

CITATION: Bradley-Kelly Construction Ltd. v. GIP Construction Ontario East Ltd. et al, 2026
ONSC 5180

COURT FILE NO.: CV-24-00095233-R000 & CV-24-00095258-R000

DATE: 2026/09/11

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Bradley-Kelly Construction Ltd, Plaintiff

-and-

GIP Construction Ontario East Ltd. and AtkinsRéalis
Construction (Pacific) Inc., Defendants

BEFORE: Justice Perron

COUNSEL: Daniel Leduc and Chelsea Packman for the Plaintiff, Bradley-Kelly Construction Ltd.

Jay Nathwani for the Defendant, GIP Construction Ontario East Ltd.

Nathan Lean for the Defendant, AtkinsRealis Construction (Pacific) Inc.

HEARD: July 17, 2026

ENDORSEMENT (MOTION FOR SUMMARY JUDGMENT)

[1] The dispute between the parties relates to the construction of the City of Ottawa's Trillium Line Extension – Ottawa Stage 2 Light Rail Transit project.

[2] Bradley-Kelly, a sub-subcontractor, filed two liens and commenced two actions with respect to work it completed at the Earl Armstrong Road and the New Wakley Yard locations.

[3] The dispute regarding the New Walkley Yard lien has been settled.

[4] Bradley-Kelly brings this motion for summary judgment seeking the release of the holdback from Atkins with respect to the Earl Armstrong Road lien.

[5] Atkins, the general contractor, brings this cross-motion seeking a declaration that Bradley-Kelly's lien was filed out of time.

[6] GIP, the subcontractor, supports Bradley-Kelly's motion for the release of the holdback.

[7] Bradley-Kelly and GIP's position is that Bradley-Kelly's work relates to work on a single "improvement" and that Bradley-Kelly's last day of supply of services or materials to the single improvement was on January 25, 2024. Because the Earl Armstrong lien was preserved on February 15, 2024, they submit that the lien was timely and complies with the statutory timeframes for preservation and perfection.

[8] Atkins' position is that Bradley-Kelly's work at the two sites constitutes work on separate "improvements". Atkins submits that because Bradley-Kelly last completed work at the Earl Armstrong site on December 27, 2023, and because the liens were not registered as general liens, the Earl Armstrong lien is not timely because the 45-day period for preserving the Earl Armstrong lien expired on February 13, 2024.

[9] For reasons that are set out below, I find that there are no genuine issues requiring a trial and that summary judgment is appropriate. The work done by Bradley-Kelly at the two sites was work done on the same, single improvement. The Earl Armstrong lien was therefore preserved and perfected on time.

Summary of Facts

[10] Prior to the hearing of the motions, the parties filed a lengthy joint statement of agreed facts.

[11] The parties agree that there is one project and one project agreement. The parties agree that there is one subcontract between Atkins and GIP, and that Bradley-Kelly entered into two subcontracts with GIP. The parties agree that the scope of work in Bradley-Kelly's two subcontracts was for work on the project. The parties agree on the last dates of work on the project by Bradley-Kelly under each subcontract. The parties also agree on the quantum of the remaining statutory holdback maintained by Atkins for the GIP subcontract which is \$703,565.82.

[12] Although not set out in the agreed statement of facts, Atkins does not dispute the quantum of the Earl Armstrong lien.

[13] I have reproduced the entirety of the agreement on facts below because it illustrates, somewhat surprisingly, that there are no factual issues in dispute on this motion except for the underlying determination on whether Bradley-Kelly did work on a single improvement or multiple improvements.

[14] The agreed-upon facts are as follows:

- a) Bradley-Kelly Construction Ltd. (“Bradley-Kelly”) is a utility and electrical infrastructure contractor operating primarily in Ottawa, Ontario.
- b) GIP Construction Ontario East Ltd. (“GIP”) is a contracting company which previously operated as Aecon Construction Ontario East Limited.
- c) AtkinsRealis Construction (Pacific) Inc. (“AtkinsRealis”) is a company which previously operated as SNC-Lavalin.
- d) On March 28, 2019, the City of Ottawa entered into a design, build, finance and maintain agreement for the Trillium Line Extension – Ottawa Stage 2 LRT (the “Project”) with TransitNext General Partnership (the “Project Agreement”).
- e) The scope of the Project included, but was not limited to, rehabilitation, maintenance, and upgrading of the existing Trillium Line infrastructure, including the track and stations extending from Bayview to Greenboro, and expanding the Trillium line with approximately 11.5 kilometers of new track from Greenboro Station to Limebank Station, including the addition of a park and ride at Earl Armstrong and Bowesville Road, including the realignment of Earl Armstrong and Bowesville Road and the construction of the New Walkley Yard.
- f) On March 28, 2019, TransitNext General Partnership entered into a contract with AtkinsRealis to act as the general contractor for the Project.
- g) AtkinsRealis and GIP entered into a single subcontract, dated December 1, 2021 (the Letter of Intent was dated October 5, 2021), under which GIP would perform certain works on the Project (the “GIP Subcontract”) including the supply of all management, coordination,

