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A Dissolved Corporation May Lose its Lien Rights

Key Takeaway

Failing to comply with corporate administrative filing procedures, even failures arising through innocent mistake or inadvertence, can severely prejudice your lien rights. For example, a failure to pay corporate filing fees may result in the dissolution of a corporation. Because a dissolved corporation is not a legal entity entitled to preserve and perfect a lien, your lien can then be declared expired and be discharged.

The Background

The Superior Court of Ontario decision of 9727868 *Canada Inc. (Plug & Play Solutions) v. Deltro Electric Ltd.* considered the lien rights of a dissolved corporation.¹ In that case, the lien claimant, Plug & Play Solutions (“**Plug & Play**”), claimed it was owed \$445,991.52 by the defendant, Deltro Electric Ltd. (“**Deltro**”).

Plug & Play’s lien rights expired on April 4, 2019. Unbeknownst to Plug & Play, at the time it preserved and perfected its lien, the company had been dissolved because of a failure to pay corporate filing fees. After learning that the corporation had been dissolved, Plug & Play’s corporate status was revived. The revival occurred approximately eight months after the expiry of Plug & Play’s lien rights.

Thereafter, Deltro brought a motion and sought, among other things, to declare the lien expired and to discharge the lien because Plug & Play was a dissolved corporation prior to the expiry of the preservation and perfection period.

The Court’s Decision

The court ultimately found that because Plug & Play was formally dissolved at the time it preserved and perfected the lien, it was not a legal entity entitled to preserve and perfect. Therefore, Plug & Play did not comply with the required timelines in the *Construction Act* and the lien was discharged.

In its analysis, the court considered s. 212(4) of the *Canadian Business Corporations Act*. That section states that a company ceases to exist once it has been dissolved. The court also considered an earlier decision of the Divisional Court in *Glencoe Insulation Co. Limited v. 3170497 Canada Inc. (“Glencoe”)*²

In *Glencoe*, the Divisional Court held that “*the dissolution of a company does not render the company non-existent, but rather it is in a state of legal limbo capable of restoration by Articles of Revival which will restore for all purposes nunc pro tunc save for rights acquired by any person in the interim.*”

Simply put, while a lien may be preserved and perfected while a corporation is dissolved, the claim remains in abeyance, albeit one that can be revived.³ However, if the statutory period for preserving and perfecting expires while the company remains dissolved, the defendant has acquired a “post-dissolution right” or right to rely on the expiration of the limitation period to defeat a now statute barred claim.

¹ [2021 ONSC 8182](#).

² 2003 CarswellOnt 6310 [*Glencoe*]

³ *Glencoe* at para 23.

The court found that it had no discretion in equity to permit the lien to continue given the context of the *Construction Act* where the expiry of the lien is mandated by statute and given the Divisional Court decision in *Glencoe*. In addition, the court noted that even if it did have discretion to allow the lien to survive it would not do so because Plug & Play should have kept its corporate affairs in order, there were no special circumstances to permit the lien to continue, lien claimants must comply with the timelines set out by the statute, and Plug & Play had other remedies in *quantum meruit* and breach of trust available to them.



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



[Simren Sihota](#), Associate
T. 647-794-1564
ssihota@margiestrub.com

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