CITATION: JP Reno Inc. v. Warner., 2026 ONSC 1065
DIVISIONAL COURT FILE NO.: 067/24 (London)
DATE: 20260223

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Firestone R.S.J., Lococo and Shore JJ.

BETWEEN:	)	
	)	
JP RENO INC.	)	*Brendan D. Bowles* and *Jacob Jones*, for the Appellant (Plaintiff)
Appellant (Plaintiff)	)	
	)	
– **and** –	)	
	)	
	)	
NORMAN MARK WARNER and SABRINA TOMIC	)	*Daniel J. MacKeigan* and *Marcus Johnson*, for the Respondents (Defendants)
Respondents (Defendants)	)	
	)	
	)	**HEARD at London:** November 28, 2025

REASONS FOR JUDGMENT

R. A. Lococo J.

I. Introduction

[1] The appellant JP Reno Inc. (the "Contractor") appeals the order of Justice Spencer Nicholson of the Superior Court of Justice dated May 23, 2024, with reasons reported at 2024 ONSC 2935 (the "Decision").

[2] The Contractor entered into a written contract for the renovation of a residential property owned by the respondents Norman Mark Warner and Sabrina Tomic (the "Homeowners"). Following a dispute between the parties, no further work was performed under the contract. The Contractor registered a claim for lien on the property's title under the *Construction Act*, R.S.O. 1990, c. C.30 (the "*Act*" or "*Construction Act*"). The Contractor subsequently commenced a construction lien action against the Homeowners and registered a Certificate of Action on the property's title.

[3] The Homeowner brought a motion to vacate the lien registration. In the Decision, the motion judge made an order to discharge the lien and vacate the registration. The motion judge

found that the lien had expired since it was not perfected by filing a Certificate of Action within the required timeline after the contract was terminated or abandoned.

[4] In this appeal, the Contractor submits that the motion judge erred in law (a) in finding that the contract was terminated or abandoned, and (b) by resorting to enhanced fact-finding powers or "best foot forward" analysis not available on a motion to vacate. The Contractor asks the court to set and aside the Decision and dismiss the Homeowners' motion with costs to the Contractor.

[5] For the reasons below, I would dismiss the appeal.

II. Factual background

[6] The Homeowners are the owners of a residential property in London, Ontario (the "Property"). The Contractor carries on business as a construction manager and contractor. The Contractor's principal is John Pankiewicz ("JP").

[7] On January 5, 2021, the parties entered into a written contract for renovations to the Property (the "Contract"). The original contract price was $69,474.83 plus Harmonized Sales Tax: Decision, at para. 3. By August 2022, the Homeowners had paid substantially more than the original contract price, following one or more change orders: Decision, at para. 4.

[8] The Homeowners did not reside at the Property during the construction. By June 2022, they were frustrated by the pace of the renovations, as indicated in emails to JP in June to August 2022. JP's responses to the Homeowners' emails were intended to placate them and assure them that the work would proceed in a timely fashion. They say that they advised JP in August 2022 that they were seeking quotes from other contractors to complete the work: Decision, at paras. 4-5. The motion judge found that the Contractor was aware that the Homeowners received quotes from other contractors: Decision, at para. 44.

[9] On August 17, 2022, the Homeowners and JP met at the Property. JP demanded a further $90,000 to continue the renovations. The Homeowners resisted. According to them, JP left the Property angry, stating "this is my house": Decision, at paras. 6, 45.

[10] That day, JP sent an email to the Homeowners. The email referred to items of labour and common materials that were supplied and not paid for: Decision, at para. 7. JP's email continued:

> My observation after today's meeting is after not listening or going over outstanding balance that you don't have intention to pay for all the labour and common materials which will prevent us from continue work at house. Tomorrow I am sending via email several invoices with price brake that some of them are outstanding from last year. This balance needs to be paid immediately to continue with future work.
>
> Looking forward to your response with 24 hours before escalating this matter to the next level.

[11] The same day, the Homeowners changed the locks to the Property to prevent JP and his crew from accessing the Property: Decision, at paras. 9, 46.

[12] On August 18, 2022, the Homeowners responded to JP's email. They disputed JP's account of events the previous day, blamed him for the delays, and denied not paying their bills on time: Decision, at para. 8. Their email stated in part:

> We trusted you despite multiple delays, disappearances from this project, and empty promises of it being completed October 2021, Christmas 2021, May 2022, end of October 2022 and end of November 2022.
>
> We were encouraged by family and friends who witnessed previously stated facts to fire you, but we continue to have faith in you and your intentions.
>
> Now, after more than 20 months since you started our house reno, enormous amount of stress and evident health issues caused by that, you have decency to accuse us of not paying our bills on time. We were never a day late when you were ready to issue a bill ….
>
> It seems to me that not only have you taken advantage of our trust, but of our finances as well.
>
> This does not make sense at all, and you storming out on us saying that you own our house was quite alarming.

