

CANADA / JUDGMENT

Macropus Global Ltd. v. Ghai

2024 BCSC 654

COURT

Supreme Court of British Columbia

DECIDED

7 March 2024

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2024 BCSC 654 Macropus Global Ltd. v. Ghai IN THE SUPREME COURT OF BRITISH COLUMBIA
Citation: Macropus Global Ltd. v. Ghai, 2024 BCSC 654 Date: 20240307 Docket: S244661 Registry:
Victoria Between: Macropus Global Ltd. Plaintiff And: Sumit Ghai Defendant Before: The
Honourable Justice Morley Oral Reasons for Judgment (In Chambers) Appearing as Agent for the
Plaintiff: C. Katireddy Counsel for the Defendant: E. Kahs (as Agent for L. Oss-Cech) Place and
Date of Trial/Hearing: Victoria, B.C. March 7, 2024 Place and Date of Judgment: Victoria, B.C.
March 7, 2024

- [1] THE COURT: These are edited oral reasons for judgment in chambers.
- [2] This is an application by Sumit Ghai to remove a builders lien on his property filed by the plaintiff, Macropus Global Ltd., for what it says is unpaid work under a construction agreement made January 6, 2022. The basis for the application is s. 25 of the Builders Lien Act, which allows an owner, among others, to apply to the court to cancel a claim of lien if satisfied that the lien is extinguished under ss. 22 or 23.
- [3] Section 22 in turn says that: A lien in respect of which a claim of lien is not filed in the manner and within the time provided in this Act is extinguished.
- [4] The basis for the statement that the lien was not filed in accordance with the manner of the Act is s. 20(2)(a), which provides as follows:
- (2) A claim of lien that is not governed by subsection (1) may be filed no later than 45 days after
- (a) the head contract has been completed, abandoned or terminated, if the owner engaged a head contractor, ...
- [5] It is common ground that Macropus Global Ltd. is the head contractor engaged by Sumit Ghai. It is also common ground that this contract was never completed. So there are two issues. Was the contract was abandoned or terminated 45 days or more before the lien was filed on December 15, 2023.

- [6] The position of Mr. Ghai is that he terminated the contract on October 15, 2023. Since that was more than 45 days before December 15th, he says it is out of time. In the alternative, the argument, as I understand it, is that Macropus Global Ltd. abandoned the work more than 45 days before filing the lien.
- [7] Macropus responds through its principal, Mr. Chinna Katireddy, that the contract was never properly terminated. Communications in mid-October of 2023 were ambiguous as to whether the contract was being terminated or the work was being put temporarily on hold. He says Macropus continued to do work up to November 1, 2023, and therefore the lien is within time.
- [8] In addressing this issue, it is important to note that it is not about the merits of the dispute. It is about whether there will be the security of a lien so that the dispute can be addressed. The purpose of the Builders Lien Act is to ensure that contractors and subcontractors are paid and therefore it encourages the construction industry generally, which is extremely important. Of course, it is also important that contractors and subcontractors meet the deadlines in the Builders Lien Act because the owners need to know what their rights are and need to be able to deal with their property.
- [9] But in interpreting this section, both termination and abandonment must be unambiguous and clear. In this particular case, the contract itself provides for how termination is to be done. Clause 30 of the contract states as follows:
30. **TERMINATION FOR CAUSE / CONTRACTOR DEFAULT:** If Builder/General Contractor fails to commence or prosecute the work hereunder promptly and diligently at all times, or, in the opinion of the Owner falls significantly behind schedule, or Builder/General Contractor fails in any way to perform the conditions contained within this Agreement, or any of the conditions relating to Builder/General Contractor contained in this agreement, or repeatedly fails to follow the instructions of the Owner(s), Builder/General Contractor may be terminated for default by Owner after being given 1 week notice by Owner if Builder/General Contractor fails to take significant steps to cure his default. Owner agrees to make payments to Builder/General Contractor in accordance with the terms of this Agreement as long as Builder/General Contractor is not in default under this Agreement. ... [Emphasis added.]
- [10] Thus when termination is for cause, the contract provides a one-week notice period in which the deficiencies can be addressed.
- [11] I note for context that prior to the dispute coming to a head in mid-October 2023, Mr. Ghai deposes that he retained counsel on the matter. Mr. Ghai's affidavit states the following, paragraph eight:
8. On or around October 15, 2023, I terminated MGL for the above reason and because I discovered that it was charging for materials and then removing them for the site for other purposes than toward the improvement to the Property. ...

