

CITATION: PNR RailWorks Inc. v. Mosaic Transit Partners Gen. Partnership, 2026 ONSC 1648
COURT FILE NO.: CV-24-722238
DATE: 2026 03 18

SUPERIOR COURT OF JUSTICE - ONTARIO

IN THE MATTER OF the *Construction Act*, RSO 1990, c C.30, as amended

RE: PNR RAILWORKS INC., *Plaintiff*

- and -

MOSAIC TRANSIT CONSTRUCTORS GENERAL PARTNERSHIP,
DUFFERIN CONSTRUCTION COMPANY, CRH CANADA GROUP INC.,
GROUPE CRH CANADA INC., DRAGADOS CANADA, INC. and AECON
INFRASTRUCTURE MANAGEMENT INC., *Defendants*

BEFORE: Associate Justice Todd Robinson

COUNSEL: R. MacDougall and N. Sidlar, *for the plaintiff*

A. Grossman and J. Mertz, *for the defendants*

HEARD: December 15, 2025 (by videoconference)

**REASONS FOR DECISION
(Leave for Summary Judgment)**

[1] PNR RailWorks Inc. (“PNR”) seeks leave to bring motions for partial summary judgment against Mosaic Transit Constructors General Partnership (“Mosaic”) in both of PNR’s lien actions in Court File Nos. CV-24-722238 and CV-24-00718039. Both actions are proceeding in a reference before me under the *Construction Act*, RSO 1990, c C.30, in which PNR’s action in Court File No. CV-24-722238 is the lead reference file. Mosaic opposes leave.

[2] PNR was contracted by Mosaic under two separate subcontracts to supply services and materials to construction of the Finch West Light Rail Transit (LRT) project. Specifically, PNR was responsible for manufacturing, supplying, and installing the signal and train control system equipment and materials for the transit line as well as performing track installation work along Finch West Avenue. PNR claims a total of \$6,534,901.38 for its signal work and \$9,381,834.86 for its track work. The majority of PNR’s claims relate to unliquidated damages arising from project delays.

[3] Mosaic has advanced set-off claims and counterclaims in both actions totalling some \$45 million in the aggregate, comprised of a delay and impact claim, back charges for subcontractors required to complete portions of PNR’s scope of work removed by Mosaic, and a

claim related to PNR's track work regarding certain wasted materials supplied by Mosaic for PNR's use.

[4] PNR does not seek leave to move for summary judgment on its entire claim. Rather, it only seeks leave regarding its unliquidated contract claims for unpaid invoices and holdback, as well as to dismiss or stay Mosaic's set-off claims and counterclaims, in whole or in part, as being premature, speculative, and unsubstantiated. PNR concedes that the balance of its claim arising from delay requires a trial. Mosaic objects to partial summary judgment and, more specifically, to the litigation delay, time, expense, and wasted judicial resources of a bifurcated judgment process.

[5] In the time that these leave motions have remained under reserve, I have carefully considered the parties' arguments. I am convinced that PNR's proposed motions for summary judgment will expedite the resolution of issues in dispute between PNR and Mosaic. I am accordingly granting leave for the motions.

ANALYSIS

[6] In its materials, PNR cites the current provisions of the *Construction Act* and its regulations. However, there is no dispute in this reference that, by operation of the transition provisions in s. 87.3 of the *Construction Act*, the subject improvement, PNR's liens, and PNR's lien actions are all governed by the provisions of the *Construction Act* and its regulations as they read on June 29, 2018, namely the former *Construction Lien Act* (the "CLA"). I accordingly refer to the provision of the *CLA* in these reasons.

[7] Summary judgment is not a procedure specifically provided in the *CLA*. It is available in a lien action only through the *Rules of Civil Procedure*, RRO 1990, Reg 194, which apply in lien actions except where inconsistent with the act: *CLA*, s. 67(3). However, a summary judgment motion cannot be brought as of right in a lien action. Interlocutory steps, other than those provided for in the *CLA*, first require "consent of the court" to be obtained "upon proof that the steps are necessary or would expedite the resolution of the issues in dispute": *CLA*, s. 67(2).

[8] When deciding a request for leave to bring a motion for summary judgment, the court may consider matters such as whether the motion will reduce trial preparation and trial time, whether a summary judgment motion would enhance the likelihood of settlement, and whether a summary judgment motion meets the objectives of timeliness, affordability, and proportionality set out by the Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7. The likelihood of success of the proposed motion, the complexity of the case, the quantum of the claim, and whether the decision will be appealed are not determinative, or are not factors at all, when deciding a request for leave for summary judgment: *Limen Structures Ltd. v. Brookfield Multiplex Construction Canada Limited*, 2016 ONSC 5107 at paras. 11-36.

