

CITATION: Camino Construction 2016 Inc. v. Graham Construction and Engineering LP,
2025 ONSC 6591

COURT FILE NO.: CV-22-689032

DATE: November 24, 2025

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Camino Construction 2016 Inc. v. Graham Construction and Engineering LP and
City of Toronto;

BEFORE: ASSOCIATE JUSTICE C. WIEBE

COUNSEL: David de Groot *for Graham Construction and Engineerin LP*;
Timothy Morgan *for Camino Construction 2016 Inc.*

HEARD: September 18, 2025.

REASONS FOR DECISION

[1] At the trial management conference on July 3, 2025, Graham Construction and Engineering LP (“Graham”) asked for leave to bring a motion seeking a stay of the two lien actions of Camino Construction 2016 Inc. (“Camino”), namely this one and the one with court file number CV-24-713891, on account of the existing arbitration as between Graham and the owner, the City of Toronto (“Toronto”), and Graham’s contention that there are subcontract terms that bind Camino to participate in that arbitration process and that make payment to Camino conditional on Graham being paid by Toronto. Mindful of the requirement in the *Arbitration Act, 1991*, S.O. 1991, c. 17 (“*AA*”), section 7(1) to stay matters that are submitted to arbitration and the need to promote efficient process, I granted the leave and scheduled this motion.

[2] Graham served and filed an affidavit sworn by Jeremy Klarenbach, the Graham project sponsor for the subject project. Camino served and filed an affidavit sworn by Claudia Lapa, a law clerk, and an affidavit sworn by Matthew Fluentes, the Camino project manager. Both sides served and filed factums and there was oral argument.

Issues

[3] The issues boiled down to the following ones:

- a) Are the Camino actions to be stayed pursuant to *AA* section 7(1) as they concern matters that have been submitted to arbitration?
- b) Are the Camino actions to be stayed pursuant to Rule 6.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 because their issues are duplicated in another action where these issues should be determined?

- c) Are the Camino actions to be stayed pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (“*CJA*”), section 106 due to a subcontract clause requiring such a stay until the substantial completion of the project upon notice from Graham?

Background facts

[4] The following are the key background facts that are not in dispute. I go into some detail as this detail is important in understanding all the proceedings.

[5] The subject project concerns improvements to the Effluent Disinfection System at the Ashbridges Bay Wastewater Treatment Plant in Toronto. As stated earlier, the owner is Toronto. On January 19, 2018 Toronto entered into a prime contract with Graham whereby Graham was to complete the improvements in three phases. This will be called the “Prime Contract.” The Prime Contract specifies that either party may trigger an arbitration of disputes by requesting arbitration, whereupon the *AA* applies.

[6] On May 15, 2018 Graham entered into a Graham standard form subcontract with Camino whereby Camino was to do specified formwork, concrete placement and finishing for a fixed price. This will be called “the Subcontract.”

[7] Under the Subcontract, Camino agreed to be bound by the terms and conditions of the Prime Contract. Under article 7 of the Subcontract, Camino agreed that, where it gives notice of a claim to an adjustment in the Subcontract price or an extension of its schedule and where such notice relates to or arises from the acts or omissions of Toronto, such adjustment “shall be conditional upon the Contractor’s [Graham’s] recovery of such relief under the Prime Contract.”

[8] Under subsections 27(d) of the Subcontract, either party is entitled to trigger an arbitration of a dispute between them by serving a “notice of a request to arbitrate.” Under subsection 27(f), should a dispute between the parties relate to a dispute between Toronto and Graham and where the Prime Contract contemplates dispute resolution by arbitration, Graham may direct that such dispute between the parties be disposed of in the same arbitration. Under subsection 27(g), Graham has the authority “at any time” to give notice suspending any dispute between the parties until substantial completion of the project whereupon such dispute “shall be deemed stayed.”

[9] Camino was scheduled to commence its work on October 5, 2018. On August 10, 2018, Graham discovered an unknown subterranean seawall that impacted the progress of the work. Graham revised the governing schedule to show that Camino would start on May 23, 2019. Camino mobilized before that date.

[10] On November 13, 2020 Camino submitted a claim for an increase in the Subcontract price due to the seawall covering the period August 1, 2018 to August 1, 2019, namely Camino Delay Claim A. There were three parts to this claim, one of which was a claim for \$766,582.37 of alleged labour standby costs due to Camino’s mobilization prior to work. On November 25, 2020 Toronto issued change order number 97 granting a schedule extension of 263 days on Phase 2 of the Project and 267 days on Phase 3 due to the seawall.

