CITATION: Kamlu Engineering Inc. v. 2502301 Ontario Inc et al, 2026 ONSC 3590
COURT FILE NO.: CV-21-00059
DATE: 2026-06-22

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
KAMLU ENGINEERING INC. Plaintiff	*A. Assuras,* for the Plaintiff
– and –	
2502301 ONTARIO INC., JOHNSON CAMPBELL COLLINS and ROSELLEE PHILLES COLLINS Defendants	*D. Morin* and *P. Reinitzer*, for the Defendant *2502301 Ontario Inc.* *D. Cerovina* for the Defendants *Johnson Campbell Collins and Rosellee Philles Collins* **In Attendance on June 16, 2026:** *Joel Easter*, Trustee in Bankruptcy, President of Scott Pichelli & Easter Ltd. *Mathew R. Harris*, Counsel **HEARD:** June 01 & 16, 2026

CHIAPPETTA J.

REASONS FOR DECISION

OVERVIEW

[1] There are three motions before the Court.

[2] The defendant, 2502301 Ontario Inc., (the defendant), asks the Court to dismiss the action and vacate the registration of a claim for lien and the certificate of action in respect of the within action, pursuant to Rule 21.01(3)(b) of the *Rules of Civil Procedure,* R.R.O. 1990, Reg. 194, (Rules). In the alternative, the defendant asks the Court for an Order setting aside

three prior cost awards made in favour of Kamlu Engineering Inc. (the plaintiff) and for an Order requiring the plaintiff to post security for costs pursuant to Rule 56 of the Rules.

[3] The plaintiff asks the Court to extend the timetable for the defendant's motion, established on October 10, 2025. At the commencement of the hearing, the defendant confirmed its consent, and an Order shall therefore go extending the timetable for the defendant's motion as requested by the plaintiff.

[4] The plaintiff further asks the Court for an Order striking the Statement of Defence and Counterclaim of the defendant pursuant to Rule 57.03 (2) of the Rules for failure to pay outstanding cost awards. At the commencement of the hearing, the defendant agreed that, should it be unsuccessful with its motion, it shall pay the outstanding cost orders in favour of the plaintiff in the amounts of $6,000 and $13,510 respectively, within 30 days, failing which the plaintiff may move before the Court for an Order striking the pleading of the defendant for its failure to pay the two noted cost awards. The plaintiff consented to these terms. An Order should therefore go in accordance with the consent of the parties.

[5] The remaining outstanding motion before the Court, therefore, is the defendant's motion to dismiss the action and vacate the lien, with alternative relief sought.

BACKGROUND

[6] The plaintiff commenced this action by Statement of Claim issued April 14, 2021. It involves a dispute over unpaid invoices subject to a contract for services. The plaintiff is a company incorporated pursuant to the *Canadian Business Corporations Act*, RSC 1985 c. B-44 (CBCA), carrying on as a general contractor. The defendant is a company incorporated pursuant to the laws of the Province of Ontario and owned the lands and premises forming the subject matter of the action.

[7] In August 2020, the plaintiff contracted with the defendant to construct a foundation and deliver modular building units for a motel. The contracted work ceased before it was completed. The parties disagree as to whether the plaintiff left the project or the defendant terminated the plaintiff. After the work stoppage, the plaintiff issued further invoices to the defendant. The parties disagree on the veracity of these invoices. The plaintiff instructed its lawyer to register a lien on the defendant's property for $241,860.58 and claims a total of $431,211.08 in lienable and non-lienable damages combined. The defendant counter claimed for $1,000,000 in general and special damages and $250,000 in aggravated and exemplary damages for breach of contract and breach of trust.

[8] This matter proceeded through the Court system in the normal course. It was set down for a 10-12-day non-jury trial on the September 8, 2025, trial sitting list. In July 2025, the plaintiff sought to adjourn the September 2025 trial date. The defendant opposed. By endorsement dated July 25, 2025, Justice Richard granted the adjournment "without hesitation", in part because the plaintiff's "sole director, officer and shareholder, Lou Gabriele, who is its key witness, is scheduled to have surgery on July 31, 2025, as part of his colon cancer treatment….". The matter was therefore removed from the September 8, 2025, trial list and returned to assignment Court to set a pre-trial date and to be added to

another trial sitting list. A pre-trial was held on February 3, 2026, and the matter was set down for a 10-12-day non-jury trial on the September 8, 2026, trial sitting list.

