase Price is greater than the sum of the proposed distribution plus the Potential Priority Amounts.
5. As noted in the First Report, the Receiver was prepared to disclose the Purchase Price to potential priority creditors provided that they execute a satisfactory non-disclosure agreement ("NDA") with respect to same.
6. Following the adjournment of the hearing, NDAs were executed with several of the Lien Claimants, each of whom received the unredacted APA and the draft September CB Ross Report referenced in the First Report.

## 4.0 Recommendations

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make the order granting the relief detailed in Section 1.1(1)(f) of the First Report.

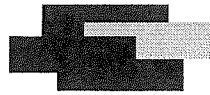
\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.,  
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER (AS DEFINED HEREIN)  
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

## **Appendix “A”**



Reply to: Fabio M. Soccol  
fabio@soccollaw.com  
Our File No. 1156-014

Wednesday, July 03, 2024

**DELIVERED VIA EMAIL**

**Osler, Hoskin & Harcourt LLP**  
100 King Street West  
1 First Canadian Place  
Suite 6200 PO Box 50  
Toronto, ON M5X 1B8

*Solicitor for the Receiver*

Attention: Marc Wasserman and Dave Rosenblatt

-and-

**Gowlings WLG**  
Suite 1600  
1 First Canadian Place  
100 King Street West  
Toronto, ON M5X 1G5

*Solicitors for MCAP, Mortgagee*

Attention: Heather Fisher

Dear Sirs and Madam:

**RE: Receivership of Vandyk-Kings Mill Limited**  
**My client: Plycon Forming Ltd.**  
**Project: 15 Neighbourhood Lane, Toronto ("Project")**  
**Plycon Construction Lien AT6424435: \$9,899,781.51**

As you may be aware, I am the solicitor representing Plycon Forming Ltd. ("Plycon") in connection with the above-noted matter.

I received your Motion Record returnable Thursday, July 4, 2024, which was served by email on Thursday, June 27, 2024 before the Canada Day Long Weekend. This is not proper service in accordance with the Rules.

As you are aware, Plycon commenced a legal action to perfect its lien bearing Superior Court file no. CV-23-00709569-000, which includes a claim for priority over the registered mortgages, including but not limited to, the mortgage registered by MCAP.

Section 78(1) of the *Construction Act* states that: “**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.**” These exceptions are expressly set out in subsections 78(3), (4), (5), (6), etc.

There is insufficient information to determine the issue of priority between the lien claimants and the mortgagees, including but not limited to, the MCAP mortgage based upon the record currently before this Court.

Plycon hereby reserves all of its rights and remedies with respect to the issue of priority over the mortgages, including but not limited to the MCAP mortgage, and propose that there be a proper process put in place to adjudicate the issue of priority between the lien claims and mortgages based upon a proper and complete record.

I request the following information and documents so that I can properly review and seek further instructions from my client:

1. A complete unredacted copy of the Asset Purchase Agreement, including the Purchase Price. Both my office and Plycon are prepared to sign a Confidentiality Agreement, please send a draft for our review.
2. A copy of the ‘draft’ CB Ross Report for September 2023 which is mentioned in the First Report of the Receiver.
3. A breakdown of the alleged Maximum Holdback Deficiency Priority Claim of \$2,964,385 mentioned in the First Report of the Receiver, including what specific amount relates to Plycon.
4. A copy of the independent opinion letter, if any, regarding the issue of priority between the lien claims and mortgagee.
5. On November 16, 2023, my office made a request for Section 39 information (copy attached). Gowlings responded on behalf of MCAP on October 13, 2023 (copy attached), however the response is incomplete. In particular, we request details of the specific advances, including the dates, amounts, nature and purpose of each advance, and confirmation whether the amounts were actually in fact “advanced”.
6. In addition to the information requested in para. 4 above, we request the following information from MCAP:
  - a. at the time when the advance(s) were made, were there any preserved or perfected lien against the premises; and
  - b. has MCAP ever received written notice of a lien, whether formal or informal? If so, please provide particulars and send us a copy.

7. Subject to receipt and review of the above, we reserve the right to cross-examine MCAP on the issue of priority vis a vis the lien claim of Plycon.

We have focused this letter on the issues with the first mortgagee MCAP, and reserve the right to seek such further or other information that may be relevant from MCAP and also from the other registered mortgages. In particular, we have not received any Section 39 information from Westmount Guarantee at all, and repeat the same requests above for Westmount Guarantee.

Trusting the above is satisfactory and if you wish to discuss further, do not hesitate to contact me.

Yours truly,

**SOCOL LAW**

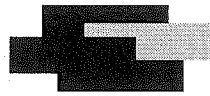
Per:

Fabio M. Soccol

FMS:ab

Encl.

- cc. Plycon
- cc. Service List



**SOCOLLAW**  
Barristers & Solicitors

Reply to: Fabio M. Soccol  
fabio@soccollaw.com  
Our File No. 1156-014

Thursday, November 16, 2023

**DELIVERED VIA COURIER**

**Vandyk - Backyard Kings Mill Limited**  
1944 Fowler Drive  
Mississauga, Ontario  
L5K 0A1

*Owner/ Developer*

-and to-

**Westmount Guarantee Services Inc.**  
As Administrative Agent for the Surety  
c/o 600 Cochrane Drive  
Suite 205  
Markham, Ontario  
L3R 5K3

*Mortgage AT5380929*

-and to-

**DELIVERED VIA EMAIL ONLY**

**Gowling WLG**  
Suite 1600, 1 First Canadian Place  
100 King Street West  
Toronto, Ontario  
M5X 1G5

*Counsel for MCAP Financial Corporation*  
*Mortgage AT5581120*

Attention: Heather Fisher

Dear Sirs/ Madams:

**RE: Plycon Forming Ltd. v. Vandyk – Backyard Kings Mill Limited**  
**Project: 15 Neighbourhood Lane, Toronto (“Project”)**  
**Construction Lien Action CV-23-00709569-0000 (\$9,899,781.51)**

As you may be aware, I am the solicitor representing Plycon Forming Ltd. ("Plycon") in connection with the above-noted matter.



**REQUEST TO ACCEPT SERVICE OF STATEMENT OF CLAIM:**

Please find enclosed herein:

1. a Certificate of Action registered on title on November 14, 2023 as AT6458916;  
and
2. A Statement of Claim issued with the Superior Court bearing court file no. CV-23-00709569-0000;

We kindly request that you accept service of the Statement of Claim by acknowledging service on the back page and returning to our office by November 30, 2023, otherwise we will arrange for personal service.

**REQUEST FOR SECTION 39 INFORMATION:**

Further to our previous letter dated September 25, 2023 (copy attached), we have not received the Section 39 information from either Vandyk – Backyard Kings Mill Limited, nor Westmount Guarantee Services Inc.

Accordingly, we hereby repeat our request for the said Section 39 information from Vandyk – Backyard Kings Mill Limited, nor Westmount Guarantee Services Inc. as follows:

**1. From the Owner:**

- i. the names of the parties to the contract, the date on which the contract was entered into and the date on which any applicable procurement process was commenced,
- ii. the contract price,
- iii. a state of accounts between the owner and the contractor containing the information listed in subsection 4.1 (see below),
- iv. a copy of any labour and material payment bond in respect of the contract posted by the contractor with the owner,
- v. a statement of whether the contract provides in writing that liens shall arise and expire on a lot-by-lot basis, and
- vi. a statement of whether the contract provides that payment under the contract shall be based on the completion of specified phases or the reaching of other milestones in its completion.

**2. From an Owner who is selling the Owner's interest in a premises that is a home:**

- i. the name and address of the purchaser, the sale price, the amount of the purchase price paid or to be paid prior to the conveyance, the scheduled date of the conveyance and the lot and plan number or other legal description of the premises as contained in the agreement of purchase and sale, and
- ii. the date on which the permit or material described in clause (b) of the definition of home buyer in subsection 1 (1) has been issued.

**3. From the Mortgagee(s):**

- i sufficient details concerning any mortgage on the premises to enable the person who requests the information to determine whether the mortgage was taken by the mortgagee for the purposes of financing the making of the improvement;
- ii. a statement showing the amount advanced under the mortgage, the dates of those advances, and any arrears in payment including any arrears in the payment of interest; or

**Subsection 4.1 - State of accounts**

4.1 A state of accounts as referred to above shall contain the following information:

1. The price of the services or materials that have been supplied under the contract.
2. The amounts paid under the contract.
3. In the case of a state of accounts under paragraph 4 of subsection (1), which of the amounts paid under the contract or subcontract constitute any part of the payment referred to in subsection 19 (1).
4. The amount of the applicable holdbacks.
5. The balance owed under the contract or subcontract.
6. Any amount retained under section 12 (set-off by trustee) or under subsection 17 (3) (lien set-off).
7. Any other information that may be prescribed. 2017, c. 24, s. 32 (9).

We request that this information be provided within twenty-one (21) days from the date of this letter.

Trusting the above is satisfactory,

Yours truly,

**SOCCOL LAW**

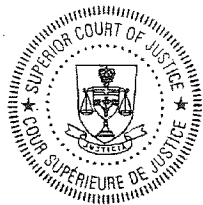
Per:

Fabio M. Soccol

FMS:ab

Encl.

cc. Plycon via email



Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
IN THE MATTER OF the *Construction Act*, O. Reg 302/18

BETWEEN:

PLYCON FORMING LTD.

Plaintiff

-and-

VANDYK - BACKYARD KINGS MILL LIMITED,  
MCAP FINANCIAL CORPORATION and  
WESTMOUNT GUARANTEE SERVICES 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 of Canada and the United States of America, the period is sixty days.

**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.

**IF YOU PAY THE PLAINTIFF'S CLAIM** and \$3,500.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$3,500.00 for costs and have the costs assessed by the Court.

Date: November 13, 2023

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

Address of Court Office:  
393 University Avenue, 10<sup>th</sup> Floor  
Toronto, Ontario  
M5G 1E6

**TO: Vandyk – Backyard Kings Mill Limited**  
1944 Fowler Drive  
Mississauga, Ontario  
L5K 0A1

**MCAP Financial Corporation**  
200 King Street West  
Suite 400  
Toronto, Ontario  
M5H 3T4

**Westmount Guarantee Services Inc.**  
As administrative Agent for the Surety  
c/o 600 Cochrane Drive  
Suite 205  
Markham, Ontario  
L3R 5K3

## CLAIM

1. The Plaintiff claims as against the Defendants as follows:
  - (a) a declaration that the Plaintiff is entitled to a lien against all of the estate, title and interest in any one or more of the Defendants in the lands and premises against which the Claim for Lien hereinafter set forth in the attached Schedule "A" is registered;
  - (b) a declaration that the Plaintiff's Claim for Lien attaches to any security posted into Court in respect of same;
  - (c) a payment of the sum of \$9,899,781.51 from the Defendants, or any of them, pursuant to the provisions of the *Construction Act*, R.S.O. 1990, c.C.30, as amended (the "Act");
  - (d) a payment of the sum of \$9,899,781.51 for damages for breach of contract;
  - (e) payment of prejudgment and postjudgment interest pursuant to the provisions of the Contract or alternatively the *Courts of Justice Act*, R.S.O. 1990, c.C. 43, as amended;
  - (f) costs of this action on a substantial indemnity scale;
  - (g) that in default of payment of the said sum of \$9,899,781.51, plus costs and interest, an Order that the estate and interest of the Defendants in the lands and premises to which the Claim for Lien hereinafter described attaches, and which

are the subject matter of this action, be sold and the proceeds applied towards payment of the Plaintiff's claim aforesaid, pursuant to the provisions of the Act;

- (h) in the alternative, payment of the Plaintiff's claim from the proceeds of any security posted to vacate same;
- (i) a declaration of full priority over the mortgage of the Defendant, MCAP Financial Corporation, registered on November 26, 2020, as Instrument No. AT5581120 in the Land Titles Office for Toronto (LRO #80), and registered against the lands and premises against which the Claim for Lien hereinafter described has been registered;
- (j) a declaration of full priority over the mortgage of the Defendant, Westmount Guarantee Services Inc., registered on March 4, 2020, as Instrument No. AT5380929 in the Land Titles Office for Toronto (LRO #80), and registered against the lands and premises against which the Claim for Lien hereinafter described has been registered
- (k) in the alternative, a declaration of full priority over the above referenced mortgages to the extent of any unadvanced portions thereof pursuant to the Act;
- (l) in the further alternative, a declaration of full priority over the above referenced mortgages to the extent that any portion of the said mortgage exceeded or exceeds the actual value of the lands and premises which are the subject matter of this action, at the time the first lien arose;

- (m) in the further alternative, a declaration of full priority over the above referenced mortgages to the extent that there are deficiencies in the holdbacks required to be retained pursuant to the provisions of the Act;
- (n) for all purposes aforesaid, and for all other purposes pursuant to the Act, that accounts be taken and directions be given under the supervision and direction of this Honourable Court; and
- (o) such other and further relief and declarations as the nature of this case may require and as to this Honourable Court appears just.

**The Parties**

2. The Plaintiff, Plycon Forming Ltd. (hereinafter “Plycon”) is a company incorporated pursuant to the laws of the Province of Ontario, and carries on business as concrete contractor.

3. The Defendant, Vandyk – Backyard Kings Mill Limited (hereinafter “Vandyk”) is a company incorporated pursuant to the laws of the Province of Ontario, and was at all material times the owner of the project forming the subject matter of this action. Vandyk acted as its own developer and builder with respect to the project.

**The Contract:**

4. The project forming the subject matter of this action is the construction of a residential condominium known as The Backyard King’s Mill (Building “B”) located at an address municipally described as 15 Neighbourhood Lane, Toronto, Ontario, on the lands and

premises more particularly described in the legal description in the Claim for Lien attached hereto as Schedule "A" (hereinafter the "Project").

5. The Plaintiff, Plycon, was contracted by the defendant, Vandyk, to complete formwork, placing of reinforcing steel, placing and finishing of concrete, and related scope of work and services all in accordance with terms, conditions and scope of work more particularly described in the contract dated May 11, 2021 (hereinafter the "Contract").

6. Plycon states that the base Contract price consists of:

- a) A lump sum of \$10,500,000.00 for supply and installation of formwork including pre-cast stairs.
- b) Unit Rate of \$52.00 per Cubic Metre for placing and finishing of concrete; and
- c) Unit Rate of \$740.00 per Tonne for placing of reinforcing steel  
Plus HST

7. The Defendant, Vandyk, was to supply the concrete and reinforcing steel.

8. From time to time the Defendant, Vandyk or its agents or representatives issued changes to the scope of work and / or directed or instructed Plycon to complete certain extras to the Contract.

9. The total revised contract price was \$13,672,102.71 inclusive of H.S.T.



10. Plycon substantially performed its scope of work during the period of time from April 5, 2022 to date in a good and workmanlike manner, and in accordance with the terms of the Contract, and to the satisfaction of the Defendant, Vandyk, the architect, structural engineer, building department, and all persons having authority.

11. Plycon's work was substantially completed. There was some relatively minor scope of work, including approximately 20 cubic metres of concrete that remained to be poured, however, the Defendant, Vandyk, failed to pay its concrete supplier who refused to supply the concrete, and therefore Plycon was unable to complete its concrete placing through no fault of Plycon. The overall Project was in effect suspended due to the actions and/or omissions of the Defendant, Vandyk.

12. Plycon rendered invoices for the work and services performed by it and received partial payments in the amount of \$3,772,321.20.

i.

13. Plycon states that there is an outstanding account due and owing to it from the Defendant, Vandyk, in the total amount of \$9,899,781.51 including H.S.T., plus interest and costs.

14. The Defendant, Vandyk, breached its contract by failing to pay Plycon the amounts properly due and owing to it.

15. Notwithstanding that Plycon supplied the aforementioned labour, services and materials to the Project, and despite repeated requests for payment, the Defendants have failed, refused and/or neglected to pay the amount which is due and owing to Plycon, namely the sum of \$9,899,781.51.

16. The Defendant, Vandyk, is in breach of contract as a result of the above-noted non-payment.

17. The Plaintiff, Plycon, pleads that Part I.1 Prompt Payment provisions of the Act apply to the subject Contract. Plycon at all material times delivered proper invoices in accordance with the Act. At no material time did the Defendant, Vandyk, deliver any notice of non-payment to Plycon. Accordingly, the Defendant, Vandyk, is obligated to pay the full amount of Plycon's invoices pursuant to Section 6.4 of the Act.

