

Moving Parties for the second draw. RBC did not release the funds because only 15% of the overall project had been completed and the bank required 25% of the overall project to be complete.

[3] On January 15, 2025, the Respondent provided the Moving Parties with a Notice of Adjudication pursuant to s. 13.5 of the *Construction Act*, R.S.O. 1990, c. C.30 (“*Act*”). The issue before the adjudicator was whether the Respondent was entitled to the second draw under the contract. After commencing the adjudication process and before obtaining a determination, the Respondent registered a lien against the Moving Parties’ property.

[4] On March 12, 2025, the adjudicator ordered the Moving Parties to pay the second draw along with interest. To date, the Moving Parties have not complied with the adjudicator’s order. As a result, the Respondent filed the adjudicator’s determination with the Superior Court of Justice and sought enforcement of the adjudicator’s order through, amongst other things, the garnishment process.

[5] In response, the Moving Parties commenced this motion pursuant to r. 60.08(16) of the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194 (“*Rules*”), to set aside, stay, or refuse the Respondent’s garnishment process on the basis that enforcing the adjudicator’s determination results in unfairness to the Moving Parties. Additionally, the Moving Parties argue that enforcing the adjudicator’s determination through the garnishment process could lead to double recovery for the Respondent, once through garnishment and once through the lien action.

[6] For the reasons that follow, I dismiss the motion. As explained below, the enforcement of the adjudicator’s order under the applicable statutory scheme does not create any unfairness to the Moving Parties and will not lead to double recovery.

[7] At its heart, the Moving Parties’ motion is an attempt to stay or appeal the adjudicator’s determination in circumstances where the Moving Parties have neither applied for a stay of the adjudicator’s determination in the Divisional Court nor sought leave from the Divisional Court to commence an application for judicial review. Relying on r. 60.08(16), the Moving Parties invite this Court to exceed its jurisdiction and undermine the purpose of the prompt payment provisions of the *Act*. I refuse this invitation.

B. Summary of Evidence

(i) *The contract*

[8] Several emails were exchanged between the parties prior to the execution of the contract on July 11, 2022. Those emails were relied on at the adjudication and were included in the record before me.

[9] In email exchanges between April 2, 2022, and July 11, 2022, the Respondent sought payment of the initial draw. The Moving Parties confirmed that they had received conditional approval for financing from RBC on the following terms:

As we discussed earlier today, I have been provided confirmation from RBC of our conditional approval for the construction financing. The land was appraised at CAD \$410,000.00 and the overall project for completion of CAD \$1,385,000.00. The impending

condition is that the sale of our previous property has been executed (May 1, 2024) before RBC will release any funds to us. That said, we will need to push the start date to sometime between May 2, 2024 and May 15, 2024, which [the Respondent] has assured me will not be a problem.

[10] On May 22, 2024, the Moving Parties advised the Respondent that RBC required them to rework the draw schedule based on work completed instead of advanced payments. A similar message from the Moving Parties to the Respondent was sent on May 24, 2024. On May 29, 2024, the Moving Parties emailed the Respondent again, as follows:

The only thing we are missing from Integricon is an updated draw schedule for the lawyer and bank. Joey and I have been speaking and have agreed to 4 x 25% draws as opposed to the 30|30|30|10 split originally presented in March. Please provide this updated document as soon as possible as the new lawyers [sic] office has informed us that the initial draw will be issued by Fri, Jun.07/24 (as opposed to the 18th by the 1st lawyers [sic] office).

[11] The contract was prepared on a form proposed by the Respondent. The Moving Parties allege that they did not receive legal advice prior to executing the contract. The emails exchanged before the execution of the contract make it clear that RBC required the Moving Parties to obtain legal counsel in order to administer the funds. There is nothing before me that explains why the Moving Parties did not seek legal advice on the contract.

[12] The contract appointed the Respondent as the contractor for all construction work and services necessary to complete the project. The draw schedule was set out in accordance with Appendix B of the contract. Where there was an agreed upon change to the work, the contract provided that the Respondent would be entitled to an additional fee calculated based on 10% of the overhead and 5% profit.

