

TruGrp v. Karmina: Returning clarity and certainty to the use of letters of credit to vacate construction liens

November 07, 2024

In the Ontario Superior Court's decision of [TruGrp v. Karmina, 2024 ONSC 2165](#), the Court adjourned TruGrp's motion challenging the adequacy of a letter of credit as security to vacate a claim for lien, pending submissions from the Accountant of the Superior Court (the Accountant) and the issuing bank, the Bank of Montreal. For more information on that decision, please see our previously published piece in the Daily Commercial News by ConstructConnect™, "[TruGrp v. Karmina - Uncertainty in the use of letters of credit to vacate construction liens?](#)", from June 2024.

Recently, the Court released its endorsement in [TruGrp v. Karmina, 2024 ONSC 4643](#), following up on this prior decision.

Details of the new decision

The Court noted that the Accountant and the Bank of Montreal provided written positions for the Court's review.

With respect to the language in the letter of credit that allowed the Bank of Montreal to decline renewal of the letter of credit upon 30 days' notice, the Accountant stated that a letter of credit with such language is acceptable security.

The Accountant also stated that a further court order with respect to the use of the bank draft as security would only be required in circumstances where the letter of credit is being replaced by a bank draft from a party other than the issuing bank. The Bank of Montreal agreed with the Accountant's position.

As a result of the Accountant's written position, TruGrp ultimately did not proceed with the motion.

Key takeaway

While the Court did not need to render a decision, the Accountant's position was clear that letters of credit with similar, commonly used renewal provisions are in fact valid security to vacate a claim for lien. This short endorsement provides much needed clarity and returns certainty to the use of letters of credit as security to vacate construction liens.

Contact us

For more information on this case, or to obtain assistance with construction liens in general, please reach out to one of the key contacts listed below or any lawyer from [BLG's Construction Group](#).

By

[Richard Yehia](#), [Evan Ivkovic](#)

Expertise

[Construction](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](#)

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from

BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.