



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

**THE HONOURABLE MR.  
JUSTICE CUMMING**

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**FRIDAY, THE 4<sup>th</sup> DAY  
OF JULY, 2008**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF THE HARD-ROCK PAVING COMPANY LIMITED  
AND THE COMPANIES LISTED ON SCHEDULE "A"

**ORDER**

**THIS MOTION**, made by Dufferin Construction Company, a business unit of St. Lawrence Cement Inc. ("Dufferin"), for a declaration that the claim for lien of Fowler Construction Company Limited is expired, was heard this day at 330 University Avenue, Toronto.

**ON READING** the consent of Dufferin Construction Company, a business unit of St. Lawrence Cement Inc. ("Dufferin"), Fowler Construction Company Limited ("Fowler"), Hard-Rock Construction Inc. ("Hard-Rock") and the Ministry of Transportation ("MTO"), filed, and on being advised that the Monitor BDO Dunwoody Limited takes no position with respect to this motion, and on hearing the submissions of the parties to the consent,

1. **THIS COURT ORDERS** that the lien of Fowler, attached to this order as Schedule A (the "Fowler Lien") shall be and the same is hereby vacated *and discharged.* *pac*

2. **THIS COURT FURTHER ORDERS** that MTO release to Dufferin the sum of \$446,797.11, being the amount held on account of the Fowler Lien.

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

**JUL 07 2008**

PER/PAR: *JSM* Joanne Nicoara  
Registrar, Superior Court of Justice

3. THIS COURT FURTHER ORDERS that Dufferin pay the sum of \$ 47,542.21 (the "Fund") into court to the credit of Court File No. CV-08-00358<sup>161-0000</sup> until further order of the

court, *being the sum of \$ 59,542.21 less \$ 12,000 on account of costs of this motion payable to Dufferin; provided however the said \$ 12,000 will be held in trust by Blaney McMurtry*

4. THIS COURT FURTHER ORDERS that Dufferin shall make application to MTO for the early release of holdback in respect of MTO Contract No. 2007-2027 (the "Project") in the amount of \$106,477.34 or such other amount as may be owing in respect of the work performed by Hard-Rock (the "Hard-Rock Holdback").

*LTP for 32 days c.e. until August 5, 2008 and any interest person may apply to this court in the interim for an order varying this paragraph 3.*

5. THIS COURT FURTHER ORDERS that upon receipt of the funds set out in paragraph 4, Dufferin shall pay the Hard-Rock Holdback into court to the credit of Court File No. CV-08-00358<sup>161-0000</sup> until further order of the court.

6. THIS COURT FURTHER ORDERS that upon payment of the Fund by Dufferin, the liability of Dufferin in respect of the Fund is extinguished.

7. THIS COURT FURTHER ORDERS that upon payment of the Hard-Rock Holdback by Dufferin, the liability of Dufferin in respect of the Hard-Rock Holdback is extinguished.

8. THIS COURT FURTHER ORDERS that upon payment by Dufferin of the Fund and the Hard-Rock Holdback, all liability of Dufferin toward Fowler and Hard-Rock, or either of them, is released, extinguished and discharged, and Fowler and Hard-Rock shall have no further claims of any nature against Dufferin in respect of the *all* Fund and the Hard-Rock Holdback.

9. THIS COURT FURTHER ORDERS that costs of this motion as they relate to Fowler and Hard-Rock shall be reserved until further order of the court on determination of ultimate payment of the Fund and the Hard-Rock Holdback.

10. THIS COURT FURTHER ORDERS that this order shall be without prejudice to any position which may be taken hereafter by either Hard-Rock or Fowler in respect of their entitlement to the funds placed into court pursuant to this order or the validity of any trust claims being asserted by Fowler in connection with the Project or otherwise.

*Peter A. Cumming J.*

*ad*

*ad*



Ministry of Transportation / Ministère des Transports

CLAIM FOR LIEN

Name of lien claimant: Fowler Construction Company Limited (Date) April 17/2008

Address for service: Box 630, 1206 Roseward Drive, Bracebridge, ON P1L 1T9

Name of owner: Her Majesty The Queen in Right of Ontario as represented by the Minister of Transportation (Contract No.: 2007-2027)

Name of person to whom lien claimant supplied services or materials: The Hard Rock Group, O/A Hard Rock Paving Co. Ltd

Address: P.O. Box 220, 198 Welland St, Port Colborne, ON L3K 5V8

Time within which services or materials were supplied:

From August 2, 2007 To November 5, 2007 (Date Supply Commenced) (Date of Most Recent Supply)

Short description of services or materials that have been supplied: DFC coarse aggregate, washed fine aggregate, unwashed fine, hydrated lime

Contract price or subcontract price: \$ purchase order attached

Amount claimed as owing in respect of services or materials that have been supplied: \$ 446,797.11