[13] Appendix B of the contract sets out the following draw schedule, which totals \$772,143.44 (“Draw Schedule”):

Draw	Amount
1 st Draw – 25% Mobilization	\$170,828.19
2 nd Draw – 25% Due on backfill completion/foundation completion	\$215,243.53
3 rd Draw – 25% Due on completion of roof/framing inspection	\$193,035.86

4 th draw – 15%	\$115,821.51
Due upon delivery of drywall	
5 th draw – 10%	\$77,214.35
Due upon completion of walk-through post drywall taping	

[14] The contract required the Moving Parties to provide evidence of adequate funding for the project; however, there was no provision that limited the Respondent’s entitlement to the draw monies only on the approval of RBC. The contract also required the Moving Parties to pay the Respondent’s invoice within 28 days.

[15] The contract includes provisions relating to termination. If the Moving Parties terminates the contract, then any Expenses or Contractor Forces Amounts (as defined in the contract) incurred up to the date of the termination became due and payable.

[16] The Respondent was entitled to give notice to the Moving Parties if the Moving Parties were in default of their obligations under the contract, including failing to pay the Respondent when due. Where the default was not corrected within 5 days, the Respondent was entitled to suspend their work or terminate the contract without prejudice to any other rights or remedy the Respondent may have. Upon termination, the contract provided that the Moving Parties would pay for all work performed, including reasonable profit, and such other damages and losses within 28 days.

(ii) The Respondent completes the foundation and backfill

[17] The Moving Parties paid the first draw amount of \$170,828.19 on June 10, 2024. The foundation and backfilling for the project was completed by September 20, 2024. On September 25, 2024, the Respondent requested payment of the second draw and sent the Moving Parties an invoice, dated September 20, 2024, for the amount owing in the second draw (the “Disputed Invoice”).

[18] On October 1, 2024, a progress report was prepared by an appraisal firm retained by RBC to assist in the administering of the project funds. The report found that 100% of the foundation and backfilling was complete and that 15% of the overall project was complete.

[19] At a project meeting on October 10, 2024, the Moving Parties advised that the payment of the Disputed Invoice would be sent to the Respondent. This position changed. At a project meeting on October 24, 2024, the Moving Parties advised the Respondent that RBC would not release the funds because not enough work had been completed on the overall project. On the same day, the Respondent provided the Moving Parties with a proposed change order (“PCO”) for a total of approximately \$262,000.00.

[20] The Moving Parties assert that the PCO included items that were contemplated in the original scope of the work under the contract. On November 4, 2024, the Moving Parties advised the Respondent that they did not agree with the PCO. On that same day, the Respondent issued a Notice of Default of the Contract due to non-payment of the Disputed Invoice. The Moving Parties did not pay the Disputed Invoice and took the position that RBC required at least 25% of the project to be completed before releasing the second draw.

[21] Given the dispute over the second draw, the Respondent ceased any additional work on the project and initiated a Notice of Adjudication under the *Act*. At that point, the Respondent had not availed itself of its right to terminate the contract.

[22] On February 10, 2025, the Respondent registered a lien claim against the Moving Parties' property in the amount of \$364,380.49.

(iii) Adjudicator's determination

[23] The parties agreed to have the dispute adjudicated by Marcel D. Mongeon (the "Adjudicator"). At the adjudication, the Moving Parties argued that the Disputed Invoice was not properly issued and that the financing conditions with RBC required percentage completion verification before the Disputed Invoice could be paid. The Moving Parties alleged that the work did not meet the required threshold set by RBC.

[24] In his March 12, 2025, reasons for determination, the Adjudicator identified three primary issues that had to be resolved:

- (1) whether the Moving Parties had a contractual obligation to pay the Disputed Invoice;
- (2) whether the Disputed Invoice was a proper invoice under the *Act*; and
- (3) whether the events that occurred after the Disputed Invoice have any impact on the Respondent's request for an order to pay.

[25] With respect to the first issue, the Moving Parties argued that the contract ought to be interpreted in light of their dealings with the Respondent prior to their signing the contract. Specifically, the Moving Parties asked the Adjudicator to read into the contract a term that only required the Moving Parties to pay the Respondent the draw amount if the Moving Parties were able to obtain the funds from RBC. The Moving Parties also argued that the Draw Schedule only required the second draw payment to be made when 25% of the project had been completed. Relying on the appraisal report, the Respondent argued that only 15% of the project had been completed and, as such, the second draw was not due.