[9] The above noted procedural summary would be otherwise unremarkable but for one significant development. On July 18, 2025, counsel for the defendant learned that Mr. Gabriele was bankrupt, having filed an assignment into bankruptcy under s49 of *The Bankruptcy and Insolvency Act* (Canada) R.S.C. 1985, c. B-3, (BIA) on May 31, 2006, for the general benefit of his creditors. The personal bankruptcy has claims provable totalling $5,639,096.44 owed to creditors under an Ordinary Administration. On July 21, 2025, Mr. Gabriele's Trustee in Bankruptcy advised counsel for the defendant that it was unaware of the within litigation. The Trustee further confirmed that it did not authorize Mr. Gabriele to act as an officer or director of the plaintiff, to commence any litigation under his personal or corporate name, or to advance construction liens. At no point during the litigation, prior to responding to the defendant's motion, has Mr. Gabriele advised the defendant or the Court of his bankruptcy status. Rather, since the inception of this matter, Mr. Gabriele has consistently described himself in sworn documents and under oath as the sole director, officer and shareholder of the plaintiff.

[10] Pursuant to s71 of the BIA, all property of the bankrupt vests in the Trustee in Bankruptcy and the bankrupt has no capacity to deal with his property. Property is defined broadly under s2 of the BIA and includes shares in a corporation. Mr. Gabriele's assets, including his shares in the plaintiff, vested in the Trustee in Bankruptcy. He is not the sole shareholder of the plaintiff, therefore, as he represented to the Court. The Trustee in Bankruptcy is the sole shareholder of the plaintiff, yet the Trustee was without knowledge of this litigation until July 2025. This is particularly troubling as any monies awarded herein would properly become part of the bankruptcy estate.

[11] As an undischarged bankrupt, Mr. Gabriele cannot be a director of the plaintiff, despite his representations to the Court as its sole director, s105 (1) (d) of the CBCA. The plaintiff is without directors and has been since April 1, 2017, when the only director other than Mr. Gabriele at the time, resigned.

[12] Mr. Gabriele filed for bankruptcy on May 31, 2006. The plaintiff commenced this action by Statement of Claim issued April 14, 2021. The question before the Court on the defendant's motion to dismiss the claim pursuant to Rule 21.01(3)(b) of the Rules, therefore, is what, if any effect does the fact that Mr. Gabriele was an undischarged bankrupt at the time the claim was issued have on the plaintiff's legal capacity to commence the proceeding.

[13] A corporation is a legally independent "person", separate from its officers, directors and shareholders, *Salomon &Co., LTD, [1897] A.C. 22.* The plaintiff's legal capacity to sue, therefore, is derived from its own corporate existence. The plaintiff and not Mr. Gabriele owns its cause of action to recover payment of its alleged unpaid invoices from the defendant. This is important to repeat and underscore as the Court conducts the legal analysis of the issue presented on this motion; it would be an error in law to equate the plaintiff's right to commence this action with Mr. Gabriele's right to commence this action.

[14] A significant amount of time and resources have gone into moving this matter towards adjudication of the issues raised herein. The defendant's motion to dismiss the action comes at a late stage of the litigation. The plaintiff submits that, as a result, the defendant is estopped from bringing this motion. The timing of this motion, however, is because of no fault of the defendant. The defendant learned of Mr. Gabriele's personal bankruptcy in July 2025 and by judicial Order in October 2025 a timetable was put in place to address its potential impact on this action. The defendant moved swiftly and efficiently once it was made aware of the issue.

