

CITATION: Leader Heating & Plumbing Inc. v. Aragon (Wellesley) Development
(Ontario) Corporation, 2026 ONSC 4324
COURT FILE NO.: CV-23-711196
DATE: 2026 07 24

SUPERIOR COURT OF JUSTICE - ONTARIO

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

RE: LEADER HEATING & PLUMBING INC., *Plaintiff*

- and -

ARAGON (WELLESLEY) DEVELOPMENT (ONTARIO) CORPORATION,
Defendant

BEFORE: Associate Justice Todd Robinson

COUNSEL: D. Morawetz and R. Scott, *for the defendant (moving party)*
L. Iantosca, *for the plaintiff*

HEARD: January 21, 2026 (by videoconference)

**REASONS FOR DECISION
(Motion to Reduce Lien Security)**

[1] Aragon (Wellesley) Development (Ontario) Corporation (“Aragon”) moves for an order further reducing security in court for the lien of Leader Heating & Plumbing Inc. (“Leader”) from \$525,000.00 to \$149,265.21. Trial in this action is scheduled for January 2027. Leader opposes any further reduction in its lien security.

[2] Aragon takes the position that Leader’s method of quantifying its lien is unsupportable. It submits that a calculation based on unpaid amounts owing to Leader plus its delay-related claim, less payments accounted for by Leader’s own expert should be used, pro-rated to account for Leader having liened only 9 of 179 units of the subject condominium building. Although relying on its own pro-rated calculation, Leader’s position is ultimately that it has a reasonable prospect of successfully proving a lien greater than the amount currently secured in court, such that lien security should not be further reduced. Specifically, Leader argues that Aragon has admitted an unpaid balance owing to Leader of \$817,269.08, plus HST, which exceeds the security.

[3] I am dismissing the motion. While my decision has remained under reserve, I have grappled with what to do with inherent conflicts in Leader’s position on lien calculation and its broader positions in response to this motion, including what I perceived as a shift in position at the motion hearing. I am satisfied that Leader has failed to account for substantial payments by

Aragon in its lien calculations and, as a result, that its calculation is unsustainable with no reasonable prospect of success at trial. However, despite Leader using its own pro-rated approach to calculate its lien amount, I find that doing so has not amounted to a binding admission on the appropriateness of pro-rating the lien. Leader's opposition to pro-rating as used in Aragon's calculations is a disputed issue that is more fairly and justly decided at trial.

ANALYSIS

[4] This motion is brought in a reference before my colleague under the *Construction Act*, RSO 1990, c C.30. The *Construction Act* does not provide specific procedures for references, but the rules of court apply in lien actions except to the extent that they are inconsistent with the *Construction Act* and its regulations: *Construction Act*, s. 50(2). Accordingly, the rules governing references in rules 54 and 55 of the *Rules of Civil Procedure*, RRO 1990, Reg 194 apply in lien actions. Given the absence of my colleague at the time this motion was scheduled for a hearing, I heard it pursuant to rule 54.05(1) of the *Rules of Civil Procedure*, which permits any associate judge to hear and dispose of a motion in the absence of the referee.

[5] There is no dispute that the provisions of the former *Construction Lien Act* (the "CLA") continue to apply to the subject improvement and Leader's lien by operation of the transition provisions in s. 87.3 of the *Construction Act*. I accordingly refer to the provisions of the CLA in the balance of these reasons.

[6] The parties' dispute arises from the construction of a thirty-storey condominium building in Toronto with 179 units. Aragon was the developer for the project. Leader was contracted to perform mechanical work. The project was significantly delayed. Leader ultimately preserved a lien for \$3,428,906.28. When Leader's claim for lien was registered, the condominium plan had been registered and the prior parcel for the lands had already been subdivided into numerous new parcels for the condominium. Leader registered its claim for lien against only nine of those parcels, being the units that had not yet been sold and were still owned by Aragon. There is no dispute that Leader did not supply the entirety of its services and materials to those nine units. Its work was performed in all units and, it appears, predominantly in the common elements of the condominium building, which are owned equally by each unit owner.

