

CITATION: Oakleigh Holdings Inc. v. Demikon Construction Ltd., 2026 ONSC 1660
COURT FILE NO.: CV-24-00001087
DATE: 20260318

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
Oakleigh Holdings Inc. and Aurelia Limited)
Partnership) *Jonathan Goode and Harris Khan for the*
) *Plaintiffs*
Plaintiffs)
)
– and –)
)
Demikon Construction Ltd. and Tacoma)
Engineers Inc.) *Robert J. Kennaley and Joseph E. O’Hearn,*
) *for Demikon Construction Ltd.*
Defendants) *Varoujan Arman for Tacoma Engineers Inc.*
)
) *Andrew Wood for Barrie Trim & Moulding*
) *Inc., in related action CV-22-587*
)
)
)
) **HEARD:** February 26, 2026

2026 ONSC 1660 (CanLII)

RULING ON DEMIKON’S MOTIONS TO DISMISS

C. BOSWELL J.

I.

[1] One construction project. Three lawsuits. Two motions to dismiss.

The Project

[2] The construction project in issue is the Matchedash Lofts in Orillia, a five storey, mixed use building with 76 condominium units. Oakleigh owns the lands. Aurelia is a limited partnership created to develop them. Demikon was hired as project manager but terminated partway through the project. Tacoma were the consulting engineers on the project.

The Lawsuits

Action 615

[3] At or around the time it was terminated as project manager, Demikon registered a \$5 million lien against the project lands, pursuant to the provisions of the *Construction Lien Act*, R.S.O. 1990, c. C.30 (the “*CLA*”).¹ They subsequently issued a claim in court file no. CV-21-00000615 on April 30, 2021 (“*Action 615*”), seeking \$5 million in damages.

[4] Oakleigh and Aurelia defended *Action 615* and advanced a counterclaim seeking \$6 million from Demikon as damages for deficiencies and delay.

[5] Relatively little has happened to move *Action 615* forward. Instead of focusing on the substantive issues, the parties have spent their time over the past five years engaged in interlocutory wrangling about whether a bond posted by Oakleigh and Aurelia should be reduced in value as a result of payments made by Oakleigh and Aurelia directly to certain subtrades of Demikon. That issue resulted in an order of this court, which was appealed to the Divisional Court. The Divisional Court made an order, which has been appealed to the Court of Appeal. I understand that a hearing of the appeal is scheduled for some time in May 2026.

Action 587

[6] Barrie Trim & Molding Inc. (“*BTM*”) was a subtrade contracted by Demikon to supply and install interior doors, closets, and baseboards to the project. When Demikon’s contract was terminated, Oakleigh and Aurelia contracted directly with *BTM* to continue with the door, closets, and baseboards work.

[7] *BTM* asserts that Oakleigh and Aurelia breached their contract by failing to pay them the contract price. They commenced an action against Oakleigh and Aurelia on May 10, 2022 in file no. CV-22-00000587 (“*Action 587*”). They seek payment of roughly \$42,000, together with a declaration that all amounts received by Oakleigh and Aurelia in relation to the project were impressed with a trust in favour of *BTM*. *Action 587* was commenced under the Simplified Rules.

[8] Oakleigh and Aurelia defended *BTM*’s action. They also advanced a counterclaim against *BTM* and Demikon (as a party added by counterclaim) seeking damages for deficiencies

¹ The *Construction Lien Act* underwent significant amendments as a result of the *Construction Lien Amendment Act*, 2017, S.O. 2017, c. 24, which received Royal Assent on December 12, 2017. One amendment changed name of the Act to the *Construction Act*. Section 87.3 of the *Construction Act* is a transition provision. It provides that the terms of the *Construction Lien Act*, as they existed as of June 18, 2018, continue to apply with respect to an improvement where a contract for the improvement was entered into prior to June 18, 2018. There is no dispute that the contract between Oakleigh/Aurelia and Demikon was entered into in 2017. In the result, the provisions of the *Construction Lien Act* continue to apply to *Action 615*.

and delay. Damages of \$150,000 are sought against BTM, while \$6 million in damages is sought against Demikon. These are the same damages raised in the counterclaim in Action 615.

Action 1087

[9] After the completion of pleadings in Action 615 and Action 587, Oakleigh and Aurelia purportedly discovered construction deficiencies relating to the balconies of some of the condominium units. They issued a Notice of Action against Demikon and Tacoma in court file no. CV-24-00001087 (“Action 1087”) on April 30, 2024. They subsequently served a Statement of Claim seeking \$500,000 in damages relating to the alleged balcony deficiencies.

