



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Capital Environmental (2025) Limited v. 96886 Newfoundland and Labrador Ltd.*, 2026 NLSC 119

Date: September 17, 2026

Docket: 202501G6797

IN THE MATTER OF the *Mechanics'*
Lien Act, R.S.N.L., 1990, c. M-3

AND

AND IN THE MATTER OF a Claim for
Lien by Capital Environmental (2025)
Limited

BETWEEN:

**CAPITAL ENVIRONMENTAL (2025)
LIMITED**

**PLAINTIFF/
DEFENDANT BY COUNTERCLAIM**

AND:

**96886 NEWFOUNDLAND &
LABRADOR LTD./CALUSADE
DEVELOPMENTS (2025) LTD.**

**FIRST DEFENDANT/
PLAINTIFF BY COUNTERCLAIM**

AND:

**MC CONSTRUCTION MANAGEMENT
LTD.**

SECOND DEFENDANT

Before: Justice Vikas Khaladkar

Place of Hearing: St. John's, Newfoundland and Labrador

Date of Hearing: September 15, 2026

Appearances:

Anna M. Wadden Appearing on behalf of the Plaintiff/
Defendant by Counterclaim

Julia Fitzpatrick Appearing on behalf of the First
Defendant/Plaintiff by Counterclaim

Joseph J. Thorne Appearing on behalf of the Second
Defendant

Authorities Cited:

CASES CONSIDERED: *Fairview Investments Ltd. v. J.D. Irving Ltd.* (1999), 187 Nfld. & P.E.I.R. 175, 566 A.P.R. 175 (Nfld. S.C.(T.D.)); *Terra Services Inc. v. Her Majesty the Queen*, 2018 NLSC 221; *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19; *Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63

STATUTES CONSIDERED: *Mechanics' Lien Act*, R.S.N.L., 1990, c. M-3

RULES CONSIDERED: *Rules of the Supreme Court*, 1986, S.N.L. 1986, c. 42, Sch. D

TEXTS CONSIDERED:

REASONS FOR JUDGMENT

KHALADKAR, J.:

INTRODUCTION

[1] 96886 Newfoundland & Labrador Ltd./Calusade Developments (2025) Ltd., (the "Owner") owned a piece of property at 120 Lemarchant Road, St. John's,

Newfoundland and Labrador that required remediation. It retained the services of Capital Environmental (2025) Limited, (the “Respondent”) herein, for hazardous abatement at the noted property.

[2] The Owner also contracted the services of MC Construction Management Ltd. (the “Applicant”), to provide supervision and construction management for the work to be done at 120 Lemarchant Road.

[3] The scope of the required work was contained in a document compiled and known as Pinchin Hazardous Building Materials Assessment (preconstruction) dated April 02, 2025.

[4] During the course of the project the Respondent concluded that some of the work it was required to do was not, in its estimation, work that it was required to provide under the terms of its engagement by the Owner. It requested a change order from the Applicant, which was not provided. The Respondent elected to refrain from providing further services under the agreement. Another firm was contracted to finish the work which the Respondent had been engaged to perform.

[5] The Applicant takes the position that there is no privity of contract between it and the Respondent. It says that the Claim for Lien and Certificate of Action against it pursuant to the *Mechanics’ Lien Act*, R.S.N.L., 1990, c. M-3 (“Act”) should be vacated. In addition, it says that the Amended Statement of Claim against it should be struck because it discloses no reasonable cause of action.

[6] The Respondent argues that it provided work and materials towards the remediation requested by the Owner and it has not been reimbursed in respect of same. The Respondent also claims damages for breach of contract and, pursuant to the second amendment to its Statement of Claim, damages against the Applicant for negligent misrepresentation and/or negligent performance of a service.

ANALYSIS

[7] The *Act* provides a statutory scheme by which persons who perform work or provide materials in respect of an improvement to land may obtain security for amounts owing to them. Section 6(1) provides that a person who performs work or provides materials for an owner, contractor or subcontractor has a lien for the price of that work or those materials upon the estate or interest of the owner in the land. The *Act* also requires the retention of a statutory holdback against which lien claims may, in appropriate circumstances, be enforced.