**The Lien:**

18. By reason of supplying the aforementioned labour, services and materials to the Project, the Plaintiff states that it is entitled to a lien upon the interest of the Defendant in the lands and premises more particularly described in the Claim for Lien attached hereto as Schedule "A", in the total amount of \$9,899,781.51, together with costs of this action pursuant to the provisions of the Act, and interest in accordance with the Contract or alternatively pursuant to the *Courts of Justice Act*, R.S.O. 1990, as amended.

19. As a result of non-payment of the aforesaid sum, on September 20, 2023, the Plaintiff registered in the Land Titles Office for the Land Titles Division of Metropolitan Toronto (LRO #80) the Construction Lien bearing Instrument No. AT6424435, against the lands and premises more particularly described in Schedule “A”.

20. The Plaintiff states that the lands and premises referred to in this Statement of Claim, which are more particularly described in the Claim for Lien attached hereto as Schedule “A” are the lands and premises to which the Plaintiff supplied the aforementioned labour, services and materials at the request of, on behalf of, with the consent and for the direct benefit of the Defendant, Vandyk, which was at all material times the “owner” within the meaning of Section 1(1) of the *Act*.

**Priority Over MCAP Financial Corporation (Instrument No. AT5581120)**

21. Plycon states that MCAP Financial Corporation (hereinafter “MCAP”) became the mortgage holder of the lands and premises comprising the Project by virtue of a mortgage in the amount of \$104,500,000.00 registered on November 26, 2020, in the Land Titles Office for the Lands Titles Division of Metropolitan Toronto (LRO#80), as Instrument No. AT5581120.

22. Plycon states that no funds were advanced under the mortgage and therefore Plycon has full priority over the mortgage.

23. In the alternative, Plycon states that its Claim for Lien has priority over the said mortgage to the extent of any unadvanced portion thereof.

24. In the further alternative, Plycon states that its Claim for Lien has priority over the said mortgage to the extent that any portion of the mortgage so advanced exceeded the actual value of the premises at the time the first lien arose.

25. Plycon further states in the alternative that the said mortgage constitutes a building mortgage within the meaning of the Act, and the Plaintiff claims priority to the extent of any deficiency in the holdback required to be retained by the Defendants under the Act.

**Priority Over Westmount Guarantee Services Inc. (Instrument No. AT5380929)**

26. Plycon states that Westmount Guarantee Services Inc. (hereinafter “Westmount”) became the mortgage holder of the lands and premises comprising the Project by virtue of a mortgage in the amount of \$30,000,000.00 registered on March 4, 2020, in the Land Titles Office for the Lands Titles Division of Metropolitan Toronto (LRO#80), as Instrument No. AT5380929.

27. Plycon states that no funds were advanced under the mortgage and therefore Plycon has full priority over the mortgage.

28. In the alternative, Plycon states that its Claim for Lien has priority over the said mortgage to the extent of any unadvanced portion thereof.

29. In the further alternative, Plycon states that its Claim for Lien has priority over the said mortgage to the extent that any portion of the mortgage so advanced exceeded the actual value of the premises at the time the first lien arose.

30. Plycon further states in the alternative that the said mortgage constitutes a building mortgage within the meaning of the Act, and the Plaintiff claims priority to the extent of any deficiency in the holdback required to be retained by the Defendants under the Act.

**Unjust Enrichment and *Quantum Meruit***

31. The Plaintiff states that by reason of the furnishing of its labour, services and material to the lands and premises, it has enhanced the value of the lands and premises herein, and that the Defendants have received the benefit of same, and the Defendants have been unjustly enriched in the amount of \$9,899,781.51 at the expense of and to the detriment of the Plaintiff. The Plaintiff pleads and relies upon the doctrine of unjust enrichment.

32. In the alternative, the Plaintiff pleads and relies upon the doctrine of *quantum meruit*.

33. The Plaintiffs proposes that this action be tried at Toronto, Ontario.

DATE: November 13, 2023

**SOCCOL LAW**  
Barrister and Solicitor  
7823 Kipling Avenue  
Vaughan, Ontario  
L4L 1Z4

**Fabio M. Socol**  
***L.S.O. No. 41041L***

Tel: 905-605-2332  
Email: [fabio@soccollaw.com](mailto:fabio@soccollaw.com)

*Solicitor for the Plaintiff*

**Properties**

**PIN** 07500 - 0082 LT  
**Description** PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 5, 6, 7 & 8 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 1 - 4, 10 - 14, 16, 18 & 28, 66R28992 AS IN AT4865050; T/W EASEMENT OVER PTS 1 - 4, 10 - 14, 16, 18 & 28, 66R28992 AS IN AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF-WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT IN GROSS OVER PART 5, 66R28992 AS IN AT5347804; SUBJECT TO AN EASEMENT IN GROSS OVER PART 7, 66R28992 AS IN AT5347808; SUBJECT TO AN EASEMENT IN GROSS OVER PART 6, 66R28992 AS IN AT5347812; SUBJECT TO AN EASEMENT AS IN AT5367415; SUBJECT TO AN EASEMENT IN GROSS OVER PART 5, 66R28992 AS IN AT5479699; CITY OF TORONTO  
**Address** 15 NEIGHBOURHOOD LANE  
TORONTO

**Consideration**

**Consideration** \$9,899,781.51

**Claimant(s)**

**Name** PLYCON FORMING LTD.  
**Address for Service** c/o Soccol Law  
Barrister & Solicitor  
7823 Kipling Avenue  
Vaughan, Ont. L4L 1Z4  
Fabio M. Soccol  
Email: fabio@soccollaw.com

I, Corrado Chuck Luciano, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

**Statements**

Name and Address of Owner VANDYK - BACKYARD KINGS MILL LIMITED 1944 Fowler Drive, Mississauga, Ont. L5K 0A1 Name and address of person to whom lien claimant supplied services or materials VANDYK - BACKYARD KINGS MILL LIMITED 1944 Fowler Drive, Mississauga, Ont. L5K 0A1 Time within which services or materials were supplied from 2022/04/05 to 2023/09/20 Short description of services or materials that have been supplied Formwork, placing of reinforcing steel, placing of concrete, and related work and services Contract price or subcontract price \$13,672,102.71 Amount claimed as owing in respect of services or materials that have been supplied \$9,899,781.51

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

**Signed By**

Fabio Mark Soccol 7823 Kipling Avenue acting for Signed 2023 09 20  
Vaughan Applicant(s)  
L4L 1Z4

Tel 905-605-2332

Fax 905-605-1812

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

FABIO M SOCCOL PROFESSIONAL CORPORATION 7823 Kipling Avenue 2023 09 20  
Vaughan  
L4L 1Z4

Tel 905-605-2332

Fax 905-605-1812

**Fees/Taxes/Payment**

**Statutory Registration Fee** \$69.00

**Total Paid** \$69.00

**PLYCON FORMING LTD.**

Plaintiff

versus

**VANDYK – BACKYARD KINGS MILL LIMITED ET. AL.**  
Defendants

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

A proceeding under the *Construction Act*, R.S.O. 1990, as amended  
Proceedings commenced at Toronto

**STATEMENT OF CLAIM**

**SOCCOL LAW**

Barrister & Solicitor  
7823 Kipling Avenue  
Vaughan, Ontario  
L4L 1Z4

**FABIO M. SOCCOL  
L.S.O. 41041L**

Tel: 905.605.2332

Fax: 905.605.1812

Email: [fabio@soccollaw.com](mailto:fabio@soccollaw.com)

*Solicitor for the Plaintiff*

**Properties**

**PIN** 07500 - 0082 LT

**Description** PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 5, 6, 7 & 8 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 1 - 4, 10 - 14, 16, 18 & 28, 66R28992 AS IN AT4865050; T/W EASEMENT OVER PTS 1 - 4, 10 - 14, 16, 18 & 28, 66R28992 AS IN AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT IN GROSS OVER PART 5, 66R28992 AS IN AT5347804; SUBJECT TO AN EASEMENT IN GROSS OVER PART 7, 66R28992 AS IN AT5347808; SUBJECT TO AN EASEMENT IN GROSS OVER PART 6, 66R28992 AS IN AT5347812; SUBJECT TO AN EASEMENT AS IN AT5367415; SUBJECT TO AN EASEMENT IN GROSS OVER PART 5, 66R28992 AS IN AT5479699; CITY OF TORONTO

**Address** 15 NEIGHBOURHOOD LANE  
TORONTO

**Party From(s)**

**Name** PLYCON FORMING LTD.

**Address for Service** c/o Soccol Law - Fabio M. Soccol  
7823 Kipling Avenue  
Vaughan, Ontario  
L4L 1Z4  
Tel: 905-605-2332  
Email: fabio@soccollaw.com

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

**Statements**

This document relates to registration number(s)AT6424435

Schedule: See Schedules

**Signed By**

Fabio Mark Soccol	7823 Kipling Avenue Vaughan L4L 1Z4	acting for Party From(s)	Signed	2023 11 14
-------------------	---	-----------------------------	--------	------------

Tel 905-605-2332

Fax 905-605-1812

I have the authority to sign and register the document on behalf of the Party From(s).

**Submitted By**

FABIO M SOCCOL PROFESSIONAL CORPORATION	7823 Kipling Avenue Vaughan L4L 1Z4	2023 11 14
---	---	------------

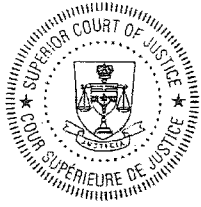
Tel 905-605-2332

Fax 905-605-1812

**Fees/Taxes/Payment**

Statutory Registration Fee	\$69.95
Total Paid	\$69.95





**CONSTRUCTION LIEN ACT**

**CERTIFICATE OF ACTION**

Under Section 36 of the Act

Court File No.

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF the *Construction Act*, O. Reg 302/18

BETWEEN:

PLYCON FORMING LTD.

Plaintiff

-and-

VANDYK-BACKYARD KINGS MILL LIMITED,  
MCAP FINANCIAL CORPORATION and  
WESTMOUNT GUARANTEE SERVICES INC.

Defendants

**CERTIFICATE OF ACTION**

I certify that an action has been commenced in the Ontario Superior Court of Justice under the *Construction Lien Act* between the above parties in respect of the premises described in Schedule "A" to this certificate, and relating to the claim(s) for lien bearing the following registration numbers:

AT6424435

Date : November 13, 2023

\_\_\_\_\_  
(registrar or local registrar)

**SCHEDULE "A"**

PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 5, 6, 7 & 8  
PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 1 - 4, 10 - 14, 16, 18 & 28, 66R28992  
AS IN AT4865050; T/W EASEMENT OVER PTS 1 - 4, 10 - 14, 16, 18 & 28, 66R28992 AS IN  
AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721;  
TOGETHER WITH A RIGHT OF WAY OVER PTS 7, 8, 9, 66R29993 AS IN AT4478658;  
SUBJECT TO AN EASEMENT IN GROSS OVER PART 5, 66R28992 AS IN AT5347804;  
SUBJECT TO AN EASEMENT IN GROSS OVER PART 7, 66R28992 AS IN AT5347808;  
SUBJECT TO AN EASEMENT IN GROSS OVER PART 6, 66R28992 AS IN AT5347812;  
SUBJECT TO AN EASEMENT AS IN AT5367415; SUBJECT TO AN EASEMENT IN  
GROSS OVER PART 5, 66R28992 AS IN AT5479699;

CITY OF TORONTO LAND TITLES DIVISION OF CITY OF TORONTO (LRO #80)

PIN NO. 07500-0082 (LT)

15 NEIGHBOURHOOD LANE  
TORONTO, ONTARIO  
M8Y 0C3

**PLYCON FORMING LTD.**

versus

**VANDYK – BACKYARD KINGS MILL LIMITED ET. AL.**  
Defendants

Plaintiff

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

A proceeding under the *Construction Act*, R.S.O. 1990, as amended  
Proceedings commenced at Toronto

**CERTIFICATE OF ACTION**

**SOCCOL LAW**  
Barrister & Solicitor  
7823 Kipling Avenue  
Vaughan, Ontario  
L4L 1Z4

**FABIO M. SOCCOL**  
**L.S.O. 41041L**

Tel: 905.605.2332

Fax: 905.605.1812

Email: [fabio@soccollaw.com](mailto:fabio@soccollaw.com)

*Solicitor for the Plaintiff*

"COPY"

Reply to: Fabio M. Soccol  
fabio@soccollaw.com  
Our File No. 1156-014

Monday, September 25, 2023

**DELIVERED VIA COURIER**

**Vandyk - Backyard Kings Mill Limited**  
1944 Fowler Drive  
Mississauga, Ontario  
L5K 0A1

*Owner/ Developer*

-and to-

**MCAP Financial Corporation**  
200 King street West  
Suite 400  
Toronto, Ontario  
M5H 3T4

*Mortgage AT5581120*

-and to-

**Westmount Guarantee Services Inc.**  
As Administrative Agent for the Surety  
c/o 600 Cochrane Drive  
Suite 205  
Markham, Ontario  
L3R 5K3

*Mortgage AT5380929*

Dear Sirs:

**RE: Plycon Forming Ltd. v. Vandyk – Backyard Kings Mill Limited**  
**Project: 15 Neighbourhood Lane, Toronto ("Project")**  
**Construction Lien: \$9,899,781.51**

Be advised that I am the solicitor representing Plycon Forming Ltd. ("Plycon") in connection with the above-noted matter.

**NOTICE OF LIEN: \$9,899,781.51**

Plycon was contracted by the owner/ developer namely Vandyk-Backyard Kings Mill Limited to complete the formwork, placing of reinforcing steel, and placing of concrete scope of work and related work and services at the above-noted Project. Plycon rendered invoices for the work and services completed. There is an outstanding account due and payable to Plycon in the amount of \$9,899,781.51 inclusive of HST and statutory holdback.

Enclosed herein is a Construction Lien registered on title on September 20, 2023 as Instrument No. AT6424435 for the amount of \$9,899,781.51. This letter is intended to be a notice of lien in accordance with the provisions of the *Construction Act*.

Plycon requests payment of the above-noted outstanding account forthwith. Take notice that Plycon intends to seek the full amount of its legal costs on a substantial indemnity scale and prejudgment and post-judgment interest in accordance with the Contract or alternatively in accordance with the *Courts of Justice Act*.

### **REQUEST FOR SECTION 39 INFORMATION:**

Kindly provide my office with the following information pursuant to Section 39 on the *Construction Act*:

#### **1. From the Owner:**

- i. the names of the parties to the contract, the date on which the contract was entered into and the date on which any applicable procurement process was commenced,
- ii. the contract price,
- iii. a state of accounts between the owner and the contractor containing the information listed in subsection 4.1 (see below),
- iv. a copy of any labour and material payment bond in respect of the contract posted by the contractor with the owner,
- v. a statement of whether the contract provides in writing that liens shall arise and expire on a lot-by-lot basis, and
- vi. a statement of whether the contract provides that payment under the contract shall be based on the completion of specified phases or the reaching of other milestones in its completion.

#### **2. From an Owner who is selling the Owner's interest in a premises that is a home:**

- i. the name and address of the purchaser, the sale price, the amount of the purchase price paid or to be paid prior to the conveyance, the scheduled date of the conveyance and the lot and plan number or other legal description of the premises as contained in the agreement of purchase and sale, and
- ii. the date on which the permit or material described in clause (b) of the definition of home buyer in subsection 1 (1) has been issued.

#### **3. From the Mortgagee(s):**

- i sufficient details concerning any mortgage on the premises to enable the person who requests the information to determine whether the mortgage was taken by the mortgagee for the purposes of financing the making of the improvement;
- ii. a statement showing the amount advanced under the mortgage, the dates of those advances, and any arrears in payment including any arrears in the payment of interest; or

**Subsection 4.1 - State of accounts**

4.1 A state of accounts as referred to above shall contain the following information:

1. The price of the services or materials that have been supplied under the contract.
2. The amounts paid under the contract.
3. In the case of a state of accounts under paragraph 4 of subsection (1), which of the amounts paid under the contract or subcontract constitute any part of the payment referred to in subsection 19 (1).
4. The amount of the applicable holdbacks.
5. The balance owed under the contract or subcontract.
6. Any amount retained under section 12 (set-off by trustee) or under subsection 17 (3) (lien set-off).
7. Any other information that may be prescribed. 2017, c. 24, s. 32 (9).

We request that this information be provided within twenty-one (21) days from the date of this letter.

