

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DIRECTOR, *NEW HOME CONSTRUCTION LICENSING ACT, 2017*

Applicant

- and -

ALBION BUILDING CONSULTANT INC. AND ZAMAL HOSSAIN

Respondents

APPLICATION under section 71 of the *New Home Construction Licensing Act, 2017*, S.O. 2017, c. 33, Sched. 1.

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In writing
- In person
- By telephone conference
- By video conference

at the following location:

330 University Avenue, Toronto ON M5G 1R7

(*Courthouse address or telephone conference or video conference details, such as a dial-in number, access code, video link, etc. if applicable*)

on a date to be set by the registrar

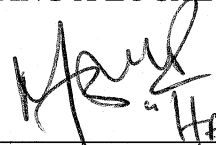
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: August 9, 2024

Issued by:


"Haman A. HANDEr"
Local registrar

Address of 330 University Avenue 8th Floor
Court office: Toronto, ON
M5G 1R7

TO: ALBION BUILDING CONSULTANT INC.
3028 Danforth Avenue, Suite 211
Toronto, ON
M4C 1N2

AND TO: ZAMAL HOSSAIN
18 Red Deer Avenue
Toronto, ON
M1N 2Y8

APPLICATION

1. THE APPLICANT MAKES AN APPLICATION FOR:

- a. An Order restraining the Respondents and their agents, employees, and persons acting under the Respondents' instruction from breaching the requirements of the *New Home Construction Licensing Act, 2017 ("NHCLA")* and its regulations;
- b. An Order restraining Albion Building Consultant Inc. ("Albion") its agents, employees, and persons acting under Albion's instruction from breaching the Freeze Orders issued by the Director on February 26, 2024, pursuant to sections 65(1)(b) and 65(1)(c) of the *NHCLA*;
- c. An Order restraining Albion its agents, employees, and persons acting under Albion's instruction from breaching the Freeze Order issued by the Director on June 27, 2024, pursuant to section 65(1)(a) of the *NHCLA*;
- d. An Order that this matter be heard on an urgent or expedited basis;
- e. An Order abridging time for serving and filing this Notice of Application and any supporting materials, if necessary;
- f. The Applicant's costs in this application; and
- g. Such further and other relief as this Honourable Court deems just.

2. THE GROUNDS FOR THE APPLICATION ARE:

Overview

- a. Zamal Hossain (“Hossain”) has been operating a new home construction business in Ontario for over a decade. Throughout that time, he has shown complete disregard for the laws regulating new home builders and vendors in Ontario. Despite numerous attempts by the Home Construction Regulatory Authority (“HCRA”) and its predecessor, Tarion Warranty Corporation (“Tarion”), to gain compliance, Hossain (through Albion) continues to build and sell new homes contrary to the *NHCLA*.
- b. The Respondents have been convicted of offences under the *Ontario New Home Warranty Plan Act* (“*ONHWPA*”) multiple times, Albion has had its licence revoked, and the Applicant has issued Freeze Orders on or in relation to Albion. Despite these escalating efforts, the Respondents continue to build and sell new homes contrary to the *NHCLA*.
- c. The Respondents have shown a history of flagrantly disobeying orders issued by both the HCRA and the Licence Appeal Tribunal (“LAT”). The Applicant, therefore, turns to this Honourable Court for assistance in achieving the compliance of the Respondents.

The Parties

- d. The Applicant, Director, *New Home Construction Licensing Act, 2017* (the “Director”), is the person appointed by the Home Construction Regulatory Authority (“HCRA”) pursuant to section 36 of the *NHCLA*.
- e. The HCRA is a not-for-profit corporation that was designated by the provincial government to administer and enforce the *NHCLA* and associated regulations effective February 1, 2021.
- f. The HCRA regulates new home builders and vendors in the province. It seeks to protect the public interest through a fair, safe and informed marketplace that supports the goal of a continuously improved homebuilding industry in Ontario.
- g. The Respondent, Albion, is a federal corporation that was incorporated on February 4, 2015. Its head office is in Toronto, Ontario.
- h. The Respondent, Hossain, is an individual who resides in Toronto, Ontario. He is the sole officer/director of Albion. Hossain is also an officer/director of several related companies that are used by him in this illegal building/vending scheme.

Builders and Vendors of New Homes Require an HCRA Licence

- i. The *NHCLA* requires anyone acting as a builder or vendor of a new home in the Province of Ontario to be licensed by the HCRA.
- j. The *NHCLA* prescribes conditions that attach to each HCRA licence. These conditions, *inter alia*, require a licensee to comply with any policies, rules,

directions, conditions, obligations, or requirements imposed on the licensee by Tarion.

