

PERSONS LIABLE FOR BREACH OF TRUST UNDER THE CONSTRUCTION LIEN ACT

Under the trust provisions of the Ontario *Construction Lien Act*, any monies received by a general contractor on account of its contract price for a project (including both progress and holdback payments) constitute trust funds for the benefit of the subcontractors who supplied service or materials to the project and are owed money for such services or materials.

The general contractor, as trustee, is precluded from using the trust funds for its own purposes, or for any purpose inconsistent with the trust, until all subcontractors who are owed amounts for services or materials supplied to the project are paid all such amounts.

Where the general contracting company misappropriates trust funds without paying the subcontractors on the project, the company is liable for damages for breach of trust. If the company is insolvent, that is not necessarily the end of the story.

If the trust funds can be traced into the hands of a third party (for example, the company's bank) who knew or ought to have known that the monies were trust funds, a claim for breach of trust may succeed against the third party.

Furthermore, section 13(1) of the *Construction Lien Act* provides:

“In addition to the persons who are otherwise liable in an action for breach of trust under the Part,

1. every director or officer of a corporation; and
2. any person, including an employee or agent of the corporation, who has effective control of a corporation or its relevant activities, who assents to, or acquiesces in, conduct that he or she knows or

reasonably ought to know amounts to breach of trust by the corporation is liable for the breach of trust.”

Section 13(1) permits a trust beneficiary to pierce the corporate veil in appropriate circumstances and legally pursue company directors who participated actively in the breach of trust.

This is an important and often underutilized debt collection remedy.