[26] The Adjudicator rejected the Moving Parties' position and found, amongst other things, that:

- (a) the contract contained no provision that draw payments would be based on anything but the Draw Schedule;

(b) the May 29, 2024 email demonstrated that the Moving Parties wanted payment to be based on a 4 times 25% basis and that is effectively what the contract says;

(c) the contract stated the completion of the foundation and backfilling was intended to be 25% of the contract value, not the project value;

(d) the contract dealt only with work provided by the Respondent to a specific stage of construction, and therefore, the contract did not apply to the entire project;

(d) the Draw Schedule required the Moving Parties to pay the Respondent when the Respondent met certain milestones;

(e) the second draw was due upon the Respondent completing the foundation and backfilling milestone; and

(f) the Respondent had completed the foundation and backfilling milestone.

[27] The Adjudicator also rejected the Moving Parties' argument that the payments under the contract should be made for actual work done. The Adjudicator found that the contract was clear that payments would be made against milestones, and there was nothing in the course of the conduct of the parties leading up to the execution of the contract that would warrant reading in a term that limited payments to the actual work done or expenditures.

[28] On the first issue, the Adjudicator concluded as follows:

To conclude on this issue, I find that the Homeowners' obligation is not conditioned on anything such as the Bank financing. The Contract is clear and specifies payments on the achievement of specific milestones. In the case of the Disputed Draw, the amount was foreseen in the Contract. The milestone for payment was achieved. Although the Homeowners did not apparently have the benefit of a lawyer to review the Contract prior to its signature, this does not affect payments to be made. Although there seems to be a clear disconnect between the monies being received from the Bank by the Homeowners and what the Homeowners have agreed to pay to the Contractor, this is what was contemplated by the Contract. The Contractor cannot be held responsible for this disconnect.

[29] With respect to the second issue, the Adjudicator found that the Disputed Invoice had some deficiencies, but nevertheless satisfied the requirements under s. 6.1(1) of the *Act*.

[30] On the final issue, the Adjudicator found that the only matter that was before him was whether an order to pay should be issued relating to the Disputed Invoice:

To make it clear, I am not making any findings of fact relating to any of the evidence submitted by either party relating to the purchases of material for the Project, the storage of those materials or a request for a change order. All of these issues might be the subject of a subsequent adjudication, arbitration or action and it would be improper for me to consider them as I do not need such a consideration in order to make a decision on the matter before me.

[31] Based on the Adjudicator’s interpretation of the contract, he ordered the Moving Parties to pay the Respondent \$215,243.53 (inclusive of H.S.T.), and \$2,701.77 for interest on the outstanding amount up to February 10, 2025, and 8% annually thereafter (the “Payment Order”).

(iv) Termination of contract

[32] Between March 13 and March 24, 2025, the Moving Parties confirmed that they were willing to satisfy the Payment Order if the Respondent agreed to continue working on the project.

[33] On March 25, 2025, the Respondent advised that it was terminating the contract because the Moving Parties had not satisfied the Payment Order. The Moving Parties assert that the termination was a repudiation of the contract.

(v) Garnishments

[34] On April 11, 2025, the Payment Order and a Notice of Garnishment in the amount of \$220,670.35 were sent to each of the Moving Parties’ banks. On the same day, the Moving Parties were advised that their bank accounts were frozen. The Moving Parties allege that approximately \$130,000.00 have been garnished from their accounts and sent to the Sheriff’s Office. On April 23, 2025, copies of the Notices of Garnishment were sent to the Moving Parties.

C. Analysis and Findings

(i) The Statutory Regime

[35] Pursuant to s. 13.5(1) of the *Act*, a party to a contract may refer a dispute to adjudication in respect of several matters, including a “dispute that [is the] subject of a notice of non-payment under Part I.1.” Section 13.13(1) provides that an adjudicator shall make a determination of the matter that is the subject of an adjudication no later than 30 days after receiving the documents required by s. 13.11.

[36] The determination of a matter by an adjudicator is binding on the parties until the determination of the matter by a court, a determination of the matter by way of an arbitration conducted under the *Arbitration Act, 1991*, or by written agreement of the parties (see. 13.15).

[37] Pursuant to s. 13.18(1), an application for judicial review of a determination of an adjudicator may only be made with leave of the Divisional Court. A motion for leave to bring an application for judicial review must be filed with Divisional Court no later than 30 days after the determination is communicated to the parties (s. 13.18(2)). No appeal lies from an order on a motion for leave to bring an application for judicial review (s. 13.18(4)).