The Motions to Dismiss

[10] Demikon initiated motions to dismiss or stay the claims of Oakleigh and Aurelia advanced against it in Actions 1087 and 587. The parties appeared before me at a case conference on July 15, 2025 to set a timetable for the motions, including any procedural steps necessary to get them hearing-ready. The hearing was initially scheduled for December 9, 2025. It was subsequently adjourned to February 26, 2026.

[11] The Notices of Motion served by Demikon in both proceedings set out the relief sought (the dismissal or staying of Actions 1087 and 587 against it) and the basis for the relief sought. In its grounds for relief, Demikon indicates that it is relying, in support of its motions, on r. 20.01(3) of the *Rules of Civil Procedure* (the “*Rules*”). Rule 20.01(3) provides for the granting of summary judgment where there is no genuine issue requiring a trial.

[12] Demikon’s motions to strike did not proceed as summary judgment motions. I am not clear as to why their motion records refer to r. 20.01(3). From as early as the case conference in July 2025, it was clear that the motions were to dismiss or stay Oakleigh and Aurelia’s claims against Demikon in Actions 1087 and 587 on the basis that they are an abuse of process.

[13] The court clearly has the jurisdiction to grant the relief sought, either pursuant to its inherent jurisdiction, or pursuant to either r. 21.01(3)(c) or r. 25.11(c).

[14] Rule 21.01(3)(c) provides that a defendant may move before a judge to have a claim dismissed or stayed on the ground that another proceeding is pending in Ontario or another jurisdiction between the same parties in respect of the same subject matter

[15] Rule 25.11(c) provides that the court may strike out any part of a pleading on the ground that it is an abuse of process.

[16] In their factum filed in response to Demikon’s motions, Oakleigh and Aurelia submitted that Demikon had failed to meet the test for summary judgment in either Action 587 or 1087. While that is undoubtedly true, it is not, in my view, determinative.

[17] The citing of r. 20.01(3) and the failure to cite either r. 21.01(3)(c) or 25.11(c) is slightly troubling, but in my view, amounts to an irregularity that caused no prejudice. All parties have known what relief was being sought and the grounds being advanced for that relief since at least July 2025. The affidavit evidence filed by Oakleigh and Aurelia was responsive to the abuse of process assertion. The motion was fully argued on the basis that Demikon was seeking to dismiss the impugned claims on the grounds that they are an abuse of process, they offend the principle against a multiplicity of proceedings, they are inefficient, they risk inconsistent findings of fact, and they offend the provisions of the *Construction Act*.

II.

The Governing Principles

[18] There are several principles that guide the court's consideration of the relief requested by Demikon. They include: (i) the promotion of just, efficient, and economically rational procedures in civil litigation; (ii) the avoidance, where possible, of a multiplicity of proceedings; and (iii) the goal of completely disposing of all issues between parties to proceedings brought under the *Construction Lien Act*. I will elaborate on each of these principles.

Efficiency and Economic Rationality

[19] Civil claims commenced in Ontario are subject to the *Rules of Civil Procedure*. Rule 1.04(1) establishes an overarching principle of interpretation. It directs that the *Rules* are to be construed and applied in a manner that will provide for the just, most expeditious, and least expensive determination of all civil cases on their merits. Rule 1.04(1.1) adds a requirement that, when applying the *Rules*, the court is to make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding.

[20] Claims commenced under the *CLA* are subject to the procedures it establishes. The *CLA* provides, however, at s. 67(3), that the *Rules* apply to pleadings and proceedings under the *CLA* except where inconsistent with the provisions of the *CLA*.

[21] The principles enunciated in r. 1.04(1) and (1.1) are not inconsistent with the provisions of the *CLA*. Indeed, the direction provided by r. 1.04 is entirely consistent with the aspiration of s. 67(1) of the *CLA* which provides that “the procedure in an action shall be as far as possible of a summary character, having regard to the amount and nature of the liens in question.”

Avoiding Multiple Proceedings for the Same Relief

[22] Avoiding multiple proceedings involving the same relief is a principle grounded in practicality. The court's resources are stretched to the breaking point. Efficiency is the order of the day. And addressing the same relief over multiple proceedings is the antithesis of efficiency.