[13] On the morning of August 18, 2022, JP attended at the Property with the police. He retrieved at least a majority (or perhaps all) of his tools and removed the building permit from the front door: Decision, at paras. 10, 47. The Contractor claimed that "some of its tools still remained on the property", which the Homeowners denied: Decision, at para. 10. The same day, JP contacted the rental company to request removal of the portable toilet from the Property: Decision, at paras. 11, 47. The portable toilet was picked up on August 25, 2022: Decision, at para. 11.

[14] At para. 12, the motion judge found that the Contractor "did not attend at the property after August 18, 2022, except to conduct some clean up." The motion judge also found that the Contractor "performed no further substantive work on the renovations after that date": Decision, at para. 56. The motion judge did not accept the Contractor's evidence that he tried to contact the Homeowners to resume work: Decision, at paras. 10, 56. As stated in the Decision, at para. 12:

> The plaintiff [Contractor] asserts that it attempted to contact the defendants [Homeowners] on August 19 and 22, 2022 to continue the project. Tellingly, there is no corroborating evidence of the plaintiff communicating with the defendants since that time to arrange to attend the property and continue the contract. The defendants' phone records do not suggest any such call was made to either of them on the dates alleged.

[15] The motion judge also stated that the Contractor "has provided no satisfactory evidence of communications evidencing an intention to continue the project": Decision, at para. 56.

[16] On September 19, 2022, the Homeowners hired a new contractor to complete the renovations: Decision, at para. 13.

[17] On October 13, 2022, the Contractor registered a claim for lien on the Property's title (the "Claim for Lien") pursuant to s. 34(1)(a) of the *Construction Act*. The registered instrument stated that services or materials were provided at the Property from January 5, 2021 to August 28, 2022. As explained further below, there is no dispute that the Contractor "preserved" its lien within the time period prescribed by s. 34 of the *Act*: Decision, at para. 14.

[18] The Contractor commenced a construction lien action against the Homeowners in the Superior Court of Justice by Statement of Claim dated January 20, 2023: see *Act*, s. 50. The court issued the Statement of Claim and a Certificate of Action on January 20, 2023. The Certificate of Action was registered on the Property's title the same day: Decision, at para. 15. On February 28, 2023, the Homeowners filed their Statement of Defence and Counterclaim in that action.

III. Motion to vacate

[19] By Notice of Motion dated October 10, 2023, the Homeowners brought a motion under s. 47 of the *Act*. They sought (a) a declaration that the Contractor's lien on the Property had expired, (b) an order to vacate the registration of the Claim for Lien and the Certificate of Action on the Property's title, and (c) an order to dismiss the Contractor's action to enforce the lien.

A. Construction Act – statutory scheme

[20] As legislative background, the *Construction Act* is designed to give priority and security to contractors and subcontractors that supply services or materials to real property, including through the mechanism of the construction lien. Because a lien is created under the *Act* as part of a comprehensive scheme, a lienholder must comply strictly with the prescribed time periods and other requirements of the *Act*: see *Scepter Industries Ltd. v. Georgian Custom Renovations Inc.*, 2018 ONSC 988, 89 C.L.R. (4th) 174, at paras. 20-21; rev'd on other grounds, 2019 ONSC 7515, 441 D.L.R. (4th) 359 (Div. Ct.). The time limits set out in the *Act* "[leave] no room for judicial discretion. This strict construction seeks to ensure that parties in the construction pyramid [of contractors and subcontractors] 'know where they stand'": *Roe (c.o.b. Superior Painting) v. Elgaard Developments Inc.*, 2016 ONSC 7831, 72 C.L.R. (4th) 77, at para. 10; *Delview Construction Ltd. v. Meringolo* (2004), 71 O.R. (3d) 1 (C.A.).

[21] To enforce a lien under the *Act*, the requirements the lienholder must comply with include those set out in Part V of the *Act*, titled Expiry, Preservation and Perfection of Liens. The evidentiary burden is on the lienholder to prove compliance with the statutory timelines of preservation and perfection: *Nortown Electrical Contractors Associates v. 161975 Ontario Inc.*, 2010 ONSC 3284, 95 C.L.R. (3d) 204, at para. 4; *Gem in Niagara Homes Inc. v. Dewling*, 2018 ONSC 3500, at para. 22.