[7] Leader's lien was promptly vacated by Aragon on an *ex parte* basis with full security for the lien posted into court. Subsequently, in December 2023, Leader's lawyers confirmed that the lien was comprised of \$833,464.35 for outstanding invoices and \$2,595,411.93 for additional labour, materials, and costs. The latter figure is quantified in an extras invoice, the majority of which is Leader's delay claim, profit, and overhead.

[8] Aragon conducted a cross-examination on Leader's lien under s. 40 of the *Construction Act*. Following that cross-examination, Aragon and Leader negotiated reduced security for the lien. They consented to an order reducing the security to \$475,000 for the lien and \$50,000 for costs. That order was signed by my colleague.

[9] Aragon now moves for a further reduction. It cites s. 44(2) of the CLA, which provides that the court may make an order vacating the registration of a claim for lien, and any certificate

of action in respect of that lien, upon the payment into court or the posting of security of an amount that the court determines to be reasonable in the circumstances to satisfy the lien. However, that subsection is inapplicable here. Leader's lien has already been vacated.

[10] The relief sought by Aragon is properly pursued under s. 44(5) of the *CLA*. That subsection provides as follows:

(5) Where an amount has been paid into court or security has been posted with the court under this section, the court, upon notice to such persons as it may require, may order where it is appropriate to do so,

(a) the reduction of the amount paid into court, and the payment of any part of the amount paid into court to the person entitled; or

(b) the reduction of the amount of security posted with the court, and the delivery up of the security posted with the court for cancellation or substitution, as the case may be.

[11] Leader relies on my decision in *Cancore Production Ltd. v. Hau*, 2021 ONSC 1027 as setting out the relevant considerations for this motion. My comments in *Cancore* were made in the context of a motion under s. 44(2). Although the relief sought by Aragon is properly relief under s. 44(5), my comments in *Cancore*, as relied upon by Leader, remain applicable here. No other case law was argued by the parties at the hearing dealing with considerations on a motion under s. 44(2) or (5).

[12] In *Cancore*, at para. 10, I noted that the court should only reduce the security required by s. 44(1) to vacate a lien if it is convincingly demonstrated that the maximum recovery by the lien claimant will be less than the amount of the lien. I held that there is an onus on the moving party to demonstrate that there is no triable issue regarding the maximum recovery by a lien claimant. Those comments are consistent with existing case law under s. 44(5).

[13] Although not cited by either side, case law under s. 44(5) has held that the court must be satisfied that there is no reasonable prospect of the lien claimant proving a lien for the amount it has claimed: *Chesney v. Malamis*, 2023 ONSC 1742 at para. 29; *Structform v. Ashcroft*, 2013 ONSC 4544 at paras. 11-12. There must be evidence that clearly and unequivocally proves the lien is excessive or improper: *Ledcor Construction Limited v. Canalfa Liberty Village Homes Inc.*, 2008 CanLII 87009 at para. 35.

[14] Leader argues essentially that I should decline Aragon's motion because the prior reduction was calculated by Leader and approved and accepted by Aragon's lawyer, with no change in circumstances since that time. I give that argument no weight. Aragon is not precluded from bringing this motion by the prior agreement to reduce the lien security.

[15] The prior consent motion arose from ongoing back-and-forth discussions and negotiations, which followed Aragon advising its intention to move to reduce security. The record before me clearly supports that the prior consent reduction was agreed without prejudice to Aragon's right to later argue that the lien security should be further reduced. Notably, the agreement was reached

through the parties' lawyers with Aragon's lawyer expressly stating that Aragon's agreement was "without prejudice to Aragon's right to bring any further motion with respect to Leader's construction lien including, but not limited to, issues related to the quantum of the construction lien and the consequences thereof." I am satisfied that this motion may proceed.

[16] Aragon argues that calculation of Leader's lien is not properly based on the entire value of the contract, as Leader has done, but rather should start with the unpaid amounts invoiced to Aragon, plus agreed unpaid change orders and extras. Aragon's affiant calculates the unpaid amount owing to Leader under the contract, including changes and extras, to be \$817,269.08, plus HST. On this motion, and despite the prior position taken in December 2023, Leader agrees that amount represents the unpaid balance of the contract.

