



[3] Mr. Rocque began work in January 2017. These initial renovations did not involve the foundation. However, in May 2017, while initial renovations were underway, the cottage was flooded and its foundation was damaged. Ultimately, Ms. Rocque decided to raise the cottage above water level and have a new foundation built.

[4] In the fall of 2018, Jonathan Rocque engaged Louis Jones Construction Ltd. (“Louis Jones”) to perform the required work to lay a new foundation. Louis Jones is a construction contractor, specializing in concrete formwork.

[5] Although there is no dispute that Mr. Rocque and Louis Jones concluded a verbal contract regarding the foundation work, certain terms of that contract are in dispute. For example, while the parties agree that the contract was on a time and material basis, they disagree whether the value of the contract was capped at \$60,000.

[6] When Louis Jones attended the work site on November 5, 2018, the cottage was raised, but the area underneath was not ready for the foundation. Louis Jones discussed this with Mr. Rocque and the two agreed that Louis Jones would level the ground beneath the cottage on a time and material basis. With Mr. Rocque’s agreement and input, Louis Jones rented a skid steer from Sunbelt, which was transported to the island on Mr. Rocque’s barge.

[7] When Louis Jones’ employees deployed the skid steer, it sank into the soil and disturbed the ground under at least part of the structure. Louis Jones submits that even if undisturbed, the soil would not likely have supported the cottage. The defendants disagree. In any event, after the soil was disturbed, geotechnical engineers concluded that remediation was needed before the foundation could be built. This was a costly and time-consuming process, involving excavation, the addition of crushed stone, and compaction. There is a dispute about whether Louis Jones or J-Rock performed this work.

[8] Louis Jones’ employees laid the foundation. They were present on site until December 19, 2017. At Mr. Rocque’s request, Louis Jones left the skid steer on site for J-Rock’s use, including to backfill around the cottage. Mr. Rocque and two of his former employees testified that the skid steer was removed from the island on December 22, 2017, a fact that Louis Jones does not dispute. However, the parties disagree about when Mr. Rocque first asked Mr. Jones to arrange for the skid steer to be picked up. Mr. Rocque says he contacted Mr. Jones by phone on December 21, 2017. Mr. Jones testified that he was contacted about this for the first time on January 2, 2018.

[9] In December 2017 and early January 2018, Louis Jones issued three invoices, totalling \$144,929.18. Mr. Rocque paid a total of \$47,000.

[10] On February 15, 2019, Louis Jones registered a lien against the property in the amount of \$97,635.59. On February 19, 2019, Sunbelt registered a lien against the property in the amount of \$19,412.43, which has now been assigned to Louis Jones.

[11] At trial, Louis Jones acknowledged that the correct value of both liens is \$91,350.59. The amounts have been adjusted to reflect two errors: Louis Jones' incorrect application of HST and the duplication arising from the amount of Sunbelt's lien having also been claimed within Louis Jones' lien.

[12] The matter proceeded as a bilingual summary trial. While this decision is written in English, any party who wishes to obtain a French translation may make a request through the trial coordinator's office.

[13] The following witnesses provided affidavit evidence and were cross-examined at trial: Louis Jones and Juanita Jones, for the plaintiff; Jonathan Rocque, Roxanne Rocque, Bradley Johnson, Arthur Maw, Christopher Pilon, and Alexandre Henrie, for the defendants Jonathan and Roxanne Rocque ("Rocque Defendants"); and Gisèle Giroux for the defendant, the Caisse Populaire Trillium Inc ("Caisse").

[14] For the reasons that follow, the claim is dismissed. I find that the liens are untimely. I also find that Louis Jones has not made out a claim in *quantum meruit*. Finally, I find that the Rocque Defendants have not established any breach of contract and they are not entitled to damages.

## ISSUES

[15] The issues in this case are as follows:

- a. Are the liens timely?
- b. Does the plaintiff have a claim in *quantum meruit*?
- c. Has the defendant, Jonathan Rocque established a breach of contract that would entitle him to damages?

