

CITATION: Serena Homes v. Shakil et al, [2025] ONSC 3855
NEWMARKET COURT FILE NO.: CV-24-00004723
DATE: 20250805

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
Serena Homes Construction Limited)
)
Lien Claimant/Responding Party) H. Keith Juriansz and Alina Saharov, for the
) Responding Party
)
– and –)
)
Mian Danish Shakil and Haris Shakeel)
)
Owners/Moving Parties) Eric Nadler and Simerjot Chahal, for the
) Moving Parties
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)
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)
) **HEARD:** May 27, June 4, June 18, 2025

2025 ONSC 3855 (CanLII)

REASONS FOR DECISION

DE SA J.:

OVERVIEW

- [1] The moving parties, Mian Danish Shakil (“Shakil”) and Haris Shakeel (“Shakeel”), who are the owners (the “Owners”) of the subject property municipally located at 10 Orlin Chappel Court, King, Ontario L7B 0P6 (the Property”), seek an order, discharging the Construction Lien of Serena Homes, which was registered on title to the Property on August 15, 2024, as instrument no. YR3709164 (the “Lien”), pursuant to Sections 35 and 47 of the *Construction Act*, R.S.O. 1990, c. C.30 (the “*Construction Act*”).
- [2] Serena submits that most of the debt remains owing, and accordingly the Lien should remain in place but reduced to reflect the actual debt. According to Serena, the motion was not necessary for the Owners to obtain a reduction of the exaggerated portion of the Lien, as Serena Homes consented to the same before the within motion was brought.
- [3] While the exaggerated portion of the Lien should be reduced, I agree that the Lien should not be discharged in its entirety. The Lien is ordered to be reduced to \$1,043,282.55, instead of the amount currently registered.

[4] The reasons for my decision are set out below.

BACKGROUND

Serena's Characterization of the Agreement

- [5] In or around February 2021, shortly after the purchase of the Property, the Owners and Muhammad Musa (“Musa”) approached Karim Lalji (“Lalji”), the principal of Serena Homes, regarding the Property. Musa had acted for the Owners as their Real Estate Broker in the purchase of the Property. Musa was also a longtime acquaintance of Lalji.
- [6] According to Lalji, the parties discussed two distinct services that would be provided by Lalji and Serena Homes.
- [7] The first group of services involved development-related services to provide architectural and structural drawings and to coordinate with the Township to get the project plans approved. It was projected that this stage would take approximately one year, and as such, Lalji quoted the Owners the amount of \$125,000.
- [8] The second type of services discussed was construction services. Serena Homes was not registered as a builder for this project under the provisions of the *Ontario New Home Warranties Plan Act*, RSO 1990, c. O.31 (“*New Home Warranties Act*”). According to Lalji, it was agreed that Serena Homes would act as a contractor, but the work would be subcontracted by Serena Homes to subcontractors engaged by Serena Homes as it did not have its own forces. Serena Homes would set its own fixed prices which would be competitive for the services that would be provided.
- [9] According to Lalji, the Owners advised that all necessary approvals had been obtained from the Township of King (the “Township”) and construction was ready to go immediately upon obtaining permits for architectural and structural drawings. This was not true. Serena had to obtain the required approvals from the Township. As a consequence, instead of the initially projected one year to get the plans approved, it took approximately three and a half years.
- [10] According to Lalji, the agreement between the parties was adjusted accordingly. Serena Homes issued three invoices to the Owners totaling approximately \$440,000 for these development services. As part of this stage, Serena Homes retained the services of many service providers such as an architect, a planner, a surveyor and various engineers. These invoices were paid as they were issued.
- [11] Ultimately, the overall scope of the second stage was also altered by the Owners. The Owners initially discussed a construction budget of \$4,000,000 for property of around 10,000-12,000 square feet. Subsequently, the Owners requested a much larger design as they wished for additional family members to reside at the Property and nearly doubled the square footage to over 21,000 square feet.

- [12] According to Lalji, the following services were contemplated and largely performed at the second stage:
- a. Dewatering of the land. The ground contained unusually high-water levels, which issue was exacerbated by heavy rainfalls. Lalji himself had to personally undertake significant hours of physical labour to address the dewatering issues.
 - b. Clearing and leveling the land and sourcing approximately six trucks of stones to be put down on the land due to its wet and muddy conditions.
 - c. Excavation-related services.
 - d. Formings for footings prior to pouring of concrete. There was a soil engineer on site who performed various measurements and tests in order to certify the level of the soil where concrete could be poured which, in this project, was deeper than usual because the ground was very wet and muddy.
 - e. Installation of footings, placement of gravel around the footings, forming of ICF walls, filling in concrete that formed the walls, adding of 11-16 column piers all around and installation of an elevator pad.
 - f. Construction of the dwelling, including the walls.

[13] Once the land was ready for construction, the Owners also retained Serena Homes to assist in the first phase of construction which was building footings and the foundation. Serena Homes provided the Owners with a comprehensive contract for these services at a fixed price. Serena Homes retained a subcontractor specialized in ICF walls which was Authentic Construction Ltd. (“Authentic”).