[15] The plaintiff further submits that because the defendant asserted a contractual claim against the plaintiff by way of counter claim, this presupposes that the plaintiff who initiated the action has authority to bind the corporation such that the defendant is estopped from asserting it does not, as a bar to the action. Again, however, the defendant did not know of Mr. Gabriele's bankruptcy at the time of its counter claim and therefore did not have knowledge of the effect of the bankruptcy on his authority to direct the plaintiff. At the time of the counter claim, Mr. Gabriele represented himself as the sole shareholder, officer and director of the plaintiff and there was no reason to question whether, in those capacities, he had authority to instruct counsel to commence the action and bind the corporation.

DISCUSSION

[16] Rule 21.01 (3)(b) of the Rules allows a defendant to bring a pre-trial motion to dismiss an action on the grounds that the plaintiff lacks the legal capacity to continue the proceeding. To succeed, the defendant must satisfy the Court that it is "plain and obvious" the plaintiff lacks this legal standing,

[17] Under section 71 of the BIA, when a person files an assignment in bankruptcy, all their "property" vests in the Trustee in Bankruptcy, and the person no longer has "capacity" to deal with their property. "Property" is defined broadly under the BIA as including "things in action." "Things in action" include tort and contract claims. Section 30(1)(d) of the BIA, grants the Trustee the power to bring, institute or defend any action or legal proceeding relating to the property of the bankrupt. In this case, again, the bankrupt party is Mr. Gabriele and not the plaintiff. The corporation is a separate legal personality from Mr. Gabriele.

[18] It follows, then, that if Mr. Gabriele commenced this claim in his own name, the action would be a nullity as only his Trustee in Bankruptcy would have the capacity to commence an action for Mr. Gabriele, as an undischarged bankrupt.

[19] As noted, however, the plaintiff is a corporation, a legal entity, distinct from its directors, officers and shareholders. Its legal capacity to sue is derived from its own corporate existence. At the relevant time, all shares of the plaintiff vested with Mr. Gabriele's Trustee in Bankruptcy. It causes me concern that Mr. Gabriele did not disclose this litigation to his Trustee in Bankruptcy. In doing so, he breached his duty to disclose all property to the Trustee, s158 of the BIA. It is of further concern that Mr. Gabriele swore multiple affidavits before this Court attesting to be the sole officer, director and shareholder of the plaintiff,

failing to reference his personal bankruptcy and its effect on his status of director, the ownership of his shares and his authority as an officer.

[20] Given these concerns, it would not be prudent to end the analysis by acknowledging the plaintiff's separate legal capacity to litigate. Rather, Mr. Gabriele's conduct on behalf of the corporate plaintiff is properly reviewed in determining whether the plaintiff had the legal capacity on April 14, 2021, to commence this claim.

[21] Beginning with the shares of the plaintiff, the plaintiff's minute books contain two share certificates. Both are signed by Mr. Gabriele as president and Adnan Zabian as secretary. Share certificate #1 dated December 8, 2014, identifies that a corporation named AZET Design and Development Ltd (hereinafter AZET) owns 50 shares. A memorandum of understanding of the same date sets out a joint venture between the plaintiff and AZET. Adnan Zabian is identified as the principal of AZET and states that the plaintiff shall remain 100% owned by Mr. Gabriele, notwithstanding the issuance of 50 shares to AZET, as referenced above. Share certificate #2 of the same date identifies that Mr. Gabriele owns 150 shares in the plaintiff. Pursuant to a director's resolution dated December 8, 2014, the plaintiff issued 120 shares to Mr. Gabriele and 50 shares to AZET. Pursuant to a share transfer document, AZET transferred 50 shares to Mr. Gabriele on April 12, 2017.

[22] It is unclear why share certificates #1 and #2 were signed on the same date. It is also of concern that Mr. Gabriele and Mr. Zabian signed the share certificates as President and Secretary when, as will be set out below, the document purporting to appoint them as officers was signed on December 8, 2014.

[23] For the purposes of today, however, in terms of the shares of the plaintiff, Mr. Gabriele was the sole shareholder as of April 12, 2017. The shares represent property acquired during Mr. Gabriele's bankruptcy. The plaintiff's shares have always vested with Mr. Gabriele's Trustee. His Trustee in Bankruptcy is and has been the sole shareholder of the plaintiff as of April 12, 2017.

