CITATION: 1499545 Ontario Inc. (Northern Bulk Logistics) v. Pattern Development 2026 ONSC 1652
COURT FILE NO.: DC-25-2228-00
DATE: 20260320

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

IN THE MATTER OF THE *CONSTRUCTION ACT*, R.S.O. 1990, c. C.30

D.L. Corbett, Ricchetti and Sutherland JJ.

BETWEEN:	)	
	)	
1499545 Ontario Inc. o/a Northern Bulk Logistics	)	*Brendan Bowles and Jessica Gahtan*, for The Applicant
	)	
Plaintiff / Applicant	)	
	)	
- and -	)	
	)	
Pattern Development, Pattern Energy Group LP, Construction Energie Renouveable GP/S.E.N.C., 1378796 Ontario Limited, G.W. Sutherland Contracting Company Limited, Timberridge Forestry and Sean Sutherland	)	*Dan Leduc*, for the Respondent
Defendants / Respondent	)	**Heard at Toronto: October 16, 2025**

REASONS FOR DECISION

SUTHERLAND J.:

Introduction

[1] The appellant appeals the motion decision of R.D. Gordon J. dated January 6, 2025 (the Order)[1], that found its claim for lien has expired for failing to set the action down for trial or obtain an order for trial within two years of issuance of the statement of claim as required by s. 37 of the *Construction Act*[2] (the "Act").

[2] The appellant contends that the motion judge erred in law in his interpretation of "improvement" and "premises" under the Act. Hence, its claim for lien (the "NBL lien")

[1] 2025 ONSC 111
[2] RSO 1990 c. C. 30.

has not expired because there is another preserved and perfected claim for lien for the same "improvement" which saves the appellant's expired claim for lien.

[3] I do not agree and for the reasons below, I would dismiss the appeal.

Background Facts

[4] This action arises in the context of a large-scale infrastructure project, the development of a wind-powered electric generating facility. The facility is to generate and transmit electricity to the provincial grid. The electricity generated is to be transported to the grid through transmissions lines.

[5] Henvey Inlet Wind LP ("Henvey") hired the respondent, Construction Energie Renouvelable GP/S.E.N.C. ("CER"), as the general contractor to construct the wind turbines and hired PowerTel Utilities Contractors Limited ("PowerTel") as general contractor to construct the transmission lines. The work was performed in service of an integrated power generating facility (the "Facility").

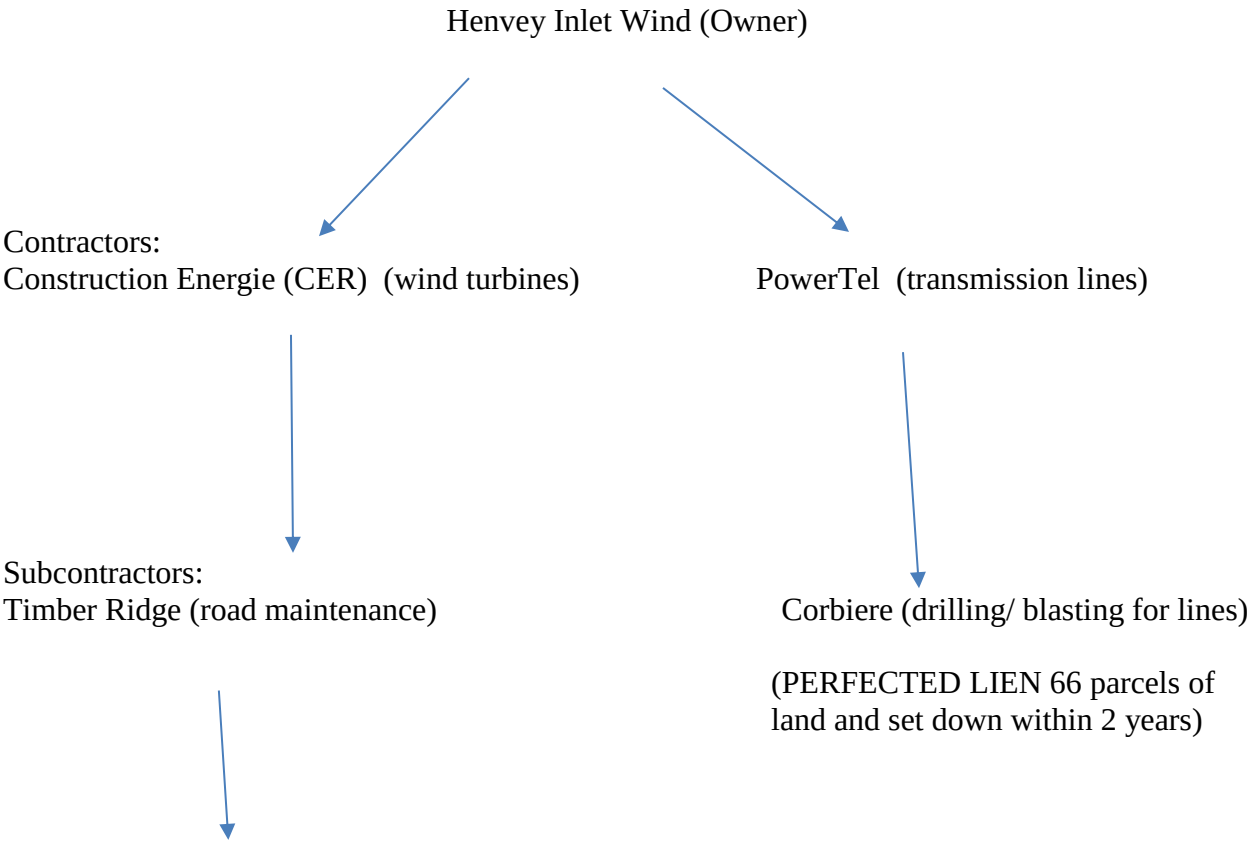
[6] CER hired 1378796 Ontario Limited o/a TimberRidge Forestry ("TimberRidge") to provide road maintenance services related to the construction of the wind turbines, and TimberRidge subcontracted a portion of its work to the appellant. The appellant was a sub-subcontractor. TimberRidge did not pay the appellant for its services, so the NBL lien was registered in the amount of $507,730.66 on the lands where the wind turbines were constructed. The appellant's claim for lien was preserved and perfected on time. The lands in which the NBL lien was registered is owned by The Ministry of Lands and Forests.