[8] The *Act* does not require direct privity of contract between the lien claimant and the owner. A person performing work or providing materials for an owner, contractor or subcontractor may acquire a lien under section 6(1), subject to the other requirements and limitations contained in the *Act*.

[9] In this case, any Claim for Lien arising from work performed by the Respondent attaches to the proprietary interest of the Owner in the subject property. It does not attach to the Applicant or to any property of the Applicant. There is, therefore, no Claim for Lien against the Applicant which can be vacated. To the extent that the Applicant seeks an Order vacating the Claim for Lien and Certificate of Action as against it, that request for relief is misconceived.

[10] It is settled law that the decision to declare a lien invalid should not be lightly undertaken at the stage of an interlocutory application unless the request to do so falls within the category of the clearest of cases. *Fairview Investments Ltd. v. J.D. Irving Ltd.* (1999), 187 Nfld. & P.E.I.R. 175, 566 A.P.R. 175 (Nfld. S.C.(T.D.)) at paragraph 13 and *Terra Services Inc. v. Her Majesty the Queen*, 2018 NLSC 221 at paragraph 24.

[11] To the extent that there are no allegations in the Statement of Claim, as amended, that the Applicant has contractual liability to the Respondent, I agree that no reasonable cause of action in contract is disclosed. The Respondent's contract for

the supply of services relating to the remediation of the property was with the owner, not with the Applicant.

[12] The *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D (“Rules”) at Rule 14.24(1)(a) give the Court the authority, at any stage of the proceedings, to order any pleading to be struck out if it discloses no reasonable cause of action or defence. The Rule has been the subject of analysis by the Supreme Court of Canada in *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19, at paragraph 14. In that case the court held that the test is whether it is plain and obvious, assuming the facts pleaded to be true, that the claim discloses no reasonable cause of action.

[13] The Statement of Claim in this case has now been amended twice and, by the second amendment, the Respondent alleges that the Applicant committed the tort of negligent misrepresentation and/or was negligent in the performance of a service. Claims for pure economic loss arising from negligent misrepresentation or negligent performance of a service are recognized at law and do not depend upon contractual privity between the parties (*Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63). Accepting the material facts pleaded as true for the purpose of this Application, I cannot conclude that it is plain and obvious that those claims cannot succeed. They will therefore not be struck.

[14] The fact that this proceeding was commenced to enforce a claim under the *Act* does not, in itself, preclude the Respondent from advancing a related claim in tort against a party to the proceeding. Section 36(4) permits the Court to determine questions arising in the action that are necessary to dispose of it and to adjust the rights and liabilities of the persons appearing before it. The allegations of negligent misrepresentation and negligent performance of a service against the Applicant arise directly from the scope of the remediation work which underlies the Claim for Lien. I am not satisfied that those allegations must be pursued in a separate proceeding.

[15] The Applicant filed its Application on April 12, 2026. It was not until June 2, 2026 that the Respondent applied to amend its Statement of Claim for the second time and incorporated allegations of negligent misrepresentation.

[16] I therefore Order as follows:

- a. The Applicant's request that the Claim for Lien and Certificate of Action be vacated as against it is dismissed. Nothing in this decision determines the ultimate validity or enforceability of the Claim for Lien against the interest of the Owner in the subject property.
- b. To the extent that the Respondent advances a claim for damages for breach of contract against the Applicant, that claim is struck on the basis that it discloses no reasonable cause of action. This does not affect the Respondent's claim for negligent misrepresentation and/or negligent performance of a service.
- c. Although the result of the Application is mixed, when the Application was filed, the Respondent had not pleaded a cause of action in negligent misrepresentation against the Applicant. That cause of action was introduced only by the second amendment to the Statement of Claim after the Application, now before me, had been commenced. In the circumstances, the Applicant shall have its costs of this Application against the Respondent in any event of the cause, calculated under Column III of the Schedule of Costs. The need to address whether any viable cause of action was pleaded against the Applicant arose, in substantial part, because the claim in negligent misrepresentation was not pleaded until after the Application had been commenced.

VIKAS KHALADKAR
Justice