B. Preserving and Perfecting the Lien

[22] Upon the supply of services or materials to the Property under the Contract, the Contractor became entitled to a lien on the Homeowners' interest in the Property under s. 14(1) of the *Act*. Section 14(1) provides:

Creation of lien

> 14(1) A person who supplies services or materials to an improvement for an owner, contractor or subcontractor, has a lien upon the interest of the owner in the premises improved for the price of those services or materials.

[23] As explained further below, to enforce the lien, the lienholder is required to both "preserve" and "perfect" the lien. A lien expires if the lienholder does not preserve and perfect the lien within the required time periods. Provided the other requirements of the *Act* are met, a lien that attaches to the premises is preserved or perfected by means of the registration of the prescribed instrument on the subject property's title. To "preserve" the lien, registration of a "claim for lien" is required: *Act*, s. 34(1)(a). To "perfect" the lien, the required instrument is a "certificate of action" issued following the issuance of a Statement of Claim that commences a construction lien action: *Act*, s. 36(3)(a).

C. Preserving the lien

[24] Under s. 31(1) of the *Act*, a lienholder is required to preserve their lien under s. 34 of the *Act* within the time period prescribed in s. 34. Otherwise, the lien expires.

[25] Under s. 34(1)(a) of the *Act*, a lien may be preserved by the registration of a claim for lien on the subject property's title "during the supplying of services or materials or at any time before the lien expires" (emphasis added). In the matter before us, the Contractor's deadline for registration of its Claim for Lien was as set out in s. 31(2)(b)(ii) of the *Act*:

> **Contractor's liens**
>
> 31 (2) … [T]he lien of a contractor,
>
> …
>
> (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.
>
> [Emphasis added.]

[26] As previously noted, the Contractor registered its Claim for Lien on the Property's title on October 13, 2022. That date was less than 60 days from the last day that both parties acknowledged that services or materials were supplied at the Property. On those facts, "there is no dispute that the [Contractor] preserved its lien within the time period prescribed by section. 34 of the *Construction Act*": Decision, at para. 14.

D. Perfecting the lien

[27] A lien may not be perfected unless it is preserved: *Act*, s. 36(1). A preserved lien expires unless it is perfected "prior to the end of the 90-day period next following the last day, under section 31, on which the lien could have been preserved": *Act*, s. 36(2). In the matter before us, the lien would have been perfected by the registration of a certificate of action on the Property's title within the required time period "except were an order to vacate the registration of the lien is made": *Act*, s. 36(3)(a).

[28] To preserve the lien in this case, the Contractor was required to commence the construction lien action and register the Certificate of Action on the Property's title "within 150 days from the date that the contract was abandoned or terminated, if either event occurred": Decision, at para. 24. The 150-day period is calculated by aggregating the 60-day and 90-day periods in ss. 31(2)(b) and 36(2) of the *Act*, respectively.

E. Homeowners' motion to vacate

[29] The Homeowners' motion to vacate the lien was brought under s. 47 of the *Act*. Section 47 provides in part:

> **Power to discharge**
> **47** (1) The court may, on motion, order the discharge of a lien,
>
> (a) on the basis that the claim for the lien is frivolous, vexatious or an abuse of process; or
>
> (b) on any other proper ground.
>
> **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.
>
> 3. An order dismissing an action.
>
> **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.

[30] In the Notice of Motion, the Homeowners alleged that:

a. The Contract was terminated or abandoned on August 17, 2022, the date that the Contractor last performed work on the Property.

b. It followed that (i) the last date on which the lien could be preserved was 60 days later on October 16, 2022 [*Act*, s. 31(2)(b)], and (ii) the last date on which the lien could be perfected was a further 90 days later on January 14, 2023 [*Act*, ss. 36(2), 36(3)(a)].

c. Since the Contractor did not register its Certificate of Action on the Property's title until January 20, 2023, the lien had already expired by that date.

d. It followed that the lien was not perfected within the time allotted in the *Act*.

e. According, (i) the Claim for Lien (registered on title October 13, 2022) and the Certificate of Action should be vacated, and (ii) the Contractor's action to enforce the lien should be dismissed.

[31] On May 22, 2024, the motion judge heard the Homeowners' motion to vacate. Before the motion judge, the Homeowners submitted that (i) the Contract was abandoned or terminated effective August 17 or 18, 2022, and (ii) the 150-day period to perfect the lien ended prior to the Contractors' commencing his lien action and registering the Certificate of Action on January 20, 2022. On that basis, the Homeowners submitted that the lien had already expired by that date: Decision, at para. 31.