[24] Considering the directors of the plaintiff, its corporate filings indicate that Damian Kucia was the sole director of the plaintiff from its inception on December 14, 2011, until December 8, 2014. A Form 6, "Changes Regarding Directors", dated July 3, 2015, indicates that Mr. Kucia was replaced by Adnan Zabian on December 8, 2014. By shareholders resolution dated December 8, 2014, signed by Mr. Gabriele and Mr. Zabian, on behalf of AZET, Mr. Gabriele and Mr. Zabian were appointed directors of the plaintiff. Mr. Zabian resigned as director on April 1, 2017. A Form 6 dated August 25, 2017, confirms he ceased to be a director on April 1, 2017. The same form indicates Mr. Gabriele as director from the inception of the plaintiff on December 14, 2011.

[25] It is unclear why the Form 6 dated August 25, 2017, indicates that Mr. Gabriele was a director from the inception of the plaintiff on December 14, 2011. It is of concern that he was not identified as such on the Form 2 "Initial Registered Office Address and First Board of Directors", along with Mr. Kucia. For the purposes of today, however, as of April 1, 2017, the plaintiff's corporate filings do not identify it as having any other director than Mr. Gabriele.

[26] As noted, Mr. Gabriele has been an undischarged bankrupt since May 31, 2006. He was therefore legally prohibited from acting as a corporate director at the time of the commencement of this action, pursuant to section 105(1) of the CBCA. As of April 1, 2017, then, the plaintiff was without directors, and its shares were solely owned by the Mr. Gabriele's Trustee in Bankruptcy.

[27] A director's resolution dated December 8, 2014, signed by Mr. Gabriele and Mr. Zabian appointed Mr. Gabriele president and Mr. Zabian secretary-treasurer of the plaintiff. At this time, Mr. Gabriele was not authorized to be a director, and he therefore did not have the authority to appoint an officer. There is no evidence before the Court suggesting that Mr. Zabian did not have authority as director to appoint Mr. Gabriele an officer of the plaintiff.

[28] Mr. Zabian resigned as an officer of the plaintiff on April 1, 2017. As of April 1, 2017, therefore, Mr. Gabriele was the only officer of the plaintiff. There is no provision of the CBCA, prohibiting an undischarged bankrupt from being an officer of a corporation. This raises two questions in the context of this motion. First, was Mr. Gabriele an officer of the corporation as of April 1, 2017, as the plaintiff was without directors. Second, if so, did he have the authority as an officer to direct counsel to commence this action on behalf of the plaintiff.

[29] The plaintiff relies on *Re: Regional Steel Works (Ottawa -1987) Inc,* 1994 CanLII 7462 (ON CTGD), and submits that Mr. Gabriele was an officer of the plaintiff at the time this action was commenced and had the authority to direct counsel to commence it. In *Re: Regional Steel Works*, the Court held that the corporation's sole officer and director was precluded from being a director but not an officer by virtue of their bankruptcy. This case addressed when and how a bankruptcy assignment can be legally voided and the Court's discretion in this regard. The moving creditor was seeking an Order declaring the assignment in bankruptcy made by Regional Steel Works on April 8, 1993, null and void on the ground that the corporation's sole director at the time, who authorized the assignment was himself a bankrupt and as such disqualified from being a director of the corporation. The Court found that officers can be delegated all the powers to manage the business and affairs of the corporation except for certain powers specifically excluded by the CBCA and that the CBCA did not specifically exclude the power to authorize an assignment in bankruptcy. Therefore, the Court concluded, an officer of a corporation may have the capacity to execute an assignment in bankruptcy on behalf of a corporation, if that power was delegated to it by the director. In this case, the Court referenced the corporation's by-laws and found that as the president of the corporation, the bankrupt officer was authorized to make the assignment in bankruptcy on behalf of the company. Significantly, the Court went on to state that even if it were satisfied that the assignment ought not to have been made, the remedy under section s 181(1) of the BIA remains discretionary and, as there was no evidence of any injustice or improper conduct, and as the relief sought would not benefit the creditors and only the moving party, this case would not be a proper one to exercise the Court's discretion.