supervision, labour, materials, equipment and the execution of all necessary work for the Limebank Road Reconstruction, Earl Armstrong Road and Bowesville Road Reconstruction, Park and Rides at Leitrim and Bowesville, MUP Paving, and Emergency Access Roads at Earl Armstrong and High Road (“Subcontract Work”).

- h) In or about February 2022, GIP entered into a sub-subcontract with Bradley-Kelly, under which Bradley-Kelly was to provide roadway lighting and traffic light infrastructure for the road widening at Earl Armstrong Road (the “EA Subcontract”). The EA Subcontract was for work on the Project.
- i) On June 20, 2022, AtkinsRealis and GIP executed Change Order CO-04 pursuant to which certain additional works at the New Walkley Yard were added to GIP’s Subcontract Works (“Walkley Works”). The Walkley Works was for work on the Project.
- j) In or about June 2022, GIP entered into a sub-subcontract with Bradley-Kelly, under which Bradley-Kelly was to provide roadway lighting and electrical work at the New Walkley Yard (the “Walkley Subcontract”). The Walkley Subcontract was for a portion of the Walkley Works on the Project and Bradley-Kelly performed same.
- k) Bradley-Kelly performed work on the Project under the EA Subcontract between October 2022 until approximately December 27, 2023.
- l) Bradley-Kelly performed work on the Project under the Walkley Subcontract from June 2022 until approximately January 25, 2024.
- m) A dispute arose between GIP and AtkinsRealis in the fall of 2023.
- n) On February 15, 2024, Bradley-Kelly preserved a claim for lien for work under the Walkley Subcontract in the amount of \$615,502.85, inclusive of HST, by delivering a form 12 to the City of Ottawa (the “Walkley Claim for Lien”).
- o) On February 15, 2024, Bradley-Kelly preserved a claim for lien for work under the EA Subcontract in the amount of \$761,602.33, inclusive of HST, by delivering a form 12 to the City of Ottawa (the “EA Claim for Lien”).

- p) GIP does not dispute that Bradley-Kelly provided services and materials to the Project for the amounts reflected in the Walkley Claim for Lien and the EA Claim for Lien.
- q) On March 19, 2024, AtkinsRealis vacated the EA Claim for Lien by posting a lien bond in the amount of \$811,602.33, pursuant to an Order of Associate Justice Wiebe under Court File No. CV-24-00716266-0000.
- r) On March 19, 2024, AtkinsRealis vacated the Walkley Claim for Lien by posting a lien bond in the amount of \$665,502.85, pursuant to an Order of Associate Justice Wiebe under Court File No. CV-24-00716266.
- s) A single certificate of substantial performance was published for the Project on October 31, 2024.
- t) There is an ongoing arbitration between GIP and AtkinsRealis as a result of disputes that arose under the GIP Subcontract.
- u) GIP registered a claim for lien on the Project, which was perfected through the issuance of a Statement of Claim in court file no. CV-24-00095503-0000.
- v) There are no lien claimants with an interest in the holdback on the GIP Subcontract aside from Bradley-Kelly and GIP.
- w) The quantum of the statutory holdback maintained by AtkinsRealis in relation to the GIP Subcontract totals \$1,319,068.67 (inclusive of HST).
- x) Bradley-Kelly and AtkinsRealis settled the Walkley Claim for Lien under such terms that \$615,502.85, inclusive of HST, of the statutory holdback will be paid to Bradley-Kelly.
- y) There is a remaining \$703,565.82 of the statutory holdback maintained by AtkinsRealis on the GIP Subcontract.

Did Bradley-Kelly Complete Work on a Single Improvement or Multiple Improvements?

[15] At the heart of these motions, there is one central issue in dispute that ultimately determines whether the EA Claim for Lien was timely: was the project a single improvement, or was the work performed by Bradley-Kelly completed on two sites that constitute separate improvements?

