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

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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.

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