

This is **Exhibit "A"** referred to in **Affidavit #1** of **Susan Danielisz**, sworn before me at Vancouver, British Columbia, on September 25, 2023.



A Commissioner for taking Affidavits
for British Columbia

S 218110

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY
BETWEEN

SEP 13 2021

METRO-CAN CONSTRUCTION (AT) LTD.

PLAINTIFF



AND:

ALDERBRIDGE WAY LIMITED PARTNERSHIP,
 ALDERBRIDGE WAY GP. LTD., 0989705 B.C. LTD.,
 SAMUEL DAVID HANSON, JASON RATZLAFF, GRAHAM THOM,
 SOUTH STREET (ALDERBRIDGE) LIMITED PARTNERSHIP,
 SOUTH STREET (ALDERBRIDGE) GP LTD.,
 SOUTH STREET DEVELOPMENT MANAGERS LTD.,
 REV INVESTMENTS INC., GATLAND DEVELOPMENT CORPORATION and
 BRENT TAYLOR HANSON

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) File a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) Serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a Counterclaim, you or your lawyer must

- (a) File a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) Serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the Plaintiff

- (a) If you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) If you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) If you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) If the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

Parties

1. The Plaintiff, Metro-Can Construction (AT) Ltd. (the "Plaintiff"), is a company incorporated under the laws of British Columbia, with an address for service in this proceeding at McLean & Armstrong LLP, 300 - 1497 Marine Drive, West Vancouver, British Columbia, V7T 1B8.

2. The Defendant, Alderbridge Way Limited Partnership ("AWLP"), is a limited partnership registered under the laws of British Columbia by its general partner, the Defendant, Alderbridge Way GP Ltd. ("AWGP"), a company incorporated under the laws of British Columbia, with a registered and records office at 20th Floor, 250 Howe Street, Vancouver, British Columbia, V6C 3R8 (collectively, "Alderbridge").

3. The Defendant, Samuel David Hanson, is a businessman with a mailing and delivery address at 200-1778 West 2nd Avenue, Vancouver, British Columbia, V6J 1H6.

4. The Defendant, Brent Taylor Hanson, is a businessman with a mailing and delivery address at 200 - 1778 West 2nd Avenue, Vancouver, British Columbia, V6J 1H6.

5. The Defendant, Jason Ratzlaff, is a businessman with a mailing and delivery

address at 28235 Smith Avenue, Abbotsford, British Columbia, V4X 1C6.

6. The Defendant, Graham Thom, is a businessman with a mailing and delivery address at 760-1040 West Georgia Street, Vancouver, British Columbia, V6E 4H1.

7. The Defendant, REV Investments Inc. ("REV"), is a company incorporated under the laws of British Columbia with a registered and records office at 28235 Smith Avenue, Abbotsford, British Columbia, V4X 1C7.

8. The Defendant, Gatland Development Corporation ("Gatland") is a company incorporated under the laws of British Columbia with a registered and records office at Suite 760 – 1040 West Georgia Street, Vancouver, British Columbia, V6E 4H1.

9. The Defendant, 0989705 B.C. Ltd. (the "Owner") is a company incorporated under the laws of British Columbia, with a registered and records office at 1600-925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.

10. At all material times, the Owner was the registered owner of the lands located in the City of Richmond, in the Province of British Columbia and legally described as:

PID: 030-721-733

LOT 1 SECTION 5 BLOCK 4 NORTH RANGE 6 WEST NEW WESTMINSTER
DISTRICT PLAN EPP86098

(the "Lands")

11. Pursuant to the *Builders Lien Act*, the Owner is the "owner" at whose request the Project was commenced.

12. Mr. S. Hanson, Mr. Ratzlaff and Mr. Thom are and were at all material times the directors of Alderbridge and the Owner.

13. The Defendant, South Street (Alderbridge) Limited Partnership ("South Street LP"), is a limited partnership registered under the laws of British Columbia by its general partner, the Defendant, South Street (Alderbridge) GP Ltd. ("South Street GP"), a company

incorporated under the laws of British Columbia, with a registered and records office 1600-325 West Georgia Street, Vancouver, British Columbia, V6C 3L2 (collectively "South Street").

14. The Defendant, South Street Development Managers Ltd. ("South Street Development") is a company incorporated under the laws of British Columbia, with a registered and records office at 1600-925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.