[17] To that figure of \$817,269.08, Aragon adds lienable delay costs, excluding lost profit and overhead (\$1,759,480), and subtracts payments made on three change orders (\$475,000). Although not admitting the claim, for the purposes of this motion, Aragon relies on Leader's own expert report in calculating Leader's claimable and lienable delay costs. That expert calculates \$1,190,237 for additional labour and material costs and \$1,041,772 for extended duration costs. Aragon argues that "head office overheads" of \$472,529, which are included in the latter figure, are not lienable. That amount is deducted. Aragon submits that the result is a maximum lien value of \$2,101,749.08. That figure is then divided by 179 units to generate a figure of \$11,741.61 per unit, which is then multiplied by 9 units to yield a lien value of \$149,265.28, plus HST.

[18] Leader submits that a proper calculation starts from the contract price. It is undisputed that the total contract price was \$6,764,774.45, plus HST. That figure is set out in Change Order #11, signed by both parties. Leader's lien calculation takes that figure, adds the amount from its delay and extras invoice, excluding overhead and profit (\$1,898,224.18), and credits a payment for Change Order #3 (\$250,000). The resulting figure is then divided by 179 units to generate a figure of \$53,109.99 per unit, which is then multiplied by 9 units to yield a lien value of \$477,989.92, plus HST.

[19] Aragon challenges Leader's calculation in three respects:

- (a) Leader maintains a delay-related costs figure of \$1,898,224.18, despite its own expert quantifying those costs at \$1,759,480 (excluding overhead);
- (b) Leader fails to account for Aragon's payment of two changes orders in the amounts of \$75,000 and \$150,000, which are credited by Leader's expert; and
- (c) Although it is undisputed that most of the contract price has been paid, Leader bases its lien on the total contract price without accounting for payments made by Aragon.

[20] I deal with each of these in turn.

[21] Aragon is correct that Leader does not rely on its own expert's figures when calculating its lien. In my view, Leader's calculation based on its October 2023 invoice is inconsistent with Leader's other evidence on this motion. Leader's affiant, at para. 14 of his supporting affidavit, notes the total contract price of \$6,847,102.82, payments received of \$6,029,833.74, and states the

balance of the claim is an “additional claim for the additional labour, material, and services provided, resulting from the delays which occurred on the Project, through no fault of Leader in the amount of \$1,190,237, \$1,041,772, \$25,000 (plus applicable taxes)”. A footnote refers to Leader’s expert report, in which those three figures are found. They are quantified in the report as follows:

- (a) \$1,190,237 is additional labour and material costs, comprised of \$434,273 for additional labour cost for loss of productivity, plus \$755,964 for material and equipment cost escalation;
- (b) \$1,041,772 is extended duration costs, comprised of \$63,678 for labour wage rate increase, \$505,565 for site management and general conditions, and \$472,529 for head office overheads; and
- (c) \$25,000 is professional fees, explained in the report to be for “the cost of engaging external consultants to assist in documenting and substantiating their rights and entitlements under the Trade Contract.”

[22] Despite Leader’s affiant expressly pointing to figures from the expert report, Leader nevertheless relies on its invoice for additional labour and material costs from October 2023 in calculating the lien amount. I note that the invoice includes the following caveat before itemizing the labour and material costs (emphasis added):

Our estimated cost of the additional labour, material, services and equipment provided to the project, as a result of delays caused by others through no fault of Leader Plumbing and Heating Inc., is summarized below. We reserve the right to supplement or amend this claim for recovery of these costs:

[23] No convincing argument has been made for how my colleague would reasonably prefer Leader’s “estimated cost” as of October 2023 over the analysis and figures put forward by Leader’s expert. During oral submissions, Leader confirmed that it was relying on its own expert report. It is expressly adopted by Leader’s affiant on this motion. I find no reasonable prospect that Leader will prove that its additional labour and material claim will exceed the amounts in its own expert report, namely \$2,257,009, plus HST.