[32] The Contractor's position was that the Contract was never abandoned or terminated prior the registration of the Claim for Lien. On that basis, the Contractor argued that the lien was perfected by the registration of the Certificate of Action on the Property's title within the applicable time period: Decision, at para. 32.

F. Decision on motion

[33] At the conclusion of the motion hearing, the motion judge reserved his decision. He provided his Decision on May 23, 2024, the day after the hearing.

[34] At para. 55 of the Decision, the motion judge found that the Homeowners terminated the Contract effective August 18, 2022. In reaching that conclusion, the evidence the motion judge considered included: (i) the emails exchanged between the parties, which indicated the Homeowners' "growing significant frustration" with the Contractor; (ii) the Homeowners' obtaining quotes from other contractors, which the Contractor was aware of; (iii) the Homeowners' changing the locks on the Property after the acrimonious meeting on August 17, 2022; (iv) JP's entering the Property the next morning with the police, retrieving most or perhaps all of his tools, and removing the building permit from the front door; (v) the same day, JP's calling the rental company to remove the portable toilet; (vi) no further substantive work being done on the property after that date; and (vii) no satisfactory evidence of any further communication by the Contractor (who bore the onus of proof) regarding continuing the renovation: Decision, at paras. 43-49.

[35] At para. 51, the motion judge concluded:

> I have no hesitation in concluding that the cumulative effect of the emails produced on this motion, culminating in the changing of the locks, is satisfactory evidence that the defendants terminated the contract effective August 18, 2022. The tenor of

> the defendants' emails, coupled with the changing of the locks, effectively communicated their desire to terminate the contract.

[36] At para. 52 the motion judge stated that in reaching that conclusion, he considered Mr. Warner's testimony on cross-examination, in which he "admitted that he never sent the [Contractor] an email or text in which he stated unequivocally that the [Contractor] was fired or that the contract was terminated." However, at para. 55, the motion judge concluded that "[a]ll of the circumstances, in their totality, convince me that the defendants terminated the contract effective August 18, 2022."

[37] At para. 56, the motion judge also found that if he was wrong in this conclusion regarding termination, he would still find that the Contractor "abandoned the contract on the same day". The motion judge continued, at para. 56:

> … I rely upon the fact that the plaintiff contacted the police to retrieve its tools on that date, contacted the portable toilet company on that date to arrange for the portable toilet to be picked up, performed no further substantive work on the renovations after that date and has provided no satisfactory evidence of communications evidencing an intention to continue the project. All of these factors, seen in the context of the defendants' emails and locking the doors, leads me to conclude that the plaintiff abandoned this project.

[38] At para. 57, the motion judge also found that the Contractor's abandonment was "permanent in the sense that I find that the plaintiff did not intend to carry out the project to completion. There is absolutely no evidence to support a finding otherwise." At para. 58, the motion judge further found the Contractor's "actions, or more accurately, inaction, … demonstrate that it had abandoned the contract effective on August 18, 2022."

[39] At para. 59, the motion judge concluded:

> In my opinion, there is no genuine triable issue with respect to the fact that this lien was not perfected in a timely fashion. The evidence presented on this motion strongly supports that view. Accordingly, I declare that the plaintiff's lien expired prior to its perfection.

[40] In the formal order dated May 23, 2024, the court declared that the Contractor's lien expired prior to perfection and ordered that (i) the lien is discharged and vacated, (ii) the Certificate of Action registered on the Property's title is vacated, (iii) the Contractor's action shall continue under ordinary procedure, and (iv) the Contractor shall pay the Homeowners' costs.

IV. Appeal from Decision on motion

A. Jurisdiction and standard of review

[41] By Notice of Appeal dated June 7, 2024, the Contractor appeals the Decision.

[42] The Divisional Court has jurisdiction to hear this appeal. An appeal from a final decision of a judge under the *Construction Act* lies to the Divisional Court: *Act*, s. 71(1).

[43] The appellate standards of review apply, as set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 8, 10, 19, 25-37. The standard of review is correctness for questions of law. The standard of review is palpable and overriding error for questions of fact and for questions of mixed fact and law except where there is an extricable question of law, which is reviewable on a correctness standard.

B. Brief statement of the parties' positions

i. Appellant's position

[44] As explained in further detail under the heading "Analysis" below, the Contractor submits that the motion judge erred in finding that the lien expired prior to perfection. The Contractor disputes the finding that the Contract was terminated or abandoned by August 18, 2022, and argues that the Certificate of Action was registered on title within the required timeline to perfect the lien. The Contractor asks the court to set aside the motion judge's order and dismiss the Homeowners' motion, with costs.

