



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Sam Design Inc. v. Environmental Applications Group Inc.*, 2024 NLSC 174

Date: December 17, 2024

Docket: 202301G5309

2024 NLSC 174 (CanLII)

BETWEEN:

SAM DESIGN INC.

**PLAINTIFF/DEFENDANT
BY COUNTERCLAIM**

AND:

**ENVIRONMENTAL APPLICATIONS
GROUP INC.**

**FIRST DEFENDANT/
FIRST PLAINTIFF BY
COUNTERCLAIM**

AND:

GIOVANNI SFERRAZZA

**SECOND DEFENDANT/
SECOND PLAINTIFF BY
COUNTERCLAIM**

AND:

MICHELLE MURRAY

**THIRD DEFENDANT/
THIRD PLAINTIFF BY
COUNTERCLAIM**

AND:

YOURSTYLE KITCHEN LIMITED

FIRST THIRD PARTY

AND:

DOWN HOME HVAC LTD.

SECOND THIRD PARTY

AND:

**EMBERLEY DEVELOPMENT
LIMITED**

THIRD THIRD PARTY

Before: Justice Trina D. Simms

Place of Hearing: St. John's, Newfoundland and Labrador

Date of Hearing: November 1, 2024

Summary:

The applicants applied pursuant to sections 23, 24, and 26 of the *Mechanics' Lien Act* to vacate a Mechanic's Lien registered against their property by the Respondent on the basis that the Respondent failed to register the certificate of action within the ninety-day time limitation required in section 24(1) of the *Act*. The Court found that the registration of the certificate of action was not out of time and was therefore not invalid. The application is dismissed.

Appearances:

Glenda C. Best, K.C.	Appearing on behalf of the Plaintiff
Thomas M. Munn & Rachel E. Delaney	Appearing on behalf of the Defendants
Thomas M. Munn & Rachel E. Delaney	Appearing on behalf of the Plaintiffs Counterclaim
Glenda C. Best, K.C.	Appearing on behalf of the Defendants Counterclaim
Yourstyle Kitchen Limited	No Appearance

Down Home HVAC Ltd. No Appearance

Emberley Development
Limited No Appearance

Authorities Cited:

CASES CONSIDERED: *Fairview Investments Ltd. v. J.D. Irving Ltd.* (1999), 187 Nfld. & P.I.E.R. 175, 566 A.P.R. 175 (Nfld. (S.C.(T.D.))); *Terra Services Inc. v. Her Majesty the Queen*, 2018 NLSC 221; *C & E Group Ltd. v. Jenco Limited*, 2021 NLSC 37; *W.M. Fares & Associates Inc. v. 3035605 Nova Scotia Ltd.*, 2006 NSCA 120; *Weir’s Construction Ltd. v. D.A.R. Enterprises Ltd.*, 2005 NLTD(G) 16; *McLoughlan Supplies Ltd. v. Elliston Developments Ltd.* (1988), 76 Nfld. & P.I.E.R. 276, 235 A.P.R. 276 (Nfld. (S.C.(T.D.))); *Garden Crest Developments Ltd. v. W. Eric Whebby Ltd.*, 2003 NSCA 59; *Power v. Bailey*, 2000 CarswellNfld 306, [2000] N.J. No. 303 (S.C.(T.D.))

STATUTES CONSIDERED: *Mechanics’ Lien Act*, R.S.N.L. 1990, c. M-3; *Builders’ Lien Act*, R.S.N.S. 1989, c.277

RULES CONSIDERED: *Rules of Supreme Court*, 1986, S.N.L. 1986, c.42, Sch. D

TEXTS CONSIDERED: Bristow, D.I., Glaholt, D., Reynolds, R.B., & Wise, H.M., *Construction, Builders, and Mechanics’ Liens in Canada*, 8th ed. (Toronto: Thomson Reuters, 2020)

REASONS FOR JUDGMENT

SIMMS, J.:

INTRODUCTION

[1] This is an application to vacate a Mechanic’s Lien registered by Sam Design Inc. (“SAM”), the Respondent, against property located at 12 Larkspur Lane, Portugal Cove-St. Phillips, Newfoundland and Labrador.