- [12] Attached to the affidavit is an email chain on that day between the principal of the plaintiff and Mr. Ghai. The chain begins at 11:02 a.m. on October 15, and Mr. Ghai communicates to Mr. Katireddy a number of concerns he has, at least in this initial email. This appears to be a notice of concerns, perhaps of deficiencies but there is no statement of an intention to terminate. The email chain continues into the evening.
- [13] Mr. Katireddy provides some responses, but they are obviously not satisfactory to Mr. Ghai. At 6:31 p.m. Mr. Ghai says the following: Hi Chinna [i.e., Mr. Katireddy], Since you have started the work and now asked to increase our signed contract price in the middle of the project and backing out. As I am not comfortable in increasing the contract price that we have signed. Why have you started the work if you are not happy with your pricing? I would request you to please refund the \$10K + city builder filing fee for breach of the contract.
- [14] On behalf of Mr. Ghai, counsel argues that this clear notice of termination.
- [15] Some evidence of what the parties considered it to be is found in the subsequent communications later in October. In particular on October 25, there is an email exchange between Mr. Ghai and Mr. Katireddy again. This is triggered by an email from Rachel Cornes, Account Relations for Pacific Warranty, who emails Mr. Reddy to say: Good morning, We received notice you are no longer working on the project located at 3960 Sherwood Road. If this is the case, please fill out the attached de-enrollment request form.
- [16] Mr. Katireddy forwards this to Mr. Ghai saying: Please confirm the following... you didn't send me a official confirmation so far about my work for 3960 Sherwood rd house construction. Please let me know.
- [17] Later on October 24, Mr. Ghai responds: I already informed you that I am working on alternate builder arrangement. I am working on the required paperwork & below email from pacific warranty is part of that. As I have paid you for this warranty, if there is any refund, please send over to my same email address.
- [18] Mr. Reddy asks: Can you tell me the reason why you are working with alternate builder?
- [19] Mr. Reddy has to send that message again, and then at 4:40 on October 25, Mr. Ghai said: Plz refer to multiple emails/whatsapp messages sent to you last week & your responses. I have no choice, but to move forward with alternate arrangement for my house construction project. I also tried to reach out to you by text message to pick up my tim-horton gift cards, but I didn't hear back.
- [20] Mr. Katireddy responds to that by saying: There is no clarity in your messages... whatever you have asked, I did answer for it. You didn't tell me anything so far how we need to proceed. you have asked me to stop the work. I stopped it. You didn't provide any further notice or details.

- [21] Mr. Katireddy says that he understood that he had been told to stop. It is clear he must have understood that Mr. Ghai was seeking alternative arrangements, but says he was continued to be asked to do some work. There is some evidence of work in the form of text messages sent on October 17 requesting removal of footing lumber and noting a garage foundation wall damage. On behalf of Mr. Ghai it is stated that this is not substantive work but just a cleanup and termination -- which is consistent with the termination of the contract, but it is clear there was -- I do have evidence that some work was done by employees of Mr. Katireddy on November 1, 2023, later in the evening when they removed leftover footings lumber.
- [22] It does appear that it was plausible for Mr. Katireddy to be confused. He was asking for identification of the defaults which were a prerequisite for termination for cause. It may be that Ghai decided that he was going to terminate without cause and take on whatever legal risk he might for that, but that, in my view, was not clear. It was not clearly articulated.
- [23] So the termination date remained unclear at that time. My understanding of the law is that termination under the Builders Lien Act, if it is to be the basis for the running of the 45-day period, needs to be unambiguous and unequivocal.
- [24] There was an unequivocal statement made Tuesday, November 14, 2023, when Sumit Ghai stated to Mr. Katireddy: I have been informed that despite multiple reminders from progressive warranty and by myself, home warranty insurance no . 50-175808 has not been withdrawn They will only be able to process refunds once you withdraw the home warranty. As I have paid to you and requested again you to please cancel this warranty as you are no longer the builder for my site address ... That is, I think, clear. It may be that there is a clearer termination prior but not before November 1, 2023, which would be necessary for this application to succeed.
- [25] Abandonment is the alternate theory on which the application is made. Abandonment requires conduct or words from the contractor that unequivocally represents that they are no longer working. Again, that is contextual. In fact, it does not appear that abandonment was the case here.
- [26] In my view, this might be somewhat different if there were evidence that Mr. Ghai was not represented. But he does not suggest of lack of sophistication. Mr. Katireddy quite explicitly asked for clarification and stated that he wanted to know whether he was being terminated. He needed to know that for the purposes of addressing insurance, warranty, possibly for employees, and also of course to know what -- when the builders lien period would begin. The fact that this request was not addressed is of significance in my view.
- [27] Under s. 25, the onus is on the owner to satisfy the court that the time began to run and it was within the owner's power to make an unequivocal statement in writing that would have put the contractor in this case on notice that the termination had happened and therefore that the period to file a lien was running.

[28] So for those reasons I dismiss the application.

[29] Since this is without regard to the merits of the underlying dispute, I will say costs are in the cause. "J. G. Morley, J." The Honourable Justice Morley

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Prepared on 29 October 2026 · Esheria