[23] Multiple proceedings also add unnecessary and wasteful costs. And they create the risk of inconsistent findings of fact.

[24] Section 138 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, specifically directs that “as far as possible, multiplicity of legal proceedings shall be avoided.”

[25] Seeking the same relief across multiple proceedings may amount to an abuse of process, but that is not always the case. The Supreme Court recognized as much in *Saskatchewan (Minister of Environment) v. Métis Nation (Saskatchewan)*, 2025 SCC. They noted that there may be cases where parties have valid reasons for bringing separate, but related, proceedings. The question in every case is, as the court described at para. 40:

whether allowing the litigation to proceed would violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice...Where, for example, having duplicative proceedings would waste the resources of the parties, courts and witnesses, or risk inconsistent results and therefore undermine the credibility of the judicial process, this can amount to an abuse of process.

[26] The Court of Appeal provided similar instruction in *Birdseye Security Inc. v. Milosevic*, 2020 ONCA 355, where they held, at para. 16:

The fact that another proceeding is pending between the same parties in respect of the same subject matter does not automatically lead to an order dismissing or staying the claim. Rather, the order is discretionary and the judge hearing the motion must be satisfied that the stay or dismissal is warranted in the particular circumstances of the case. While a multiplicity of proceedings may constitute an abuse of process which warrants an order staying or dismissing a proceeding...that is not necessarily always the case. All of the circumstances must be considered to determine whether, in the interests of justice, a stay or dismissal should be granted. (Citations omitted).

[27] The Court of Appeal held that a party seeking to stay or dismiss an action on the basis that it offends the rule against a multiplicity of proceedings must establish that “the continuation of the action would cause it substantial prejudice or injustice (beyond inconvenience and expense) because it would be oppressive or vexatious or would otherwise be an abuse of the process of the court, and that the stay would not cause an injustice to the responding party.” (*Birdseye*, para. 15). Factors to consider in the exercise of the court’s discretion include: the likelihood and effect of the two matters proceeding in tandem, the possibility and effect of different results, the potential for double recovery, and the effect of possible delay.

Disposing of all Project-Related Litigation Within the Lien Proceeding

[28] Earlier I observed that s. 67(1) of the *CLA* provides that, insofar as is possible, proceedings under the *CLA* are to be summary in nature.

[29] Carthy J.A. described the nature of construction lien litigation in *Teepee Excavation & Grading Ltd. v. NiranConstruction Ltd.* (2000), 49 O.R. (3d) 612 (C.A.) at para. 12, as follows:

The Construction Lien Act serves a specialized purpose in a narrow field. A lien claimant may commence an action, provide shelter for other claimants, obtain a form of execution before judgment, and proceed to trial in summary fashion without production of documents, discovery or other interlocutory steps except by leave. A plaintiff may join with a lien claim a claim for breach of contract and a defendant may counterclaim in respect of any claim against the plaintiff. There may also be cross-claims and third party claims. There are no appeals from interlocutory orders.

[30] The specialized procedures of the *CLA* promote the goal of efficiency. See *MGW-Homes Design Inc. v. Pasqualino*, 2024 ONCA 422, at para. 34.

[31] Part VIII of the *CLA* sets out the procedures that apply to lien actions under the *Act*. Section 51 provides direction to the court that in lien proceedings, the court is to dispose entirely of the proceedings and to take all accounts between the parties to the proceeding. The section provides, specifically, as follows:

The court, whether the action is being tried by a judge or on a reference by a master, a case management master or a person agreed on by the parties,

(a) shall try the action, including any set-off, crossclaim, counterclaim and, subject to section 56, third party claim, and all questions that arise therein or that are necessary to be tried in order to dispose completely of the action and to adjust the rights and liabilities of the persons appearing before it or upon whom notice of trial has been served; and

(b) shall take all accounts, make all inquiries, give all directions and do all things necessary to dispose finally of the action and all matters, questions and accounts arising therein or at the trial and to adjust the rights and liabilities of, and give all necessary relief to, all parties to the action.

[32] The scope of s. 51 has been described in the jurisprudence as “both broad and comprehensive”. See *Juddav Designs Inc. v. Cosgriffe*, 2012 ONSC 6493, per Chapnik J., at para. 12. This broad and comprehensive scope similarly serves the goal of efficiency. It ensures that the court can, indeed *shall*, take all steps necessary to do justice between the parties, having regard to their various claims and positions.

III.