[7] Aaron Corbiere and Curtis Corbiere, carrying on business in partnership as E. Corbiere & Sons Contracting ("Corbiere") were hired by PowerTel to provide drilling and blasting services in respect of the construction of the transmission lines. Henvey hired PowerTel. Corbiere preserved and perfected a construction lien on the parcels of land where the transmission line was constructed (the **"**Corbiere Lien"). The parcels of lands on which the Corbiere lien was registered encompasses 66 parcels. These parcels are owned by Henvey Inlet Wind LP and Henvey Inlet Wind GP Inc. Corbiere set down its action for trial on March 19, 2021, within the two-year period required by the Act.

[8] The NBL lien and the Corbiere lien were registered against different properties.

[9] The appellant's action was not set down for trial.

[10] Illustration of the claims for lien are as follows:



Jurisdiction

[9] The Divisional Court has jurisdiction over this appeal pursuant to s. 71 of the Act.

Standard of Review

[10] The standard of review that is applicable on a question of law is correctness. On questions of fact, the standard is palpable and overriding error. On questions of mixed fact and law, where there is an extricable legal principle the standard of review is correctness, but with respect to the

application of the correct legal principles to the evidence, the standard is palpable and overriding error.[3]

The Decision of the Motion Judge

[11] The motion was framed under s. 37 of the Act. NBL took the position that it was not necessary to set its action down within two years because the Corbiere lien had been set down for trial in time, and NBL could enforce its lien in the Corbiere action. Therefore, it argues, NBL's lien did not expire pursuant to s. 37 of the Act.

[12] The motion judge reviewed the scheme and purpose of the Act and correctly stated:

> [23] Insofar as this proceeding is concerned, the scheme of the Act is to create a lien in favour of a person who supplies services or materials to an improvement made in respect of land, and provide a strict regimen that must be followed to maintain and enforce that lien. The Act recognizes that where more than one person asserts a lien against the same improvement, it is appropriate to have the rights and obligations of all such parties determined in a single proceeding as they will have a common interest in, among other things, the premises which may ultimately be ordered sold

[13] The motion judge reviewed the meaning of improvement and premises and disagreed with the plaintiff's position "that the "improvement" drives the definition of the "premises."

[14] The motion judge concluded that the definition of "improvement" is tied to the lands on which the lien is registered. The "lien rights" are restricted to the improvement on the land(s) described in the registered claim for lien. The lands against which the NBL lien was registered were not the same and were not included in the lands of the Corbiere lien. The lands are around 100 kilometres apart.