[45] The Contractor argues that in reaching the Decision, the motions judge erred in law by:

a. finding the Contract was terminated, where the Homeowners did not clearly and unequivocally communicate to the Contractor that the Contract was terminated and where no notice of termination was published; and

b. finding the Contract was abandoned, where the evidence was not clear and unequivocal that the Contractor did not intend to complete the Contract more than 150 days before perfecting the lien.

[46] Among other things, the Contractor submits that the motion judge erred in law in finding that the Contract was terminated in the absence of a notice of termination under s. 31(6) of the *Act*. The Contractor says that compliance with s. 31(6) was a necessary element for a contract to be found terminated for the purposes of the *Act*. At the relevant time, ss. 31(6) and (7) provided:

> **Notice of termination**
>
> 31(6) If a contract is terminated, either the owner or the contractor or other person whose lien is subject to expiry shall publish, in the manner set out in the regulations, a notice of the termination in the prescribed form and, for the purposes of this section, the date on which the contract is terminated is the termination date specified in the notice for the contract.
>
> **Validity of termination**

(7) Subsection (6) does not prevent a person from contesting the validity of a termination.[1]

[47] The Contractor also argues that the evidence before the motion judge, properly considered, did not meet the threshold required to find that the Contract was terminated or abandoned. Among other things, the Contractor says that the motion judge erred by inappropriately applying enhanced fact-finding powers to a record that would not otherwise support a finding that the Contract was terminated or abandoned. The Contractor submits that enhanced fact-finding powers available to a judge on a summary judgment motion under r. 20 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194,[2] are not available on a motion to discharge or vacate a lien under s. 47 of the *Act*. The Contractor also submits that the motion judge erred by engaging in "best foot forward" analysis that is not available on a s. 47 motion.

ii. Respondent's position

[48] In response, the Homeowners submit that the motion judge did not err in finding that the Contract was terminated or abandoned effective August 18, 2022. The Homeowners say that the motion judge found that the Contract was terminated or abandoned by that date after consideration of "[a]ll of the circumstances in their totality," based on findings of fact that were well supported by the evidence. They submit that these findings are entitled to deference absent palpable and overriding error, which they say the Contractor has not established. The Homeowners dispute that the motion judge, in making these findings, resorted to enhanced fact-finding powers he does not have or engaged in "best foot forward" analysis.

[49] The Homeowners also note that the Contractor did not raise before the motion judge the issue of compliance with s. 31(6) of the *Act* and no evidence was provided as to whether a notice of termination was published. In any event, the Homeowners dispute that publishing a notice of termination is necessary to establish that a contract was terminated for the purposes of the *Act*.

C. Result

[50] As explained below, I conclude that the motion judge did not err in finding that (a) the lien expired prior to perfection, and (b) the Contract was terminated or abandoned on August 18, 2022. The record below supports the motion judge's finding of either termination or abandonment, without resorting to enhanced fact-finding powers or "best foot forward" analysis. Even if a notice of termination under s. 31(6) is required to establish termination, the result would be the same in this case, since the motion judge did not err in finding that the Contract was abandoned.

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[1] Sections 31(6) to (7) of the *Act* were subsequently repealed and replaced by new ss. 31(6) to (8): see *Fighting Delays, Building Faster Act, 2025*, S.O. 2025, c. 14, Sched. 2, s. 6.

[2] See rr. 20.04(2.1) [power to weigh evidence, evaluate witness credibility, and draw reasonable inferences from the evidence] and 20.04(2.2) [power to order oral evidence (mini-trial)]; *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87.

V. Analysis

[51] I do not agree that the motion judge erred in finding termination or abandonment on the record before him. Further, I do not agree that he erred by exercising enhanced fact-finding powers or "best foot forward" analysis not available to him on a s. 47 motion.

A. Appellant's submissions

[52] While arguing that absence of a s. 31(6) notice is fatal to a finding of termination, the Contractor also submits that the evidentiary record before the motion judge does not support a finding of either termination or abandonment.

[53] With respect to termination, the Contractor says that there is nothing in the motion judge's findings that supports the notion that the Homeowners clearly and unequivocally communicated to the Contractor, either verbally or in writing, their intention that the Contractor no longer perform its contractual obligations. The Contractor points to the Homeowners' email of August 18, 2022, which stated that they "continue to have faith in you [JP] and your intentions." They also note that the Homeowners never stated unequivocally, in an email or text, that the Contractor was fired or that the Contract was terminated. The Contractor agrees that on the evidentiary record, the Homeowners were frustrated and likely wanted to terminate the Contract and find a new contractor. However, the Contractor argues that the Homeowners stopped short of actually terminating the Contract.