Trusting the above is satisfactory,

Yours truly,

**SOCCOL LAW**

Per: 

Fabio M. Soccol

FMS:ab

Encl.

cc. Plycon via email

**Properties**

**PIN** 07500 - 0082 LT

**Description** PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 5, 6, 7 & 8 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 1 - 4, 10 - 14, 16, 18 & 28, 66R28992 AS IN AT4865050; T/W EASEMENT OVER PTS 1 - 4, 10 - 14, 16, 18 & 28, 66R28992 AS IN AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT IN GROSS OVER PART 5, 66R28992 AS IN AT5347804; SUBJECT TO AN EASEMENT IN GROSS OVER PART 7, 66R28992 AS IN AT5347808; SUBJECT TO AN EASEMENT IN GROSS OVER PART 6, 66R28992 AS IN AT5347812; SUBJECT TO AN EASEMENT AS IN AT5367415; SUBJECT TO AN EASEMENT IN GROSS OVER PART 5, 66R28992 AS IN AT5479699; CITY OF TORONTO

**Address** 15 NEIGHBOURHOOD LANE  
TORONTO

**Consideration**

**Consideration** \$9,899,781.51

**Claimant(s)**

**Name** PLYCON FORMING LTD.

**Address for Service** c/o Soccol Law  
Barrister & Solicitor  
7823 Kipling Avenue  
Vaughan, Ont. L4L 1Z4  
Fabio M. Soccol  
Email: fabio@soccollaw.com

I, Corrado Chuck Luciano, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

**Statements**

Name and Address of Owner VANDYK - BACKYARD KINGS MILL LIMITED 1944 Fowler Drive, Mississauga, Ont. L5K 0A1 Name and address of person to whom lien claimant supplied services or materials VANDYK - BACKYARD KINGS MILL LIMITED 1944 Fowler Drive, Mississauga, Ont. L5K 0A1 Time within which services or materials were supplied from 2022/04/05 to 2023/09/20 Short description of services or materials that have been supplied Formwork, placing of reinforcing steel, placing of concrete, and related work and services Contract price or subcontract price \$13,672,102.71 Amount claimed as owing in respect of services or materials that have been supplied \$9,899,781.51

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

**Signed By**

Fabio Mark Soccol 7823 Kipling Avenue acting for Signed 2023 09 20  
Vaughan Applicant(s)  
L4L 1Z4

Tel 905-605-2332

Fax 905-605-1812

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

FABIO M SOCCOL PROFESSIONAL CORPORATION 7823 Kipling Avenue 2023 09 20  
Vaughan  
L4L 1Z4

Tel 905-605-2332

Fax 905-605-1812

**Fees/Taxes/Payment**

**Statutory Registration Fee** \$69.00  
**Total Paid** \$69.00

October 13, 2023

**BY EMAIL - [fabio@soccollaw.com](mailto:fabio@soccollaw.com)**

Fabio Soccol  
Soccol Law, Barristers & Solicitors  
7823 Kipling Avenue  
Vaughan, ON L4L 1Z4

**Heather Fisher**  
Direct +1 416 369 7202  
Direct Fax +1 416 862 7661  
[heather.fisher@gowlingwlg.com](mailto:heather.fisher@gowlingwlg.com)  
File no. T103750

Dear Mr. Soccol:

**Re: Vandyk - Backyard Kings Mill Limited ats Plycon Forming Ltd.**  
**Project: 15 Neighbourhood Lane, Toronto ("Project")**  
**Construction Lien: \$9,899,781.51**

---

We are counsel for MCAP, a mortgagee on the 15 Neighbourhood Lane property. We are writing in response to your request for information pursuant to section 39 of the *Construction Act* dated September 25, 2023, requesting:

- i) sufficient details concerning any mortgage on the premises to enable the person who requests the information to determine whether the mortgage was taken by the mortgagee for the purposes of financing the making of the improvement;
- ii) a statement showing the amount advanced under the mortgage, the dates of those advances, and any arrears in payment including any arrears in the payment of interest;  
or

With respect to (i) we confirm that the mortgage taken by the mortgagee was for the purposes of financing the making of the improvement.

With respect to (ii), please find below a summary of the requested advance information:

**Amount of Indebtedness Owing as of October 2, 2023**

Principal Balance Outstanding	\$34,330,788.36
Accrued Interest to : October 2, 2023	\$536,500.87
Other Charges : Late Interest	\$2,161.34
Discharge Fees	\$500.00



Amendment Fees	\$735,277.00
L/C Fees:	\$0.00
Cash Requirement to Collateralize Letters of Credit	\$2,038,499.84
Per diem rate of interest	\$ 8,786.28
<hr/>	
Loan Maturity Date	August 1, 2023
Last Draw for Construction Purposes	June 21, 2023
Most Recent Advance	August 1, 2023
<hr/>	
<b>Total Amount</b>	<b>\$37,643,727.41</b>

We trust this satisfies your request for information pursuant to Section 39 of the *Construction Act*.

Yours truly,

Gowling WLG (Canada) LLP



Heather Fisher  
HF

## **Appendix “B”**

**From:** Dick, Marleigh <mdick@osler.com>

**Sent:** Wednesday, July 3, 2024 7:11 PM

**To:** Fazzari, Michael <mfazzari@millerthomson.com>; Nicole Maragna <nmaragna@bianchipresta.com>; MacGregor, Richard <rmacgregor@millerthomson.com>; Fabio Soccol <fabio@soccollaw.com>; susan.feldman@mcap.com; haddon.murray@gowlingwlg.com; heather.fisher@gowlingwlg.com; Noah Goldstein <ngoldstein@ksvadvisory.com>; Murtaza Tallat <mtallat@ksvadvisory.com>; Jeff.Larry@paliareroland.com; daniel.rosenbluth@paliareroland.com; ryan.shah@paliareroland.com; jvandyk@vandyk.com; Del Vecchio, Riccardo <rdelvecchio@millerthomson.com>; kmovat@foglers.com; Guaragna, Paul <pguaragna@millerthomson.com>; dan@fridmar.com; CTonks@pdclawyers.ca; rmoubarak@sutherlaw.com; tpapasin@rjc.ca; abayne@rjc.ca; Domenic Presta <dpresta@bianchipresta.com>; psarkis@rarlitigation.com; phorgan@carltonlaw.ca; madilman@mblaw.ca; aslavens@torys.com; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca; Insolvency.Unit@ontario.ca; ic.osbservicebsfservice.ic@canada.ca; jdutrizac@blg.com; dbambrough@blg.com; jmargie@margiestrub.com; gruggiero@srlawpractice.com; coneil@stewartmckelvey.com; cpiercey@stewartmckelvey.com; naomi.brown@toronto.ca; Ward, David <dward@millerthomson.com>; Craddock, Erin <ecraddock@millerthomson.com>; Sanderson, Thomas <tsanderson@millerthomson.com>; jessicagahtan@glaholt.com; hmeredith@mccarthy.ca; djmiller@tgf.ca; fisherr@simpsonwigg.com

**Cc:** Wasserman, Marc <MWasserman@osler.com>; Rosenblat, Dave <drosenblat@osler.com>; Muller, Ben <bmuller@osler.com>; Duggal, Chloe <cduggal@osler.com>

**Subject:** RE: [\*\*EXT\*\*] RE: Receivership of Vandyk-Backyard Kings Mill Limited - Court File No. CV-23-00710267-00CL

To the Service List:

The motion scheduled to take place on July 4, 2024 at 11:00 a.m. EST has been adjourned.

We anticipate the motion will take place on July 15, 2024 at 12:00 p.m. EST, pending confirmation from the Commercial List scheduling coordinator.

With respect to the various information requests received in the below thread, we will be in touch directly with counsel in short order.

Best,  
Marleigh

**OSLER**

**Marleigh Dick**

Associate

416.862.4725 | [mdick@osler.com](mailto:mdick@osler.com)

Mobile: 647.963.4482

Osler, Hoskin & Harcourt LLP | [osler.com](http://osler.com)

**From:** Fazzari, Michael <[mfazzari@millerthomson.com](mailto:mfazzari@millerthomson.com)>

**Sent:** Wednesday, July 03, 2024 3:50 PM

**To:** Nicole Maragna <[nmaragna@bianchipresta.com](mailto:nmaragna@bianchipresta.com)>; MacGregor, Richard

<[rmacgregor@millertthomson.com](mailto:rmacgregor@millertthomson.com)>; Fabio Soccol <[fabio@soccollaw.com](mailto:fabio@soccollaw.com)>

**Cc:** Dick, Marleigh <[mdick@osler.com](mailto:mdick@osler.com)>; [susan.feldman@mcap.com](mailto:susan.feldman@mcap.com); [haddon.murray@gowlingwlw.com](mailto:haddon.murray@gowlingwlw.com); [heather.fisher@gowlingwlw.com](mailto:heather.fisher@gowlingwlw.com); [ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com); [mtallat@ksvadvisory.com](mailto:mtallat@ksvadvisory.com); [Jeff.Larry@paliareroland.com](mailto:Jeff.Larry@paliareroland.com); [daniel.rosenbluth@paliareroland.com](mailto:daniel.rosenbluth@paliareroland.com); [ryan.shah@paliareroland.com](mailto:ryan.shah@paliareroland.com); [jvandyk@vandyk.com](mailto:jvandyk@vandyk.com); Del Vecchio, Riccardo <[rdelvecchio@millertthomson.com](mailto:rdelvecchio@millertthomson.com)>; [kmovat@foglers.com](mailto:kmovat@foglers.com); Guaragna, Paul <[pguaragna@millertthomson.com](mailto:pguaragna@millertthomson.com)>; [dan@fridmar.com](mailto:dan@fridmar.com); [CTonks@pdclawyers.ca](mailto:CTonks@pdclawyers.ca); [rmoubarak@sutherlaw.com](mailto:rmoubarak@sutherlaw.com); [tpapasin@rjc.ca](mailto:tpapasin@rjc.ca); [abayne@rjc.ca](mailto:abayne@rjc.ca); Domenic Presta <[dpresta@bianchipresta.com](mailto:dpresta@bianchipresta.com)>; [psarkis@rarlitigation.com](mailto:psarkis@rarlitigation.com); [phorgan@carltonlaw.ca](mailto:phorgan@carltonlaw.ca); [madilman@mblaw.ca](mailto:madilman@mblaw.ca); [aslavens@torys.com](mailto:aslavens@torys.com); [AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca](mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca); [Insolvency.Unit@ontario.ca](mailto:Insolvency.Unit@ontario.ca); [ic.osbservicebsfservice.ic@canada.ca](mailto:ic.osbservicebsfservice.ic@canada.ca); [jdutrizac@blg.com](mailto:jdutrizac@blg.com); [dbambrough@blg.com](mailto:dbambrough@blg.com); [jmargie@margiestrub.com](mailto:jmargie@margiestrub.com); [gruggiero@srlawpractice.com](mailto:gruggiero@srlawpractice.com); [coneil@stewartmckelvey.com](mailto:coneil@stewartmckelvey.com); [cpiercey@stewartmckelvey.com](mailto:cpiercey@stewartmckelvey.com); [naomi.brown@toronto.ca](mailto:naomi.brown@toronto.ca); Ward, David <[dward@millertthomson.com](mailto:dward@millertthomson.com)>; Craddock, Erin <[ecraddock@millertthomson.com](mailto:ecraddock@millertthomson.com)>; Sanderson, Thomas <[tsanderson@millertthomson.com](mailto:tsanderson@millertthomson.com)>; [jessicagahtan@glaholt.com](mailto:jessicagahtan@glaholt.com); [hmeredith@mccarthy.ca](mailto:hmeredith@mccarthy.ca); [djmiller@tgf.ca](mailto:djmiller@tgf.ca); [fisherr@simpsonwigle.com](mailto:fisherr@simpsonwigle.com); Wasserman, Marc <[MWasserman@osler.com](mailto:MWasserman@osler.com)>; Rosenblat, Dave <[drosenblat@osler.com](mailto:drosenblat@osler.com)>; Muller, Ben <[bmuller@osler.com](mailto:bmuller@osler.com)>; Duggal, Chloe <[cduggal@osler.com](mailto:cduggal@osler.com)>  
**Subject:** RE: [\*\*EXT\*\*] RE: Receivership of Vandyk-Backyard Kings Mill Limited - Court File No. CV-23-00710267-00CL

Good afternoon,

We are counsel for Dircam Electric Limited.

We are opposing the relief sought and request that this matter be adjourned. On review of the motion materials served on June 27, 2024, there appears to be insufficient information to determine the issue of priority as between the lien claimants and the mortgagees. Furthermore, the lien claimants are unaware of any procedure proposed with respect to the vetting of liens, including but not limited to a proof of lien claims procedure. Accordingly, it is our position that this motion be adjourned until the foregoing issues have been appropriately addressed.

Thank you,  
Michael

**MICHAEL FAZZARI**  
Associate

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**From:** Nicole Maragna <[nmaragna@bianchipresta.com](mailto:nmaragna@bianchipresta.com)>

**Sent:** Wednesday, July 3, 2024 3:08 PM

**To:** MacGregor, Richard <[rmacgregor@millertthomson.com](mailto:rmacgregor@millertthomson.com)>; Fabio Soccol <[fabio@soccollaw.com](mailto:fabio@soccollaw.com)>

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**Subject:** RE: **[\*\*EXT\*\*]** RE: Receivership of Vandyk-Backyard Kings Mill Limited - Court File No. CV-23-00710267-00CL

Good afternoon,

As you are aware, we are counsel for the lien claimant, Lido Wall Systems Inc.

We are in receipt of the Motion Record and First Report of the Receiver, KSV Restructuring Inc. with a motion date scheduled for tomorrow, Thursday, July 4<sup>th</sup>, 2024 at 11:00 a.m. Such motion record has not been served in accordance with the *Rules of Civil Procedure*.

Due to the short and improper service of this motion, we are opposing the relief sought and concur with counsel Richard MacGregor that this motion be adjourned. Our position is that this motion shall be adjourned until the issues of priority and the vetting of the liens have been dealt with, as there is no mechanism proposed to be put in place to adjudicate same in the motion materials or draft order.

Yours very truly,

**Nicole M. Maragna, B.A (HONS.), LL.B.**

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**From:** MacGregor, Richard <[rmacgregor@millertthomson.com](mailto:rmacgregor@millertthomson.com)>  
**Sent:** Wednesday, July 3, 2024 1:01 PM  
**To:** Fabio Soccol <[fabio@soccollaw.com](mailto:fabio@soccollaw.com)>  
**Cc:** Dick, Marleigh <[mdick@osler.com](mailto:mdick@osler.com)>; [susan.feldman@mcap.com](mailto:susan.feldman@mcap.com); [haddon.murray@gowlingwlg.com](mailto:haddon.murray@gowlingwlg.com); [heather.fisher@gowlingwlg.com](mailto:heather.fisher@gowlingwlg.com); [ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com); [mtallat@ksvadvisory.com](mailto:mtallat@ksvadvisory.com); [Jeff.Larry@paliareroland.com](mailto:Jeff.Larry@paliareroland.com); [daniel.rosenbluth@paliareroland.com](mailto:daniel.rosenbluth@paliareroland.com); [ryan.shah@paliareroland.com](mailto:ryan.shah@paliareroland.com); [jvandyk@vandyk.com](mailto:jvandyk@vandyk.com); Del Vecchio, Riccardo <[rdelvecchio@millertthomson.com](mailto:rdelvecchio@millertthomson.com)>; Fazzari, Michael <[mfazzari@millertthomson.com](mailto:mfazzari@millertthomson.com)>; [kmovat@foglers.com](mailto:kmovat@foglers.com); Guaragna, Paul <[pguaragna@millertthomson.com](mailto:pguaragna@millertthomson.com)>; [dan@fridmar.com](mailto:dan@fridmar.com); [CTonks@pdclawyers.ca](mailto:CTonks@pdclawyers.ca); [rmoubarak@sutherlaw.com](mailto:rmoubarak@sutherlaw.com); [tpapasin@rjc.ca](mailto:tpapasin@rjc.ca); [abayne@rjc.ca](mailto:abayne@rjc.ca); Domenic Presta <[dpresta@bianchipresta.com](mailto:dpresta@bianchipresta.com)>; Nicole Maragna <[nmaragna@bianchipresta.com](mailto:nmaragna@bianchipresta.com)>; [psarkis@rarlitigation.com](mailto:psarkis@rarlitigation.com); [phorgan@carltonlaw.ca](mailto:phorgan@carltonlaw.ca); [madilman@mblaw.ca](mailto:madilman@mblaw.ca); [aslavens@torys.com](mailto:aslavens@torys.com); [AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca](mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca); [Insolvency.Unit@ontario.ca](mailto:Insolvency.Unit@ontario.ca); [ic.osbservicebsfservice.ic@canada.ca](mailto:ic.osbservicebsfservice.ic@canada.ca); [jdutrizac@blg.com](mailto:jdutrizac@blg.com); [dbambrough@blg.com](mailto:dbambrough@blg.com); [jmargie@margiestrub.com](mailto:jmargie@margiestrub.com); [gruggiero@srlawpractice.com](mailto:gruggiero@srlawpractice.com); [coneil@stewartmckelvey.com](mailto:coneil@stewartmckelvey.com); [cpiercey@stewartmckelvey.com](mailto:cpiercey@stewartmckelvey.com); [naomi.brown@toronto.ca](mailto:naomi.brown@toronto.ca); Ward, David <[dward@millertthomson.com](mailto:dward@millertthomson.com)>; Craddock, Erin <[ecraddock@millertthomson.com](mailto:ecraddock@millertthomson.com)>; Sanderson, Thomas <[tsanderson@millertthomson.com](mailto:tsanderson@millertthomson.com)>; [jessicagahtan@glaholt.com](mailto:jessicagahtan@glaholt.com); [hmeredith@mccarthy.ca](mailto:hmeredith@mccarthy.ca); [djmiller@tgf.ca](mailto:djmiller@tgf.ca); [fisherr@simpsonwigg.com](mailto:fisherr@simpsonwigg.com); Wasserman, Marc <[MWasserman@osler.com](mailto:MWasserman@osler.com)>; Rosenblat, Dave <[drosenblat@osler.com](mailto:drosenblat@osler.com)>; Muller, Ben <[bmuller@osler.com](mailto:bmuller@osler.com)>; Duggal, Chloe <[cduggal@osler.com](mailto:cduggal@osler.com)>  
**Subject:** Re: **[\*\*EXT\*\*]** RE: Receivership of Vandyk-Backyard Kings Mill Limited - Court File No. CV-23-00710267-00CL

Hello we are reviewing the materials served just before the long weekend. We have not had enough time to consider the evidence or proposed transaction. We cannot be in a position by Thursday and similarly request the matter be adjourned so claimants can have enough time to consider. Our client is facing a potential substantial loss.