The Owners’ Characterization of Events

[14] In their motion materials, the Owners characterize the situation very differently. The Owners describe the arrangement as a “management agreement” (which was not reduced to writing) pursuant to which Serena Homes agreed to provide project management services for a flat fee of \$125,000, and utilize its business contacts, source and supply all contractors, tradespeople, and materials to the project on an “at cost” pass through-basis with no profit.

[15] By August 2024, in total, the Owners had given Serena Homes \$1,696,388.93 towards the project. On August 8, 2024, they discovered that Serena Homes/Mr. Lalji had “fraudulently” altered a quote delivered by Rotberg Steel (for \$220,350.00) into an invoice to the Owners for \$333,350.00 (“Rotberg Steel Invoice”). Moreover, Rotberg Steel confirmed that no final order for the Steel had been placed.

[16] As a result, the Owners began contacting other contractors and trades that were retained by Serena Homes for the Project for copies of their actual invoices to cross reference those delivered by Serena Homes/Mr. Lalji.

- [17] According to the Owners, they discovered that Serena Homes/Mr. Lalji was fraudulently manipulating the invoices they received from third party contractors and trades working on the Project to increase the monies payable by the Owners without their knowledge or consent. Other third-party contractors and trades refused to provide their invoices.
- [18] According to the Owners, it remains unclear to the Owners what amounts went to contractors and trades and what amounts were fraudulently misappropriated by Serena Homes/Mr. Lalji by altering and increasing invoices of third parties.

Breakdown of Relationship and the Lien

- [19] In or around late July or early August 2024, the relationship between the Owners and Lalji broke down. The Owners retained Yellow Vest Construction Inc. (“Yellow Vest”) to inspect the construction costs, however as Yellow Vest does not specialize in or have knowledge of installation of ICF walls that the Owners required, Yellow Vest approached Authentic and requested it to continue its work at the site.
- [20] On August 14, 2024, the Owners terminated the services of Serena Homes and requested it to remove itself and all of its equipment from the Property.
- [21] On August 15, 2024, Serena Homes registered the Lien against the Property for just over \$1.6 million.

Serena’s Request to Reduce the Lien on Consent

- [22] On September 18, 2024, an account reconciliation was sent to the Owners’ lawyers, along with amounts invoiced and paid. In this correspondence, counsel for Serena Homes advised that it had been discovered that the Lien had been registered for an exaggerated amount and that Serena Homes intended to bring a Motion under s. 35(2) of the *Construction Act* for an Order that the lien amount be reduced by the exaggerated portion, at its expense. This correspondence noted that the amount of the Lien should have been registered for \$1,352,092.55. Counsel for Serena Homes requested consent from the Owners to Serena Home’s proposed motion and advised that Serena Homes would also undertake to register the Order, once obtained, on title to the Property.
- [23] Consent was not provided by the Owners. Instead, the Owners brought the within Motion.
- [24] When reviewing the documents related to the project in order to prepare responding materials to the Owners’ motion, additional errors were discovered with respect to the Lien value, as follows:
- a. The amount of the Lien needed to be reduced further by the amount of \$333,350.00 because Serena Homes’ contract had been terminated prior to Serena Homes ordering materials from Henry Rotberg Steel Corporation. The Owners had paid a total of \$333,350.00 for these materials.

- b. The following amounts should have been added to the value of the Lien, as Serena Homes had not yet invoiced the Owners for two items:
 - i. The Owners had no power at the Property and workers needed power, including hydro, in order to work. Serena Homes provided its own generator for 4.5 months from in or around April 2024 to mid-August 2024, the fair value of which is \$20,250 total, *i.e.* \$4500 per month.
 - ii. Approximately 78 hours of Lalji's own labour relating to dewatering services and general manual labour relating to the foundation walls between April and June 2024, which Lalji charges at \$55 per hour, adding a total of \$4,290 to the value of the Lien.

[25] Having regard to the above adjustments, Serena determined that the value of the Lien is \$1,043,282.55, instead of the amount registered of \$1,612,303.43.

[26] On August 20, 2024, Authentic caused a lien in the amount of \$507,583.02 to be registered. This amount is included in the outstanding Lien registered by Serena Homes.

ISSUE ON THE MOTION

[27] Should the subject Lien be discharged in its entirety or alternatively reduced in value by the exaggerated portion?

ANALYSIS

[28] The relevant provisions of the *Construction Act* are Sections 35 and 47.

General powers of the court

Power to discharge

47 (1) The court may, on motion, order the discharge of a lien,

(a) on the basis that the claim for the lien is frivolous, vexatious or an abuse of process; or

(b) on any other proper ground.

Power to vacate, etc.

(1.1) The court may, on motion, make any of the following orders, on any proper ground:

1. An order that the registration of a claim for lien, a certificate of action or both be vacated.

2. If written notice of a lien has been given, a declaration that the lien has expired or that the written notice of the lien shall no longer bind the person to whom it was given.
3. An order dismissing an action.

Conditions

(1.2) An order under subsection (1) or (1.1) may include any terms or conditions that the court considers appropriate in the circumstances.