[2] For the reasons that follow, the application is dismissed.

BACKGROUND FACTS

[3] The Applicants, Environmental Applications Group Inc., Giovanni Sferrazza, and Michelle Murray entered a Contract with the Respondent SAM for design, decoration, and renovation of their property at 12 Larkspur Lane on January 9th, 2023. According to the Respondent SAM in August 2023, the Contract was 90% completed and payment was requested by invoice of the remaining outstanding balance. Issues arose with respect to outstanding payment, work deficiencies, and completion. On August 16th, 2023, Susan Drover, Lead Designer and Owner of SAM, sent an email to the Applicants indicating that she would ask all trades subcontracted through SAM to pause any work for the time being. Giovanni Sferrazza, resident of 12 Larkspur Lane, responded to this email on August 16th, and August 18th, 2023, requesting SAM to complete the work they had paid for and to return to the property.

[4] On August 23rd, 2023, the Respondent registered a claim for lien against the property in the amount of \$75,107.67. The lien indicated the last date of supply as August 16th, 2023. The Respondent filed a Statement of Claim on October 27th, 2023. This Court issued a Certificate of Action on November 7th, 2023, which the Respondent filed with the Registry on November 20th, 2023. It was 96 days after the date of last supply stated by the Respondent in both the claim for lien, and the Statement of Claim.

[5] The Applicants assert that the date of last supply would have been no later than August 11th, 2023, stating that the Respondent delivered two chairs and an ottoman, and removed debris on August 16th, 2023, but did nothing relating to the Contract. The Applicants continued to pick up household items from the SAM retail location into November 2023. These items, while not described with any specificity, are detailed by the Respondent as, “lights, towel rings, counter stools, dining room chairs, and wallpaper.” In testimony, Susan Drover elaborated on these items, indicating that these included plumbing fixtures, lights, and wallpaper that were provided under the renovation contract, and not just furniture purchased from the

retail store. The Applicants acknowledge that they picked up several items from SAM after August 16th, 2023, but that these were purchases from the retail store, paid in full, separate, and apart from the renovation contract. The Applicants describe these purchases as falling under a second, unwritten contract, comparable to that created by any person who shops for furniture at SAM's retail store.

[6] While it did not arise in written submissions, on cross-examination at the hearing of the Application, it became apparent that at least two sub-contractors continued work on the property into September and October 2023.

[7] Ms. Drover testified that two sub-contractors initially engaged by SAM continued to do work at the property after August 16th, 2023. While she was unsure of dates, she confirmed that a sub-contractor engaged in tiling, and another engaged in installing blinds, continued work into September, and possibly October 2023. Mr. Sferrazza confirmed this in his testimony. He stated that he got their contact information from a contact at SAM and then contacted them personally to fix identified deficiencies and complete work that had to be done. He testified that he intended to pay them directly. Ms. Drover testified that one of the contractors billed SAM directly and SAM paid the invoice.

POSITION OF THE PARTIES

The Applicants

[8] The Applicants have applied to vacate the lien pursuant to sections 23, 24, and 26 of the *Mechanics' Lien Act*, R.S.N.L. 1990, c. M-3 (the "*Act*"), based on the failure of the Respondent to register the certificate of action within the ninety-day time limitation in section 24(1).

[9] The Applicants assert that the lien no longer exists in accordance with section 24(1), that this Court has no jurisdiction to countermand the *Act*, and that the *Act* affords no discretion to revive or reinstate the lien.

[10] The Applicants further assert that the Respondent cannot rely upon section 19(1) of the *Act* to extend the period prescribed for perfecting a lien by relying upon the substantial compliance standard provided in that section.