15. Mr. S. Hanson and/or Mr. B. Hanson were at all material times the shareholders and directors of South Street and South Street Development.

16. At all material times, South Street LP, South Street, South Street Development, REV and/or Gatland were the owners of the Alderbridge and/or the Owner.

Construction Contracts

17. In or about April 2019, the Plaintiff was engaged by Alderbridge to perform excavation and related on-site and off-site civil works pursuant to two stipulated price contracts between Alderbridge and the Plaintiff (collectively the "Contracts"), for the construction of a mixed-use project to be known as 'Atmosphere' (the "Project") on the Lands.

18. Terms of the Contracts included, *inter alia*, the following:

- (a) Alderbridge would pay the Plaintiff the stipulated prices of \$8,904,000 (with respect to the "Excavation Contract") and \$2,497,574.10 (with respect to the "Offsite Services Contract") and subject to modification for Changes, by way of progress payments due and payable within 30 days of receipt of an invoice;
- (b) Additions or changes to the work to be performed by the Plaintiff would be paid for by Alderbridge at cost plus 10% in addition to the original stipulated

sums;

- (c) Interest would become due and payable on overdue amounts;
- (d) Alderbridge would maintain sufficient equity in the Project and reasonable financing arrangements so as to fulfill the obligations to the Plaintiff under the Contracts;
- (e) Statutory holdback of 10% of each progress draw would be held in trust for payment to the Plaintiff in accordance with the *Builders Lien Act*, and
- (f) Such other terms as may be proven at trial.

Nonpayment & Breach of the Contracts

19. In accordance with the terms of the Contracts, the Plaintiff supplied work and materials to the Project and invoiced Alderbridge accordingly.

20. In total during the course of construction, the Plaintiff submitted the following invoices, including which a total of \$15,231,204.30 was invoiced:

- (a) 18 monthly progress invoices under the Excavation Contract totaling \$12,769,349.24 inclusive of taxes, each of which were certified and approved by Alderbridge and/or it's agents; and
- (b) 6 monthly progress invoices under the Offsite Services Contract totaling \$2,239,478.73 inclusive of taxes, each of which were certified and approved by Alderbridge and/or it's agents.

21. Included in the Plaintiff's invoicing were amounts due under the Contracts on account of extra work performed as reflected in separate Change Orders.

22. In breach of the Contracts, Alderbridge has refused and/or neglected to make full payment of amounts owing to the Plaintiff for the materials supplied, despite demand. Of

the total amounts invoiced by the Plaintiff pursuant to the Contract, only \$8,616,647.53 has been paid by Alderbridge.

23. There remains \$8,675,549.62 due and owing to the Plaintiff from Alderbridge under the Contracts including statutory holdback withheld on earned progress, plus interest.

Lien Claims

24. On or about September 15, 2020, December 11, 2020, and March 1, 2021, the Plaintiff made several claims of lien pursuant to the *Builders Lien Act*, S.B.C. 1997, c. 45 (the "*Builders Lien Act*") alleging that the total sum of \$8,675,549.62 was due and owing, by causing the following claims of lien to be filed against the Lands in the New Westminster Land Title Office:

Date of Lien Filing	Amount	Registration No.
September 15, 2020	\$1,390,796.43	CA8430749
September 15, 2020	\$11,291.75	CA8430747
September 15, 2020	\$25,200.00	CA8430750
September 15, 2020	\$6,351,083.73	CA8430748
December 11, 2020	\$17,895.73	CA8639514
December 11, 2020	\$161,061.55	CA8639513
March 1, 2021	\$708,096.01	CA8808803
March 1, 2021	\$10,124.42	CA8808900

(collectively the "Liens")

25. As of the date of the filing of the Liens, the Contracts had not been completed and

the improvement had been completed or abandoned.

26. The Plaintiff has complied with the provisions of the *Builders Lien Act* and is entitled to a Lien on the Lands.

Holdback Claim

27. Alderbridge and/or the Owner were each obligated by section 4 of the *Builders Lien Act* to retain a holdback from the amounts payable to the Plaintiff with respect to the Project.

28. The Plaintiff is a company engaged, in connection with an improvement on the Lands. Accordingly, any such holdbacks retained by those Defendants (the "Holdbacks") are charged with payment of the amount of \$8,675,549.62 to the Plaintiff.