## ANALYSIS

### Are the Liens Timely?

#### Which Act Applies?

[16] The *Construction Lien Act*, R.S.O. 1990, c. C.30 ("Old Act") was amended effective July 1, 2018, and became the *Construction Act*, R.S.O. 1990 c. 30 ("New Act".) The July 1, 2018

amendments include changes to lien preservation and perfection deadlines. Under the Old Act, a lien expires unless preserved within 45 days of certain prescribed milestones. Under the New Act, the deadline to preserve a lien is 60 days from the same milestones. Louis Jones and Sunbelt are both subcontractors. The relevant milestone under both statutes is “the last date upon which the person last supplied services and materials to the improvement.”

[17] The New Act contains s. 87.3, a transition provision that sets out the criteria for determining which version of the statute applies. Under s. 87.3, the New Act applies to all construction in Ontario after July 1, 2018, unless a contract for the improvement was entered into before July 1, 2018, or a procurement process for the improvement was commenced before July 1, 2018.

[18] Section 1(1) of the new act defines "improvement" broadly, to mean:

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.

[19] The Rocque Defendants contend that the contract for the improvement was entered into in November 2016 and the work was ongoing through to July 2019. They submit that the foundation work forms part of this contract and, therefore, is part of the same improvement. In support of this position, they rely on *Crosslinx Transit Solutions Constructors v. Form & Build Supply (Toronto) Inc.*, 2021 ONSC 3396.

[20] In *Crosslinx*, the issue was whether the transition provision applies to subcontracts. The prime contract was entered into in 2015, and the relevant subcontracts were entered into in 2020. The subcontractor argued that the subcontract was governed by the timelines under the New Act, which was in force as of the date of the subcontract.

[21] Robinson AJ held that the intended effect of s. 87.3 is that the same legislative scheme applies consistently to all persons involved in the same improvement. The date of a subcontract has no relevance to determining which version of the legislation applies to an improvement. He wrote, at para. 30:

It logically follows that the same legislative scheme governing the rights, obligations and remedies under the contract should also govern subcontracts for performance of the same scope of work required by that contract.

[22] Louis Jones argues that the flood resulted in a new scope of work, which went well beyond the 2016 contract between Mr. Rocque and Roxanne Rocque. Foundation work was not planned in 2016, and the work that was ultimately done could not have been foreseen, as the damage to the foundation did not occur until May 2017.

[23] Strictly speaking, it is not necessary for me to decide whether there were two contracts between Mr. Rocque and Roxanne Rocque or whether the flood repairs were an extra to the original contract in 2016. As I describe in more detail, below, regardless of whether the foundation work was an extra or a new contract, the result is the same: the Old Act applies.

[24] The facts in this case are important: the scope of the work fundamentally changed after the flood, in a way that could not have been foreseen in 2016. In my view, the flood-related work was a fundamentally different scope of work from what was contemplated in the 2016 contract between the Rocque Defendants. The fact that a contract was in place and an improvement in progress when the flood occurred does not bring new, unrelated work within the scope of the 2016 contract.

[25] On these facts, I find that there were two distinct contracts: the first was concluded in 2016 and concerned the initial renovations requested by Ms. Rocque, which were primarily inside the cottage. The second was for repairs following the 2017 flood, which involved fundamentally different work, including raising the cottage and laying a new foundation.

[26] In keeping with Robinson A.J.'s comments in *Crosslinx*, an improvement is understood in reference to the scope of work under the relevant contract. While improvement is broadly defined in the statute, it is limited to the scope of the contract giving rise to the improvement. Both the decision in *Crosslinx* and s. 87.3(2) of the New Act make it clear that the date of the subcontract between Jonathan Rocque and Louis Jones is not relevant. Applying section 87.3, I must determine whether the relevant contract between Jonathan Rocque and Roxanne Rocque was entered into before July 1, 2018, or whether a procurement process for the improvement was commenced before July 1, 2018.

[27] As noted, the initial contract was entered into in 2016. If the foundation work in question was performed under the initial contract – including by subcontractors -- it is governed by the Old Act.

