

April 13, 2023

Considering the Jurisdictional Nuances of an Associate Justice's Authority

Key Takeaway

It is important for counsel to be mindful of the jurisdictional limitations of an Associate Justice's authority when assessing where to bring your client's motion. The expanded authority of a lien reference Associate Justice pursuant to section 58(4) of the former *Construction Lien Act*, RSO 1990, c C.30 ("**CLA**"), is limited to those liens and lien actions that have been specifically referred to be determined by an Associate Justice and any other liens and lien actions that become subsumed in the reference by operation of the *CLA*. The court's expanded authority cannot be used for other non-related lien actions, including breach of trust claims.

The decision of *Pylon Paving (1996) Inc. v. Beaucon Building Services et al.*,¹ delves into the nuances of an Associate Justice's authority in relation to a breach of trust claim (a non-lien action).

The Background

Pylon Paving (1996) Inc. ("**Pylon**") was a subcontractor to Beaucon Building Services Inc. ("**Beaucon**"). Pylon remained unpaid for their asphalt and concrete work. Pylon preserved and perfected its lien. The lien action was referred to Associate Justice Robinson. Pylon also commenced a separate breach of trust action seeking relief under the former *CLA*. The trust action was not referred to the lien action.

Beaucon did not defend the lawsuit.

Pylon brought a motion for, *inter alia*, judgment on its breach of trust claim against Beaucon and its principal on various grounds.

Joining Trust Claims and Lien Actions under the *CLA*?

As noted above, the dispute in this case was governed by the former *CLA*. As a result, of sections 50(1) and (2) of the *CLA*, the Court affirmed that Pylon's breach of trust claim could not be joined with its lien claim. Interestingly, the Court also notes that subsection 50(2) has been repealed. While the Court does not comment further on the impact of subsection 50(2) being repealed, the question of whether joinder is possible under the *Construction Act* is an issue that is still open for debate and has yet to be definitively resolved.

Associate Justice's Authority under the *CLA* in a Related Breach of Trust Action

There is no dispute that section 58(4) of the *CLA* grants an Associate Justice significant expanded authority. It provides a lien reference Associate Justice with "all the jurisdiction, powers and authority of the court to try and completely dispose of the action and all matters and questions arising in connection with the action."

¹ [2022 ONSC 3282](#).

However, these expanded powers cannot be used in the context of a breach of trust action where the breach of trust action has not been referred to the lien reference under rule 54 of the *Rules of Civil Procedure* (the “**Rules**”). If Pylon had brought a motion to a Justice under rule 54, the Justice may have granted an order “transferring” the action to the construction lien court. However, that was not the case.

As a result, the Court could only grant judgment if an Associate Justice had the jurisdiction to do so under the *Rules* governing ordinary civil actions.

An Associate Justice’s Jurisdiction to Grant Default Judgment is Limited

Pylon sought default judgment pursuant to Rule 19.05 of the *Rules*. However, the Court found that Rule 19.05 expressly requires the motion be brought before a Justice. Therefore, an Associate Justice, outside a lien reference, does not have jurisdiction to grant default judgment under Rule 19.05.

The Court noted that an Associate Justice’s authority to grant default judgment is limited to the types of claims that fall under subrule 19.04(1) – being a debt or liquidated demand in money, recovery of possession of land, recovery of possession of personal property, and foreclosure, sale or redemption of a mortgage.

Pylon’s breach of trust claim, as pleaded, did not fall under the type of claims identified at Rule 19.04(1). Pylon’s statement of claim pleaded the elements of a breach of trust claim; however, neither the extent of the trust nor the extent of the alleged breach of trust were pleaded. Therefore, the extent of the breach of trust was a matter requiring judicial determination. As a result, Pylon’s claim was an unliquidated claim which is not a claim for which an Associate Justice has jurisdiction.

Associate Justices Have Jurisdiction to Grant Summary Judgment

Pylon also sought summary judgment.

Rule 20 of the *Rules* permits a summary judgment motion to be brought before an Associate Justice (with some restrictions on the Associate Justice’s authority and powers) and there is no similar restriction on the jurisdiction to grant judgment for an unliquidated sum. As a preliminary point, the Court commented that it was interesting, or as Associate Justice Robinson wrote – “inconsistent” – that an Associate Justice is precluded from granting default judgment on an unliquidated sum, yet is still entitled to grant summary judgment on that same unliquidated amount.

Subrule 20.02(2) directs that summary judgment may be granted if the court is satisfied that there is no genuine issue requiring trial. There will be no genuine issue requiring trial when the court is able to reach a fair and just determination on the merits. This assessment is based only on the evidence in the record and is done without the fact-finding powers provided for in subrules 20.04(2.1) and (2.2). The enhanced fact finding powers allow for evidence to be weighed, credibility to be assessed, inferences to be drawn and further oral evidence.

An Associate Justice under a lien reference has access to these enhanced fact finding powers. However, an Associate Justice hearing a summary judgment motion in an ordinary civil litigation action does not have access to these enhanced fact finding powers.

Notwithstanding the above limitations, Associate Justice Robinson found summary judgment was appropriate for this case as there was no genuine issue requiring a trial and there was no need to rely on the aforementioned enhanced powers.

Associate Justices Lack Jurisdiction to Make an Order Under Section 178(1)(d) of the BIA

Pylon sought a declaration that the judgment against the defendant survive any subsequent assignment into bankruptcy pursuant to s. 178(1)(d), which preserves a debt or liability arising out of misappropriation while acting in a fiduciary capacity.

The “court” is a defined term under the *Bankruptcy and Insolvency Act* (“**BIA**”), and means a Justice of the Superior Court, and includes a registrar when exercising the powers of the court conferred on a registrar under the *BIA*. There is no mention of other judicial officers.

Associate Justice Robinson found that since he is neither a Judge nor a registrar in bankruptcy and has not been authorized by the Chief Justice to exercise any of the powers or jurisdiction conferred to the Ontario Superior Court of Justice by virtual of section 183 of the *BIA*, he lacked the jurisdiction or authority to make any declaration under the *BIA*, including under s. 178(1)(d).



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