Court File No./N° du dossier du greffe : CV-26-00002440-0000

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

(Court Seal)

LONDON HEALTH SCIENCES CENTRE

Plaintiff

- and -

2473127 ONTARIO INC. c.o.b. as BH CONTRACTORS LTD., DIPESH PATEL, and MATTER ARCHITECTURAL STUDIO INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: 80 Dundas St.
London, Ontario N6A 6A3

TO: Matter Architectural Studio Inc.
300-1108 Dundas Street
London, ON N5W 3A7

AND TO: BH Contractors Ltd.
60 North Center Rd.
PO Box 27057, Masonville
London, ON N5X 3W0

AND TO: Dipesh Patel
2026 Case Court
London, ON N6G 5G1

CLAIM

1. The Plaintiff claims against the Defendants, Matter Architectural Studio Inc. ("**Matter**"), 2473127 Ontario Inc., carrying on business as BH Contractors ("**BH**"), and Dipesh Patel ("**Patel**"), jointly and severally, for:

(a) damages in the amount of $2,000,000, and such further amounts as may be particularized before trial;

(b) pre-judgment and post-judgment interest in accordance with the provisions of the *Courts of Justice Act*, RSO 1990, c C.43 as amended;

(c) costs of this proceeding on a substantial indemnity basis, together with applicable taxes; and

(d) such further and other relief as this Honourable Court may deem just.

The Parties

2. The Plaintiff, London Health Sciences Centre ("**LHSC**"), is a public hospital operating pursuant to the *Public Hospitals Act*, RSO 1990, c P.40. LHSC operates Victoria Hospital at 800 Commissioners Road East in London, Ontario. The Project, as defined below, concerned window replacement work at Building 26 on the Victoria Hospital campus.

3. The Defendant, Matter, is a corporation incorporated pursuant to the laws of the Province of Ontario, carrying on business as an architectural and design firm. Matter provided architectural and consulting services to LHSC in connection with the Victoria Hospital Building 26, Zones C and D (the "**Building**") window replacement project (the "**Project**").

4. The Defendant, BH, was the contractor, which was retained to perform window replacement work for LHSC in connection with the Project.

5. The Defendant, Patel, resides in London, Ontario. At all material times, Patel was LHSC's Vice-President of Facilities Management and responsible for, among other things, the administration and oversight of LHSC construction and facilities projects, including the Project.

6. Patel was directly involved in the procurement, administration, and payment certification and processes for the Project. Patel also had a direct or indirect personal or financial interest in BH, the nature and extent of which is within the knowledge of Patel and/or BH.

The Project and Background

7. The Project required the replacement of the window systems existing at the commencement of the Project, including window frames and insulated glazing units (the "**Window Systems**") on Levels three (3) through seven (7) of the Building. Initially, the Project was planned to take three (3) years to complete.

8. In or around April 2023, LHSC retained Matter to provide architectural and consulting services in connection with the Project. Matter prepared and issued drawings and the Issued for Tender Project Manual Specifications and documents, containing, among other things, the Instructions to Bidders, Bid Form, and Supplementary Conditions for the CCDC-4 (2011) unit price form of contract (the "**Contract Documents**").

9. The Contract Documents established the intended scope and requirements of the Project, including the Window Systems to be replaced and the standards applicable to the work.

10. In addition to preparing the Contract Documents, Matter's services included, without limitation, the following:

(a) participating in, and providing expertise to LHSC, during the procurement process;

(b) reviewing the proposals received in response to the procurement for the Project and advising LHSC regarding the proponent's compliance and suitability; and

(c) recommending a proponent for the Project.

The Procurement and Award

11. In or around February 2024, LHSC issued a request for proposals (the "**RFP**") for the Project.

12. Also, on or about February 20, 2024, Matter prepared a cost estimate for the Project, which was provided to Patel. At that time, Matter anticipated that the total cost of the supply and installation of 178 windows on Levels three (3) through seven (7) of the Building would be $2,893,856.11.

13. On or about March 25, 2024, LHSC received one (1) proposal in response to the RFP; from BH. The BH proposal included, among other things, that the proposed price for the Project work was $2,879,600.00, exclusive of HST (the "**BH Proposal**").

14. On or about March 27, 2024, Matter delivered its review and recommendation concerning the procurement to Healthcare Materials Management Services, which was administering the procurement process on LHSC's behalf. Matter recommended that, in its opinion, the BH Proposal satisfied the applicable RFP criteria and recommended that LHSC award the Project to BH.

15. LHSC pleads that Matter failed to exercise reasonable care in reviewing the BH Proposal and negligently (a) failed to properly verify BH's identity, legal status, qualifications, experience, and/or compliance with the applicable procurement requirements, and (b) recommended that LHSC award the Project to BH, when Matter knew, or ought to have known, that the Project should not have been awarded to BH.

16. LHSC also pleads that Matter knew, or ought to have known, that LHSC would rely on Matter's review and recommendation in determining whether to award the Project to BH, or at all. LHSC reasonably relied on Matter's recommendation, and the Project was awarded to BH by way of a Notice of Intent dated March 28, 2024.

