

CITATION: Urban Electrical Contractors v. Urban Integrated Group Inc., 2025 ONSC 5164
COURT FILE NO.: CV-23-701571
DATE: 2025 09 09

SUPERIOR COURT OF JUSTICE - ONTARIO

IN THE MATTER OF the *Construction Act, RSO 1990, c C.30, as amended*

RE: 1086289 ONTARIO INC. o/a URBAN ELECTRICAL CONTRACTORS,
Plaintiff

- and -

URBAN INTEGRATED GROUP INC. and 35 MERCER LIMITED,
Defendants

BEFORE: Associate Justice Todd Robinson

COUNSEL: J. Siemon and A. Jovanovic, *for the defendant, 35 Mercer Limited (moving party)*
F. Souza, *for the defendant, Urban Integrated Group Inc.*
N. Maragna, *for the plaintiff*

HEARD: June 9, 2025 (by videoconference)

**REASONS FOR DECISION
(Reduction in Lien and Lien Security)**

[1] 35 Mercer Limited (“Mercer”) brought this motion seeking to reduce the lien of 1086289 Ontario Inc. o/a Urban Electrical Contractors (“UEC”) by \$4,333,708.96 or, alternatively, to such lesser amount as may be determined. That relief was opposed by UEC. Mercer also initially sought orders declaring certain other subtrade and supplier liens arising from the project expired and returning security for those liens from court. Reducing the security in court was opposed by Urban Integrated Group Inc. (“UIG”) since security posted to vacate UIG’s own liens was reduced to account for security already posted for other liens in the contractual tiers below UIG.

[2] Prior to the motion hearing, Mercer, UEC, and UIG settled the motion, other than costs. A key term of their settlement was a significant reduction in UEC’s lien and the related lien security in court by \$3,231,464.75. Counsel for the parties agreed to a form of consent order.

[3] Subsequently, Mercer and UEC settled UEC’s lien in its entirety as well as UEC’s claim against Mercer. That agreed settlement includes consenting to a full discharge of UEC’s lien, returning the lien bond posted by Mercer as security for UEC’s lien, and dismissing this action as

against Mercer. Although taking no position on discharge of UEC's lien and dismissal of UEC's action as against Mercer, UIG opposes the requested full return of security for UEC's lien.

[4] Having considered the parties' submissions, I agree with UIG that UEC's lien security cannot be returned in full and should only be reduced by the amount for which UIG has consented. I have also decided that there should be no costs of the motion awarded to any party, but without prejudice to Mercer and UIG claiming their respective costs of the motion as against one another as costs in UIG's lien actions.

ANALYSIS

Extent of reduction in security

[5] As noted above, Mercer, UEC, and UIG initially agreed to settle this motion on terms, namely that UEC's lien and security for the lien would be reduced by \$3,231,464.75. Mercer agreed to withdraw the balance of its motion dealing with the liens of other subtrades and suppliers. Mercer, UEC, and UIG all agreed that costs of the motion would be dealt with by the court. A consent order was drafted and circulated by Mercer's lawyers and, after amendments, counsel for Mercer, UEC, and UIG all agreed on a final form of consent order.

[6] Following that settlement, Mercer and UEC continued settlement discussions themselves. They ultimately reached a separate, broader settlement to discharge UEC's lien, return the security for UEC's lien, and dismiss UEC's action as against Mercer on a without costs basis. UIG was not involved in those settlement discussions. Notably, the settlement does not fully dispose of UEC's lien and lien action. It only disposes of UEC's lien and its claim against Mercer, with a contemplated return of the security posted by Mercer for UEC's lien. UEC's claim in contract against UIG and UIG's crossclaim against Mercer are not being dismissed.

[7] Following that settlement, a new draft consent order was proposed by Mercer's lawyers and agreed by UEC. That form of order is opposed by UIG insofar as it seeks a full return of the security in court for UEC's lien.

[8] UIG proposes that two orders be signed. The first order is the one agreed by the parties when settling the motion. The second order is one that does not alter the original terms of the motion settlement, but gives effect to the separate terms of settlement as between Mercer and UEC, namely discharge of the lien and dismissal of the action as against Mercer, without costs. UIG still opposes returning the full security for UEC's lien.

[9] Mercer's primary argument is that UEC's claim is carried by UIG as a flow-through claim against Mercer, so there is no basis to view the claims by UEC and UIG separately. Moreover, Mercer argues that UIG's position is inconsistent with its own factum, which states that UIG was seeking an order that the security for UEC's lien "be reduced by any amount that [UEC] may consent". Mercer submits that clarification on UIG's position was sought from UIG, but no response was provided. The settlement with UEC was ultimately reached. The draft order proposed by Mercer is argued to be consistent with the terms of the settlement with UEC and

UIG's prior position as stated in its factum. UEC has consented to withdraw its lien so the security should thereby be returned.

