

COURT FILE NUMBER BK01 – 095206

COURT COURT OF QUEEN'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

PLAINTIFF THE BANK OF NOVA SCOTIA

DEFENDANTS NORTH AMERICAN STEEL ERECTORS
INC.

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE Ramsay Legal Counsel
AND CONTACT #307, 4600 Crowchild Tr. NW
INFORMATION OF PARTY Calgary, Alberta T3A 2L6
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Clerk's Stamp

Attn: Dan B. Ramsay
Solicitor's File No. 21-0016

AFFIDAVIT OF STEEVE TOUPIN

Sworn/affirmed on June 2nd, 2021

I, STEEVE TOUPIN, of Cochrane, Alberta, SWEAR AND SAY THAT:


1. I am the Corporate Representative of the Defendant, North American Steel Erectors Inc. ("NASE"), and as such have personal knowledge of the matters hereinafter deposed to except where stated to be based on information and belief.
2. I make this affidavit in response to the Affidavit of Josh Coonan affirmed April 6, 2021, and the Application of the Bank of Nova Scotia filed April 14, 2021, as well as in support of NASE's cross-application to dismiss the Application or alternatively seeking a stay of the herein proceedings.
3. NASE carries on business throughout Canada providing steel erector contracting and other services to large construction projects, including bridges, commercial and residential condominium towers, and sports facilities.
4. NASE is the plaintiff in 2 separate ongoing legal actions, one in Alberta and one in Manitoba.

5. On December 9, 2020, NASE filed a Statement of Claim in the Court of Queen's Bench of Alberta, Calgary, Court File No. 2001-16202, against Shield Industries Ltd. and Wynward Insurance Group arising from NASE's provision of materials and services for a bridge located at 9th Avenue in Calgary, Alberta (the "Alberta Action"). Attached hereto and marked as **Exhibit "A"** is a copy of the Statement of Claim.
6. As alleged in the Alberta Action, NASE entered into a purchase order with Shield Industries Ltd. for it to fabricate and supply steel for the bridge project. Shield Industries Ltd.'s obligations were guaranteed under a performance bond issued by Wynward Insurance Group in favour of NASE. Shield Industries Ltd. failed to meet its obligations, and Wynward has disputed the amounts owing to NASE for the costs of the materials and services Shield Industries Ltd. was to provide under the purchase order. The total sought in this action against both defendants is \$3,673,856.02.
7. The Alberta Action has recently been initiated. Statements of Defence have been filed and the parties are presently in the process of compiling their documents for Affidavits of Records.
8. On May 7, 2020, NASE filed a Statement of Claim in the Court of Queen's Bench, Winnipeg Centre, Court File No. CI 20-01-27129 against Exact Detailing Ltd. The action pertains to an agreement for Exact Detailing Ltd. to provide structural steel detailing design services to the construction of a tower located in Winnipeg, Manitoba. Exact Detailing Ltd. breached the terms of the agreement by failing to attain approval for extra work orders, failing to provide electronic drawings, and causing delays in the progress of work and prevented NASE from completing its work on the project, causing damages to NASE of \$4,677,711.08. Attached hereto and marked as **Exhibit "B"** is a copy of the Statement of Claim in the Manitoba Action.
9. The parties to the Manitoba Action have agreed to arbitration. This is to take place sometime in the next few months, though an actual date has yet to be scheduled. An arbitrator is being discussed and the parties are compiling their documents for use in the arbitration process. Attached hereto and marked as **Exhibit "C"** is a copy of a Year End Audit Letter from NASE's Manitoba counsel for the Manitoba Action.
10. As the Manitoba Action is at the doorstep of arbitration, I anticipate that it will be revolved within the next few months, after the arbitration is scheduled and completed, and will result in a significant payment or award made in favour of NASE.
11. If the Applicant herein is successful in petitioning NASE into Bankruptcy and a Trustee is appointed, this will significantly prejudice NASE's ability to pursue these legal actions. Distribution of any funds held by NASE will prevent it from paying the legal fees necessary to pursue the actions for amounts owed.
12. Further, I am in a better position than a Trustee to prosecute and make decisions for NASE in respect of these actions as I have had firsthand involvement in the contracting and projects which are subject of the litigation.

13. The total amount owed to NASE in both actions is well in excess of the current amount that NASE owes its creditors, the Bank of Nova Scotia and the CRA. I believe both actions are meritorious and will likely result in substantial amounts of money being awarded or paid to NASE.
14. If the application herein is successful and limit NASE's ability to pursue its actions, the CRA will be prejudiced as the funds that can be recovered from those claims can be applied to NASE's amounts owing to CRA as well.
15. As the amounts owed to NASE are well in excess of the amounts owed to Bank of Nova Scotia, I do not believe that there is any prejudice to the Bank of Nova Scotia if the herein proceedings are stayed.
16. Further, it is my belief that the Bank of Nova Scotia's application to petition NASE into bankruptcy is being brought for a collateral or improper purpose.
17. The Bank of Nova Scotia has initiated Court of Queen's Bench Action 2101-02086 (the "212 Action") in respect of a corporation related to NASE, 2127712 Alberta Ltd. ("212"), seeking judgment for non-payment on the credit facilities referred to in the Bank of Nova Scotia's herein application. Attached hereto and marked as **Exhibits "D" and "E"** respectively are current Alberta Corporate Registry searches for NASE and 212.
18. In its Statement of Claim in the 212 Action, the Bank of Nova Scotia alleges, *inter alia*:
 - A. On November 15, 2019, NASE entered into a loan agreement with the Bank of Nova Scotia, which agreement included two credit facilities: an overdraft facility of \$1.5 million and a Visa facility of \$50,000.00;
 - B. 2127712 Alberta Ltd., acted as guarantor of these credit facilities on behalf of NASE;
 - C. On December 9, 2019, the Bank of Nova Scotia issued a standby letter of credit to NASE pursuant to the loan agreement in the sum of \$282,106.87; and
 - D. NASE and 2127712 Alberta Ltd. had defaulted on their various debt and guarantee obligations to the Bank of Nova Scotia.Attached hereto and marked as **Exhibit "F"** is the Statement of Claim in the 212 Action.
19. The 212 Action is ongoing and has not been resolved by judgment or by agreement.