[9] As I have previously held, determining whether a step is necessary or whether it will expedite resolution of issues in dispute is a case-specific exercise. It requires the court to consider the specific circumstances of the specific case in the context of the overall scheme of the *CLA*. There is no "one size fits all" approach on the appropriateness of summary judgment

motions, including partial summary judgment, in lien actions: *The Fifth Wall Corp. v. Tonelli*, 2022 ONSC 599 at para. 22.

[10] PNR seeks leave to move for partial summary judgment on only the portion of its claims asserted to be unliquidated, namely unpaid invoice amounts and unpaid holdback, as follows:

- (a) \$1,132,605.76 for unpaid invoices allegedly approved by Mosaic for PNR's signals work, plus \$840,932.26 in accrued and unpaid holdback retained from invoices otherwise paid by Mosaic; and
- (b) \$867,167.45 for unpaid invoices allegedly approved by Mosaic for PNR's track work, plus \$1,246,554.02 in accrued and unpaid holdback retained from invoices otherwise paid by Mosaic.

[11] In addition, PNR intends to seek an order dismissing or staying Mosaic's set-off claims and counterclaims in both actions essentially on the basis that Mosaic cannot prove its damages. PNR asserts that Mosaic has failed to properly and meaningfully quantify its damages claim despite multiple opportunities to do so through the Scott Schedule process that I ordered. PNR submits that Mosaic's claims are, at best, premature and speculative.

[12] PNR also submits that a motion for summary judgment is appropriate to decide whether a contractual limitation of liability provision in both subcontracts operates to limit Mosaic's maximum recovery to 100% of each subcontract price. If applicable, the clauses would reduce Mosaic's maximum aggregate recoverable claim to approx. \$20 million.

[13] PNR does not pursue leave on the basis that its proposed motions are necessary. Rather, it submits that they will expedite the resolution of issues in dispute. Specifically, PNR argues that deciding its unliquidated claims, determining whether Mosaic's set-off claims and counterclaim are viable and, if so, whether the contractual liability cap applies to those claims will significantly narrow issues and the quantum in dispute. That, in turn, will increase the likelihood of settlement.

[14] Mosaic disagrees entirely. Mosaic submits that a partial summary judgment motion will "introduce needless procedural complexity, delay the commencement of trial, and create the risk of duplicative or inconsistent findings at trial." It argues that partial summary judgment will not expedite the resolution of the actions and, accordingly, leave should be denied.

[15] In both its written and oral submissions, Mosaic points to its positions that PNR failed to perform work in accordance with the subcontracts, delayed the project, and wasted Mosaic-supplied materials. PNR's conduct is argued to have led to portions of PNR's subcontract scope being removed. Mosaic asserts that, because of its own claim arising from PNR's breaches of contract, PNR is owed nothing. Mosaic submits that addressing those disputes will require a complex project schedule and quantification analysis and, likely, an expert opinion on standard of care. It will also require evidence on PNR's performance, which Mosaic argues justified removing a portion of PNR's subcontract work.

[16] Mosaic's position is that, in adjudicating its set-off claims and counterclaims, I will have to make findings of fact and law with respect to, at least, the following issues:

- (a) interpretation of the subcontracts regarding the scope of work, schedule provisions, coordination provisions, and limitations of liability;
- (b) whether PNR's performance of its subcontract work met the technical and commercial requirements of the subcontracts and the standard expected of a contractor such as PNR;
- (c) whether PNR met the requirements of the subcontract schedules and, if not, whether PNR was impacted by compensable delay events attributable to Mosaic;
- (d) the root cause of PNR's delays in completing its subcontract work;
- (e) whether PNR and/or Mosaic appropriately mitigated their losses arising from PNR's performance; and
- (f) what were the damages costs and losses incurred by PNR and/or Mosaic because of PNR's performance and any impacts from it.

[17] In my view, most of Mosaic's arguments on these leave motions focus on the substantive merits of the case and, specifically, why Mosaic has an arguable position that PNR breached the subcontracts and is liable to Mosaic for damages that it has allegedly suffered. I agree that all of the above issues will be in play if Mosaic's set-off claims and counterclaims proceed to trial. However, I am not convinced that most of the identified issues will need to be addressed on the proposed summary judgment motions.

[18] Based on its submissions, PNR is not seeking to join swords with Mosaic on the motions over Mosaic's argument that PNR is liable for alleged breaches of the subcontracts. PNR is only proposing to join swords over its own claims for unpaid invoices and unpaid holdback amounts, as well as the scope of and limits on any provable damages incurred by Mosaic.