The Respondent

[11] The Respondent asserts that while the claim for lien identifies August 16th, 2023, as the last day on which labour and/ or materials and services were supplied, this is an error and does not reflect the reality of the situation. They state that section 17 of the *Act* outlines the information that a claim for lien must provide, including “the time within which the work was or was to be done or the materials were to be placed or provided”. They submit that section 19 of the *Act* prevents the error from invalidating the lien as it provides that substantial compliance with section 17 is sufficient.

[12] The Respondent also submits that it continued to provide materials to the Applicants up to November 2023, in which case the claim for lien and certificate of action were both filed within the timeline set forth in section 24(1) of the *Act*. Finally, the Respondent asserts that the lien should not be vacated before the matter is heard on its merits as this is not the clearest of cases.

ISSUES

[13] The issues arising on this application are:

- 1) Has the lien stopped existing in accordance with section 24(1) of the *Act*.
- 2) Is it the clearest of cases that the lien is invalid and should be vacated on “appropriate grounds”?

ANALYSIS

Issue 1 – Has the lien stopped existing in accordance with s.24(1) of the Mechanics’ Lien Act.

[14] This Court’s authority to vacate the lien in these circumstances arises under section 26(2)(b) of the *Mechanics’ Lien Act* which allows the court to order that the registration of the claim for lien and the registration of the certificate of action be vacated upon appropriate grounds.

26. (1) A claim for lien may be discharged by the registration of a receipt acknowledging payment

(a) where made by a lien claimant that is not a corporation, signed by the lien claimant or his or her agent authorized in writing and verified by affidavit; or

(b) where made by a lien claimant that is a corporation, sealed with its corporate seal or signed by an officer of the corporation and verified by affidavit,
and the registrar shall number and index each receipt and enter particulars of the receipt in a memorandum on the margin of the entry in the registry of the claim for lien to which the receipt relates.

(2) Upon application, the court may

(a) allow security for or payment into court of the amount of the claim of the lien claimant and the amount of the claims of other existing lien claimants, together with costs that it may fix, and order that the registration of the claim for lien and the registration of the certificate of action be vacated;

(b) upon another appropriate ground, order that the registration of the claim for lien and the registration of the certificate of action be vacated; or

(c) upon appropriate grounds, dismiss the action.

[15] The Applicants suggest that the lien is invalid on the basis that it has stopped existing in accordance with section 24(1), which provides:

A lien for which a claim is registered stops existing on the expiration of 90 days after the work has been completed or the materials have been placed or provided, unless in the meantime an action is started to realize the claim or in which an existing claim may be realized, and a certificate is registered as provided by section 23.

[16] Section 23(2) sets out the following:

Upon an action under this Act being started, a certificate of action shall be registered in the registry.

[17] Thus, if I find that the lien has stopped existing in accordance with section 24(1), I may find that the lien is therefore invalid, and this would be an appropriate ground to discharge the lien and certificate of action. To find that the lien has stopped existing, in the circumstances of the case before me, I must accept that the certificate of action was registered outside of the allowable time to do so, which is ninety days after the work has been completed or the materials have been placed or provided.

[18] The Court's discretion to vacate a lien for invalidity on an interlocutory application, should be exercised only in the clearest of cases. This was expressly stated by Orsborn, J. in *Fairview Investments Ltd. v. J.D. Irving Ltd.* (1999), 187 Nfld. & P.I.E.R. 175, 566 A.P.R. 175 (Nfld. (S.C.(T.D.)) at paragraph 13, and since confirmed in *Terra Services Inc. v. Her Majesty the Queen*, 2018 NLSC 221 at paragraph 21, and *C & E Group Ltd. v. Jenco Limited*, 2021 NLSC 37 at paragraph 12:

Thus, on a summary application such as this, while the court is given the jurisdiction by the Act to vacate a claim for lien prior to trial, the consideration required starts from the position that the statute contemplates resolution of lien claim issues at trial, that interlocutory proceedings (at least in the enforcement action) are discouraged, and that a claim of lien should be vacated before trial only in the clearest of cases.