We suggest the adjournment go by consent so we can avoid an attendance. Or to speak to that on Thursday if responses from everyone are not possible.

We ask for the Receivers position on this asap.

Richard

**RICHARD K. MACGREGOR**  
Partner

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On Jul 3, 2024, at 12:36 PM, Fabio Soccol <[fabio@soccollaw.com](mailto:fabio@soccollaw.com)> wrote:

Dear Counsel,

Please find attached a letter dated July 3, 2024 on behalf of my client Plycon Forming.

If you have any questions or wish to discuss in greater detail, please do not hesitate to contact me.

Regards,

Fabio M. Soccol  
[fabio@soccollaw.com](mailto:fabio@soccollaw.com)

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<image002.png>

**From:** Dick, Marleigh <[mdick@osler.com](mailto:mdick@osler.com)>

**Sent:** Thursday, June 27, 2024 10:07 PM

**To:** [susan.feldman@mcap.com](mailto:susan.feldman@mcap.com); [haddon.murray@gowlingwlg.com](mailto:haddon.murray@gowlingwlg.com); [heather.fisher@gowlingwlg.com](mailto:heather.fisher@gowlingwlg.com); [ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com); [mtallat@ksvadvisory.com](mailto:mtallat@ksvadvisory.com); [jeff.larry@paliareroland.com](mailto:jeff.larry@paliareroland.com); [daniel.rosenbluth@paliareroland.com](mailto:daniel.rosenbluth@paliareroland.com); [ryan.shah@paliareroland.com](mailto:ryan.shah@paliareroland.com); [jvandyk@vandyk.com](mailto:jvandyk@vandyk.com); [rdelvecchio@millerthomson.com](mailto:rdelvecchio@millerthomson.com); [mfazzari@millerthomson.com](mailto:mfazzari@millerthomson.com); [kmovat@foglers.com](mailto:kmovat@foglers.com); [fabio@soccollaw.com](mailto:fabio@soccollaw.com); [pguaragna@millerthomson.com](mailto:pguaragna@millerthomson.com); [dan@fridmar.com](mailto:dan@fridmar.com); [CTonks@pdclawyers.ca](mailto:CTonks@pdclawyers.ca); [rmacgregor@millerthomson.com](mailto:rmacgregor@millerthomson.com); [rmoubarak@sutherlaw.com](mailto:rmoubarak@sutherlaw.com); [tpapasin@rjc.ca](mailto:tpapasin@rjc.ca); [abayne@rjc.ca](mailto:abayne@rjc.ca); [dpresta@bianchipresta.com](mailto:dpresta@bianchipresta.com); [nmaragna@bianchipresta.com](mailto:nmaragna@bianchipresta.com); [psarkis@rarlitigation.com](mailto:psarkis@rarlitigation.com); [phorgan@carltonlaw.ca](mailto:phorgan@carltonlaw.ca); [madilman@mblaw.ca](mailto:madilman@mblaw.ca); [aslavens@torys.com](mailto:aslavens@torys.com); [agc-pgc.toronto-tax-fiscal@justice.gc.ca](mailto:agc-pgc.toronto-tax-fiscal@justice.gc.ca); [Insolvency.Unit@ontario.ca](mailto:Insolvency.Unit@ontario.ca); [ic.osbservicebsfservice.ic@canada.ca](mailto:ic.osbservicebsfservice.ic@canada.ca); [jdutrizac@blg.com](mailto:jdutrizac@blg.com); [dbambrough@blg.com](mailto:dbambrough@blg.com); [jmargie@margiestrub.com](mailto:jmargie@margiestrub.com); [gruggiero@SRlawpractice.com](mailto:gruggiero@SRlawpractice.com); [coneil@stewartmckelvey.com](mailto:coneil@stewartmckelvey.com); [cpiercey@stewartmckelvey.com](mailto:cpiercey@stewartmckelvey.com); [naomi.brown@toronto.ca](mailto:naomi.brown@toronto.ca); [dward@millerthomson.com](mailto:dward@millerthomson.com); [ecraddock@millerthomson.com](mailto:ecraddock@millerthomson.com); [tsanderson@millerthomson.com](mailto:tsanderson@millerthomson.com); [jessicagahtan@glaholt.com](mailto:jessicagahtan@glaholt.com); [hmeredith@mccarthy.ca](mailto:hmeredith@mccarthy.ca); [djmillier@tgf.ca](mailto:djmillier@tgf.ca); [fisherr@simpsonwiggles.com](mailto:fisherr@simpsonwiggles.com)

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**Subject:** Receivership of Vandyk-Backyard Kings Mill Limited - Court File No. CV-23-00710267-00CL

To the Service List:

Please find attached the Motion Record (Approval and Vesting Order and Distribution Order) and First Report of the Receiver, KSV Restructuring Inc., in the above-noted matter, served upon you pursuant to the *Rules*.

Best,  
Marleigh  
<image003.gif>

**Marleigh Dick**  
Associate  
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## **Appendix “C”**

Toronto

July 5, 2024

Dave Rosenblat  
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drosenblat@osler.com

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**SENT BY ELECTRONIC MAIL**

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Ottawa

Fabio M. Soccol Professional Corporation  
7823 Kipling Ave., Vaughan, Ontario  
L4L 1Z4

Vancouver

New York

Attention: Fabio Soccol

**Re: Vandyk-Kings Mill Limited**

As you are aware, we are counsel to KSV Restructuring Inc., in its capacity as receiver and manager of certain assets, property and undertakings of Vandyk-Kings Mill Limited (in such capacity, the “**Receiver**”). We are in receipt of your letter dated July 3, 2024 with respect to the Receiver’s motion returnable July 4, 2024, which has been adjourned to July 15, 2024 (the “**Letter**”).

As set out in the First Report of the Receiver dated June 27, 2024 (the “**First Report**”), the Receiver is of the view that the proceeds from the proposed sale will be sufficient to address any claims that are in priority to the proposed distribution to MCAP. The Receiver’s analysis with respect to potential priority claims is set out in the First Report. As noted in the First Report, the Receiver will share the purchase price with lien claimants that execute a confidentiality agreement. A form of confidentiality agreement is provided with this letter.

With respect to the information and documents requested in the Letter:

- We will provide the items requested in items 1, 2 and 3 in the Letter upon execution of a confidentiality agreement.
- With respect to item 4 in the Letter, we refer you to the priority analysis in the First Report and the scope of opinion referred to therein.
- Gowling WLG (Canada) LLP, counsel to MCAP, which we have copied on this letter, will be providing responses to items 5 and 6 of the Letter.

No distribution to Westmount Guarantee is being sought at this time.

We would ask that you provide a signed confidentiality agreement as soon as possible so that we can provide the applicable items noted above. We ask that you advise of any



concerns after your review of the above items, after receipt, as soon as possible and in any event no later than July 9, 2024 given the July 15, 2024 motion date.

Thank you,

Dave Rosenblat

c: Marc Wasserman, *Osler, Hoskin & Harcourt LLP*  
Noah Goldstein, *KSV Restructuring Inc.*  
Murtaza Tallat, *KSV Restructuring Inc.*  
Heather Fisher, *Gowling WLG (Canada) LLP*

## **Appendix “D”**

July 9, 2024

**Via E-Mail**

**Soccol Law**

Barristers & Solicitors  
7823 Kipling Avenue  
Vaughan, ON L4L 1Z4

**Heather Fisher**  
Direct +1 416 369 7202  
Direct Fax +1 416 862 7661  
heather.fisher@gowlingwlg.com  
File no. T1033750

**Attention: Mr. Fabio M. Soccol**

Dear Mr. Soccol:

**Re: Vandyk - Backyard Kings Mill Limited (“Vandyk”)**  
**Project: 15 Neighbourhood Lane, Toronto (“Project”)**

We are counsel to MCAP Financial Corporation (“**MCAP**”). Further to your letter of July 3, 2024, we are writing in response to the following questions:

5. ... In particular, we request details of the specific advances, including the dates, amounts, nature and purpose of each advance, and confirmation whether amounts were in fact “advanced”.
6. In addition to the information requested in para. 4, above, we request the following information from MCAP:
  - a. at the time when the advance(s) were made, were there any preserved or perfected liens against the premises; and
  - b. has MCAP ever received written notice of a lien, whether formal or informal? If so, please provide particulars and send us a copy.

**Advance Information**

There were 11 advances made under the construction loan for the purposes of funding construction of the Project (the “**Construction Advances**”). The advance information for the Construction Advances is set out below:

<b>Advance</b>	<b>Date of Advance</b>	<b>Amount</b>
1	November 26, 2020	\$ 14,181,580
2	June 16, 2022	\$ 457,204
3	July 28, 2022	\$ 1,720,575
4	November 9, 2022	\$ 2,842,504
5	December 20, 2022	\$ 2,708,110
6	January 24, 2023	\$ 1,246,122
7	February 21, 2023	\$ 1,251,326
8	March 17, 2023	\$ 1,583,250
9	April 19, 2023	\$ 985,824
10	May 5, 2023	\$ 1,823,487
11	June 21, 2023	\$ 1,994,301

### **Liens against the Premises**

There were no lien claims registered at the time of any of the Construction Advances (attached is the parcel register for the Property, confirming same).

Under Section 39 of the *Construction Act*, an individual lien claimant is not entitled to the particulars of all notice MCAP received in relation to lien claimants. However, MCAP confirms that it has received written notice of liens in respect of the Property.

We trust this satisfies your requests for additional information.

Sincerely,

Gowling WLG (Canada) LLP



Heather Fisher  
HF

cc: Osler, Hoskin & Harcourt LLP - Marc Wasserman and Dave Rosenblatt  
Service List  
encl. Parcel Register (07500-0082)

LAND  
REGISTRY  
OFFICE #66

07500-0082 (LT)

PAGE 1 OF 9  
PREPARED FOR RKing000  
ON 2024/07/05 AT 15:12:05

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

**PROPERTY DESCRIPTION:** PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 5, 6, 7 & 8 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 1 - 4, 10 - 14, 16, 18 & 28, 66R28992 AS IN AT4865050; T/W EASEMENT OVER PTS 1 - 4, 10 - 14, 16, 18 & 28, 66R28992 AS IN AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT IN GROSS OVER PART 5, 66R28992 AS IN AT5347804; SUBJECT TO AN EASEMENT IN GROSS OVER PART 7, 66R28992 AS IN AT5347808; SUBJECT TO AN EASEMENT IN GROSS OVER PART 6, 66R28992 AS IN AT5347812; SUBJECT TO AN EASEMENT AS IN AT5367415; SUBJECT TO AN EASEMENT IN GROSS OVER PART 5, 66R28992 AS IN AT5479699; CITY OF TORONTO

**PROPERTY REMARKS:** FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2018/04/13. PLANNING ACT CONSENT IN DOCUMENT AT4865050.

**ESTATE/QUALIFIER:** FEE SIMPLE LT ABSOLUTE PLUS  
**RECENTLY:** DIVISION FROM 07500-0078  
**PIN CREATION DATE:** 2018/06/06

**OWNERS' NAMES:** VANDYK - BACKYARD KINGS MILL LIMITED  
**CAPACITY SHARE**

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2018/06/06 **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
NOTE: THE NO DEALINGS INDICATOR IS IN EFFECT ON THIS PROPERTY						
EB160013	1955/10/24	AGREEMENT			THE CORPORATION OF THE TOWNSHIP OF ETOBICOKE	C
EB163037	1956/01/03	CERTIFICATE				C
EB177163	1956/11/19	AGREEMENT			THE CORPORATION OF THE TOWNSHIP OF ETOBICOKE	C
EB181933	1957/04/04	AGREEMENT			THE CORPORATION OF THE TOWNSHIP OF ETOBICOKE	C
EB186721	1957/07/29	BYLAW				C
EB188451	1957/09/06	AGREEMENT			TOWNSHIP OF ETOBICOKE	C
AT3907826	2015/06/09	CHARGE		*** DELETED AGAINST THIS PROPERTY *** 2384903 ONTARIO INC.	J LANG ASSET MANAGEMENT INC. HRJL REAL ESTATE INVESTMENT LP	
CORRECTIONS: PARTY TO NAME:HRJL REAL ESTATE INVESTMENT LP ADDED ON 2016/08/24 AT 15:45 BY GARRETT, TRACEY.						
AT3907827	2015/06/09	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** 2384903 ONTARIO INC.	J LANG ASSET MANAGEMENT INC. HRJL REAL ESTATE INVESTMENT LP	
REMARKS: AT3907826						
CORRECTIONS: PARTY TO NAME:HRJL REAL ESTATE INVESTMENT LP ADDED ON 2016/08/24 AT 15:45 BY GARRETT, TRACEY.						

