

CITATION: 1499545 Ontario Inc. (Northern Bulk Logistics) v. Construction Energie
Renouvelable GP/S.E.N.C. 2025 ONSC 111
COURT FILE NO.: CV-19-0072
DATE: 2025-01-06

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
1499545 Ontario Inc. o/a Northern Bulk) Brendan Bowles / Lance Spitzig, for the
Logistics) Plaintiff
)
Plaintiff)
- and -)
) Dan J. Leduc, for defendant Energie
Construction Energie Renouvelable) Renouvelable GP/S.E.N.C.
GP/S.E.N.C., 1378796 Ontario Limited,)
G.W. Sutherland Contracting Company)
Limited, TimberRidge Forestry and Sean)
Sutherland)
)
Defendants) **HEARD:** December 20, 2024

DECISION ON MOTION

R.D. GORDON J.

Overview

[1] The defendant Construction Energie Renouvelable GP/S.E.N.C. (“CER”) seeks an order discharging the plaintiff’s claim for lien as expired because the plaintiff failed to set its action down for trial or obtain an order for trial within two years of issuing its statement of claim as required by s. 37 of the *Construction Lien Act*, R.S.O. 1990 c. C.30 (the “Act”).

[2] The plaintiff, Northern Bulk Logistics (“NBL”) does not argue that its lien shelters under the lien of another pursuant to s. 36 of the *Act*. Rather, it relies on s. 37 and says its lien arises from the same “improvement” as another lien action that was set down for trial within two years of this action being issued with the result that its lien has not expired.

[3] As a preliminary matter, the parties agree that the consent of the court should issue for the hearing of this motion and I agree as it will serve to expedite the resolution of the issues in dispute.

Background Facts

[4] Henvy Inlet Wind LP undertook the development of a wind-powered electric generating facility to generate and transmit electricity to the provincial power grid. CER was the general contractor for the construction of the wind turbines. PowerTel Utilities Contractors Limited (“PowerTel”) was the general contractor for the construction of the transmission lines.

The NBL Claim for Lien

[5] CER entered into a subcontract with 1378796 Ontario Limited as TimberRidge Forestry (TimberRidge) to have it provide road maintenance services.

[6] Part of TimberRidge’s work was subcontracted to the plaintiff. The plaintiff says it is owed \$507,730.66 for the work it did. On October 23, 2019 the plaintiff registered its lien, which it subsequently perfected in Parry Sound on December 3, 2019. The lands subject to the lien were those upon which the wind turbines had been constructed under the CER contract.

[7] December 3, 2021 was the two year anniversary of the issuance of the plaintiff’s statement of claim. As of that date, it had not set the action down for trial and had not obtained a trial date. It did serve a trial record, but not until June 15, 2023.

The Corbiere Claim for Lien

[8] Aaron Corbiere and Curtis Corbiere, carrying on business in partnership as E. Corbiere & Sons Contracting (“Corbiere”) was a subcontractor of PowerTel that provided drilling and blasting services. Corbiere says it remains unpaid for work it performed and registered a claim for lien on September 6, 2019. The lands subject to the lien were those upon which the transmission lines had been constructed under the PowerTel contract.

[9] Corbiere perfected its lien in Sudbury on October 17, 2019. The Corbiere action was set down for trial on March 19, 2021.

[10] NBL had no contract with PowerTel. Corbiere had no contract with CER.

[11] On the evidence before me, the lands subject to lien by the plaintiff are entirely different than the lands subject to lien by Corbiere.

[12] At issue in this motion is whether the Corbiere action is an action in which the plaintiff’s lien may be enforced.

The Applicable Law

[13] Section 37 of the *Construction Lien Act*, R.S.O. 1990, c. C.30 provides as follows:

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.

[14] 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 [s. 14(1) of the *Act*].

[15] A lien expires unless preserved. A lien which attaches to a premises is preserved by registering a claim for lien on title to the premises [ss. 31 and 34(1) of the *Act*].

