

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: MEADOWLANDS GROUP INC and FAISAL MIRZA, Plaintiffs

AND:

HARK CONSTRUCTION LTD and PARIS BAGUETTE and 12652463
CANADA INC, Defendants

BEFORE: The Honourable Mr. Justice J.R. McCarthy

COUNSEL: Plaintiff, Self Represented

Lia Bruschetta and Emma Smith, for the Defendant Baguette

Defendant, Hark Construction Ltd., Self Represented

HEARD: July 24, 2026, by videoconference.

REASONS ON MOTION

The Motion

- [1] The Defendants, Paris Baguette (“PBC”) and 12652463 Canada Inc. (“126”), move for an order: i) declaring that the Plaintiff Meadowlands’ lien (“the lien”) has expired; ii) discharging the lien; iii) dismissing the Plaintiffs’ action against them; iv) delivering up the lien posted to replace the lien; and v) substantial indemnity costs. Faisal Mirza (“Mirza”) is the principal and directing mind of the Plaintiff Meadowlands, which I refer to as “the Plaintiff”.

Section 47 of the Construction Act

- [2] The motion is brought pursuant to s. 47 of the Construction Act (“the CA”) which grants the court authority, *inter alia*, to vacate the registration of a lien and certificate of action and to declare that a lien has expired.
- [3] A motion under s. 47 of the CA is akin to a motion for summary judgment without enhanced powers. That said, the test is still whether there is a genuine triable issue in respect to any bases on which the lien discharge is sought.

Background

- [4] The Plaintiff was a sub-contractor on a project owned by PBC at 47 Harry Walker Parkway South, Unit A.510/11/12 in Newmarket (“the project”). A contract was entered into between PBC and Hark Construction Ltd (“Hark”), whereby Hark would act as general contractor and both hire and pay the sub-contractors (“the contract”). At no time was there any written contract between PBC and the Plaintiff.
- [5] The Plaintiff entered into a sub-contract with Hark under which the Plaintiff provided labour and materials to the project. The Plaintiff completed its work on the project under the sub-contract between July 2023 and September 27, 2023. Its invoice to Hark was issued and due on September 27, 2023 (“the Plaintiff invoice”) and references July 20, 2023 as the date when services were provided. The total of the invoice is \$39,568.
- [6] PBC opened for business as a cafe on September 29, 2023. The contract was by all accounts completed by December 15 or 31st, 2023 at the latest. By then, Hark had reattended the project to complete the remaining 10% of contract work, to respond to a final construction “punch list”, complete any extras and remedy any deficiencies. Hark’s final invoice was dated December 13, 2023, which was the last day it supplied services to the project.
- [7] According to the evidence of PBC and its representatives, at no time during the project did PBC ever deal with or communicate with the Plaintiff or its representatives. No contract was ever signed between them, and no invoice was ever issued by the Plaintiff to PBC. No subcontractors visited the café after December 2023.

The Small Claims Court Action

- [8] In April 2024, the Plaintiff launched a Small Claims Court action naming PCB and Hark, claiming outstanding amounts related to sub-contracting work it had provided to the project. A judge of the Small Claims Court dismissed the Plaintiff’s action against PBC on the grounds that there was no privity of contract between the Plaintiff and PBC. It was found that the sub-contract was solely between the Plaintiff and the general contractor, Hark.

The Claim for Lien

- [9] On May 2, 2024, seven months after PBC opened, and two weeks after the Small Claims Court decision, the Plaintiff registered a claim for lien on the project in the amount of \$39,568.20 and then sought to perfect the claim for lien by issuing this present action.
- [10] Upon PBC posting a lien bond, the lien was vacated by order of this court on June 14, 2024.
- [11] Section 31(3)(b) of the *CA* states that a lien of “other persons”, which includes sub-contractors, shall be preserved within 60 days of the earlier of: i) the date on which the person last supplied services or materials to the improvement; and ii) the date the contract is completed, abandoned or terminated, and iii) the date a subcontract is certified to be completed where the services or materials were supplied under or in respect of that

subcontract. The “contract” in ii) under the CA means the contract between the owner and the contractor, in this case, PBC and Hark.

The Issue

[12] The issue before the court is whether the lien expired pursuant to the CA because the Plaintiff failed to preserve its lien within 60 days of the period set out in section 31(3)(b).

