

CANADA / JUDGMENT

Hager v. United Sheet Metal Ltd.

[1954] SCR 384

COURT

Supreme Court of Canada

DECIDED

19 May 1954

Source: decisions.scc-csc.ca · Research copy typeset by Esheria. Not court-issued or certified.

Hager v. United Sheet Metal Ltd.

Collection

Supreme Court Judgments

Date

1954-05-19

Report

[1954] SCR 384

Judges

Kerwin, Patrick; Taschereau, Robert; Rand, Ivan Cleveland; Estey, James Wilfred; Locke, Charles Holland; Cartwright, John Robert

On appeal from

Alberta

Subjects

Property law

Decision Content

Supreme Court of Canada

Hager v. United Sheet Metal Ltd., [1954] S.C.R. 384

Date: 1954-05-19

Reinhold Hager and Eda Mary Hager (Defendants) Appellants ;

and

United Sheet Metal Ltd. and Chinook Building Supplies Ltd. (Plaintiffs) Respondents.

1954: February 3, 4; 1954: May 19.

Present: Kerwin, Taschereau, Rand, Estey, Locke and Cartwright JJ.

ON APPEAL FROM THE SUPREME COURT OF ALBERTA, APPEAL DIVISION

Land Titles—Mechanics' Liens—Priorities—Lands sold bona fide purchaser for value without notice—Certificate of title issued to purchaser before registration of liens within statutory period — Whether liens apply—The Lands Title Act, R.S.A. 1942, c. 205 as amended—The Mechanics' Lien Act, R.S.A. 1942, c. 236, as amended.

The appellants, bona fide purchasers of land for value without notice, registered title under The Lands Title Act, R.S.A. 1942, c. 205, prior to the registration by the respondents of mechanics' liens within the time permitted by The Mechanics' Lien Act, R.S.A. 1942, c. 236. Held: 1. That The Mechanics' Lien Act does not alter or modify the provisions of The Lands Title Act in respect to such purchasers. The respondents' liens were not "notified on the folio of the register" when the certificate of title was issued to the appellants and therefore the latter, as provided by s. 60(1) of The Lands Title Act, held the land free and clear of such liens.

2. That the appellants were not "owners" within the meaning of ss. 2(g) and 6 of The Mechanics' Lien Act.

Per: Locke J.—While in one sense a person who takes a transfer for value from the person upon whose credit the material is supplied and obtains a certificate of title, "claims under" the former owner in strictness it is not under this transfer that the claim of the holder of the certificate to hold the land free of the lien is based, but rather upon the express terms of ss. 60 and 62 of The Lands Title Act,

Judgment of the Appellate Division of the Supreme Court of Alberta (1953) 9 W.W.R. (N.S.) 481, reversed and judgment at trial restored.

APPEAL from a judgment' of the Appellate Division of the Supreme Court of Alberta 1 F. Ford and Parlee JJ.A. dissenting, reversing a judgment of Egbert J. 2, declaring the defendants held a certificate of title free from the mechanics' liens of the plaintiffs and directing the removal of the liens from the certificate of title.

D. F. McLeod for the appellants.

T. J. Hopwood for the respondents.

The judgment of Kerwin, Tachereau, Kellock, Estey and Cartwright JJ. was delivered by:

Estey J.:—This is an appeal pursuant to special leave granted by the Appellate Division of the Supreme Court of Alberta from a majority decision of that Court reversing the judgment of the learned trial judge in favour of the defendants (appellants).

The issue may be briefly stated: Do the appellants, who bona fide purchased the land here in question and became registered owners thereof after respondents had provided labour and materials utilized in the construction of a building thereon but before they had registered mechanics' liens (though registration thereof was within the time permitted by The Mechanics' Lien Act (R.S.A. 1942, c. 236 as amended)) hold the land subject to or free from the mechanics' liens? The labour and materials were provided by the respondents at the request of and for the benefit of Frank Carter and utilized in the improvement of a building on land of which he was the registered owner and described as the West 30 feet of the East 40 feet of Lot 13 in Block 12 according to a plan of record in the South Alberta Land Registration District as Plan Upper Hillhurst, Calgary, 6219 L.

The labour and materials were provided prior to June 13, 1951, on which date Frank Carter sold the premises to the appellants, who became bona fide purchasers for valuable consideration and to whom, on that date, was issued, out of the appropriate Land Titles Office, a certificate of title to the said land.

