

CITATION: King-Beland v. Turner, 2025 ONSC 7031
COURT FILE NO.: CV-25-0092-00
DATE: 2025-12-15

SUPERIOR COURT OF JUSTICE – ONTARIO

IN THE MATTER OF *the Construction Act*, R.S.O. 1990, c. C.30

RE: Zachary King-Beland, Plaintiff/Defendant by Counterclaim/Responding Party
v.
Kevin Albert Turner, Defendant/Plaintiff by Counterclaim/Moving Party

HEARD: December 11, 2025

BEFORE: Fitzpatrick J.

COUNSEL: Zachary King-Beland, Self Represented

J. Clark for the Defendant/Plaintiff by Counterclaim

Endorsement on Motion to Vacate Lien

[1] This is a motion in a construction lien action. The Plaintiff/Defendant by Counterclaim and Responding Party, Zachary King-Beland, (KB) registered a construction lien (the "Lien") and Certificate of Action on title to the property owned by Defendant/Plaintiff by Counterclaim, Kevin Albert Turner, (KAT) pursuant to the *Construction Act*, R.S.O. 1990 c. C. 30 as amended (the "Construction Act"). The Property is municipally known as 371 Manitou Road, Manitouwadge, in the District of Thunder Bay, and legally described as:

"PCL 26650 SEC TBF; PT LOCATION CL 11011 GERTRUDE BEING PT OF CROWN RESERVE; DESIGNATED AS PT 6 ON 55R11274, CONTAINING 0.976 HECTARES, BE THE SAME MORE OR LESS, IN THE TOWNSHIP OF MANITOUWADGE, IN THE DISTRICT OF THUNDER BAY; MANITOUWADGE (the "Property")"

[2] KAT moves for an order discharging the Lien and directing that the action and counterclaim proceed as an ordinary civil action pursuant to the simplified procedure of *Rules of Civil Procedure* R.R.O. 1990 Reg. 194 as amended.

Background

[3] KB operates a sole proprietorship providing among other things, construction services. KAT operates a bed and breakfast lodge business on the Property.

[4] The Property experienced flood damage in September 2023. In March 2024 KB was retained as a completion general contractor for remediation work after an initial contractor Service Master failed to complete work in a satisfactory manner. KAT and KB made an agreement for construction services where the total cost of labour and materials was \$118,620.63 inclusive of taxes plus any costs for additional work completed outside the scope of the clean up contract. The parties referred to the contract as the “Northwood Project”.

[5] There is a dispute about the sufficiency of the construction services provided to the Property in respect of the Northwood Project. On October 5, 2024, KAT and KB met at the Property. KB demanded payment in full for services and materials provided to the Property to that date. KAT refused to pay.

[6] On October 6, 2024, workers employed by KB attended the Property to do clean up, removal of tools and equipment and final organization of the work area.

[7] KB caused the Lien to be filed on December 6, 2024. KB purported to perfect the Lien by issuing a Certificate of Action and a Statement of Claim on March 4, 2025. Among other things,

the statement of claim contained a pleading that the date of last supply of construction services to the Property was October 6, 2024.

The Law

[8] The provisions of the Construction Act which are applicable to this matter are as follows:

Expiry of liens

31 (1) Unless preserved under section 34, the liens arising from the supply of services or materials to an improvement expire as provided in this section. R.S.O. 1990, c. C.30, s. 31 (1); 2017, c. 24, s. 67.

Contractor's liens

(2) Subject to subsection (4), the lien of a contractor,

(a) for services or materials supplied to an improvement on or before the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the 60-day period next following the occurrence of the earlier of,

(i) the date on which a copy of the certificate or declaration of the substantial performance of the contract is published as provided in section 32, and

(ii) the date the contract is completed, abandoned or terminated; and

(b) for services or materials supplied to the improvement where there is no certification or declaration of the substantial performance of the contract, or for services or materials supplied to the improvement after the date certified or declared to be the date of substantial performance, expires at the conclusion of the 60-day period next following the occurrence of the earlier of,

(i) the date the contract is completed, and

(ii) the date the contract is abandoned or terminated.

How lien preserved

34 (1) A lien may be preserved during the supplying of services or materials or at any time before it expires,

(a) where the lien attaches to the premises, by the registration in the proper land registry office of a claim for lien on the title of the premises in accordance with this Part;...

What liens may be perfected

36 (1) A lien may not be perfected unless it is preserved. R.S.O. 1990, c. C.30, s. 36 (1)...

Saving other rights

38 The expiration of a lien under this Act shall not affect any other legal or equitable right or remedy otherwise available to the person whose lien has expired.

Declaration by court that preserved lien has expired

45 (1) Where a lien that attaches to the premises is not preserved or is not perfected within the time allowed for doing so under section 31 or 36, the court upon,

- (a) the motion of any person without notice to any other person;
- (b) proof that the lien has not been preserved or perfected within the time allowed; and
- (c) production of,
 - (i) a certificate of search under the Land Titles Act, or
 - (ii) a registrar's abstract under the Registry Act,together with a certified copy of the claim for lien,

shall declare that the lien has expired and order that the registration of the claim for lien be vacated.

General powers of the court

Power to discharge

47 (1) The court may, on motion, order the discharge of a lien,...