Discussion

[13] I would allow the motion for the following reasons:

- (a) The Plaintiff clearly had no written contract with PBC. Mirza’s evidence that there was an oral contract between Meadowlands and PBC through a “Chinese owner” from PBC is neither believable nor credible. It is also contrary to the balance of the evidentiary record. The only employee and representative of PBC Bakery who visited the project site during construction was a Mr. Zuccarello, who is most assuredly not the “Chinese guy.”
- (b) Absent any oral contract, the existence of which is entirely unsupported by any cogent evidence, PBC had no contractual relationship with the Plaintiff. Pursuant to the contract between PBC and Hark, no contractual relationship was contemplated between any of Hark’s sub-contractors (such as Meadowlands) and PBC. Any payment the Plaintiff received for work on the project came from Hark, not PBC.
- (c) The Plaintiff invoice is made out to Hark only, and references only work completed in July 2023. This is consistent with an email that the Plaintiff sent to PBC on February 14, 2024 (“the February email”) which states that the Plaintiff was waiting on late payment from the general contractor PBC had hired. That same email makes clear that the Plaintiff was one of the trades that worked on the project during the summer of 2023.
- (d) Mirza’s suggestion that Meadowlands visited the café premises in January, February or March 2024 is not corroborated by any email, text, work order, record, witness, employee, or time sheet.
- (e) Mirza has confirmed that the Plaintiff’s lien was based solely upon the work described in the Plaintiff invoice which is the only invoice it issued to Hark for work on the project. That being the case, any work provided in January, February or March 2024 could not have been performed under the sub-contract with Hark.
- (f) Mirza confirmed that the Plaintiff’s work on the project was completed between July and September 27, 2023. The expiry of the period within which Meadowlands had to preserve its lien was as early as November 27, 2023.
- (g) Even if the plaintiff returned to the café as late as March 2024, Mirza admitted that it pertained to deficiency work (a few cracked tiles and to fix whatever they were asking)

and “not a big amount”. The governing case law makes clear that this type of service cannot serve to extend the period for preserving a lien: see *Infinite Construction Development Ltd. v Chen*, 2023 ONSC 2627, at paras. 22-23.

- (h) Mirza conceded in cross-examination that the last work done on the project by the Plaintiff was probably prior to the February email. This is consistent not only with the assertion in the February email itself but also with the balance of the evidence.
- (i) The Plaintiff has not provided a shred of credible evidence to support the allegation that it completed work in the café in March 2024. The Plaintiff simply states that the information is no longer available. This does not constitute evidence to raise a genuine issue requiring a trial. There is no real conflicting evidence as to the scope of work or when it was completed.
- (j) Mirza testified under oath that Meadowlands did not bill for work it allegedly completed in 2024. Nonetheless, the Plaintiff seeks to rely on an invoice dated March 8, 2024 (“the March invoice”) and mailed to “126” (the landlord) along with the claim for lien in July 2024. The March invoice is clearly a sham invoice. It is a revised version of the Plaintiff invoice. This sham invoice simply replaces the addressee Hark with 126 and PBC. Moreover, Mirza admitted in cross-examination that the March invoice is for the exact same work that was already completed eight months earlier.
- (k) Despite giving multiple undertakings to provide backup for work allegedly performed at the café in March 2024, Meadowlands has provided no evidence within its answers to its undertakings. As the court did in *2708320 Ontario Ltd. cob Viceroy Homes v. Jia Development Inc.*, 2023 ONSC 2301, I would draw an adverse inference from the claimant’s failure to comply with such undertakings.
- (l) A judge of the Small Claims Court has already determined that there was no privity of contract between Plaintiff and PBC.
- (m) There was never any privity of contract between the Plaintiff and 126. Upon the bonding off of a lien, a landlord is no longer a required party and the claim against it should be dismissed: see *DCL Management Ltd. v. Zenith Fitness Inc.*, 2010 ONSC 5915, at para. 101.
- (n) The Divisional Court has confirmed that a subcontractor has no claim of quantum meruit and unjust enrichment as against an owner on a project. Without privity of contract, the only remaining remedy available for a sub-contractor on a project is a construction lien: see *Tremblar Building Supplies Ltd. v. 1839563 Ontario Ltd.*, 2020 ONSC 6302, at paras. 5, 13-18.

[14] For the foregoing reasons, I find that the Plaintiff failed to preserve its claim for lien under the Act within 60 days of last supplying services to the project. It has no tenable cause of action against either of the Defendants under the CA, in contract or in equity.

- [15] The motion is allowed. There shall be an order to go as follows: the lien has expired; the lien shall be discharged; the action is dismissed; and the lien bond shall be delivered up for cancellation.
- [16] The issue of costs, and the form and content of any order, may be addressed before at a case conference hearing to be arranged through the trial coordinator at Newmarket.

McCarthy J.

Date: August 19, 2026