[28] In terms of the second contract, Mr. Rocque affirmed that he began assessing the flood damage to the cottage in May of 2017. His work at that time included attending the site, reviewing engineering reports, and meeting with representatives of insurance companies. On May 23, 2017, Ms. Rocque paid \$7,000 to Mr. Rocque for work he did in relation to the flood damage. Mr. Rocque also affirmed that he retained A.Dagenais & Associates, an engineering firm, in about June 2018 to help plan for the repair work. Based on this evidence, I find that the second contract between Jonathan Rocque and Roxanne Rocque was entered into before July 1, 2018. This conclusion follows from the fact that Mr. Rocque had commenced work on the repairs and that, by May 2017, Ms. Rocque had already paid him for some of that work.

[29] Both the initial 2016 contract and the contract for flood repairs were entered into before July 1, 2018. Accordingly, the Old Act applies, including to Sunbelt and to Louis Jones'

subcontract. The deadline for filing the liens was therefore 45 days from the date of last supply of services or materials.

What is the Date of the Last Supply of Services or Materials?

[30] The 45 days to preserve a lien runs from “the last date upon which the person last supplied services and materials to the improvement.” Section 1(1) of both statutes defines materials to include “equipment rented without an operator for use in the making of the improvement.”

[31] When Louis Jones and Sunbelt preserved their liens, the date of last supply stated in their claims for lien was January 2, 2018. I accept that after Louis Jones’ employees left the site on December 19, it continued to supply the skid steer for use in making the improvement. There is no dispute that Mr. Rocque and his employees removed the skid steer from the island on December 22, 2017. Neither Mr. Rocque nor his former employees testified that they stopped using the skid steer before December 22.

[32] In my view, in determining the last date of supply of materials, the relevant date is not when Mr. Jones was asked to retrieve the skid steer, but when that equipment physically ceased to be deployed in furtherance of the improvement. The skid steer was removed from the island on December 22, 2017, after which it was no longer used in the making of the improvement, within the meaning of s.1(1). On this basis, I find that the last day of supply of materials was December 22, 2017.

[33] Louis Jones left other items on site, including jacks, tarps, a wagon, and a ramp. Those materials remained onsite until at least September of 2018. I have considered whether the last day of supply of services is extended by the presence of these items on site.

[34] As Di Tomaso J explained in *Blockwall Masonry Ltd. v. Arcaio Design*, 2007 CanLII 36067 at para. 24:

Sometimes a fine distinction must be made between services and materials supplied in order to complete a contract and the same services and materials supplied merely for the purposes of extending the time for filing a lien which otherwise would have expired. This distinction is a question of fact in every case and often a difficult one to make.

[35] Louis Jones bears the onus of proving that the liens are timely, including the date of last supply. Because neither Mr. Jones nor his employees were physically present on site after December 19, 2017, Mr. Jones testified that he had no knowledge of how and whether J-Rock used the skid steer after this date. However, he affirmed that J-Rock continued to use the other items left on site after December 19. Given Louis Jones’ absence after that date, it is unclear on what basis he could make this assertion. During cross-examination, Mr. Jones conceded that he did not

know when J-Rock stopped using the skid steer and the other items. I find that Mr. Jones' evidence on cross-examination is more reliable on this point.

[36] Mr. Rocque acknowledged that the ramp remained in use until at least March 2018, as it was frozen in the snow and could not be removed until the spring. Mr. Rocque testified that his team did not use Louis Jones' tarps or jacks, although the wagon was used "one or two times" to transport materials. Neither of Mr. Rocque's former employees provided any evidence or were cross-examined on the use of the wagon or the other items left on site.

[37] I find that the items left on site (other than the skid steer) were minor and added no meaningful value to the improvement. Louis Jones did not bill for these items. The items were left behind although the Louis Jones crew had finished its work and did not expect to return to site. The ongoing supply of these items was not part of the performance of the contract. Unlike the skid steer, the other items were not left on site at Mr. Rocque's request. In these circumstances, I find that the materials remaining on site do not constitute a supply of materials to the improvement that is sufficient to extend the time for preserving the liens.

