

**CITATION:** Maple Drywall Inc. v. 485 Logan Developments Inc, 2025 ONSC2222

**COURT FILE NO.:** CV-23-704391

**DATE:** April 10, 2025

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Maple Drywall Inc. v. 485 Logan Developments Inc.;

**BEFORE:** ASSOCIATE JUSTICE C. WIEBE

**COUNSEL:** Michael Mandarino *for 485 Logan Developments Inc.*;  
Nicole Maragna *for Maple Drywall Inc.*;

**HEARD:** April 7, 2025.

**ENDORSEMENT**

[1] The defendant, 485 Logan Developments Inc. (“Logan”), brings this motion seeking an order under *Construction Act*, R.S.O. 1990, c.C.30 (“CA”) section 44(5)(b) reducing the security posted by Logan for the claim for lien registered by the plaintiff, Maple Drywall Inc. (“Maple”), on the title to the subject project. The project is the construction of a stacked condominium. On July 26, 2023 Maple registered a claim for lien in the amount of \$1,032,377.04. On August 7, 2023 Logan obtained an order from me vacating the Maple claim for lien upon the posting of a lien bond by Logan in the amount of \$1,282,377.07, which was the amount of the claim for lien plus \$250,000 in security for costs. Logan posted that security.

[2] Logan seeks a reduction of lien security in the amount of \$566,348.09. That would leave a claim for lien of \$466,028.95. Curiously, in its notice of motion Logan does not seek a reduction in the posted \$250,000 of security for costs. Logan does though seek damage recovery of \$17,099.06 being the alleged excessive interest it paid to date to the bonding company on the posted lien bond.

[3] CA section 44(5) authorizes the court to reduce the posted lien security “where it is appropriate to do so.” In her decision in *Ledcor Construction Limited v. Canalfa Liberty Village Homes Inc.*, 2008 CanLII 87009 (ONSC) at para. 35, Master Albert described the test to be applied under this section as follows: “A motion to reduce security under section 44(5) of the *Construction Lien Act* cannot succeed where there are genuine issues of fact that require a trial to determine whether the entire amount claimed or some lesser amount is appropriate. Only where the evidence clearly and unequivocally proves that the lien as registered is excessive or improper should the court reduce or release security at an interlocutory stage.”

[4] The following facts were evident from the motion material and were not disputed. The issue on this motion is whether the \$566,348.09 Maple billed Logan on June 21, 2023 was clearly and unequivocally excessive and improper in its entirety. This invoice stemmed from a document that was appended to the contract between Logan and Maple dated October 25, 2022 (“the Contract”)

wherein Maple agreed to complete the drywall and acoustics scope of the project for a fixed price. This appended document was Maple's revised quotation dated October 24, 2022 which described a contract price of \$950,000 plus HST and an "overage" in the amount of \$501,193 plus HST, \$566,348.09. The document stated in red that this overage would be "paid out in full within a maximum of 60 days of substantial completion of this trade contractor's work." The Contract was a fixed price contract with the price being \$950,000 plus HST, namely \$1,073,500.

[5] It is undisputed that Maple did not substantially complete its work. The Maple work was delayed, and tension arose between the parties. Finally, after a discussion, on June 1, 2023 the principal of Maple, Rob Bucci, emailed the principal of Logan, David Martino, and the construction manager, Oben Build, advising that Maple would complete certain specified work and not the remainder, and that Maple would bill for the work completed to date. Maple proceeded accordingly. It rendered two progress bills, a bill for holdback and two bills for extras. The last of the progress bills, Progress Billing No. 6 dated June 21, 2023, showed Maple's work as 70% complete. There was also the Maple June 21, 2023 bill for the overage in its entirety. These bills including the overage bill composed the Maple claim for lien.

[6] Logan's argument is simple: in its best case where Maple proves that it was justified in stopping work as it did, Maple cannot prove a lien for the overage bill as the Overage PO was only payable 60 days after substantial completion of Maple's work, which never happened.

[7] Maple's reply is as follows: the Overage PO was a part of the agreed upon "price" for Maple's supply as it was the product of pre-Contract negotiations wherein Maple agreed to Logan's request to split the Maple bid price of \$1,451,193 plus HST into a contract price of \$950,000 plus HST and an overage of \$501,193 plus HST payable after substantial completion of Maple's work. The reason for this agreement was to assist Logan in getting project financing by misleading Logan's lender into believing that Logan's drywall and acoustics cost was no more than the \$950,000 plus HST that appeared in the budget Logan presented to the lender.

[8] Having reviewed the motion material and heard the oral submissions of counsel, I have decided as follows:

- there is a genuine issue of fact as to whether the overage is a part of the agreed upon price for Maple's work and, therefore, a proper part of the Maple claim for lien;
- there is no genuine issue of fact that 30% of the overage (\$169,904.42) is not owed, thereby requiring a reduction of the posted security for the Maple claim for lien by this amount of \$169,904.42 plus a reduction of the posted security for costs of \$34,381.85.

The security for costs reduction of \$34,381.85 is derived as follows: the 30% reduction of the lien security produces a proper lien amount of \$1,032,377.02 - \$169,904.42 = \$862,462.60; the proper security for costs is 25% of \$862,462.60 = \$215,618.15; the resulting formula for the reduction of security for costs is: \$250,000 - \$215,618.15 = \$34,381.85. This means a total reduction of posted security of \$169,904.42 + \$34,381.85 = \$204,286.27. Here are my reasons.

