WeirFoulds LLP

What Are We Waiting For? A Cautionary Endorsement on Timing, Process, and Priority of Lien Claims Caught in an Insolvency

November 20, 2025

By Krista Chaytor, Fabiola Bassong, Hayden Trbizan

Introduction

In a recent endorsement concerning lien claims in receivership proceedings[1], the court offers a nuanced and pragmatic message for construction stakeholders, insolvency practitioners, and receivers.

On one hand, the court conveys that lien proceedings should not automatically be consigned to a grinding halt under insolvency stays.[2] On the other hand, the court warns that lien claimants should not wait too long to seek protective relief against the statutory two year set down requirement in the *Construction Act, R.S.O. 1990, c. C.30 ("**Construction Act**").* In doing so, lien claimants may find the court unreceptive absent a concrete legal and evidentiary basis.[3]

The endorsement is both encouraging and exacting. It recognizes the imperative to respect the expeditious processes under the *Construction Act* while insisting on disciplined, timely litigation strategy during insolvency.

The helpful part for lien claimants: lien claims need not be trapped in an insolvency deep freeze

The court squarely rejects the notion that lien claims must always await the end of receivership realization before any procedural progress can occur. Rather, the court emphasizes the policy of the *Construction Act* for timely prosecution alongside the practical reality that lien rights and priorities, including trust and holdback issues, may sit at or near the top of the priority ladder in an insolvency. Where validation and quantification of lien claims are inevitable to facilitate project continuation or to inform distribution priorities, the court signals that there is no automatic rule relegating lien litigation to the end of the line.[4]

This recognition by the court matters for at least three reasons:

1) it acknowledges the public policy embedded in the *Construction Act* to resolve lien rights quickly, protecting trades and suppliers and keeping money flowing on projects;

2) it invites case-specific solutions to permit lien issues to advance in tandem with realization, especially where doing so poses no tangible prejudice to the receivership's objectives[5]; and

3) it endorses creative procedural mechanisms, such as "lien regularization" models, that can preserve statutory rights while streamlining process, thereby avoiding the blunt choice between paralysis and full-tilt litigation during a stay.[6]

In short, the court suggests a preference for lien claims to progress rather than be caught in abeyance for an unknown duration.

The cautionary part for lien claimants: delay in seeking relief may undercut the very protection lien claimants need

The endorsement is equally clear that the court may not use procedural tools to avoid the adverse consequences of section 37 of the *Construction Act*. While the court accepts that *bona fide*, imperfect compliance can sometimes be regularized, it draws a firm line between remedying technical non‑compliance and deploying deeming language to sidestep an inconvenient statutory requirement.[7] Ultimately, the closer parties come to the two year set down date without having sought to lift the stay or to implement a structured process consistent with the *Construction Act*, the more skeptical the court will be of last‑minute workarounds.[8]

The court's prospective questions make this caution concrete. From now on, lien claimants should expect to be asked why the stay could not have been lifted earlier or a parallel process established before the expiry of the two year period, and how any proposed order aligns with the scheme prescribed by the *Construction Act*.[9] The court's reluctance to "simply help find a way to avoid"[10] section 37 underscores that delay is not neutral. Instead, it creates risk that protective orders may be withheld if parties have not marshalled a legal basis and evidence required to reconcile insolvency management with statutory timelines.

Reconciling insolvency pragmatism with *Construction Act* discipline

In navigating the tensions inherent in insolvency proceedings, the court recognizes the legitimate efficiencies of waiting to assess claims to clarify who is in the money and accepts that premature litigation can impose needless costs. However, the court refuses to let those considerations supplant the expeditious nature of the *Construction Act*, particularly where lien rights and priorities can materially affect project outcomes and distributions. The court's analysis invites receivers and lien claimants to work together earlier to identify whether, and to what extent, lien issues can be advanced without jeopardizing realization. It also signals that, when creative solutions are proposed, they should mirror the substance of the statutory regime rather than dilute it.

Practical implications for lien claimants, receivers, and secured creditors

The main takeaway is that parties should evaluate lien processes well before the section 37 deadline, and where appropriate, seek narrow lifts of the stay or targeted regularization orders that align with the intent of the *Construction Act*.

Going forward, parties should be prepared to show why earlier movement was not feasible, what prejudice (if any) would arise from allowing lien steps to proceed during realization, and how the proposed process preserves statutory rights. Conversely, secured creditors and receivers should anticipate that courts will not allow indefinite deferrals where high‑priority lien issues could be addressed without undermining the receivership.

Finally, lien claimants who assume that the court will bless late‑stage deeming relief risk adverse outcomes. The better course is early, principled engagement to either move to lift the stay or propose a structured, statute‑consistent process that both safeguards lien rights and respects the practical imperatives of insolvency administration.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

[1] *MCAP Financial Corporation v. Vandyk – The Buckingham North – Grand Central Limited*, 2025 ONSC 6358.

[2] *Ibid* at paras 13-16.

[3] *Ibid* at para 27.

[4] *Ibid* at paras 9-16.

[5] *Ibid* at para 17.

[6] *Ibid* at para 18.

[7] *Ibid* at paras 19-21.

[8] *Ibid* at para 27.

[9] *Ibid* at para 28.

[10] *Ibid* at para 21.

For more information or inquiries:

Krista Chaytor

Toronto
416.947.5074

Email:
kchaytor@weirfoulds.com

Krista Chaytor is an experienced litigator with a practice focused on business litigation.

Fabiola Bassong

Toronto
647.715.7132

Email:
fbassong@weirfoulds.com

Fabiola Bassong is an Associate in the Construction Practice Group at WeirFoulds LLP.

Hayden Trbizan

Toronto
647.715.7116

Email:
htrbizan@weirfoulds.com

Hayden Trbizan is an Associate in the Construction Practice Group at WeirFoulds LLP.

WeirFoulds LLP

www.weirfoulds.com

Toronto Office
4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office
1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035

© 2026 WeirFoulds LLP