

COURT OF APPEAL FOR ONTARIO

CITATION: Chaly v. Structured Restoration Inc., 2025 ONCA 901

DATE: 20251224

DOCKET: COA-25-CV-0525

Roberts, Favreau and Rahman JJ.A.

BETWEEN

Alisa Chaly\* and Elena Attin

Applicants (Appellant\*)

and

Structured Restoration Inc.

Respondent (Respondent)

Alisa Chaly, acting in person

Sumit Tangri, for the respondent

Heard: December 18, 2025

On appeal from the order of Justice Meredith Donohue of the Superior Court of Justice, dated March 21, 2025.

REASONS FOR DECISION

[1] Alisa Chaly, the appellant, brought an application to remove a lien registered on a property owned by her mother, Elena Attin. Ms. Chaly is in possession of the property. The respondent registered the lien against the property after Ms. Chaly refused to pay the full amount it claimed she owed for remediation work done after

a sewage backup damaged the basement of the property. The application judge dismissed the application, finding that the remediation work was an improvement pursuant to ss. 1(1) and 14(1) of the *Construction Act*, R.S.O. 1990, c. C.30.

[2] In advance of the hearing, this court raised the issue of whether it has jurisdiction over the appeal or whether the appeal lies to the Divisional Court pursuant to s. 71(1) of the *Construction Act*. Ms. Chaly initially made written submissions on the issue taking the position that this court has jurisdiction. The respondent took the position in its factum that the appeal should have been brought to the Divisional Court. In advance of the hearing, after reviewing the respondent's submissions on jurisdiction, Ms. Chaly advised that she now agreed that the appeal should have been brought to the Divisional Court.

[3] The parties attended before us to address the issue of whether the appeal should be transferred to the Divisional Court and the issue of costs. They both advised that they agreed that the appeal should be transferred to the Divisional Court and that the issue of costs should be addressed by the Divisional Court.

[4] We agree that this court does not have jurisdiction over the appeal and that the appeal should be transferred to the Divisional Court. We briefly explain the basis for reaching this conclusion.

[5] Section 71(1) of the *Construction Act* provides that:

Except as otherwise provided in this section, an appeal lies to the Divisional Court from a judgment or an order on a motion to oppose confirmation of a report under this Act.

[6] This court has interpreted s. 71(1) broadly to mean that an “appeal involving only proceedings under the *Construction Lien Act*, R.S.O. 1990, c. C.3”, now the *Construction Act*, is to be brought in the Divisional Court: *Villa Verde L.M. Masonry Ltd. v. Pier One Masonry Inc.* (2001), 54 O.R. (3d) 76 (C.A.), at para. 1. While s. 71(1) refers to “judgments” made under the Act, the Divisional Court’s jurisdiction extends to “orders” made under the Act: *Villa Verde*, at paras. 7-8; *MGW-Homes Design Inc. v. Pasqualino*, 2024 ONCA 422, 172 O.R. (3d) 770, at para. 3.

[7] In contrast to cases where an appeal lies to the Divisional Court, in *Arcamm Electrical Services Ltd. v. Avison Young Real Estate Management Services LP*, 2024 ONCA 251, at para. 17, this court found that the judgment appealed from in that case was “not made in reliance on the *Construction Act*” because the source of the court’s jurisdiction below was r. 20 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (emphasis added).

[8] In this case, Ms. Chaly brought an application to discharge the lien registered by the respondent. The notice of application, with which Ms. Chaly initiated the application, explicitly states that the application is brought pursuant to and in reliance on the *Construction Act*. In concluding that the lien was valid, the application judge interpreted s. 14(1) and the definition of “improvement” in s. 1(1)

of the *Construction Act*. This is precisely the type of issue that falls within the ambit of the *Construction Act*. It was a decision made in reliance on the *Construction Act*.

[9] In her written submissions on the issue of jurisdiction, Ms. Chaly explained that she brought the application under s. 47(1) of the *Construction Act*, which gives the court the power to discharge a lien “on motion”, including “on any ... proper ground”. In this case, Ms. Chaly brought an application rather than a motion. It may be that the proper route for challenging the lien was within the action brought by the respondent to seek payment for the work it had done and pursuant to which the lien was registered. However, this issue was not raised below. Moreover, it would put form over substance to decide the issue of jurisdiction on the basis of whether Ms. Chaly attempted to discharge the lien by way of an application rather than a motion. Given that the substance of Ms. Chaly’s proceeding was to challenge the validity of the lien, an issue that falls squarely within the ambit of the *Construction Act* pursuant to s. 47(1) and that required interpretation of provisions of the Act, we are satisfied that s. 71(1) applies in this case and that the proper route of appeal is to the Divisional Court.

[10] Pursuant to s. 110(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, this court has the power to transfer the appeal to the Divisional Court. We are satisfied that this is an appropriate case for transfer to the Divisional Court.

[11] We order that the appeal be transferred to the Divisional Court. As agreed between the parties, the costs of the appeal before this court are to be decided by the Divisional Court.

“L.B. Roberts J.A.”

“L. Favreau J.A.”

“M. Rahman J.A.”