

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

NORTHERN HOMES LIMITED,

Plaintiff

- and -

STEEL-SPACE INDUSTRIES LIMITED  
and W. R. HOLDINGS (N.W.T.)  
LIMITED,

Defendants

REASONS FOR JUDGMENT OF THE HONOURABLE  
MR. JUSTICE W. G. MORROW

The Defendant W. R. Holdings (N.W.T.) Limited (hereinafter called the defendant) is the registered owner of Lots 771-2, 765 and 766 in Hay River filed under Plan 397. Two claims for lien show as having been filed in the Land Titles Office at Yellowknife on August 29, 1974 by Northern Homes Limited (hereinafter called the plaintiff). The first bearing number 13985 is for \$1048.00 and the second bearing number 13986 is for \$6,587.47. These claims for lien were filed pursuant to the requirements of Section 23 of the *Mechanics' Lien Ordinance*, R.O.N.W.T. 1956, c. 66.

Sections 24 and 25 of the above Ordinance read as follows:

" 24. Every lien that has been duly deposited under this Ordinance shall absolutely cease to exist after the expiration of ninety days after the work has been completed or materials

"or machinery furnished or wages earned or the expiry of the period of credit where such period is mentioned in the claim of lien filed, unless in the meantime proceedings are instituted under this Ordinance to realize the claim and a certificate thereof (which may be granted by the Court in which or the judge before whom the proceedings are instituted) is duly registered in the land titles office of the land registration district wherein the property in respect of which the lien is claimed is situated.

25. If there is no period of credit or if the date of expiry of the period of credit is not stated in the claim so filed, the lien shall cease to exist upon the expiration of ninety days after the work has been completed or materials or machinery furnished unless in the meantime proceedings have been instituted pursuant to section 24."

To protect its position as required by the two sections set forth above, the Plaintiff issued a Statement of Claim, seeking a declaration that it had a valid and subsisting Mechanics Lien, judgment in the sum of \$6,583.73 and certain other relief of no concern in the present proceedings. This claim was issued at the Court House on October 28, 1974. At the same time a Certificate of Lis Pendens was filed with the Clerk of Court. On November 15, 1974 the Defendant filed a Statement of Defence denying the validity of the claims made and alleging that in any event the work was negligently carried out and abandoned.

The present motion before me is for an Order vacating the registration of lien No. 13986 pursuant to Section 27(7) of the Ordinance.

On the hearing, counsel for the Defendant, applicant, made a preliminary objection to me hearing representations from a Mr. Penner, who appeared as President and Director of the Plaintiff Company, the plaintiff otherwise having no legal representation. Upon examining the record it appears that both the Statement of Claim and the Lis Pendens were filed in the name of the Company without any legal representation at all.

Because of the importance of the matter raised, particularly where the Ordinance requires an action to be brought or the lien expires (Sections 24 and 25 above) I invited the solicitor for the Territorial Government to submit argument as well as hearing argument from defence counsel and Mr. Penner in person.

Defence counsel in effect put forth two arguments:

- (1) The action has not been properly commenced because the Statement of Claim has been issued by the Company and not by a solicitor.
- (2) Mr. Penner cannot make representations on behalf of the Company even though he is President and a director.

The Alberta Rules of Court apply in the Northwest Territories: *Judicature Ordinance*, O.N.W.T. 1970 (3d) s. 25(1).

The formal requirements of a statement of claim are set forth in Rule 88, the pertinent parts of which read:

"88. The statement of claim and all copies which are served shall have at the foot or end thereof or endorsed thereon or attached thereto

- (a) if the statement of claim is issued by a solicitor for the plaintiff, a statement to that effect and the solicitor's name and address for service; or if by a solicitor as agent for another solicitor, the solicitor's name and address and also the agent's name and address for service,
- (b) if the statement of claim is issued by the plaintiff in person, a statement to that effect and the plaintiff's address for service,
- (c) a statement of the plaintiff's residence,
- (d) a statement of the defendant's residence so far as known to the plaintiff, and"

It will be seen from the above that provision is made for issuing a statement of claim by two possible methods. One by a solicitor in which case subsection (a) governs or by the plaintiff in person as set forth in subsection (b). Subject to what may be said in respect to argument number two below I am inclined to accept "in person" to mean just that and to hold that the present proceedings have been properly commenced.

