

CITATION: Mana Home Design Inc. v. Sitrine Property Management Inc., 2025 ONSC 6887
COURT FILE NO.: CV-23-700650
DATE: December 8, 2025

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Mana Home Design Inc. v. Sitrine Property Management Inc., The Sitrine Group Inc., 970 Lawrence Project Ltd. and The Canadian Imperial Bank of Commerce;

BEFORE: ASSOCIATE JUSTICE C. WIEBE

COUNSEL: Andrea Gorys (and Emily Di Bratto) for *Sitrine Property Management and The Sitrine Group Inc. (together “Sitrine”)*;
Joseph Osuji for *Mana Hoeme Design Inc. (“Mana”)*;

HEARD: December 8, 2025.

ENDORSEMENT

[1] At the trial management conference on July 29, 2025, at Ms. Gorys’ request, I scheduled a two-hour motion by Sitrine under *Construction Act*, R.S.O. 1990, c. 30 (“CA”) section 47 for an order declaring the quantum of the Mana claim for lien frivolous, vexatious and an abuse of process or wilfully exaggerated, and ordering that this claim for lien be discharged and this action dismissed with substantial indemnity costs.

[2] At the argument of the motion, without calling on Mana, I dismissed the motion with costs in favour of Mana. I gave oral reasons. The following are my brief written reasons for this decision.

[3] I summarized the law concerning CA section 47 in my decision in *2708320 Ontario Ltd. cob Viceroy Homes v. Jia Development Inc.*, 2023 ONSC 2301 (CanLII) in paragraph 27 as follows:

The process to be followed in a section 47 motion has now been clarified. The moving party must prove that there is no triable issue as to the basis on which the lien is sought to be discharged; see *Maplequest (Vaughan) Developments. Inc. v. 2603774 Ontario Inc.*, 2020 ONSC 4308 (CanLII) at paragraph 25. Both parties must “put their best foot forward” in the evidence to assist the court in making this determination, and the court is entitled to make this assumption; see *GTA Restoration Group Inc. v. Baillie*, 2020 ONSC 5190 (CanLII) at paragraph 56. The lien claimant has this onus because it is invariably in the best position to provide the evidence; see *GTA, op. cit.*, paragraph 55.

[4] The only additional comment I make for the purpose of this motion is that, if the moving party’s own motion material reveals sufficient issues justifying a trial concerning the issue in dispute, namely the quantum of the claim for lien, the lien claimant does not have to adduce evidence in response. That is what I found to be the case with this motion for the following reasons:

- *Contract price:* The project in issue was the interior renovation of an office space. It is undisputed that Sitrine, the tenant owner, hired Mana under a verbal fixed price contract to do the work. The two affidavits presented by Sitrine were from officers of those companies who were involved with the project. Mr. Silber swore that the contract price was \$435,544 plus HST. There is nothing to corroborate that statement. The Mana quotation for the work (in the motion material) showed the figure of \$507,203 plus HST. This is no doubt Mana asserts this to be the contract price as indicated in its claim for lien (also in the motion material). This is a triable issue.
- *State of completion:* Sitrine complained that Mana did not produce the documents “in support of its claim for lien,” such as subtrade invoices, labour time sheets, etc. In a fixed price contract such as this, the issue is the state of the contractor’s completion, not the contractor’s costs. Sitrine had no payment certifier or any other person charged with assessing the status of the Mana work. Its affidavits contain self-serving, uncorroborated statements from the two Sitrine officers as to the state of completion. On the other hand, Mana’s claim for lien asserts that it finished all of its work. There was indeed circumstantial evidence in the motion material that supports this position. The Mana claim for lien (in the motion material) indicates that Mana worked to January 15, 2023. The Sitrine affidavits indicate that the Mana contract was terminated on January 17, 2023, namely after Mana says it stopped working, and that Sitrine moved into the improved premises on January 27, 2023, namely only ten days later. This all suggests that the project was at substantial performance, if not total completion, by the time the Mana contract was terminated. It is undisputed that Sitrine paid Mana \$268,241.71. The contract price as indicated on the Mana claim for lien is \$571,851.99, namely just under the \$507,203 plus HST that Mana quoted. If Mana completed its work, as it appears to allege, its claim may indeed be \$571,851.99 - \$268,241.71 = \$303,610.28, namely the exact amount of the Mana claim for lien. Interestingly, this does not even account for the \$35,821 worth of 9 extras that are undisputed. Clearly, the state of completion and Mana’s entitlement to payment are triable issues.
- *Deficiencies:* Sitrine raised numerous issues concerning deficiencies in Mana’s work. If proven, this would be a back-charge that would be relevant to the state of completion issue and the quantum of the Mana lien. However, there are two issues that were not all made clear in the moving party’s motion material. First, there is the quantum of the alleged deficiencies. Sitrine now asserts that it incurred the \$111,352.40 in costs it paid to Stay-Brite for its alleged work in February and March, 2023 correcting the Mana deficiencies. The Sitrine affidavits indicate that earlier Sitrine had only back-charged \$49,161.37 from Mana’s billings in relation to deficiencies. This discrepancy in quantum was not explained. Second, and most importantly, there is no evidence that Sitrine served Mana with a detailed notice of these deficiencies and, most importantly, a notice that gave Mana the opportunity to correct them. The common law is clear that a contractor must be given notice of deficiencies and an opportunity to correct them in order to preserve his claim. There is no evidence that this was done in this case. A failure to do so may be fatal to the back-charge. Therefore, both the quantum the alleged deficiencies back-charge and Sitrine’s entitlement to it are triable issues.

- *Invoices:* The motion record shows that Mana rendered five invoices totaling \$388,254.08. Siteline did not dispute the first four, but did dispute less than half of the last one. This all may be true, but the governing contract, being a verbal contract whose terms are not all clear, may well be found to give rise to entitlement to payment for unbilled work that was done, particularly if the work was done with the knowledge and approval of Siteline. Mana's billing practices and Mana's entitlement to payment for unbilled work are clearly further triable issues.

[5] For these reasons, I dismissed the motion. As to costs, Mana, as the successful party, deserved costs, but Mr. Osuji did not file a costs outline as required by the *Rules*. He said he was suffering from an illness. I asked him for a reasonable costs award in the circumstances, and he suggested \$6,000 which Ms. Gorys did not dispute given the size of her client's costs outline. I awarded Mana \$6,000 in costs to be paid by Siteline in thirty days from today.

DATE: December 8, 2025

ASSOCIATE JUSTICE C. WIEBE