[38] Importantly, an application for judicial review of an adjudicator’s decision does not operate as a stay of the determination unless the Divisional Court states otherwise (s.13.18(7)). The Divisional Court has held that a stay will not be granted as a matter of course and that where a stay is granted, it will normally be accompanied by an order securing the disputed payment. The reason for this is simple: the Legislature’s goal in enacting the prompt payment provisions (ss. 6.1 to 6.9) and the prompt adjudication provisions (ss. 13.1 to 13.23) was to ensure both prompt payment and prompt adjudication. Routinely granting a stay of an adjudicator’s determination

would be inconsistent with the prompt payment scheme (see *Anatolia Tile & Stone Inc. v. Flow-Rite Inc.*, 2023 ONSC 1291, at para. 12).

[39] If leave is granted and an application for judicial review is commenced, then the adjudicator's decision may only be set aside on the narrow grounds set out in s. 13.18(5). Those grounds include, the contract or subcontract is invalid or has ceased to exist; the determination was of a matter that may not be the subject of adjudication; there is a reasonable apprehension of bias on the part of the adjudicator; and the determination was made as a result of fraud (s. 13.18(5)).

[40] Where an adjudicator's decision requires a party to pay, that payment must be made within 10 days of receiving the determination (s. 13.19(2)). If prompt payment is not made, a party to an adjudication may enforce an adjudicator's determination by filing a certified copy of the determination with this Court and the determination is enforceable as if it were an order of the court (s. 13.20).

(ii) *The Parties' submissions*

[41] The Moving Parties argue that r. 60.08(16) permits this Court to make an order to set aside, stay, or refuse a garnishment if the attachment of the debt would work inequitably, unfairly, or causes prejudice or injustice to some person other than the judgement creditor (*20 Toronto Street Holdings Ltd. v. Coffee, Tea or Me Bakeries Inc.*, (2001), 53 O.R. (3d) 360 (Ont. S.C.), at para. 5).¹

[42] The Moving Parties go on to argue that in light of the Respondent's repudiation of the contract, the enforcement of the Payment Order through the garnishment process will result in monies being paid to the Respondent for work not completed and that the Respondent will obtain double recovery. The Moving Parties argue that this is inequitable and unfair.

[43] Alternatively, the Moving Parties argue that the Respondent should only be entitled to garnish a total of \$47,102.53, which represents the difference between actual work provided by the Respondent and the monies already paid to the Respondent for the first draw. The Moving Parties argue that the Respondent provided \$217,930.72 worth of work on the project and the Respondent has already been paid \$170,828.19.

[44] The Respondent argues that the Adjudicator's determination is binding and enforceable, and s. 13.20 of the *Act* permits the Respondent to file and enforce the determination as a court order. The Respondent argues that the Moving Parties' motion is an attempt to stay the Payment Order in the absence of seeking leave from the Divisional Court to commence an application for judicial review or seeking a stay of the Adjudicator's determination. As such, the Respondent submits that this Court does not have jurisdiction to grant the relief sought by the Moving Parties.

¹ As a matter of completeness, I note that s. 13 of *O. Reg. 302/18: Procedures for Actions under Part VIII*, made pursuant to the *Act*, prohibits a party from taking interlocutory steps, other than those provided for under the *Act*, without consent of the court on proffer that the steps are necessary or would expedite the resolution of the dispute. Section 13 does not apply to this motion because the Respondent's garnishment proceeding was not commenced pursuant to Part VIII of the *Act*.

(iii) Findings and Conclusion

[45] Garnishment is a statutory remedy. The remedy is broad, equitable, and discretionary (*Entes Industrial Plants Construction & Erection Contracting Co. Inc. v. Centerra Gold Inc.*, 2023 ONCA 294, 481 D.L.R. (4th) 160, at para. 10; *Waxman v. Waxman*, 2007 ONCA 326, at para. 37). Rule 60.08(1) of the *Rules* provides that garnishment is available to a creditor under an order for the payment or recovery of money. Having filed a certified copy of the Adjudicator's determination with the Court, there is no doubt that the Respondent is a creditor under an order for the payment of money.