29. The Holdbacks were to be held in trust for the benefit of the Plaintiff.

Construction Financing

30. Pursuant to the Contracts, Alderbridge represented to the Plaintiff that it had sufficient financial arrangements to fulfill the obligations to the Plaintiff under the Contracts.

31. Additionally or alternatively, the directors of Alderbridge personally represented to the Plaintiff that Alderbridge had sufficient financial arrangements to fulfill the obligations to the Plaintiff under the Contracts and that the Plaintiff would be paid for work performed.

32. Pursuant to a number of instruments unknown to the Plaintiff, Alderbridge and/or the Owner secured financing for purposes of construction of the Project and payment to the contractors, including the Plaintiff.

33. Pursuant to the multiple lending facilities obtained by Alderbridge and/or the Owner, \$261,337,090.88 was advanced pursuant to multiple draws for the purposes of construction of the Project and payment to the contractors, including the Plaintiff.

34. The Plaintiff reasonably relied on the representations made by Alderbridge and/or the directors of Alderbridge in continuing with construction.

35. The representations made by Alderbridge and/or the directors of Alderbridge were knowingly false and/or negligently made.

36. The representations made by Alderbridge and/or the directors of Alderbridge were made for the purpose(s) of inducing the Plaintiff to continue to perform work.

37. The Plaintiff's reliance on the representations made by Alderbridge and/or the directors of Alderbridge resulted in loss and/or damages.

Breach of Trust(s)

38. During the course of the Project, Alderbridge and/or the Owner received money on account of the Plaintiff's supply of work and materials under the Contracts for purposes of construction of the Project.

39. Additionally, under the *Builders Lien Act*, the Holdbacks were to be held in trust for the Plaintiff.

40. The funds advanced and/or required to be held in trust for the Plaintiff (including the Holdbacks) are, by operation of law, the subject of a trust (the "Trust") for the benefit of the Plaintiff, with Alderbridge, Mr. S. Hanson, Mr. Ratzlaff and Mr. Thom acting as trustees.

41. In breach of trust, Alderbridge, Mr. S. Hanson, Mr. Ratzlaff and/or Mr. Thom appropriated or converted all or part of the Trust funds for a use not authorized thereunder.

42. Mr. S. Hanson, Mr. Ratzlaff and/or Mr. Thom have knowingly assented to, directed and/or acquiesced in the breach of trust and/or knowingly received or applied the Trust funds or property derived from the Trust funds to their own benefit.

43. Mr. S. Hanson, Mr. Ratzlaff and/or Mr. Thom 's conduct constitutes a breach of

trust actionable against them personally.

44. The Plaintiff has suffered loss and damage as a result of the breaches of trust of Alderbridge, Mr. S. Hanson, Mr. Ratzlaff and Mr. Thom personally.

Conversion & Unjust Enrichment

45. The construction financing and advances made under such facilities was obtained and made in whole or in part on the basis of construction progress and work performed by the Plaintiff and its trades.

46. Under the lending agreements, Alderbridge and/or the Owner as debtors were obligated to pay to the Plaintiff amounts advanced on account of work performed and the Plaintiff was entitled to immediate payment of such funds advanced.

47. Each or any of the Defendants, South Street LP, South Street, South Street Development, REV, Gatland, Samuel Hanson and/or Brent Hanson, unlawfully and wrongly converted for their own use all or a portion of the funds advanced for purposes of paying the Plaintiff for work performed.

48. By their wrongful conversion of funds advanced for payment to the Plaintiff, each or any of the Defendants, South Street LP, South Street, South Street Development, REV, Gatland, Samuel Hanson and/or Brent Hanson were unjustly enriched and the Plaintiff was concurrently deprived of its entitlement to payment.

49. There is no juristic reason for the enrichment of each or any of the Defendants, South Street LP, South Street, South Street Development, REV, Gatland, Samuel Hanson and/or Brent Hanson.

Part 2: RELIEF SOUGHT

The following relief is sought against Alderbridge and/or the directors of Alderbridge.

Samuel Hanson, Jason Ratzlaff and/or Graham Thom:

1. Judgment for debt in the amount of \$8,675,549.62;
2. Damages for breach of contract;
3. An order that all proper and necessary directions, accounts, inquiries, and references be taken;
4. Interest pursuant to the Contracts or, alternatively, the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
5. Costs; and
6. Such further and other relief as the nature of this case may require and this Honourable Court may deem fit.

