

Date: 2001 05 07
Docket: CV 08859

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

KIWI ELECTRIC LTD. and J.S.L. MECHANICAL INSTALLATIONS LTD.

Plaintiffs

- and -

CAMILLUS ENGINEERING CONSULTANTS LTD. and
THE MUNICIPAL CORPORATION OF THE VILLAGE OF FORT SIMPSON

Defendants

- and -

THE MUNICIPAL CORPORATION OF THE VILLAGE OF FORT SIMPSON

Third Party

MEMORANDUM OF JUDGMENT

[1] The defendant Camillus entered into a contract with the defendant Village for, generally, the design and construction of a sewage treatment plant.

[2] The plaintiffs are each of them sub-contractors of the general contractor Camillus. Each of the plaintiffs performed work under the respective sub-contract in 1999 and 2000. Each plaintiff says it remains unpaid for work performed pursuant to contract. In May and June 2000 the plaintiffs filed liens in the land titles office against the Village's property pursuant to the *Mechanic's Lien Act*.

[3] On June 19, 2000 the plaintiffs commenced the within action against the defendant Camillus and the defendant Village. Although in the within action the plaintiffs seek a declaration of their respective interest in the Village's property pursuant to the *Mechanic's Lien Act*, the plaintiffs also seek, as against the defendant Camillus, judgment for an unpaid debt under the plaintiffs' respective contracts with Camillus.

[4] Within this action the plaintiffs now apply, on an interlocutory application, for summary judgment against the defendant Camillus pursuant to Rule 174(1)

174(1) A plaintiff may, after a defendant has delivered a statement of defence, apply with supporting affidavits or other evidence for summary judgment against the defendant on all or part of the claim in the statement of claim.

[5] The plaintiff Kiwi says it is owed \$41,650.06 (this amount was reduced to \$31,589.12 during oral argument). Camillus says it only owes Kiwi \$27,230.21, and disputes the balance.

[6] The plaintiff J.S.L. says it is owed \$40,090.98. Camillus says it only owes J.S.L. \$21,520.87, and disputes the balance.

[7] I see no reason why the plaintiffs should not have summary judgment for the undisputed amount of the outstanding debts. With respect to those amounts there is no issue for trial.

[8] Camillus submits that the plaintiffs' claims must await resolution of another dispute that Camillus has with another sub-contractor Foothills Industrial Systems Ltd. and resolution of Camillus' own dispute under the general contract with the owner Village. I find no merit in this submission. Camillus' other problems are unrelated in law to its contractual debt to these plaintiffs.

[9] Camillus also submits that s.15 of the *Mechanic's Lien Act* is a bar to the relief sought here by the plaintiffs:

s.15(1) Where a claim is made by a sub-contractor in respect of a lien on which the sub-contractor is entitled and a dispute arises as to the amount due or payable in respect of the lien, the dispute shall be settled by arbitration.

(2) A sub-contractor making a claim under subsection (1) shall appoint one arbitrator, the employer of that person shall appoint one arbitrator and the two arbitrators shall point the third arbitrator.

(3) The decision of the arbitrators or a majority of them is final and conclusive.

[10] With respect, I disagree. Firstly, the “claim” the Court is being asked to adjudicate upon on this interlocutory application is the claim in debt against Camillus, and not with respect to the lien which the plaintiffs also happen to assert. Secondly, the amounts mentioned above (i.e., \$27,230.21 owing to Kiwi; \$21,520.87 owing to J.S.L.) are not in dispute. The arbitration process in s.15, if it applies at all, surely applies only to the amount in dispute.

[11] For the foregoing reasons, the plaintiffs’ application under Rule 174 is granted.

[12] The plaintiff Kiwi shall have judgment against the defendant Camillus in the amount of \$27,230.21, plus interest pursuant to s.56 of the *Judicature Act* from May 5, 2000. The plaintiff J.S.L. shall have judgment against the defendant Camillus in the amount of \$21,520.87, plus interest pursuant to s.56 of the *Judicature Act* from May 5, 2000. The plaintiffs shall have one set of party-party costs in Column 4. Success on this application is without prejudice to the plaintiffs’ right to continue with the balance of their claims against the defendants for disputed amounts, liens, interest claims, costs, etc.

J.E. Richard,
J.S.C.

Dated at Yellowknife, NT, this
7th day of May 2001

Counsel for the Plaintiffs: Doug McNiven
Counsel for the Defendant Camillus: James Thorlakson
Counsel for the defendant Village: Charles Thompson

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MEMORANDUM OF JUDGMENT OF THE
HONOURABLE JUSTICE J.E. RICHARD