[46] Given the discretionary and broad nature of the garnishment remedy, r. 60.18(16) allows the Court, in response to a garnishment motion, to "make any order it deems just" (see *Entes*, at para. 10; *20 Toronto Street Holdings Ltd.*, at para. 5). Rule 60.18(16) permits a judge to relieve the debtor of the burden of a garnishment order in circumstances where it would be inequitable, unfair, or cause prejudice to a person other than the judgment creditor (see *20 Toronto Street Holdings Ltd.*, at para. 5).

[47] As noted above, the Moving Parties argue that allowing the Respondent to use the garnishment process to enforce the Payment Order would be inequitable and unfair. I disagree.

[48] The Moving Parties' fairness argument is anchored on three propositions: (1) that the Adjudicator's determination was premised on the Respondent continuing to work on the project (see para. 22 of the Moving Parties' factum); (2) that the Adjudicator's determination is interim and can be reviewed by the court on a garnishment motion; and (3) that the termination/repudiation of the contract means that the Respondent is not entitled to the Payment Order.

[49] I now evaluate each proposition.

[50] The Moving Parties cannot point to any part of the determination where the Adjudicator either implicitly or explicitly found that the Payment Order was made on the basis that the Respondent would continue to work on the project. There is nothing in the Adjudicator's reasons that suggests that the Payment Order was premised on the Respondent continuing to work on the project.

[51] The Adjudicator found that the Respondent was entitled to the second draw upon completion of the foundation and backfill milestone. Based on the Adjudicator's interpretation of the contract, the Respondent was entitled to the second draw irrespective of whether the Respondent continued to perform work on the project. Had the Respondent continued to perform work under the contract, the Respondent may have been entitled to the third or fourth draw; however, the fact that the Respondent did not continue to perform work under the contract did not disentitle the Respondent to the second draw for work that had already been completed. As such, the first proposition is demonstrably false.

[52] Through this motion, the Moving Parties attempt to resurrect an argument that was explicitly rejected by the Adjudicator: that the Respondent was only entitled to payment for actual work performed and not the completion of a specific milestone. In the Adjudicator's determination, he summarized the Moving Parties' argument as follows:

The Disputed Draw is a payment for future work, not work completed. If the Claimants receive such payment and do not complete the work of the Project, they will receive a windfall that is only intended for future work on the Project. If the Claimant is paid without completing the work, the Order would not be reasonable or just.

...

The lien that has been placed on the Property was done in bad-faith as the Contractor is seeking payment for work not yet completed, with no intention to complete the Project. Essentially the Contractor is looking for a windfall of funds to not complete the Project.

[53] As noted above, the Moving Parties' argument was rejected. The Adjudicator found that the Respondent was entitled to the second draw for *past* work completed (i.e., completing the backfilling and foundation milestone).

[54] It is clear from the Adjudicator's determination and the submissions made by the parties to the Adjudicator (which are included in the record before me) that the Moving Parties' motion is an attempt to use a garnishment motion to collaterally attack the Adjudicator's determination.

[55] While the Adjudicator's determination is an interim decision, it is nevertheless binding on the parties, subject to the following:

- (a) the Divisional Court grants a stay of the determination;
- (b) leave to commence a judicial review application is granted and the application is granted;
- (c) the matter that is subject to the determination is addressed by a judge;
- (d) the matter that is subject to the determination is addressed by an arbitrator under the *Arbitration Act, 1991*; or
- (e) by agreement of the parties.

[56] A garnishment motion, which is solely about whether a creditor is entitled to enforce an order through the garnishment process is not "a determination of the *matter* by a court." A garnishment motion may require a judge to consider an adjudicator's determination, but it does not involve a "determination of the matter" that was the subject of adjudication. A garnishment motion can inquire into the equities of enforcing an order, but it is not intended to challenge the correctness of the order being enforced.

[57] Using a garnishment motion to undermine findings made by an adjudicator would effectively undermine the purpose of the prompt payment and prompt adjudication system imposed by Part I.1 and Part II.1 of the *Act*. Those provisions were enacted to address the problem of interruptions in the flow of funds on construction sites as a result of delays caused by the litigation process (see *Jamrik v. 2688126 Ont. Inc.*, 2024 ONSC 2854, at para. 23; *Pasqualino v. MGW-Homes Design Inc.*, 2022 ONSC at para. 30).