[54] To similar effect regarding abandonment, the Contractor submits that the evidentiary record was not clear and convincing that the Contractor abandoned the Contract on August 18, 2022. The Contractor says that in finding that the Contract was abandoned, the motion judge erred by weighing the evidence and assessing witness credibility to draw the inference that the Contractor lacked the intention to complete the Contract. The Contractor argues that in doing so, the motion judge purported to use enhanced fact-finding powers that were not available to him on a s. 47 motion. The Contractor also says that the motion judge erred in utilizing "best foot forward" evidentiary analysis to buttress his finding that the Contractor's evidence was less persuasive than that of the Homeowners. The Contractor argues that such analysis would be appropriate on a r. 20 summary judgment motion but not on a s. 47 motion.

[55] The Contractor submits that at para. 27 of the Decision, the motion judge correctly stated that "the courts have held that motions under section 47 of the *Act* are akin to motions for summary judgment under the *Rules of Civil Procedure*, although they are procedurally different": see *Maplequest (Vaughan) Developments. Inc. v. 2603774 Ontario Inc.*, 2020 ONSC 4308, 3 C.L.R. (5th) 182 (Div. Ct.), at para. 25; *GTA Restoration Group Inc. v. Baillie*, 2020 ONSC 5190, 17 C.L.R. (5th) 89, at paras. 42-45, leave to appeal refused, 2021 ONSC 1250 (Div. Ct.). The Contractor says that one of the key differences is that the enhanced fact-finding powers under r. 20 are not available to motion judges when adjudicating this type of motion: see *R&V Construction Management Inc. v. Baradaran*, 2020 ONSC 3111, 54 C.P.C. (8th) 91 (Div. Ct.). In that case, at para. 61, the Divisional Court stated that "[e]nhanced [p]owers are not available on a motion pursuant to s. 47, which is not a motion for summary judgment under R.20 of the Rules of Civil Procedure."

[56] The Contractor argues that there is no evidence in the motion record that the Contractor communicated any intention not to complete the Contract as of August 18, 2022. The Contractor says that it did not, verbally or in writing, inform the Homeowners that it was abandoning the project. It also notes that the motion judge agreed that JP's "email of August 17, 2022 does not demonstrate that the [Contractor] was abandoning the project": Decision, at para. 56. The Contractor also relies on JP's testimony that he attempted to call and text the Homeowners on August 19 and 22, 2022 about how to proceed with future work.

[57] The Contractor submits that in reaching the conclusion that the Contract was abandoned, the motion judge erred in considering the circumstantial evidence surrounding JP's visit to the worksite on August 18, 2022 (including the removal of tools from the house) and inappropriately drew the inference that the Contractor had abandoned the project the same day. The Contractor says that in other decisions where the court has granted a s. 47 motion to discharge or vacate a lien, the court was careful not to (or did not need to) draw inferences to reach determinations of termination or abandonment: see: *Gem in Niagara*, at para. 8; *2280092 Ontario Inc. v. Collins*, 2021 ONSC 4365, at para. 10.

[58] The Contractor argues that clear and convincing direct evidence must be available on the record to ground a finding of abandonment or termination on a s. 47 motion. It says that inferences drawn from circumstantial evidence, even when considered together, would not be enough to satisfy the burden on s. 47 motion. The Contractor submits that on a s. 47 motion, the absence of the robust procedure that would be provided at trial or on a r. 20 summary judgment motion would increase the risk of the irreversible discharge of liens that would otherwise be found valid at trial: *see R&V Construction*, at paras. 21-27. It argues that the danger of an unjust discharge is heightened when there are credibility issues and conflicting evidence.

[59] To support its position that "clear and convincing evidence" was the applicable evidentiary onus on a s. 47 motion, the Contractor relied on the decision of Ricchetti R.S.J. in *Leblon Drywall Inc. v. King Station Facility*, 2022 ONSC 3181, at paras. 37, 39. In *Leblon*, at para. 39, the motion judge dismissed a r. 20 summary judgment motion to discharge a construction lien after finding that the owner had not established "on clear and convincing evidence" that the lien was registered out of time. The Contractor reasons that if that evidentiary standard applies on a summary judgment motion, it stands to reason that it would be the minimum standard that applies on a s. 47 motion, where enhanced fact-finding powers are unavailable. The Contractor also notes that in *Leblon*, at para. 11, Ricchetti R.S.J. stated that "while the court can draw reasonable and rational inferences, the court should not embark upon speculation particularly where material facts are in dispute or where there are multiple/conflicting reasonable and rational explanations."

