

LUMBERMEN'S ONTARIO BULLETIN

Construction Credit Reports Since 1915

The below article is the second 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.

Registering a Lien on the Wrong Land

While every attempt should be made to complete a Claim for Lien accurately, perhaps the most vital information contained in the Claim for Lien is the legal description of the land to which the lien attaches. Although there has been the odd exception, generally, if a lien claimant fails to identify the correct property on the Claim for Lien, the lien will be found to be invalid. Such was the case in the 1998 decision of *Electrical Equipment Co. v. General Motors of Canada* where the lien claimant registered its lien on the defendant's head office rather than its truck plant where the work was done. In *Bravo Cement v. University of Toronto* the court clearly stated that the discretionary power of the court under s. 6 does not extend to permit a court to validate a claim for lien where wrong lands are named. The setting out of the wrong lands is a fatal flaw which a court is not empowered under the Construction Lien Act to correct.

In *Riverside Glass Ltd. v. Charron's Quality Market Ltd.* the defendant owned two adjoining lots, Lot 111 and Lot 112. The lien claimant supplied materials for the improvement of Lot 111 but registered a lien on Lot 112. Eventually Lot 112 was going to be used as a parking lot for the market that was being built on Lot 111. In reaching the decision that the lien was valid, the court relied primarily on the definition of "premises" in the CLA which includes "the land occupied by the improvement, or enjoyed therewith". The court invoked section 6 to "cure" the defect. This case is one of the very few where a lien on the wrong land was saved. In most "wrong land" cases the lien is found to be invalid.

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