

CANADA / JUDGMENT

Paron Construction v. Town Drywall et al.

[1980] 2 SCR 115**COURT**

Supreme Court of Canada

DECIDED

3 June 1980

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Paron Construction v. Town Drywall et al. Collection Supreme Court Judgments Date 1980-06-03
Report

[1980] 2 SCR 115 Judges Martland, Ronald; Dickson, Robert George Brian; McIntyre, William Rogers; Chouinard, Julien; Lamer, Antonio On appeal from Ontario Subjects Priorities and hypothecs Decision Content Supreme Court of Canada Paron Construction v. Town Drywall et al., [1980] 2 S.C.R. 115 Date: 1980-06-03 Paron Construction Limited (Plaintiff) Appellant; and Town Drywall Inc. and Brampar Building Supplies Limited (Defendant) Respondent. 1980: June 3. Present: Martland, Dickson, McIntyre, Chouinard and Lamer JJ. ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO. Mechanics' liens—Funds paid into court by general contractor—Contractor not cestui que trust of such funds—Does not step into shoes of lien claimants whom it pays directly to permit continuation of work—The Mechanics' Lien Act, R.S.O. 1970, c. 267, as amended. The appellant Paron, a general contractor, entered into a subcontract on April 4, 1977, with Town Drywall Inc. for an amount of \$210,675. The respondent Brampar had obtained a default judgment against Town Drywall in March of 1977. As work progressed on the project, Paron received a number of claims in respect of amounts becoming due from itself to Town Drywall. These included a June 15, 1977, County Court order for attachment in respect of all such debts owing or accruing due, a notice of garnishee served by Brampar on June 22, 1977, and an ex parte order for payment into court of the amount of \$14,580.63, together with interest and costs, on August 3, 1977. Paron paid into court the sum of \$14,965.65 on August 11, 1977. This full amount was ordered paid out to Brampar over the objections of Paron on January 4, 1978. At the time of this order, moneys were owing to subcontractors of Town Drywall and to material suppliers. In addition, Paron had paid Town Drywall's workmen directly in order to keep them working on the project, thereby removing their lien claims. By completion of the project, Paron had paid, including the funds in dispute, in excess of \$246,000 in connection with its subcontract with Town Drywall, which was by this time without assets. The Ontario Court of Appeal dismissed Paron's appeal against the order to pay the funds out to Brampar, stating that on the facts of this case, Paron was not a cestui que trust of the trust fund which it held and had paid into court pursuant to The Mechanics' Lien Act. The Court also held that Paron could not otherwise step into the

shoes of those lien claimants whom it had paid for its own purposes. The Court of Appeal also noted that Paron had consented to the order for payment into court, and had not raised the trust submissions in the record. APPEAL from a judgment of the Court of Appeal for Ontario dismissing an appeal from an order of Sullivan J. Appeal dismissed. Ronald B. Moldaver, for the appellant. Robert Statton, for the respondent. The judgment of the Court was delivered orally by MARTLAND J.—We are all of the opinion that the judgment of the Court of Appeal should not be disturbed. The appeal is dismissed with costs. Judgment accordingly. Solicitors for the appellant: Bristow, Swybrous & Moldaver, Toronto. Solicitors for the respondent: Statton & Webster, Toronto.

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