



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-24-00715153-00CL DATE: JULY 2, 2025

NO. ON LIST: 4

TITLE OF PROCEEDING: **EXPORT DEVELOPMENT CANADA v. ANTAMEX INDUSTRIES ULC et al**

BEFORE: **JUSTICE W.D. BLACK**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Mitch Stephenson	Applicant	mstephenson@fasken.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Daniel Fridmar	Subcontractor, Alumicor Limited	dan@fridmar.com
Asim Iqbal	Stuart Olson Construction Ltd.	asim.iqbal@gowlingwlg.com
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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Caitlin McIntyre	Receiver	caitlin.mcintyre@blakes.com

ENDORSEMENT OF JUSTICE W.D. BLACK:

- [1] This was a motion by Deloitte Restructuring Inc. ("Deloitte"), in its capacity as the court-appointed receiver and manager (in such capacity the "Antamex Receiver"), of all of the assets, undertakings and property acquired for or used in connection with the business of Antamex Industries ULC ("Antamex"). Deloitte was also appointed as the receiver (the "256 Receiver"), of the property of 256 Victoria West ULC ("256 Victoria, and together with Antamex, the "Debtors"). 256 Victoria is a related party to Antamex, and owns the Alliston Premises (as defined in the materials, and from time to time I will use

other terms as defined in the materials) at which Antamex was a tenant. The 256 Appointment Order authorized the procedural consolidation of the receivership proceedings in respect of the Debtors (and as such I will refer to Deloitte, in its capacities as Antamex Receiver and 256 Receiver as the “Receiver” except where more precise identification of the particular role is required).

- [2] The motion seeks various items of relief.
- [3] In respect of one of those items, which was to seek approval of a proposed settlement with Glass Enterprises Northeast LLC (“GEN”), the Receiver advised at the outset of the hearing that by agreement with GEN, the request for approval of the proposed settlement will be deferred, and is no longer sought before me today.
- [4] That left a number of items of relief sought.
- [5] Only one of those items is somewhat contentious, and so I will deal with it below.
- [6] In terms of unopposed and uncontentious items, the Receiver first sought approval for certain proposed interim distributions.
- [7] Those proposed interim distributions are to EDC in particular, which was owed \$10,462,962.93 by Antamex pursuant to a Credit Facility dated November 5, 2021 among EDC as lender, Antamex as borrower and Naverra LLC (“Naverra” an affiliate of Antamex) as guarantor. That amount has continued to accrue interest and now stands at approximately \$10.9 million. The Receiver’s counsel has opined that the security documentation in connection with the Credit Facility created a valid security interest in favour of EDC against the property of Antamex.
- [8] The Receiver notes that in accordance with this court’s Distribution and Ancillary Matters Order dated January 31, 2025 (the “RBC Distribution Order”) distributions were made to RBC, a senior secured creditor, from the estates of 256 Victoria and Antamex in full satisfaction of the debts owed to RBC.
- [9] In addition, all leased equipment was returned to equipment lessors earlier on in these proceedings, and so the amounts the Receiver seeks to distribute to EDC do not constitute the proceeds of sale of such equipment.
- [10] Accordingly, the Receiver is requesting authorization from the court to make the following interim distribution (the “Interim Distribution”), from the following sources:
 - (a) Auction Proceeds: as set out in the Receiver’s Fourth Report, following the court-approved auction in respect of Antamex’s property located on the Premises the Receiver was holding \$2,273,455 in proceeds (the “Auction Proceeds”). In accordance with the RBC Distribution Order a portion of the Auction Proceeds was used to satisfy the balance of RBC’s claim against the Debtors. The Receiver continues to hold \$2,011,991 of the Auction Proceeds;
 - (b) 256 Reserve: in accordance with the RBC Distribution Order, \$650,000 was held back by the Receiver from the proceeds of the real property transaction in the 256 Victoria estate pending a final accounting of matters relating to the estate of 256 Victoria. The Receiver has now completed that final accounting and, in accordance with the RBC Distribution Order, Antamex has a subrogated claim, to that of RBC, against 256 Victoria in the amount of \$618,544.32 which may be distributed to Antamex for the benefit of its creditors;

- (c) Ancillary Relief Order Funds: the Receiver is holding approximately \$2,200,000 (the “Ancillary Relief Order Funds”) in relation to the payment made by the Sureties under the Ancillary Relief Order as directed by this court in a February 18, 2025 endorsement; and
- (d) Project Funds: the Receiver seeks authorization to distribute to EDC any funds that have been determined not to be funds held in trust for a Subcontractor or other trust claimant. Funds over which a dispute exists, including all funds on the South Station Project and the 520 Matteo Project, will be held back from such distribution.