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NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT4276176	2016/07/13	APL CH NAME OWNER		2384903 ONTARIO INC.	VANDYK - BACKYARD HUMBERSIDE LIMITED	C
AT4296558	2016/08/02	CHARGE		*** DELETED AGAINST THIS PROPERTY *** VANDYK - BACKYARD HUMBERSIDE LIMITED	MERIDIAN CREDIT UNION LIMITED	
AT4296559	2016/08/02	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** VANDYK - BACKYARD HUMBERSIDE LIMITED	MERIDIAN CREDIT UNION LIMITED	
		REMARKS: RENTS AT4296558				
AT4296582	2016/08/02	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** J LANG ASSET MANAGEMENT INC. HRJL REAL ESTATE INVESTMENT LP	MERIDIAN CREDIT UNION LIMITED	
		REMARKS: AT3907826 TO AT4296558				
66R28992	2016/10/28	PLAN REFERENCE				C
AT4478657	2017/02/02	NOTICE	\$2	CITY OF TORONTO		C
		REMARKS: SITE PLAN AGT.; PTS 1,2,3,9,15,16,17,18,22 PLAN 66R28992				
66R29993	2018/04/13	PLAN REFERENCE				C
AT4865050	2018/05/16	TRANSFER		VANDYK - BACKYARD HUMBERSIDE LIMITED	VANDYK - BACKYARD KINGS MILL LIMITED	C
AT4890817	2018/06/20	CHARGE		*** DELETED AGAINST THIS PROPERTY *** VANDYK - BACKYARD HUMBERSIDE LIMITED VANDYK - BACKYARD QUEENSVIEW LIMITED VANDYK - BACKYARD KINGS MILL LIMITED VANDYK-SHOPPES OF STONEGATE LIMITED	KINGSETT MORTGAGE CORPORATION	
AT4890818	2018/06/20	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** VANDYK-BACKYARD HUMBERSIDE LIMITED VANDYK-BACKYARD QUEENSVIEW LIMITED VANDYK-BACKYARD KINGS MILL LIMITED VANDYK-SHOPPES OF STONEGATE LIMITED	KINGSETT MORTGAGE CORPORATION	
		REMARKS: AT4890817.				
AT4891678	2018/06/21	DISCH OF CHARGE		*** COMPLETELY DELETED *** J LANG ASSET MANAGEMENT INC. HRJL REAL ESTATE INVESTMENT LP		
		REMARKS: AT3907826.				
AT5186698	2019/07/16	CHARGE		*** DELETED AGAINST THIS PROPERTY *** VANDYK - BACKYARD HUMBERSIDE LIMITED VANDYK - BACKYARD KINGS MILL LIMITED	KINGSETT MORTGAGE CORPORATION	

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT5200718	2019/07/31	LR'S ORDER <i>REMARKS: TO AMEND PIN TO ADD PART 9 66R29993 TO EASEMENT AT4478658</i>		LAND REGISTRAR, TORONTO LAND REGISTRY OFFICE		C
AT5327060	2019/12/20	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** GREAT PYRAMID GLASS AND MIRROR LTD.		
AT5338546	2020/01/10	APL AMEND ORDER		*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE	GREAT PYRAMID GLASS AND MIRROR LTD.	
AT5347788	2020/01/22	NOTICE		CITY OF TORONTO		C
AT5347793	2020/01/22	TRANSFER REL&ABAND <i>REMARKS: AT4865049. PARTIAL RELEASE AS TO PARTS 10, 13, 14 AND 28, 66R28992 AND PART 1, 66R30958</i>	\$2	VANDYK-BACKYARD KINGS MILL LIMITED	CITY OF TORONTO	C
AT5347804	2020/01/22	TRANSFER EASEMENT	\$2	VANDYK - BACKYARD KINGS MILL LIMITED	CITY OF TORONTO	C
AT5347805	2020/01/22	POSTPONEMENT <i>REMARKS: AT4890817 TO AT5347804</i>		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION	CITY OF TORONTO	
AT5347806	2020/01/22	POSTPONEMENT <i>REMARKS: AT4296558 TO AT5347804</i>		*** COMPLETELY DELETED *** MERIDIAN CREDIT UNION LIMITED	CITY OF TORONTO	
AT5347807	2020/01/22	POSTPONEMENT <i>REMARKS: AT5186698 TO AT5347804</i>		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION	CITY OF TORONTO	
AT5347808	2020/01/22	TRANSFER EASEMENT	\$2	VANDYK - BACKYARD KINGS MILL LIMITED	CITY OF TORONTO	C
AT5347809	2020/01/22	POSTPONEMENT <i>REMARKS: AT4890817 TO AT5347808</i>		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION	CITY OF TORONTO	
AT5347810	2020/01/22	POSTPONEMENT <i>REMARKS: AT4296558 TO AT5347808</i>		*** COMPLETELY DELETED *** MERIDIAN CREDIT UNION LIMITED	CITY OF TORONTO	
AT5347811	2020/01/22	POSTPONEMENT <i>REMARKS: AT5186698 TO AT5347808</i>		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION	CITY OF TORONTO	
AT5347812	2020/01/22	TRANSFER EASEMENT	\$2	VANDYK - BACKYARD KINGS MILL LIMITED	CITY OF TORONTO	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT5347813	2020/01/22	POSTPONEMENT		*** COMPLETELY DELETED *** MERIDIAN CREDIT UNION LIMITED	CITY OF TORONTO	
		REMARKS: AT4296558 TO AT5347812				
AT5347814	2020/01/22	POSTPONEMENT		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION	CITY OF TORONTO	
		REMARKS: AT4890817 TO AT5347812				
AT5347815	2020/01/22	POSTPONEMENT		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION	CITY OF TORONTO	
		REMARKS: AT5186698 TO AT5347812				
AT5348063	2020/01/22	APL (GENERAL)		VANDYK-SHOPPES OF STONEGATE LIMITED	CITY OF TORONTO	C
		REMARKS: AT4865050 TO AT5347804.				
AT5348064	2020/01/22	APL (GENERAL)		VANDYK - BACKYARD QUEENSVIEW LIMITED	CITY OF TORONTO	C
		REMARKS: AT4865050 TO AT5347804.				
AT5348065	2020/01/22	APL (GENERAL)		VANDYK - BACKYARD HUMBERSIDE LIMITED	CITY OF TORONTO	C
		REMARKS: AT4865050 TO AT5347804.				
AT5348066	2020/01/22	APL (GENERAL)		VANDYK-SHOPPES OF STONEGATE LIMITED	CITY OF TORONTO	C
		REMARKS: AT4865050 TO AT5347808				
AT5348067	2020/01/22	APL (GENERAL)		VANDYK - BACKYARD QUEENSVIEW LIMITED	CITY OF TORONTO	C
		REMARKS: AT4865050 TO AT5347808.				
AT5348068	2020/01/22	APL (GENERAL)		VANDYK - BACKYARD HUMBERSIDE LIMITED	CITY OF TORONTO	C
		REMARKS: AT4865050 TO AT5347808				
AT5348069	2020/01/22	APL (GENERAL)		VANDYK-SHOPPES OF STONEGATE LIMITED	CITY OF TORONTO	C
		REMARKS: AT4865050 TO AT5347812.				
AT5348070	2020/01/22	APL (GENERAL)		VANDYK - BACKYARD QUEENSVIEW LIMITED	CITY OF TORONTO	C
		REMARKS: AT4865050 TO AT5347812				
AT5348071	2020/01/22	APL (GENERAL)		VANDYK - BACKYARD HUMBERSIDE LIMITED	CITY OF TORONTO	C
		REMARKS: AT4865050 TO AT5347812.				
AT5367415	2020/02/19	TRANSFER EASEMENT	\$2	VANDYK - BACKYARD KINGS MILL LIMITED	ROGERS COMMUNICATIONS INC.	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT5380929	2020/03/04	CHARGE	\$30,000,000	VANDYK - BACKYARD KINGS MILL LIMITED	WESTMOUNT GUARANTEE SERVICES INC.	C
AT5399678	2020/04/01	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** NANO INDUSTRIES ONTARIO INC.		
AT5406606	2020/04/14	APL DEL CONST LIEN		*** COMPLETELY DELETED *** VANDYK - BACKYARD KINGS MILL LIMITED VANDYK - BACKYARD HUMBERSIDE LIMITED		
		REMARKS: AT5399678.				
AT5430161	2020/05/15	POSTPONEMENT		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION	WESTMOUNT GUARANTEE SERVICES INC.	
		REMARKS: AT4890817 TO AT5380929				
AT5430162	2020/05/15	POSTPONEMENT		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION	WESTMOUNT GUARANTEE SERVICES INC.	
		REMARKS: AT5186698 TO AT5380929				
AT5436497	2020/05/26	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** EMPIRE CONTROLS LTD.		
AT5443208	2020/06/03	APL DEL CONST LIEN		*** COMPLETELY DELETED *** EMPIRE CONTROLS LTD.		
		REMARKS: AT5436497.				
AT5472421	2020/07/14	DISCH OF CHARGE		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION		
		REMARKS: AT5186698.				
AT5479699	2020/07/23	TRANSFER EASEMENT	\$2	VANDYK - BACKYARD KINGS MILL LIMITED	CITY OF TORONTO	C
AT5479700	2020/07/23	POSTPONEMENT		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION	CITY OF TORONTO	
		REMARKS: AT4890817 TO AT5479699				
AT5479701	2020/07/23	POSTPONEMENT		MERIDIAN CREDIT UNION LIMITED	CITY OF TORONTO	C
		REMARKS: AT4296558 TO AT5479699				
AT5479702	2020/07/23	POSTPONEMENT		ROGERS COMMUNICATIONS INC.	CITY OF TORONTO	C
		REMARKS: AT5367415 TO AT5479699				
AT5479703	2020/07/23	POSTPONEMENT		WESTMOUNT GUARANTEE SERVICES INC.	CITY OF TORONTO	C
		REMARKS: AT5380929 TO AT5479699				

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT5479777	2020/07/23	APL (GENERAL) <i>REMARKS: AT4865050 POSTPONED TO AT5479699</i>		VANDYK-BACKYARD HUMBERSIDE LIMITED	CITY OF TORONTO	C
AT5479778	2020/07/23	APL (GENERAL) <i>REMARKS: AT4865050 POSTPONED TO AT5479699</i>		VANDYK-BACKYARD QUEENSVIEW LIMITED	CITY OF TORONTO	C
AT5479779	2020/07/23	APL (GENERAL) <i>REMARKS: AT4865050 POSTPONED TO AT5479699</i>		VANDYK-BACKYARD HUMBERSIDE LIMITED	CITY OF TORONTO	C
AT5531340	2020/09/29	NOTICE	\$2	VANDYK - BACKYARD HUMBERSIDE LIMITED VANDYK - BACKYARD QUEENSVIEW LIMITED VANDYK - BACKYARD KINGSMILL LIMITED		C
AT5531477	2020/09/29	TRANSFER REL&ABAND  <i>REMARKS: AT4865049.</i>		VANDYK - BACKYARD HUMBERSIDE LIMITED VANDYK - BACKYARD KINGS MILL LIMITED VANDYK - BACKYARD QUEENSVIEW LIMITED	VANDYK - BACKYARD HUMBERSIDE LIMITED	C
AT5581120	2020/11/26	CHARGE	\$104,500,000	VANDYK - BACKYARD KINGS MILL LIMITED	MCAP FINANCIAL CORPORATION	C
AT5581121	2020/11/26	NO ASSGN RENT GEN <i>REMARKS: AT5581120.</i>		VANDYK - BACKYARD KINGS MILL LIMITED	MCAP FINANCIAL CORPORATION	C
AT5581126	2020/11/26	POSTPONEMENT <i>REMARKS: AT5380929 TO AT5581120 TO AT5581121</i>		WESTMOUNT GUARANTEE SERVICES INC.	MCAP FINANCIAL CORPORATION	C
AT5582589	2020/11/27	DISCH OF CHARGE  <i>REMARKS: AT4890817.</i>		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION		
AT5677735	2021/03/16	DISCH OF CHARGE  <i>REMARKS: AT4296558.</i>		*** COMPLETELY DELETED *** MERIDIAN CREDIT UNION LIMITED		
AT5680013	2021/03/18	NOTICE	\$2	CITY OF TORONTO		C
AT5680014	2021/03/18	POSTPONEMENT <i>REMARKS: AT5380929 TO AT5680013</i>		WESTMOUNT GUARANTEE SERVICES INC.	CITY OF TORONTO	C
AT5680015	2021/03/18	POSTPONEMENT <i>REMARKS: AT5581120 TO AT5680013</i>		MCAP FINANCIAL CORPORATION	CITY OF TORONTO	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT5717411	2021/04/27	CERTIFICATE		HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF THE ENVIRONMENT, CONSERVATION AND PARKS		C
		REMARKS: CERTIFICATE OF REQUIREMENT; S.197(2) ENVIRONMENTAL PROTECTION ACT				
AT6340102	2023/05/25	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** DOLVIN MECHANICAL CONTRACTORS LIMITED		
AT6356023	2023/06/15	APL DEL CONST LIEN		*** COMPLETELY DELETED *** DOLVIN MECHANICAL CONTRACTORS LIMITED		
		REMARKS: AT6340102.				
AT6360204	2023/06/22	CONSTRUCTION LIEN		*** DELETED AGAINST THIS PROPERTY *** RONI EXCAVATING LIMITED		
AT6375492	2023/07/14	APL DEL CONST LIEN		*** COMPLETELY DELETED *** RONI EXCAVATING LIMITED		
		REMARKS: AT6360204.				
AT6407063	2023/08/25	CONSTRUCTION LIEN	\$743,323	DIRCAM ELECTRIC LIMITED		C
AT6408162	2023/08/29	CONSTRUCTION LIEN	\$103,508	DIRCAM ELECTRIC LIMITED		C
AT6423816	2023/09/20	CONSTRUCTION LIEN	\$61,359	KOHN PARTNERSHIP ARCHITECTS INC.		C
AT6424435	2023/09/20	CONSTRUCTION LIEN	\$9,899,781	PLYCON FORMING LTD.		C
AT6426188	2023/09/22	CONSTRUCTION LIEN	\$558,195	VIOLA READY MIX INC.		C
AT6427885	2023/09/26	CONSTRUCTION LIEN	\$500,488	MYER SALIT LIMITED		C
AT6439372	2023/10/12	CONSTRUCTION LIEN	\$240,354	AUTOMATED FIRE PROTECTION SYSTEMS INC.		C
AT6440475	2023/10/13	CONSTRUCTION LIEN	\$2,251,028	DOLVIN MECHANICAL CONTRACTORS LIMITED		C
AT6445158	2023/10/23	CONSTRUCTION LIEN	\$42,222	STEPHENSON'S RENTAL SERVICES INC.		C
AT6445871	2023/10/24	CONSTRUCTION LIEN	\$6,215	READ JONES CHRISTOFFERSEN LTD.		C
AT6448252	2023/10/26	CERTIFICATE		STEPHENSON'S RENTAL SERVICES INC.		C
AT6451921	2023/11/01	CERTIFICATE		DIRCAM ELECTRIC LIMITED		C
AT6453188	2023/11/02	CERTIFICATE		VIOLA READY MIX INC.		C

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LAND  
 REGISTRY  
 OFFICE #66

07500-0082 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT6456380	2023/11/08	CONSTRUCTION LIEN	\$849,376	LIDO WALL SYSTEMS INC.		C
AT6456905	2023/11/09	CERTIFICATE		MYER SALIT LIMITED		C
		REMARKS: AT6427885				
AT6456920	2023/11/09	CERTIFICATE		DOLVIN MECHANICAL CONTRACTORS LIMITED		C
		REMARKS: AT6440475				
AT6457030	2023/11/09	CONSTRUCTION LIEN	\$260,581	VENICE CONSTRUCTION INC.		C
AT6457231	2023/11/09	CONSTRUCTION LIEN	\$359,360	CLASSIC TILE CONTRACTORS LIMITED		C
AT6457806	2023/11/10	CONSTRUCTION LIEN	\$61,302	SUMMIT CONCRETE & DRAIN LTD.		C
AT6458916	2023/11/14	CERTIFICATE		PLYCON FORMING LTD.		C
		REMARKS: A6424435 CERTIFICATE OF ACTION				
AT6459778	2023/11/15	CONSTRUCTION LIEN	\$18,552	2164705 ONTARIO INC.		C
AT6460838	2023/11/15	CERTIFICATE		SUMMIT CONCRETE & DRAIN LTD.		C
		REMARKS: AT6457806				
AT6461236	2023/11/16	CONSTRUCTION LIEN	\$336,966	PRIMELINE WINDOWS & DOORS INC.		C
AT6464018	2023/11/22	CONSTRUCTION LIEN	\$86,438	ATLAS IRONWORKS INC.		C
AT6464046	2023/11/22	CONSTRUCTION LIEN	\$9,473	LIVE PATROL INC.		C
AT6464285	2023/11/22	CERTIFICATE		KOHN PARTNERSHIP ARCHITECTS INC.		C
		REMARKS: CERTIFICATE OF ACTION				
AT6465303	2023/11/23	CONSTRUCTION LIEN	\$117,938	UNIQSPACE SOLUTIONS LTD.		C
AT6468348	2023/11/29	CERTIFICATE		LIDO WALL SYSTEMS INC.	VANDYK - BACKYARD KINGS MILL LIMITED MCAP FINANCIAL CORPORATION WESTMOUNT GUARANTEE SERVICES INC.	C
		REMARKS: AT6456380				
AT6475541	2023/12/07	CERTIFICATE		UNIQSPACE SOLUTIONS LTD.	VANDYK - BACKYARD KINGS MILL LIMITED MCAP FINANCIAL CORPORATION WESTMOUNT GUARANTEE SERVICES INC.	C
AT6477629	2023/12/12	CERTIFICATE		AUTOMATED FIRE PROTECTION SYSTEMS INC.	VANDYK- BACKYARD KINGS MILL LIMITED	C