[11] In June, 2021 Graham submitted to Toronto a claim for schedule extension and price increase due to the seawall, a claim that included claims of its subcontractors, including Camino. This is called Graham Delay Claim A. After an analysis, on February 10, 2022, Toronto responded. Concerning Camino, Toronto disputed the quantum of two parts of the Camino claim and denied the entirety of the Camino labour standby cost claim. In March, 2022 Graham accepted Toronto's position on the Camino claim. On September 27, 2023, under a Partial Payment Agreement it reached with Graham, Toronto paid what it did not dispute. Graham distributed the payment to its subcontractors, including Camino. This resolved the Camino Delay Claim A except for the Camino labour standby cost claim.

[12] In the meantime, on September 8, 2022, Camino preserved a lien in the amount of \$8,899,421.83 and on October 21, 2022 perfected the lien by commencing this action against Graham and Toronto. I will call this "Camino Lien Action 1." This claim included Camino Delay Claim A. On October 5, 2022 Graham obtained an order vacating this claim for lien with posted security. In March, 2023 Graham defended and counterclaimed and crossclaimed against Toronto for contribution and indemnity. On April 18, 2024 Camino discontinued this action as against Toronto but with an order that preserved the Graham crossclaim. Toronto has not defended the crossclaim.

[13] On November 2, 2022, Graham gave Camino written notice to arbitrate Camino's claims. In the same letter, Graham also gave notice under subsection 27(g) of the Subcontract suspending dispute resolution until substantial completion of the project. In 2023 the parties approached Joel Richler to be the arbitrator. However, on February 2, 2024 Mr. de Groot advised Ms. Spiegel by phone that Graham now wanted the Camino claims resolved by court action. The arbitration was abandoned as a result.

[14] On December 21, 2023 Camino preserved a second lien in the amount of \$9,645,778.34, and on January 31, 2024 perfected the lien by commencing a second lien action against Graham and Toronto. I will call this "Camino Lien Action 2." On February 15, 2024 Graham obtained an order vacating this claim for lien with posted security. In April, 2024 Graham defended, counterclaimed and crossclaimed against Toronto for contribution and indemnity. On April 18, 2024 Camino discontinued this action as against Toronto with an order that preserved the Graham crossclaim. Toronto has not defended the crossclaim.

[15] In March, 2024 Camino and Graham agreed to part ways. The remainder of the Camino scope was de-scoped and done by other trades; first Talvan and later Soncin.

[16] On February 1, 2024, Graham, concerned about a limitation defence, commenced an action against Toronto claiming damages on account of various delay events. The claim included Graham Delay Claim A and Graham Delay Claim B (as described below) and reserved the right to add other delay claims. Toronto has not defended this action at this point. This action will be called the "Graham/Toronto Action."

[17] I was advised that Graham intends eventually to preserve and perfect its own lien when the project is done and will join this existing civil action to its lien action at that time. Substantial performance of the project is now expected to take place in May, 2026.

[18] Graham raised other delay claims with Toronto during this time and thereafter:

- Graham Delay Claim B for the periods January 31, 2019 to March 31, 2021 concerning Phase 1 and July 31, 2019 to April 30, 2020 concerning Phases 2 and 3;
- Graham Delay Claim C for the period April 30, 2020 to October 1, 2023; and
- Graham Delay Claim D for the period October 1, 2023 to November 30, 2024, with this claim including claims arising from recently discovered, excessive cracking and repair of the concrete structure in advance of watertightness testing, a concrete structure that pertains to Camino's scope.

[19] Camino raised other delay claims also: Camino Delay Claim B covering the period August 2, 2019 to January 22, 2020; Camino Delay Claim C covering the period January 23, 2020 to August 3, 2021; and Camino Delay Claim D covering the period October 22, 2022 to November 13, 2023.

[20] Camino obtained two judgments of reference, one for each of its lien actions. These were dated October 27, 2023 for the Camino Lien Action 1, and May 21, 2024 for Camino Lien Action 2. I became seized of both references at the first trial management conference on September 17, 2024. I conducted subsequent trial management conferences on November 18, 2024, May 5, 2025, June 2, 2025 and July 3, 2025. It was at the fifth trial management conference on July 3, 2025 that I scheduled this motion.

[21] On June 20, 2025 Graham and Toronto entered into a Dispute Resolution Agreement to have the amount of the Graham Delay Claim A that was not accepted and paid by Toronto resolved by arbitration. Graham then obtained an arbitration agreement with arbitrator, Bernie McGarva, and agreements with three of its subtrades with claims (ie. Clearway Construction Inc., WSN Construction Inc. and Torsteel Co. Limited) to participate in the arbitration. On June 23, 2025, Graham called on Camino to participate, but it refused. This arbitration is now underway and is expected to be done by May or June, 2026.