What is the Legal Framework Applicable to the Issue of Determining the “Improvement”?

[16] I will first set out the legal framework applicable to the determination of whether the work was completed on a single “improvement”.

[17] Subsection 31(3)(a)(ii) of the *Construction Lien Act* (previously defined above as the “Act”) provides that, subject to the statutory exceptions for certification and substantial performance, a subcontractor’s lien expires at the conclusion of the forty-five day period following the date on which the person last supplied services or materials to the “improvement”.

[18] “Improvement” is defined at section 1 of the Act as follows:

“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.

[19] The Act defines “land” to include any building, structure or works affixed to the land, or an appurtenance to any of them, but does not include the improvement. The Act also includes a definition of “premises” which includes 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.

[20] In the decision of *The State Group Inc. v Quebecor World Inc. and 4307046 Canada Inc.*, Master Wiebe (as he then was) considered the question of how to determine whether the lien concerned the “same improvement” and stated the following:

The question of “same improvement” appears to be largely a fact finding exercise with the governing principle being the establishment of some nexus between the work done by the lien claimants in question that makes it a common effort. The same improvement can have one “contract” or many “contracts”, but what makes it an improvement is the coordination of the contract work toward a common purpose or goal.¹

[emphasis added]

[21] In *1499545 Ontario Inc. (Northern Bulk Logistics) v Pattern Development*, the Divisional Court confirmed its agreement with Master Wiebe—and the decision of Master Albert in *Vestacom Limited*—that the determination of whether services and materials had been provided to the same improvement is a fact-finding exercise.²

[22] The following passage from the Divisional Court in *Prasher Steel Ltd. v Pre-Eng Contracting Ltd.*, is also material to the issues I must determine on these motions:

Liens arise upon the provision of services and materials to an improvement, and the time to claim a lien expires based on the date of last supply of services or materials to the improvement. Absent certification of substantial performance or completion, it matters not whether a subcontractor provides its services or materials under one subcontract or multiple subcontracts—the subcontractor lien arises upon first supply and persists until expiry following the date of last supply of services or materials.³

[emphasis added]

¹ 2013 ONSC 2277 (CanLII) at para 9.

² 2026 ONSC 1652 (CanLII) at para 29-31.

³ 2024 ONSC 4772 (CanLII) at para 9.

What Evidence Supports that there was a Single Improvement or Multiple Improvements?

[23] Pursuant to *State Group* and *Northern Bulk*, I will now consider the evidence on this motion that supports the parties' respective positions on whether there was a single improvement or multiple improvements.

[24] The evidence supporting Bradley-Kelly and GIP's position that there was a single improvement includes the following:

- a. The Project arises from one procurement process and a single prime contract;
- b. Atkins was the general contractor over the entire Project;
- c. The same individual oversaw work at the Earl Armstrong and New Wakley sites;
- d. The work performed by Bradley-Kelly pursuant to the Earl Armstrong and Walkley Yard subcontracts was for work on the Project;
- e. A single certificate of substantial performance was published. The certificate describes the location of the premises as "All Lands comprising the permanent structures and infrastructure of the below Project". The improvement on the certificate is described as "Design and Construction of the Trillium Line Extension Ottawa Stage 2 LRT Project";
- f. There is only one holdback fund;
- g. The light rail system and/or the Project could not operate without federal and regulatory approval; and,
- h. The Project did not open until the entire Project (including the EA and the Walkley Works) was complete.

[25] Most of the above evidence is also captured in the joint statement of agreed facts.

[26] Bradley-Kelly has also provided evidence that the lands on which the project was constructed are contiguous. For example, the project map and project agreement demonstrate—and require—the contiguous nature of the light rail track and the unified nature of the project. In

addition, the evidence of Bradley-Kelly's affiant (Robert Brennan) is that rails connect the main light rail track to the New Walkley yard where the trains are serviced and repaired. Mr. Brennan's evidence is also that the Earl Armstrong road widening work was done on the road immediately in front of the Bowesville Park and Ride to accommodate one of the new light rail stations for the project.

[27] Turning now to Atkins, what evidence does it rely upon to support its position that there are multiple improvements?

[28] Although Atkins' entire argument is predicated on its position that the project involves multiple improvements and that Bradley-Kelly ought to have registered a general lien under section 20, Atkins could not point me to any piece of evidence in its materials to support its position that there are multiple improvements.