[11] The Receiver has confirmed that there are sufficient funds in Antamex’s estate to satisfy all priority payables, including employee amounts, notwithstanding the proposed Interim Distribution.

[12] I find that the proposed Interim Distribution is reasonable, and as noted is unopposed, and I order it.

[13] In addition, and also unopposed and apparently uncontentious, the Receiver seeks (pursuant to the Appointment Orders), authorization for payment of its fees and expenses, and those of its counsel in connection with the ongoing administration of these receivership proceedings.

[14] Specifically, the Receiver seeks approval of fees in the following amounts:

- (a) Fees of the Receiver in the amount of CAD \$487,705.00 plus HST and disbursements for the period September 1, 2024 to May 30, 2025;
- (b) Fees of the Receiver’s counsel, Blakes, in the amount of CAD \$614,469.50 plus HST and disbursements for the same period;
- (c) Fees of U.S. counsel to the Receiver, Perkins Coie LLP, in the amount of USD \$72,637.60 plus disbursements for the same period; and
- (d) Fees of Delaware counsel to the Receiver, Chipman Brown Cicero & Cole in the amount of USD \$6,960.00 plus disbursements for the period July 24, 2024 to May 31, 2025.

[15] Again, these amounts strike me as reasonable in the circumstances, and in the absence of any opposition I order them as well.

[16] That leaves for determination an amount claimed by Alumicor Limited (“Alumicor” and the “Alumicor Claim”), a subcontractor on a project undertaken at York University (the “YorkU Project”).

[17] The context for the Alumicor Claim relates to a Project Material Agreement dated April 19, 2024 (the “Project Material Agreement”), between the Receiver and Stuart Olson Construction Ltd. (“Stuart Olson”), a general contractor on the YorkU Project.

[18] Pursuant to the Project Material Agreement, in order to allow the YorkU Project not to be stalled unduly as a result of the Receivership, all materials related to the YorkU Project were released to Stuart Olson upon payment by Stuart Olson of outstanding accounts receivable related to the YorkU Project.


[19] Stuart Olson disputed that certain amounts forming part of the accounts receivable were payable to Antamex. Under the Project Material Agreement, the Receiver agreed to hold the disputed amount,

\$562,893.44 (the “Disputed Amount”) in trust for Stuart Olson pending a resolution of the parties’ entitlement.

- [20] As expressly confirmed in the Project Material Agreement, the Disputed Amount was paid to the Receiver in trust to facilitate a commercial resolution by allowing the immediate release to and pick-up by Stuart Olson of certain materials in Antamex’s possession and urgently needed to complete the YorkU Project.
- [21] The Receiver has now reviewed the proof of claim filed by Stuart Olson, and the agreements between Stuart Olson and Antamex, and has confirmed that: (i) Stuart Olson has a valid contractual right to set off its damages against the accounts payable to Antamex on the date of the Receiver’s appointment; and (ii) Stuart Olson has sustained damages that exceed the Disputed Amount.
- [22] The Receiver therefore seeks this court’s authorization to return the Disputed Amount to Stuart Olson. Stuart Olson, whose counsel was in attendance at the motion, supports that request.
- [23] Also in attendance before me was counsel for Alumicor.
- [24] Alumicor was a materials supplier on the YorkU Project. It was retained by Antamex to fabricate and supply various aluminum doors and frames to be used on the YorkU Project (the “Materials”).
- [25] On January 23, 2024, Alumicor supplied the Materials to the YorkU Project pursuant to a purchase order, which Materials were received and accepted by Antamex.
- [26] After learning of the Receivership, but not yet knowing the particulars of the Project Material Agreement, Alumicor submitted a proof of claim within the Trust Claims Process established by order of Dietrich J., dated March 26, 2025.
- [27] After receiving a notice of disallowance of its claim (on June 17, 2025), Alumicor sought to obtain from the Receiver’s counsel a copy of the Project Materials Agreement, in order to determine whether the materials to be delivered to Stuart Olson following the payment of the Disputed Amount related to the Materials supplied by Alumicor.
- [28] In response, the Receiver advised that the Disputed Amount was “expressly held in trust for Stuart Olson, and not held as “Project Funds” for the benefit of other potential claimants. The Receiver reviewed the documentation provided by Stuart Olson and agrees that the accounts receivable were not payable to Antamex. The Receiver is therefore required to return the Disputed Amount to Stuart Olson.”
- [29] Following discussions between counsel for Alumicor and the Receiver, the Receiver provided a copy of the Project Material Agreement.
- [30] Upon review of the Project Material Agreement, Alumicor says that it is “crystal clear” that the materials that Stuart Olson had Antamex release were indeed Alumicor’s Materials.
- [31] Based on confirming that the Materials were in fact Alumicor’s Materials, the Receiver delivered a revised Notice of Disallowance (in response to Alumicor’s proof of claim), confirming that Alumicor was entitled to 100% of its claimed amount for the Materials delivered, with the caveat that this amount would not be paid out in full at this juncture, but would instead be pro-rated based on the available funds to all subcontractors on the YorkU Project.

