BLOG

Construction Lenders: Paying Trades May Leave Lien Security Tied Up

Commercial Real Estate | Construction Liens | Lending | Real Estate

17 November 2026

In *Demikon Construction Ltd. v. Oakleigh Holdings Inc.*, 2026 ONCA 808, released November 10, the Ontario Court of Appeal confirmed that paying subcontractors directly does not automatically reduce security posted to remove a general contractor's lien from title.

The owner sought to reduce its posted security by approximately $3.55 million in direct trade payments. The Court dismissed the appeal because the evidence did not establish which trades still had valid lien rights when paid. A reduction required proof of those rights and compliance with the statutory direct-payment requirements.

For construction lenders, the risk is a funding shortfall. Meaning, money advanced to keep trades working may leave the existing lien security tied up.

Before funding direct payments following a contractor dispute or termination, lenders should require counsel to confirm the trades' lien status and required notices, supported by invoices and payment records. Draw budgets should continue to carry the existing lien security until a reduction is obtained. Direct payments should also be tracked separately from statutory holdbacks.

Lending takeaway - Do not assume that every dollar paid directly to a trade releases a dollar of lien security.

For any related questions or to choose a topic for discussion in an upcoming 1-Minute Read, please contact the writer. To see my previous 1-Minute Reads for Commercial Mortgage Lenders, please visit the Insights portion of my profile at https://grllp.com/zzlotnick

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

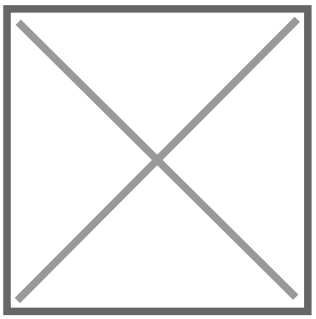
Gardiner Roberts

Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

© 2026 Gardiner Roberts LLP. All rights reserved.

Author



Zev Zlotnick

Partner

416.865.6601

zzlotnick@grllp.com

© 2026 Gardiner Roberts LLP. All rights reserved.