[10] UIG submits that relying solely on the specific language at the end of its factum is misleading and meant to distract from the reality that the only amount agreed by UIG for reducing security was \$3,231,464.75. UIG argues that its submission in the factum was not "a free-standing offer to settle" that opposing counsel could rely upon. Rather, it was meant to cover the circumstance that UEC had already agreed in its own factum, namely reducing the lien security by \$67,464 for other amounts that UEC was no longer pursuing. UIG submits that when Mercer's lawyers sought to clarify UIG's position they were effectively seeking with prejudice admissions from UIG without providing any context for or details of the ongoing settlement discussions between Mercer and UEC.

[11] I agree that Mercer is taking too narrow a view of the position in UIG's factum. UIG's factum specifically identifies that the claim of UEC (among those of other lien claimants) is subsumed in UIG's claim and that UEC is not withdrawing its claim against UIG. Those facts and the basis for UIG's opposition to returning security are set out early in UIG's factum, which states as follows:

As long as these amounts are sought by these parties against Urban Integrated in these proceedings, with or without a lien, then the security posted should not be reduced. The security that Mercer posted to vacate [UIG]'s liens was based on a consent order, that took into account the earlier security posted for the subtrades, so as to avoid any duplication.

[12] UIG also raises prejudice in its factum from the reduction in security for UEC's lien. It submits that any reduction in UEC's lien security is also a reduction in security for UIG's liens. As a result, reduction of the lien security prejudices not only UIG, but also the various subcontractors who have liens or other claims that are subsumed in UIG's liens. UIG's factum further points to concerns raised in UIG's supporting affidavit that Mercer is disposing of assets, making any reduction in security even more concerning (albeit that position was not advanced in oral argument).

[13] UEC supports Mercer's position, arguing that independent security was posted for UEC's claim and, since its lien claim is subsumed in UIG's claims and is no longer not being pursued, there is no prejudice to UIG from returning that lien security. In my view, that submission overlooks that UEC is continuing its contract claim against UIG, even if no longer pursuing its lien. UIG may still be found liable to UEC for the same amounts that are still being pursued against it and form part of UIG's liens.

[14] It is significant that none of the parties dispute that UIG's liens were vacated with reduced security that accounted for the security already posted by Mercer to vacate various subtrade and supplier liens, including UEC's lien. Pursuant to s. 44(9), rule 2 of the *Construction Act*, RSO 1990, c C.30, an amount paid into court or security posted to vacate a lien is subject to the claims of all persons having a lien to the same extent as if that amount was realized by the sale of the premises. As set out in that rule, such lien security is distributed among all lien claimants in accordance with the priorities provided for in the legislation. This security "pooling" is an

important feature in the quasi-class nature of lien actions in the *Construction Act*. Put simply, security for one lien is security for all liens.

[15] It follows that security posted for one lien claim cannot be returned without first considering whether other lien claimants are affected by that return. For that reason, prior to ordering the return of lien security, the court routinely requires evidence on whether there are any other liens and, if so, whether those other liens have been satisfied, discharged, released, or vacated with sufficient separate security under s. 44(1) of the *Construction Act*. That is the case even if the return of lien security is requested on consent of all parties to a lien action. Although that evidentiary requirement may not be explicitly set out in the practice directions for each judicial region throughout Ontario, it is squarely set out in Part I, Section 2C, para. 18 of the *Consolidated Practice Direction – Toronto Region* (as it was previously set out in the predecessor *Notice to Profession and Parties – Toronto Region*).

[16] UIG is clearly affected by the return of UEC's lien security. UIG's consent to have its own liens vacated with reduced security was expressly premised on accounting for UEC's lien claim (among others), consistent with s. 44(9), rule 2 of the *Construction Act*. The result was that the portion of UIG's liens that overlap with UEC's already-vacated lien was not secured again.

[17] In my view, accepting Mercer's position would be tantamount to endorsing that an owner can settle directly with a subcontractor (with which that owner has no privity of contract) and bind the contractor (the contracting party) without the contractor's prior consent. I have been directed to no provision of the *Construction Act* or case law supporting such a position. The closest provision is s. 28, which permits an owner to make payment without obligation to a person having a lien, on notice to the payer of the lien claimant, in which case the payment is deemed a payment to the lien claimant's payer. That provision, at best, supports a reduction for any settlement amount actually paid by Mercer to UEC. That is not what Mercer is seeking.