- [32] Alumicor maintains that under the *Construction Act*, RSO 1990, c. C.30, (the “Act”), the Disputed Amounts were impressed with a trust under section 8 of the Act, such that any contractual set-off that Stuart Olson might claim under the Antamex Subcontract cannot be applied to those trust funds until the owner’s \$2.35 million holdback has been dealt with and all lien claim rights have expired, as required under ss. 12 and 30 of the Act.
- [33] Alumicor argues further that the Receiver cannot “contract out” of the Act.
- [34] Stuart Olson responds that the Act does not apply to the distribution the Receiver seeks to make. Pursuant to the Project Material Agreement, Stuart Olson asserts, the Receiver holds the Disputed Amounts in escrow and subject to an express trust for Stuart Olson pending resolution of the entitlement dispute. The Receiver, as noted, has completed that review and determined that Antamex has no entitlement to the Disputed Amounts.
- [35] Stuart Olson argues that the Disputed Amounts are not trust funds under the Act in that they were not made “on account of the contract or subcontract price of an improvement” within the meaning of subsection 8(1) of the Act. To properly constitute trust funds, subsection 8(1) of the Act requires that the amounts in question must be “on account of the contract or subcontract price of an improvement...”. As such, Stuart Olson says that Alumicor’s premise that “all amounts, regardless of how they are received, constitute a trust” is incorrect.
- [36] Stuart Olson points out that the Project Material Agreement confirms that the Disputed Amounts were to be held in trust “pending a consensual resolution or Court determination” of entitlement. In other words, Stuart Olson argues, the payment was made precisely because entitlement had not yet been established, and not in satisfaction of or on account of a subcontract obligation. It says that the only operative trust relevant to this analysis is the common law trust created by the Project Material Agreement in favour of Stuart Olson, not the deemed trust under the Act.
- [37] Stuart Olson also points out that the funds were not “received by a contractor or subcontractor” under subsection 8(1)(b) of the Act. While the Receiver stands in Antamex’s shoes for some purposes, the Receiver is a court officer appointed over Antamex’s property, assets and undertaking, of which the YorkU Project is a part. Stuart Olson says it paid the Disputed Amount to the Receiver in that capacity.
- [38] Finally, Stuart Olson argues that the Disputed Amounts do not form part of the statutory holdback required by the Act. Stuart Olson’s records show that the statutory holdback retained by York University includes the amount of \$2,345,984.84 on account of the Antamex Subcontract, equal to 10% of the net amounts certified and paid to Antamex.
- [39] York University continues to retain that entire holdback amount. Sections 12 and 30 of the Act therefore do not restrict Stuart Olson’s contractual set-off against the Disputed Amounts.
- [40] Moreover, Alumicor is a party to and is pursuing its lien rights within an ongoing construction lien proceeding related to the YorkU Project in this court in Newmarket.
- [41] Counsel for Alumicor candidly acknowledged that, but for the Receivership and the Project Material Agreement, Alumicor would be left to do exactly what it is doing, that is, pursuing its claim within the ongoing construction lien proceedings.

- [42] As the Receiver puts it, “the Trust Claims process has no effect on Alumicor’s ability to pursue its lien claim filed on the YorkU Project or any claim it may have against Stuart Olson directly.”
- [43] The Receiver of course confirms that it will be bound by this court’s direction, but says that “in the Receiver’s view, it is obligated to return the Disputed Amount to Stuart Olson.”
- [44] I agree.
- [45] It seems evident that Alumicor sees in the Project Material Agreement an opportunity potentially to jump the lien claim process and leapfrog other claimants by asserting a direct claim to the Disputed Amounts.
- [46] In my view the provisions of the Act on which Alumicor relies do not fit the unique circumstances of the Project Material Agreement, which was a one-off practical commercial solution to avoid a delay that would potentially prejudice an array of stakeholders.
- [47] While I do not blame Alumicor for “trying it on”, I am not prepared to grant its claim. Accordingly, I authorize the Receiver to pay the Disputed Amount to Stuart Olson as determined under the Project Material Agreement. Alumicor is not foreclosed from pursuing its lien claim and any claim that it may have against Stuart Olson directly.
- [48] Given these findings, an order is to issue in the terms of the order provided by the Receiver (amended to remove reference to the GEN settlement approval, which is deferred). I have attached a signed copy of that order.



W.D. BLACK J.

DATE: JULY 2, 2025