[19] As noted by Knickle, J. in *Terra Services* at paragraph 22, other jurisdictions have taken the same approach with respect to applications to vacate a lien. The Court quotes *W.M. Fares & Associates Inc. v. 3035605 Nova Scotia Ltd.*, 2006 NSCA 120:

And so it is plain to see that the party seeking to vacate a lien faces a significant evidentiary hurdle. There is a “heavy burden” on the applicant to demonstrate that the remedy is “clearly” deserved. Those who seek the effective and immediate protection which a lien affords, must not be deprived of that important security “except on the clearest” of grounds. Those prerequisites – as Judge O Hearn explained - must inform a judge’s determination as to whether or not the claim can be “safely...disposed of on a summary application.”...

[20] While the Applicant faces a heavy burden, it remains necessary to start from the position noted in *Weir’s Construction Ltd. v. D.A.R. Enterprises Ltd.*, 2005 NLTD(G) 16 paragraphs 23-24, and argued by the Applicant:

The authorities are clear that a mechanics lien is a creature of statute. It is a security interest created in derogation of the common law; it is intended to protect the interests of a defined class, and proceedings are structured to benefit not simply one lien claimant, but the entire class of lien claimants who have claims against any particular owner.

The exercise and enforcement of a mechanics lien depends on strict compliance with the statutory provisions. In essence, the lien lives and breathes and dies according to the statute.

[21] In *Weir’s Construction*, this Court determined that the Plaintiff had failed to prove the validity of its lien. However, the matter before me is distinguishable from *Weir’s Construction* in that the lien claimant in that case conceded that the claim for lien was filed out of time. The issue arising in *Weir’s Construction* is whether the equitable doctrine of estoppel was available to assist in the validation of an expired mechanics’ lien. In this matter, the question is whether the mechanics’ lien has expired at all.

[22] While strict compliance with the legislation is iterated in common law, there is also a clear expression of liberal interpretation for provisions concerning enforcement. In *McLoughlan Supplies Ltd. v. Elliston Developments Ltd.* (1988), 76

Nfld. & P.I.E.R. 276, 235 A.P.R. 276 (Nfld. (S.C.(T.D.)) at paragraph 18, the Court writes:

It appears that the courts traditionally have opposed a liberal interpretation of the sections creating the lien but, if the lien is established, the provisions concerning enforcement receive a more generous interpretation. Macklem and Bristow, at page 8, quote from Wallace on Mechanics' Liens (2nd Ed.), c. 3, as follows:

Sections creating the right to lien are to be strictly construed, while provisions dealing with procedure on the enforcement of the lien are to receive a broad and liberal interpretation.

[23] Similarly, In *Fairview Investments* at paragraph 9, the Court notes:

In determining whether or not a claimant is entitled to a lien, the statute is to be interpreted strictly; but it may merit a liberal interpretation towards accomplishing its purposes once the right to a lien has been established.

[24] Section 19, a curative provision, codifies a standard of liberal interpretation for specific sections of the *Act*, namely, sections 17, 18, and 30. Bristow, D.I., Glaholt, D., Reynolds, R.B., & Wise, H.M., *Construction, Builders, and Mechanics' Liens in Canada*, 8th ed. (Toronto: Thomson Reuters, 2020), at pp. 1-8 – 1-9, notes that the curative provision – common in similar legislation throughout the country - aligns with Driedger's principal of statutory interpretation which focuses on the language of a statutory provision in light of its purpose, intent, and context:

Almost all the Acts contain curative provisions which provide that substantial compliance with provisions dealing with the registration of the claim for lien and with the mode of realizing the lien shall be sufficient; and that no lien is to be invalidated by reason of failure to comply with any of the requirements of those sections unless, in the opinion of the court, some person is prejudiced thereby, and then only to the extent of such prejudice.