[30] The available discretion in *Re Bankruptcy of Regional Steel Works* is an important distinction to the facts before the Court on this motion. Even if the authorization was not available to the officer, and the assignment was not properly made, the Court would not have exercised its discretion granted by the statute to annul the bankruptcy, for reasons given. The Court found the authorization of the officer to make the assignment in bankruptcy, however, in the absence of a director, in the corporation's by-laws.

[31] It is a requirement of the CBCA that a corporation must have at least one director, s102(2). There is no requirement to have officers, but most corporations do, to manage the day-to-day business and affairs of the company. Sound corporate governance is such that a corporate officer cannot function without a director from whom to obtain direction, *Eagle Construction Services, Inc v Royal One 225 Markham Road Med,* 2021 ONSC 2347, at para 35. While Mr. Gabriele technically and legally remained in the role of officer, upon the resignation of Mr. Zabian on April 1, 2017, because officers operate under delegate director authority, at some point he would have lacked the foundational authority that empowered him as an officer.

[32] There is no evidence before the Court, to indicate that prior to his resignation as director on April 1, 2017, Mr. Zabian delegated the power to Mr. Gabriele as officer to commence lawsuits on behalf of the plaintiff, generally or this one specifically. Nor would it be appropriate to assume such power was delegated considering, Mr. Gabriele was governing himself as a director of the corporation since December 8, 2014, contrary to the CBCA, without the authority to delegate that authorization to himself as officer. It is for the same reason it is not surprising that no documentary evidence of such delegation, like articles of incorporation or by-laws, have been submitted to the Court on this motion. Mr. Gabriele conducted himself as if the need for such delegation was not necessary considering his falsely stated status as sole director and shareholder.

[33] Outside of documentary evidence it can be said, in the normal course, that officers are appointed by directors and derive their day-to-day authority from directors. Initiating a lawsuit pursuant to an unpaid contract for services falls within the ordinary duties of an officer when managing the day-to-day affairs of the business. At the time the decision was made to commence this lawsuit, however, the plaintiff had been without any directors for 4 years. While commencing a lawsuit may be a delegable duty, the delegation cannot last indefinitely without directors. At some point, officers cannot continue to operate a board less corporation, independent of what duties had been delegated to them to do so. I am uncertain as to what that point may be, but I am certain that is well under 4 years. For example, in *Re: Regional Steel Works*, the period in question was only 8 days, the sole director of the corporation made a personal assignment into bankruptcy on March 30, 1993, and then instructed counsel to make an assignment in bankruptcy of Regional Steel Works on April 8, 1993.

commencement of the action. In the autumn of 2003, after the action was instituted, Mr. Sicotte's Trustee in Bankruptcy took possession of the shares of the corporate plaintiff.

[38] In July 2004, the insurance company brought a motion to dismiss the action. The Court granted the motion finding that the action was a nullity as the shareholder of the plaintiff, Mr. Sicotte's Trustee, was unaware of the action and did not consent to it.

[39] On October 23, 2004, Mr. Sicotte's Trustee sold his shares of the corporate plaintiff to 3416462 Canada Inc, the shares of which were now held by Mr. Poirer. The parties to this sale were aware of the corporate plaintiff's insurance claim. This development impacted the decision on appeal.

[40] On May 26, 2005, the corporate plaintiff successfully appealed the dismissal of their action. The Court of Appeal found although Mr. Sicotte was disqualified from being a director, as an officer, he was entitled to act in such a way that the corporation gave a mandate to bring an action which is not an act that the law reserves to administrators. Significantly, the Court held that the validity of the instructions Mr. Sicotte gave to counsel to commence the lawsuit on behalf of the corporation was now ratified by the new shareholders of the company. The Court wrote that "the very fact that the appellants did not disallow the action brought on their behalf and that, at the instigation of their new shareholder, they on the contrary, have continued it shows their willingness to ratify the procedures" *Electrique Glaserk v AXA,* at para 60.