...

Exaggerated, false claims Liability

35 (1) In addition to any other ground on which the person may be liable, any person who preserves a claim for lien or who gives written notice of a lien in the following circumstances is liable to any person who suffers damages as a result:

1. The person knows or ought to know that the amount of the lien has been wilfully exaggerated.
2. The person knows or ought to know that he or she does not have a lien.

Reduction of lien amount

(2) In the circumstances described in paragraph 1 of subsection (1), the court may, on motion, order that the lien amount be reduced by the exaggerated portion, as determined in accordance with section 17, if it finds that the person has acted in good faith

- [29] The matter of exaggerated liens was considered in detail by Master T. Robinson (now, Associate Justice Robinson), in the decision of *GTA Restoration Group Inc. v Baillie* (“*GTA Restoration*”), 2020 ONSC 5190.
- [30] In *GTA Restoration*, the Defendant argued that the lien registered ought to be discharged as it was willfully exaggerated constituting an abuse of process. Associate Justice Robinson declined to discharge the lien, but instead ordered that the value of the lien was to be reduced by the exaggerated portion.
- [31] In the context of that decision, Associate Justice Robinson explained that motions to discharge liens under section 47 of the *Construction Act* are not motions for summary judgment and do not necessarily seek a summary disposition of the lien on its merits, but

the two types of motions have been nevertheless held as analogous in jurisprudence. He explained at para 45:

Given the variety of manners in which s. 47 may be used to seek discharge of a lien, it would also be an error to require the summary judgment “best foot forward” evidentiary onus in all s. 47 motions. There are many conceivable “proper grounds” that may support discharge under s. 47 that do not engage triable issues, such as ongoing procedural delays contrary to the summary procedure required by the CA or non-compliance with court orders. Nevertheless, the “best foot forward” evidentiary onus is well-established in s. 47 motions: see, for example, *G.C. Rentals Enterprises Ltd. v. Advanced Precast Inc.*, 2014 ONSC 4237 at para. 35; *Diamond Drywall Contracting Inc. v. Ikram*, 2016 ONSC 5411 (Master) at para. 18. In my view, such an evidentiary onus only reasonably arises where s. 47 of the CA is used in a manner akin to Rule 20 of the *Rules of Civil Procedure*.

- [32] The Owners take the position that the fabricated invoices demonstrate the Lien to be frivolous. According to the Owners’ materials, the mark-ups total \$1,680,597, and exceed any reasonable mark up. Serena has admitted to tampering with the invoices. In the circumstances, the fabricated invoices should be sufficient to demonstrate the registrations to be frivolous, vexatious, and an abuse and the Lien should be discharged in its entirety.
- [33] The Owners have also filed an expert report for an assessment of the construction costs from Alpha Cost Consultants Inc. (“Alpha”), who determined that the construction cost should have totaled \$583,700, plus HST for the work performed. The Owners have already paid in excess of 1.6 million dollars. The Owners submit that this is further evidence that the Lien is frivolous and should be discharged.
- [34] In this case, Serena Homes denies that it willfully exaggerated the quantum of the Lien. Serena Homes itself advised the Owners of the exaggeration which resulted from an inadvertent miscalculation. As noted, when the error was discovered, Serena Homes proposed to bring a motion, at its expense, to reduce the quantum of the Lien, but the Owners did not provide their consent.
- [35] According to Serena, the only reason why invoices were altered is due to the Owners’ requests to alter originally received invoices from various contractors. Serena does not know why the request was made. But Serena Homes maintains that pass through “at cost” prices were never agreed to as significant work was to be involved such as coordinating with the Township and lawyers, sourcing suppliers at best possible rates, sourcing materials and labour, overseeing services and paying for services and materials up front.
- [36] Serena takes the position that the Owners’ claim that the parties agreed to a flat fee of \$125,000 over a course of multiple years for the construction of a multimillion-dollar, large custom home on vacant land makes no sense.
- [37] I have considered the record before me. Serena has produced invoices that were billed in the amount of \$2,746,480.68. Of this total amount billed, \$1,696,388.87 has been paid.

- [38] According to the accounting provided by Serena, there were mark ups of \$286,966.90 on the amounts paid by Serena to the subcontractors.
- [39] What is clear is that there is still a substantial amount outstanding for the services that have been provided by Serena and the subcontractors. Indeed, a substantial balance remains even if the position advanced by the Owners were to be accepted. In my view, the exact amount owing and whether the mark-ups and additional fees were contemplated by the terms of the agreement, is an issue for trial.
- [40] As Justice Nicholson explained in *XPL Construction Solutions Inc. v North Bay Capital Investments Ltd.*, 2023 ONSC 238 at para. 79, a discharge order should not be made lightly as doing so may deprive a subcontractor of a legitimate remedy.
- [41] Having regard to the errors noted above, the Lien is reduced to \$1,043,282.55, instead of the amount registered at \$1,612,303.43.
- [42] The motion seeking to have the Lien discharged is dismissed.
- [43] Given the circumstances here, the costs of the motion will be determined in the cause.

Justice C.F. de Sa

Released: August 5, 2025

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