[60] The Contractor notes that JP and Mr. Warner gave conflicting testimony about attempted communications from the Contractor to the Homeowners after August 18, 2022. While conceding that there was no evidence provided to corroborate JP's evidence that he attempted to communicate with the Homeowners, the Contractor says that Mr. Warner's evidence was predicated on a hearsay statement from his phone provider that there were no records of such attempted communication. The Contractor submits that given the conflicting evidence, an ultimate determination would have to be made based on an assessment of the credibility of each witness. It argues that this assessment

would be impossible to do on a s. 47 motion and should be deferred to trial where *viva voce* evidence could be provided.

[61] The Contractor also submits that in addition to inappropriately weighing the evidence, the motion judge further erred by evaluating the evidentiary record on a "best foot forward" standard. At para. 29 of the Decision, the motion judge quoted para. 56 of Associate Justice Robinson's decision in *GTA Restoration*:

> 56. In my view, neither *R&V Construction* nor *Maplequest* alter the prior case law requiring both the moving party and responding lien claimant to put their best foot forward in s. 47 motions where the court must assess if there are triable issues, such as challenges to timeliness of a lien, quantum of a lien, or lienability of services or materials supplied. On my reading, the Divisional Court has clarified that the evidentiary onus extends solely to the bases on which discharge is sought.

[62] The Contractor submits that para. 56 of *GTA Restoration* is inconsistent with *R&V Construction*, at para. 46, where the Divisional Court stated that, there is "no requirement for parties to 'put their best foot forward'" on a s. 47 motion. The Contractor argues that it was an error of law for the motion judge to evaluate the evidence on that basis. The Contractor agrees that "there are times that a genuine issue could be resolved on a [s. 47] motion," but submits that the motion judge should instead have framed his analysis to determine whether it would be "fair, just and appropriate" in the circumstances for the matter to be decided at trial instead: see *Infinite Construction Development Ltd. v. Chen*, 2023 ONSC 2627 (Div. Ct.), at para. 14.

[63] The Contractor also argues that that record relating to abandonment was ambiguous and that the Contractor's actions have reasonable and rationale explanations other than an intention to abandon the Contract. The Contractor says that the motion judge erred in failing to consider such alternative explanations, instead accepting the Homeowners' explanation based on weighing of the circumstantial evidence.

B. No error in finding termination or abandonment

[64] I conclude that the motion judge did not err in finding termination or abandonment on the record before him.

[65] The Contactor agrees that the motion judge identified the correct legal test on a s. 47 motion, that is, "whether there was a triable issue in respect [of] any of the bases on which discharge of the lien is sought": *Decision*, at paras. 28-29, 59; *Maplequest*, at para. 25. The motion judge also correctly identified that termination or abandonment occurs when there is a permanent cessation or stoppage of work and an intention to terminate or abandon the contract, subjective intentions not being determinative: Decision, at paras. 20, 38; *Baeumler Quality Construction Inc. v. Pirraglia*, 2018 ONSC 7610, 96 C.L.R. (4th) 358, at para. 25; *Nigeco Contracting Ltd. v. Aizenstros*, 2019 ONSC 3364, 99 C.L.R. (4th) 348 at para. 22; *Gem in Niagara*, at paras. 27-28; and *Dieleman Planer Co. v. Elizabeth Townhouses Ltd.*, [1975] 2 S.C.R 449, at p. 452.

[66] In the Decision, the motion judge made the following findings of facts that led to his determination of both the intention to terminate and abandon the Contract as of August 18, 2022:

a. The Homeowners purchased new locks and changed the locks on the doors the evening of August 17, 2022: Decision, at para. 46.

b. First thing in the morning on August 18, 2022, the Contractor called London police in order to enter the Property and retrieve its tools: at para. 47.

c. On that date, the Contractor removed the majority, and perhaps all, of its tools: at para. 47.

d. On that date, the Contractor removed the building permit from the front door: at para. 47.

e. On that date, the Contract contacted the rental company and requested removal of the portable toilet from the Property: at para. 47. A toilet was required for construction to be performed at the Property pursuant to the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, and O. Reg 213/91 under that Act.

f. There was no conduct evidencing an intention to continue the project after August 18, 2022. Rather, both parties' conduct suggested they had each moved on: at para. 41.

g. The Homeowners hired another contractor to complete the work in September 2022: at para. 50.

[67] The motion judge found that the Homeowners terminated the Contract on August 18, 2022, based on all the circumstances in their totality: Decision, at para. 55.