[19] I agree with Mosaic that PNR's liability to Mosaic is likely not appropriate for summary judgment on the facts of this case. However, liability and damages are separate issues at trial. Assuming that Mosaic is able to prove PNR's liability, Mosaic must still prove damages to establish entitlement to any judgment on its claims. PNR submits that Mosaic cannot prove damages for some or all the losses it is pursuing. Since the proposed motions are dealing only with provable damages, Mosaic's concerns about getting into liability are, in my view, moot. I do not need to decide PNR's liability to assess whether there is any genuine issue for trial that Mosaic has incurred provable damages.

[20] Put simply, if there is no genuine issue that Mosaic cannot prove its damages claim, then proving liability and causation would seem to become legally moot. Conversely, if there is a genuine issue on all or a portion of Mosaic's damages claim, then liability and causation for those damages can be addressed with proving those damages at trial.

[21] No convincing argument has been advanced for why PNR's subcontract performance is material to deciding if there is a genuine issue for trial on whether the unpaid invoices were approved by Mosaic, whether PNR's rendered invoices properly reflect earned and unpaid amounts (including holdback) under the subcontracts, whether Mosaic has provable damages and,

if so, whether those damages are contractually capped by operation of the limitation of liability clause in the subcontracts.

[22] Mosaic points to case law outlining various concerns with partial summary judgment. In my view, those concerns are less pronounced in a *Construction Act* reference where I am seized of all steps in the litigation, including the ultimate trial. In that context, whether I spend time hearing a partial summary judgment motion and writing comprehensive reasons on issues that will not fully dispose of PNR's actions is really a "me" issue. I am both the motions judge and the trial judge. I am unconvinced that there is a legitimate concern of inconsistent judicial findings at trial when a partial summary judgment motion is heard by the same judicial official who will provide directions on how evidence from that motion will be used at trial and will also be the trial judge. The metric on these motions remains whether I am satisfied that there is a reasonable prospect that granting leave will expedite the resolution of issues in dispute.

[23] Debt collection claims are generally appropriate for summary judgment. The Court of Appeal has specifically commented that "the summary judgment process is tailor-made to enforce liquidated claims by creditors against debtors and guarantors" and that "the court should be reluctant to delay a creditor's access to this summary procedure": *2275518 Ontario Inc. v. The Toronto-Dominion Bank*, 2024 ONCA 343 at para. 44.

[24] Disputes over whether work and related invoicing was approved, whether invoiced services and materials were supplied, the quantum of earned and unpaid amounts under a contract or subcontract, and whether and when such amounts are payable are all issues that typically lend themselves well to summary judgment procedures.

[25] Lien actions are statutorily prescribed to be summary in nature: *CLA*, s. 67(1). In the context of a summary lien proceeding, providing lien claimants with access to summary judgment to address liquidated debt collection claims makes sense. Delay-related claims require more scrutiny, but PNR is not proposing to seek judgment on its delay claim as part of its motions.

[26] Although I agree with Mosaic that examinations for discovery on the delay-related issues will be necessary in the overall litigation (and I am likely to grant leave for that interlocutory step at a future hearing for trial directions), the scope of discoveries may be significantly narrowed by successful summary judgment motions. That is particularly true if Mosaic's damages claim is dismissed or stayed, even if only in part. If the motions are unsuccessful, it is not clear that leave to discover on PNR's unpaid invoice claims would have been granted, and the cross-examination transcripts could serve as discovery evidence on those issues.

[27] I am convinced that issues in the unpaid invoice and holdback claims, whether there is any genuine issue on Mosaic's damages claims, in whole or in part, and whether the contractual liability cap limits Mosaic's maximum recovery are all issues that, if addressed prior to trial, may reduce both discovery and trial time. The proposed summary judgment motions are proportionate to the quantum of the liens and issues in dispute and, in my view, would not be a waste of judicial resources, particularly if the ultimate trial is significantly shortened.

[28] Deciding the liability cap issue will not substantively reduce discovery or trial time. Mosaic will still have to prove the same damages claim regardless of any liability cap. However, in my view, knowing whether there is a liability cap changes the risk to the parties at trial and, thereby, has a reasonable prospect of changing the dynamic of settlement discussions during the balance of this reference.

[29] Mosaic argues that the limitation of liability provisions cannot be interpreted in a vacuum and that whether they apply will depend on the nature and extent of liability found against PNR. However, the subcontracts are not in evidence on these motions and, in any event, no case law has been tendered and no argument advanced to support why the nature and extent of PNR's liability is reasonably a factor in contractual interpretation of the relevant clause.

[30] With respect to Mosaic's damages, I agree with PNR that Mosaic has had multiple opportunities since PNR's actions were commenced and since they first came before me to meaningfully quantify its set-off claims and counterclaims. It had not done so at the time of this hearing. Prior to the motions hearing, several other hearings had occurred before me to address alleged non-compliance by Mosaic with the spirit of my Scott Schedule order. I agreed with PNR at those hearings that Mosaic had not complied. After three Scott Schedules, Mosaic has provided some specific quantification of portions of its claim, but is maintaining that its total damages cannot be reliably estimated, that expert evidence will be required, and that documents seemingly supporting its damages claim are litigation privileged. It is beyond the scope of these motions to decide whether Mosaic's latest Scott Schedules are sufficient.