[24] It well-established that overhead costs are not lienable. Leader has itself excluded the overhead and profit line items from its extras invoice in calculating its lien. The overhead cost line item included in the extended duration claim must thereby be deducted, as Aragon has done.

[25] In addition, the claim of \$25,000 for professional fees is not lienable. The sole description provided is found in the expert report, as discussed above. Documenting and substantiating rights and entitlements under a contract is not a supply of services and materials to an improvement, let alone a lienable one.

[26] For the foregoing reasons, I accept Aragon’s calculation of the maximum potentially recoverable and lienable amount for Leader’s delay-related claim, based on the expert report, at \$1,759,480.

[27] It is significant that, on this motion, both parties agree on accounting under the contract. As already noted, the total contract price, including additional purchase orders and extras, was \$6,847,102.82. A total of \$6,029,833.74 was paid by Aragon. Both parties agree that \$250,000 was paid in respect of Change Order #3. Leader does not dispute that the amounts for Change Orders #4 and #5 were paid and will need to be accounted for at trial.

[28] Aragon argues that its payments of Change Order #4 (\$75,000) and Change Order #5 (\$150,000) should be credited as was done by Leader's own expert. I was directed to the portion of Leader's expert report where payment of those two change orders is specifically noted and is set-off against Leader's delay-related claim. The following chart is included in the report:

Item	Description	Amount
1	Labour & Material Costs	\$1,190,237
2	Extended Duration Costs	\$1,041,772
3	Professional Fees	\$25,000
	Sub-Total	\$2,257,009
4	SCO 003 - Interim Payment on Account of Delay	(\$250,000)
5	SCO 004 – Payment for Sprinklers & Insulation	(\$75,000)
6	SCO 005 – Payment for Delayed Heat Pumps	(\$150,000)
	Total Adjustment to Contract Price	\$1,782,009

[29] The expert report accounts for payment of the three change orders against the delay-related claim because, in the expert's assessment, they relate to it. However, it is far from clear to me on the evidentiary record for this motion that the amounts paid for Change Orders #3, #4, and #5 are not already subsumed in the amount stated by Aragon to have been paid to Leader. The change orders are from 2022. There is no evidence on when they were paid. At para. 21 of Aragon's supporting affidavit, the following unequivocal statement is made:

To date, inclusive of CO #11, three Purchase Orders, and various extras, Aragon has paid Leader the total sum of \$6,029,833.74 (not inclusive of HST) toward the overall contract price [...]

[30] The affidavit was sworn on October 20, 2025. The evidence before me is thereby that, as of that date, Aragon had paid the "total sum" of \$6,029,833.74, excluding HST. Copies of Change Orders #4 and #5 are in the motion record, but there is no proof of payment. There is no evidence before me addressing whether the amounts for Change Orders #3, #4, and #5 are included or excluded from the total payment figure. If included, then deducting the \$475,000 as done by Aragon would be duplicating a credit amount already deducted from the total value of services and materials supplied when calculating the unpaid balance of the contract. There is insufficient evidence before me to find that the \$475,000 is in addition to the \$6,029,833.74 in payments, which is required for me to accept Aragon's calculation.

[31] I agree with Aragon that Leader's calculation does not account for the admitted payments made by Aragon. Leader takes the adjusted base contract amount from Change Order #11, adds its invoiced additional labour and material cost claim, and credits only the \$250,000 payment for Change Order #3. Leader's calculation asserts a total claim of \$9,506,688.45, despite admitting to receiving an aggregate of \$6,029,833.74 in payments.

[32] There is no question that Leader is not owed and would not have been entitled to lien for \$9,506,688.45. Nothing in the record before me supports such a claim. In my view, using that unsupportable figure as the basis for calculating a provable lien claim does not make sense.

[33] No cogent or convincing argument has been made by Leader for why the total payments by Aragon should not be accounted for when determining the lien value. Leader argues that how the payments were allocated should be left for trial since there is no evidence before me supporting whether those payments relate to the nine liened units nor any evidence on allocation of the funds. Those arguments do not assist Leader. Using the total contract price to calculate a lien, without accounting for payments made, is contrary to the *CLA*.

