

Innocent typo can have significant impact on claim

Ounce of prevention goes long way in electronic registration of liens

By ROSA L. MAURO
(DCN SPECIAL)



We are seeing an increasing number of "bad liens" due to easily avoided clerical errors in electronic registration.

For example, a lawyer is hired by a contractor to register a claim for lien. The conveyancer in the lawyer's office keys in the wrong Property Identifier Number (PIN). No one bothers to pay the extra \$18 (plus taxes) to obtain a copy of the Parcel Register after the lien is believed to have been registered.

Unfortunately, this innocent typo is a significant, often fatal, mistake. The claim for lien is registered against the wrong land. Usually, the error is not discovered until someone points it out after the 45-day period for preservation of a lien under the Construction Lien Act (CLA).

The client is notified. Steps are taken. The lawyer

re-registers the lien against the correct parcel of land and issues a Statement of Claim and Certificate of Action, but it is most often too late. The lien rights have expired.

For a construction lawyer, this means exposure to liability to both the client and the innocent land owner under s. 35 of the Construction Lien Act. For the client, this is the end of the claim for lien.

The provisions of s. 6 of the CLA do not apply. This is not a "minor irregularity."

In *Bravo Cement vs. University of Toronto* (1991), 46 C.L.R. 207, Justice Holland explained why liening improper land is fatal:

The curative provision of s. 6 of the CLA has clearly narrowed the court's authority to correct defects in the process employed by a lien claimant in complying with s. 34(5). Section 34(5)(e) was considered by the Master as the applicable provision and while he 'always felt that registering a lien on the wrong land invalidated the lien,' he expressed concern about the decision of *Nor-Min Supplies Ltd. et al. vs. Canadian National Railway Co. et al.* (1979), 27 O.R. (2d) 390 (decided under the Mechanics' Lien Act), and felt that he must follow the decision of this court in *Allied Fasteners and Supplies Ltd. vs. Benoit Mario Perras*, unreported, November 20, 1989. He exercised a discretion which he felt he had under s. 6 of the CLA and held the

liens to be valid and denied the appropriate relief sought . . . Naming the wrong lands in the claim for lien is a fatal flaw which the court is not empowered to correct under the present act. Accordingly, consideration of the issue of prejudice, relevant only to the exercise of the court's discretion does not arise.

Sheltering is of no help. Sheltering applies to perfection of liens not preservation of liens. The text writers are unanimous that registering a lien against the wrong property is a fatal flaw.

Consider this example: A lien is registered against three parcels of land. However, two parcels are the correct PIN and the third is registered against the wrong land. If you discover, after ordering the Parcel Register, that you have used the wrong PIN number, do not release the lien outright and then re-register against the correct land. Register the lien against the correct land. If there is any chance

that the lien is still in time, then do not release or discharge the erroneous lien, simply vacate it from title to the "wrong" land, by court order, and immediately register (perfect) the lien on the "right" land. The courts have determined that the release of a lien discharges the lien, and it cannot be revived.

What about prevention? The best protection is to double—even triple check—the item in draft before registering. You must be 100 per cent certain that you have all the correct information in the lien, particularly the PIN number, before clicking "Register" in Teraview. By simply ordering a Parcel Register at the time of registration to check and confirm the actual registration details would put an end to most of these cases. They would be caught before the lien expired.

And what about mitigation? If the lien has expired, register a release of lien immediately against the

"wrong land." If that lien has been vacated or perfected, an order will be required. Commence an action in debt. Claim on the payment bond, if any. Start a trust claim. All the client has lost is the lien, not the right to claim for breach of contract, breach of trust, and/or for compensation under a labour and material payment bond.

Rosa L. Mauro is an associate with the law firm *Glaholt LLP*, which specializes in construction litigation.

City settles dispute with bank over demolition

THUNDER BAY, Ont.

The city has agreed to pay the Royal Bank of Canada more than \$2.4 million to settle a dispute involving the demolition of a grain elevator.

"The settlement is now final," city lawyer Rosalie Evans said. "All the paper-

work is done and the money has been paid."

The city reached the out-of-court settlement with the bank in the past few weeks, Coun. Mark Bentz said.

In October 2000, the city guaranteed a loan for the demolition of the elevator. The dilapidated concrete

elevator, a sentinel in Thunder Bay for decades, was destroyed with explosives on Dec. 17, 2000.

Thunder Bay Waterfront Development Inc. "defaulted on its obligations to the bank," triggering a guarantee by the city, Evans said.