[31] Mosaic concedes that some of its damages have not yet crystallized. In my view, that concession itself raises an issue requiring the court's attention. The court must control its own processes. Whether a defendant who asserts delay damages against a lien claimant is entitled to slow the progress of that lien claimant's action until damages have crystallized is a significant issue to both construction litigants and the construction bar. If that is permissible, then the length of litigation delay that is fair and just in summary lien proceedings under the *Construction Act* is also an important issue. In context of the proposed summary judgment motions, the issue will be whether as-yet uncrystallized damages raises a genuine issue requiring a trial on a claim for such damages.

[32] I acknowledge that Mosaic's damages claim is significant. However, I am not convinced that the need for an expert is an answer to failing to more specifically quantify a damages claim. Experts provide opinion evidence, interpreting underlying factual evidence. A lack of underlying factual evidence is precisely PNR's complaint.

[33] Although not strictly necessary to my analysis on leave, PNR has put forward a tenable basis for its argument that there is no genuine issue for trial on Mosaic's damages claim. Whether PNR will meet that threshold and, if so, whether Mosaic is able to show a genuine issue requiring a trial on damages are issues beyond deciding leave and more properly addressed on a fulsome evidentiary record for the motions.

[34] For the purposes of these leave motions, in my view, it will expedite the resolution of the issue of whether Mosaic has a viable damages claim to allow PNR to proceed with its proposed

motions. Both parties will have a “best foot forward” evidentiary onus, meaning that Mosaic will be required to tender cogent evidence supporting a genuine issue for trial on its damages claim. That will include meaningfully identifying what comprises its damages claim and what evidence supports it. If it feels that its current Scott Schedules have done that, then there will be a judicial determination on that. To the extent that Mosaic maintains its claims for as-yet uncrystallized damages, there will also be specific argument on why PNR is not entitled to proceed to judgment until that damages claim has crystallized.

[35] During oral submissions, PNR conceded that Mosaic’s responding motion materials could conceivably lead PNR to withdraw its motion. In responding submissions, Mosaic tried to pick up that thread in support of its position that leave should not be granted. PNR’s potential response to receiving Mosaic’s responding materials is immaterial to whether I grant leave for the motions. Judicial resource concerns are readily mitigated by declining to schedule a long motion hearing until materials have been exchanged. In any event, whether Mosaic’s materials dissuade PNR from pursuing its motions is not an issue for granting leave. It is an issue for costs of the summary judgment motions, particularly if PNR withdraws them without first securing Mosaic’s agreement as to costs.

DISPOSITION

[36] For these reasons, I granted leave for PNR to bring its proposed motions for summary judgment on the following issues:

- (a) judgment on PNR’s claims for unpaid invoice amounts and unpaid holdback for both the signals work subcontract and the track work subcontract;
- (b) dismissing or staying Mosaic’s set-off claim and counterclaims for failure to prove damages, but not based on liability or causation; and
- (c) if Mosaic’s set-off claims and counterclaims are not dismissed or stayed in their entirety, whether the limitation of liability clauses in the subcontracts apply to limit Mosaic’s maximum recovery.

[37] PNR and Mosaic shall coordinate a motions directions conference before me via my Assistant Trial Coordinator for the purpose of timetabling the motion. Prior to that directions conference, counsel should have agreed (or at least exchanged positions) on a proposed timetable for all steps in the motions.

COSTS

[38] PNR has been successful and is presumptively entitled to its costs of these leave motions. PNR seeks its partial indemnity costs of the leave motions in the aggregate of \$14,492.02, including HST and disbursements. Mosaic’s costs outline discloses similar costs, with a partial indemnity claim of \$17,535.61. PNR’s costs claim is evidently within the reasonable expectations of Mosaic.

[39] Mosaic submitted that, if PNR was successful, then its costs of this leave motion should be payable in the cause on the motion. I am not convinced that is the correct outcome here. Mosaic staunchly opposed leave for the proposed summary judgment motions, but was unsuccessful in that opposition. I agree with PNR that its costs claim is fair and reasonable given the significance of the potential motions. If successful, the motions may materially change the litigation landscape between the parties. I find no compelling reason to deviate from the presumptive standard that costs follow the event.

[40] I am accordingly awarding PNR's requested costs of these motions in the amount of \$14,492.02, including HST and disbursements, payable by Mosaic within thirty (30) days. Order accordingly.

ASSOCIATE JUSTICE TODD ROBINSON

DATE: March 18, 2026