On the following day, June 14, 1951, respondent United Sheet Metal Limited registered a mechanics' lien and subsequently the other respondents registered liens, all of which were within the time permitted for registration by the statute.

The Land Titles Act (R.S.A. 1942, c. 205) is a statute of general application to all the lands throughout the province. The Mechanics' Lien Act creates a lien in favour of those who provide labour and materials utilized in the construction, alteration or repair of buildings. It is, therefore, legislation in favour of specified parties who, as a result thereof, may register an incumbrance against the land in the appropriate Land Titles Office. It follows that the effect of registration of a mechanics' lien in the Land Titles Office must be determined under the provisions of The Land Titles Act, except as these may be repealed, altered or modified by the provisions of The Mechanics' Lien Act. This conclusion, apart from the general principles of construction, is supported by the provisions of The Mechanics' Lien Act.

Under The Land Titles Act documents become effective upon registration and once a certificate of title is issued to an owner of land that owner, except in the case of fraud, holds it subject only to such incumbrances, liens, estates or interests as are notified on the certificate of title but "absolutely free from all other incumbrances, liens, estates or interests ..." The lien under The Mechanics' Lien Act is created by s. 6(1). This section reads as follows:

6(1) Unless he signs an express agreement to the contrary and in that case, subject to the provisions of section 4, a person who performs any work or service upon or in respect of or places or furnishes any materials to be used in the making, constructing, erecting, fitting, altering, improving, demolishing, or repairing of any improvement for any owner, contractor or sub-contractor, shall by virtue thereof have a lien for so much of the price of the work, service or materials as remains due to him in the improvement and the land occupied thereby or enjoyed therewith, or upon or in respect of which the work or service is performed, or upon which the materials are to be used.

Section 7 provides that “The lien shall arise at the date of the commencement of the work or at the date of the first delivery of material.”

These ss., 6 and 7, specify that the lien exists prior to and apart from registration. The statute, however, goes on to provide for registration within specified times and when registered under s. 19(8) the lien becomes “an incumbrance against the land, or the estate or interest in the land therein described, as provided in The Land Titles Act.” If, however, the lien is not registered, s. 24(1) provides: “Every lien which is not registered shall absolutely cease to exist on the expiration of the time” fixed for the registration thereof.

The Mechanics’ Lien Act, while it does not expressly repeal, does, to some extent, alter or modify certain provisions of The Land Titles Act in respect of priorities in relation to mechanics’ liens, qua incumbrances.

Section 11 reads as follows:

11. Liens arising by virtue of this Act shall as against the lands and improvements subject to the lien be prior to all unregistered mortgages and prior to all mortgages registered subsequent to the date the lien arose.

Section 11b. (1): as enacted in 1943 S. of A. c. 35, s. 5.

11b. (1) Where works or improvements are put upon premises subject to a registered mortgage, liens arising by virtue of this Act shall be prior to such mortgage to the extent of the increase in value of the mortgaged premises resulting from such works or improvements and from all subsequent improvements and no such lien shall be barred or foreclosed in any proceedings on such mortgage. Section 11b. (9): as enacted in 1943 S. of A. c. 35, s. 5.

11b. (9) In the case of an agreement for the purchase of land where the purchase money, or part thereof, is unpaid, and the purchaser has not been registered as owner thereof, he shall for the purposes of this Act be deemed a mortgagor and the seller a mortgagee, whose mortgage was registered on the date of execution of the agreement for sale.

This provision in s. 11b.(9), restricted as it is to a purchaser who still owes a part of the purchase price and has not become registered owner, clearly suggests that the legislature did not intend to legislate, in The Mechanics’ Lien Act, in respect to a purchaser such as the appellants who have paid the purchase price in full and become registered owners.

The Mechanics’ Lien Act, therefore, does not alter or modify the provisions of The Land Titles Act in respect to an owner in the position of the appellants who, under s. 60(1) of The Land Titles Act, hold their certificate of title “subject ... to such incumbrances, liens, estates or interests as are notified on the folio of the register which constitutes the certificate of title absolutely free from all other incumbrances, liens, ...” All of the liens here in question were not “notified on the folio” when the certificate of title was issued to the appellants. It must follow that they hold the land free and clear thereof.