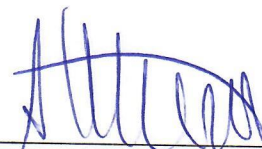
20. I am concerned that by the Bank of Nova Scotia's pursuing two separate court actions, the 212 Action and the herein bankruptcy proceedings against NASE, it is attempting to receive double recovery as both are seeking to enforce on the same credit facilities, but against separate entities in separate proceedings.

SWORN BEFORE ME at Calgary, Alberta,
this 2 day of June, 2021.



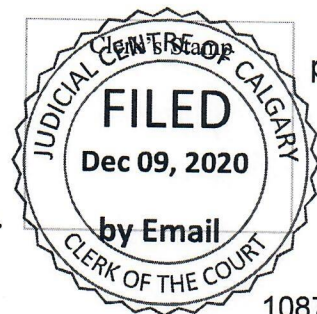
Commissioner for Oaths in and for the
Province of Alberta

Daniel Bertram Ramsay
Barrister & Solicitor

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STEEVE TOUPIN

COURT FILE NUMBER 2001-16202
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF NORTH AMERICAN STEEL ERECTORS INC.
DEFENDANT(S) SHIELD INDUSTRIES LTD. and WYNWARD
 INSURANCE GROUP
DOCUMENT STATEMENT OF CLAIM



10872

ADDRESS FOR SERVICE AND Jeffrey D. Vallis, Q.C. / Theron Davis
CONTACT INFORMATION OF Borden Ladner Gervais LLP
 1900, 520 3rd Ave. S.W.
PARTY FILING THIS Calgary, AB T2P 0R3
DOCUMENT Telephone: (403) 232-9404 / 9761
 Facsimile: (403) 266-1395
 File No. 446270-000001

THIS IS EXHIBIT "A"
referred to in the Affidavit of
Steeve Toupin
Sworn before me this 2
day of June A.D. 2021
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. North American Steel Erectors Inc. ("NASE") is a body corporate, duly incorporated pursuant to the laws of the Province of Alberta. NASE carries on the business of supplying and installing structural steel on commercial, institutional, bridge and sports facility projects.
2. The Defendant, Shield Industries Ltd. ("Shield") is a body corporate, duly incorporated pursuant to the laws of the Province of Alberta. Shield carries on business as a fabricator of, among other things, structural steel.
3. The Defendant, Wynward Insurance Group ("Wynward") is a body corporate, duly incorporated pursuant to the laws of Canada and is duly authorized to transact the business of suretyship in Canada, including in the Province of Alberta.

Daniel Bertram Ramsay
Barrister & Solicitor

The Project

4. Pursuant to Subcontract #463022 – OS, dated May 30, 2019, NASE was engaged by PCL Construction Management Inc. (“**PCL**”) to supply, fabricate and install structural steel on the 9th Ave Vehicle Bridge Replacement project (the “**Project**”), located in Calgary, Alberta (the “**Subcontract**”).
5. On or about April 4, 2019, NASE and Shield entered into Purchase Order Number 1906-002 (the “**Purchase Order**”), whereby Shield agreed to fabricate and supply the structural steel for the Project as described in Shield’s Quotation No. 6317, dated January 31, 2019 (the “**Work**”), for a stipulated price of \$3,720,348.03 (including GST) (the “**Purchase Order Price**”).
6. The Purchase Order incorporated the terms and conditions of the Subcontract by express reference and Shield was bound to adhere to those terms and conditions in the performance of the Work.

The Performance Bond

7. Pursuant to clause 4 of the special conditions of the Subcontract, Shield was obligated to provide a performance bond in favour of NASE, providing a penal sum equivalent to one-half of the Purchase Order Price.
8. On or about October 9, 2019, Wynward issued Performance Bond No. W086-102-001P/L-A (the “**Bond**”), with a penal limit of \$1,860,174.02 (the “**Bond Amount**”), which replaced Bond No. W0186-102-001P/L. Under the Bond, NASE was the named Obligee, Shield was the Principal, and Wynward was the Surety. NASE pleads and relies upon the terms and provisions of the Bond.
9. In the event that Shield defaulted on any of its obligations under the Purchase Order, NASE could deliver to Wynward a written statement that Shield was in such default and request that Wynward fulfill its obligations under the Bond (a “**Demand**”).
10. In advance of making a Demand on the Bond, NASE was, entirely at its own discretion, entitled to notify Wynward if Shield was, or was soon to be, in default and request that the parties attend a conference to communicate those concerns (a “**Pre-Demand Conference**”).
11. Upon receipt of a Demand, Wynward would be afforded a reasonable time within which to conduct an investigation of the Demand and determine its liability under the Bond.
12. Twenty-one days following receipt of the information required to conduct the investigation, Wynward was obligated to complete its investigation and advise NASE of its decision. Alternatively, if Wynward required more time to complete its investigation then, before the expiry of the aforementioned twenty-one days, it was obligated to write to NASE and set out the status of the investigation and provide an estimate of when the investigation would be complete.
13. While Wynward performed its investigation, NASE was entitled under the terms of the Bond to engage a replacement contractor or contractors to proceed with the Work for the benefit and protection of the Project and in order to mitigate its losses.
14. Where NASE engaged a replacement contractor, and subject to the conditions of the Bond, the reasonable costs incurred by NASE were to be reimbursed by Wynward.
15. Following an investigation, if the conditions precedent have been satisfied and Shield’s default confirmed, Wynward would then be obligated to promptly:

- (a) remedy the default;
- (b) complete the Purchase Order in accordance with its terms and conditions;
- (c) obtain a bid, or bids, for submission to NASE for completing the Purchase Order in accordance with its terms and conditions, and upon determination by NASE and Wynward of the lowest responsible bidder, arrange for a contract between such bidder and NASE, and make available as work progresses (even though there should be a default, or a succession of defaults, under the contract or contracts of completion, arranged under this option) sufficient funds to pay to complete Shield's obligations in accordance with the terms and conditions of the Purchase Order, and to pay those expenses incurred by NASE as a result of Shield's default relating directly to the performance of the Work under the Purchase Order, less the balance of the Purchase Order Price; or,
- (d) pay NASE the lesser of: (1) the Bond Amount; or, (2) NASE's proposed cost of completion less the balance of the Subcontract price.

Shield's Default and the Surety's Investigation

- 16. In order to ensure that Shield was meeting its obligations under the Purchase Order on or about October 31, 2019, among other times, NASE, PCL and Shield met and discussed Shield's progress. Part of that meeting included potential options that would ensure that Shield met the Purchase Order with respect to schedule, and conformed to the plans and specifications incorporated into the Purchase Order. Among the options discussed was the possibility that Shield engage a subcontractor to assist with portions of its Work.
- 17. Entirely of its own volition, Shield subcontracted with Supreme Steel LP to perform portions of the Work.
- 18. In the months subsequent to the October 31, 2019 meeting, it began to become clear to NASE that Shield was unable to adequately manage its obligations under the Purchase Order. As a result, on December 11, 2019, NASE issued a notice of non-compliance to Shield requesting that Shield take steps to avoid a default (the "**Notice of Non-Compliance**").
- 19. NASE received and reviewed Shield's response to the Notice of Non-Compliance upon returning from a shut down for the holiday season and, on or about January 2, 2020, NASE contacted a representative of Wynward regarding its continuing concerns related to Shield's performance.
- 20. Without any appreciable improvement following receipt of Shield's response to the Notice of Non-Compliance, on January 16, 2020, NASE informed Wynward in writing that Shield was in default under the Purchase Order, and that NASE had become aware that Shield was facing financial difficulties, and requested a Pre-Demand Conference. That Pre-Demand Conference was held on January 30, 2020, during which Shield confirmed that it was facing financial difficulties.
- 21. On or about February 20, 2020, Shield indicated that it would be laying off its employees and that its financial difficulties would prevent it from being able to continue with the Work.
- 22. Further, Shield's performance had not improved following the Pre-Demand Conference and, on or about February 27, 2020, NASE made a Demand to Wynward, declared that Shield was in default and requested that Wynward fulfill its obligations under the Bond (the "**Bond Claim**").

23. On or about March 2, 2020 to March 5, 2020, Shield made the final deliveries of materials and then subsequently abandoned the Project.
24. Following the Bond Claim, Wynward began an investigation, with the full cooperation of NASE.
25. Shield failed to satisfy its obligations under the Purchase Order. These failures include, but are not limited to, the following:
 - (a) Shield issued invoices that included, and Shield sought payment for, Work that was not complete;
 - (b) Shield failed to follow the change request requirements of the Purchase Order and failed to justify additional costs for which it was seeking payment, which in turn resulted in NASE being unable to obtain a corresponding approval from PCL;
 - (c) Shield failed or otherwise refused to perform the Work as outlined in the plans, specifications, or as otherwise contemplated within the Purchase Order;
 - (d) Shield performed the Work negligently and in breach of the express or implied terms of the Purchase Order;
 - (e) Shield failed or refused to adequately correct significant portions of its negligent and deficient Work, but even where some portions of the Work were corrected, Shield failed to do so in a timely manner;
 - (f) Shield failed to implement adequate quality assurance and quality control processes;
 - (g) Shield failed to staff and maintain a sufficient number of employees, agents or subcontractors to complete the Work properly, on time, and in accordance with the express or implied terms of the Purchase Order;
 - (h) Shield failed to staff appropriately skilled and competent employees, agents or subcontractors so that the Work could be completed properly, on time, and in accordance with the express or implied terms of the Subcontract;
 - (i) Shield failed to properly train the employees, agents or subcontractors that it did have to ensure they were adequately qualified to perform the Work;
 - (j) Shield failed to properly manage and supervise its employees, agents, or subcontractors;
 - (k) Shield failed to maintain a safe work site at all times in accordance with the express or implied terms of the Subcontract; and
 - (l) Shield failed to complete its scope of Work and abandoned the Purchase Order

(collectively, "**Shield's Defaults**").
26. By contrast, NASE has satisfied all of its obligations under the Purchase Order including, but not limited to, having made timely payment to Shield for all of its validly performed Work and properly submitted invoices.

27. At no point in time did NASE relieve Shield from its contractual obligations, or otherwise waive, acquiesce or abandon its right to demand that Shield perform its obligations under the Purchase Order.
28. On or about August 8, 2020, Wynward and NASE entered into a mitigation agreement (the "**Mitigation Agreement**"), whereby Wynward agreed that NASE could proceed with a remedial plan (the "**Remedial Plan**") to complete the remaining work (the "**Remaining Work**"), as described in Schedules to the Mitigation Agreement. Pursuant to the Mitigation Agreement, Wynward agreed not to challenge or dispute the completion of the Remaining Work performed by NASE in accordance with the Remedial Plan.
29. Wynward and NASE entered into the Mitigation Agreement without prejudice to the rights and/or obligations of the parties under the Bond.
30. To date, Wynward has failed or otherwise refused to provide a decision with respect to the Bond Claim and, despite repeated demands, has further failed to fulfill its obligations under the Bond.