[22] Incidentally, Clearway and Torsteel preserved and perfected their liens and are a part of the reference. WSN is participating in the reference but has yet to preserve and perfect its lien. It intends to do so at the end of the project. At the trial management conference on July 3, 2025, I expressly made no orders for interlocutory steps in the Clearway and Torsteel actions at their request to facilitate the arbitration.

[23] The Dispute Resolution Agreement also committed Graham and Toronto to having a delay expert determine the excusable and compensable days of delay in Graham Delay Claim B. Graham and Toronto also agreed to negotiate and mediate the quantification of the expert determined compensable delay. No subtrades are taking part in this process. The expert, Ali Fard, has been chosen. His determination is expected to be given by January, 2026.

[24] On July 2, 2025 Graham served Camino with a notice to arbitrate the single issue of Camino's labour standby claim. The proposal was to have this issue arbitrated by Mr. McGarva immediately before or after the Graham Delay Claim A arbitration. Camino refused this proposal.

Arbitration stay

[25] *AA* section 7(1) requires a stay where an action is commenced in respect of matters that an arbitration agreement provides must be referred to arbitration. The test for such a stay is set out in the decision of the Supreme Court of Canada in *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 (CanLII) at paragraphs 76 to 86. First, the applicant for a stay must prove an “arguable case” that four technical prerequisites are met: (i) an arbitration agreement exists; (ii) court proceedings have been commenced by a party to an arbitration agreement; (iii) the court proceedings are in respect of a matter that the parties agreed be submitted to arbitration; and (iv) the party applying for a stay does so before taking any “step” in the court proceeding. Second, if all the technical prerequisites are met, the mandatory stay provisions are engaged; but the party resisting the stay now has to prove on a balance of probabilities that any statutory exception applies.

[26] Graham relies on Subcontract subsection 27(f), the “Related Disputes Clause,” to argue that this clause is an arbitration agreement, that Camino Lien Actions 1 and 2 relate to the arbitration of the Graham Delay Claim A that was triggered by the Dispute Resolution Agreement, and that Graham’s direction to Camino to participate in the arbitration should cause a stay of those lien actions pursuant to *AA* section 7(1).

[27] I agree with Camino that Graham has failed to show an arguable case concerning the third technical prerequisite, namely that the Camino Lien Actions 1 and 2 are in respect of a matter that the parties agreed be submitted to arbitration. First, the “Related Disputes Clause” in the Subcontract needs to be read as a whole. The last part of that clause states that, should Graham issue written notice to Camino of Graham’s intention to have the dispute between them resolved by litigation, “such dispute will be resolved by litigation.” That is what happened on February 2, 2024 when Mr. de Groot informed Ms. Spiegel that Graham wanted the Camino claims resolved by litigation and not arbitration, thereby ending the arbitration that had been initiated with Mr. Richler. According to Subcontract subsection 27(f), that choice of Graham’s is final. In short, there is no agreement to arbitrate the Camino claims at present. If the parties are to arbitrate the Camino claims, they will have to reach a new agreement in this regard.

[28] Second, there is no evidence that the issues in the Camino Lien Actions relate to the Graham Delay Claim A arbitration. Subsection 27(f) requires that a dispute between the contractor and subcontractor “relate to the dispute between the Owner and the Contractor.” The evidence shows that Camino Lien Action 2 does not relate in any way to the Graham Delay Claim A arbitration. As for Camino Lien Action 1, this claim does contain Camino Delay Claim A which initially formed a part of Graham Delay Claim A. But that claim is now resolved except for the Camino labour standby cost claim. As for the Camino labour standby cost claim, Graham has decided not to litigate that claim with Toronto. Therefore, the evidence indicates that none of the issues in the Camino Lien Actions relate to the Graham Delay Claim A arbitration.

[29] Camino made several other arguments on this point as follows: Graham should be denied the stay for having breached the fourth technical prerequisite of the test, namely the requirement that the party seeking the stay not take steps in the litigation (ie. the Camino Lien Actions) that affirm the correctness of that process over arbitration; Graham should also be denied the stay under the second part of the test and *AA* section 6(3) which allows a court to refuse a stay to “prevent

unequal or unfair treatment of parties to arbitration agreements,” with the argument being that Graham is using the arbitration to delay a resolution of the Camino claims; Graham should also be denied the stay under the second part of the test and *AA* section 7(2)(4) which allows a court to deny the stay where the motion for the stay is brought with “undue delay”; and Graham should also be denied the stay under the second part of the test and *AA* section 7(5) which allows a court to deny a stay where the arbitration will deal only with some matters in dispute.