[41] Factually, *Electrique Glaserk v AXA* is distinguishable from the facts this Court is considering. Mr. Sicotte was discharged from bankruptcy prior to the commencement of the action, his Trustee knew he owned all of the shares of the corporate plaintiff prior to the commencement of the action, the corporate plaintiff did not operate for 4 years without directors when Mr. Sicotte directed counsel to commence the action on behalf of the corporation, and, most significantly, at the time the issue was considered by the Appeal Court, the shares of the corporation were sold by Mr. Sicotte's Trustee in Bankruptcy and the new shareholders willingly ratified the actions of Mr. Sicotte in directing counsel to commence the action on behalf of the company.

[42] Mr. Gabriele's Trustee in Bankruptcy, Joel Easter, President of Scott Pichelli & Easter Ltd, attended the second day of the hearing of this matter at my request, represented by counsel Matthew R. Harris. He confirmed to the Court that he only learned of the existence of the corporate plaintiff and this action in the "last short while." He advised the Court that, although all the shares of the plaintiff company vest with Mr. Gabriele's Trustee in Bankruptcy, he takes no position on this motion, no position on the claim and has no intention to take over the direction of the claim as sole shareholder, on behalf of the company or participate in the claim. Contrary to the dispositive fact in *Electrique Glaserk v AXA,* therefore, the shareholder of the corporate plaintiff has not ratified the actions of Mr. Gabriele in directing counsel to commence this claim on behalf of the plaintiff.

[34] The plaintiff has been without directors since April 1, 2017. At that time Mr. Gabriele's Trustee in Bankruptcy owned all the shares of the plaintiff. As the sole shareholder of a corporation without directors, he did not appoint new directors presumably as he was unaware of Mr. Gabriele's ownership of and role in the plaintiff. Rather, as officer, Mr. Gabriele, continued the day-to-day operations of the plaintiff, artificially pursuant to a long-expired delegation of power from Mr. Zabian, as director, prior to April 1, 2017. It is for these reasons, in my view, Mr. Gabriele technically remained an officer of the corporation as at the commencement of this action, even though it was without directors, but there is no evidence that he had the authority as an officer to instruct counsel on behalf of the plaintiff to commence this action, 4 years after the plaintiff was without directors.

[35] In summary, Mr. Gabriele directed the plaintiff's former counsel to register the lien at issue and to commence this action on behalf of the plaintiff. The action was commenced on April 21, 2021. At the time of the commencement of this action, the shares of the plaintiff were vested entirely with Mr. Gabriele's Trustee in Bankruptcy and had been for 4 years. The plaintiff was without directors, the only director having resigned April 1, 2017. Mr. Gabriele was legally prohibited from being a director of the plaintiff. Technically, Mr. Gabriele remained an officer of the plaintiff but with long expired delegated authority to conduct day to day operations like directing counsel to commence a lawsuit. Mr. Gabriele disingenuously and under oath represented himself to this Court as the sole shareholder, officer and director of the plaintiff. He failed to disclose the existence of the plaintiff and this litigation to his Trustee in Bankruptcy, even though his Trustee is the sole shareholder of the plaintiff and any proceeds from the litigation would properly form part of the bankruptcy estate. Mr. Gabriele continues to be the only person directing counsel for the plaintiff.

[36] The plaintiff submits that, if Mr. Gabriele was not an officer of the plaintiff, he was an employee or agent of the plaintiff and was permitted to instruct counsel to commence the action on the plaintiff's behalf, as an employee or agent. As noted, independent of his bankruptcy, Mr. Gabriele remained an officer of the plaintiff, but one without delegated authority to conduct its affairs. The same would be true with Mr. Gabriele's purported status as an employee or agent of the plaintiff. One can call him officer, employee or agent; reference to any of these labels is artificial specifically due to the length of time the plaintiff floundered without directors to manage or delegate the management of its business and affairs. Simply put, in my view, an officer of a corporation without directors for 4 years is an officer in name only, without the required derived powers via delegation from an active board.