The Costs to Complete

31. At this time, and subject to uncovering further deficiencies in Shield's work, the total cost to NASE to complete Shield's Work will be not less than \$4,336,846.93.
32. NASE had already paid to Shield \$1,919,409.12 and, as a result, the balance of the contract price is \$1,800,938.91.
33. The resulting short fall from Shield's Defaults and abandonment of the Purchase Order is, therefore, not less than \$2,535,908.02.

Claims against the Defendants

34. Shield has failed, refused, or been otherwise unable to perform its obligations under the Purchase Order. As a result of Shield's Defaults, negligence, and breaches of the Purchase Order, NASE has suffered and continues to suffer damages and losses.
35. Wynward has failed to fulfill its obligations under the Bond. Specifically, Wynward has failed to take the steps necessary to see that Shield's Defaults were corrected and the Work completed. By so doing, Wynward has exacerbated the delay on the Project to such an extent that NASE has had to incur significant additional costs and its losses have been substantially increased.
36. Further, Wynward has failed and or otherwise refused to render a decision regarding the Demand and has taken an unreasonable amount of time in so delaying.
37. As a result of both Shield's Defaults or its negligence in carrying out the Work under the Purchase Order, and Wynward's conduct and breaches of the Bond, NASE has suffered, and continues to suffer, serious damages including, but not limited to, losses from delay, additional costs, Work deficiencies, bank charges, interest costs, increased administrative and overhead costs, and costs to complete Shield's unfinished Work. NASE currently estimates such losses, the particulars and total amount of which shall be proven at trial, to be not less than as follows:
 - (a) Shortfall on costs to complete of \$2,535,908.02;

- (b) Additional manpower costs of \$385,948.00;
- (c) Delay and acceleration costs of \$648,000.00;
- (d) Liquidated damages losses of approximately \$104,000.00; and,
- (e) Such additional costs as may be proven at trial.

Remedy sought:

38. The Plaintiff, NASE, claims against the Defendant, Wynward:
- (a) a declaration that the Performance Bond remains in full force and effect; and,
 - (b) a declaration that NASE has discharged all preconditions for payment under the Performance Bond, or alternatively for relief from forfeiture in respect thereof.
39. The Plaintiff, NASE, claims against the Defendants, Wynward and Shield, jointly and severally:
- (a) judgment in the amount of \$3,673,856.02, or in the case of Wynward the Bond Amount;
 - (b) pre-judgment and post-judgment interest in accordance with the *Judgment Interest Act*, RSA 2000, c J-1;
 - (c) costs of this action on a solicitor-client basis or on such other basis as may be determined by this Honourable Court;
 - (d) such further and other relief as this Honourable Court may deem just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

FILED MAY 07 2020

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

NORTH AMERICAN STEEL ERECTORS INC.,

Daniel Bertram Ramsay
Barrister & Solicitor

- and -

plaintiff,

EXACT DETAILING LTD.,

defendant.

STATEMENT OF CLAIM

MARR FINLAYSON POLLOCK LLP

Barristers and Solicitors
240 River Avenue
Winnipeg, Manitoba
R3L 0B4

DAVID I. MARR

Ph.: (204) 925-5308
Fax: (204) 992-7099

File No. DM190024

File No. CI-20-01-271293
THIS IS EXHIBIT
referred to in the Affidavit of
Steeve Toupin
Sworn before me this 2
day of June A.D. 2021
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

**THE QUEEN'S BENCH
Winnipeg Centre**

BETWEEN:

NORTH AMERICAN STEEL ERECTORS INC.,

plaintiff,

- and -

EXACT DETAILING LTD.,

defendant.

STATEMENT OF CLAIM

TO THE DEFENDANT:

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 a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Queen's Bench Rules*, serve it on the plaintiff's lawyer or where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

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

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750.00 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 \$750.00 for costs and have the costs assessed by the court.

Date: May 7, 2020

**D. CHAMPAGNE
DEPUTY REGISTRAR
COURT OF QUEEN'S BENCH
FOR MANITOBA**

Issued by: _____
Deputy Registrar
Address of Court Office:
100C – 408 York Avenue
Winnipeg, MB R3C 0P9

TO: EXACT DETAILING LTD.
c/o Thompson Dorfman Sweatman LLP
1700 – 242 Hargrave Street
Winnipeg, MB R3C 0V1
Attention: Meghan C. Ross
lawyers for the defendant

CLAIM

1. The plaintiff claims from the defendant:
 - a) the sum of \$4,677,711.08 (resulting from piecemeal procurement of steel and costs to engage TDS Industrial Services Ltd. to provide detailing services);
 - b) payment for additional damages for breach of contract and breach of the duty of good faith in contractual performance in an amount to be determined at trial;
 - c) pre-judgment and post-judgment interest;
 - d) costs of this action; and
 - e) such further and other relief as this Honourable Court may deem just.
2. The plaintiff, North American Steel Erectors Inc. ("NASE"), is a corporation incorporated pursuant to the laws of the Province of Alberta, and is duly registered to carry on business in the Province of Manitoba, and carries on business as a prime steel contractor across Canada.
3. The defendant, Exact Detailing Ltd. ("Exact") is a corporation incorporated pursuant to the laws of the Province of British Columbia, and carries on the business of providing steel detailing services.
4. This action arises from the design and construction of the Winnipeg Artis Tower (the "Project") located in Winnipeg, Manitoba.
5. On or about April 6, 2018, NASE submitted a revised proposal for the supply and installation of structural steel, joists and decking for the Project and on or about June 13, 2018 Diaser Management (2006) Ltd. ("Diaser"), the Construction Manager, issued a purchase order to NASE to perform the work (the "Contract").

