

LUMBERMEN'S ONTARIO BULLETIN

Construction Credit Reports Since 1915

The below article is the third in a series of legal articles written by Anna M. Esposito, head of the Construction Group at Pallett Valo LLP in Mississauga which will focus on pitfalls to avoid when exercising lien rights.

Naming the Wrong Lien Claimant

While it seems difficult to imagine, there have been situations in which a lien claimant improperly identifies *itself* in a Claim for Lien with fatal consequences. This usually arises when there is some confusion or ambiguity about the lien claimant's corporate name or legal status.

In *Triple "R" Demolition Inc. v. 1186468 Ontario Ltd.* the lien claimant entered into a contract in a corporate name before that corporation had been brought into legal existence. The lien claimant represented itself as operating a valid corporate entity throughout the contractual negotiations, during the construction and until completion of most of the work. Then a dispute arose over payment. Only then was the corporation incorporated and a lien registered. The court found that since the underlying contract was non-existent, a claim for lien based on a void contract could not be upheld, and the lien was discharged. Since the corporate entity that registered the lien was non-existent at the time of the underlying contract, the court refused to 'save' the lien using the curative provisions of section 6 of the *Construction Lien Act*.

The *Triple "R"* case can be contrasted to the decision reached in the case of *G.C. Rentals Ltd. v. Falco Steel Fabricators Inc.* In *G.C. Rentals*, the lien claimant improperly identified itself on the Claim for Lien as "G.C. Rentals Ltd." when the registered business name was actually "G.C. Rentals & Repairs". The court held that because G.C. Rentals & Repairs was still a legal entity capable of suing and being sued, the misnomer was a minor irregularity and could be saved by section 6 of the Act. The court also found that no one had been prejudiced by the mistake, as all parties knew who they were dealing with despite the misnomer.

A corporation that is dissolved (sometimes for technical reasons, like failing to make annual filings), can be procedurally revived thereafter. A Claim for Lien filed by a dissolved corporation is without validity unless the corporation is revived 'in time'. If the corporation is revived after its lien rights have expired, the Claim for Lien registered by the dissolved corporation is a nullity and cannot be saved by section 6 of the CLA.

For more information regarding this article please contact Anna Esposito at 905-273-3022 ext 260 or aesposito@pallettvalo.com

PALLETT VALO LLP
Lawyers & Trade-Mark Agents