[29] Atkins appears to rely on its assertion that the work was completed on multiple parcels of land or multiple premises. Atkins simply refutes the suggestion that lands separated by multiple kilometres could be one, contiguous piece of land. Atkins also relies on the description provided by Bradley-Kelly in its claim for lien which is limited to a description of the Earl Armstrong site.

Analysis: Bradley-Kelly Supplied Materials and Services on a Single Improvement

[30] In the absence evidence, Atkins' position that there are multiple improvements depends almost entirely on the success of its submissions on the law. I have briefly summarized Atkins' legal argument below.

[31] Atkins submits that the first step is to examine the creation of the EA Claim for Lien which, it submits, ought to have been created under section 20 of the Act which contemplates a general lien for work related to improvements on more than one premises under a single contract. Atkins relies on the *Northern Bulk* and *Caledon* decisions to support its position that the concept of "improvement" is anchored to the "land" and that the description of the lands in the claim for lien is essential. Atkins submits that the caselaw squarely rejects Bradley-Kelly's position that a single contract cannot cover more than one improvement, or that "one contract = one project = one improvement". Atkins submits that if Bradley-Kelly wanted its supply to the Walkley Yard site to

save the timeliness of its EA Claim for Lien, Bradley-Kelly had to expressly identify the Walkley land in its claim for lien.

[32] I reject Atkins' position for several reasons which I have summarized in four points below.

[33] The first major difficulty for Atkins is that Atkins has not provided me with any evidence to support its position that Bradley-Kelly's work was completed on multiple improvements.

[34] The caselaw makes it clear that the determination of whether services and materials were provided to the same "improvement" is a fact-finding exercise.

[35] The only evidence that I have before me is the evidence presented by Bradley-Kelly and GIP which is essentially uncontested.

[36] Based on Bradley-Kelly's evidence as summarized above at paragraphs 24 to 26 and the agreed upon facts, I have no difficulty concluding that Bradley-Kelly's work was completed on a single improvement. Whether it was work completed pursuant to the Walkley Works subcontract or the EA subcontract, Bradley-Kelly's work was completed towards a common purpose and common goal which was to complete the Project.

[37] Other than Atkins' assertions denying same, the only evidence that I have before me is that the work was completed on lands that are contiguous. Bradley-Kelly relies on the Divisional Court's analysis in *Caledon (Town) v 2220742 Ont. Ltd. o/a Bronte Construction*⁴ to submit that the contiguity of the land is a factor in determining what an "improvement" is under the Act. As explained below, I agree.

[38] The legal issue in *Caledon* was the application of the transitional provisions of the new Act. But in discussing the concept of "improvement", the Divisional Court states that the concept of "improvement" is tied to land and in particular, that "the question is whether the works are in respect to the same improvement to the same lands"⁵. Whether the "lands" are the same or different

⁴ 2024 ONSC 4555 (CanLII).

⁵ *Ibid* at paras 32-33.

is a factual finding⁶. Based on the evidence before it, the Divisional Court found that the “lands” were different and not contiguous and that they were separated by roads and privately-owned properties.⁷

[39] I have the exact opposite evidence before me. The only evidence I have is that the lands are contiguous. Applying *Caledon*, the lands at issue in the present case are therefore the same lands. This finding therefore forms part of my conclusion above that all of Bradley-Kelly’s work was completed for the same, or to a single, “improvement”.

[40] Bradley-Kelly submits that read together, *State Group*, *Caledon* and the Act support that an “improvement” is the alteration, addition, repair, construction, erection, or installation, on the same or contiguous lands, of coordinated work being completed towards a common purpose or goal. I agree entirely.

[41] Because I have found that there was a single “improvement”, it follows that pursuant to *Prasher Steel* and section 31(3)(a) of the Act, the EA Claim for Lien was timely because it was preserved within 45 days of Bradley-Kelly’s last day of supply to the improvement (which was January 25, 2024) and it was subsequently perfected in compliance with the Act.

[42] Because of my conclusion above that there was a single improvement, I do not need to make any findings on which version of the Act applies. The parties agreed that the old Act (the Construction Lien Act) applied⁸.

[43] I note that Bradley-Kelly and GIP submitted that there were inherent contradictions in Atkins’ position on whether there was one or multiple improvements in Atkins’ submissions on the different sections of the Act, in particular Atkins’ position on the lien expiry provisions compared to the transition provisions of the Act. I do not need to weigh in on this issue because

⁶ *Ibid* at para 37.