The Sub-Contract

6. On or about May 31, 2018 Exact tendered a quote to NASE for the supply of structural steel design detail services which included the supply of structural and steel design, direction drawings, shop drawings and steel erection detailed layout instructions and modelling and, on or about June 19, 2018 NASE issued a purchase order to Exact therefor, upon terms which included weekly model sharing and progress reporting and payments to be made to Exact when NASE is paid by Diaser (the "Sub-Contract").

7. The value of the Sub-contract is made up of the base contract price of \$375,000.00 plus \$18,750.00 in sales tax (GST of 5%).

8. Clause 2 of the Sub-contract directs that "payments (are) to be made within the latter of thirty (30) days or five (5) days after receipt of payment for such work from Construction Manager" (the "pay when paid clause"). For the purposes of the pay when paid clause, the Construction Manager and the Owner under NASE's contract are one and the same.

9. NASE and Exact have collaborated on previous projects, which were governed by purchase orders issued by NASE which also contained a "pay when paid" clause. Exact understood that "pay when paid" clauses governed the contractual relationship between Exact and NASE, and Exact accepted the pay when paid clause under the Sub-contract.

Extra Work Orders

10. In addition to the base contract, between on or about July 6, 2018 to on or about May 30, 2019, Exact issued 56 extra work orders ("EWOs"), 3 of which were cancelled, for which Exact claimed the sum of \$205,152.41 for the remaining 53 EWOs.

11. In accordance with the Sub-contract, and as agreed by Exact, any changes, including EWOs, had to be approved and paid by the Owner before NASE could issue payments to Exact.

12. Contrary to the terms of the Sub-contract, Exact withheld and failed to provide electronic drawings (models) and issued viewer only drawings such that NASE was unable to make any changes as required, and insisted on payment prior to NASE being paid by the Owner which also contributed to delays in the progress of the work.

13. Notwithstanding NASE's efforts to have Exact comply, on or about June 28, 2019, NASE terminated the Sub-contract and retained TDS Industrial Services Ltd. who had to re-do some of Exact's work for which Exact had been paid, and complete the work left outstanding under the Sub-contract at a cost to NASE of \$230,500.00 and GST of \$11,525.00, totalling \$242,025.00.

14. On or about July 25, 2019, Exact caused a Builder's Lien to be registered against the Owner's property for the sum of \$205,152.41 (the "Lien Amount"), which NASE vacated with Exact's consent by payment into court the Lien Amount without prejudice to any claims, set-offs, or counterclaims which NASE may have, including the validity of the claim for lien itself. The lien was discharged as of January 13, 2020.

15. Exact's claim for lien is improper and exaggerated, and NASE pleads and relies upon section 40 of *The Builders' Liens Act*, C.C.S.M. c. B91.

16. As a result of Exact's misconduct described herein, including its failure to deliver the detailed design model and insisting on premature payment before releasing shop drawings

pursuant to its Sub-contract with NASE, Exact severely impeded NASE's ability to perform the Contract, NASE claims as set out in paragraph 1 hereof.

7th
Date: May 8, 2020

MARR FINLAYSON POLLOCK LLP

Barristers and Solicitors

240 River Avenue

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Telephone: (204) 925-5308

Facsimile: (204) 992-7099

DAVID I. MARR

lawyers for the plaintiff



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Christine Watson
cwatson@mfplawco.com

February 18, 2021

File No. DM190024

Via email to: stoupin@nasteelerectors.com

North American Steel Erectors
160 Griffin Ranch Road
Cochrane, AB T4C 2B8

Attention: Mr. Steeve Toupin, PE, P.Eng

Dear Sir:

Daniel Bertram Ramsay
Barrister & Solicitor

Re: Year End Audit – Exact Detailing Ltd.

THIS IS EXHIBIT " C "
referred to in the Affidavit of
Steeve Toupin

Sworn before me this 2
day of June A.D. 2021

A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

In response to your request for a status report of the claim of North American Steel Erectors Inc. (NASE) against Exact Detailing Ltd. (Exact) and Exact's counterclaim against NASE in the Court of Queen's Bench, Winnipeg Centre, under file No. CI20-01-27129, we would advise as follows.

In response to a Builder's Lien filed by Exact against land owned by Artis Winnipeg Square Parade Ltd. on July 25, 2019 in regard to its claim for the sum of \$205,152.41 for alleged unpaid accounts, NASE paid the said sum into court, following which Exact consented to the discharge of the Builder's Lien. Thereafter, on May 7, 2020 NASE commenced an action in the Court of Queen's Bench, Winnipeg Centre, against Exact claiming the sum of \$4,677,711.08, resulting from piecemeal procurement of steel and costs to engage another detailing service to correct the deficient work of Exact and to complete unfinished work. Exact filed a Statement of Defence and Counterclaim against NASE on June 9, 2020 for the said sum of \$205,152.41.

Notwithstanding the pending action and counterclaim (the "Dispute"), the parties have agreed to refer the Dispute to arbitration. Discussions are underway to decide upon a sole arbitrator and, in the meantime, documents relevant to the Dispute are in the process of being exchanged. It is anticipated that an arbitrator will be agreed upon within the next month or so, after which the arbitrator's terms of appointment will be settled and pre-hearing matters including the exchange of documents and examinations for discovery will be arranged and dates will be set for the arbitration hearing, which may take place before the end of this year.

Assuming NASE can satisfy the arbitrator of the validity and quantum of its claim (and correspondingly, that Exact is not entitled to its counterclaim), we anticipate an award in NASE's favour although the prospect of recovery of an award is unknown at this time. Regardless, assuming NASE can satisfy the arbitrator that Exact breached its contract with NASE, Exact's counterclaim should fail, thereby allowing NASE to make an application for payment out of court of the said sum of \$205,152.41 (plus interest), which NASE paid into Court to have the Builder's Lien discharged.