[18] UEC's claim is the subject matter of *both* UEC's lien *and* UIG's lien. The fact that Mercer has settled UEC's lien claim directly with UEC does not preclude UIG from still pursuing its own claim for those carried amounts. UIG's claim against Mercer is grounded in its own contracts and the work performed under them by and on behalf of UIG. It is not grounded in the claims that subcontractors in lower tiers may or may not advance under their own subcontracts.

[19] I acknowledge that Mercer may potentially be entitled to some credit for amounts paid to UEC. However, Mercer's settlement with UEC cannot foreclose UIG's claim for the same work absent UIG's consent. Put simply, UIG was not a party to the settlement between Mercer and UEC, so UIG is not bound by UEC's concessions. The fact that UEC is continuing its contract claim against UIG lends support to UIG's position that security for its own lien claims should not be reduced beyond the amount to which it has consented. That claim, which has been carried by UIG in its claims against Mercer, has not been withdrawn.

[20] For these reasons, I am only ordering reduction of the security for UEC's lien to the extent of UIG's consent. Given the consent discharge of UEC's lien, the balance of security will now stand for UIG's liens.

Costs of the motion

[21] Mercer seeks its costs of the motion, but only against UIG. It does not seek any costs against UEC. Specifically, Mercer seeks costs of the motion from UIG in the amount of \$28,225.40, including HST and disbursements. That figure represents roughly one-half of Mercer's partial indemnity costs on the motion. Mercer maintains that UIG's position and materials drove more than half of Mercer's costs on the motion, but it is nevertheless seeking only one-half of its costs against UIG.

[22] UIG submits that this case is akin to my prior decision in *Brian Stucco Construction Inc. v. Nili-Ardakani*, 2021 ONSC 8541. In that case, I reviewed case law discussing both the reluctance of the court to award costs where all other issues between the parties have been resolved without court intervention and the circumstances under which the court may still consider awarding costs when parties have settled. I ultimately denied costs to either side since they had settled all issues themselves and I found nothing exceptional about the case to warrant assessing costs absent judicial findings or determinations on the merits. UIG argues that this is a similar case in which the parties compromised and reached a settlement of the motion without judicial intervention on terms that are not the same as the relief sought by Mercer in its notice of motion.

[23] Mercer disagrees, arguing that this case is not the same as *Brian Stucco*. Mercer moved for a reduction in UEC's lien in excess of \$3 million, which it obtained. As ancillary relief, Mercer also sought declarations that other liens had expired and the return of related lien security. That ancillary relief was ultimately withdrawn, but only by way of deferring Mercer's requests that the other liens be declared expired. Mercer submits that the portion of its motion relating to the other liens was negligible. Mercer argues that it did not capitulate or abandon its position; rather, it only deferred it. Conversely, UIG is argued to have capitulated on reduction of security for UEC's lien, but waited until after serving a responding factum to do so. By that time, UIG had served substantial motion materials opposing the motion, including a motion record of over 1,100 pages, and had cross-examined on Mercer's supporting affidavits.

[24] Mercer further argues that UIG's conduct and position in response to the motion was unreasonable. Mercer submits that, prior to bringing the motion, it had obtained admissions that UEC had no documents to substantiate its substantial delay claim, which UIG is advancing against Mercer as a flow-through claim. Nevertheless, UIG sought to substantiate UEC's claim when UEC had not done so itself, notably pointing to alleged "extensive documentation" purportedly provided to UIG's delay expert, but which is not included in the record. UIG's supporting affiant put forward positions on the merits of UIG's delay claim that required Mercer to review significant documents, mostly from UIG and not from UEC.

[25] Unquestionably there were significant materials exchanged on this motion, but the number of pages is not an indicator of complexity. The materials include copies of UIG's three contracts with Mercer, representing hundreds of pages; various documents supporting UIG's delay claim; and the lengthy report of UIG's delay expert. UIG's materials and the expert report cover more than only UEC's delay claim. These are all documents at issue in the litigation between UIG and Mercer. It is not clear to me that they needed to be reviewed afresh and in detail in dealing with this motion.

[26] I also do not agree with Mercer that it was for UEC, and not UIG, to prove UEC's delay claim. As between UIG and Mercer, UIG bears the onus of proving its delay claim, which subsumes UEC's claim. Mercer's challenges to UEC's delay claim on this motion accordingly implicated the validity of at least a portion of UIG's own delay claim. An order disposing of UEC's lien does not automatically reduce or limit UIG's claims. As already noted, although UEC is no longer pursuing a lien, UEC's claims against UIG have not been withdrawn.

