

CITATION: Magil Construction Ontario Inc. v JBelli Holdings Inc., 2025 ONSC 4018

COURT FILE NO.: CV-20-1511-0000

DATE: 2025 07 07

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Magil Construction Ontario Inc., Plaintiff
-and-
JBelli Holdings Inc., Freshhouse Foods Ltd., Farm Credit Canada, FMMC
GP Inc., and FMMC Private Yield Fund LP II, Defendants

BEFORE: C. Chang J.

COUNSEL: L. Armstrong, for the Plaintiff
D. Golden, R. Hauk, for the Defendants, JBelli Holdings Inc. and
Freshhouse Foods Ltd.

HEARD: July 5, 2025 (in writing)

ENDORSEMENT

[1] This endorsement is to also be filed and uploaded to Case Centre in CV-20-1429-0000 and CV-20-1268-0000.

[2] By their counsel’s letters dated July 4, 2025, JBelli Holdings Inc. and Freshhouse Foods Ltd. (the “moving parties”) request leave to bring urgent motions in this action and the two other related actions set out above. I have been assigned as the case manage judge for all three actions. The proposed motions seek orders under s. 44 of the *Construction Act*, R.S.O. 1990, c. C.30 vacating the registrations of various claims for lien and certificates of action upon the posting of security. The moving parties say that they require the requested orders before July 17, 2025 because they must clear title for an upcoming refinancing.

[3] Although sitting on July 4, 2025, I was not assigned to determine requests for leave to bring urgent motions. I was therefore only able to review this matter after completing a very lengthy list at approximately 5:45 p.m. that evening, and I am writing this endorsement on Saturday July 5, 2025.

[4] There are any number of serious problems with the moving parties’ requests for leave. First among them is the sheer unnecessary length of the motion materials filed. One motion record is 221 pages long, and the other two are each 235 pages long. All of this on proposed motions to vacate on the posting of security. Second, despite the extraordinary and unnecessary length of the motion materials, counsel have decided that not a single bookmark or hyperlink would be appropriate. Anywhere.

[5] However, the most significant and most troubling problem with these requests for leave is the fact that, when they were filed, the parties and counsel were (or unquestionably ought to have been) well aware that they did not meet the threshold for urgency as set out in the *Notice to the Profession and Parties*.

[6] All of the applicable claims for lien were registered in the Spring of 2020, and all of the applicable actions were commenced (and the applicable certificates of action registered) shortly thereafter. Moreover, the issue of vacating the registrations of the two largest claims for lien (in the amounts of \$5,460,335.52 and \$1,934,709.42) was raised, at the latest, at a case management conference before me on December 5, 2024. Borrowing from FL Myers J. in *Marrese v Moscone*, 2023 ONSC 5857, at para. 25: these facts make it clear enough that there is no true urgency.

[7] Despite all of this, the moving parties and their counsel expect the court to drop everything, move these proposed motions to the front of the queue ahead of all other litigants who have acted reasonably and in accordance with the court's procedural law. All so that they (being the moving parties and their counsel) can play catch-up at the urgent and incalculable expense of all other litigants in the civil and family streams of our justice system, and at the urgent and incalculable expense of painfully scarce judicial resources.

[8] It is beyond troubling that counsel doggedly maintain the misapprehension that "urgency" resultant from their and/or their clients' failures to move matters along in a timely fashion constitutes legitimate legal urgency. As a result of that misapprehension, the court continues to process inordinately and unnecessarily high numbers of requests for urgent hearings of matters that lack legitimate legal urgency. The consequent drain on already threadbare judicial resources can neither be countenanced nor tolerated. Also as a result of such misapprehension, too many parties facing truly urgent issues (e.g., a legitimate parenting emergency, or the imminent unlawful dissipation of assets) are being made to wait for the allegedly-but-not-legitimately "urgent" matters to be dealt with first. This practice of attempting to improperly "jump the queue" can also neither be countenanced nor tolerated.

[9] This type of conduct must stop, and the mindset that fuels it must be corrected. Immediately.

[10] The moving parties' requests for leave to bring their proposed urgent motions in the case-at-bar is denied. The requests are not urgent.

[11] That said, given the upcoming refinancing by the moving parties, I am not prepared to leave them without any remedy whatsoever, as, it seems, that would result in the said refinancing transaction possibly falling through. I am prepared to adjudicate the three motions in writing, provided that the moving parties satisfy the following conditions:

- a. **by no later than 2:00 p.m. on July 8, 2025**: the moving parties shall remove the motion materials currently on Case Centre, and upload proper motion materials that, among other things, are fully hyperlinked and/or bookmarked;
- b. **by no later than 2:00 p.m. on July 9, 2025**: the moving parties shall serve, file, and upload an affidavit of a lawyer (not a law clerk, assistant, secretary, or student) with personal knowledge of the files that:
 - i) fully explains the delay in bringing this motion since the December 5, 2025 case management conference, and
 - ii) sets out the following details of the proposed refinancing:
 - (A) the amount of the credit to be advanced and secured by the subject property,
 - (B) the closing date and the existence and details of any provisions for the extension of the closing date, and
 - (C) no details other than those set out above need be provided; and
- c. the moving parties will not seek any costs respecting the proposed motions, whether in the cause or otherwise, and the appropriate provision is to be added to each of the proffered draft orders.

[12] As I will not be sitting next week, it will be up to counsel for the moving parties to report to me at SCJ.JudicialAssistant.Milton@ontario.ca respecting the completion of each step set out above. Should all of the above conditions not be met and reported to me, then the moving parties shall file their materials as motions in writing, as prescribed by the *Notice to the Profession and Parties*, in the normal course.

[13] To be clear, the fact that I am providing the moving parties with the considerable indulgence set out above does not mean that: a) I will be granting the requested orders; or b) that any further such indulgences will be available at any time or for any reason.

C. Chang J.

Date: July 7, 2025