I trust this is satisfactory but should you have any questions, please do not hesitate to contact me.

Yours truly,

MARR FINLAYSON POLLOCK LLP

Per:

A handwritten signature in black ink, appearing to read 'David I. Marr', written over the printed name.

DAVID I. MARR

DIM:cw

**Services Provided by David I. Marr Law Corporation*

Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2021/05/27
Time of Search: 01:21 PM
Search provided by: A-PLUS REGISTRY SERVICES LTD.
Service Request Number: 35539859
Customer Reference Number: Ransay law

THIS IS EXHIBIT "....."
referred to in the Affidavit of
Steeve Toupin
Sworn before me this 2
day of June A.D. 2021
.....
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

Corporate Access Number: 2019448758
Business Number: 739358497
Legal Entity Name: NORTH AMERICAN STEEL ERECTORS INC.

Daniel Bertram Ramsay
Barrister & Solicitor

Name History:

Previous Legal Entity Name	Date of Name Change (YYYY/MM/DD)
CENTRAL ERECTORS INC.	2016/03/08

Legal Entity Status: Active
Alberta Corporation Type: Named Alberta Corporation
Registration Date: 2016/01/18 YYYY/MM/DD

Registered Office:

Street: 160 GRIFFIN RANCH ROAD
City: COCHRANE
Province: ALBERTA
Postal Code: T4C2B8

Records Address:

Street: 160 GRIFFIN RANCH ROAD
City: COCHRANE
Province: ALBERTA
Postal Code: T4C2B8

Email Address: MGOSWAMI@NASTEELERECTORS.COM

Directors:

Last Name: TOUPIN
First Name: STEEVE
Street/Box Number: 264095 MONTERRA DRIVE

City: COCHRANE
Province: ALBERTA
Postal Code: T4C0A7

Voting Shareholders:

Last Name: SPALDING
First Name: GORDON
Street: 10432 GLENROSE DRIVE
City: DELTA
Province: BRITISH COLUMBIA
Postal Code: V4C0A6
Percent Of Voting Shares: 22.22

Last Name: TOUPIN
First Name: STEEVE
Street: 264095 MONTERRA DRIVE
City: COCHRANE
Province: ALBERTA
Postal Code: T4C0A7
Percent Of Voting Shares: 77.78

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: 100 CLASS "A" SHARES
Share Transfers Restrictions: NONE
Min Number Of Directors: 1
Max Number Of Directors: 5
Business Restricted To: NONE
Business Restricted From: NONE
Other Provisions: NONE

Other Information:

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2021	2020/12/15

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2016/01/18	Incorporate Alberta Corporation
2016/03/08	Name Change Alberta Corporation
2017/06/07	Name/Structure Change Alberta Corporation
2019/01/11	Change Address
2019/03/08	Change Director / Shareholder
2020/02/22	Update BN
2020/12/15	Enter Annual Returns for Alberta and Extra-Provincial Corp.

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.



Government Corporation/Non-Profit Search of Alberta ■ Corporate Registration System

Date of Search: 2021/05/27
Time of Search: 01:05 PM
Search provided by: A-PLUS REGISTRY SERVICES LTD.
Service Request Number: 35539594
Customer Reference Number: Dan Ramsay

Corporate Access Number: 2021277120
Business Number: 732476916
Legal Entity Name: 2127712 ALBERTA LTD.

Legal Entity Status: Active
Alberta Corporation Type: Numbered Alberta Corporation
Registration Date: 2018/06/26 YYYY/MM/DD

Registered Office:

Street: 160 GRIFFIN RANCH ROAD
City: COCHRANE
Province: ALBERTA
Postal Code: T4C2B8

Records Address:

Street: 160 GRIFFIN RANCH ROAD
City: COCHRANE
Province: ALBERTA
Postal Code: T4C2B8

Email Address: MGOSWAMI@NASTEELERECTORS.COM

Primary Agent for Service:

Last Name	First Name	Middle Name	Firm Name	Street	City	Province	Postal Code	Email
GOSWAMI	MANASHI			160 GRIFFIN RANCH RD	COCHRANE	ALBERTA	T4C2B8	MGOSWAMI@NASTEELERECTORS.COM

Directors:

Last Name: SPALDING
First Name: GORDON
Street/Box Number: 10432 GLENROSE DRIVE
City: DELTA
Province: BRITISH COLUMBIA
Postal Code: V4C0A6

Last Name: TOUPIN
First Name: STEEVE
Street/Box Number: 264095 MONTERRA DRIVE
City: COCHRANE

THIS IS EXHIBIT "E"
referred to in the Affidavit of
Steeve Toupin
Sworn before me this 2
day of June A.D. 2021
A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

Daniel Bertram Ramsay
Barrister & Solicitor

Province: ALBERTA
Postal Code: T4C0A7

Voting Shareholders:

Last Name: SPALDING
First Name: GORDON
Street: 160 GRIFFIN RANCH ROAD
City: COCHRANE
Province: ALBERTA
Postal Code: T4C2B8
Percent Of Voting Shares: 50

Last Name: TOUPIN
First Name: STEEVE
Street: 160 GRIFFIN RANCH ROAD
City: COCHRANE
Province: ALBERTA
Postal Code: T4C2B8
Percent Of Voting Shares: 50

Details From Current Articles:

The information in this legal entity table supersedes equivalent electronic attachments

Share Structure: THE CORPORATION IS AUTHORIZED TO ISSUE SHARES AS SET OUT IN THE ATTACHED SCHEDULE "A".

Share Transfers Restrictions: SEE ATTACHED SCHEDULE "B".