(b) on any other proper ground. 2017, c. 24, s. 37 (1).

Power to vacate, etc.

(1.1) The court may, on motion, make any of the following orders, on any proper ground:

1. An order that the registration of a claim for lien, a certificate of action or both be vacated.
2. If written notice of a lien has been given, a declaration that the lien has expired or that the written notice of the lien shall no longer bind the person to whom it was given...

Conditions

(1.2) An order under subsection (1) or (1.1) may include any terms or conditions that the court considers appropriate in the circumstances.

The Issue

[9] The issue on this motion is straightforward; Had the time for registering the Lien expired on December 6, 2024? KB argues the Lien was registered in time. KAT says it was registered out of time.

[10] I agree with the submissions of KAT. The Lien expired on December 5, 2024. I say so for the following reasons.

[11] KAT late filed an affidavit in response to this motion. I allowed the late filing and had KAT affirm that the contents of his affidavit were true on the record at the commencement of the motion. As KAT's affidavit was initially rejected by court staff when he tried to file it the day before the motion, I direct CSD staff to upload a copy of the affidavit to the Case Centre bundle entitled Motion on Notice- Dec 11, 2025.

[12] At paragraph 9 of KAT's affidavit he deposes;

the last date on which services were supplied to the project was October 6, 2024.

[13] This evidence is consistent with KB's pleading where it is stated that the last day of supply to the Northwoods project was October 6, 2024.

[14] 60 days from October 6, 2025 is December 5, 2024. A lien filed on December 6, 2024 is 61days after October 6, 2025. I find the Lien had expired in accordance with the provisions of section 31(1) of the *Construction Act* when it was filed.

[15] In addition, I accept the submissions of KAT, that the work done by forces employed by KB on October 6, 2024 where not construction supply or services that improved the property such that they created lienable rights. KB's affidavit refers to possible evidence to be provided by the workers who attended to do "cleanup and tool-removal work". Such evidence was not provided on the motion. This motion was first returnable October 2, 2025. KB was given until November 13, 2025 to file responding materials. He did comply with that order. The matter was adjourned to December 11, 2025 peremptory on KB. I deny him leave to file additional material as was requested in his affidavit. In my view there is no need. The work done on October 6, 2024 is properly described. It is minor or trivial or clean up work that would not improve the Property and extend lien rights to that day in any event (*Demasi Contracting Inc. and AMT Group*, 2023 ONSC 5555 (AJ Roger)).

[16] I therefore declare that pursuant to s. 47 of the *Construction Act* that the Construction Lien preserved by registration by a claim for lien as Instrument Number: TY357651 registered in the Land Registry Office #55 on title of the property legally described as PCL 26650 SEC TBF; PT LOCATION CL 11011 GERTRUDE BEING PT OF CROWN RESERVE; DESIGNATED AS PT 6 ON 55R11274, CONTAINING 0.976 HECTARES, BE THE SAME MORE OR LESS, IN THE TOWNSHIP OF MANITOUWADGE, IN THE DISTRICT OF THUNDER BAY; MANITOUWADGE has expired and that registration of said claim for lien shall be vacated together with the Certificate of Action bearing Instrument number TY360747.

[17] The necessary documentation to effect this declaration can be prepared by KAT. The necessity of KB's approval as to form and content of the order arising from this endorsement is hereby dispensed with.

[18] I further order that if required and upon registration in the applicable land registry office of a certified copy of this Order in the manner prescribed by the applicable land registry office, the applicable land registrar is hereby directed to specifically vacate the Claim for Lien bearing Instrument Number: TY357651 together with the Certificate of Action bearing Instrument Number: TY360747 both on title to the Property.

[19] The action will continue under the Simplified Rules further to the powers of the Court under section 38 of the *Construction Act* as the expiration of the Lien does not affect KB's right to pursue his breach of contract claim. Leave is granted to KB to serve and file a fresh as amended pleading eliminating any references to the Lien. This amended pleading shall be served on or before January 30, 2026. KB has leave to file a fresh as amended defence and counterclaim on or before February 28, 2026.

[20] Costs for today fixed in the amount of \$4,000.00 inclusive of disbursements and HST. I am fixing costs as it is the most efficient and proportionate way to move the matter forward. Also, the costs are set taking in to account reasonable fees that may be generated by KAT being responsible from vacating the Lien and Certificate of Action from title to the Property.

[21] If updated pleadings are exchanged, or if they are not as of March 28, 2026, the next step in this matter will be a case conference with a view to scheduling an early resolution conference.

CITATION: King-Beland v. Turner, 2025 ONSC 7031
COURT FILE NO.: CV-25-0092-00
DATE: 2025-12-15

SUPERIOR COURT OF JUSTICE - ONTARIO

IN THE MATTER OF *the Construction Act*,
R.S.O. 1990, c. C.30

Zachary King-Beland,
Plaintiff/Defendant by Counterclaim
v.
Kevin Albert Turner,
Defendant/Plaintiff by Counterclaim

HEARD: December 11, 2025

COUNSEL: Zachary King-Beland, Self
Represented

J. Clark for the Defendant/Plaintiff by
Counterclaim

**ENDORSEMENT ON MOTION TO
VACATE LIEN**

Fitzpatrick J.

DATE: December 15, 2025