CITATION: Demasi Contracting Inc. v. Farahmand, 2025 ONSC 5445
COURT FILE NO.: CV-24-3447
DATE: 20250924

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: DEMASI CONTRACTING INC., Plaintiff

AND:

ALI FARAHMAND, HEALTHCARE & MUNICIPAL CREDIT UNION, AJGL GROUP INC. and SAHAR HAJIMOHAMMADI, Defendants

BEFORE: The Hon. Madam Justice S.E. Fraser

COUNSEL: Hezekiah O. Davies, Counsel for the Plaintiff

No one appearing for the Defendants, although properly served

HEARD: August 22, 2025 (by videoconference), with further written submissions

ENDORSEMENT

I. Nature of the Motion

[1] The Plaintiff seeks an order authorizing the sale of 6 Maryvale Crescent, Richmond Hill and an order under the *Construction Act*, R.S.O. 1990, c. C.30 (the "Act") that the first mortgagee Healthcare and Municipal Employees' Credit Union (HMCU), improperly named in this proceeding as Healthcare & Municipal Credit Union, is an owner under the Act and that, as a lien claimant, it stands in priority to HMCU.

[2] For the reasons set out below, I dismiss the motion and deny the relief sought.

A. The Proceeding

[3] The Plaintiff is a lien claimant who obtained default judgment as against the Defendants on June 27, 2025.

[4] The Registrar granted judgment without prejudice to the Plaintiff's right to seek further relief in this proceeding including priority of its construction lien under the Act.

[5] The matter was first brought in writing before Justice Di Luca on July 24, 2025. He ordered a factum and identified several concerns. The matter came before the Court again on August 8, 2025, and Justice Wannamaker ordered that Justice Di Luca's concerns had not been fully addressed.

[6] I heard the matter on August 22, 2025, ordered that the parcel register be provided, and asked for supplementary material relating to service on the first mortgagee, HMCU. I agreed to consider the supplementary material in writing. The supplementary material filed satisfies me the Defendants have had notice of the proceedings and this motion.

B. Background Facts

[7] The Defendant Ali Farahmand and his spouse purchased the property on July 29, 2022. Also on that date, a $3,120,000 charge was registered on the property in favour of HMCU.

[8] By the facts deemed admitted, in June 2023, the Defendant Ali Farahmand hired the Plaintiff to demolish and rebuild the building on the property. The Plaintiff performed the work, hired subcontractors, and remained on site until March, 2024. Invoices were delivered for the work performed.

[9] The property was encumbered with both HMCU's mortgage and a second mortgage, the latter which has now been discharged.

[10] The Defendant Farahmand did not pay all the invoices and there remains a debt of $760,000.

[11] HMCU was aware of the work being done on the property in the Fall of 2023 and the Plaintiff states that it consented to the work being done on the property when it attended to the property.

[12] On April 3, 2024, HMCU took possession of the property and changed the locks of the Plaintiff's trailer. The Plaintiff asserts that HMCU took and/or destroyed its construction equipment/work by burying it in the ground at the construction site.

[13] On April 28, 2024, the Plaintiff registered its lien.

[14] On March 26, 2025, AJGL Group Inc., which had a second mortgage on the property, settled with the Defendant Farahmand and his spouse and discharged the second mortgage. The Plaintiff has discontinued the claim as against AJGL Group Inc.

II. Issue

[15] I must decide whether the Defendant HMCU is an owner within the meaning of the Act.

III. Analysis

[16] I will first address the statutory definition of owner, then address judicial consideration of the definition, and then examine the facts of this case as it applies to those principles.

[17] The Act provides at s. 1 that:

> "owner" means any person, including the Crown, having an interest in a premises at whose request and,
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> (a) upon whose credit, or
>
> (b) on whose behalf, or
>
> (c) with whose privity or consent, or
>
> (d) for whose direct benefit,
>
> an improvement is made to the premises but does not include a home buyer.

[18] The definition is the same as it was under the *Construction Lien Act*, which is now the Act.