[34] The lien of a person is limited to the amount owing to the person in relation to the improvement: *CLA*, s. 17(1). Put another way, liens are only properly preserved and perfected for the unpaid price of services and materials supplied to the subject improvement. A lien claimant cannot lien for services and materials for which it has been paid. Those amounts are no longer owing. It follows that, when calculating the value of a lien, there must be an accounting of the amounts paid when determining the amount owing. That amount owing is the maximum quantum of the lien claimant's lien.

[35] Aragon's position accounts for the \$6,029,833.74 in payments when calculating the unpaid amount under the contract. That is how the \$817,269.08 figure is reached. Leader agrees with that figure, yet does not use it when calculating its lien. Leader's calculation instead uses a pre-payment total contract price and accounts for only the \$250,000 payment for Change Order #3. In my view, given s. 17(1) of the *CLA*, Leader's calculation of its lien, which does not address all payments made by Aragon, is unsupportable and has no reasonable prospect of success at trial. I reject it.

[36] In my view, the proper accounting of Leader's maximum claimable lien must take the total contract price for completed contract work, deduct payments made, and add Leader's delay-related claim. The remaining issue is then whether the total claim should be pro-rated in some fashion and limited by the number of units against which the lien was preserved.

[37] Aragon argues that Leader has admitted that the lien value should be calculated on a *pro rata* basis. It takes the position that, in agreeing to the prior reduction, the underlying rationale was that Leader's claim could only succeed for a *pro rata* amount for the services and materials supplied to the liened premises, namely the nine units against which the lien was preserved. It further argues that Leader has itself used a *pro rata* calculation in response to this motion.

[38] Leader disagrees that its prior consent to reduce the lien security is properly characterized as admitting that it was only entitled to *pro rata* recovery. It was a negotiated resolution of

Aragon's intended motion. Leader argued at the hearing that it has *not* agreed to a *pro rata* calculation of its lien, unless the lien is based on the total contract price.

[39] I acknowledge that the prior reduction motion was settled by Aragon accepting Leader's calculations as set out in an offer to settle. Those calculations were based on a *pro rata* allocation of the total lien amount equally across all 179 units. Because it was a negotiated resolution of the prior motion, I agree with Leader that I should put no weight on the outcome of that motion in deciding whether Leader has admitted a *pro rata* approach. Nevertheless, in my view, Leader's argument at the hearing that it has not admitted the appropriateness of a *pro rata* calculation appears to be in stark contrast to its own responding materials and the only calculation that Leader has put before me.

[40] Both Leader's supporting affidavit and its factum calculate a total amount owing, divide it by 179 units, and then multiply that figure by 9 units to reach the total of \$477,898.92. That calculation is expressly characterized by Leader as "the correct calculation of the amount of the Lien". That "correct calculation" is based on pro-rating. Nevertheless, despite its materials using a *pro rata* calculation, Leader asks that I find a triable issue on whether its lien should be pro-rated across the 179 units.

[41] The argument advanced by Leader in oral argument that a *pro rata* calculation is appropriate only in a calculation based on the total contract price (which, as discussed above, contravenes s. 17(1) of the *CLA*), but not appropriate in Aragon's calculation, is not a position taken in its responding materials. In my view, during oral argument, Leader attempted to pivot its position in response to my multiple questions to its lawyer about how its calculation was sustainable without accounting for the payments made by Aragon. As noted above and reflected in its materials, Leader also relied on a *pro rata* calculation in response to this motion. That position changed only after its calculation method fell under my scrutiny and could not be explained to my satisfaction at the hearing. That scrutiny also followed various probing questions that I had asked Aragon's lawyer about Aragon's arguments in support of why a *pro rata* allocation approach was appropriate at all.

[42] Nevertheless, the legal test for an admission is stringent. As the party asserting that an admission has been made, Aragon bears the onus of satisfying me that Leader has made an unambiguous deliberate concession. Aragon cited no case law and pointed only to the same "correct calculation" language in Leader's materials that I have noted. Although a s. 40 cross-examination was undertaken, I was not directed to anything in that examination supporting a concession by Leader to a pro-rated approach. As discussed above, I am satisfied that the agreement to a *pro rata* calculation in the prior reduction motion was a negotiated resolution and does not constitute an admission.