17. Following the award, Matter prepared and/or assisted in preparing the construction contract documentation for the Project.

Performance of the Work

18. On or about March 30, 2024, BH commenced work on the Project. BH was required to perform the work:

(a) in accordance with the Contract Documents, including the replacement of the identified Windows Systems at Levels three (3) to seven (7) of the Building;

(b) in a proper and workmanlike manner;

(c) using suitable and conforming materials;

(d) in accordance with applicable legislation, regulations, codes, by-laws, standards, and manufacturers' requirements; and

(e) with the reasonable care and skill expected of a competent contractor performing comparable institutional window replacement work.

19. At some point after the award of the Project to BH, Patel unilaterally decided, and without consultation with, or the knowledge of, others at LHSC, to no longer retain Matter to administer the Project, but rather Patel decided to administer the Project himself.

BH's Invoices and LHSC's Payments

20. Between April 1, 2024, and September 25, 2024, BH provided invoices for the Project, addressed to LHSC, but by submitting them to Patel only.

21. BH's invoices lacked sufficient detail concerning the labour, materials, quantities, locations, percentage of completion, and work for which payment was claimed, and were not accompanied by adequate supporting documentation demonstrating that the invoiced work had been performed.

22. BH invoiced LHSC a total of $1,841,025.38, inclusive of HST, comprising $1,764,597.83 in respect of Window Systems and $76,427.55 in respect of doors, for the Project work for Level 3 only. Despite the additional door work, no change orders appear to have been issued for the Project.

23. At some point during the progression of the Project, and despite the RFP, Patel, BH, and/or Matter decided that BH would only carry out work on Level three (3) and not the other levels of the Building.

Patel's Involvement

24. As set out above, Patel unilaterally decided to administer and oversee the Project, including reviewing and/or approving of the work and the invoices submitted for payment.

25. Patel received, reviewed, approved, and/or caused to be approved invoices submitted by BH in connection with the Project and authorized or caused payments to be made notwithstanding (a) the absence of adequate supporting documentation demonstrating that the invoiced work had been performed and complied with the Contract Documents, (b) Patel's failure to review and/or ensure that BH actually performed the work, or that the work was properly performed in accordance with the Contract Documents, and (c) that he failed to have a consultant with expertise in the area of the Project work, review and confirm that the work was properly performed, or at all. In addition, BH submitted, and Patel approved, BH invoices for amounts that were significantly greater than the price and amounts that were required for the work on Level three (3).

26. Patel failed to identify or address material discrepancies between the scope of work required by the Contract Documents, the work actually performed by BH, the amounts invoiced, and the amounts paid by LHSC.

LHSC's Investigation

27. In or around December 2025, LHSC determined that there may be issues with the installation of the windows in the Building. As a result, LHSC commenced an investigation into the work performed on the Project.

28. The investigation revealed that the work performed by BH materially departed from the Contract Documents, including, without limitation, as follows:

(a) BH's Window Systems work was largely confined to Level three (3) and not the other levels for which BH was to supply work and services;

(b) the existing Level three (3) window frames remained in place, contrary to the Project requirements;

(c) the contemplated window replacement work at Levels four (4) through seven (7) was not performed; and

(d) the work performed at Level three (3) was deficient and did not provide adequate resistance to water penetration.

29. The deficiencies identified in the Level three (3) work include, without limitation, water penetration through the installed window assemblies, deficient or displaced glazing gaskets, and deficiencies affecting water management at sill and corner conditions.

30. The investigation further determined that BH had quoted and invoiced LHSC for the replacement of 193 windows, whereas only 99 windows were identified as having been replaced.

31. As a result of the investigation, and unknown to LHSC at the time of the Project but known to Patel and/or BH at that time, LHSC significantly overpaid BH for the Level three (3) Project work.

Matter's Negligence

32. In providing architectural and related professional services in connection with the Project, Matter was required to exercise the reasonable care, skill, diligence, and judgment expected of a reasonably prudent architect acting in comparable circumstances, and to perform its services in

accordance with applicable legislation, regulations, codes, by-laws, and applicable professional standards.

33. Matter breached its duties to LHSC. The particulars of Matter's negligence include, without limitation, the following:

(a) failing to exercise reasonable care in reviewing the BH Proposal;

(b) failing to make reasonable inquiries concerning BH's identity, legal status, qualifications, experience, and compliance with the applicable procurement requirements;

(c) failing to properly review the BH Proposal, including confirming that it was compliant;

(d) recommending that LHSC award the Project at all and/or to BH without a reasonable basis for concluding that BH satisfied the applicable requirements and was capable of performing the Project;

(e) failing, in the course of any construction-phase services it undertook, to identify and advise LHSC of material departures from the Contract Documents that were, or ought reasonably to have been, apparent in the proper performance of those services;

(f) failing to perform the professional services it undertook with reasonable care, skill, diligence, and judgment; and

(g) such further and other particulars as may become known through documentary production and discovery.

