

CANADA / JUDGMENT

Spoor v. Nicholls

2002 BCCA 119

COURT

British Columbia Court of Appeal

DECIDED

19 February 2002

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2002BCCA0119 Citation: Spoor v. Nicholls Date: 20020219 2002 BCCA 119 Docket: V03512 Registry: Victoria COURT OF APPEAL FOR BRITISH COLUMBIA BETWEEN: KEITH HOWARD SPOOR and BRIAN MILLER PLAINTIFFS (APPELLANTS) AND: IRENE JANICE NICHOLLS and GILBERT NICHOLLS DEFENDANTS (RESPONDENTS) Before: The Honourable Mr. Justice Hall The Honourable Madam Justice Levine The Honourable Mr. Justice Low R. W. Cameron Counsel for the Appellants B. A. Marlatt Counsel for the Respondents Place and Date of Hearing: Victoria, British Columbia June 14, 2001 Place and Date of Judgment: Vancouver, British Columbia February 19, 2002 Written Reasons by: The Honourable Mr. Justice Low Concurred in by: The Honourable Mr. Justice Hall The Honourable Madam Justice Levine Reasons for Judgment of the Honourable Mr. Justice Low:

- [1] On 14 June, 2001 this Court gave judgment on this appeal. The case arises out of a modest home improvement construction contract. The trial judge had dismissed the claim of the plaintiff contractors and allowed the counterclaim of the respondent owners. We ordered a new trial.
- [2] The successful appellant seeks three additional orders:
 - (a) that the respondents pay the costs of the appeal forthwith; (b) that the Builders Lien Act security of the appellants be reinstated; and (c) that the appellants recover the costs of the first trial in any event of the second trial.
- [3] I do not propose to review the circumstance of this already too lengthy piece of litigation. In my opinion, because this appeal was necessitated by the respondents making an application to reopen their case, it is appropriate that the respondents pay the appellants costs of the appeal forthwith.
- [4] I do not consider it appropriate for this Court to deal with the issue of statutory security. That issue was not before us.
- [5] I am not persuaded that the circumstances here give rise to a departure from the usual rule that the costs of the first trial follow the event of the second trial.

[6] I would order that the parties bear their own costs of the present application. "The Honourable Mr. Justice Low" I AGREE: "The Honourable Mr. Justice Hall" I AGREE: "The Honourable Madam Justice Levine"

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