[58] Put simply, the second proposition is undercut by the fact that a garnishment motion is not intended to be a review of the correctness of the order being enforced. If a garnishment motion did permit such a review, it would effectively eviscerate the purpose of the prompt payment and prompt adjudication provisions.

[59] Finally, whether the contract has been repudiated is irrelevant to whether the Respondent is entitled to enforce the Payment Order through the garnishment process. I come to this conclusion for two reasons. First, it would only be relevant if the Adjudicator's determination was made on the assumption that the Respondent would continue working on the project. The determination was not made on such an assumption.

[60] Second, a similar argument was rejected by the Divisional Court in *Pasqualino*. In *Pasqualino*, a party subject to a payment order sought leave to judicially review an adjudicator's determination. In seeking leave, the party claimed that at the time of the adjudication, the contract "ceased to exist" because it was repudiated. R.S.J. Richetti (as he then was) rejected this argument because it was not raised in the adjudication below and because repudiation of the contract did not necessarily mean that all obligations arising from the contract, when it existed, were null and void:

[24] Whether the construction contract was abandoned or terminated was expressly not decided by the Adjudicator. In my view, whether the construction contract was abandoned or terminated, even if that had been established before the Adjudicator, would not have made the construction contract "cease to exist".

[25] I point out that the Adjudication process was not intended to require an Adjudicator to delve into making factual and legal determinations on whether a contract was abandoned or terminated, whose fault it was, did it amount to a repudiation, is the claim advanced by the innocent party and such types of determinations. The simplified and expeditious process of adjudication would be defeated if the Adjudicator was required to consider and decide such issues.

...

[27] A construction contract is repudiated by a fundamental breach by a party. A termination or abandonment can amount to contract repudiation. However, if a contract is determined to be abandoned or terminated contract, even if amounting to repudiation, that does NOT make the contract cease to exist. The innocent party can elect to affirm the contract or accept the repudiation and bring the performance of the contract to an end. But the terminated or abandoned contract does not cease to exist. Its performance is brought to an end. The innocent party is excused from performing its obligations and can sue for damages for breach of contract. The guilty party generally (although not in all cases) loses its right to claim damages. Accordingly, the abandoned or terminated contract cannot "cease to exist" because the parties will have acquired rights during the performance that can and do survive a termination or abandonment of the contract.

[28] In *Guarantee Company of North America v. Gordon Capital Corp.* (2000), 178 D.L.R. (4th) (SCC) 1, the court concluded that, whether there is repudiation, the contract continues to exist to determine rights that arose prior to the termination:

41 So much is relatively clear. Problems have arisen, however, from misuse of the word “rescission” to describe an accepted repudiation. In *Keneric Tractor Sales Ltd. v. Langille*, 1987 CanLII 29 (SCC), [1987] 2 S.C.R. 440, at p. 455, Wilson J., writing for the Court, addressed the distinction as follows:

The modern view is that when one party repudiates the contract and the other party accepts the repudiation the contract is at this point terminated or brought to an end. The contract is not, however, rescinded in the true legal sense, i.e., in the sense of being voided *ab initio* by some vitiating element. The parties are discharged of their prospective obligations under the contract as from the date of termination but the prospective obligations embodied in the contract are relevant to the assessment of damages: see *Johnson v. Agnew*, [1980] A.C. 367, [1979] 1 All E.R. 883 (H.L.), and *Moschi v. Lep Air Services Ltd.*, [1973] A.C. 331, [1972] 2 All E.R. 393 (H.L.). [Emphasis added.]

....

[32] If either party could allege a termination or abandonment of their construction contract and that allegation were to result in the construction contract “ceasing to exist”, Adjudication could be easily avoided and there would be a return to the prior lengthy and expensive legal process with the likelihood that the flow of funds would not flow down the construction pyramid for a very long time. Essentially, the Adjudication provisions in the *Construction Act* would be gutted.

[61] I adopt the reasoning in *Pasqualino*. Even if I accept that the contract was repudiated on March 25, 2025, that does not mean that the Respondent lost its entitlement to the second draw. Rather, the obligations that arose before the contract was terminated/repudiated continue.