BH's Breaches

34. BH owed LHSC a duty to exercise the reasonable care, skill, and diligence expected of a competent contractor performing comparable institutional window replacement work. BH breached its duties to LHSC. The particulars of BH's negligence include, without limitation, the following:

(a) failing to perform the work required by the Contract Documents, including the contemplated work at Levels four (4) through seven (7);

(b) failing to replace window frames and other components required by the Contract Documents, including, without limitation, supplying and installing vinyl windows instead of the required aluminum windows;

(c) performing incomplete and deficient work at Level three (3);

(d) failing to perform its work in accordance with applicable legislation, regulations, codes, standards, manufacturers' requirements, and proper construction practices;

(e) failing to adequately supervise, inspect, and correct its work;

(f) submitting invoices that did not accurately or adequately describe or substantiate the work and/or materials for which payment was sought;

(g) seeking and accepting payment in respect of incomplete, deficient, unsupported, or unperformed work;

(h) failing to advise LHSC that material portions of the Project had not been performed; and

(i) such further and other particulars as may become known through documentary production and discovery.

Patel's Breaches

35. Patel owed LHSC a duty to exercise reasonable care, diligence, and judgment in administering the Project, overseeing its performance, work, and reviewing or approving BH's invoices. Patel breached his duties to LHSC. The particulars of Patel's negligence include, without limitation, the following:

(a) failing to administer and oversee the Project with reasonable care and in LHSC's interests;

(b) failing to disclose his personal or financial interest in BH;

(c) failing to take reasonable steps to verify that the work invoiced by BH had been properly performed (or at all);

(d) failing to properly review, investigate, and confirm that the work and/or materials allegedly supplied complied with the Contract Documents and Project requirements;

(e) failing to require adequate documentation in support of BH's invoices;

(f) approving or permitting payment of invoices in respect of incomplete, deficient, unsupported, or unperformed work;

(g) failing to identify or investigate material discrepancies between the scope of the Project, the work performed, the amounts invoiced, and the amounts paid;

(h) failing to comply with LHSC's applicable authorization, approval, procurement, and payment requirements;

(i) failing to properly record changes to the work;

(j) failing to attain proper approvals for the work, payments, and/or changes; and

(k) such further and other particulars as may become known through documentary production and discovery.

Damages

36. The acts and omissions of the Defendants, individually and collectively, caused or contributed to LHSC awarding the Project to BH, paying for work that was incomplete, deficient, unsupported, or not performed, and incurring costs to investigate, complete, correct, and remediate the Project.

37. As a result of the Defendants' negligence, LHSC is required to remove and replace all of the windows located on Level three (3) of the Building. In addition, LHSC now has to replace the windows on Levels four (4) to seven (7) of the Building, which is work that originally formed the Project work, but which work was not completed by BH.

38. LHSC has suffered and will continue to suffer loss and damage as a result of the Defendants' negligence and breaches of contract, including, without limitation, the following:

(a) the costs required to investigate, correct, remediate, and replace the deficient work performed at Level three (3);

(b) professional, consultant, investigation, inspection, and testing costs incurred in investigating and addressing the deficient Level three (3) work;

(c) costs associated with disruption arising from the investigation, remediation, and replacement of the deficient Level three (3) work; and

(d) such further losses and expenses arising from the deficient Level three (3) work as may be particularized before trial.

39. As a further result of the negligence and/or breaches of contract of BH and Patel, LHSC has suffered and will continue to suffer additional loss and damage, including, without limitation:

(a) amounts improperly paid to BH in respect of work at Levels four (4) through seven (7), which was not performed by BH;

(b) any additional costs incurred or to be incurred by LHSC as a result of the failure to perform the contemplated window replacement work at Levels four (4) through seven (7), including investigation, maintenance, repair, and other costs attributable to the continued use of the existing window systems; and

(c) such further losses and expenses arising from the failure to perform the contemplated work at Levels four (4) through seven (7) as may be particularized before trial.

40. LHSC states that the Defendants caused or contributed to the loss and damages arising from the deficient Level three (3) work. BH and Patel additionally caused or contributed to the loss and damage arising from LHSC's payment for work at Levels four (4) through seven (7) that was not performed by BH, but had been paid by LHSC.

41. The negligence of each Defendant caused or contributed to the loss and damage suffered by LHSC. LHSC claims against the Defendants jointly and severally pursuant to the *Negligence Act*.

Statutory Provisions

42. LHSC pleads and relies upon:

(a) the *Negligence Act*, RSO 1990, c. N.1, as amended;

(b) the *Architects Act*, RSO 1990, c. A.26, and the regulations made thereunder;

(c) the *Building Code Act, 1992*, SO 1992, c 23, and the regulations made thereunder;

(d) the *Construction Act*, RSO 1990, c C.30, as amended; and

(e) the Courts of Justice Act, RSO 1990, c C.43, as amended.

Place of Trial

43. LHSC proposes that this action be tried in London, Ontario.

Date: November 9, 2026

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Electronically issued / Délivré par voie électronique : 09-Nov-2026
London Superior Court of Justice / Cour supérieure de justice

London Health Sciences Centre -and- ***2473127 Ontario Inc., c.o.b. as BH Contractors Ltd. et al.***

Plaintiff | Defendants | Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at LONDON

STATEMENT OF CLAIM

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