Even if the above should not be correct it would seem to me that by failing to raise this defect before now, and by filing a Statement of Defence in reply to the Claim the defendants have accepted the pleadings. In any event if this position was to be taken it should have been pled specifically as required by Rule 127.

It now becomes necessary to consider the second argument, namely that on the actual hearing before me Mr. Penner cannot be heard but rather his Company should appear by counsel.

At page 251 in Volume 36, *Halsbury's Laws of England*, 3rd Edition the law is expressed as:

"A company may employ an unqualified person to institute proceedings in a county court, but cannot appear except by solicitor or counsel or other representative allowed by the court or statute."

The above statement of the law appears to be based on several English decisions. These decisions remain to be examined in the light of the legislation and Rules of Court applicable here and with the full realization that counsel are not always readily available in the Territories.

The *Companies Ordinance*, O.N.W.T. 1968 (1st) c. 1 is silent on the matter. So also is the *Legal Profession Ordinance*, R.O.N.W.T. 1956, c. 57 except that there is no prohibition unless the person appearing purports to charge remuneration in which event it would be an offence.

In 1897 in *Re An Arbitration between The London County Council and The London Tramways Co.*, (1897) 13 T.L.R. 254, the Chairman of the London Tramways moved to set aside an award. When asked by the Court by what authority he appeared on behalf of the company his reply was that the company was willing that he do so and further that he was a servant of the company. The Court refused to permit him to appear. Justice Cave remarking: "A litigant was allowed to appear in person, but a company must appear by attorney who could instruct counsel on their behalf."

A similar result is found in *Scriven v. Jescott (Leeds) Ltd.*, (1908) 53 Sol. Jo. 101 where a managing-director of a company was not allowed to appear, Bray, J. holding that a company was "not in the same position as a litigant in person."

In examining the language found in R.S.C., Ord. 4, r. 2, Merton J. held that the language did "not contemplate that a company can sue in person" and "a company cannot appear in person": *Frinton and Walton Urban District Council v. Walton and District Sand and Mineral Co. Ltd.*, 1938 1 All E.R. 649. It is to be noted that Ord. 4, r. 2 above refers to a Writ of Summons and "a plaintiff suing in person."

A similar result was reached in an attempted appearance before the House of Lords: *Tritonia Ltd. et al v. Equity and Law Life Assurance Society* 1943 2 All E.R. 401.

In Saskatchewan it has been held that a company cannot issue a writ of summons by anyone but a solicitor: *Western*

*Producers Mutual Hail Ins. Co. v. Stewart* 1928 1 W.W.R. 320.

In *R. v. Cook* 1932 1 D.L.R. 88 there is a discussion to be found at pages 92 to 94 wherein McGillivray, J.A. reiterates the same principles as set forth in the cases above, although his remarks were not necessary as the decision of the court went on another ground.

The above concept seems to have come indirectly, if not directly, from the ancient concept of corporations as reflected in the remarks of Lord Coke found in *The Case of Sutton's Hospital*, 10 Co. Rep. 23a, 77 E.R. 960 at page 973:

"They (corporations) cannot commit treason, nor be outlawed, nor excommunicate, for they have no souls, neither can they appear in person, but by attorney."

Some of the more recent cases appear to lean away from the limited concept of corporation as set forth above. Cf. *R. v. Cook* (supra) at page 93 and *Risbey v. Revelstoke Steel Fabricators Ltd. et al* (1964) 47 W.W.R. 638.

While apparently accepting as a general proposition that a company cannot be represented in court by an officer the case of *Battle v. Irish Art Promotion Centre Ltd.* 1966 Irish Reports 252 refers to the possibility of an exception if there is statutory authority to the contrary. In *Charles P. Kinnell & Co. v. Harding, Wace & Co.* 1918 1 K.F. 405, the Court discusses a case brought in the County Court where a corporation may by leave of a judge be permitted to appear by some person

other than a solititor. The remarks of Swinfen Eady, L.J. found at page 413 of the report are not without interest:

"As from its nature a company cannot appear in person, not having as a legal entity any visible person, it must appear by counsel or solicitor, or by leave of the judge some other person may be allowed to appear instead of the company to address the Court, which includes the examination of the witnesses and generally conducting the case. There is no limit or restriction imposed on the judge as to the persons whom he may allow, or as to the nature of the cases in which he may allow some other person to address him instead of counsel or solicitor for the company. It is left to his discretion, but except under special circumstances he would doubtless only sanction some director or officer or regular employee of the company so appearing instead of the company, and would limit his permission to cases which he thought could properly be disposed of before him, without the assistance of either counsel or solicitor."