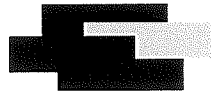
NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT6484901	2023/12/20	NO SEC INTEREST	\$717,107	METERGY SOLUTIONS INC.		C
AT6492443	2024/01/09	CHARGE	\$8,125,000	VANDYK - BACKYARD KINGS MILL LIMITED	DIVERSIFIED CAPITAL INC.	C
AT6492444	2024/01/09	CHARGE	\$7,500,000	VANDYK - BACKYARD KINGS MILL LIMITED	DIVERSIFIED CAPITAL INC.	C
AT6492445	2024/01/09	RESTRICTION-LAND		VANDYK - BACKYARD KINGS MILL LIMITED		C
REMARKS: NO TRANSFER OR CHARGE OF LANDS SET OUT HEREIN SHALL BE REGISTERED WITHOUT THE CONSENT OF DIVERSIFIED CAPITAL INC.						
AT6493748	2024/01/11	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)	KSV RESTRUCTURING INC.	C
AT6501215	2024/01/24	CONSTRUCTION LIEN	\$295,759	SKYWAY CANADA LIMITED		C
AT6510590	2024/02/07	CERTIFICATE		CLASSIC TILE CONTRACTORS LIMITED		C
AT6512080	2024/02/09	CERTIFICATE		VENICE CONSTRUCTION INC.	VANDYK - BACKYARD KINGS MILL LIMITED	C
AT6518460	2024/02/23	CERTIFICATE		SKYWAY CANADA LIMITED		C
REMARKS: AT6501215						
AT6519357	2024/02/26	CERTIFICATE		LIVE PATROL INC.		C
REMARKS: AT6464046						
AT6549536	2024/04/10	CONSTRUCTION LIEN	\$51,301	WJ GROUNDWATER CANADA LIMITED		C



## **Appendix “E”**



Reply to: Fabio M. Soccol  
fabio@soccollaw.com  
Our File No. 1156-014

Tuesday, July 09, 2024

**DELIVERED VIA EMAIL**

**Osler, Hoskin & Harcourt LLP**

100 King Street West  
1 First Canadian Place  
Suite 6200 PO Box 50  
Toronto, ON M5X 1B8

*Solicitor for the Receiver*

Attention: Marc Wasserman and Dave Rosenblatt

-and-

**Gowlings WLG**

Suite 1600  
1 First Canadian Place  
100 King Street West  
Toronto, ON M5X 1G5

*Solicitors for MCAP, Mortgagee*

Attention: Heather Fisher

Dear Sirs and Madam:

**RE: Receivership of Vandyk-Kings Mill Limited**  
**My client: Plycon Forming Ltd.**  
**Project: 15 Neighbourhood Lane, Toronto ("Project")**  
**Plycon Construction Lien AT6424435: \$9,899,781.51**

I have reviewed the Confidential Information received today. I have also reviewed the Gowlings letter dated July 9, 2024 (copy attached excluding confidential information), providing additional Section 39 information on behalf of MCAP received today.

As you are aware, the lien claimants are significant stakeholders in these proceedings, the face value of the liens is approximately \$17M. Plycon's lien is \$9.9M alone.

As you are also aware, the issue of priority between lien claimants and mortgages is governed by Section 78 of the *Construction Act*. Generally, under Section 78 liens have priority over a mortgage, unless a mortgagee can establish that they fall within one of the exceptions set out therein. The onus is upon the mortgagee to establish that they fall within one of the exceptions contained in Section 78 of the *Construction Act*.

There is insufficient information currently on the record to determine the issue of the extent of MCAP's priority over the lien claimants at this time.

In particular, some of the material issues regarding the extent of MCAP's priority are as follows:

1. The Gowlings letter dated July 9, 2024 acknowledges that MCAP received written notices of liens regarding the Project, however MCAP has declined to voluntarily provide any further particulars nor copies of these written notices. As you are aware, MCAP is not entitled to priority regarding any advances made in the face of a written notice of lien. Refer to sections 78(3) and 78(6) of the *Construction Act*.
2. The Gowlings letter dated July 9, 2024, shows Draw #11 made on June 21/23, which is coincidentally one (1) day before the lien registered on June 22/23 by Roni Excavating as AT6375492. This warrants some further investigation.
3. The Gowlings letter dated July 9, 2024 sets out 11 advances made by MCAP totaling \$30,794,283. The MCAP Mortgage Statement contained in the Application Record (copy attached) indicates a principal balance outstanding of \$34,330,788. There is a discrepancy of \$4,330,788 between the "advances" actually made by MCAP and the principal balance claimed by MCAP in their Mortgage Statement. As you are aware, MCAP's priority under Sections 78(3) or 78(6) of the *Construction Act* is limited to the extent of advances actually made.
4. The statutory holdback funds should be plus applicable H.S.T.

In light of the above, we request that MCAP: (1) reconsider providing voluntary disclosure of particulars and copies of the written notices of lien received by them, (2) provide a copy of Draw #11 including the bank draft or wire payment as the case may be, and (3) clarify the discrepancy mentioned in paragraph 3 above, including providing a Mortgage Statement "for information purposes" breaking down the specific advances and interest calculations based upon amounts actually "advanced" within the meaning of Section 78 of the *Construction Act*.

We look forward to receipt of any additional information from MCAP by 5 p.m Wednesday, July 10<sup>th</sup>.

Be advised that there is a telephone conference with counsel for the other lien claimants that have signed the Confidentiality and NDA Agreement scheduled on Thursday, July 11<sup>th</sup>. We reserve the right to raise such further or other positions or issues as may be advisable following this telephone conference, including but not limited to, delivery of responding materials and/or cross-examining MCAP.

Lastly, I would like to propose the following:

1. that the determination of the issue of priority between the liens and MCAP be adjourned and a proper process put in place for delivery of materials, cross-examinations and a date for a hearing based upon a full record;

2. that the current proposed order include a clause to the effect that is expressly without prejudice to the determination of the issue of priority as between the lien claims and MCAP;

I trust that in due course there will be a process for determination of the issue of priority between the liens and the Westmount/ Aviva second mortgage, and also vetting of the lien claims, however, I understand that these issues are not raised in the current motion before the court scheduled for July 15, 2024.

Trusting the above is satisfactory and if you wish to discuss further, do not hesitate to contact me.

Yours truly,

**SOCCOL LAW**

Per:

Fabio M. Soccol

FMS:ab

Encl.

cc. Plycon  
cc. Service List

July 9, 2024

**Via E-Mail**

**Soccol Law**  
Barristers & Solicitors  
7823 Kipling Avenue  
Vaughan, ON L4L 1Z4

**Heather Fisher**  
Direct +1 416 369 7202  
Direct Fax +1 416 862 7661  
heather.fisher@gowlingwlg.com  
File no. T1033750

**Attention: Mr. Fabio M. Soccol**

Dear Mr. Soccol:

**Re: Vandyk - Backyard Kings Mill Limited ("Vandyk")**  
**Project: 15 Neighbourhood Lane, Toronto ("Project")**

We are counsel to MCAP Financial Corporation ("**MCAP**"). Further to your letter of July 3, 2024, we are writing in response to the following questions:

5. ... In particular, we request details of the specific advances, including the dates, amounts, nature and purpose of each advance, and confirmation whether amounts were in fact "advanced".
6. In addition to the information requested in para. 4, above, we request the following information from MCAP:
  - a. at the time when the advance(s) were made, were there any preserved or perfected liens against the premises; and
  - b. has MCAP ever received written notice of a lien, whether formal or informal? If so, please provide particulars and send us a copy.

**Advance Information**

There were 11 advances made under the construction loan for the purposes of funding construction of the Project (the "**Construction Advances**"). The advance information for the Construction Advances is set out below:

Advance	Date of Advance	Amount
1	November 26, 2020	\$ 14,181,580
2	June 16, 2022	\$ 457,204
3	July 28, 2022	\$ 1,720,575
4	November 9, 2022	\$ 2,842,504
5	December 20, 2022	\$ 2,708,110
6	January 24, 2023	\$ 1,246,122
7	February 21, 2023	\$ 1,251,326
8	March 17, 2023	\$ 1,583,250
9	April 19, 2023	\$ 985,824
10	May 5, 2023	\$ 1,823,487
11	June 21, 2023	\$ 1,994,301

Total: \$ 30,794,283

**Liens against the Premises**

There were no lien claims registered at the time of any of the Construction Advances (attached is the parcel register for the Property, confirming same).

Under Section 39 of the *Construction Act*, an individual lien claimant is not entitled to the particulars of all notice MCAP received in relation to lien claimants. However, MCAP confirms that it has received written notice of liens in respect of the Property.

We trust this satisfies your requests for additional information.

Sincerely,

Gowling WLG (Canada) LLP



Heather Fisher  
HF

cc: Osler, Hoskin & Harcourt LLP - Marc Wasserman and Dave Rosenblatt  
Service List  
encl. Parcel Register (07500-0082)



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PAGE 1 OF 9

PREPARED FOR RKING000  
ON 2024/07/05 AT 15:12:05

07500-0082 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

**PROPERTY DESCRIPTION:**

PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 5, 6, 7 & 8 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 1 - 4, 10 - 14, 16, 18 & 28, 66R28992 AS IN AT4865050; T/W EASEMENT OVER PTS 1 - 4, 10 - 14, 16, 18 & 28, 66R28992 AS IN AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7, 8, 9, 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT IN GROSS OVER PART 5, 66R28992 AS IN AT5347804; SUBJECT TO AN EASEMENT IN GROSS OVER PART 7, 66R28992 AS IN AT5347808; SUBJECT TO AN EASEMENT IN GROSS OVER PART 6, 66R28992 AS IN AT5347812; SUBJECT TO AN EASEMENT AS IN AT5367415; SUBJECT TO AN EASEMENT IN GROSS OVER PART 5, 66R28992 AS IN AT5479699; CITY OF TORONTO

**PROPERTY REMARKS:**

FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2018/04/13. PLANNING ACT CONSENT IN DOCUMENT AT4865050.

**ESTATE/QUALIFIER:**

RECENTLY.

**FEE SIMPLE**

DIVISION FROM 07500-0078

**LT ABSOLUTE PLUS**

CAPACITY SHARE

**OWNERS' NAMES**

VANDYK - BACKYARD KINGS MILL LIMITED

PIN CREATION DATE:

2018/06/06

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CHRG/CHND
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2018/06/06 **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
NOTE: THE NO DEALINGS INDICATOR IS IN EFFECT ON THIS PROPERTY						
EB160013	1955/10/24	AGREEMENT			THE CORPORATION OF THE TOWNSHIP OF ETOBICOKE	C
EB163037	1956/01/03	CERTIFICATE			THE CORPORATION OF THE TOWNSHIP OF ETOBICOKE	C
EB177163	1956/11/19	AGREEMENT			THE CORPORATION OF THE TOWNSHIP OF ETOBICOKE	C
EB181933	1957/04/04	AGREEMENT			THE CORPORATION OF THE TOWNSHIP OF ETOBICOKE	C
EB186721	1957/07/29	BYLAW			TOWNSHIP OF ETOBICOKE	C
EB188451	1957/09/06	AGREEMENT			J LANG ASSET MANAGEMENT INC.	C
AT3907826	2015/06/09	CHARGE		*** DELETED AGAINST THIS PROPERTY *** 2384903 ONTARIO INC.	HRJL REAL ESTATE INVESTMENT LP	
CORRECTIONS: PARTY TO NAME:HRJL REAL ESTATE INVESTMENT LP ADDED ON 2016/06/24 AT 15:45 BY GARRETT, TRACEY.						
AT3907827	2015/06/09	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** 2384903 ONTARIO INC.	J LANG ASSET MANAGEMENT INC.	
REMARKS: AT3907826						
CORRECTIONS: PARTY TO NAME:HRJL REAL ESTATE INVESTMENT LP ADDED ON 2016/06/24 AT 15:45 BY GARRETT, TRACEY.						

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT4276176	2016/07/13	APL CH NAME OWNER		2384903 ONTARIO INC.	VANDYK - BACKYARD HUMBERSIDE LIMITED	C
AT4296558	2016/08/02	CHARGE		*** DELETED AGAINST THIS PROPERTY *** VANDYK - BACKYARD HUMBERSIDE LIMITED	MERIDIAN CREDIT UNION LIMITED	
AT4296559	2016/08/02	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** VANDYK - BACKYARD HUMBERSIDE LIMITED	MERIDIAN CREDIT UNION LIMITED	
		REMARKS: RENTS AT4296558				
AT4296582	2016/08/02	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** J LANG ASSET MANAGEMENT INC. HRJL REAL ESTATE INVESTMENT LP	MERIDIAN CREDIT UNION LIMITED	
		REMARKS: AT3907826 TO AT4296558				
66R28992	2016/10/28	PLAN REFERENCE				C
AT4478657	2017/02/02	NOTICE	\$2	CITY OF TORONTO		C
		REMARKS: SITE PLAN=AGT.; PTS 1,2,3,9,15,16,17,18,22 PLAN 66R28992				
66R29993	2018/04/13	PLAN REFERENCE				C
AT4865050	2018/05/16	TRANSFER		VANDYK - BACKYARD HUMBERSIDE LIMITED	VANDYK - BACKYARD KINGS MILL LIMITED	C
AT4890817	2018/06/20	CHARGE		*** DELETED AGAINST THIS PROPERTY *** VANDYK - BACKYARD HUMBERSIDE LIMITED VANDYK - BACKYARD QUEENSVIEW LIMITED VANDYK - BACKYARD KINGS MILL LIMITED VANDYK-SHOPPES OF STONEGATE LIMITED	KINGSETT MORTGAGE CORPORATION	
AT4890818	2018/06/20	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** VANDYK-BACKYARD HUMBERSIDE LIMITED VANDYK-BACKYARD QUEENSVIEW LIMITED VANDYK-BACKYARD KINGS MILL LIMITED VANDYK-SHOPPES OF STONEGATE LIMITED	KINGSETT MORTGAGE CORPORATION	
		REMARKS: AT4890817.				
AT4891678	2018/06/21	DISCH OF CHARGE		*** COMPLETELY DELETED *** J LANG ASSET MANAGEMENT INC. HRJL REAL ESTATE INVESTMENT LP		
		REMARKS: AT3907826.				
AT5186698	2019/07/16	CHARGE		*** DELETED AGAINST THIS PROPERTY *** VANDYK - BACKYARD HUMBERSIDE LIMITED VANDYK - BACKYARD KINGS MILL LIMITED	KINGSETT MORTGAGE CORPORATION	

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT5200718	2019/07/31	LR'S ORDER REMARKS: TO AMEND PIN TO ADD PART 5		LAND REGISTRAR, TORONTO LAND REGISTRY OFFICE EASEMENT AT4478659		C
AT5327060	2019/12/20	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** GREAT PYRAMID GLASS AND MIRROR LTD.	GREAT PYRAMID GLASS AND MIRROR LTD.	C
AT5338546	2020/01/10	APL AMEND ORDER		*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE		C
AT5347788	2020/01/22	NOTICE		CITY OF TORONTO		C
AT5347793	2020/01/22	TRANSFER RELEASE AND REMARKS: AT4865049. PARTIAL RELEASE	\$2	VANDYK-BACKYARD KINGS MILL LIMITED \$2 VANDYK - BACKYARD KINGS MILL LIMITED	CITY OF TORONTO	C
AT5347804	2020/01/22	TRANSFER EASEMENT	\$2	VANDYK - BACKYARD KINGS MILL LIMITED	CITY OF TORONTO	C
AT5347805	2020/01/22	POSTPONEMENT		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION	CITY OF TORONTO	C
AT5347806	2020/01/22	POSTPONEMENT		*** COMPLETELY DELETED *** MERIDIAN CREDIT UNION LIMITED	CITY OF TORONTO	C
AT5347807	2020/01/22	POSTPONEMENT		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION	CITY OF TORONTO	C
AT5347808	2020/01/22	TRANSFER EASEMENT	\$2	VANDYK - BACKYARD KINGS MILL LIMITED	CITY OF TORONTO	C
AT5347809	2020/01/22	POSTPONEMENT		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION	CITY OF TORONTO	C
AT5347810	2020/01/22	POSTPONEMENT		*** COMPLETELY DELETED *** MERIDIAN CREDIT UNION LIMITED	CITY OF TORONTO	C
AT5347811	2020/01/22	POSTPONEMENT		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION	CITY OF TORONTO	C
AT5347812	2020/01/22	TRANSFER EASEMENT	\$2	VANDYK - BACKYARD KINGS MILL LIMITED	CITY OF TORONTO	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT5347813	2020/01/22	POSTPONEMENT REMARKS: AT4296558 TO AT5347812		*** COMPLETELY DELETED *** MERIDIAN CREDIT UNION LIMITED	CITY OF TORONTO	
AT5347814	2020/01/22	POSTPONEMENT REMARKS: AT4890817 TO AT5347812		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION	CITY OF TORONTO	
AT5347815	2020/01/22	POSTPONEMENT REMARKS: AT5184698 TO AT5347812		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION	CITY OF TORONTO	
AT5348063	2020/01/22	APL (GENERAL) REMARKS: AT4865050 TO AT5347804.		VANDYK-SHOPPES OF STONEGATE LIMITED	CITY OF TORONTO	C
AT5348064	2020/01/22	APL (GENERAL) REMARKS: AT4865050 TO AT5347804.		VANDYK - BACKYARD QUEENSVIEW LIMITED	CITY OF TORONTO	C
AT5348065	2020/01/22	APL (GENERAL) REMARKS: AT4865050 TO AT5347804.		VANDYK - BACKYARD HUMBERSIDE LIMITED	CITY OF TORONTO	C
AT5348066	2020/01/22	APL (GENERAL) REMARKS: AT4865050 TO AT5347808		VANDYK-SHOPPES OF STONEGATE LIMITED	CITY OF TORONTO	C
AT5348067	2020/01/22	APL (GENERAL) REMARKS: AT4865050 TO AT5347808.		VANDYK - BACKYARD QUEENSVIEW LIMITED	CITY OF TORONTO	C
AT5348068	2020/01/22	APL (GENERAL) REMARKS: AT4865050 TO AT5347808		VANDYK - BACKYARD HUMBERSIDE LIMITED	CITY OF TORONTO	C
AT5348069	2020/01/22	APL (GENERAL) REMARKS: AT4865050 TO AT5347812.		VANDYK-SHOPPES OF STONEGATE LIMITED	CITY OF TORONTO	C
AT5348070	2020/01/22	APL (GENERAL) REMARKS: AT4865050 TO AT5347812		VANDYK - BACKYARD QUEENSVIEW LIMITED	CITY OF TORONTO	C
AT5348071	2020/01/22	APL (GENERAL) REMARKS: AT4865050 TO AT5347812.		VANDYK - BACKYARD HUMBERSIDE LIMITED	CITY OF TORONTO	C
AT5367415	2020/02/19	TRANSFER EASEMENT	\$2	VANDYK - BACKYARD KINGS MILL LIMITED	ROGERS COMMUNICATIONS INC.	C

