

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C.C-36, AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE OF ARRANGEMENT OF
SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC.,
2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC.
AND 2147650 ONTARIO INC

NOTICE OF MOTION

The Moving Parties, Argo Lumber Inc. and Newmar Window Manufacturing Inc. will make a motion to Judge presiding over the Commercial List on **a date to be set** at 10 a.m., or as soon thereafter as the motion can be heard at 330 University Avenue, Toronto, Ontario.

THE MOTION WILL BE HEARD orally.

THE MOTION IS FOR:

1. An order extending the Claims Deadline set under the Order of the Honourable Mr. Justice Wilton-Siegel dated January 16, 2014, to permit the moving parties, Argo Lumber Inc. and Newmar Window Manufacturing Inc., to file all documentation relating to their lien claims as provided to the Monitor on or about August 14, 2014;
2. If necessary, an order abridging the time for service and filing of this notice of motion and the motion record and dispensing with service on any person other than those served; and
3. Such further and other relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. Argo Lumber Inc. ("Argo") supplied lumber, trusses and related building materials to an improvement on the Lands described on the attached Schedule "B" ("Project"). Argo Lumber Inc. delivered the materials and services requested with the sum of \$135,060.11, including H.S.T., remaining unpaid and owing to Argo.
2. On October 18, 2013, Argo caused to be registered a Claim for Lien against title to the Lands in the Land Registry Office for the Land Titles Division of York Region in Newmarket, (No. 65), as Instrument No. YR2048904.
3. On November 27, 2013, Argo caused a Statement of Claim to be issued to perfect its Claim for Lien as against the Defendants, 2147681 Ontario Inc., 2148990 Ontario Inc., 2147650 Ontario Inc., 2148993 Ontario Inc., Dapaul Management Limited, Silver Streams Homes (Puccini) Inc., Silver Streams Homes Inc., Puccini Mortgage Corp., Dapaul Management Limited, 388242 Ontario Limited, Foremost Mortgage Holding Corporation, Bank of Montreal, 53 Puccini Mortgage Corp., Nastell Investments Limited, Castle Lane Design Group Inc. and Home Trust Company.
4. Newmar Window Manufacturing Inc. ("Newmar") supplied windows, doors and related building materials to the Project. Newmar delivered the materials and services requested with the sum of \$67,793.32, including H.S.T., remaining unpaid and owing to Newmar.
5. On October 22, 2013, Newmar caused to be registered a Claim for Lien against title to the Lands in the Land Registry Office for the Land Titles Division of York Region in Newmarket, (No. 65), as Instrument No. YR2050277.
6. On November 27, 2013, Newmar caused a Statement of Claim to be issued to perfect its Claim for Lien as against the Defendants, 2147681 Ontario Inc., 2148990 Ontario Inc., 2147650 Ontario Inc., 2148993 Ontario Inc., Dapaul Management Limited, Silver Streams Homes (Puccini) Inc., Silver Streams Homes Inc., Puccini Mortgage Corp., Dapaul Management Limited, 388242 Ontario Limited, Foremost Mortgage Holding

Corporation, Bank of Montreal, 53 Puccini Mortgage Corp., Nastell Investments Limited, Castle Lane Design Group Inc. and Home Trust Company.

7. On or about December 17, 2013, an order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C.-36 ("CCAA"), as amended, was granted by the Honourable Mr. Justice Newbould.

8. Under paragraph 11 of the Order of December 17, 2013, the Court granted a stay of all proceedings as against Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148993 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc. and 2147650 Ontario Inc.

9. The stay of proceedings was thereafter extended by the following orders:

- (a) The Order of the Honourable Mr. Justice Wilton-Siegel dated January 16, 2014;
- (b) The Order of the Honourable Mr. Justice Newbould dated April 17, 2014; and
- (c) The Order of the Honourable Mr. Justice D. Brown dated June 26, 2014.

10. On or about January 16, 2014, the Honourable Mr. Justice Wilton-Siegel made an Order which, *inter alia*, set out a Claims process.

11. Counsel for Argo Lumber Inc. and Newmar Window Manufacturing Inc. was present in Court on January 16, 2014, when the order was made establishing the Claims process.

12. Paragraphs 8 and 9 of the Order of the Honourable Mr. Justice Wilton-Siegel sets out the requirements with respect to the filing of Secured Claims. Under paragraph 1(q) of the Order, "Secured Claims" includes, *inter alia*, construction lien claimants.

13. Under paragraph 8 of the January 16, 2014 Order, the Court ordered that all lien claimants deliver to the Monitor their written submissions together with all supporting documentation respecting the validity, quantum and priority of their Secured Claims by the Claims Deadline or such later date as the Monitor may agree or the Court may order prior to the Claims Deadline, failing which, the secured claim of such claimant against the Property shall be extinguished and forever barred.

14. With respect to information and documentation, paragraph 9 of the Order provides that, in the case of lien claimants, information and documentation includes "a complete copy of the contract or subcontract, change orders, evidence of the date of last supply of work or services, a copy of all invoices, time sheets and a detailed statement of account including all payments received".

15. Paragraph 1(e) of the January 16, 2014 Order, establishes the Claims Deadline as 5 p.m. (E.S.T.) on February 14, 2014.

16. Under paragraph 4 of the January 16, 2014 Order, the Court ordered that the Monitor shall cause a Notice of Creditors to be sent to each Known Creditor by facsimile transmission, electronic communication or regular prepaid mail on or before January 21, 2014.