[15] The motion judge concluded that the NBL lien could not be enforced in the Corbiere action and for that reason dismissed NBL's motion.

Position of the Parties

[16] The appellant contends that the motion judge took a narrow interpretation of "improvement" in that the improvement on the land is not restricted to the land described in the claim for lien. The appellant contends that an "improvement" under the Act can include lands that are not specifically described in the claim for lien. Accordingly, given that the NBL lien and the Corbiere lien related to the same construction project, that is, the construction of wind turbine and transmission lines that shared a common function of

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[3] *Housen v. Nikolaisen*, 2002 SCC 33, at paras 8-10*; Gebremariam v. Gebregiogis* 2017 ONSC 2000 (Div. Ct), at para. 4; *Breen v. The Corporation of the Township of Lake of Bays* 2022 ONCA 626 at para. 28.

generating and transmitting power to the electrical grid, it is the same improvement under the Act and accordingly, NBL can enforce its claim for lien in the Corbiere action.

[17] The respondent argues that the motion judge did not err in law. The work performed on the project as stated in the NBL lien and the Corbiere lien were two distinct improvements: wind turbine and transmission lines. There were two improvements on separate, non abutting lands and NBL cannot use the Corbiere lien to save its failure to set the matter down for trial in the two-year period mandated by the Act.

Issue

[18] The issue to be determined on this appeal is:

> a. Did the motion judge err in law in determining that NBL's lien expired upon its failure to set the action down within 2 years despite the fact the Corbiere lien action had be set down within the 2-year period?

Analysis and Conclusion

The Act

[19] Section 14 of the Act creates a lien in favour of a person when a person commences to supply services or materials to the improvement.

[20] Section 1(1) of the Act defines the following:

> "improvement" means, in respect of any land,
>
> (a) any alteration, addition or capital repair to the land,
>
> (b) any construction, erection or installation on the land, including the installation of industrial, mechanical, electrical or other equipment on the land or on any building, structure or works on the land that is essential to the normal or intended use of the land, building, structure or works, or
>
> (c) the complete or partial demolition or removal of any building, structure or works on the land"
>
> "owner" means any person, including the Crown, having an interest in a premises at whose request and,
>
> (a) upon whose credit, or
>
> (b) on whose behalf, or
>
> (c) with whose privity or consent, or
>
> (d) for whose direct benefit,

an improvement is made to the premises but does not include a home buyer;

"land" includes any building, structure or works affixed to the land, or an appurtenance to any of them, but does not include the improvement;

"premises" includes,

(a) the improvement,

(b) all materials supplied to the improvement, and

(c) the land occupied by the improvement, or enjoyed therewith, or the land upon or in respect of which the improvement was done or made; (emphasis added)

"contractor" means a person contracting with or employed directly by the owner or an agent of the owner to supply services or materials to an improvement and includes a joint venture entered into for the purposes of an improvement or improvements;

"subcontractor" means a person not contracting with or employed directly by the owner or an agent of the owner but who supplies services or materials to the improvement under an agreement with the contractor or under the contractor with another subcontractor and includes a joint venture entered into for the purposes of an improvement or improvements;

Section 37 reads:

Expiry of perfected lien

37 (1) A perfected lien expires immediately after the second anniversary of the commencement of the action that perfected the lien, unless one of the following occurs on or before that anniversary:

1. An order is made for the trial of an action in which the lien may be enforced.

2. An action in which the lien may be enforced is set down for trial.

Motion under s. 46

(2) Where a lien has expired under subsection (1), a motion may be made under section 46.

Did the motion judge err in law in his interpretation of improvement, land and premises?

[21] There is no issue that NBL had a preserved and perfected lien on the interest of Henvey in the lands for which NBL's claim for lien was registered.

[22] There also is no dispute that the lands Corbiere liened and the lands which NBL liened were different lands.

[23] There is also no issue that the motion judge's interpretation of improvement, land and premises are questions of law and his application of that interpretation is a question of mixed fact and law.

[24] At its simplest, the issue is whether NBL's lien can be "enforced" in the Corbiere lien action and thereby avoid the 2-year limitation period by virtue of s. 37 of the Act. In order to decide this issue, the motion judge considered the statutory definitions of improvement, land and premises.