[16] The “premises” is defined to include the improvement, all materials supplied to the improvement, and the land occupied by the improvement, or enjoyed therewith, or the land upon or in respect of which the improvement was done or made.

[17] “Improvement” means, in respect of any land,

- (a) Any alteration, addition or 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.

[18] A party to a construction lien action who has had a date set for a settlement meeting or trial is required to serve notice of the settlement meeting and/or trial on, among others, any person having a preserved or perfected lien against the premises [s. 60 of the *Act*]. Any person served with the notice of trial is a party to the action [s. 57 of the *Act*].

[19] The plaintiff argues that its lien and the Corbiere lien relate to the same premises. If both liens relate to the same premises, the plaintiff must be served with the notice of trial in the Corbiere action and becomes a party to that action. If it is a party to that action, its lien can be enforced in it.

[20] The determination of this issue requires interpretation of the provisions of the *Act* noted above.

[21] The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, and the intention of Parliament [see *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 306, at para. 28].

[22] The *Act* is remedial legislation that provides a means for contractors and subcontractors to obtain payment for labour and material supplied to a property, while balancing the competing interests of owners, contractors, subcontractors, and mortgagees in the construction process [see

BCIMC Construction Fund Corp. v. 33 Yorkville Residences Inc., [2022] O.J. No. 2018, aff'd at 2023 ONCA 1].

[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.

Analysis

[24] The plaintiff says that both it and Corbiere provided goods and services in respect of the same improvement, namely, the construction of a wind-powered generating facility that included both the turbines and the transmission lines required to transmit the power once generated. Since the definition of “premises” includes the improvement, it argues that the liens were preserved against the same premises.

[25] Essentially, the plaintiff takes the position that the “improvement” drives the definition of the “premises”.

[26] I do not agree.

[27] A person who supplies services or materials to an improvement (the lien claimant) has a lien upon the interest of the owner in the premises improved. To preserve the lien, the lien claimant must register a claim for lien on title to the premises. To register its lien, the lien claimant must provide a description of the premises sufficient for registration under the *Land Titles Act* or the *Registry Act*, as the case may be.

[28] Once registration is complete and the time for preservation of the lien has passed, the lien claimant’s lien is restricted to the lands described in its claim for lien. By virtue of the definition of “premises”, the lien is deemed to include the “improvement”. However, the definition of “improvement” in the Act is clearly tied to the lands:

“improvement” means, in respect of any land,

- (a) Any alteration, addition or 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;

[29] The word “improvement” is defined to provide guidance on what types of goods or services provided in respect of land may give rise to a lien. The improvement that gives rise to the lien is restricted to the improvement on the land described in the claim for lien.

[30] In this case, Corbiere described specific lands in its claim for lien. Those lands constitute the premises for the Corbiere lien, which is deemed to include, in respect of those lands, the improvements to them. Corbiere’s lien can affect no other premises than those described in its claim for lien nor any improvements to other lands.

[31] The plaintiff’s claim for lien described different lands than those described in the Corbiere lien. The lands described in the plaintiff’s lien constitute the premises for the purposes of its lien, which is deemed to include, with respect to those lands, the improvements to them. The plaintiff’s lien can affect no other premises than those described in its claim for lien nor improvements to any other lands.

[32] The logical result of this analysis is that the plaintiff’s lien cannot be enforced in the Corbiere action because the two lien actions do not relate to the same premises.

[33] The plaintiff cites *Deslaurier Custom Cabinets Inc. v. Le Groupe Brigil* 2012 ONSC 3350 in support of its position.