17. On January 17, 2014, counsel for Argo and Newmar received an email from Ian Aversa, counsel for the Monitor, attaching the Notice to Creditors in compliance with the Order of the Honourable Mr. Justice Wilton-Siegel.

18. Through oversight, counsel for Argo and Newmar failed to diarize the Claims Deadline in the firm calendar and, as a result, Argo and Newmar failed to file their information and documentation in accordance with the Order of the Honourable Mr. Justice Wilton-Siegel by the Claims Deadline.

19. On or about July 25, 2014, motion materials were served by a number of mortgagees referred to as private lenders in respect of a dispute concerning the fees of counsel for the Monitor, as well as issues concerning whether or not the Claims Process

should be abandoned or revised. At the time the motion materials were delivered, counsel for Argo and Newmar was involved in the preparation of lengthy written closing submissions for a 10-week trial and, thereafter, away on vacation.

20. Upon return from vacation, counsel for Argo and Newmar reviewed the Responding Motion Record and noted, for the first time, that the Claims of neither Argo nor Newmar were included on a Claims Summary prepared as an attachment to an email sent by counsel for the Monitor.

21. At that point and upon further inquiries being made, counsel for Argo Lumber Inc. and Newmar Window Manufacturing Inc., realized that the Claims Deadline set out in the Order of the Honourable Mr. Justice Wilton-Siegel had not been diarized by counsel for Argo Lumber Inc. and Newmar Window Manufacturing Inc., and therefore, the information and documentation in respect of the moving parties' claims had not been submitted to the Monitor.

22. As a result, on August 14, 2014, counsel for the moving parties, wrote to the Monitor and submitted the required information and documentation on behalf of Argo Lumber Inc. and Newmar Window Manufacturing Inc.

23. In response, on August 19, 2014, Ian Aversa, counsel for the Monitor, wrote to counsel for the moving parties, acknowledging receipt of the documentation and information and advising that it was to have been submitted to the Monitor by February 14, 2014. In his letter, Mr. Aversa further advises that the Monitor intends to raise the issue of the moving parties' claims with the Vetting Committee and will keep the moving parties abreast of any recent developments.

24. Mr. Aversa has advised counsel for the moving parties that only one meeting has been held by the Vetting Committee with a second meeting anticipated to take place in September 2014. A number of the mortgagees, referred to as "private lenders", have filed materials in response to a motion for an order approving the fourth report of the Monitor, alleging that the Monitor has not followed the Claims Process set out in the Order

of the Honourable Mr. Justice Wilton-Siegel in that the Monitor has failed to deliver Notices of Disallowance to the Secured Claims in accordance with the deadlines set out in the Order.

25. Further, it appears that the lien claims will be referred for determination to an arbitrator or referee and, therefore, the Claims Process will be abandoned.

26. Therefore, it appears that no Notices of Disallowance have been delivered by the Monitor as required by the Order of the Honourable Mr. Justice Wilton-Siegel. It also appears that the Claims Process has not proceeded as ordered, nor has it been completed.

27. Based on the above, the moving parties submit that no prejudice would result in the granting of an order extending the deadline to permit the moving parties to file their information and documentation in support of their claims.

28. At all times it has been the intention, and it remains the intention, of the moving parties to pursue their claims for the amounts outlined above.

29. Rules 1.05, 2.03, 3.02, 37 and 57.03 of the *Rules of Civil Procedure*; and

30. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

1. The Affidavit of Sonja Turajlich and the exhibits referred to therein; and

2. Such further and other material as counsel may advise and this Honourable Court may permit.

August 27, 2014

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Emilio Bisceglia
Lawyers for the Lien Claimants, Argo Lumber
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**TO:
SEE SERVICE LIST ATTACHED
AS SCHEDULE "A" HERETO**

SCHEDULE "A"

Court File No. 13-10362-00-CL

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**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SILVER
STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO
INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.**

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Schedule "B"

PIN# 03206-3418 LT
LOT 1, PLAN 65M4249; TOWN OF RICHMOND HILL

PIN# 03206-3440 LT
LOT 23, PLAN 65M4249; SUBJECT TO AN EASEMENT IN GROSS OVER PT #2,
65R32917 AS IN YR1620823; TOWN OF RICHMOND HILL

PIN# 03206-3441 LT
LOT 24, PLAN 65M4249; SUBJECT TO AN EASEMENT IN GROSS OVER PT #2,
65R32917 AS IN YR1620823; TOWN OF RICHMOND HILL

PIN# 03206-3501 LT
LOT 18, PLAN 65M4331; TOWN OF RICHMOND HILL

PIN# 03206-3502 LT
LOT 19, PLAN 65M4331; TOWN OF RICHMOND HILL

PIN# 03206-3503 LT
LOT 20, PLAN 65M4331; TOWN OF RICHMOND HILL

PIN# 03206-3505 LT
LOT 22, PLAN 65M4331; TOWN OF RICHMOND HILL

PIN# 03206-3506 LT
LOT 23, PLAN 65M4331; TOWN OF RICHMOND HILL

PIN# 03206-3507 LT
LOT 24, PLAN 65M4331; TOWN OF RICHMOND HILL

PIN# 03206-3508 LT
LOT 25, PLAN 65M4331; TOWN OF RICHMOND HILL

IN THE MATTER OF A PLAN OF COMPROMISE OF ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

Court File No. CV-13-10362-00CL

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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