The lien claimant claims a charge against the holdbacks required to be retained under the Act and any additional amount owed by a payer to the contractor or to any subcontractor whose contract or subcontract was in whole or in part performed by the services or material that have been supplied by the lien claimant in relation to the contract:

REW, St Catharines ON 2007-2027 (Location of Contract)

Date April 28/2008 (Signature of Claimant or Agent)

AFFIDAVIT OF VERIFICATION OF LIEN CLAIM

I, make an oath and say (or affirm) as follows: (use A, B or C as applicable)

- A. 1. I am the lien claimant named in the claim for lien; 2. The facts stated in the claim for lien are true.
B. 1. I am the agent (or assignee) of Use lie's claimant named in the claim for lien; 2. I have informed myself of the facts stated in the claim for lien, and I believe those facts to be true.
C. 1. I am a trustee of the workers' trust fund which is named as the lien claimant in the claim for lien 2. I have informed myself of the facts stated in the claim for lien, and I believe those facts to be true. Sworn (or affirmed) before me at the

Town of Bracebridge in the District of Muskoka this 28th day of April 2008 Barbara Karen Booth, a Commissioner, etc., District Municipality of Muskoka, for Fowler Construction Company Limited. Expires March 15, 2008.

(Deponent)

Claims for a lien may be preserved by sending this form by hand or by registered mail to the:

DIRECTOR, LEGAL SERVICES BRANCH MAIN FLOOR, WEST TOWER, 1201 WILSON AVENUE, DOWNSVIEW, ONTARIO M3M 1J8



Ministry of Transportation / Ministère des Transports

AMENDED CLAIM FOR LIEN

June 3, 2008

Name of lien claimant: Fowler Construction Company Limited (Date)

Address for service: c/o Devry, Smith & Frank LLP, Barristers & Solicitors, 95 Barber Greene Road, Suite 100, Toronto, Ontario, M3C 3E9

Name of owner: Her Majesty The Queen in Right of Ontario as represented by the Minister of Transportation Contract No.: 2007-2027

Name of person to whom lien claimant supplied services or materials: Hard-Rock Paving Company Limited

Address: 198 Welland Street, Port Colborne, Ontario L3K 5V8

Time within which services or materials were supplied: From August 2, 2007 To November 5, 2007

Short description of services or materials that have been supplied: DFC coarse aggregate, washed fine aggregate, unwashed fine aggregate and hydrated lime

Contract price or subcontract price: \$ Purchase order attached

Amount claimed as owing in respect of services or materials that have been supplied: \$446,797.11

The lien claimant claims a charge against the holdbacks required to be retained under the Act and any additional amount owed by a payer to the contractor or to any subcontractor whose contract or subcontract was in whole or in part performed by the services or material that have been supplied by the lien claimant in relation to the contract:

MTO contract 2007-2027 re: QEW, from 1.1km W. of Seventh St. to W. side of Garden City Skyway, St. Catha (Location of Contract)

Date June 3, 2008 (Signature of Claimant or Agent) Mark R. Mancini, Devry, Smith & Frank

AFFIDAVIT OF VERIFICATION OF LIEN CLAIM

I, Mark R. Mancini make an oath and say (or affirm) as follows: (use A, B or C as applicable)

- A. 1. I am the lien claimant named in the claim for lien; 2. The facts stated in the claim for lien are true. B. 1. I am the agent (or assignee) of Use lie's claimant named in the claim for lien; 2. I have informed myself of the facts stated in the claim for lien, and I believe those facts to be true. C. 1. I am a trustee of the workers' trust fund which is named as the lien claimant in the claim for lien 2. I have informed myself of the facts stated in the claim for lien, and I believe those facts to be true. Sworn (or affirmed) before me at the

Kimberley Court of City of Toronto in the Province of Ontario this 3rd day of June 2008 (Deponent) Mark R. Mancini A Commissioner, Etc.

Claims for a lien may be preserved by sending this form by hand or by registered mail to the:

DIRECTOR, LEGAL SERVICES BRANCH MAIN FLOOR, WEST TOWER, 1201 WILSON AVENUE, DOWNSVIEW, ONTARIO M3M 1J8 KIMBERLEY DAWN COURT, a Commissioner, etc., Ontario, for Devry, Smith & Frank LLP, Solicitors. November 24, 2009.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE HARD-ROCK PAVING COMPANY LIMITED

Applicants

**ONTARIO SUPERIOR COURT OF JUSTICE**  
Commercial List

Proceeding Commenced at Toronto

**ORDER**

**BLANEY McMURTRY LLP**  
Barristers and Solicitors  
2 Queen Street East, Suite 1500  
Toronto, ON M5C 3G5

**Michele Hecke (LSUC #37125K)**  
Tel: (416) 593-3935  
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Solicitors for the Dufferin Construction Company,  
a business unit of St. Lawrence Cement Inc.