Min Number Of Directors: 1

Max Number Of Directors: 9

Business Restricted To: THERE SHALL BE NO RESTRICTIONS ON THE BUSINESS WHICH THE CORPORATION MAY CARRY ON.

Business Restricted From: THERE SHALL BE NO RESTRICTIONS ON THE BUSINESS WHICH THE CORPORATION MAY CARRY ON.

Other Provisions: SEE ATTACHED SCHEDULE "C".

Associated Registrations under the Partnership Act:

Trade Partner Name	Registration Number
BOW RIVER SELF STORAGE	TN21497003
RIVERSIDE STORAGE	TN21498050

Other Information:

Last Annual Return Filed:

File Year	Date Filed (YYYY/MM/DD)
2021	2021/05/10

Filing History:

List Date (YYYY/MM/DD)	Type of Filing
2018/06/26	Incorporate Alberta Corporation
2018/11/22	Change Address
2020/02/23	Update BN
2021/05/10	Change Director / Shareholder
2021/05/10	Enter Annual Returns for Alberta and Extra-Provincial Corp.

Attachments:

Attachment Type	Microfilm Bar Code	Date Recorded (YYYY/MM/DD)
Share Structure	ELECTRONIC	2018/06/26
Restrictions on Share Transfers	ELECTRONIC	2018/06/26
Other Rules or Provisions	ELECTRONIC	2018/06/26
Letter - Spelling Error	10000407139646733	2021/05/10

The Registrar of Corporations certifies that, as of the date of this search, the above information is an accurate reproduction of data contained in the official public records of Corporate Registry.

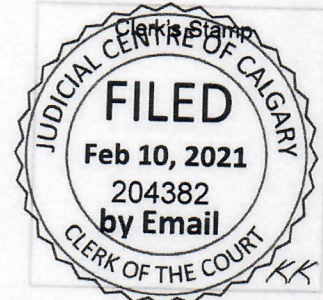


COURT FILE NUMBER 2101-02086
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF THE BANK OF NOVA SCOTIA
DEFENDANT 2127712 ALBERTA LTD.
DOCUMENT **STATEMENT OF CLAIM**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

McMillan LLP
#1700, 421 – 7th Ave SW
Calgary, AB T2P 4K9

Attention: Kourtney Rylands/Preet Saini
Telephone: (403) 355.3326/ (403) 531.4716
Fax: (403) 531.4720
Email: kourtney.rylands@mcmillan.ca/
preet.saini@mcmillan.ca
File No. 277272



THIS IS EXHIBIT "F"
referred to in the Affidavit of
Steve Tospin
Sworn before me this 2
day of June A.D. 2021

A COMMISSIONER FOR OATHS
IN THE PROVINCE OF ALBERTA

Daniel Bertram Ramsay
Barrister & Solicitor

NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Statement of facts relied on:

Parties

1. The Plaintiff, The Bank of Nova Scotia ("BNS" or the "Bank") is a Schedule I Bank under the Bank Act, SC 1991, c 46 and carries on business in Calgary, Alberta, and throughout Canada.
2. The Defendant 2127712 Alberta Ltd. ("212") is a corporation incorporated pursuant to the laws of Alberta with a registered office at 160 Griffin Ranch Road, Cochrane, Alberta T4C 2B8.

3. While not a party to this action, North American Steel Erectors Inc. ("NASE" and together with 212, the "Debtors") is a corporation incorporated pursuant to the laws of Alberta with a registered office at 160 Griffin Ranch Road, Cochrane, Alberta T4C 2B8.

Loan and Security Agreement

4. By a Business Banking Agreement dated November 15, 2019, between the Bank and the Debtors (the "Loan and Security Agreement"), the Bank agreed to extend and did extend various credit facilities to NASE, including, an overdraft facility in the amount of \$1,500,000 (the "Credit Facility") and a Visa facility in the amount of \$50,000 (the "Visa Facility"), on the terms and conditions set out in the NASE Loan and Security Agreement, a Visa agreement dated September 22, 2018, and an agreement for standby letter of credit, particulars of which include, among others:
- a. In relation to the Credit Facility, NASE shall pay interest on amounts borrowed at a rate of the Bank's prime rate plus 1.20% per annum, for amounts owing on the Credit Facility;
 - b. In relation to the Visa Facility, NASE shall pay interest on amounts borrowed at the rate of 19.99% per annum, for amounts owing on the Visa Facility;
 - c. The amounts owing under the Credit Facility shall be repayable upon demand by the Bank at any time;
 - d. Up to \$300,000 may be carved out of the \$1,500,000 Credit Facility limit to be issued as a financial letter of credit with fees equal to the greater of \$200 and 1% per annum on issuance and renewal of each letter of credit;
 - e. The Debtors shall provide as security, among others:
 - i. a general security agreement by each of NASE and 212 providing a first ranking security interest in all present and after acquired personal property;
 - ii. an unlimited guarantee of the debts and liabilities of NASE under the Loan and Security Agreement by 212;
 - f. NASE shall maintain a Current Ratio (as defined in the Loan and Security Agreement) equal to or greater than 1.10:1 at all times;
 - g. NASE shall not borrow in excess of the Borrowing Base (as defined in the Loan and Security Agreement);
 - h. NASE shall provide to the Bank the following reports with respect to itself and 212:
 - i. Annual financial statements, subject to a review engagement by an independent accountant, within 120 days of each fiscal year end;