[43] Leader's affiant characterizes the *pro rata* calculation used as the "correct calculation". However, I am not satisfied that such a statement is an admission of fact within the meaning of subrule 51.06(1) of the *Rules of Civil Procedure* or the established case law on admissions (none of which has been cited to me in any event). I also do not view Leader's position statements in its factum as binding admissions. The underlying issue is also legal, not factual, or at least an issue

of mixed fact and law. No argument was made or case law tendered on the circumstances under which a binding admission of law or mixed fact and law is made.

[44] In my view, while the “correct calculation” statement was arguably a deliberate statement, there is nothing before me containing a sufficiently clear and unambiguous concession on using a *pro rata* allocation to quantify Leader’s lien to constitute a legally binding admission. To the extent that Leader changed its position on this motion in a manner that was not reasonably contemplated or expected by Aragon, that is an issue for costs.

[45] Aragon has advanced various arguments for why Leader’s lien is properly limited to the *pro rata* amount for the nine units liened. That includes arguments why, more generally, it is an appropriate approach to limit a lien to a *pro rata* amount of the total amount owing where a lien claimant has opted to preserve its lien against only some of the units in a condominium rather than against all units comprising the improved property. As noted above, during Aragon’s submissions, I probed those arguments and the legal support for them.

[46] I have doubts about whether Aragon’s argued *pro rata* approach is consistent with the definitions, provisions, and overall scheme of the *CLA* (and the *Construction Act*). However, this motion is not a proper forum to decide whether Leader is only entitled to a lien for the pro-rated amount of its total claim to the nine units it liened. No case law has been tendered by Aragon in support of its position and limited interpretation of the provisions of the *CLA* has been undertaken and argued. The materials are sparse and the evidentiary record incomplete.

[47] Whether a lien claimant is entitled to pursue recovery of its full lien claim for condominium work against only some of the units or whether the lien is properly limited to a *pro rata* allocation against the liened units appears to be a novel issue. In my view, it is not in the interests of justice to decide whether it is appropriate to apply a *pro rata* allocation on the limited record before me. A fulsome evidentiary record and more carefully considered and developed arguments that address the *pro rata* approach with reference to provisions of the *CLA*, supported with case law, should be advanced. That will happen (or at least should happen) at trial.

[48] I accordingly find a triable issue on whether Leader’s lien should be pro-rated on a per unit basis and limited to the pro-rated value for the nine units liened.

[49] I need not provide any calculation of Leader’s maximum potentially recoverable lien value. The parties’ agree that the unpaid balance under the contract is \$817,269.08, plus HST. That exceeds the existing security in court. On the numbers before me, the potentially provable lien amount would only be less than the current security in court if a *pro rata* allocation is applied. I have found that issue must be determined at trial. It follows that the current lien security should not be further reduced pending trial.

DISPOSITION

[50] For the foregoing reasons, Aragon's motion is dismissed.

COSTS

[51] Costs outlines were exchanged. However, I could not hear costs submissions at the time of the hearing because there had been offers to settle the motion. Although this action is subject to a reference before my colleague, costs generally follow the event and I think it appropriate that I determine costs flowing from the motion argued before me.

[52] I strongly encourage the parties to settle costs of the motion. If they cannot agree, then written costs submissions shall be exchanged. Leader shall serve any costs submissions by August 7, 2026. Aragon shall serve its responding costs submissions by August 21, 2026. There shall be no reply submissions absent leave of the court. Costs submissions shall not exceed four (4) pages, excluding any offers to settle and case law.

[53] Once served, all costs submissions shall be submitted by email directly to my Assistant Trial Coordinator, Christine Meditskos, with proof of service. Unless exchanged and submitted in accordance with the above, the parties shall be deemed to have agreed on costs.

ASSOCIATE JUSTICE TODD ROBINSON

DATE: July 24, 2026