[37] The defendant relies upon *Electrique Glaserk v AXA* 2005 QCCA 942, leave to appeal to SCC denied. There were three actions commenced in this case but the first and third were dismissed and the decision focuses on the second action, commenced by the corporate plaintiff on September 23, 2003, pursuant to an insurance indemnity. Mr. Sicotte was the sole shareholder, director and officer of the corporate plaintiff. Mr. Sicotte made an assignment in personal bankruptcy in the fall of 2000. He was discharged from bankruptcy in March 2003, before the commencement of the action in question. Mr. Sicotte's Trustee in Bankruptcy learned of the shares he held in the corporate plaintiff prior to the

[43] The plaintiff argues that as Mr. Gabriele's Trustee in Bankruptcy, the sole shareholder of the plaintiff, has not disallowed the action, he has implicitly ratified the conduct of Mr. Gabriele directing counsel to commence the action. The plaintiff relies on the 1965 Supreme Court of Canada case of *Eisenberg v Bank of Nova Scotia,* 1965 CarswellOnt 580 at para 37, wherein the Court states that it "cannot be heard to deny a transaction to which all the shareholders have given their assent even when such assent be given in an informal manner or by conduct as distinguished from a formal resolution at a duly convened meeting." The facts of the case, however, and the passage relied upon therefore are not applicable to the facts of the within case. In *Eisenberg v Bank of Nova Scotia,* the president of the company instigated the transaction on behalf of the company to secure a bank loan, but he did so without calling a formal shareholders' or directors' meeting to authorize the pledge. The Supreme Court dismissed the appeal, ruling in favour of the Bank of Nova Scotia. The Court determined that because the president was the sole shareholder who directed and authorized the transaction, the lack of formal procedural meetings was not enough to render the transaction invalid. The Court upheld the transaction instigated and driven by a sole shareholder acting on the company's behalf, even though the corporate formalities were bypassed.

[44] In this case, at the time of the commencement of the action, the sole shareholder was unaware of the corporate plaintiff, the ownership of its shares and the action itself. When he learned of the action, some short while ago, he showed no willingness to ratify the actions of Mr. Gabriele in directing counsel to commence it but rather has advised the Court that he will not be getting involved or taking a position with respect to it. The fact that he has not taken steps to disallow the action is not sufficient to assume or infer the sole shareholder's confirmation of Mr. Gabriele's direction to counsel to commence an action on behalf of the company. As sole shareholder of a company without directors, some active step or expression demonstrating an intention to ratify the procedure is warranted. At the very least, if Mr. Gabriele's Trustee in Bankruptcy intended to ratify his actions, one would have expected him to oppose this motion. He advised the Court, however, that he is not taking a position on this motion to dismiss the action for lack of legal capacity to commence it.

[45] The plaintiff further relies upon *Placrefid Ltd. v Minister of National Revenue,* 1992 CarswellNat 324 and argues that even if Mr. Gabriele was not properly authorized to instruct counsel to commence this action, the Courts treat such an invalidity as an irregularity and not sufficient to deprive the corporation of the authority to bring the action, relying on s116 of the CBCA. S116 provides that "an act of a director or officer is valid notwithstanding an irregularity in their election or appointment or a defect in their application."

[46] Again, however, *Placrefid Ltd. V Minister of National Revenue* is not applicable to the within case. In *Placrefid Ltd. V Minister of National Revenue,* the Crown brought a motion to dismiss the action as being a nullity. The sole shareholder, director and officer of the corporate plaintiff, D, became bankrupt, the shares vested in her Trustee in Bankruptcy, and she ceased to be a director and an officer. D was discharged from bankruptcy and attempted to take control of the company. The Trustee in Bankruptcy indicated his willingness to allow this, but the Trustee never formally transferred the shares of the

company back to D. Accordingly, not being a shareholder, she could not elect herself a director or appoint herself an officer. The Court cited the sister provision to s116 of the CBCA in the *Business Corporations Act*, R.S.O 1990, c. B.16. s128 and held that the only reason that the purported authorization of commencement of the action by the corporation could be claimed a nullity is that there was a defect in D's appointment election and qualification. This defect was the inadvertence of the Trustee to formally transfer the shares back to D. This failure was discovered after the statement of claim was filed. Because of s128, the Court found the action was not a nullity.