The following relief is sought pursuant to the *Builders Lien Act*:

7. A declaration that the Plaintiff is entitled to a lien pursuant to the *Builders Lien Act* in the amount of \$8,675,549.62 against the Lands, Improvement and/or Holdbacks retained by the Defendants, or any of them;
8. A declaration that the Plaintiff's liens are a first charge, lien or encumbrance in preference or priority to all the rights, title and interest of the Defendants;
9. A judgment or order that, in default of payment of \$8,675,549.62 and costs, the Lands and the improvements thereon be sold, the Holdback be paid and/or the Security be realized, as applicable, for the purpose of paying the amount of the Lien and costs pursuant to the *Builders Lien Act*;
10. A declaration that in breach of the statutory trust created by sections 10 and 11 of the *Builders Lien Act*, Alderbridge converted or appropriated the Trust Funds held in trust for the Plaintiff with the acquiescence and/or knowledge of Messieurs S. Hanson, Ratzlaff

and Thom;

11. A Certificate of Pending Litigation;
12. An order that all proper and necessary directions, accounts, inquiries, and references be taken;
13. Interest pursuant to the Contracts or, alternatively, the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
14. Costs including for drafting and filing the Liens; and
15. Such further and other relief as the nature of this case may require and this Honourable Court may deem fit.

The following relief is sought against South Street LP, South Street, South Street Development, REV, Gatland, Samuel Hanson and Brent Hanson:

16. An order that all proper and necessary directions, accounts, inquiries, and references be taken;
17. Judgment for damages in the amount of \$8,675,549.62;
18. Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
19. Costs; and
20. Such further and other relief as the nature of this case may require and this Honourable Court may deem fit

Part 3: LEGAL BASIS

Breach of Contract Claim

1. In breach of the Purchase Agreement, Alderbridge has refused or neglected to make payment to the Plaintiff of the sum of \$8,675,549.62, despite demand.

2. As a result of the breach of the Contracts, the Plaintiff has suffered, and continues to suffer, damage, loss, and expense.

Builders Lien Act Claim

3. The Plaintiff is an eligible lien claimant and is entitled to a lien against the Lands, improvement and/or Holdbacks in accordance with the principles in *Shimco Metal Erectors Ltd. v. North Vancouver (District)*, 2003 BCCA 193.

4. Alderbridge misappropriated and/or converted funds subject to the Trust, in breach of sections 10 and 11 of the *Builders Lien Act*, and with the knowledge, acquiescence and/or direction of Messieurs S. Hanson, Ratzlaff and Thom.

Misrepresentation

5. The representations made by Alderbridge and/or the directors of Alderbridge personally with respect to the construction financing were false.

6. Alderbridge and/or the directors of Alderbridge made the representations knowing they were false.

7. The Plaintiff reasonably relied on the representations.

8. The Plaintiff's reliance on the false representations resulted in loss and/or damages.

Conversion and/or Unjust Enrichment

9. The advances were made on account of the work performed by the Plaintiff and its subtrades.

10. Each or any of the Defendants, South Street LP, South Street, South Street Development, REV, Gatland, Samuel Hanson and/or Brent Hanson, wrongly converted for their own use the funds advanced for payment to the Plaintiff, who was deprived of receipt of funds to which it was entitled.

11. The Defendants' actions enriched them and concurrently deprived the Plaintiff.
12. There is no juristic reason for the Defendants' enrichment.

Plaintiff's Address for Service: McLean & Armstrong LLP
 Barristers & Solicitors
 300 - 1497 Marine Drive
 West Vancouver, BC V7T 1B8
 Attention: Chris Moore
 [Telephone: 604-925-0672]


Fax number address for service: *None*

Email address for service: *None*

Place of trial: Vancouver, BC

The address of the registry is: 800 Smithe Street
 Vancouver, BC V6Z 2E1

Dated: September 13, 2021


 Signature of Lawyer for the Plaintiff
 McLean & Armstrong LLP
 Per: Chris Moore

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) Prepare a List of Documents in Form 22 that lists
 - (i) All documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) All other documents to which the party intends to refer at trial, and
 - (b) Serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Claim for debt and damages pursuant to a contract secured by a claim of lien.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investments losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES

[Check all boxes below that apply to this case]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Builders Lien Act, S.B.C. 1997, c. 45.

Court Order Interest Act, R.S.B.C. 1996, c. 79.