- k. Tarion and the *ONHWPA* require builders and vendors to ensure that new homes qualify for, and are enrolled in, the statutory new home warranty plan.
- l. Prior to February 1, 2021, Tarion was responsible for licensing builders/vendors and managing the warranty program. After February 1, 2021, these functions have been split. The HCRA licenses builders/vendors and Tarion manages the warranty program.

Albion is Not Licensed to Build or Sell New Homes

- m. On or about February 13, 2019, Albion became licensed as a builder/vendor of new homes in Ontario.
- n. On January 27, 2024, the HCRA revoked Albion's licence to build and sell new homes in Ontario. The HCRA had moved to refuse to renew Albion's licence due to numerous concerns about its ability to operate with honesty and integrity. In an Order dated January 27, 2023, the LAT upheld the HCRA's decision to refuse to renew Albion's licence but permitted Albion a maximum of one year to complete construction of 6 specifically identified homes Albion was constructing in compliance with the *NHCLA* and the *ONHWPA* (the "LAT Order").
- o. The HCRA learned that during this one-year wind-up period granted by the LAT Order, Albion did not simply complete construction of its legal existing projects identified in the LAT Order. Rather, it continued its business as usual and

continued to violate the *NHCLA* and *OHWPA* with impunity by commencing the building of other new homes without a licence.

- p. An HCRA investigation revealed 53 new homes built or sold by Albion, Hossain, or a related entity in violation of the *NHCLA* and/or the *ONHWPA*. Despite the LAT Order's wind-up period expiring on January 27, 2024, Albion continues to act as a builder and/or vendor of 11 homes and the HCRA believes it plans to start construction on more homes soon.
- q. Albion and Hossain continue to contravene the *NHCLA* by acting as builders and vendors of new homes in Ontario while unlicensed.

Albion Breaches Director Orders

- r. On February 26, 2024, the Applicant issued Freeze Orders on Albion, pursuant to sections 65(1)(b) and 65(1)(c) of the *NHCLA*, requiring Albion to refrain from withdrawing any asset or trust fund it had on deposit and to hold any assets it received from a purchaser of a new home in trust (the "February Freeze Orders"). The February Freeze Orders were served on Albion on February 27, 2024, when the HCRA executed a search warrant on Albion's office.
- s. The HCRA has learned that Albion has breached the February Freeze Orders by withdrawing funds from its bank account to pay trades/subcontractors that were involved in constructing new homes. Albion and Hossain are contravening orders made under the *NHCLA* by blatantly disregarding the February Freeze Orders and the LAT Order.

- t. As a result of this information, on June 27, 2024, the Applicant issued a further Freeze Order on Toronto Dominion Canada Trust (“TD Canada Trust”) accounts held by Albion, pursuant to section 65(1)(a) of the *NHCLA*. This Freeze Order required TD Canada Trust to hold all assets and/or trust funds contained in any account held by Albion and not to release such assets and/or trust funds to any person.
- u. Despite these efforts, the HCRA has learned that Albion continues to make attempts to circumvent these Orders by relying on other accounts to fund its continued unlicensed building and selling of new homes.

A Restraining Order is Necessary to Stop Albion and Hossain

- v. It appears to the Director that Albion and Hossain are contravening the *NHCLA* by continuing to act as builders and vendors of new homes in Ontario and by violating the February Freeze Orders.
- w. The HCRA requires the assistance of the Court in order to fulfill its mandate of public protection. The Respondents have proven themselves to be ungovernable and the enforcement tools used to date have been ineffective to protect the public in the face of flagrant disregard for the requirements of the *NHCLA* and its regulations.
- x. The Applicant also relies on:
 - i. *NHCLA*, s.37, 70, and 71;

- ii. *Courts of Justice Act* RSO 1990, c C.43, s. 101
- iii. *Rules of Civil Procedure*, RRO 1990 Reg 194, Rules 1.04, 2.03, 14.05(2), 38, and 40;
- iv. Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

- a. Affidavit of Keith Mottram, to be sworn, and all exhibits attached thereto; and
- b. Such further and other evidence as this Honourable Court may permit.

August 9, 2024

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Director, New Home Construction Licensing Act, 2017

CV-24-00725406-0000

Court File No.:

DIRECTOR, NEW HOME CONSTRUCTION LICENSING ACT, 2017 -and- Applicant

ALBION BUILDING CONSULTANT INC., et al. Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

NOTICE OF APPLICATION

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RCP-F 4C (September 1, 2020)