The Parties’ Positions

[33] Demikon’s position is that Oakleigh and Aurelia have acted improperly in advancing the same claims against Demikon in three different proceedings.

[34] The counterclaim in Action 587 should be dismissed, in Demikon's submission, because:

- (i) It is duplicative and offends the rule against a multiplicity of proceedings;
- (ii) It is an abuse of process, not only because it is duplicative, but because it bogs BTM's simplified procedure claim down with a \$6 million counterclaim against a party who need not and should not be included in that claim. It appears to be an overt attempt to obtain procedural rights that would not otherwise be available to Oakleigh and Aurelia within the lien claim in Action 615;
- (iii) It offends the procedures of the *CLA*, in particular the requirement under s. 51 that the court determine all issues between the parties in the lien trial; and
- (iv) It is generally inefficient and not consistent with r. 1.04.

[35] The counterclaim in Action 1086 should similarly be dismissed, in Demikon's submission, because it offends the rule against a multiplicity of proceedings, offends the procedures of the *CLA*, and is procedurally inefficient.

[36] Demikon submits that the claims of Oakleigh and Aurelia can, and should, be fully litigated in the lien action.

[37] Demikon opposes any further order joining Actions 587 or 1087 with the lien action on the basis that no motion to join those proceedings has been advanced.

[38] Oakleigh and Aurelia take the position that the motions seek summary judgment and that Demikon failed to meet the test for summary judgment in either Action 587 or 1087. To be fair, they did not strenuously press that issue during oral argument. In any event, I have addressed this issue above.

[39] In terms of Action 587, counsel to Oakleigh and Aurelia advised during oral argument, that they had prepared and would serve a Notice of Discontinuance of the counterclaim against Demikon in Action 587. Assuming the Discontinuance is served, then the sole issue in relation to Demikon's participation in Action 587 will be costs.

[40] In terms of Action 1087, Oakleigh and Aurelia submit that the factual basis for the claim is entirely different than that of the lien action. They say that their counterclaim in the lien action does not include deficiencies with the balconies. They are entitled, they say, to proceed in a separate action for that relief. Given its distinctive nature, it will not result in duplicative proceedings, nor risk inconsistent factual findings.

[41] Oakleigh and Aurelia accordingly ask that Demikon's motions be dismissed.

[42] BTM's counsel made brief submissions. They want to be able to proceed summarily. They have been delayed by the addition of the counterclaim against Demikon. They accept that a discontinuance against Demikon will free them up to move with greater dispatch in their action.

[43] Tacoma's counsel also made brief submissions. They took no formal position on the motions, though they did indicate that they do not relish being tethered to the lien claim in any way. They fear it would slow down the progress of the proceedings.

IV.

Analysis

[44] I proceed on the expectation that Oakleigh and Aurelia will, if they have not done so already, serve a Notice of Discontinuance of their counterclaim against Demikon in Action 587. In my view, that resolves Demikon's motion in Action 587, subject to the issue of costs. I have addressed the costs issue in a separate endorsement in Action 587, released simultaneously with this ruling.

[45] I note that, absent the discontinuance, I would have stayed the counterclaim, on the basis that it is an abuse of process, for the following reasons:

- (i) It is clearly duplicative. It advances the same allegations and relief sought in the counterclaim in Action 615;
- (ii) It is unfairly prejudicial to BTM, given that it will bog down BTM's Simplified Rules claim with a claim to \$6 million in damages that have nothing to do with BTM;
- (iii) It risks inconsistent factual findings; and
- (iv) Advancing the same claim for damages for deficiencies and delay in two separate proceedings is inefficient and not cost-effective and runs afoul of the overarching intent of the *Rules*.

[46] While the determination of the motion in Action 587 was easy, assessing the motion in Action 1086 is less so.

[47] Demikon's counsel expressed confidence that the alleged balcony deficiencies that form the substance of the claim in Action 1086 were included in Oakleigh and Aurelia's counterclaim in Action 615. I have less confidence. The counterclaim is broadly worded, so it is certainly *possible* that the balcony deficiencies could fall within its scope. That said, Oakleigh and Aurelia have filed affidavit evidence from Oakleigh's president, Geoffrey Campbell, who deposes that the balcony deficiencies were discovered subsequent to the close of pleadings in Action 615. They are, in Oakleigh and Aurelia's submissions, a distinct deficiency.