The Canadian Press

REQUEST FOR TENDER

REFERENCE #	155-T-04
DESCRIPTION	Watermain Replacement on Doncaster Avenue, Henderson Avenue, and Watermain Extension on Proctor Avenue
CLOSING DATE AND TIME	August 20, 2004, 10:00 a.m. local time
DOCUMENT PICK-UP	Documents will be available for pick-up (no fax or email) on and after August 6, 2004.
The official bid document must be obtained C.O.D. (cash on delivery) at \$50 CDN per package through the Contact Centre , Markham Civic Centre, Unionville Entrance, Main Level, 101 Town Centre Boulevard, Markham, ON. If a courier is picking up the document, the courier must identify the bidder's company name at the time of pick-up.	
The non-refundable bid document fee is payable in cash or cheque to The Corporation of the Town of Markham.	
BID SUBMISSION	
Sealed Bids for the tender, addressed to the Town Clerk, Clerks Department, Markham Civic Centre, 101 Town Centre Boulevard, Markham, ON L3R 9W3 will be received at the specified closing date and time as listed above.	
Under no circumstances will facsimile or late bids be accepted or considered.	
The Town of Markham relies on this advertisement to provide public notice of this business opportunity and is not obligated to notify any potential bidders in any other manner.	
INQUIRIES:	
For tender pick-up:	Contact Centre, Unionville Entrance, Main Level, 101 Town Centre Boulevard, Markham, ON
Technical Inquiries:	Paul Li, P.Eng. Chisholm, Fleming and Associates, 905 474-1458
Contractual Inquiries:	Ivy Ho, Purchasing Supervisor, 905-477-7000, ext. 3190, Email: iho@markham.ca
Bid Results:	Phone 905-477-7000, ext. 2222
View Document online:	Log on to the www.bidnavigator.com



www.markham.ca

DOCUMENT #2004-405P
SINGLES AND SENIORS HIGH-RISE APARTMENTS
(MISSISSAUGA)

DOCUMENT #2004-406P
FAMILY TOWNHOUSES
(MISSISSAUGA AND BRAMPTON)

Peel Housing Corporation Turn Key Proposal Call
Quick Start (Pilot Program)
Affordable Rental Housing Program

The Regional Municipality of Peel on behalf of the Peel Housing Corporation o/a Peel Living an independent Corporation administered by the Region of Peel Housing department, is inviting turn key proposals from private sector developers, private/non-profit partnerships and the non-profit sector to construct affordable rental housing. Proponents are to develop projects on their own sites which will be delivered turn key to PHC for operation and management.

Priority will be given to proposals with short construction time frames to unit completion that result in the creation of new affordable rental housing units through new construction, renovation, rehabilitation or conversion. It is also recognized that there are affordable rental housing projects that are well advanced and "development ready" which may be suitable. Proposals to displace existing tenants will not be considered. To be eligible a proponent must be a corporation and the project (s) supported must be within the defined catchment area(s). Projects must contain a minimum of one hundred (100) new affordable rental housing units for the Family Townhouses in the Mississauga and Brampton catchment area and one hundred and fifty (150) new affordable rental housing units for the Singles and Seniors High-rise Apartments in the Mississauga catchment area. All of the units in the project(s) must be new affordable rental units.

Documents may be obtained at Purchasing, 10 Peel Centre Drive, 1st Floor, Brampton, Ontario L6T 4B9 during the hours of 8:30 a.m. to 4:30 p.m. **on or after 12:00 noon local time MONDAY, AUGUST 9, 2004.**

SEALED PROPOSALS, clearly marked as to contents and on forms supplied by the Region of Peel, can be obtained and will be received by Purchasing, 1st Floor, 10 Peel Centre Drive, Brampton, Ontario, L6T 4B9, telephone (905) 791-7800 ext. 4303 and fax (905) 791-3697 on or before:

12:00 noon local time
THURSDAY, AUGUST 26, 2004

NO SUBMISSIONS WILL BE ACCEPTED AFTER THIS DEADLINE.

Region of Peel
Working for you



CORPORATION OF THE
CITY OF KITCHENER

TENDER

T04-045 –
WATER STREET SOUTH
RECONSTRUCTION
(JUBILEE DRIVE TO
JOSEPH STREET)

SEALED TENDERS, complete in every respect, submitted in the envelope provided or your envelope, clearly marked with the tender number, closing date and your company name will be received by the undersigned until 12 Noon, Local Time,

THURSDAY,
AUGUST 19TH, 2004

Water Street South Reconstruction Project – Jubilee Drive to Joseph Street – extending over an approximate distance of 390 metres.

The work includes the replacement of the existing sanitary sewer, storm sewer, watermain, roadway, curb and gutter, sidewalks and municipal service connections to the street property line.

Tender documents may be obtained from the City of Kitchener, Purchasing Division, 4th Floor, 200 King Street West, Kitchener (519) 741-2218. A \$50. administrative fee will be charged for each set of documents.

Tenders will be opened publicly at two p.m. local time, **Thursday August 19th, 2004** in the Scott Room on the 9th Floor, City Hall, 200 King Street West, Kitchener.

The lowest or any tender will not necessarily be accepted.

Facsimile submissions will not be accepted.

Larry Gordon
Director of Purchasing

Current Bid Opportunities can be viewed on the internet at

www.opba.ca
www.city.kitchener.on.ca