It is, however, contended that the foregoing is changed by virtue of the definition of “owner” in s. 2(g) and that as a consequence the respondents have a lien against the interests of the appellants as owners.

It will be noted that in s. 6(1) above quoted, the respondents having supplied services and materials “for any owner ... shall by virtue thereof have a lien ... in ... the land occupied thereby ...” The relevant portions of s. 2(g) reads:

2. In this Act, unless the context otherwise requires,—

* * *

(g) “owner” extends to every person ... having any estate or interest in land, at whose request, express or implied, and,—

(i) upon whose credit; or

(ii) upon whose behalf; or

(iii) with whose privity and consent; or

(iv) for whose direct benefit,—any contract work is done and all

persons claiming under him or it whose rights are acquired after

the commencement of the work; There can be no question but that the services and materials were supplied at Carter’s request while he was registered owner of the land, nor can there be any question but that the appellants purchased the land from Carter. The question, therefore, arises: Are the appellants, as the respondents contend, included in the phrase “all persons claiming under” Carter?

The Mechanics’ Lien Act creates a lien apart from and prior to its registration. Once, however, registration is effected, it becomes an incumbrance under The Land Titles Act and it would seem to follow that questions in respect to priority must then be determined under the relevant provisions of The Mechanics’ Lien and Land Titles Acts. In these circumstances it would appear that the provisions for registration are such that the words “unless the context otherwise requires” in s. 2(g) are important in construing the foregoing phrase which, so far as that is reasonably possible, ought to be construed in a manner that is neither repugnant to nor in conflict with any other provision of the enactment. Moreover, the construction here contended for by the respondents would largely, if not entirely, nullify the provisions with respect to registration and priority where mechanics’ liens are in issue under the two above-mentioned Acts.

The foregoing view is supported by the fact that registration is not mentioned in the definition under s. 2(g), while its importance in the substantive provisions of the statute cannot be doubted. In my view it was not the intention of the legislature that the phrase “all persons claiming under him” should be given a meaning that would deny to a bona fide purchaser who had received a certificate of title as owner the position that he is otherwise entitled to under The Land Titles Act and The Mechanics’ Lien Act.

We are in this case concerned only with registered owners of land and mechanics’ liens registered against land after it has passed into the” hands of the appellants who, at all relevant times, were not owners within s. 6 and s. 2(g). A construction that does not include them within the definition of “owner” in s. 2(g) does not unduly restrict the effect of the wide and comprehensive language thereof. The Legislature, by s. 2(g) as well as by other provisions in the statute, makes it clear that “owner” includes both those who are registered as owners and others whose interests are not registered. An example of the latter may be found in s. 11b(9), where one who holds the land as purchaser under an agreement for sale, but who owes all or a part of the purchase price and who has not been registered as owner, is included within the definition in s. 2(g). The purchaser in the latter section is deemed a mortgagor and the seller a mortgagee “whose mortgage was registered on the date of the execution of the agreement for sale.”

While the provisions of the Ontario mechanics’ lien legislation considered in *Sterling Lumber Co. v. Jones*, 3 are different, the definition of “owner” is substantially to the same effect. There Jones, an owner, obtained services and materials from the lienholder in the construction of a house. When nearing completion, one Oliver purchased and registered his conveyance from Jones on July 9, 1914, prior to the registration of any mechanics’ lien. In fact the liens were not registered until the following month. The Ontario Court of Appeal held that Oliver, as registered owner under The Ontario Registry Act (R.S.O. 1914, c. 124), held the property free and clear of the mechanics’ liens. Mr. Justice Hodgins at p. 293 stated:

It is quite possible to give a reasonable interpretation to the words in the definition (sec. 2(c)) “all persons claiming under him or them whose rights are acquired after the work or service in respect of which the lien is claimed is commenced or the materials furnished have been commenced to be furnished,” without infringing this principle.

The appeal should be allowed and the judgment of the learned trial judge restored. The appellants should have their costs both in the Appellate Division and in this Court.

