Court of King's Bench of Alberta

Citation: Phoenix Treatment Systems Ltd v 1924613 Alberta Ltd, 2025 ABKB 714

Date: 20251205
Docket: 2403 22495
Registry: Edmonton

Between:

Phoenix Treatment Systems Ltd

Plaintiff

- and -

1924613 Alberta Ltd

Defendant

Michel Trepanier, Michel Trepanier doing business as Grande Drain Cleaning Service, Grande Cache Pizza Ltd, Maria Yates, Maria Yates doing business as Green House Coffee Shop, David Yates, David Yates doing business as Green House Coffee Shop, ABC Corporation, and DEF Corporation

Third Party Defendants

Memorandum of Decision
of
Applications Judge B.W. Summers

Introduction

[1] This Memorandum of Decision considers the meaning of "work on or in respect of an improvement" as that phrase is used in the *Prompt Payment and Construction Lien Act*, RSA 2000, c P-26.4, as amended ("*PPCLA*").

Facts

[2] The Defendant owner of the Grande Cache Mall ("Lands") retained the Plaintiff to carry out plumbing work after a sewer backup on the Lands. There was no written agreement.

[3] The plumbing work was completed on May 22, 2024. After the work was done the Defendant's representative asked that the Plaintiff attend at the Lands to meet with the Defendant's insurance adjuster to explain the work that had been done. That meeting took place on June 3, 2024 ("Meeting").

[4] The Plaintiff submitted its lien against the Lands for registration on August 1, 2024 ("Lien"). August 1, 2024 is 70 days after May 22, 2024 and is 59 days after the Meeting. As the deadline for submitting a lien for registration is 60 days, the issue is whether the Meeting is "work on or in respect of an improvement".

Discussion of the Law

PPCLA

[5] Section 6 of the *PPCLA* provides for the creation of the lien:

> 6(1) Subject to subsection (2), a person who
>
> (a) does or causes to be done any work on or in respect of an improvement, or
>
> (b) furnishes any material to be used in or in respect of an improvement,
>
> for an owner, contractor or subcontractor has, for so much of the price of the work or material as remains due to the person, a lien on the estate or interest of the owner in the land in respect of which the improvement is being made.[1]

[6] Section 1 of the *PPCLA* provides the following definitions:

> "improvement" means anything constructed, erected, built, placed, dug or drilled, or intended to be constructed, erected, built, placed, dug or drilled, on or in land except a thing that is neither affixed to the land nor intended to be or become part of the land;
>
> "work" includes the performance of services on the improvement.

[7] Subsection 41(2) of the *PPCLA* sets the time limit for the filing of a lien as follows:

> (2) A lien for the performance of services may be registered at any time within the period commencing when the lien arises and
>
> (a) subject to clauses (b) and (c), terminating 60 days from the day that the performance of the services is completed or the contract to provide the services is abandoned.[2]

[1] Subsection (2) of s 6 has no application in this case.
[2] Clauses (b) and (c) of subsection 41(2) have no application in this case.

How to Interpret the *PPCLA*

[8] There is a wealth of judicial authority in Alberta on how the *Builders' Lien Act ("BLA")*, predecessor to the *PPCLA*, should be interpreted. It is a bifurcated approach. Justice D. B. Nixon explained it in ***Young EnergyServe Inc v LR Ltd, LR Processing Partnership***, 2021 ABQB 101 *("**Young**")* as follows (at paragraphs 34-37):

> [34] In assessing the appropriate interpretive approach concerning the ... Lien, the Supreme Court of Canada has addressed the bifurcated approach that I touched on above. In particular, the Supreme Court of Canada has cited, with approval, the dissent of Kelly JA of the Ontario Court of Appeal that "... while the statute may merit a liberal interpretation with respect to the rights it confers upon those to whom it applies, it must be given a strict interpretation in determining whether any lien-claimant is a person to whom a lien is given by it": ***Clarkson*** at 114.
>
> [35] To reinforce the point, the Supreme Court of Canada referenced, with approval, the following comment from the Supreme Court of Oregon:
>
> > We agree with the defendant that the right to a lien is purely statutory and a claimant to such a lien must in the first instance, bring himself clearly within the terms of the statute. The statute is strictly construed as to persons entitled to its benefits and as to the procedure necessary to perfect the lien; but when the claimant's right has been clearly established, the law will be liberally interpreted toward accomplishing the purposes of its enactment: ***Clarkson*** at 114.
>
> [36] Based on the judicial guidance of the appellate courts concerning builders' liens, two separate interpretative steps must be applied. First, a strict interpretation must be applied when establishing the claimant's right. Second, a liberal interpretation must be applied after the claimant's right is established.
>
> [37] This Court has endorsed those two separate interpretative steps: see ***TRG Developments Corp v Kee Installations Ltd***, 2014 ABQB 482 [***TRG Developments***]. Citing the comments of the Supreme Court of Canada in ***Clarkson***, Justice Veit stated the following in ***TRG Developments***:
>
> > The first is the lien itself. Because a lien establishes a new right, unknown to the common law, lien claimants must bring themselves strictly within the statutory framework. The second is notice of the lien. A certificate of *lis pendens*, or certificate of pending litigation, does not create rights; therefore, the statutory framework relating to the giving of notice may be interpreted remedially rather than strictly: ***TRG Developments*** at para 4.
> >
> > [...]
> >
> > In summary, case law from both the Supreme Court of Canada and our Court of Appeal establishes that, in order to establish a builders' lien, a claimant must strictly comply with the statutory pre-requisites to the creation of the right. However, the court is

> entitled to liberally interpret other matters dealt with in the legislation: ***TRG Developments*** at para 27.