[25] There is one approach to statutory interpretation and that is the modern approach.[4] The modern approach is that the court should consider the works of the legislation in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme, objects of the Act and the intention of the legislature, always keeping in mind that it is the text of the legislative provisions at issue that must be the "anchor" of the interpretive exercise.[5]

[26] From the clear reading of the *Act*, the purpose of the Act is providing a means of security for the payment for labour and materials supplied for the improvement on lands. In the Act, there are obligations for holdback and trust for monies paid or received for the improvement on lands.

[27] Accordingly, utilizing the principle of internal consistency, the meaning of the same words of improvement, land and premises must be consistent throughout out the Act, whether dealing with the preservation or perfection of a lien, determination of substantial completion and the holdback or trust obligations mandated in the Act.[6]

[28] This Court in *Caledon (Town) v. 2220742 Ont. Ltd o/a Bronte Construction*[7] found that the concept of "improvement" is tied to the land. The Court stated in paragraph 33:

> The next question is whether the WSP works and the Bronte works in respect to Pond #7 were in respect to the same "alteration, addition or capital repair to the land" (subpara. (a)) or were in respect to the same "construction, erection or installation on the land" (subpara. (b)). "Improvement" is not co-extensive with "contract". This is a trite statement in construction law, but it bears stating since, obviously, the Act contemplates that different persons will undertake different work under

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[4] *Bell ExpressVu Ltd. partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559 at para. 26; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 117 and *La Presse inc. v. Quebec* 2023 SCC 22 at paras. 22-24.

[5] *West Whitby Landowners Group Inc. v. Elexicon Energy Inc.* 2025 ONCA 821 at para. 53.

[6] *R. v. Zeolkowski*, 1989 CanLII 72 (SCC): "Giving the same words the same meaning throughout a statute is a basic principle of statutory interpretation..." and Ruth Sullivan, *Sullivan on the Construction of Statutes, Fifth Edition, (Markham, Ont, LexiNexis Canada Inc., 2008), at pp. 215-217.*

[7] 2024 ONSC 4555 (CanLII) (Div Ct) at para. 32.

> different contracts on the same "improvement". Contracts are not in respect to distinct improvements because the works described in the contracts are distinct – the question is whether the works are in respect to the same improvement to the same lands.

[29] Master Wiebe, in determining the meaning of same improvement, stated:

> This leaves the question of how to determine the "same improvement." The only case that gave me any guidance on this question was the statement of Justice Salhany in the case of *Tri-Haven Homes Inc. v. O'Neil* 1995 CanLII 7191 (ON SC), [1995] O. J. No. 1221 at para. 17 where he said that the "same improvement" means "the same building or the same aspect of construction within a building." The question of "same improvement" appears to be largely a fact finding exercise with the governing principle being the establishment of some nexus between the work done by the lien claimants in question that makes it a common effort. The same improvement can have one "contract" or many "contracts," but what makes it an improvement is the coordination of the contract work toward a common purpose or goal.[8]

[30] Master Albert in *Vestacon Limited v. ARC Production Ltd*.[9] was tasked to determine, among other things, if Vestcon's lien had expired. To make that determination Master Albert concluded that it is a fact-finding exercise to ascertain whether or not the adjoining lands are "lands enjoyed therewith" with relevant factors of commonality of officers or directors, separate legal owners are related, a visible separation or property line and if there is an integrated or common purpose.[10]

[31] I agree with both Associate Justices Wiebe and Albert that the determination of whether services and materials have been provided to the same improvement is a fact-finding exercise.

[32] It is not contested that there may be multiple improvements on the same land or that a single improvement may be made to multiple parcels of land.

[33] However, even where an improvement includes multiple parcels of land, a lien claimant cannot enforce its lien against lands which it chose not to and did not include in its claim for lien: a lien claimant may choose to register its lien against only a portion of the improvement, for strategic or financial reasons or by mistake.

[34] I agree with the motions judge that the description of land in the claim for lien determines the land on which the improvement was made against which the claimant seeks to enforce its lien. (para 30-32 and 36 of the motion judge's Reasons)

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[8] *Thew State Group Inc. v. Quebecor World Inc. and 4307046 Canada Inc.* 2013 ONSC 2277 (CanLII) at para. 9.
[9] 2018 ONSC 5366 (CanLII)
[10] *Vestacon*, para. 122.

[35] It ought to be noted that the ultimate remedy in a lien action, if successful, is that the lien claimant can enforce the lien by selling the lands to pay its judgment.