The judgment of *Rand and Locke JJ.* was delivered by: *Locke J.*—The appellants in the present matter are the registered owners of the lands upon which the respondents claim to be entitled to liens and hold a certificate of title issued to them on June 13, 1951, under the provisions of The Land Titles Act (R.S.A. 1942, c. 205). It was admitted by the respondents that this certificate of title issued pursuant to a transfer given by the former registered owner, one Frank Carter, to the appellants for valuable consideration and was registered by them, they having no notice of the claims of the respondents. The materials in respect of which the claims of lien were filed were supplied at the request of Carter prior to the date upon which he delivered the transfer to the

appellants. The Mechanics' Lien Act (c. 236, R.S.A. 1942) by s. 6 declares that a person who furnishes materials to be used for the purpose of constructing any improvement for any owner, contractor or sub-contractor, shall by virtue thereof have a lien for the price. "Owner" is defined by clause (g) of s. 2 as extending, inter alia, to every person having an

estate or interest in land at whose request:—

any contract work is done and all persons claiming under him or it whose rights are acquired after the commencement of the work.

The point in the appeal is as to whether the appellants are persons claiming under Carter, within the meaning of clause (g) of s. 2 of the Act, and thus "owners" within s. 6.

Section 11 of The Mechanics' Lien Act (as amended) declares that liens arising by virtue of the Act shall as against the lands and improvements subject to the lien be prior to all unregistered mortgages and prior to all mortgages registered subsequent to the date the lien arose. Section 11b provides, inter alia, that when works are put upon premises subject to a registered mortgage, liens arising by virtue of the Act shall be prior to such mortgage, to the extent of the increase in value of the mortgaged premises resulting from such works. Subsection (9) of this section provides that in the case of an agreement for the purchase of land where the purchase money or part of it is unpaid and the purchaser has not been registered as owner, he shall for the purposes of the Act be deemed a mortgagor and the seller a mortgagee whose mortgage was registered on the date of the execution of the agreement for sale. Section 22 provides that a lien may be registered before or during the performance of the contract or within thirty-five days after its completion. By s. 24 it is provided that every lien which is not registered shall cease to exist on the expiration of the time so limited.

The appellants contend that their title to the land, evidenced by the certificate of title issued to them, is not subject to the liens claimed by the respondents and they rely upon the provisions of The Land Titles Act (R.S.A. 1942, c. 205) to sustain that position. Subsection (e) of s. 2, the interpretation section of that Act, defines "incumbrances" as any charge on land created or effected for any purpose whatever and as including mechanics' liens when authorized by statute.

Section 55 declares that instruments registered affecting the same land shall be entitled to priority the one over the other according to the time of registration and not according to the date of execution.

Section 60 provides that the owner of land in whose name a certificate of title has been granted shall, except in certain circumstances which do not bear upon the present matter, hold it subject to such incumbrances as are notified on the folio of the register which constitutes the certificate of title but absolutely free from all other incumbrances, liens, estates or interests.

The land mentioned in any certificate of title granted under the Act is stated by s. 61 to be by implication subject to certain reservations, charges or rights, none of which affect the present question.

Section 62 reads:—

Every certificate of title granted under this Act shall (except in case of fraud wherein the owner has participated or colluded) so long as the same remains in force and uncanceled under this Act be conclusive evidence in all courts as against His Majesty and all persons whomsoever that the person named therein is entitled to the land included in the same, for the estate or interest therein specified, subject to the exceptions and reservations mentioned in section 61, except so far as regards any portion of land by wrong description of boundaries or parcels included in the certificate of title and except as against any person claiming under a prior certificate of title granted under this Act or granted under any law heretofore in force relating to titles to real property in respect of the same land; and for the purpose of this section that person shall be deemed to claim under a prior certificate of title who is holder of, or whose claim is derived directly or indirectly from the person who was the holder of, the earliest certificate of title granted, notwithstanding that the certificate of title has been surrendered and a new certificate of title has been granted upon any transfer or other instrument.

Other than in the definition of “incumbrance” in clause (e) of s. 2, the only reference to mechanics’ liens in the statute is in s. 148a which requires the District Registrar, upon receiving a claim for registration of the lien under the provisions of the Mechanics’ Lien Act, to advise the registered owner in writing of the fact. Liens in favour of workmen and those who supplied material were first provided for in the Northwest Territories by Ordinance No. 6 of 1884. The definition of “owner” in that ordinance included, as does the present statute, the person having an estate, legal or equitable, in the lands at whose request the materials were supplied and:—

all persons claiming under him, whose rights are acquired after the work in respect of which the lien is claimed, is commenced, or the materials or machinery furnished have been commenced to be furnished.