[9] There is no change from the *BLA* to the *PPCLA* that would alter the analysis described above.

[10] Whether the Lien was submitted for registration within 60 days pursuant to subsection 41(2) of the *PPCLA* is dependent upon whether the Meeting constitutes "work on or in respect of an improvement". In considering what is the answer to this question I must strictly interpret the statutory requirements.

[11] To my knowledge there is no case strictly on point with respect to the issue in this case. However, there are several decisions that I find to be of assistance. I will reference them in chronological order with respect to Alberta cases and then a case from Ontario.

[12] In ***Hett v Samoth Realty Projects Ltd,*** 1977 CanLII 1643 (AB CA), 76 DLR (3d) 362 *("**Hett**")*, the Appellate Division of the Alberta Supreme Court ruled that an agent hired to develop a rental housing project did not have a lien under the *BLA* and stated (at 369 of DLR report):

> Although it is clear that services need not be physically performed upon the improvement to fall within the meaning of the Act they must in my judgment be directly related to the process of construction. Surely inspiration, the development of concepts, logistics, applications for zoning, legal services, or accounting services, do not fall within "services upon the improvement" as those words are defined by the case-law, and this is so even within the wide meaning attributed to that phrase in the ***Inglewood*** case.

[13] In ***Peter Hemingway Architect Ltd v Abacus Cities Ltd,*** 1980 ABCA 182 the Alberta Court of Appeal ruled that an architect held a valid lien for services provided for an intended project, even though the project was never started.

[14] In ***Leduc Estates Ltd v IBI Group,*** 1991 CanLII 5971 Master Funduk felt that he had to follow ***Hett*** in ruling that there was not a valid lien for "preliminary valuation, subsequent investigation and preparing subdivision plans" for a project to convert a quarter section of land from agricultural to family residential. That decision was upheld on appeal to the Court of Queen's Bench and the Court of Appeal.

[15] The Alberta Court of Appeal ruled that the provision of subsistence services, such as catering and lodging, at a location adjacent to the right of way where the pipeline was being constructed, gave rise to a lien on the right of way in ***PTI Group Inc v ANG Gathering & Processing Ltd***, 2002 ABCA 89. The Court found that such services were directly related to the construction of the improvement and followed prior cases where liens were found to be valid: the provision of services of a cook in ***Hutchinson* v *Berridge,*** 1922 CanLII 449 (AB CA)**,** [1922] 2 WWR 710 (Alta CA) and providing plumbing services and supplying gas for stoves and heating at the work campsite in ***Alberta Gas Ethylene Company Ltd* v *Noyle***, 1979 ABCA 334 (CanLII)**,** [1980] 2 WWR 507 (CA).

[16] In ***Young***, the Court determined that cleaning, repairing, and relining the interior of tanks and pressure vessels, and the replacement of worn or faulty piping and pressure valves at a gas plant did not meet the definition of "improvement" under the *BLA*. The Court found that the

work performed was in the category of "maintenance" rather than "constructed, erected, built, placed, dug or drilled...".

[17] As I indicated previously, to my knowledge there is no case from Alberta on point. At best, we are left with the general guidance that the work must be directly related to the process of construction.

[18] Perhaps the case with facts closest to those in the case at bar is ***Hugomark v Ontario,*** 2010 ONSC 7033 (CanLII) ***("Hugomark case").*** In that case lien claimant Hugomark Services Inc ("Hugomark") argued that its liens were valid, although the notices of lien were not served within 45 days of the last work done, because Hugomark later had meetings with the owner and contractor to resolve its claims. Hugomark argued that its attendance at the meetings was a continuation of the supply of services. Madam Justice Hennessy disagreed with Hugomark and stated (at paragraph 20):

> The attendance at the resolution meetings does not constitute a direct supply of services to the site or towards an improvement of the site. The attendance at these meetings had nothing to do with the actual construction, performance of work, or the improvement of the premises that were the subject of the contract. There is no authority for the proposition that off-site construction claim meetings constitute the direct "supply of services or materials to an improvement" to entitle the plaintiff to extend its lien rights, so as to allow it to preserve and perfect its lien over one year after its lien rights would have ordinarily expired. The work of the plaintiff, i.e. attending at dispute resolution meetings, does not extend the timeline in which to place a lien on the project.

[19] Although the ***Hugomark case*** is from a different jurisdiction, I find the reasoning in that case to be persuasive in this case.

[20] In this case, the Plaintiff's meeting with the insurance adjuster almost two weeks after the plumbing work had been completed does not constitute "work on or in respect of an improvement". No work was done on the improvement at the Meeting. Furthermore, there is no evidence that this was part of the original plumbing contract between the Plaintiff and the Defendant.

[21] I conclude that the Lien was not registered in time and must be struck. Costs will follow the event under Column 1 of Schedule C of the Alberta *Rules of Court.*

Heard on the 27th day of October, 2025.
Dated at the City of Edmonton, Alberta this 5th day of December, 2025.

B.W. Summers
A.J.C.K.B.A.

Appearances:

Drew Pearson
KMSC Law LLP
for the Plaintiff

Justine Bell
McLennan Ross LLP
for the Defendant