[48] I have no reason to discount the credibility or reliability of Mr. Campbell's evidence on the record currently before me. For the purposes of the motions before me, I accept that the balcony deficiencies were discovered well after the close of pleadings in Action 615.

[49] Moreover, Tacoma is alleged to have some measure of liability with respect to the state of the balconies. Oakleigh and Aurelia are clearly entitled to pursue damages against Tacoma.

Tacoma is not a party to Action 615. Tacoma's counsel has signalled that it does not want to be a party to, or bound up in any way, with Action 615.

[50] I am not satisfied, in the circumstances, that Action 1086 amounts to an abuse of process. The parties are not identical in the two actions. And the issues are sufficiently distinct that there is no serious risk of inconsistent factual findings. I cannot say that the continuation of Action 1086 will cause substantial prejudice or injustice to Demikon, or any other party, beyond inconvenience and expense.

[51] Having said that, there are a number of features of Action 1086 that trouble me.

[52] First, litigating the validity, value, and responsibility for deficiencies on a single construction project in multiple actions undermines judicial economy. While I have accepted, for the purpose of these motions, that the alleged balcony deficiencies are distinct from the deficiencies claimed in Action 615, that is not the equivalent of agreeing that they should be litigated separately.

[53] Much of the evidence that will be called in Action 615 will necessarily have to be repeated in Action 1086. For instance, the contractual background, the history of the project, the introduction of the protagonists and their respective key players, and how the project ultimately progressed.

[54] Second, and related to my first concern, is that litigating project deficiencies in separate actions runs up costs (unnecessarily) for all parties. It is simply not the most efficient and cost-effective way to proceed, which means it is inconsistent with the overarching principles of r. 1.04.

[55] Third, arguing deficiencies over two separate proceedings tends to undermine the directive of s. 51 of the *Construction Lien Act*. Specifically, the court is directed to "take all accounts, make all inquiries, give all directions and do all things necessary to dispose finally of the action and all matters, questions and accounts arising therein or at the trial and to adjust the rights and liabilities of, and give all necessary relief to, all parties to the action."

[56] Adjusting the rights and liabilities of the parties arising from the Matchedash Lofts project will require that *all* alleged deficiencies are before the same court. They do not necessarily have to be in a consolidated proceeding, but they should be before the court at the same time, so that all necessary accounts may be taken between the parties.

[57] On balance, I am of the view that Action 1086 ought to be heard together with, or immediately after Action 615. Rule 6.01 provides the jurisdiction for such an order.

[58] I am mindful of Demikon's submission that no party has presently sought an order under r. 6.01. I appreciate that, in the result, the affected parties have not directly turned their minds to evidence that they may wish to file in relation to an order directing that Actions 615 and 1086 be heard together.

[59] On balance, however, my view is that the order should be made now in the interests of judicial economy, cost-effectiveness, and efficiency.

[60] The actions clearly involve similar issues and both relate to the same project. Both involve significant sums of money. While the lien action does not automatically entitle the parties to productions and discovery, an order has been made for those steps to take place.² In my view, there is much to be gained by having Actions 1086 and 615 heard together or one after the other by the same judge. On the other hand, there is little, if any prejudice to any of the parties involved in either proceeding.

[61] Tacoma's counsel made it clear that they do not want to be tethered to the lien action. The reason advanced is that they fear they will be dragged into much more substantial and slower litigation.

[62] I appreciate that Tacoma will be compelled to participate in broader litigation but I am not persuaded that it will be slower or that their concern significantly undermines the broader benefits to be gained by making the order under r. 6.01. Moreover, I am prepared to case manage the joined claims to ensure they proceed with reasonable dispatch going forward.

[63] In the result, the motion to stay or dismiss Action 1086 against Demikon is dismissed, but I direct – subject to the overriding discretion of the trial judge – that Actions 615 and 1086 be heard together or one following the other.

[64] The parties may make written submissions on costs according to the following timetable:

- (i) Demikon is to serve and file its cost submissions by April 1, 2026;
- (ii) Oakleigh and Aurelia are to serve and file their cost submissions by April 15, 2026;
- (iii) Tacoma is to serve and file any cost submissions it may wish to make by April 22, 2026; and
- (iv) Demikon is to serve and file any reply submissions by April 29, 2026.

[65] Cost submissions are not to exceed two pages in length, not including any costs outline. Submissions may be delivered to my judicial assistant once served.

C. Boswell J.

² See the Order of Leibovich J. dated April 28, 2025

Released: March 18, 2026