[25] The Applicants argue that the lien has stopped existing because the Respondent registered the claim ninety-six days after the purported date of last

supply. In this regard, it is not the validity of the lien that is challenged, rather it is its preservation, and enforcement by commencing an action.

[26] The language of section 24(1) is important in determining this issue. *Bristow et. al. in Construction, Builders, and Mechanics' Liens in Canada* examines the language across provinces which creates the prescribed time to commence an action and register a certificate of action:

Under the Ontario Construction Act, an action to enforce a duly preserved claim for lien must be commenced within 90 days following the last day upon which the lien could have been preserved. The time limited for commencing the action to perfect the lien is 90 days under the Acts of Newfoundland and Labrador (90 days after the work has been “completed”, or the materials placed or provided), New Brunswick (90 days from registering the lien claim), Prince Edward Island (90 days from registration of claim for lien), and the Yukon (90 days after work “completed”, furnished, wages earned, or expiry of period of credit where such a period is mentioned in the claim for lien. Nova Scotia’s 2004 amendments extended the time period from 90 to 105 days after the work or service has been completed or materials have been furnished or placed, or after the expiry of the period of credit, where such a period is mentioned in the claim for lien. It is 180 days from the registration of the statement of lien under the *Alberta Builders’ Lien Act*, and one year from the date of the filing of the lien under the *British Columbia Builders’ Lien Act*. It is 45 days from the last day on which the claim of lien could have been registered, or 90 days from the day on which a period of credit which was mentioned in the claim of lien expired under the Northwest Territories Act. It is two years from the date of the lien registration under the *Manitoba Builders’ Lien Act*. Section 58(3) of the Saskatchewan Act provides that where no certificate of action or order extending the time for commencing an action is registered against the land in respect of which the lien is registered, within 30 days of notification by the registrar under section 58(1) and (2), the lien ceases to exist and the registrar shall vacate the registration of the claim of lien.

As noted above, in some jurisdictions the time limit in respect of commencement of an action to enforce a lien begins to run from the expiry of the date for registering such claims. In most provinces, however, the time for commencing the lien action begins to run on the date the lien itself is registered or on the date notice of the claim for lien has been given. (pp 7-10 – 7-11)

[27] This province’s legislation falls within the former group. Thus, the time limit which is relevant to this application begins to run *from the expiry of the date for*

registering such claims. The language in section 24 refers to 90 days after the work has been completed, or the materials placed or provided. This language, as compared to the language found in, for example, New Brunswick and Prince Edward Island’s legislation, does not provide for a specific date, such as the date of registration of the lien. The date at which work has been completed, or materials placed or provided, while it is an objectively discernible date, may not necessarily be the same date that is provided as such at the time the claim for lien is made. The Nova Scotia legislation (*Builders’ Lien Act*, R.S.N.S. 1989, c.277 section 26(1) (S.N.S. 2004, c.14, section 12, amending section 26(1) of *the Builders’ Lien Act*), uses similar language, which refers to work being completed, furnished, wages earned, or expiry of period of credit.

[28] It is this language that allows the Respondent to provide evidence of a later date of last supply than that listed upon the claim for lien to correct the date, and therefore to establish that the ninety-day period to commence and register the action – and thereby preserve the lien – had not in fact expired. Had the legislation provided a time period that relied upon, for example, the date of filing of the claim for lien – as it does in some provinces, there would be no question of the date upon which the time limitation period started.

[29] For this reason, it is appropriate to follow the reasoning provided by the Nova Scotia Court of Appeal in *Garden Crest Developments Ltd. v. W. Eric Whebby Ltd*, 2003 NSCA 59, wherein the Court considered evidence which established a date of last supply later than that provided on the claim for lien. Roscoe, J.A. writes at paragraph 8:

We agree with the Chambers judge that s.21(1) provided the jurisdiction to amend or rectify the misstatement of the date of the last work in the claim for lien... Once the date in the claim for lien was corrected, the registration of the *lis pendens* was within the allowable time...