[62] I note that if the Moving Parties wanted to argue that “repudiation” of the contract meant that the Payment Order could not be enforced, then it should have sought leave to commence a judicial review application pursuant to ss. 13.18(1) and (5) of the *Act* on the basis that, “the contract or subcontract is invalid or has ceased to exist.” The Moving Parties allege that the contract was repudiated on March 25, 2025, which was still within the 30-day period to seek leave to commence a judicial review (s. 13.18(2)).

[63] For the above reasons, the third proposition has no merit.

[64] The Moving Parties also argue that it would be unfair to permit the Respondent to enforce the Payment Order through garnishment because it creates a risk that the Respondent will be paid twice.² I reject this argument for three reasons.

[65] First, s. 13.5(5) of the *Act* provides that construction disputes may be referred to adjudication regardless of whether there is a court action regarding the same subject matter (see *Pasqualino* at para. 35). In enforcing the Payment Order and registering the lien, the Respondent

² The Respondent’s lien is for \$364,380.49. On the record before me, it is not clear exactly what lienable services the Respondent is seeking to enforce through its lien claim and action.

is merely engaging in the statutory remedies afforded to it. There is nothing inherently unfair with the Respondent relying on both mechanisms.

[66] Second, to the extent that the lien claim is inclusive of the monies owed under the Payment Order, there is little risk that the Respondent will receive double recovery. If the Moving Parties post security with the court to vacate the lien, then they have a right to seek a reduction of the amount of the security posted under s. 44(5) of the *Act*. Presumably, any monies paid to the Respondent through the garnishment process would be deducted from the amount paid into court to vacate the lien. Further, a judge hearing the lien action may determine that the Moving Parties' interpretation of the contract is preferable to the Adjudicator's interpretation. In this scenario, the Moving Parties would be free to seek recovery of any amounts paid under the Payment Order (see *Pasqualino* at paras.30; 42-43; *Arad Incorporated v Rejali et al*, 2023 ONSC 3949, at para. 16; s.13.15(1) of the *Act*).

[67] Third, to the extent that the lien claim does not overlap with the monies owing under the Payment Order, then there is no risk of double recovery. The Payment Order is limited to the monies owed to the Respondent based on the Adjudicator's finding that it was entitled to the second draw. There is nothing in the statute that prohibits the Respondent from registering a lien for other obligations owing under the contract for lienable services or materials pursuant to ss. 14 and 17 of the *Act*.

[68] In asking this Court to set aside, stay, or refuse the garnishment, the Moving Parties are, in effect, seeking to stay the Payment Order (see *Okkin Construction Inc. v. Apostolopoulos*, 2022 ONSC 6367, at paras. 38-41). If the garnishment process is stayed or set aside, then the Adjudicator's determination is rendered meaningless. The *Act* provides an exhaustive regime for how to judicially review an adjudicator's determination, the narrow grounds on which a party can seek to set aside a determination, and which court is responsible for granting a stay of an adjudicator's decision. In effect, the Moving Parties rely on r. 61.06(16) to urge the Court to do indirectly what it cannot do directly – stay the Payment Order. I lack the jurisdiction to make such an order.

[69] To be clear, my decision is not a ruling on the reasonableness or correctness of the Adjudicator's determination. That assessment falls outside the scope of this motion. To the extent that the Respondent's lien action requires a judge to interpret the contract, it will be that judge who determines the meaning of the contract and the Draw Schedule.

[70] In light of the above, I dismiss the Moving Parties' motion and set aside the interim order dated May 13, 2025, which was extended on June 16, 2025.

[71] The Respondent seeks several orders related to the ongoing enforcement of the Payment Order, including an order directing the Sheriff to distribute any amounts it has received from the Respondent's Notices of Garnishment. The Respondent also seeks various declarations (e.g., an order that the Respondent's Notices of Garnishment are valid and enforceable). In the absence of a cross-motion, it would not be appropriate to grant an order directing the Sheriff to distribute the funds. With respect to the declaratory relief sought, I see no utility in granting those declarations. It is clear from these reasons that the Respondent is entitled to enforce the Payment in the normal course including through the garnishment process.

D. Conclusion and costs

[72] The motion is dismissed.

[73] I strongly urge the parties to come to an agreement on costs. If an agreement cannot be reached, then the Respondent shall serve costs submissions of no more than three pages and a costs outline by August 25, 2025. The Moving Parties shall serve a three page responding costs submissions and a costs outline by September 5, 2025.

The Honourable Justice Sunil S. Mathai

Released: August 13, 2025