

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Four Seasons Roofing Ltd. v. Lavigne, 2006 NSSC 402

Date: 20061206
Docket: S.H. 266185
Registry: Halifax

Between: Four Seasons Roofing Limited, a body corporate

Plaintiff

v.

Glen Lavigne

Defendant

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Judge: The Honourable Justice A. David MacAdam

Heard: December 6, 2006, in Halifax, Nova Scotia

**Oral
Decision:** December 6, 2006

**Written
Decision:** January 31, 2007

Subject: *Builders' Lien Act* - Lien on wrong lands - S. 21, Curative provisions

Summary: The plaintiff filed a Claim for Lien in which the lands described were not the lands on which the goods were supplied and the work performed. After the expiration of the statutory period for filing a Claim for Lien, an Amended Claim for Lien was filed, containing the correct description.

Issue: At issue is whether the curative provisions of Section 21(1) of the *Builders' Lien Act* were applicable in that there was substantial compliance so as to maintain the validity of the Claim for Lien.

Result: The lien was not valid in that Section 21(2) of the *Builders' Lien Act* specifically provided that nothing in sub-section (1) was to be construed as dispensing with the registration required by the *Act*. One of the registration requirements, pursuant to Section 19(1) of the *Act*, was that the Lien was to state a description of the land or property to be charged. This was not a circumstance where there was a "mis-description" in that

the lands charged contained , but described a larger tract than the land on which the work had been performed, such as in *Empire Excavators Ltd. v. T.A.G. Developments Ltd.*, 1998 Carswell NS 162 where Justice Hood held there was substantial compliance and therefore Section 21(1) was applicable.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
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