[38] Louis Jones' claim for lien was registered on February 15, 2019, which is 55 days after December 22, the last day of supply of materials. Sunbelt's claim for lien was registered on February 19, 2019, which is 56 days from December 22, 2018. I find that both liens are untimely since both had already expired when the claims for lien were registered.

[39] Given this finding, it is not strictly necessary for me to address a number of other issues that arose at trial, including contributory fault and holdback obligations. However, I will comment that even had the liens been timely, Louis Jones did not meet the onus of proving the value of the services supplied on the time and materials contract. Louis Jones relied on timesheets prepared by a foreman, who did not testify at trial. Louis Jones and Juanita Jones, who did testify, acknowledged that they did not verify the hours in the timesheets. The plaintiff did not produce a witness who could testify to the truth of the contents of the timesheets. Therefore, the timesheets are hearsay evidence. Louis Jones did not argue that the timesheets are admissible business records within the meaning of the *Evidence Act*, R.S.O. 1990, c. E.23. In these circumstances, I could not have concluded that Louis Jones met the burden of proving the value of certain services provided.

### ***Quantum Meruit***

[40] Louis Jones advances an alternative argument in *quantum meruit*. This claim must fail. Louis Jones has not led any evidence to support a finding of *quantum meruit*, including about any improved value to the property. Moreover, there is no dispute that there was a contract between Louis Jones and Mr. Rocque.

[41] The *Construction Lien Act* ousts certain equitable rights, including in *quantum meruit*: *Urban Mechanical Contracting Ltd. v. Zurich*, 2022 ONCA 589 at para. 46 and *MGL Construction Inc. v. Boutet and Folk*, 2015 ONSC 4477 at para. 21. There is consistent authority for the proposition that, where a contract exists, claims in *quantum meruit* by subcontractors against owners should not be allowed. Rather, the contract between the parties and the construction lien legislation govern the issues between the parties.

### **Did Louis Jones Breach the Contract?**

[42] Little time was spent on whether there was a breach of contract at trial and in closing submissions. I will address this issue briefly. In essence, the Rocque Defendants submit that because Louis Jones breached or abandoned the contract, Mr. Rocque is entitled to damages. However, Mr. Rocque has not established the breach or abandonment of the contract on a balance of probabilities. The foundation was laid, although Mr. Rocque submits that certain finishing aspects of the project were not complete. The contract between Louis Jones and Mr. Rocque was verbal and on a time and materials basis. Mr. Jones' evidence is that the allegedly incomplete items were never part of the agreed scope of work. In any event, it is undisputed that Mr. Rocque did not advise Louis Jones of any alleged deficiencies or give him an opportunity to rectify them.

### **DISPOSITION**

[43] I find that both liens were not preserved within 45 days of the date of the last supply of services and materials, as required under the Old Act, and are expired. The claims for liens and related certificates of action are vacated.

[44] Louis Jones' alternative claim in *quantum meruit* is dismissed, as is Jonathan Rocque's claim for damages for breach of contract.

[45] After the close of trial, the parties were to determine if an aide-mémoire prepared by Mr. Tremblay would be submitted to the court on consent of all parties. The parties advised that no agreement could be reached concerning the document. Therefore, the aide-mémoire was not considered in preparing these reasons.

[46] If the parties cannot agree on costs, they may agree on a schedule for providing brief written submissions, of no more than three pages exclusive of bills of cost.

**Released:** June 18, 2026

**CITATION:** Louis Jones Construction Ltd. v. Jonathan Rocque o/a J-Rock Construction,  
Roxanne Rocque and Caisse Populaire Trillium Inc., 2026 ONSC 3159

**COURT FILE NO.:** CV 19-20 & CV 19-24

**DATE:** June 18, 2026

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

Louis Jones Construction Ltd.

**– and –**

Jonathan Rocque o/a J-Rock Construction, Roxanne  
Rocque and Caisse Populaire Trillium Inc.

---

**DECISION**

---

The Honourable Justice M. Flaherty, SCJ

**Released:** June 18, 2026