Referring back to the quotation taken from *Re London County Council and London Tramways* (supra) and quoted earlier in this judgment Ruttan, J. has this to say: *Risbey v. Revelstoke Fabricators et al* (1964) 47 W.W.R. 638 @ 639.

" I do not conclude that "attorney" necessarily means a member of the legal profession, but can include any properly authorized person, i.e., the president or managing director of a company who could instruct counsel to appear on behalf of the company in a court of law. It seems to me, with respect, that later authorities cited by

"Mr. Miller have developed from this earlier statement and have similarly identified "attorney" with "solicitor".

I am not prepared to hold a company is powerless to act except through a solicitor. There have been cases in this court where affidavits were accepted, sworn by a president of a company even without formally stating in the affidavit his power or authority to make such a deposition. A certain authority to act or speak for the company is to be implied from the office held by a senior official of a company. I am not prepared to hold that such an officer, if his qualifications are unchallenged, cannot enter an appearance."

Aside from the language found in Rule 88, above, and Rule 712 (1) which refers to "personal attendance of the party" in respect to business to be conducted at court offices I am unable to find anything in the Rules of Court which might help.

Of some interest perhaps is the fact that "person" includes a corporation in the definitions contained in *The Interpretation Act*, R.S.A. 1970, ch. 189; *Interpretation Act*, R.S.C. 1970, c. I-23; and *Interpretation Ordinance*, R.O.N.W.T., 1956, c. 52.

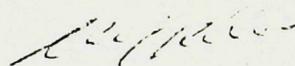
In my opinion it would seem to me that most, if not all, of the mysteries which were said to have evolved around corporations in the days of Coke and Blackstone have surely evaporated by now.

If the Rules that are applicable here are broad enough to permit the filing of pleadings by a proper officer of a corporation then surely they are broad enough to permit such a person, if suitably authorized, to continue to represent the corporation throughout the proceedings. In this respect I adopt the remarks of Ruttan, J., quoted above.

In the present case Mr. Penner explained how he could not obtain legal counsel in Yellowknife because all four of the law offices here in Yellowknife were already representing either the defendant or other creditors with interests adverse to him. To import counsel from Edmonton to the south would place an excessive financial burden on the litigant in the present case, requiring the added expenditure of hotel, meals, and return air fare from Edmonton.

In the result I find that Mr. Penner was entitled to appear in Court in this matter as attorney for the plaintiff Company. I would observe, though, that experience indicates that parties should where possible use counsel in their litigation.

There will be no costs to anyone under the circumstances. I wish to thank counsel for the Territorial Government for his assistance in argument.



W. G. Morrow

Yellowknife, N.W.T.  
21 March, 1975.

Counsel:

J. E. Richard, Esq., for Defendant  
W. R. Holdings

E. D. Johnson, Esq., for Government  
of the N.W.T.

B. Penner, Esq., in person

IN THE SUPREME COURT OF THE UNITED STATES

PLAINTIFFS

vs.

DEFENDANTS

Case No. 12-1234

Presented for review on writ of certiorari from the United States Court of Appeals for the Fifth Circuit, No. 11-1234.

On October 12, 2011, the United States Court of Appeals for the Fifth Circuit affirmed the judgment of the United States District Court for the Eastern District of Texas, No. 10-1234, which granted summary judgment in favor of the defendant.

The defendant argues that the plaintiff's claim is barred by the statute of limitations. The plaintiff argues that the claim is not barred because the statute of limitations does not apply to this type of claim.

The court concludes that the plaintiff's claim is not barred by the statute of limitations. The court finds that the statute of limitations does not apply to this type of claim.

Accordingly, the court reverses the judgment of the United States District Court for the Eastern District of Texas, No. 10-1234, and remands the case for further proceedings.

IT IS SO ORDERED.

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NO.

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