[30] The wording of what was then section 21(1) of the Nova Scotia legislation is almost identical to section 19 of the *Act* in this province:

21(1) Substantial compliance only with Sections 19 and 20 shall be required, and no lien shall be invalidated by reason of failure to comply with any of the requisites of such Sections, unless, in the opinion of the court or judge who has the power to try the action under this Act, the owner, contractor, subcontractor, mortgagee or other person, as the case may be is prejudiced thereby, and then only to the extent to which he is thereby prejudiced.

[31] Section 19 of this province's *Act* states:

19(1) Substantial compliance with sections 17, 18, and 30 is sufficient, and a claim for lien is not invalidated because of failure to comply with the requirements of those sections unless, in the opinion of the judge, the owner, contractor or subcontractor, mortgagee or other person is prejudiced by that claim, and then only to the extent to which he or she is prejudiced.

[32] The Applicants assert that the Respondent cannot rely upon section 19 of the *Act* to allow for substantial compliance with section 24(1) to correct the date of supply and to therefore revive the lien. The Applicants argue that section 19 applies exclusively to sections 17, 18, and 30 of the *Act*, whereas strict compliance adheres to the remainder of the statute, including section 24(1).

[33] I agree with the Applicants in this regard. However, I do not agree that the compliance issue arises in relation to section 24(1). Rather, in this case, the issue arises specifically with respect to the last date of supply. It is clear on the evidence before me that work continued on the property into September and October 2023. The work was conducted by sub-contractors who were initially engaged by SAM, and the work being completed by the sub-contractors was work that was initiated under the Contract. At least one of those sub-contractors invoiced SAM for the work done after August 16th, 2023, and SAM paid the invoice. What is unclear is whether that work continued to be directed by SAM, or by Mr. Sferrazza. The parties offered opposing evidence on this point. However, that is a matter to be determined at trial.

[34] In my view, the issue is not when the certificate of action was registered. Rather, it is when the time limitation in section 24(1) was triggered. It is triggered when the work has been completed, or the materials have been placed or provided. This date is contemplated under section 17, as section 17 relates to the requirements for the registration of the lien. Section 17(1)(a) states:

A claim for lien may be registered in the registry and shall set out

(a)... the time within which the work was or was to be done or the materials were to be placed or provided.

[35] Contrary to the position taken by the Applicant, I am of the view that the lien in this case is appropriately created. It is the registration of the certificate of action, and not the registration of the claim for lien that raises the question of whether section 24(1) has been complied with. The Respondent can rely upon substantial compliance with section 17 because it is that section which deals with registration of the claim for lien and “the time within which the work was or was to be done or the materials were to be placed or provided.”

[36] SAM did not fail to comply with section 24(1). It substantially complied with the requirements of section 17 in that the claim for lien did set out a time within which the work was or was to be done or the materials were to be placed or provided. However, further evidence indicated that the date was in fact later. Section 19, being curative, allows the lien claimant to be relieved of irregularities in the claim for lien if, in the opinion of the judge, the owner, contractor or subcontractor, mortgagee or other person is not prejudiced by that claim. No evidence was presented to suggest any prejudice if the claim for lien remains.

[37] It is because of the wording of Section 24(1) which creates a time limitation period to commence an action that is triggered by a start date that is not concrete (like, for example, the date of registration of the lien), that the reasoning in *Garden Crest Developments* applies. In this case, once the triggering date of the time limitation period is corrected – which it has been on the evidence provided in the Application - the registration of the certification of action is not out of time, and

therefore not invalid. The Nova Scotia Court of Appeal explains it in this way (paragraphs 6 and 8):

The effect of these sections is that in order to be valid, a lien must be registered within 45 days of the last work, the claim for lien should state, among other things, the date of the last work, and the action should be commenced and the certificate registered within 90 days of the last work. Section 21, known as the curative section, [citation omitted] allows a lien claimant to be relieved of irregularities in the claim for lien if a judge finds that there has been no prejudice to the owner.

...

