

**CITATION:** Structured Restoration Inc. v. Chaly, 2026 ONSC 1978  
**COURT FILE NO.:** CV-24-00062424-000  
**DATE:** 2026-04-02

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Structured Restoration Inc., Plaintiff

**AND:**

Alisa Chaly and Elena Attin and Parama Credit Union Limited and Olympia Trust Company, Defendants

**BEFORE:** The Honourable Justice L. E. Standryk

**COUNSEL:** S. Tangri, Counsel, for the Plaintiff

A. Chaly, Self-represented Defendant

**HEARD:** March 26, 2026

**REASONS FOR DECISION**

**Overview**

- [1] The defendant, Elena Attin, is the registered owner of the property municipally known as 5 Firelane 14B, Niagara-on-the-Lake, Ontario. She and her daughter, the co-defendant Alisa Chaly, reside at the property.
- [2] The plaintiff performed work on the property, which was completed on February 10, 2024. A construction lien was registered on the property on March 20, 2024, and a Statement of Claim and Certificate of Action were issued on July 10, 2024.
- [3] The defendant moves for an order pursuant to r. 24.01(1)(c) of the *Rules of Civil Procedure*. R.R.O. 1990, Reg. 194, to dismiss the plaintiff's action for delay and vacating the lien.
- [4] For the reasons that follow, the motion is dismissed.

**Background**

- [5] On March 28, 2024, prior to the commencement of this proceeding, the defendants issued an Application in court file CV-24-00062169-0000. In that application, the defendants sought to have the lien vacated on the basis that the Superior Court of Justice of Ontario lacked jurisdiction. They asserted that the work allegedly performed by the plaintiff did not fall within the scope of the *Construction Act*, R.S.O. 1990, c. C.30, and that any claim arising from such work ought to have been pursued in the Small Claims Court rather than by way of a lien action in the Superior Court.

- [6] Donohue J. heard that application on March 19, 2025. On March 21, 2025, she released her decision concluding that the work performed by the plaintiff constituted remediation work falling within the scope of the *Construction Act*, and not mere maintenance as asserted by the defendants. Accordingly, she held that the plaintiff's claim was lienable and that the Superior Court of Justice possessed the proper jurisdiction.
- [7] The defendants appealed Donohue J.'s decision on April 15, 2024, by filing a notice of appeal with the Court of Appeal for Ontario. On December 18, 2025, the appeal was transferred to the Divisional Court. A hearing for that appeal has not yet been scheduled.

### **Defendant's Position**

- [8] The plaintiffs depose that the perfected lien is scheduled to expire two days before the defendants' upcoming mortgage refinancing. Moreover, they intend to list the property for sale. The defendants submit that the plaintiff has not taken any steps to advance this action to trial since the lien was perfected, and that this delay creates financial and practical hardship. While the defendants have an opportunity to vacate the lien by paying the amount in dispute into court, they submit that doing so is not feasible due to financial constraints and would still require the parties to litigate the underlying debt, with absolutely no incentive for the plaintiff to advance this proceeding.
- [9] The defendants argue that the *Construction Act* requires that lien matters proceed summarily, not through prolonged or complex litigation. Regardless of the outcome of the appeal, the plaintiff must still prove the debt. If the *Construction Act* applies, they must set the matter down for trial. If it does not apply, the lien should never have been registered, and the matter belongs in Small Claims Court. Either way, the appeal does not justify the plaintiff's inaction.
- [10] The defendants contend that the plaintiff's reliance on the pending appeal to explain why they have not set the matter down for trial is a pretext to justify delay. They argue that the continued existence of the lien and the plaintiff's failure to advance the action will only exacerbate their difficulties in refinancing and impede any prospective sale.

### **Plaintiff's Position**

- [11] The plaintiff argues that the procedural history provides context for the chronology of this proceeding and that there has been no intentional delay on their part. The plaintiff highlights the following:
- i. After the defendant filed an application challenging the lien's validity, the plaintiff filed a Statement of Claim and Certificate of Action on September 9, 2024, properly perfecting the lien under the *Construction Act*.
  - ii. Difficulties with service required the plaintiff to seek an order validating service, which was granted by Latimer J. on December 19, 2024.

- iii. The plaintiff notes that the appeal was originally before the Court of Appeal, with a hearing date of November 15, 2025, but the Court of Appeal later advised that the matter should proceed in the Divisional Court due to the monetary amount in dispute. Despite this, the defendants did not take steps to move the appeal to the Divisional Court. The plaintiff argues that this jurisdictional uncertainty affects judicial economy: if the action proceeds now and the Divisional Court later finds the lien invalid, the Superior Court would have acted without jurisdiction.

- [12] The plaintiff further submits that *Construction Act* matters follow a summary procedure, with strict timelines that supersede the *Rules of Civil Procedure*. They rely on *Smith v. Hudson's Bay Company*, 2019 ONSC 2348 and *Bernach v. Makepeace*, 2021 ONSC 1289.
- [13] The plaintiff maintains that they have not delayed the matter and that they have acted appropriately within the *Construction Act* framework.
- [14] They assert that they are ready to move forward once the jurisdictional issue is resolved.