[30] Having made my decision based on my analysis of the third prerequisite, I do not have to comment on these arguments and will not do so. I make an exception though concerning the final further argument, as it is closely relates to my second point about the third prerequisite. There are simply not enough overlapping issues between the Camino Lien Actions and Graham Delay Claim A arbitration to justify the requested stay.

Rule 6.01 stay

[31] Graham also relies on Rule 6.01(1) of the *Rules of Civil Procedure*, namely the rule which specifies that where there are two or more proceedings pending in the court and it appears to the court that (a) they have a question of law or fact in common, (b) the relief claimed in them arises out of the same transaction or occurrence or series of transactions or occurrences, or (c) for any other reason an order ought to be made under this rule, the court may order that, amongst other things, “any of the proceedings be, (i) stayed until after the determination of any other of them . . .” The argument is that there are significant overlapping issues between the Camino Lien Actions and the Graham/Toronto Action to justify a stay of the Camino Lien Actions under this rule.

[32] The court brings several factors to bear in considering the application of this rule. These factors were adequately described by Master Pope in *Burnco Manufacturing Inc. v Ellisdon Corporation*, 2016 ONSC 5806 (CanLII) at paragraph 20. Graham argues that two of the listed factors are germane to this case: the court’s obligation to avoid inconsistent findings resulting from a multiplicity of proceedings; and the prospect of an earlier trial in one action narrowing the issues in the other or increasing the likelihood of settlement in the other.

[33] I do not accept this argument. As indicated in *Burnco*, pleadings are the critical documents, as they set out the issues. Therefore, I studied the filed pleadings. The Graham statement of claim in the Graham/Toronto Action is exceedingly spare in detail. It refers to Graham Delay Claims A and B and Camino Lien Action 1, but there are no particulars. As stated earlier, there is no pleading from Toronto. Therefore, I had to address this issue based on the pleadings in the Camino Lien Actions.

[34] The pleadings in the Camino Lien Actions do not show such a comprehensive overlapping that justifies the requested stay. These pleadings are also general in nature with minimal particularity. The most detailed pleadings about delay appear in Camino Lien Action 1 and concern the subterranean seawall and the unstable piles. I understand that the Camino claims concerning these conditions are either now resolved or are not being pursued by Graham as against Toronto. Details in the remainder of the pleadings in Camino Lien Action 1 (ie. extras, descoping, non-payment, safety) implicate only Camino and Graham. Graham makes a general allegation against Toronto about delay and pleads a crossclaim for contribution and indemnity against Toronto but without particularity. Toronto has not pleaded in response to the Graham crossclaim. The Camino statement

of claim in Camino Lien Action 2 is again thin on detail, certainly detail about damages that in any way pertain to Toronto. In its pleading, Graham does blame Toronto for damages arising from design changes but does not implicate Toronto in detail concerning other issues. Again, Graham pleads a crossclaim against Toronto for contribution and indemnity, but again without particularity. Again, Toronto has not pleaded in response to the Graham crossclaim.

[35] In short, the pleadings presented in this motion do not paint the core remaining issues in the Camino Lien Actions as implicating Toronto to such an extent as to justify a complete stay of the Camino Lien Actions at this point. In *Brunco* at paragraph 20 Master Pope identified as a significant factor in determining whether to order trial together, the extent to which the issues in the two actions are interwoven. The pleadings presented in this motion do not satisfy me that the issues in the Camino Lien Actions and the Graham/Toronto Action are so interwoven as to justify the requested stay. Therefore, I am not prepared in stay the Camino Lien Actions on this ground.

[36] I make some additional comments. I note that the issue in *Brunco* was not a stay, but whether the subject actions should be tried together. A stay is a more serious step, particularly concerning a lien action, which should be resolved as much as reasonably possible in a summary fashion. I note also that, unlike in *Brunco*, there have in this case been no productions and discovery at this point. Such necessary interlocutory process might create a different picture, and this issue may have to be revisited after that is done.

CJA section 106 stay

[37] Graham also relies on *CJA* section 106. This section allows a court to stay a proceeding on such terms as are considered just.

[38] Graham argues that it invoked subsection 27(g) of the Subcontract in its letter of November 2, 2022 suspending any dispute resolution until attainment of substantial completion of the project. This subsection specifies that where Graham has invoked this subsection all dispute resolution process “shall be deemed stayed and the Parties shall execute such further written assurances to stay such proceedings to give effect to this provision.” Graham argues that the court should respect this subsection and grant a stay accordingly.

