

CANADA / JUDGMENT

F.A.P. Construction Ltd. v. RMC Ready-Mix Ltd.

2002 BCSC 1752

COURT

Supreme Court of British Columbia

DECIDED

16 December 2002

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Citation:	F.A.P. Construction v. RMC Ready-Mix et al
Date:	20021216 2002 BCSC 1752
Docket:	L023834 Registry: Vancouver IN THE SUPREME COURT OF BRITISH COLUMBIA
BETWEEN:	F.A.P. CONSTRUCTION LTD. PETITIONER
AND:	RMC READY-MIX LTD. AND F & F CONTRETE LTD. RESPONDENTS

REASONS FOR JUDGMENT

OF

MASTER PATTERSON

(IN CHAMBERS)

Counsel for the Petitioner:

M. Wolters

Counsel for the Respondents:

G.J. Niemela

Date and Place of Hearing:

December 13, 2002

Vancouver, BC

- [1] In its petition the petitioner F.A.P. Construction Ltd. (hereinafter "F.A.P.") seeks an order of the court that two claims of lien filed against various properties and the consequent claims of pending litigation be discharged upon payment into court of the full amount of the liens. The disagreement between the parties is whether or not there should be added to the amount paid into court a sum for security for costs.
- [2] From the affidavits, it appears that the lien claimants RMC Ready-Mix Ltd. and F & F Concrete Ltd. (hereinafter "RMC" and "F & F", respectively) were subcontractors who supplied concrete and concrete finishing to a number of properties being constructed by Vanview Construction Ltd. (hereinafter "Vanview"). The properties themselves are owned by a number of different registered owners.
- [3] Vanview was apparently unable to complete the construction and F.A.P. has contracted to complete the various projects. Apparently, F.A.P. has agreed to obtain discharges of various liens and has been successful in doing so with all but these two, the subject matter of this application. There is now some urgency in having the liens discharged.
- [4] The total amount of the liens filed by both RMC and F & F is \$15,707.14. If security for costs in the amount of 15 percent (which is the usual rate) were added, that would be an additional \$2,356.07.
- [5] The essence of the application is that the petitioner brings this application pursuant to s. 23 of the Builders Lien Act, S.B.C. 1997, c. 45, which is a relatively new section of the Act and is clearly intended to be different from s. 24 of the Act. Section 24 provides the usual remedy of obtaining a discharge of lien on posting security, including an amount for costs.
- [6] Section 23 provides a remedy for an owner to step out of the builders lien claim and litigation on paying into court either the full amount of the lien or in some cases the holdback that is required pursuant to the Act. The Act provides that upon payment being made pursuant to such an order that the lien be removed. There is no provision in s. 23 for payment of an amount for security for costs in addition to the amount of the lien or holdback.
- [7] In this case, it is clear from the affidavits that the following facts are made out:
1. RMC and F & F are subcontractors of Vanview;
 2. There is no evidence that they were engaged by the registered owners to do work or provide materials;
 3. The applicant F.A.P. is not related to the registered owners and was engaged to complete the contract after Vanview failed to do so;

4. The amount sought to be paid in by the applicant is the full amount of the liens claimed by RMC and F & F;
5. There have been unsuccessful negotiations to settle this impasse which appears to involve only \$2,356.07.

[8] Section 23 of the Builders Lien Act is as follows:

23(1) If a claim of lien is filed by one or more members of a class of lien claimants, other than a class of lien claimants engaged by an owner, the owner, contractor, subcontractor or mortgagee authorized by the owner to disburse money secured by a mortgage may, on application, pay into court the lesser of

- (a) the total amount of the claim or claims filed, and
 - (b) the amount owing by the payor to the person engaged by the payor through whom the liens are claimed provided the amount is at least equal to the required holdback in relation to the contract or subcontract between the payor and that person or, if the payment is made by a purchaser to whom section 35 applies, 10% of the purchase price of the improvement.
- (2) Payment into court under an order made under subsection (1) discharges the owner from liability in respect of the claims of lien filed and
- (a) the money paid into court stands in place of the improvement and the land or mineral title, and
 - (b) the order must provide that the claims of lien be removed from the title to the land or mineral title.

[9] This section has been considered by Master Joyce, as he then was, in *Port Royal Riverside Development et al v. Vadasz et al*, [1998] B.C.J. No. 2074, and by Master Groves in *GM Electric Ltd. v. Lin*, 2000 BCSC 1260. Both of those cases conclude that the provisions of s. 23 are different from the provisions of s. 24, particularly in that no security is required.

[10] It follows that the petitioner should have the order sought, that upon payment into court of the sum of \$15,707.14 the liens be removed. There is no requirement for the payment of any additional amount as security for costs.

[11] The petitioner is successful on this application, the respondents have failed to show this should be an application under s. 24 or that security is required. Consequently, the petitioner is entitled to costs of this application, such costs to be assessed on Scale 3.

"Master A. Patterson"

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