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## Improvement v Premises: Northern Bulk Draws the Line

### Key Takeaway

The recent decision of *1499545 Ontario Inc. (Northern Bulk Logistics) v Construction Energie Renouvelable GP/S.E.N.C.*, 2025 ONSC 111, considered whether the claim for lien of Northern Bulk Logistics (“**Northern Bulk**”) and the lien of another lien claimant (i.e., Corbiere) related to the same premises. The crux of the issue argued before the court was that if both liens related to the same premises, then Northern Bulk had to be served with a notice of trial in the Corbiere action and therefore became a party to that action. If Northern Bulk was a party to that action, then Northern Bulk’s lien could be enforced as part of the Corbiere action.

The Court held that the improvement that gives rise to the lien is restricted to the improvement on the lands described in the claim for lien. In this case, the Court concluded that the lands subject to Northern Bulk’s lien were entirely different than the lands subject to the Corbiere land. Therefore, Northern Bulk’s lien could not be enforced in the Corbiere action because the two lien actions did not relate to the same premises.

Notably, the Superior Court of Justice’s decision is under appeal. It remains to be seen whether the appellate court will uphold the lower court’s reasoning or adopt a different approach. Regardless, what is clear is that it is critical to ensure that your lien or your client’s claim is set down or an order for trial is obtained within the two-year period stipulated under the *Construction Act*.

### Factual Context

In this case, the issue before the court concerned two streams of contracting parties for the development of a wind-powered electric generating facility (the “**Project**”).

The first stream of contracting parties fell under Construction Energie Renouvelable GP/S.E.N.C. (“**CER**”). In brief:

- CER was the general contractor for the construction of the wind turbines.
- CER subcontracted with TimberRidge to provide road maintenance services.
- TimberRidge subcontracted with Northern Bulk.
- On October 23, 2019, Northern Bulk registered its lien which was subsequently perfected on December 3, 2019.
- At the two-year anniversary of the issuance of the statement of claim, Northern Bulk had not set down its action for trial and had not obtained a trial date.

The second stream of contracting parties fell under PowerTel Utilities. In brief:

- PowerTel Utilities Contractors Limited was the general contractor for the construction of the transmission lines.
- Corbiere was a subcontractor to PowerTel.
- Corbiere registered a claim for lien on September 6, 2019 which was subsequently perfected on October 17, 2019.
- The Corbiere action was set down for trial on March 19, 2021.

### The Court’s Analysis

For context, it is important to note that pursuant to section 37 of the *Construction Act*, a perfected lien will expire on the second anniversary of the commencement of the action unless an order is made for the trial of the action or the action in which the lien may be enforced is set down for trial.

As noted above, in this case, Northern Bulk did not set down its action for trial or obtain an order for trial within two years of the commencement of its action. However, Northern Bulk relied on section 37 to argue that as its lien arose out of the same “improvement” as another lien action (i.e., the Corbiere lien action) which was set down for trial within two years of the Northern Bulk action being commenced with the result that Northern Bulk’s lien was not expired. In particular, Northern Bulk argued that both it and Corbiere provided goods and services in respect of the same improvement. Since the definition of “premises” includes “improvement”, Northern Bulk argued that the liens were preserved against the same premises.

The Superior Court described Northern Bulk’s position as arguing that the “improvement” drives the definition of the “premises”. The Court disagreed with Northern Bulk’s position. The Court noted that a person who supplies services or materials to an improvement (i.e., a lien claimant) has a lien upon the interest of the owner in the premises improved. While the definition of “premises” is deemed to include the improvement, the definition of “improvement” is tied and restricted to the lands described in the claim for lien.

In this case, Corbiere described specific lands in its claim for lien. Northern Bulk’s claim for lien described different lands than those described in the Corbiere lien. The Court concluded that the *“logical result of this analysis is that the plaintiff’s lien cannot be enforced in the Corbiere action because the two lien actions do not relate to the same premises.”* The Court, in distinguishing a prior court decision where the continued viability of a claim for lien was at issue, noted that in that prior case it was safe to assume that the various lien claimants had supplied goods and services to the same land.

In support of its analysis, the Court noted that the ultimate remedy in a lien claim is the sale of the lands affected by the liens or an order for the disposition of the security paid into court. The Court noted that in the Corbiere action, Northern Bulk could have no entitlement to any part of the proceeds of sale or security because the lien did not attach to the same premises.



Rosario Carnovale, Student  
T. 647-933-1479  
[rcarnovale@margiestrub.com](mailto:rcarnovale@margiestrub.com)



[Sharon Sam](#), Partner  
T. 437-747-4550  
[ssam@margiestrub.com](mailto:ssam@margiestrub.com)