[9] The key issue is the interpretation to be given to the Overage PO. In the leading case of *Sattva Capital Corp. v. Creston Molly Corp.*, 2014 SCC 53 at paragraphs 47, 48 and 57 the Supreme Court outlined the governing principles of contract interpretation: the overriding concern is determining the intention of the parties and the scope of their understanding; the contract must be read as a whole giving the words their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of contract formation; in a commercial contract the court should know the commercial purpose of the contract based on a knowledge of the genesis of the transaction, the background, the context and the market in which the parties are operating; the surrounding circumstances can never be allowed to overwhelm the words of the contract; and the interpretation of a written contract must always be grounded in the text and read in light of the entire contract.

[10] The Overage PO appended to the Contract is supportive of Maple's position, or is, at worse, ambiguous. It is undisputed that Maple's bid price was \$1,451,193 plus HST. The Overage PO on its face indicates that the overage of \$501,193 plus HST is that part of the Maple bid price that is not included in the contract price of \$950,000 plus HST. It then indicates in red that the overage will be paid in full within 60 days of substantial completion of Maple's work. This all accords with Maple's position. It does not, however, explain the reason for this price splitting and deferral of payment.

[11] The affidavit of Rob Bucci in the Maple motion record provides a reasonable explanation. Mr. Bucci stated that, after Maple presented its bid, Mr. Martino, the principal of Logan, in August, 2022 wanted "a favour" from Maple as Logan was overbudget with its lender and needed to show the lender that the drywall scope would only cost \$950,000 to get financing for the project. Mr. Bucci said he agreed to this "favour" to assist Mr. Martino in getting the financing.

[12] The affidavit attaches emails between Messrs. Martino and Bucci and Oben Build dated in September and October, 2022 whereby the contract price was "structured" to meet this objective. Initially, the overage was to come out of another project Mr. Martino was considering, but this project did not proceed. The parties then structured the overage to be paid on this project but at the end of Maple's work, making sure that all documents did not tie the overage to the Contract price or any billings of the Contract price. In a telling email dated November 3, 2022, Ashley Keough of Oben Build stated that, "The PO cannot be provided until the end of the project, as the value of the overage would then show up on our booked (sic), which cannot happen at this time."

[13] Mr. Martino swore an affidavit on this motion that focused on the Contract price and the Maple progress billings. None of these refer to the overage. That is not surprising given the apparent arrangement between the parties. The affidavit does not deal with the negotiation of the Overage PO. Mr. Martino was asked in cross-examination about the pre-Contract negotiations about the overage, but he refused to answer these questions.

[14] This all, in my view, creates at minimum a genuine issue of fact as to whether the overage formed a part of the Contract price for Maple's supply and gave rise to lien rights in the event of non-payment. That is what I find.

[15] However, I note that on June 21, 2023 Maple billed for the entire overage of \$566,348.09. On the same date, Maple rendered its final progress billing, Progress Billing No. 6 dated June 21,

2023, wherein it stated that it was only 70% complete. This was at the end of Maple's work. Maple only billed 70% of its Contract price and liened for that portion of those billings that were not paid. It would be inconsistent for Maple to be entitled to a lien for more than 70% of the overage if, as it appears, the overage was a part of the Contract price. Ms. Maragna did not seriously contest that conclusion. Hence, there must be a reduction in the posted security of \$204,286.27 in accordance with the calculations described above. That is what I also find.

[16] There was then the issue of the interest paid by Logan on its lien bond. To date, that interest is \$38,717.25. The excessive security is \$204,286.27. This is 15% of the total security originally posted of \$1,282,377.07 15% of \$38,717.25 is \$5,807.58. I find that this \$5,807.58 is damage Logan suffered on account of the excessive portion of the Maple claim for lien. Mr. Bucci should have known that registering a claim for lien for the entire overage was excessive given the fact that Maple showed its work as 70% complete in Progress Billing No. 6. Pursuant to *CA* section 35, this \$5,807.58 must be paid to Logan by Maple.

[17] Therefore, I grant the motion for an order reducing the posted security, but I grant a reduction of only **\$204,286.27**, namely about 28% of the requested reduction factoring in the appropriate security for costs reduction. I also order that Maple pay Logan damages of **\$5,807.58**.

[18] Concerning costs, Maple filed a bill of costs showing \$12,453.50 in partial indemnity costs, \$17,968.36 in substantial indemnity costs, and \$19,806.64 in actual costs. Logan's costs outline shows \$31,982.74 in partial indemnity costs and \$47,845.06 in actual costs. I indicated orally what my decision would probably be and asked for oral submissions on costs. Ms. Maragna argued that Maple should get its substantial indemnity costs of \$17,968.36. Ms. Mandarino argued that Logan should be paid between \$10,000 and \$12,000 in partial indemnity costs.

[19] I have decided to award Maple **\$12,000** in partial indemnity costs to be paid by Logan in thirty days. Here are my reasons. First, the result shows that Maple was the more successful party as it succeeded in defeating over 70% of the requested security reduction. However, the partial Logan success must be recognized with a proportionate discount in the costs award. Second, Maple made an offer to settle this motion on March 26, 2025, an offer whereby Maple agreed to reduce the posted security by \$338,793.94 with costs of the motion to be in the cause. In my view, Maple obtained a result that was much more beneficial to it than this offer. This was an offer Logan should have accepted given the evidence about the overage. While Rule 49.10 is not binding on this court (as this is an action under the *CA*), this offer by Maple satisfies me that Maple acted reasonably in trying to settle this motion and that Logan did not. Third, I find Logan's conduct in bringing this motion for a reduction of the security for the entire overage, objectionable. It appears that Logan obtained a favour from Maple concerning the overage and that in this motion Logan sought to use this favour to prejudice Maple's claim for lien. My unfavorable view of this conduct must be reflected in the costs award.

**DATE:** April 10, 2025

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**ASSOCIATE JUSTICE C. WIEBE**