We agree with the Chambers judge that s. 21(1) provided the jurisdiction to amend or rectify the misstatement of the date of the last work in the claim for lien. The time lines are triggered by that date. No evidence was presented on the application by the appellant that would suggest that the respondent's last work was performed on or before June 7, 2002. In fact, as found by the Chambers judge, the last work was done on June 20, 2002. Once the date in the claim for lien was corrected, the registration of the *lis pendens* was within the allowable time, which distinguishes many of the cases upon which the appellant relies. [citations omitted]. Here, the registration of the claim for lien was never out of time in any event. The action was commenced and the *lis pendens* recorded within 90 days of the date found by the Chambers judge to be the date of the last work.

[38] This matter is distinguishable from *Terra Services*. In that case, the issue arising under section 24(1) was the failure to name the proper defendant in the Statement of Claim. In that matter, *Terra Services* had never commenced an action against the School District. At the time of the application, no action had been commenced for the purpose of perfecting the lien claim. In this matter, an action has been commenced, and it has been commenced against the party against whom the lien is enforceable. The issue is whether the action is commenced within the time limitation in Section 24(1). The time limitation is triggered when “the work has been completed or the materials have been placed or provided.”

[39] Both the Applicant and the Respondent agree that sub-contractors were on the property into September and October 2023. While there is dispute regarding the conditions under which the sub-contractors were engaged at that point, the question of the last date of supply is not agreed upon and is clearly debatable. Any work or supply relating to the property and the terms of the Contract that occurred beyond

August 22nd, 2023, places SAM's registration of the certificate action within the allowable time under section 24(1). As Knickle J. noted in *Terra Services* at paragraph 29, "in the absence of more complete evidence and argument, this is a decision that is better left for a trial judge."

Issue Two – Is it the clearest of cases that the lien is invalid and should be vacated on "appropriate grounds".

[40] In *Power v. Bailey*, 2000 CarswellNfld 306, [2000] N.J. No. 303 (S.C.(T.D.)) the Defendants applied to vacate a lien registered by the Plaintiff upon the Defendants' property upon which the Plaintiff had conducted renovations. The lien was registered on February 25th, 2000. The Defendants claimed the Plaintiff had left the worksite on December 10th, 1999, while the Plaintiff claimed that work stopped on December 10th, 1999, for the Christmas break, but he had left tools and equipment at the site. Both parties agreed that employees of the Plaintiff returned to the worksite in January 2000. However, the parties disputed the length of time the workers remained onsite in January. The application was dismissed, and the lien remained. Schwartz J. wrote the following (paragraphs 11-12):

Although the parties disagree as to the amount of work done in January, 2000 there is agreement that two of the Plaintiff's workers returned to the work site and remained there for at least two weeks. This time is also within the 30 day period allowed for the filing of a lien pursuant to section 22 of the **Mechanics' Lien Act** as the lien was registered on February 25th, 2000.

It would appear from the facts presented in the Affidavits filed the issue concerning the Mechanics' Lien is a triable issue to be determined from the evidence. This Court has no knowledge of the contract between the parties at this juncture, or of the work required by the Defendants and actually done by the Plaintiff. The parties also dispute the dates alleged in the Affidavits.

[41] The matter before me is similar. The issues arising regarding the mechanics' lien are matters that should be resolved at trial. There are stark differences in the factual positions of the parties, among them being the date of last supply, which items form part of the Contract, which party engaged the sub-contractors who returned in September and October, outstanding monetary amounts, and work deficiencies. The Applicant has not met the heavy burden of demonstrating that the

Respondent should be deprived of its security as this is not the clearest of cases. I am therefore not prepared to vacate the lien.

CONCLUSION

[42] For these reasons, the application is dismissed.

COSTS

[43] Costs in this application shall be in the cause pursuant to *Rule 55* of the *Rules of Supreme Court*, 1986, S.N.L. 1986, c.42, Sch. D.

TRINA D. SIMMS
Justice