[68] The motion judge further found as a fact that the Contractor did not intend to carry out the project to completion, and there was absolutely no evidence before him to support a finding otherwise: Decision, at paras. 56-57. Accordingly, he found that the Contractor abandoned the Contract effective August 18, 2022: Decision, at para. 58.

[69] The findings of termination and abandonment are findings of fact: *Gem in Niagara*, at para. 28; *Wildberry Homes Inc. v. Prosperity One Credit Union Ltd.* (2008), 83 C.L.R. (3d) 109 (Ont. S.C.), at para. 16. These findings are entitled to deference, absent a palpable and overriding error or an extricable error of law: *Housen*, at paras. 10, 19, 25 and 36. The Contractor, being the applicant on the s. 47 motion, bore the burden of establishing that that the motion judge erred in making those findings. The standard of proof is on a balance of probabilities: *Gem in Niagara*, at para. 22; *Nortown*, at para. 4. As explained further below, the Contractor has not met that burden.

C. No error by resorting to enhanced fact-finding powers or "best foot forward" analysis

[70] I conclude that the motion judge did not err by exercising enhanced fact-finding powers engaging if "best foot forward" analysis not available to him on a s. 47 motion.

[71] At para. 27 of the Decision, the motion judge correctly stated that s. 47 motions are "akin to [r. 20] motions for summary judgment under the *Rules of Civil P*rocedure, although they are

procedurally different": see *Maplequest*, at para. 25. At no point in the Decision did the motion judge state that enhanced fact-finding powers were available to him or utilized by him. The Contractor has not established that the motion judge fell into error by purporting to use such powers.

[72] Similarly with respect to "best foot forward" analysis, the motion judge at para. 29 of the Decision quoted para. 56 of *GTA Restoration*, where Robinson A.J. provided his view of the extent to which that standard applies on a s. 47 motion. However, the motion judge recognized that the burden of proof was on the lienholder to prove the statutory timelines of preservation and perfection in order to establish, on a balance of probabilities, that the lien had not expired: Decision, at para. 25; *Gem in Niagara*, at paras. 22-23. The motion judge determined that the Contractor did not meet that burden, finding that "there is no genuine triable issue with respect to the fact that this lien was not perfected in a timely fashion: Decision, at para. 59.

[73] The motion judge did not err in making that determination. Contrary to the Contractor's submissions, I am not persuaded that the motion judge erred by failing to apply the standard of "clear and convincing evidence" referred to in *Leblon* (a summary judgment decision) and the other decisions on which the Contractor relies. I do not agree that those decisions have the effect of altering the standard of proof for s. 47 motions to something other than the standard that ordinarily applies in civil proceedings, being on a balance of probabilities. I also disagree that those decisions support the conclusion that the presiding judge on a s. 47 motion is prohibited in all circumstances from drawing inferences from the evidence to make findings of fact, as judges do both at trial and on interlocutory motions as a matter of course.

[74] As in *Maplequest*, at paras. 18-19, the motion judge was entitled to conclude that in the absence of supporting documentary evidence (such as emails, text messages or invoices) to support the testimony of the Contractor (who bore the burden of proof), such evidence was not available or did not exist. The Contractor relied on JP's bald assertions that were not supported by documentation or other evidence. In those circumstances, the motion judge did not err in finding the Homeowners' favour and granting the motion to vacate the lien.

D. Conclusions

[75] For the above reasons, I conclude that that the motion judge did not err in determining, on the record before him, that the Contract was terminated or abandoned effective on August 18, 2022. On that basis, I conclude that the motion judge did not err in finding that the Contractor's lien expired prior to perfection. As well, I conclude that the result would be the same, even if a s. 31(6) notice of termination is required to establish termination under the *Act*, given my conclusion that the motion judge did not err in finding that the Contract was abandoned.

[76] Accordingly, I would dismiss the appeal and order the Contractor to pay costs to the Homeowners in the agreed amount of $15,000.

Lococo J.

I agree

Firestone R.S.J.

I agree

Shore J.

Date: February 23, 2026

CITATION: JP Reno Inc. v. Warner., 2026 ONSC 1065
DIVISIONAL COURT FILE NO.: 067/24 (London)
DATE: 20260223

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Firestone R.S.J., Lococo and Shore JJ.

BETWEEN:

JP RENO INC.

Appellant (Plaintiff)

– and –

NORMAN MARK WARNER and SABRINA TOMIC

Respondents (Defendants)

REASONS FOR JUDGMENT

R. A. Lococo J.

Date: February 23, 2026