[19] The required elements of owner are that the person has an interest in the premises, and that at the request of that person, an improvement is made on the premises. To satisfy the ownership criteria, the improvement upon the premises must be upon the credit of the person who has the interest in the property and requests the improvement, or on the person's behalf, or with the person's privity or consent, or for the person's direct benefit.

[20] In *Ravenda Homes Ltd. v. 1372708*, 2017 ONCA 834, in considering the definition of owner, the Court of Appeal for Ontario held at para. 29 that:

> [T]he definition of owner under s. 1(1) of the CLA requires that an owner have "an interest in a premises" to which the improvement is made, not just an interest in the improvement. An interest in personalty or an interest in an improvement by itself, without an attached interest in land, cannot constitute a lienable interest.

[21] The Plaintiff relies on *Ravenda Homes* in support of its request. I agree that HMCU had an interest in the premises. However, this aspect of the Court of Appeal decision addresses only the requirement of an interest in the premises and the improvement. The analysis does not end there.

[22] In *RSG Mechanical Incorporated v.1398796 Ontario Inc*., 2015 ONSC 2070, the Divisional Court held at paras. 55-59, that there is a temporal aspect of the assessment of whether an individual, corporation or other entity is an owner: the relevant time to determine ownership is when the work or improvement was requested, not sometime later.

[23] To be an owner under s. 1 of the Act, the work must be done at the request of the person. There is no evidence that the work was done at the request of HMCU. There is some evidence that HMCU consented or acquiesced to the work being done. However, in my view, the Plaintiff has not proven that the work was done at the request of HMCU.

[24] In *Ravenda Homes*, the Court considered this part of the test at paras. 30-31. It held "at the request" may be express or implied from the circumstances of the case including the nature of the arrangements or dealings between the parties. This means that the Court must look not only to the contract but also to the substance of the transaction between the parties.

[25] In this case, the premises were mortgaged by HMCU and the charge registered well in advance of any work. There is no suggestion that HMCU's role was to finance the work.

[26] I acknowledge that the affidavit of Mario Soto Lopez, who supplied foundation and concrete work at the property, is evidence that HMCU, by its representative Kamalia Sarafin, was aware of the improvements. He states that she was aware of the construction, was happy that it added value, and did not object to it continuing. No dates were provided for the conversations he detailed.

[27] That approval, however, in my view, does not satisfy the "at whose request" aspect of the definition of owner. HMCU may have acquiesced, and even consented.

[28] Nothing in the material filed demonstrates that the improvements on the property were at the request of HMCU and I find that this part of the test is not met.

[29] For these reasons, I find that HMCU is not an owner under the Act and that this motion cannot succeed.

[30] The Plaintiff argues that under s. 78(1) of the Act, liens arising from an improvement have priority over all conveyances, mortgages or other agreements affecting an owner's interests in the property. This of course is subject to the other subsections of s. 78. Those subsections distinguish mortgages taken with the intention of securing an improvement and prior mortgages.

[31] Section 78(3) provides that:

> Subject to subsection (2), and without limiting the effect of subsection (4), all conveyances, mortgages or other agreements affecting the owner's interest in the premises that were registered prior to the time when the first lien arose in respect of an improvement have priority over the liens arising from the improvement to the extent of the lesser of,
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> (a) the actual value of the premises at the time when the first lien arose; and
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> (b) the total of all amounts that prior to that time were,
>
> (i) advanced in the case of a mortgage, and
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> (ii) advanced or secured in the case of a conveyance or other agreement.

[32] In my view, there is no authority in the circumstances which would lead me to conclude that the Plaintiff as lien claimant in this case stands in priority to the Defendant HMCU. *Global Eavestroughing Limited et al v. Astro Management Ltd.*, 1994 CanLII 4401 (NC SC), refers to Ontario cases which predate the Act and is not of assistance.

[33] Finally, even if I had found that HMCU is an owner under the Act, its liability under s. 23(1) would be limited to the holdback that the owner is required to retain.

IV. Disposition

[34] The Plaintiff's motion for a judicial sale and an order that HMCU is an owner is dismissed.

[35] There are no costs of this motion.

[36] The Plaintiff shall serve a copy of this Endorsement at the last known address of the Defendants.

Justice S.E. Fraser

Date: September 24, 2025