- ii. Internally prepared quarterly financial statements, within 45 days of each fiscal year end;
 - iii. A borrowing base calculation, an aged listing of accounts receivable, and an aged listing of trade accounts payable within 30 days of each month end;
 - i. An Event of Default occurs upon, among others: (i) failure the Debtors to pay any principal, interest or other amount when due to the Bank or to any other lender; (ii) breach by the Debtors of any term contained in, or any other default, under any other agreement between either of the Debtors and the Bank, or (iii) if the Bank determines that there is an adverse change in the financial condition of the Debtors;
 - j. on the occurrence of an Event of Default, among other remedies::
 - i. all amounts owing by NASE shall become immediately due and payable and bear interest at the Bank's prime rate plus 6% per annum;
 - ii. the Bank may immediately demand and collect the total amount owing from 212; and
 - iii. the Bank may realize on the Collateral (as defined below) at any time after an Event of Default if the obligations under the Loan and Security Agreement have not been paid in full.
5. Pursuant to the Loan and Security Agreement, 212 provided an unlimited guarantee on the following terms, among others:
- a. 212 agreed to pay to the Bank all of the present and future debts and other obligations owing by NASE to the Bank of any kind whatsoever (including interest, fees and expenses);
 - b. The Bank is entitled to demand payment from 212, as guarantor, without attempting to recover payment from NASE, or any other person;
 - c. 212 is liable to pay interest on all guaranteed amounts from the date of demand at the rate of the Bank's prime rate plus 6% per annum; and
 - d. 212 is liable to pay all expenses incurred by the Bank in collecting from 212 pursuant to the Loan and Security Agreement, including legal fees and disbursements on a solicitor and own client (full indemnity) basis.
6. Pursuant to the Loan and Security Agreement, the Debtors provided a general security agreement on the following terms, among others:
- a. The Debtors granted to the Bank a security interest in all of their present and after-acquired personal property other than goods used or acquired for use

- primarily for personal, family or household purposes (collectively, the "Collateral");
- b. The Bank is entitled to realize on the Collateral at any time after an Event of Default if the Debtors have not paid their obligations in full; and
 - c. The Bank is entitled to all rights and remedies available to it by law, in addition to those specified in the Loan and Security Agreement.
7. On December 9, 2019, the Bank issued a standby letter of credit to NASE in accordance with the terms of the Loan and Security Agreement, in the amount of \$282,106.87, with an expiry date of November 21, 2020.

212 CEBA Loan Agreement

8. By a Canada Emergency Business Account Credit Agreement dated April 24, 2020, between the Bank and 212 (the "**212 CEBA Loan Agreement**"), the Bank agreed to loan and did loan \$40,000 to 212, on the terms and conditions set out in the 212 Loan Agreement, among others:
- a. 212 shall not be required to pay interest until December 31, 2022;
 - b. 212 shall pay interest at the rate of 5.00% per annum on the outstanding balance of the loan after December 31, 2022;
 - c. An Event of Default occurs upon, among others:
 - i. Failure of 212 to observe or perform any provision of the terms and conditions under the 212 CEBA Loan Agreement;
 - ii. Default by 212 under any other agreement or arrangement between 212 and the Bank; or
 - iii. If the Bank has reason to suspect that 212 is engaged in any improper or unlawful conduct;
 - d. On the occurrence of an Event of Default, all amounts owing by 212 shall become immediately due and together.

Default & Demand for Repayment

9. Events of Default have occurred under the Loan and Security Agreement and the 212 CEBA Loan Agreement by reason of, among other things:
- a. NASE's failure to pay all sums of money when due under the Loan and Security Agreement;

- b. The Debtors' failure to observe the covenants, conditions and provisions contained in the Loan and Security Agreement, and more specifically, among others:
 - i. 212's failure to repay the indebtedness owing under the Loan and Security Agreement;
 - ii. NASE's failure to maintain a Current Ratio (as defined in the Loan and Security Agreement) of 1.10 to 1;
 - iii. NASE borrowing in excess of the Borrowing Base; and
 - iv. NASE's failure to deliver financial reporting.
- 10. On or about November 9, 2020, the Bank demanded immediate repayment in full of all amounts outstanding under the Loan and Security Agreement as at November 4, 2019, plus interest, costs, fees, and expenses accruing thereon from and after November 4, 2019.
- 11. On or about January 27, 2021, the Bank demanded immediate repayment in full of all amounts outstanding under the 212 CEBA Loan Agreement as at January 26, 2021, plus interest, costs, fees, and expenses accruing thereon from and after January 26, 2021.
- 12. The Debtors have failed to pay or fully pay the Bank in response to the demands.

The Indebtedness

- 13. 212 is indebted to the Bank pursuant to the Loan and Security Agreement and the 212 CEBA Loan Agreement in the amount of \$1,790,776.24 calculated as follows:
 - a. \$1,732,852.59 being the principal and interest due under the Loan and Security Agreement as at December 31, 2020;
 - b. \$40,000.00 being the principal and interest due under the 212 Loan Agreement as at December 31, 2020;
 - c. \$17,923.65 being the pre-litigation costs and expenses, including legal fees and disbursements, incurred by the Bank in relation to enforcement of the Loan and Security Agreements and in collecting any outstanding indebtedness, as at February 1, 2021

plus all costs, fees, and expenses accruing thereafter (collectively, the "**Indebtedness**").
- 14. The Indebtedness is a just debt, due and owing, to the Bank.

Remedy sought:

15. The Bank seeks the following remedies against the defendant, 212:
- a. Judgment for debt in the amount of 1,790,776.24;
 - b. Interest from and after December 31, 2020, on the sum of \$1,732,852.59 at the rate of the Bank's prime rate plus 6.00% per annum;
 - c. Further fees and expenses (excluding legal fees) incurred after February 1, 2021 and payable under the Loan and Security Agreement;
 - d. Costs on a solicitor and own client basis or, in the alternative, costs on an appropriate scale; and
 - e. An interim and permanent Order for the Appointment of a Receiver and/or Receiver and Manager.
 - f. Such further and other relief as this Honourable Court may allow.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff against you.