This language appears to have been taken from the Mechanics’ Lien Act of Ontario (R.S.O. 1877, c. 120) and first appeared in c. 20 of the Statutes of Ontario of 1875.

It was in 1886 that the Territories Real Property Act, which introduced the Torrens system into the Northwest Territories, was enacted by the Parliament of Canada. Ss. 60, 61 and 62 of that Act, with certain changes which do not affect the present matter, are reproduced in those sections in the present Land Titles Act of Alberta. The Land Titles Act first enacted in Alberta in 1906 substantially re-enacted the Dominion Act of 1886 and its successor, the Land Titles Act of 1894. The Mechanics’ Lien Ordinance was in turn replaced by The Mechanics’ Lien Act of Alberta of 1906. Both statutes appear in the revisions of the Alberta Statutes of 1922 and 1942.

I have considered the decisions under the Ontario Statute to which we have been referred, in which the rights of lien holders as against mortgagees or purchasers advancing money or taking title without any knowledge of such claims have been considered. Of these, *McVean v. Tiffin* 4, *Reinhart v. Shutt* 5, *Wanty v. Robins* 6, *Reggin v. Manes* 7, and *Sterling Lumber Co. v. Jones* 8, appear to support the position of the appellants, at least to this extent that priority of registration under the Registry Act was held to give priority over the claim of lien. They do not, however,

directly touch the question to be decided here which turns, in my opinion, upon the effect to be given to the sections of The Land Titles Act to which I refer.

While the Territories Real Property Act of 1885 was passed after the first Mechanics' Lien Ordinance to which I have referred, since The Land Titles Act and The Mechanics' Lien Act were passed at the same time in 1906, 1922 and 1942 by the Legislature of Alberta, it cannot be successfully contended that the provisions of either statute repeal any part of the other by implication. I think it is possible, without doing violence to the language of either, to give effect to the provisions of both.

As I have pointed out, The Mechanics' Lien Act in its present form gives priority to the lien claimant over the holder of a registered mortgage to the extent of the increase in value brought about by the performance of the work, and further declares the priority of the lien over all unregistered mortgages and those registered subsequent to the date the lien arose. In addition, by s. 11b(9) it declares the rights of the lien claimant as against the vendor under an agreement for sale. While to this extent The Mechanics' Lien Act has dealt with questions of priority in regard to claims against land, it is silent as to the rights of a lien claimant against a person to whom a certificate of title has been issued and who has thus obtained the protection afforded by ss. 60 and 62 of The Land Titles Act unless, indeed, it can be said that the effect of s. 6, when read with the definition of "owner", conflicts with these sections of The Land Titles Act.

In my opinion, the expression "owner" in s. 6 should not be construed as including a person who has obtained a transfer for value and, having registered it and obtained a certificate of title for the land, has become entitled to the protection of the provisions of The Land Titles Act. While it is true that in one sense such a person "claims under" the former owner at whose request or upon whose credit the materials are supplied in that the transfer of the land has been given by such person, in strictness it is not under this transfer that the claim of the holder of the certificate of title to hold his land free of the lien is based, but rather upon the express terms of these sections of The Land Titles Act. When the appellants obtained their certificate of title, there were no incumbrances or liens notified on the folio of the register which constituted the certificate and so they held it free from any such claim and, by virtue of s. 62, the certificate of title is conclusive evidence in all courts of that fact. I would allow this appeal with costs in this Court and in the Appellate Division and restore the judgment of the learned trial Judge.

Appeal allowed with costs.

Solicitors for the appellants: German, Mackay & McLaws.

Solicitors for the respondents: Scott & Gregg.

1 (1953) 9 W.W.R. (N.S.) 481; [1953] 4. D.L.R. 308.

2 (1952-53) 7 W.W.R. (N.S.) 481.

3 (1916) 29 D.L.R. 288.

4 (1885) 13 A.R.I.

5 (1888) 15 O.R. 325.

6 (1888) 15 O.R. 474.

7 (1892) 22 O.R. 443.

8 (1916) 36 O.L.R. 153.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/7538/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/hager-v-united-sheet-metal-ltd-1954>

Prepared on 28 October 2026 · Esheria