[36] That leads to a fundamental issue: how could NBL enforce its lien remedy against lands against which it did not register a lien but against which Corbiere did register a lien? In my view, it cannot.

[37] There is another fundamental issue: how could parties with an interest in the lands against which Corbiere registered a lien know of the priorities or liabilities associated with that land without any registration of a claim for lien against those lands. For example, if the Corbiere lien had been bonded off, the lenders would continue to advance funds; project funds would continue to flow down the pyramid (including trust funds and holdback funds), without taking account of NBL's lien claim. In my view, the scheme of the Act is clear on this point: NBL cannot enforce its lien in the Corbiere lien proceedings because NBL did not lien any of the lands liened by Corbiere.

[38] Let me deal with some of the legal authorities raised in this appeal.

[39] Justice Goodearle in *Phoenix Drywall v. Mississauga Rest Home Two Inc.* was dealing with a situation where the lien claimant registered a lien on vacant property adjacent to the actual lienable property. The Court found that the two properties were adjacent to each other and that the management and directorship of the two corporations that owned the two properties were uniform. The purpose of the construction – the building of a rest home – was the same. Ownership of the two parcels of land had some overlapping uniformity but lacked total uniformity. Justice Goodearle determined that, though the properties were different, it was the same improvement. Justice Goodearle described as follows:

> 26. The parcels in question were acquired on the same date and severed on the same date for nominal consideration. The specific use for each parcel, as stated in the material (ie. as a parking lot and driveway on the one hand and a rest home building on the other) demonstrates an obvious and vital integration of uses for a common purpose to achieve the general goal which is the satisfactory serving of the needs of the inhabitants or patients in a rest home.

[40] Thus, Justice Goodearle found that the claim for lien attached to lands that were not described in the registered claim for lien.

[41] Regional Senior Justice Shaughnessy in *Beaver Material Handling Company Ltd. v. Ronald Christoph Hejna et al* considered a motion to discharge/or vacate a claim for lien and a certificate of action. The construction was the building of a marina. The claim for lien in question was registered on land across a highway. The lands were two separate lands with the marina located on both sides of the highway. The lands were owned by separate companies that had the same officer and director. The companies were related. Regional Senior Justice Shaughnessy concluded:

> [23] I find in the present case, that the lands on the east side of Highway 169 and those on the west side of the highway, have a common usage.

> Together they form the lands upon which the Marina is operated. Based on the material filed on this motion, I find that these two parcels of land have an integrated and common function. More particularly, the lands on the west side of the highway provides parking for the Marina and storage for the boats of the Marin patrons. Therefore, the lands on both sides of the highway together constitute the Marina and as such, are lands enjoyed each with the other as provided in the statute.

[42] On this basis, Regional Justice Shaughnessy found that the registered claim for lien attached to both parcels of land even though only one parcel was registered with the claim for lien.

[43] With respect, I disagree with the reasoning in both decisions.

[44] "Improvement" does not determine the lands against which the lien claimant can enforce its lien. The description of the lands in the claim for lien does.

[45] NBL submits that the phrase "enjoyed therewith" in the claim for lien expands the lands to more than was described in the claim for lien. I disagree.

[46] The Oxford dictionary defines "therewith" as meaning with or in the thing mentioned[11] which I interpret as meaning within the improvement on the lands for which the improvement was made. It is the lands that the lien claimant has certified in its claim for lien that is "enjoyed therewith" with the improvement of labour and materials provided by the lien claimant.

[47] I come to this conclusion given the extraordinary relief the Act provides to lien claimants to security in the lands for payment of the labour and materials supplied. The land which is subject to the claim for lien must be clear and certain.

Conclusion

[48] Owners of land, as well as mortgagees with security in the land, need to know whether the lands have been encumbered by a lien. To hold otherwise would lead to too much uncertainty.

[49] The NBL lien and Corbiere lien were registered against different lands. On that basis alone, I agree with the motions judge, that NBL cannot enforce its lien claim in the Corbiere action and therefor cannot avail itself of the Corbiere lien to save its claim for lien for not being set down for trial within the two-year period.

[11] Oxford University Press 2011.

[50] The appeal is dismissed, with costs in the agreed amount of $10,000, inclusive, payable by the appellant to the respondent within thirty days.

"Sutherland J."

I agree: "D.L. Corbett J."

I agree: "Ricchetti J."

Released: March 20, 2026

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