[27] I am not convinced by Mercer's arguments that this case is materially different than *Brian Stucco*. The parties reached a settlement of the motion, other than costs. I have not made any determinations on the parties' rights, nor could I do so without argument on the record put before me on this motion. Mercer's request that I award costs is very much a request that I decide costs in the abstract, but premised on Mercer's view that UIG's responding position was unmeritorious. I am unable to find that it did or did not have merit.

[28] Frankly, UIG's opposition to reducing security does have some merit. As discussed above, it is undisputed that security for UIG's liens was reduced to account for the very lien security that Mercer was seeking be returned. I am also mindful that Mercer initially sought a reduction of \$4,333,708.96 in security for UEC's lien, plus return of security for three other liens totalling \$900,555.60. This is not a situation where UIG capitulated and Mercer is obtaining all relief sought on the motion. To the contrary, Mercer ultimately withdrew its request for return of the \$900,555.60 and consented to reduction of security for UEC's in the reduced amount of \$3,231,464.75. I do not know why Mercer compromised its position, much like I do not truly know why UIG withdrew full opposition to any reduction in security. UIG argues that the lower reduction in UEC's lien security and withdrawal of relief for return of other security was a central factor.

[29] Ultimately, I find the comments of Myers J. in *Muskala v. Sitariski*, 2017 ONSC 2842 at para. 9, to be apt here:

I cannot tell if the defendants ought to have consented in advance or if they had good reason not to consent until they did. One never knows why people settle without invading the privileged relationship between lawyer and client. Perhaps the defendants had very good defences to the motions but chose to consent for other reasons – such as to establish their *bona fides* and to buy peace.

[30] I note also that, if I were to assess costs, I would also need to consider that UIG was successful on the disputed security reduction issue argued before me.

[31] UIG submits that each party should bear their own costs. I am not convinced that is a just result in the circumstances. In my view, there has been value to both Mercer and UIG from the materials exchanged and steps taken in this motion in their own dispute in UIG's lien actions, which are also subject to the reference before me. In my view, UIG's alternative proposal is appropriate, namely that there should be no costs of the motion at this time, but without prejudice to each of Mercer and UIG claiming their costs of this motion as against one another as costs of UIG's lien actions in any event of the cause. I will be in a far better position to determine the reasonableness of the parties' positions once I have made final determinations on their respective claims against one another.

DISPOSITION

[32] For the foregoing reasons, having regard to the consent of Mercer, UEC, and UIG and the separate consent of Mercer and UEC, I order as follows:

- (a) UEC's lien is hereby discharged.
- (b) The enforceable value of the lien bond security for UEC's lien is hereby reduced by \$3,231,464.75, leaving a balance of \$2,320,997.51, which shall continue to be held by the Accountant of the Superior Court of Justice as security for UIG's liens pending further court order.
- (c) Mercer shall be at liberty to replace the existing lien bond security with replacement security in the amount of \$2,320,997.51 or otherwise amend the existing security by providing a lien bond rider reducing the bond amount to \$2,320,997.51, for which a separate motion may be brought in writing, either *ex parte* or on consent, with a copy of the proposed replacement security or any lien bond rider provided for approval by the court.
- (d) The balance of Mercer's relief on this motion is withdrawn.
- (e) This action is hereby dismissed as against Mercer only, on a with prejudice and without costs basis.
- (f) This action shall hereafter continue as against UIG, including the crossclaim of UIG as against Mercer, as an ordinary action governed by the *Rules of Civil Procedure*, RRO 1990, Reg 194, and shall no longer be governed by the provisions of the *Construction Act* and its regulations.
- (g) There shall be no costs of the motion to any party, without prejudice to Mercer and UIG claiming costs of this motion as against one another as costs of UIG's lien actions, in any event of the cause.

[33] I have signed an amended form of the draft motion order submitted by UIG, as amended electronically prior to signing.

[34] In my prior decision in this reference dealing with distribution of admitted basic holdback (2025 ONSC 2353), I allocated the sum of \$776,777.60 for UEC's lien. Since that lien has now been discharged, how those funds are to be addressed must be determined. Submissions on the funds, including potential reallocation and, if allocated to other lien claimants, any additional holdback release, may be made at a future hearing for directions in this reference.

ASSOCIATE JUSTICE TODD ROBINSON

DATE: September 9, 2025