[39] Having consider the issues, I agree with Graham and will impose a stay of the Camino Lien Actions until a specified time, set by me, that is at or shortly after the presently anticipated date of substantial performance, namely in May, 2026. Here are my reasons:

- This seems fair and just to Camino as Camino agreed to this term, subsection 27(g) of the Subcontract. The subsection was also properly invoked by Graham on November 2, 2022.
- Subsection 27(g) also makes sense. At substantial performance, all back-charges for deficiencies are usually brought to a conclusion. This is when the owner marshals its resources to ensure that all supplied and installed equipment is commissioned and functional, and that there are no defects with the project. The contractor will be diligent in passing those back-charges done to its trades. Moving forward with production and discovery in the Camino Lien Actions at this point only risks requiring further rounds of

production and discovery when this final inspection process is done. This is not just a speculative issue. Mr. de Groot advised that the owner recently discovered defects in the concrete, concrete that was supplied and installed by Camino.

- At the time of anticipated substantial performance, the expert determination of the excusable and compensable delay concerning Graham Delay Claim B will be done. There will then be a negotiation between Toronto and Graham as to the compensation to be paid for the determined compensable delay. This negotiation should be done or well underway when the reference resumes. This process may well have a significant impact on the compensation to be paid to trades such as Camino concerning delay, particularly given the governing “pay-when-paid” clauses in the subcontracts. I was advised that this process should also form a template for the determination of the other Graham Delay Claims. There is no point in pushing forward with the Camino Lien Actions when issues of liability and damages for delay in those actions will be clarified and reduced by the expert determination.
- At substantial performance the other subtrades with claims will preserve and perfect their liens. Indeed, Graham will probably preserve and perfect its lien. These lien proceedings may further implicate Camino concerning delay and perhaps other issues. Camino may in fact decide to become involved in these other actions at that point. The reference can then be properly organized with all actions moving forward, together if necessary or separately if possible.

[40] Camino argues that Graham has essentially waived this right of a stay of the Camino Lien Actions pursuant to Subcontract subsection 27(g) by failing to move promptly to effect the stay. It argues that Graham waited too late, namely until the fifth trial management conference, to have this motion scheduled. It also argues that this issue was expressly raised by Mr. de Groot at the second trial management conference on November 18, 2024 and was dismissed.

[41] I do not accept this argument. Firstly, there was no inordinate delay in bringing this motion or waiver by Graham. The first four trial management conferences on September 17, 2024, November 18, 2024, May 5, 2025 and June 2, 2025 focused on understanding the claims and the issues (which were somewhat complex), bringing all necessary parties into the reference, and coming to terms with the existing and evolving alternative dispute resolution processes. It was only after the Dispute Resolution Agreement on June 20, 2025 and Camino’s refusal to participate in the arbitrations, that Graham sought at the fifth trial management conference on July 3, 2025 to bring this motion. No interlocutory steps have been ordered in the Camino Lien Actions. There is no reason for Camino to believe that Graham waived its subsection 27(g) right to a stay.

[42] Secondly, I have reviewed my directions of November 18, 2024. Mr. de Groot discussed generally having the proceeding suspended until the lien period had run its course after substantial performance. He made this suggestion on account of the alleged interlocking delay issues that have arisen. In my view, this discussion did not put an end to this issue. I was not made aware of Subcontract subsection 27(g) or the fact that Graham had formally invoked that subsection. There was no motion before me seeking a stay, as there is now. I had not reviewed the pleaded issues to the extent I have now.

Conclusion

[43] For these reasons, I have decided to stay this reference as it pertains to the Camino Lien Actions until June, 2026. I will hold the next trial management conference concerning the matters in the non-Talvan stream of this reference on **Monday, June 29, 2025 at 2:30 p.m.** by way of a videoconference using the coordinates to be provided by my Assistant Trial Coordinator.

[44] Concerning costs, Graham filed a costs outline showing partial indemnity costs totaling \$37,871.27 and substantial indemnity costs totaling \$56,806.92. Camino filed a costs outline showing partial indemnity costs totaling \$20,544.76 and substantial indemnity costs totaling \$30,817.13.

[45] I encourage the parties to resolve the issue of costs. If they cannot, Graham must serve, file and upload written submissions on costs of no more than three (3) pages on or before December 3, 2025. Camino must then serve, file and upload written responding submissions on costs of no more than three (3) pages on or before December 12, 2025. Graham must then serve, file and upload any reply written submissions on costs of no more than one (1) page on or before December 16, 2025.

DATE: November 24, 2025

ASSOCIATE JUSTICE C. WIEBE