### Analysis

- [15] The defendants rely on r. 24.01 as the court's jurisdiction to dismiss the action for delay. Specifically, the defendants rely on r. 24.01(c), which applies where a plaintiff has failed to set the action down for trial within six months after the close of pleadings. It is not disputed that the plaintiff has not set the action down for trial.
- [16] The test on a motion for delay under r. 24.01 is clear. The defendant must persuade me that: (1) the default is intentional and contumelious; or (2) the plaintiff and/or their lawyers are responsible for the inexcusable delay that gives rise to a substantial risk that a fair trial might not now be possible: *Woodheath Developments Ltd. v. Goldman* (2003), 66 O.R. (3d) 731 (Div. Ct.), at p. 732, as cited in *Armstrong v. McCall* (2006), 213 O.A.C. 229 (C.A.), at para. 11.
- [17] However, this court has previously held that a dismissal for failure to set an action down for trial within six months of the close of pleadings is not available in a lien action. In *Smith*, the court concluded that r. 24.01(1)(c) (erroneously referred to as r. 27.01: *Bernach*, at para. 17) was inconsistent with the statutory scheme governing construction liens.
- [18] The court in *Smith* specifically considered s. 67(3) of the former *Construction Lien Act* R.S.O. 1990, c. C.30 (now the *Construction Act*), which provided that the rules of court apply to pleadings and proceedings under the Act except where they are inconsistent: *Smith*, at para. 16. The substance of that provision is now reflected in s. 50(2) of the *Construction Act*.
- [19] In its analysis, the court referred to s. 37(1) of the *Construction Lien Act*, the substance of which continues to be reflected in s. 37(1) of the current *Construction Act*, which stipulates that a lien expires on the second anniversary of the commencement of the action that

perfected the lien unless either an order for trial has been obtained or the action in which the lien may be enforced has been set down for trial.

- [20] The court concluded that r. 24.01(1)(c) was inconsistent with the statutorily prescribed timelines afforded to a lien claimant to prevent the expiry of its lien. The reasoning in *Smith* has been cited and applied by this court in *Rosswill Pools 1995 Ltd. v. Mandarino*, 2025 ONSC 7212; *Constantinidis v. Lumar Design Group Inc.*, 2025 ONSC 1109; and *Bernach*.
- [21] Applying these principles to the case before me and being bound by the findings of fact and determination of Donohue J. that this proceeding properly falls within the jurisdiction of the Superior Court of Justice under the scope of the *Construction Act*, I find that r. 24.04 has no application.
- [22] Although the decision in *Smith* is not strictly binding on me, the principle of horizontal *stare decisis* requires that I follow that decision as a matter of judicial comity and for reasons supporting *stare decisis* generally: *R. v. Sullivan*, 2022 SCC 19, [2022] 1 S.C.R. 460, at para. 65. The factual underpinnings in *Smith* are not significantly different from those in this case. *Smith* remains a persuasive authority, directly addressing the interaction between the *Rules* and the *Construction Act*. I see no basis to depart from it.
- [23] As in *Smith*, the defendant's reliance on r. 24.04 would, if accepted, truncate the legislatively mandated period within which a lien claimant may advance its action before the lien expires. Such a result would be incompatible with the statutory protection afforded to lien claimants.
- [24] The perfected lien in this matter does not expire until the second anniversary of the commencement of the action (s. 37(1) of the *Construction Act*). On the record before me, I am satisfied that the plaintiff's claim remains viable and continues to subsist within the prescribed statutory timelines.
- [25] Although the plaintiff has not yet set the matter down for trial, the evidentiary record demonstrates that the reluctance to do so is largely attributable to the defendants' pending appeal of Donohue J.'s decision, which directly concerns this court's jurisdiction to adjudicate the lien claim. Should the defendants succeed on appeal, this court would no longer have jurisdiction over this proceeding, given the amount in issue, \$16,273.65. In these circumstances, the plaintiff's decision to refrain from taking further procedural steps pending the outcome of the appeal is neither unreasonable nor indicative of delay. Rather, it reflects a measured and responsible approach that accords with the principles of judicial economy and avoids the unnecessary expenditure of resources by the parties and the court.
- [26] Moreover, part of the delay in advancing the action is attributable to the defendants' own conduct. While the defendants deny any attempt to evade service of the Statement of Claim, Latimer J., on a motion by the plaintiff to validate service of the claim, found "the motion material amply justifies the relief sought" and stated that the materials "depict silliness on the part of the defendants to evade service and avoid engagement with the civil court

process”. While the defendants dispute that characterization, the findings of fact and the order validating service stand. When considering the impact of the current appeal and the defendants’ avoidant behaviour, the record does not disclose any dilatory conduct by the plaintiff.

[27] There is accordingly no basis upon which to grant the relief sought.

### **Disposition and Direction**

[28] The motion is dismissed.

[29] The plaintiff requested directions regarding the course of this proceeding pending the appeal before the Divisional Court on the issue of jurisdiction. The pending appeal adds complexity to the scheduling of this matter; however, it does not relieve the plaintiff of the obligation to set the matter down for trial within the timelines mandated by the *Construction Act*. If, before the trial date is reached, the appeal decision is released with implications for this court’s jurisdiction, the parties are expected to cooperate in addressing any resulting procedural matter, including transfer to the Small Claims Court jurisdiction.

### **Costs**

[30] With respect to costs, I directed the parties to provide their positions on costs in the event of success. The plaintiff has been successful on this motion and is therefore presumptively entitled to its costs. The plaintiff has filed a Bill of Costs claiming partial indemnity costs in the amount of \$7,022.36. The court is not aware of any outstanding offers to settle that would affect the quantum of the entitlement.

[31] I am satisfied that the amount sought is fair and reasonable. In making that determination, I have considered the principles governing an award of costs under r. 57.01, including the result achieved, the complexity of the issues, the principle of indemnity and the several court appearances required of the parties. I have also considered that costs were reserved by me to the motions judge on a contested adjournment previously requested by the plaintiff due to counsel’s inability to appear on that date.

[32] Costs payable by the defendants to the plaintiff are fixed at the amount of \$7,022.36, inclusive of fees, disbursements and H.S.T., payable within 60 days.

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L. E. Standryk J.

**Date:** April 2, 2026