[47] In this case, however, Mr. Gabriele was an undischarged bankrupt at the time he directed counsel to commence the action on behalf of the corporation. The shares of the corporation vested with his Trustee in Bankruptcy, who was unaware of both the corporation and the action. His actions are not properly described as a defect in his appointment as director. He was prohibited from being a director by statute. It is not through inadvertence that he instructed counsel to commence this action. Rather, aware of his bankruptcy, Mr. Gabriele represented himself and governed himself as the sole shareholder, director and officer of the corporation with the authority to instruct counsel to commence an action on behalf of the corporation, while intentionally withholding the knowledge of this litigation from his Trustee, contrary to the BIA. In my view, s116 does not apply in these circumstances to validate the actions of Mr. Gabriele on behalf of the corporation.

[48] For these reasons, therefore, I have concluded that Mr. Gabriele did not have the legal capacity to direct the corporation to register the lien or commence an action. As the beneficial owner of the corporation, and as the corporation was without directors for 4 years, only Mr. Gabriele's Trustee in Bankruptcy had the legal standing to instruct counsel and institute this action on behalf of the plaintiff. This did not occur presumably because Mr. Gabriele failed to inform his Trustee that he was operating a business outside of the bankruptcy. This could have potentially been rectified if Mr. Gabriele's Trustee in Bankruptcy ratified his actions in directing the corporation to bring this claim. His Trustee in Bankruptcy has advised the Court, however, of his intention not to participate or take a position with respect to this action. There is no other director or shareholder to ratify the steps taken by Mr. Gabriele on behalf of the plaintiff. If the plaintiff was a company with other shareholders or directors, the outcome may have been different.

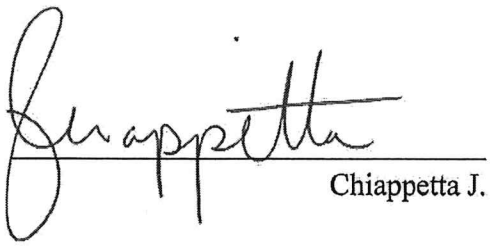
CONCLUSION

[49] On April 14, 2021, when the claim was issued, the plaintiff corporation was without directors, with an officer without direction or authority for 4 years. The beneficial owner was Mr. Gabriele's personal Trustee in Bankruptcy. Mr. Gabriele directed counsel on behalf of the corporation. He conducted himself and represented himself as the directing mind of the plaintiff and the beneficial owner, with authority to bind the plaintiff throughout this litigation. This was and remains untrue as Mr. Gabriele is an undischarged bankrupt, having filed an assignment in bankruptcy on May 31, 2006. Mr. Gabriele's Trustee in Bankruptcy was unaware of the within litigation until recently. He did not authorize Mr. Gabriele to act as an officer or director of the plaintiff, to commence any litigation under his personal or corporate name, or to advance construction liens. He has not ratified the actions of Mr. Gabriele in instructing counsel to commence this action on

behalf of the corporation. The consequence of this is that the plaintiff had no capacity to bring this claim. The claim is therefore a nullity and is dismissed as an abuse of process.

[50] The defendant's motion is granted. An Order should go in accordance with subparagraphs (a), (b) and (c) of the defendant's Notice of Motion dated April 30, 2026. The alternative relief requested need not be addressed in the circumstances.

[51] The defendant is entitled to costs of this motion and the action. The parties are encouraged to agree on an acceptable costs award. If the parties can not agree, I will receive submissions in writing, first by the defendant within 60 days and then the plaintiff within 45 days thereafter. If the defendant wishes to replay, it may do so within 30 days thereafter.



Chiappetta J.

Released: June 22, 2026

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REASONS FOR DECISION

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