[34] As in the case before me, at issue in *Deslaurier* was the continued viability of a claim for lien that had been perfected but not set down for trial within two years of the issuance of the statement of claim. The court held that notwithstanding that the claim for lien had been perfected and that the two-year period had passed, it may still be enforced in a different action that had been perfected and set down within the required timeframe. As noted by the court in that decision:

[17] One of the principle reasons that the Act requires all lien claimants to be before the court and bound by the result at trial of any of the liens has to do with ultimate disposition of the land affected by the liens or of the security paid into court. Under provisions such as ss. 44, 65, 80 and 84 the funds paid into court or the proceeds of sale of the land to which the liens attach are pooled and shared pro-rata by the lien claimants as their interests may appear and subject to the priority rules. Consequently, unless the funds exceed the total of all of the liens those funds cannot be distributed until all subsisting lien claims have been adjudicated.

[35] Of particular note, the issue in *Deslaurier* was not whether the various lien claimants had supplied goods and services to the same improvement – they had all supplied goods or services to the same building. It is safe to assume their liens were registered against the same land.

[36] This is a significant distinguishing factor from the case before me. As noted in the quote above, the ultimate remedy in a lien claim is the sale of the lands affected by the liens or an order for disposition of the security paid into court. In the Corbiere action, NBL could have no entitlement to any part of the proceeds of sale or the security because its lien does not attach to the same premises.

[37] I conclude that NBL's claim for lien expired when it failed to set its action down for trial or obtain an order for its trial within two years of issuance of the statement of claim.

Other Issues Raised

[38] CER raised two other issues that it says support its position.

[39] First, the NBL action was properly commenced in Parry Sound, at the court office for the county in which the premises are situated, while the Corbiere action was commenced in Sudbury.

[40] Although it does appear the Corbiere action was commenced in the wrong jurisdiction, this does not serve to necessarily nullify that claim for lien. There is provision in the *Court of Justice Act* and in the *Rules of Civil Procedure* for transfer of that action to the appropriate territorial jurisdiction and until that issue is determined the Corbiere claim remains a valid and ongoing construction lien action.

[41] Second, some of the lands subject to lien in each of the NBL and Corbiere actions are within the Henvy Inlet Indian Reserve #2. Because real property of an Indian or band situate on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution at the instance of any person other than an Indian or band [see 2. 89(1) of the *Indian Act*], CER questions whether a lien arising under provincial legislation can have any legal effect. If the Corbiere claim for lien can have no legal effect, then the NBL claim for lien cannot be enforced in that action in any event. If I was to decide this issue I would be making a significant determination of the rights of Corbiere and Henvy Inlet First Nation without them having the opportunity to participate fully in the process. I decline to do so.

Conclusion

[42] CER's motion is granted. The plaintiff's lien registered on October 23, 2019 and bearing instrument number GB125641 is expired, discharged, and released against the security posted by CER in the amount of \$557,730.66 in the form of a lien bond bearing number 798-2483 as deposited with the Accountant of the Superior Court of Justice by the order of Associate Justice Wiebe dated October 25, 2019 under Court File No. CV-19-00629832-0000; and the said bond is to be delivered up for cancellation and returned to counsel for CER to the attention of Dan L. Leduc at Soloway Wright LLP, 700 – 427 Laurier Avenue West, Ottawa, ON K1R 7Y2.

[43] In accordance with the agreement reached between the parties, NBL shall pay the costs of CER fixed at \$22,000 all inclusive.

The Honourable Mr. Justice R.D. Gordon

CITATION: 1499545 Ontario Inc. (Northern Bulk Logistics) v. Construction Energie
Renouvelable GP/S.E.N.C. 2025 ONSC 111
COURT FILE NO.: CV-19-0072
DATE: 2025-01-06

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

1499545 Ontario Inc. o/a Northern Bulk Logistics

Plaintiff

– and –

Construction Energie Renouvelable GP/S.E.N.C.,
1378796 Ontario Limited, G.W. Sutherland Contracting
Company Limited, TimberRidge Forestry and Sean
Sutherland

Defendants

DECISION ON MOTION

R.D. Gordon J.

Released: January 6, 2025