⁷ *Ibid* at paras 37-42.

⁸ Bradley-Kelly asserted an alternative position in the event that I found there were multiple improvements but I do not need to consider that argument because I have found there is only one improvement.

my finding above is dispositive of the motion, but I note that this contradictory position may be a relevant factor on the issue of costs of these motions.

[44] In any event, although my finding above is dispositive of the motions, I will briefly address below the three other reasons why I do not accept Atkins' submissions.

[45] The second reason I do not accept Atkins' submissions is that they were based on a misunderstanding or a misstatement of Bradley-Kelly and GIP's position. For example, neither Bradley-Kelly nor GIP suggested that a single contract could not cover more than one improvement nor did they submit that "improvement" was co-extensive with "contract". Bradley-Kelly and GIP submitted, quite correctly, that the fact that there was only one contract and one Project are factors that I could consider as part of the fact-finding exercise as to whether the services and materials had been provided to the same improvement.

[46] The third reason I do not agree with Atkins is that its position lacked support. This reason applies not only to Atkins' lack of evidence on the issue of the "improvement" but is also applicable to Atkins' submission that Bradley-Kelly ought to have registered a general lien under section 20 of the Act. Several pages of Atkins' factum were focused on Atkins' legal theory on this issue. But other than Atkins' assertions of legislative intent and purpose, Atkins' argument was not supported by any authority. During their submissions, Atkins referred me to two cases⁹ which very generally refer to section 20 being a basis for claiming or creating a lien, but those cases do not analyze the issue and do not support Atkins' legal theory of section 20. In contrast, Bradley-Kelly and GIP referred me to several authorities, including evidence of legislative intent, which support that a general lien under section 20 is designed to assist suppliers of services and materials to a subdivision to preserve their lien. In addition, the wording of section 20 in its plain and ordinary meaning provides that the registration of a general lien is elective ("any person...*may choose* to have the person's lien follow the form of contract and be a general lien").

⁹ *Gillies Lumber Inc. v Kubassek Holdings Inc.*, 1999 CanLII 3757 (ON CA) at para 40; *Leo P. Abrams & Sons Ltd. v MacDonald Homes Inc. (Trustee)*, 1996 CanLII 2970 (ON CA).

[47] Bradley-Kelly’s “path” to the creation of its lien is straightforward. Its lien was “created” under section 14 of the Act. Pursuant to section 16 of the Act, the lien could not attach to “premises” because the land is owned by the Crown and/or is a railway right-of-way. The lien was therefore a charge against the holdback pursuant to section 21 of the Act. I note that this also explains why the lien was not registered against title to any specific property.

[48] In any event, because I have found that there is a single improvement, section 20 does not apply. Even if I had found there were multiple improvements, Atkins’ submissions would not have been sufficient for me to conclude that Bradley-Kelly ought to have registered a general lien.

[49] I would summarize my fourth reason for not accepting Atkins’ submissions as disagreeing with their interpretation of the caselaw. For example, I agree with Bradley-Kelly and GIP that Northern Bulk is distinguishable on the facts and the legal issue it determined. I also agree with their submission that Atkins’ reliance or emphasis on limited passages from the Northern Bulk are taken out of context and/or do not support Atkins’ conclusions¹⁰.

Conclusion

[50] For the reasons set out above, Bradley-Kelly’s motion for summary judgment is granted and Atkins’ cross-motion is dismissed. The EA Claim for Lien was preserved and perfected in a timely manner pursuant to the provisions of the Act. Atkins shall forthwith release the remaining holdback to Bradley-Kelly.

[51] If the parties cannot agree on costs, Bradley-Kelly and GIP shall each deliver brief written submissions of no more than three pages double-spaced (in addition to their costs outline) within 30 days of the date of these reasons. Atkins shall deliver their responding submission of no more than four pages double-spaced (in addition to any costs outline) within 15 days of receipt of Bradley-Kelly and GIP’s submissions. Within 10 days thereafter, Bradley-Kelly and GIP may

¹⁰ See for example the summary of Bradley-Kelly’s analysis at paragraph 56.

deliver a joint reply of no more than two pages double-spaced.

Justice K. Perron

Date: September 11, 2026

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Jay Nathwani for the Defendant, GIP
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Nathan Lean for the Defendant,
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REASONS FOR DECISION

PERRON J.

Released: September 11, 2026