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PAGE 5 OF 9

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT5380929	2020/03/04	CHARGE	\$30,000,000	VANDYK - BACKYARD KINGS MILL LIMITED	WESTMOUNT GUARANTEE SERVICES INC.	C
AT5389678	2020/04/01	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** NAMO INDUSTRIES ONTARIO INC.		
AT5406606	2020/04/14	APL DEL CONST LIEN		*** COMPLETELY DELETED *** VANDYK - BACKYARD KINGS MILL LIMITED VANDYK - BACKYARD HUMBERSIDE LIMITED		
		REMARKS: AT5389678.				
AT5430161	2020/05/15	POSTPONEMENT		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION	WESTMOUNT GUARANTEE SERVICES INC.	
		REMARKS: AT4890817 TO AT5380929				
AT5430162	2020/05/15	POSTPONEMENT		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION		
		REMARKS: AT5186698 TO AT5380929				
AT5436497	2020/05/26	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** EMPIRE CONTROLS LTD.	WESTMOUNT GUARANTEE SERVICES INC.	
AT5443208	2020/06/03	APL DEL CONST LIEN		*** COMPLETELY DELETED *** EMPIRE CONTROLS LTD.		
		REMARKS: AT5436497.				
AT5472421	2020/07/14	DISCH OF CHARGE		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION		
		REMARKS: AT5186698.				
AT5479699	2020/07/23	TRANSFER EASEMENT	\$2	VANDYK - BACKYARD KINGS MILL LIMITED	CITY OF TORONTO	C
AT5479700	2020/07/23	POSTPONEMENT		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION	CITY OF TORONTO	C
		REMARKS: AT4890817 TO AT5479699				
AT5479701	2020/07/23	POSTPONEMENT		MERIDIAN CREDIT UNION LIMITED	CITY OF TORONTO	C
		REMARKS: AT4296558 TO AT5479699				
AT5479702	2020/07/23	POSTPONEMENT		ROGERS COMMUNICATIONS INC.	CITY OF TORONTO	C
		REMARKS: AT5367415 TO AT5479699				
AT5479703	2020/07/23	POSTPONEMENT		WESTMOUNT GUARANTEE SERVICES INC.	CITY OF TORONTO	C
		REMARKS: AT5380929 TO AT5479699				

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PAGE 6 OF 9

PREPARED FOR RKing000 ON 2024/07/05 AT 15:12:05

07500-0082 (LT)

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT5479777	2020/07/23	APL (GENERAL) REMARKS: AT4864050 POSTPONED TO AT5479699		VANDYK-BACKYARD HUMBERSIDE LIMITED	CITY OF TORONTO	C
AT5479778	2020/07/23	APL (GENERAL) REMARKS: AT4864050 POSTPONED TO AT5479699		VANDYK-BACKYARD QUEENSVIEW LIMITED	CITY OF TORONTO	C
AT5479779	2020/07/23	APL (GENERAL) REMARKS: AT4864050 POSTPONED TO AT5479699		VANDYK-BACKYARD HUMBERSIDE LIMITED	CITY OF TORONTO	C
AT5531340	2020/09/29	NOTICE	\$2	VANDYK - BACKYARD HUMBERSIDE LIMITED VANDYK - BACKYARD QUEENSVIEW LIMITED VANDYK - BACKYARD KINGSMILL LIMITED		C
AT5531477	2020/09/29	TRANSFER REL&ABAND REMARKS: AT4864049.		VANDYK - BACKYARD HUMBERSIDE LIMITED VANDYK - BACKYARD KINGS MILL LIMITED VANDYK - BACKYARD QUEENSVIEW LIMITED	VANDYK - BACKYARD HUMBERSIDE LIMITED	C
AT5581120	2020/11/26	CHARGE	\$104,500,000	VANDYK - BACKYARD KINGS MILL LIMITED	MCAP FINANCIAL CORPORATION	C
AT5581121	2020/11/26	NO ASSGN RENT GEN REMARKS: AT5581120.		VANDYK - BACKYARD KINGS MILL LIMITED	MCAP FINANCIAL CORPORATION	C
AT5581126	2020/11/26	POSTPONEMENT REMARKS: AT5380929 TO AT5581120 TO AT5581121		WESTMOUNT GUARANTEE SERVICES INC.	MCAP FINANCIAL CORPORATION	C
AT5582589	2020/11/27	DISCH OF CHARGE REMARKS: AT4894817.		*** COMPLETELY DELETED *** KINGSETT MORTGAGE CORPORATION		
AT5677735	2021/03/16	DISCH OF CHARGE REMARKS: AT4294558.		*** COMPLETELY DELETED *** MERIDIAN CREDIT UNION LIMITED		
AT5680013	2021/03/18	NOTICE	\$2	CITY OF TORONTO		C
AT5680014	2021/03/18	POSTPONEMENT REMARKS: AT5380929 TO AT5680013		WESTMOUNT GUARANTEE SERVICES INC.	CITY OF TORONTO	C
AT5680015	2021/03/18	POSTPONEMENT REMARKS: AT5581120 TO AT5680013		MCAP FINANCIAL CORPORATION	CITY OF TORONTO	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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LAND REGISTRY OFFICE #66



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER  
 07500-0082 (LT)

PAGE 7 OF 9  
 PREPARED FOR RKing000  
 ON 2024/07/05 AT 15:12:05

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT5171411	2021/04/27	CERTIFICATE		HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF THE ENVIRONMENT, CONSERVATION AND PARKS		C
		REMARKS: CERTIFICATE OF REQUIREMENT; S.197(2) ENVIRONMENTAL PROTECTION ACT				
AT6340102	2023/05/25	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** DOLVIN MECHANICAL CONTRACTORS LIMITED		
AT6356023	2023/06/15	APL DEL CONST LIEN		*** COMPLETELY DELETED *** DOLVIN MECHANICAL CONTRACTORS LIMITED		
		REMARKS: AT6340102 2023/06/15				
AT6360204	2023/06/22	CONSTRUCTION LIEN		*** DELETED AGAINST THIS PROPERTY *** RONI EXCAVATING LIMITED		
AT6375492	2023/07/14	APL DEL CONST LIEN		*** COMPLETELY DELETED *** RONI EXCAVATING LIMITED		
		REMARKS: AT6360204				
AT6407063	2023/08/25	CONSTRUCTION LIEN	\$743,323	DIRCAM ELECTRIC LIMITED		C
AT6408162	2023/08/29	CONSTRUCTION LIEN	\$103,508	DIRCAM ELECTRIC LIMITED		C
AT6423816	2023/09/20	CONSTRUCTION LIEN	\$61,359	KOHN PARTNERSHIP ARCHITECTS INC.		C
AT6424435	2023/09/20	CONSTRUCTION LIEN	\$9,899,781	PLYCON FORMING LTD.		C
AT6426188	2023/09/22	CONSTRUCTION LIEN	\$558,195	VIOLA READY MIX INC.		C
AT6427885	2023/09/26	CONSTRUCTION LIEN	\$500,488	MYER SALIT LIMITED		C
AT6439372	2023/10/12	CONSTRUCTION LIEN	\$240,354	AUTOMATED FIRE PROTECTION SYSTEMS INC.		C
AT6440475	2023/10/13	CONSTRUCTION LIEN	\$2,251,028	DOLVIN MECHANICAL CONTRACTORS LIMITED		C
AT6445158	2023/10/23	CONSTRUCTION LIEN	\$42,222	STEPHENSON'S RENTAL SERVICES INC.		C
AT6445871	2023/10/24	CONSTRUCTION LIEN	\$6,215	READ JONES CHRISTOFFERSEN LTD.		C
AT6448252	2023/10/26	CERTIFICATE		STEPHENSON'S RENTAL SERVICES INC.		C
AT6451921	2023/11/01	CERTIFICATE		DIRCAM ELECTRIC LIMITED		C
AT6453188	2023/11/02	CERTIFICATE		VIOLA READY MIX INC.		C

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07500-0082 (LT)

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHRD
AT6456380	2023/11/08	CONSTRUCTION LIEN	\$849,376	LIDO WALL SYSTEMS INC.		C
AT6456905	2023/11/09	CERTIFICATE		MYER SALIT LIMITED		C
AT6456920	2023/11/09	CERTIFICATE		DOLVIN MECHANICAL CONTRACTORS LIMITED		C
AT6457030	2023/11/09	CONSTRUCTION LIEN	\$260,581	VENICE CONSTRUCTION INC.		C
AT6457231	2023/11/09	CONSTRUCTION LIEN	\$359,360	CLASSIC TILE CONTRACTORS LIMITED		C
AT6457806	2023/11/10	CONSTRUCTION LIEN	\$61,302	SUMMIT CONCRETE & DRAIN LTD.		C
AT6458916	2023/11/14	CERTIFICATE		FLAXON FORMING LTD.		C
AT6459778	2023/11/15	CONSTRUCTION LIEN	\$18,552	2164705 ONTARIO INC.		C
AT6460838	2023/11/15	CERTIFICATE		SUMMIT CONCRETE & DRAIN LTD.		C
AT6461236	2023/11/16	CONSTRUCTION LIEN	\$336,966	PRIMELINE WINDOWS & DOORS INC.		C
AT6464018	2023/11/22	CONSTRUCTION LIEN	\$86,438	ATLAS IRONWORKS INC.		C
AT6464046	2023/11/22	CONSTRUCTION LIEN	\$9,473	LIVE PATROL INC.		C
AT6464285	2023/11/22	CERTIFICATE		KOHN PARTNERSHIP ARCHITECTS INC.		C
AT6465303	2023/11/23	CONSTRUCTION LIEN	\$117,938	UNIOSPACE SOLUTIONS LTD.		C
AT6468348	2023/11/29	CERTIFICATE		LIDO WALL SYSTEMS INC.	VANDYK - BACKYARD KINGS MILL LIMITED MCAPI FINANCIAL CORPORATION WESTMOUNT GUARANTEE SERVICES INC.	C
AT6475541	2023/12/07	CERTIFICATE		UNIOSPACE SOLUTIONS LTD.	VANDYK - BACKYARD KINGS MILL LIMITED MCAPI FINANCIAL CORPORATION WESTMOUNT GUARANTEE SERVICES INC.	C
AT6477629	2023/12/12	CERTIFICATE		AUTOMATED FIRE PROTECTION SYSTEMS INC.	VANDYK - BACKYARD KINGS MILL LIMITED	C

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07500-0082 (LF)

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

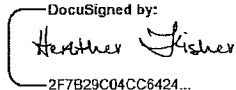
REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
AT6484901	2023/12/20	NO SEC INTEREST	\$717,107	METERGY SOLUTIONS INC.		C
AT6492443	2024/01/09	CHARGE	\$8,125,000	VANDYK - BACKYARD KINGS MILL LIMITED	DIVERSIFIED CAPITAL INC.	C
AT6492444	2024/01/09	CHARGE	\$7,500,000	VANDYK - BACKYARD KINGS MILL LIMITED	DIVERSIFIED CAPITAL INC.	C
AT6492445	2024/01/09	RESTRICTION-LAND		VANDYK - BACKYARD KINGS MILL LIMITED		C
		REMARKS: NO TRANSFER OR CHARGE OF LANDS SET OUT HEREIN		SHALL BE REGISTERED WITHOUT THE CONSENT OF DIVERSIFIED CAPITAL INC.		
AT6493748	2024/01/11	APW COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)	KSV RESTRUCTURING INC.	C
AT6501215	2024/01/24	CONSTRUCTION LIEN	\$295,759	SKYWAY CANADA LIMITED		C
AT6510590	2024/02/07	CERTIFICATE		CLASSIC TILE CONTRACTORS LIMITED		C
AT6512080	2024/02/09	CERTIFICATE		VENICE CONSTRUCTION INC.		C
AT6518460	2024/02/23	CERTIFICATE		SKYWAY CANADA LIMITED	VANDYK - BACKYARD KINGS MILL LIMITED	C
		REMARKS: AT6501215				
AT6519357	2024/02/26	CERTIFICATE		LIVE PATROL INC.		C
		REMARKS: AT6464046				
AT6549536	2024/04/10	CONSTRUCTION LIEN	\$51,301	WJ GROUNDWATER CANADA LIMITED		C

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DocuSign Envelope ID: 8F951BA7-1F12-41CB-A97D-FE86FF15DCF0

This is Exhibit "W" referred to in the Affidavit of Michael Misener sworn by Michael Misener of the City of Burlington, in the Regional Municipality of Halton, before me at the City of Toronto, in the Province of Ontario, on November 24, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Handwritten signature of Heather Fisher in black ink, enclosed in a rounded rectangular box.

2F7B29C04CC6424...

---

*Commissioner for Taking Affidavits (or as may be)*

**HEATHER FISHER**



Application Record  
Ex. "W"

DocuSign Envelope ID: 8F951BA7-1F12-41CB-A97D-FE86FF15DCFO



MCAP

200 King Street West, Suite 400  
Toronto, Ontario, M5H 3T4  
Tel 416 598-2665

1 800 387-4405  
[www.mcap.com](http://www.mcap.com)

November 22, 2023

Gowlings WLG (Canada) LLP  
1 First Canadian Place, 100 King Street West, Suite 1600  
Toronto, Ontario  
M5X 1G5

Attention to: Susan Rosen

Payout Date: November 23, 2023

**INFORMATION STATEMENT**

Mortgage No. 19-6493-T41	This Statement is Valid Until: November 30, 2023	
Maturity Date August 1, 2023	Bank Prime Rate: Royal Bank Prime	Margin: RB Prime + 2.00% or min of 5.70%
Borrower Name: Vandyk-Backyard Kings Mill Limited	Property Address: 15 Neighbourhood Lane, Etobicoke, ON	

Principal Balance Outstanding		\$34,330,788.36
Accrued Interest to : <u>November 23, 2023</u>		\$986,469.34
Other Charges:	Late Interest	\$10,566.84
	Discharge Fees:	\$500.00
	Amendment Fee:	\$585,277.00
	L/C Fees:	\$0.00
	Cash Requirement to Collateralize Letters of Credit:	\$2,038,499.84
Per diem rate of interest: <u>\$ 8,853.89</u>		
Total Amount		\$37,952,101.38

The full principal amount together with interest, fees and any applicable per diem rate of interest must be received in full in order to obtain a discharge of mortgage.

The above statement is calculated assuming all payments due up to and including the date of discharge are made under the terms of our contract and honoured by the bank

We request that discharge proceeds be wired or direct deposited into MCAP's account. Funds received after 2:30 PM shall be deemed to have been made and received on the next business day and MCAP Financial Corporation shall be entitled to the additional per diem interest.

Direct Deposits or Wired Discharge Funds are to be delivered to the following account:

Account Holder: MCAP Financial Corporation  
200 King Street West, Suite 400, Toronto, Ontario, M5H 3T4  
Bank: Bank of Montreal  
100 King Street West, Toronto, Ontario, M5X 1A3  
Bank Number: 001  
Transit Number: 00022  
Account Number: 1357-893  
Swift Number: BOFMCAM2

Confirmation from the Borrower or its Counsel of wired or direct deposit of funds must be sent via electronic mail to [TOFunding@MCAP.com](mailto:TOFunding@MCAP.com) in order to ensure the application on funds on the appropriate business date. Confirmations are reference the loan number and include information regarding the project name, wired amount, deposit slip and lot/unit closing(s).

Any legal and/or other costs of providing the discharge are in addition to the amount stipulated in the above statement and shall be borne by the Borrower.

This statement is subject to changes to the Bench Mark Rate. Changes to the Bench Mark Rate may result in additional funds due at the time of closing. Kindly consult with the undersigned to ensure the validity of the total discharge amount due.

Prepared By: Katie Lee  
Katie Lee  
Funding Manager

Authorized by: Philip Frank  
Philip Frank  
Sr. Director

## **Appendix “F”**

**From:** Gillott, Roger <RGillott@osler.com>

**Sent:** Wednesday, July 10, 2024 6:25 PM

**To:** fabio@soccollaw.com

**Cc:** Rosenblat, Dave <drosenblat@osler.com>; Wasserman, Marc <MWasserman@osler.com>; Fisher, Heather <Heather.Fisher@gowlingwlg.com>; Fara.Guerrieri@gowlingwlg.com; Cc: 'Fazzari, Michael' <mfazzari@millertthomson.com>; kmovat@foglers.com; 'Guaragna, Paul' <pguaragna@millertthomson.com>; dan@fridmar.com; Chris Tonks <CTonks@pdclawyers.ca>; rmoubarak@sutherlaw.com; tpapasin@rjc.ca; abayne@rjc.ca; 'Pani Sarkis' <psarkis@rarlitigation.com>; phorgan@carltonlaw.ca; madilman@mblaw.ca; margie@margiestrub.com; 'Zachary Dubeau' <zdubeau@rarlitigation.com>; 'Nicole Maragna' <nmaragna@bianchipresta.com>; 'MacGregor, Richard' <rmacgregor@millertthomson.com>; amy@soccollaw.com

**Subject:** Receivership of Vandyk - Kings Mill/Your Client: Plycon

Dear Mr. Soccol,

Thank you for your letter dated July 9, 2024. We would ask you to consider the following:

- The Claim for Lien of Kohn Partnership Architects Inc. (“**Kohn**”), registered as Instrument No: AT6423816 (enclosed), states that Kohn began supplying services on December 23, 2013. This is the date the first lien “arose” on the project.
- Under section 78(6) of the *Construction Act*, a mortgage that is registered after the date when the first lien arose has priority over the liens (subject to holdback deficiency and advances when registered liens or notices of lien are present).
- Each of the mortgages registered on title today was registered after the date the first lien arose (December 23, 2013).

With respect to the other information requested in your letter, we understand that Gowlings has responded.

Regards,

**OSLER**

**Roger Gillott**

Partner

416.862.6818 | [RGillott@osler.com](mailto:RGillott@osler.com)

Osler, Hoskin & Harcourt LLP | [osler.com](http://osler.com)



**Properties**

*PIN* 07500 - 0082 LT  
*Description* PART OF BLOCKS B, C & D, REGISTERED PLAN 5261, DESIGNATED AS PTS 5, 6, 7 & 8 PLAN 66R28992; S/T EASEMENT IN FAVOUR OF PTS 1 - 4, 10 - 14, 16, 18 & 28, 66R28992 AS IN AT4865050; T/W EASEMENT OVER PTS 1 - 4, 10 - 14, 16, 18 & 28, 66R28992 AS IN AT4865050 & AT4865051; S/T INTEREST OF THE CITY OF TORONTO AS IN EB186721; TOGETHER WITH A RIGHT OF WAY OVER PTS 7,8,9 66R29993 AS IN AT4478658; SUBJECT TO AN EASEMENT IN GROSS OVER PART 5, 66R28992 AS IN AT5347804; SUBJECT TO AN EASEMENT IN GROSS OVER PART 7, 66R28992 AS IN AT5347808; SUBJECT TO AN EASEMENT IN GROSS OVER PART 6, 66R28992 AS IN AT5347812; SUBJECT TO AN EASEMENT AS IN AT5367415; SUBJECT TO AN EASEMENT IN GROSS OVER PART 5, 66R28992 AS IN AT5479699; CITY OF TORONTO  
*Address* TORONTO

**Consideration**

*Consideration* \$61,359.01

**Claimant(s)**

*Name* KOHN PARTNERSHIP ARCHITECTS INC.  
*Address for Service* c/o Fogler, Rubinoff LLP  
77 King Street West  
Suite 3000, PO Box 95  
Toronto, ON M5K 1G8

Attention: Justin M. Jakubiak

I am the lien claimant and the facts stated in the claim for lien are true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

**Statements**

Name and Address of Owner Vandyk - Backyard Kings Mill Limited, 1944 Fowler Drive Mississauga, ON L5K 0A1 Name and address of person to whom lien claimant supplied services or materials See Schedule Attached Time within which services or materials were supplied from 2013/12/23 to 2023/08/30 Short description of services or materials that have been supplied Supply of architectural services and drawings with respect to the redevelopment of the Stonegate Plaza Lands. Contract price or subcontract price \$2,056,600.00 Amount claimed as owing in respect of services or materials that have been supplied \$61,359.01

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Schedule: Name and address of person(s) to whom the lien claimant supplied services or materials:

1) Vandyk - Backyard Humberside Limited  
1944 Fowler Drive  
Mississauga, ON L5K 0A1

2) Vandyk - Backyard Kings Mill Limited  
1944 Fowler Drive  
Mississauga, ON L5K 0A1

3) Vandyk Commercial Co. Limited  
1775 North Sheridan Way  
Mississauga, ON L5K 1A2

**Signed By**

Kenneth Wolfgang Movat 77 King Street West Suite 3000 PO acting for Signed 2023 09 20  
Box 95 TD Centre Applicant(s)  
Toronto  
M5K 1G8

Tel 416-864-9700

Fax 416-941-8852

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

FOGLER, RUBINOFF LLP 77 King Street West Suite 3000 PO 2023 09 20  
Box 95 TD Centre  
Toronto  
M5K 1G8

**Submitted By**

Tel 416-864-9700

Fax 416-941-8852

**Fees/Taxes/Payment**

Statutory Registration Fee \$69.00

Total Paid \$69.00

**File Number**

Claimant Client File Number : 234571/JMJ

## **Appendix “G”**

**From:** Gillott, Roger <RGillott@osler.com>

**Sent:** Wednesday, July 10, 2024 6:25 PM

**To:** fabio@soccollaw.com

**Cc:** Rosenblat, Dave <drosenblat@osler.com>; Wasserman, Marc <MWasserman@osler.com>; Fisher, Heather <Heather.Fisher@gowlingwlg.com>; Fara.Guerrieri@gowlingwlg.com; Cc: 'Fazzari, Michael' <mfazzari@millertthomson.com>; kmovat@foglers.com; 'Guaragna, Paul' <pguaragna@millertthomson.com>; dan@fridmar.com; Chris Tonks <CTonks@pdclawyers.ca>; rmoubarak@sutherlaw.com; tpapasin@rjc.ca; abayne@rjc.ca; 'Pani Sarkis' <psarkis@rarlitigation.com>; phorgan@carltonlaw.ca; madilman@mblaw.ca; margie@margiestrub.com; 'Zachary Dubeau' <zdubeau@rarlitigation.com>; 'Nicole Maragna' <nmaragna@bianchipresta.com>; 'MacGregor, Richard' <rmacgregor@millertthomson.com>; amy@soccollaw.com

**Subject:** Receivership of Vandyk - Kings Mill/Your Client: Plycon

Dear Mr. Soccol,

Thank you for your letter dated July 9, 2024. We would ask you to consider the following:

- The Claim for Lien of Kohn Partnership Architects Inc. (“**Kohn**”), registered as Instrument No: AT6423816 (enclosed), states that Kohn began supplying services on December 23, 2013. This is the date the first lien “arose” on the project.
- Under section 78(6) of the *Construction Act*, a mortgage that is registered after the date when the first lien arose has priority over the liens (subject to holdback deficiency and advances when registered liens or notices of lien are present).
- Each of the mortgages registered on title today was registered after the date the first lien arose (December 23, 2013).

With respect to the other information requested in your letter, we understand that Gowlings has responded.

Regards,

**OSLER**

**Roger Gillott**

Partner

416.862.6818 | [RGillott@osler.com](mailto:RGillott@osler.com)

Osler, Hoskin & Harcourt LLP | [osler.com](http://osler.com)



## **Appendix “H”**



**From:** Fabio Soccol <fabio@soccollaw.com>

**Sent:** Thursday, July 11, 2024 3:18 PM

**To:** Rosenblat, Dave <drosenblat@osler.com>; Wasserman, Marc <MWasserman@osler.com>; RGillot@osler.com

**Cc:** 'Fisher, Heather' <Heather.Fisher@gowlingwlg.com>; Fara.Guerrieri@gowlingwlg.com; 'Fazzari, Michael' <mfazzari@millerthomson.com>; kmovat@foglers.com; 'Guaragna, Paul' <pguaragna@millerthomson.com>; dan@fridmar.com; 'Chris Tonks' <CTonks@pdclawyers.ca>; rmoubarak@sutherlaw.com; tpapasin@rjc.ca; abayne@rjc.ca; 'Pani Sarkis' <psarkis@rarlitigation.com>; phorgan@carltonlaw.ca; madilman@mblaw.ca; margie@margiestrub.com; 'Zachary Dubeau' <zdubeau@rarlitigation.com>; 'Nicole Maragna' <nmaragna@bianchipresta.com>; 'MacGregor, Richard' <rmacgregor@millerthomson.com>; 'Ken Eccleston' <ken@ecclestonllp.com>; awainstock@dakllp.com; james@botnicklaw.com; jjakubiak@foglers.com; jfrustaglio@sutherlaw.com; coneil@stewartmckelvey.com; normanronski@harrisandharris.com; amy@soccollaw.com

**Subject:** Receivership of Vandyk - Kings Mill - My Client Plycon Forming

Dear Counsel,

I confirm that there was a meeting held earlier today between counsel for some of the lien claimants to discuss the Receiver's Motion Record returnable Monday, July 15, 2024.

After consultation with Counsel for the other lien claimants, I wish to take this opportunity to summarize Plycon Forming's position as follows:

1. We ask that the Receiver advise whether there has been any independent appraisal obtained regarding the "assets" that were sold to PAD Developments. If so, we request that a copy of the appraisal be shared (amongst the lien claimants that have signed the Confidentiality/ NDA) so that we can see how the purchase price compares to the appraised value. If an independent appraisal was not obtained, then what is the rationale for not obtaining such a report?
2. One lien claimant in particular, Dolvin Mechanical, has commenced an action against, inter alia, MCAP relying upon a written letter from MCAP dated June 9, 2023 whereby MCAP undertook to pay the progress invoices directly. Mr. MacGregor who acts for Dolvin Mechanical intends to review the relevant emails and correspondence surrounding this MCAP Undertaking with a view to determine, amongst other things, whether there is an issue regarding a "written notice of lien" that predates some of the MCAP Draws, and Dolvin reserves the right to file an affidavit if necessary.
3. There is no sworn affidavit from MCAP regarding the issue of priority over the lien claimants. The quantum of the class of lien claimants is significant (\$17M). In the circumstances, we request that the issue of the determination of the extent of MCAP's priority be adjourned to be dealt with properly on its merits and with a complete record. In particular, we request that MCAP deliver a sworn affidavit in support of its position. The lien claimants, including Plycon, reserve the right to deliver responding material and conduct cross-examinations. A mutually acceptable date to be set for the hearing of this issue.

4. The proposed court order to be revised to include a proviso that it is without prejudice to the issue of the determination of priority between the lien claimants claims and MCAP, with a right to claw back from MCAP.

Thank you and if you wish to discuss further I am available this afternoon.

Regards,

Fabio M. Soccol  
[fabio@soccollaw.com](mailto:fabio@soccollaw.com)

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7823 Kipling Avenue, Vaughan, Ontario L4L 1Z4  
Tel: 905.605.2332  
Fax: 905.605.1812  
[www.soccollaw.com](http://www.soccollaw.com)

---

## **Appendix “I”**

**From:** Rosenblat, Dave <drosenblat@osler.com>

**Sent:** Friday, July 12, 2024 3:07 PM

**To:** Fabio Soccol <fabio@soccollaw.com>; Wasserman, Marc <MWasserman@osler.com>;  
RGillot@osler.com

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**Subject:** RE: Receivership of Vandyk - Kings Mill - My Client Plycon Forming

Thank you. Please see responses in **bold** below.



**Dave Rosenblat**

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**Sent:** Thursday, July 11, 2024 3:18 PM

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**Subject:** Receivership of Vandyk - Kings Mill - My Client Plycon Forming

Dear Counsel,

I confirm that there was a meeting held earlier today between counsel for some of the lien claimants to discuss the Receiver's Motion Record returnable Monday, July 15, 2024.

After consultation with Counsel for the other lien claimants, I wish to take this opportunity to summarize Plycon Forming's position as follows:

1. We ask that the Receiver advise whether there has been any independent appraisal obtained regarding the “assets” that were sold to PAD Developments. If so, we request that a copy of the appraisal be shared (amongst the lien claimants that have signed the Confidentiality/ NDA) so that we can see how the purchase price compares to the appraised value. If an independent appraisal was not obtained, then what is the rationale for not obtaining such a report? **The receiver did not obtain an independent appraisal. In the context of a sales process, appraisals are not typically obtained given that the sales process effectively serves as an appraisal (i.e., the market dictates the value of the assets, as reflected in the transaction selected as the successful bid).**
2. One lien claimant in particular, Dolvin Mechanical, has commenced an action against, inter alia, MCAP relying upon a written letter from MCAP dated June 9, 2023 whereby MCAP undertook to pay the progress invoices directly. Mr. MacGregor who acts for Dolvin Mechanical intends to review the relevant emails and correspondence surrounding this MCAP Undertaking with a view to determine, amongst other things, whether there is an issue regarding a “written notice of lien” that predates some of the MCAP Draws, and Dolvin reserves the right to file an affidavit if necessary. **A claim of Dolvin against MCAP for direct payment is separate from the relief being sought on July 15. To the extent there is a “written notice of lien”, this should be provided in advance of the motion on July 15, which has already been subject to a two-week adjournment. The receiver is not aware of such a written notice of lien.**
3. There is no sworn affidavit from MCAP regarding the issue of priority over the lien claimants. The quantum of the class of lien claimants is significant (\$17M). In the circumstances, we request that the issue of the determination of the extent of MCAP’s priority be adjourned to be dealt with properly on its merits and with a complete record. In particular, we request that MCAP deliver a sworn affidavit in support of its position. The lien claimants, including Plycon, reserve the right to deliver responding material and conduct cross-examinations. A mutually acceptable date to be set for the hearing of this issue. **The receiver is making the motion for the distribution order and has completed its assessment with respect to MCAP’s priority in connection therewith. Potential recipients of distributions are not required to provide affidavit evidence in connection with such motions (it is the moving party, i.e. the receiver, who does so). The receiver’s report, which was provided on June 27, outlines the receiver’s analysis in this regard, and we have provided the unredacted purchase agreement and draft CB Ross report to lien claimants that have executed a NDA. In addition, the receiver and MCAP have provided you with details requested since the adjournment on July 3, which as discussed we will be appending to a supplementary report to be filed.**
4. The proposed court order to be revised to include a proviso that it is without prejudice to the issue of the determination of priority between the lien claimants claims and MCAP, with a right to claw back from MCAP. **The receiver has made its determination with respect to priority and that is the basis for the Distribution Order being sought on July 15. The receiver has not been provided with any evidence that impacts this determination. To the extent of any such evidence that should be provided prior to the motion on July 15.**

Thank you and if you wish to discuss further I am available this afternoon.

Regards,

Fabio M. Soccol  
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